

NEBRASKA ADMINISTRATIVE CODE

Title 48 - DEPARTMENT OF BANKING AND FINANCE

Chapter 5 - ISSUER-DEALERS

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 issuer-dealers 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 ELIGIBILITY. An issuer may be licensed to sell its own securities if the issuer is located in Nebraska, or if the issuer registers its securities by qualification and proposes to sell its securities in this state without the benefit of a registered broker-dealer.

003 APPLICATION. Applications for initial registration as an issuer-dealer shall be filed with the Director and shall consist of the following:

003.01 A copy of an Application for Registration as Issuer-Dealer ("Application"), together with all applicable schedules and exhibits specified therein complete, accurate and current, executed with an original manual signature;

003.02 A copy of the issuer's most recent financial statements, either audited or signed, under penalty of perjury, by an officer, director, trustee, general partner, or limited liability company managing member attesting that the statements are true and accurate to the best of the signer's knowledge and belief;

003.03 A corporate surety bond in the amount of twenty-five thousand dollars (\$25,000.00), if the issuer's net capital is less than twenty-five thousand dollars (\$25,000.00);.

003.03A An issuer-dealer's net worth shall be computed on the basis of total assets minus total liabilities.

003.03B An issuer-dealer may request a signature bond in lieu of the net worth or surety bond requirement and the Director may allow the issuer-dealer to post the signature bond, if the Director finds that the net worth or the surety bond requirement causes an undue burden upon the issuer-dealer.

003.04 A check or money order in the amount of one hundred dollars (\$100.00) payable to "Nebraska Department of Banking and Finance"; and

003.05 Any other information the Director may require.

004 QUALIFICATIONS.

004.01 The issuer-dealer shall be of good repute, shall be knowledgeable of the Act, and must meet the requirements of the Act and rules adopted thereunder.

004.02 The issuer-dealer shall not conduct a general securities business and shall not normally be engaged in the business of selling securities.

005 POST-REGISTRATION FILINGS. An issuer-dealer shall file quarterly reports with the Director indicating the amount of securities sold during the period.

006 RENEWAL. The issuer-dealer licensing period shall run concurrently with the registration of said issuer-dealer's securities in this state. An issuer-dealer's registration may be renewed by filing the information specified in Section 003, above, before the expiration of its registration.

007 AMENDMENT. Whenever a material change in operations occurs or is discovered, a registered issuer-dealer shall promptly file an amendment to its Application with the ~~Department~~ Director. Material changes include, but are not be-limited to:

007.01 A change in the name or ~~name(s)~~ names under which business is conducted in Nebraska and the firm's business address;

007.02 A change in the ownership, management or control of the firm;

007.03 A change in type of entity, general plan or character of its business, or method of operation;

007.04 Insolvency, dissolution, liquidation, receivership, bankruptcy, or a material adverse change or impairment of working capital, or non-compliance with the minimum net capital or bond requirements;

007.05 The termination of business; or

007.06 The filing of any of the following actions against the firm; a partner, limited liability company member, officer, or director of the firm, or any person in a similar position; or an agent:

007.06A A criminal charge alleging a misdemeanor involving a security or commodity or any aspect of the securities or commodities business, or any felony;

007.06B Any civil action in which a fraudulent, dishonest, or unethical act is alleged or any violation of a securities law is involved; or

007.06C The entry of an order or proceeding by any court or administrative agency against the firm denying, suspending, or revoking its license, or threatening to do so, or enjoining it from engaging in or continuing any conduct or practice in the securities business.

008 CORRECTION OF DOCUMENTS. If the information contained in any document filed with the Director is, or becomes, inaccurate or incomplete in any material respect, the issuer-dealer shall file a correcting amendment on the Application within thirty (30)-days of the date that information becomes inaccurate or incomplete.

009 AGENTS. Any person who is involved directly or indirectly in the sale of securities of the issuer-dealer must be licensed as an agent of the issuer-dealer by the Department.

009.01 An agent must have sufficient training and knowledge of the securities business, and must meet the requirements of the Act and this Rule.

009.02 Partners, officers, directors and managing members of an issuer-dealer may effect sales of securities of the issuer-dealer without registration as agents, provided two partners, officers, directors, or managing members shall have taken and passed either the Nebraska Securities Law Exam, administered by the Department or a securities examination administered by the ~~National Association of Securities Dealers~~ Financial Industry Regulatory Authority ("FINRA"), acceptable to the Director.

009.03 An application for initial registration as an agent of an issuer-dealer shall be filed with the Director and shall consist of the following:

009.03A A copy of an Application for Registration as Agent of Issuer-Dealer, together with all applicable schedules and exhibits specified therein, complete, accurate and current, executed with an original manual signature;

009.03B A check in the amount of forty dollars (\$40.00) payable to the "Nebraska Department of Banking and Finance"; and

009.03C Any other information the Director may require.

009.04 Agents are required to pass the Nebraska Securities Law Exam, unless the Director determines, in his or her discretion, that the nature of the offering indicates an examination administered by the ~~National Association of Securities Dealers~~ FINRA is appropriate.

009.04A The Nebraska Securities Law Exam will be administered by appointment and upon payment of an examination fee of five dollars (\$5.00), payable to the "Nebraska Department of Banking and Finance" by company draft.

009.04B The Nebraska Securities Law Exam will be based upon the Act, rules adopted thereunder, and information contained in the prospectus and registration statement for the securities of the issuer-dealer.

~~009.05~~ ~~Application for registration~~ Agent registration must be renewed annually on the anniversary date of the employing issuer-dealer's registration.

~~009.06~~ An issuer-dealer shall notify the Director within ten ~~(10)~~ days after the termination of any agent or principal.

010 DENIAL, SUSPENSION OR REVOCATION OF LICENSE.

010.01 An issuer-dealer's license may be denied, suspended, or revoked if it, or any partner, limited liability company member, officer, or director of the issuer-dealer, or any person occupying a similar status or performing similar functions for the issuer-dealer, has engaged in violations of the Act or rules adopted thereunder, or has engaged in dishonest or unethical practices in the securities business.

010.02 An agent's license can be denied, suspended, or revoked by the Director if the agent has engaged in violations of the Act, or rules adopted thereunder, or otherwise engaged in dishonest or unethical practices in the securities business.

~~010.03~~ ~~The conduct set forth in 48 NAC 12.002 shall constitute "an act, practice or course of business which operates, or would operate, as a fraud or deceit upon another person" by an issuer-dealer or its agent for purposes of Section 8-1102(1)(c) of the Act.~~

~~010.04~~ ~~The conduct set forth in 48 NAC 12.003 shall constitute "dishonest or unethical business practices" by an issuer-dealer or its agent for purposes of Section 8-1103(9)(a)(vii) of the Act.~~

~~010.05~~ ~~The delineation of certain acts and practices is not intended to be all inclusive. Acts or practices not enumerated in 48 NAC 12.002 may also be deemed fraudulent and dishonest.~~

011 ADVERTISING RESTRICTION. No advertising may be used in connection with the sale of securities by the issuer-dealer or agent, unless the advertising material has received the prior approval of the Director.

012 SUITABILITY.

012.01 No issuer-dealer or agent of an issuer-dealer may sell securities of the issuer-dealer unless he or she has reasonable grounds to believe that the investment is suitable for the investor, based upon the investor's other securities holdings, and the investor's financial situation and needs.

012.02 The issuer-dealer must keep written records which establish the basis for the issuer-dealer or agent's determination that the securities of the issuer-dealer are suitable for each investor.

013 REGISTRATION REPRESENTATIONS. No issuer-dealer or agent shall make material representations to a prospective investor in connection with the sale of securities of the issuer-dealer that are not contained in the prospectus or registration statement which has been registered or filed as an exemption with the Department.

014 SALES LITERATURE. No sales literature, other than the prospectus which has been registered or filed as an exemption with the Department, may be used by the issuer-dealer or agent in connection with the sale of securities of the issuer-dealer.

015 SUPERVISION. An issuer-dealer is responsible for the acts of its agents and must maintain reasonable supervision and control over its employees.

016 DISHONEST AND UNETHICAL BUSINESS PRACTICES.

016.01 The conduct set forth in 48 NAC 12.002 shall constitute "an act, practice or course of business which operates, or would operate, as a fraud or deceit upon another person" by an issuer-dealer or its agent for purposes of Section 8-1102(1)(c) of the Act.

016.02 The conduct set forth in 48 NAC 12.003 shall constitute "dishonest or unethical business practices" by an issuer-dealer or its agent for purposes of Section 8-1103(9)(a)(vii) of the Act.

016.03 The delineation of certain acts and practices is not intended to be all inclusive. Acts or practices not enumerated in 48 NAC 12.002 may also be deemed fraudulent and dishonest.

017 VERIFICATION OF IMMIGRATION STATUS. Every issuer-dealer who registers issuer-dealer agents to transact business in Nebraska must verify the citizenship or immigration status of each issuer-dealer agent registered to transact business on its behalf in Nebraska and submit such verification to the Department.

017.01 For each issuer-dealer agent identified as a qualified legal alien, the issuer-dealer must submit a completed United States Citizenship Attestation Form, and one of the currently acceptable forms of documentation required by the Systematic Alien Verification for Entitlements Program and the Department of Homeland Security.

017.02 The issuer shall maintain, as a required record, a copy of the completed United States Citizenship Attestation Form for each issuer-dealer agent registered in Nebraska, regardless of citizenship or immigration status. Such records shall be maintained for a period of five years.