

## GUIDANCE DOCUMENT

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**NEBRASKA DEPARTMENT OF BANKING AND FINANCE  
BUREAU OF SECURITIES**

**INTERPRETATIVE OPINION NO. 14: – PRIVATE SECURITIES TRANSACTIONS BY AGENTS  
AND THE SECTIONS 8-1111(9) AND 8-1111(16) EXEMPTIONS**

This Interpretative Opinion discusses private securities transactions by agents of a broker-dealer registered in Nebraska, in relation to certain securities transactional exemptions provided by the Securities Act of Nebraska (“Act”).

Sections 8-1111(9)(a)(ii), and 8-1111(23) provide that in order for certain limited or non-public securities offerings to qualify for the exemption from registration, the securities must be offered in a transaction wherein:

No commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a broker-dealer or issuer-dealer.

Sections 8-1111(16)(b) and 8-1111(20)(b) provide that in order for certain limited or non-public securities offerings to qualify for the exemption from registration, the securities must be offered in a transaction wherein:

No commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a broker-dealer or issuer-dealer.

Section 8-1101(1) provides that an “agent shall mean any individual other than a broker-dealer . . . .” Section 8-1101(2)(a) specifically excludes an “agent” from the definition of a broker-dealer.

Promoters of limited or nonpublic offerings under Sections 8-1111(9), 8-1111(16) and 8-1111(20), have employed agents of registered broker-dealers on an independent, commissioned basis to solicit prospective buyers for such limited offerings. In some instances, agents engage in the private securities transactions outside the scope of their association with the broker-dealer.

Depending upon all the facts and circumstances, private securities transactions effected by an agent outside the usual or normal course or scope of employment, particularly if the transactions are not reflected on the broker-dealer’s books and records, may mislead prospective buyers into believing that the transactions are sponsored by the employing broker-dealer.

Therefore, an agent who acts on an independent, commissioned basis in making a limited or non-public offering pursuant to Section 8-1111(9), 8-1111(16) or 8-1111(20), must be registered as a broker-dealer prior to any solicitation in order to qualify for the exemptions from registration. The promoter of the limited or non-public offering who employs the agent on a commissioned basis independent of the registered broker-dealer is also charged with knowledge that the agent must register as a broker-dealer before any solicitations are made.

The registered broker-dealer who allows its registered agents to act on an independent, commissioned basis in making limited or non-public offerings without registering as a broker-dealer may be subject to administrative action based on the failure to properly and adequately supervise its agents.

When an agent of a registered broker-dealer sells a limited or non-public offering on an independent, commissioned basis, the agent and the promoter have sold unregistered securities.

The same restrictions discussed above shall apply in the same manner to agents of issuer-dealers when selling on an independent, commissioned basis outside the usual or normal course or scope of employment by the issuer-dealer.

Questions regarding this opinion should be addressed to:

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