

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).