

NEBRASKA ADMINISTRATIVE CODE

Title 48 - DEPARTMENT OF BANKING AND FINANCE

Chapter 28 - UNSOUND FINANCIAL CONDITION

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 the offering of securities by issuers in unsound financial condition 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 UNSOUND FINANCIAL CONDITION. An issuer shall be deemed to be in unsound financial condition if the financial statements contain:

002.01 A footnote to the financial statements or an explanatory paragraph in the independent auditor's report regarding the issuer's ability to continue as a going concern; and

002.02 One of the following:

002.02A An accumulated deficit;

002.02B Negative shareholder equity;

002.02C An inability to satisfy current obligations as they come due; or

002.02D Negative cash flow (or revenues not being generated by operations).

002.03 If the application for registration contains audited financial statements which were issued more than ninety days from the date of application, the accompanying interim unaudited financial statements are subject to the conditions of this Rule.

003 CONDITIONS.

003.01 An application for registration by an issuer in unsound financial condition may be denied by the Director, if the Director finds that such denial is necessary for investor protection and is in the best interests of the public.

003.02 An application for registration by an issuer in unsound financial condition may be registered by the Director if the chief financial officer of the issuer provides pro forma financial data acceptable to the Director that:

003.02A Demonstrate that the issuer's financial condition will improve either as a direct result of the offering proceeds, or as a proximate result of the offering proceeds (as part of a long term business plan);

003.02B Demonstrate when profitability is expected to occur; and

003.02C Are supported with documentation of, and the bases for, any assumptions.

004 DISCLOSURE. In addition to satisfying the requirements of Section 003.02 above, the issuer must:

004.01 Include prominent disclosure that the issuer is considered to be in unsound financial condition, and that persons should not invest unless they can afford to lose their entire investment; and

004.02 Disclose the following risk factors, as applicable:

004.02A The presence of an explanatory paragraph in the independent auditor's report;

004.02B The issuer's lack of revenues from operations, and the means by which the issuer has been financing its operations;

004.02C The presence and amount of any accumulated deficit;

004.02D The presence and amount of any negative shareholders' equity; and

004.02E The need for future financing.

005 SUITABILITY STANDARDS. In addition to the other requirements of this Rule, the Director may impose suitability standards or limit the sales of securities to accredited investors in lieu of, or in addition to, the requirements of Sections 003.02 and 004 above.

005.01 The imposition of any suitability standards does not relieve a broker-dealer or agent from the responsibility of making an independent determination of suitability required under industry standards.

005.02 Unless the Director determines that the risks associated with the offering would require different standards, public investors shall have one of the following:

005.02A A minimum annual gross income of seventy thousand dollars (\$70,000.00) and a minimum net worth of seventy thousand dollars (\$70,000.00); or

005.02B A minimum net worth of two hundred fifty thousand dollars(\$250,000.00).

005.02C Net worth shall be determined exclusive of home, home furnishings, and automobiles.

006 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.