

NEBRASKA ADMINISTRATIVE CODE

TITLE 48 — DEPARTMENT OF BANKING AND FINANCE

Chapter 31 — OPTIONS AND WARRANTS

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.

001.02 The Department has determined that this Rule relating to options and warrants 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 — UNDERWRITER'S COMPENSATION. Options or warrants may be issued to underwriters as compensation in connection with a public offering if the following conditions are met:

002.01 The underwriter is a managing underwriter.

002.02 The public offering is:

002.02A A firmly underwritten offering, or

002.02B A "minimum-maximum" offering, provided options or warrants may be issued in a "minimum-maximum" public offering only if:

002.02B1 The options or warrants are issued on a pro-rata basis;  
and

002.02B2 The "minimum" amount of securities has been sold.

~~002.03~~ The number of shares covered by underwriter's options or warrants does not exceed ten percent (10%) of the shares of common stock actually sold in the public offering.

~~002.04~~ The life of the options or warrants does not exceed a period of five years from the completion date of the public offering.

~~002.05~~ The options or warrants are not exercisable for the first year after the completion date of the public offering.

~~002.06~~ The exercise price of the options or warrants is at least equal to either:

~~002.06A~~ The public offering price plus a step-up of seven percent (7%) for each year that the options or warrants are unexercised (the seven percent (7%) step-up per year will commence one year from the completion date of the public offering) up to a maximum of one hundred twenty-eight percent (128%); or

~~002.06B~~ One hundred twenty percent (120%) of the public offering price.

~~002.07~~ Options or warrants may not be transferred, except:

~~002.07A~~ To partners of the underwriter, if the underwriter is a partnership;

~~002.07B~~ To officers and employees of the underwriter, who are also shareholders of the underwriter, if the underwriter is a corporation;

~~002.07C~~ To managing members of the underwriter, if the underwriter is a limited liability company; or

~~002.07D~~ By will, pursuant to the laws of descent and distribution, or by operation of law.

~~002.08~~ The warrant agreement may not allow for a reduction in the exercise price of the options or warrants resulting from the subsequent issuance of shares by the issuer except where such issuances are pursuant to:

~~002.08A~~ A stock dividend or stock split; or

~~002.08B~~ A merger, consolidation, reclassification, reorganization, recapitalization, or sales of assets.

~~003~~ — ~~INSTITUTIONAL INVESTORS.~~ Options or warrants may be granted to unaffiliated institutional investors in connection with loans if the following conditions are met:

~~003.01~~ The options or warrants are issued contemporaneously with the issuance of the loan;

~~003.02~~ The options or warrants are issued as the result of bona fide negotiations between the issuer and the unaffiliated institutional investor;

~~003.03~~ The exercise price of the options or warrants is not less than the fair market value of the issuer's shares of common stock underlying the options or warrants on the date that the loan was approved; and

~~003.04~~ The number of shares issuable upon exercise of the options or warrants multiplied by the exercise price thereof does not exceed the face amount of the loan.

~~004~~ — ~~ACQUISITIONS, REORGANIZATIONS, CONSOLIDATIONS AND MERGERS.~~ Options or warrants may be issued in connection with acquisitions, reorganizations, consolidations or mergers if:

~~004.01~~ The options and warrants are issued to persons who are not affiliates of the issuer; and

~~004.02~~ The earnings of the issuer at the time of grant and after giving effect to the acquisition, reorganization, consolidation or merger, would not be materially diluted by the exercise of the options or warrants.

~~005~~ — ~~EXERCISE PRICE.~~ Options and warrants may not be granted at an exercise price of less than eighty five percent (85%) of fair market value of the issuer's underlying shares of common stock on the date of grant.

~~006~~ — ~~TOTAL NUMBER OF OPTIONS AND WARRANTS.~~ The total number of options and warrants issued or reserved for issuance at the date of the public offering, excluding options and warrants exercisable at or above the public offering price, may not exceed:

~~006.01 Fifteen percent (15%) of the issuer's shares of common stock that will be outstanding upon completion of the public offering; or~~

~~006.02 Fifteen percent (15%) of the number of shares outstanding during the period the registration is in effect.~~

~~006.03 The number of options and warrants reserved for issuance may be disregarded if the issuer files an undertaking or states in the prospectus that the amount of outstanding options and warrants shall not exceed the above limitation during the period the registration is in effect.~~

~~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.~~

Effective Date: ~~April 7, 1999~~