



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

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STATE OF WASHINGTON  
FILED

DATE: October 09, 2019

TIME: 9:31 AM

WSR 19-21-042

**Agency:** Department of Financial Institutions, Securities Division

**Original Notice**

**Supplemental Notice to WSR** \_\_\_\_\_

**Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR 18-06-76 ; or**

**Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or**

**Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**

**Proposal is exempt under RCW \_\_\_\_\_.**

**Title of rule and other identifying information:** (describe subject) The Securities Division is proposing to amend WAC 460-44A-503 to require notice filings concerning securities offerings exempt under Rule 506 of federal Regulation D be made through the North American Securities Administrators Association's online Electronic Filing Depository (EFD) system.

**Hearing location(s):**

**Date:**                      **Time:**                      **Location:** (be specific)                      **Comment:**

November 26, 2019	9:00 AM	150 Israel Road SW –Room 319 Tumwater, WA 98501	
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**Date of intended adoption:** 11/27/2019 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

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Other:

By (date) November 25, 2019

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Other:

By (date) November 22, 2019

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The Securities Division is proposing to amend WAC 460-44A-503, which currently sets forth notice filing requirements for securities offerings made in reliance on federal Regulation D, Rule 506. The proposed rule amendments would create a new subsection of the rule, requiring that notice filings and fees for securities offerings made in reliance on Rule 506 to be submitted electronically through EFD. The proposed rule amendments would also clarify that any amendments to previously-filed notice filings concerning Rule 506 offerings must also be filed through EFD.

**Reasons supporting proposal:** Launched by the North American Securities Administrators Association in 2014, EFD is an online system that has modernized and streamlined the process of submitting notice filings by allowing issuers to electronically submit Forms D concerning Rule 506 offerings to state securities regulators and pay filing fees. Currently, 48 jurisdictions either accept or mandate Rule 506 notice filings made through EFD. The system is in wide use: in 2018, 68,438 new notice filings, 7,435 amendment filings, and 9,308 renewal filings for Rule 506 offerings were made through EFD in those jurisdictions utilizing the system. In Washington alone, the Securities Division received 3,412 Rule 506 notice filings through EFD, compared to 577 notice filings on paper.

Although the Securities Division currently accepts notice filings through EFD as well as paper submissions, paper submissions require the Securities Division to manually process and scan the notice filings, which may result in delays to the issuer in receiving an acknowledgment of its filing or any follow-up correspondence. Requiring issuers to use the EFD system to file Rule 506 notice filings would eliminate inefficiencies and result in a streamlined process for both issuers and the Securities Division.

**Statutory authority for adoption:** RCW 21.20.327; RCW 21.20.450

**Statute being implemented:** RCW 21.20.327

**Is rule necessary because of a:**

Federal Law?  Yes  No  
Federal Court Decision?  Yes  No  
State Court Decision?  Yes  No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

**Name of proponent:** (person or organization) Department of Financial Institutions, Securities Division  Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Michelle Webster, Esq.	150 Israel Road SW, Tumwater, WA 98501	360-902-8736
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Enforcement: Administrator	William Beatty, Securities	150 Israel Road SW, Tumwater, WA 98501	360-902-8760

**Is a school district fiscal impact statement required under RCW 28A.305.135?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:  
Name:  
Address:

Phone:  
Fax:  
TTY:  
Email:  
Other:

No: Please explain: The Department of Financial Institutions is not an agency identified in RCW 34.05.328.

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)  
(Internal government operations)

RCW 34.05.310 (4)(e)  
(Dictated by statute)

RCW 34.05.310 (4)(c)  
(Incorporation by reference)

RCW 34.05.310 (4)(f)  
(Set or adjust fees)

RCW 34.05.310 (4)(d)  
(Correct or clarify language)

RCW 34.05.310 (4)(g)  
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.

Explanation of exemptions, if necessary:

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. \_\_\_\_\_

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

**Small Business Economic Impact Statement**

WAC 460-44A-503  
Concerning Regulation D, Rule 506 Notice Filings

October 9, 2019

**Introduction**

The Securities Division of the Department of Financial Institutions has prepared this Small Business Economic Impact Statement (SBEIS) in connection with proposed amendments to WAC 460-44A-503. The proposed amendments to WAC 460-44A-503 would require notice filings concerning securities offerings exempt under federal Regulation D, Rule 506 to be made online through the Electronic Filing Depository (EFD) system.

Launched by the North American Securities Administrators Association in 2014, EFD is an online system that has modernized and streamlined the process of submitting notice filings by allowing issuers to electronically submit Forms D concerning Rule 506 offerings to state securities regulators and pay filing fees. Currently, 48 jurisdictions either accept or mandate Rule 506 notice filings made through EFD. The system is in wide use: in 2018, 68,438 new notice filings, 7,435 amendment filings, and 9,308 renewal filings for Rule 506 offerings were made through EFD in those jurisdictions utilizing the system. In Washington alone, the Securities Division received 3,412 Rule 506 notice filings through EFD, compared to 577 notice filings on paper.

The Securities Division is considering a rule amendment to require Rule 506 notice filings to be made through EFD. As detailed in this SBEIS, the Securities Division gathered information on the possible economic impact of the proposed rule amendments, and determined that rule amendments should be adopted to streamline the process of Rule 506 notice filings for all involved parties.

## **Procedural Background**

On March 6, 2018, the Securities Division filed a CR-101 Preproposal Statement of Inquiry with the Office of the Code Reviser (Code Reviser), stating that it was considering requiring filers to submit Rule 506 notice filings to the Securities Division through the EFD system. The Securities Division conducted a survey to determine the costs associated with the proposed rule amendments, and distributed the survey on March 5, 2019. The survey was also posted to the Securities Division's website. At the same time, the Securities Division distributed draft rule amendments to WAC 460-44A-503 to the survey pool in a mailing on March 5, 2019. The Securities Division also posted the draft on its website.

The Securities Division carefully considered the responses to the survey, and determined that no changes to the proposed rule amendments were necessary, based on the feedback it received. The Securities Division now intends to proceed with rulemaking to amend WAC 460-44A-503 by formally proposing the draft amendments in a Notice of Proposed Rule Making (CR-102) with the Code Reviser.

## **Summary of the Proposed Amendments**

The proposed rule amendments would amend WAC 460-44A-503. WAC 460-44A-503 currently sets forth notice filing requirements for securities offerings made in reliance on federal Regulation D, including offerings made in reliance on Rule 506. The proposed rule amendments would create a new section of the rule, requiring that notice filings and fees for securities offerings made in reliance on Rule 506 be submitted electronically through EFD. The proposed rule amendments would also clarify that any amendments to previously-filed notice filings must also be filed through EFD.

## **Need for Economic Impact Statement**

RCW 19.85.030 provides that an agency must prepare a small business economic impact statement if the proposed rule will impose more than minor costs on businesses in an industry. The term "minor cost" is defined to mean a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll. To make a filing through EFD, there is a per-offering system use fee of \$155, in addition to the state filing fees. Accordingly, the Securities Division determined that a small business economic impact may be required for this rulemaking.

## **Survey of Interested Persons**

### *Description of Survey Process*

To obtain information to prepare an SBEIS, RCW 19.85.040 permits an agency to survey a representative sample of affected businesses to assist in the accurate assessment of the costs of a proposed rule. To that end, the Securities Division prepared an online Small Business Economic Impact Survey to survey businesses that may be impacted by the proposed rule amendments.

Federal Regulation D, Rule 506 provides exemptions from federal registration requirements for securities offerings that fulfill certain requirements. As securities offered in Rule 506 offerings are "covered" securities, an issuer conducting an offering in reliance on Rule 506 is not required to file more than a notice of the offering and pay a filing fee to each state in which it seeks to conduct the offering. However, Rule 506 is only one of a number of "covered" securities offerings that require a notice filing, and one of numerous exemptions from registration. As such, the Securities Division does not know in advance who might decide to conduct an offering pursuant to Rule 506.

For purposes of gathering information to prepare an SBEIS, the Securities Division determined to survey every person that had made a Rule 506 notice filing in the last three (3) years. The Securities Division reasoned that these persons might be likely to rely on Rule 506 exemptions in the future, or file amendments or renewals to current Rule 506 notice filings. These persons may also include attorneys or paralegals who advise those making Rule 506 notice filings, and have a sense of the potential economic impact on small businesses. In addition, the Securities Division reasoned that this group might have recent insights about the impact of the proposed rule amendments in connection with future notice filings.

On March 5, 2019, the Securities Division sent an e-mail containing a link to its online survey to the survey pool described above. If a filer did not provide an e-mail address in its filing, then the Securities Division sent the letter by regular mail. Both the letter and the e-mail explained the reasons for conducting the survey, requested that recipients complete the survey by following the link provided, and provided a link to the draft rule amendments. The survey was delivered to 1,551 recipients.

Finally, the Securities Division posted a link to the electronic survey on its rulemaking website so that any interested persons who did not otherwise receive the initial request could take the survey.

The online survey consisted of 12 questions. The survey explained the current notice filing requirements, and explained that filing through EFD would require the payment of a per-offering system use fee of \$155, in addition to any state filing fees. The survey further explained the circumstances under which an issuer would, and circumstances under which an issuer would not, be required to pay the system use fee. For the payment of fees, the survey explained that the EFD system currently utilizes the Automated Clearing House (ACH) system for facilitating payments of state filing fees and system use fees. The survey asked whether the proposed rule amendments would cause increased costs to comply with the proposed rule, and then requested information on the additional costs of complying in the categories of professional services, equipment, supplies, labor, and administrative costs. Each question also allowed a free-form response for survey takers to explain any other additional compliance costs. Lastly, the survey requested data on whether the proposed amendments would result in lost sales or revenue, or the loss or addition of any jobs.

The survey period lasted from March 5, 2019 through April 4, 2019. The Securities Division received 63 unique responses to the survey, although some respondents did not respond to all of the questions in the survey. The Securities Division received full or partial survey responses from 23 respondents that identified themselves as persons or companies that file Rule 506 notice filings; 8 respondents that identified themselves as “other” – primarily paralegals, attorneys, or compliance firms that file Rule 506 notice filings on behalf of clients; and 32 respondents that identified themselves as an attorney or paralegal that advises Rule 506 notice filing issuers. Of the 63 respondents, 26 were small businesses as defined by RCW 19.85.020(3) because they had 50 or fewer employees. The remaining respondents were associated with business entities that ranged from 70 employees to 2,500 employees, or declined to answer. The Securities Division considered comments from all respondents, as many of the large businesses represented in this survey are law firms that advise Rule 506 filers or may file on their behalf. The results of the survey are discussed below.

## **REQUIRED ELEMENTS OF THE SMALL BUSINESS ECONOMIC IMPACT STATEMENT**

**A brief description of the reporting, record keeping, and other compliance requirements of the proposed rules and of the kinds of professional services that a small business is likely to need in order to comply with the requirements. An analysis of the costs of compliance for identified industries, including costs of equipment, supplies, labor, professional services, and increased administrative costs.**

As discussed above, Rule 506 is an exemption from federal registration requirements. Issuers seeking to rely on Rule 506 are required to electronically submit a Form D on the Securities and Exchange Commission’s EDGAR (Electronic Data Gathering, Analysis and Retrieval) system. Issuers are also required to file notice of a Rule 506 offering, and pay a filing fee, to each state in which it seeks to conduct the offering. This notice primarily consists of the Form D filed with the Securities and Exchange Commission.

To file a notice with the Securities Division, filers may utilize one of two methods: (1) mailing a paper filing to the Securities Division, along with a check made out to the Washington State Treasurer’s Office to pay the filing fee; or (2) electronically submitting a filing through the EFD system, and using the ACH system to pay required fees.

For those using EFD to make notice filings, the EFD system automatically digests what is filed on EDGAR. However, filers must affirmatively select the jurisdictions in which they are seeking to make notice filings. To use the EFD system, filers are required to pay a per-offering system use fee, in addition to state filing fees. For example, when an issuer files a new Form D through the EFD system, it must pay a \$155 system use fee. If the issuer later needs to amend the filing for that particular offering, it will not be charged the system use fee. However, if the amendment filing is the first type of filing for the offering made through EFD, then the system use fee would be collected for that filing.

Although the majority of filers already utilize the EFD system to file notices with the Securities Division, the proposed rule amendments would *require* filers to do so. As such, filers may incur expenses relating to the need to comply with this requirement, including paying the one-time system use fee, or establishing an account to facilitate ACH payments. Filers may rely on the assistance of counsel, or accounting departments, in order to comply with the requirements to file through the EFD system.

The Securities Division surveyed respondents to determine whether the requirements of the proposed rule amendments would add costs to their business, and if so, how much. The survey summarized the rule, including the circumstances under which the filer would incur the per-offering system use fee, and asked whether the proposed rule amendments would create any additional costs for the filer to comply, and whether there would be additional costs, other than the system use fee.

Of the 63 respondents, an overwhelming number indicated that the proposed rule amendments would not create additional costs to their businesses, apart from the per-offering \$155 system use fee. The following chart provides the responses to the survey question regarding whether compliance with the proposed rule amendment would create additional costs to the respondents’ businesses.

<b>Whether Rule Changes Would Create Additional Costs (Beyond the \$155 Per-Offering System Use Fee)</b>		
	<b>Yes</b>	<b>No</b>
Proposed Rule Amendments	2 (3%)	61 (97%)

Where the survey takers indicated that the proposed rule amendments would create additional costs, the survey requested information regarding the amount of increased costs of professional services, equipment, supplies, labor, and administrative costs. As survey respondents were requested to provide information regarding its number of employees, the Securities Division was able to calculate the average increased cost per employee, to the extent information was supplied by the respondents. Of the 63 unique respondents, 44 respondents provided estimated employee/independent contractor figures.<sup>1</sup> These costs per employee were then averaged.

Information provided by certain respondents was not included in the per-employee averages. Specifically, one (1) respondent stated that it would require additional time for its accounting department, as the EFD system does not currently accept credit card payments, but did not provide any quantitative cost estimates, or the number of its employees. Two (2) respondents stated that it would see increased professional services costs in a “small amount” or “not much” but otherwise indicated no additional costs for equipment, labor, supplies, or administrative expenses. One respondent stated that it would cost \$50,000 in additional professional services, but declined to provide the reasons for its estimate, or the number of employees it had. As such, the Securities Division did not include these respondents in the per-employee averages.

<b>Average Cost Increase Per Employee (All Respondents)</b>					
	Professional Services	Equipment	Supplies	Labor	Administrative
Proposed Rule Amendments	\$4.79	\$0.20	\$0.02	\$0.82	\$0.99

Of these 44 respondents, only five (5) provided quantitative estimated additional costs above “\$0” and the number of employees the respondent had. The below chart provides the average cost increase per employee only for the respondents who provided estimates of additional costs (regardless if they answered “yes” to the question of whether the proposed rule amendments would result in increased costs), and disclosed the number of employees or independent contractors the respondent had. Not all respondents provided increased cost estimates for all categories; accordingly, the average cost increase per employee is only calculated using the number of employees per respondent that actually provided an estimate in that particular category.<sup>2</sup> For those that simply indicated the EFD system use fee would result in increased administrative costs, but did not provide quantitative estimates, the Securities Division calculated the fees based on the number of new and amended EFD filings the respondent estimated that it would make per year, multiplied by \$155, and included that in the calculation of the average increase in administrative costs per employee.

<b>Average Cost Increase Per Employee (Respondents with Increased Costs)</b>					
	Professional Services	Equipment	Supplies	Labor	Administrative
Proposed Rule Amendments	\$2,142.86	\$178.57	\$75.00	\$6.80	\$517.50

### **Analysis of Increased Costs**

The survey results indicated that the proposed rule amendments, *i.e.*, switching from paper notice filing to electronic submissions, would create greater costs for some respondents than for others. Because the survey responses ranged widely, the Securities Division discusses the range of responses for each type of cost category below.

#### **Additional Professional Services**

<sup>1</sup> In the aggregate, these respondents had 12,515 employees and independent contractors.

<sup>2</sup> Specifically, the “Professional Services” category is based on 4 respondents with 28 employees in the aggregate; the “Equipment” category is based on 2 respondents with 14 employees in the aggregate; the “Supplies” category is based on 1 respondent with 4 employees; the “Labor” category is based on 3 respondents with 1,508 employees in the aggregate; and the “Administrative” category is based on 3 respondents with 24 employees in the aggregate. Only one of the respondents who is included in the labor categories is not a “small business.” The remainder are.

The survey results indicated that approximately 12% (8 of 63) of the survey respondents believed that the proposed rule amendments would increase additional professional services. However, only five (5) respondents provided quantitative estimates, which ranged between \$10,000 and \$50,000, and the \$50,000 estimate was excluded from the range due to the lack of information regarding employee numbers. The quantitative estimates for those respondents that provided their number of employees and independent contractors indicated an average of \$2,142.86 per employee for professional services. The non-quantitative estimates provided by respondents were: "not much," a "small amount" and "additional time for our accounting department since [the EFD system] do not take credit cards."

The Securities Division found the quantitative cost increase estimates surprising because the proposed rule amendments merely change the manner in which Rule 506 notice filers submit notices; the proposed rule amendments do not change the underlying filing requirements.

As Rule 506 is a federal exemption from registration, Rule 506 notice filers are required to first file their Forms D online using the Securities and Exchange Commission's EDGAR (Electronic Data Gathering, Analysis and Retrieval) system. The EFD system automatically digests the notices that are filed on EDGAR, and then the filer affirmatively selects the jurisdictions in which it seeks to file. In addition, for those filing notices in multiple states, 14 other states already require that such notices be submitted through the EFD system. Although notice filers are required by the EFD system to pay an additional system use fee, it is difficult to see how a filer might incur, for example, an additional professional cost of \$50,000. We speculate that some businesses might be required to expend efforts to facilitate ACH payments, rather than credit card or check payments, and that this may increase professional costs for them.

In contrast to these few respondents, a majority of survey respondents (34 of 63, or 54%) affirmatively indicated that the amount of increased costs was "\$0" (others stated "N/A" or failed to respond). One respondent expressly indicated that it would incur no additional legal fees in changing the method of Rule 506 notice filings from paper to filing online. Another indicated that most of its filings are already submitted through the EFD system, so it would save the cost of writing a separate check and mailing a paper package to the Securities Division. The respondent further indicated that it would save costs to move to filing on EFD only. When averaged against all respondents, the estimated increased costs would be an average of \$4.79 per employee. Accordingly, the Securities Division believes that it would not significantly increase professional costs to comply with the proposed rule amendments.

#### *Equipment Costs*

The survey results indicated that approximately 3% (2 of 63) of the survey respondents believed that the proposed rule amendments would result in increased equipment expenses. Of the respondents that anticipated the proposed rule amendments would increase costs, these cost estimates ranged from \$500 to \$2,000 for an average per-employee increase of \$178.57. It is unclear the basis for the estimated increased equipment costs. The primary manner of filing the Rule 506 notice filing with the Securities and Exchange Commission is already electronic. Accordingly, the Securities Division speculates that Rule 506 notice filers might incur additional costs to set up ACH payments.

In contrast, 50% of survey respondents (32/63) expressly indicated that there would be \$0 in increased equipment costs (the remainder stated "N/A" or failed to respond), and on a whole would result in an average increase of \$0.20 per employee. The Securities Division believes that the proposed rule amendments would not significantly increase equipment costs for Rule 506 notice filers. Rather, we anticipate that filers may save costs in printing, postage, and administrative time to file notices online.

#### *Supply Costs*

The survey results indicated that approximately 2% (1 of 63) of the respondents believed that the proposed rule amendments would result in increased supply costs. That respondent estimated that the proposed rule would increase costs in an amount of \$300, for an average increase of \$75 per employee. However, the respondent did not explain the basis for the increased supply costs.

In contrast, 52% of survey respondents (33/63) expressly indicated that there would be \$0 in increased supplies costs (others stated "N/A" or failed to respond). When averaged against the remainder of the respondents, the expenses result in an average increase of \$0.02 per employee on a whole. Accordingly, the Securities Division believes that the proposed rule amendments would not significantly increase supply costs for Rule 506 notice filers. Rather, we anticipate that businesses may save costs in printing and postage supplies they would otherwise incur to make paper filings with the Securities Division.

#### *Labor Costs*

The survey results indicated that approximately 5% (3 of 63) of the respondents believed that the proposed rule amendments would result in increased labor costs. Of the 3% of respondents that anticipated the proposed rule amendments would increase costs, the individual estimates ranged from \$150 to \$10,000, for an average cost increase of \$6.80 per employee. Although the primary manner of filing the Rule 506 notice filing with the Securities and Exchange Commission is electronic, the Securities

Division speculates that Rule 506 notice filers might incur additional labor costs to set up ACH payments, or familiarize themselves with the EFD system.

In contrast, 49% of survey respondents (31/63) expressly indicated that there would be \$0 in increased labor costs (others stated "N/A," "unknown," or failed to respond). When all responses are averaged together, the proposed rule amendments result in an average increase of \$0.82 per employee for labor costs. As such, the Securities Division believes that the proposed rule amendments would not significantly increase labor costs for Rule 506 notice filers. Rather, we anticipate that filers (and the persons who work for them and/or make filings on their behalf) may save costs in printing, postage, and labor in filing all notices online.

#### *Administrative Costs*

The survey results indicated that approximately 5% (3 of 63) of the respondents believed that the proposed rule amendments would result in increased administrative costs. For the 5% that anticipated that the proposed rule amendments would increase administrative costs, those costs included an average of \$517.50 per employee. In calculating this average, for those that simply indicated the EFD system use fees would result in increased administrative costs, but did not provide quantitative estimates, the Securities Division calculated the fees based on the number of new and amended EFD filings the respondent estimated that it would make per year, multiplied by \$155. The quantitative responses ranged from \$1,800 to \$10,000.

In contrast, 50% of survey respondents (32/63) expressly indicated that there would be \$0 in increased administrative costs (others stated "N/A" or failed to respond). One (1) respondent stated that there would be less administrative costs associated with a move to EFD filings. When all respondents are averaged together, the respondents anticipate that the proposed rule amendments will result in an increase of \$0.99 per employee. Accordingly, the Securities Division believes that the proposed rule amendments would not significantly increase administrative costs for Rule 506 notice filers. Rather, we anticipate that filers may save costs in the time it takes to file notices online, and the time spent printing and mailing notice filings.

#### *Other Compliance Costs Associated with the Proposed Rule Amendments*

In addition to professional services, equipment, supplies, labor, and administrative costs to comply with the proposed rule amendments, the Securities Division also requested respondents to explain any other compliance costs associated with the draft rule. Three (3) of 64 respondents identified the EFD system use fee as a source of additional compliance costs. One (1) of these three (3) clarified that the EFD system use fee is fine when the filer is making a filing in several states at once, but if the filer is only seeking to file in Washington, then the system use fee could be costly. In contrast, two (2) other respondents indicated that it would be more cost effective to file Rule 506 notices through the EFD system than to make paper filings, the savings of which may be passed on to their clients. One (1) additional respondent identified the "blue sky filing fee" as an additional compliance cost; however, the filing fee imposed by the Securities Division is \$300, regardless of the manner of notice filing. The proposed rule amendments do not change the filing fee. The remaining respondents indicated that additional costs were not applicable, or would equal "\$0".

#### **Whether compliance with the proposed rule will cause businesses to lose sales or revenue.**

The rulemaking is unlikely to result in lost sales or revenue for businesses that file Rule 506 notice filings through the EFD system. Of the 63 respondents, only two (2) indicated that the proposed rule amendments might cause a loss in sales or revenues, or 3% of the respondents. The survey requested a free form answer regarding which specific provisions in the proposed rule amendments might result in lost sales or revenue. One (1) of the two (2) respondents who stated "Yes" to lost sales or revenue stated "N/A" with respect to the estimated amount of lost revenue, and further stated "N/A" when prompted to identify the particular provision that would result in lost revenue. Accordingly, this respondent may have answered "Yes" to the initial question in error. The other respondent estimated lost revenue in the amount of \$10,000, and further explained, "As a Coamony [sic] operating in Canada the EFD is NOT set up to allow for the bank on this side – thus I cannot use the system." This respondent is correct in that not all financial institutions allow ACH payments. However, Canadian companies do successfully file Rule 506 notice filings currently with the states through the EFD system, and therefore we believe that this issue may be remedied.

In contrast, 58 respondents (92% of the respondents surveyed) indicated that they did not believe that the proposed rule amendments would result in lost sales or revenues. One respondent further opined that requiring Rule 506 notice filings to be made through the EFD system would save law firms the time and costs associated with creating letters, ordering checks, and preparing paper filing packages – compared to clicking through the EFD system.

#### **An estimate of the number of jobs that will be created or lost as a result of compliance with the proposed rule.**

The survey also asked whether the proposed rule amendments might result in the addition or elimination of any jobs. Only one (1) respondent indicated that the proposed rule amendments may cause its business to eliminate any jobs, and estimated that one (1) job might be eliminated. However, this same respondent is the same that has difficulties facilitating ACH payments as



a Canadian company, and the Division believes that these issues can be remedied. In contrast, 60 (95% of all respondents) respondents indicated that they believed the proposed rule would not cause their businesses to eliminate any jobs.

None of the respondents indicated that the proposed rule amendments would cause them to add any jobs.

Based on the survey results, the Securities Division estimates that the average person or company filing Rule 506 notice filings, or the average attorney or paralegal advising Rule 506 notice filing issuers, would not eliminate or add any jobs as a result of the proposed rule amendments.

**A comparison of compliance costs for the small business segment and the large business segment of the affected industries, and whether the impact on small business is disproportionate.**

RCW 19.85.040 requires the Securities Division to determine whether compliance with the proposed rule amendments will have a disproportionate impact on small business by comparing the cost of compliance for small business with the costs of compliance for the ten percent of businesses that are the largest businesses.

The Securities Division categorized each survey response based on whether it came from a small business, or whether it represented the ten percent of businesses that were the largest businesses that responded. The two categories were then compared to each other. Generally, the survey results tended to show that the increased costs per employee of small businesses were disproportionately greater than the increased costs per employee of the largest businesses.

The results may be impacted by the fact that the survey pool included both persons/companies that file Rule 506 notice filings and attorneys/paralegals that advise Rule 506 notice filers. The respondents that qualified as small businesses were comprised of issuers, law firms, and compliance firms with a small number of employees. Meanwhile, the largest ten percent of businesses surveyed were international law firms, with thousands of employees. The expenses to comply with the proposed rule amendments would naturally tend to be higher for a small business issuer that is likely filing a limited number of notice filings in a limited number of states, and may incur the EFD system use fee. They may also rely on legal and accounting services. In contrast, large law firms are merely assisting issuers in preparing or filing the notices. When surveyed, several respondents that were larger law firms indicated that electronic filings are more cost effective than paper filings, the savings of which may be passed onto these issuers.

The following chart compares the average cost increase per employee associated with the proposed rule amendments for both the largest 10% of businesses required to comply and small businesses. Small businesses are defined as 50 or fewer employees. The largest 10% of businesses were likewise determined by the number of employees. These charts include only data from respondents who provided quantitative answers to cost categories (including \$0) and disclosed the number of employees or independent contractors the respondent had. For example, one respondent indicated a “small amount” of additional professional services costs would be incurred, and therefore was not included in calculating the average figures presented below. Unlike the table of increased costs per employee displayed above, the tables below express per-employee averages for *all* small businesses, and *all* of the ten percent of the largest businesses, regardless of whether they estimated increases or not.

For those that simply indicated the EFD system use fees would result in increased administrative costs, but did not provide quantitative estimates, the Securities Division calculated these costs based on the number of new and amended EFD filings the respondent estimated that it would make per year, multiplied by \$155, and included this figure in arriving at the average administrative cost increase per employee.

<b>Average Cost Increase Per Employee – Comparison of Small Business and Largest 10% of Businesses</b>					
	Professional Services	Equipment	Supplies	Labor	Administrative
Small Businesses	\$184.00	\$7.60	\$0.92	\$31.08	\$38.22
Largest 10%	\$0.00	\$0.00	\$0.00	\$0.02	\$0.00

*Comparison of Lost Sales or Revenue*

In their survey responses, the largest 10% of businesses indicated that they would not lose any sales or revenue as a result of the proposed rule amendments. In contrast, one (1) small business indicated that it would loss sales or revenue in the amount of \$10,000 because of the draft rules, averaging to an amount of \$5,000 of lost revenue per employee. However, this same respondent indicated that it has difficulties facilitating ACH payments as a Canadian company, which we believe can be remedied without substantial expense.

### *Comparison of addition or elimination of jobs*

None of the respondents indicated that the proposed rule amendments would cause them to add any jobs. However, one (1) small business indicated that the proposed rule amendments might cause its business to eliminate jobs, and estimated that one (1) job might be eliminated. However, this same respondent indicated that it has difficulties facilitating ACH payments as a Canadian company, which we believe can be remedied without substantial expense. In contrast, 60 (95% of all respondents) respondents indicated that the proposed rule would not cause their businesses to eliminate any jobs, which includes all of the 10% largest businesses.

### **Steps taken by the Department under RCW 19.85.030(2) to reduce the costs of the proposed rule on small businesses, or reasonable justification for not doing so, addressing the specified mitigation steps.**

The Securities Division carefully considered all of the survey responses submitted, as well as a number of potential methods to reduce the impact of the proposed rule amendments on small businesses. Based on the survey results discussed above, the Securities Division determined not to make any modifications to its proposed rule amendments. We discuss the methods considered and the reasons for not making modifications to the proposed rule amendments below.

#### *Reducing, modifying, or eliminating substantive regulatory compliance*

The Securities Division received several comments in its economic impact survey which indicated that the proposed rule amendments may increase costs to comply. However, the overwhelming number of survey respondents indicated that the proposed rule amendments impose no additional costs. Several respondents even indicated that it would save them time and money to make filings through the EFD system. Indeed, since the creation of the EFD system, the Securities Division has heard informal feedback from state securities regulators, filers, and other interested parties that the electronic filing system has streamlined the process to file and process such documents. The Securities Division believes that mandating filings through the EFD system will ultimately save printing, packaging, and mailing costs, which will result in cost and time efficiencies. It is important to note that many notices that are filed in hard copy are submitted by overnight courier at significant expense to ensure timely submission. With electronic filing, filings are made in a matter of minutes and avoid the expense of overnight couriers.

Although the EFD system charges a separate per-offering system use fee, the Securities Division notes that smaller businesses will only incur the one-time system use fee in connection with offerings to raise capital, which are unlikely to occur with any frequency. In addition, the time saved by attorneys who file on behalf of issuers can be expected to be passed onto those issuers.

Lastly, the Securities Division notes that it issues acknowledgments to these hard copy Rule 506 notice filings, and in certain instances, may issue follow-up correspondence. The submission of paper notice filings requires the Securities Division to manually receive, process and scan the filings, which may result in delays to the filer receiving any follow-up correspondence or an acknowledgment of the filing itself. Requiring filings to be made through the EFD system will eliminate inefficiencies and result in a streamlined process for both filers and the Securities Division. Issuers can confirm the receipt of the filing through EFD without requiring an acknowledgment from the Division. Accordingly, the Securities Division made no changes to the proposed rule amendments.

#### *Simplifying, reducing, or eliminating recordkeeping and reporting requirements*

The proposed rule amendments would only impact the manner in which Rule 506 notice filings are made with the Securities Division. As such, there are no recordkeeping or reporting requirements to simplify, reduce, or eliminate. Based on feedback received from survey respondents, it appears that switching to electronic submissions through the EFD system may decrease costs and increase efficiencies by eliminating printing, packaging, and the mailing of separate paper notice filings.

#### *Reducing the frequency of inspections*

The Securities Division does not inspect or otherwise examine the filers who submit Rule 506 notice filings. Rather, the primary responsibility of issuers making offerings in reliance on federal Rule 506 is to file notice of such offering and to pay the filing fee with the Securities Division. Accordingly, the Securities Division is unable to reduce the frequency of inspections.

#### *Delaying compliance timetables*

The Securities Division will allow filers and other interested persons adequate time to adjust to the proposed rule amendments through existing processes, including following the timing and notice procedures required in connection with proposed rulemaking. The Securities Division understands that it may take time for filers to familiarize themselves with the EFD system, or set up accounts to facilitate ACH payments, and that this may require input from attorneys or accountants. The Securities Division will publish notice on its website, distribute such notices to interested persons, and offer assistance to filers that have

difficulties navigating the EFD system. In addition, the Securities Division is considering implementing a limited grace period in which it will continue to accept paper filings after the proposed rule amendments become effective.

#### *Reducing or modifying fine schedules for noncompliance*

There are no fines associated with a filer's failure to comply with the proposed rule amendments. However, the Securities Division is also considering implementing a limited grace period in which it will continue to accept paper filings after the proposed rule amendments become effective.

#### *Any other mitigation techniques*

Because the proposed rule amendments may have an increased impact on small businesses, the Securities Division determined to take additional mitigation steps to reduce overall burden of compliance. The Securities Division outlines these steps below.

First, in connection with the proposed rule amendments, the Securities Division will publish and distribute notice of proposed rule-making, and adoption of proposed amendments, to its interested persons list and to those who have made Rule 506 filings in the most recent three (3) years. The Securities Division will also publish notice of our rulemaking on our website, and further revise our website to add a direction to file through the EFD system, wherever Rule 506 offerings are discussed.

The Securities Division will also offer support to filers navigating the EFD system. If filers have questions regarding the EFD system, or its requirements, the Securities Division will endeavor to provide answers to such questions, or will direct the filer to the appropriate EFD system administrator. The Securities Division will also direct filers to the Frequently Asked Questions section of the EFD website. The company that developed the EFD system also provides a user helpdesk that is available from 9 a.m. to 6 p.m. eastern time, and the Securities Division will take care to ensure that filers are aware of this resource.

The Securities Division is also considering a limited grace period in which it will continue to accept paper filings after the proposed rule amendments become effective. If the Securities Division receives paper filings during this grace period, then we will notify the filer of the new filing requirements and accept the paper filing.

Beyond the steps outlined above, the Securities Division does not believe that it can reduce costs further.

#### **How the Department will involve small businesses in rule development**

Since the beginning of the rulemaking process, the Securities Division has involved interested persons, including small businesses, in the development of the proposed rules.

On March 6, 2018, the Securities Division filed a Preproposal Statement of Inquiry (CR-101) concerning the rulemaking. The Securities Division distributed the CR-101 notice to its interested persons list for securities registration matters. This group of recipients included many small businesses and those that advise small businesses. The CR-101 notice invited interested persons to participate in the rulemaking process by submitting comments to the Securities Division.

The Securities Division next prepared a survey to determine the economic impact of the proposed rule amendments. The survey, along with a copy of the draft proposed amendments, was sent to a survey pool consisting of every person that had made a Rule 506 notice filing in the last three (3) years. The Securities Division reasoned that these persons might be likely to rely on Rule 506 exemptions in the future, or file amendments or renewals to current Rule 506 notice filings. In addition, the Securities Division reasoned that this group might have current insights about the impact of the proposed rule amendments on small businesses. The Securities Division will continue to seek the feedback of interested parties as the rulemaking process continues.

#### **A list of the industries that will be required to comply with the rule**

Companies electing to conduct securities offerings in reliance on federal Rule 506 in this state will be required to comply with the proposed rule amendments, *i.e.*, file notices of such offerings through the EFD system. Similarly, attorneys and/or paralegals that elect to assist issuers with making such filings will likewise be required to comply with the proposed rule amendments.

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: Michelle Webster, Esq.

Address: 150 Israel Road, SW, Tumwater, WA 98501

Phone: 360-902-8736

Fax: 360-902-0524  
TTY: 360-664-8126  
Email: michelle.webster@dfi.wa.gov  
Other:

**Date:** 10/9/19

**Name:** Charlie Clark

**Title:** Director

