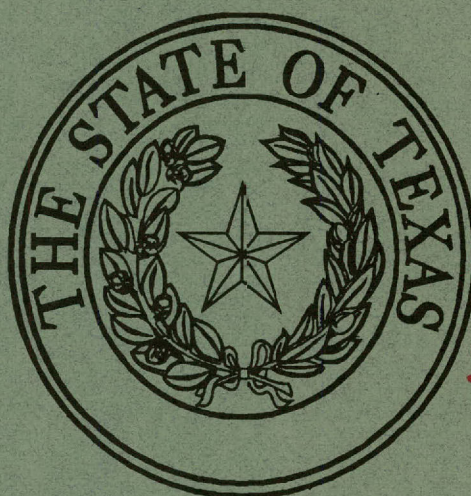


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**THE TEXAS  
STATE SECURITIES BOARD  
AND  
THE TEXAS INVESTOR**



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Printed September 1997



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## **MISSION OF THE STATE SECURITIES BOARD**

The primary mission of the State Securities Board, as set forth in the Texas Securities Act, is to protect Texas investors. Consistent with that mission, the State Securities Board attempts to ensure a free and competitive securities market in Texas, increase investor confidence, and thereby encourage the formation of capital and the creation of new jobs in Texas.

This brochure has been prepared by the staff of the State Securities Board (the "Agency") to provide a brief introduction to the Agency and how it functions, and to give practical suggestions to investors about how to protect themselves from fraud.







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## **WHAT ARE THE GOALS OF SECURITIES REGULATION?**

The securities markets provide a means for investors to achieve important financial objectives, such as providing a college education for their children and earning money for retirement. The securities markets also provide entrepreneurs with access to capital to build or expand businesses and create new jobs. Investment advisers, dealer firms, and their sales agents bring these two groups together in the marketplace to effect transactions for both groups' mutual benefit and to make our economic system work.

State and federal laws attempt to foster full and fair disclosure in the securities markets and thereby promote investor protection. On the state level, these regulatory laws are often referred to as "blue sky laws." This term reflects the state legislatures' desire to prohibit schemes so speculative as to represent nothing more than a square foot of blue sky. Texas' "blue sky law" is found in the Texas Securities Act (the "Act"). The rules and regulations of the State Securities Board (the "Rules"), promulgated pursuant to the Act, interpret and expand on



the protections afforded by the Act. The Act and Rules promote the goal of investor protection in the following ways:

1. They prohibit the use of fraud or misrepresentation in the offer for sale and sale of securities.
2. They require that securities be registered, sold pursuant to an exemption, or be the subject of a federal exception from state registration before they are offered or sold. The registration process involves the review of certain materials related to proposed offerings to determine whether those offerings are fair, just, and equitable and whether all relevant facts have been disclosed.
3. They require that securities dealers, agents, salesmen, and investment advisers be licensed with the State Securities Board unless an exemption or federal exception is available.
4. Finally, the Act provides for certain remedies and sanctions for violations of its provisions.



The registration and informational requirements of the Act and Rules serve to heighten investor confidence and awareness. This, in turn, assures that businesses of all sizes have access to capital markets. While the Act and Rules provide for certain exemptions from the registration requirements, those exemptions reflect judgments that certain securities transactions and certain kinds of securities contain inherent safeguards which render registration unnecessary. Nonetheless, exempt transactions and exempt securities remain subject to the anti-fraud requirements of the Act.

## **WHAT IS A SECURITY?**

The Act contains a broad definition of the term "security." Thus, the popular concept of what constitutes a security -- stocks and bonds listed for trading on a stock exchange -- is incomplete. The term also includes, among other things, collateral trust certificates, notes, commercial paper, evidences of indebtedness, interests in or under an oil, gas or mining lease, interests in cattle-feeding programs and "investment contracts." Generally, an



investment contract is an arrangement whereby an individual invests something of value in a common enterprise with an expectation of a return in the form of interest, dividends, increased capital, or other benefits to be derived from the significant managerial efforts of others. Any time a security is offered or sold in Texas, the security must be registered and must be sold by a registered person unless an exemption is available under the Act or Rules or an exception from state registration exists pursuant to federal law.

## **THE STATE SECURITIES BOARD**

The State Securities Board is the state agency entrusted with the task of administering and enforcing the Act. The Agency is overseen by a board (the "Board") composed of three members appointed by the Governor, with the advice and consent of the Senate, for six-year overlapping terms. The Board adopts and periodically updates rules to ensure that investors are adequately protected and that unreasonable burdens on legitimate capital raising activities are avoided. The Board appoints a Securities Commissioner who serves at its pleasure. The Securities Commissioner serves as the Agency's chief administrative



officer and supervises the day-to-day activities of the staff. The main office of the State Securities Board is located in Austin. The Agency also maintains offices in Dallas, Houston, Lubbock, and South Texas.

## **FUNCTIONS AND GOALS**

The Agency is organized into five divisions. Although the divisions coordinate closely in accomplishing the Agency's mission, each fulfills a unique role within the Agency.

### **SECURITIES REGISTRATION DIVISION**

The Securities Registration Division reviews all applications to register securities for sale in Texas. The primary function of this review is to ensure investors access to full and fair disclosure of all relevant investment information and to ensure that offering terms are "fair, just and equitable" in accordance with the criteria established by the Act and Rules. Review is designed to ensure, among other things, that the promoter and investor will share in the results of the venture (whether the results be profits or losses), that conflicts of interest are minimized, and that promotional expenses are reasonable.



The approval of a registration application does not constitute a recommendation of the securities being registered, nor does it in any way predict investment success. Rather, the purpose of review is to assure that certain minimal financial and informational requirements are met.

The Division also answers questions from the public concerning securities registration requirements and the status of securities registration applications.

### **DEALER REGISTRATION DIVISION**

The goal of dealer registration is to ensure that individuals and firms dealing with investors meet certain minimum standards of conduct and financial solvency. The Dealer Registration Division reviews all applications for registration of dealers, agents, salesmen, and investment advisers and performs inspections of dealers and investment advisers to ensure compliance with the requirements of the Act and Rules. All individuals or firms offering or selling securities or giving investment advice within the state must be registered unless an exemption is available.



Registrants must submit to an extensive background investigation, pass examinations on general securities principles and state securities laws, and agree to meet certain record-keeping and disclosure requirements. The following criteria, among others, are considered in determining whether to approve an application for registration: financial solvency; conviction of a crime; evidence of past inequitable or fraudulent business practices, and performance on written examinations.

The Division also answers questions regarding the registration status and disciplinary history of dealers, salesmen, or investment advisers and responds to inquiries concerning the activities of dealers, salesmen, and investment advisers.

### **ENFORCEMENT DIVISION**

The Enforcement Division attempts to prevent, detect, and redress violations of the Act and Rules. The Division is armed with certain statutory tools in its effort to protect the investor.



The Act provides for administrative sanctions to be imposed by the Securities Commissioner. These sanctions include: denial, revocation, or suspension of dealer, salesman, or investment adviser registration; cease and desist orders prohibiting or suspending the sale of securities; orders denying or revoking registration of securities; orders revoking exemptions; and cease publication orders.

The Act imposes criminal penalties for certain unlawful activities. After it investigates suspected violations of the Act, the Enforcement Division may recommend criminal prosecution of the suspected violator. Indictments and convictions are usually prosecuted by local district attorneys or United States attorneys, with the assistance of Enforcement staff members.

### **GENERAL COUNSEL DIVISION**

The General Counsel Division provides legal advice to the Board, Securities Commissioner, and staff, responds to public inquiries concerning interpretation of the Act and Rules, and issues written interpretive opinions to assist persons in complying with the law.



## **STAFF SERVICES DIVISION**

The Staff Services Division, under the direction of the Director of Staff Services, serves an administrative function. The Division handles data processing, personnel matters, reception, purchasing, deposits of revenue, and budgeting for the Agency.

## **PRACTICAL SUGGESTIONS FOR INVESTOR PROTECTION**

No investment is risk free and certain risks cannot necessarily be avoided. However, investors often can protect themselves against unnecessary risks by informing themselves about investments and investing, taking steps to avoid investment “scams” or “swindles,” determining their personal financial situation and needs, and setting realistic investment objectives.

Many investors need assistance in reading and understanding the disclosures relating to investments. If you are not sure you understand the materials, do not hesitate to ask for help from someone you trust who is knowledgeable about financial matters.



The State Securities Board has available *A Guide for Texas Families to Personal Financial Management* that provides considerable information that may be helpful to individual investors. This information can be obtained by contacting the State Securities Board.

There is perhaps no better way to protect yourself than by informing yourself about certain risks attending investments. The Agency routinely provides such information to the public by disseminating, among other things, "Investor Alerts" sponsored by the North American Securities Administrators Association and/or the Better Business Bureau. These publications are available from the Agency at no charge. Among other topics, the publications address: *Tips for Consumers on Mutual Funds Sold at Banks*; *"IRA Approved" Investment Schemes*; *Oil and Gas Drilling Scams*; and *How to Choose and Deal with a Stockbroker*.



# PROTECT YOURSELF FROM CON ARTISTS

## How Swindlers Find Victims

Although many legitimate investment opportunities are offered by reputable investment professionals, “con artists,” or “investment swindlers,” who often imitate the techniques of legitimate professionals, also are vying for your investment dollars. Many people believe that they can spot a con artist by his or her appearance; however, a successful con artist often looks like any other successful businessperson and can be smooth, cultured, and charming. Some swindlers rent luxurious offices with impressive addresses, distribute polished written materials, and wear expensive clothing to give the appearance of being reputable and successful business persons. Some of the ways that swindlers find their victims include, but are not limited to:

- ***Unsolicited telephone calls.*** Although some investments promoted over the phone are legitimate, unsolicited phone calls are the most common means swindlers use to contact would-be victims.



- **Mail.** The mail is often used for the initial contact, although in an effort to avoid postal regulators, swindlers may finalize the deal by phone or in person. Indeed, some fraudulent operators may *insist* on closing the deal in person or via private courier.
- **Online investment schemes.** The Internet provides a valuable source of information for investors to use to educate themselves about financial matters. However, “cyberspace” also provides swindlers with uncharted territory in which to practice fraud and abuse. For more information about how to protect yourself in cyberspace, you may wish to refer to a special *Investor Bulletin*. For a free copy of the *Bulletin* call (512) 305-8300, or write to the State Securities Board, P.O. Box 13167, Austin, Texas, 78711-3167, or visit the Agency’s web page, located at <http://www.ssb.state.tx.us>.
- **Referrals.** One of the oldest investment scams is called a “Ponzi Scheme.” A con artist will offer high rates of return on an investment, then use his or her own money, or the funds of investors, to provide initial investors with extraordinary returns. Friends and



neighbors hear about the success of the venture, and, in turn, invest their own funds. However, there is no venture. Instead, the con artist rakes in money based on word of mouth and then exits, leaving a very few investors wealthier than before and the vast majority disappointed and defrauded.

- ***Advertisements.*** Con artists often use, among other media, newspapers, magazines, financial publications, and direct mail to contact their prospective victims.

### **Precautions You Can Take to** **Avoid Being a Victim**

You are most vulnerable when you fail to gather all the facts about an investment opportunity. **ALWAYS INVESTIGATE BEFORE YOU INVEST!** You can protect yourself from unscrupulous persons by taking the following precautions, among others:

- **Be extremely cautious when strangers contact you by telephone or in person. Never give a stranger**



your social security number or drivers license number.

- **Always refuse demands** for an immediate decision. Some swindlers use **high pressure** sales techniques that require immediate money commitments because “tomorrow will be too late,” or this is “just one of two remaining openings.”
- If you are solicited over the phone, do not make an immediate decision. As discussed below, ask for written information about the firm, the salesperson, and the investment. If you are hounded by high-pressure tactics -- hang up! **NEVER SEND MONEY IN RESPONSE TO TELEPHONE SOLICITATIONS!**
- **Be wary of advertisements that give little or no information** other than “800” numbers or other means of contacting salespersons.
- **Scrutinize** investments sold on the basis of **rumors, tips, or supposedly “inside information.”** Look out for **buzz words** like “sure thing” or “secret technology.”



- **Be skeptical about claims** that an investment will yield extraordinary returns on your money in a short period of time. Always remember: **IF THE OPPORTUNITY APPEARS TO BE TOO GOOD TO BE TRUE, IT PROBABLY IS!**
- **Ask for written information** about the investment you are considering, such as a prospectus, offering circular, and financial statements. Read the materials carefully and make sure you understand them before you sign a purchase order to pay for an investment. Most legitimate investment opportunities will be accompanied by written materials clearly disclosing the potential for loss, short- and long-term tax implications, and any fees, among other things. Again, if the seller has little or no written information about the company or its past performance avoid investing in the company.
- **Be inquisitive.** Ask every question about the seller and the investment that occurs to you. No question is dumb or silly when you are deciding how to invest your hard-earned money. Understand the risks and



benefits of every prospective investment before making a decision to buy.

- **Do not accept promotional items** or gifts in exchange for special investment offers or discounts. Remember: **EVERYTHING HAS ITS PRICE.**
- **Never sign a blank form.**
- **Seek advice** from disinterested third parties, such as your lawyer or accountant.
- **Contact the State Securities Board** to find out if the company issuing the securities and the persons selling them are properly licensed and free of any history of violating the law. If the person or company has failed to properly register or has a history of trouble with authorities, you should proceed only with extreme caution, if at all.
- **Contact your Better Business Bureau** to obtain information on complaints about the company, salesperson or investment.



- **If in doubt -- wait!**

## **THE INFORMED INVESTOR**

Taking steps to prevent fraud will help you **avoid** bad investments. Your best guide to **choosing** an investment is a careful assessment of your personal financial situation and investment goals. Your library has various books and other publications that can assist you in developing your investment strategy, and many schools, community centers, financial institutions, and community colleges offer courses or seminars on the basics of personal investing. **REMEMBER: ALL INVESTMENTS REQUIRE RESEARCH AND DELIBERATION!**

No investment is risk free, and, generally, the greater the potential return, the greater the risk. Nevertheless, if you ask the following questions, among others, before you invest, you may be able to avoid some common investment pitfalls.

- What is the age and track record of the company?



- Who makes up the company's management and how experienced are they? How much compensation will they receive? How much of their time are they going to put into running the company?
- How will the offering proceeds be used?
- What are the specific risks of the investment?
- How much money will go to commissions and management and other fees?
- What statements or other documents regarding this investment will be disseminated and how often will they be updated?
- How can the investment be sold or liquidated?
- Is the security registered with the State Securities Board?
- Is the person offering or selling the security registered with the State Securities Board? What is the person's disciplinary history?



## **INVESTOR REMEDIES**

In addition to the administrative and criminal sanctions discussed in the description of the Enforcement Division, above, the Act provides for private civil remedies for violations of its provisions. If you suspect that you have been defrauded, you may wish to contact an attorney to determine what course you should take to establish your rights. In addition, you may wish to contact the Agency and inquire about a suspected violation.

## **INVESTOR INQUIRIES**

Investors should realize that the Agency cannot protect them from possible financial loss or the risks inherent in any investment. However, the Agency welcomes information and inquiries concerning suspected violations of the Act.

Investors with such concerns should send the Agency a letter describing the nature of the concern, together with copies of any relevant documents. As an alternative, investors may wish to telephone the Agency's Enforcement Division. Enforcement Division staff



responding to such calls may provide investors with brief questionnaires to fill out and return. Complaints may also be submitted electronically to [complaints@ssb.state.tx.us](mailto:complaints@ssb.state.tx.us). Finally, anonymous inquiries, both written and oral, are accepted. The Agency acknowledges receipt of all inquiries.

Depending on the circumstances surrounding an inquiry, the Agency may begin an investigation. If an investigation uncovers facts that indicate a violation of the Act, the Agency may pursue administrative sanctions, injunctive relief through the Attorney General, or indictment and criminal conviction through the appropriate prosecutorial authority.

Should you have information about a suspected violation, or if you wish to inquire about the activities of persons issuing or selling securities or giving investment advice, please contact:

- State Securities Board  
P. O. Box 13167  
Austin, Texas 78711-3167  
(512) 305-8300  
(512) 305-8310 (facsimile)  
or visit our web page at:  
<http://www.ssb.state.tx.us>



En Español:

- State Securities Board  
606 N. Carancahua, Suite 608, West Tower  
Corpus Christi, Texas 78476  
(512) 887-1085

In addition, the following entities may provide you with assistance:

- North American Securities Administrators Association, Inc.  
One Massachusetts Avenue, N.W., Suite 310  
Washington, D.C. 20001  
(202) 737-0900  
<http://www.nasaa.org>
- National Association of Securities Dealers  
12801 North Central Expressway  
Suite 1050  
Dallas, Texas 75243  
(972) 701-8554  
1-800-289-9999 (disciplinary history)  
<http://www.nasdr.com> (registration information)  
<http://www.nasd.com> (general information)



- **Securities and Exchange Commission**  
801 Cherry Street  
19th Floor  
Fort Worth, Texas 76102  
(817) 978-3821  
1-800-SEC-0330 (investor information service)  
<http://www.sec.gov>
- **Commodity Futures Trading Commission**  
1155 21st Street, N.W.  
Washington, D.C. 20581  
(202) 418-5080  
1-800-676-4632 (consumer protection hotline)  
<http://www.cftc.gov>
- **Honorable Dan Morales**  
Texas Attorney General  
P. O. Box 12548  
Austin, Texas 78711  
(512) 463-2100  
(512) 463-2007 (citizens assistance)  
1-800-252-8011 (general information)  
<http://www.oag.state.tx.us>



- Better Business Bureau of Austin, Inc.  
John S. Etchieson, President  
2101 S. IH 35, Suite 302  
Austin, Texas 78741  
(512) 445-2911  
1-800-580-5477  
<http://www.bbb.org>  
(Or your local Better Business Bureau)
- New York Stock Exchange  
Eleven Wall Street  
New York, New York 10005  
(212) 656-3000  
<http://www.nyse.com>
- American Stock Exchange  
86 Trinity Place  
New York, New York 10006-1881  
(212) 306-1000  
<http://www.amex.com>



## **ADDITIONAL INFORMATION**

Information about certain securities offerings is available to the public in the form of registration statements and reports filed with the Agency.

If you have any questions about whether a security is registered, contact:

- Securities Registration Division  
State Securities Board  
P. O. Box 13167  
Austin, Texas 78711-3167  
(512) 305-8300  
(512) 305-8310 (facsimile)

If you have any questions about whether a dealer, salesman or investment adviser is registered, contact:

- Dealer Registration Division  
State Securities Board  
P. O. Box 13167  
Austin, Texas 78711-3167  
(512) 305-8300  
(512) 305-8340 (facsimile)



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Section 2.L of the Texas Securities Act