

NEBRASKA ADMINISTRATIVE CODE

Title 48 - DEPARTMENT OF BANKING AND FINANCE

Chapter 13 - INFORMATION REQUIREMENTS FOR THE SECTION 8-1110(5)
EXCHANGE EXEMPTION

001 GENERAL.

001.01 This Rule has been promulgated pursuant to authority delegated to the Director in Sections 8-1120(3) and 8-1110(5) of the Securities Act of Nebraska ("Act").

001.02 The Department has determined that this Rule relating to Section 8-1110(5) of the Act 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 rules referenced in this Rule is attached hereto.

001.05001.06 The provisions of this Rule shall not apply to any security that is a federal covered security pursuant to the provisions of Section 18(b)(1) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(1).

002 NOTICE FILING REQUIREMENT. The notice required by Section 8-1110(5)(b) of the Act will be satisfied if the following conditions of this Rule are met.

002.01 Such notice shall be filed with the Nebraska Department of Banking and Finance, Suite 311, The Atrium, 1200 N Street, P.O. Box 95006, Lincoln, Nebraska 68509-50095006.

002.02 Such notice shall be filed by, or on behalf of, the issuer prior to the first use of a disclosure document covering a security which has been approved for listing on a recognized exchange if no quotations have been available and no public trading has taken place for any securities of such issuer.

003 CONTENTS OF NOTICE. The notice of exemption shall contain the following information:

003.01 The name and address of the issuer;

003.02 One of the following:

003.02A The name and address of the Nebraska-registered broker-dealer(s) that will be selling the securities,

003.02B If the issuer is selling its own securities, the name, business address and business telephone number of the person responsible for such activities, or

003.02C A statement by the issuer or issuer's counsel that all securities transactions with Nebraska residents will be executed by a Nebraska-registered broker-dealer or a person properly exempt from broker-dealer registration in Nebraska;

003.03 A description of the business of the issuer;

003.04 The type of security to be sold and the total dollar amount of the offering;

003.05 The name of the exchange or market system on which the securities will be listed; and

003.06 A check or money order in the amount of two hundred dollars (\$200.00), payable to "Nebraska Department of Banking and Finance."

004 **DISCLOSURE.** Nothing in this exemption is intended to relieve, or should be construed as in any way relieving, sellers or persons acting on behalf of sellers from providing to prospective investors disclosure adequate to satisfy the provisions of Section 8-1102(1) of the Act.

005 **BURDEN OF PROOF.** In any proceeding involving this Rule, the burden of proving the exemption or an exception from a definition or condition from registration is upon the person claiming ~~it~~ the exemption.

006 **CURE ORDERS.** If the notice required by Section 8-1110(5) of this Act and this Rule is not filed prior to the first sale made in reliance on this exemption, the issuer shall file, with the notice described in Section 003 above:

006.01 The information required by 48 NAC 19; and

006.02 The date the subject security was listed.

15 U.S.C.

United States Code, 2014 Edition

Title 15 - COMMERCE AND TRADE

CHAPTER 2A - SECURITIES AND TRUST INDENTURES

SUBCHAPTER I - DOMESTIC SECURITIES

Sec. 77r - Exemption from State regulation of securities offerings

From the U.S. Government Publishing Office, www.gpo.gov**§77r. Exemption from State regulation of securities offerings****(a) Scope of exemption**

Except as otherwise provided in this section, no law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof—

(1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that—

(A) is a covered security; or

(B) will be a covered security upon completion of the transaction;

(2) shall directly or indirectly prohibit, limit, or impose any conditions upon the use of—

(A) with respect to a covered security described in subsection (b) of this section, any offering document that is prepared by or on behalf of the issuer; or

(B) any proxy statement, report to shareholders, or other disclosure document relating to a covered security or the issuer thereof that is required to be and is filed with the Commission or any national securities organization registered under section 78o-3 of this title, except that this subparagraph does not apply to the laws, rules, regulations, or orders, or other administrative actions of the State of incorporation of the issuer; or

(3) shall directly or indirectly prohibit, limit, or impose conditions, based on the merits of such offering or issuer, upon the offer or sale of any security described in paragraph (1).

(b) Covered securities

For purposes of this section, the following are covered securities:

(1) Exclusive Federal registration of nationally traded securities

A security is a covered security if such security is—

(A) listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities);

(B) listed, or authorized for listing, on a national securities exchange (or tier or segment thereof) that has listing standards that the Commission determines by rule (on its own initiative or on the basis of a petition) are substantially similar to the listing standards applicable to securities described in subparagraph (A); or

(C) a security of the same issuer that is equal in seniority or that is a senior security to a security described in subparagraph (A) or (B).

(2) Exclusive Federal registration of investment companies

A security is a covered security if such security is a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.].

(3) Sales to qualified purchasers

A security is a covered security with respect to the offer or sale of the security to qualified purchasers, as defined by the Commission by rule. In prescribing such rule, the Commission may define the term "qualified purchaser" differently with respect to different categories of securities, consistent with the public interest and the protection of investors.

(4) Exemption in connection with certain exempt offerings

A security is a covered security with respect to a transaction that is exempt from registration under this subchapter pursuant to—

- (A) paragraph (1) or (3) of section 77d¹ of this title, and the issuer of such security files reports with the Commission pursuant to section 78m or 78o(d) of this title;
- (B) section 77d(4)¹ of this title;
- (C) section 77d(6)¹ of this title;
- (D)² a rule or regulation adopted pursuant to section 77c(b)(2) of this title and such security is—
 - (i) offered or sold on a national securities exchange; or
 - (ii) offered or sold to a qualified purchaser, as defined by the Commission pursuant to paragraph (3) with respect to that purchase or sale;

(D)² section 77c(a) of this title, other than the offer or sale of a security that is exempt from such registration pursuant to paragraph (4), (10), or (11) of such section, except that a municipal security that is exempt from such registration pursuant to paragraph (2) of such section is not a covered security with respect to the offer or sale of such security in the State in which the issuer of such security is located; or

(E) Commission rules or regulations issued under section 77d(2)¹ of this title, except that this subparagraph does not prohibit a State from imposing notice filing requirements that are substantially similar to those required by rule or regulation under section 77d(2)¹ of this title that are in effect on September 1, 1996.

(c) Preservation of authority

(1) Fraud authority

Consistent with this section, the securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions, in connection with securities or securities transactions³

- (A) with respect to—
 - (i) fraud or deceit; or
 - (ii) unlawful conduct by a broker, dealer, or funding portal; and

(B) in connection to⁴ a transaction described under section 77d(6)¹ of this title, with respect to—

- (i) fraud or deceit; or
- (ii) unlawful conduct by a broker, dealer, funding portal, or issuer.

(2) Preservation of filing requirements

(A) Notice filings permitted

Nothing in this section prohibits the securities commission (or any agency or office performing like functions) of any State from requiring the filing of any document filed with the Commission pursuant to this subchapter, together with annual or periodic reports of the value of securities sold or offered to be sold to persons located in the State (if such sales data is not included in documents filed with the Commission), solely for notice purposes and the assessment of any fee, together with a consent to service of process and any required fee.

(B) Preservation of fees**(i) In general**

Until otherwise provided by law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof, adopted after October 11, 1996, filing or registration fees with respect to securities or securities transactions shall continue to be collected in amounts determined pursuant to State law as in effect on the day before October 11, 1996.

(ii) Schedule

The fees required by this subparagraph shall be paid, and all necessary supporting data on sales or offers for sales required under subparagraph (A), shall be reported on the same schedule as would have been applicable had the issuer not relied on the exemption provided in subsection (a) of this section.

(C) Availability of preemption contingent on payment of fees**(i) In general**

During the period beginning on October 11, 1996, and ending 3 years after October 11, 1996, the securities commission (or any agency or office performing like functions) of any State may require the registration of securities issued by any issuer who refuses to pay the fees required by subparagraph (B).

(ii) Delays

For purposes of this subparagraph, delays in payment of fees or underpayments of fees that are promptly remedied shall not constitute a refusal to pay fees.

(D) Fees not permitted on listed securities

Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(1) of this section, or will be such a covered security upon completion of the transaction, or is a security of the same issuer that is equal in seniority or that is a senior security to a security that is a covered security pursuant to subsection (b)(1) of this section.

(F) ⁵ Fees not permitted on crowd funded securities

Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(4)(B), or will be such a covered security upon completion of the transaction, except for the securities commission (or any agency or office performing like functions) of the State of the principal place of business of the issuer, or any State in which purchasers of 50 percent or greater of the aggregate amount of the issue are residents, provided that for purposes of this subparagraph, the term "State" includes the District of Columbia and the territories of the United States.

(3) Enforcement of requirements

Nothing in this section shall prohibit the securities commission (or any agency or office performing like functions) of any State from suspending the offer or sale of securities within such State as a result of the failure to submit any filing or fee required under law and permitted under this section.

(d) Definitions

For purposes of this section, the following definitions shall apply:

(1) Offering document

The term "offering document"—

(A) has the meaning given the term "prospectus" in section 77b(a)(10) of this title, but without regard to the provisions of subparagraphs (a) and (b) of that section; and

(B) includes a communication that is not deemed to offer a security pursuant to a rule of the Commission.

(2) Prepared by or on behalf of the issuer

Not later than 6 months after October 11, 1996, the Commission shall, by rule, define the term "prepared by or on behalf of the issuer" for purposes of this section.

(3) State

The term "State" has the same meaning as in section 78c of this title.

(4) Senior security

The term "senior security" means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends.

(May 27, 1933, ch. 38, title I, §18, 48 Stat. 85; Pub. L. 104–290, title I, §102(a), Oct. 11, 1996, 110 Stat. 3417; Pub. L. 105–353, title III, §§301(a)(4), 302, Nov. 3, 1998, 112 Stat. 3235, 3237; Pub. L. 111–203, title IX, §985(a)(2), July 21, 2010, 124 Stat. 1933; Pub. L. 112–106, title III, §305(a), (b) (2), (c), (d)(2), title IV, §401(b), Apr. 5, 2012, 126 Stat. 322, 323, 325.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (b)(2), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

Section 77d(1), (2), (3), (4), and (6) of this title, referred to in subsecs. (b)(4)(A) to (C), (E) and (c)(1)(B), were redesignated section 77d(a)(1), (2), (3), (4), and (6), respectively, of this title by Pub. L. 112–106, title II, §201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314.

AMENDMENTS

2012—Subsec. (b)(4)(C). Pub. L. 112–106, §305(a)(2), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (b)(4)(D). Pub. L. 112–106, §401(b), added subpar. (D) relating to section 77c(b)(2) of this title.

Pub. L. 112–106, §305(a)(1), redesignated subpar. (C), relating to section 77c(a) of this title, as (D). Former subpar (D) redesignated (E).

Subsec. (b)(4)(E). Pub. L. 112–106, §305(a)(1), redesignated subpar. (D) as (E).

Subsec. (c)(1). Pub. L. 112–106, §305(b)(2), substituted ", in connection with securities or securities transactions" for "with respect to fraud or deceit, or unlawful conduct by a broker or dealer, in connection with securities or securities transactions." and added subpars. (A) and (B).

Subsec. (c)(1)(A)(ii). Pub. L. 112–106, §305(d)(2), which directed amendment of subsec. (c)(1) by substituting ", dealer, or funding portal" for "or dealer", was executed by making the substitution in subpar. (A)(ii) as added by Pub. L. 112–106, §305(b)(2).

Subsec. (c)(2)(F). Pub. L. 112–106, §305(c), added subpar. (F).

2010—Subsec. (b)(1)(C). Pub. L. 111–203, §985(a)(2)(A), substituted "(C) a security" for "(C) is a security".

Subsec. (c)(2)(B)(i). Pub. L. 111–203, §985(a)(2)(B), substituted "State or" for "State, or".

1998—Subsec. (b)(1)(A). Pub. L. 105–353, §301(a)(4)(A), inserted ", or authorized for listing," after "Exchange, or listed".

Subsec. (b)(4)(C). Pub. L. 105–353, §302, substituted "paragraph (4), (10), or (11)" for "paragraph (4) or (11)".

Subsec. (c)(2)(B)(i), (C)(i). Pub. L. 105–353, §301(a)(4)(B), (C), made technical amendments to references in original act which appear in text as references to October 11, 1996.

Subsec. (d)(1)(A). Pub. L. 105–353, §301(a)(4)(D), substituted "section 77b(a)(10)" for "section 77b(10)" and "subparagraphs (a) and (b)" for "subparagraphs (A) and (B)".

Subsec. (d)(2). Pub. L. 105–353, §301(a)(4)(E), made technical amendment to reference in original act which appears in text as reference to October 11, 1996.

Subsec. (d)(4). Pub. L. 105–353, §301(a)(4)(F), substituted "The term" for "For purposes of this paragraph, the term".