

NEBRASKA ADMINISTRATIVE CODE

Last Issue Date: April 7, 1999

TITLE 48 - DEPARTMENT OF BANKING AND FINANCE

Chapter 21 – UNDERWRITING EXPENSES, SELLING EXPENSES AND SELLING SECURITY HOLDERS

001 GENERAL.

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

001.02 The Department has determined that this Rule relating to underwriting expenses, selling expenses and selling security holders 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 persons, 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 LIMITATION ON UNDERWRITING EXPENSES AND SELLING SECURITIES. An offer or sale of securities may be disallowed if the direct and indirect selling expenses related to the public offering exceed:

002.01 Seventeen percent (17%) of the gross proceeds on public offerings of \$7,500,000 or less;

002.02 Fifteen percent (15%) of the gross proceeds on public offerings that exceed \$7,500,000.

002.03 Selling expenses include but are not limited to:

002.03A Commissions to underwriters or broker-dealers;

002.03B Non-accountable fees or expenses to be paid to the underwriter or broker-dealer;

002.03C Underwriter's warrants, which shall be valued at twenty percent (20%) of the public offering price, unless a public market exists for the issuer's warrants;

002.03D Future registration rights of underwriter's options, warrants, or shares at the issuer's expense, which shall be valued at one percent (1%) of the public offering;

002.03E Rights of first refusal, which shall be valued at one percent (1%) of the public offering;

002.03F Solicitation fees, which shall be valued at the lesser of actual cost or one percent (1%) if the fees are payable within one year of the offering;

002.03G Financial consulting or financial advisory agreements or any other similar type of agreement or fees, however designated, which shall be valued at actual cost;

002.03H Due diligence expenses;

002.03I Attorneys' fees for services in connection with the issue and sale of the securities and their qualification for sale under applicable laws and regulations;

002.03J Auditors' and accountants' fees;

002.03K The cost of printing prospectuses, circulars and other documents required to comply with securities laws and regulations;

002.03L Charges of transfer agents, registrars, indenture trustees, escrow holders, depositories, engineers, appraisers and other experts;

002.03M The cost of authorizing and preparing the securities, including issue taxes and stamps; and

002.03N Other expenses incurred in connection with the public offering of securities as determined by the Director.

003 EXPENSES PAID BY SELLING SECURITY HOLDERS. A public offering or sale of securities, that includes selling security holders, may be disallowed unless:

003.01 The selling security holders pay a pro rata share of all selling expenses that are the result of the inclusion of their shares in the public offering; and

003.02 The prospectus or offering document discloses the amount of selling expenses which the selling security holders shall pay.

003.03 With the exception of underwriter's or broker-dealer's compensation, the provisions of this Section shall not apply if:

003.03A The security holders have a written agreement with the issuer, that was entered into at least one year prior to the filing of the public offering, whereby the issuer has agreed to pay all of the selling security holders' selling expenses;

003.03B The agreement was arrived at through arm's-length negotiations and approved by a majority of the members of the issuer's board of directors who do not have an interest in the transactions; and

003.03C The selling securities holders have held their securities for at least two years prior to the filing of the public offering.

004 WAIVER OF RULE. While applications not conforming to the standards contained herein shall be looked upon with disfavor, where good cause is shown, certain provisions of this Rule may be waived by the Director.