ADMINISTRATIVE RULES

of

SOUTH DAKOTA

Cite as ARSD \_\_\_\_\_\_\_

DEPARTMENT OF HEALTH

ARTICLE 20:08

SECURITIES

Published By

South Dakota Legislative Research Council

Printed December 7, 2020

**ARTICLE 20:08**

**SECURITIES**

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**BROKER-DEALER AND AGENT RULES**

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

 (1)  Definitions:

 (a)  "Division" means the Division of Insurance, South Dakota Department of 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 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; 44 SDR 99, effective December 11, 2017.

 **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).

 **20:08:03:02.  Record keeping requirements for broker-dealers.**

 (1)  Unless otherwise provided by order of the SEC, each broker-dealer registered or required to be registered under SDCL chapter 47-31B shall make, maintain and preserve books and records in compliance with the SEC rules 17a-3 (17 C.F.R. § 240.17a-3), 17a-4 (17 C.F.R. § 240.17a-4), 15g-9 (17 C.F.R. § 240.15g-9) and 15c2-11 (17 C.F.R. § 240.15c2-11), which are adopted and incorporated by reference.

 (2)  To the extent that the SEC promulgates changes to the above referenced rules, broker-dealers in compliance with such rules as amended are not subject to enforcement action by the division for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

 **Source:** 27 SDR 5, effective July 31, 2000; 30 SDR 211, effective July 1, 2004.

 **General Authority:** SDCL 47-31B-411(c)(1), 47-31B-605(a)(1), 47-31B-605(b).

 **Law Implemented:** SDCL 47-31B-103, 47-31B-411(c).

 **20:08:03:03.  Broker-dealer minimum financial requirements.**

 (1)  Each broker-dealer registered or required to be registered under SDCL chapter 47-31B, shall comply with SEC Rules 15c3-1 (17 C.F.R. § 240.15c3-1), 15c3-2 (17 C.F.R. § 240.15c3-2), and 15c3-3 (17 C.F.R. § 240.15c3-3), which are adopted and incorporated by reference.

 (2)  Each broker-dealer registered or required to be registered under SDCL chapter 47-31B shall comply with SEC Rule 17a-11 (17 C.F.R §. 240.17a-11) and shall file with the division upon request copies of notices and reports required under SEC Rules 17a-5 (17 C.F.R. § 240.17a-5), 17a-10 (17 C.F.R. § 240.17a-10), and 17a-11 (17 C.F.R. § 240.17a-11), which are adopted and incorporated by reference.

 (3)  To the extent the SEC promulgates changes to the above referenced rules, broker-dealers in compliance with such rules as amended are not subject to enforcement action by the division for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended SEC rule.

 (4)  Financial Reports: Broker-dealer financial reports do not need to be filed with the division unless requested by the director.

 **Source:** 27 SDR 5, effective July 31, 2000; 30 SDR 211, effective July 1, 2004.

 **General Authority:** SDCL 47-31B-411(a), 47-31B-605(a)(1), 47-31B-605(b), 47-31B-605(c).

 **Law Implemented:** SDCL 47-31B-103, 47-31B-411.

 **20:08:03:04.  Net capital requirements of broker-dealers.** A broker-dealer registered or required to be registered under SDCL chapter 47-31B shall have and maintain an adjusted net capital in compliance with Rule 15c3-1 (17 C.F.R. § 240.15c3-1) under the Securities Exchange Act of 1934.

 **Source:** 27 SDR 5, effective July 31, 2000; 30 SDR 211, effective July 1, 2004.

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

 **Law Implemented:** SDCL 47-31B-103, 47-31B-411.

 **20:08:03:05.  Waiver of certain broker-dealer records and financial requirements.** Upon written application, the director may waive the requirements of §§ 20:08:03:02, 20:08:03:03, and 20:08:03:04 either unconditionally or on specified terms and conditions, any broker-dealer applicant or registrant not registered with the United States Securities and Exchange Commission or a member of a self-regulatory organization, who satisfies the director that, because of the special nature of its business, its financial position and the safeguards it has established for the protection of customer funds and securities, it is not necessary in the public interest or for the protection of investors to subject the applicant or registrant to the provisions of §§ 20:08:03:02, 20:08:03:03, and 20:08:03:04.

 **Source:** 27 SDR 5, effective July 31, 2000; 30 SDR 211, effective July 1, 2004.

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

 **Law Implemented:** SDCL 47-31B-103, 47-31B-411.

 **20:08:03:06.  Dishonest and unethical practices, broker-dealer, broker-dealer agents.** Any broker-dealer or agent who engages in one or more of the following practices shall be deemed to have engaged in dishonest or unethical practices as used in SDCL 47-31B-412(d)(13) and such conduct may constitute grounds for denial, suspension, or revocation of registration or such other action authorized by statute.

(1)  Broker-Dealers

 (a)  Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of any of its customers;

 (b)  Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

 (c)  Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer.

 The rule in this subsection (c) may be referred hereinafter as the suitability rule;

 (d)  Executing a transaction on behalf of a customer without authorization to do so;

 (e)  Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the executing of orders;

 (f)  Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

 (g)  Failing to segregate customers' free securities or securities held in safekeeping;

 (h)  Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by Rules of the Securities and Exchange Commission;

 (i)  Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

 (j)  Failing to furnish to a customer purchasing securities in an offering, no later than the due date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

 (k)  Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

 (l)  Offering to buy from or sell to any person any security at a stated price unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;

 (m)  Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by such broker-dealer, or by any such person for whom the broker-dealer is acting or with whom the broker-dealer is associated in such distribution, or any person controlled by, controlling, or under common control with such broker-dealer;

 (n)  Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design, or contrivance, which may include:

 (1)  Effecting any transaction in a security which involves no change in the beneficial ownerships thereof;

 (2)  Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security. However, nothing in this subsection prohibits a broker-dealer from entering bona fide agency cross transactions for customers;

 (3)  Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

 (o)  Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

 (p)  Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security;

 (q)  Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material, or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs, or otherwise designed to supplement, detract from, supersede, or defeat the purpose or effect of any prospectus or disclosure; or

 (r)  Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with, or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of such security, the existence of such control to such customer, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

 (s)  Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member; or

 (t)  Failure or refusal to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint.

(2)  Agents

 (a)  Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities, or an executed stock power of a customer;

 (b)  Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

 (c)  Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

 (d)  Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;

 (e)  Dividing or otherwise splitting the agent's commissions, profits, or other compensation from the purchase or sale of securities with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control.

 (A)  Notwithstanding the provisions of § 20:08:03:06(2)(e) of this rule, a broker-dealer or agent:

 (i)  May share a commission, discount, or other remuneration from the purchase or sale of a security with:

 (a)  A depository institution as defined in SDCL 47-31B-102(5).

 (b)  A bank holding company approved by the board of governors of the federal reserve bank pursuant to the Bank Holding Company Act of 1956, 70 Stat. 133, 12 U.S.C. 1841, as amended; or

 (c)  A financial holding company approved by the board of governors of the federal reserve bank pursuant to the Bank Holding Company Act of 1956, 70 Stat. 133, 12 U.S.C. 1841, as amended;

 (B)  May provide to an employee of a depository institution compensation for the referral of a customer if the compensation is a nominal one-time cash fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a purchase or sale of a security.

 (f)  Engaging in conduct specified in subsection (1)(b),(c),(d),(e),(f),(i),(j),(n),(o),(p), or (q).

 The conduct set forth above is not inclusive. Engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension or revocation of registration.

(3)  Broker-dealers and agents

 (a)  Any acts or practices enumerated in subsection (1) above.

 (b)  In connection with the solicitation of a sale or purchase of an OTC unlisted non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act when requested to do so by a customer.

 (c)  Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited.

 (d)  For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account which with respect to all OTC non-NASDAQ equity securities in the account, contains a value for each such security based on the closing market bid on a date certain. However, this subsection applies only if the firm has been a market maker in such security at any time during the month in which the monthly or quarterly statement is issued.

 (e)  Failing to comply with any applicable provision of the Conduct Rules and any other Rules of Fair Practice of FINRA or any applicable fair practice, ethical standard, or fiduciary standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission.

(4)  Sale of investment company shares by broker-dealers or agents. Any broker-dealer or agent who engages in one or more of the following practices shall be deemed to have engaged in dishonest or unethical practices as used in SDCL 47-31B-412(d)(13) and such conduct may constitute grounds for denial, suspension, or revocation of registration or such other action authorized by statute.

 (a)  Sales load communications:

 (1)  In connection with the offer or sale of investment company shares, failing to adequately disclose to a customer all sales charges, including asset based and contingent deferred sales charges, which may be imposed with respect to the purchase, retention or redemption of such shares.

 (2)  In connection with the solicitation of investment company shares, stating or implying to a customer, either orally or in writing, that the shares are sold without a commission, are "no load" or have "no sales charge" if there is associated with the purchase of the shares: (i) a front-end load; (ii) a contingent deferred sales load; (iii) an SEC Rule 12b-1 fee or a service fee which exceeds .25 percent of average net fund assets per year; or (iv) in the case of closed-end investment company shares, underwriting fees, commissions, or other offering expenses.

 (3)  In connection with the solicitation of investment company shares, failing to disclose to a customer any relevant: (i) sales charge discount on the purchase of shares in dollar amounts at or above a breakpoint; or (ii) letter of intent feature, if available, which will reduce the sales charges.

 (4)  In connection with the solicitation of investment company shares, recommending to a customer the purchase of a specific class of investment company shares in connection with a multi-class sales charge or fee arrangement without reasonable grounds to believe that the sales charge or fee arrangement associated with such class of shares is suitable and appropriate based on the customer's investment objectives, financial situation and other securities holdings, and the associated transaction or other fees.

 (b)  Recommendations.

 (1)  In connection with the solicitation of investment company shares, recommending to a customer the purchase of investment company shares which results in the customer simultaneously holding shares in different investment company portfolios having similar investment objectives and policies without reasonable grounds to believe that such recommendation is suitable and appropriate based on the customer's investment objectives, financial situation and other securities holdings, and any associated transaction charges or other fees.

 (2)  In connection with the solicitation of investment company shares, recommending to a customer the liquidation or redemption of investment company shares for the purpose of purchasing shares in a different investment company portfolio having similar investment objectives and policies without reasonable grounds to believe that such recommendation is suitable and appropriate based on the customer's investment objectives, financial situation and other securities holdings, and any associated transaction charges or other fees.

 (c)  Disclosure Statements.

 (1)  In connection with the solicitation of investment company shares, stating or implying to a customer the fund's current yield or income without disclosing the fund's most recent average annual total return, calculated in a manner prescribed in SEC Form N-1A, for one, five and ten year periods and fully explaining the difference between current yield and total return. However, if the fund's registration statement under the Securities Act of 1933 has been in effect for less than one, five, or ten years, the time during which the registration statement was in effect shall be substituted for the periods otherwise prescribed.

 (2)  In connection with the solicitation of investment company shares, stating or implying to a customer that the investment performance of an investment company portfolio is comparable to that of a savings account, certificate of deposit or other bank deposit account without disclosing to the customer that the shares are not insured or otherwise guaranteed by the FDIC or any other government agency and the relevant differences regarding risk, guarantees, fluctuation of principal and/or return, and any other factors which are necessary to ensure that such comparisons are fair, complete, and not misleading.

 (3)  In connection with the solicitation of investment company shares, stating or implying to a customer the existence of insurance, credit quality, guarantees or similar features regarding securities held, or proposed to be held, in the investment company's portfolio without disclosing to the customer other kinds of relevant investment risks, including interest rate, market, political, liquidity, or currency exchange risks, which may adversely affect investment performance and result in loss and/or fluctuation of principal notwithstanding the creditworthiness of such portfolio securities.

 (4)  In connection with the offer or sale of investment company shares, stating or implying to a customer: (i) that the purchase of such shares shortly before an ex-dividend date is advantageous to such customer unless there are specific, clearly described tax or other advantages to the customer; or (ii) that a distribution of long-term capital gains by an investment company is part of the income yield from an investment in such shares.

 (5)  In connection with the offer or sale of investment company shares, making: (i) projections of future performance; (ii) statements not warranted under existing circumstances; or (iii) statements based upon nonpublic information.

 (d)  Prospectus.

 In connection with the solicitation of investment company shares, the delivery of a prospectus is not dispositive that the broker-dealer or agent has fulfilled the duties set forth in the subsections of this rule.

 (e)  Definitions. For purposes of this subsection (4), the following terms mean:

 (1)  "Recommend": any affirmative act or statement that endorses, solicits, requests, or commends a securities transaction to a customer or any affirmative act or statement that solicits, requests, commands, importunes or intentionally aids such person to engage in such conduct.

 (2)  "Solicitation": any oral, written or other communication used to offer or sell investment company shares excluding any proxy statement, report to shareholders, or other disclosure document relating to a security covered under Section 18(b)(2) of the Securities Act of 1933 that is required to be and is filed with the Securities and Exchange Commission or any national securities organization registered under Section 15A of the Securities Exchange Act of 1934.

 The conduct set forth above in this section is not inclusive. Engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension or revocation of registration.

(5)  Variable contracts:  The term, variable contract, includes variable annuities. Because owners of Variable Contracts assume certain investment risks, the contracts are also considered securities and are subject to SDCL chapter 47-31B. As securities, the sales and distribution of variable contracts are fully subject to sales practice rules. The suitability rule, as set forth in § 20:08:03:06(1)(c), applies when a variable contract is recommended and sold to a customer. Questions of suitability will arise when the investor (i) states that his or her life insurance needs are adequately met; (ii) the investor expresses preference for an investment other than an insurance product; (iii) the investor has the inability to fully appreciate how much of the purchase payment or premium is allocated to cover insurance or other costs, and the investor's ability to understand the complexity of Variable Contracts generally; (iv) the investor's willingness to invest a set amount on a yearly basis; (v) the investor's need for liquidity and short-term investment; (vi) the investor's immediate need for retirement income; and (vii) the investor's investment sophistication and whether he or she is able to monitor the investment experience of the separate account.

 It shall be deemed to be a dishonest or unethical practice as used in SDCL 47-31B-412(d)(13), for a broker-dealer or agent of a broker-dealer to violate FINRA Rules 2320 and 2330 or to exclude any of the following procedures below in this subsection (5), in order to determine suitability when recommending to a customer Variable Contracts.

 (a)  The agent should make reasonable efforts to obtain the customer's occupation, marital status, age, number of dependents, investment objectives, risk tolerance, tax status, previous investment experience, liquid net worth, other investments and savings, and annual income;

 (b)  The agent should discuss all relevant facts with the customer, including liquidity issues such as potential surrender charges and the Internal Revenue Service (IRS) penalty fees, including mortality and expense charges, administrative charges, and investment advisory fees; any applicable state and local government premium taxes, inheritance taxes and market risk;

 (c)  The agent should seek to ensure that the variable contract application and any other information provided by the customer is complete and accurate, and promptly forwarded to a registered principal of the broker for review;

 (d)  The registered agent and registered principal should review the customer's investment objectives, risk tolerance, and other information to determine that the variable contract as a whole and the underlying sub-accounts recommended to the customer are suitable prior to approving the transaction;

 (e)  The registered agent should have a thorough knowledge of the specifications of each variable contract that is recommended, including the death benefit, fees and expenses, sub-account choices, special features, withdrawal privileges, and tax treatment;

 (f)  A current prospectus should be given to the customer when a variable contract is recommended and should be discussed with the customer;

 (g)  The registered agent should inquire about whether the customer has a long-term investment objective and typically should recommend a variable contract only if the answer to that question, with consideration of other product attributes, is affirmative. The registered agent should make sure that the customer understands the effect of surrender charges on redemptions and that a withdrawal prior to the age of 59½ could result in a tax penalty. Customers 59½ should be informed when surrender charges apply to withdrawals;

 (h)  The broker should develop procedures to screen for any customer whose age may make a long-term investment inappropriate;

 (i)  Brokers should establish procedures to require a principal's careful review of variable contract investments that exceed a stated percentage to the customer's net worth, and any contract in which a customer is investing more than a stated dollar amount;

 (j)  When a registered agent recommends the purchase of a variable contract for any tax-qualified retirement account (e.g., 401(k) plan, IRA), the registered agent should disclose to the customer that the tax deferred accrual feature is provided by the tax-qualified retirement plan and that the tax deferred accrual feature of the variable contract is unnecessary;

 (k)  A registered agent should conduct an especially comprehensive suitability analysis prior to approving the sale of a variable contract with surrender charges to a customer in a tax-qualified account subject to plan minimum distribution requirements;

 (l)  The broker should have an exchange or replacement analysis document or utilize an existing form authorized by a state insurance commission or other regulatory agency.

 If such a document is used, it should be completed for all variable contract replacements and should include an explanation of the benefits of replacing one contract for another variable contract considering such matters as product enhancements and improvements, lower cost structures, and surrender charges. The document also should be signed by the customer, the registered agent, and the registered principal; and

 (m)  The broker should have a compliance procedure that will "red flag" registered agents who have a high rate of variable contract replacements or rollovers so that the firm can determine whether the replacements are suitable.

 The conduct set forth above is not inclusive. Engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension or revocation or registration.

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

 **General Authority:** SDCL 47-31B-605(a)(1) and (2).

 **Law Implemented:** SDCL 47-31B-103, 47-31B-412, 47-31B-605(a)(2).

 **20:08:03:07.  Fraudulent practices of broker-dealers, broker-dealer agents, and agents of the issuer.** The purpose of this section is to identify practices in the securities business which are generally associated with schemes to manipulate. A broker-dealer, broker-dealer agent or agent of the issuer who engages in one or more of the following practices shall be deemed to have engaged in an "act, practice, or course of business that operates or would operate as a fraud or deceit" as used in SDCL 47-31B-501. This rule is not intended to be all-inclusive, and thus, acts or practices not enumerated herein may also be deemed fraudulent.

 (1)  Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

 (2)  Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner.

 (3)  In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possessions of material, non-public information which would impact on the value of the security.

 (4)  In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstance of each investor.

 (5)  Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (1) transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees or (2) parking or withholding securities.

 (6)  Although nothing in this section precludes application of the general anti-fraud provisions against anyone for practices similar in nature to the practices discussed below, the following subsections specifically apply only in connection with the solicitation of a purchase or sale of OTC unlisted non-NASDAQ equity securities:

 (a)  Failing to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to the agent including commissions, sales charges, or concessions.

 (b)  In connection with a principal transaction, failing to disclose, both at the time of solicitation and on the confirmation, a short inventory position in the firm's account of more than 3 percent of the issued and outstanding shares of that class of securities of the issuer provided that this subsection shall apply only if the firm is a market maker at the time of the solicitation.

 (c)  Conducting sales contests in a particular security.

 (d)  After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.

 (e)  Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.

 (f)  Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.

 (g)  Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance including but not limited to the use of boiler room tactics or use of fictitious or nominee accounts.

 (h)  Failure to comply with any prospectus delivery requirement promulgated under federal law.

 (i)  Effect any transaction in, or to induce or attempt to induce the purchase or sale of, any penny stock by any customer except in accordance with the requirements as set forth in the 1934 Securities Exchange Act Sec. 15(g) and the rules and regulations prescribed thereunder.

 **Source:** 27 SDR 5, effective July 31, 2000; 30 SDR 211, effective July 1, 2004.

 **General Authority:** SDCL 47-31B-605(a)(1).

 **Law Implemented:** SDCL 47-31B-103, 47-31B-501.

 **20:08:03:07.01.  Certifications and professional designations.**

(1)  The use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be deemed to be a dishonest and unethical practice in the securities business within the meaning of SDCL 47-31B-412(d)(13). The prohibited use of such certifications or professional designation includes the following:

 (a)  Use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

 (b)  Use of nonexistent or self-conferred certification or professional designation;

 (c)  Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

 (d)  Use of a certification or professional designation that was obtained from a designating or certifying organization that:

 (i)    Is primarily engaged in the business of instruction in sales and/or marketing;

 (ii)   Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

 (iii)  Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

 (iv)  Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

(2)  There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph (1)(d) above when the organization has been accredited by:

 (a)  The American National Standards Institute;

 (b)  The National Commission for Certifying Agencies; or

 (c)  An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

(3)  In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered include:

 (a)  Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

 (b)  The manner in which those words are combined.

(4)  For purposes of this rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, if that job title:

 (a)  Indicates seniority or standing within the organization; or

 (b)  Specifies an individual's area of specialization within the organization.

For purposes of this subsection, financial services regulatory agency includes an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

(5)  Nothing in this rule limits the director's authority to enforce existing provisions of law.

 **Source:** 37 SDR 112, effective December 9, 2010.

 **General Authority:** SDCL 47-31B-605(a)(1), 47-31B-605(b), 47-31B-608(a).

 **Law Implemented:** SDCL 47-31B-103, 47-31B-412(d)(13).

 **20:08:03:08.  Written supervisory procedures.** Each broker-dealer shall establish and keep current a set of written supervisory procedures and a system for applying such procedures, which may be reasonably expected to prevent and detect any violations of SDCL chapter 47-31B and the rules and orders thereunder. The procedures shall include the designation by name or title of a number of supervisory employees reasonable in relation to the number of its registered agents, offices, and transactions in this state. A complete set of the procedures and system for applying them shall be kept and maintained at every office.

 **Source:** 27 SDR 5, effective July 31, 2000; 30 SDR 211, effective July 1, 2004.

 **General Authority:** SDCL 47-31B-605(a)(1).

 **Law Implemented:** SDCL 47-31B-411(c).

 **20:08:03:09.  Copies of complaints to be filed with director.** A broker-dealer shall file with the director a copy of any complaint related to its business transactions or operations in this state, which names the broker-dealer or any of its partners, officers, or agents as defendants in a civil or criminal proceeding or in an administrative or disciplinary proceeding by a public or private regulatory agency, within 20 days after the complaint is served on the broker-dealer. The broker-dealer shall file with the director a copy of any answer to the complaint filed by the broker-dealer within 10 days after it is filed. The broker-dealer shall file with the director a copy of any decision, order, or sanction made concerning the proceeding within 20 days after the decision, order, or sanction is entered.

 **Source:** 27 SDR 5, effective July 31, 2000; 30 SDR 211, effective July 1, 2004.

 **General Authority:** SDCL 47-31B-605(a)(1).

 **Law Implemented:** SDCL 47-31B-411(c).

 **20:08:03:10.  Notice of transfer of control or of name change.** A broker-dealer shall promptly file with the director a notice of transfer of control or change of name not less than 30 days before the date on which the transfer of control or change of name is to become effective. The director may permit a shorter notice period.

 **Source:** 27 SDR 5, effective July 31, 2000; 30 SDR 211, effective July 1, 2004.

 **General Authority:** SDCL 47-31B-407(d), 47-31B-605(a)(1).

 **Law Implemented:** SDCL 47-31B-407(c), 47-31B-407(d).

 **20:08:03:11.  Notice of net capital deficiency.** A broker-dealer shall file with the director an immediate notice whenever the net capital of the broker-dealer is less than is required in § 20:08:03:04.

 **Source:** 27 SDR 5, effective July 31, 2000; 30 SDR 211, effective July 1, 2004.

 **General Authority:** SDCL 47-31B-605(a)(1).

 **Law Implemented:** SDCL 47-31B-411(c).

 **20:08:03:12.  Notice required of opening or closing of branch office.** Repealed.

 **Source:** 27 SDR 5, effective July 31, 2000; 30 SDR 211, effective July 1, 2004; repealed, 33 SDR 63, effective October 18, 2006.

 **20:08:03:13.  Notice of thefts required.** Each broker-dealer shall give immediate notice to the director of the theft or mysterious disappearance of any securities or funds from any of its offices in this state, stating all material facts known concerning the theft or disappearance.

 **Source:** 27 SDR 5, effective July 21, 2000; 30 SDR 211, effective July 1, 2004.

 **General Authority:** SDCL 47-31B-605(a)(1).

 **Law Implemented:** SDCL 47-31B-411(c).

 **20:08:03:14.  Broker-dealer conduct on the premises of financial institutions.**

(1)  No broker-dealer may conduct broker-dealer services on the premises of a financial institution where retail deposits are taken unless the broker-dealer complies initially and continuously with the requirements set forth in FINRA Rule 3160.

(2)  This section does not alter or abrogate a broker-dealer's obligations to comply with other applicable laws, rules, or regulations that may govern the operations of broker-dealers and their agents, including but not limited to, supervisory obligations. These rules do not apply to broker-dealer services provided to nonretail customers.

(3)  Definitions:

 (a)  For purposes of this section, the term financial institution means federal and state-chartered banks, savings and loan associations, savings banks, credit unions, and the service corporations of such institutions located in South Dakota.

 (b)  "Broker-dealer services" means the investment banking or securities business as defined in paragraph (u) of Article I of the By-Laws of FINRA.

 **Source:** 27 SDR 5, effective July 31, 2000; 30 SDR 211, effective July 1, 2004; 37 SDR 112, effective December 9, 2010.

 **General Authority:** SDCL 47-31B-605(a)(1) to (3), inclusive.

 **Law Implemented:** SDCL 47-31B-605(a)(2), 47-31B-605(a)(3).

 **20:08:03:15.  Cross-border exemptions from registration for broker-dealers and agents.**

(1)  Broker-Dealer Exemption. A broker-dealer that is registered in Canada and who has no office or other physical presence in this state is exempted from broker-dealer registration pursuant to SDCL 47-31B-401(d), if the broker-dealer complies with the following conditions:

 (a)  Registered with or is a member of a self-regulatory organization in Canada, stock exchange in Canada, or the *Bureau des services financiers*;

 (b)  Maintains in good standing its provincial or territorial registration and its registration with or membership in a self-regulatory organization in Canada, stock exchange in Canada, or the *Bureau des services financiers*; and

 (c)  Effects or attempts to effect transactions in securities:

 (1)  With or for a person from Canada who is temporarily present in this state, with whom the Canadian broker-dealer had a bona fide broker-dealer-client relationship before the person entered the United States; or

 (2)  With or for a person from Canada who is present in this state, whose transactions are in a Canadian self-directed tax advantaged retirement account of which the person is the holder or contributor.

(2)  Agent exemption. An agent who represents a Canadian broker-dealer that is exempt under this rule is exempt from agent registration under SDCL 47-31B-402(b)(9).

 **Source:** 30 SDR 211, effective July 1, 2004; 37 SDR 112, effective December 9, 2010.

 **General Authority:** SDCL 47-31B-401(d), 47-31B-402(b)(9), 47-31B-605(a)(3).

 **Law Implemented:** SDCL 47-31B-401(d).

 **20:08:03:16.  Employee of the issuer exemption.** An employee who represents an issuer and who effects transactions in the issuer's securities exempted by SDCL 47-31B-202(11) and 47-31B-202(14) is exempt from agent registration under SDCL 47-31B-402(a) if the employee does not receive a commission or other remuneration for making offers or sales of the issuers securities.

 For purposes of this rule, a managing member of a limited liability company or a general partner of the issuer, and officers and directors of the issuer, are deemed to be employees of the issuer.

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

 **General Authority:** SDCL 47-31B-102(2), 47-31B-402(b)(a)(9).

 **Law Implemented:** SDCL 47-31B-102(2), 47-31B-402(a)(9).

 **20:08:03:17.  Finders.**

 (1)  The term, agent, as defined in SDCL 47-31B-102(2), does not include a finder.

 (2)  The term, broker-dealer, as defined in SDCL 47-31B-102(4), does not include a finder.

 (3)  The term, finder, means a person who directly or indirectly locates, introduces, or refers any person to an issuer. A finder may not:

 (a)  Render any investment advice as to the advantages or disadvantages of entering into an investment;

 (b)  Participate in any presentations or negotiations regarding any material term of an investment;

 (c)  Receive compensation based on the amount of any investment made but may otherwise receive compensation, and the compensation may be contingent on a potential investor actually investing;

 (d)  Receive any compensation unless the amount of compensation is disclosed by the issuer to the investor prior to the sale of any security.

 (4)  Compensation paid to a finder pursuant to this section does not destroy the exemptions from registration as set forth in SDCL 47-31B-202(14) or 47-31B-402(b)(5).

 (5)  A finder cannot engage in general solicitation to find investors for any private offering other than an entity as described in § 20:08:07:38(1)(a).

 (a)  The types of relationships with offerees that may be important in establishing that a general solicitation has not taken place are those that would enable the finder to be aware of the financial circumstances or sophistication of the persons with whom the relationship exists or a relationship that otherwise is of some substance and duration.

 (b)  If an issuer contracts in writing with a finder, and the contract requires the finder to comply with the finder rule as set forth in § 20:08:03:17, the issuer will not be denied an otherwise available exemption from registration even though the finder violates a provision of § 20:08:03:17. This subsection does not exempt the finder from any liability that may arise from a violation of § 20:08:03:17.

 **Source:** 33 SDR 63, effective October 18, 2006.

 **General Authority:** SDCL 47-31B-605(a)(1) to (3), inclusive.

 **Law Implemented:** SDCL 47-31B-401(H), 47-31B-402(b)(9).

 **20:08:03:18.  Business brokers.**

(1)  If a "business broker" as defined in subsection (2) below is involved in the sale of a business that results in a securities transaction, the business broker is exempt from registration as a broker-dealer and the agents for the business broker are exempt from registration as agents of the issuer if all the following conditions apply:

 (a)  In marketing a business, the business broker only advertises to potential buyers that the "business" is for sale;

 (b)  The business broker does not advise either the buyer or seller that the transaction be completed via a sale or purchase of securities;

 (c)  If the decision is made to conclude the sale of the business via a sale of securities, the sale is made by the buyer and seller or their advisors without the business broker's advice;

 (d)  After the time, if any, the decision is made that the sale transaction is a securities sale the business broker then has a limited role in the negotiations between or among the parties and merely facilitates the transmittal of information or documents between the buyer and seller, or their advisors;

 (e)  In no event does the business broker have the authority to make binding agreements on behalf of any party to a securities transaction;

 (f)  The business broker does not assess the value of any security or equity interest to be sold, but may assess the total value of the assets or the business to be sold as a going concern;

 (g)  The business broker does not assist the buyer in obtaining financing.

 However, the business broker may provide uncompensated introductions to lending sources that the buyer may consider for the transaction. The business broker also may help in completing the paperwork associated with the loan applications for the buyer in order to assist in completing the transaction;

 (h)  The compensation to be paid to the business broker does not change regardless of the manner in which the sale is concluded (whether asset sale or the sale of securities);

 (i)  The business broker always advises potential buyers that the business broker does not and may not verify the information given to the business broker about the business;

 (j)  The business broker also advises potential buyers that the business broker does not make any representation about the accuracy of the information provided regarding any aspect of the business;

 (k)  The business sold is not a "shell" entity;

 (l)  The business broker does not handle the transfer of funds from the buyer to a seller, but may accept earnest money from a buyer for deposit with a third party escrow agent; and

 (m)  The business broker is always subject to the anti-fraud provisions of all state and federal securities acts.

(2)  "Business broker," means those brokers who market and facilitate the transfers of businesses from one owner to another owner or group of purchasers formed without the assistance of the business broker.

 **Source:** 37 SDR 112, effective December 9, 2010.

 **General Authority:** SDCL 47-31B-401(b)(1)(H), 47-31B-402(b)(9).

 **Law Implemented:** SDCL 47-31B-401(b)(1)(H), 47-31B-402(b)(9).

**CHAPTER 20:08:04**

**REGISTRATION REQUIREMENTS AND PROCEDURES**

Section

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20:08:04:115 Registration of securities by qualification.

20:08:04:116 Advertising.

Appendix A Quarterly and/or Final Report of Sales of Securities, repealed, 37 SDR 112, effective December 9, 2010.

 **20:08:04:01.  Definitions.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:02.  Selling expenses.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:03.  Expense limitation for mutual funds.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:04.  Options to underwriters.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:05.  Selling security holders.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:06.  Offering price.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:07.  Offering price of common stock of issuers not in the promotional or developmental stage.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:08.  Corporations no longer in the promotional or developmental stage.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:09.  Cheap stock.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:10.  Offering price of common stock of issuers in the promotional or developmental stage.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:11.  Significant earnings.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:12.  Options and warrants issued to financial institutions.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:13.  Qualified options and warrants issued to employees and directors.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:14.  Nonqualified options and warrants issued to employees and directors.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:15.  Dilution.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:16.  Escrow of cheap stock.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:17.  Release from escrow.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:18.  Transfer of escrowed shares.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:19.  Rights of escrowed shares.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:20.  Voting rights of escrowed shares.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:21.  Terms of escrow in prospectus.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:22.  Escrow agent.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:23.  Promoters' investment.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:24.  Equity investment of promoters.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:25.  Preferred stock.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:26.  Debentures.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:27.  Acquisitions.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:28.  Promotional companies.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:29.  Application of preferred stock and debentures rules -- Exemptions.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:30.  Right of preferred shareholders to representation on board of directors.**

Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:31.  Protective provisions for preferred shares.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:32.  Nonconvertible debt securities.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:33.  Trust indentures.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:34.  Convertible senior securities.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:35.  Assessments.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:36.  Restrictions on transfer.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:37.  Open-end investment companies.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:38.  Open-end investment companies -- Cash and cash equivalents.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:39.  Open-end investment companies -- Restrictions on investments.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:40.  Open-end investment companies -- Prohibited investments.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:41.  Open-end investment companies -- Disclosure of investment policies.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:42.  Open-end investment companies -- Net assets required.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:43.  Open-end investment companies -- Redemption fee.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:44.  Open-end investment companies -- Use of affiliated broker-dealers.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:45.  Open-end investment companies -- Notification of noncompliance.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:46.  Closed-end investment companies.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:47.  Closed-end investment companies -- Restrictions on investments.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:48.  Closed-end investment companies -- Legend required.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:49.  Transactions with affiliates.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:50.  Control.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:51.  Transactions with affiliates -- Authorization.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:52.  Loans to affiliates.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:53.  Existing loans to affiliates.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:54.  Disclosure of affiliate transactions.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:55.  Real estate programs.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:56.  Oil and gas programs.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:57.  Publicly offered cattle feeding programs.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:58.  Church bonds.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:59.  Nonprofit health care facility offerings.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:60.  Real estate investment trusts.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:61.  Commodity pool programs.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:62.  Equipment programs.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:63.  Blind pools.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:64.  Variable annuities companies and trusts.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:65.  Variable annuities companies and trusts -- Applications.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:66.  Variable annuities companies and trusts -- Load permitted.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:67.  Variable annuities companies and trusts -- Classes of securities.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:68.  Variable annuities companies and trusts -- Change in securities.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:69.  Variable annuities companies and trusts -- Source of distributions.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:70.  Variable annuities companies and trusts -- Inspection of records.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:71.  Variable annuities companies and trusts -- Fees and expenses.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:72.  Variable annuities companies and trusts -- Independent contractors.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:73.  Variable annuities companies and trusts -- Prohibited activities.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:74.  Additional requirements for variable annuities trusts.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:75.  Registration by coordination or qualification.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:76.  Submission of financial statements.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective, October 10, 2001.

 **20:08:04:77.  Submission of financial statements -- Accountant's report.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:78.  Impoundment conditions -- When required.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:79.  Operation of impoundment conditions.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:80.  Impoundment -- Subscription agreements.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:81.  Impoundment -- Purchase receipts.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:82.  Impoundment agent.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:83.  Impoundment agreement.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:84.  Release of proceeds.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:85.  Insufficiency of proceeds.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:86.  Purchase of securities subject to impoundment by officer, director, promoter underwriter, affiliate, or associate.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:87.  Removal of impoundment conditions.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:88.  Requests for variance.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:89.  Legend required.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:90.  Quarterly reports.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:91.  Semiannual reports.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:92.  Annual reports.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:93.  Final reports.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:94.  Sales and advertising literature.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:95.  Deceptive or misleading promotional practices.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:96.  Advertisements which need not be filed.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:97.  Use of rankings or ratings of direct participation programs.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:98.  Public inspection of records.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:99.  Records subject to public inspection.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:100.  Confidentiality of private offerings.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:101.  Requirements for confidential treatment.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:102.  Requests for confidentiality.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:103.  Denial of request.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:104.  Granting of requests.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:105.  Disclosure of confidential information.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:106.  Transmittal of forms by facsimile machine.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:107.  Stop orders.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:108.  Service of stop orders.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:109.  Request for hearing.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:110.  Hearing date.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:111.  Hearing officer.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:112.  Informal conference.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:113.  Procedures and evidence.** Repealed.

 **Source:** 16 SDR 185, effective May 16, 1990; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:04:114.  Registration of securities by coordination.**

 (1)  A person seeking to register a security in this state, for which a registration statement has been filed under the Securities Act of 1933, shall file completed Forms U-1 and U-2 and pay the fee required in SDCL 47-31B-305(b).

 (2)  A prospectus meeting the requirements under the Securities Act of 1933 that receives full review by the U.S. Securities and Exchange Commission will not be subject to disclosure review or comment by the division.

 (3)  Amendments: At the end of each period of not more than one year from the effectiveness of the registration statement, or in the event of any material change relating to the issuer or the securities subsequent to the filing of a prospectus, an amended prospectus shall be filed reflecting any such changes, and a current disclosure of all material facts relating to the issuer and the securities, including financial statements. No further solicitations or sales of the securities may be made thereafter until such amended prospectus has been filed with the division.

 (4)  Quarterly reports: Quarterly reports of sales of securities shall be filed with the division by all issuers of public offerings registered pursuant to SDCL 47-31B-303 and 47-31B-304, unless the maximum fee has been paid pursuant to SDCL 47-31B-305(b). These reports shall be filed within 30 days of the end of each calendar quarter using the State Quarterly Sales Report and shall contain information regarding sales of securities made in this state. A quarterly report shall be filed regardless of whether any sales were made in South Dakota in that calendar quarter.

 (5)  Annual reports: All issuers of securities registered pursuant to SDCL 47-31B-303 and 47-31B-304 who have not paid the maximum fee as set forth in SDCL 47-31B-305(b), shall file annual reports with the division. The annual report shall consist of a copy of the annual corporate report to shareholders, including audited financial statements, and must be accompanied by the fee required in SDCL 47-31B-305(h). The annual report shall be filed within 90 days after the end of the issuer's fiscal year.

 (6)  Final reports: All issuers of securities registered pursuant to SDCL 47-31B-303 and 47-31B-304 who have not paid the maximum fee as set forth in SDCL 47-31B-305(b), must file a final report of sales of securities with the division using the state Quarterly Report of Sales Form. The final report shall be filed within 30 days after the termination of the registration, regardless of whether termination is by expiration, revocation, or voluntary termination. The final report shall contain information regarding sales of securities made in this state and must be filed whether any sales were made in this state.

 (7)  Securities registered with the division for a period of more than one year from the date of effectiveness, shall file a written request for extension together with the fee in SDCL 47-31B-305(i).

 **Source:** 28 SDR 48, effective October 10, 2001; 30 SDR 211, effective July 1, 2004; 37 SDR 112, effective December 9, 2010.

 **General Authority:** SDCL 47-31B-305(h), 47-31B-605(a)(1), 47-31B-605(3), 47-31B-605(b).

 **Law Implemented:** SDCL 47-31B-303, 47-31B-305(b), 47-31B-305(h), 47-31B-305(i).

 **20:08:04:115.  Registration of securities by qualification.**

 (1)  A person seeking to register a security by qualification shall file completed Forms U-1 and U-2 and pay the fee required in SDCL 47-31B-305(b).

 (2)  Prospectus requirements. As a condition of registration, a prospectus, offering circular, or similar document meeting the requirements of subdivision (3), (4), and (5) shall be sent or given to each person to whom an offer is made by or for the account of the issuer or any other person on whose behalf the offering is made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription as a participant in the distribution. The document shall be sent or given either before or concurrently with the earlier of any of the following:

 (a)  Any written offer made to the person, otherwise than by means of public advertising;

 (b)  Confirmation of any sale to the person;

 (c)  Payment pursuant to any sale to the person; or

 (d)  Delivery of the security pursuant to any sale to the person.

 (3)  Unless otherwise permitted by the division, the outside front cover of the prospectus, limited to one page, shall meet the requirements of any form under the Securities Act of 1933 or shall contain substantially the following information:

 (a)  Name and location of issuer and its type of organization;

 (b)  Designation of securities offered;

 (c)  Per share or unit and aggregate public offering price, underwriting or selling commissions and discounts and net proceeds to offeror;

 (d)  Name of managing underwriter or broker-dealer or statement that the securities are being offered by the issuer;

 (e)  A statement describing the anticipated secondary market for the securities being offered, including the identity of anticipated market for the securities being offered, including the identity of anticipated market makers;

 (f)  Date of prospectus;

 (g)  A cross-reference to the risk factors section, including the page number where it appears in the prospectus. The cross-reference shall be highlighted by prominent type or in another manner;

 (h)  The following information shall appear on the cover page in bold-face type on any prospectus, offering circular, or similar document as follows:

 (i)   NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR PASSED UPON THE ADEQUACY OR ACCURACY OF THE PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE; or

 (ii)  NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR DETERMINED IF THIS PROSPECTUS IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

 (i)  Such other information as the director may permit or require.

 (4)  Disclosure: The prospectus shall contain a full disclosure of all material facts relating to the issuer and the offering and sale of the registered securities including the information required in SDCL 47-31B-304(b), including the information required in SDCL 47-31B-304(b)(1) to (18), inclusive. The division will accept the Form U-7 disclosure document as adopted in amended form on September 28, 1999, by the North American Securities Administrators Association, Inc. ("NASAA").

 (5)  The disclosure-related provisions of the NASAA statements of policy or guidelines may be used by the division for purposes of reviewing the adequacy of disclosure.

 (6)  Amendments: At the end of each period of not more than one year from the effectiveness of the registration statement, or in the event of any material change relating to the issuer or the securities subsequent to the filing of a prospectus, an amended prospectus shall be filed reflecting any such changes, and a current disclosure of all material facts relating to the issuer and the securities, including financial statements. No further solicitations or sales of the securities may be made thereafter until such amended prospectus has been filed with the division.

 (7)  Quarterly reports: Quarterly reports of sales of securities shall be filed with the division by all issuers of public offerings registered in this state pursuant to SDCL 47-31B-303 and 47-31B-304, unless the maximum fee has been paid as set forth in SDCL 47-31B-305(b). These reports shall be filed within 30 days of the end of each calendar quarter and shall contain information regarding sales of securities made in this state as set forth on the state Quarterly Report of Sales Form. A quarterly report shall be filed regardless of whether any sales were made in South Dakota in that calendar quarter.

 (8)  Annual reports: All issuers of securities registered pursuant to SDCL 47-31B-303 and 47-31B-304 who have not paid the maximum fee as set forth in SDCL 47-31B-305(b), shall file annual reports with the division during the time a registration statement is effective. The annual report shall consist of a copy of the annual corporate report to shareholders, including audited financial statements, and must be accompanied by the fee required in SDCL 47-31B-305(h). The annual report shall be filed within 90 days after the end of the issuer's fiscal year.

 (9)  Final reports: All issuers of securities registered pursuant to SDCL 47-31B-303 and 47-31B-304 who have not paid the maximum fee as set forth in SDCL 47-31B-305(b), must file a final report of sales of securities using the state Quarterly Report of Sales Form with the division. The final report shall be filed within 30 days after the termination of the registration, regardless of whether termination is by expiration, revocation, or voluntary termination. The final report shall contain information regarding sales of securities made in this state and must be filed whether any sales were made in this state.

 (10)  An extension of registration may be requested beyond one year by filing with the director a written request for an extension together with the fee under SDCL 47-31B-305(i).

 **Source:** 28 SDR 48, effective October 10, 2001; 30 SDR 211, effective July 1, 2004; 37 SDR 112, effective December 9, 2010.

 **General Authority:** SDCL 47-31B-304(b), 47-31B-304(e), 47-31B-305(h), 47-31B-605(a)(1), 47-31B-605(a)(3).

 **Law Implemented:** SDCL 47-31B-304, 47-31B-305(b), 47-31B-305(h), 47-31B-305(i).

 **20:08:04:116.  Advertising.** For purposes of SDCL 47-31B-301, an issuer or a selling security holder (and any person acting on behalf of either of them) that publishes through any medium a notice of a proposed offering to be registered under SDCL chapter 47-31B is not deemed to offer its securities for sale through that notice if the notice meets the requirements as set forth in Reg. §230.135 of the Securities Act of 1933. The advertisement does not need to be filed with the division.

 **Source:** 37 SDR 112, effective December 9, 2010.

 **General Authority:** SDCL 47-31B-301(2).

 **Law Implemented:** SDCL 47-31B-103, 47-31B-202(13).

DEPARTMENT OF REVENUE AND REGULATION

DIVISION OF SECURITIES

QUARTERLY AND/OR FINAL REPORT OF SALES OF SECURITIES

Chapter 20:08:04

APPENDIX A

SEE: §§ 20:08:04:14 and 20:08:04:155

(Repealed)

 Source: 30 SDR 211, effective July 1, 2004; repealed, 37 SDR 112, effective December 9, 2010.

**CHAPTER 20:08:05**

**INVESTMENT ADVISER RULES**

Section

20:08:05:01 Repealed.

20:08:05:02 Repealed.

20:08:05:03 Repealed.

20:08:05:04 Repealed.

20:08:05:05 Repealed.

20:08:05:06 Repealed.

20:08:05:07 Repealed.

20:08:05:08 Repealed.

20:08:05:09 Repealed.

20:08:05:10 Repealed.

20:08:05:11 Repealed.

20:08:05:12 Repealed.

20:08:05:13 Repealed.

20:08:05:14 Investment adviser representative definitions.

20:08:05:15 Application for investment adviser and investment adviser representative registration.

20:08:05:16 Notice filing requirements for federal covered investment advisers.

20:08:05:17 Electronic filing with designated entity.

20:08:05:18 IARD transition rule.

20:08:05:19 Withdrawal of investment adviser and investment adviser representative registration.

20:08:05:20 Promptly remedied.

20:08:05:21 Minimum financial requirements for investment advisers.

20:08:05:22 Financial reporting requirements for investment advisers.

20:08:05:23 Recordkeeping requirements.

20:08:05:24 Bonding requirements for certain investment advisers.

20:08:05:25 Custody requirements for investment advisers.

20:08:05:26 Investment adviser brochure.

20:08:05:27 Examination requirements.

20:08:05:28 Prohibited conduct in providing investment advice.

20:08:05:29 Contents of an investment advisory contract.

 **20:08:05:01.  Registration requirements for investment advisers.** Repealed.

 **Source:** 26 SDR 99, effective February 3, 2000; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:05:01.01.  Electronic filing with designated entity.** Repealed.

 **Source:** 28 SDR 48, effective October 10, 2001; 30 SDR 211, effective July 1, 2004; repealed, 37 SDR 112, effective December 9, 2010.

 **20:08:05:01.02.  State investment adviser registration.** Repealed.

 **Source:** 28 SDR 48, effective October 10, 2001; 30 SDR 211, effective July 1, 2004; repealed, 37 SDR 112, effective December 9, 2010.

 **20:08:05:01.03.  Investment adviser representative registration.** Repealed.

 **Source:** 28 SDR 48, effective October 10, 2001; 30 SDR 211, effective July 1, 2004; repealed, 37 SDR 112, effective December 9, 2010.

 **20:08:05:02.  Notice filing for federal covered advisers.** Repealed.

 **Source:** 26 SDR 99, effective February 3, 2000; 28 SDR 48, effective October 10, 2001; 30 SDR 211, effective July 1, 2004; repealed, 37 SDR 112, effective December 9, 2010.

 **20:08:05:03.  Registration requirements for investment adviser representatives.** Repealed.

 **Source:** 26 SDR 99, effective February 3, 2000; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:05:04.  Series 65 or Series 66 and Series 7 examination requirements.** Repealed.

 **Source:** 26 SDR 99, effective February 3, 2000; 30 SDR 211, effective July 1, 2004; repealed, 37 SDR 112, effective December 9, 2010.

 **20:08:05:05.  Custody of client funds or securities by investment advisers.** Repealed.

 **Source:** 26 SDR 99, effective February 3, 2000; 30 SDR 211, effective July 1, 2004; repealed, 37 SDR 112, effective December 9, 2010.

 **20:08:05:06.  Minimum financial requirements for investment advisers.** Repealed.

 **Source:** 26 SDR 99, effective February 3, 2000; 30 SDR 211, effective July 1, 2004; repealed, 37 SDR 112, effective December 9, 2010.

 **20:08:05:07.  Bonding requirements for certain investment advisers.** Repealed.

 **Source:** 26 SDR 99, effective February 3, 2000; 30 SDR 211, effective July 1, 2004; repealed, 37 SDR 112, effective December 9, 2010.

 **20:08:05:08.  Record keeping requirements for investment advisers.** Repealed.

 **Source:** 26 SDR 99, effective February 3, 2000; 28 SDR 48, effective October 14, 2001; 30 SDR 211, effective July 1, 2004; repealed, 37 SDR 112, effective December 9, 2010.

 **20:08:05:09.  Cash payments for client solicitations.** Repealed.

 **Source:** 26 SDR 99, effective February 3, 2000; 30 SDR 211, effective July 1, 2004; repealed, 37 SDR 112, effective December 9, 2010.

 **20:08:05:10.  Written disclosure statements.** Repealed.

 **Source:** 26 SDR 99, effective February 3, 2000; 28 SDR 48, effective October 10, 2001; 30 SDR 211, effective July 1, 2004; repealed, 37 SDR 112, effective December 9, 2010.

 **20:08:05:10.01.  Financial reporting requirements for investment advisers.** Repealed.

 **Source:** 30 SDR 211, effective July 1, 2004; repealed, 37 SDR 112, effective December 9, 2010.

 **20:08:05:11.  Sponsors of wrap fee programs.** Repealed.

 **Source:** 26 SDR 99, effective February 3, 2000; repealed, 28 SDR 48, effective October 10, 2001.

 **20:08:05:12.  Agency cross transactions for advisory clients.** Repealed.

 **Source:** 26 SDR 99, effective February 3, 2000; 30 SDR 211, effective July 1, 2004; repealed, 37 SDR 112, effective December 9, 2010.

 **20:08:05:13.  Fraudulent, deceptive, or manipulative practices.** Repealed.

 **Source:** 26 SDR 99, effective February 3, 2000; 30 SDR 211, effective July 1, 2004; repealed, 37 SDR 112, effective December 9, 2010.

 **20:08:05:14.  Investment adviser representative definitions.** Notwithstanding SDCL 47-31B-102(16), the term "investment adviser representative" as it applies to a person who is employed by or associated with a federal covered investment adviser only includes an individual who has a "place of business" in this jurisdiction, as that term is defined in Part 275.203A-3(b) of the Investment Advisers Act of 1940 by the U.S. Securities and Exchange Commission, and who either:

(1)  Is an "investment adviser representative" as that term is defined in Part 275.203A-3(a)(1) of the Investment Advisers Act of 1940 by the U.S. Securities and Exchange Commission; or

(2)  Is not a "supervised person" as that term is defined in rules or regulations promulgated under Section 202(a)(25) of the Investment Advisers Act of 1940 by the U.S. Securities and Exchange Commission; and

solicits, offers or negotiates for the sale of or sells investment advisory services on behalf of a federal covered investment adviser.

 **Source:** 37 SDR 112, effective December 9, 2010.

 **General Authority:** SDCL 47-31B-605(a)(2).

 **Law Implemented:** SDCL 47-31B-103, 47-31B-404(a).

 **20:08:05:15.  Application for investment adviser and investment adviser representative registration.**

(1)  Investment adviser initial application:

 (a)  The application for initial registration as an investment adviser pursuant to SDCL 47-31B-403(a) shall be made by completing Form ADV (Uniform Application for Investment Adviser Registration) in accordance with the form instructions and by filing the form electronically with IARD. The application for initial registration shall also include the following:

 (i)     Proof of compliance by the investment adviser with the examination requirements of § 20:08:05:27;

 (ii)   Such financial statements as set forth in § 20:08:05:22, including a copy of the balance sheet for the last fiscal year, and if such balance sheet is as of a date more than 45 days from the date of filing of the application, an unaudited balance sheet is prepared as set forth in § 20:08:05:22;

 (iii)  A copy of the surety bond required by § 20:08:05:24, if applicable, shall be made available upon request of the director; and

 (iv)  The fee required by SDCL 47-31B-410(c).

 (b)  Form ADV Part 2. The director may:

 (i)    Accept a copy of Part 2 of Form ADV as filed electronically with IARD; or

 (ii)   Require a paper copy of Part 2 of Form ADV be filed directly with the director.

 (c)  Annual renewal. The application for annual renewal registration as an investment adviser shall be filed electronically with IARD. The application for annual renewal registration shall include the following:

 (i)     The fee required by SDCL 47-31B-410(c); and

 (ii)    A copy of the surety bond required by § 20:08:05:24, if applicable.

 (d)  Updates and amendments:

 (i)     An investment adviser must file electronically with IARD, in accordance with the instructions in the Form ADV, any amendments to the investment adviser's Form ADV;

 (ii)    An amendment will be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment; and

 (iii)   Within 90 days of the end of the investment adviser's fiscal year, an investment adviser must file electronically with IARD an Annual Updating Amendment to the Form ADV.

 (e)  Completion of filing. An application for initial or renewal registration is not considered filed for purposes of SDCL 47-31B-403(a) until the required fee and all required submissions have been received by the director.

(2)  Exemption from registration for certain investment advisers. Pursuant to SDCL 47-31B-403(b)(3), an investment adviser that meets the exemption requirements as set forth in Sections 203(b), 203(l), or 203(m) of the Investment Advisers Act of 1940 as amended, is also exempt from the registration requirements set forth in SDCL 47-31B-403(a).

(3)  Investment adviser representative initial application:

 (a)  The application for initial registration as an investment adviser representative pursuant to SDCL 47-31B-404(a) shall be made by completing Form U4 (Uniform Application for Securities Industry Registration or Transfer) in accordance with the form instructions and by filing the Form U4 electronically with IARD. The application for initial registration shall also include the following:

 (i)     Proof of compliance by the investment adviser representative with the examination requirements of § 20:08:05:27.

 (ii)    The fee required by SDCL 47-31B-410(d).

 (b)  Annual renewal. The application for annual renewal registration as an investment adviser representative shall be filed electronically with IARD. The application for annual renewal registration shall include the fee required by SDCL 47-31B-410(d).

 (c)  Updates and amendments:

 (i)     The investment adviser representative is under a continuing obligation to update information required by Form U4 as changes occur;

 (ii)    An investment adviser representative and the investment adviser must electronically file promptly with IARD any amendments to the representative's Form U4; and

 (iii)   An amendment will be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment.

 (d)  Completion of filing. An application for initial or renewal registration is not considered filed for purposes of SDCL 47-31B-404(a) until the required fee and all required submissions have been received by the director.

 (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 investment advisers or federal covered investment advisers with which the applicant will associate and set forth the reasons for the dual registration;

 (ii)  All investment advisers or federal covered investment advisers with which applicant intends to associate represent in writing to the division that each assumes full responsibility for the applicant at all times; and

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

 **Source:** 37 SDR 112, effective December 9, 2010; 38 SDR 63, effective October 24, 2011; 43 SDR 80, effective December 6, 2016.

 **General Authority:** SDCL 47-31B-403(a) and (b)(3), 47-31B-404(b)(2), 47-31B-410(d) and (f), 47-31B-412(e), 47-31B-605(a) and (b), 47-31B-608(c)(1).

 **Law Implemented:** SDCL 47-31B-102(16), 47-31B-103, 47-31B-403(a), 47-31B-404(a), 47-31B-406(a), 47-31B-410(d), 47-31B-605(a)(3).

 **20:08:05:16.  Notice filing requirements for federal covered investment advisers.** The notice filing for a federal covered investment adviser pursuant to SDCL 47-31B-405(a) of the Act shall be filed electronically with IARD on an executed Form ADV [17 C.F.R. 279.1] (Uniform Application for Investment Adviser Registration). A notice filing of a federal covered investment adviser shall be deemed filed when the fee required by SDCL 47-31B-410(e) and the Form ADV are filed electronically with and accepted by IARD on behalf of the state.

(1)  Form ADV Part 2 (Uniform Requirements for the Investment Adviser Brochure and Brochure Supplements). The director may:

 (a)  Accept a copy of Part 2 of Form ADV as filed electronically with IARD; or

 (b)  Deem Part 2 of Form ADV filed if a federal covered investment adviser provides, within 5 days of a request, Part 2 of Form ADV to the director. Because the director deems Part 2 of Form ADV to be filed, a federal covered investment adviser is not required to submit Part 2 of Form ADV to the director unless requested.

(2)  Renewal. The annual renewal of the notice filing for a federal covered investment adviser pursuant to SDCL 47-31B-405(c) shall be filed electronically with IARD. The renewal of the notice filing for a federal covered investment adviser shall be deemed filed when the fee required by SDCL 47-31B-410(e) is filed with and accepted by IARD on behalf of the state.

(3)  Updates and amendments. A federal covered investment adviser must file electronically with IARD, in accordance with the instructions in the Form ADV, any amendments to the federal covered investment adviser's Form ADV.

 **Source:** 37 SDR 112, effective December 9, 2010.

 **General Authority:** SDCL 47-31B-405(a) and (c), 47-31B-410(e) and (f), 47-31B-605(a)(1), 47-31B-605(b), 47-31B-608(c)(1).

 **Law Implemented:** SDCL 47-31B-103, 47-31B-405(a) and (c), 47-31B-410(e) and (f).

 **20:08:05:17.  Electronic filing with designated entity.** The director designates the web-based Investment Adviser Registration Depository (IARD) to receive and store filings and collect related fees from investment advisers and investment adviser representatives on behalf of the director.

(1)  Use of IARD. Unless otherwise provided, all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings, and fees required to be filed with the director pursuant to the rules promulgated under SDCL chapter 47-31B, shall be filed electronically with and transmitted to IARD. The following additional conditions relate to such electronic filings:

 (a)  Electronic signature. When a signature or signatures are required by the particular instructions of any filing to be made electronically through IARD, a duly authorized officer of the applicant or the applicant himself or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing electronically to IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

 (b)  When filed. Solely for purposes of a filing made electronically through IARD, a document is considered filed with the director when all fees are received and the filing is accepted by IARD on behalf of the state.

 (c)  Brochure supplements, updates, and amendments. An investment adviser must file electronically with the IARD Part 2B of Form ADV brochure supplements for each supervised person doing business in this state. Brochure supplements must be updated promptly whenever any information in them becomes materially inaccurate.

 (d)  All amendments to Part 1A of Form ADV and Part 2A of Form ADV shall be filed electronically with the IARD, unless you have received a continuing hardship exemption under § 20:08:05:17(3)(d).

(2)  Electronic filing. Notwithstanding § 20:08:05:17(1), the electronic filing of any particular document and the collection of related processing fees shall not be required until such time as IARD provides for receipt of such filings and fees and 30 days notice is provided by the director. Any documents or fees required to be filed with the director that are not permitted to be filed with or cannot be accepted electronically by IARD shall be filed directly with the director.

(3)  Hardship exemptions. Section 20:08:05:17 provides two hardship exemptions from the requirements to make electronic filings.

 (a)  Temporary hardship exemption:

 (i)     Investment advisers registered or required to be registered under chapter 47-31B who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD may request a temporary hardship exemption from the requirements to file electronically.

 (b)  To request a temporary hardship exemption, the investment adviser must:

 (i)     File an Application for a Temporary or Continuing Hardship Exemption, Form ADV-H, in paper format with the director where the investment adviser's principal place of business is located, no later than one business day after filing (that is the subject of the Form ADV-H) was due; and

 (ii)    Submit the filing that is the subject of the Form ADV-H in electronic format to IARD no later than seven business days after the filing was due.

 (c)  Effective date -- Upon filing. The temporary hardship exemption will be deemed effective upon receipt by the director of the complete Form ADV-H. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the director.

 (d)  Continuing hardship exemption -- Criteria for exemption. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of § 20:08:05:17 are prohibitively burdensome.

 (e)  To apply for a continuing hardship exemption, the investment adviser must:

 (i)     File Form ADV-H in paper format with the director at least 20 business days before a filing is due; and

 (ii)    If a filing is due to more than one administrator, the Form ADV-H must be filed with the administrator where the investment adviser's principal place of business is located. The administrator who receives the application will grant or deny the application within ten business days after the filing of Form ADV-H.

 (f)  Effective date -- Upon approval. The continuing hardship exemption is effective upon approval by the director. The time period of the exemption may be no longer than one year after the date on which the Form ADV-H is filed. If the director approves the application, the investment adviser must, no later than five business days after the exemption approval date, submit filings to IARD in paper format (along with the appropriate processing fees) for the period of time for which the exemption is granted.

 (4)  Recognition of exemption. The decision to grant or deny a request for a hardship exemption will be made by the director where the investment adviser's principal place of business is located, which decision will be followed by the director in the other state(s) where the investment adviser is registered.

 **Source:** 37 SDR 112, effective December 9, 2010.

 **General Authority:** SDCL 47-31B-410(d) and (f), 47-31B-605(a)(1) and (3), 47-31B-605(b), 47-31B-608(c)(1).

 **Law Implemented:** SDCL 47-31B-103, 47-31B-105, 47-31B-406, 47-31B-410(d) and (f), 47-31B-608(c).

 **20:08:05:18.  IARD transition rule**.

(1)  Electronic filing of Form ADV. Each investment adviser registered or required to be registered under SDCL chapter 47-31B must resubmit its Form ADV electronically (if it has not previously done so) with IARD unless it has been granted a hardship exemption under § 20:08:05:17(3).

 (a)  If the amendment to Form ADV is made after the effective date of § 20:08:05:18, or at an earlier date if an investment adviser has filed its Form ADV (or any amendments to Form ADV) electronically with IARD, the registrant must file amendments to Form ADV required by § 20:08:05:18 electronically with IARD, unless it has been granted a hardship exemption under § 20:08:05:17(3).

(2)  Electronic filing of Form U4. For each investment adviser representative registered or required to be registered under SDCL chapter 47-31B, Form U4 must be submitted electronically (if it has not previously been done) with IARD, unless the investment adviser (filing on behalf of the investment adviser representative) has been granted a hardship exemption under § 20:08:05:17(3).

 **Source:** 37 SDR 112, effective December 9, 2010.

 **General Authority:** SDCL 47-31B-406(e), 47-31B-608(c)(1).

 **Law Implemented:** SDCL 47-31B-406(e).

 **20:08:05:19.  Withdrawal of investment adviser and investment adviser representative registration.**

(1)  Withdrawal of investment adviser registration. The application for withdrawal of registration as an investment adviser pursuant to SDCL 47-31B-409 shall be completed by following the instructions on Form ADV-W (Notice of Withdrawal from Registration as Investment Adviser) and filed electronically upon Form ADV-W with IARD.

(2)  Withdrawal of investment adviser representative registration. Pursuant to SDCL 47-31B-409, the withdrawal of registration of an investment adviser representative shall be made by application for withdrawal of registration by following the instructions on Form U5 (Uniform Termination Notice for Securities Industry Registration) and filed electronically with IARD within 30 days of the date of termination and in accordance with SDCL 47-31B-408.

 **Source:** 37 SDR 112, effective December 9, 2010.

 **General Authority:** SDCL 47-31B-408(a), 47-31B-409, 47-31B-605(b), 47-31B-608(c)(1) and (2).

 **Law Implemented:** SDCL 47-31B-408(a), 47-31B-409.

 **20:08:05:20. Promptly remedied.** For purposes of SDCL 47-31B-410(c), (d) and (e), an investment adviser, an investment adviser representative, and a federal covered investment adviser, respectively, will have promptly remedied a delay in payment or under payment of fees if the adviser or representative remits the fee payment to the director within ten business days of receipt of notification from the director of the delay or underpayment. If such payment is not received within the ten business day period, an investment adviser, an investment adviser representative, and a federal covered investment adviser will be found to have refused to pay the fee.

 **Source:** 37 SDR 112, effective December 9, 2010.

 **General Authority:** SDCL 47-31B-605(a)(1).

 **Law Implemented:** SDCL 47-31B-410(c), (d) and (e).

 **20:08:05:21.  Minimum financial requirements for investment advisers.** An investment adviser registered or required to be registered under SDCL chapter 47-31B who has custody of client funds or securities shall maintain at all times a minimum net worth of $35,000 except:

(1)  An investment adviser having custody solely due to direct fee deduction and complying with the terms described under § 20:08:05:25(7) and related books and records, as described in § 20:08:05:23, is not required to comply with the net worth or bonding requirements of § 20:08:05:21.

(2)  An investment adviser having custody solely due to advising pooled investment vehicles and complying with the terms described under § 20:08:05:25(8) or 20:08:05:25(10)(c) and related books and records, as described in § 20:08:05:23, is not required to comply with the net worth or bonding requirements of § 20:08:05:21.

(3)  An investment adviser registered or required to be registered under SDCL chapter 47-31B who has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain at all times a minimum net worth of $10,000.

(4)  An investment adviser registered or required to be registered under chapter 47-31B who accepts prepayment of more than $500 per client and six or more months in advance shall maintain at all times a positive net worth.

 (a)  Unless otherwise exempted, as a condition of the right to transact business in this state, every investment adviser registered or required to be registered under SDCL chapter 47-31B shall by the close of business on the next business day notify the director if such investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the director of its financial condition, including the following:

 (i)     A trial balance of all ledger accounts;

 (ii)    A statement of all client funds or securities which are not segregated;

 (iii)   A computation of the aggregate amount of client ledger debit balances; and

 (iv)   A statement as to the number of client accounts.

(5)  For purposes of § 20:08:05:21, the term, net worth, means an excess of assets over liabilities, as determined by generally accepted accounting principles, but does not include as assets: prepaid expenses (except as to items properly classified assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature, home, home furnishings, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(6)  For purposes of § 20:08:05:21, the term, custody, is as defined in § 20:08:05:25(11).

(7)  For purposes of § 20:08:05:21, an investment adviser is not deemed to be exercising discretion when it places trade orders with a broker-dealer pursuant to a third party trading agreement if:

 (a)  The investment adviser has executed a separate investment adviser contract exclusively with its client which acknowledges that a third party trading agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account; and

 (b)  The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser in fact does not exercise discretion with respect to the account; and

 (c)  A third party trading agreement is executed between the client and a broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

(8)  The director may require that a current appraisal be submitted in order to establish the worth of any asset.

(9)  Every investment adviser that has its principal place of business in a state other than this state shall maintain only such minimum net worth as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is registered or licensed in such state and is in compliance with such state's minimum capital requirements.

 **Source:** 37 SDR 112, effective December 9, 2010.

 **General Authority:** SDCL 47-31B-411(c)(1) and (f), 47-31B-605(a)(1) to (3), inclusive.

 **Law Implemented:** SDCL 47-31B-411(b), (c)(1) and (f).

 **20:08:05:22.  Financial reporting requirements for investment advisers.** Every registered investment adviser who has custody of client funds or securities or requires payment of advisory fees six months or more in advance and in excess of $500 per client shall file with the director an audited balance sheet as of the end of the investment adviser's most recent fiscal year.

(1)  Each balance sheet filed pursuant to § 20:08:05:22 must be:

 (a)  Examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles;

 (b)  Audited by an independent certified public accountant; and

 (c)  Accompanied by an opinion of the accountant as to the report of financial position, and by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity.

(2)  Every registered investment adviser who has discretionary authority over client funds or securities, but not custody, shall file with the director a balance sheet, which need not be audited, but which must be prepared in accordance with generally accepted accounting principles or such other basis of accounting acceptable to the director and represented by the investment adviser or the person who prepared the statement as true and accurate, as of the end of the investment adviser's most recent fiscal year.

(3)  The financial statements required by § 20:08:05:22 shall be filed with the director within 90 days following the end of the investment adviser's fiscal year.

(4)  Every investment adviser that has its principal place of business in a state other than this state shall file only such reports as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is registered or licensed in such state and is in compliance with such state's financial reporting requirements.

 **Source:** 37 SDR 112, effective December 9, 2010.

 **General Authority:** SDCL 47-31B-411(b) and (f).

 **Law Implemented:** SDCL 47-31B-411(b).

 **20:08:05:23.  Recordkeeping requirements.** Each investment adviser registered or required to be registered under chapter 41-31B shall make and keep true, accurate, and current the following books, ledgers, and records:

(1)  A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(2)  General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

(3)  A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order; instruction, modification, or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

(4)  All check books, bank statements, canceled checks, and cash reconciliations of the investment adviser.

(5)  All bills or statements (or copies of), paid or unpaid, relating to the investment adviser's business.

(6)  All trial balances, financial statements, and internal audit working papers relating to the investment adviser's business.

(7)  Originals of all written communications received and copies of all written communications sent by the investment adviser relating to:

 (a)  Any recommendation made or proposed to be made and any advice given or proposed to be given;

 (b)  Any receipt, disbursement or delivery of funds or securities; or

 (c)  The placing or execution of any order to purchase or sell any security, provided, however,

 (i)    That the investment adviser is not required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser; and

 (ii)   That if the investment adviser sends any notice, circular, or other advertisement offering any report, analysis, publication, or other investment advisory service to more than ten persons, the investment adviser is not required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular, or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular, or advertisement a memorandum describing the list and its source.

(8)  A list or other record of all accounts which list identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities, or transactions of any client.

(9)  A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

(10)  A copy in writing of each agreement entered into by the investment adviser with any client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

(11)  A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

(12)(a)  A record of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

 (i)     Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

 (ii)    Transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction may not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

 (b)  For purposes of § 20:08:05:23(12) the following definitions apply:

 (i)     The term, advisory representative, means any partner, officer, or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:

 (A)  Any person in a control relationship to the investment adviser;

 (B)  Any affiliated person of a controlling person; and

 (C)  Any affiliated person of an affiliated person.

 (ii)    The term, control, means the power to exercise a controlling influence over the management of policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company.

 (c)  An investment adviser may not be deemed to have violated the provisions of § 20:08:05:23(12) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(13)(a)  Notwithstanding the provisions of § 20:08:05:23(12) above, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

 (i)     Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

 (ii)    Transactions in securities which are direct obligations of the United States.

The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

 (b)  An investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50 percent of:

 (i)     Its total sales and revenues; and

 (ii)    Its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

 (c)  For purposes of § 20:08:05:23(13) the following definitions apply:

 (i)     The term, advisory representative, when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, means any partner, officer, director, or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons, who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of such the recommendations or of the information concerning the recommendations:

 (A)  Any person in a control relationship to the investment adviser;

 (B)  Any affiliated person of a controlling person; and

 (C)  Any affiliated person of an affiliated person.

 (ii)    The term, control, means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company.

 (d)  An investment adviser may not be deemed to have violated the provisions of § 20:08:05:23(13) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(14)  A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of § 20:08:05:26, and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

(15)  For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser:

 (a)  Evidence of a written agreement to which the adviser is a party related to the payment of such fee;

 (b)  A signed and dated acknowledgement of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and

 (c)  A copy of the solicitor's written disclosure statement. The written agreement, acknowledgment, and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206(4)-3 of the Investment Advisers Act of 1940. For purposes of this rule, the term, solicitor, means any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients.

(16)  All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser). However, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all manager accounts shall be deemed to satisfy the requirements of this paragraph.

(17)  A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

(18)  Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

(19)  Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

(20)  A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives as that term is defined in § 20:08:05:23(12)(b), which file shall contain all applications, amendments, renewal filings, and correspondence.

(21)  Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U4 and each amendment to the Disclosure Reporting Pages on Form U4 must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

(22)  Where the adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or has forwarded third party checks within 24 hours the adviser will be considered as not having custody but shall keep a ledger or other listing of all securities or funds held or obtained, including the following information:

 (a)  Issuer;

 (b)  Type of security and series;

 (c)  Date of issue;

 (d)  For debt instruments, the denomination, interest rate, and maturity date;

 (e)  Certificate number, including alphabetical prefix or suffix;

 (f)  Name in which registered;

 (g)  Date given to the adviser;

 (h)  Date sent to client or sender;

 (i)  Form of delivery to client or sender, or copy of the form of delivery to client or sender; and

 (j)  Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

(23)  If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody under § 20:08:05:25(10)(b), the adviser shall keep the following records:

 (a)  A record showing the issuer or current transfer agent's name, address, phone number, and other applicable contract information pertaining to the party responsible for recording client interests in the securities; and

 (b)  A copy of any legend, shareholder agreement, or other agreement showing that those securities that are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(24)  If an investment adviser has custody, as that term is defined in § 20:08:05:25(11), the records required to be made and kept under § 20:08:05:23(1) to (23), inclusive, shall include:

 (a)  A copy of any documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian;

 (b)  A journal or other record showing all purchases, sales, receipts, and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts;

 (c)  A separate ledger account for each client showing all purchases, sales, receipts, and deliveries of securities, the date and price of each purchase and sale, and all debits and credits;

 (d)  Copies of confirmations of all transactions effected by or for the account of any client;

 (e)  A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security;

 (f)  A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of such statements along with the date such statements were sent to the clients;

 (g)  If applicable to the adviser's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination;

 (h)  A record of any finding by the independent certified public accountant of any material discrepancies found during the examination; and

 (i)  If applicable, evidence of the client's designation of an independent representative.

(25)  If an investment adviser has custody because it advises a pooled investment vehicle, the adviser shall also keep the following records;

 (a)  True, accurate, and current account statements;

 (b)  Where the adviser complies with § 20:08:05:25(10)(c) the records required to be made and kept shall include:

 (i)     The date(s) of the audit;

 (ii)    A copy of the audited financial statements; and

 (iii)   Evidence of the mailing of the audited financial to all limited partners, members, or other beneficial owners within 120 days of the end of its fiscal year.

 (c)  If the adviser complies with § 20:08:05:25(8) the records required to be made and kept shall include:

 (i)     A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party.

 (ii)    Copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.

(26)  If an investment adviser has custody because it is acting as the trustee for a beneficial trust as described in § 20:08:05:25(10)(e), the investment adviser shall also keep the following records until the account is closed or the adviser is no longer acting as trustee:

 (a)  A copy of the written statement given to each beneficial owner setting forth a description of the requirements of § 20:08:05:25(1) to (9), inclusive, and the reason why the adviser will not be complying with those requirements; and

 (b)  A written acknowledgement signed and dated by each beneficial owner, and evidencing receipt of the statement required under § 20:08:05:23(26)(a).

(27)  Each investment adviser subject to § 20:08:05:23(1) to (23), inclusive, who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

 (a)  Records showing separately for each client the securities purchased and sold, and the date, amount, and price of each purchase and sale.

 (b)  For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each client, and the current amount or interest of the client.

(28)  Any books or records required by § 20:08:05:23 may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(29)  Each investment adviser subject to § 20:08:05:23(1) to (23), inclusive, shall preserve the following records in the manner prescribed:

 (a)  All books and records required to be made under the provisions of § 20:08:05:23(1) to (27)(a), inclusive, except for books and records required to be made under the provisions of paragraphs § 20:08:05:23(11) and (16), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years in the principal office of the investment adviser.

 (b)  Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

 (c)  Books and records required to be made under the provisions of § 20:08:05:23(11) and (16) shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.

 (d)  Books and records required to be made under the provisions of § 20:08:05:23(17) to (22), inclusive, shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

 (e)  Notwithstanding other record preservation requirements of § 20:08:05:23, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

 (i)     Records required to be preserved under §§ 20:08:05:23(3), 20:08:05:23(7) to (10), inclusive, 20:08:05:23(14) and (15), 20:08:05:23(17) to (19), inclusive, and 20:08:05:23(24 to 27), inclusive; and

 (ii)    The records or copies required under § 20:08:05:23(11) and (16) which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business location's physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in § 20:08:05:23(29).

(30)  An investment adviser subject to § 20:08:05:23(1) to (23), inclusive, before ceasing to conduct or discontinuing business as an investment adviser shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under § 20:08:05:23 for the remainder of the period specified in § 20:08:05:23, and shall notify the director in writing of the exact address where the books and records will be maintained during the period.

(31)  Pursuant to § 20:08:05:23(29) the records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:

 (a)  Paper or hard copy form as those records are kept in their original form; or

 (b)  Micrographic media, including microfilm, microfiche, or any similar medium; or

 (c)  Electronic storage media, including any digital storage medium or system that meets the terms of § 20:08:05:23.

(32)  The investment adviser must:

 (a)  Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

 (b)  Provide promptly any of the following that the director (by its examiners or other representatives) may request:

 (i)     A legible, true, and complete copy of the record in the medium and format in which it is stored;

 (ii)    A legible, true, and complete printout of the record; and

 (iii)   Means to access, view, and print the records; and

 (iv)   Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by § 20:08:05:23.

(33)  In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

 (a)  To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

 (b)  To limit access to the records to properly authorized personnel and the director (including its examiners and other representatives); and

 (c)  To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(34)  For purposes of § 20:08:05:23, the phrase, investment supervisory services, means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and the phrase, discretionary power, does not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

(35)  Any book or other record made, kept, maintained, and preserved in compliance with Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained, and preserved under § 20:08:05:23, shall be deemed to be made, kept, maintained, and preserved in compliance with § 20:08:05:23.

(36)  Each investment adviser registered or required to be registered in this state and that has its principal place of business in a state other than this state is exempt from the requirements of § 20:08:05:23, if the investment adviser is registered or licensed in such state and is in compliance with such state's recordkeeping requirements.

 **Source:** 37 SDR 112, effective December 9, 2010.

 **General Authority:** SDCL 47-31B-411, 47-31B-605(a)(1), (2) and (3), 47-31B-605(b).

 **Law Implemented:** SDCL 47-31B-103, 47-31B-411.

 **20:08:05:24.  Bonding requirements for certain investment advisers.** Any bond required by § 20:08:05:24 shall be issued by a company qualified to do business in this state in the form determined by the director and shall be subject to the claims of all clients of such investment adviser regardless of the client's state of residence.

(1)  Every investment adviser registered or required to be registered under SDCL chapter 47-31B having custody of or discretionary authority over client funds or securities shall be bonded in an amount determined by the director based upon the number of clients and the total assets under management of the investment adviser.

(2)  Each investment adviser registered or required to be registered under chapter 47-31B who has custody or discretion of client funds or securities who does not meet the minimum net worth standard as set forth in § 20:08:05:21(1) to (3), inclusive, shall be bonded in the amount of the net worth deficiency rounded up to the nearest $5,000.

(3)  For purposes of § 20:08:05:24, the term, custody, is as defined in § 20:08:05:25(11).

(4)  An investment adviser that has its principal place of business in a state other than this state is exempt from the requirements of § 20:08:05:24(1) and (2), if the investment adviser is registered or licensed as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding.

 **Source:** 37 SDR 112, effective December 9, 2010.

 **General Authority:** SDCL 47-31B-411(e), 47-31B-605(a)(2).

 **Law Implemented:** SDCL 47-31B-411(e).

 **20:08:05:25.  Custody requirements for investment advisers.** It is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice, or course of business for an investment adviser to have custody of client funds or securities unless:

(1)  The investment adviser notifies the director promptly in writing that the investment adviser has or may have custody. This notification is required to be given on Form ADV;

(2)  Qualified custodian. A qualified custodian maintains those funds and securities:

 (a)  In a separate account for each client under the client's name; or

 (b)  In accounts that contain only the adviser's clients' funds and securities, under the adviser's name as agent or trustee for the clients.

(3)  If an investment adviser opens an account with a qualified custodian on its client's behalf, either under the client's name or under the name of the investment adviser as agent, the investment adviser must notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information.

(4)  Account statements must be sent to clients, either:

 (a)  By a qualified custodian when the investment adviser has a reasonable basis for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period; or

 (b)  By the investment adviser who sends an account statement, at least quarterly, to each client for whom the investment adviser has custody of funds or securities, identifying the amount of funds and of each security of which the investment adviser has custody at the end of the period and setting forth all transactions during that period; and

 (c)  An independent certified public accountant verifies all client funds and securities by actual examination at least once during each calendar year at a time chosen by the accountant without prior notice or announcement to the adviser and that is irregular from year to year, and files a copy of the special examination report with the director within 30 days after the completion of the examination, along with a letter stating that it has examined the funds and securities and describing the nature and extent of the examination; and

 (d)  The independent certified public accountant, upon finding any material discrepancies during the course of the examination, notifies the director within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the director.

(5)  Special rule for limited partnerships and limited liability companies. If the adviser is a general partner of a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), the account statements required in § 20:08:05:25(4) must be sent to each limited partner (or member or other beneficial owner or their independent representative).

(6)  Independent representatives. A client may designate an independent representative to receive, on the client's behalf, notices and account statements as required under § 20:08:05:25(3) and (4).

(7)  Direct fee deduction. An investment adviser who has custody as defined in § 20:08:05:25(11)(a)(i)(B) by having fees directly deducted from client accounts must also provide the following safeguards:

 (a)  The investment adviser must have written authorization from the client to deduct advisory fees from the account held with the qualified custodian;

 (b)  Each time a fee is directly deducted from a client account, the investment adviser must concurrently:

 (i)     Send the qualified custodian an invoice of the amount of the fee to be deducted from the client's account; and

 (ii)   Send the client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee.

 (c)  The investment adviser notifies the director in writing that the investment adviser intends to use the safeguards provided in § 20:08:05:25(7)(a) and (b). Such notification is required to be given on Form ADV.

 (d)  An investment adviser having custody solely because it meets the definition of custody as defined in § 20:08:05:25(11)(a)(i)(B) and who complies with the safekeeping requirements in § 20:08:05:25(1) to (7), inclusive, will not be required to meet the financial requirements for custodial advisers as set forth in § 20:08:05:21 and 20:08:05:22(1) or the bonding requirement as set forth in § 20:08:05:24.

(8)  Pooled investments. An investment adviser who has custody as defined in § 20:08:05:25(11)(a)(i)(C) and who does not meet the exception provided under § 20:08:05:25(10)(c) must, in addition to the safeguards set forth in § 20:08:05:25(1) to (5), inclusive, also comply with the following:

 (a)  Hire an independent party to review all fees, expenses, and capital withdrawals from the pooled accounts;

 (b)  Send all invoices or receipts to the independent party, detailing the amount of the fee, expenses, or capital withdrawal and the method of calculation such that the independent party can:

 (i)     Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement); and

 (ii)    Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser.

 (c)  For purposes of § 20:08:05:25, the phrase, independent party, means a person that:

 (i)     Is engaged by the investment adviser to act as a gatekeeper for the payment of fees, expenses, and capital withdrawals from the pooled investment;

 (ii)   Does not control and is not controlled by and is not under common control with the investment adviser; and

 (iii)  Does not have, and has not had within the past two years, a material business relationship with the investment adviser.

 (d)  The investment adviser notifies the director in writing that the investment adviser intends to use the safeguards provided in § 20:08:05:25(1) to (8)(d), inclusive. This notification is required to be given on Form ADV.

 (e)  An investment adviser having custody solely because it meets the definition of custody as defined in § 20:08:05:25(11)(a)(i)(C) and who complies with the safekeeping requirements in § 20:08:05:25(1) to (6), inclusive, and (8) will not be required to meet the financial requirements for custodial investment advisers as set forth in § 20:08:05:21 and 20:08:05:22 or the bonding requirement as set forth in § 20:08:05:24.

(9)  Investment adviser or investment adviser representative as trustee. When a trust retains an investment adviser; investment adviser representative; or employee, director, or owner of an investment adviser as trustee and the investment adviser acts as the investment adviser to that trust, the investment adviser will:

 (a)  Notify the director in writing that the investment adviser intends to use the safeguards provided in § 20:08:05:25(9) and (10). This notification is required to be given on Form ADV; and

 (b)  Send to the grantor of the trust, the attorney for the trust if it is a testamentary trust, the co-trustee (other than the investment adviser; investment adviser representative; or employee, director, or owner of the investment adviser); or a defined beneficiary of the trust, at the same time that it sends any invoice to the qualified custodian, an invoice showing the amount of the trustees' fee or investment management or advisory fee, the value of the assets on which the fees were based, and the specific manner in which the fees were calculated; and

 (c)  Enter into a written agreement with a qualified custodian which specifies:

 (i)     That the qualified custodian will not deliver trust securities to the investment adviser, any investment adviser representative, or employee, director, or owner of the investment adviser, nor will transmit any funds to the investment adviser; any investment adviser representative or employee; director or owner of the investment adviser, except that the qualified custodian may pay trustees' fees to the trustee and investment management or advisory fees to investment adviser, if:

 (A)  The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than the investment adviser; investment adviser representative; or employee, director or owner of the investment adviser); or a defined beneficiary of the trust has authorized the qualified custodian in writing to pay those fees;

 (B)  The statements for those fees show the amount of the fees for the trustee and, in the case of statements for investment management or advisory fees, show the value of the trust assets on which the fee is based and the manner in which the fee was calculated; and

 (C)  The qualified custodian agrees to send to the grantor of the trust, the attorneys for a testamentary trust, the co-trustee (other than the investment adviser; investment adviser representative; or employee, director or owner of the investment adviser); or a defined beneficiary of the trust, at least quarterly, a statement of all disbursements from the account of the trust, including the amount of investment management fees paid to the investment adviser and the amount of trustees' fees paid to the trustee.

 (ii)  Except as otherwise set forth in § 20:08:05:25(9)(c)(ii), that the qualified custodian may transfer funds or securities, or both, of the trust only upon the direction of the trustee (who may be the investment adviser; investment adviser representative; or employee, director, or owner of the investment adviser), who the investment adviser has duly accepted as an authorized signatory. The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than the investment adviser; investment adviser representative; or employee, director, or owner of the investment adviser); or a defined beneficiary of the trust, must designate the authorized signatory for management of the trust. The direction to transfer funds or securities, or both, can only be made to the following:

 (A)  A trust company, bank trust department, or brokerage firm independent of the investment adviser for the account of the trust to which the assets relate;

 (B)  The named grantors or to the named beneficiaries of the trust;

 (C)  A third party independent of the investment adviser in payment of the fees or charges of the third party including:

 (a)  Attorney's, accountant's, or qualified custodian's fees for the trust; and

 (b)  Taxes, interest, maintenance or other expenses, if there is property other than securities or cash owned by the trust;

 (D)  Third parties independent of the investment adviser for any other purpose legitimately associated with the management of the trust; or

 (E)  A broker-dealer in the normal course of portfolio purchases and sales, if the transfer is made on payment against delivery basis or payment against trust receipt.

 (d)  Not be required to meet the financial requirements for custodial advisers as set forth in §§ 20:08:05:21 and 20:08:05:22(1) or the bonding requirements as set forth in § 20:08:05:24 if the investment adviser has custody solely because it meets the definition of custody as defined in § 20:08:05:25(11)(a)(i)(C) and who complies with the safekeeping requirements in § 20:08:05:25(1) to (6), inclusive, and (9).

(10)  Exceptions.

 (a)  Shares of mutual funds. With respect to shares of an open-end company as defined in Section 5(a)(1) of the Investment Company Act of 1940 ("mutual fund"), the investment adviser may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with § 20:08:05:25(1) to (9), inclusive;

 (b)  Certain privately offered securities.

 (i)     The investment adviser is not required to comply with § 20:08:05:25(1) to (9), inclusive, with respect to securities that are:

 (A)  Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

 (B)  Uncertificated and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and

 (C)  Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

 (ii)  Notwithstanding § 20:08:05:25(10)(b)(i), the provisions of § 20:08:05:25(10)(b)(ii) are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, the audited financial statements are distributed, as described in § 20:08:05:25(10)(c) and the investment adviser notifies the director in writing that the investment adviser intends to provide audited financial statements, as described above. Such notification is required to be given on Form ADV.

 (c)  Limited partnerships subject to annual audit. An investment adviser is not required to comply with § 20:08:05:25(4) with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to an audit at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year. The investment adviser must also notify the director in writing that the investment adviser intends to employ the use of the audit safeguards described above. Such notification is required to be given on Form ADV.

 (d)  Registered investment companies. The investment adviser is not required to comply with § 20:08:05:25 with respect to the account of an investment company registered under the Investment Company Act of 1940.

 (e)  Beneficial trusts. An investment adviser is not required to comply with safekeeping requirements of § 20:08:05:25(1) to (9), inclusive, or the Net Worth and Bonding Requirements of §§ 20:08:05:21, 20:08:05:22(1) and 20:08:05:24 if the investment adviser has custody solely because the investment adviser, investment adviser representative, or employee, director, or owner of the investment adviser is a trustee for a beneficial trust, if all of the following conditions are met for each trust:

 (i)     The beneficial owner of the trust is a parent, a grandparent, a spouse, a sibling, a child, or a grandchild of the trustee. These relationships shall include step relationships.

 (ii)    For each account under this § 20:08:05:25(10)(e)(i) above, the investment adviser complies with the following:

 (A)  The investment adviser provides a written statement to each beneficial owner of the account setting forth a description of the requirements of § 20:08:05:25 (1) to (9), inclusive, and the reasons why investment adviser will not be complying with those requirements.

 (B)  The investment adviser obtains from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under § 20:08:05:25(10)(e)(ii)(A).

 (C)  The investment adviser maintains a copy of both documents described in § 20:08:05:25(10)(e)(ii)(A) and (B) until the account is closed or the investment adviser is no longer trustee.

 (f)  Any investment adviser who intends to have custody of client funds or securities but is not able to utilize a qualified custodian as defined in § 20:08:05:25(11)(c) shall first obtain approval from the director and must comply with all of the applicable safekeeping provisions under § 20:08:05:25(1) to (9), inclusive, including taking responsibility for those provisions that are designated to be performed by a qualified custodian.

(11)  Definitions. For the purposes of § 20:08:05:25:

 (a)  "Custody," holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them or has the ability to appropriate them;

 (i)     Custody includes:

 (A)  Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;

 (B)  Any arrangement (including a general power of attorney) under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and

 (C)  Any capacity (such as general partner of a limited partnership, managing member of a limited liability company, or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment adviser or its supervised person legal ownership of or access to client funds or securities.

 (ii)    Receipt of checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within 24 hours of receipt and the adviser maintains a ledger or other listing of all securities or funds held or obtained, including the following information:

 (A)  Issuer;

 (B)  Type of security and series;

 (C)  Date of issue;

 (D)  For debt instruments, the denomination, interest rate, and maturity date;

 (E)  Certificate number, including alphabetical prefix or suffix;

 (F)  Name in which registered;

 (G)  Date given to the adviser;

 (H)  Date sent to client or sender;

 (I)   Form of delivery to client or sender, or copy of the form of delivery to client or sender; and

 (J)   Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

 (b)  "Independent representative," a person who:

 (i)     Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;

 (ii)    Does not control, is not controlled by, and is not under common control with investment adviser; and

 (iii)   Does not have, and has not had within the past two years, a material business relationship with the investment adviser.

 (c)  "Qualified custodian," the following independent institutions or entities that are not affiliated with the investment adviser by any direct or indirect common control and have not had a material business relationship with the investment adviser in the previous two years:

 (i)     A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act or other entity pursuant to 15 U.S.C. § 80b-2(a)(2), as of January 1, 2018;

 (ii)    A registered broker-dealer holding the client assets in customer accounts;

 (iii)   A registered futures commission merchant registered under Section 4f(a) of the Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

 (iv)   A foreign financial institution that customarily holds financial assets for its customers, if the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

 **Source:** 37 SDR 112, effective December 9, 2010; 44 SDR 184, effective June 25, 2018.

 **General Authority:** SDCL 47-31B-411(f), 47-31B-605(a)(1) to (3), inclusive.

 **Law Implemented:** SDCL 47-31B-103, 47-31B-411(f).

 **20:08:05:26.  Investment adviser brochure.**

(1)  General requirements: Unless otherwise provided in § 20:08:05:26, an investment adviser, registered or required to be registered pursuant to SDCL 47-31B-403 shall, in accordance with the provisions of § 20:08:05:26, furnish each advisory client and prospective advisory client with a written disclosure statement that complies with Part 2A and 2B of Form ADV [C.F.R. § 279.1] or such other information as the director may require.

(2)  Delivery: An investment adviser, except as provided in § 20:08:05:26(2)(a), shall deliver the statement required by § 20:08:05:26 to an advisory client or prospective advisory client not less than 48 hours prior to entering into any investment advisory contract with such client or prospective client; or at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

 (a)  The delivery of the statement required by § 20:08:05:26(2) need not be made in connection with entering into:

 (i)     An investment company contract; or

 (ii)    A contract for impersonal advisory services requiring a payment of less than $500.

(3)  Offer to deliver:

 (a)  An investment adviser, except as provided in § 20:08:05:26(2), annually shall, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required by § 20:08:05:26.

 (b)  The delivery or offer required by § 20:08:05:26(3)(a) need not be made to advisory clients receiving advisory services solely pursuant to:

 (i)     An investment company contract; or

 (ii)    A contract for impersonal advisory services requiring a payment of less than $500.

 (c)  With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services which requires a payment of $500 or more, an offer of the type specified in § 20:08:05:26(3)(a) shall also be made at the time of entering into an advisory contract.

 (d)  Any statement requested in writing by an advisory client pursuant to an offer required by § 20:08:05:26(3)(a) must be mailed or delivered within seven days of the receipt of the request.

(4)  Omission of inapplicable information. If an investment adviser renders substantially different types of investment advisory services to different advisory clients, any information required by Part 2 of Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(5)  Other disclosures:

 (a)  Nothing in § 20:08:05:26 shall relieve any investment adviser from any obligation pursuant to any provision of chapter 47-31B or the rules thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by § 20:08:05:26.

 (b)  Delivery of brochures and brochure supplements made in compliance with 17 C.F.R. Part 275.204-3 are considered to be in compliance with § 20:08:05:26.

(6)  Definitions. For purposes of § 20:08:05:26:

 (a)  "Contract for impersonal advisory services" means any contract relating solely to the provision of investment advisory services:

 (i)     By means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

 (ii)    Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

 (iii)   Any combination of the foregoing services.

 (b)  "Entering into," does not mean, in reference to an investment advisory contract, an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

 (c)  "Investment company contract" means a contract with an investment company registered under the Investment Company Act of 1940 which meets the requirements of Section 15(c) of that Act.

 **Source:** 37 SDR 112, effective December 9, 2010.

 **General Authority:** SDCL 47-31B-411(g), 47-31B-605(a)(2), 47-31B-605(b).

 **Law Implemented:** SDCL 47-31B-103, 47-31B-403(a), 47-31B-411(g).

 **20:08:05:27.  Examination requirements.**

(1)  Unless otherwise waived by the director, an investment adviser or an investment adviser representative shall take and pass within the two year period immediately preceding the date of the application:

 (a)  The Uniform Investment Adviser State Law Examination (S65); or

 (b)  The Uniform Combined State Law Examination (S66) and the General Securities Representative Examination (S7).

(2)  If the investment adviser is an entity, then a supervisory or control individual shall take and pass the examination(s) as required in § 20:08:05:27(1).

(3)  Any person who has been registered as an investment adviser or an investment adviser representative in any state requiring the licensing, registration, or qualification of investment advisers or investment adviser representatives within the two year period immediately preceding the date of filing an application is not required to comply with the examination requirement set forth in § 20:08:05:27(1)(a) and (1)(b).

(4)  Compliance with § 20:08:05:27(1) and (2) is waived if the applicant has been awarded any of the following designations and at the time of filing an application is current and in good standing:

 (a)  Certified Financial Planner (CFP) awarded by the Certified Financial Planners Board of Standards.

 (b)  Chartered Financial Consultant (ChFC) or Masters of Science and Financial Services (MSFS) awarded by the American College, Bryn Mawr, Pennsylvania.

 (c)  Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts.

 (d)  Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants.

 (e)  Chartered Investment Counselor (CIC) awarded by the Investment Adviser Association.

(5)  An applicant who has taken and passed the Uniform Investment Adviser State Law Examination (S65) within two years prior to the date the application is filed with the director or at any time if the applicant has been registered or licensed as an investment adviser, investment adviser representative within the two years prior to the date the application is filed with the director, is not required to take and pass the Uniform Investment Adviser State Law Examination again.

(6)  An applicant who is an agent for a broker-dealer/investment adviser and who is not required by the agent's home jurisdiction to make a separate filing on CRD as an investment adviser representative but who has previously met the examination requirement in § 20:08:05:27(1)(a) and (1)(b) necessary to provide advisory services on behalf of the broker-dealer/investment adviser, is not required to take and pass the Uniform Investment Adviser State Law Examination (S65) again.

(7)  Persons deemed to be investment adviser representatives only because they solicit, offer, or negotiate for the sale of or sell investment advisory services in this state are not required to take and pass the examinations in § 20:08:05:27(1)(a) and (1)(b).

 **Source:** 37 SDR 112, effective December 9, 2010.

 **General Authority:** SDCL 47-31B-404(f), 47-31B-412(e), 47-31B-605(a)(1) to (3), inclusive, 47-31B-605(b).

 **Law Implemented:** SDCL 47-31B-103, 47-31B-404(f), 47-31B-412(e).

 **20:08:05:28.  Prohibited conduct in providing investment advice.** A person who is an investment adviser, an investment adviser representative, or a federal covered investment adviser is a fiduciary and has a duty to act primarily for the benefit of its clients. The provisions of § 20:08:05:28 apply to federal covered investment advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1966. While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser, an investment adviser representative or a federal covered investment adviser and its clients and the circumstances of each case, an investment adviser, an investment adviser representative, or a federal covered investment adviser may not engage in prohibited fraudulent, deceptive, or manipulative conduct, including the following:

(1)  Recommending to a client to whom investment advisory services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser, investment adviser representative, or federal covered investment adviser.

(2)  Exercising any discretionary authority in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary authority relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(3)  Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account.

(4)  Placing an order to purchase or sell a security for the account of a client without authority to do so.

(5)  Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(6)  Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser or a financial institution engaged in the business of loaning funds.

(7)  Loaning money or securities to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(8)  Misrepresenting to any client, or prospective client, the qualifications of the investment adviser, investment adviser representative, federal covered investment adviser, or any employee, or person affiliated with the investment adviser, investment adviser representative, or federal covered investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(9)  Providing a report or recommendation to any client prepared by someone other than the investment adviser, investment adviser representative, or federal covered investment adviser without disclosing that fact. This prohibition does not apply to a situation in which the investment adviser, investment adviser representative, or federal covered investment adviser uses published research reports or statistical analyses to render advice or where an investment adviser, investment adviser representative, or federal covered investment adviser orders such a report in the normal course of providing service.

(10)  Charging a client an unreasonable fee.

(11)  Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser, investment adviser representative, or federal covered investment adviser, or any of its employees, or affiliated persons which could reasonably be expected to impair the rendering of unbiased and objective advice including:

 (a)  Compensation arrangements connected with investment advisory services to clients which are in addition to compensation from such clients for such services; and

 (b)  Charging a client an investment advisory fee for rendering investment advice when compensation for effecting securities transactions pursuant to such advice will be received by the investment adviser, investment adviser representative, or federal covered investment adviser or its employees or affiliated persons.

(12)  While acting as principal for its own advisory account, to knowingly sell any security to or purchase any security from a client, or while acting as broker-dealer for a person other than the client, to knowingly effect any sale or purchase of any security for the account of the client, without disclosing to the client in writing before the completion of the transaction the capacity in which it is acting and obtaining the consent of the client to the transaction.

 (a)  The prohibitions of § 20:08:05:28(12) do not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to the transaction.

 (b)  The prohibitions of § 20:08:05:28(12) do not apply to any transaction with a customer or a broker-dealer if the broker-dealer acts as an investment adviser solely:

 (i)     By means of publicly distributed written materials or publicly made oral statements;

 (ii)    By means of written materials or oral statements not purporting to meet the objectives or needs of specific individuals or accounts;

 (iii)   Through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or

 (iv)   Any combination of the foregoing services.

 (c)  Publicly distributed written materials or publicly made oral statements shall disclose that, if the purchaser of the advisory communication uses the investment adviser's services in connection with the sale or purchase of a security which is a subject of the communication, the investment adviser may act as principal for its own account or as agent for another person. Compliance by the investment adviser with the foregoing disclosure requirement does not relieve it of any other disclosure obligations under the chapter 47-31B.

 (d)  Definitions for purposes of § 20:08:05:28:

 (i)     "Publicly distributed written materials" means written materials which are distributed to 35 or more persons who pay for those materials.

 (ii)    "Publicly made oral statements" means oral statements made simultaneously to 35 or more persons who pay for access to those statements.

(13)  The prohibitions of § 20:08:05:28 do not apply to an investment adviser effecting an agency cross transaction for an advisory client provided the following conditions are met:

 (a)  The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for such client;

 (b)  Before obtaining such written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker-dealer for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;

 (c)  At or before the completion of each agency cross transaction, the investment adviser or any other person relying on § 20:08:05:28 sends the client a written confirmation. The written confirmation shall include:

 (i)     A statement of the nature of the transaction;

 (ii)    The date the transaction took place;

 (iii)   An offer to furnish, upon request, the time when the transaction took place; and

 (iv)   The source and amount of any other remuneration the investment adviser received or will receive in connection with the transaction. In the case of a purchase, if the investment adviser was not participating in a distribution, or, in the case of a sale, if the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser has been receiving or will receive any other remuneration and that the investment adviser will furnish the source and amount of such remuneration to the client upon the client's written request.

 (d)  At least annually, and with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on § 20:08:05:28 sends each client a written disclosure statement identifying:

 (i)     The total number of agency cross transactions during the period for the client since the date of the last such statement or summary; and

 (ii)    The total amount of all commissions or other remuneration the investment adviser received or will receive in connection with agency cross transactions for the client during the period.

 (e)  Each written disclosure and confirmation required by § 20:08:05:28 must include a conspicuous statement that the client may revoke the written consent required under § 20:08:05:28(13)(a) at any time by providing written notice to the investment adviser.

 (f)  No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

 (g)  For purposes of § 20:08:05:28, the phrase, agency cross transaction for an advisory client, means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction. When acting in such capacity such person is required to be registered as a broker-dealer in this state unless excluded from the definition.

 (h)  Nothing in § 20:08:05:28 may be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfilling the adviser's or representative's duty with respect to the best price and execution for the particular transaction for the client nor does it relive any investment adviser or investment adviser representative of any other disclosure obligations imposed by chapter 47-31B.

(14)  Guaranteeing a client that a specific result will be achieved with advice rendered.

(15)  Publishing, circulating, or distributing any advertisement which does not comply with Part 275.206(4)-1 under the Investment Advisers Act of 1940.

(16)  Making, in the solicitation of clients, any untrue statement of a material fact, or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which they are made, not misleading.

(17)  Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940.

(18)  Disclosing the identity, investments, or other financial information of any client or former client unless required by law to do so, or unless consented to by the client.

(19)  Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the action of the investment adviser or investment adviser representative is subject to and does not comply with the requirements of § 20:08:05:25.

(20)  Engaging in any act, practice, or course of business which is fraudulent, deceptive, manipulative, or unethical.

(21)  Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of chapter 47-31B or any rule thereunder.

 **Source:** 37 SDR 112, effective December 9, 2010.

 **General Authority:** SDCL 47-31B-502(b), 47-31B-605(a)(2).

 **Law Implemented:** SDCL 47-31B-103, 47-31B-502(b).

 **20:08:05:29.  Contents of an investment advisory contract.** The provisions of § 20:08:05:29(1) apply to federal covered investment advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996.

(1)  It is unlawful for any investment adviser, investment adviser representative, or federal covered investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:

 (a)  The services to be provided, the term of the contract, the investment advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of termination or non-performance of the contract, and any grant of discretionary power to the investment adviser, investment adviser representative, or federal covered investment adviser;

 (b)  That no direct or indirect assignment or transfer of the contract may be made by the investment adviser, investment adviser representative, or federal covered investment adviser without the consent of the client or other party to the contract;

 (c)  That the investment adviser, investment adviser representative, or federal covered investment adviser may not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

 (d)  That the investment adviser, investment adviser representative, or federal covered investment adviser, if a partnership, shall notify the client or other party to the investment contract of any change in the membership of the partnership within a reasonable time after the change.

(2)  It is unlawful for any investment adviser, investment adviser representative, or federal covered investment adviser to:

 (a)  Include in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of chapter 47-31B or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940; or

 (b)  Enter into, extend, or renew any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act of 1940. This provision applies to all advisers and investment adviser representatives registered or required to be registered under chapter 47-31B.

(3)  Not withstanding § 20:08:05:29(1)(c), an investment adviser may enter into, extend, or renew an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client if the conditions in § 20:08:05:29(3)(a) to (d), inclusive, are met.

 (a)  The client entering into the contract must be:

 (i)     A natural person or a company who, immediately after entering into the contract, has at least $ 1,000,000 under the management of the investment adviser; or

 (ii)   A person who the investment adviser and its investment adviser representatives reasonably believe, immediately before entering into the contract, is a natural person or a company whose net worth, at the time the contract is entered into, exceeds $2,000,000. The net worth of a natural person may include assets held jointly with that person's spouse. For purposes of calculating a natural person's net worth:

 (A)  The person's primary residence may not be included as an asset;

 (B)  Indebtedness secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time the investment advisory contract is entered into may not be included as a liability; and

 (C)  Indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the residence must be included as a liability.

 (b)  The compensation paid to the investment adviser with respect to the performance of any securities over a given period must be based on a formula with the following characteristics:

 (i)     In the case of securities for which market quotations are readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 (Definition of "Current Net Asset Value" for Use in Computing Periodically the Current Price of Redeemable Security), the formula must include the realized capital losses and unrealized capital depreciation of the securities over the period;

 (ii)    In the case of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, the formula must include:

 (A)  The realized capital losses of securities over the period; and

 (B)  If the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and

 (iii)   The formula must provide that any compensation paid to the investment adviser under § 20:08:05:29 is based on the gains less the losses computed in accordance with § 20:08:05:29(3)(b)(i) and (3)(b)(ii) in the client's account for a period of not less than one year.

 (c)  Before entering into the advisory contract and in addition to the requirements of Form ADV, the investment adviser must disclose in writing to the client or the client's independent agent all material information concerning the proposed advisory arrangement, including the following:

 (i)     That the fee arrangement may cause an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

 (ii)    If relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

 (iii)   The periods which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;

 (iv)   The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate; and

 (v)    If the investment adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, how the securities will be valued and the extent to which the valuation will be independently determined.

 (d)  The investment adviser (and any investment adviser representative) who enters into the contract must reasonably believe, immediately before entering into the contract, that the contract represents an arm's length arrangement between the parties and that the client (or in the case of a client which is a company as defined in § 20:08:05:29(6)(d), the person representing the company), alone or together with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a company may be a partner, director, officer, or an employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee, but must satisfy the definition of client's independent agent set forth in § 20:08:05:29(6)(c).

(4)  Any person entering into or performing an investment advisory contract under § 20:08:05:29 is not relieved of any obligations under § 20:08:05:28 or any other applicable provision of chapter 47-31B or any rule or order thereunder.

(5)  Nothing in § 20:08:05:29 relieves a client's independent agent from any obligation to the client under applicable law.

(6)  The following definitions apply for purposes of § 20:08:05:29:

 (a)  "Affiliate" is as defined in Section 2(a)(3) of the Investment Company Act of 1940.

 (b)  "Assignment" as used in § 20:08:05:29(1)(b), includes any transaction or event that results in any change to the individuals or entities with the power, directly or indirectly, to direct the management or policies of, or to vote more than 50 percent of any class of voting securities of, the investment adviser or federal covered investment adviser as compared to the individuals or entities who had such power as of the date when the contract was first entered into, extended, or renewed.

 (c)  "Client's independent agent" means any person who agrees to act as an investment advisory client's agent in connection with the contract, but does not include:

 (i)     The investment adviser relying on § 20:08:05:29;

 (ii)    An affiliated person of the investment adviser or an affiliated person of an affiliated person of the investment adviser including an investment adviser representative;

 (iii)   An interested person of the investment adviser;

 (iv)   A person who receives, directly or indirectly, any compensation in connection with the contract from the investment adviser, an affiliated person of the investment adviser, an affiliated person of an affiliated person of the investment adviser or an interested person of the investment adviser; or

 (v)   A person with any material relationship between himself (or an affiliated person of that person) and the investment adviser (or an affiliated person of the investment adviser) that exists, or has existed at any time during the past two years.

 (d)  "Company" means a corporation, partnership, association, joint stock company, trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under Title 11 of the United States Code, or similar official or any liquidating agent for any of the foregoing, in such persons official capacity. "Company" does not include:

 (i)     A company required to be registered under the Investment Company Act of 1940 but which is not so registered;

 (ii)   A private investment company, for purposes of § 20:08:05:29(6)(d), a private investment company is a company which would be defined as an investment company under Section 3(a) of the Investment Company Act of 1940 but for the exception from that definition provided by Section 3(c)(1) of that act;

 (iii)  An investment company registered under the Investment Company Act of 1940; or

 (iv)  A business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, unless each of the equity owners of any such company, other than the investment adviser entering into the contract, is a natural person or a company within the meaning of § 20:08:05:29(6)(d).

 (e)  "Interested person" means:

 (i)     Any member of the immediate family of any natural person who is an affiliated person of the investment adviser;

 (ii)    Any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment advisor or by a controlling person of the investment adviser if that beneficial or legal interest exceeds:

 (A)  One tenth of one percent of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser; or

 (B)  Five percent of the total assets of the person seeking to act as the client's independent agent; or

 (iii)   Any person or partner or employee of any person who, at any time since the beginning of the last two years, has acted as legal counsel for the investment adviser.

 **Source:** 37 SDR 112, effective December 9, 2010; 41 SDR 58, effective October 14, 2014.

 **General Authority:** SDCL 47-31B-502(c), 47-31B-605(a)(2).

 **Law Implemented:** SDCL 47-31B-103, 47-31B-502(c).

**CHAPTER 20:08:06**

**REGISTRATION EXEMPTIONS**

(Repealed. 28 SDR 48, effective October 10, 2001)

**CHAPTER 20:08:07**

**NOTICE FILINGS FOR COVERED SECURITIES AND**

**REGISTRATION EXEMPTIONS**

Section

20:08:07:01 Notice filing for open-end investment companies.

20:08:07:02 Notice filing for closed-end investment companies.

20:08:07:03 Notice filing for unit investment trusts.

20:08:07:03.01 Notice filing for face-amount certificate company.

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

20:08:07:04 Repealed.

20:08:07:05 Repealed.

20:08:07:06 Repealed.

20:08:07:07 Repealed.

20:08:07:08 Repealed.

20:08:07:09 Repealed.

20:08:07:10 Repealed.

20:08:07:11 Repealed.

20:08:07:12 Repealed.

20:08:07:13 Nonprofit corporations.

20:08:07:14 Repealed.

20:08:07:15 Repealed.

20:08:07:16 Repealed.

20:08:07:17 Foreign cooperatives.

20:08:07:18 Repealed.

20:08:07:19 Repealed.

20:08:07:20 Unsolicited orders.

20:08:07:21 Real estate and mortgage-backed securities.

20:08:07:22 Repealed.

20:08:07:23 Sales to existing security holders/standby commissions.

20:08:07:24 Limited offerings general rules.

20:08:07:25 Intrastate limited offering transactional exemption.

20:08:07:26 Repealed.

20:08:07:27 Testing-the-waters exemption.

20:08:07:28 Repealed.

20:08:07:29 Model accredited investor exemption.

20:08:07:30 Manual exemption.

20:08:07:31 Viatical settlements.

20:08:07:32 Canadian-United States cross-border trading exemption.

20:08:07:33 Church extension fund securities.

20:08:07:34 Solicitation of interest.

20:08:07:35 Merger and consolidation.

20:08:07:36 Designated foreign jurisdiction.

20:08:07:37 Twenty-five purchasers exempt transaction.

20:08:07:38 Entities for economic development.

20:08:07:39 Isolated non-issuer exemption.

20:08:07:40 Request for transactional exemption pursuant to a fairness determination.

20:08:07:41 Notice filing requirement for federal crowdfunding offerings.

20:08:07:42 Notice filing requirement for Regulation A - Tier 2 offering.

20:08:07:43 Transactional exemption from registration for issuers that comply with ongoing reporting requirements under Tier 2 of Regulation A.

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.

 **20:08:07:01.  Notice filing for open-end investment companies.** Prior to any offer or sale of securities, issued by an open-end investment company, that are covered securities pursuant to section 18(b)(2) of the Securities Act of 1933, the following notice and fee must be submitted to the division:

 (1)  A signed NASAA Form NF, Uniform Notice Filing Form;

 (2)  A signed NASAA Form U-2, Uniform Consent to Service of Process. An issuer who has filed a Form U-2 in connection with a previous notice filing need not file another; and

 (3)  The initial or renewal fee as set forth in SDCL 47-31B-302.

 A renewal filing is required annually.

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

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

 **Law Implemented:** SDCL 47-31B-103, 47-31B-302(a)(1) and (2), 47-31B-302(b), 47-31B-302(d).

 **20:08:07:02.  Notice filing for closed-end investment companies.** Prior to any offer or sale of securities issued by a closed-end investment company that are covered securities pursuant to section 18(b)(2) of the Securities Act of 1933, the following notice and fee must be submitted to the division:

 (1)  A signed Form NF, Uniform Notice Filing Form;

 (2)  A signed Form U-2, Uniform Consent to Service of Process. An issuer who has filed a Form U-2 in connection with a previous notice filing need not file another; and

 (3)  An initial or renewal fee as set forth in SDCL 47-31B-302.

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

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

 **Law Implemented:** SDCL 47-31B-103, 47-31B-302(a)(1) and (2), 47-31B-302(b), 47-31B-302(d).

 **20:08:07:03.  Notice filing for unit investment trusts.** Prior to any offer or sale of securities issued by a unit investment trust that are covered securities pursuant to section 18(b)(2) of the Securities Act of 1933, the following notice and fee must be submitted to the division:

 (1)  A signed Form NF, Uniform Notice Filing Form;

 (2)  A signed Form U-2, Uniform Consent to Service of Process. An issuer who has filed a Form U-2 in connection with a previous notice filing need not file another; and

 (3)  An initial or renewal filing fee pursuant to SDCL 47-31B-302.

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

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

 **Law Implemented:** SDCL 47-31B-103, 47-31B-302(a)(1) and (2), 47-31B-302(b), 47-31B-302(d).

 **20:08:07:03.01.  Notice filing for face-amount certificate company.** Prior to any offer or sale of face amount certificate Company securities that are covered securities pursuant to section 18(b)(2) of the Securities Act of 1933, the following notice and fee must be submitted:

 (1)  A signed Form NF, Uniform Notice Filing Form;

 (2)  A uniform consent to service of process, Form U-2; and

 (3)  The same fee as set forth in SDCL 47-31B-302(a)(1) for closed end management companies.

 **Source:** 30 SDR 211, effective July 1, 2004; 43 SDR 80, effective December 6, 2016.

 **General Authority:** SDCL 47-31B-302(a).

 **Law Implemented:** SDCL 47-31B-103, 47-31B-302(a)(1) and (2), 47-31B-302(b), 47-31B-302(d).

 **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).

 **20:08:07:04.  Notice filing for Rule 506 Reg. D offerings.** Repealed.

 **Source:** 28 SDR 48, effective October 10, 2001; 30 SDR 58, effective November 5, 2003; repealed, 30 SDR 211, effective July 1, 2004.

 **20:08:07:05.  Notice filing for industrial revenue bonds.** Repealed.

 **Source:** 28 SDR 48, effective October 10, 2001; repealed, 30 SDR 211, effective July 1, 2004.

 **20:08:07:06.  Other covered securities.** Repealed.

 **Source:** 28 SDR 48, effective October 10, 2001; repealed, 30 SDR 211, effective July 1, 2004.

 **20:08:07:07.  Institutional buyer definition.** Repealed.

 **Source:** 28 SDR 48, effective October 10, 2001; repealed, 30 SDR 211, effective July 1, 2004.

 **20:08:07:08.  Excluded securities.** Repealed.

 **Source:** 28 SDR 48, effective October 10, 2001; repealed, 30 SDR 211, effective July 1, 2004.

 **20:08:07:09.  Government issued securities.** Repealed.

 **Source:** 28 SDR 48, effective October 10, 2001; repealed, 30 SDR 211, effective July 1, 2004.

 **20:08:07:10.  Credit enhancements.** Repealed.

 **Source:** 28 SDR 48, effective October 10, 2001; repealed, 30 SDR 211, effective July 1, 2004.

 **20:08:07:11.  Bank securities.** Repealed.

 **Source:** 28 SDR 48, effective October 10, 2001; repealed, 30 SDR 211, effective July 1, 2004.

 **20:08:07:12.  Securities listed on exchanges.** Repealed.

 **Source:** 28 SDR 48, effective October 10, 2001; repealed, 30 SDR 211, effective July 1, 2004.

 **20:08:07:13.  Nonprofit corporations.** The exemption granted in SDCL 47-31B-201(7) for non-profit organizations, also includes community development organizations, economic development organizations, agricultural trade associations, and attorney, doctor, chiropractic, dental, and other professional associations.

 **Source:** 28 SDR 48, effective October 10, 2001; 30 SDR 211, effective July 1, 2004.

 **General Authority:** SDCL 47-31B-203.

 **Law Implemented:** SDCL 47-31B-201(7), 47-31B-203.

 **20:08:07:14.  Commercial paper.** Repealed.

 **Source:** 28 SDR 48, effective October 10, 2001; repealed, 30 SDR 211, effective July 1, 2004.

 **20:08:07:15.  Employee stock purchase plan.** Repealed.

 **Source:** 28 SDR 48, effective October 10, 2001; repealed, 30 SDR 211, effective July 1, 2004.

 **20:08:07:16.  Notice requirements for employee stock purchase plan.** Repealed.

 **Source:** 28 SDR 48, effective October 10, 2001; repealed, 30 SDR 211, effective July 1, 2004.

 **20:08:07:17.  Foreign cooperatives.** A foreign cooperative, that has been issued a certificate of authority by the South Dakota secretary of state and has filed the required annual reports, is entitled to the same exemptions as a domestic cooperative pursuant to SDCL 47-31B-201(8).

 **Source:** 28 SDR 48, effective October 10, 2001; 30 SDR 211, effective July 1, 2004.

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

 **Law Implemented:** SDCL 47-31B-203.

 **20:08:07:18.  Isolated non-issuer transaction.** Repealed.

 **Source:** 28 SDR 48, effective October 10, 2001; repealed, 30 SDR 211, effective July 1, 2004.

 **20:08:07:19.  Secondary trading.** Repealed.

 **Source:** 28 SDR 48, effective October 10, 2001; repealed, 30 SDR 211, effective July 1, 2004.

 **20:08:07:20.  Unsolicited orders.** Any purchaser acquiring a security pursuant to the exemption specified in section SDCL 47-31B-202(6) shall acknowledge in writing that his/her order to buy was unsolicited. However, no such acknowledgement is required if the confirmation furnished the purchaser is clearly marked "Unsolicited Order" or the broker-dealer furnishes the purchaser before or concurrently with the delivery of the confirmation a memorandum stating that the transaction is based upon an unsolicited order to buy.

 **Source:** 28 SDR 48, effective October 10, 2001; 30 SDR 211, effective July 1, 2004.

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

 **Law Implemented:** SDCL 47-31B-202(6).

 **20:08:07:21.  Real estate and mortgage-backed securities.** The exemption for real estate and mortgage-backed securities specified in SDCL 47-31B-202(11) does not include any transaction which involves a security that is an investment contract or a profit-sharing agreement.

 **Source:** 28 SDR 48, effective October 10, 2001; 30 SDR 211, effective July 1, 2004.

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

 **Law Implemented:** SDCL 47-31B-202(11), 47-31B-203.

 **20:08:07:22.  Original incorporator and subscriber.** Repealed.

 **Source:** 28 SDR 48, effective October 10, 2001; repealed, 30 SDR 211, effective July 1, 2004.

 **20:08:07:23.  Sales to existing security holders/standby commissions.** For purposes of SDCL 47-31B-202(15), a standby commission means payment to an underwriter for risk and services in connection with the commitment to take down any portion of the offering which is not taken down by the security holders. No other commissions or remuneration may be paid. If a commission is paid, the issuer must file a notice specifying the terms of the offer to the director prior to making the offer to security holders.

 **Source:** 28 SDR 48, effective October 10, 2001; 30 SDR 211, effective July 1, 2004.

 **General Authority:** SDCL 47-31B-605(a)(1) and (2).

 **Law Implemented:** SDCL 47-31B-202(15), 47-31B-203.

 **20:08:07:24.  Limited offerings general rules.**

 (1)  Limited offerings issued pursuant to an exemption from registration under SDCL 47-31B-203 will be reviewed on the basis of "full disclosure" rather than "merit" review.

 (2)  Any disclosure document used, shall contain full disclosure of all material facts relating to the issuer and the offer and sale of the securities. The North American Securities Administrators Association (NASAA) guidelines or statements of policy, may be used by the division for purposes of reviewing the adequacy of disclosure in the disclosure document.

 (3)  Before any sales are made to non-accredited investors in this state, one of the following conditions must be satisfied. The issuer and any person acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that one of the following conditions are satisfied:

 (a)  The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation and needs.

 (b)  The purchaser, either alone or with his or her purchaser representative(s), has such knowledge and experience in financial and business matters that he or she is or they are capable of evaluating the merits and risks of the prospective investment.

 (4)  Any offer, but not the sale, of a security made pursuant to § 20:08:07:25 by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a disclosure document or prospectus, is allowed if all of the conditions are satisfied in § 20:08:07:27, testing-the-waters exemption.

 (5)  The following information shall appear on the cover page of any disclosure document or prospectus, in bold-face type:

 (a)  "NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR PASSED UPON THE ADEQUACY OR ACCURACY OF THE DISCLOSURE DOCUMENT OR PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE."; or

 (b)  "NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR DETERMINED IF THIS DISCLOSURE DOCUMENT OR PROSPECTUS IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE."

 **Source:** 28 SDR 48, effective October 10, 2001; 30 SDR 211, effective July 1, 2004.

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

 **Law Implemented:** SDCL 47-31B-203.

 **Note:** The NASAA statements of policy can be located at www.nasaa.org under NASAA corporate finance.

 **20:08:07:25.  Intrastate limited offering transactional exemption.** Any sale by an issuer having its principal office in this state is eligible for the intrastate limited offering transactional exemption according to the following conditions:

A. (1)  The total number of sales is not made to more than thirty-five non-accredited persons in this state;

 (a)  "Persons in this state" include any sale that physically takes place within this state, whether to residents or nonresidents;

 (b)  Integration: Offers and sales that are made more than six months before the start of an intrastate limited offering or are made more than six months after completion of an intrastate limited offering will not be considered part of that offering, so long as during those six month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered or sold under the intrastate limited offering, other than those offers or sales of securities under an employee benefit plan pursuant to SDCL 47-31B-202(21);

 (2).  An intrastate limited offering may be offered and sold no more than twelve consecutive months from the approval date of the filing;

 (3).  The issuer believes that all of the buyers in this state, other than those designated in SDCL 47-31B-202(13), are purchasing for investment;

 (4).  No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state other than a finder as defined in § 20:08:03:17, except reasonable and customary commissions paid by the issuer to a broker or agent registered with the division;

 (5).  Ten days prior to any sale, the issuer must submit to the director, a completed "Statement of the Issuer Form", and pay a filing fee pursuant to SDCL 47-31B-203. The offering may not be sold prior to approval by the director; and

 (6).  The issuer must file the report of sales form within 30 days of the end of the grant of the exemption or after the offering is closed, whichever occurs first.

B. (1)  Unless the issuer complies with § 20:08:07:27 with respect to the testing-the-waters exemption, there can be no public advertising of an offer to sell securities; and any offers made under this section may only be directed to persons with whom the issuer has a pre-existing relationship or persons acting on the issuer's behalf who have a pre-existing business relationship. The term, no public advertising, means that neither the issuer nor any person acting on behalf of the issuer may offer or sell the securities by any form of general solicitation or general advertising, including an advertisement, article, notice, or other communication published in a newspaper, magazine, or similar media or broadcast over television or radio and a seminar or meeting whose attendees have been invited by general solicitation or general advertising.

 (2).  The director may increase the number of purchasers for purposes of this rule if the issuer shows the director that:

 (a)  The number limitation is unwarranted for this offering;

 (b)  The increased number is necessary to complete a particular community or economic development project; or

 (c)  The purchasers are limited to a particular identified group; and the issuer discloses the number of intended purchasers to the director.

 (3).  For the purpose of computing the number of sales which have been made or will have been made upon completion of a proposed offering pursuant to this rule, the following sales shall be excluded:

 (a)  The sale to a relative or spouse of a purchaser and a relative of the spouse who has the same home as the purchaser;

 (b)  The sale to a trust or estate in which a purchaser or any of the persons related to the purchaser as specified in subdivision (a) of this section collectively have 100 percent of the beneficial interest, excluding contingent interest;

 (c)  The sale to a corporation or other organization of which a purchaser or any of the persons related to him as specified in subdivision (a) of this section collectively are the beneficial owners of all the equity securities, excluding directors' qualifying shares, or equity interests.

 (4).  A sale to a corporation, partnership, limited liability company, association, joint stock company, trust, or unincorporated organization shall be counted as one sale; however, if the entity was organized for the specific purpose of acquiring the securities offered, each beneficial owner of equity interest or equity securities in the entity shall count as a separate sale. A tenancy by the entirety is one person.

 (5).  A sale made to an accredited investor as defined in 17 C.F.R. § 230.501, or a sale pursuant to SDCL 47-31B-202(13) may not be construed as a sale for the purpose of computing the maximum number of sales allowed under this rule.

 (6).  Intrastate limited offerings are presumed confidential and shall receive confidential treatment.

 **Source:** 28 SDR 48, effective October 10, 2001; 30 SDR 211, effective July 1, 2004; 33 SDR 63, effective October 18, 2006; 43 SDR 80, effective December 6, 2016.

 **General Authority:** SDCL 47-31B-605(a)(1) to (3), inclusive.

 **Law Implemented:** SDCL 47-31B-103, 47-31B-203.

 **20:08:07:26.  Uniform limited offering exemption -- Reg. A, Reg. D, Rule 504, Rule 505, and SCOR.** Repealed.

 **Source:** 28 SDR 48, effective October 10, 2001; repealed, 30 SDR 211, effective July 1, 2004.

 **20:08:07:27.  Testing-the-waters exemption.** Solicitations of interest prior to filing with the division is allowed if there is compliance with this section.

 (1)  An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a disclosure document or prospectus (or its equivalent) for such security is exempt from SDCL 47-31B-301 if all of the following conditions are satisfied:

 (a)  The issuer intends to conduct its offering in this state pursuant to the intrastate limited offering rule, § 20:08:07:25.

 (b)  Ten business days prior to the initial solicitation of interest under this rule, the issuer files with the director a Solicitation of Interest Form along with any other materials to be used to conduct solicitations of interest, including the script of any broadcast to be made and a copy of any notice to be published.

 (c)  Five business days prior to usage, the issuer files with the director any amendments to the foregoing materials or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular offeree pursuant to a request by that offeree.

 (d)  No Solicitation of Interest Form, script, advertisement, or other material which the issuer has been notified by the director not to distribute is used to solicit indications of interest.

 (e)  Except for scripted broadcasts and published notices, the issuer does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current Solicitation of Interest Form at or before the time of the communication or within five days from the communication.

 (f)  During the solicitation of interest period, the issuer does not solicit or accept money or commitment to purchase securities.

 (g)  No sale is made until seven days after delivery to the purchaser of a final disclosure document or prospectus, or in those instances in which delivery of a preliminary prospectus is allowed hereunder, a preliminary prospectus.

 (h)  The issuer does not know, and in the exercise of reasonable care could not know that the issuer or any of the issuer's officers, directors, ten percent shareholders, or promoters:

 (1)  Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the Solicitation of Interest Form.

 (2)  Has been convicted within five years prior to the filing of the Solicitation of Interest Form of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including forgery, embezzlement, obtaining money under false pretense, larceny, or conspiracy to defraud.

 (3)  Is currently subject to any federal or state administrative enforcement order or judgment entered by any state securities administrator or the Securities and Exchange Commission within five years prior to the filing of the Solicitation of Interest Form or is subject to any federal or state administrative enforcement order or judgment entered within five years prior to the filing of the Solicitation of Interest Form in which fraud or deceit, including making untrue statements of material facts and omitting to state material facts, was found.

 (4)  Is subject to any federal or state administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities.

 (5)  Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the Solicitation of Interest Form. The prohibitions listed above do not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing such party is licensed or registered in this state and the form B-D filed with this state discloses the order, conviction, judgment, or decree relating to such person. No person disqualified under this subsection may act in a capacity other than that for which the person is licensed or registered. Any disqualification caused by this section is automatically waived if the agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

 (2)  A failure to comply with any condition of subsection (1) of this rule will not result in the loss of the exemption from the requirements of SDCL 47-31B-301 for any offer to a particular individual or entity if the issuer shows:

 (a)  The failure to comply did not pertain to a condition directly intended to protect that particular individual or entity;

 (b)  The failure to comply was insignificant with respect to the offering as a whole; and

 (c)  A good faith and reasonable attempt was made to comply with all applicable conditions of subsection (1).

 If an exemption is established only through reliance upon this subsection (2), the failure to comply shall nonetheless be actionable as a violation of SDCL chapter 47-31B by the director under SDCL 47-31B-603 and constitutes grounds for denying or revoking the exemption as to a specific security or transaction.

 (3)  The issuer shall comply with the requirements of this subsection (3)(a) and (b), inclusive. Failure to comply will not result in the loss of the exemption from the requirements of SDCL 47-31B-301, but shall be a violation of SDCL chapter 47-31B, be actionable by the director under SDCL 47-31B-603, and constitute grounds for denying or revoking the exemption as to a specific security or transaction.

 (a)  Any published notice or script for broadcast must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:

 (1)  NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED;

 (2)  NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF A DISCLOSURE DOCUMENT OR PROSPECTUS THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING;

 (3)  AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND; and

 (4)  THIS OFFER IS BEING MADE PURSUANT TO THE INTRASTATE EXEMPTION FROM REGISTRATION. NO SALE MAY BE MADE UNTIL THE DISCLOSURE DOCUMENT IS QUALIFIED PURSUANT TO SDCL CHAPTER 47-31B.

 (b)  All communications with prospective investors made in reliance on this rule must cease after a registration statement is filed in this state, and no sale may be made until at least 20 calendar days after the last communication made in reliance on this rule.

 (4)  The director may waive any condition of this exemption in writing, upon application by the issuer and cause having been shown. Neither compliance nor attempted compliance with this rule, nor the absence of any objection or order by the director with respect to any offer of securities undertaken pursuant to this rule, shall be deemed to be a waiver of any condition of the rule or deemed to be a confirmation by the director of the availability of this rule.

 (5)  Offers made in reliance on this rule will not result in a violation of SDCL 47-31B-301 by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under federal securities laws.

 (6)  All communications made in reliance on this rule are subject to the anti-fraud provisions of SDCL chapter 47-31B.

 (7)  The director may or may not review the materials filed pursuant to this rule. Materials filed, if reviewed, will be judged under anti-fraud principles. Any discussion in the disclosure documents of the potential rewards of the investment must be balanced by a discussion of possible risks.

 (8)  Any offer effected in violation of this rule may constitute an unlawful offer of an unregistered security for which civil liability attaches under SDCL 47-31B-509. Likewise any misrepresentation or omission may give rise to civil liability. Under SDCL chapter 47-31B, a subsequent registration of the security for the sale of the security does not cure the previous unlawful offer. Only a rescission offer made in accordance with the provisions of SDCL 47-31B-510 can accomplish such a cure.

 (9)  Issuers on whose behalf indications of interest are solicited under this rule may not make offers or sales in reliance on SDCL 47-31B-202(14), until six months after the last communication with a prospective investor made pursuant to this rule.

 (10)  There is no fee required for the filing of notice for this section.

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

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

 **Law Implemented:** SDCL 47-31B-203.

 **20:08:07:28.  Preliminary offering circulars.** Repealed.

 **Source:** 28 SDR 48, effective October 10, 2001; repealed, 30 SDR 211, effective July 1, 2004.

 **20:08:07:29.  Model accredited investor exemption.** Any offer or sale of a security in a transaction that meets the following requirements is exempted from SDCL 47-31B-301:

 (1)  Sales of securities shall be made only to persons who are or the issuer reasonably believes are accredited investors as defined in 17 C.F.R. § 230.501.

 (2)  The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to distribution or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months of sale is presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under SDCL chapter 47-31B or to an accredited investor pursuant to an exemption available under SDCL 47-31B-201 and 47-31B-202.

 (3)  The exemption available under this rule is not available to an 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 the underwriter:

 (a)  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 United States Securities and Exchange Commission;

 (b)  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;

 (c)  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 or enjoining the 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.

 (4)  Section three of this rule does not apply if:

 (a)  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 the party;

 (b)  Before the first offer under this exemption, the director, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

 (c)  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 section.

 (5)  A general announcement of the proposed offering may be made by any means and shall include only the following:

 (a)  The name, address, and telephone number of the issuer of the securities;

 (b)  The name, a brief description, and price of any security to be issued;

 (c)  A brief description of the business of the issuer;

 (d)  The type, number, and aggregate amount of securities being offered;

 (e)  The name, address, and telephone number of the person to contact for additional information; and

 (f)  A statement that:

 (i) Sales will only be made to accredited investors;

 (ii) No money or other consideration is being solicited or will be accepted by way of this general announcement; and

 (iii) The securities have not been registered with or approved by any state securities agency or the U.S. Securities and Exchange Commission and offered pursuant to an exemption from registration.

 (6)  The issuer, in connection with an offer, may provide information in addition to the general announcement under section (5) of this rule, if the information:

 (a)  Is delivered through an electronic database that is restricted to persons who have been pre-qualified as accredited investors; or

 (b)  Is delivered after the issuer reasonably believes that the prospective buyer is an accredited investor.

 Telephone solicitation is not permitted unless the issuer reasonably believes that the prospective purchaser is an accredited investor.

 (7)  To perfect a notice filing under this section, the issuer shall file with the director the following:

 (a)  A completed "Model Accredited Invest or Exemption Uniform Notice of Transaction";

 (b)  A consent to service of process; and

 (c)  A fee pursuant to SDCL 47-31B-203 within 15 days after the first sale in this state.

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

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

 **Law Implemented:** SDCL 47-31B-103, 47-31B-203.

 **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; 44 SDR 99, effective December 11, 2017.

 **General Authority:** SDCL 47-31B-202(2)(D), 47-31B-605(a)(1), 47-31B-605(a)(3).

 **Law Implemented:** SDCL 47-31B-202(2)(D).

 **Note:** Mergent's manuals can be located at <http://www.mergent.com/>.

 OTCQX and OTCQB can be located at <http://www.otcmarkets.com/home>.

 **20:08:07:31.  Viatical settlements.**

 (1)  Viatical settlements: Pursuant to SDCL 47-31B-102(28), viatical settlements are defined as securities. Viatical settlements are hereinafter referred to as "viatical investments." All persons involved in the offer and/or sale of viatical investments are subject to the registration and antifraud provisions of SDCL chapter 47-31B.

 (2)  The standards contained in the NASAA "Guidelines Regarding Viatical Investments" ("Guidelines") as of May 1, 2004, including the definitions, are incorporated herein by reference and apply to the offer and sale of viatical investments the proceeds of which primarily finance the purchase of life insurance policies from viators. These guidelines do not apply to investments in a pool of life insurance policies, as those offerings are covered by existing registration guidelines. Applications not conforming to the standards contained herein shall be looked upon with disfavor. However, the director shall review such documents based on full disclosure and may allow waivers or exceptions from certain standards under these guidelines.

 (3)  Prior to the first offer or sale of a viatical investment in this state, the issuer must file with the division the following completed documents according to the NASAA Guidelines:

 (a).  A document that shows compliance with NASAA Guideline Section II "Requirements of the viatical issuer."

 (b).  A document that shows compliance with NASAA Guideline Section III "Suitability of Participants."

 (c).  A document that shows compliance with NASAA Guideline Section IV "Escrow Requirements."

 (d).  A document that shows compliance with NASAA Guideline V(B) "Compensation."

 (e).  A document that shows compliance with NASAA Guideline VIII "Offering Circular."

 (f).  A document that shows the issuers' intent to comply with NASAA Guideline IX "Post Sale Disclosure."

 (g).  A signed Form U-2, Uniform Consent to Service of Process.

 (h).  The fee as set forth in SDCL 47-31B-203.

 (4)  The filing required in section (3) of this rule is effective one year from the date of approval by the division. The director must be notified in writing of an occurrence of any material change in the information on file with the director within 30 days after the occurrence of the material change.

 (5)  Viatical investments can only be sold through a registered agent of a registered broker-dealer or by an agent of the issuer in compliance with § 20:08:03:01(4), except that the agent must show proof that the applicant has passed the series 63 and the series 7 examinations.

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

 **General Authority:** SDCL 47-31B-605(a)(1) to (3), inclusive, 47-31B-605(b).

 **Law Implemented:** SDCL 47-31B-203.

 **Note:** The NASAA guidelines and statements of policy can be located at [www.nasaa.org](http://www.nasaa.org) under NASAA corporate finance.

 **20:08:07:32.  Canadian-United States cross-border trading exemption.** Any offer or sale of a security effected by a Canadian broker-dealer exempted from broker-dealer registration pursuant to SDCL 47-31B-401(d) is exempted from the securities registration requirements of SDCL 47-31B-301.

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

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

 **Law Implemented:** SDCL 47-31B-203.

 **20:08:07:33.  Church extension fund securities.**

 (1)  Definitions.

 (a)  Church extension fund means a not-for-profit organization affiliated or associated with a denomination, or a fund that is accounted for separately by a denomination organized as a not-for-profit organization, that offers and sells notes primarily to provide funding for loans to various affiliated churches and related religious organizations of the denomination for the acquisition of property, construction or acquisition of buildings, and other related capital expenditures or operating needs.

 (b)  Denomination means a national or regional religious organization or association that consists of or acts on behalf of its individual affiliated churches as well as various affiliated national or regional administrative and religious organizations or units. The organization, associations, churches, or units described in this definition shall be organized as or associated with a not-for-profit organization.

 (c)  Not-for-profit means an entity as described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended, that is accounted for as a not-for-profit organization under generally accepted accounting principles (GAAP) in the United States. A not-for-profit organization generally possesses the following characteristics, in varying degrees, that distinguish it from a business enterprise: contributions of significant amounts of resource providers who do not expect commensurate or proportionate pecuniary return; operating purposes other than to provide goods or services at a profit; and absence of ownership interests like those of business enterprises.

 (2)  Full disclosure. In order to assure full disclosure, the division may apply the applicable statements of policy adopted by the North American Securities Administrators Association, Inc. (NASAA) as listed in the Statement of Policy Regarding Church Extension Fund Securities adopted by NASAA on April 17, 1994, and amended April 18, 2004.

 (3)  Church extension fund securities filing required. For each request for exemption under SDCL 47-31B-201(7)(B), the following shall be submitted to the division:

 a.  Form U-2;

 b.  A copy of the prospectus used to make offers and sales;

 c.  All advertising; and

 d.  The fee listed under SDCL 47-31B-203.

 (4)  Effective period. Church extension fund securities that qualify for the exemption under SDCL 47-31B-201(7)(B) are effective for one year from the date that the securities were ordered to be exempt by the director.

 (5)  Individual church offerings. General obligation financing by a church extension fund is different in its purposes and operation than the one-time offering of church bonds by an individual church or congregation to finance the construction of a single, specific church building or other related capital improvements, in which all of the securities are repaid within a set period of time. An offering of this nature does not need to file a request for an exemption under SDCL 47-31B-201(7)(B) unless the director so orders. However, the director recommends that issuers of such securities consider using the Archived NASAA Statement of Policy for Church Bonds as adopted by NASAA on April 29, 1981, as a useful tool in drafting documents to provide full disclosure and avoid anti-fraud violations.

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

 **General Authority:** SDCL 47-31B-201(7), 47-31B-605(a)(1) to (3), inclusive.

 **Law Implemented:** SDCL 47-31B-103, 47-31B-201(7), 47-31B-203.

 **Note:** The NASAA statements of policy can be located at [www.nasaa.com](http://www.nasaa.com) under NASAA corporate finance.

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

 1.  Scope of the exemption. The solicitation of interest exemption under SDCL 47-31B-202(17) if 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 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; 44 SDR 99, effective December 11, 2017.

 **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).

 **20:08:07:35.  Merger and consolidation.** The transactional exemption granted pursuant to SDCL 47-31B-202(18) does not apply if the transaction was made for the purpose of avoiding the registration requirements of SDCL chapter 47-31B.

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

 **General Authority:** SDCL 47-31B-605(a)(1).

 **Law Implemented:** SDCL 47-31B-202(18).

 **20:08:07:36.  Designated foreign jurisdiction.** In designating a foreign jurisdiction under SDCL 47-31B-202(23), the director shall consider whether a foreign jurisdiction's laws provide substantially similar protection to investors as is provided by the Securities Exchange Act of 1934 with respect to securities listed on a national securities exchange in the United States. However, the director may waive a particular requirement for national exchanges under the Securities Exchange Act of 1934 when making a determination for designating a foreign jurisdiction or exchange designation.

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

 **General Authority:** SDCL 47-31B-202(23), 47-31B-605(a)(1).

 **Law Implemented:** SDCL 47-31B-103, 47-31B-202(23).

 **20:08:07:37.  Twenty-five purchasers exempt transaction.**

(1)  Payment of compensation to a finder as set forth in § 20:08:03:17 is not considered a violation of SDCL 47-31B-202(14)(C).

(2)  For calculating the number of purchasers under SDCL 47-31B-202(14)(A), the following purchasers shall be excluded:

 (a)  Any relative, spouse, or relative of the spouse of a purchaser who has the same principal residence as the purchaser;

 (b)  Any trust or estate in which a purchaser and any of the persons related to the purchaser as specified in § 20:08:07:37(2)(a) or 20:08:07:37(2)(c) collectively have more than 50 percent of the beneficial interest (excluding contingent interests);

 (c)  Any corporation or other organization of which a purchaser and any of the persons related to the purchaser as specified in subsection 20:08:07:37(2)(a) or 20:08:07:37(2)(b) of this section collectively are beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interest;

 (d)  A corporation, partnership, or other entity shall be counted as one purchaser. However, if that entity is organized for the specific purpose of acquiring the securities offered, then each beneficial owner of equity securities or equity interests in the entity shall count as a separate purchaser except to the extent provided in subdivision (a) of this section;

 (e)  A non-contributory employee benefit plan within the meaning of Title 1 of the Employee Retirement Income Security Act of 1974 shall be counted as one purchaser where the trustee makes all investment decisions for the plan;

 (f)  Any executive officer of the issuer offering and selling securities may not be counted as a purchaser pursuant to SDCL 47-31B-202(14). "Executive officer" means the president, any vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy function, or any other person who performs similar policy making functions for the issuer. Executive officers of subsidiaries may be deemed executive officers of the issuer if they perform such policy making functions for the issuer.

(3)  Integration: Pursuant to SDCL 47-31B-202(14), in reference to the prefatory language, "a single issue" signifies that two or more issues can be integrated and potentially destroy the exemption. There are two general tests for integration.

 (a)  Offers and sales that are made more than six months before the start of an offering or are made more than six months after completion of an offering will not be considered part of that offering, so long as during those six month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those previously offered and sold pursuant to a transaction exempt under SDCL 47-31B-202(14).

 (b)  If two issues occur within six months, integration may occur depending upon the following factors:

 (i)     Whether the offerings are part of a single plan of financing;

 (ii)    Whether the offerings involve issuance of the same class of securities;

 (iii)   Whether the offerings are made at or about the same time;

 (iv)   Whether the same type of consideration is to be received; and

 (v)    Whether the offerings are made for the same general purpose.

 **Source:** 33 SDR 63, effective October 18, 2006; 37 SDR 112, effective December 9, 2010.

 **General Authority:** SDCL 47-31B-605(a)(2) and (3).

 **Law Implemented:** SDCL 47-31B-203.

 **20:08:07:38.  Entities for economic development.**

 (1)  In order to facilitate economic development, a potential issuer may present a business plan at a public meeting prior to the registration of securities if the following conditions are met:

 (a)  The meeting is called by an entity organized and operated primarily for economic development, and not for pecuniary profit no part of the net earnings of which inures to the benefit of a stockholder or other person;

 (b)  The entity complies with the finder rules as set forth in § 20:08:03:17; and

 (c)  The potential issuer makes no offer or sale of a security at a meeting and prior to complying with SDCL chapter 47-31B and the rules promulgated pursuant to that chapter.

 (2)  If an entity contracts in writing with a potential issuer prior to a meeting called by the entity, and the contract requires the potential issuer to comply with § 20:08:07:38(c), the entity will not be deemed to have violated § 20:08:07:38 based on a violation of § 20:08:07:38(c) by the potential issuer. This subdivision does not exempt the potential issuer from any liability that may arise from a violation of § 20:08:07:38(c).

 (3)  The term, potential issuer, means a person who has developed or is in the process of developing a business plan or business idea that may require investor funding through the issuance of securities by the potential issuer to complete the goals of the plan or idea.

 **Source:** 33 SDR 63, effective October 18, 2006.

 **General Authority:** SDCL 47-31B-605(a)(1) to (3), inclusive.

 **Law Implemented:** SDCL 47-31B-203, 47-31B-301(2).

 **20:08:07:39.  Isolated non-issuer exemption.** The term, isolated, as used in SDCL 47-31B-202(1), means standing alone, detached, separate as opposed to repeated or successive. Whether a sale is isolated depends upon the facts and circumstances of each transaction in the light of the purpose of chapter 47-31B. A non-issuer transaction is a transaction or distribution not directly or indirectly for the benefit of the issuer.

 **Source:** 37 SDR 112, effective December 9, 2010.

 **General Authority:** SDCL 47-31B-605(a)(3).

 **Law Implemented:** SDCL 47-31B-202(1).

 **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 under 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 21 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 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; 44 SDR 99, effective December 11, 2017; 45 SDR 158, effective June 27, 2019.

 **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 fonn marked "renewal": and

 (b)  A cover letter requesting renewal; and

 (c)  The renewal fee prescribed by SDCL 47-31B-302(e).

 **Source:** 44 SDR 99, effective December 11, 2017.

 **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:** 44 SDR 99, effective December 11, 2017.

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

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

 **20:08:07:43.  Transactional exemption from registration of issuers that comply with ongoing reporting requirements under Tier 2 of Regulation A.** Secondary sales of securities of an issuer that previously sold securities in an offering qualified under Tier 2 of Regulation A of the Securities Act of 1933 are exempt, provided that the issuer is subject to and current in its ongoing reporting requirements under 17 CFR § 230.257(b) (July 1, 2020) at the time of the sale and that the issuer complies with the terms of the exemption from registration in SDCL subdivision 47-31B-202(2).

 **Source:** 47 SDR 68, effective December 7, 2020.

 **General Authority:** SDCL 47-31B-203, 47-31B-605.

 **Law Implemented:** SDCL 47-31B-202(2).

DEPARTMENT OF REVENUE AND REGULATION

SECURITIES

STATEMENT OF ISSUER FORM

Chapter 20:08:07

APPENDIX A

SEE: § 20:08:07:25

(Repealed)

 **Source:** 28 SDR 48, effective October 10, 2001; 30 SDR 211, effective July 1, 2004; repealed, 37 SDR 112, effective December 9, 2010.

DEPARTMENT OF REVENUE AND REGULATION

SECURITIES

REPORT OF SALES FORM

Chapter 20:08:07

APPENDIX B

SEE: § 20:08:07:25

(Repealed)

 **Source:** 28 SDR 48, effective October 10, 2001; 30 SDR 211, effective July 1, 2004; repealed, 37 SDR 112, effective December 9, 2010.

DEPARTMENT OF REVENUE AND REGULATION

SECURITIES

CONSENT TO SERVICE OF PROCESS FORM U-2

Chapter 20:08:07

APPENDIX C

SEE: §§ 20:08:07:01, 20:08:07:02, 20:08:07:03, 20:08:07:03.01, 20:08:07:03.02, 20:08:07:25, 20:08:07:31, and 20:08:07:33

(Repealed)

 Source: 28 SDR 48, effective October 10, 2001; 30 SDR 211, effective July 1, 2004; repealed, 37 SDR 112, effective December 9, 2010.

DEPARTMENT OF REVENUE AND REGULATION

SECURITIES

FORM D

Chapter 20:08:07

APPENDIX D

SEE: § 20:08:07:03.02

(Repealed)

 Source: 28 SDR 48, effective October 10, 2001; 30 SDR 211, effective July 1, 2004; repealed, 37 SDR 112, effective December 9, 2010.

DEPARTMENT OF REVENUE AND REGULATION

SECURITIES

SOLICITATION OF INTEREST FORM

Chapter 20:08:07

APPENDIX E

SEE: § 20:08:07:34

(Repealed)

 **Source:** 28 SDR 48, effective October 10, 2001; 30 SDR 211, effective July 1, 2004; repealed, 37 SDR 112, effective December 9, 2010.

DEPARTMENT OF REVENUE AND REGULATION

SECURITIES

MODEL ACCREDITED INVESTOR FORM

Chapter 20:08:07

APPENDIX F

SEE: § 20:08:07:29

(Repealed)

 **Source:** 28 SDR 48, effective October 10, 2001; repealed, 37 SDR 112, effective December 9, 2010.

DEPARTMENT OF REVENUE AND REGULATION

SECURITIES

FORM NF

Chapter 20:08:07

APPENDIX G

SEE: §§ 20:08:07:01, 20:08:07:02, 20:08:07:03, and 20:08:07:03.01

(Repealed)

 **Source:** 28 SDR 48, effective October 10, 2001; 30 SDR 211, effective July 1, 2004; repealed, 37 SDR 112, effective December 9, 2010.

# CHAPTER 20:08:08

**RESERVED**

**CHAPTER 20:08:09**

**RESERVED**

**CHAPTER 20:08:10**

**DEFINITIONS**

(Repealed, 12 SDR 151, 12 SDR 155, effective July 1, 1986)

**CHAPTER 20:08:11**

**BENEFICIAL OWNERSHIP FILINGS**

(Repealed. 12 SDR 151, 12 SDR 155, effective July 1, 1986)

**CHAPTER 20:08:12**

**CORPORATE TAKE-OVER REGISTRATION**

(Repealed. 12 SDR 151, 12 SDR 155, effective July 1, 1986)

**CHAPTER 20:08:13**

**OWNERSHIP FILING EXEMPTIONS**

(Repealed. 12 SDR 151, 12 SDR 155, effective July 1, 1986)

**CHAPTER 20:08:14**

**PROHIBITED MATERIALS OR ACTS**

(Repealed. 12 SDR 151, 12 SDR 155, effective July 1, 1986)

**CHAPTER 20:08:15**

**FEES**

(Repealed. 12 SDR 151, 12 SDR 155, effective July 1, 1986)