

GUIDANCE DOCUMENT

This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

FEDERAL COVERED SECURITIES

Q: What are Nebraska's filing requirements for a Form D, Regulation 506 filing?

A: *The filing requirements are found at Section 8-1108.02 of the Securities Act of Nebraska, which is supplemented by Chapter 20 of the Securities Rules. There are three items to be included in a filing:*

- A copy of the Form D with the completed appendix attached*
- A form U-2 or consent to service of process, which designates the Director of the Nebraska Department of Banking and Finance*
- A check for the \$200 filing fee made payable to the Nebraska Department of Banking and Finance*

Q: The Securities and Exchange Commission has implemented an electronic filing system for Form D filings. Does Nebraska accept Form D filings electronically?

A: *Not at this time. The Department along with other state regulators is exploring the creation of an electronic filing system for these filings.*

Q: Which version(s) of Form D will the Department accept?

A: *The Department will accept the paper Form D which was used prior to the adoption of the electronic system by the SEC, the Temporary Form D issued by the SEC, or a print out of the electronic version of the Form D. Regardless of which version the issuer files, the issuer must include completed appendix pages.*

Q: The electronic version of the Form D has incorporated a consent to service of process. Is a separate consent necessary if we file using the electronic version of Form D?

A: *No. The consent to service of process contained in the electronic version of Form D is sufficient to meet this requirement. Filings made on other versions of Form D will require a separate form U-2 or consent to service of process.*

Q: What is the deadline for filing a Form D?

A: *A Form D must be filed with the Department no later than fifteen days after the first sale in Nebraska.*

Q: Does Nebraska require a special legend on a Private Placement Memorandum?

A: *No, Nebraska does not have a special legend requirement.*

Q: Section 8-1108.02(3) says that the Director may require filing with respect to a federal covered security under section 18(b)(3) or (4)(A), (B), and (C) of the Securities Act of 1933. Does Nebraska currently require such a filing?

A: *See Chapter 20. Currently filings are only required for offerings pursuant to a Form D or offerings by federal agricultural co-operatives.*

Q: We are not paying commissions in connection with our offering, but are planning on paying a finder's fee. How does Nebraska interpret finder's fees?

A: *Nebraska interprets finder's fees as commissions and therefore, may only be paid to a registered agent of a Nebraska registered broker/dealer.*

Q: Must an issuer of a federal covered security use a Nebraska registered broker-dealer to solicit sales in Nebraska?

A: See Section 8-1108.02(7): All federal covered securities offered or sold in Nebraska must be sold through a registered agent of a Nebraska registered broker-dealer or by persons exempt from broker-dealer registration except in the case of a security offered pursuant to section 18(b)(4)(D) of the Securities Act of 1933 where no commission or other remuneration is paid directly or indirectly for soliciting any prospective buyer.

SECURITIES EXEMPT FROM REGISTRATION

Q: If an issuer has a security that would be exempt under Section 8-1110, does that issuer have to use a registered broker/dealer to make that offering?

A: Yes, a security exempt from registration under Section 8-1110 is not exempt from using a registered broker/dealer even if commissions are not being paid in connection with that offering.

Q: Section 8-1110(1) discusses municipal bond offerings but only mentions Nebraska bonds. Do municipal bond issuers from other states have to register in Nebraska?

A: Municipal bonds issued by states other than Nebraska are federal covered securities pursuant to Section 18 (b)(4)(c) of the Securities Act of 1934. These bonds are not required to be registered in Nebraska and no notice filing is required by the issuer.

TRANSACTIONAL EXEMPTIONS

Q: How does Nebraska interpret the isolated transaction exemption found at Section 8-1111(1)?

A: Nebraska interprets the isolated transaction exemption to apply on a nationwide basis, not to just transactions made within the State of Nebraska. See also Interpretative Opinion No. 6.

Q: Is the exemption found at Section 8-1111(2) self-executing?

A: Yes, see Interpretative Opinion Nos. 7 & 8 for additional information on the manual exemption.

Q: Where can I find the record-keeping requirements with respect to Section 8-1111(3)?

A: Those requirements are found in Chapter 14 of the Securities Rules.

Q: Is the accredited investor exemption found at Section 8-1111(8) self executing?

A: Yes, no filing is required to rely upon this exemption. However, documentation should be kept by the issuer with respect to each investors accredited status should questions ever arise.

Q: Where can I find a definition of the “institutional investor mentioned in Section 8-1111(8)?

A: See Interpretative Opinion No. 10.

Q: Is there a form for a filing made pursuant to Section 8-1111(9)?

A: No, there is no set form. However, the filing requirements are listed in Chapter 15 of the Securities Rules. All of the items found in Chapter 15 should be addressed when making a filing under Section 8-1111(9).

Q: Section 8-1111(9) says that “failure to give such notice may be cured by an order issued by the director”, what is the format for requesting such an order?

A: The requirements for requesting an Order Curing Late Notice (“OCLN”) are found in Chapter 19 of the Securities Rules. These requirements build upon one another depending on how late the filing is when actually received by the Department.

Q: Do I have to make a filing for a transaction under 8-1111(11)?

A: *It depends on whether the issuer is paying commissions. If the issuer is not paying commissions, the transaction falls under Section 8-1111(11)(a) and is self-executing. If commissions are paid, the transaction falls under Section 8-1111(11)(b) and a notice filing is required. See also Interpretative Opinion No. 12.*

Q: Can a mutual fund charge 12b-1 fees and still fall under the self-executing portion of Section 8-1111(11)(a)?

A: *Yes, these types of fees are permissible and no filing would be necessary.*

Q: Is there a filing required for a transaction under Section 8-1111(14)?

A: *No, this provision is self-executing. See also Interpretative Opinion No. 13.*

Q: Where can I find the filing requirements for the notice filing for agricultural cooperatives under Section 8-1111(15)?

A: *See Chapter 16 of the Securities Rules for those filing requirements. Note that the agricultural cooperative must be organized under Nebraska law.*

Q: Where can I find Nebraska's filing requirements for a Form D, Regulation 505 filing?

A: *The filing requirements are found at Section 8-1111(16), which is supplemented by Chapter 17 of the Securities Rules. Chapter 17 outlines what should be included in your notice filing. Note that Chapter 17 also provides that this filing is only available for corporations.*

Q: Our company is adopting an employee stock option plan that qualifies federally under Rule 701; does Nebraska have a reciprocal state exemption?

A: *Yes, see Section 8-1111(17) of the Act. As of July 20, 2002, this exemption is self-executing and no filing is necessary.*

Q: I am interested in making an intrastate offering, where can I find more information on the exemption under Section 8-1111(20)?

A: *See Chapter 18 of the Securities Rules.*

Q: Our company offers viatical settlements; does Nebraska provide an exemption for these contracts?

A: *Section 8-1111(21) provides an exemption for certain sales of viatical settlements. The conditions surrounding offers and sales of viaticals in Nebraska and for the required notice filing are set forth in that section. If the viatical settlement sales do not qualify for this exemption, they must be registered by qualification under Section 8-1107.*

GENERAL EXEMPTION QUESTIONS

Q: Where can I find Nebraska's filing requirements for a Form D, Regulation 504 filing?

A: *It is the Nebraska Bureau of Securities' policy to not accept filings under Form D, Regulation 504. If such a filing were made at the federal level, another exemption would need to be found at the state level or the securities must be registered by qualification under Section 8-1107.*

Q: Does an issuer have to provide disclosure to investors even when that issuer qualifies for an exemption under Nebraska law?

A: *Yes. Qualifying for an exemption does not exempt that issuer from the anti-fraud provisions of the Securities Act of Nebraska found at Section 8-1102. Full disclosure must still be made to all investors.*

Q: Does your office accept filings by fax?

A: *No. All exemption filings should be made by mail and sent to either the street address: Commerce Court, Suite 400, 1230 'O' Street, Lincoln, Nebraska 68508-1402 or to the Department's Post Office Box at: PO Box 95006; Lincoln, Nebraska 68509-5006.*

Q: When a filing requires a fee, who should the check be made out to?

A: *To the Nebraska Department of Banking and Finance.*

Q: When a filing requires including a U-2 or consent to service of process, who should that consent be made out to?

A: *To the Director of the Nebraska Department of Banking and Finance.*