

Government of the District of Columbia
Department of Insurance and Securities Regulation

Lawrence H. Mirel
Commissioner

Theodore A. Miles
Securities Director



SECURITIES RELEASE NO. 02-1

The Securities Bureau has received numerous inquiries concerning the securities laws and rules it administers. To provide guidance to the public regarding the current laws and rules, the Securities Bureau is releasing the following set of Questions and Answers. This release is intended to provide general guidance only. In the event of any inconsistency between a statement in this release and the Act, Rules or Bulletins, the latter will control.

If you have a securities registration or notice filing question that is not answered in this release, you may contact a member of the Securities Bureau staff with your question(s). A listing of the Securities Bureau staff is provided at the end of this release.

-
- Question 1. *When did the requirements applicable to securities offerings in the District of Columbia take effect?*
- Question 2. *What securities offerings must be registered or filed with the Securities Bureau?*
- Question 3. *I would like to make a securities offering in the District of Columbia to not more than 10 investors who do not meet the criteria for "accredited investors." The offering will not exceed 1 million dollars, and it otherwise satisfies the conditions for a SEC Regulation D, Rule 504 offering. What do I need to file with the Securities Bureau?*
- Question 4. *I would like to make a securities offering in the District of Columbia that will not exceed 5 million dollars and that otherwise satisfies the conditions for a SEC Reg. D, Rule 505 offering. What do I need to file with the Securities Bureau?*
- Question 5. *I would like to make a private securities offering to investors in the District of Columbia that satisfies the terms for a SEC Regulation D, Rule 506 offering. What do I need to file with the Securities Bureau?*
- Question 6. *Why are the fees for 505 and 506 offerings different?*
- Question 7. *Does my non-profit organization have to submit a filing with the Securities Bureau if it plans to offer debt securities in the District of Columbia?*

- Question 8. *My firm plans to offer open-end management company securities in the District of Columbia. What are the notice filing fees associated with these securities offerings?*
- Question 9. *My mutual funds (open-end management companies) made initial notice filings with DISR effective June 1, 2001. Some of them have fiscal years that end on June 30; others that end on September 30. When and how should I make renewal notice filings for those funds?*
- Question 10. *Do the notice filing requirements for federal covered securities of Sections 1941 and 1942 of the rules apply to bonds, notes, and other obligations issued by states, counties and municipalities ("municipal securities")?*
- Question 11. *What requirements apply to the registration of bank securities?*
- Question 12. *Do I have to file a prospectus with your office if I intend to make an Exchange Offer in the District of Columbia under Section 1914 of the rules?*
- Question 13. *I would like to offer a security in the District of Columbia that will be exempt under your rules, and only requires a notification filing and fee. Does my offering have to comply with the legend requirements of Section 1916 of the rules?*
- Question 14. *If I intend to make a private offering that will only be offered to "institutional investors," do I have to provide a notification filing or fee to your office?*
- Question 15. *I plan to offer securities in the District of Columbia under a "shelf registration." Do your rules require a separate filing and fee for each takedown?*
- Question 16. *Are there any notice filing requirements for options issued by a clearing agency registered under the Securities Exchange Act of 1934?*
- Question 17. *I would like to offer an employee benefit/compensation plan in the District that is exempt under D.C. Official Code § 31-5604.10 of your Act. Are there any notice filing requirements for this offering? What must be done prior to making the plan available in the District?*
- Question 18. *If the securities in a registered offering are being sold by the officers, directors, or employees of the issuer, must those individuals be licensed by the Securities Bureau?*
- Question 19. *What registrations or notice filings may be made electronically with the Securities Bureau?*
- Question 20. *How do I submit my filings and fee payments to the Securities Bureau?*
-
- Question 1: *When did the requirements applicable to securities offerings in the District of Columbia take effect?*

Answer: Pursuant to D.C. Official Code § 31-5608.06 (2001 ed.), the registration and notice filing requirements pertaining to securities offerings became applicable June 1, 2001.

Question 2: *What securities offerings must be registered or filed with the Securities Bureau?*

Answer: Under the Securities Act of 2000, securities offerings must either be registered or exempt from registration. Also, as provided in the National Securities Markets Improvement Act ("NSMIA"), the registration requirements are preempted with respect to certain federal covered securities. Some of those federal covered securities are subject to notice filing requirements under Sections 305 or 308 of the Act. Issuers and others that make offerings or engage in transactions that are exempt from registration may be required to make notice filings with regard to those exempt offerings or transactions, as discussed in some of the questions and answers below.

Registration of securities in the District of Columbia may be accomplished by notification, by coordination, or by qualification. Registration by notification is available only for large seasoned companies. Securities may be registered by coordination when an issuer or selling shareholder is registering a securities offering with the Securities and Exchange Commission ("SEC"); the applicant may file with the Securities Bureau copies of the documents filed with the SEC. Registration by qualification may be done by any issuer or selling shareholder that is required to register a securities offering. Each method of registration has different requirements. For details regarding those requirements, see the Securities Act of 2000 and the Rules Pertaining to Registration of Securities Offerings.

Question 3: *I would like to make a securities offering in the District of Columbia to not more than 10 investors who do not meet the criteria for "accredited investors." The offering will not exceed 1 million dollars, and it otherwise satisfies the conditions for a SEC Regulation D, Rule 504 offering. What do I need to file with the Securities Bureau?*

Answer: An issuer offering securities pursuant to rule 504 of SEC Regulation D, 17 C.F.R. § 230.504 may use the exemption found in section 402(12)(A) of the Securities Act of 2000 to make offers in the District of Columbia. Such issuers, however, are prohibited from making offers to more than ten persons during any 12 consecutive months. For these purposes, financial institutional investors, including "accredited investors," do not count against the ten persons limit. An issuer relying upon this exemption must file a written notice with the Commissioner at least twenty (20) days prior to the first offer, and is required to comply with sections 1943.8 - 1943.10 of the rules.

Question 4: *I would like to make a securities offering in the District of Columbia that will not exceed 5 million dollars and that otherwise satisfies the conditions for a SEC Reg. D, Rule 505 offering. What do I need to file with the Securities Bureau?*

Answer: Prior to any sale, the issuer must file with the Securities Bureau a notice of intention to sell using SEC Form D. The notice of intention must be accompanied by a non-refundable filing fee based on the amount offered in the District, a Consent to Service of Process (Form U-2), and a copy of any prospectus that may be required pursuant to the Act. The requirements pertaining to SEC Reg. D, Rule 505 offerings may be found in section 1944 of the rules.

Question 5: *I would like to make a securities offering to investors in the District of Columbia that satisfies the terms for a SEC Regulation D, Rule 506 offering. What do I need to file with the Securities Bureau?*

Answer: Not more than 15 days after the first sale in the District, the issuer must file a complete Form D, a consent to service of process, and a filing fee in the amount of \$250. The requirements pertaining to Reg. D, Rule 506 offerings may be found in Section 1942 of the rules.

Question 6: *Why are the fees for 505 and 506 offerings different?*

Answer: The fees for 505 limited offerings and 506 private placement offerings are different because the level of review is different for each of these offerings. The 505 limited offerings are reviewed by the Securities Bureau to ensure that certain disclosure requirements have been met. The 506 private offerings are the subject of notice filings that do not receive the same level of review.

Question 7: *Does my non-profit organization have to submit a filing with the Securities Bureau if it plans to offer debt securities in the District of Columbia?*

Answer: Yes. Securities issued by not-for-profit organizations are exempt securities under D.C. Official Code § 31-5604.01(8) of the Act. However notice must be provided to the Department prior to issuing the offering, pursuant to that section and to Section 1943 of the rules. As such, your non-profit organization must file a notice with the Securities Bureau, DISR at least ten (10) days before you plan to issue the offering. The Securities Bureau then has five (5) days to decide whether the offering must be registered. For the relevant provisions see Sections 1943.3 - 1943.4 of the rules.

Question 8: *My firm plans to offer open-end management company securities in the District of Columbia. What are the notice filing fees associated with these securities offerings?*

Answer: An issuer making a notice filing for an open-end management company offering in the District of Columbia must pay an "up-front" fee in the amount of \$400 dollars per class at the time of an initial filing. At the expiration of a 12-month notice filing period, the issuer has the option of paying: (1) an additional flat fee of \$1300 per class; or (2) a fee of 1/10 of 1% of gross sales in the District less the initial payment of \$400. The \$1300 flat fee may be prorated if the initial filing period is for less than 12 months. Issuers that elect option (2) must file a sales report that sets forth the dollar

volume of sales of the subject securities to residents of the District for each class for which that option is elected. For initial filings prior to November 30, 2001, the up-front fee per class was \$500.00. For a detailed description of the fee requirements see section 1949 of the rules.

The effective period for these initial notice filings begins on the later of the date on which the Department receives the last of the items required by § 1940.1 for initial filings or the date on which the registration statement for the securities is declared effective by the SEC, and shall end on the last day of the issuer's fiscal year that occurs soonest after the beginning date. The effective period for renewal notice filings are for the twelve months beginning the day after the end of the initial period, provided that the filer complies with the renewal filing requirements in this section. For a detailed description of the investment company notice filing provisions, see section 1940 of the rules.

Question 9: *My mutual funds (open-end management companies) made initial notice filings with DISR effective June 1, 2001. Some of them have fiscal years that end on June 30; others that end on September 30. When and how should I make renewal notice filings for those funds?*

Answer: Those funds were required to make renewal filings sixty days after the end of their fiscal years, so the funds with fiscal years that ended on June 30, 2001 had to file renewals on or before August 31, 2001, and the funds with fiscal years that ended on September 30, 2001 had to file renewals on or before November 30, 2001. The renewal fees in effect between June 1, 2001 and November 30, 2001 were applicable to renewals of funds with fiscal years that ended on June 30 or September 30, 2001. The renewal fees for all those funds were \$500 plus the "back-end fee," which consisted of a percentage of sales in excess of \$500,000 during the period from June 1, 2001 to the end of the fiscal year fees, or an alternative fee of \$1300 multiplied by the number of months between June and the end of the fiscal year, divided by 12. DISR will accept as timely filed all such renewals due between August 31, 2001 and November 30, 2001 that are filed no later than May 31, 2002.

Question 10: *Do the notice filing requirements for federal covered securities of sections 1941 and 1942 of the rules apply to bonds, notes, and other obligations issued by states, counties and municipalities ("municipal securities")?*

Answer: The requirements of sections 1941 and 1942 of the rules apply only to federal covered securities that are not otherwise exempt from registration under Sections D.C. Official Code § 31-5604.01 and § 31-5604.02 of the Securities Act of 2000. Bonds, notes, and other obligations issued by states, counties and municipalities are exempt from registration and require no filing or fee. D.C. Official Code § 31-5604.01(1). If you have a question regarding whether the security that you would like to offer falls under this exemption, you may contact the Securities Bureau.

Question 11: *What requirements apply to the registration of bank securities?*

Answer: Securities of institutions that meet the definition of "depository institution" under D.C. Official Code § 31-5601.01(9)(A) of the Act are exempted from the registration requirements by D.C. Official Code § 31-5604.01(3). Those securities are also not subject to the notice filing requirements of Rule 1943.

Question 12: *Do I have to file a prospectus with your office if I intend to make an Exchange Offer in the District of Columbia under Section 1914 of the rules?*

Answer: No. Exchange offers are not subject to the prospectus provisions set forth in sections 1910-1913 and 1915 - 1939 of the rules. Those prospectus provisions apply only to prospectuses that are subject to the registration provisions of the Act. Exchange Offers are exempt pursuant to D.C. Official Code § 31-5604.02 (19) of the Act. Pursuant to 1914 of the rules, a request for a written opinion granting an exemption under D.C. Official Code § 31-5604.02 (19) of the Act must be submitted to the Commissioner prior to offering the security. Exchange offers at present are subject only to the notification requirements set forth in section 1943 of the rules.

Question 13: *I would like to offer a security in the District of Columbia that will be exempt under your rules, and only requires a notification filing and fee. Does my offering have to comply with the legend requirements of Section 1916 of the rules?*

Answer: No. The legend requirement of Rule 1916 only applies to offerings for which a registration statement is required to be filed with the Securities Bureau.

Question 14: *If I intend to make a private offering that will only be offered to "institutional investors," do I have to provide a notification filing or fee to your office?*

Answer: No. If your offering is made only to institutional investors that meet the definition of that term in D.C. Official Code § 35-5601.01, the offering is exempt from registration, and no filing or fee is necessary. The definition of institutional investor includes a depository institution, an insurance company, a separate account of an insurance company, an investment company registered under the Investment Company of 1940, a business development company as defined in the Investment Company Act of 1940, a qualified institutional buyer as defined in SEC Rule 144A, a broker-dealer, and an "accredited investor" as defined in SEC rule 501(a). However, if the securities offering is not offered exclusively to institutional investors our office requires registration or notification pursuant to the Act. See Section 1943 of the rules.

Question 15: *I plan to offer securities in the District of Columbia under a "shelf registration." Do your rules require a separate filing and fee for each takedown?*

Answer: No. Shelf registrations are treated as full registrations in the District of Columbia. They are subject to a one-time filing fee that must be submitted with the initial registration based on the amount of securities offered in the District. The filing requirements for registration by coordination of shelf registrations pursuant to SEC Rule 415 of the 1933 Act may be found in 1903 of the rules.

Question 16: *Are there any notice filing requirements for options issued by a clearing agency registered under the Securities Exchange Act of 1934?*

Answer: Generally speaking, there are no notice filing requirements for such options. However, the exemption does not apply to off-exchange futures contracts or substantially similar arrangements. See D.C. Official Code § 31-5604.01(7).

Question 17: *I would like to offer an employee benefit/compensation plan in the District that is exempt under D.C. Official Code § 31-5604.10 of your Act. Are there any notice filing requirements for this offering? What must be done prior to making the plan available in the District?*

Answer: The rules provide that at least 20 days prior to the first securities offering pursuant to such a plan, a written notice must be filed with the Commissioner. The notice filing requirements for employee compensation/ benefit plans may be found in section 1943.5 of the rules.

With regard to the timing requirements, the Securities Bureau intends to issue revised regulations that will deal with this subject. Until then, the Securities Bureau will accept filings made less than 20 days prior to the first offer, if the filings are accompanied by an explanation of the issuers' inability to provide notice at least 20 days prior to the first offer.

Question 18: *If the securities in a registered offering are being sold by the officers, directors, or employees of the issuer, must those individuals be licensed by the Securities Bureau?*

Answer: "Agents of issuers" must be licensed by the Securities Bureau unless certain conditions are present: 1) if the offers are made by a registered broker-dealer; 2) if the offering is made by an agent who is a partner, officer, or director of a broker dealer or issuer, or a person occupying a similar status or performing similar functions, and no compensation that he or she receives is directly or indirectly related to the purchase or sales of securities; or 3) if the individual represents an issuer in effecting transactions in a security exempted by D.C. Official Code § 31-5604.01(1), (2), (3), (4), (5), (6), (7), (8) or (9), or transactions exempted by D.C. Official Code § 31-5604.02 of the statute. Licensing requirements for issuer agents may be found in Section 1946 of the rules.

What if my securities offering is made only to accredited investors? Is there still an issuer agent registration requirement?

Answer: As noted above, if the transaction is exempt from registration under section D.C. Official Code § 31-5604.02, the agent is not required to be licensed. Since offers only to accredited investors are exempt under D.C. Official Code § 31-5604.02 (11), those selling agents would not be required to register or be licensed.

Question 19: *What registrations or notice filings may be made electronically with the Securities Bureau?*

Answer: The filing of documents and information using an approved electronic method is equivalent to filing of paper documents and information with the Department. Currently, only the Form NF, the form for notice filing of offerings of the securities of investment companies, may be submitted electronically. Electronic submissions using the Blue Express filing system, developed by ClearSky, Automated Business Development Corporation, is currently being accepted by the Securities Bureau. The Securities Bureau encourages filers to develop electronic filing systems and will authorize those that meet our technical requirements. For further information contact Larry Coates at 202.442.4926.

Question 20: *How do I submit my filings and fee payments to the Securities Bureau?*

Answer: All filings should be submitted to the Securities Bureau, Department of Insurance and Securities Regulation, 810 First Street, NE, Suite 601, Washington, D.C. 20002. Fees shall be paid by check, money order, bank cashier's check, credit card, bank money order, or any manner of electronic transfer of funds acceptable to the Commissioner, made payable to the "D.C. Treasurer."

THE SECURITIES ACT OF 2000 IS AVAILABLE ONLINE AT THE COUNCIL OF THE DISTRICT OF COLUMBIA WEBSITE, LOCATED AT [HTTP://WWW.DCCOUNCIL.WASHINGTON.DC.US/](http://www.dccouncil.washington.dc.us/). FOLLOW THE FOLLOWING STEPS TO ACCESS THE DISTRICT'S SECURITIES ACT. 1) CLICK NEW! DC CODE NOW AVAILABLE ON LINE!!!; 2) CLICK DIVISION V LOCAL BUSINESS AFFAIRS; 3) CLICK TITLE 31. INSURANCE AND SECURITIES; 4) CLICK SUBTITLE X SECURITIES (DC SECURITIES ACT OF 2000); THE SECURITIES ACT OF 2000 MAY BE FOUND IN SUBTITLE X SECURITIES. THE RULES PERTAINING TO THE REGISTRATION OR NOTICE FILING OF SECURITIES OFFERINGS MAY BE FOUND ON THE DISR WEBSITE AT [WWW.DISR.DC.GOV](http://www.d isr .dc.gov).

**DISTRICT OF COLUMBIA
DISR – Securities Bureau
Staff Telephone Listing**

Theodore Miles
Securities Director
(202) 442-7800
theodore.miles@dc.gov

Yvonne Henderson
Securities Licensing Specialist (B/D)
(202) 442-5677
yvonne.henderson@dc.gov

Larry N. Coates
Assistant Director, Corporate Finance
(202) 442-4926
larry.coates@dc.gov

Cheryl Young
Staff Assistant
(202) 442-7854
cheryl.young@dc.gov

Maurice Goff
Assistant Director, Licensing
(202) 442-4934
maurice.goff@dc.gov

Lilah R. Blackstone
Assistant General Counsel (Securities)
(202) 442-4810
lilah.blackstone@dc.gov

James M. McManus
Securities Examiner
(202) 442-4927
james.mcmanus@dc.gov

Ron Claiborne
Consumer Investor Relations Specialist
(202) 442-7640
ron.claiborne@dc.gov

Rosland Lane
Registration Systems Specialist
(202) 442-4794
rosland.lane@dc.gov

Ashraf Bhagat
Securities Licensing Specialist (Investment Adviser)
(202) 442-7641
ashraf.bhagat@dc.gov