

**MEMORANDUM**

**TO:** Legislative Council Administrative Rules Committee  
**FROM:** Karen Tyler, Securities Commissioner  
**RE:** Proposed new §73-02-01-02 of the N.D. Admin. Code  
**DATE:** September 13, 2012

**Chapter 73-02-01 Registration of Securities**

A brief description of the proposed new rules that have been approved and adopted by the Securities Commissioner and an explanation regarding the matters of concern to the committee are as follows:

1. *Whether the rules resulted from statutory changes made by the Legislative Assembly.*

No, the proposed rules simply codify existing practice and promote uniformity in the registration of securities.

2. *Whether the rules are related to any federal statute or regulation.*

No.

3. *A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.*

An abbreviated notice of hearing was published once in each official county newspaper in North Dakota and a full notice of hearing was filed with the Legislative Council. The proposed rules were available to anyone who requested them. The abbreviated notice stated that the rules were available on the North Dakota Securities Department website at [www.ndsecurities.com](http://www.ndsecurities.com). A public hearing was held on April 17, 2012, in Bismarck. The comment period was open until April 30, 2012. No oral or written comments were received. The rules were submitted to the Attorney General on May 15, 2012, for a legal opinion; and the Attorney General approved the rules on July 27, 2012.

4. *Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to*

*address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.*

No oral or written comments, concerns, objections or complaints were received concerning the proposed rules; therefore, no changes were made.

5. *The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.*

The cost for publication of the public hearing notices was \$1,814.02.

6. *An explanation of the subject matter of the rules and the reasons for adopting those rules.*

The Securities Commissioner has been granted the regulatory authority to approve or disapprove applications for registration of all securities to be offered for sale in this state that are not otherwise exempt from registration. N.D.C.C. §10-04-08.1. The Securities Act directs the Commissioner to “cooperate with the administrators of the securities laws of other states” to achieve “maximum uniformity” in the interpretation of state Blue Sky laws. N.D.C.C. §10-04-03. To promote uniformity in registration filings in North Dakota with those in other states, for the benefit of both investors and issuers, North Dakota Securities Commissioners and Department staff have utilized “Statements of Policy” adopted by the North American Securities Administrators Association (NASAA) as guidelines in determining whether a particular securities offering contains the “reasonable conditions, limitations, and restrictions” necessary for approval of registration as set forth in N.D.C.C. §10-04-08.1 since the 1970s. The proposed rules are a codification of existing practice and present no change for securities issuers.

7. *Whether a regulatory analysis was required by North Dakota Century Code (N.D.C.C.) § 28-32-08 and whether a regulatory analysis was issued.*

A regulatory analysis was not required because none was requested nor will the proposed rules have an impact on the regulated community in excess of \$50,000.

8. *Whether a regulatory analysis or economic impact statement of impact on small entities was required by N.D.C.C. § 28-32-08.1 and whether that regulatory analysis or impact statement was issued.*

Regulatory analysis and economic impact statements on small entities were issued and are attached.

9. *Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency.*

These rules are not expected to have any fiscal effect on revenues or expenditures.

10. *Whether a constitutional takings assessment was prepared as required by N.D.C.C. § 28-32-09.*

A constitutional takings assessment was not required because the proposed rules will not limit the uses of real property.

11. *If these rules were adopted as emergency (interim final) rules under N.D.C.C. § 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules.*

These rules were not adopted as emergency rules.

Attachments

**STATE OF NORTH DAKOTA**

**SECURITIES DEPARTMENT**

**NORTH DAKOTA ADMINISTRATIVE CODE**

**ARTICLE 73-02**

**SECURITIES ACT OF 1951**

**CHAPTER 73-02-01**

**REGISTRATION OF SECURITIES**

**SMALL ENTITY REGULATORY ANALYSIS**

1. Establishment of less stringent compliance or reporting requirements for small entities.

Less stringent reporting requirements for small entities were considered. The proposed rules would not implement any new securities-related requirements not already administered by the Department. Small entities issuing securities generally utilize statutory exemptions from registration set forth in Sections 10-04-05 and 10-04-06 of the North Dakota Century Code and will not be adversely impacted.

2. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities.

The proposed rules codify existing practice and promote uniformity. No impact to small entities is expected.

3. Consolidation or simplification of compliance or reporting requirements.

Yes, no impact.

4. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule.

Small entities were not given different standards to comply with than large entities.

5. Exempting small entities from all or any part of the requirements.

Existing law provides numerous exemptions from securities registration for small entities issuing securities. To the extent registration is required for a small entity, the proposed rule allows the Commissioner to waive or modify any of the requirements of the statements of policy or guidelines for good cause shown, upon request of the registrant, upon a finding that the requirement is not necessary to protect the public interest.

## **SMALL ENTITY ECONOMIC IMPACT STATEMENT**

1. Small entities that may be subject to the proposed rule.

Securities issuers falling within the definition of N.D.C.C. § 28-32-08.1(1).

2. The administrative or other costs required for small entities to comply with the proposed rule.

The proposed rules would not implement any new securities-related requirements not already administered by the Department. Small entities issuing securities generally utilize statutory exemptions from registration set forth in Sections 10-04-05 and 10-04-06 of the North Dakota Century Code and will not be adversely impacted.

3. The probable cost and benefit to private persons and consumers who may be affected by the proposed rule.

There will be no cost to consumer investors who will benefit from the disclosures set forth in the offerings. Issuers will benefit because of the uniformity of standards applicable through the securities laws of other states.

4. The probable effect of the proposed rule on state revenues.

None.

5. Whether there are any less intrusive or less costly methods of achieving the proposed rule's purpose.

No.