

**Materials for the  
February 18, 2021  
Meeting of the  
State Securities Board**

Teleconference 1-877-226-9790  
Access Code 2050688

Governor Abbott has temporarily suspended certain provisions of the Texas Open Meetings Act that require government officials and members of the public to be physically present at a specified meeting location. Pursuant to that suspension, the public will not be able to attend the Board meeting in person but may attend telephonically at no cost. To listen to the meeting, members of the public may call toll-free 1-877-226-9790 and enter access code 2050688.

The February 18<sup>th</sup> meeting of the State Securities Board will be held remotely by telephone conference call, as authorized under Texas Government Code, Section 551.125. An electronic copy of the agenda will be available at <https://www.ssb.texas.gov/about-us/agency-reports/statesecurities-board-meetings>, along with a copy of the meeting materials. A recording of the meeting will be available by contacting [gc@ssb.texas.gov](mailto:gc@ssb.texas.gov) or calling 512-305-8304.

Members of the public who would like to address the Board on an agenda item must register by calling 512-305-8304 or emailing [proposal@ssb.texas.gov](mailto:proposal@ssb.texas.gov) by 5:00 p.m. on February 17<sup>th</sup> and providing their full name, phone number, and identifying the agenda item on which they wish to speak. You will be placed on a list and advised when it is your time to speak. All public comments at the telephonic meeting will be limited to three minutes. Members of the public may also submit written public comments to the Board via email at [proposal@ssb.texas.gov](mailto:proposal@ssb.texas.gov) no later than 5:00 p.m. on February 17<sup>th</sup>.

## AGENDA

1. Minutes of October 8, 2020, Board Meeting; consider excused absences, if any.
2. Recommendation from the Board's Audit Committee related to the selection of an internal auditor for the FY 2021 audit, possibly followed by a vote selecting the internal auditor for FY 2021; annual selection of Audit Committee members.
3. Rulemaking - Adoptions:
  - A. Matching services.
    1. Repeal of §109.15, Designated Matching Services.
    2. Repeal of Form 133.35, Application for Designation as Matching Service under §109.15.
  - B. Updates for SEC changes to definitions of accredited investor and qualified institutional buyer.
    1. Amending §107.2, concerning definitions, to align the definitions relating to accredited investor and qualified institutional buyer with recent changes to those definitions by the Securities and Exchange Commission, reference the current Form D, and expand the definition of EFD System to include additional filings as permitted by Board rule.
    2. Amending §109.4, concerning securities registration exemption for sales to financial institutions and certain institutional investors, §109.5, concerning dealer registration exemption for sales to financial institutions and certain institutional investors, and §109.6, concerning investment adviser registration exemption for investment advice to financial institutions and certain institutional investors, to replace

detailed definitions relating to accredited investors and qualified institutional buyers with cross-references to definitions in §107.2, concerning definitions.

4. Report on budget and performance.

5. Legislative update.

6. Update on Agency operations.

Persons with disabilities who plan to attend this meeting and require auxiliary aids or services should contact Sonia Fergerson at (512) 305-8306 at least five business days prior to the meeting so that appropriate arrangements can be made.

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## TITLE 7. BANKING AND SECURITIES

### PART 7. STATE SECURITIES BOARD

#### CHAPTER 107. TERMINOLOGY

##### 7 TAC §107.2

The Texas State Securities Board proposes an amendment to §107.2, concerning Definitions. The proposed amendment would align the definitions of individual accredited investor, institutional accredited investor, and qualified institutional buyer with the definitions of accredited investor and qualified institutional buyer used by the Securities and Exchange Commission (SEC). The SEC recently adopted amendments to these terms, which become effective December 8, 2020. The proposed amendment would also move the definitions of qualified institutional buyer set forth elsewhere in the rules to this section, change the definition of Form D to reference the current SEC Form D, and expand the definition of the EFD System from accepting only Form D filings to include additional types of electronic filings as permitted by Board Rule.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed amendment is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendment is in effect the public benefit expected as a result of adoption of the proposed amendment will be to coordinate the definitions in the rule with federal standards and requirements and to facilitate the Agency's ability to accept additional types of electronic filings via the EFD system in the future. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to [proposal@ssb.texas.gov](mailto:proposal@ssb.texas.gov). In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under 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.

The proposal affects Texas Civil Statutes, Articles 581-5, 581-7, 581-12, and 581-12-1.

*§107.2. Definitions.*

The following words and terms, when used in Part 7 of this title (relating to the State Securities Board), shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (40) (No change.)

(41) Individual accredited investor--~~A natural~~ [Natural] person [as] described in Rule 501(a), [501(a)(5) and (6)] promulgated by the SEC under the Securities Act of 1933 (17 CFR §230.501, as amended) [as made effective in SEC Release Number 33-6389, as amended in Release Numbers 33-6758, 33-6825, and 33-9287].

(42) Institutional accredited investor--An entity (not a natural person) described in Rule 501(a), [501(a)(4) - (4), (7) and (8)] promulgated by the SEC under the Securities Act of 1933 (17 CFR §230.501, as amended) [as made effective in SEC Release Number 33-6389, as amended in Release Numbers 33-6758 and 33-6825].

(43) Form D--

(A) For paper filings--Form D, Notice of Exempt Offering of Securities, [as effective on September 23, 2013] (referenced in 17 CFR [Code of Federal Regulations] §239.500).

(B) For electronic filings made through the EFD System--The information, relating to a filing designated to be made in Texas, that is submitted through the EFD System in connection with a Form D filing made with the SEC. It includes all information made available to the Securities Commissioner through the EFD System in connection with the Texas filing.

(44) EFD System--The Electronic Filing Depository system provided by the North American Securities Administrators Association (NASAA) that is used for making an electronic filing [of Form D] with the Securities Commissioner of Form D and such other filings as permitted by Board rule.

(45) Qualified institutional buyer--An entity described in Rule 144A, as promulgated by the SEC under the Securities Act of 1933 (17 CFR §230.144A, as amended).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 26, 2020.

TRD-202004472

Travis J. Iles

Securities Commissioner

State Securities Board

Earliest possible date of adoption: December 6, 2020

For further information, please call: (512) 305-8303



## CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

### 7 TAC §§109.4 - 109.6

The Texas State Securities Board proposes amendments to §109.4, concerning Securities Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors; §109.5, concerning Dealer Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors; and §109.6, concerning Investment Adviser Registration Exemption for Investment Advice to Financial Institutions and Certain Institutional Investors. The Securities and Exchange Commission (SEC) recently amended its definitions of accredited investors and qualified institutional buyers, which become effective December 8, 2020. The proposed amendments would replace detailed definitions relating to accredited investors and qualified institutional buyers in these sections with cross-references to §107.2, concerning Definitions, which is being concurrently proposed for amendment to incorporate the SEC's amendments to these definitions. These amendments would allow the Board to update the definitions in §107.2, without having to also update the definitions in these sections, each time the SEC alters these definitions in the future.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed amendments are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendments are in effect the public benefit expected as a result of adoption of the proposed amendments will be to coordinate the rules with federal standards and requirements. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendments will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendments are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or negatively affect the state's economy. Additionally, the proposed amend-

ments do not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sections in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to [proposal@ssb.texas.gov](mailto:proposal@ssb.texas.gov). In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendments are proposed under Texas Civil Statutes, Articles 581-5.T, 581-12.C, and 581-28-1. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 12.C provides the Board with the authority to prescribe new dealer, agent, investment adviser, or investment adviser representative registration exemptions by rule. 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.

The proposal affects Texas Civil Statutes, Articles 581-5, 581-7, 581-12, and 581-12-1.

*§109.4. Securities Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors.*

(a) (No change.)

(b) Sales to certain institutional investors. The State Securities Board, pursuant to the Act, §5.T, exempts from the securities registration requirements of the Act, §7, the offer and sale of any securities to any of the following persons:

(1) (No change.)

(2) any "qualified institutional buyer" (as that term is defined in §107.2 of this title (relating to Definitions) [Rule 144A(a)(1) promulgated by the SEC under the 1933 Act, as made effective in SEC Release Number 33-6862, and amended in Release Number 33-6963]); and

(3) (No change.)

(c) (No change.)

*§109.5. Dealer Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors.*

(a) (No change.)

(b) Sales to certain institutional investors. The State Securities Board, pursuant to the Act, §5.T and §12.C, exempts a person from the dealer and agent registration requirements of the Act, when the person sells or offers for sale any securities to any of the following persons:

(1) (No change.)

(2) any "qualified institutional buyer" (as that term is defined in §107.2 of this title (relating to Definitions) [Rule 144A(a)(1) promulgated by the SEC under the 1933 Act, as made effective in SEC Release Number 33-6862, and amended in Release Number 33-6963]); and

(3) (No change.)

(c) (No change.)

*§109.6. Investment Adviser Registration Exemption for Investment Advice to Financial Institutions and Certain Institutional Investors.*

(a) (No change.)

(b) Investment advice rendered to certain institutional investors. The State Securities Board, pursuant to the Act, §5.T and §12.C, exempts from the investment adviser and investment adviser representative registration requirements of the Act, persons who render investment advisory services to any of the following:

(1) an "institutional accredited investor," [(c) as that term is defined in §107.2 of this title (relating to Definitions) [Rule 501(a)(1)-(3), (7), and (8) promulgated by the Securities and Exchange Commission (SEC) under the Securities Act of 1933, as amended (1933 Act), as made effective in SEC Release Number 33-6389, as amended in Release Numbers 33-6437, 33-6663, 33-6758, and 33-6825)];

(2) any "qualified institutional buyer," [(c) as that term is defined in §107.2 of this title (relating to Definitions) [Rule 144A(a)(1) promulgated by the SEC under the 1933 Act, as made effective in SEC Release Number 33-6862, and amended in Release Number 33-6963]]; and

(3) (No change.)

(c) - (e) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 26, 2020.

TRD-202004473

Travis J. Iles

Securities Commissioner

State Securities Board

Earliest possible date of adoption: December 6, 2020

For further information, please call: (512) 305-8303



**7 TAC §109.15**

The Texas State Securities Board proposes the repeal of §109.15, concerning Designated Matching Services. The proposal would repeal this rule, as it is no longer in use and has become obsolete. There are currently no entities operating as a designated matching service under this rule. A related form, §133.35, Application for Designation of Matching Services Under §109.15, is also concurrently proposed for repeal.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed repeal is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed repeal.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the repeal is in effect the public benefit expected as a result of adoption of the proposed repeal will be that a rule that is no longer needed will be eliminated. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed repeal will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no an-

anticipated economic cost to persons who are required to comply with the repeal as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed repeal is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed repeal does not create a new regulation; and it does not limit or expand an existing regulation. The proposal repeals a rule that is obsolete and no longer in use.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed repeal in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711 3167 or faxed to (512) 305 8336. Comments may also be submitted electronically to [proposal@ssb.texas.gov](mailto:proposal@ssb.texas.gov). In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The repeal is proposed under Texas Civil Statutes, Articles 581-12.C and 581-28-1. Section 12.C provides the Board with the authority to prescribe new dealer, agent, investment adviser, or investment adviser representative registration exemptions by rule. 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.

The repeal affects Texas Civil Statutes, Articles 581 12 and 581-18.

*§109.15. Designated Matching Services.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Travis J. Iles

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8303



## CHAPTER 133. FORMS

### 7 TAC §133.35

The Texas State Securities Board proposes the repeal of §133.35, which adopts by reference the Application for Designation of Matching Services Under §109.15 form, which is used

to apply to become a designated matching service pursuant to §109.15, which is concurrently being proposed for repeal. The form and rule are being repealed because they are no longer in use and have become obsolete.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed repeal is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed repeal.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the repeal is in effect the public benefit expected as a result of adoption of the proposed repeal will that a form that is no longer needed will be eliminated. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed repeal will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed repeal of the rule adopting by reference the form is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed repeal does not create a new regulation; and it does not limit or expand an existing regulation. The proposal repeals an existing form used under a rule that has also been proposed for repeal.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed repeal in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711 3167 or faxed to (512) 305 8336. Comments may also be submitted electronically to [proposal@ssb.texas.gov](mailto:proposal@ssb.texas.gov). In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The repeal is proposed under Texas Civil Statutes, Articles 581-12.C and 581-28-1. Section 12.C provides the Board with the authority to prescribe new dealer, agent, investment adviser, or investment adviser representative registration exemptions by rule. 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.

The repeal affects Texas Civil Statutes, Articles 581 12 and 581-18.

*§133.35. Application for Designation as Matching Service under §109.15.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Travis J. Iles

Securities Commissioner

State Securities Board

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