

NEBRASKA ADMINISTRATIVE CODE

Title 48 - DEPARTMENT OF BANKING AND FINANCE

Chapter 19 - REQUESTS FOR ORDERS CURING LATE NOTICE FILINGS

001 GENERAL.

001.01 This Rule has been promulgated pursuant to the 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 requests to cure late filings of an exemption notice pursuant to Sections ~~8-1110(5)~~, 8-1111(9), 8-1111(16), 8-1111(20), ~~8-1111(21)~~, ~~and~~ 8-1111(23), ~~and~~ ~~8-1108.02(2)(b)~~ under 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 this Rule, unless otherwise specified.

001.05 For purposes of this Rule, the term "seller" ~~shall~~ includes any issuer or other person on whose behalf a notice of exemption from registration under Sections ~~8-1110(5)~~, 8-1111(9), 8-1111(16), 8-1111(20), ~~8-1111(21)~~, ~~and~~ 8-1111(23), ~~and~~ ~~8-1108.02(2)(b)~~ is filed with the Director.

002 FILING REQUIREMENT. A seller that does not file an exemption notice within the time period specified in the above applicable statutory provisions of the Act, or any Rule promulgated thereunder, shall file a written request with the Director for an Order curing the late filing of the exemption notice.

002.01 The request shall be signed and dated by an officer, director, general partner, managing member or legal counsel of the seller.

002.02 The request shall accompany the exemption notice.

003 CONTENTS OF REQUEST.

003.01 If the exemption notice is filed thirty days or less after the time period specified for the exemption claimed, the request shall include:

003.01A The date (day, month, year) of the first Nebraska sale in reliance on the applicable exemption, ~~and dates of any subsequent sales;~~

003.01B An explanation as to why the filing was late;

003.01C A representation that the conditions of the exemption have been met, except for the timely filing of the notice;

003.01D A representation that there have been no adverse material changes in the financial condition of the issuer since the original date of the offering or first sale;

003.01E A representation that there have been no civil suits or complaints filed by investors against the seller, or investor complaints since the date of the first Nebraska sale; and

003.01F A representation that no administrative actions or investigations have been initiated by any state or federal regulatory authority in connection with the offering or any other investment-related activity by the issuer. For purposes of this Rule, investment-related shall mean pertaining to securities, commodities, banking, insurance, or real estate, including, but not limited to, acting as, or being associated with, a broker-dealer, issuer, investment company, investment adviser, futures sponsor, or depository institution.

003.02 If the exemption notice is filed thirty-one to sixty days after the time period specified for the exemption claimed, the request shall include:

003.02A The information required by Section 003.01, above;

003.02B The names and addresses of all Nebraska investors as of the filing date;

003.02C The date of each Nebraska investor's investment; and

003.02D A statement by the seller(s), and its officers, managers and selling agents, in which they, in their individual and corporate capacity, discuss their prior securities offering experience, if any.

003.03 If the exemption notice is filed more than sixty days after the time period specified for the exemption claimed, the request shall include:

003.03A The information by Section 003.02, above; and

003.03B If represented by counsel, the date counsel was retained by the seller, and the date when discussions on the Nebraska offering began.

004 INVESTIGATIONS. If an exemption notice is filed more than ninety days after the time period specified for the exemption claimed, the Department may commence an independent investigation of the matter. The Department specifically reserves the right to assess the expense of its investigation to the seller pursuant to Section 8-1115(1) of the Act or to assess a fine pursuant to Section 8-1108.01(4) of the Act.