**20:08:07:03.02.  Notice filing for Rule 504 and 506 Reg. D offerings.**

(1)  Rule 504.

A.  Securities offered and sold pursuant to 17 C.F.R. § 230.504 are exempt from SDCL 47-31B-301. In order to qualify for this exemption, there must be full compliance with 17 C.F.R. § 230.504.

B.  Disqualification. The exemption under subsection (1)(A) is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of such underwriter:

1.  Within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the U.S. Securities and Exchange Commission;

2.  Within the last five years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;

3.  Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

4.  Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminary, or permanently restraining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

C.  Subsection (1)(B) does not apply if:

1.  The party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;

2.  Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

3.  The issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this subsection.

(2)  Filing required for Rule 504. An issuer offering a security pursuant to Rule 504 must file with the division, no later than 15 days after the first sale of such security in this state, the following:

a.  A manually or electronically signed copy of the Form D; and

b.  The filing fee as set forth in SDCL 47-31B-203.

(3)  Notice filing Rule 506. An issuer offering a security pursuant to 17 C.F.R. § 230.506 must file with the division, no later than 15 days after the first sale of such security in this state, the following:

a.  A manually or electronically signed copy of the Form D;

b.  The filing fee as set forth in SDCL 47-31B-302(c); and

c.  Payment of the late fee pursuant to SDCL 47-31B-302(c) does not prevent any civil liability or regulatory action from being taken based on a violation of SDCL 47-31B-301.

(4)  Amendments. During the period of the offering, the issuer shall take steps necessary to insure that all material information contained in the notice filing remains current and accurate for filings made pursuant to subsections (2) and (3) of this rule.

**Source:** 30 SDR 211, effective July 1, 2004; 37 SDR 112, effective December 9, 2010; 45 SDR 158, effective June 27, 2019.

**General Authority:** SDCL 47-31B-203, 47-31B-302(c), 47-31B-605(a)(1), 47-31B-605(a)(3), 47-31B-605(b).

**Law Implemented:** SDCL 47-31B-103, 47-31B-203, 47-31B-302(c).