

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", (appendix A) 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 (appendix B) 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.

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

Law Implemented: SDCL 47-31B-103, 47-31B-203.