

Testimony in Support of HB 1085
North Dakota Securities Commissioner Karen Tyler
House Industry, Business and Labor Committee
January 6, 2021

Adding references to a new section of the Securities Act

In the 2019 legislative session, new section 10-04-07.2 titled “Registration by coordination” was created. From page 2 through page 25 of the bill, there are 6 necessary additions of a reference to either the new code section or the term “coordination”.

Exempting “issuer” from the definition of “Broker-dealer”

Page 1

Beginning on page 1 at line 17, the proposed language amends the definition of “Broker-dealer” to create an exemption for an issuer that is offering and selling its own securities.

When a company issues its own securities in order to raise capital, it will either need to register the securities offering, or qualify for an exemption from registration.

Under current law, in certain circumstances, not only will the company have to register the securities offering, but it will also have to register at the company level as the *intermediary* that will be selling the securities. The company is considered to be acting as a broker in selling its own securities, so it falls under our current definition of broker-dealer and must register as such. The terminology applied to this requirement is “issuer-dealer registration”.

Extensive information disclosure is required through the process of a securities registration or is made available in qualifying for a registration exemption – this is important so that an investor can make an informed decision about the risk of the investment. However, the information collected through the additional step of registration at the company level as an intermediary (issuer-dealer), produces redundancies in the securities issuance process, without creating a meaningful investor protection benefit.

North Dakota is 1 of only 5 states that continues to place this type of registration requirement on a company issuing and selling its own securities. I do not believe investor protections would be compromised by eliminating the requirement.

I do want to stress this is a very narrowly construed definition and registration exemption that applies only to a company engaging in the offer and sale of its own securities.

Page 30

Creating this exemption for issuers would render unnecessary the language found on page 30, line 23 through 27, pertaining to agent registration for officers and directors of the issuing company.

Electronic Filing/Providing for a Renewal

Page 25

The Department is successfully migrating to a fully electronic filing system for securities offerings. Beginning on page 25 at line 18, you will find a number of

different types of filers that are now utilizing our electronic filing system. The changes on page 25 and the bottom of page 26 are suggested in order to eliminate any ambiguity pertaining to an electronic filing requirement.

Also in this section, on page 27 at line 7, we suggest creating the ability for a company using this particular type of exemption (Regulation D Rule 506), to file a renewal if they want to extend the offering beyond their original 12 month offering period. Currently, if an issuer wants to extend the offering period beyond 12 months, they are required submit a new initial filing. Providing for a renewal will produce operational efficiencies for both issuers and the Department.

Modernizing the Securities Act in response to Federal Law and Regulation

Changes

Page 27

As a result of changes in federal securities laws, and subsequent rulemaking by the Securities and Exchange Commission, our Securities Act is in need of modification.

Just as we have many securities registration exemptions on the state law level, so too are there many registration exemptions on the federal level, and they are often connected through a conditioned pre-emption of state authority.

There has been a significant change to a federal level exemption called Regulation A, Tier 2. The SEC increased the amount of money that can be raised under this exemption from \$5 million to \$50 million, and pre-empted states from requiring registration for this type of offering. We can, however, require that the issuer of the securities put us on notice that they are selling their securities in the state, and the requirements for that “notice filing” are established through the amendment that begins on page 27 at line 20, and continues to page 28 at line 13.

Another federal level change that we are addressing through this proposed legislation is federal Regulation Crowdfunding. Here again, Congress created and the SEC wrote the rules for a new securities registration exemption that pre-empted state authority, with the exception of our ability to require the issuer put us on notice, under certain circumstances, that they are selling in the state. The

requirements for this type of notice filing begin on page 28 at line 14 and continue to page 29 at line 17.

The language presented in the amendments relating to both Reg A, Tier 2 and federal Regulation Crowdfunding filings, is language from model legislation drafted by state securities regulators and the North American Securities Administrators Association.

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