

NEBRASKA ADMINISTRATIVE CODE

Title 48 - DEPARTMENT OF BANKING AND FINANCE

Chapter 38 - INFORMATION REQUIREMENTS FOR THE SECTION 8-1111(23)
EXEMPTION

001 GENERAL.

001.01 This Rule has been promulgated pursuant to authority delegated to the Director in Section 8-1120 and Section 8-1111(23) of the Securities Act of Nebraska ("Act").

001.02 The Department has determined that this Rule regarding securities offerings is consistent with investor protection and is in the public interest.

001.03 The Director may, on a case-by-case basis, and with prior written notice to the affected parties, require adherence to additional standards or policies, as deemed necessary in the public interest.

001.04 The definitions in 48 NAC 2 apply to the provisions of this Rule, unless otherwise specified.

001.05 Federal statutes and rules of the Securities and Exchange Commission ("SEC") or the Financial Industry Regulatory Authority ("FINRA") referenced herein means those statutes and rules as amended on or before the effective date of this Rule. A copy of the applicable statutes or rules referenced in this Rule is available as an appendix at www.ndbf.nebraska.gov.

002 ADJUSTMENT OF EXEMPTION AMOUNT. The exemption amount in Section 8-1111(23) of the Act is adjusted to \$811,500.00.

003 CONDITIONS OF EXEMPTION. Transactions meeting the following conditions will be deemed exempt from the registration provisions of the Act:

003.01 The proceeds from all sales of securities by the issuer in any two-year period do not exceed the amount provided in Section 002, above, and at least eighty percent of the proceeds are used in Nebraska;

003.02 No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer;

003.03 The issuer is not disqualified under Section 007, below;

003.04 The issuer shall file a notice, as specified in Section 004, below, with the Department of Banking and Finance, P.O. Box 95006, Lincoln, Nebraska 68509-5006, no later than fifteen business days prior to any sales for which an exemption under this Rule is claimed;

003.05 The issuer shall, within thirty days after the completion of the offering, file with the Director a statement setting forth the number of investors, the total dollar amount raised, and disclosure of the use of proceeds; and

003.06 The offering shall be conducted in compliance with the federal "Intrastate Offers and Sales" exemption, 17 CFR 230.147, or the federal "Intrastate Offering Exemption", 17 CFR 230.147A.

004 CONTENTS OF NOTICE. The notice submitted prior to making any sales in reliance on this exemption shall include the following information:

004.01 The name, address, telephone number, and email address of the issuer;

004.02 The name and address of each person holding direct or indirect ownership or beneficial interest in the issuer;

004.03 The dollar amount of the offering;

004.04 The type of security being offered;

004.05 The manner in which purchasers will be solicited; and

004.06 A statement that the conditions of this exemption will be met, signed under oath or affirmation by an authorized representative of the issuer.

004.07 Every notice and disclosure document filed with the Director shall be signed by a person duly authorized by the issuer.

004.08 The Director may require the filing of additional information if the Director deems it material to the offering.

005 DELIVERY OF DISCLOSURE DOCUMENT. The issuer shall give each prospective investor a copy of the offering disclosure document at least twenty-four hours prior to the investor signing any agreement to purchase the securities or paying any consideration for the securities. The offering disclosure document shall include:

005.01 A description of the proposed use of the proceeds of the offering;

005.02 The name of each partner or limited liability company member of the issuer, officer, director, or person occupying a similar status of the issuer or performing similar functions for the issuer; and

005.03 The financial condition of the issuer.

006 LIMITATIONS ON AVAILABILITY. The exemption provided by this Rule is available only to an issuer of the securities. The exemption is not available for:

006.01 Affiliates of the issuer or any other person for resale of the issuer's securities;

006.02 Transactions by existing security holders of the issuer;

006.03 Offerings, including “blind pool offerings”, for which the specific business to be engaged in, the specific property to be acquired, or the specific use of the offering proceeds by the issuer is not identified.

007 DISQUALIFICATION FACTORS. This exemption is not available for use by an issuer if the issuer, or any partner or limited liability company member of the issuer, any officer, director, or any person occupying a similar status of the issuer, any person performing similar functions for the issuer, or any person holding a direct or indirect ownership interest in the issuer or in any way a beneficial interest in such sale of securities of the issuer is subject to a disqualification factor enumerated in Section 8-1111(23)(c) of the Act.

008 DISCLOSURE. Nothing in this Rule is intended to, or should be construed as, in any way relieving issuers or persons acting on behalf of issuers from providing to prospective investors disclosure adequate to satisfy the provisions of Section 8-1102(1) of the Act.

009 AVAILABILITY OF EXEMPTION.

009.01 Offers and sales which are exempt under this Rule may not be combined with offers and sales exempt under any other Rule or Section of the Act; however, nothing in this limitation shall act as an election. Should the offer and sale fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.

009.02 The exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this Rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this Rule.

010 EFFECTIVENESS. A notice of exemption filed pursuant to Section 8-1111(23) of the Act remains effective until the earliest of the following events:

010.01 the amount provided in Section 002, above, in proceeds is raised;

010.02 Two years from the date of the first sale; or

010.03 The issuer files the statement required by Section 002.05, above.

011 BURDEN OF PROOF. In any proceeding involving this Rule, the burden of proving the exemption from registration is upon the person claiming the exemption.

012 INTEGRATION. All offers or sales that are part of the same offering must meet all of the terms and conditions of this Rule. Offers and sales that are made more than six months before the start, or more than six months after completion, of an offering made in reliance on this Rule, will not be considered part of that offering, provided no offers or sales of securities are made by or for the issuer during such periods. 48 NAC 41 identifies the factors that will be considered in determining whether offers and sales should be integrated.

013 CURE ORDER. An issuer which fails to file the notice at least fifteen business days prior to any sale made in reliance on this exemption may request the late filing be cured by complying with 48 NAC 19.