

NEBRASKA ADMINISTRATIVE CODE

Last Issue Date: April 7, 1999

TITLE 48 - DEPARTMENT OF BANKING AND FINANCE

Chapter 24 - LOANS AND OTHER MATERIAL AFFILIATED TRANSACTIONS

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 loans and other material affiliated transactions 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    INDEPENDENT DIRECTORS.

002.01 Where there have been or will be loans and other material affiliated transactions as described in this Rule, the offer or sale of securities may be disallowed by the Director unless the issuer has, and represents in the prospectus or offering document that it will maintain, at least two independent directors on its board of directors.

002.02 In the event the issuer has only two independent directors on its board of directors, both independent directors must be disinterested in and

approve loans and other material transactions covered by Sections 003.02, 005.01, 006.01 and 006.02 below.

003 LOANS. The offer or sale of securities may be disallowed by the Director if the issuer or its affiliates will have loans outstanding after the offering to, or intends to make loans to or loan guarantees on behalf of, its promoters, other than:

003.01 Advances to officers, directors, and employees for travel, business expense, and similar ordinary operating expenditures;

003.02 Loans or loan guarantees made for the purchase of an issuer's securities by its officers, directors, and employees, and loans for relocation of officers, directors, and employees, provided the loans or loan guarantees were approved by a majority of the independent directors of the issuer's board of directors who did not have an interest in the transactions and who had access, at the issuer's expense, to issuer's or independent legal counsel; or

003.03 Loans made by an issuer or its affiliates whose primary business is that of making loans, provided that:

003.03A The loans will be evidenced by promissory notes naming the lender as payee;

003.03B The loans will bear interest at rates which are comparable to those normally charged by other commercial lenders for similar loans made in the lender's locale;

003.03C The loans will be repaid pursuant to appropriate amortization schedules and contain default provisions comparable to those normally used by other commercial lenders for similar loans made in the lender's locale;

003.03D The loans will be made only if credit reports and financial statements show the loans to be collectible and the borrowers are satisfactory credit risks, in light of the nature and terms of the loans and other circumstances;

003.03E The loans meet the loan policies normally used by other commercial lenders for similar loans made in the lender's locale;

003.03F The purposes of the loans and the disbursements of proceeds will be reviewed and monitored in a manner comparable to that normally used by other commercial lenders for similar loans made in the lender's locale; and

003.03G The loans will not violate the requirements of any banking or other financial institution regulatory authority.

004    REPAYMENT OF LOANS. Except for loans described in Section 003 above, all loans existing at the time of the application for registration shall be repaid in full prior to the offering. The Director may waive this requirement if:

004.01 Repayment of the loans will be made pursuant to appropriate amortization schedules; or

004.02 Any portion of the offering is made on behalf of a promoter and the promoter undertakes to immediately repay the loans from the proceeds of the offering.

005    MATERIAL TRANSACTIONS. The offer or sale of securities may be disallowed by the Director if the issuer or its affiliates have engaged in other material transactions with promoters, unless the transactions were on terms no less favorable to the issuer or its affiliates than those that are generally available from unaffiliated third parties, and

005.01 For ongoing transactions, approved by a majority of the issuer's independent directors who did not have an interest in the transactions and who had access at the time of ratification, at the issuer's expense, to issuer's or independent legal counsel; or

005.02 For past transactions which are now closed, if there were less than two disinterested independent directors at the time of the transactions, the prospectus discloses that the issuer lacked sufficient disinterested independent directors to approve the transactions.

006    DISCLOSURE. The issuer shall disclose in the prospectus or offering document whether or not it or its affiliates have made or will make loans to, have made or will make loan guarantees on behalf of, or have engaged or will engage in material transactions with promoters and the terms and details relating thereto. If material affiliated transactions or loans have been made, or may be made, the Director may require the following representations to appear in the prospectus or offering document:

006.01 All future material affiliated transactions and loans will be made or entered into on terms that are no less favorable to the issuer than those that can be obtained from unaffiliated third parties; and

006.02 All future material affiliated transactions and loans, and any forgiveness of loans, must be approved by a majority of the issuer's independent directors who do not have an interest in the transactions and who have access, at the issuer's expense, to issuer's or independent legal counsel.

007 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.