

# NEBRASKA ADMINISTRATIVE CODE

## Title 48 - DEPARTMENT OF BANKING AND FINANCE

### Chapter 4 - BROKER-DEALERS

#### 001 GENERAL.

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

001.02 The Department has determined that this Rule relating to 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 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 means those statutes and rules as amended on or before the effective date of this Rule. A copy of the statutes or rules referenced in this Rule is available as an appendix to this rule at <https://ndbf.nebraska.gov/about/legal/administrative-rules-and-regulations>

002 APPLICATION. The application for initial registration as a broker-dealer pursuant to Section 8-1103(1) of the Act shall be filed as directed in Section ~~006007~~, below, and contain the following:

002.01 A copy of Uniform Application for Broker-Dealer Registration ("Form BD"), together with all applicable schedules and exhibits specified therein, complete, accurate and current;

002.02 A completed "Affidavit of Broker-Dealer Activity in Nebraska";

002.03 ~~A copy of the firm's most recent audited financial statements, and, if the date of the financial statements is not within ninety days of the date the application is filed, the firm's most recent quarterly Focus Report Part II(A). The financial statements prepared in accordance with Section 003, below;~~

002.04 A fee in the amount of two hundred fifty dollars (\$250.00); and

002.05 Any other information the Director may require.

002.06 A broker-dealer which is not a member of the Financial Industry Regulatory Authority ("FINRA") shall submit the following additional information for an initial application for registration as a broker-dealer pursuant to the Act:

002.06A A signed Form BD;

002.06B A current and correct copy of the firm's articles of incorporation, partnership, or organization, and any amendments thereto, if applicable; and

002.06C A corporate resolution, Form U-2A, if applicable.

**003** FINANCIAL STATEMENTS. The financial statements shall be:

003.01 A copy of the firm's most recent audited financial statements, and, if the date of the financial statements is not within ninety days of the date the application is filed, the firm's most recent quarterly Focus Report Part II(A), if such report has been filed with FINRA; or

003.02 In the event that the firm does not have audited financial statements, the Director may accept unaudited financial statements that are accompanied by an affirmative representation by the firm, signed by an officer, director or person occupying a similar position, that the statements provide all material information relating to the financial condition of the firm and are true and accurate to the best of the signer's knowledge and belief.

**004** RENEWAL. All broker-dealer registrations automatically expire annually on December 31. All broker-dealer registrations must be renewed on or prior to that date.

**0054** AMENDMENT AND CORRECTION OF DOCUMENTS. If a material change in operations occurs, or if the information contained in any document filed with the Director is or becomes inaccurate or incomplete in any material respect, the broker-dealer shall file a correcting amendment on Form BD within the time period specified in the instructions to that form relating to filings made with the SEC.

**0065** WITHDRAWAL. A broker-dealer desiring to withdraw its registration as a broker-dealer pursuant to Section 8-1103(9)(d) of the Act shall file a Notice of Withdrawal from Registration as a Broker-Dealer ("Form BDW"), with the Director or with a registration depository system designated by the Director.

**0076** FORMS SUBMISSIONS.

0076.01 A broker-dealer which is a member of FINRA shall file the forms necessary for registration, renewal or withdrawal of its registration or the registration or termination of its agents in Nebraska with, and pay all applicable fees for such registrations through, the Central Registration Depository/Investment Advisor Registration Depository System ("CRD/IARD"). ~~All mail for CRD/IARD processing must be sent to:~~

~~\_\_\_\_\_ FINRA  
\_\_\_\_\_ P.O. Box 9495  
\_\_\_\_\_ Gaithersburg, MD 20898-9495~~

For purposes of Section 8-1103(4) of the Act, a form submitted through CRD/IARD is deemed filed with the Department when the record is transmitted to the Department for review.

0076.02 A broker-dealer which is not a member of FINRA shall file the forms necessary for registration, renewal, or withdrawal of its registration or the registration or termination of its agents in Nebraska directly with the Department.

0076.03 With respect to any document filed electronically through CRD/IARD, when a signature or signatures are required by the particular instructions of any filing to be made through CRD/IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to CRD/IARD. Submission of a filing in this manner constitutes irrefutable evidence of legal signature by any individual whose name is typed on the filing.

### 0087 SUPERVISORS AND COMPLIANCE PRINCIPALS.

0087.01 A broker-dealer, which is not a member of FINRA, shall designate in writing a compliance principal and conform with this section during all registration periods.

0078.01A The compliance principal will be responsible for supervising the compliance of the broker-dealer and its registered agents and other associated persons with the Act and the rules and regulations promulgated thereunder.

0078.01B If the designated compliance principal ceases to act in that capacity, the broker-dealer must designate in writing a qualified replacement principal within sixty days after such change has occurred.

0087.01C Failure to designate a compliance principal constitutes grounds for denial or suspension of a broker-dealer registration.

0087.01D The designated compliance principal for Nebraska shall be registered as an agent of the broker-dealer in Nebraska and have taken and passed a qualifying examination, as set forth below:

0078.01D1 The examinations required by FINRA pursuant to FINRA Rule 1220;

008.01D2 The Uniform Securities Agent State Law Examination (Series 63) or the Uniform Combined State Law Examination (Series 66); and

0087.01D32 One of the following examinations:

0078.01D32a The General Securities Principal Examination (Series 24 examination);

0087.01D32b The Investment Company Products Principal Examination (Series 26 examination), if

the broker-dealer's registration is or will be limited to investment company products;

0087.01D32c The Direct Participation Programs Principal Examination (Series 39 examination) if the broker-dealer's registration is or will be limited to direct participation programs; or

0087.01D32d The General Securities Representative Examination (Series 7 examination), if the broker-dealer's registration is or will be limited to:

0087.01D32d(i) Securities of one issuer or associated issuers (other than mutual funds),

0087.01D32d(ii) Interests in mortgages or other receivables, or

0087.01D32d(iii) Securities of non-profit organizations, provided that the Director may waive the requirement of this section for principals 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.

0087.02 Every registered broker-dealer must designate at least one registered agent located at its principal office, and one registered agent located at each office of supervisory jurisdiction ("OSJ") that is located in this state to act in a supervisory capacity.

0087.02A Such supervisor shall have taken and passed the appropriate supervisory examination administered by FINRA.

0087.02B For any office located in this state not designated as an OSJ, the broker-dealer must designate a supervisor for the office. The designated supervisor need not be located in this state, but must be registered in this state as an agent and have taken and passed the appropriate supervisory examination administered by FINRA.

0087.02C For purposes of this subsection "office of supervisory jurisdiction" means any office of a broker-dealer at which any one or more of the following functions take place:

0087.02C1 Order execution or market making;

0087.02C2 Structuring of public offerings or private placements;

0087.02C3 Maintaining custody of customers' funds or securities;

0078.02C4 Final acceptance (approval) of new accounts on behalf of the member;

0087.02C5 Review and endorsement of customer orders;

0087.02C6 Final approval of retail communications for use by persons associated with the broker-dealer, except for an office that solely conducts final approval of research reports; or

0087.02C7 Responsibility for supervising the activities of persons associated with the broker-dealer located at one or more other offices of the broker-dealer.

0098 **SUPERVISION.** A broker-dealer is ultimately responsible for the acts of its agents and other associated persons and must maintain reasonable supervision and control at all times.

01009 **CLEARING BROKER-DEALER REGISTRATION.** If a broker-dealer utilizes a clearing broker-dealer to clear trades with Nebraska customers, the clearing broker-dealer must be registered in Nebraska.

0110 **BOOKS AND RECORDS.** Unless otherwise provided by order of the SEC, all broker-dealers registered or required to be registered under the Act shall make, maintain and preserve books and records in compliance with SEC Rules 17a-3 (17 C.F.R. 240.17a-3), 17a-4 (17 C.F.R. 240.17a-4), and 15c3-3 (17 C.F.R. 240.15c3-3).

0124 **MINIMUM FINANCIAL REQUIREMENTS AND FINANCIAL REPORTING REQUIREMENTS.**

0124.01 Each broker-dealer which is a member of FINRA registered or required to be registered under the Act shall:

0124.01A Comply with the financial requirements established in SEC Rule 15c3-1 (17 C.F.R. 240.15c3-1), and 15c3-3 (17 C.F.R. 240.15c3-3), and

0124.01B Comply with the financial reporting requirements established in SEC Rule 17a-11 (17 C.F.R. 240.17a-11) and provide copies of notices and reports required by such SEC Rules to the Director upon request.

0124.02 Each broker-dealer which is not a member of FINRA registered or required to be registered under the Act shall:

0124.02A Maintain a net capital of not less than twenty-five thousand dollars (\$25,000.00).

0124.02A1 A broker-dealer which has a net capital which is less than required by this Section shall submit a surety bond in the amount of twenty-five thousand dollars (\$25,000.00) with its application.

0124.02A2 Net capital means total assets minus total liabilities.

0124.02B File with the Director audited financial statements showing the assets, liabilities and net capital of the broker-dealer within ninety days of the end of the broker-dealer's fiscal year, which shall be:

0124.02B1 Examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles;

0124.02B2 Audited by an independent public accountant or an independent certified public accountant; and

0124.02B3 Accompanied by an opinion of the accountant as to the report of financial position, and by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity.

0123 REGISTRATION OF SUCCESSOR TO REGISTERED BROKER-DEALER. In the event that a broker-dealer succeeds to and continues the business of a broker-dealer registered pursuant to Section 8-1103 of the Act, the registration of the predecessor shall be deemed to remain effective as the registration of the successor if the successor, within thirty days after such succession, files an application for registration on Form BD, and the predecessor files a notice of withdrawal from registration on Form BDW.

0123.01 The registration of the predecessor broker-dealer will cease to be effective as the registration of the successor broker-dealer forty-five days after the application for registration on Form BD is filed by such successor.

0132.02 Notwithstanding any other provision of this Rule, if a broker-dealer succeeds to and continues the business of a registered broker-dealer, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership, the successor may, within thirty days after the succession, amend the registration of the predecessor on Form BD to reflect these changes. This amendment is deemed an application for registration filed by the predecessor and adopted by the successor.

0143 VERIFICATION OF IMMIGRATION STATUS. Every broker-dealer who registers agents to transact business in Nebraska must verify the citizenship and immigration status of each agent registered to transact business on its behalf in Nebraska and submit such verification to the Department.

0143.01 For each agent identified as a qualified legal alien, the broker-dealer must submit a completed United States Citizenship Attestation Form, and a legible, current and unexpired copy of the front and back of one of the currently acceptable forms of

documentation required by the Systematic Alien Verification for Entitlements Program and the Department of Homeland Security.

0143.02 The broker-dealer shall maintain, as a required record, a copy of the completed United States Citizenship Attestation Form for each agent registered in Nebraska, regardless of citizenship or immigration status.

0154 USING THE INTERNET FOR GENERAL DISSEMINATION OF INFORMATION ON PRODUCTS AND SERVICES.

Broker-dealers 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:

0154.01 The Internet Communications contain a disclosure statement in which it is clearly stated that:

0154.01A The broker-dealer in question may only transact business in this state if first registered, excluded, or exempted from the broker-dealer registration requirements of the Act; and

0154.01B The broker-dealer 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 broker-dealer has complied with, or has qualified for an applicable exemption or exclusion from, the broker-dealer registration requirements of the Act.

0154.02 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 broker-dealer is first registered in this state or qualifies for an exemption or exclusion from such requirement.

0154.02A Nothing in this paragraph shall be construed to relieve a broker-dealer from any applicable securities registration requirement in this state.

0154.03 The Internet Communications do not involve either effecting or attempting to effect transactions in securities in this state over the Internet, but are limited to the dissemination of general information on products and services.

0165 DISHONEST AND UNETHICAL BUSINESS PRACTICES.

0165.01 The conduct set forth in 48 NAC 12.002 constitutes “an act, practice or course of business which operates, or would operate, as a fraud or deceit upon another person” by a broker-dealer for purposes of Section 8-1102(1)(c) of the Act.

| 0165.02 The conduct set forth in 48 NAC 12.003 and 48 NAC 12.004 constitutes a “dishonest or unethical business practice” by a broker-dealer for purposes of Section 8-1103(9)(a)(vii) of the Act.

| 0165.03 The delineation of certain acts and practices is not intended to be all inclusive. Acts or practices not enumerated in 48 NAC 12.002 and 48 NAC 12.003 may also be deemed fraudulent and dishonest.