AGENCY OVERVIEW

414 Securities Department

Date: 12/07/2012
Time: 13:54:30

Statutory Authority
North Dakota Century Code Chapters 10-04, 43-10.1, 51-19, and 51-23.

Agency Description
The North Dakota Securities Department is a regulatory agency that serves the citizens of North Dakota through the administration and enforcement of the North Dakota Securities Act (10-04), the North Dakota Commodities Act (51-23), the Franchise Investment Law (51-19) and Pre-Need Funeral Services Law (43-10.1).

Investor protection begins with registration of investment securities, sales firms and agents, franchise offerings and pre-need funeral plan sales. Fees collected are a revenue source for the State of North Dakota. The agency fosters the formation of capital by legitimate North Dakota businesses.

Investigation of fraud and misrepresentation results in money returned to North Dakota investors through rescission, recovery and restitution. Enforcement actions generate state revenues through statutory civil penalties, and consent orders and agreements. Education programs help investors make wise investment decisions and avoid fraud and abuse.

Agency Mission Statement
The primary mission of the Securities Department is to protect the North Dakota Investor through the administration of the North Dakota Securities Act (10-04). We support this mission through our efforts in four functional areas:

- Regulation of the Capital Formation Process
- Registration of Securities Industry Firms and Professionals
- Examinations, Investigations and Enforcement Actions
- Investor Education and Financial Literacy Initiatives

Agency Performance Measures
1. Operate department within budget parameters.
2. Routinely examine broker-dealers and investment advisors registered and with offices in the state.
3. Maintain staff of highly trained, professional, experienced examiners in all divisions.
4. Perform duties in ethical, unbiased, informed and efficient manner.
5. Foster public confidence in regulated industry and capital markets through effective administration of duties.
6. Promote compliance with the Securities Act through routine firm examinations and swift enforcement action when necessary, appropriate and in the public interest.

Annual performance reviews are utilized to determine effectiveness in contributing to agency goals and overall mission. Statistics are maintained for each division and are compared to prior measurement period. However, agency activity is market driven, i.e. broker-dealer, agent, franchise, securities registrations, thus changes in statistics do not directly translate into a measure of agency effectiveness.

Major Accomplishments
1. Assisted 37 North Dakota companies seeking to raise $140.7 million in capital through securities offerings.
2. Opened 59 investigations of fraud and misconduct perpetrated against North Dakota investors.
3. Returned $664,643 to victimized North Dakota investors through restitution, rescission and disgorgement.
4. Referred 4 enforcement matters to State’s Attorneys for criminal prosecution. Continue to assist with prosecution.

Future Critical Issues
- Fraud against seniors.
- Evolution of securities products, services and delivery mechanisms.

AGENCY OVERVIEW

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- Continued growth in number of investors.
- Continued growth in enforcement caseload.
- Increasing personal responsibility for future financial security.
- Implementation of Regulatory Reform legislation.
- New oversight of mid-size investment advisors managing assets of $25.0 million to $100.0 million.

These critical issues require the continued strengthening of the Securities Department's enforcement resources. The ability to execute effective investigations and achieve successful enforcement action outcomes, to the benefit of the harmed ND Investor, will continue to be dependent on the availability of training resources and the ability to contract as needed with outside legal and professional services.

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REQUEST SUMMARY

414 Securities Department **Bill#: HB1011** **Date:** 12/07/2012
Biennium: 2013-2015 **Time:** 13:54:30

Description	Expenditures 2009-2011 Biennium	Present Budget 2011-2013	Budget Request Change	Requested Budget 2013-2015 Biennium	Optional Budget Request
By Major Program					
Investor Protection	1,933,786	2,226,419	(117,493)	2,108,926	164,891
Total Major Program	**1,933,786**	**2,226,419**	**(117,493)**	**2,108,926**	**164,891**
By Line Item					
Salaries and Wages	1,336,849	1,519,978	29,706	1,549,684	174,709
Operating Expenses	596,937	706,441	(147,199)	559,242	(9,818)
Total Line Items	**1,933,786**	**2,226,419**	**(117,493)**	**2,108,926**	**164,891**
By Funding Source					
General Fund	1,637,200	1,909,220	29,706	1,938,926	164,891
Federal Funds					
Special Funds	296,586	317,199	(147,199)	170,000	0
Total Funding Source	**1,933,786**	**2,226,419**	**(117,493)**	**2,108,926**	**164,891**
Total FTE	**9.00**	**9.00**	**0.00**	**9.00**	**1.00**

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REQUEST DETAIL

414 Securities Department **Bill#: HB1011**

Biennium: 2013-2015

Date: 12/07/2012
Time: 13:54:30

Description	Expenditures 2009-2011 Biennium	Present Budget 2011-2013	Budget Request Change	Requested Budget 2013-2015 Biennium	Optional Budget Request
Salaries and Wages					
Salaries - Permanent	1,010,131	1,139,983	2,427	1,142,410	96,000
Salaries - Other	0	0	0	0	38,927
Overtime	1,212	571	6,064	6,635	0
Fringe Benefits	325,506	379,424	21,215	400,639	39,782
Salary Increase	0	0	0	0	0
Benefit Increase	0	0	0	0	0
Total	**1,336,849**	**1,519,978**	**29,706**	**1,549,684**	**174,709**
Salaries and Wages					
General Fund	1,336,849	1,519,978	29,706	1,549,684	174,709
Federal Funds	0	0	0	0	0
Special Funds	0	0	0	0	0
Total	**1,336,849**	**1,519,978**	**29,706**	**1,549,684**	**174,709**
Operating Expenses					
Travel	88,602	105,557	(45,957)	59,600	7,500
Supplies - IT Software	6,586	9,477	78	9,555	4,750
Supply/Material-Professional	174,234	121,971	(46,739)	75,232	(3,168)
Food and Clothing	0	164	0	164	0
Bldg, Ground, Maintenance	110	719	(113)	606	0
Miscellaneous Supplies	0	2,000	(151)	1,849	0
Office Supplies	14,359	14,789	(2,454)	12,335	(1,000)
Postage	6,225	7,998	(48)	7,950	0
Printing	16,625	19,084	(1,955)	17,129	0
IT Equip Under $5,000	14,835	8,125	(4,635)	3,490	20,600
Other Equip Under $5,000	162	6,238	(1,875)	4,363	0
Office Equip & Furn Supplies	33,056	13,476	(7,645)	5,831	3,000
Insurance	2,942	1,853	(580)	1,273	0
Rentals/Leases-Equip & Other	7,964	12,225	(3,625)	8,600	0
Rentals/Leases - Bldg/Land	10,605	15,550	(990)	14,560	0
Repairs	44,243	2,000	0	2,000	0
IT - Data Processing	29,108	46,991	(5,660)	41,331	1,200
IT - Communications	21,735	26,766	(6,445)	20,321	3,000
IT Contractual Srvcs and Rprs	4,825	9,500	(2,300)	7,200	1,300
Professional Development	52,155	55,835	(20,400)	35,435	3,000
Operating Fees and Services	37,184	28,624	24,500	53,124	0
Fees - Professional Services	31,382	197,499	(20,205)	177,294	(50,000)
Total	**596,937**	**706,441**	**(147,199)**	**559,242**	**(9,818)**

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REQUEST DETAIL

414 Securities Department **Bill#: HB1011** **Date:** 12/07/2012

Biennium: 2013-2015 **Time:** 13:54:30

Description	Expenditures 2009-2011 Biennium	Present Budget 2011-2013	Budget Request Change	Requested Budget 2013-2015 Biennium	Optional Budget Request
Operating Expenses					
General Fund	300,351	389,242	0	389,242	(9,818)
Federal Funds	0	0	0	0	0
Special Funds	296,586	317,199	(147,199)	170,000	0
Total	**596,937**	**706,441**	**(147,199)**	**559,242**	**(9,818)**
Funding Sources					
General Fund	1,637,200	1,909,220	29,706	1,938,926	164,891
Federal Funds	0	0	0	0	0
Special Funds	296,586	317,199	(147,199)	170,000	0
Total Funding Sources	**1,933,786**	**2,226,419**	**(117,493)**	**2,108,926**	**164,891**

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CHANGE PACKAGE SUMMARY

414 Securities Department **Bill#: HB1011**
Biennium: 2013-2015

Date: 12/07/2012
Time: 13:54:30

Description	Priority	FTE	General Fund	Federal Funds	Special Funds	Total Funds
Base Budget Changes						
Ongoing Budget Changes						
A-A 2 Decrease special fund appropriation		0.00	0	0	(147,199)	(147,199)
Base Payroll Change		0.00	29,706	0	0	29,706
Total Ongoing Budget Changes		**0.00**	**29,706**	**0**	**(147,199)**	**(117,493)**
Total Base Budget Changes		**0.00**	**29,706**	**0**	**(147,199)**	**(117,493)**
Optional Budget Changes						
One Time Optional Changes						
A-D 3 IT - Upgrade/replace	3	0.00	25,850	0	0	25,850
A-D 4 Retirement salaries and wages	4	0.00	38,927	0	0	38,927
Total One Time Optional Changes		**0.00**	**64,777**	**0**	**0**	**64,777**
Ongoing Optional Changes						
A-C 5 1 FTE - Investigator	2	1.00	158,282	0	0	158,282
Total Ongoing Optional Changes		**1.00**	**158,282**	**0**	**0**	**158,282**
Total Optional Budget Changes		**1.00**	**223,059**	**0**	**0**	**223,059**
Optional Savings Changes						
A-G 1 Governor's request	1	0.00	(58,168)	0	0	(58,168)
Total Optional Savings Changes		**0.00**	**(58,168)**	**0**	**0**	**(58,168)**

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BUDGET CHANGES NARRATIVE

414 Securities Department **Bill#: HB1011**

Date: 12/07/2012
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Change Group: A	**Change Type:** A	**Change No:** 2	**Priority:** 5

Decrease special fund appropriation - Refocus investor education services

The Department is in the process of re-focusing and re-designing its Investor Education programs. As a result, the Department anticipates a reduction in expenses in this area, and is decreasing the special fund appropriation request.

Change Group: A	**Change Type:** C	**Change No:** 5	**Priority:** 2

1 FTE - Investigator - & related operating expenses

While the Department has made some progress in implementing a consistent schedule of routine examinations of broker dealer and investment advisor firms, we continue to face challenges to our exams program due to a consistently high level of complaint driven investigations, for-cause examinations and enforcement activity. Additionally, the Department has seen an increase in Ponzi scheme, fraud, and theft of funds cases. These types of cases typically involve numerous victims, large monetary losses, and violations committed over long time frames. As such, these cases can be exceedingly complicated and document intensive, and require the department to divert resources away from our routine exam program. These types of cases commonly result in criminal referrals, a process which also requires dedication of our examiner/ investigator resources.

Examinations of BD and IA firms serve as an early warning system and help to uncover compliance deficiencies before the investor is harmed. Because routine broker-dealer and investment advisor examinations are a critical preventative mechanism necessary for the protection of investors in North Dakota, the Department is requesting the addition of one examiner/investigator position.

Change Group: A	**Change Type:** D	**Change No:** 3	**Priority:** 3

IT - Upgrade/replace - Agency hardware/software

Funding for standard 4 year replacement cycle for agency computer hardware and software upgrades.

Change Group: A	**Change Type:** D	**Change No:** 4	**Priority:** 4

Retirement salaries and wages - 2 staff retirements

2 of the Department’s 9 FTE’s have reached eligible retirement age. Without the requested adjustment to Salaries and Wages, the Department does not have a funding source to cover the required payment for annual and sick leave balances.

Change Group: A	**Change Type:** G	**Change No:** 1	**Priority:** 1

Governor's request - 3% Savings

The operating expense category from which the majority of the cut would be made is professional services. In the 2005-2007 biennium, the Department received an increase in professional services funding in lieu of the greater expense of hiring another department attorney. This funding source covers investigation and litigation related expenses such as outside legal counsel, expert witnesses, and forensic accounting costs. These are expenses that are primarily driven by the occurrence of settlement versus litigation of department enforcement actions, as such they are difficult to predict. The Department often concludes a biennium with a balance to turn back, due to this line item as well as prudent fiscal management. However, it is important to note that a significant reduction in professional services funding would adversely impact the Department’s ability to effectively litigate enforcement actions to the further detriment of the harmed North Dakota investor.

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BUDGET CHANGES NARRATIVE

414 Securities Department **Bill#: HB1011**

Date: 12/07/2012
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Change Group: R	**Change Type:** A	**Change No:** 1	**Priority:**

IT Upgrade and Replacements

Provides $25,850 from special funds for replacement of agency computers and software upgrades.

Change Group: R	**Change Type:** A	**Change No:** 100	**Priority:**

Executive Compensation Package Adjustment

This budget change provides funding for recommended 2013-15 compensation adjustments. Compensation adjustments for each agency were calculated following the recommendations of the Hay Group developed through the 2011 study of the state's classified employee compensation system. Pursuant to those recommendations, compensation adjustments were calculated to provide funding to allow for both performance-based salary adjustments and market-based salary adjustments. This funding allows for increases of 2% to 4% for employees in the first quartile of the pay range and 1% to 2% for those in the second quartile of the range. For employees in the third and fourth quartiles, which are above the market policy position, no market policy increase is funded. Performance-based increases are assumed to be 3% for employees meeting performance standards and up to 5% for employees exceeding performance standards. No performance-based increases are provided for employees that fail to meet performance standards.

Change Group: R	**Change Type:** B	**Change No:** 1	**Priority:**

Retirement Leave Payouts

Provides $38,927 of one-time funding from the general fund for anticipated annual and sick leave payouts. Two of the agency's nine employees are eligible for retirement.