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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Department of Commerce and Insurance
Division:	Tennessee Securities Division
Contact Person:	Virginia Smith
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Don Coleman
Address:	500 James Robertson Parkway, Nashville, TN 37243
Phone:	(615) 741-6500
Email:	Don.Coleman@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	500 James Robertson Parkway		
Address 2:			
City:	Nashville, TN		
Zip:	37243		
Hearing Date:	October 23, 2020		
Hearing Time:	2 PM	<input checked="" type="checkbox"/> X CST/CDT	

Additional Hearing Information:

In the event that this in-person hearing is prohibited by reason of Executive Order or closure of the building, this hearing will be conducted via WebEx hearing. In such a case, the meeting may be accessed here:

Meeting number (access code): 161 795 8935

Meeting password: Jm6kx6bDPJ8

Join by phone+1-415-655-0003 US TOLL**Join from a video system or application**Dial 1617958935@tn.gov.webex.com

You can also dial 173.243.2.68 and enter your meeting number.

Revision Type (check all that apply): Amendment New Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0780-04-02	Securities Registration and Exemptions
Rule Number	Rule Title
0780-04-02-.08	Uniform Limited Offering Exemption

Chapter Number	Chapter Title
Rule Number	Rule Title

Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to

<https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Chapter 0780-04-02
Securities Registration and Exemptions

Rule 0780-04-02-.08 is deleted in its entirety and the Rule is reserved.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: Jul 14, 2020

Signature: 
Hodgen Mainda (Jul 14, 2020 14:58 CDT)

Name of Officer: Hodgen Mainda

Title of Officer: Commissioner

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Filed with the Department of State on: 7/16/2020

Tre Hargett
Secretary of State

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RULES OF
TENNESSEE DEPARTMENT OF COMMERCE AND
INSURANCE DIVISION OF SECURITIES

CHAPTER 0780-04-02
SECURITIES REGISTRATION AND
EXEMPTIONS

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0780-04-02-.08 UNIFORM LIMITED OFFERING EXEMPTION.

~~(1) Preliminary Notes.~~

- ~~(a) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of the Act.~~
- ~~(b) In view of the objective of this Rule and the purposes and policies underlying the Act, this exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this Rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this Rule.~~
- ~~(c) Nothing in this Rule is intended to relieve registered broker-dealers or agents from the due diligence, suitability, or know-your-customer standards or any other requirements of the law otherwise applicable to such registered persons.~~

~~(2) Exemptions. By the authority delegated to the commissioner in T.C.A. §§ 48-1-103(b)(11) and 48-1-116, the following transactions are determined to be exempt from T.C.A. §§ 48-1-104 and 48-1-113.~~

~~Any sale of securities offered and sold in compliance with the 1933 Act, Regulation D, SEC Rule 505 (17 C.F.R. § 230.505), including any offer or sale made exempt by application of SEC Rule 508(a) (17 C.F.R. § 230.508(a)), as made effective in SEC Release No. 33-6389 and as amended in subsequent SEC releases, which satisfies the following further conditions and limitations:~~

~~(a) Commissions.~~

- ~~1. No commission, fee, or other remuneration shall be paid or given directly or indirectly to any person for soliciting any prospective purchaser in this state unless such person has fully complied with the registration requirements set forth in the Act and in these Rules, and has satisfied all outstanding comments of the Division.~~
- ~~2. It is a defense to a violation of this subparagraph if the issuer sustains the burden of proof to establish that the issuer did not know and in the exercise of reasonable~~

~~care could not have known that the person who received a commission, fee, or other remuneration was not registered in compliance with the registration requirements set forth in the Act and in these Rules.~~

- ~~(b) Disqualification. No exemption under this Rule shall be available for the securities of any issuer if any of the parties described in the 1933 Act, Regulation A, SEC Rule 252 (c) (f) (17 C.F.R. § 230.252 (c) (f)):~~
- ~~1. Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any state's securities law within five (5) years prior to the filing of the notice required under this exemption.~~
 - ~~2. Has been convicted within five (5) years prior to the filing of the notice required under this exemption of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.~~
 - ~~3. Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five (5) years prior to the filing of the notice required under this exemption or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts or omitting to state material facts, was found and the order or judgment was entered within five (5) years prior to the filing of the notice required under this exemption.~~
 - ~~4. Is subject to any state's administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities.~~
 - ~~5. Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminary restraining or enjoining, or is subject to any order, judgment, or decree of any court of competent jurisdiction permanently restraining or enjoining such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five (5) years prior to the filing of the notice required under this exemption.~~
 - ~~6. The prohibitions of parts (2)(b)1.-3. and (2)(b)5. of this Rule shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing such party is licensed or registered in this state and the Form BD filed with this state discloses the order, conviction, judgment, or decree relating to such person. No person disqualified under this subparagraph may act in a capacity other than that for which the person is licensed or registered.~~
 - ~~7. Any disqualification caused by this subparagraph is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.~~
 - ~~8. It is a defense to a violation of this subparagraph if the issuer sustains the burden of proof to establish that the issuer did not know and in the exercise of reasonable care could not have known that a disqualification under the subparagraph existed.~~
- ~~(c) Filing Requirement. The issuer shall file with the Division a notice on Form D (17 C.F.R. §~~

~~239.500):~~

- ~~1. No later than fifteen (15) days after the earlier of the first payment of consideration or the delivery of a signed subscription agreement by an investor in this state which results from an offer being made in reliance upon this exemption, and at such other times and in the form required under Regulation D, SEC Rule 503, (17 C.F.R. § 230.503), to be filed with the SEC. The Form D shall contain all information requested on the Form.~~
 - ~~2. The notice on Form D shall be accompanied by:
 - ~~(i) One (1) copy of all written information furnished to offerees;~~
 - ~~(ii) A Form U-2 Uniform Consent to Service of Process;~~
 - ~~(iii) If the issuer is a corporation, a Form U-2A Uniform Form of Corporate Resolution;~~
 - ~~(iv) A non-refundable filing fee in the amount of five hundred dollars (\$500); and~~
 - ~~(v) A statement noting the date of the first sale, if any of such security, in this state.~~~~
 - ~~3. The issuer shall promptly furnish any additional information requested by the Division.~~
 - ~~4. Any initial notice on or amendment to the Form D shall be manually signed by a person authorized by the issuer.~~
- ~~(d) Amendments. Any filing pursuant to this exemption shall be amended by filing with the Division such information and changes as may be necessary to correct any material misstatement or omission in the filing. Any written offering material required by this Rule that was not prepared at the time of the initial filing, or which materially differs from the written offering material included in the filing shall be delivered or mailed to the Division concurrently with its first use in this state. There shall be no fees charged for amendment to filings pursuant to this Rule.~~
- ~~(e) Suitability. In all sales to nonaccredited investors in this state the following conditions must be satisfied, or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that the following conditions are satisfied:~~
- ~~1. The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation, and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed ten percent (10%) of the investor's net worth, it is suitable; and~~
 - ~~2. The purchaser, either alone or with his/her purchaser representative(s), has such knowledge and experience in financial and business matters that he/she is or they are capable of evaluating the merits and risks of the prospective investment.~~
- ~~(f) Legend. The offering document shall display on its cover substantially the following information, to the extent appropriate, in capital letters, and if printed, in boldface roman type at least as high as ten (10) point modern type:~~

~~IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED.~~

~~THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.~~

~~THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD, EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISK OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.~~

- ~~(3) A failure to comply with a term, condition, or requirement of subparagraphs (2)(a), (2)(c), and (2)(e) of this Rule will not result in the loss of the exemption from the requirements of T.C.A. §§ 48-1-104 and 48-1-113 for any sale to a particular purchaser if the person relying on the exemption shows:~~
- ~~(a) The failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular purchaser;~~
 - ~~(b) The failure to comply was insignificant with respect to the offering as a whole; and~~
 - ~~(c) A good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of subparagraphs (2)(a), (2)(c), and (2)(e) of this Rule.~~
- ~~(4) Where an exemption is established only through reliance on paragraph (3) of this Rule, the failure to comply shall nonetheless be actionable by the commissioner.~~
- ~~(5) Transactions which are exempt under this Rule may not be combined with transactions exempt under any other Rule or any section of the Act; however, nothing in this limitation shall act as an election. Should, for any reason, the offer and sale fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.~~
- ~~(6) The commissioner may, by rule or order, increase the number of purchasers or waive any other conditions of this exemption.~~
- ~~(7) The exemption authorized by this Rule shall be known and may be cited as the "Tennessee Uniform Limited Offering Exemption."~~

~~**Authority:** T.C.A. §§ 48-1-103(b)(11), 48-1-104, 48-1-113, 48-1-115, 48-1-116, and 48-1-124(e); Public Acts of 1997, Chapter 164, § 1; § 18 of the Securities Act of 1933, as amended by the National Securities Markets Improvement Act of 1996; and 17 C.F.R. §§ 230.252, 230.500, 230.503, 230.505, and 230.508.~~

~~**Administrative History:** Original rule filed September 28, 1990; effective November 12, 1990. Amendment filed November 6, 1997; effective January 20, 1998. Repeal and new rule filed March 16, 2015; effective June 14, 2015.~~