

NEBRASKA ADMINISTRATIVE CODE

Title 48 - DEPARTMENT OF BANKING AND FINANCE

Chapter 39 - CONDITIONS AND INFORMATION REQUIREMENTS FOR THE SECTION 8-1111(24) CROWDFUNDING EXEMPTION

001 GENERAL.

001.01 This Rule has been promulgated pursuant to authority delegated to the Director in Section 8-1120 and Section 8-1111(24) of the Securities Act of Nebraska ("Act").

001.02 The Department has determined that this Rule regarding securities offerings 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 parties, 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 applicable statutes or rules referenced in this Rule ~~is~~ available as an appendix to this rule at www.ndbf.nebraska.gov <https://ndbf.nebraska.gov/about/legal/administrative-rules-and-regulations>.

002 DEFINITIONS. For purposes of this Rule:

002.01 Accredited investor means a bank, a savings institution, a trust company, an insurance company, an investment company as defined in the Investment Company Act of 1940, a pension or profit-sharing trust or other financial institution or institutional buyer, an individual accredited investor, or a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

002.02 Funding portal means an internet web site that is operated by a portal operator for the offer and sale of securities pursuant to this Rule;

002.03 Individual accredited investor means (A) any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer, (B) any manager of a limited liability company that is the issuer of the securities being offered or sold, (C) any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his or her purchase, exceeds one million dollars (\$1,000,000.00), excluding the value of the primary residence of such person, or (D) any natural person who had an individual income in excess of two hundred thousand dollars (\$200,000.00) in each of the two most recent years or joint income with that person's spouse in excess of three hundred thousand dollars (\$300,000.00) in each

of those years and has a reasonable expectation of reaching the same income level in the current year; and

002.04 Portal operator means an entity authorized to do business in this state which operates a funding portal and has registered with the Department.

003 ISSUER QUALIFICATION. An issuer offering securities pursuant to this exemption shall meet the following requirements:

003.01 The issuer shall be a business entity that is organized pursuant to the laws of the State of Nebraska and is properly registered with the Nebraska Secretary of State;

003.02 The issuer derived at least eighty percent of its gross revenue during its most recent fiscal year prior to the offering from the operation of a business in Nebraska;

003.03 The issuer had at least eighty percent of its assets located in Nebraska at the end of its most recent semiannual period prior to the offering;

003.04 The issuer will use at least eighty percent of the net proceeds of this offering in connection with the operation of its business or real property in Nebraska or the purchase of real property located in, or the rendering of services within Nebraska; and

003.05 The issuer's principal office is located in Nebraska.

004 LIMITATIONS ON AVAILABILITY. The exemption provided by this Rule is available only to an issuer of the securities. The exemption is not available for:

004.01 Affiliates of the issuer or any other person for resale of the issuer's securities;

004.02 Transactions by existing security holders of the issuer;

004.03 An issuer that is either before or because of the offering, an investment company as defined in Section 3 of the Investment Company Act of 1940, 15 U.S.C. 80a-3, an entity that would be an investment company but for the exclusions provided in section 3(c) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(c), or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m or 15 U.S.C. 78o(d);

004.04 Offerings which are "blind pool offerings" or other offerings for which the specific business to be engaged in or specific property to be acquired by the issuer is not identified; and

004.05 Offerings in which the issuer plans to engage in a merger or acquisition with an unspecified business entity.

005 DISQUALIFICATION. The exemption in this Rule is not available for the securities of any issuer, if the issuer or any director, executive officer, general partner, managing

member, or other person with management authority over the issuer, has been subject to any conviction, order, judgment, decree, or other action specified in Rule 506(d)(1) adopted under the Securities Act of 1933, 17 C.F.R. 230.506(d)(1), that would disqualify an issuer under Rule 506(d) adopted under the Securities Act of 1933, 17 C.F.R. 230.506(d), from claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act of 1933, 17 C.F.R. 230.506(a) to 17 C.F.R. 230.506(c). However, this subdivision does not apply if both of the following are met:

005.01 On a showing of good cause and without prejudice to any other action by the Director, the Director determines that it is not necessary under the circumstances that an exemption is denied; and

005.02 The issuer establishes that it made a factual inquiry into whether any disqualification existed under this subdivision but did not know, and in the exercise of reasonable care, could not have known, that a disqualification existed under this subdivision. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants.

006 AGGREGATE OFFERING AMOUNT. Except as provided in subsection 006.03 below, the sum of all cash and other consideration to be received for all sales of the security in reliance on the exemption under this subdivision, excluding sales to any accredited investor, does not exceed the following amount:

006.01 If the issuer has not undergone, and made available to each prospective investor and the Director the documentation resulting from, a financial audit of its most recently completed fiscal year that complies with generally accepted accounting principles, one million dollars (\$1,000,000.00), less the aggregate amount received for all sales of securities by the issuer within the twelve months before the first offer or sale made in reliance on the exemption under this subdivision; or

006.02 If the issuer has undergone, and made available to each prospective investor and the Director the documentation resulting from, a financial audit of its most recently completed fiscal year that complies with generally accepted accounting principles, two million dollars (\$2,000,000.00), less the aggregate amount received for all sales of securities by the issuer within the twelve months before the first offer or sale made in reliance on the exemption under this subsection.

006.03 An offer or a sale to an officer, director, partner, trustee or individual occupying similar status or performing similar functions with respect to the issuer, or to a person owning ten percent or more of the outstanding shares of any class or classes of securities of the issuer does not count towards the monetary limitations in subsections 006.01 and 006.02. above.

007 PURCHASER OFFERING LIMIT. The issuer shall not accept more than five thousand dollars (\$5,000.00) from any single purchaser, except that such limitation does not apply to sales to an accredited investor. There is no limitation on the amount that an accredited investor may invest in offerings conducted pursuant to this Rule.

008 NOTICE FILING.

008.01 The notice filed by an issuer pursuant to Section 8-1111(24) shall be signed by a person duly authorized by the issuer and shall include the following information:

008.01A A Form NCF containing such information as the Department requires;

008.01B The disclosure document to be provided to investors pursuant to Neb. Rev. Stat. § 8-1111(24)(a)(xi);

008.01C The financial statements prepared in accordance with Section ~~009~~, below;

008.01D The escrow agreement required by Section ~~010~~, below;

008.01E A copy of the issuer's articles of incorporation or other documents which indicate the form of organization, and a Certificate of Good Standing issued by the Nebraska Secretary of State within the preceding thirty days;

008.01F A representation stating that all of the conditions of Section 8-1111(24) have been or will be met by the issuer; and

008.01G A ~~check or money order in the amount of filing fee~~ of two hundred dollars (\$200.00) ~~payable to the "Nebraska Department of Banking and Finance."~~

008.02 The notice shall be filed at least ten days prior to the commencement of the offering, except that the Director may waive this requirement for good cause shown.

008.03 An issuer shall not commence offering or selling such security until it has received written or electronic confirmation from the Department that its notice filing has been accepted by the Department.

008.04 The Director may require the filing of corrected or additional information if ~~he or she~~ the Director deems it material to the offering.

008.05 If at any time while the offering is ongoing there is a material change that would affect the accuracy of the information contained in notice filing, the issuer shall file amended information within thirty days. All amendments must first be filed with the Department and be accepted by the Department prior to their use by the issuer.

009 FINANCIAL STATEMENTS. The issuer shall provide the following financial statements for itself and its consolidated subsidiaries, if applicable:

009.01 A balance sheet as of the end of the most recent fiscal year, or, as of a date within one hundred twenty days of the date of the first sale, if the issuer has been in existence for less than one fiscal year; and

009.02 An income statement for the immediate past fiscal year or such shorter period as the issuer, including predecessors, has been in existence.

009.03 If the issuer has not conducted significant operations, a statement of receipts and disbursements shall be included in lieu of a statement of income.

009.04 The financial statements shall be:

009.04A Prepared in accordance with generally accepted accounting principles and audited by an independent accountant;

009.04B Reviewed by an independent accountant within one hundred twenty days before the first sale; or

009.04C In the event that the issuer does not have audited or reviewed financial statements, the financial statements shall be accompanied by an affirmative representation by the issuer, 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 issuer and are true and accurate to the best of the signer's knowledge and belief.

009.05 The issuer shall provide the financial statement required by subsection 009.01, above, in connection with income producing assets and/or income producing real property to be purchased with the proceeds of the offering by the issuer.

010 ESCROW AGREEMENT. All funds received from investors shall be deposited into a bank, regulated trust company, savings bank, savings and loan association or a credit union authorized to do business in Nebraska ("financial institution", collectively) in accordance with the terms of an escrow agreement.

010.01 The financial institution shall not be affiliated with the issuer, any portal operator assisting with the offering, or any officers, director, managing member, or affiliate of the issuer or any portal operator assisting with the offering.

010.02 The escrow agreement shall provide as follows:

010.02A The investor funds will be deposited into an escrow account with the financial institution acting as escrow agent;

010.02B For each investment, the issuer shall provide to the financial institution a copy of the subscription agreement with the names, addresses and respective amounts paid by each investor whose funds comprise each deposit;

010.02C The issuer must raise the minimum offering amount as stated in the disclosure document before the financial institution may release the offering proceeds to the issuer. Such proceeds shall be released to the issuer upon joint written notice from the issuer and the portal operator that the minimum offering amount has been met; and

010.02D If the issuer does not raise the minimum offering amount by the offering deadline, the financial institution shall return all subscription funds, plus any interest earned on the subscription funds, to the investors.

010.02E The escrow agent shall notify the Director in writing no later than five days after the release of proceeds to the issuer, or the return ~~of~~ of proceeds to the investors.

010.03 The financial institution may contract with the issuer to collect reasonable fees for its escrow services regardless of whether the minimum target offering amount is reached.

011 METHOD OF OFFERING. All offers and sales of securities pursuant to this Rule shall be made through one or more funding portals operated by a portal operator, subject to the following:

011.01 The portal operator shall, prior to offering securities on its funding portal, conduct a reasonable investigation of the background and regulatory history of each issuer whose securities are to be offered on the funding portal and of each of the issuer's directors, executive officers, general partners, managing members, or other persons with management authority over the issuer. The portal operator must deny an issuer access to its funding portal if the portal operator has a reasonable basis for believing that:

011.01A The issuer does not meet the requirements of Section 003, above, or the exemption is not available for the issuer pursuant to Section 004, above;

011.01B The issuer or any of its directors, executive officers, general partners, managing members, or other persons with management authority over the issuer, is subject to a disqualification under Section 005, above;

011.01C The issuer has engaged in, is engaging in, or the offering involves any act, practice, or course of business that will, directly or indirectly, operate as a fraud or deceit upon any person; or

011.01D It cannot adequately or effectively assess the risk of fraud by the issuer or its potential offering.

011.02 The portal operator shall establish and maintain, during the time that the offering appears on the funding portal, a secure method of communication through the funding portal itself that will permit potential and actual investors to communicate with one another and with representatives of the issuer about the offering. Further, the foregoing communications must be made visible and accessible, at all times during the time the offering appears on the qualified portal, to all those with access to the offering materials of issuer.

011.03 The portal operator shall obtain, either in writing or electronically, an affirmative declaration from a potential purchaser that the potential purchaser is a Nebraska resident before allowing such person any access to any information concerning an offering conducted pursuant to this subsection. In the event that

portal operator has knowledge or reason to believe that a potential investor is not a Nebraska resident, the portal operator shall deny or revoke the potential investor's access to such information.

011.04 The portal operator shall make available to potential investors via the funding portal, the disclosure document prescribed by Neb. Rev. Stat. § 8-1111(24)(a)(xi). The disclosure document shall be in a format that reasonably permits a person accessing the funding portal to print, save, download, or otherwise store the disclosure document.

011.05 The portal operator shall in connection with a sale of a security listed on the funding portal:

011.05A Obtain the certification from the investor prescribed by Neb. Rev. Stat. § 8-1111(24)(a)(viii).

011.05B Obtain certification from the investor that the investor qualifies as an accredited investor as defined in this subdivision, if the investor is investing more than five thousand dollars (\$5,000.00).

011.05C Obtain an affirmative representation, in writing or electronically, that the investor is a resident of Nebraska along with documentation evidencing such residence. ~~Any of the~~ following documents are acceptable to prove residence in the state of Nebraska:

011.05C1 A valid driver's license or identification card issued by the State of Nebraska;

011.05C2 A valid Nebraska voter registration card; ~~and/or~~

011.05C3 Property tax records showing that the investor owns and occupies property in this state as his or her principal residence.

011.05D Provide to the issuer a copy of the signed subscription agreement and all documents collected from the investor pursuant to subsections 011.05A through 011.05C, above.

012 ADVERTISING.

012.01 A general announcement by an issuer or funding portal regarding an issuer's offering being made in reliance on this subdivision shall not be considered an offer of a security so long as only the following are included:

012.01A A statement that the issuer is conducting an offering, the name of the portal operator conducting the offering and a link directing the potential investor to the funding portal;

012.01B The maximum amount of the offering; and

012.01C Factual information about the legal identity and business location of the issuer, limited to the name of the issuer of the security, the address, and a brief description of the business of the issuer.

012.02 Any general announcement regarding an issuer's offering being made in reliance on this subdivision must contain a statement making it clear that the offering is directed only to residents of Nebraska.

013 RESTRICTIONS ON RESALE. While the securities are being offered pursuant to this Rule and for a period of nine months from the date of the last sale by the issuer of such securities, all resales by any person shall be made only to residents of Nebraska.

014 REPORTS TO INVESTORS. An issuer shall provide a report to investors which meets the following requirements:

014.01 The report shall contain the following information:

014.01A Compensation received by each director and executive officer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received; and

014.01B An analysis by management of the issuer of the business operations and financial condition of the issuer.

014.02 The report shall be prepared and delivered no later than forty-five days after the end of each fiscal quarter.

014.03 In lieu of delivering a report to each investor, the issuer may post the report on a funding portal, subject to the following:

014.03A The issuer has notified each investor in writing that it intends to post the report on the funding portal, provided such notice contains the following:

014.03A1 The Uniform Resource Locator for the funding portal on which the report will be posted; and

014.03A2 A statement that the investor can elect to receive the report in writing, and information as to how the investor can make such election.

014.03B The report shall be posted no later than forty-five days after the end of each fiscal quarter;

014.03C The report shall remain on the funding portal until the report for the succeeding quarter is posted; and

014.03D The issuer shall provide a written copy to any investor who elects to receive a written copy.

014.04 A copy of the report shall be filed with the Department no later than forty-five days after the close of each fiscal quarter.

015 RECORDS. An issuer shall maintain and preserve for a period of five years from either the date of the document or communication or the date of the closing or termination of the securities offering, whichever is later, records related to offers and sales made pursuant to this exemption.

015.01 The records that shall be maintained include, but are not limited to, the following:

015.01A The disclosure document provided to prospective investors;

015.01B The signed investor certification prescribed by Neb. Rev. Stat. § 8-1111(24)(a)(viii);

015.01B All subscription agreements;

015.01C All information used to establish that an issuer, prospective purchaser, or investor is a Nebraska resident;

015.01D All information used to establish that a prospective purchaser or investor is an accredited investor as defined in subsection 002.01, above;

015.01E All agreements and/or contracts between the issuer and the portal operator;

015.01F All escrow agreements between the issuer and a financial institution pursuant to section 010, above;

015.01G All correspondence or other communications with portal operators, financial institutions acting as escrow agents, prospective purchasers, and/or investors;

015.01H Each quarterly report prepared pursuant to section 014, above; and

015.01I All other records relating to the offers and/or sales of securities made through the funding portal.

015.02 An issuer shall, upon written request of the Director, furnish to the Director any records required to be maintained and preserved under this subdivision.

015.03 The records required to be kept and preserved under this Rule must be maintained in a manner, including by any electronic storage media, that will permit the immediate location of any particular document so long as such records are available for immediate and complete access by representatives of the Director. Any electronic storage system must preserve the records exclusively in a nonrewriteable,

nonerasable format; verify automatically the quality and accuracy of the storage media recording process; serialize the original and, if applicable, duplicate units storage media, and time-date for the required period of retention the information placed on such electronic storage media; and be able to download indexes and records preserved on electronic storage media to an acceptable medium. In the event that a records retention system commingles records required to be kept under this subdivision with records not required to be kept, representatives of the Director may review all commingled records.

016 DISCLOSURE. Nothing in this Rule is intended to, or should be construed as, in any way relieving issuers or persons acting on behalf of issuers from providing to prospective investors disclosure adequate to satisfy the provisions of Section 8-1102(1) of the Act.

017 AVAILABILITY OF EXEMPTION.

017.01 Offers and sales which are exempt under this Rule may not be combined with offers and sales exempt under any other Rule or Section of the Act; however, nothing in this limitation shall act as an election. Should the offer and sale fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.

017.02 The exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this Rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this Rule.

018 BURDEN OF PROOF. In any proceeding involving this Rule, the burden of proving the exemption from registration is upon the person claiming the exemption.