Executive Summary

State Securities Board

Project Manager: Alan Leonard

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Graphs, stock tickers, and financial industry jargon pepper the daily news and often obscure the basic importance of securities in powering the economy. The transparency of securities offerings and the competence of securities professionals affect not just those who actively buy or sell securities, but any Texan who plans for retirement or future expenses, like college tuition. While the federal Securities and Exchange Commission has overall responsibility for monitoring the securities marketplace in the United States, the State Securities Board plays a critical role in protecting Texas residents from fraudulent or negligent practices by securities professionals and criminal opportunists.

Since its last Sunset review in 2000, the agency has responded to volatile market swings and regulatory changes at the national level that have broadened the scope and scale of its regulatory authority and introduced new challenges, like cryptocurrency offerings. Sunset staff found the State Securities Board remains a needed agency that effectively carries out its mission to protect investors and ensure a healthy and productive securities market. The agency has few of the problems that can plague other state regulatory agencies, such as licensing backlogs, anticompetitive rulemaking, or lax enforcement. As a result, this review sought to further streamline the agency's functions and provide tools its staff needs to address these evolving demands, including establishing more formal processes and providing opportunities for more transparency. The recommendations apply best practices intended to simplify the agency's registration process, help prioritize its enforcement of a fair market and defense against incompetent or predatory behavior, and increase transparency to the public and the Legislature.

The State Securities Board effectively carries out its mission to protect investors and ensure a healthy securities market.

While the board is a well-run agency that contributes $150 million in excess fee revenue to the state through its regulation, its greatest long-term challenge is one that Sunset cannot address — the loss of the staff's cultivated expertise to higher paying national regulators. The agency is the state's expert on enforcing state and federal securities laws and it cannot easily or quickly replace the expertise of seasoned financial examiners and attorneys. This report contains no recommendation to address this problem, as issues of agency funding and staffing should be addressed through the appropriations process and the agency so far has managed to maintain its high level of performance. However, as the agency's workload increases and criminals constantly create new schemes to defraud the public, the agency and the state could feel the effects of the agency's struggle to retain qualified staff. The following material summarizes Sunset staff recommendations on the State Securities Board.

Issue 1

Key Elements of the State Securities Board's Statute and Procedures Do Not Conform to Common Regulatory Standards.

Various agency registration and enforcement processes do not match model standards or common practices observed through Sunset reviews of many regulatory agencies. Specifically, the agency lacks clear authority to provide prosecutorial support and needs direction to evaluate its capacity to assist local prosecutors. The agency also does not have statutory authority to order a registrant to pay a refund to a client, and the agency has not routinely update its risk-based inspection tool to fit its unique needs. Finally, the agency has unneeded requirements to register branch offices and for applicants to submit certain forms in paper format. Updating the agency's statute and practices would help reduce regulatory burdens and ensure the agency can focus its efforts to best protect the public.

Key Recommendations

- Clarify statute to authorize the agency to provide prosecutorial assistance and require the agency to develop a process to determine staff resources available to support prosecutions.
- Authorize the agency to order refunds for violations of agency statute or rules.

Issue 2

The State Has a Continuing Need to Regulate the Securities Industry.

The Legislature created the State Securities Board in 1957 to oversee securities regulation and prevent fraud against consumers. Securities are an important tool for businesses, governments, and investors, and regulation by the agency helps protect against fraudulent practices and maintain investors' confidence in the market. In addition, the agency's statute does not reflect standard language typically applied across the board during Sunset reviews, and its sole reporting requirement about its activities and identified needs for future securities regulation remains necessary.

Key Recommendation

- Continue the State Securities Board for 12 years.

Fiscal Implication Summary

Overall, the recommendations in this report would result in an estimated negative fiscal impact to the state of about $425,850 to the General Revenue Fund. Most of the recommendations are designed to be accomplished with existing resources and processes or reduce administrative burdens. However, one issue would have a direct negative fiscal impact to the state, as summarized below.

Issue 1 — Recommendation 1.3 to remove the requirement to register branch offices would have an estimated negative impact of $425,850 to the state, due to the loss of branch office registration fee revenue. This estimated negative impact is based on the loss of $25 charged for each of the 11,347 branch offices the agency registered in fiscal year 2017 and each of the 5,687 amendments to branch office certificates in the same year. Removing this requirement would reduce an administrative burden and any efficiencies gained would be used for other agency operations. The table shows the overall impact of this recommendation.

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Fiscal Year	Loss to the General Revenue Fund
2020	$425,850
2021	$425,850
2022	$425,850
2023	$425,850
2024	$425,850