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Sequence Number: 06-15-14
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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. §4-5-205

Agency/Board/Commission:	Commerce and Insurance
Division:	Securities
Contact Person:	Barbara A. Doak, Chief Counsel for the Securities Division
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0780-04-02	Securities Registration and Exemptions Table of Contents
Rule Number	Rule Title
0780-04-02-.16	Unsolicited Transaction Exemption

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Department of Commerce and Insurance
Division of Securities

Chapter 0780-04-02
Securities Registration and Exemptions

Amendment

0780-04-02 Securities Registration and Exemptions is amended by adding the following language to the Table of Contents:

0780-04-02-.16 Unsolicited Transaction Exemption

Authority: T.C.A. §48-1-103(b)(20) and Public Acts of 2013, Chapter 261.

Chapter 0780-04-02
Securities Registration and Exemptions

New Rule

0780-04-02-.16 Unsolicited Transaction Exemption

(1) Preliminary Notes:

(a) Nothing in this rule is intended to relieve registered or exempt broker-dealers or agents from the due diligence, suitability, know-your-customer standards, or any other requirements of the law otherwise applicable to such registered persons.

(2) Exemption. By the authority delegated to the Commissioner in T.C.A. §§48-1-103(b)(20) and 48-1-116, all registered or exempt broker-dealers or broker-dealer agents who intend to rely upon the exemption afforded to unsolicited non-issuer transactions on the basis of T.C.A. §48-1-103(b)(20) must comply with the following to be exempt from T.C.A. §§48-1-104 and 48-1-113:

(a) Shall retain the following information for each such unsolicited non-issuer transaction:

1. The CRD numbers for the broker-dealer firm and the agent;
2. The name of the broker-dealer;
3. The name of the agent;
4. The date of the transaction;
5. The dollar amount of the transaction, the number of shares, and the price per share;
6. The Cusip number for each security making up the order placed by the purchaser;
7. The name of each security making up the order placed by the purchaser;
8. The purchaser(s)'s account number at the broker-dealer;

9. The broker-dealer's office address;
 10. The broker-dealer's branch office identification number (if applicable);
 11. An indication that the transaction was not solicited in any way by the broker-dealer or any agent of the broker-dealer; and
 12. An indication that the broker-dealer:
 - (i) Acted solely as an agent for the purchaser;
 - (ii) Had no direct or indirect interest in the sale or distribution of the security ordered by the purchaser; and
 - (iii) Received no commission, profit or other compensation from any source other than the purchaser.
- (b) The information in this paragraph (2) must be retained by the broker-dealer for a period of five (5) years from the date of the transaction, in a manner consistent with Rule 0780-04-03-.02(1)(b).
- (c) Upon request by the Division, based on a complaint or as the result of a Division examination of the broker-dealer's books and records, the broker-dealer must provide the purchaser(s) with a document containing the information retained pursuant to subparagraph (a) above and must obtain the purchaser(s) signed acknowledgement that the transaction was unsolicited. Such acknowledgement may be in the form of a manual or electronic signature.

Authority: T.C.A. §§48-1-103(b)(20), 48-1-111, 48-1-115 and 48-1-116(a) and Public Acts of 2013, Chapter 261.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

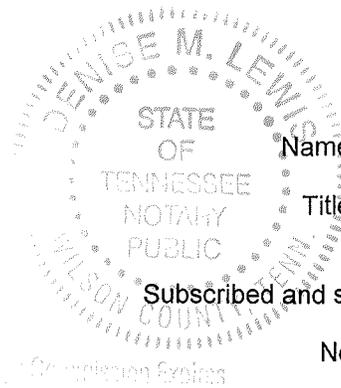
Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Commerce and Insurance, Division of Securities on the 05/20/14 and is in compliance with the provisions of T.C.A. §4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/12/13

Rulemaking Hearing(s) Conducted on: (add more dates). 10/02/13



Date: 5/20/14

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner of the Dept. of Commerce & Insurance

Subscribed and sworn to before me on: 5/20/14

Notary Public Signature: Denise M. Lewis

My commission expires on: 2/15/2016

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

6-5-14

Date

Department of State Use Only

Filed with the Department of State on: 6-17-14

Effective on: 9-15-14

Tre Hargett

Tre Hargett
Secretary of State

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 SECRETARY OF STATE

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

The Department of Commerce and Insurance received one comment letter from the Securities Industry and Financial Markets Association (SIFMA), which represents the interests of securities firms, broker-dealers, banks and asset managers of all sizes in all financial markets in the United States. SIFMA expressed concern that this rule could create new documentation requirements for broker-dealers. The Division responded to this concern by agreeing to remove the reference to a new Unsolicited Transaction Exemption Form. Instead, this rule will require broker-dealers to retain information in a manner consistent with existing books and records requirements. The Division also agreed to remove language which required broker-dealer agents to sign securities transaction confirmations. In addition, at SIFMA's request, a reference to suitability requirements was removed from the language of this rule.

The Department of Commerce and Insurance also received an unofficial verbal comment from Wiley Brothers, an investment adviser, noting Wiley Brothers' agreement with SIFMA's comments.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. §4-5-202(a)(3) and T.C.A. §4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

The Department of Commerce and Insurance has considered whether this rulemaking hearing rule will have an economic impact on small business (business with fifty (50) or fewer employees). This rule is anticipated not to have a significant economic impact affecting small business. This rule will require broker-dealers to provide the Division with certain documentation regarding unsolicited transactions. Broker-dealers currently maintain this documentation pursuant to existing books and records requirements. The Division shall only request such documentation based on a complaint or as the result of a Division examination of the broker-dealer's books and records.

The outcome of the analysis set forth in T.C.A. §4-5-403 is as follows:

- (1) The Division worked closely with SIFMA to ensure that this rule will not create any additional costs to broker-dealers.
- (2) There will be minimal change in reporting, recordkeeping and other administrative costs for broker-dealers because this rule will require broker-dealers to provide the Division with documentation that they already currently maintain pursuant to existing books and records requirements.
- (3) The effect on small businesses will be negligible. This rule will have no effect on consumers and will only affect broker-dealers.
- (4) This rule is the least burdensome means of meeting the objectives of the Tennessee General Assembly.
- (5) There are no other counterparts in the State of Tennessee; however, this regulation is similar to regulations in effect in the states surrounding Tennessee.
- (6) Small businesses cannot be exempted from this rule. This rule is cost effective for large and small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule will not have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. §4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule allows broker-dealers to rely on an exemption from certain provisions of the Tennessee Securities Act of 1980, as amended, T.C.A. §§48-1-101 to 48-1-201 (2012), for unsolicited non-issuer transactions on the basis of T.C.A. §48-1-103(b)(20). In order to rely on this exemption, broker-dealers will be required to maintain documentation regarding unsolicited transactions. The Division may request such information in response to complaints received by the Division or as the result of a Division examination of the broker-dealer's books and records.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

This rule is promulgated pursuant to T.C.A. §§48-1-103(b)(20), 48-1-111, 48-1-115 and 48-1-116(a) and Public Acts of 2013, Chapter 261.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rule will only apply to broker-dealers. The Division worked closely with SIFMA to ensure that the rule has minimal impact on broker-dealers. The issues raised by SIFMA were resolved to SIFMA's satisfaction.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Daphne D. Smith, Assistant Commissioner for Securities.

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Barbara Doak, Chief Counsel for the Securities Division.

- (H)** Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

500 James Robertson Parkway, Nashville, TN 37243; 615-741-9467; Barbara.Doak@tn.gov.

- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

Unsolicited Transaction Exemption
Redlined Rule

0780-04-02-.15 BANK HOLDING COMPANY EXEMPTION.

(1) All issuers who wish to offer securities in, or into this state in reliance on an exemption afforded to sales of securities by a bank holding company or a savings and loan holding company must file with the Commissioner no later than ten (10) days prior to the first sale:

- (a) One copy of the Form U-1, Uniform application to Register Securities;
- (b) A Form U-2 Uniform Consent to Service of Process;
- (c) If the issuer is a corporation, a Form U-2A Uniform Form of Corporate Resolution;
- (d) A non-refundable filing fee in the amount of \$100.00; and
- (e) A copy of all sales or advertising literature used or proposed to be used.

Authority: T.C.A. §§48-1-103(a)(13) and 48-1-116(a). **Administrative History:** Original rule filed April 5, 2004; effective June 19, 2004.

0780-04-02-.16 UNSOLICITED TRANSACTION EXEMPTION

(1) Preliminary Notes:

(a) Nothing in this rule is intended to relieve registered or exempt broker-dealers or agents from the due diligence, suitability, know-your-customer standards, or any other requirements of the law otherwise applicable to such registered persons.

(2) Exemption. By the authority delegated to the Commissioner in T.C.A. §§48-1-103(b)(20) and 48-1-116, all registered or exempt broker-dealers or broker-dealer agents who intend to rely upon the exemption afforded to unsolicited non-issuer transactions on the basis of T.C.A. §48-1-103(b)(20) must comply with the following to be exempt from T.C.A. §§48-1-104 and 48-1-113:

(a) Shall retain the following information for each such unsolicited non-issuer transaction:

- 1. The CRD numbers for the broker-dealer firm and the agent;
- 2. The name of the broker-dealer;
- 3. The name of the agent;
- 4. The date of the transaction;
- 5. The dollar amount of the transaction, the number of shares, and the price per share;

6. The Cusip number for each security making up the order placed by the purchaser;
 7. The name of each security making up the order placed by the purchaser;
 8. The purchaser(s)'s account number at the broker-dealer;
 9. The broker-dealer's office address;
 10. The broker-dealer's branch office identification number (if applicable);
 11. An indication that the transaction was not solicited in any way by the broker-dealer or any agent of the broker-dealer; and
 12. An indication that the broker-dealer:
 - (i) Acted solely as an agent for the purchaser;
 - (ii) Had no direct or indirect interest in the sale or distribution of the security ordered by the purchaser; and
 - (iii) Received no commission, profit or other compensation from any source other than the purchaser.
- (b) The information in this paragraph (2) must be retained by the broker-dealer for a period of five (5) years from the date of the transaction, in a manner consistent with Rule 0780-04-03-.02(1)(b).
- (c) Upon request by the Division, based on a complaint or as the result of a Division examination of the broker-dealer's books and records, the broker-dealer must provide the purchaser(s) with a document containing the information retained pursuant to subparagraph (a) above and must obtain the purchaser(s) signed acknowledgement that the transaction was unsolicited. Such acknowledgement may be in the form of a manual or electronic signature.

Authority: T.C.A. §§48-1-103(b)(20), 48-1-111, 48-1-115 and 48-1-116(a) and Public Acts of 2013, Chapter 261. Administrative History: Original rule filed -; effective --.