

NEBRASKA ADMINISTRATIVE CODE

~~Title 48 – DEPARTMENT OF BANKING AND FINANCE~~

~~Chapter 17 – CONDITIONS AND INFORMATION REQUIREMENTS FOR THE
SECTION 8-1111(16) UNIFORM LIMITED OFFERING EXEMPTION~~

~~001 – GENERAL.~~

~~001.01~~ This Rule has been promulgated pursuant to authority delegated to the Director in Section 8-1111(16) and Section 8-1120(3) of the Securities Act of Nebraska (“Act”).

~~001.02~~ The Department has determined that this Rule relating to exemptions from registration 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.

~~001.05~~ Federal statutes and rules of the Securities and Exchange Commission (“SEC”) or the Financial Industry Regulatory Authority (“FINRA”) referenced herein shall mean those statutes and rules as amended on or before the effective date of this Rule. A copy of the applicable statutes or rule referenced in this Rule is attached hereto.

~~002 – CONDITIONS OF EXEMPTION.~~

~~002.01~~ Any offer or sale of securities offered or sold in compliance with the Securities Act of 1933, Regulation D, Rules 230.501 – 230.503, 230.505, and 230.507 – 230.508, 17 CFR 230.501-503, 17 CFR 230.505, and 17 CFR 230.507-508, which satisfies the following further conditions and limitations shall be deemed exempt from the registration provisions of the Act.

~~002.02~~ The issuer shall file the following with the Director within thirty days of the first sale made in Nebraska in reliance on the exemption contained in this Rule.

~~002.02A~~ — A SEC Form D notice manually signed by a person duly authorized by the issuer;

~~002.02B~~ — A copy of the disclosure statement given to investors in compliance with this Rule;

~~002.02C~~ — The date of the first sale of a security made in reliance on this exemption;

~~002.02D~~ — A check in the amount of two hundred dollars (\$200.00), payable to “Nebraska Department of Banking and Finance”;

~~002.01E~~ — A representation by an officer, director, general partner, managing member or legal counsel of the issuer that all of the conditions of Section 8-1111(16) of the Act have been or will be met; and

~~002.02F~~ — A consent to service of process 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 a Nebraska-registered agent of a Nebraska-registered broker-dealer or issuer-dealer.

~~003~~ — DISQUALIFICATION.

~~003.01~~ The exemption under this Rule shall not be available for the securities of any issuer if a party or interest described in the Securities Act of 1933, Regulation A, Rule 230.262, Section (a), (b) or (c), 17 CFR 230.262:

~~003.01A~~ — 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.

~~003.01B~~ — 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.

~~003.01C~~ — Is currently subject to an administrative enforcement order or judgment entered by any state securities administrator or the Securities and Exchange Commission within five years prior to the commencement of the offering.

~~003.01D~~ — 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.

~~003.01E~~ — Is currently subject to any states administrative 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.

~~003.01F~~ — Is 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.

~~003.02~~ The prohibitions of Section 003.01, above, shall not apply if the party or interest subject to the disqualification is duly licensed to conduct securities related business in the state in which the administrative order or judgment was entered against such party or interest.

~~003.03~~ Any disqualification caused by this section is automatically waived if the state which created the basis for disqualification, or the Director, determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

~~003.04~~ An offering involving debt securities or preferred stock cannot qualify under this Rule if the offering would be disallowed under 48 NAC 29 or 48 NAC 30.

~~004~~ — QUALIFICATION OF CERTAIN ISSUERS. An issuer offering securities pursuant to Regulation D, Rule 230.505, 17 CFR 230.505 can rely on such exemption only if the issuer:

~~004.01~~ Is not an investment company as defined by Section 3 of the Investment Company Act of 1940, 15 USC § 80-3; and

~~004.02~~ Is not a majority owned subsidiary of an issuer which does not meet the qualifications for use of this Rule as specified herein.

~~005~~ — 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 anti-fraud provisions of the Act.

~~006~~ — AVAILABILITY OF EXEMPTION.

~~006.01~~ 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, for any reason, 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.

~~006.02~~ This 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.

~~007~~ — BURDEN OF PROOF. In any proceeding involving this Rule, the burden of proving the exemption from registration is upon the person claiming the exemption.

~~008~~ — CURE ORDER. An issuer which fails to file a notice within thirty days of the first sale made in Nebraska in reliance on this exemption may request the late filing be cured by complying with 48 NAC 19.