

NEBRASKA ADMINISTRATIVE CODE

Last Issue Date: April 7, 1999

Title 48 - DEPARTMENT OF BANKING AND FINANCE

Chapter 18 - NEBRASKA INTRASTATE ISSUER EXEMPTION

001 GENERAL.

001.01 This Rule has been promulgated pursuant to authority delegated to the Director in Section 8-1111(20) and Section 8-1120(3) of the Securities Act of Nebraska ("Act").

001.02 The Department has determined that this Rule regarding intrastate 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 shall apply to the provisions of this Rule, unless otherwise specified.

002 CONDITIONS OF EXEMPTION. Transactions meeting the conditions of this Rule will be deemed exempt from the registration provisions of the Act.

002.01 The offer or sale of securities pursuant to this Rule may be made only to Nebraska residents. No offers or sales may be made to persons who are not residents of Nebraska nor may offers or sales be made outside Nebraska.

002.02 An issuer relying on the Rule must have, both before and upon completion of the offering, its principal office and more than fifty percent (50%) of its employees located in Nebraska.

002.03 No commission, finder's fee, or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser or in connection with sales of securities in reliance on this Rule, unless such person is registered in this state as a broker-dealer or issuer-dealer, or agent of such.

002.04 The offering price for the securities (and the exercise price, if the securities offered are options, warrants or rights for common stock, and the conversion price if the securities are convertible into common stock) must be equal to or greater than five dollars per share or unit offered.

002.05 The total aggregate amount of proceeds collected in a twelve-month period shall not exceed \$750,000.

002.06 At least eighty percent (80%) of the net proceeds from the sale of the offering shall be used in Nebraska.

002.07 The issuer shall file a notice, as specified in Section 003 below, with the Department of Banking and Finance, P.O. Box 95006, Suite 311, 1200 "N" Street, Lincoln, Nebraska 68509-5006, no later than twenty (20) days prior to any sales for which an exemption under this Rule is claimed. Such notice shall be effective for a period of twelve (12) consecutive months.

002.08 The issuer shall, within thirty (30) days after the completion of the offering, file with the Department a statement indicating the number of investors, the total dollar amount raised, and disclosure of the use of proceeds.

002.09 The issuer must have reasonable belief that the securities purchased are taken for investment. Investment intent may be manifested by, but is not limited to, a restriction which shall be stated on the face of the security that it shall be held by the purchaser until the earlier of two years from the date of purchase from the issuer or the date the issuer of the securities becomes subject to the reporting requirements of Sections 13 or 15(d) of the Securities Exchange Act of 1934.

003 CONTENTS OF NOTICE.

003.01 The notice shall include the following information:

003.01A The name and address of the issuer;

003.01B The names and addresses of the broker-dealer or issuer-dealer, and any individuals selling or promoting the offering;

003.01C The business in which the issuer is to be engaged;

003.01D The type of security being issued (common stock, limited partnership interests, debentures, etc.);

003.01E The total dollar amount of such securities;

003.01F The date of the first sale of a security in reliance on the exemption, if applicable;

003.01G The Securities Offering Disclosure Document ("Form SODD");

003.01H The financial statements prepared in accordance with Section 005 below;

003.01I A representation stating that all of the conditions of Section 8-1111(20) have been or will be met by the issuer; and

003.01J A check in the amount of two hundred dollars (\$200), payable to "Nebraska Department of Banking and Finance."

003.02 Every notice and disclosure document filed with the Department shall be manually signed by a person duly authorized by the issuer.

003.03 The Director may require the filing of additional information if he or she deems it material to the offering.

004 DELIVERY OF DISCLOSURE DOCUMENT. A copy of the offering disclosure document and the financial statements prepared in accordance with Section 005 shall be given to prospective investors at least 24 hours prior to signing any agreement to purchase the securities or paying any consideration for the securities.

005 FINANCIAL REPORTING REQUIREMENTS.

005.01 The issuer shall provide the following financial statements for itself and its consolidated subsidiaries, if applicable:

005.01A A balance sheet as of the end of the most recent fiscal year, or, as of a date within 120 days of the date of the first sale, if the issuer has been in existence for less than one fiscal year; and

005.01B An income statement for the immediate past fiscal year or such shorter period as the issuer (including predecessors) has been in existence.

005.01C If the issuer has not conducted significant operations, a statement of receipts and disbursements shall be included in lieu of a statement of income.

005.02 Except as otherwise provided, the financial statements shall be:

005.02A Prepared in accordance with generally accepted accounting principles and audited by an independent accountant;
or

005.02B Reviewed by an independent accountant.

005.02B1 financial statements shall be accompanied by an accountant's review report signed by the independent accountant after completion of his or her review performed in accordance with the standards prescribed by the American Institute of Certified Public Accountants.

005.02B2 The review shall be dated within 120 days of the date of the first sale.

005.02B3 If the Director deems it to be in the public interest and necessary for the protection of investors, audited financial statements will be required.

005.03 An issuer with no prior operating history may elect not to have an accounting review prepared by an independent accountant if the issuer deems the information not material to an investor's understanding of the issuer, its business, and the securities being offered.

005.03A Financial statements which are neither audited nor subjected to an accounting review must be accompanied by an affirmative representation by the issuer, signed by an officer, director or person occupying a similar position, that the statements provide all material information relating to the financial condition of the issuer and are true and accurate to the best of the signer's knowledge and belief.

005.03B All financial statements shall be prepared in accordance with generally accepted accounting principles.

005.04 The issuer shall provide the financial statement required by Section 005.01 above in connection with income producing assets and/or income producing real property to be purchased with the proceeds of the offering by the issuer.

005.05 Upon request by the issuer, the Director may, where consistent with the protection of investors, permit the omission of one or more of the statements required under this Rule, and the inclusion, in substitution thereof, of appropriate statements with financial information having comparable relevance to an investor in determining whether he or she should invest in the program.

006 CORRECTION. If, during the offering period under this Rule, there shall occur an event which would materially affect the issuer, its prospects or properties, or otherwise materially affect the accuracy or completeness of the information contained in the disclosure document, the disclosure document shall be promptly revised to reflect such event and filed with the Department. The revised document shall be used for all sales of securities claiming the exemption thereafter. All investors who have purchased in this offering must be given a copy of the revised document with the option of affirming their investment decision or receiving their money back.

007 SOLICITATION RESTRICTION. Neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following:

007.01 Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio;

007.02 Any advertisement, article, notice, spam or junk electronic mail, or other general communication placed on, or delivered by means of, the Internet; and

007.03 Any seminar or meeting to which attendees have been invited by any general solicitation or general advertising.

008 MINIMUM OFFERING AMOUNT. The issuer must specify in the disclosure document the minimum amount of funds necessary to achieve the results outlined in the disclosure document. This shall be the minimum amount of funds to be raised through the offering.

009 ESCROW REQUIREMENT. The issuer must establish a separate interest bearing account with a financial institution office located in Nebraska for all funds received from sales of securities under this exemption until at least the minimum amount has been raised. If the minimum amount of funds is not raised within 12 months of the beginning of the offering, then all funds, including any interest thereon, shall be promptly returned to the investors, and the issuer shall immediately notify the Department of such action.

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

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

010.02 Transactions by existing security holders of the issuer.

010.03 An issuer which is an investment company subject to the Investment Company Act of 1940, or subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934.

010.04 Debt offerings unless the issuer can demonstrate reasonable historical ability to service its debt.

010.05 Offerings which are "blind pool offerings" or other offerings for which the specific business to be engaged in or specific property to be acquired by the issuer is not identified.

011 **DISQUALIFICATION FACTORS.** This Rule shall not be available for the securities of any issuer, if the issuer or any of its officers, directors, general partners, managing members, beneficial owners of ten percent (10%) or more of any class of its equity securities promoters or any selling agents of the securities to be offered, or any officer, director, managing member, or partner of such selling agent:

011.01 Has filed a registration statement which is the subject of a currently effective stop order entered pursuant to any federal or state securities laws within five years prior to the commencement of the offering;

011.02 Has been convicted within five years prior to the commencement of the offering of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud;

011.03 Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator or the Securities and Exchange Commission within five years prior to the commencement of the offering;

011.04 Is subject to any federal, state, or foreign governmental agency administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the commencement of the offering;

011.05 Is currently subject to any state's administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities of the issuer; or

011.06 Is currently subject to any order, judgment, or decree of any court of competent jurisdiction which temporarily or preliminarily restrains or enjoins, or which was entered within five years prior to the commencement of the offering, and permanently restrained or enjoined such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state, or with the Securities and Exchange Commission.

011.07 Any disqualification caused by this Section may be waived if the Director determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied.

011.08 For purposes of this Section, beneficial ownership means the power to vote or direct the vote and/or the power to dispose or direct the disposition of such securities.

012 DISCLOSURE. Nothing in this exemption 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 of the Act.

013 AVAILABILITY OF EXEMPTION.

013.01 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.

013.02 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.

014 BURDEN OF PROOF. In any proceeding involving this Rule, the burden of proving the exemption or any exception from a definition or condition is upon the person claiming it.

015 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. The Department's Interpretative Opinion Number 1 identifies the factors that will be considered in determining whether offers and sales should be integrated.

016 CURE ORDER. An issuer which fails to file the notice at least twenty (20) days prior to any sale made in reliance on this exemption may request the late filing be cured by complying with 48 NAC 19.