

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" (Appendix F);
- (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.

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.

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