

704-1:51-3.1. Registration by Coordination.

Preliminary Note: Securities for which a registration statement has been filed under the federal “Securities Act of 1933” or any securities for which filings have been made pursuant to the SEC’s regulation A may be registered by coordination in Colorado. Various sections of the Colorado Securities Act, these rules, and certain NASAA forms require a person seeking registration by coordination to file with the Securities Commissioner certain documents that are submitted to the SEC. The Division finds that the duplicative filing of such documents increases offering costs and harms the environment, and, therefore, not requiring these paper filings is in the public interest.

A. Filing Information

1. When securities are registered by coordination under Section 11-51-303, C.R.S., any document filed with the SEC in connection with such offering shall be considered filed with the Securities Commissioner when such document is received by the SEC.

~~2~~4. Application for registration by coordination in the State of Colorado is made by filing the NASAA Form U-1 and the documents required by it, along with the information required for registration by coordination under section 11-51-303(1)(a) and (b)(I)-(III), C.R.S.

~~3~~2. The application for registration by coordination shall also include a specimen, copy, or detailed description of the security to be offered and sold. The description shall include details of all terms and conditions to which the security, or its holder, are subject.

~~4~~3. A person seeking registration by coordination shall also file a Consent to Service of Process on the NASAA Form U-2 (see Rule 51-7.1) with the Securities Commissioner, along with a filing fee as specified by the Securities Commissioner.

B. Effective Date

1. A registration statement required to be filed with the Securities Commissioner in connection with a registration by coordination is considered effective simultaneously with or subsequent to the registration statement filed with the SEC when the following conditions are satisfied:

a. A stop order issued under sections 11-51-303(4) or 11-51-306, C.R.S., or a stop order issued by the SEC, is not in effect, and a proceeding is not pending against the person seeking registration by coordination under section 11-51-410,

C.R.S.; and

b. The complete registration statement has been on file with the Securities Commissioner for a period of at least ten (10) days.

2. The person seeking registration by coordination shall promptly notify the Securities Commissioner of the date when the registration statement filed with the SEC becomes effective, and the content of any price amendment. The notification containing the price amendment shall be promptly filed with the Securities Commissioner, and if not timely filed, the Securities Commissioner may, without prior notice or hearing, issue a stop order under section 11-51-306, C.R.S., which stop order shall retroactively deny the effectiveness of the registration statement, or suspend the effectiveness of the registration statement until the person seeking registration complies with the conditions in this Rule 51-3.1.

3. The Securities Commissioner shall promptly notify the person seeking registration of a stop order by telegram, telephone, facsimile, or other electronic means, and shall maintain evidence that such notification was given in the form of a certificate or affidavit of service or other appropriate document.

4. In the event the person seeking registration complies with the notice requirements of this Rule 51-3.1.B. subsequent to entry of a stop order, the stop order shall become void as of the date of its issuance.

5. In the event the Securities Commissioner intends to institute a proceeding for a stop order under section 11-51-306, C.R.S., in connection with the registration statement, the Securities Commissioner shall notify the person seeking such registration. Evidence of such notice by the Securities Commissioner may include a certificate or affidavit of service, or other appropriate documentary evidence.

C. Amendments

Any amendments to the federal prospectus filed with the Securities Commissioner pursuant to section 11-51-303(2) shall be made by filing an amended Form U-1 and an amended registration statement. The amendment becomes effective when the amended registration becomes effective with the SEC and any requirements of this Rule 51-3.1 have been satisfied. Such amendment shall also contain any post-effective amendments to such SEC registration that would result in net proceeds from the sale of registered securities that are subject to the escrow requirements of section 11-51-302(6), C.R.S. and Rule 51-3.4.

D. Closing Report

Within 30 days of the close of the offering or the termination of the registration statement, whichever occurs first, the registrant shall file with the Securities Commissioner a closing report. The closing report shall be filed on the Division's Form RC-C.

E. Designees

At such time as the Securities Commissioner authorizes the electronic filing of registration statements, the Securities Commissioner may designate other persons or entities to receive filings on behalf of the Division under this Rule 51-3.1, including but not limited to, applications, registration statements, and fees. Any such designation shall be for the sole purpose of receiving such filings and transmitting those documents to the Division.

F. Prompt filing; Notification

1. For purposes of this Rule 51-3.1, when an act is required to be done “promptly,” or any person is required to “promptly file” or “promptly notify,” such terms shall mean within five (5) business days of the date the action was taken or order entered.

2. Methods of “notification,” as required by this Rule 51-3.1, may include certified or registered mail, telegram, telephone, facsimile, e-mail, or other electronic means. The person sending any required notification shall assure receipt of such notification by retaining all necessary documents reflecting that the notice was sent and received, including preparing and maintaining a certificate or affidavit of service, with appropriate documentation attached.

3 CCR 704-1:51-3.7
3 Colo. Code Regs. 704-1:51-3.7 Alternatively cited as 3 CO ADC 704-1

704-1:51-3.7. Notification of Exemption under Section 11-51-308(1)(p), C.R.S., for Certain Securities or Transactions Exempt from Registration under the 33 Act

A. The notification of exemption required under section 11-51-308(1)(p), C.R.S., is made by filing with the Securities Commissioner, or his or her designee, ~~a paper copy, or electronic copy if electronic filing is permitted,~~ of the forms which must be filed with the SEC pursuant to rules and regulations promulgated under the 33 Act in connection with reliance on a securities or transactional exemption from registration created by said rules or regulations under the 33 Act relevant to the Colorado exemption, and by paying a filing fee.

B. The required filings must be made with the Securities Commissioner no later than the time when such filings in connection with the federal exemption would have to be made with the SEC. Any filing required under (A), and any amendment required under (C) or (D), must be submitted to the Securities Commissioner through the Electronic Filing Depository (EFD) operated by NASAA, and must comply with the following:

1. All filing fees shall likewise be submitted through EFD;

2. A person duly authorized by the issuer shall affix his or her electronic signature to the Form D filing by typing his or her name in the appropriate fields and submitting the filing through the EFD, which shall constitute irrefutable evidence of legal signature by the individual whose name is typed on the filing; and

3. The electronic filing of documents and the collection of related filing fees shall not be required until such time as the EFD system provides for receipt of such filings and fees. Any documents or fees required to be filed with the Securities Commissioner that are not permitted to be filed with, or cannot be accepted by, the EFD system shall be filed directly with the Securities Commissioner.

C. An issuer may file an amendment to a previously filed notice of sales on Form D at any time.

D. An issuer must file an amendment to a previously filed notice of sales on Form D for an offering:

1. To correct a material mistake of fact or error in the previously filed notice of sales on Form D, as soon as practicable after discovery of the mistake or error;

2. To reflect a change in the information provided in the previously filed notice of sales on Form D, as soon as practicable after the change, except that no amendment is required to reflect a change that occurs after the offering terminates or a change that occurs solely in the following information:

a. The address or relationship of the issuer of a related person identified in response to Item 3 of the notice of sales on Form D;

b. An issuer's revenues or aggregate net asset value;

c. The minimum investment amount, if the change is an increase, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in a decrease of more than ten percent;

d. Any address or state(s) of solicitation shown in response to Item 12 of the notice of sales on Form D;

e. The total offering amount, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent;

f. The amount of securities sold in the offering or the amount remaining to be sold;

g. The number of non-accredited investors who have invested in the offering, as long as the change does not increase the number to more than thirty-five;

h. The total number of investors who have invested in the offering;

i. The amount of sales commissions, or use of proceeds for payment to executive officers, directors or promoters, if the change is a decrease, or if the change, together with all the other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent; and

3. Annually, on or before the first anniversary of the filing of the notice of sales on Form D or the filing of the most recent amendment to the notice of sales on Form D, if the offering is continuing at that time.

E. An issuer that files an amendment to a previously filed notice of sales on Form D must provide current information in response to all requirements of the notice of sales on Form D regardless of why the amendment is filed.