

NEBRASKA ADMINISTRATIVE CODE

Title 48 - DEPARTMENT OF BANKING AND FINANCE

Chapter 6 - AGENTS OF BROKER-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 agents of broker-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 REGISTRATION. An agent may be registered to transact business in Nebraska if he or she complies with the Act and the rules promulgated thereunder.

003 CENTRAL REGISTRATION DEPOSITORY. The Department utilizes the Central Registration Depository/Investment Advisor Registration Depository ("CRD/IARD") system to register agents, and to terminate, renew, and transfer agent registrations.

004 APPLICATION. An agent's application for registration must be submitted to the Director by the employing broker-dealer.

004.01 Broker-dealers that are affiliated with the ~~National Association of Securities Dealers (NASD broker-dealers)~~ Financial Industry Regulatory Authority ("FINRA broker-dealers") must submit ~~the agent's a~~ a Uniform Application for Securities Industry Registration or Transfer ("Form U-4U4") and application fee of forty dollars (\$40.00) to the Director through ~~the CRD/IARD system.~~ For purposes of Section 8-1103(4)(a) of the Act, a form submitted through ~~the CRD/IARD~~ shall be deemed filed with the ~~Department~~ Director when the record is transmitted to the ~~Department~~ Director for review.

004.02 Broker-dealers that are not affiliated with ~~the National Association of Securities Dealers~~ FINRA ("~~non-NASD non-FINRA~~ broker-dealers") must submit the agent's Form U4 U-4 and application fee of forty dollars (\$40.00) directly to the Director.

005 RENEWAL. An agent's registration must be renewed annually by the employing broker-dealer prior to the broker-dealer's December 31 renewal date.

005.01 NASD-FINRA broker-dealers must submit the agent's renewal fee to the Director through ~~the CRD/IARD system.~~

005.02 ~~NASD-FINRA~~ broker-dealers must submit the agent's renewal fee directly to the Director.

006 TERMINATION. ~~An~~ To terminate an agent's ~~termination notice~~ registration under the Act, a Uniform Termination Notice For Securities Industry Registration ("Form ~~U-5~~ U5") must be submitted by the former employing broker-dealer within thirty ~~(30)~~ days after the agent's termination.

006.01 ~~NASD-FINRA~~ broker-dealers must submit the agent's Form ~~U-5~~ U5 to the Director through the CRD/IARD system.

006.02 ~~Non-NASD-FINRA~~ broker-dealers must submit the agent's Form ~~U-5~~ U5 directly to the Director.

007 DUAL AND MULTIPLE REGISTRATION. Dual and multiple registration is prohibited in Nebraska except when an agent is in the process of transferring his or her registration or when the broker-dealers involved are affiliates.

007.01 Dual registration pending transfer is permitted only if the following conditions are satisfied:

007.01A The agent's new broker-dealer notifies the Director about the transfer within seven (7)-days after the agent's termination with his or her former broker-dealer.

007.01B The agent's new broker-dealer submits the agent's Form ~~U4~~ U-4 to the Director within twenty-one (21)-days after the notice of termination has been submitted.

007.01C The agent does not have a disciplinary history that must be disclosed on Form ~~U4~~ U-4.

~~007.01D Transfers by agents of broker-dealers which are members of the NASD must be accomplished pursuant to the Temporary Agent Transfer Program, adopted by the North American Securities Administrators Association and attached hereto.~~

007.02 An agent can be registered with more than one broker-dealer if the broker-dealers involved are affiliates.

007.02A Affiliate means a person who, directly or indirectly, controls, is controlled by, or is under common control with, another person.

007.02B For purposes of this section, control is defined as ownership, directly or beneficially, of eighty percent (80%) or more of the outstanding voting securities of another company.

008 QUALIFYING EXAMINATIONS. An agent is required to take and pass the following examinations administered by ~~the NASD~~ FINRA:

008.01 The Uniform Securities Agent State Law Examination (Series 63 examination) ~~or the Uniform Combined State Law Examination (Series 66 examination);~~ and

008.02 One of the following examinations or any predecessor examination:

008.02A The General Securities Representative Examination (Series 7 examination);

008.02B The Investment Company/Variable Contracts Limited Representative Examination (Series 6 examination) if the agent's registration will be limited to investment company products or if the agent will sell interests in viatical settlement contracts; ~~or~~

008.02C The Direct Participation Programs Limited Representative Examination (Series 22 examination), if the agent's registration will be limited to direct participation programs; ~~or-~~

008.02D Investment Banking Representative Qualification Examination (Series 79 examination), if the agent's registration will be limited to investment banking activities.

~~008.02D~~ The Director may waive the requirement of this section for agents of a broker-dealer whose registration is limited to securities of non-profit organizations if the director finds the waiver is consistent with investor protection and is in the public interest.

008.03 The Uniform Combined State Law Examination (Series 66 examination) may be taken in lieu of the Series 63 examination by any agent who also takes and passes the Series 7 examination.

008.04 This examination requirement shall be waived for an applicant who has previously passed the required written examinations provided that such applicant does not have a gap in registration longer than two years before the date of the filing of the present registration application.

008.05 The Director may waive the requirement of this subsection if the Director finds the waiver is consistent with investor protection and is in the public interest.

009 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 agent shall file a correcting amendment on Form ~~U-4~~ U4 within the time period specified in the instructions to that form.

010 ~~DISHONEST AND UNETHICAL BUSINESS PRACTICES.~~

~~010.01~~ 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 agent for purposes of Section 8-1102(1)(c) of the Act.

~~010.02 The conduct set forth in 48 NAC 12.003 and 48 NAC 12.004 shall constitute "dishonest or unethical business practices" by an agent for purposes of Section 8-1103(9)(a)(vii) of the Act.~~

~~010.03 The delineation of certain acts and practices is not intended to be all inclusive. Acts or practices not enumerated therein may also be deemed fraudulent and dishonest.~~

010 USING THE INTERNET FOR GENERAL DISSEMINATION OF INFORMATION ON PRODUCTS AND SERVICES. Agents shall not be deemed to be "transacting business" in this state for purposes of Section 8-1103 of the Act based solely on the use of the Internet, world wide web, and similar proprietary or common carrier electronic systems (hereinafter the "Internet") to distribute information on available products and services through certain communications made on the Internet directed generally to anyone having access to the Internet, and transmitted through postings on bulletin boards, social networking sites, blogs or similar sites, displays on "Home Pages" or similar methods (hereinafter, "Internet Communications") if the following conditions are observed:

010.01 The Internet Communications contain a disclosure statement which clearly states that:

010.01A The agent in question may only transact business in this state if first registered or excluded or exempted from the agent registration requirements of the Act; and

010.01B The agent will not make follow-up, individualized responses to persons in this state that involve either the effecting or attempting to effect transactions in securities, unless the agent has complied with, or has qualified for an applicable exemption or exclusion from, the agent registration requirements of the Act.

010.02 The Internet Communications contain a mechanism, including and without limitation, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this state, said agent is first registered in this state or qualifies for an exemption or exclusion from such requirement.

010.02A Nothing in this paragraph shall be construed to relieve an agent from any applicable securities registration requirement in this state;

010.03 The Internet Communications do not involve either effecting or attempting to effect transactions in securities in this state over the Internet, but is limited to the dissemination of general information on products and services.

010.04 The Internet Communications meet the following requirements:

010.04A The affiliation with the broker-dealer of the agent is disclosed in a non-italicized font, of at least ten points, within the Internet Communications;

010.04B The broker-dealer with whom the agent is associated retains responsibility for reviewing and approving the content of any Internet Communication by the agent;

010.04C The broker-dealer with whom the agent is associated first authorizes the distribution of information on the particular products through the Internet Communications; and

010.04D In disseminating information through the Internet Communications, the agent acts within the scope of the authority granted by the broker-dealer.

011 DISHONEST AND UNETHICAL BUSINESS PRACTICES.

011.01 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 agent for purposes of Section 8-1102(1)(c) of the Act.

011.02 The conduct set forth in 48 NAC 12.003, 48 NAC 12.004 and 48 NAC 12.005 shall constitute "dishonest or unethical business practices" by an agent for purposes of Section 8-1103(9)(a)(vii) of the Act.

011.03 The delineation of certain acts and practices is not intended to be all inclusive. Acts or practices not enumerated therein may also be deemed fraudulent and dishonest.