

NEBRASKA ADMINISTRATIVE CODE

TITLE 48 - DEPARTMENT OF BANKING AND FINANCE

Chapter 24 - LOANS AND OTHER MATERIAL AFFILIATED TRANSACTIONS

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 loans and other material affiliated transactions 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 INDEPENDENT DIRECTORS.~~

~~002.01 Where there have been or will be loans and other material affiliated transactions as described in this Rule, the offer or sale of securities may be disallowed by the Director unless the issuer has, and represents in the prospectus or offering document that it will maintain, at least two independent directors on its board of directors.~~

~~002.02 In the event the issuer has only two independent directors on its board of directors, both independent directors must be disinterested in and approve loans and other material transactions covered by Sections 003.02, 005.01, 006.01 and 006.02 below.~~

002 GROUNDS FOR DENIAL OF SECURITIES REGISTRATIONS. The Director may deny the offer or sale of securities under the following circumstances:

002.01 The issuer or its affiliates have loans outstanding after the offering that are not permitted by this Rule;

002.02 The issuer or its affiliates have engaged in material transactions with promoters that are not permitted by this Rule; or

002.03 Representations and statements required by this Rule are not included in the offering documents.

003 LOANS. The following types of offer or sale of securities may be disallowed by the Director if the issuer or its affiliates will have loans outstanding after the offering to, or intends to make loans to, or loan guarantees on behalf of, promoters of the issuer are permitted; its promoters, other than:

003.01 Advances to officers, directors, and employees for travel, business expense, and similar ordinary operating expenditures;

003.02 ~~Loans or loan guarantees made for the purchase of an issuer's securities by its to allow the issuer's officers, directors, and employees to purchase the issuer's securities, and loans for relocation of officers, directors, and employees, provided the loan is approved under Section 005 below; loans or loan guarantees were approved by a majority of the independent directors of the issuer's board of directors who did not have an interest in the transactions and who had access, at the issuer's expense, to issuer's or independent legal counsel; or~~

003.03 Loans made by an issuer or its affiliates whose primary business is that of making loans, provided that:

003.03A ~~The loans will be~~are evidenced by promissory notes naming the lender as payee;

003.03B ~~The loans will bear~~ interest at rates which are comparable to those normally charged by other commercial lenders for similar loans made in the lender's locale;

003.03C ~~The loans will be repaid~~require repayment pursuant to appropriate amortization schedules; ~~and contain default provisions comparable to those normally used by other commercial lenders for similar loans made in the lender's locale;~~

003.03D ~~The loans will be made only if~~ are supported by credit reports and financial statements ~~which show the loans to be collectible and that the issuer or its affiliates can collect the loans and that the borrowers are~~ satisfactory credit risks, in light of the nature and terms of the loans and other circumstances;

003.03E The loans meet the loan policies ~~other commercial lenders normally used by other commercial lenders~~ use for similar loans made in the lender's locale;

003.03F ~~The issuer will reviews~~ purposes of the loans and ~~monitors the disbursements of proceeds will be reviewed and monitored in a manner comparable to that~~ other commercial lenders normally use ~~by other commercial lenders~~ for similar loans made in the lender's locale; and

003.03G ~~The loans will do not violate the requirements of any banking or other financial institution~~ institution's regulatory authority; and

003.03H ~~The loans contain default provisions comparable to those other commercial lenders normally use for similar loans made in the lender's locale.~~

004 REPAYMENT OF LOANS. ~~Except for loans described in Section 003 above, all loans~~ Loans to promoters that exist existing at the time of the application for registration

shall ~~must~~ be repaid by the promoters in full; prior to the offering. The Director may waive this requirement if:

004.01 Repayment of the loans will be made pursuant to appropriate amortization schedules; or From proceeds of the offering, if a portion of the offering is made on behalf of a promoter;

004.02 Before the offering; or

004.03 After the offering using appropriate amortization schedules, if the Director permits. Any portion of the offering is made on behalf of a promoter and the promoter undertakes to immediately repay the loans from the proceeds of the offering.

#### 005 INDEPENDENT DIRECTORS.

005.01 If there have been or will be loans and/or other material affiliated transactions, the issuer will maintain at least two independent directors on its board of directors, which requirement must be disclosed in the offering document.

005.02 The issuer must provide independent directors with access, at the issuer's expense, to legal counsel for the issuer or independent legal counsel.

005.03 Any loan or other material affiliated transaction involving an issuer's promoters requires the approval of a majority of the issuer's independent directors who do not have an interest in the transactions.

005.03A If the issuer has only two independent directors on its board of directors, loans and other material affiliated transactions require the approval of both independent directors. Both independent directors must be disinterested in any loans and/or other material affiliated transactions in question.

#### 006 DISCLOSURE REQUIREMENTS.

006.01 Loans. The issuer must disclose in the offering document whether or not it or its affiliates have made or will make loans to, or have made or will make loan guarantees on behalf of, promoters and the relevant terms and conditions of such loans or loan guarantees.

006.02 Affiliated Transactions. The issuer shall disclose in the offering documents whether or not it or its affiliates have engaged, or will engage, in material transactions with promoters and the relevant terms and conditions of such affiliated transactions.

006.03 Representations. The Director may require the following statements and representations to appear in the offering document.

006.03A A statement that the issuer or its affiliates will make all future material affiliated transactions and enter into all future loans on terms that are no less favorable to the issuer than those that can be obtained from unaffiliated third parties.

006.03B A statement that all future material transactions and loans, and any forgiveness of loans, in accordance with Section 005, above, will require the approval of a majority of the issuer's independent directors.

006.03C A statement that the issuer's officers, directors, and legal counsel will:

006.03C1 Consider their due diligence and assure that there is a reasonable basis for these representations; and

006.03C2 Consider whether to embody the representations in the issuer's charter or bylaws.

007005 MATERIAL AFFILIATED TRANSACTIONS. The offer or sale of securities may be disallowed by the Director if the issuer or its affiliates have engaged in other material transactions with promoters, unless the transactions were on terms no less favorable to the issuer or its affiliates than those that are generally available from unaffiliated third parties, and  
The following types of affiliated transactions are allowed:

007.01 A transaction approved in accordance with Section 005, above, if the offering document discloses the terms of the transactions and indicates whether the terms are as favorable to the issuer or its affiliates as those generally available from unaffiliated third parties.

007.02 A transaction entered into when the issuer had less than two (2) disinterested independent directors, if the offering document:

007.02A Discloses the terms of the transactions;

007.02B Indicates whether the terms are as favorable to the issuer or its affiliates as those generally available from unaffiliated third parties; and

007.02C Discloses that the issuer lacked sufficient disinterested independent directors to approve the transactions at the time the transactions were initiated.

005.01 For ongoing transactions, approved by a majority of the issuer's independent directors who did not have an interest in the transactions and who had access at the time of ratification, at the issuer's expense, to issuer's or independent legal counsel; or

005.02 For past transactions which are now closed, if there were less than two disinterested independent directors at the time of the transactions, the prospectus discloses that the issuer lacked sufficient disinterested independent directors to approve the transactions.

006—DISCLOSURE. The issuer shall disclose in the prospectus or offering document whether or not it or its affiliates have made or will make loans to, have made or will make loan guarantees on behalf of, or have engaged or will engage in material transactions with promoters and the terms and details relating thereto. If material affiliated transactions or

loans have been made, or may be made, the Director may require the following representations to appear in the prospectus or offering document:

~~006.01~~ All future material affiliated transactions and loans will be made or entered into on terms that are no less favorable to the issuer than those that can be obtained from unaffiliated third parties; and

~~006.02~~ All future material affiliated transactions and loans, and any forgiveness of loans, must be approved by a majority of the issuer's independent directors who do not have an interest in the transactions and who have access, at the issuer's expense, to issuer's or independent legal counsel.

~~008007~~ 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.