

Texas Securities Board Rule Proposals
Submitted to the *Texas Register* on March 13, 2006
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The Texas State Securities Board proposes an amendment to §115.1, concerning securities dealers and agents. The proposed amendment would define the term “finder” and provide for a restricted registration to act solely in that capacity. An individual engaged only in the limited activity specified must apply for restricted registration as a finder. Persons registered as general securities dealers are permitted to engage in finder activities under their general dealer license.

Micheal Northcutt, Director, Registration Division, and Benette Zivley, Director, Inspections and Compliance Division, have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt and Mr. Zivley also have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to explicitly inform persons operating as finders that registration is required and to provide a special category of restricted dealer registration for individuals engaged in this limited activity. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Article 581-12.

Statutes and codes affected: Texas Civil Statutes, Article 581-12.

§115.1. General Provisions.

(a) Definitions. Words and terms used in this chapter are also defined in §107.2 of this title (relating to Definitions). The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1)-(8) (No change.)

(9) Finder — An individual who receives compensation for introducing an accredited investor to an issuer or an issuer to an accredited investor solely for the purpose of a

potential investment in the securities of the issuer, but does not participate in negotiating any of the terms of an investment and does not give advice to any such parties regarding the advantages or disadvantages of entering into an investment, and conducts this activity in accordance with §115.11 of this title (relating to Activities of a Finder). Note that a finder is not permitted to register in any capacity other than as a restricted dealer.

(b) (No change.)

(c) Types of registrations.

(1) (No change.)

(2) Restricted registration. The restricted registrations are as follows:

(A)-(K) (No change.)

(L) registration to deal in all general securities except municipal securities; ~~and~~

(M) registration to act exclusively as a finder; and

(N) ~~(M)~~ registration with other restrictions which the Securities Commissioner may impose based upon the facts.

(3) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on March 13, 2006.

DENISE VOIGT CRAWFORD
Securities Commissioner
State Securities Board

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The Texas State Securities Board proposes an amendment to §115.3, concerning securities dealer and agent examinations. The proposed amendment would provide a full waiver from the examination requirements for an individual applying for a restricted registration as a finder.

Micheal Northcutt, Director, Registration Division, and Benette Zivley, Director, Inspections and Compliance Division, have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt and Mr. Zivley also have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to streamline the registration process for persons seeking a restricted registration as a finder since activities permitted under that restricted registration are very limited in scope. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Articles 581-28-1 and 581-13.D. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 13.D provides the Board with authority to waive examination requirements for any applicant or class of applicants.

Cross-reference to Statute: Texas Civil Statutes, Article 581-13.

Statutes and codes affected: Texas Civil Statutes, Article 581-13.

§115.3. Examination.

(a)-(b) (No change.)

(c) Waivers of examination requirements.

(1) (No change.)

(2) A full waiver of the examination requirements of the Texas Securities Act, Section 13.D, is granted by the Board to the following classes of persons:

(A)-(D) (No change.)

(E) a finder;

(F) [~~(E)~~] a person who completed the required examinations, but whose registration has lapsed for more than two years and who has been continually employed in a securities-related position with an entity which was not required to be registered; and

(G) [~~(F)~~] a person who completed the required examinations, but whose registration has lapsed for more than two years and who has been continually registered during the period of the lapse (or unregistered for no more than 60 days when transferring from one employer to another) with the NASD and the state securities regulator in the state in which the person maintains its principal place of business.

(3)-(4) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on March 13, 2006.

DENISE VOIGT CRAWFORD
Securities Commissioner
State Securities Board

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The Texas State Securities Board proposes new section §115.11, concerning activities of a finder. The proposed new section would set out permitted activities of an individual registering as a finder as well as those activities the individual would be prohibited from engaging in. It would also provide for the disclosures to be made by the finder, specify required recordkeeping, and exclude a finder from the supervisory requirements of §115.10.

Micheal Northcutt, Director, Registration Division, and Benette Zivley, Director, Inspections and Compliance Division, have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt and Mr. Zivley also have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that the permitted scope of a finder's activities and obligations as a restricted dealer would be specified. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

The Board solicits comments on the proposed rule and asks specifically for suggestions regarding recordkeeping requirements and the scope of permitted and prohibited activities for finders.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Article 581-12.

Statutes and codes affected: Texas Civil Statutes, Articles 581-12 and 13-1.

§115.11. Activities of a Finder.

(a) Prohibited activities. A finder shall not:

- (1) participate in negotiating any of the terms of an investment;
- (2) give advice to an accredited investor or an issuer regarding the advantages or disadvantages of entering into an investment;
- (3) conduct due diligence, provide a valuation, or provide other analysis to an accredited investor or an issuer regarding an investment;
- (4) advertise to seek accredited investors or issuers;
- (5) have custody of an accredited investor's funds or securities;
- (6) serve as an escrow agent for the parties; or
- (7) disclose information to an accredited investor or an issuer other than the information described in subsections (b) and (c) of this section.

(b) Required disclosures.

(1) A finder must disclose the following to each accredited investor:

- (A) that compensation will be paid to the finder;
- (B) that the finder can neither recommend nor advise the accredited investor with respect to the offering; and
- (C) any potential conflict of interest in connection with the finder's activities.

(2) The disclosures required by paragraph (1) of this subsection must be provided in writing.

(c) Permitted disclosures.

(1) A finder may provide to an accredited investor some or all of the following information:

- (A) the name, address, and telephone number of the issuer of the securities;
- (B) the name, a brief description, and price (if known) of any security to be issued;
- (C) a brief description of the business of the issuer in 25 words or less;

(D) the type, number, and aggregate amount of securities being offered; and/or

(E) the name, address, and telephone number of the person to contact for additional information.

(2) A finder may provide to an issuer contact information regarding an accredited investor.

(d) Recordkeeping.

(1) A finder is not required to maintain the records listed in §115.5 of this title (relating to Minimum Records).

(2) A finder shall maintain and preserve for a period of five (5) years the following records:

(A) records of compensation received for acting as a finder, including the name of the payor, the date of payment, name of the issuer, and name of the accredited investor;

(B) a copy of Form BD used to register the finder;

(C) copies of any information provided by the finder to prospective accredited investors;

(D) any agreements and/or contracts between the finder and the accredited investor;

(E) any agreements and/or contracts between the finder and the issuer;

(F) any lists of contacts/prospective accredited investors and/or issuers; and

(G) any correspondence with accredited investors and/or issuers.

(3) The records required to be maintained and preserved pursuant to this subsection must be arranged and indexed in a manner that will permit the immediate location of any particular document.

(4) In the event that a records retention system commingles records required to be kept under this subsection with records not required to be kept, representatives of the Securities Commissioner may review all commingled records.

(5) A finder shall, upon written request of the Securities Commissioner, furnish to the Securities Commissioner any records required to be maintained and preserved under this subsection.

(e) Supervisory requirements. A finder is not required to maintain a supervisory system as provided in §115.10 of this title (relating to Supervisory Requirements).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on March 13, 2006.

DENISE VOIGT CRAWFORD
Securities Commissioner
State Securities Board