

20:08:03:01. Registration for broker-dealers, broker-dealer agents, and agents of the issuer.

(1) Definitions:

(a) "Division" means the Division of ~~Securities~~ Insurance, South Dakota Department of ~~Revenue and Regulation~~ Labor and Regulation.

(b) "CRD" means the Central Registration Depository.

(c) "NASAA" means the North American Securities Administrators Association, Inc.

(d) "OSJ" means Office of Supervisory Jurisdiction as referenced in the FINRA Manual IM-1000-4 under Rule 3010 and defined in Rule 3010(g)(1).

(e) "FINRA" means the Financial Industry Regulatory Authority, Inc.

(2) Broker-dealer registration, supervision, post registration, renewal, and withdrawal requirements:

(A) Registration: Except as set forth in subdivision (2)(F) of this section, to register as a broker-dealer the applicant must be a member of FINRA, and file with the CRD the following:

(i) SEC Form BD (Uniform Application for Broker-Dealer Registration); and

(ii) The registration fee pursuant to SDCL [47-31B-410\(a\)](#).

A certificate of registration will not be issued. Proof of status is available from the CRD.

(B) Supervision:

(i) Every registered broker-dealer must employ at its principal office and at each office of supervisory jurisdiction (OSJ) in this state, at least one person designated to act in a supervisory capacity, who is registered as an agent in this state and has satisfied the supervisory examination requirements of FINRA. For any other office in this state, not designated as an OSJ, a supervisor must be designated to supervise the office; however, the supervisor need not be located in this state, but must be registered in this state as an agent and satisfy the supervisory examination requirements of FINRA.

Failure to abide by this subdivision for more than 30 days, may result in revocation or the suspension of the registered broker-dealer until such time as there is compliance with this rule.

(C) Post registration:

(i) The applicant must file amendments to SEC Form BD in accordance with the instructions on those forms with the CRD only.

(ii) The applicant must file SEC Form X-17A-5 FOCUS reports in a timely manner with FINRA. However, the division may request applicant to provide a copy of the FOCUS report.

(D) Registration renewal requirements:

(i) All registrations expire on December 31 of each year.

(ii) To renew registration, the applicant must submit to the CRD the registration fee pursuant to SDCL [47-31B-410\(a\)](#) before December 31.

(E) Registration withdrawals:

(i) To withdraw a registration, the applicant must file with the CRD, or with the division if not required by the CRD, SEC Form BDW (Uniform Request for Withdrawal from Registration as a Broker-Dealer).

(ii) A withdrawal is effective 30 days following receipt of SEC Form BDW, unless the division notifies the applicant otherwise.

(F) Intrastate broker-dealers:

Every broker-dealer registered or required to be registered under SDCL chapter 47-31B, whose business is exclusively intrastate, who does not make use of any facility of a national securities exchange and who is not registered under section 15 of the Securities Exchange Act of 1934, shall be subject to the same broker-dealer requirements as set forth above, except that an intrastate broker-dealer does not need to be a member of FINRA and those documents required to be filed with the CRD shall be filed with the division.

(3) Broker-dealer agent registration, post registration, renewal and withdrawal requirements.

(A) Broker-dealer agent registration:

To register as a broker-dealer agent, the applicant or the sponsoring broker-dealer must file with the CRD the following, in addition to any information required by FINRA, the CRD, or the SEC:

(i) FINRA Form U-4 (Uniform Application for Securities Industry Registration or Transfer);

(ii) Proof that the applicant passed the Series 63 examination (Uniform Securities Agent State Law Examination) or the Series 66 examination (Uniform Combined State

Law Exam) which are administered by FINRA, and any other exams required by the SEC or FINRA; and

(iii) The registration fee pursuant to SDCL [47-31B-410\(b\)](#) and in the form of payment prescribed by the CRD.

A broker-dealer agent must re-take and pass the Series 63 Exam or the Series 66 Exam if the agent's most recent registration terminated two or more years before the date of receipt by the division of a new application.

A broker-dealer agent, who has been registered as a broker-dealer agent in any jurisdiction in the United States prior to January 1, 1989, is not required to pass the Series 63 examination provided there has never been a lapse of registration of more than two years. The director may require additional examinations for any individual found to have violated any state or federal securities law.

An out-of-state agent must be registered or exempt from registration in the agent's home state as a precondition of being considered for registration in South Dakota. The burden of proof for claiming an exemption is on the agent.

A certificate of registration will not be issued. Proof of status is available from the CRD.

(B) Broker-dealer agent post registration:

(i) The applicant must file amendments to FINRA Form U-4 in accordance with the instructions on this form with the CRD only.

(C) Broker-dealer agent renewal requirements:

(i) All registrations expire on December 31 of each year.

(ii) To renew registration, the applicant must submit to the CRD the renewal fee pursuant to SDCL 47-31B-410(b) before December 31.

(D) Broker-dealer agent withdrawal requirements:

(i) To withdraw a registration or application, the applicant must file with the CRD, FINRA Form U-5 (Uniform Termination Notice for Securities Industry Registration).

(ii) A withdrawal is effective 30 days following receipt of FINRA Form U-5, unless the division notifies the applicant otherwise.

(E) Dual registration:

A dual registration may be allowed by the director if:

(i) The applicant requests a dual registration in writing to the division which identifies the broker-dealers with which the applicant will associate and set forth the reasons for the dual registration;

(ii) Both broker-dealers with which applicant intends to associate represent in writing to the division that each assumes full responsibility for applicant at all times; and

(iii) The applicant discloses the dual registration to each client.

(F) Agents of an Intrastate Broker-Dealer:

Every agent of a broker-dealer registered or required to be registered under SDCL chapter 47-31B whose business is exclusively intrastate, who does not make use of any facility of a national securities exchange and who is not registered under section 15 of the Securities Exchange Act of 1934, is subject to the same broker-dealer agent requirements as set forth in § 20:08:03:01, except that an agent of an intrastate broker-dealer does not need to be a member

of FINRA and those documents required to be filed with the CRD shall be filed with the division.

(4) Agent of the issuer, registration requirements:

(A) To register as an agent of the issuer, the applicant or the sponsoring issuer must file with the division the following:

- (i) FINRA Form U-4 with original signatures;
- (ii) Proof that the applicant passed the Series 63 Exam or the Series 66 Exam; and
- (iii) The fee as set forth in SDCL 47-31B-410(b).

An agent of the issuer must re-take and pass the Series 63 Exam or the Series 66 Exam if the agent's most recent registration terminated two or more years before the date of receipt by the division of a new application.

A certificate of registration will not be issued.

(B) Agent of the issuer post registration:

- (i) An agent of the issuer must promptly file with the division amendments to FINRA Form U-4 or any other information which materially changes the information on file with the division.

(C) Registration renewals for agents of the issuer:

To renew a registration, the applicant must file the following with the division before December 31 of each year;

- (i) FINRA Form U-4 with original signatures; and
- (ii) The fee as set forth in SDCL 47-31B-410(b), to be submitted to the South Dakota Division of ~~Securities~~ Insurance.

All registrations expire on December 31 of each year.

(D) Registration withdrawal requirements:

(i) To withdraw a registration, the applicant must file a written request for withdrawal with the Division on Form U-5.

(ii) A withdrawal is effective 30 days following receipt of the written request for withdrawal, unless the division notifies the applicant otherwise.

(iii) If an agent of the issuer applies for registration with two or more issuers in a twelve-month period, the division may deem the agent to be a broker-dealer and require the agent to register as a broker-dealer.

(5) Registration transfers:

A broker-dealer or broker-dealer agent may transfer a registration by following CRD procedures. The division recognizes and participates in the NASAA/CRD Temporary Agent Transfer ("TAT") program and will honor transfers effected through TAT procedures.

Source: 27 SDR 5, effective July 31, 2000; 28 SDR 48, effective October 10, 2001; 30 SDR 58, effective November 5, 2003; 30 SDR 211, effective July 1, 2004; 37 SDR 112, effective December 9, 2010.

General Authority: SDCL 47-31B-402(e), 47-31B-410(f), 47-31B-411(b), 47-31B-412(e), 47-31B-503, 47-31B-605(a)(1) to (3), inclusive, 47-31B-605(b).

Law Implemented: SDCL 47-31B-103, 47-31B-401, 47-31B-402, 47-31B-406, 47-31B-408, 47-31B-409, 47-31B-410, 47-31B-412(e).

CHAPTER 20:08:07

NOTICE FILINGS FOR COVERED SECURITIES AND REGISTRATION EXEMPTIONS

Section

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Appendix A Statement of Issuer Form, repealed, 37 SDR 112, effective December 9, 2010.

Appendix B Report of Sales Form, repealed, 37 SDR 112, effective December 9, 2010.

Appendix C Consent to Service of Process Form U-2, repealed, 37 SDR 112, effective December 9, 2010.

Appendix D Form D, repealed, 37 SDR 112, effective December 9, 2010.

Appendix E Solicitation of Interest Form, repealed, 37 SDR 112, effective December 9, 2010.

Appendix F Model Accredited Investor Form, repealed, 37 SDR 112, effective December 9, 2010.

Appendix G Form NF, repealed, 37 SDR 112, effective December 9, 2010.

20:08:07:30. Manual exemption. The following nationally recognized securities manuals are approved for purposes of SDCL 47-31B-202(2)(D).

- (1) Mergent's Industrial Manual;
- (2) Mergent's Bank and Finance Manual;
- (3) Mergent's Public Utility Manual;
- (4) Mergent's Municipal and Governmental Manual;
- (5) Mergent's Transportation Manual;
- (6) Mergent's OTC Industrial Manual;
- (7) Mergent's OTC Unlisted Manual;
- (8) Mergent's International Manual;
- (9) OTCQX Market;
- (10) OTCQB Market.

Source: 28 SDR 48, effective October 10, 2001; 30 SDR 211, effective July 1, 2004; 41 SDR 58, effective October 14, 2014; 43 SDR 80, effective December 6, 2016.

General Authority: SDCL 47-31B-202(D), 47-31B-605(a)(1), 47-31B-605(a)(3).

Law Implemented: SDCL 47-31B-202(D).

Note: Mergent's manuals can be located at ~~www.mergentonline.com~~
<http://www.mergent.com/>. OTCQX and OTCQB can be located at
<http://www.otcmarkets.com/home>.

20:08:07:34. Solicitation of interest.

1. Scope of the exemption. The solicitation of interest exemption under SDCL 47-31B-202(17) is only available to issuers that register by qualification under SDCL 47-31B-304(b)(13) and have filed with the division, and are exempt from registration from the Securities Act of 1933. Oral offers may be made both before and after a registration statement is effective provided there is compliance with this rule.

2. Form and content. The record to offerees shall consist of a preliminary offering document that meets the following requirements:

a. The outside front cover page shall comply with subsection 230.555(a)(1) of regulation A under the Securities Act of 1933 or state:

"A registration statement pursuant to SDCL chapter 47-31B relating to these securities has been filed with the South Dakota Division of ~~Securities~~ Insurance. This Preliminary Offering Document is being distributed pursuant to the exemption under SDCL 47-31B-202(17). Information contained in this Preliminary Offering Document is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time

an offering document which is not designated as a Preliminary Offering Document is delivered and the offering statement filed with the Division becomes qualified. This Preliminary Offering Document does not constitute an offer to sell or the solicitation of an offer to buy. Under no circumstances shall the issuer collect any funds for the securities while relying upon the exemption under SDCL 47-31B-202(17)."; and

b. The preliminary offering document shall contain substantially the information required in an offering circular under the Form 1-A or Form U-7.

c. Filing. The issuer shall file the preliminary offering document and all related documents with the division as part of the registration statement prior to making any solicitations of interest under the exemption of SDCL 47-31B-202(17).

d. No funds may be collected by the issuer for the securities while relying upon the exemption under SDCL 47-31B-202(17).

Source: 30 SDR 211, effective July 1, 2004.

General Authority: SDCL 47-31B-202(17), 47-31B-605(a)(1), 47-31B-605(b).

Law Implemented: SDCL 47-31B-103, 47-31B-202(17).

20:08:07:40. Request for Transactional Exemption Pursuant to a Fairness Determination.

(1) Any person seeking the director's approval, pursuant to SDCL § 47-31B-202(9), of the fairness of the terms and conditions of the issuance and delivery of securities in exchange for outstanding securities, claims, or property interests, shall make application with the director as described in paragraph (2) below. The director may in his sole discretion reject any application. The director will only consider an application for a proposed exchange transaction where five percent (5%) or more of the persons to whom it is proposed to issue securities or to deliver other

consideration in an exchange under SDCL § 47-31B-202(9) are persons who are South Dakota residents, and:

(a) The applicant is a domestic business entity formed, organized, or incorporated under the laws of South Dakota; or

(b) The applicant is a business entity whose headquarters or principal place of business is located in South Dakota;

(2) The application and all accompanying documents shall be type-written and submitted to the director in triplicate. The application shall be signed and dated by the applicant or by a person authorized to act in the applicant's behalf. The application shall request that the director conduct a hearing pursuant to SDCL § 47-31B-202(9) and shall contain the following information:

(a) The full legal name, state of formation, organization or incorporation, and principal office address of any person proposing to issue securities or deliver other consideration in the proposed exchange;

(b) A description of the proposed transaction, including but not limited to all parties to the transaction, all major lines of business engaged in by such parties, expected benefits of the transaction, a chronological description of the transaction to date, a projected timetable and description of all events necessary to consummate the transaction, all legal and financial advisors providing advice to any party to the transaction, all identification of any persons providing any valuation or fairness opinions to any party with respect to the securities or other consideration to be issued or exchanged in the proposed transaction;

(c) A description of the securities or other consideration to be issued or delivered in the proposed exchange;

(d) A description of the bona fide securities, claims or property interests for which the securities or other consideration referred to in paragraph (2)(c) are to be exchanged, including the full legal name, state of formation, organization or incorporation, and principal office address of the issuer of any such bona fide securities;

(e) A brief statement of the terms and conditions under which the securities or other consideration referred to in paragraph (2)(c) will be issued and exchanged or delivered and exchanged for the bona fide securities, claims or property interests;

(f) A list of the full legal names, addresses, and percentage interest owned of all persons to whom the securities will be issued or other consideration delivered in the exchange. If some or all of such persons are to receive the securities or other consideration by virtue of their ownership of shares of stock in a corporation, the applicant may comply with this requirement by submitting a list which shows the shareholders of the corporation and the number of shares and percentage of total shares held by each shareholder as of a date not more than 30 days prior to the filing of the application;

(g) A statement setting forth the distinct number of and percentage total of all persons named on the list to be provided pursuant to paragraph (2)(f) who are residents of South Dakota;

(h) A statement setting forth proposed findings of fact which the applicant requests that the director find and incorporate in the director's written decision with respect to the application;

(i) A statement as to whether the applicant intends to rely on the exemption from federal securities registration provided for in section 3(a)(10) of the Securities Act of 1933, 15 U.S.C. §77c(a)(10);

(j) Any additional information which the applicant desires the director to consider. The director may require the applicant to submit other information in addition to the information required by this rule. The director may also waive or modify the requirements of this rule by allowing the applicant to submit less information than this rule would otherwise require;

(3) The application shall be accompanied by the following documents:

(a) All written agreements, and accompanying appendices, exhibits and attachments, governing the proposed transaction;

(b) All press releases or other media announcements regarding the proposed transaction disseminated by any party to the proposed transaction;

(c) A draft copy of the notice of the requested hearing to be held by the director in connection with the application that the applicant plans to mail to all persons to whom the applicant proposes to issue securities or to deliver other consideration in the proposed transaction;

(d) An audited balance sheet, prepared in accordance with generally accepted accounting principles applicable in the United States ("US GAAP"), as of the close of the most recent fiscal year, and, in the case of a proposed rollup transaction, a pro forma balance sheet, as of the close of most recent fiscal year, disclosing the effect of the transaction, in each case, of any person whose securities will be issued or exchanged in the proposed transaction;

(e) An audited income statement, prepared in accordance with US GAAP, for the most recent fiscal year, and, in the case of a proposed rollup transaction, a pro forma income statement, as of the close of most recent fiscal year, disclosing the effect of the transaction, in each case, of any person whose securities will be issued or exchanged in the proposed transaction;

(f) All valuation or fairness opinions identified in paragraph (2)(c), including all materials supporting any parties' valuation of the securities or other consideration to be issued or exchanged in the proposed transaction;

(g) Any other documents which the applicant desires the director to consider. The director may require the applicant to submit other documents in addition to the documents required by this rule. The director may also waive or modify the requirements of this rule by allowing the applicant to submit fewer documents other than those which this rule would otherwise require;

(h) A non-refundable filing fee of five hundred dollars (\$500.00);

(i) A written undertaking to pay, upon receipt of an invoice from the director, the fees and costs required by paragraph (4)(d) of this rule;

(j) A completed and notarized Form U-2, Uniform Consent to Service of Process;

(4) The procedure following application is as follows:

(a) The director may inform the applicant of any deficiencies in the application or of any additional information or documents required and may require the applicant to amend or resubmit the application prior to setting a date for the hearing;

(b) The director, in his sole discretion, may retain an independent valuation consultant to review all of the materials submitted in paragraph (2)(f) of this rule;

(c) Upon the filing of an application complying with the provisions of this rule, correction of any deficiencies and amendment of the application as necessary, and receipt of all materials requested by the director, the director will, within a reasonable period of time, inform the applicant of the date, hour, and place of the hearing;

(d) Upon the director's issuance of a notice of hearing pursuant to SDCL 1-26-17, the applicant shall remit to the director a non-refundable fairness proceeding fee of seven thousand five hundred dollars (\$7,500.00) and shall reimburse the director for all costs incurred by the director in connection with the fairness proceeding, including any costs in connection with the retention of any independent valuation consultant;

(e) The applicant shall mail by United States mail, postage prepaid, notice of the hearing to all persons to whom it is proposed to issue securities or to deliver the other consideration in such exchange, not less than 14 days prior to the hearing. The applicant shall provide to the director, on or before the date of the hearing, a certification that the notice of hearing has been so mailed;

(f) An evidentiary hearing shall be held by the director pursuant to chapter 1-26 and SDCL 47-31B-604;

(g) The applicant has the burden of proving the applicability of its claim for exemption under SDCL 47-31-B-202(9);

(h) Within a reasonable period of time after the hearing, the director of securities shall issue an order either granting or denying approval of the terms of conditions of the proposed transaction.

Source: 42 SDR 51, effective October 13, 2015.

General Authority: SDCL 47-31B-605(a).

Law Implemented: SDCL 47-31B-103, 47-31B-202(9).

20:08:07:41. Notice Filing Requirement for Federal Crowdfunding Offerings

The following provisions apply to offerings made under federal Regulation Crowdfunding (17 C.F.R § 227) and Sections 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933:

- (1) An issuer that offers and sells securities in an offering exempt under federal Regulation Crowdfunding and that either (1) has its principal place of business in this state or (2) sells 50% or greater of the aggregate amount of the offering to residents of this state, shall file the following with the Division of Insurance:
 - (a) A completed Uniform Notice of Federal Crowdfunding Offering form or copies of all documents filed with the Securities and Exchange Commission;
 - (b) A consent to service of process on Form U-2 if not filing on the Uniform Notice of Federal Crowdfunding Offering form; and
 - (c) The filing fee prescribed by SDCL 47-31B-302(e).
- (2) If the issuer has its principal place of business in this state, the filing required under paragraph (a) shall be filed with the Division of Insurance when the issuer makes its initial Form C filing concerning the offering with the Securities and Exchange Commission. If the issuer does not have its principal place of business in this state but residents of this state

have purchased 50% or greater of the aggregate amount of the offering, the filing required under paragraph (a) shall be filed when the issuer becomes aware that such purchases have met this threshold and in no event later than thirty days from the date of completion of the offering.

- (3) The initial notice filing is effective for twelve months from the date of the filing with the Division of Insurance; and
- (4) For each additional twelve-month period in which the same offering is continued, an issuer conducting an offering under federal Regulation Crowdfunding must renew its notice filing by filing the following on or before the expiration of the notice filing:
 - (a) A completed Uniform Notice of Federal Crowdfunding Offering form marked “renewal”; and
 - (b) A cover letter requesting renewal; and
 - (c) The renewal fee prescribed by SDCL 47-31B-302(e).

Source:

General Authority: SDCL 47-31B-302, 47-31B-605.

Law Implemented: SDCL 47-31B-103, SDCL 47-31B-302.

20:08:07:42 Notice Filing Requirement for Regulation A – Tier 2 Offering

The following provisions apply to offerings made under Tier 2 of federal Regulation A and Section 18(b)(3) of the Securities Act of 1933:

- (1) An issuer planning to offer and sell securities in this state in an offering exempt under Tier 2 of federal Regulation A shall submit the following at least twenty-one calendar days prior to the initial sale in this state:

- (a) A completed Regulation A – Tier 2 notice filing form or copies of all documents filed with the Securities and Exchange Commission;
 - (b) A consent to service of process on Form U-2 if not filing on the Regulation A – Tier 2 notice filing form; and
 - (c) The filing fee prescribed by SDCL 47-31B-302(e).
- (2) The initial notice filing is effective for twelve months from the date of the filing with this state; and
- (3) For each additional twelve-month period in which the same offering is continued, an issuer conducting a Tier 2 offering under federal Regulation A must renew its notice filing by filing the following on or before the expiration of the notice filing:
- (a) The Regulation A – Tier 2 notice filing form marked “renewal”;
 - (b) A cover letter requesting renewal; and
 - (c) The filing fee prescribed by SDCL 47-31B-302(e).

Source:

General Authority: SDCL 47-31B-302, 47-31B-605.

Law Implemented: SDCL 47-31B-103, SDCL 47-31B-302.