

NEBRASKA ADMINISTRATIVE CODE

Title 48 - DEPARTMENT OF BANKING AND FINANCE

Chapter 27 – SPECIFICITY REGARDING USE OF PROCEEDS

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 specificity in the use of proceeds 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 CONDITIONS. A registration statement not complying with the requirements of this Rule may be denied registration by the Director.

003 PROCEEDS DISCLOSURE. The issuer must disclose in the offering document for both the minimum and maximum amounts proposed, if applicable, the percentages and dollar amounts of the following, in a tabular form:

003.01 The proceeds the issuer expects to receive from the offering;

003.02 The purposes for which the issuer will use the proceeds;

003.03 The estimated amount to be used for each purpose; and

003.04 The order or priority in which the issuer will use the proceeds for the purposes stated.

004 DISCLOSURE OF OTHER SOURCES OF FUNDS. The issuer must disclose in the offering document:

004.01 The amounts of any funds to be raised from other sources to achieve the purposes stated;

004.02 The sources of any additional funds; and

004.03 Whether the sources are firm or contingent and, if contingent, an explanation of the contingency.

005 **DISCLOSURE OF PROPERTY ACQUISITION.**

005.01 If the issuer will use any part of the proceeds to acquire any property, including goodwill, other than in the ordinary course of business, the issuer must disclose in the offering document:

005.01A The names and addresses of the vendors;

005.01B The purchase price;

005.01C The names of any persons who have received commissions in connection with the acquisition; and

005.01D The amounts of any commissions and any other expense in connection with the acquisition, including the cost of borrowing money to finance the acquisition.

005.02 If any part of the proceeds will be used to acquire property or a business that is not yet identified, the issuer must disclose in the offering document:

005.02A The type of property or business the issuer is seeking;

005.02B The impact that the anticipated acquisition will have on the issuer's core business; and

005.02C The issuer's acquisition criteria.

006 **DISCLOSURE OF DEBT REPAYMENT.** If the issuer plans to use any material part of the proceeds to discharge indebtedness, the issuer must disclose in the offering document:

006.01 The terms of the indebtedness, including interest rate;

006.02 A statement of whether the indebtedness includes unpaid salaries to promoters; and

006.03 The use of proceeds from the indebtedness that was incurred.

007 **FLEXIBILITY IN USE OF PROCEEDS.** The issuer must not reserve more than fifteen percent of the proceeds for working capital or general corporate purposes, or for any other unspecified use. If the issuer's business plans require flexibility in the use of unspecified proceeds, the issuer must:

007.01 Disclose all potential uses of the proceeds with qualifying language that the uses may be subject to change; and

007.02 Indicate the circumstances that may lead to reallocation of the proceeds and the potential areas of such reallocation.

008 **SUFFICIENCY OF FUNDS.** The issuer must demonstrate that the offering proceeds, together with all other sources of financing currently available to the issuer, are

sufficient to sustain the issuer's proposed activities. If the proceeds are insufficient to sustain the issuer's activities for at least twelve months following the offering, the appropriate risk disclosure must be included in the offering document.

009 IMPOUNDMENT OF PROCEEDS. In the event the offering is not firmly underwritten, the issuer must set a minimum amount of proceeds to be raised consistent with the business plan set forth in the offering document.

009.01 The issuer or any other person that receives the proceeds from the sale of the securities must deposit the proceeds from the sale of the securities in an interest-bearing escrow or trust account with an impoundment agent and shall comply with the requirements set forth in 48 NAC 25, Sections 003, 004 and 005.

009.02 The offering document must disclose if officers, directors or other promoters have the right to purchase shares for the purpose of meeting the impound requirements.

010 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.