

NEBRASKA ADMINISTRATIVE CODE

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

~~Chapter 33 – LIMITED PARTNERSHIPS~~

~~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 limited partnerships 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 – REQUIREMENTS~~—Certificates of interest or participation in limited partnerships shall conform to the provisions of this Rule and any other policies and requirements that may be adopted or approved by the Director with respect to a specific security or transaction or types of plans or programs.

~~002.01~~—Limited partnerships must comply with the applicable North American Securities Administrators Association (“NASAA”) Guidelines or Statements of Policy specified below, as adopted on the effective date of this Rule. A copy of each Guideline or Statement of Policy is available in the appendix to this rule at <http://www.ndbf.ne.gov/legal/title48.shtml> and are also contained in NASAA REPORTS published by Commerce Clearing House..

~~002.01A~~—The offer or sale of interests in a limited partnership or other business combination which will engage in real estate syndications may be deemed inconsistent with investor protection and not in the public interest if the offering does not comply with the provisions of NASAA’s Statement of Policy Regarding Real Estate Programs.

~~002.01B~~—The offer or sale of interests in a limited partnership or other business combination which will engage in oil or gas well drilling and exploration activities or the purchase of production from oil and gas wells may be deemed inconsistent with investor protection and not in the public interest if the offering does not comply with the provisions of NASAA’s Statement of Policy for the Registration of Oil and Gas Programs.

~~002.01C~~—The offer or sale of interests in a limited partnership or similar organizational form which will engage in cattle feeding operations may be deemed inconsistent with investor protection and not in the public interest if the offering does not comply with the provisions of NASAA’s Statement of Policy for the Registration of Publicly Offered Cattle Feeding Programs.

~~002.01D~~—The offer or sale of interests in a limited partnership or other business combination which will engage in the buying and selling of, and trading in, commodity futures contracts, options thereon, commodity forward contracts or similar instruments, may be deemed inconsistent with investor protection and not in the public interest if the offering does not comply with the provisions of NASAA's Statement of Policy on Registration of Commodity Pool Programs.

~~002.01E~~—The offer or sale of interests in a limited partnership or other business combination which will engage in the acquisition and ownership of equipment for lease or operation may be deemed inconsistent with investor protection and not in the public interest if the offering does not comply with the provisions of NASAA's Statement of Policy for Equipment Programs.

~~002.01F~~—The offer or sale of interests in any other limited partnership or other business combination may be deemed inconsistent with investor protection and not in the public interest if the offering does not comply with the provisions of NASAA's Statement of Policy for Omnibus Guidelines.

~~002.02~~—The limited partnership agreement or other organizational instrument shall conform to the provisions and requirements of this Rule, which shall also be fully disclosed in the prospectus of the offering.

~~002.03~~—An offer or sale of securities may be disallowed if the standards described in this Rule are not met, or if the offering is deemed inconsistent with investor protection.

~~002.04~~—The total amount of consideration of all kinds which may be paid directly or indirectly to the sponsor or its affiliates shall be reasonable, considering all of the aspects of the program and the investors.

~~002.05~~—The limited partnership shall specify an offering minimum which shall be an amount sufficient for the limited partnership to reasonably begin its program.

~~003~~—~~MINIMUM INVESTMENTS~~. Limited partnerships shall require the following:

~~003.01~~—The minimum investment of initial and subsequent investors in limited partnerships shall be five thousand dollars (\$5,000.00), except for an investment through an IRA/Keogh plan which shall be one thousand dollars (\$1,000.00).

~~003.02~~—The minimum amounts for additional investments or reinvestments shall be:

~~003.02A~~—One thousand dollars (\$1,000.00) for investments in subsequent partnerships of the same series in the same program year; and

~~003.02B~~—Fifty dollars (\$50.00) for reinvestments of dividends from income revenues in the same program year.

~~003.03~~—Reinvestments in continuous offerings in subsequent program years will be permitted where all offers are made by prospectus and where the investor annually signs a new agreement to reinvest.

~~004~~—SUITABILITY.

~~004.01~~—Unless the Director determines that the risks associated with the limited partnership would require higher standards, limited partnerships shall require purchasers of limited partnership interests to have one of the following:

~~004.01A~~—A minimum annual gross income of at least seventy thousand dollars (\$70,000.00) and a minimum net worth of at least seventy thousand dollars (\$70,000.00); or

~~004.01B~~—A minimum net worth of at least two hundred fifty thousand dollars (\$250,000.00).

~~004.01C~~—Net worth shall be determined exclusive of home, home furnishings, and automobiles.

~~004.01D~~—In the case of sales to fiduciary accounts, these minimum suitability standards may be met by the beneficiary, by the fiduciary account, or by the donor or grantor who directly or indirectly supplies the funds to purchase the shares if the donor or grantor is the fiduciary.

~~004.02~~—A purchaser of limited partnership interests shall be required to sign a subscription agreement. Such subscription agreement shall contain a statement attesting that the purchaser meets the suitability standards required.

~~005~~—LIMITED LIFE. The limited partnership shall exist for a specified length of time.

~~005.01~~—The length of the existence of the partnership shall be reasonable.

~~005.02~~—The length of the existence of the partnership shall be disclosed in the prospectus and partnership agreement.

~~006~~—OFFERING PERIOD.

~~006.01~~—The duration of the offering period shall be specified in the prospectus and partnership agreement.

~~006.02~~—The proceeds of the sales shall be escrowed during the offering period.

~~006.03~~—If the specified offering minimum is not received during the offering period, the proceeds of the sales shall be returned to the investors with pro rata interest from the escrowed funds.

~~007~~—TAXES. The limited partnership shall obtain a favorable tax ruling concerning the tax status of the partnership before commencing operations.

~~007.01~~— An opinion of independent tax counsel may be accepted by the Director in lieu of a tax ruling.

~~007.02~~— Any projection of earnings, tax write-offs and returns shall be reasonable and fully disclosed in the prospectus.

~~008~~— ~~RIGHTS OF LIMITED PARTNERS.~~

~~008.01~~— Limited partners owning ten percent of the limited partnership capital shall have the right to propose for vote any amendment to the limited partnership agreement, any dismissal of the general partner, and/or the termination of the life of the partnership. A majority of the limited partnership interests shall be required for approval of any such proposal.

~~008.02~~— Any limited partner shall have the right to secure, by written request to the general partner, an alphabetical list of the names, addresses and telephone numbers of all other limited partners (“limited partner list”) along with the number of interests held by each of them.

~~008.02A~~— A copy of the limited partner list shall be mailed to the requesting limited partner within ten days of the request.

~~008.02A1~~— The copy of the limited partner list shall be printed in alphabetical order, on white paper, and in a readily readable type size, in no event smaller than 10-point type.

~~008.02A2~~— A reasonable fee for copy work may be charged by the limited partnership.

~~008.03~~— Any contract between the partnership and the general partner or an affiliate of the general partner shall be subject to termination by majority vote or consent of the limited partners following sixty days’ prior written notice thereof to the limited partners.

~~008.04~~— The general partner shall not withdraw from the partnership without sixty days’ prior written notice thereof to the limited partners.

~~008.05~~— A majority of the limited partnership interests shall approve any transfer of the general partner’s interest.

~~009~~— ~~SERIES OFFERINGS.~~ A filing to register a limited partnership that is the continuation of a series previously registered in Nebraska shall include the following additions to such filing:

~~009.01~~— An affidavit:

~~009.01A~~— Setting forth the substantive changes from the prior partnership, and

~~009.01B~~— Attesting that any changes required by the Department following review of previous filings are included in the offering; and

~~009.02~~ A marked copy of the prospectus showing the changes from the previous filing.

~~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.