

# State Securities Board

## Self-Evaluation Report



September 1, 2017

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# State Securities Board - 312 Self-Evaluation Report

## I. Agency Contact Information

A. Please fill in the following chart.

State Securities Board  
Exhibit 1: Agency Contacts

	Name	Address	Telephone & Fax Numbers	Email Address
Agency Head & Sunset Liaison	Travis J. Iles, Securities Commissioner	208 E. 10 <sup>th</sup> St., 5 <sup>th</sup> Fl. Austin, Texas 78701	512-305-8341 / 512-305-8336	<a href="mailto:tiles@ssb.texas.gov">tiles@ssb.texas.gov</a>

Table 1 - Agency Contacts

## II. Key Functions and Performance

A. Provide an overview of your agency's mission, objectives, and key functions.

### *Mission*

Pursuant to the requirements of The Securities Act, Tex. Rev. Civ. Stat. Ann. Arts. 581-1 to 581-45 (The Securities Act or Act), the mission of the State Securities Board (SSB) is to protect investors. Consistent with that mission, the agency seeks to encourage capital formation, job formation, free and competitive securities markets, and minimize burdens on issuers and persons subject to the Act, especially small businesses.

The Securities Act sets forth powers to investigate suspected violations of the Act, initiate administrative enforcement proceedings, refer matters for civil or criminal action, require registration of nonexempt securities sold in Texas, and require registration of firms and individuals who sell securities or render investment advice in Texas.

The SSB works to identify and stop fraudulent investment schemes, examine approximately 1,400 Texas investment advisers managing more than \$20 billion in investor funds, analyze and authorize more than 62,000 securities offerings, and carefully examine and process the applications for registration of firms and individuals who sell securities in the state. The agency generally deposits more than \$100 million in to the General Revenue Fund each year. Its appropriations for the last fiscal year were \$7.3 million. SSB appropriations for the upcoming fiscal year are approximately \$7.0 million.

### *Key Functions*

The SSB maintains programs for law enforcement, inspection and compliance, evaluation of dealer and agent applications, and analysis of securities offerings.

The law enforcement program seeks to proactively detect and prevent violations of the Act, including fraud committed in connection with the sale of securities, sales of unregistered, nonexempt securities, and sales made by unregistered dealers and agents. The program investigates suspected violations of the Act and, if appropriate, promptly initiates administrative enforcement proceedings or refers the matter for criminal prosecution or civil action. With an emphasis on criminal prosecution for violations of the Act, the Enforcement Division works closely with other law enforcement authorities such as county and district attorney's offices, federal prosecuting offices, police departments, sheriff's offices, the Federal Bureau of Investigation, United States Postal Inspection Service, Internal Revenue Service, Securities and Exchange Commission (SEC), and other units of government as appropriate. Enforcement attorneys routinely assist in state and federal prosecutions after designation as a special assistant prosecutor or Special United States Attorney.

The inspection and compliance program conducts periodic compliance examinations of the records of registered entities. Investment advisers subject to oversight by the agency are the primary subjects of the inspection and compliance program. The inspection program is responsible for performing compliance examinations on investment advisers with client assets under management (AUM) of up to \$100 million. Compliance examinations are also performed on registered dealers. In fiscal 2016, approximately 1,400 Texas investment advisers managing over \$20 billion in investor funds were subject to the inspection program's cycle. This program works closely with the agency's law enforcement, securities registration, and dealer, investment adviser, and agent registration programs as well as with the Financial Industry Regulatory Authority (FINRA), North American Securities Administrators Association (NASAA), other state securities agencies, the SEC, and other state and federal law enforcement and regulatory authorities.

The program for evaluation of applications for dealer, investment adviser, and agent registration examines each application for registration in accordance with the standards set forth in The Securities Act and Board Rules. This function is designed to ensure that applicants have the qualifications necessary to deal with the investing public in Texas. The program also conducts an ongoing review process by examining amendments to registration filings submitted by registrants. Amendments are filed when an event occurs that causes an answer on an original application to change. In fiscal 2016, the program approved and renewed the registration of approximately 333,000 firms and individuals.

The program for analysis of securities offerings includes the review of all applications to register securities for sale in Texas to ensure that the offering terms are "fair, just and equitable" in accordance with the criteria established by The Securities Act and Board Rules. The program also processes notice filings for certain offerings in Texas not subject to registration review. In fiscal 2016, the program processed approximately 62,000 securities submissions and filings which represented approximately \$264,131,140,000.00 in authorized securities offerings. The program also provides information to entrepreneurs, small businesses, and securities issuers throughout the state regarding the capital formation process and compliance with the Act.

The SSB seeks to maximize each programs' effectiveness in achieving its mission by maintaining information-sharing procedures and closely coordinating activities between programs of the agency as well as with other local, state, and federal regulatory and law enforcement agencies and has undertaken a series of investor education initiatives to assist all Texans in making informed investment decisions that affect their financial future.

**B. Do your key functions continue to serve a clear and ongoing objective? Explain why each of these functions is still needed. What harm would come from no longer performing these functions?**

The SSB's key functions continue to be necessary for the long-term health and viability of the capital markets in Texas. Each of the programs described in Section II.A is a key component of a regulatory structure that protects investors and facilitates the transparency, efficiency, and integrity of the capital markets in Texas, thereby maintaining investor confidence and promoting capital formation in the state. The cessation of these functions would risk significant financial harm for investors while creating instability in the capital markets.

**C. What evidence can your agency provide to show your overall effectiveness and efficiency in meeting your objectives?**

The agency's performance measures submitted through the Legislative Budget Board's ABEST system demonstrate the SSB's overall effectiveness and efficiency in meeting the agency's key functions. Available quarterly reports for fiscal years 2015 through 2017 are included with this report.

The law enforcement functions of the agency are largely undertaken by the Enforcement Division. The overall effectiveness of this function is reflected in the number and nature of enforcement actions taken each year to enforce The Securities Act and the close working relationships the agency maintains with state and federal prosecuting offices and law enforcement agencies throughout the state. It is common for the division's attorneys to assist these offices after designation as a special assistant prosecutor or special assistant United States attorney. Similarly, the SSB's financial examiners and accountants routinely perform source and use analyses of voluminous and complex financial records and testify as fact, expert, or summary witnesses in these prosecutions. In many instances, the prosecution of fraudulent investment schemes would not be undertaken but for the assistance provided by the agency.

Certain law enforcement functions are also performed by the registration and inspections programs. Respectively, administrative law actions relating to the qualifications of pending applicants for licensure are performed by the Registration Division and administrative law actions related to registrants are undertaken by the Inspections & Compliance Division. Under current practice, the registration and inspections and compliance programs' legal staff often handle administrative matters collaboratively to leverage limited resources and maximize expertise.

With respect to the mission of investor protection, case examples in recent years reflect the efficiency and effectiveness of the law enforcement and inspection and compliance programs:

- \$171,000 paid to investors in a forfeiture proceeding relating to a fraudulent oil and gas investment scheme. The promoter was also sentenced to a 13-year prison term.
- \$110,000 paid to investors as part of an agreed administrative order to immediately halt an illegal stock offering.
- \$14.5 million in rescission payments offered to 179 Texas investors following the issuance of an emergency order and agreed orders to halt an illegal promissory note offering.
- \$735,000 paid to investors for unsuitable sales made by a registered securities dealer.
- \$515,000 paid to investors following an emergency administrative order and receivership action to stop the fraudulent sale of interests in a real estate investment scheme. The promoter is currently under indictment for securities fraud, money laundering, and other charges.
- \$46,000 paid to clients of a formerly-registered investment adviser who fraudulently overcharged his clients.
- \$5.5 million paid to investors following a receivership action for a fraudulent offering purportedly involving life settlement contracts. Five control persons of the company are currently under indictment for securities fraud, theft, money laundering, and other charges.
- \$19 million paid to investors following a receivership action for the fraudulent sale of promissory notes to mostly elderly investors. The two control persons were each sentenced to 10-year prison terms.
- \$98,000 paid to an investor for the failure to supervise agents of a registered dealer and ensure that unsuitable recommendations were not being made to clients.

The following charts depict trending workloads in the Inspections & Compliance and Registration Divisions. Each division has identified efficiencies to accomplish its objectives under an increasing work load and flat or declining staffing levels.



The compliance examination program, as is the case with other agency programs, relies on developing technologies to respond to increasing levels of sophistication and complexity in the modern securities industry. The program utilizes these technologies to efficiently examine increasing volumes of information and carefully review information relating to a firm's management practices of client accounts, sales and disclosure practices, record keeping compliance, and other internal compliance controls.

**D. Does your agency's enabling law continue to correctly reflect your mission, objectives, and approach to performing your functions?**

Yes.

**E. Have you recommended changes to the Legislature in the past to improve your agency's operations? If so, explain. Were the changes adopted?**

In response to testimony made by the Securities Commissioner during an oversight hearing before the House Investment and Financial Services Committee, HB 2493 was filed by Representative Tan Parker in the 84<sup>th</sup> Legislative Session to designate the SSB as a self-directed and semi-independent agency. The bill passed the House during that session but did not receive a vote by the full Senate before the end of the session. Similar legislation was filed during the 85<sup>th</sup> Legislative Session, HB 823, but was not adopted.

Significant changes to The Securities Act were recommended to the Legislature in connection with the agency's review by the Sunset Advisory Commission (Sunset) in its 2000 report. The 77<sup>th</sup> Legislature adopted the recommendations in 2001. These issues and recommendations are discussed in further detail in Section III of this report.

**F. Do any of your agency's functions overlap or duplicate those of another state or federal agency? Explain if, and why, each of your key functions is most appropriately placed within your agency. How do you ensure against duplication with other related agencies?**

While securities regulation in the United States is comprised of federal, state, and self-regulatory organizations (SRO), the collective functioning and coordination of these groups creates a complementary regulatory framework with distinct responsibilities among agencies and SROs and avoids regulatory overlap or duplication of efforts.

The National Securities Markets Improvement Act (NSMIA) of 1996 sets forth an example of the differing responsibilities among state and federal regulatory agencies. NSMIA created distinct divisions in responsibilities between the SEC and the states in some areas. The SEC was vested with exclusive authority for the registration of securities issued by investment companies and certain other classes of "covered securities." After the passage of NSMIA, the states retained the authority to register other securities offerings and impose notice filing requirements and collect fees for "covered securities" transactions sold in the state. The states were also charged with the responsibility of investment adviser oversight of investment advisers with AUM up to a certain threshold, currently \$100 million.

The focus of federal regulation when compared to that of the SSB also fundamentally differs. The SEC's primary objectives and responsibilities include oversight of national capital markets, stock exchanges, national dealer practices, and publicly-traded company accounting standards. The SSB, by contrast, focuses on compliance examinations of investment advisers with up to \$100 million AUM and fraudulent sales practices and schemes which may not impact capital markets at the national level but do harm Texas investors. The SSB also closely reviews applicants for

registration to determine that requisite qualifications are satisfied. This review includes criminal background checks.

Significant coordination with other state and federal agencies and SRO further eliminates overlap and duplication that might otherwise exist. The SSB's programs routinely coordinate their work with federal securities regulators by referring incidents of suspected illegal activity to, and receiving such referrals from, the SEC and FINRA. Agency staff also regularly communicate with the SEC to identify priorities and address the allocation of resources. Similar coordination is accomplished through regular communications with the Financial Industry Regulatory Authority (FINRA), an SRO, as well as other state regulators based on the facts and circumstances of matters under the agency's review.

**G. In general, how do other states carry out similar functions?**

Like Texas, other states perform substantially similar regulatory functions. These functions are executed in varying ways and may differ for a variety of reasons. These reasons include region or jurisdiction-specific enforcement trends, the size of the regulated community and capital markets for the state, and the volume of applications for registration filed with the agency. Regulatory philosophy also impacts the manner in which an agency will carry out its regulatory functions.

**H. What key obstacles impair your agency's ability to achieve its objectives?**

Staffing levels and the agency's ability to retain highly-trained and specialized personnel continually provide challenges to the effective execution of the agency's programs. In fiscal 1998, when the agency last prepared for Sunset, the agency had 80 actual FTEs. Despite increasing workloads over the years, as of this report date, the agency is authorized for 97 FTEs but is operating with 82.75 actual FTEs.

The majority of the staff of the SSB are attorneys, financial examiners, accountants, information technology specialists, and other professionals. Securities regulation in the United States is comprised of federal, state, and self-regulatory entities employing legal, analytical, inspection and investigation professionals. This regulatory structure lends itself to movement of staff to positions in the industry and between regulators based on compensation packages. Although salaries for professional positions at the SSB are not competitive with those of individuals performing related work in the private sector, the agency seeks to maintain a salary structure that is at least competitive with similar positions for other state and federal regulators. However, the agency loses qualified, experienced staff to other regulators based on salary levels. This is directly attributable to deficiencies in the agency's appropriations, making it impossible for it to compete with the salaries offered by other regulators.

Besides compensation packages that are lower than those of private industry and fellow regulators, technological advancements, continued growth in the workload of the SSB, and the increasing complexity of investment schemes offered to the public will challenge the agency's ability to process and evaluate information. The SSB receives much of its evidence obtained in connection with investigations and compliance examinations in electronic format. As such, the

agency must maintain modern equipment, software, and implement methodologies to effectively process and analyze this information. The SSB continuously seeks to take advantage of new technologies to enhance workplace productivity and collaboration, reduce technology operating costs, and improve redundancy of critical information.

**I. Discuss any changes that could impact your agency’s key functions in the near future (e.g., changes in federal law or outstanding court cases).**

The agency is not aware of any changes in federal law or pending court cases that would change the agency’s key functions.

**J. What are your agency’s biggest opportunities for improvement in the future?**

Identifying opportunities for increased efficiencies and implementing strategies to realize these efficiencies offer opportunities for improvement going forward. The staff is continually encouraged to identify potential areas of improvement, and these areas are discussed as part of directors and senior staff’s weekly meetings. Yet, the SSB’s biggest opportunity for improvement remains the ability to establish a salary structure more competitive with those of similar state and federal regulators. See response to Section II.H of this report.

**K. In the following chart, provide information regarding your agency’s key performance measures included in your appropriations bill pattern, including outcome, input, efficiency, and explanatory measures. Please provide information regarding the methodology used to collect and report the data.**

**State Securities Board  
Exhibit 2: Key Performance Measures — Fiscal Year 2016**

Key Performance Measures	FY 2016 Target	FY 2016 Actual Performance	FY 2016 % of Annual Target
Percentage of Texas Dealers and Investment Advisers Inspected	25%	22.69%	90.76%
Percentage of Inspected Dealers and Investment Advisers Found to Require Corrective Action	80%	80.81%	101.01%
Number of Investigations Opened	414	417	100.72%
Number of Securities Filings and Submissions Processed	52,200	62,265	119.28%
Revenues Deposited to the State Treasury from Securities Applications	102,000,000	129,777,139.08	127.23%
Number of Dealers, Agents, Investment Advisers, and Investment Adviser Representatives Applications and Submissions Processed	342,000	417,681	122.13%
Number of Dealers, Agents, Investment Advisers, and Investment Adviser Representatives Licensed or Authorized	320,000	333,467	104.21%
Number of Inspections Conducted	340	327	96.18%

**Table 2 - Key Performance Measures**

The agency maintains internal databases that collect the data used to calculate performance measure information. A detailed description of program-specific performance measures is set forth in Section VII.C of this report.

- L. Please discuss any “high-value data” your agency possesses, as defined by Section 2054.1265 of the Government Code. In addition, please note whether your agency has posted those data sets on publicly available websites as required by statute.**

N/A.

### **III. History and Major Events**

**Provide a timeline of your agency's history and key events, including:**

- **the date your agency was established;**
- **the original purpose and responsibilities of your agency; and**
- **major changes in responsibilities or statutory authority.**

**Also consider including the following information if beneficial to understanding your agency:**

- **changes to your policymaking body's name or composition;**
- **significant changes in state/federal legislation, mandates, or funding;**
- **significant state/federal litigation that specifically affects your agency's operations; and**
- **key changes in your agency's organization (e.g., a major reorganization of the agency's divisions or program areas).**

In 1957, the 55<sup>th</sup> Legislature created the State Securities Board. The legislation was the culmination of four earlier statutes dating back to 1913 adopted in response to a series of securities fraud scandals in Texas. The Act set forth the responsibility of the agency to register securities sold in Texas, register firms and individuals selling securities or rendering investment advice in the state, and to “. . . take such measures and make such investigations as will prevent or detect the violation of any provision . . .” of the Act. The Act also created the policymaking body of the agency, known as “The State Securities Board,” composed of three members appointed by the Governor, with concurrence of the Senate, who serve six-year staggered terms. Board members must be citizens of Texas and members of the general public. A person is not eligible for appointment if the person or the person's spouse is registered as a dealer, salesman, agent or investment adviser, is employed by or participates in the management of a securities dealer or investment adviser, or has a financial interest in a dealer or investment adviser other than as a consumer. Board members serve without compensation but are entitled to reimbursement of travel expenses while in the performance of their actual duties.

In 1963, in an effort to raise the qualifications of persons entering the securities industry, the Legislature amended The Securities Act to require that individuals pass a written examination before being registered to sell securities in Texas.

In 1983, Texas joined with the National Association of Securities Dealers (NASD), now known as the Financial Industry Regulatory Authority (FINRA), and other states in the use of the Central Registration Depository computer network to facilitate the rapid nationwide registration of securities dealers and agents.

In 1991, Section 41 of The Securities Act was amended by the Legislature to increase fees required of a securities dealer, investment adviser, or agent by \$200. The “professional fee” transformed Texas registration fees from among the lowest in the United States to among the highest. This section was repealed in 2015.

In 1995, the SSB solicited comments from 200 individuals and organizations, including persons practicing before the agency, the Texas Stock and Bond Dealers Association, the American Association of Retired Persons, the Securities Industry Association, the Consumer Federation of America, and members of the Securities Law Committee of the Business Law Section of the State Bar of Texas, regarding changes to the Act and submitted to the Legislature a consensus proposal to modernize the Act. The resulting legislation was passed unanimously by the House and Senate and signed into law by the Governor. These amendments to the Act helped ensure that investors would continue to be adequately protected and addressed concerns of the regulated community: financial statement requirements for certain small business issuers were lessened; methods of registration and renewal procedures were clarified; certain fees paid by small business persons and retired individuals were reduced; the Board was granted authority to exempt certain persons from dealer and agent registration requirements; provisions relating to service of process and actions by securities dealers or agents to collect commissions were clarified; and changes to accommodate participation in an electronic filing system and certain uniform renewal procedures were made.

In 1996, Congress passed the National Securities Markets Improvement Act (NSMIA), amending federal securities laws to redefine the roles of state and federal regulatory authorities with respect to certain securities offerings and registered firms and individuals. The United States Securities and Exchange Commission (SEC) was vested with exclusive authority for the registration of securities issued by investment companies and certain other classes of “covered securities.” States retained the authority to register other securities offerings, impose notice filing requirements and collect fees for “covered securities” transactions based on the amount of securities sold in the state, and to investigate and bring enforcement actions based on fraud or unlawful conduct by a dealer or agent.

The other major change effected by the legislation was to create a division of authority between the SEC and the states with respect to investment advisers. The states retained authority over investment advisers having up to \$25 Million in assets under management (AUM). The states also retained authority to receive notice filings and fees for advisers registered with the SEC who do business in the state and to investigate and bring enforcement actions for fraud or deceit.

In response to this federal legislation, the agency increased the number of personnel assigned to the programs for the analysis of securities offerings and inspections to more appropriately reflect the regulatory responsibilities of the agency in those areas.

Also in 1996, the Texas Department of Public Safety, Crime Records Service issued a statement regarding the agency’s access to criminal justice records and making clear the nature of the Enforcement Division’s law enforcement program by stating:

The Enforcement Division of the State Securities Board has been recognized by the FBI as a “criminal justice agency,” which performs the “administration of criminal justice” as defined in federal regulation and state law.

In 2000, the Sunset Advisory Commission (Sunset) issued its decision and recommendations to the Legislature. In addition to its across-the-board recommendations, Sunset identified six issues affecting the SSB. The SSB concurred in the recommendations.

First, Sunset found the small size of the Board limited its effectiveness and communications among its members. The 77<sup>th</sup> Legislature in 2001 amended The Securities Act to increase the size of the Board from three members to five members. Additionally, the statute was amended to address the Sunset issues that follow. See generally, The Securities Act, § 2.

Second, Sunset found the SSB lacked key enforcement tools needed to protect Texas investors. Specifically, Sunset identified the lack of criminal liability against corporations for violations of the Act; lack of civil liability with respect to investment advisers for fraud and registration violations; and the need for an extension of the Commissioner’s cease and desist authority to include unregistered agents and fraudulent sales practices, and the authorization to issue emergency cease and desist orders. See generally, The Securities Act, §§ 29-3, 33-1, 23, and 23-2.

Third, Sunset found that state law did not specifically authorize the SSB to perform inspections on registrants or designate the confidential nature of information obtained through these inspections. See generally, The Securities Act, § 13-1.

Fourth, it found effective investor protection requires investor education and that this requirement was a function of the SSB. See generally, The Securities Act, § 43.

Fifth, Sunset found there were benefits to be gained in uniformity with federal and other state statutes by defining securities dealers and investment advisers separately. See generally, The Securities Act, § 4.

Sixth, Sunset found there was a continuing need for the SSB and recommended the continuation of the SSB.

In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). The law increased AUM subject to state oversight of investment advisers from \$25 million to \$100 million. The result of the increase in AUM was an increase in the number of investment advisers subject to the SSB’s oversight through its compliance examination program.

Dodd-Frank also made changes to the regulation of certain investment advisers at the federal level. First, the legislation required advisers to private funds and hedge funds to register with the SEC if they had AUM of \$150 Million or more and created a category of exempt reporting advisers (ERAs) for advisers to private funds with less than \$150 Million in AUM that file periodic reports with the SEC. Corresponding changes were made in Texas via rulemaking to better align the state

regulatory structure with the federal one. Texas rules that were adopted or amended as a result of these changes include 7 TAC §§109.6 and 139.23.

In 2011, the Board enacted the Custody of Funds or Securities of Clients by Registered Investment Advisers rule, 7 TAC § 116.17. The rule placed certain requirements on investment advisers holding client funds as opposed to utilizing third-party custodians. The rule coordinated with federal law and was designed to improve safeguards for client assets. The rule has become a key component of the SSB's compliance examinations.

In 2012, Congress passed The Jumpstart Our Business Startups Act of 2012 (JOBS Act) , intending to assist businesses in raising funds in public capital markets by minimizing regulatory requirements. The JOBS Act included a mandate for the implementation of national crowdfunding to be developed through SEC rulemaking.

While the SEC was still formulating rules on national crowdfunding, the SSB proactively implemented several rules and corresponding forms to make available intrastate crowdfunding, 7 TAC §§ 115.19 and 139.25 and Forms 133.15, 133.16, and 133.17. In 2015, the 84<sup>th</sup> Legislature amended the Act to include Crowdfunding, §44, relating to crowdfunding and small business development entities and directed the agency to adopt rules to effectuate the new section. In 2016, the SSB adopted the rule and form relating to these small business development entities, 7 TAC § 115.20 and Form 133.20.

In 2015, the Supreme Court of Texas issued a significant and favorable opinion holding that “life settlement agreements” or “viatical settlement agreements” constituted an “investment contract” and thus a “security” under The Securities Act. Prior to the holding, the secondary market sales of these investments were widespread in Texas and resulted in significant financial harm to Texas investors. The Court provided an exhaustive investment contract analysis and construed the term “investment contract” broadly.

In 2017, the 85<sup>th</sup> Legislature amended The Securities Act to include Protection of Vulnerable Adults from Financial Exploitation, §45, relating to reporting requirements of dealers and investment advisers when financial abuse is suspected and limitations of liability for the entity making reports in good faith.

## IV. Policymaking Structure

- A. Complete the following chart providing information on your policymaking body members.

**State Securities Board  
Exhibit 3: Policymaking Body**

<b>Member Name</b>	<b>Term / Most Recent Appointment Dates / Appointed by</b>	<b>Qualification <i>(e.g., public member, industry representative)</i></b>	<b>City</b>
Beth Ann Blackwood, Chair	4/2013 – 1/2019 Governor Perry	The Securities Act, § 2	Dallas
E. Wally Kinney, Member	3/2013 – 1/2019 Governor Perry	The Securities Act, § 2	Dripping Springs
David A. Appleby, Member	5/2011 – 1/2017 Governor Perry	The Securities Act, § 2	El Paso
Alan Waldrop, Member	6/2011 – 1/2017 Governor Perry	The Securities Act, § 2	Austin
Miguel Romano, Jr., Member	9/2015 – 1/2021 Governor Abbott	The Securities Act, § 2	Austin

Table 3 - Policymaking Body

- B. Describe the primary role and responsibilities of your policymaking body.

The Board is the governing body of the agency. The Board formulates policy objectives, oversees implementation of these objectives, and is responsible for the proposal, adoption, amendment, and repeal of Board rules. The Board appoints the Securities Commissioner, who serves at the pleasure of the Board, to implement the policies of the Board, administer the provisions of The Securities Act, and to manage the day-to-day operations of the agency. The Securities Act, §§ 2.G, 2-4, and 7 TAC § 101.1(c).

- C. How is the chair selected?

The Chair is designated by the Governor. The Securities Act, §2.D.

- D. List any special circumstances or unique features about your policymaking body or its responsibilities.

Section 2 of The Securities Act requires that members be from the general public. A person is ineligible for appointment if the person or the person's spouse is registered with the agency, has an active notice filing under the Act to act as an investment adviser or investment adviser representative, is employed by or participates in the management of a registered entity, or has a financial interest in a registered entity other than as a consumer. The Securities Act, §2.B.

**E. In general, how often does your policymaking body meet? How many times did it meet in FY 2016? In FY 2017?**

The Board generally meets several times during each fiscal year to consider rulemaking, policy issues, or operational matters as needed. In the fiscal years 2015-2017 the Board met on: October 22, 2014; January 9, 2015; May 13, 2015; August 25, 2015; January 27, 2016; May 24, 2016; September 19, 2016; January 24, 2017; and August 1, 2017.

**F. What type of training do members of your agency's policymaking body receive?**

The Securities Act, § 2-3, requires members of the Board to complete a training program before voting, deliberating, or being counted as a member in attendance at a meeting of the Board. The training program includes information regarding: the legislation that created the Board; the programs operated by the Board; the role and functions of the Board; the rules of the Board, with an emphasis on the rules that relate to disciplinary and investigatory authority; the current budget of the Board; and the results of the most recent formal audit of the Board.

The training program also includes information regarding the requirements of: the open meetings law, Chapter 551, Government Code; the public information law, Chapter 552, Government Code; the administrative procedure law, Chapter 2001, Government Code; other laws relating to public officials, including conflict-of-interest laws and procurement training, Chapter 2262, Government Code; and any applicable ethics policies adopted by the Board or the Texas Ethics Commission.

**G. Does your agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, describe these policies.**

Yes. The Securities Act, §2-4, requires the Board to implement policies that separate its policymaking responsibilities from the management responsibilities of the Commissioner. See 7 TAC §101.1(c) & (d).

**H. What information is regularly presented to your policymaking body to keep them informed of your agency's performance?**

The Board's audit committee is provided a monthly report on revenues and expenditures. The committee also receives updates on the agency's annual internal audits. The audits are performed by an independent outside auditor. Quarterly performance measures are reported to the entire Board after entry in the Legislative Budget Board's ABEST system (LBB). The Board also receives regulatory, legislative, and enforcement updates.

**I. How does your policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of your agency?**

Board members typically receive comments regarding issues subject to the jurisdiction of the agency in connection with public meetings of the Board. Comments received by the Board

directly from the public at other times may be discussed with the Securities Commissioner, other members of the staff, or at a meeting of the Board. Meetings of the Board and rulemaking are conducted in accordance with the notice and public comment, and open meeting requirements of the Administrative Procedure Act and the Open Meetings Act. When the agency receives comments or information impacting the Board’s responsibilities under § 101.1(c), the same is provided to the Board.

**J. If your policymaking body uses subcommittees or advisory committees to carry out its duties, fill in the following chart. In addition, please attach a copy of any reports filed by your agency under Government Code Chapter 2110 regarding an assessment of your advisory committees.**

**State Securities Board  
Exhibit 4: Subcommittees and Advisory Committees**

Name of Subcommittee	Size / Composition / How are members appointed?	Purpose / Duties	Legal Basis for Committee
Audit Committee	Two Members appointed annually by majority vote of the Board	Monitor the Agency’s internal audit program, receipt and deposit of fee revenue, and expenditure of appropriated funds	N/A

Table 4 - Subcommittees and Advisory Committees

## V. Funding

**A. Provide a brief description of your agency’s funding.**

The agency is appropriated funds by the Legislature from the General Revenue Fund. Section 35.A of The Securities Act requires the SSB to set certain fees to fully cover its appropriations. As a result, the SSB’s operations ultimately result in zero cost to the General Revenue Fund. These fees are also among the lowest in the United States and are predominately derived from non-Texas sources. Section 316.045 of the Government Code requires the agency to align its fees with its appropriations. A reduction in appropriations requires a reduction in fees resulting in a reduction in funds deposited to the General Revenue Fund.

In addition to the agency’s operational costs being covered by these fees, additional fees are annually deposited into the General Revenue Fund in an amount generally greater than \$100 million.

**B. List all riders that significantly impact your agency’s budget.**

Capital budget for the acquisition of Information Resource Technologies.

**C. Show your agency’s expenditures by strategy.**

State Securities Board

**Exhibit 5: Expenditures by Strategy — 2016 (Actual)**

Goal / Strategy	Amount Spent	Percent of Total	Contract Expenditures Included in Total Amount *
1.1 Law Enforcement	\$2,792,790.27	39.98%	\$14,366.20
2.1 Securities Registration	\$399,565.67	5.72%	\$1,749.30
3.1 Dealer Registration	\$442,539.74	6.33%	\$1,998.97
4.1 Inspect Records	\$1,772,991.55	25.38%	\$8,162.90
<b>Subtotal</b>	<b>\$5,407,887.23</b>		-
1.1 Central Administration	\$1,324,865.53	18.96%	\$5,425.33
1.2 Information Technology	\$253,500.10	3.63%	-
<b>GRAND TOTAL:</b>	<b>\$6,986,252.86</b>	<b>100%</b>	<b>\$31,702.70</b>

Table 5 - Expenditures by Strategy

\* Reported contract expenditures included expenses associated with third-party court reporting services and internal audit services. Certain subscriptions were excluded from the table, e.g. Thompson Reuters Westlaw and Clear.

**D. Show your agency's sources of revenue. Include all local, state, and federal appropriations, all professional and operating fees, and all other sources of revenue collected by the agency, including taxes and fines.**

**State Securities Board  
Exhibit 6: Sources of Revenue — Fiscal Year 2016 (Actual)**

Source	Amount
General Revenue Fund	\$7,318,433.28
<b>Appropriated Receipts</b>	\$2,022.71
<b>TOTAL</b>	<b>\$7,320,455.99</b>

Table 6 - Sources of Revenue

**E. If you receive funds from multiple federal programs, show the types of federal funding sources.**

The SSB does not receive funds from federal programs.

**State Securities Board  
Exhibit 7: Federal Funds — Fiscal Year 2016 (Actual)**

Type of Fund	State / Federal Match Ratio	State Share	Federal Share	Total Funding
N/A	-	-	-	-
	<b>TOTAL</b>	-	-	-

Table 7 - Federal Funds

**F. If applicable, provide detailed information on fees collected by your agency.**

**State Securities Board  
Exhibit 8: Fee Revenue — Fiscal Year 2016 \***

<b>Fee Description/ Program/ Statutory Citation</b>	<b>Current Fee/ Statutory Maximum</b>	<b>Number of Persons or Entities Paying Fee</b>	<b>Fee Revenue</b>	<b>Where Fee Revenue is Deposited (e.g., General Revenue Fund)</b>
Securities Filings: ACT § 35.A.(1)	\$100 / \$100	57,796	\$5,779,650.00	General Revenue Fund
Original Dealer/IA Applications: ACT § 35.A.(2), including § 133.29 fees, which vary in amount	\$75 / \$100	1,341	\$100,564.00	General Revenue Fund
Dealer / IA Renewals: ACT § 35.A.(3)	\$40 / \$100	9,712	\$388,430.00	General Revenue Fund
Original Agent / IAR Applications: ACT § 35.A.(4)	\$35 / \$100	58,405	\$2,044,185.00	General Revenue Fund
Agent / IAR Renewals: ACT § 35.A.(5)	\$20 / \$100	251,892	\$5,037,822.50	General Revenue Fund
Registration certificate amendment or branch office registration: ACT § 35.B.(1)	\$25 / \$25	19,335	\$483,370.00	General Revenue Fund
Securities applications: ACT § 35.B.(2)	1/10 of 1% / 1/10 of 1%	29,327	\$120,986,492.79	General Revenue Fund
Certified copies of papers filed in the office of the Commissioner: ACT § 35.B.(3)	\$1 per page plus a \$15 certification fee / \$1 per page plus a \$15 certification fee	6	\$401.00	General Revenue Fund
Stock exchange application: ACT § 35.B.(4)	\$10,000 / \$10,000	0	\$0	General Revenue Fund
Texas Securities Law Exam: ACT § 35.B.(5)	\$35 / \$35	13	\$455.00	General Revenue Fund
Secondary trading exemption filing: ACT § 35.B.(6)	\$500 / \$500	9	\$4,500.00	General Revenue Fund
Limited offering exemption filing: ACT § 35.B.(7)	1/10 of 1%, no more than \$500	4,348	\$1,941,998.86	General Revenue Fund
GC interpretation: ACT § 35.B.(8)	\$100 / \$100	2	\$200.00	General Revenue Fund

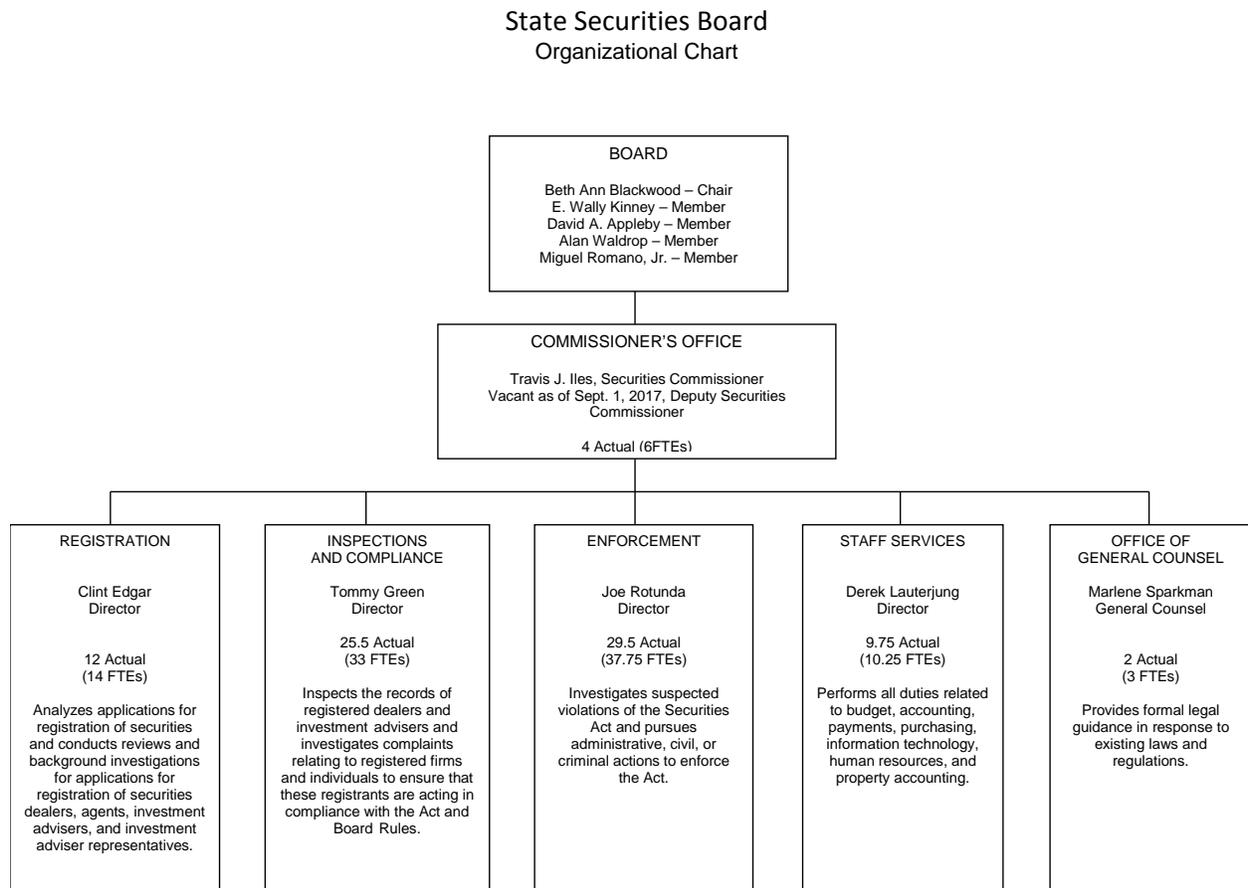
<b>Fee Description/ Program/ Statutory Citation</b>	<b>Current Fee/ Statutory Maximum</b>	<b>Number of Persons or Entities Paying Fee</b>	<b>Fee Revenue</b>	<b>Where Fee Revenue is Deposited (e.g., General Revenue Fund)</b>
Sale of excess securities: ACT § 35-1.A	three times the difference between the initial fee paid and the fee required plus interest	157	\$759,942.94	General Revenue Fund
Sale of excess securities limited offering: ACT § 35- 1.B	three times the difference between the fee initially paid and the fee which should have been paid plus interest	0	\$0	General Revenue Fund
Sale of unregistered securities: ACT § 35-2	six times the amount that would have been paid if the issuer had filed an application to register the securities	10	\$4,061.32	General Revenue Fund
Administrative Fines: ACT § 23-1	Varies	15	\$666,785.45	General Revenue Fund
Professional fee: ACT § 41	Repealed 84 <sup>th</sup> Legislature	516	\$103,200.00	General Revenue Fund
Court costs: ACT § 28	Varies	0	\$0	General Revenue Fund
Charges for copies of public records: Board Rule 101.5.(a)	charges set by the Office of the Attorney General, 1 TAC, §70.3	12	\$1,360.36	General Revenue Fund
Sale of Texas Securities Act and lists (cost recovery + tax)	\$6.25 Mailed \$3.00 Picked up \$500 per list	17	\$668.25	General Revenue Fund
		<b>Total Fee Revenue</b>	\$138,304,087.47 *	

Table 8 - Fee Revenue

\* Multiplying the Current Fee times the Number of Persons or Entities Paying Fee will not result in a number equal to the Fee Revenue for multiple fee types. This can be caused by several different issues including late renewal fees that differ from the standard fee, amendment fees that differ from the standard fee, and incorrect fee amount submissions that are abandoned. The agency's staff can assist with detailed information as needed.

## VI. Organization

- A. Provide an organizational chart that includes major programs and divisions, and shows the number of FTEs in each program or division. Detail should include, if possible, Department Heads with subordinates, and actual FTEs with budgeted FTEs in parenthesis.



Appropriated FTEs – 104 - as of August 31, 2017.

**B. If applicable, fill in the chart below listing field or regional offices.**

**State Securities Board  
Exhibit 9: FTEs by Location — Fiscal Year 2016**

Headquarters, Region, or Field Office	Location	Co-Location? Yes / No	Number of Budgeted FTEs FY 2016	Number of Actual FTEs as of June 1, 2016
Austin	Austin	Yes	71	55.75
Dallas	Dallas	Yes	15	14
Houston	Houston	Yes	9	8
Lubbock	Lubbock	Yes	3	3
San Antonio	San Antonio	Yes	3	3
Corpus Christi	Corpus Christi	Yes	3	2
			<b>TOTAL: 104</b>	<b>TOTAL: 85.75</b>

Table 9 - FTEs by Location

As of September 1, 2017, the actual FTEs - 82.75.

**C. What are your agency's FTE caps for fiscal years 2016–2019?**

**2016:** 104 (Actual FTEs as of June 1<sup>st</sup> - 87.25 )

**2017:** 104

**2018:** 97

**2019:** 97

**D. How many temporary or contract employees did your agency have as of August 31, 2016? Please provide a short summary of the purpose of each position, the amount of expenditures per contract employee, and the procurement method of each position.**

In FY16, the agency hired a temporary Legal Assistant II, in the General Counsel Division. The position was a posted position, not procured. As of August 31, 2016, it was actively filled. The ending date of the position was March 14, 2017.

Job duties included:

*...conducting or assisting with legal research and rulemaking; assisting in tracking and analyzing legislation and preparing legislative histories; proofreading and editing legal and administrative documents; checking citations, quotations, footnotes, and references for accuracy; assisting with open records requests by copying and scanning sometimes voluminous records; drafting correspondence; organizing, maintaining, and updating paper file systems, electronic records, and updating internal databases.*

- E. List each of your agency's key programs or functions, along with expenditures and FTEs by program.

**State Securities Board**  
**Exhibit 10: List of Program FTEs and Expenditures — Fiscal Year 2016**

Program	Number of Budgeted FTEs FY 2016	Actual FTEs as of August 31, 2016	Actual Expenditures
Law Enforcement	37.75	33.5	\$2,792,790.27
Securities Registration	7	6	\$399,565.67
Dealer Registration	7	7	\$442,539.74
Inspections & Compliance	33	25.5	\$1,772,991.55
Central Administration	16.25	15.25	\$1,324,865.53
Information Technology	3	3	\$253,500.10
<b>TOTAL</b>	<b>104</b>	<b>90.25</b>	<b>\$6,986,252.86</b>

Table 10 - List of Program FTEs and Expenditures

## **VII. Guide to Agency Programs – Law Enforcement**

### **A. Provide the following information at the beginning of each program description.**

***Name of Program or Function: Law Enforcement***

***Location/Division: Austin, Corpus Christi, Dallas, Houston, Lubbock, San Antonio***

***Contact Name: Travis J. Iles***

***Actual Expenditures, FY 2016: \$2,792,790.27***

***Number of Actual FTEs as of June 1, 2017: 30.5***

***Statutory Citation for Program: The Securities Act, §§ 3, 23-2, 25-1, 28, 29, & 32***

### **B. What is the objective of this program or function? Describe the major activities performed under this program.**

The Enforcement Division is responsible for conducting investigations to detect and prevent violations of The Securities Act, including illegal sales of unregistered nonexempt securities, sales of securities by unregistered dealers, and/or fraud committed in connection with the sale of securities; and pursuing appropriate administrative, civil, or criminal actions against firms or individuals that violate provisions of the Act.

Law enforcement investigations originate from a number of sources including market surveillance, referrals from other law enforcement entities, and complaints as well as information received from other sources. The division is particularly active in its market surveillance efforts in an attempt to halt or mitigate financial harm to Texas investors due to ongoing unlawful and fraudulent conduct. Investigations begin when conduct appears to potentially violate provisions of the Act and involve a myriad of steps based upon the facts and circumstances of the investigation. Investigative steps include but are not limited to the following: a preliminary determination that the suspect investment constitutes a “security” as defined under the Act; obtaining and carefully reviewing offering and promotional materials describing the investment; identifying financial institutions used in connection with the scheme; subpoenaing records from financial institutions and other sources, e.g., postal drop boxes, virtual office suites; completing source and use analyses of financial records to trace funds and identify potential victims as well as individuals financially benefiting from the scheme; interviewing victims and compiling investment related documentation; taking sworn testimony of individuals who are targets in the investigation as provided by The Securities Act, § 28; acquiring certified records after mining public sources of data relevant to the scheme; synthesizing evidence and analyzing its admissibility in court; determining where violations of the Act as well as the Penal Code have occurred; and assessing appropriate relief for the violative conduct.

As warranted, the Enforcement Division may pursue an administrative law enforcement action to stop ongoing unlawful activity pursuant to the authority of The Securities Act, § 23-2. It may

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also refer matters to the Office of the Attorney General for civil matters pursuant to The Securities Act, §§ 25-1 & 32. For the most egregious conduct, enforcement attorneys and financial examiners prepare criminal referrals for state and federal prosecutors and assist those offices in bringing the matters to successful resolution. Often, staff attorneys serve as special assistant prosecutors and SSB financial examiners and accountants routinely perform source and use analyses of voluminous and complex financial records and testify as fact, expert, and summary witnesses in these prosecutions. The criminal component of the law enforcement program typically relies on felony provisions of The Securities Act, § 29, as well as the Penal Code.

**C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program. Also please provide a short description of the methodology behind each statistic or performance measure.**

The agency's performance measures submitted through the Legislative Budget Board's ABEST system demonstrate the law enforcement program's overall effectiveness and efficiency in meeting the agency's key functions. See generally Section II.C of this report.

The law enforcement functions of the agency are largely undertaken by the Enforcement Division. The overall effectiveness of this function is reflected in the close working relationships the agency maintains with state and federal prosecuting offices throughout the state, and law enforcement agencies such as the Federal Bureau of Investigation and United States Postal Inspection Service. The SSB's relationships with these prosecuting offices and law enforcement agencies has in many instances reduced costs to the agency in its pursuit of law enforcement actions by leveraging those offices and agencies' resources. In turn, they benefit from the designation of SSB attorneys to assist their offices as special assistant prosecutors or special assistant United States attorneys. Similarly, the SSB's financial examiners and accountants routinely perform source and use analyses of voluminous and complex financial records and testify as fact, expert, and summary witnesses in these prosecutions. In many instances, the prosecution of fraudulent investment schemes would not be undertaken but for the assistance provided by the agency, highlighting the program's effectiveness.

In calendar year 2017 alone, the criminal law enforcement function has resulted in six indictments (covering 290 transactions), five guilty pleas, and nine sentences against individuals. Sentences ranged from probation to ten years in prison. Three individuals await sentencing in their federal prosecutions. Restitution totaling approximately \$7,727,000.00 has been ordered or is otherwise due for the prosecutions brought to resolution. Summaries of the referenced matters may be accessed at <https://www.ssb.texas.gov/news-publications/enforcement-actions-criminal-civil>.

The law enforcement program tracks on a quarterly basis the number of investigations opened by the division as a key performance measure. The measure reports a numeric count of new law enforcement investigations opened as a result of market surveillance, complaints, and referrals from other law enforcement entities as well as information received from other sources.

The program also tracks the number of criminal and civil referrals, law enforcement actions taken, the dollar amount involved in these actions, and the percentage of law enforcement actions' success rate as non-key performance measures as follows:

*Number of Criminal and Civil Referrals*

This measure reports a count of the number of matters referred to county, state or federal prosecutors for criminal prosecution as a result of investigations and the number of matters referred for civil action as a result of investigations.

*Number of Law Enforcement Actions Taken*

This measure reports a count of the number of transactions in indictments against persons, criminal convictions and orders of deferred adjudication, proceedings to revoke parole, community supervision or supervised release, civil and administrative actions filed, civil and administrative orders issued, undertakings, Section 28 proceedings conducted or search or arrest warrants executed resulting from agency investigations.

*Dollar Amount Involved in Law Enforcement Actions Taken*

This measure reports an estimate of the aggregate amount of funds obtained from the public in schemes associated with civil and criminal law enforcement actions taken.

*Percentage of Enforcement Actions Successful*

This measure reports the percentage of law enforcement cases filed as a result of investigations which successfully result in administrative, civil, or criminal judicial orders entered against the respondents or defendants in the cases.

Performance reports for fiscal 2015 through 2017 are submitted as an attachment to this report.

**D. Describe any important history regarding this program not included in the general history section, including how the services or functions have changed from the original intent.**

The central function of the law enforcement program has remained unchanged – to conduct investigations designed to prevent or detect violations of The Securities Act and initiate, where appropriate, administrative, civil, or criminal proceedings. The strength of capital markets, population growth, the constant evolution of technology, and changes in the way investment transactions are executed have required the law enforcement program to continually adapt and leverage limited resources through careful case selection and coordination with other law enforcement agencies. The primary purpose of the program continues to be the protection of investors.

**E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.**

The law enforcement program serves the investing public of Texas as well as legitimate business owners, dealers and investment advisers, and their agents and representatives by vigorously investigating individuals who are violating the Act, with a particular focus on fraudulent activities

in connection with the sale of securities. The nature of the program's work does not lend itself to a statistical breakdown of those affected.

**F. Describe how your program or function is administered, including a description of the processes involved in the program or function. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.**

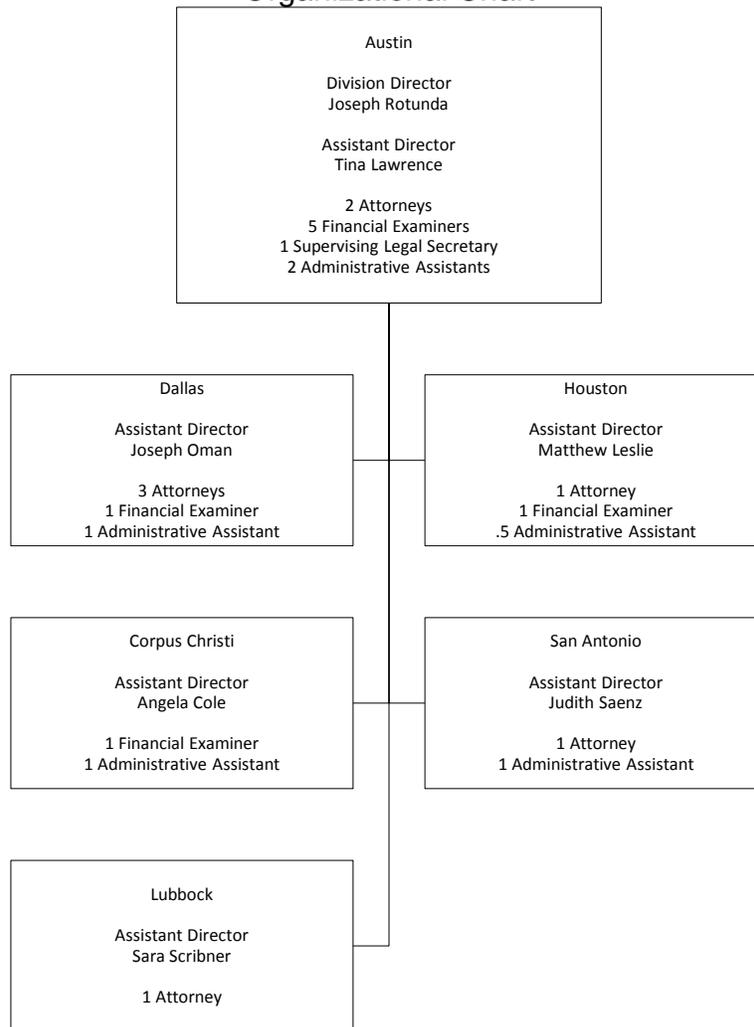
The Director of Enforcement administers the law enforcement program by supervising and evaluating the work of all division personnel. The director's responsibilities include oversight of staff located in the division's five field offices. The director's responsibilities also include authorizing administrative enforcement actions and civil and criminal referrals. The director reports to the Securities Commissioner and Deputy Securities Commissioner and assists in formulating policy and rulemaking recommendations made to the Board.

Enforcement personnel report to the director and their respective assistant director. The majority of the staff are highly-trained and well-educated attorneys and financial examiners who rely heavily on the administrative support staff to execute the law enforcement function of the division. Support staff are routinely tasked with voluminous scanning projects to ensure defense counsel is provided full discovery in criminal matters referred by the agency for criminal prosecution and often take the lead on acquiring certified records and authenticated bank records for use in formal actions brought or referred by the division.

As of September 1, 2017, the Enforcement Division employed 29.5 FTEs classified as one director, six attorneys who serve as assistant directors, eight enforcement attorneys, eight financial examiners, and six and one-half administrative support personnel.

# Enforcement Division

## Organizational Chart



The Enforcement Division maintains an internal database, referred to as the TUB, used to maintain the division's files. The TUB catalogues investigative files and indexes individuals and entities associated with a particular matter under the division's review and identifies the attorney or financial examiner leading the review. The division's legal assistant and administrative assistants have full access to the TUB, while other agency employees may have limited access.

Enforcement files can be described as Investigation Suspense (I/S) files and Investigation files. When the division becomes aware of suspected violations of The Securities Act by performing market surveillance, receiving tips or complaints from the public, or referrals from other federal or state agencies, an I/S file will typically be opened based on the information gathered. The file is assigned to an attorney or financial examiner who conducts a pre-investigation to determine the likelihood a violation has occurred and whether a full investigation is required. Information is gathered from multiple sources; including, the Financial Industry Regulatory Authority (FINRA); the Department of Public Safety (DPS); the Securities and Exchange Commission's (SEC) Electronic

Data Gathering, Analysis, and Retrieval (EDGAR) System; the CLEAR fraud investigation database system; and, the SSB's Enforcement and Registration databases. If the investigator determines that a violation has not occurred or that the Division does not have jurisdiction, he or she will prepare a closing memo or complete a Request for File Closing form, which is reviewed and approved by the division director or the assistant director from the Austin office.

The Division typically opens an investigation, or converts an I/S file into an investigation, by completing an Opening Data Sheet (ODS) when an in-depth examination involving the sale of a security is necessary, a probable violation has occurred, it is likely that proof of a violation will result in action, or a subpoena is required to proceed. The division director or the assistant director from the Austin office are responsible for approving or denying the ODS. An investigation can consist of interviewing or obtaining information from the investors, victims, witnesses and suspects; issuing subpoenas; obtaining search warrants; reviewing financial information; and additional steps based upon the unique facts and circumstances of the investigation.

Once an investigation is completed, it may result in the issuance of a civil or criminal referral, an administrative action, or the closing of the investigation if a violation was not detected. Similar to closing an I/S file, the investigator will complete a Request for File Closing form or prepare a closing memo, which is reviewed and approved by the division director or the assistant director from the Austin office.

The law enforcement program coordinates with and relies on the Inspections & Compliance and Registration Divisions. This is particularly true where the scheme being investigated involves both registered and unregistered components. It should be noted under current practices that certain administrative law enforcement actions are performed by legal staff in the Inspection & Compliance and Registration Divisions where the underlying conduct relates to registered entities and individuals or those entities and individuals seeking registration.

**G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

General Revenue Fund.

**H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.**

Similar services or functions are provided by other states to protect their respective citizens and foster the integrity of their capital markets. Some states' focuses are primarily civil in nature. The United States Securities and Exchange Commission (SEC) performs similar functions with respect to civil enforcement of the federal securities laws. The SEC's enforcement emphasis is on matters implicating national securities markets and interstate commerce. The SSB places an emphasis on criminal prosecution of violations of the Act and is not limited by interstate commerce

considerations in policing the capital markets in Texas. Many securities offerings made in Texas do not fall within SEC jurisdiction or enforcement interest, and the enforcement program can be contrasted with that of the SEC because of the Enforcement Division's focus on unregulated entities, individuals, and securities.

- I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

The law enforcement program routinely coordinates its work with federal securities regulators by referring incidents of suspected illegal activity in appropriate circumstances to the SEC. The enforcement program's personnel also regularly communicate with the SEC to identify priorities and address the allocation of resources.

- J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.**

The law enforcement program works with police departments, sheriffs' offices, county attorneys, district attorneys, and other local units of government throughout the state. It also works with the SEC, Federal Bureau of Investigation, the United States Postal Inspection Service, and other units of government as appropriate. The enforcement division frequently shares information with these groups, and based on the information-sharing provisions of The Securities Act, § 28, and the Board Rules, 7 TAC § 131.1, it does so without the necessity of formal agreements or contracts.

- K. If contracted expenditures are made through this program please provide:**

- a short summary of the general purpose of those contracts overall;
- the amount of those expenditures in fiscal year 2016;
- the number of contracts accounting for those expenditures;
- the method used to procure contracts;
- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

Reported contract expenditures for the law enforcement program included expenses associated with third-party court reporting services and internal audit services. Certain subscriptions were excluded from the table, e.g., Thompson Reuters Westlaw and Clear. The program used an Informal Bidding Process. The staff confirm and document invoiced services have been received prior to approval for payment. The Board Audit Committee and the full Board also review the performance of the contract internal auditor. There are no current contracting issues.

The amount of these expenditures for fiscal year 2016 were \$14,366.20. Six contracts accounted for these expenditures. The top five contracts by dollar amount were as follows: \$9,987.00 –

Internal Auditor; \$1,486.45 – Court Reporter, Dallas field office; \$870.40 – Court Reporter, Houston field office; \$809.70 – Court Reporter, San Antonio field office; and \$795.15 – Court Reporter, Austin office.

**L. Provide information on any grants awarded by the program.**

N/A.

**M. Are there any barriers or challenges that impede the program’s performance, including any outdated or ineffective state laws? Explain.**

The obstacles described in Section II.H of this report have a negative impact on the program. Any relevant outdated or ineffective state laws impacting the program are described in Section IX of this report.

**N. Provide any additional information needed to gain a preliminary understanding of the program or function.**

The most recent version of the Procedure Manual for the Enforcement Division of the Texas State Securities Board, dated May 2017, provides a thorough description of the mechanics of the enforcement program. Descriptions of criminal and civil enforcement actions are accessible on the agency website at <https://www.ssb.texas.gov/news-publications/enforcement-actions-criminal-civil>.

**O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:**

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

N/A.

**P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency’s practices. Please include a brief description of the methodology supporting each measure.**

**State Securities Board  
Law Enforcement  
Exhibit 11: Information on Law Enforcement Investigations and Actions  
Fiscal Years 2015 and 2016**

	Fiscal Year 2015	Fiscal Year 2016
Total number of regulated persons	N/A	N/A

	Fiscal Year 2015	Fiscal Year 2016
Total number of regulated entities	N/A	N/A
Total number of complaints received from the public	N/A	N/A
Total number of investigations initiated by agency	444	417
Investigations resulting in:		
administrative order	16	11
administrative fine *	0	0
civil referral	2	0
criminal referral	15	15
indictments by transaction	931	843
convictions by transaction	28	477
Total number of special prosecutor appointments **	52	6
Dollar amount of law enforcement actions	\$1,715,234.26	\$44,476,202.57
Restitution ordered	\$1,499,431.10	\$8,433,529.09
Percentage of law enforcement actions successful	100% (10/10)	100% (17/17)

Table 11 - Information on Law Enforcement Investigations and Actions

\* The law enforcement program does not typically pursue administrative fines in connection with actions initiated by the division.

\*\* The number of special prosecutor appointments during a given fiscal year may include re-appointments due to changes in the administration of district attorney's offices. The number may also include multiple enforcement staff being appointed in connection with a particular case or prosecution.

## **VII. Guide to Agency Programs – Inspection & Compliance**

### **A. Provide the following information at the beginning of each program description.**

***Name of Program or Function:*** Inspection & Compliance

***Location/Division:*** Austin, Dallas, Houston

***Contact Name:*** Travis J. Iles

***Actual Expenditures, FY 2016:*** \$1,772,991.55

***Number of Actual FTEs as of June 1, 2017:*** 25.5

***Statutory Citation for Program:*** The Securities Act, § 13-1

### **B. What is the objective of this program or function? Describe the major activities performed under this program.**

Registered investment advisers and dealers are subject to compliance examinations conducted by the Inspections & Compliance Division. Compliance examinations are designed to ensure licensed entities and individuals are compliant with The Securities Act and Board Rules. Administrative guidelines for record keeping requirements are set forth in Chapters 115 and 116 of the Board Rules. Financial examiners evaluate the firm's management practices relating to individual client accounts, internal compliance controls, sales and disclosure practices, supervisory structure for agents, record keeping compliance, and conflicts of interest as part of the compliance examination.

The inspection program focuses on registrants not routinely examined by other regulatory agencies. As previously discussed, the National Securities Markets Improvement Act (NSMIA) created a division of responsibilities between the Securities and Exchange Commission (SEC) and the states. After the passage of NSMIA, the states were assigned responsibility of investment adviser oversight for investment advisers with assets under management (AUM) up to a certain threshold, currently \$100 million.

In fiscal 2016, over 1,400 Texas investment advisers managing more than \$20 billion in investor funds were subject to the program's compliance examination cycle. For fiscal 2018, these investment advisers will be on an approximate five-year exam schedule.

Depending on the seriousness of violations that are identified, the firm may be given the opportunity to correct the problem or may be subject to administrative, civil, or criminal enforcement action. In many instances, registrant conduct not meriting a revocation or bar from the industry will be addressed by the imposition of measured sanctions and heightened compliance requirements to increase the likelihood of compliance during the continuance of the registration. This may be accomplished by the entry of an administrative order or undertaking. Under current practice, the legal staff of the inspection and compliance and registration

programs coordinate and collaboratively execute this administrative law enforcement function to leverage resources and enhance efficiencies.

**C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program. Also please provide a short description of the methodology behind each statistic or performance measure.**

The agency's performance measures submitted through the Legislative Budget Board's ABEST system demonstrate the inspection and compliance program's overall effectiveness and efficiency in meeting the agency's key functions. See generally Section II.C of this report.

At present, the inspection and compliance program has been allocated 31 FTEs and has 23.5 actual FTEs to utilize in connection with conducting compliance examinations. Despite the decreased staff levels, the division is on schedule to meet its four-year compliance examination cycle for fiscal 2017.

The compliance examination program, as is the case with other agency programs, relies on developing technologies to respond to increasing levels of sophistication and complexity in the modern securities industry. The program utilizes these technologies to efficiently examine increasing volumes of information and carefully review information relating to a firm's management practices of client accounts, sales and disclosure practices, record keeping compliance, and other internal compliance controls. Irrespective of the technological complexities of a particular investigation, the compliance and examination program places a priority on returning funds to clients harmed by Texas registrants.

In fiscal 2017, the inspections and compliance program resolved an administrative law enforcement action against a registered investment adviser based, in part, upon the firm's failure to enforce its written supervisory procedures. This failure resulted in the transfer of approximately \$90,000 from an elderly, Texas investor's account based upon a "spam" email received by the firm. Because of the enforcement action, the Texas investor was made whole.

The program has been instrumental in other actions resulting in funds being restored to defrauded Texas investors. In one such case, the division coordinated with the agency's law enforcement program, and facilitated the seizure of funds taken from additional elderly, Texas investors. The adviser is now awaiting sentencing in federal court, and funds have been restored to some of the victims.

The inspections and compliance program reports on a quarterly basis the following key measures:

*Number of Inspections Conducted*

This measure is a count of all inspections conducted pursuant to The Securities Act of registered dealers and investment advisers to determine whether the firms are in compliance with the Act and Board rules;

*Percentage of Inspected Dealers and Investment Advisers Found to Require Corrective Action*  
(Outcome measure reported annually)

The number of Texas-registered dealers and Texas-registered investment advisers inspected by the agency that are not inspected by any other regulatory entity [1] is divided by the total number of Texas-registered dealers and Texas-registered investment advisers that are not inspected by any other regulatory entity [2]; and

*Percentage of Inspected Dealers and Investment Advisers Found to Require Corrective Action*  
(Outcome measure reported annually)

The number of registered dealers and registered investment advisers inspected by the agency and found out of compliance [1] is divided by the total number of inspections of registered dealers and registered investment advisers completed [2].

The inspection and compliance program reports the number of referrals for administrative or law enforcement action as a result of finding violations as a non-key, quarterly measure.

The program also reports the number of administrative actions taken by the Inspections & Compliance Division as a non-key, quarterly measure. This measure is the number of administrative actions taken on dealers, agents, investment advisers, and investment adviser representatives as a result of referrals from compliance examination staff.

Performance reports for fiscal 2015 through 2017 are submitted as an attachment to this report.

**D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.**

In 1990, the inspection and compliance program began in response to significant growth in the number of registrants in Texas and indications that an inspection program was necessary to ensure that registrants were complying with the record keeping, registration and other provisions of The Securities Act and Board Rules. The program was initiated by the agency pursuant to the mandate set forth in Section 3 of The Securities Act “. . . to take such measures and to make such investigations as will prevent or detect the violation of any provision thereof.” After the last Sunset review, The Securities Act was amended to formally recognize the program’s authority to perform inspections. See The Securities Act, § 13-1.

The fundamental functions have remained unchanged since the program’s creation. Over time, the program has received appropriations that have allowed it to gradually reduce the compliance examination cycle of registrants to approximately once every four years for the 2016/2017 biennium. For the 2018/2019 biennium, the compliance examination cycle will be approximately five years. In response to increasing levels of sophistication and complexity of certain schemes detected through the inspection process, inspectors have been required to become adept at understanding and using developing technologies. With the passage of NSMIA, more responsibility has been placed on the inspection program to ensure that investment advisers in the state subject to the sole or primary regulatory oversight of the agency are acting in

compliance with The Securities Act and Board Rules. Those firms have effective control more than \$20 billion in investors' funds. As noted elsewhere in this report, the program's workload increased with the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) and the resulting change in sole or primary oversight responsibility for adviser's with AUM of up to \$100 Million.

The inspection program will continue to be needed as a key component of the system in place to protect investors and maintain the integrity of the capital markets in Texas.

**E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.**

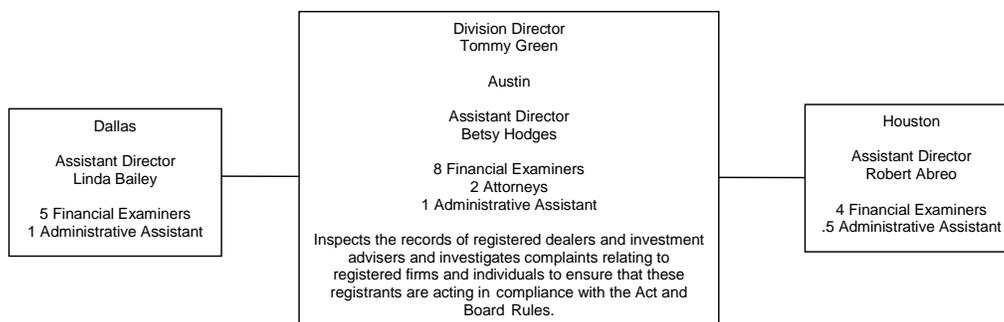
The inspection and compliance examination program continues to serve the investing public of Texas as well as legitimate investment advisers and dealers, and their representatives and agents. The program continuously examines and identifies individuals who are violating The Securities Act or Board Rules, and emphasizes compliance with requirements designed to enhance investor protection. The nature of the program's work does not lend itself to a statistical breakdown of those affected in general, however, Section VII, Exhibit 11 suggests the need for the program and its oversight of registered entities not regulated by other authorities – approximately 1,400 firms.

**F. Describe how your program or function is administered, including a description of the processes involved in the program or function. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.**

The Director of Inspections and Compliance administers the program. The director supervises the work of the employees performing the inspection function, selects firms for inspection, reviews all inspection reports, evaluates the sufficiency of evidence indicating potential violations of the Act or Board Rules, and coordinates staff resources to work closely with the law enforcement program to analyze information indicating potential violations of the Act and to provide assistance in administrative, civil, or criminal enforcement proceedings. The Director of Inspections and Compliance reports to the Securities Commissioner and Deputy Securities Commissioner.

As of September 1, 2017, the Inspections and Compliance Division employed 25.5 employees classified as one director, three assistant directors, two staff attorneys, two and one-half administrative assistants and seventeen financial examiners; and operates out of the Austin office and 2 field offices located in Dallas and Houston. The Dallas office is responsible for the Dallas-Fort Worth area; the Houston office, for the greater Houston area; and, the Austin office, for the remaining areas of Texas.

## State Securities Board Organizational Chart



On an ongoing basis, the director identifies investment advisers who have become the subject of a complaint, present a specific area of concern, or have previously been found to be in non-compliance with The Securities Act or Board Rules. Compliance examinations of these types of investment advisers are prioritized based upon an assessment of potential client risk. To identify investment advisers subject to routine examination, on a quarterly basis, the SSB Programmer/Database Administrator provides the director with the total number of Texas registered investment advisers (IAs) and non-Financial Industry Regulatory Authority (FINRA) broker dealer firms (BD) based in Texas. From this number, the director determines the number of compliance examinations that each of the three office locations is required to perform within the quarter to meet the annual examination goal for these registrants. Each assistant director generates a listing from the Inspections & Compliance Division's database of active IAs and non-FINRA BD firms within their geographic area. The listing is sorted by last inspection date, and firms are first selected for examination based on the Division's four-year cycle goal of inspecting each firm at least once every four years. A risk assessment tool is available for assistant directors to use in finalizing the selection of firms for examination, which considers other factors; such as, the firm's size and total AUM. During fiscal 2018, the compliance examination cycle will be approximately five years.

The types of compliance examinations performed are as follows:

1. Cycle: routine;
2. For Cause: prompted by a complaint or other specific concern;
3. Follow-Up: follow-up of an order, undertaking, or caution letter generated by a prior compliance examination; and
4. Sweep Review: performed as part of an issue-based inspection sweep in coordinated efforts with fellow state and federal regulatory groups as well as FINRA.

The financial examiner completes a pre-exam checklist prior to visiting the registrant and performing the compliance examination. The pre-exam checklist, which includes background and profile information of the registered IA or BD, must be approved by the respective assistant director before the financial examiner may perform the inspection.

Compliance examinations are performed pursuant to the following procedures:

1. Conducting an interview with the IA or BD and office staff and completing the interview module;
2. Taking an office tour to identify all registered and unregistered personnel and their functions;
3. Completing the appropriate modules, sub-modules, and review worksheets;
4. Conducting an exit interview with the IA or BD to discuss any findings;
5. Preparing the response letter to be issued to the IA or BD; and
6. Preparing a legal referral for the director and staff attorneys recommending administrative action based on the deficiencies and violations found during the inspection as warranted.

Upon completion of each compliance examination, the respective assistant director reviews the exam file, which includes the completed examination module, and any completed sub-modules or review worksheets. A draft of a response letter, as completed by a financial examiner, is also submitted to the assistant director for review and approval. The assistant director will communicate any recommended changes to the financial examiner, who will update the exam file and response letter accordingly. The response letter is then signed by the financial examiner and issued to the firm.

Response letters may be generally described as follows:

1. No Action Letters inform the firm that the compliance examination is complete and no violations were noted;
2. Recommendation Letters inform the firm that the compliance examination is complete and includes best practice recommendations proposed by SSB; and
3. Caution Letters inform the firm of rule violations noted by SSB and request that the firm addresses these violations and provide a written response.

The IA or BD is required to respond to the Caution Letter within 30 days describing the steps taken to correct the noted deficiencies and/or violations. Once the firm's responses are deemed satisfactory, the compliance examination will be considered complete and closed and a letter or email correspondence is provided to the firm informing them that the compliance examination is considered complete. The Division utilizes the Inspections and Compliance Case Management System (I&C Database) to track, among other information, the examination start date and the Division's progress in meeting its annual performance measures.

Under some circumstances, the financial examiner and assistant director may determine a formal administrative enforcement action is warranted. The director will review the examination file and financial examiners will assist the division's legal staff in performing the administrative law enforcement function.

The Inspections & Compliance Division works closely with the agency's Enforcement, Securities Registration, and Dealer, Investment, and Agent Registration Divisions and with FINRA, the North American Securities Administrators Association (NASAA), other state securities agencies, the United States Securities and Exchange Commission (SEC), and other state and federal law enforcement and regulatory authorities.

- G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

General Revenue Fund.

- H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.**

The SEC, FINRA, and other states provide similar functions to those of the Inspections and Compliance Division. The primary focus of the national regulators is on the financial stability of the firm and industry wide sales practices. The State Securities Board focus is more on fraudulent sales practices, practices inequitable to the client, and unregistered sales activity. NSMIA established a division of responsibility for the registration and inspection of investment advisers between the SEC and the states. The states generally have exclusive jurisdiction over investment advisers with AUM of up to \$100 million.

- I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

The inspection program works closely with other states, FINRA, and the SEC to coordinate the discovery of potential violations of The Securities Act and to avoid duplication of resources or conflict. Representatives of the program have monthly conference calls and meet bi-annually with representatives of FINRA, the SEC, and other states in the region to discuss specific cases relating to registered dealers, investment advisers, agents, and representatives. The staff also communicates on a daily basis with these and other regulators via telephone, Internet discussion groups, and the Central Registration Depository (CRD). The CRD system promotes uniformity in registration applications and warehouses significant disclosure information on entities and individuals registered in Texas.

As referenced in Section VII.I, the clear division of responsibility for the registration and inspection of investment advisers between the SEC and the states based upon the \$100 million AUM threshold prevents duplication or conflict between the complimentary regulatory frameworks.

**J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.**

The SEC is a federal agency regulating the national securities markets. FINRA is a membership-based self-regulatory organization that creates and enforces rules for member firms based on the federal securities laws and is overseen by the SEC. The agency coordinates with these entities to maintain a comprehensive and complimentary system of securities regulation.

See responses to Sections VII. H. and I. above for a description of their relationship to the agency.

**K. If contracted expenditures are made through this program please provide:**

- a short summary of the general purpose of those contracts overall;
- the amount of those expenditures in fiscal year 2016;
- the number of contracts accounting for those expenditures;
- the method used to procure contracts
- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

Reported contract expenditures for the inspections and compliance program included expenses associated with third-party court reporting services and internal audit services. Certain subscriptions were excluded from the table, e.g., Thompson Reuters Westlaw. The program used an Informal Bidding Process. The staff confirm and document invoiced services have been received prior to approval for payment. The Board Audit Committee and the full Board also review the performance of the contract internal auditor. There are no current contracting issues.

The amount of these expenditures for fiscal year 2016 were \$8,162.90. Two contracts accounted for these expenditures. The two contracts were as follows: \$6,990.90 – Internal Auditor; and \$1,172.00 – Court Reporter, Austin.

**L. Provide information on any grants awarded by the program.**

N/A.

**M. Are there any barriers or challenges that impede the program's performance, including any outdated or ineffective state laws? Explain.**

The obstacles described in Section II.H of this report have a negative impact on the program. The inspections program may, however, be impacted more than other agency programs by limited compensation packages because industry has a strong interest in culling talent for its internal compliance programs. In performing compliance examinations, financial examiners are also required to travel a substantial amount of time on a regular basis throughout the year. Any relevant outdated or ineffective state laws impacting the program are described in Section IX of this report.

**N. Provide any additional information needed to gain a preliminary understanding of the program or function.**

The program relies on internal, written policies and procedures that provide a description of the mechanics of the program.

**O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:**

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

*Why the regulation is needed.*

The inspection and compliance program is necessary for the agency to maintain effective oversight over registered dealers and investment advisers to protect investors from fraud and maintain the integrity of the capital markets in Texas. The inspection program is designed to detect problems before they severely harm investors.

*The scope of, and procedures for, inspections or audits of regulated entities*

See response to VII.F. above.

*Follow-up activities conducted when non-compliance is identified*

See response to VII.F. above.

*Sanctions available to the agency to ensure compliance*

Violation of the record-keeping or access requirements of The Securities Act or Board Rules may subject a firm to suspension or revocation of registration and/or an administrative fine. A violation of the Act may subject a firm or individual to administrative, civil, or criminal liability.

*Procedures for handling consumer/public complaints against regulated entities.*

The procedure for handling a complaint against a person registered under the Act is set forth in The Securities Act, § 2-6. This section requires the Commissioner to maintain a file on each written complaint received by the agency. The file must include the following: the name of the person who filed the complaint; the date the complaint is received by the Commissioner; the subject matter of the complaint; the name of each person contacted in relation to the complaint; a summary of the results of review or investigation of the complaint; and a explanation of a reason why the file was closed, if the Commissioner closed the file without taking action other than to investigate the complaint. The section also requires the agency to provide a copy of the

Board’s policies and procedures relating to complaint investigation and resolution to the person filing the complaint and to each person who is a subject of the complaint. Lastly, the section requires the agency to, at least quarterly until final disposition of the complaint, notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless notice would jeopardize an undercover investigation.

Information received by the program indicating a potential violation of the Act by a registered firm or individual is carefully examined by the staff. In evaluating the matter, the staff may take testimony, request documentation from the applicant, request records from currently registered dealers and investment advisers that were the prior employer of the applicant, obtain subpoenas for the records of financial institutions, and share information with self-regulatory organizations, regulatory agencies, or local, state, federal, or international law enforcement authorities. Throughout the process of investigating the matter, financial examiners of the Inspections & Compliance Division work closely with legal staff. More complex investigations may require coordination with legal staff of the Registration Division, with oversight by the Deputy Securities Commissioner.

- P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency’s practices. Please include a brief description of the methodology supporting each measure.**

**State Securities Board  
Inspections & Compliance  
Exhibit 11: Information on Regulated Persons or Entities Including Complaints and Regulatory  
Actions  
Fiscal Years 2015 and 2016**

	Fiscal Year 2015	Fiscal Year 2016
Total number of regulated persons *	300,633	322,709
Total number of regulated entities *	10,174	10,758
<b>Number of registered entities not inspected by any other regulatory authority</b>	1,385	1,406
Total number of entities inspected	270	327
Total number of matters received from the public **	130	85
Total number of complaints investigated by I&C	57	41
Number of complaints forwarded to the Enforcement Division	78	48
Number of complaints pending from prior years	31	22
Number of complaints found to be non-jurisdictional	9	6
Number of jurisdictional complaints found to be without merit	44	30
Number of complaints with resolution	130	82
Average number of days for complaint resolution - <b>Do not track</b>	-	-
Complaints resulting in disciplinary order:	0	3

	Fiscal Year 2015	Fiscal Year 2016
administrative fine	0	2
reprimand	0	2
suspension	0	1
revocation	0	0
undertaking	0	2
restitution	0	0
Disciplinary order from complaint and non-complaint sources:	2	18
administrative fine	2 (\$335,000)	13 (\$543,000)
reprimand	2	8
suspension	0	3
revocation	0	3
undertaking	1	5
restitution	0	1 (\$110,855.07)

Table 12 - Information on Regulated Persons or Entities Including Complaints and Regulatory Actions

\* Total number of registered individuals and entities will vary based upon the date the data is compiled.

\*\* In certain instances, the number of complaints received from the public will not be equal to the number of matters investigated by the inspections program and those forwarded to the Enforcement Division. This may be due, for example, to more than one complaint at times being associated with a single complaint file.

## **VII. Guide to Agency Programs – Dealer/Investment Adviser/Agent Registration**

- A. Provide the following information at the beginning of each program description.**

***Name of Program or Function: Dealer/Investment Adviser/Agent Registration***

***Location/Division: Austin***

***Contact Name: Travis J. Iles***

***Actual Expenditures, FY 2016: \$442,539.74***

***Number of Actual FTEs as of June 1, 2017: 7***

***Statutory Citation for Program: The Securities Act, §§ 12, 13, 15, 18 & 19***

- B. What is the objective of this program or function? Describe the major activities performed under this program.**

The dealer, investment adviser, and agent registration program reviews and processes applications and filings pertaining to the registration of firms and individuals doing business in Texas as securities dealers, investment advisers, and their agents/representatives. The program reviews applications for registration to determine compliance with requirements of The Securities Act and Board Rules and closely examines any criminal, disciplinary, or financial information relating to an applicant. When necessary, the program will investigate past conduct of firms and individuals with pending applications to detect whether a basis for administrative action, including the potential denial of the applicant's registration, exists and is appropriate to ensure that unqualified firms and individuals are prohibited from dealing with the investing public or are deterred from engaging in future misconduct. In many instances, applicant conduct not meriting a bar from the industry will be addressed by the imposition of measured sanctions and heightened compliance requirements to increase the likelihood of compliance once a registration is granted. Under current practice, the legal staff of the inspection and compliance and registration programs coordinate and collaboratively execute this administrative law enforcement function to leverage resources and enhance efficiencies, as appropriate.

- C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program. Also please provide a short description of the methodology behind each statistic or performance measure.**

The agency's performance measures submitted through the Legislative Budget Board's ABEST system demonstrate the SSB's overall effectiveness and efficiency in meeting the agency's key functions. See generally Section II.C of this report.

The dealer, investment adviser, and agent registration program reports the number of applications and submissions processed as a key, quarterly measure. This measure is a count of the number of dealer, agent, investment adviser, and investment adviser representative applications, amendments, renewals, notice filings, and branch office amendments processed and includes all submissions that are withdrawn, abandoned and denied.

The program also reports revenues deposited to the state treasury for applications and submissions as a non-key, quarterly measure. This measure reflects the dollar amount of fees received for dealer, agent, investment adviser, and investment adviser representative applications and submissions.

Using the agency's automated tracking system as a source of data, the number of new applications approved is added to the number of renewals to report the number of dealers, agents, investment advisers and investment adviser representatives registered. This is an annual explanatory measure.

Performance reports for fiscal 2015 through 2017 are submitted as an attachment to this report.

**D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.**

The program began shortly after the creation of the agency in 1957 to implement dealer and agent registration provisions in the Act designed to protect investors. Sections 12, 13, 15, 18, and 19 of the Act set forth the requirements and procedure for registration. Administrative guidelines for registration and record-keeping requirements are set forth in Chapters 115 and 116 of the Board Rules.

The original functions of the program remain unchanged. These functions will continue to be needed as a key component of the system in place to protect investors by ensuring licensed securities professionals have the requisite qualifications to handle funds entrusted to them by their clients. The integrity of the capital markets in Texas also benefit from the licensure of these qualified securities professionals.

**E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.**

This is a regulatory program that serves the people of the State of Texas as a component of the investor protection mission of the agency. The program examines and processes applications submitted by securities dealers, investment advisers, and their agents and representatives to ensure applications meet the requirements of the Act and Board Rules. The program also conducts investigations into applicants when necessary to determine the applicant's business repute and whether a basis exists for administrative action, up to and including a denial of the applicant's registration. Finally, the program processes other filings made by firms and individuals relying on an exemption from the registration requirements identified in the Board Rules. In fiscal

2016, the number of new registrations submitted and approved and registrations renewed was approximately 333,000. The requirements for registration or filing vary depending on the entity, the plan of business, and in the case of investment advisers, the amount of assets under management.

These requirements are set forth in Sections 13, 18, and 19 of the Act and Chapters 115 and 116 of the Board Rules. Exemptions from registration are found in Chapters 109 and 139 of the Board Rules.

**F. Describe how your program or function is administered, including a description of the processes involved in the program or function. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.**

The Director of Registration administers the dealer, investment adviser and agent registration program. The director supervises division personnel in the review and processing of investment adviser, dealer, investment adviser representative, and agent applications for entity and individual licensure in Texas. The director coordinates registration procedures with those of other states and the Financial Industry Regulatory Authority (FINRA) through the utilization of the Central Registration Depository (CRD). The CRD system promotes uniformity in registration applications and warehouses significant disclosure information on entities and individuals seeking registration in Texas. Through its use of the CRD system, the registration program efficiently accesses information necessary to determine a particular applicant's qualifications.

The director supervises the review and processing of dealer, investment adviser, agent and investment adviser representative applications; coordinates the procedures of the program with those of other states and FINRA in utilizing the CRD system for uniform applications for registration; reviews and analyzes complex or questionable filings; and oversees investigations of applicants when the staff finds a basis for administrative action, including denial of the applicant's registration, exists and is appropriate. The Director of Registration reports to the Securities Commissioner and Deputy Securities Commissioner.

As of September 1, 2017, the Dealer/Investment Adviser/Agent program consisted of one director, one assistant director, one attorney, three financial examiners and four support personnel who examine, investigate, and process applications and filings. Personnel have responsibilities in both the Analysis of Securities Offerings program and the Dealer/Investment Adviser/Agent Registration program. Combined, the programs consist of 12 actual FTEs.

The staff conducts a thorough examination of each application with an emphasis on the proposed plan of business, financial condition, and disciplinary history of the applicant. When necessary, an investigation may be opened into the past conduct of the applicant to determine whether a basis for administrative action, including denial of the applicant's registration, exists and is appropriate to ensure investor protection.

Registrants are required to timely file amendments to their registration when an event occurs that causes an answer to a question on a previously-filed application to become incorrect. At the end of each calendar year, registrants are required to file certain forms and pay fees to renew their registrations for the following year.

The agency is a participant in the CRD system developed by the North American Securities Administrators Association (NASAA) and FINRA, which allows dealers, investment advisers, and their agents/representatives to apply for registration in all desired states and with FINRA or the United States Securities and Exchange Commission (SEC), as applicable, via a single form filed electronically at a central location. The uniformity created through the use of the CRD system is an enormous benefit to the industry and creates substantial efficiencies for regulators. This computer system makes the application available electronically to every state, FINRA, and the SEC. The CRD, along with the advent of uniform forms and uniform exams, has created a simplified avenue for dealers and investment advisers to seek registration for the firms and their agents. Registration fees collected through the CRD are transmitted to the state daily via electronic funds transfer.

- G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

General Revenue Fund.

- H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.**

Other states have similar functions but Texas places more importance on disciplinary disclosures made by applicants and registrants. FINRA, a self-regulatory organization (SRO) for broker-dealers, performs a similar function with respect to its member firms and their agents but does not register investment advisers or investment adviser representatives of such firms and does not perform a substantive review of the disciplinary history or criminal background of applicants beyond what may constitute a “statutory disqualification” for purposes of the federal Securities Exchange Act of 1934.

- I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency’s customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

The program works closely with other states, NASAA, and FINRA to maintain and periodically update uniform forms and procedures for registration of dealers, investment advisers, and their agents. Representatives of the agency participate on regulatory committees and working groups and meet periodically with industry representatives to address issues relating to uniformity and

the registration process. The staff meets quarterly with representatives of the SEC, other states in the region, as well as FINRA to discuss specific cases and issues relating to dealers, investment advisers, and agents/representatives. The staff also communicates on a daily basis with other regulatory authorities via telephone, Internet discussion groups, and the CRD.

**J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.**

In addition to working with other states and FINRA, the program may work closely with the SEC in connection with the review of applications or investigations into past conduct of applicants. Generally, the SEC has primary jurisdiction for investment advisers with assets under management (AUM) of more than \$100 million, while the states have primary jurisdiction for investment advisers with AUM up to \$100 million. Texas also requires notice filings for “investment adviser representatives” located in Texas. Individuals and firms may apply for registration in Texas after a time during which they were subject primarily to SEC jurisdiction. Additionally, Texas-based investment adviser representatives of SEC-registered investment advisers must register in Texas, though the investment adviser is subject primarily to SEC regulation.

**K. If contracted expenditures are made through this program please provide:**

- a short summary of the general purpose of those contracts overall;
- the amount of those expenditures in fiscal year 2016;
- the number of contracts accounting for those expenditures;
- the method used to procure contracts
- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

Reported contract expenditures for the dealer/investment adviser/agent program included expenses associated with third-party court reporting services and internal audit services. Certain subscriptions were excluded from the table, e.g. Thompson Reuters Westlaw. The program used an Informal Bidding Process. Staff confirm and document invoiced services have been received prior to approval for payment. The Board Audit Committee and the full Board also review the performance of the contract internal auditor. There are no current contracting issues.

The amount of these expenditures for fiscal year 2016 were \$1,998.97. Two contracts accounted for these expenditures. The two contracts were as follows: \$1,747.72 – Internal Auditor; and \$251.25 – Court Reporter, Austin.

**L. Provide information on any grants awarded by the program.**

N/A.

**M. Are there any barriers or challenges that impede the program’s performance, including any outdated or ineffective state laws? Explain.**

The obstacles described in Section II.H of this report have a negative impact on the program. Any relevant outdated or ineffective state laws impacting the program are described in Section IX of this report.

**N. Provide any additional information needed to gain a preliminary understanding of the program or function.**

The program relies on internal, written policies and procedures that provide a description of the mechanics of the program.

**O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:**

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

*Why the regulation is needed.*

The functions of the program are designed to ensure that firms and individuals meet certain minimum qualifications before being permitted to deal in securities or render investment advice in Texas. These functions are necessary to maintain the integrity of the capital markets in the state and maintain investor confidence.

*The scope of, and procedures for, inspections or audits of regulated entities*

Securities dealers and investment advisers are subject to inspections by the inspections and compliance program of the agency discussed previously.

*Follow-up activities conducted when non-compliance is identified*

See discussion under the inspections and compliance program of the agency.

*Sanctions available to the agency to ensure compliance*

A violation of The Securities Act or Board Rules may subject a firm or individual to administrative, civil, or criminal liability. Individuals or entities may also be required to enter into an undertaking with the Commissioner wherein the individual or entity agrees to act or refrain from acting in certain ways to achieve compliance with the Act and Board Rules as a condition of granting a registration.

*Procedures for handling consumer/public complaints against regulated entities.*

The procedure for handling a complaint against a person registered under the Act is set forth in The Securities Act, § 2-6. This section requires the Commissioner to maintain a file on each written complaint received by the agency. The file must include the following: the name of the person who filed the complaint; the date the complaint is received by the Commissioner; the subject matter of the complaint; the name of each person contacted in relation to the complaint; a summary of the results of review or investigation of the complaint; and an explanation of why the file was closed, if the Commissioner closed the file without taking action other than to investigate the complaint. The section also requires the agency to provide a copy of the Board's policies and procedures relating to complaint investigation and resolution to the person filing the complaint and to each person who is a subject of the complaint. Lastly, the section requires the agency to, at least quarterly until final disposition of the complaint, notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless notice would jeopardize an undercover investigation. The Inspections and Compliance Division carries out the he Commissioner's responsibilities as set forth in The Securities Act, § 2-6, under most circumstances involving a regulated person.

Information received by the program indicating a potential violation of the Act by a registered firm or individual is carefully examined by the staff. In evaluating the matter, the staff may take testimony, request documentation from the applicant, request records from currently registered dealers and investment advisers that were the prior employer of the applicant, obtain subpoenas for the records of financial institutions, and share information with self-regulatory organizations, regulatory agencies, or local, state, federal, or international law enforcement authorities. Throughout the process of investigating the matter, financial examiners of the Registration Division will work closely with legal staff. Investigations may be resolved informally or formally via administrative action by legal staff of the Registration Division. More complex investigations may require coordination with legal staff of the Inspections and Compliance Division, with oversight by the Deputy Securities Commissioner.

- P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices. Please include a brief description of the methodology supporting each measure.**

**State Securities Board  
Dealer/Investment Adviser Registration  
Exhibit 11: Information on Regulated Persons or Entities and Regulatory Actions  
Fiscal Years 2015 and 2016**

	Fiscal Year 2015	Fiscal Year 2016
Total number of registered persons *	300,633	322,709
Total number of registered entities *	10,174	10,758
Number of applications and submissions processed for dealer, agent, investment adviser and investment adviser representatives	389,614	417,681

	Fiscal Year 2015	Fiscal Year 2016
Number of dealer, agent, investment adviser and investment adviser representatives registered	310,807	333,467
Average time of days for deficiency letters on dealer and investment adviser applications	2.8	5.35
Total number of complaints received from the public *	N/A	N/A
Total number of complaints initiated by agency *	N/A	N/A
Applicant review resulting in disciplinary order:	2	2
administrative fine	1(\$4,529.88)	2 (\$10,000)
reprimand	1	1
suspension	1	2
denial	0	0
undertaking	1	1

Table 13 - Information on Regulated Persons or Entities and Regulatory Actions

\* Total number of registered individuals and entities will vary based upon the date the data is compiled.

## VII. Guide to Agency Programs – Analysis of Securities Offerings

### A. Provide the following information at the beginning of each program description.

***Name of Program or Function:*** Analysis of Securities Offerings

***Location/Division:*** Austin

***Contact Name:*** Travis J. Iles

***Actual Expenditures, FY 2016:*** \$399,565.67

***Number of Actual FTEs as of June 1, 2017:*** 5

***Statutory Citation for Program:*** The Securities Act, §§7 & 10

### B. What is the objective of this program or function? Describe the major activities performed under this program.

This program reviews applications for registration and processes filings for securities offerings made in Texas. In accordance with requirements set forth in The Securities Act and registration guidelines in Board Rules, the program examines applications for registration of securities offerings to determine whether the issuer of securities has disclosed all material information about its plan of business and finance and the offering is “fair, just and equitable” to prospective investors. The program is designed to ensure that fraudulent offerings are not registered and that any information indicating a violation of the Act is properly investigated by legal staff. In addition to ensuring the registration of appropriate offerings and preventing fraudulent offerings from being registered, financial examiners assigned to the program provide assistance to entrepreneurs, small businesses, and others regarding exemptions from registration, registration procedures, and financing alternatives through telephone conferences, distribution of information on the Internet, in-office visits, and at seminars.

### C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program. Also please provide a short description of the methodology behind each statistic or performance measure.

The agency’s performance measures submitted through the Legislative Budget Board’s ABEST system demonstrate the SSB’s overall effectiveness and efficiency in meeting the agency’s key functions relating to the analysis of securities offerings. See generally Section II.C of this report.

The registration program tracks the number of securities filings and submissions processed on a quarterly basis. Securities filings are those applications that require a merit review. Securities submissions are notice filings with the state.

The program also tracks the average time (days) between the receipt of a securities registration application and the issuance of a deficiency letter as a non-key measure.

Using the agency's automated tracking system as a source of data, the dollar amount received for securities offerings is reported as an explanatory measure. The revenues are deposited to the state treasury.

Performance reports for fiscal 2015 through 2017 are submitted as an attachment to this report.

**D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.**

An original function of the program – to review applications for registration of securities offerings made in Texas – remains unchanged. However, the state's oversight responsibilities have diminished with the adoption of regulations providing additional exemptions from the securities registration requirements of The Securities Act and with the passage of federal legislation that preempted state regulation with respect to "federal covered securities." However, the state continues to review applications for the registration of offerings, which is a difficult and time-consuming process. The functions of the program, which include providing assistance to entrepreneurs, small businesses, and other issuers seeking access to the capital markets, will continue to be a key component of the system in place to protect investors and encourage the formation of capital in Texas.

**E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.**

The program affects persons or entities wishing to raise capital through the issuance of securities. Qualifications or eligibility of persons that wish to participate in capital formation in Texas depends upon whether the issuer registers the securities offering or relies upon an exemption. Certain exemptions contain "bad actor disqualifications" that are listed within the Board Rule providing the exemption. Additionally, the definition of "dealer" includes an "issuer," which requires certain persons associated with the issuer to submit an application for registration in Texas dealer that is reviewed under the registration program.

**F. Describe how your program or function is administered, including a description of the processes involved in the program or function. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.**

The Director of the Registration Division administers the program in the Austin office. The director or assistant director reviews all incoming applications for the registration of securities, assigns such applications to financial examiners, performs the second-tier review of applications for registration, forwards registration recommendations to the Deputy Commissioner or Securities Commissioner for approval when the offering is deemed to be "fair, just, and

equitable,” coordinates the resolution of problems associated with offerings that do not comply with the Board Rules or provisions of The Securities Act, and supervises and evaluates the work of all employees in the program. The Director of Registration reports to the Securities Commissioner and Deputy Securities Commissioner.

As of September 1, 2017, the Analysis of Securities Offerings program consisted of one director, one assistant director, one attorney, three financial examiners and two support personnel. Personnel have responsibilities in both the Analysis of Securities Offerings program and the Dealer/Investment Adviser/Agent Registration program. Combined, the programs consist of 12 actual FTEs.

The financial examiners carefully review applications filed with the agency, negotiate with issuers to address deficiencies in compliance with the requirements of The Securities Act or Board Rules, and make recommendations to the Director of Registration regarding registration. If a financial examiner identifies a potential fraudulent offering or information indicates that the offering or the issuer has violated The Securities Act, then the examiner will promptly work with legal staff for further investigation and potential administrative action. For certain offerings made by an issuer in a number of states, the program has developed procedures with other states that are also reviewing the offering to coordinate comments regarding the offering through a designated “lead state” to expedite the review process. All filings received by the program are reviewed for completeness and checked to see that appropriate fees are paid. The professional staff also provides assistance to entrepreneurs, small businesses, legal counsel, and others regarding exemptions from registration, registration procedures, and financing alternatives via the telephone, the Internet, in-office visits, and at seminars.

**G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

General Revenue Fund.

**H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.**

Similar services or functions are provided by other states to protect their citizens and the integrity of their capital markets. There is no internal or external program that provides similar services or functions in Texas.

**I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency’s customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

In addition to uniform application forms, state securities regulators have adopted guidelines for the reviews of securities offerings known as the North American Securities Administrators Association (NASAA) Statements of Policy for the purpose of a uniform review. Policy statements adopted by the Board may be found in the Board Rules, § 113.14 and <https://www.ssb.texas.gov/nasaa-statements-policy>. Additionally, certain issuers may use the previously-mentioned coordinated review, which aggregates comments from each state securities regulator into one document. Finally, certain exemptions from the securities registration requirements are uniform among the states. Because other exemptions may vary state-by-state, staff remains cognizant of securities regulation among other states through its participation in NASAA.

**J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.**

The staff works closely with other states and NASAA to propose and periodically update uniform procedures, registration guidelines, and exemptions from registration.

**K. If contracted expenditures are made through this program please provide:**

- a short summary of the general purpose of those contracts overall;
- the amount of those expenditures in fiscal year 2016;
- the number of contracts accounting for those expenditures;
- the method used to procure contracts
- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

Reported contract expenditures for the analysis of securities offerings program included expenses associated with third-party court reporting services and internal audit services. Certain subscriptions were excluded from the table, e.g., Thompson Reuters Westlaw. The program used an Informal Bidding Process. The staff confirm and document invoiced services have been received prior to approval for payment. The Board Audit Committee and the full Board also review the performance of the contract internal auditor. There are no current contracting issues.

The amount of these expenditures for fiscal year 2016 were \$1,749.30. Two contracts accounted for these expenditures. The two contracts are as follows: \$1,498.05 – Internal Auditor; and \$251.25 – Court Reporter, Austin.

**L. Provide information on any grants awarded by the program.**

N/A.

**M. Are there any barriers or challenges that impede the program's performance, including any outdated or ineffective state laws? Explain.**

The obstacles described in Section II.H of this report have a negative impact on the program. Any relevant outdated or ineffective state laws impacting the program are described in Section IX of this report.

**N. Provide any additional information needed to gain a preliminary understanding of the program or function.**

The program relies on internal, written policies and procedures that provide a description of the mechanics of the program. Additional information on securities registration can be accessed on the agency's website at <https://www.ssb.texas.gov/securities-professionals>.

**O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:**

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

*Why the regulation is needed.*

The functions of the program for analysis of securities offerings are designed to ensure that certain minimal financial and informational requirements are met before securities are publicly offered in Texas. These functions are necessary to sustain the transparency and fairness of the capital markets in Texas and maintain investor confidence.

*The scope of, and procedures for, inspections or audits of regulated entities*

Securities issuers are not routinely subject to inspection or audit by the program. The staff generally relies upon audited financial statements, prepared and certified by public accountants, submitted by the issuer in connection with the registration and renewal process. Financial statements for small business issuers, as defined by Board Rule, may be reviewed by an independent certified public accountant in accordance with certain standards set forth in the Act. Securities issuers who are dealers are subject to compliance examinations by the inspection and compliance program of the agency discussed above.

*Follow-up activities conducted when non-compliance is identified*

N/A

*Sanctions available to the agency to ensure compliance*

A violation of the Act may subject the issuer to administrative, civil, or criminal liability.

*Procedures for handling consumer/public complaints against regulated entities.*

The staff does not typically receive complaints from the public concerning individuals or entities seeking registration.

Where applicable, the provisions of the Act, § 2-6 would apply to the complaint.

- P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency’s practices. Please include a brief description of the methodology supporting each measure.**

**State Securities Board  
Analysis of Securities Offerings  
Exhibit 11: Information on Analyzing Securities Filings and Submissions  
Fiscal Years 2015 and 2016**

	Fiscal Year 2015	Fiscal Year 2016
Total number of complaints received from the public *	N/A	N/A
Total number of complaints initiated by agency *	N/A	N/A
Average number of days for issuance of deficiency letters on securities applications	5.6	8.9
Number of securities filings and submissions processed	61,865	62,265
Value of amount of authorized securities offerings	\$256,854,852,302.99	\$264,131,140,089.61
Revenue deposited to State Treasury from securities applications	\$142,269,821.24	\$129,777,139.08

**Table 14 - Information on Analyzing Securities Filings and Submissions**

\* Complaints received by the program for the analysis of securities offerings would be referred to the enforcement or inspections and compliance programs, as appropriate.

## VIII. Statutory Authority and Recent Legislation

- A. Fill in the following charts, listing citations for all state and federal statutes that grant authority to or otherwise significantly impact your agency. Do not include general state statutes that apply to all agencies, such as the Public Information Act, the Open Meetings Act, or the Administrative Procedure Act. Provide information on Attorney General opinions from FY 2011–2015, or earlier significant Attorney General opinions, that affect your agency’s operations.

### State Securities Board Exhibit 12: Statutes / Attorney General Opinions

#### Statutes

Citation / Title	Authority / Impact on Agency <i>(e.g., “provides authority to license and regulate nursing home administrators”)</i>
The Securities Act TEX. REV. CIV. STAT. ANN. Art. 581-1 et seq.	Creates the State Securities Board and provides for the administration and enforcement of the provisions of The Securities Act.

Table 15 – Statutes

#### Attorney General Opinions

Attorney General Opinion No.	Impact on Agency
ORD No. 130 (1976)	Investigative files of the agency pertaining to enforcement of the Act are excepted from the disclosure requirements of the Open Records Act.
ORD No. 122 (1976) OR2011-02964 (2011) says the same thing	A transcript of testimony taken pursuant to Section 28 of the Act is excepted from the disclosure requirements of the Open Records Act. No special right of access applies to require disclosure to the witness deposed or that person’s attorney.
ORD 96-2446 (1996)	Information obtained in connection with the investigation of a complaint is excepted from the disclosure requirements of the Open Records Act.
OR 89-150 (1989)	Internal memoranda, notes, worksheets and other internal agency files relating to the regulation of a securities issuer are excepted from the disclosure requirements of the Open Records Act.
JM 707 (1987)	The agency does not have authority to adopt a rule which would authorize the Securities Commissioner to waive the statutory “fair, just, and equitable” securities registration requirements.
OR2004-0239 (2004)	Previous determination - Information obtained in connection with an investigation to prevent or detect a violation of the Act or a Board rule or order is excepted from the disclosure requirements of the Public Information Act.
OR2011-11424 (2011)	Analyses and opinions pertaining to registration-related materials are excepted from the disclosure requirements of the Public Information Act.

Attorney General Opinion No.	Impact on Agency
OR2014-18159 (2014)	The Board is a law enforcement agency for purposes of Section 552.108 of the PIA.

- B. Provide a summary of recent legislation regarding your agency by filling in the charts below or attaching information already available in an agency-developed format. Briefly summarize the key provisions. For bills that did not pass, briefly explain the key provisions and issues that resulted in failure of the bill to pass (e.g., opposition to a new fee, or high cost of implementation). Place an asterisk next to bills that could have a major impact on the agency.**

**State Securities Board  
Exhibit 13: 85th Legislative Session**

***Legislation Enacted***

Bill Number	Author	Summary of Key Provisions
HB 3921	Rep. Tan Parker	Relating to financial exploitation of certain vulnerable adults. Signed by Governor Abbott, 06-01-17. Effective date – 09-01-17.

Table 16 - Legislation Enacted 85th Leg

***Legislation Not Passed***

Bill Number	Author	Summary of Key Provisions / Reason Bill Did Not Pass
* HB 823	Rep. Tan Parker	Relating to the self-directed and semi-independent status of the State Securities Board. Last Action: Introduced and referred to committee on House Investments and Financial Services 02-21-17.
HB 2382	Rep. Tan Parker	Relating to information required to be disclosed by certain investors of publicly traded companies whose headquarters are located in this state. Last Action: Introduced and referred to committee on House Investments and Financial Services 03-20-17.
HB 3224	Rep. Mary Ann Perez	Relating to requiring dealers and investment advisers to report suspected financial abuse of elderly persons. Last Action: Committee action pending in House Investments and Financial Services 04-11-17.
HB 3972	Rep. Eric Johnson	Relating to financial exploitation of certain elderly persons. Last Action: Committee action pending in House Investments and Financial Services 04-11-17.
SB 2067	Sen. Kelly Hancock	Relating to financial exploitation of certain vulnerable adults. Last Action: Committee action pending in Senate Business and Commerce 04-25-17.
SB 2206	Sen. Kelly Hancock	Relating to information required to be disclosed by certain investors of publicly traded companies whose headquarters are located in this state. Last Action: Introduced and referred to committee on Senate Business and Commerce 03-29-17.
SB 28	Sen. Van Taylor	Relating to certain governmental entities subject to Sunset review. Last Action: Received in the House 08-08-17.

Table 17 - Legislation Not Passed 85th Leg

## **IX. Major Issues - Inadequate Career Ladder for Professionals**

### **A. Brief Description of Issue**

Section 2.K of The Securities Act requires that the State Securities Board develop an intra-agency career ladder program. For many years the appropriations process has failed to provide adequate funds to permit the agency to make appropriate use of the existing state salary structure for a career ladder for its financial examiners and attorneys based on years of experience, advanced training, and progressively increasing levels of competence and responsibility. Salaries for the positions are not competitive with those of individuals performing the same or similar work in the private sector or with other financial regulators. This issue has created pay compression between inexperienced and experienced professionals and has resulted in unacceptable rates of turnover in positions that are critical to the agency's operations.

### **B. Discussion**

To effectively and efficiently do the work required by The Securities Act, the State Securities Board requires a professional staff that is knowledgeable and adequately trained to make prompt and accurate decisions regarding complex fraudulent schemes, illegal sales practices, compliance with regulatory requirements, and plans of business of firms and individuals dealing in securities and rendering investment advice to the public.

The agency expends significant time and resources training attorneys and financial examiners to perform the legal and analytical work necessary in enforcement, registration and inspections. Losing experienced and well-trained professionals represents not only a significant loss of investment in time and money to the agency and the State, but a loss to taxpayers and to the applicants, registrants and the industry as well -- who would have otherwise benefitted from the efficiency that experienced and well-trained professionals can bring to an inspection, investigation, or analysis of a complex filing.

As with other financial regulatory agencies, the State Securities Board is competing not only against private industry, but also with other regulators in the region. Securities regulation in the United States is comprised of federal, state, and self-regulatory entities employing legal, analytical, inspection, and investigation professionals. This regulatory structure lends itself to movement of staff between the regulators based on compensation packages. The agency loses qualified, experienced staff to other regulators who can afford to pay substantially more -- in the case of a federal regulator, twice as much.

Although the salaries of the agency cannot be expected to compete favorably with those of the private sector, the significant pay disparities that exist between the salaries paid by the agency and those of other regulators performing the same or similar work could be corrected to reduce turnover.

The State Securities Board has a long tradition of managing an increasing workload by finding opportunities for greater efficiency whenever possible. This approach remained achievable so long as the agency was able to retain experienced professional staff.

**C. Possible Solutions and Impact**

A statutory change that would permit the State Securities Board to operate in the same manner as other Texas financial regulatory agencies could allow the agency to directly address the problem -- greatly improving its ability to attract and retain qualified professional staff, encouraging the development of the next generation of effective leadership, and improving its service delivery to the industry and general public.

An evaluation by the Sunset Advisory Commission may be appropriate regarding the merits of designating the State Securities Board as a Self-Directed, Semi-Independent agency.

Another possible solution:

An increase in the appropriations to the agency could also allow the agency to directly address the problem without requiring statutory change. The agency is appropriated funds by the Legislature from the General Revenue Fund. Section 35.A of The Securities Act requires the SSB to set certain fees to fully cover its appropriations. As a result, the SSB’s operations ultimately result in zero cost to the General Revenue Fund. These fees are also among the lowest in the United States and are predominately derived from non-Texas sources. Section 316.045 of the Government Code requires the agency to align its fees with its appropriations. The agency could cover an increase in appropriations with a corresponding increase in fees. Such an increase could be achieved with minimal stakeholder impact and zero cost to the General Revenue Fund.

In addition to the agency’s operational costs being covered by these fees, additional fees are annually deposited into the General Revenue Fund in an amount generally greater than \$100 million.



Conversely, a reduction in appropriations requires a reduction in fees and results in a reduction in funds deposited to the General Revenue Fund.

## **IX. Major Issues - Fees for Investment Company Filings**

### **A. Brief Description of Issue**

As previously noted, in 1996 Congress passed the National Securities Markets Improvement Act (NSMIA), preempting state laws relating to registration of certain national securities offerings (covered securities), including those of investment companies. Under the law, states retained the authority to perform the ministerial function of requiring notice filings from the issuers of such offerings and were permitted to continue to collect fees for offerings made in a state. The states also retained the authority to investigate fraud and to bring appropriate administrative, civil, and criminal actions for fraud involving covered securities.

Pursuant to the requirements of Section 35.B (2) of The Securities Act and rules adopted by the agency to implement the receipt of fee revenue relating to covered securities, the fees for these offerings are paid to the State Securities Board and are deposited into the General Revenue Fund. Although receipts have varied over time depending on economic conditions, for each of the last three fiscal years these deposits have exceeded \$100 million -- an amount disproportionate to state oversight in this area of securities regulation.

### **B. Discussion**

Unlike most other states, Texas fee requirements do not place a cap on the maximum annual fees required to be paid by issuers of securities. This fee structure has been criticized, in the context of securities offerings preempted from state registration requirements under NSMIA, as being possibly in violation of the Due Process and Commerce clauses of the U.S. Constitution. See [Mutual Fund Sales Notice Fees: Are a Handful of States Unconstitutionally Exacting \\$200 Million Each Year? Hastings Constitutional Law Quarterly, Volume 40, Issue 1, Fall 2012, pp. 65-118.](#)

### **C. Possible Solutions and Impact**

The staff of the State Securities Board is not aware of any current or imminent legal challenge on this issue but is providing this information to the Sunset Advisory Commission for discussion purposes as a policy matter that may be of interest.

## **IX. Major Issues - Clarify The Securities Act, Section 5 Preamble**

### **A. Brief Description of Issue**

Section 5 of The Securities Act specifies transactions exempt from the securities and dealer registration requirements of the Act. As currently written, the section's preface is somewhat unclear. To the uninitiated, the language could suggest that transactions falling within the ambit of one of the Section 5 exemptions would fall completely outside the coverage of the Act.

### **B. Discussion**

The language in the preamble could be clarified so readers are apprised that Section 5 transactions, although exempt from the registration requirements, are nonetheless subject to other provisions of the Act, such as the antifraud provisions. As currently written, various antifraud provisions instead contain language that makes them applicable regardless of whether the transaction or the securities are exempt pursuant to Section 5 or Section 6 of the Act. For examples, see Section 23.A ("...whether exempt or not..."); Section 29.C ("...whether or not...exempt..."); Section 29.E ("...whether or not...exempt..."); Section 33.A(2) ("...whether or not...exempt..."). This introduces unnecessary complexity and may interfere with the ability of parties engaged in an exempt transaction to understand their obligations and potential liability under the Act.

### **C. Possible Solutions and Impact**

The preamble could be redrafted to more clearly disclose the effect of engaging in an exempt transaction upon the parties thereto.

## **IX. Major Issues - Define “Securities” to Include Viatical and Life Settlements**

### **A. Brief Description of Issue**

In 2015, the Texas Supreme Court held that an investment in a life settlement contract may constitute a security regulated by The Securities Act. The statute, however, has not yet been amended to reflect the court’s holding or that investments in viatical and life settlement contracts should constitute securities. *Life Partners, Inc. v. Arnold*, 464 S.W.3d 660 (Tex.2015).

### **B. Discussion**

Unfortunately, the market for investments in viatical and life settlement contracts experienced numerous instances of fraud. In Texas, the State Securities Board, along with other law enforcement and prosecutorial agencies, worked cooperatively to uncover fraudulent schemes involving viatical and life settlement contracts, shut down issuers of fraudulent products, seek restitution for defrauded investors and prosecute those who harm the investing public.

In July 2010, the Government Accountability Office issued a report to the United States Senate Special Committee on Aging that found that all but two states regulate investments in life settlements under their state securities laws. The report also represented that 35 states have statutes that expressly provided that these investments constitute securities, and that 13 other states and the District of Columbia applied the investment contract test to determine whether these instruments constitute securities.

Texas is among a minority of states that has not passed a law that expressly provides that investments in viatical and life settlement contracts are regulated as securities, and until recently very little case law addressed the issue. In 2004, in *Griffitts v. Life Partners*, No. 10-01-00271-CV (10th Ct. App. 2004), the Tenth Court of Appeals handed down one of the first decisions to consider whether an investment in a life settlement contract constituted a security regulated under The Securities Act. It ultimately held that certain investments in life settlement contracts did not constitute securities. The opinion was not dispositive, however, because it was an unpublished memorandum decision.

### **C. Possible Solutions and Impact**

The Securities Act could be amended to clarify the jurisdiction of the agency to regulate investments in viatical and life settlement contracts.

## **IX. Major Issues - Redact a Provision of The Securities Act, Section 28.A**

### **A. Brief Description of Issue**

The first paragraph of Section 28.A of The Securities Act authorizes the Securities Commissioner to subpoena witnesses and to take the testimony of witnesses and receive evidence in confidential investigative proceedings. The third paragraph of Section 28.A confuses the authority of the Securities Commissioner by describing a procedure for deposing a witness pursuant to the Texas Rules of Civil Procedure.

### **B. Discussion**

The first paragraph of Section 28.A authorizes the Securities Commissioner to conduct investigations to prevent or detect violations of The Securities Act, Board Rules and Orders. It authorizes the Securities Commissioner, in part, to issue subpoenas that require the attendance and testimony of witnesses and to examine witnesses and receive evidence. This paragraph requires the Securities Commissioner to maintain the confidentiality of information received in connection with an investigation, such as the testimony of such witnesses, and prohibits the Securities Commissioner from disclosing this information to the public except under order of court for good cause shown.

The third paragraph of Section 28.A, however, contains an unusual provision that provides that the Securities Commissioner may cause the deposition of a witness to be taken in a manner provided by the Texas Rules of Civil Procedure.

The third paragraph of Section 28.A, dealing with the taking of testimony through a civil deposition, is unnecessary because the first paragraph of Section 28.A already authorizes the Securities Commissioner to issue subpoenas, take testimony and receive evidence in a confidential investigative proceeding. Moreover, the third paragraph might be misinterpreted to bind the agency's confidential investigative proceedings to the requirements of private civil lawsuits. This language in the third paragraph may limit the Securities Commissioner's ability to thoroughly investigate a suspected violation of the law by restricting the types of questions that may be asked, authorizing parties to object to inquiries and requiring the Securities Commissioner to disclose an otherwise confidential transcript of the testimony.

### **C. Possible Solutions and Impact**

The third paragraph of Section 28.A could be redacted in totality. The redaction should have no impact because the Securities Commissioner does not rely on the third paragraph to issue subpoenas, take the testimony of witnesses or receive evidence. The redaction would have the benefit of clarifying the statute and ensuring the provision is not misinterpreted to limit the authority to conduct confidential investigations.

## **IX. Major Issues - Enforcement Attorneys Serving as Special Prosecutors**

### **A. Brief Description of Issue**

Elected district attorneys regularly request that the agency's enforcement attorneys assist their offices in the prosecution of criminal cases referred to their offices by the agency. They often appoint the enforcement attorneys as special prosecutors.

Defendants are now challenging the authority of enforcement attorneys to serve as appointed prosecutors. The agency has spent a considerable amount of time and resources defending these challenges, and its interests have prevailed in every venue that has considered the issue.

### **B. Discussion**

Section 28 of The Securities Act authorizes the Securities Commissioner to conduct investigations to prevent or detect a violation of the statute. When an investigation uncovers evidence of a violation of the statute, Section 3 of The Securities Act authorizes the Securities Commissioner to refer a criminal case to a district attorney's office. The district attorney's office may thereafter prosecute a defendant for an offense set forth in the statute, such as sale of securities without being registered as a dealer or agent pursuant to Section 29.A, sale of unregistered securities pursuant to Section 29.B, or securities fraud pursuant to Section 29.C. The district attorney's office may also elect to prosecute a promoter of a fraudulent securities scheme for one or more offenses codified in the Texas Penal Code, such as misapplication of fiduciary property, theft, engaging in organized criminal activity or money laundering.

Elected district attorneys regularly request that enforcement attorneys employed by the State Securities Board assist in the prosecution of criminal cases referred to their offices. They often request such assistance because enforcement attorneys can contribute their highly specialized knowledge of The Securities Act and other laws that routinely apply to white collar criminal cases, their understanding of evidentiary and technical issues associated with complex prosecutions, and their mastery of complicated facts that are critical to providing the case-in-chief beyond a reasonable doubt. Other district attorney's offices, particularly in rural areas of Texas, can lack the resources to prosecute complex white collar criminal cases that may involve voluminous amounts of evidence, numerous witnesses and challenging legal issues. These criminal cases may not be filed and prosecuted unless elected district attorneys can rely on the assistance of the agency's enforcement attorneys acting as special prosecutors.

Enforcement attorneys appointed as special prosecutors typically assist prosecutor's offices in all phases of the criminal prosecutions, including presenting cases to grand juries, interviewing material witnesses, reviewing evidence, arguing pretrial motions, conducting discovery, negotiating plea bargains and trying cases before juries. In recent years, enforcement attorneys assisted district attorney's offices in prosecuting criminals in Collin County, Travis County, Bexar County, Fort Bend County, Bell County and other counties throughout Texas. Their work has

contributed to the successful conviction of numerous perpetrators of schemes that have defrauded the investing public.

**C. Possible Solutions and Impact**

A statutory amendment could alleviate confusion over whether the agency's enforcement attorneys are authorized to contribute their skill and experience to the prosecution of perpetrators of fraudulent securities schemes, ensure the agency does not continue to waste time and resources defending against these challenges, and allow the underlying prosecutions to proceed without unnecessary cost or delay.

## **IX. Major Issues - The Securities Act, Section 5.0 Dividend Reporting Requirement**

### **A. Brief Description of Issue**

Section 5.0(9) of The Securities Act provides an exemption from the securities registration requirements of the Act for securities sold by a registered dealer and for which certain information about the issuer appears in a “recognized securities manual.” The Texas exemption requires information not required of issuers by other states that allow for a similar exemption from the securities registration requirements.

### **B. Discussion**

This type of exemption is found in the securities statutes of most other states (notably, states that have adopted a version of the uniform securities act) and is important because significant trading occurs in reliance on these exemptions for international and over-the-counter stocks. The information required by the Act that must appear in the recognized securities manual is similar to the requirements in other statutes, but for two differences: the Act requires a “record of dividends paid,” which is a requirement that does not appear in the securities statutes of other states; and the Act requires profit and loss statements for a period of three years, compared to a two-year requirement for other states.

With respect to the Texas dividend requirement, the staff is aware of at least one instance in which an issuer is unable to sell securities in Texas because the recognized securities manual in which financial information of the issuer appears only publishes dividend payment information on an annual basis. The statutory requirement is that the financial information, which by Board Rule should be certified, must be as of a date within 18 months of the sale. Accordingly, at a point in time during the year, depending on the issuer’s fiscal year end, the dividend information published in the manual will not be within 18 months. The dividend requirement is the only reason an issuer could lose the exemption during the year because other financial information required by the Act is generally supplemented by the manual on a routine basis.

### **C. Possible Solutions and Impact**

Removing the dividend requirement in the Act could make The Securities Act, Section 5.0 exemption more uniform with other states and could eliminate the possibility that an issuer could lose the exemption at a point during the year. Additionally, adjusting the time period from three years to two years for profit and loss statements could promote uniformity and assist in avoiding future obstacles not known to the staff at this time.

## **IX. Major Issues - Manual Registration Withdrawal of BDs/IAs**

### **A. Brief Description of Issue**

Currently, there are no statutory or rule-based provisions in The Securities Act or Board Rules that are applicable to the termination of a registration other than the filing requirement of a uniform withdrawal of registration form. There is a potential jurisdictional challenge or issue to the agency's authority to initiate administrative remedies against a registered form or individual after a registrant has made the required withdrawal filing.

### **B. Discussion**

Sections 115.3 and 116.3 describe the requirements for a dealer, investment adviser, and agents with respect to the termination of a registration with the Securities Commissioner. The Form BDW, ADV-W, and U5 are the respective uniform withdrawal forms used to terminate a registration.

In practice, the Inspections & Compliance Division may at times, in connection with an investigation into violations of securities laws, designate the termination of a registration as manual, rather than automatic. Accordingly, the termination of the registration will not be processed in the agency's registration systems until after the Registration Division has confirmed with the Inspections & Compliance Division that any issues with the registrant have been resolved. The purpose of this practice is to attempt to retain jurisdiction over the registrant for the purposes of an administrative proceeding to suspend or revoke the registration, due to the lack of any specific provisions regarding the effectiveness of termination of a registration or jurisdiction of the agency to institute such proceeding after the filing of the termination form.

The effect on a registrant of a revocation imposed by the agency as part of an administrative action is much more significant than the voluntary termination of a registration prior to an administrative proceeding. Specifically, Section 14.A(9) of The Securities Act provides a basis for the denial of a registration if the applicant is subject to a revocation order entered within the last five years. Accordingly, if the firm or individual subject to revocation were to reapply at a later date, there would be a statutory basis for a denial of the application pursuant to Section 14.A(9) of the Act. In contrast, if the firm or individual was able to voluntarily terminate their registration prior to an administrative proceeding, upon reapplication, the staff would have no statutory basis to deny the application; rather, the staff would need to re-investigate a case for the denial of the registration based off evidence and conduct that could be historical, rather than rely on the more procedural provision of Section 14.A(9) of the Act. This requires substantially more agency resources.

Additionally, there are benefits to other regulators if a registrant is subject to a revocation of their securities license rather than the registrant voluntarily terminating the registration. The Financial Industry Regulatory Authority (FINRA) rules provide that no person shall be associated

with a member if they are subject to “statutory disqualification,” which includes persons subject to orders from a state securities regulator that bars such person from registration. This provision is not unlike the previously-referenced Section 14.A(9) of the Act. Other state regulators’ statutes contain similar reciprocal provisions which allows them to automatically deny an application if the applicant’s registration has been revoked in another jurisdiction. Accordingly, the agency’s ability to continue to pursue its administrative proceeding for revocation, even after withdrawal of the registration, provides support and strengthens investor protections of other regulators.

FINRA and other state regulators have provisions in their statutes and rules that retain jurisdiction after a registrant submits a form to terminate registration. FINRA rules provide that a person who is no longer associated with a FINRA member is still subject to the filing of a complaint and the requirement to provide information for a period of two years. Many state regulators have provisions in their statutes that specifically provide that: the withdrawal of a registration is effective after 30 days unless a revocation or suspension proceeding is pending or is filed within the 30-day period; and the regulator may institute a revocation or suspension proceeding within one year after withdrawal became effective.

### **C. Possible Solutions and Impact**

A provision in the Texas Securities Act similar to the provisions in the FINRA rules and in many state statutes could strengthen the agency’s investor protection efforts because it would allow the agency to seek a revocation order and remove potential jurisdictional challenges or issues. A specific provision would also provide clarity and notice to current registrants.

## **IX. Major Issues – Necessity of “Registration Certificates”**

### **A. Brief Description of Issue**

The Texas Securities Act contains three separate Sections relating to Registration Certificates for dealers and investment advisers: Sections 15; 17; and 21. Section 15 of the Act acknowledges the discretion of the Securities Commissioner with respect to when an applicant’s registration is granted, in addition to discussing the contents of the registration certificate. However, Sections 17 and 21 relate entirely to the form and posting of the registration certificate.

### **B. Discussion**

The registration certificate likely provided significant value to investors for many years, in that the certificate may have served as the only readily available evidence of the dealer or investment adviser’s registration with the Securities Commissioner and source of material information regarding the dealer or investment adviser. However, the importance of the physical certificate displayed in the location of the dealer or investment adviser has diminished with time in light of technological advances and the emergence of central databases used by securities regulators.

The agency participates with other regulators in the requirement of uniform forms for applicants. The uniform forms, such as the Form BD (for dealers), Form ADV (for investment advisers) and Form U4 (for individuals), contain all information required to be listed on the registration certificate, as well as a significant amount of other information, such as civil, criminal and regulatory history. Since 1983, these uniform forms have been stored in the Central Registration Depository (CRD), and this information is available to securities regulators through the CRD’s webCRD system, the on-line based system maintained by the North American Securities Administrators Association (NASAA) and the Financial Industry Regulatory Association (FINRA). Much of the information available to securities regulators is also available to the public through the BrokerCheck, <https://brokercheck.finra.org/>, and Investment Adviser Public Disclosure (IAPD), <https://adviserinfo.sec.gov/IAPD/Default.aspx>, websites.

Investor protection efforts by securities regulators advocate that prospective investors use these websites to “investigate before they invest” because the information available online through BrokerCheck and IAPD can be much more helpful to an investor than the limited information contained on the registration certificate. Removing the requirements from The Securities Act that the agency issue a registration certificate to dealers and investment advisers and that the dealers and investment advisers post such registration certificates would not hurt the agency’s investor protection efforts.

Eliminating the paper certificate would allow the agency to remove some redundancies within its internal record keeping that are needed to make the certificate available for printing by dealers and investment advisers. There should be no impact to dealers or investment advisers, as The Securities Act prohibits dealers and investment advisers from using the fact of their registration as an advertisement. This change would only eliminate the obligation of the dealer

and investment adviser to visit the agency website to print out the paper registration certificate for posting.

The fiscal impact of eliminating this requirement would be the necessary amendment to Section 35.B.(1) of The Securities Act, which currently imposes a \$25 fee on any amendments to a dealer or investment adviser's certificate of registration, to remove the fee requirement. Accordingly, the amount paid to the State Treasury would be reduced by this amount.

**C. Possible Solutions and Impact**

The continued requirement to make available a certificate of registration for dealers and investment advisers may be an unnecessary redundancy that adds relatively little value to investors at the expense of agency resources.

## X. Other Contacts

- A. Fill in the following charts with updated information on people with an interest in your agency, and be sure to include the most recent email address.

### State Securities Board Exhibit 14: Contacts

#### **Interest Groups**

*(groups affected by agency actions or that represent others served by or affected by agency actions)*

Group or Association Name/ Contact Person	Address	Telephone	Email Address
The Securities Industry and Financial Markets Association (SIFMA) Managing Director, State Government Affairs -- Kim Chamberlain	1101 New York Avenue, NW, 8th Floor Washington, D.C. 20005	212-313-1311	<a href="mailto:kchamberlain@sifma.org">kchamberlain@sifma.org</a>
Financial Services Institute (FSI) Director, State Legislative Affairs--Michelle Carroll	607 14th Street NW Suite 750 Washington, DC 20005	202-517-6464	<a href="mailto:Michelle.carroll@financialservices.org">Michelle.carroll@financialservices.org</a>
Securities Law Committee of the Business Law Section of the State Bar of Texas Chair-- John Fahy	John Fahy Whitaker Chalk Swindle & Schwartz PLLC 301 Commerce Street, Suite 3500 Fort Worth, TX 76102	817-878-0547	<a href="mailto:jfahy@whitakerchalk.com">jfahy@whitakerchalk.com</a>

Table 18 - Interest Groups

#### **Interagency, State, or National Associations**

*(that serve as an information clearinghouse or regularly interact with your agency)*

Group or Association Name/ Contact Person	Address	Telephone	Email Address
North American Securities Administrators Association (Joseph Brady, Executive Director)	750 First Street, NE, Suite 1140 Washington, DC 20002-4251	202-737-0900	<a href="mailto:jb@nasaa.org">jb@nasaa.org</a>
Financial Industry Regulatory Authority (FINRA) (State Liaison--Scott Borchert)	1735 K Street, NW Washington, DC 2006	202-728-8278	<a href="mailto:Scott.borchert@finra.org">Scott.borchert@finra.org</a>
Dallas: District Director -- Erin Vocke	12801 North Central Expressway, Ste 1050 Dallas, Texas 75243	972-7167617	<a href="mailto:Erin.vocke@finra.org">Erin.vocke@finra.org</a>

<b>Group or Association Name/ Contact Person</b>	<b>Address</b>	<b>Telephone</b>	<b>Email Address</b>
American Association of Retired Persons (AARP) (Tim Morstad, Associate State Director for Outreach and Advocacy)	98 San Jacinto, Suite 750 Austin, Texas	512-480-2436	<a href="mailto:tmorstad@aarp.org">tmorstad@aarp.org</a>
United States Attorney's Office, Western District of Texas: Assistant U.S. Attorney – Alan Buie	816 Congress Avenue, Suite 1000 Austin, Texas 78701	512-370-1242	<a href="mailto:Alan.Buie@usdoj.gov">Alan.Buie@usdoj.gov</a>
United States Attorney's Office, Western District of Texas: Assistant U.S. Attorney – Dan Guess	816 Congress Avenue, Suite 1000 Austin, Texas 78701	512-370-1257	<a href="mailto:Dan.Guess@usdoj.gov">Dan.Guess@usdoj.gov</a>
United States Attorney's Office, Southern District of Texas: Assistant U.S. Attorney – Jay Hileman	1000 Louisiana, Suite 2300 Houston, Texas 77002	713-703-9308	<a href="mailto:Jay.Hileman@usdoj.gov">Jay.Hileman@usdoj.gov</a>
Federal Bureau of Investigation: White Collar Squad Supervisor – Holley Kelley	12515 Research Boulevard, Suite 400 Austin, Texas 78759	512-663-2842	<a href="mailto:Holly.Kelley@ic.fbi.gov">Holly.Kelley@ic.fbi.gov</a>
Federal Bureau of Investigation: Special Agent – David Hall	12515 Research Boulevard, Suite 400 Austin, Texas 78759	512-569-0476	<a href="mailto:David.Hall@ic.fbi.gov">David.Hall@ic.fbi.gov</a>
Internal Revenue Service: Criminal Investigation Division – Michael Fernald		512-801-3132	<a href="mailto:Michael.Fernald@ci.irs.gov">Michael.Fernald@ci.irs.gov</a>
United States Secret Service: Department of Homeland Security – Devon Kiernan		512-592-1252	<a href="mailto:Devon.Kiernan@uss.s.dhs.gov">Devon.Kiernan@uss.s.dhs.gov</a>
United States Postal Inspection Service: U.S. Postal Inspector – Matthew Boyden		713-208-5883	<a href="mailto:MSBoyden@uspis.gov">MSBoyden@uspis.gov</a>
Collin County District Attorney's Office: Honorable Greg Willis	2100 Bloomdale Road, Suite 100 McKinney, Texas 75071	972-548-4323	
Hood County District Attorney's Office: Honorable Robert "Rob" Christian	1200 West Pearl Street Grandbury, Texas 76048	817-579-3245	
Limestone County Attorney: Honorable William Roy DeFriend	200 West State Street, Suite 110 Groesbeck, Texas 76642	254-729-3814	
Hunt County District Attorney: Honorable Noble D. Walker	2507 Lee Street, 4 <sup>th</sup> Floor Greenville, Texas 75401	903-408-4180	

Group or Association Name/ Contact Person	Address	Telephone	Email Address
Rockwall County District Attorney: Honorable Kenda Culpepper	1111 Yellow Jacket Lane, Suite 201 Rockwall, Texas 75087	972-204-6800	

Table 19 - Interagency, State, and National Association

**Liaisons at Other State Agencies**

(with which your agency maintains an ongoing relationship, e.g., the agency's assigned analyst at the Legislative Budget Board, or attorney at the Attorney General's office)

Agency Name / Relationship / Contact Person	Address	Telephone	Email Address
Office of the Governor Policy Advisor--Jared Staples	P.O. Box 12428 Austin, Texas 78711	512-463-3329	<a href="mailto:jared.staples@gov.texas.gov">jared.staples@gov.texas.gov</a>
State Auditor's Office Audit Manager - Michael Clayton	Robert E Johnson Building	512-936-9465	<a href="mailto:michael.clayton@sao.texas.gov">michael.clayton@sao.texas.gov</a>
Office of the Attorney General Deputy Division Chief -- Jack Hohengarten	P.O. Box 12548 Austin, Texas 78711	512-475-3503	
Legislative Budget Board: Budget Analyst - Jennifer Quereau	Robert E Johnson Building	512-463-2666	<a href="mailto:jennifer.quereau@lbb.state.tx.us">jennifer.quereau@lbb.state.tx.us</a>
Legislative Budget Board: Secondary Analyst - Caitlin Perdue	Robert E Johnson Building	512-463-8203	
Legislative Budget Board: Performance Analyst - Jennifer Quereau	Robert E Johnson Building	512-463-2666	<a href="mailto:jennifer.quereau@lbb.state.tx.us">jennifer.quereau@lbb.state.tx.us</a>
Legislative Budget Board: IT Resource Analyst - Ronnie Porfirio	Robert E Johnson Building	512-475-2784	
Legislative Budget Board: Contract Oversight Analyst - Briana Novian	Robert E Johnson Building	512-463-5311	
Comptroller: Appropriation Control - Reno Daniels	LBJ Building	(512) 463-3528	<a href="mailto:reno.daniels@cps.texas.gov">reno.daniels@cps.texas.gov</a>
Comptroller: Financial Reporting - Maricela Cayetano	LBJ Building	(512) 475-0557	<a href="mailto:maricela.cayetano@cpa.texas.gov">maricela.cayetano@cpa.texas.gov</a>
Comptroller: SPA - Stacy Parker	LBJ Building	(512) 463-5895	<a href="mailto:stacy.parker@cpa.texas.gov">stacy.parker@cpa.texas.gov</a>
Comptroller: Travel and Purchase - Vance Tyler	LBJ Building	(512) 475-1046	<a href="mailto:vance.tyler@cpa.texas.gov">vance.tyler@cpa.texas.gov</a>
Comptroller: USPS -Wesley Green	LBJ Building	(512) 463-8437	<a href="mailto:wesley.green@cpa.texas.gov">wesley.green@cpa.texas.gov</a>

Table 20 - Liaisons at Other State Agencies

## XI. Additional Information

- A. Texas Government Code, Sec. 325.0075 requires agencies under review to submit a report about their reporting requirements to Sunset with the same due date as the SER. Include a list of each agency-specific report that the agency is required by statute to prepare and an evaluation of the need for each report based on whether factors or conditions have changed since the statutory requirement was put in place. Please do not include general reporting requirements applicable to all agencies, reports that have an expiration date, routine notifications or notices, posting requirements, federally mandated reports, or reports required by G.A.A. rider. If the list is longer than one page, please include it as an attachment.

**State Securities Board**  
**Exhibit 15: Evaluation of Agency Reporting Requirements**

Report Title	Legal Authority	Due Date and Frequency	Recipient	Description	Is the Report Still Needed? Why?
N/A	N/A	N/A	N/A	N/A	N/A

Table 21 - Agency Reporting Requirements

- B. Has the agency implemented statutory requirements to ensure the use of "person first respectful language"? Please explain and include any statutory provisions that prohibits these changes.

The agency utilizes person first respectful language similar to that recommended in Chapter 392, Texas Government Code. EEOC training is also required of all personnel as set forth in the agency's policies and procedures manual. Lastly, it is noted The Securities Act is undergoing codification by the Texas Legislative Council.

- C. Fill in the following chart detailing information on complaints regarding your agency. Do not include complaints received against people or entities you regulate. The chart headings may be changed if needed to better reflect your agency's practices.

**State Securities Board**  
**Exhibit 16: Complaints Against the Agency — Fiscal Years 2015 and 2016**

	Fiscal Year 2015	Fiscal Year 2016
Number of complaints received	0	1
Number of complaints resolved	1	1
Number of complaints dropped / found to be without merit	1	1
Number of complaints pending from prior years	1	0
Average time period for resolution of a complaint	N/A	N/A

Table 22 - Complaints Against the Agency

D. Fill in the following charts detailing your agency's Historically Underutilized Business (HUB) purchases.

**State Securities Board  
Exhibit 17: Purchases from HUBs**

***Fiscal Year 2015***

Category	Total \$ Spent	Total HUB \$ Spent	Percent	Agency Specific Goal*	Statewide Goal
Heavy Construction	\$0.00	\$0.00	0	11.2%	11.2%
Building Construction	\$0.00	\$0.00	0	21.1%	21.1%
Special Trade	\$0.00	\$0.00	0	32.9%	32.9%
Professional Services	\$21,890.00	\$21,890.00	100%	23.7%	23.7%
Other Services	\$158,900.00	\$19,729.00	12.42%	26.0%	26.0%
Commodities	\$92,246.00	\$46,224.00	50.11%	21.1%	21.1%
<b>TOTAL</b>	<b>\$273,036.00</b>	<b>\$87,843.00</b>			

Table 23 - HUB Purchases for FY 2015

***Fiscal Year 2016***

Category	Total \$ Spent	Total HUB \$ Spent	Percent	Agency Specific Goal	Statewide Goal
Heavy Construction	\$0.00	\$0.00	0	11.2%	11.2%
Building Construction	\$0.00	\$0.00	0	21.1%	21.1%
Special Trade	\$0.00	\$0.00	0	32.9%	32.9%
Professional Services	\$26,135.00	\$26,135.00	100%	23.7%	23.7%
Other Services	\$169,535.00	\$40,944.00	24.15%	26.0%	26.0%
Commodities	\$66,987.00	\$53,570.00	79.97%	21.1%	21.1%
<b>TOTAL</b>	<b>\$262,657.00</b>	<b>\$120,649.00</b>			

Table 24 - HUB Purchases for FY 2016

***Fiscal Year 2017 \****

Category	Total \$ Spent	Total HUB \$ Spent	Percent	Agency Specific Goal	Statewide Goal
Heavy Construction	0.00	\$0.00	0	11.2%	11.2%
Building Construction	0.00	\$0.00	0	21.1%	21.1%
Special Trade	0.00	\$0.00	0	32.9%	32.9%

Category	Total \$ Spent	Total HUB \$ Spent	Percent	Agency Specific Goal	Statewide Goal
Professional Services	\$20,992.00	\$20,992.00	100%	23.7%	23.7%
Other Services	\$92,189.00	\$12,714.00	13.79%	26.0%	26.0%
Commodities	\$44,299.00	\$13,150	29.69%	21.1%	21.1%
<b>TOTAL</b>	\$157,480.00	\$46,857	29.75%		

Table 25 - HUB Purchases for FY 2017

\* 2017 figures, as of February 28, 2017.

**E. Does your agency have a HUB policy? How does your agency address performance shortfalls related to the policy? (Texas Government Code, Sec. 2161.003; TAC Title 34, Part 1, rule 20.286c)**

The SSB has adopted by reference the rules of the Comptroller of Public Accounts relating to the Historically Underutilized Business Program. 7 TAC § 101.6.

**F. For agencies with contracts valued at \$100,000 or more: Does your agency follow a HUB subcontracting plan to solicit bids, proposals, offers, or other applicable expressions of interest for subcontracting opportunities available for contracts of \$100,000 or more? (Texas Government Code, Sec. 2161.252; TAC Title 34, Part 1, rule 20.285)**

N/A.

**G. For agencies with biennial appropriations exceeding \$10 million, answer the following HUB questions.**

**1. Do you have a HUB coordinator? If yes, provide name and contact information. (Texas Government Code, Sec. 2161.062; TAC Title 34, Part 1, rule 20.296)**

Aris Oglesby, (512)305-8717, aoglesby@ssb.texas.gov

**2. Has your agency designed a program of HUB forums in which businesses are invited to deliver presentations that demonstrate their capability to do business with your agency? (Texas Government Code, Sec. 2161.066; TAC Title 34, Part 1, rule 20.297)**

The SSB put on the “2017 Inter Agency HUB Vendor Fair: Marketing for Success” in conjunction with other state agencies that promoted the HUB program, and allowed vendors to speak directly with procurement staff about current and future purchasing opportunities.

**3. Has your agency developed a mentor-protégé program to foster long-term relationships between prime contractors and HUBs and to increase the ability of HUBs to contract with the state or to receive subcontracts under a state contract? (Texas Government Code, Sec. 2161.065; TAC Title 34, Part 1, rule 20.298)**

N/A.

H. Fill in the charts below detailing your agency's Equal Employment Opportunity (EEO) statistics.

**State Securities Board  
Exhibit 18: Equal Employment Opportunity Statistics**

**1. Officials / Administration**

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2015	7	14.3%	7.4%	0%	22.1%	28.6%	37.4%
2016	8	12.5%	7.4%	0%	22.1%	25.0%	37.4%
2017	7	14.3%	7.4%	0%	22.1%	14.3%	37.4%

Table 26 - EEO Statistics for Officials/Administration

**2. Professional**

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2015	66	18.2%	10.4%	13.7%	19.3%	50.0%	55.3%
2016	63	17.5%	10.4%	15.9%	19.3%	47.6%	55.3%
2017	58	17.2%	10.4%	17.2%	19.3%	50.0%	55.3%

Table 27 - EEO Statistics for Professionals

**3. Technical**

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2015	4	0%	14.4%	50.0%	27.2%	50.0%	55.3%
2016	3	0%	14.4%	33.3%	27.2%	33.3%	55.3%
2017	3	0%	14.4%	33.3%	27.2%	33.3%	55.3%

Table 28 - EEO Statistics for Technical

**4. Administrative Support**

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2015	30	16.7%	14.8%	26.7%	34.8%	86.7%	72.1%
2016	35	20.0%	14.8%	20.0%	34.8%	85.7%	72.1%
2017	22	27.3%	14.8%	27.3%	34.8%	86.4%	72.1%

Table 29 - EEO Statistics for Administrative Support

**5. Service / Maintenance**

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2015	0	0%	13.0%	0%	54.1%	0%	51.0%
2016	0	0%	13.0%	0%	54.1%	0%	51.0%
2017	0	0%	13.0%	0%	54.1%	0%	51.0%

Table 30 - EEO Statistics for Service and Maintenance

**6. Skilled Craft**

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2015	0	0%	10.6%	0%	50.7%	0%	11.6%
2016	0	0%	10.6%	0%	50.7%	0%	11.6%
2017	0	0%	10.6%	0%	50.7%	0%	11.6%

Table 31 - EEO Statistics for Skilled Craft

**I. Does your agency have an equal employment opportunity policy? How does your agency address performance shortfalls related to the policy?**

The State Securities Board has an equal employment opportunity policy. The policy states that the agency bases all employment decisions affecting applicants or employees only on lawful, job related and non-discriminatory criteria. Agency policy prohibits discrimination against an individual in connection with any employment-related decision because of race, color, disability, religion, sex, national origin, or age. To the extent possible, the agency utilizes a wide range of recruiting sources to secure the maximum number of qualified applicants, including minorities and women, for available positions within all classifications. Procedures for screening applicants, conducting interviews, hiring, evaluating job performance, and disciplinary action are objective, job-related, and consistently applied. Position descriptions are reviewed as necessary to ensure that they accurately reflect the actual duties and responsibilities required for each position and that only valid and job-related qualifications are required. Employees are encouraged to participate in training or educational opportunities that improve their competitiveness and increase promotional opportunities consistent with resources available to the agency. In-service training programs and cross-training programs will expose employees to a range of job duties and experiences. The agency has created a training program to address employment discrimination in accordance with the requirements of Chapter 21 of the Labor Code. New employees are required to attend the program no later than the 30th day after the date the employee begins working at the agency. All employees are required to attend the training program every two years.