FISCAL IMPACT STATEMENT

Agency: Banking and Finance
Titles: 45 Chapters 1-5, 10, 13-14, 22, 29
46 Chapters 1-6, 9, 12
47 Chapters 1-11
48 Chapters 6, 13, 16, 35, 38, 39

Prepared by: Michael Cameron, Legal Counsel
Date Prepared: June 19, 2018
Telephone: 471-3245

Type of Fiscal Impact: There will be no fiscal impact. The rules do not impose any new fees or change any fee amounts. The rules also do not create or eliminate any exemptions that would impact the number of entities making filings for which a filing fee is required.

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(X)	(X)	(X)
Increased Costs	( )	( )	( )
Decreased Costs	( )	( )	( )
Increased Revenue	( )	( )	( )
Decreased Revenue	( )	( )	( )

Description of Impact:

State Agency: No impact

Political Subdivisions: No Impact

Regulated Public: No Impact

NOTICE OF RULEMAKING HEARING
NEBRASKA DEPARTMENT OF BANKING AND FINANCE

Notice is hereby given that the Nebraska Department of Banking and Finance will hold a rulemaking hearing on July 25, 2018, commencing at 9:30 a.m., at the offices of the Department of Banking and Finance, 1526 K Street, Suite 300, Lincoln, Nebraska 68508.

The purpose of the hearing is to take testimony and evidence concerning the following changes to the Rules and Regulations of the Department:

1) The proposed repeal of Title 45, Chapters 1-5, 10, 13-14, 22, and 29.
2) The proposed repeal of Title 46, Chapters 1-6, 9 and 12.
3) The proposed repeal of Title 47, Chapters 1-11.
4) The proposed revisions to Title 48, Chapters 6, 13, 16, 38, and 39.
5) The proposed repeal of Title 48, Chapter 35.

45 NAC—Banking Rules: Chapters 1-5, 10, 13-14, 22, and 29, are proposed for repeal as such rules are obsolete.

46 NAC—Industrial, Savings & Loan, Credit Union Rules: Chapters 1-6, 9, and 12 are proposed for repeal as such rules are obsolete.

47 NAC—Electronic Transmission Terminal Rules: Chapters 1-11 are proposed for repeal as such rules are obsolete.

48 NAC—Securities Rules: The following amendments are proposed for Title 48:

48 NAC 6—Agents of Broker-Dealers: The purpose of the proposed revision of 48 NAC 6 is to update provisions governing broker-dealer agents. The proposal adjusts examination requirements for agents to correspond to new examination requirements established by the Financial Industry Regulatory Authority.

48 NAC 13—Information Requirements for the Section 8-1110(5) Exchange Exemption: The purpose of the proposed revision of 48 NAC 13 is to eliminate an obsolete notice filing requirement and to designate approved exchanges for the exchange exemption.

48 NAC 16—Information Requirements for the Section 8-1111(15) Agricultural Cooperative Exemption: The purpose of the proposed revision of 48 NAC 16 is to clarify that the filing requirements apply to all cooperatives and limited cooperative associations.

48 NAC 35—Repealed. This chapter is proposed for a complete repeal as such rule is obsolete.

48 NAC 38—Information Requirements for the Section 8-1111(23) Notice: The purpose of the proposed revision of 48 NAC 38 is to increase the amount that can be raised from $250,000 to $750,000, and to authorize issuers to rely upon the federal “Intrastate Offering Exemption”, 17 CFR 230.147A.

48 NAC 39—Conditions and Information Requirements for the Section 8-1111(24) Crowdfunding Exemption: The purpose of the proposed revision of 48 NAC 39 is to eliminate certain restrictions on advertising. Issuers will be allowed to advertise across state lines as long as the advertising states that the offering is limited to Nebraska residents.

The rulemaking hearing is being conducted under and by virtue of the provisions of Section 84-907, R.R.S 1943, as amended, which provides that COPIES OF THE PROPOSED RULES ARE AVAILABLE FOR PUBLIC EXAMINATION at the Office of the Department of Banking and Finance, 1526 K Street, Suite 300, Lincoln, Nebraska 68508, and at the Office of the Secretary of State, 1201 N Street, Suite 120, Lincoln, Nebraska 68508. In addition, the proposed rules are available on the Department of Banking and Finance's website at https://ndbf.nebraska.gov, and the Secretary of State's website www.sos.ne.gov.

A copy of the Fiscal Impact Statement is available at the Office of the Department of Banking and Finance and on the Department's website.

All interested persons are invited to attend and testify at the hearing. Interested persons may also submit written comments to the Department of Banking and Finance prior to the hearing, which comments will be made part of the hearing record at the time of the hearing.

If auxiliary aids or reasonable accommodations are needed for attendance at this hearing, please call the Nebraska Department of Banking and Finance at (402) 471-2171, or, for persons with hearing impairments, please call the Nebraska Relay System, (800) 833-7352 TDD. This contact should be made at least seven (7) days prior to the hearing.

Dated at Lincoln, Nebraska, this 19th day of June, 2018.

Mark Quandahl, Director
Nebraska Department of Banking and Finance

~~Title 45 - DEPARTMENT OF BANKING AND FINANCE~~

~~Chapter 1 - PARTICIPATION OR PLACED PAPER~~

~~001~~ ~~Participation or placed paper shall mean any obligation sold either in part or in whole for the accommodation of the bank's customer. It may be taken in commercial form, taken payable to any officer or director of the bank, or payable to a third party or another bank.~~

~~Every bank selling a participation in a loan or placing the entire obligation as noted above shall maintain an auxiliary ledger showing in detail the name of the obligor, the original amount of the loan, the current balance of the loan, together with a current date, the original date of the loan, the rate of interest, the type of collateral, and the name of the party purchasing such obligations. Participation loans shall reflect the amount sold and the amount retained by the bank in such a manner as to make clear the dollar amount held by each party involved.~~

~~Any obligation sold by the bank with recourse upon itself shall be so noted and reflected upon its books in memorandum form as contingent liability.~~

Title 45 - DEPARTMENT OF BANKING AND FINANCE

Chapter 2 - LIABILITY LEDGER

001 Each state bank shall maintain a record in a form most applicable to the institution. Such record shall set forth:

001A a borrower's conventional single payment notes in such manner to reflect the borrower's total obligation to such bank;

001B shall give a precise account of all notes paid by the borrower including the payments thereon;

001C name and address of the borrower; and

001D the amount of each note, date of execution, date of maturity, number assigned and rate of interest.

~~Title 45 - DEPARTMENT OF BANKING AND FINANCE~~

~~Chapter 3 - NOTE REGISTER~~

~~001 Each state bank shall maintain a note register in a form most applicable to the institution. Such register shall list each note showing the date of execution, the number, the borrower, rate of interest, the amount and due date.~~

~~Title 45 - DEPARTMENT OF BANKING AND FINANCE~~

~~Chapter 4 - CERTIFICATE OF DEPOSIT LEDGER~~

~~001 Each state bank shall maintain a certificate of deposit ledger which shall denote the amount of time certificate of deposit held by each depositor. The ledger shall list each certificate separately, giving number and amount and show a current balance for each account provided, however, that a computer print-out may be acceptable in lieu of the ledger when the print-out contains,~~

~~001A the number,~~

~~001B the amount of each certificate, and~~

~~001C the total outstanding certificates held by each depositor.~~

~~Title 45 - DEPARTMENT OF BANKING AND FINANCE~~

~~Chapter 5 - CASH BOOK~~

~~001 Each state bank shall maintain a permanently posted cash book, and all items other than transit items shall be so described that identification can be made.~~

Effective date: January 9, 1991

Title 45 - DEPARTMENT OF BANKING AND FINANCE

Chapter 10 - BANK CHARTER APPLICATIONS

001 When an application is required by the provisions of section 8-120 pertaining to the chartering of a new bank, such application shall be made upon forms to be supplied by the Department of Banking and Finance.

002 The director may by way of investigation require additional information which he or she, in his or her discretion, deems necessary to carry out the purposes and intent of the laws relating to bank organization.

003 If the director requires additional information pursuant to section 002 above, such additional information shall not be deemed to be a part of the bank organization application, but shall be deemed to be a part of the bank organization investigation conducted by the department.

004 The bank organization application shall be so prepared that the information contained therein shall not vary substantially in any material respect, from the date of the filing of such application to the date of the hearing on said application. The intent of this regulation is to assure to all parties that the information contained in the bank organization application as filed, will be substantially the same information upon which the public hearing on the said application is conducted.

005 The director, in his or her discretion, may accept amended bank organization applications. If the director finds the amended bank organization application to vary substantially in any material respect from the application as originally filed, the director may continue the public hearing to allow all parties an opportunity to investigate the amended application.

006 This rule is in addition to any requirements contained in 49 NAC 1, 2, and 3.

~~Title 45 - DEPARTMENT OF BANKING AND FINANCE~~

~~Chapter 13 - RESERVE~~

~~001 All state banks need not maintain a cash reserve greater than zero, but may, in the judgment of management, maintain such reserves as necessary to conduct the day-to-day operation of the bank.~~

Title 45 - DEPARTMENT OF BANKING AND FINANCE

Chapter 14 - INTEREST ON DEPOSITS

001 The Director of Banking and Finance, pursuant to authority delegated to him by Section 8-106, R.R.S. Nebraska, 1943, prescribes the following for carrying out the provisions of Section 8-133, R.R.S. Nebraska, 1943.

There are no maximum rates of interest prescribed on any deposits made or retained in State banks.

Title 45 - DEPARTMENT OF BANKING AND FINANCE

Chapter 22 - PREMIUMS, FINDERS FEES, PREPAYMENT OF INTEREST AND PAYMENT OF INTEREST IN MERCHANDISE IN DEPOSITS

001 Pursuant to Section 8-1,123, 45 NAC 22 shall govern banks on depositor promotional plans.

001.01 Premiums Not Considered Payment of Interest

001.01A Premiums, whether in the form of merchandise, credit, or cash, given by a depository institution to a depositor will be regarded as an advertising or promotional expense rather than a payment of interest if: (1) the premium is given to a depositor only at the time of the opening of a new account or an addition to, or renewal of, an existing account; (2) no more than two premiums per account are given within a 12-month period; and (3) the value of the premium or, in the case of articles of merchandise, the total cost (including shipping, warehousing, packaging, and handling costs) does not exceed $10 for deposits of less than $5,000 or $20 for deposits of $5,000 or more. The costs of premiums may not be averaged. Prior to the beginning of a premium program, an executive officer of the depository institution must certify that the total cost of a premium, including shipping, warehousing, packaging, and handling costs, does not exceed the applicable $10/$20 limitations and that no portion of the total cost of any premium has been attributed to development, advertising, promotional or other expenses. The certification and supporting documents must be retained by the institution in its files and must be made available to the Department of Banking and Finance upon request.

001.01B Certifications required by paragraph 001.01A must contain the following language:

001.01B1 (For use with premium programs.)

I, _____,
(name and title of certifying officer and institution)

do hereby certify, to the best of my knowledge and belief, that the total cost(s) of the premium(s) offered by this institution during a premium program to be conducted from _____ (date)

to _____, including the wholesale cost,
(date)

shipping, warehousing, packaging and handling costs, does (do) not exceed $10 for deposits of less than $5,000 or $20 for deposits of $5,000 or more. I further certify

that the costs of premium items have not been averaged, that no portion of the cost of any premium has been attributed to development, advertising, promotional, or other expenses, and that this program complies in all respects with the requirements of 45 NAC 22-001.01.

_____

_____ (Signature)

?, _____

_____ (Date)

001.01B2 (For use with self-liquidating programs.)

I, _____,
(name and title of certifying officer and institution)

do hereby certify, to the best of my knowledge and belief, that depositors are required to absorb the total costs of items sold by this institution in a self-liquidating program to be conducted from _____ to _____,
(date) (date)

including the wholesale cost, shipping, warehousing, packaging and handling costs. I further certify that the costs of items have not been averaged, that no portion of the cost of any item has been attributed to development, advertising, promotional, or other expenses, and that this program complies in all respects with the requirements of 45 NAC 22-001.01.

_____

_____ (Signature)

_____

_____ (Date)

001.02 Finders Fees. Any fee paid by a depository institution to a person who introduces a depositor to the institution must be paid in cash when paid for deposits subject to interest rate ceilings, and will be regarded as payment of interest to the depositor for purposes of determining compliance with interest rate ceilings, except that a depository institution may pay bonuses in cash or merchandise to its employees for participating in an account drive, contest, or other incentive plan, provided such bonuses are tied to the total amount of deposits solicited and are not tied to specific, individual deposits.

001.03 Prepayment of Interest and Payment of Interest in Merchandise

001.03A Interest may be paid in the form of merchandise, cash, or a credit to a deposit account. However, interest on a deposit subject to deposit interest rate ceilings, whether in the form of merchandise, cash, or credit to an account, may not

be paid by a depository institution until such interest has been earned, except as provided in 45 NA C 22-001.02. Where merchandise is paid in lieu of cash interest, an executive officer of the depository institution must certify that the total cost of such merchandise includes shipping, warehousing, packaging, and handling costs, and that no portion of the cost has been attributed to development, advertising, promotional or other expenses. The costs of individual items of merchandise may not be averaged. The certification and supporting documents must be retained by the institution in its files and must be made available to the Department of Banking and Finance upon request.

001.03B Certifications required by paragraph 001.01A must contain the following language:

I, _____,
(name and title of certifying officer and institution)

do hereby certify, to the best of my knowledge and belief, that the total cost(s) of the merchandise offered by this institution in lieu of cash interest during a program conducted from _____ to _____,
_____ (date) (date)

includes the wholesale cost, shipping, warehousing, packaging and handling costs, and does not exceed the maximum amount of earned interest that could have been paid in the form of cash or a credit to an account. I further certify that the costs of the items have not been averaged, that no portion of the cost of any item has been attributed to development, advertising, promotional, or other expenses, and that this program complies in all respects with the requirements of 45 NAC 22-001.03.

_____
_____ (Signature)

_____
_____ (Date)

Effective date: July 12, 1987

Title 45 - DEPARTMENT OF BANKING & FINANCE

Chapter 29 - EQUITY REQUIREMENTS FOR LOANS TO EXECUTIVE OFFICERS

001 Scope and Application

001.01 This rule will govern certain loans made by a state bank to its executive officers pursuant to the provisions of Neb. Rev. Stat. section 8-140. Such loans include only those which are secured by a lien on the current or future residence of the executive officer and are in addition to the $20,000 maximum educational and personal loans authorized by that section.

001.02 An executive officer who is a cosigner on a loan included under the provisions of section 001.01 shall be governed by this rule, whether or not he/she is a maker of the loan.

001.03 Compliance with this rule does not exempt a bank from compliance with the provisions of the Federal Reserve Board's Regulation O.

002 Definitions

002.01 "Lien" shall mean any charge or security or encumbrance upon the property enforceable in equity or law.

003 Minimum Equity

003.01 Loans which will be secured by a first lien on the residence may be made in an amount not to exceed eighty percent of the appraised value of the property. Minimum equity is set at twenty percent.

003.02 Loans which will be secured by a lien other than a first lien on the residence may be made when the aggregate of the lien being taken by the bank and the actual amount of all liens prior thereto does not exceed eighty percent of the appraised value of the property. Minimum equity is set at twenty percent.

003.02A In the case of liens of record that provide for fluctuating balances or additional advances or are open-ended or have similar features, the maximum amount that could be advanced thereunder shall be considered as the actual amount of these prior liens.

003.02B In the case of liens of record that do not provide for fluctuating balances or additional advances or are not open-ended or do not have similar features, the current balance of the instrument which gave rise to the lien may be used for determining the actual amount of these prior liens.

004 Documentation Requirements

004.01 The lien position must be established. A title opinion or title insurance is required.

004.02 Calculation of the actual amount of all prior liens shall be documented and verified. This may include memoranda, correspondence and credit agency reports.

004.03 The appraised value is to be evidenced by a written appraisal which predates the loan by no more than six months. The appraisal shall be conducted by an independent licensed real estate appraiser.

003.02 Loans which will be secured by a lien other than a first lien on the residence may be made when the aggregate of the lien being taken by the bank and the actual amount of all liens prior thereto does not exceed eighty percent of the appraised value of the property. Minimum equity is set at twenty percent.

003.02A In the case of liens of record that provide for fluctuating balances or additional advances or are open-ended or have similar features, the maximum amount that could be advanced thereunder shall be considered as the actual amount of these prior liens.

003.02B In the case of liens of record that do not provide for fluctuating balances or additional advances or are not open-ended or do not have similar features, the current balance of the instrument which gave rise to the lien may be used for determining the actual amount of these prior liens.

004 Documentation Requirements

004.01 The lien position must be established. A title opinion or title insurance is required.

004.02 Calculation of the actual amount of all prior liens shall be documented and verified. This may include memoranda, correspondence and credit agency reports.

004.03 The appraised value is to be evidenced by a written appraisal which predates the loan by no more than six months. The appraisal shall be conducted by an independent licensed real estate appraiser.

Title 46 - DEPARTMENT OF BANKING AND FINANCE

Chapter 1 - REQUIRED RESERVES INDUSTRIAL LOAN AND INVESTMENT COMPANIES

001 Computation of Required Reserves. Required reserves are computed on the basis of the daily average certificate of indebtedness balances during a seven-day period ending each Wednesday (the computation period). Reserve requirements are computed by applying the ratios prescribed in Section 8-407.01 to the type of certificate noted therein. The reserve balance that is to be maintained shall be maintained during a corresponding seven-day period (maintenance period) which begins on the second Thursday following the end of a given computation period and ends on the first Wednesday after the close of the next computation period.

Carryover Deficiencies. Any excess or deficiency in a required reserve balance for any maintenance period that does not exceed 2 percent of the required reserve shall be carried forward to the next maintenance period. Any carryover not offset during the next period may not be carried forward to additional periods.

A record of the computation and maintenance of the required reserves shall be maintained in accordance with the Department's Form 2900 and be available for review by examiners at each examination. Any deficiency in the required reserve during the maintenance period shall result in an assessment on the deficiency at a rate of eight percent per annum for the periods deficient payable to the Department at the end of each fiscal year ending June 30. Habitual deficiencies in the required reserve may result in an additional assessment of five dollars per day at the discretion of the Department.

Title 46 - DEPARTMENT OF BANKING AND FINANCE

Chapter 2 - INVESTMENT OF ASSETS OF AN INDUSTRIAL LOAN & INVESTMENT COMPANY

001 Allowable Investments (Other than loans made in the normal course of business):

001.01 Unlimited investments in debt securities of the U.S. Government and its Agencies;

001.02 Investment in marketable debt securities of other than U.S. Government or its agencies with ratings accorded by a recognized rating service in the four highest categories;

Ratings on Nebraska municipal obligations are not required. These investments are subject to the company's lending limit except general obligations of a political subdivision having taxing authority. Sanitary Improvement District warrants are subject to the lending limits.

001.03 Investment in stocks or corporate securities convertible to stock having an established public market and traded on an exchange or over the counter;

These investments shall not exceed in aggregate ten percent of the company's assets. The aggregate obligations of each such corporate investment shall not exceed the company's lending limit.

001.04 Investment in personal property for lease purpose;

001.04A Any industrial loan and investment company may become the owner or lessor of personal property acquired upon the specific request and for the use of a customer and may incur such additional obligations as may be incident to becoming an owner and lessor of such property provided such investment in personal property acquired for use of any one customer shall not exceed an amount equal to the company's paid-in capital stock, and provided the aggregate of all such investments for the use of all customers shall not exceed the company's total capital, including capital notes and debentures.

001.04B Personal property acquired for the use of a customer is owned by the company, and the lease payments are in the nature of rent rather than interest, so these investments are not loans and are

not subject to the limitations of Section 8-409.

001.05 Investments in stock of a corporation, either wholly or partially owned, for the following purposes or related to the activities of an industrial loan & investment company;

001.05A Operating facility, including parking facility with other retail and office rental spaces, and insurance agency, casualty or life;

These investments shall not exceed the company's equity capital without Departmental approval. The operating facility can be held directly rather than in corporate form.

001.05B Investment in the stock or capital notes or debentures of another industrial loan & investment company subject to the specific approval of the Nebraska Department of Banking and Finance.

001.05C Any other such activity as the Director of Banking and Finance may permit.

001.06 Investment in stock of a corporation or limited partnership interest in a limited partnership, either wholly or partially owned, for the purpose of acquiring real estate, other than the operating facility, or in direct ownership of real estate;

These investments shall be limited in the aggregate to the equity capital of the company. Non-operating investments in real estate may include the following:

001.06A Commercial or residential real estate held for rental or subdivision and sale; and

001.06B Agricultural Land.

Any investments in excess of this limit shall be subject to the approval of the Nebraska Department of Banking & Finance.

None of the foregoing regulations shall prohibit ownership of property or assets received in satisfaction or forbearance of obligations previously

~~contracted for in the ordinary course of business. Real estate or such other assets acquired in satisfaction of debts or at sale upon judgment or decree shall be sold at private or public sale within five years unless authority shall be given in writing by the Department of Banking and Finance to hold it for a longer period. The total amount of such real estate or assets held of this nature (representing equity investment including the booked value of the real estate held plus any acquired obligations assumed through foreclosure and not booked) shall not at any one time exceed twenty-five percent of total equity capital excluding capital notes or debentures without written notice to the Department of Banking and Finance.~~

~~002 Other Permitted Activities. An industrial loan & investment company may take, as consideration for a loan, a share in the profit, income, or earnings from a business enterprise of a borrower or a shared appreciation in a mortgage loan; the latter of which the borrower agrees to share the property's appreciation with the company in return for a preferential interest rate. The specified share of the property's appreciation due the industrial company (the lender) is to be classified as "contingent interest." (That is, the lender may assess a contingent interest charge equal to a specific percent of the property's appreciation over the life of the loan in exchange for lending at a preferential rate.)~~

~~Shared profits or shared appreciation mortgages may not exceed a term of ten years; however, monthly payments on shared appreciation mortgages may be based on an amortization schedule of up to 40 years, with guaranteed long-term refinancing. At the sale or transfer of property on a shared appreciation mortgage or at maturity of the note, contingent interest must be collected. If the property taken as collateral on a shared appreciation mortgage is not sold within the ten-year term allowed, the industrial company (the lender) must guarantee to refinance the outstanding indebtedness and contingent interest with a long-term mortgage made at the then-prevailing market rate. The borrower must have the right to prepay the loan at any time without penalty. The aggregate amount of loans made under shared profits or shared appreciation mortgages may not exceed 10% of the company's total assets without the Department's approval, nor~~

may they individually exceed 40% of equity or appreciation in the property.

Contingent interest must be based upon net appreciation (that is, appreciation net of the cost of improvements and certain costs associated with buying and selling the property). Such interest shall not be taken upon the books until realized, either at the sale of property or when refinanced in accordance with this rule.

The borrower's obligation to repay the principal amount of such loans made under this rule shall not be conditioned upon profit, income, earnings, or sale of property. However, this provision does not prohibit the lender from foreclosing upon its security. An industrial company (the lender) shall not participate in management of any business enterprise of a borrower except as required in the management of the loan portfolio or incur guarantees of indebtedness or other liabilities.

003 Excluded Investment.

003.01 Any investment held in the form of equity in a partnership or trust, unless represented by a true limited partner's interest without management involvement;

003.02 Investment in stock of a private corporation, either wholly or partially owned, encompassing any operating business unrelated to the activities of an industrial loan and investment company;

All activities such as retailing, manufacturing, wholesaling, distributing services or any other activity not previously permitted shall be prohibited unless otherwise approved by the Nebraska Department of Banking and Finance.

004 Implementation of Regulations & Compliance:

004.01 Any existing investments of an industrial loan and investment company that would be prohibited under any of the aforementioned regulations shall be "Grandfathered" and be permitted to be retained by the company for a period of ten years at which time all such investments must comply with this rule.

004.02 Any new investments of an industrial loan and investment company shall not be permitted, unless, with its existing investment, the industrial loan and investment company will be in compliance based on the foregoing regulations. Such investments are subject to approval by the Nebraska Department of Banking and Finance.

NOTE:

1. "Total capital," when used in this rule, shall mean: paid-up capital stock, surplus, undivided profits, capital reserves, and capital notes and debentures.

2. "Equity capital," when used in this rule, shall mean: paid-up capital stock, surplus, undivided profits, and capital reserves. It shall not include any debt capital such as capital notes and debentures.

Title 46 - DEPARTMENT OF BANKING AND FINANCE

Chapter 3 - PREMIUMS, FINDERS FEES, PREPAYMENT OF INTEREST AND PAYMENT OF INTEREST IN MERCHANDISE ON CERTIFICATES OF INDEBTEDNESS

001 Pursuant to Section 8-412, 46 NAC 3 shall govern industrial loan and investment companies on promotion plans relating to certificates of indebtedness.

001.01 Premiums Not Considered Payment of Interest.

001.01A Premiums, whether in the form of merchandise, credit, or cash, given to an account holder will be regarded as an advertising or promotional expense rather than a payment of interest if: (1) the premium is given to an account holder only at the time of the opening of a new account or an addition to, or renewal of, an existing account; (2) no more than two premiums per account are given within a 12-month period; and (3) the value of the premium or, in the case of articles of merchandise, the total cost (including shipping, warehousing, packaging, and handling costs) does not exceed $10 for accounts of less than $5,000 or $20 for accounts of $5,000 or more. The costs of premiums may not be averaged. Prior to the beginning of a premium program, an executive officer of the institution must certify that the total cost of a premium, including shipping, warehousing, packaging, and handling costs, does not exceed the applicable $10/$20 limitations and that no portion of the total cost of any premium has been attributed to development, advertising, promotional, or other expenses. The certification and supporting documents must be retained by the institution in its files and must be made available to the Department of Banking and Finance upon request.

001.01B Certifications required by part 001.01A must contain the following language:

001.01B1 (For use with premium programs.)

I,
(name and title of certifying officer and institution)

do hereby certify, to the best of my knowledge and belief, that the total cost(s) of the premium(s) offered by this institution during a premium program to be conducted from _____ to _____, including the (date)

(date)wholesale cost, shipping, warehousing, packaging, and handling costs, does (do) not exceed $10 for accounts of less than $5,000 or $20 for accounts of $5,000 or more. I further certify that the costs of premium items have not been averaged, that no portion of the cost of any premium has been attributed to development, advertising, promotional, or other expenses, and that this program complies in all respects with the requirements of 46 NAC 3.001.01.

_____

_____ (Signature)

_____

_____ (Date)

001.01B2 (For use with self-liquidating programs.)

I,

(name and title of certifying officer and institution)

do hereby certify, to the best of my knowledge and belief, that account holders are required to absorb the total costs of items sold by this institution in a self-liquidating program to be conducted from _____ to _____,

(date) (date)

including the wholesale cost, shipping, warehousing, packaging, and handling costs. I further certify that the costs of items have not been averaged, that no portion of the cost of any item has been attributed to development, advertising, promotional, or other expenses, and that this program complies in all respects with the requirements of 46 NAC 3.001.01.

_____

_____ (Signature)

_____

_____ (Date)

001.02 Finders Fees

Any fee paid by an industrial loan and investment company to a person who introduces an account holder to the institution must be paid in cash when paid for accounts subject to interest rate ceilings, and will be regarded as a payment of interest to the account holder for purposes of determining compliance with interest rate ceilings, except that an industrial loan and investment company may pay bonuses in cash or merchandise to its employees for participating in an account drive, contest, or other incentive plan, provided such bonuses are tied to the total amount of funds solicited and are not tied to specific, individual accounts.

001.03 Prepayment of Interest and Payment of Interest in Merchandise.

001.03A Interest may be paid in the form of merchandise, cash, or a credit to a certificate of indebtedness account. However, interest on accounts subject to certificate of indebtedness interest rate ceilings, whether in the form of merchandise, cash, or credit to an account, may not be paid by an industrial loan and investment company until such interest has been earned, except as provided in 46 NAC 3.001.02. Where merchandise is paid in lieu of cash interest, an executive officer of the industrial loan and investment company must certify that the total cost of such merchandise includes shipping, warehousing, packaging, and handling costs, and that no portion of the cost has been attributed to development, advertising, promotional, or other expenses. The costs of individual items of merchandise may not be averaged. The certification and supporting documents must be retained by the institution in its files and must be made available to the Department of Banking and Finance upon request.

001.03B Certifications required by paragraph 001.03A must contain the following language:

I,

~~(name and title of certifying officer and institution)~~

~~do hereby certify, to the best of my knowledge and belief, that the total cost(s) of merchandise offered by this institution in lieu of cash interest during a program conducted from _____ to _____ (date) (date) includes the wholesale cost, shipping, warehousing, packaging, and handling costs, and does not exceed the maximum amount of earned interest that could have been paid in the form of cash or a credit to an account. I further certify that the costs of the items have not been averaged, that no portion of the cost of any item has been attributed to development, advertising, promotional, or other expenses, and that this program complies in all respects with the requirements of 46 NAC 3.001.03~~

_____

_____ ~~(Signature)~~

_____

_____ ~~(Date)~~

Title 46 - DEPARTMENT OF BANKING AND FINANCE

Chapter 4 - CAPITAL NOTES OR DEBENTURES OF INDUSTRIAL LOAN AND INVESTMENT COMPANIES

001 A capital note or debenture issued by an industrial loan and investment company must meet the following conditions:

001.01 Maturity of seven (7) years or more.

001.02 Have a denomination of $500 or more.

001.03 Is not eligible as collateral.

001.04 Subordinated to the claims of certificate of indebtedness holders.

001.05 Is unsecured.

001.06 Cannot be retired without approval of the Department of Banking and Finance.

TITLE 46 - DEPARTMENT OF BANKING AND FINANCE

CHAPTER 5 - ADVERTISING

001 In connection with any advertising or written material, an industrial loan and investment company must include a statement that it is an industrial loan and investment company.

002 No advertising or written material used in connection with the certificate of indebtedness shall mention the fidelity bond insurance carried by the industrial loan and investment company, unless the advertising or written material contains a statement explaining the coverage of the fidelity bond and a statement that the certificate of indebtedness is not insured by the fidelity bond.

003 No advertising or written material of an industrial loan and investment company shall in any way indicate that certificates of indebtedness of the industrial loan and investment company are guaranteed or insured, unless the certificates of indebtedness are, in fact, insured by an entity approved by the Director of Banking and Finance. If the certificates of indebtedness are insured, the insuring entity and the limits of the insurance must be specified.

004 Form of certificates of indebtedness:

004.01 Paid-up certificates.

Certificates of indebtedness evidencing the paid-up certificate shall include the following information, but will in no way be limited to the following information:

004.01A A statement in bold print that the certificate of indebtedness is not insured, unless the certificate of indebtedness is, in fact, insured by an entity approved by the Director of Banking and Finance. If the certificate of indebtedness is insured, the insuring entity and the limits of the insurance must be specified.

004.01B A statement that the certificate of indebtedness is an evidence of indebtedness and is not a deposit or certificate of deposit.

004.01C A statement as to whether or not the paid-up certificate is automatically renewed and any terms of notice which must be given by the industrial or certificate holder in order to prevent the certificate of indebtedness from being automatically renewed.

004.01D A clear statement of the circumstances under which paid-up certificates of indebtedness may be paid before maturity including the applicable forfeiture of interest penalties, and the discretion the company is allowed in permitting such payment.

004.01E The terms of the contract of the certificate of indebtedness, i.e., interest, maturity, payment of interest and principal, etc.

004.02 Installment certificates.

004.02A A statement in bold print that the installment certificate of indebtedness is not insured, unless the installment certificate of indebtedness is, in fact, insured by an entity approved by the Director of Banking and Finance. If the certificate of indebtedness is insured, the insuring entity and the limits of the insurance must be specified.

004.02B A statement that the installment certificate of indebtedness is an evidence of indebtedness and is not a deposit or certificate of deposit.

004.02C The terms of the contract of the installment certificate of indebtedness, i.e., interest, right to withdrawal, payment of interest and principal, etc.

005 A certificate of indebtedness which evidences the paid-up certificate or installment certificate should be treated as a contract between the industrial loan and investment company and the certificate holder and it should disclose all terms of that contract.

Title 46 - DEPARTMENT OF BANKING AND FINANCE

Chapter 6 - INTEREST ON CERTIFICATES OF INDEBTEDNESS

001 The Director of Banking and Finance, pursuant to authority delegated to him by Section 8-401.01, R.R.S. Nebraska, 1943, prescribes the following regulations for carrying out the provisions of Section 8-410 R.R.S. Nebraska 1943.

001.01 Definitions

001.01A Paid-up time certificates of indebtedness. This term means a certificate of indebtedness issued in fixed denomination and evidenced by an instrument which provides on its face that the amount is payable:

001.01A1 On a certain date, specified in the instrument, not less than 7 days after date; or

001.01A2 At the expiration of a certain specified time not less than 7 days after the date of the instrument.

001.01B Paid-up certificates of Indebtedness--Open Account. This term means a paid-up certificate of indebtedness, other than a paid-up time certificate of indebtedness, with respect to which there is in force a written contract with the certificate holder that neither the whole nor any part of such certificate may be withdrawn, prior to the date of maturity, which shall be not less than 7 days after the date of the certificate, or prior to the expiration of the period of notice which must be given by the certificate holder in writing not less than 7 days in advance of withdrawals.

001.01C Installment Certificates of Indebtedness. This term means an installment certificate of indebtedness issued in passbook or other form and under such term which will allow the holder to add or withdraw funds from time to time as he may desire, except the industrial loan and investment company may require at least a 7-day notice of any such withdrawal.

001.02 Maximum Rates of Interest Payable on Certificates of Indebtedness.

Pursuant to the provisions of Section 8-410 R.R.S. Nebraska 1943, effective January 1, 1986, industrial loan and investment companies may pay interest on any certificate of indebtedness, either paid-up or installment,

~~at any rate.~~

~~001.03 Payment of Paid-Up Certificates of Indebtedness Before Maturity.~~

~~001.03A Penalty for Early Withdrawal. The following minimum early withdrawal penalties apply only to paid-up certificates of indebtedness contracts entered into, renewed, or extended prior to September 30, 1983, and that have not been renewed or extended on or after October 1, 1983. Where a paid-up certificate of indebtedness with an original maturity of more than one year, or any portion thereof, is paid before maturity, a certificate holder shall forfeit an amount at least equal to six months of interest earned, or that could have been earned, on the amount withdrawn at the nominal (simple interest) rate being paid on the certificate, regardless of the length of time the funds withdrawn have remained in the certificate.~~

~~(Penalties for early withdrawals of paid-up certificates of indebtedness are governed by the restrictions in effect at the time the contract is entered into. If existing paid-up certificates of indebtedness contracts are extended or renewed (whether by automatic renewal or otherwise), so as to increase the rate of interest paid, the restriction in effect at the time of extension or renewal will apply. With the consent of the certificate holder, restrictions that become effective after the date of the contract may be applied.)~~

~~Where necessary to comply with the requirements of this section, any interest already paid to or for the account of the certificate holder shall be deducted from the amount requested to be withdrawn.~~

~~Any amendment of a paid-up certificate of indebtedness contract that results in an increase in the rate of interest paid or in a reduction in the maturity of the paid-up certificate of indebtedness constitutes a payment of the paid-up certificate of indebtedness before maturity.~~

001.03A1 A paid-up certificate of indebtedness may be paid before maturity without a reduction or forfeiture of interest as prescribed by this section in the following circumstances:

001.03A1a Where the Director determines that general economic conditions in areas of Nebraska officially designated disaster areas by the President of the United States warrant a temporary suspension of the penalty and gives industrial loan and investment companies permission to permit early withdrawal of paid-up certificates of indebtedness without penalty upon a showing that the certificate holder has suffered a loss related to disaster; or,

001.03A1b Where an industrial loan and investment company pays all or a portion of a certificate of indebtedness representing funds contributed to an Individual Retirement Account or Keough plan under 26U.S.C.401 when the individual for whose benefit the account is maintained attains age 59 1/2 or thereafter, or is disabled (as defined in 26 U.S.C. (I.R.C. 1954) Section 72 (m)(7).

001.03A2 A paid-up certificate of indebtedness must be paid before maturity without a forfeiture of interest as prescribed by this section in the following circumstances:

001.03A2a Where an industrial loan and investment company pays all or a portion of a paid-up certificate of indebtedness upon the death or court-declared incompetence of any owner of the paid-up certificate of indebtedness funds (see "owner," paragraph 001.02A2b(1) of this section); or

001.03A2b(1) For the purpose of

~~this section, an "owner" of paid-up certificates of indebtedness funds is any individual who at the time of his or her death or determination of incompetence, has beneficial title to all or a portion of such funds and full power of disposition and alienation with respect thereto.~~

~~001.03A2b(2) In the event the owner of a certificate of indebtedness in an Individual Retirement Account or a Keough plan under 26 U.S.C 401 revokes such account or plan within seven (7) days of the date of establishment, interest shall be paid on the account or plan.~~

~~001.03B Penalty for Early Withdrawal. The following minimum early withdrawal penalties shall apply to paid-up certificate of indebtedness contracts entered into, renewed or extended on or after October 1, 1983:~~

~~001.03B1 Where a paid-up certificate of indebtedness with an original maturity or required notice period of 7 to 31 days, or any portion thereof, is paid before maturity, a certificate holder shall forfeit an amount equal to the greater of (i) all interest earned on the amount withdrawn from the most recent of the date of certificate of indebtedness, date of maturity, or date on which notice was given, or (ii) all interest that could have been earned on the amount withdrawn during a period equal to one-half the maturity period or the required notice period.~~

~~001.03B2 Where a paid-up certificate of indebtedness with an original maturity or required notice period of 32 days to one year, or any portion thereof is paid before maturity, a certificate holder shall forfeit an amount at least equal to one month's interest earned, or that could have been earned, on the amount~~

withdrawn at the nominal (simple) interest rate being paid on the certificate of indebtedness, regardless of the length of time the funds withdrawn have remained on deposit.

001.03B3 Where a paid-up certificate of indebtedness with an original maturity or required notice period of more than one year, or any portion thereof is paid before maturity, the certificate holder shall forfeit an amount at least equal to three months' interest earned, or that could have been earned, on the amount withdrawn at the nominal (simple) interest rate being paid on the certificate of indebtedness, regardless of the length of time the funds withdrawn have remained on deposit.

001.03B4 A paid-up certificate of indebtedness may be paid before maturity without a reduction or forfeiture of interest as prescribed by this section in the following circumstances:

001.03B4a Where the Director determines that general economic conditions in areas of Nebraska officially designated disaster areas by the President of the United States warrant a temporary suspension of the penalty and gives industrial loan and investment companies permission to permit early withdrawal of paid-up certificates of indebtednes without penalty upon a showing that the certificate holder has suffered a loss related to disaster; or,

001.03B4b Where an industrial loan and investment company pays all or a portion of a certificate of indebtedness representing funds contributed to an Individual Retirement Account or Keough plan under 26 U.S.C. 402 when the individual for whose benefit the account is maintained attains age 59 1/2

~~or thereafter, or is disabled (as defined in 26 U.S.C. (I.R.C. 1954) Section 72 (m)(7).~~

~~001.03B5 A paid-up certificate of indebtedness must be paid before maturity without a forfeiture of interest as prescribed by this section in the following circumstances:~~

~~001.03B5a Where an industrial loan and investment company pays all or a portion of a paid-up certificate of indebtedness upon the death court-declared incompetence of any owner of the paid-up certificate of indebtedness funds (see "owner," paragraph 001.02A2b(1) of this section); or~~

~~001.03B5a(1) For the purpose of this section, an "owner" of paid-up certificates of indebtedness funds is any individual who at the time of his or her death or determination of incompetence, has beneficial title to all or a portion of such funds and full power of disposition and alienation with respect thereto.~~

~~001.03B5b In the event the owner of a certificate of indebtedness in an Individual Retirement Account or a Keogh plan under 26 U.S.C. 401 revokes such account or plan within seven (7) days of the date of establishment, no penalty shall be assessed and no interest shall be paid on the account or plan.~~

~~001.03B6 Any amendment of a paid-up certificate of indebtedness contract that results in an increase in the rate of interest paid or in a reduction in the maturity of the paid-up certificate of indebtedness before maturity.~~

~~001.03C Notwithstanding paragraph 001.03A,~~

~~where a paid-up certificate of indebtedness of $1,000 to less than $100,000, with an original maturity of 91 days, that has been issued, renewed or extended before October 1, 1983, but not renewed or extended on or after that date, is paid before maturity, a certificate holder shall forfeit an amount equal to at least all interest earned on the amount withdrawn.~~

~~001.03D Notwithstanding paragraph 001.03A, where a nonnegotiable paid-up certificate of indebtedness of $1,000 or more, with an original maturity or required notice period of 7 to 31 days, that has been issued, renewed or extended before October 1, 1983, but not renewed or extended on or after that date, is paid before maturity, the certificate holder shall forfeit an amount equal to at least the greater of:~~

> ~~001.03D1 all interest earned on the amount withdrawn from the most recent of the date of certificate of indebtedness, date of maturity, or date on which notice was given; or,~~
>
> ~~001.03D2 all interest that could have been earned on the amount withdrawn during a period equal to one-half the maturity period or required notice period.~~

~~001.03E Where all or any part of a paid-up certificate of indebtedness issued under this section is withdrawn within seven business days after the maturity date of the deposit or the date of expiration of notice of withdrawal, no early withdrawal penalty is required to be applied on the amount withdrawn.~~

~~001.03F Disclosure of Early Withdrawal Penalty. At the time a certificate holder enters into a paid-up certificate of indebtedness contract with an industrial loan and investment company, the company shall provide a written statement of the effect of the penalty prescribed in paragraphs 001.03A through 001.03D of this section, which shall:~~

~~001.03F1 State clearly that the customer has contracted to keep his funds in the certificate for the stated maturity, and~~

~~001.03F2 Described fully and clearly how such penalty provisions apply to paid-up certificates of indebtedness in the event the company, notwithstanding the contract provisions, permits payment before maturity. Such statements shall be expressly called to the attention of the customer.~~

~~001.04 Loans Upon Security of Certificates of Indebtedness. An industrial loan and investment company may make a loan to the holder of a certificate of indebtedness upon the security of such certificate, provided that the rate of interest on such loan shall be not less than 1% per annum in excess of the rate of interest on the certificate of indebtedness.~~

Title 46 - DEPARTMENT OF BANKING AND FINANCE

Chapter 9. Computer Services

001 Section 21-1777 says in part that agents of credit unions "shall give the Department of Banking . free access to all books, papers, securities and other sources of information. " Any entity performing bookkeeping functions for a credit union operating under 21-1760 through 21-17,126 through electronic data processing shall be deemed a computer servicer. Except for a credit union show membership comprises employees of a company that furnishes computer services to the credit union, a computer servicer shall be further deemed an agent of the credit union, thereby subject to the provision of 21-1777.

002 As an agent of the credit union, a computer servicer shall provide to the Department of Banking a letter of assurance. This letter of assurance shall stipulate full compliance with Section 21-1777 of the Nebraska statutes.

003 Except for a credit union whose membership comprises employees of a company that furnishes computer services to the credit union, no credit union operating under 21-1760 through 21-17,126 of the Nebraska statutes may cause to be performed, whether on or off premises, the above mentioned bookkeeping functions by any computer servicer until a contract or agreement has been executed. Said contract or agreement shall be made available to the Department of Banking and shall also become a permanent part of the books and records of the credit union. Said contract or agreement shall contain a termination clause and a description of services offered, both of which shall conform to the standards that the Department of Banking from time to time may prescribe.

004 No credit union whose membership comprises employees of a company that furnishes computer services to the credit union operating under Sections 21-1760 through 21-17,126 R.R.S., 1943, as amended may cause to be performed, whether on or off premises, the above mentioned bookkeeping functions by any computer servicer until the Board of Directors of the credit union has executed a computer service certificate that contains the following provisions:

004.01 a description of the services furnished to the credit union by the company computer servicer which shall conform to the standards that the Department of Banking from time to time may prescribe:

~~004.02 reasonable assurance the company computer servicer will comply with Section 21-1777 R.R.S., 1943, as amended;~~

~~004.03 reasonable assurance that company computer servicers will not be terminated without sufficient notice in order to enable the credit union to secure other computer services;~~

~~004.04 assurance the Board of Directors of the credit union will assist in securing for the Department of Banking free access to all books, papers, securities and other sources of information.~~

Title 46 - DEPARTMENT OF BANKING AND FINANCE

Chapter 12 - DISTRIBUTION OF FUNDS TO DEPOSITORS OF INDUSTRIAL LOAN AND INVESTMENT COMPANIES

001 Scope and Application

001.01 This rule will govern the distribution of funds to depositors of certain industrial loan and investment companies pursuant to the provisions of LB 272A enacted by the Nebraska Unicameral Legislature in Ninety-First Legislature, Second Session, 1990. This rule will also govern distributions of funds which may be appropriated to the Department by the Legislature in future sessions from time to time for the purposes set forth in LB 272A.

002 Definitions. As used in these Regulations, the following terms have the following definitions:

002.01 "Account" shall mean a certificate of indebtedness or any other similar evidence of an industrial company's indebtedness to depositors or accountholders that was unpaid when a Protected Company filed bankruptcy pursuant to Chapter 11 of the United States Bankruptcy Code or when a Company now in receivership entered receivership, and the successor obligations thereof issued to depositors or accountholders by the Successor Companies. Account shall not include the indebtedness represented by any capital note issued by an industrial company prior to such bankruptcy or receivership. The subsequent issuance by the Successor Companies of capital notes in exchange for certificates of indebtedness or other evidences of indebtedness to depositors or accountholders of the Protected Companies shall not impair the guaranteed status of such original certificates of indebtedness or other evidences of indebtedness to depositors or accountholders of the Protected Companies.

002.02 "Act" shall mean LB 272A, as enacted by the Ninety-First Legislature, Second Session.

002.03 "Company now in receivership" shall mean Commonwealth Savings Company, Lincoln, Nebraska.

002.04 "Department" shall mean the Nebraska Department of Banking and Finance.

002.05 "Depositor" shall mean the owner of an Account.

002.06 "Guaranteed Account" shall mean an Account that is entitled to share in the appropriations made under the Act by reason of having been guaranteed by the NDIGC. Guaranteed Account shall not include any Account that, pursuant to a plan of reorganization of a Protected Company, (i) was paid in full upon the effective date of said plan by reason of having been less than $1,000 in principal amount, or (ii) wherein the holder of an Account, pursuant to an election made under the plan of reorganization, elected to reduce his or her claim to $1,000.

002.07 "Nebraska Depository Institution Guaranty Corporation" or "NDIGC" shall mean the private corporation for guarantee of Accounts formed under Neb. Re v. Stat. § 21-17,127 et seq.

002.08 "Person" shall mean a natural person, estate, trust, corporation, partnership, unincorporated association, or other entity.

002.09 "Protected Company" shall mean American Savings Company, Omaha, Nebraska, and State Security Savings Company, Lincoln, Nebraska.

002.10 "Receiver" shall mean the Receiver for Commonwealth Savings Company, insolvent.

002.11 "Successor Company" shall mean an existing corporation which is a successor to a Protected Company and which has issued evidences of indebtedness,
such as capital notes, to Depositors for the unpaid amounts of their deposits. The Successor Companies covered by this Rule are American Investments, Inc., Omaha, Nebraska, and Security Investment Company, Lincoln, Nebraska.

002.12 Other terms used herein and not defined shall have the meanings specified therefor in the Act.

003 Distribution of Appropriated Funds

003.01 The Department shall distribute to the Successor Companies and to the Receiver the funds appropriated under the Act. The Successor Companies and the Receiver shall in turn distribute such funds to their Depositors in satisfaction of the Depositors' Guaranteed Accounts. All distributions of the appropriated funds, whether by the Department to the Successor Companies and the Receiver, or by the Successor Companies and the Receiver to their Depositors, shall be made in accordance with this Rule.

004 Determination of Entitlement to Guaranty

004.01 The Receiver and the Successor Companies shall use the standards set forth in this Rule to determine entitlement to share in the appropriated funds.

005 Allocation of Appropriated Funds

005.01 It is the intent of the Legislature under the Act to treat equally each similarly situated Depositor, regardless of the identity of the industrial company in which said Depositor originally deposited his or her funds. While the Legislature has stated its intention that future Legislatures shall continue to appropriate funds to the Department for distribution to the Depositors until the principal amount of all Guaranteed Accounts has been distributed to the Depositors, the Legislature acknowledged that this statement of intent is not binding on future Legislatures. All appropriated funds shall be allocated among the Successor Companies and the Receiver for distribution to the Depositors in accordance with the terms of the Act and in light of the possibility that future Legislatures may decide not to make further appropriations to the payment of the Guaranteed Accounts. One or more distributions of appropriated funds to the Successor Companies and the Receiver may therefore be disproportionate at the Successor Company and Receiver level until each similarly situated Depositor receives an equal percentage of the principal amount on deposit in his or her Guaranteed Account.

006 Certification of Guaranteed Deposits

006.01 Within ten (10) days after notice from the Department, the Receiver and each Successor Company shall certify the following to the Department: (i) the total principal amount of its unpaid Guaranteed Accounts, up to a maximum of $30,000 per Guaranteed Account that, pursuant to this Rule, are entitled to receive funds appropriated under the Act; and (ii) the unpaid percentage of the total principal amount, up to $30,000 per Guaranteed Account, of said Guaranteed Accounts, determined at the Depositor level.

007 Findings and Statement of Intent for Entitlement to Guaranty and Determination of Guaranty

007.01 It is the intent of the Legislature under the Act to fulfill the $30,000 NDIGC guaranty of Accounts. Article IV, section (e) of the Plan of Operation and Bylaws of the NDIGC controls the guaranty of Accounts by setting the following definition:

(e) "Covered Claim" means any unpaid Account of a saver in a member

depository institution as defined by rule and regulations of the Federal Deposit Insurance Corporation under Title 12, Code of Federal Regulations, 330, entitled "Clarification and Definition of Deposit Insurance Coverage", and all amendments thereto, where applicable and consistent with the laws of Nebraska, which is not in excess of the maximum limit and authorized by the Director of Banking and Finance, State of Nebraska if such depository institution becomes insolvent or goes into liquidation or receivership.

A copy of Title 12, Code of Federal Regulation, 330, in effect November 1, 1983, is attached to this Rule as pages 8 to 14 and incorporated herein by reference. With the limitation of section 002.01, supra, the appropriated funds shall be distributed in satisfaction of the NDIGC guaranty in accordance with the NDIGC's Plan of Operation and Bylaws, as set forth herein.

007.02 The same person's Guaranteed Accounts with separate institutions shall not be aggregated with each other for purposes of determining the guaranteed amount of that person's Accounts.

007.03 The guaranty coverage of Accounts maintained by Depositors, in the same or different rights and capacities, as is set forth under Title 12, Code of Federal Regulations, entitled "Clarification and Definition of Deposit Insurance Coverage," attached to this Rule as pages 8 to 14, shall be up to the maximum amount of the $30,000 NDIGC guaranty of Accounts.

008 Ownership of Accounts for Entitlement to Guaranty

008.01 Funds appropriated under the Act shall be distributed only to the rightful owners of the Guaranteed Accounts. Prior to distributing any appropriated funds, the Successor Companies and the Receiver shall establish ownership of each Guaranteed Account in accordance with this Section 008. Absent a change in circumstances of which notification in writing has been made to the Receiver and Successor Company, it shall be sufficient if payments to the Account owners are made by check to the order of such Account owners shown on the certificate.

008.02 In the event of a change of circumstances, of which notification in writing has been made to the Receiver and the Successor Companies, payment instructions executed by all owners shown on the certificate shall be sufficient to permit such payment. In lieu of the signatures of all persons shown on a certificate as owners thereof, the persons claiming to be the owner(s) of a Guaranteed Account shall present evidence to the Successor Companies and the Receiver substantiating that claim, which shall be satisfactory in the judgement of the Receiver or Successor Company of such proof of ownership.

008.03 Following are examples of permissible means to substantiate a claim of ownership of an Account; they are not the exclusive means to establish ownership:

008.03A In the case of a divorce, a divorce decree and property settlement agreement establishing said ownership.

008.03B In the case of death, or a guardianship or conservatorship, letters appointing the claimant as personal representative, letters of guardianship, or letters of conservatorship.

008.03C In the case of death, a deed of distribution or instrument of distribution establishing the heir's or devisee's claim.

008.03D In the case of an attorney-in-fact, a signed power of attorney.

008.03E In the case of a payable on death Account, a death certificate of the original Account owner and satisfactory proof of the claimant's identity.

008.03F In the case of other trust Accounts, evidence satisfactory to the Receiver or Successor Company of the occurrence of the conditions precedent to the claimant's entitlement to the Account.

009 Payment

009.01 Payment to each Depositor shall be made by check issued by a Successor Company or Receiver as designated by the Department. Each such check shall bear the following statement on the front side:

"Void 120 days after issuance."

009.02 Any such check issued to a Depositor shall be an "offer of payment" as that term is used in the Act. Any Depositor who fails or refuses to present such check for payment, within 120 days of issuance, shall be considered to be the owner of unclaimed funds.

009.03 The Department, Successor Company or Receiver shall determine, after 120 days have elapsed from the issuance of checks, the total amount of money represented by checks which have not been presented for payment within 120 days of issuance. The amount so determined shall be paid by the Department, Successor Company or Receiver to the Treasurer of the State of Nebraska as unclaimed property pursuant to Section 69-1301 et. seq.

PART 330—CLARIFICATION AND DEFINITION OF DEPOSIT INSURANCE COVERAGE

Regulations

Interpretations

AUTHORITY: 12 U.S.C. 1813, 1817, 1821, 1822.

SOURCE: The provisions of this Part 330 appear at 32 Fed. Reg. 10408, July 14, 1967, except as otherwise noted.

REGULATIONS

§ 330.0 Definition.

For the purpose of this Part 330 the term "insured bank" includes an insured branch of a foreign bank.

[Codified to 12 C.F.R. § 330.0]

§ 330.1 General principles applicable in determining insurance of deposit accounts.

(a) *General.* This Part 330 provides for determination by the Corporation of the insured depositors of an insured bank and the amount of their insured deposit accounts. The rules for determining the insurance coverage of deposit accounts maintained by depositors in the same or different rights and capacities in the same insured bank are set forth in the following provisions of this part. Insofar as rules of local law enter into such determinations, the law of the jurisdiction in which the insured bank's principal office is located shall govern, except where the insured bank is an insured branch of a foreign bank, in which case the law of the jurisdiction where the insured branch is located shall govern.

(b) *Records.* (1) The deposit account records of the insured bank shall be conclusive as to the existence of any relationship pursuant to which the funds in the account are deposited and on which a claim for insurance coverage is founded. Examples would be trustee, agent, custodian or executor. No claim for insurance based on such a relationship will be recognized in the absence of such disclosure.

(2) If the deposit account records of an insured bank disclose the existence of a relationship which may provide a basis for additional insurance, the details of the relationship and the interests of other parties in the account must be ascertainable either

from the records of the bank or the records of the depositor maintained in good faith and in the regular course of business.

(3) [Reserved]

(4) The interests of the co-owners of a joint deposit account shall be deemed equal, unless otherwise stated on the insured bank's records in the case of a tenancy in common.

(c) *Valuation of trust interests.* (1) Trust interests in the same trust deposited in the same account will be separately insured if the value of the trust interest is capable of determination, without evaluation of contingencies, except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031-7 of the Federal Estate Tax Regulations (26 CFR 20.2031-7). Notwithstanding the foregoing, in connection with pension and other trusteed employee benefit funds (including those qualifying under section 401(d) or section 408(a) of the Internal Revenue Code of 1954), the trust interest of each participant shall be evaluated for insurance purposes as if the interest of such participant had fully vested as of the date the insured bank was closed on account of inability to meet the demands of its depositors.

(2) In connection with any trust in which certain trust interests are not capable of evaluation in accordance with the foregoing rule, payment by the Corporation to the trustee with respect to all such trust interests shall not exceed the basic insured amount of $100,000.

(3) Each trust interest in any trust established by two or more settlors shall be deemed to be derived from each settlor pro rata to his contribution to the trust.

(4) The term "trust interest" means the interest of a beneficiary in an irrevocable express trust, whether created by trust instrument or statute, but does not include any interest retained by the settlor. Notwithstanding the foregoing, any allocable interest created pursuant to an employee benefit plan, including a plan qualified under section 401(d) or section 408(a) of the Internal Revenue Code of 1954, as amended, shall be deemed to be a trust interest.

(5) With respect to trust funds held by an insured bank in a fiduciary capacity pursuant to section 7(i) of the Act, the term "trust interest" shall mean the same as the term "trust funds" as used in section 3(p) of the Act.

(d) *Insured branches of foreign banks.* (1) Except as provided in § 330.1(d)(3) deposits in an insured branch of a foreign bank which are payable in the United States shall be insured in accordance with the rules of this part.

(2) Deposits held by an insured depositor in any insured branch or insured branches of the same foreign bank shall be added together for deposit insurance purposes.

(3) Deposits to the credit of the foreign bank or any office, branch or agency of and wholly owned (except for a nominal number of directors' shares) subsidiary of the foreign bank shall not be insured.

[Codified to 12 C.F.R. § 330.1]

[Section 330.1 amended at 35 Fed. Reg. 460, January 14, 1970, effective December 23, 1969; 39 Fed. Reg. 41359, November 27, 1974; 43 Fed. Reg. 10683, March 15, 1978; 43 Fed. Reg. 58081, December 12, 1978; 44 Fed. Reg. 40059, July 9, 1979; 45 Fed. Reg. 23645, April 8, 1980, effective March 31, 1980; 51 Fed. Reg. 21138, June 11, 1986]

§ 330.2 Single ownership accounts.

Funds owned by an individual and deposited in the manner set forth below shall be added together and insured up to $100,000 in the aggregate.

(a) *Individual accounts.* Funds owned by an individual (or by the community between husband and wife of which the individual is a member) and deposited in one or more deposit accounts in his own name shall be insured up to $100,000 in the aggregate.

(b) *Accounts held by agents or nominees.* Funds owned by a principal and deposited in one or more deposit accounts in the name or names of agents or nominees shall be added to any individual deposit accounts of the principal and insured up to $100,000 in the aggregate.

(c) *Accounts held by guardians, custodians, or conservators.* Funds held by a guardian, custodian, or conservator for the benefit of his ward or for the benefit of a minor under a Uniform Gifts to Minors Act and deposited in one or more deposit accounts in the name of the guardian, custodian, or conservator shall be added to any individual deposit accounts of the ward or minor and insured up to $100,000 in the aggregate.

[Codified to 12 C.F.R. § 330.2]

[Section 330.2 amended at 35 Fed. Reg. 460, January 14, 1970, effective December 23, 1969; 39 Fed. Reg. 41359, November 27, 1974; 45 Fed. Reg. 23645, April 8, 1980, effective March 31, 1980]

§ 330.3 Testamentary accounts.

(a) Funds owned by an individual and deposited in a revocable trust account, tentative or "Totten" trust account, "payable-on-death" account or similar account evidencing an intention that on his death the funds shall belong to his spouse, child or grandchild shall be insured up to $100,000 in the aggregate as to each such named beneficiary, separately from any other accounts of the owner.

(b) If the named beneficiary of such an account is other than the owner's spouse, child or grandchild, the funds in such account shall be added to any individual accounts of such owner and insured up to $100,000 in the aggregate.

[Codified to 12 C.F.R. § 330.3]

[Section 330.3 amended at 35 Fed. Reg. 460, January 14, 1970, effective December 23, 1969; 39 Fed. Reg. 41359, November 27, 1974; 45 Fed. Reg. 23646, April 8, 1980, effective March 31, 1980]

§ 330.4 Accounts held by executors or administrators.

Funds of a decedent held in the name of the decedent or in the name of the executor or administrator of his estate and deposited in one or more deposit accounts shall be insured up to $100,000 in the aggregate, separately from the individual deposit accounts of the beneficiaries of the estate or of the executor or administrator.

[Codified to 12 C.F.R. § 330.4]

[Section 330.4 amended at 35 Fed. Reg. 460, January 14, 1970, effective December 23, 1969; 39 Fed. Reg. 41359, November 27, 1974; 45 Fed. Reg. 23646, April 8, 1980, effective March 31, 1980]

§ 330.5 Accounts held by a corporation or partnership.

(a) Deposit accounts of a corporation or partnership engaged in any independent activity shall be insured up to $100,000 in the aggregate. A deposit account of a corporation or partnership not engaged in an independent activity shall be deemed to be owned by the person or persons owning such corporation or comprising such partnership and, for deposit insurance purposes, the interest of each person in such a deposit account shall be added to any other deposit accounts individually owned by such person and insured up to $100,000 in the aggregate.

(b) Notwithstanding any other provision of this Part 330, any trust or other business arrangement which has filed or is required to file a registration statement with the Securities and Exchange Commission pursuant to section 8 of the Investment Company Act of 1940 shall be deemed to be a corporation for purposes of determining deposit insurance coverage.

[Codified to 12 C.F.R. § 330.5]

[Section 330.5 amended at 35 Fed. Reg. 460, January 14, 1970, effective December 23, 1969; 39 Fed. Reg. 41359, November 27, 1974; 42 Fed. Reg. 10312, February 22, 1977, effective March 24, 1977; 45 Fed. Reg. 23646, April 8, 1980, effective March 31, 1980]

§ 330.6 Accounts held by an unincorporated association.

Deposit accounts of an unincorporated association engaged in any independent activity shall be insured up to $100,000 in the aggregate. A deposit account of an unincorporated association not engaged in an independent activity shall be deemed to be owned by the persons comprising such association and, for deposit insurance purposes, the interest of each owner in such a deposit account shall be added to any other deposit accounts individually owned by such person and insured up to $100,000 in the aggregate.

[Codified to 12 C.F.R. § 330.6]

[Section 330.6 amended at 35 Fed. Reg. 460, January 14, 1970, effective December 23, 1969; 39 Fed. Reg. 41359, November 27, 1974; 45 Fed. Reg. 23646, April 8, 1980, effective March 31, 1980]

§ 330.7 Independent activity.

The term "independent activity" means any activity other than one directed solely at increasing insurance coverage.

[Codified to 12 C.F.R. § 330.7]

§ 330.8 Public unit accounts.

(a) (1) Each official custodian of funds of the United States depositing the same in time or savings deposits in an insured bank shall be separately insured up to $100,000 as to such deposits. Each such official custodian depositing such funds in a demand deposit shall be separately insured up to $100,000.

(2) Each official custodian of funds of any State of the United States or any county, municipality, or political subdivision thereof depositing the same in time or savings deposits in an insured bank in the same State shall be separately insured up to $100,000.

(3) Each official custodian of funds of the District of Columbia lawfully depositing the same in time or savings deposits in an insured bank in the District of Columbia shall be separately insured up to $100,000.

(4) Each official custodian of funds of the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, or Guam, or of any county, municipality, or political subdivision thereof lawfully depositing the same in time or savings deposits in an insured bank in Puerto Rico, the Virgin Islands, American Samoa, or Guam, respectively, shall be separately insured up to $100,000.

(5) Each official custodian referred to in paragraphs (a)(2), (3), and (4) of this section lawfully depositing such funds in demand deposits in an insured bank within the same State, District of Columbia, Commonwealth, possession or territory comprising the public unit or wherein the public unit is located, or in any form of deposit, whether time, savings or demand, in an insured bank outside such jurisdiction, shall be separately insured up to $100,000.

(6) For purposes of this paragraph (a), if the same person is an official custodian of more than one public unit, he shall be separately insured with respect to the public funds held by him for each such unit, but shall not be separately insured by virtue of holding different offices in such unit or, except as provided in paragraph (b) of this section, holding such funds for different purposes.

(b) *Public bond issues.* Where an officer, agent or employee of a public unit has custody of certain funds which by law or under the bond indenture are required to be paid to the holders of bonds issued by the public unit, any deposit of such funds in an insured bank shall be deemed to be a deposit by a trustee of trust funds of which the bondholders are pro rata beneficiaries, and each such beneficial interest shall be separately insured up to $100,000.

(c) *Political subdivision.* The term "political subdivision" includes any subdivision of a public unit, as defined in section 3(m) of the Federal Deposit Insurance Act, or any principal department of such public unit, (1) the creation of which subdivision or department has been expressly authorized by State statute, (2) to which some functions of government have been delegated by State statute, and (3) to which funds have been allocated by statute or ordinance

for its exclusive use and control. It also includes drainage, irrigation, navigation, improvement, levee, sanitary, school or power districts, and bridge or port authorities and other special districts created by State statute or compacts between the States. Excluded from the term are subordinate or nonautonomous divisions, agencies, or boards within principal departments.

[Codified to 12 C.F.R. § 330.8]

[Section 330.8 amended at 34 Fed. Reg. 247, January 8, 1969; 35 Fed. Reg. 460, January 14, 1970, effective December 23, 1969; 39 Fed. Reg. 41359, November 27, 1974; 45 Fed. Reg. 23646, April 8, 1980, effective March 31, 1980]

§ 330.9 Joint accounts.

(a) *Separate insurance coverage.* Deposits owned jointly, whether as joint tenants with right of survivorship, as tenants by the entireties, as tenants in common, or by husband and wife as community property, shall be insured separately from deposit accounts individually owned by the co-owners.

(b) *Qualifying joint accounts.* A joint deposit account shall be deemed to exist, for purpose of insurance of accounts, only if each co-owner has personally executed a deposit account signature card and possesses withdrawal rights. The restrictions of this paragraph shall not apply to co-owners of a time certificate of deposit or to any deposit obligation evidenced by a negotiable instrument, but such a deposit must in fact be jointly owned.

(c) *Failure to qualify.* A deposit account owned jointly which does not qualify as a joint account for purposes of insurance of accounts shall be treated as owned by the named persons as individuals and the actual ownership interest of each such person in such account shall be added to any other accounts individually owned by such person and insured up to $100,000 in the aggregate.

(d) *Same combination of individuals.* All joint deposit accounts owned by the same combination of individuals shall first be added together and insured up to $100,000 in the aggregate.

(e) *Interest of each co-owner.* The interests of each co-owner in all joint deposit accounts owned by different combinations of individuals shall then be added together and insured up to $100,000 in the aggregate.

[Codified to 12 C.F.R. § 330.9]

[Section 330.9 amended at 33 Fed. Reg. 8505, June 8, 1968; 35 Fed. Reg. 460, January 14, 1970, effective December 23, 1969; 39 Fed. Reg. 41359, November 27, 1974; 45 Fed. Reg. 23646, April 8, 1980, effective March 31, 1980]

§ 330.10 Trust accounts.

All trust interests for the same beneficiary deposited into deposit accounts established pursuant to valid trust agreements created by the same settlor (grantor) shall be added together and insured up to $100,000 in the aggregate, except time and savings deposits of the same beneficiary which qualify as pension or profit-sharing plans under section 401(d) or 408(a) of the Internal Revenue Code of 1954, as amended. The vested and ascertainable interest (excluding any remainder interest) of each beneficial owner in a time or savings deposit established under either of the above sections, shall be added together and insured to an additional $100,000 maximum for each beneficial owner, notwithstanding the insurance provided in this section to other types of deposit accounts. The insurance of such trust interests shall be separate from that afforded deposit accounts of the trustee of such trust funds or the settlor or beneficiary of such trust arrangement.

[Codified to 12 C.F.R. § 330.10]

[Section 330.10 amended at 35 Fed. Reg. 460, January 14, 1970, effective December 23, 1969; 39 Fed. Reg. 41359, November 27, 1974; 43 Fed. Reg. 58081, December 12, 1978; 45 Fed. Reg. 23646, April 8, 1980, effective March 31, 1980]

§ 330.11 Deposits evidenced by negotiable instruments.

If any insured obligation of a bank be evidenced by a negotiable certificate of deposit, negotiable draft, negotiable cashier's or officer's check, negotiable certified check, or negotiable traveler's check or letter of credit, the owner of such deposit obligation will be recognized for all purposes of claim for insured deposits to the same extent as if his name and interest were disclosed on the records of the bank provided the instrument was in fact negotiated to such owner prior to the date of the closing of the bank. Affirmative proof of such negotiation must be offered in all cases to substantiate the claim.

[Codified to 12 C.F.R. § 330.11]

§ 330.12 Deposit obligations for payment of items forwarded for collection by bank acting as agent.

Where a closed bank has become obligated for the payment of items forwarded for collection by a bank acting solely as agent, the owner of such items will be recognized for all purposes of claim for insured deposits to the same extent as if his name and interest were disclosed on the records of the bank when such claim for insured deposits, if otherwise payable, has been established by the execution and delivery of prescribed forms. Such bank forwarding such items for the owners thereof will be recognized as agent for such owners for the purpose of making an assignment of the rights of such owners against the closed insured bank to the Federal Deposit Insurance Corporation and for the purpose of receiving payment on behalf of such owners.

[Codified to 12 C.F.R. § 330.12]

§ 330.13 Continuation of prior coverage.

[Revoked at 44 Fed. Reg. 75623, December 21, 1979]

§ 330.14 Notification of depositors.

[Revoked at 44 Fed. Reg. 75623, December 21, 1979]

§ 330.15 Amount of insured deposit.

§ 330.15 NOT ADOPTED AS OF 11/1/83

(a) For those depository institutions where earnings on any savings deposit are calculated at a contract rate, the amount of an insured deposit is the principal amount which the insured deposit holder would have been entitled to withdraw as of the date of default of the institution, plus earnings on the deposit accrued to such date at the contract rate, without regard to whether such deposit is subject to any pledge.

(b) For those depository institutions where earnings on any deposit are calculated at an anticipated or announced rate, the amount of an insured deposit is the principal amount which the insured deposit holder would have been entitled to withdraw as of the date of default of the institution, plus the earnings on the deposit accrued to such date at the anticipated or announced rate, without regard to whether such deposit is subject to any pledge.[1] In the absence of any such announced or stated anticipated rate, such rate for savings deposits shall be the rate paid in the immediately preceding payment period.

(c) With respect to certificates of deposit sold at a discount from their face value, and for which there is no stated rate of interest, the value of the certificate shall be its original purchase price plus the amount of accrued earnings calculated by compounding interest annually at the rate necessary to increase the original purchase price to the maturity value over the life of the certificate.

(d) For all insured banks, where there is a time deposit with a fixed or minimum term or a qualifying or notice period that has not expired as of such date, interest thereon to the date of closing shall be computed according to the terms of the deposit contract as if the deposit

[1] Regardless of the method of the calculation of earnings on a deposit and whether or not the deposit is subject to any pledge, said method and/or presence or absence of a pledge shall not affect the FDIC's right to deduct offsets in determining the amount of insured deposits, as set forth in section 3(m)(1) of the Federal Deposit Insurance Act.

could have been withdrawn on such date without any penalty or reduction in the rate of earnings.

[Codified to 12 C.F.R. 330.15]

[Section 330.15 added at 48 Fed. Reg. 52031, November 16, 1983, effective December 16, 1983]

INTERPRETATIONS

§ 330.101 Recognition of deposit ownership in custodial accounts.

(a) The opinion of the Board of Directors has been requested as to whether a fractional or percentage computation of the interests of owners of commingled funds on deposit in custodial accounts in banks insured by the Federal Deposit Insurance Corporation meets the requirements of § 330.1.

(b) Section 330.1 provides that if the name and interest of an owner of any portion of a specifically designated custodial deposit is disclosed on the records of the person in whose name the deposit is maintained and such records are maintained in good faith and in the regular course of business, such owner will be recognized for all purposes of claim for insured deposits to the same extent as if his name and interest were disclosed on the records of the bank.

(c) The Board of Directors has concluded that, if the records of the depositor, maintained in good faith and in the regular course of business, reflect, at all times, the name and ascertainable interest of each owner in a specifically designated custodial deposit, such interest may be determined on a fractional or percentage basis. This may be accomplished in any manner which indicates that where the funds of an owner are commingled with other funds held in custody and a portion thereof is placed on deposit in one or more insured banks, his interest in a custodial deposit in any one insured bank would represent at any given time the same fractional share as his share of the total commingled funds.

[Codified to 12 C.F.R. § 330.101]

NOTES

Nullification of regulation limiting insurance coverage of brokered deposits. On March 26, 1984, the FDIC issued a joint regulation with the Federal Home Loan Bank Board limiting the insurance coverage of funds placed with an insured depository institution either by or through a deposit broker. 49 FR 13003 (1984). The regulation was to take effect on October 1, 1984. The FDIC promulgated the brokered deposits regulation because it deems deposit brokerage to be a misuse of the federal deposit insurance system and a significant threat to the federal deposit insurance fund.

On the same day the FDIC issued the brokered deposits regulation, court action was brought to nullify the regulation. On June 20, 1984, the Federal District Court for the District of Columbia ruled that the regulation was illegal, concluding that the FDIC (and the Federal Home Loan Bank Board) had exceeded statutory boundaries in imposing insurance limitations on brokered deposits. The FDIC intends to pursue an appeal of the Court's decision.

In view of the Court's decision, the March 26 amendments to sections 330.0, 330.2, 330.10 and 330.13 have been removed from FDIC's rules and regulations.

Brochure on Insurance of Deposit Accounts. The text of the question and answer brochure on insurance of deposit accounts, entitled "Your Insured Deposit," reads as follows:

"FOREWORD

"This booklet provides examples of insurance coverage under Federal Deposit Insurance Corporation (FDIC) regulations on certain accounts commonly held by depositors in insured banks.

Title 47 - DEPARTMENT OF BANKING AND FINANCE

Chapter 1 - ELECTRONIC TRANSMISSION TERMINALS - ESTABLISHING BANK

001 Responsibilities.

001.01 Any bank, or group of two or more banks, or a combination of a bank or banks and a third party desiring to become an establisher hereunder in order to service existing accounts shall file with the Director, at least thirty days prior to such establishment, an application of their intention to do so, with such information as shall be required on forms prescribed by the Department of Banking. Upon request, the Director may shorten the thirty day application period.

001.02 An establishing bank shall be responsible for routing all transaction messages which it receives from its facility, that will not be processed by the establishing bank, to an approved switch in readable form.

001.03 An establishing bank shall be responsible for routing all transaction messages which it receives from a switch, which will not be processed by the establishing bank, back to the facility from which the message first originated.

001.04 The establishing bank shall file terminal locations and required terminal information with the Director on forms and at such times as may be prescribed by the Director.

001.05 Each establishing bank shall furnish a copy of its standard user-establishing bank agreement or agreements and any material change thereto to the Director.

002 The Director shall require the filing of such additional information necessary to originate and complete a transaction including but not limited to:

002.01 Information necessary to complete a transaction:

002.01A Card specifications.

002.01B Switching Equipment Required.

002.01C Information Required of the User Relative to the Disposition of the Transaction.

Title 47 - DEPARTMENT OF BANKING AND FINANCE

Chapter 2 - ELECTRONIC TRANSMISSION TERMINALS - USER BANK

001 Any bank desiring to become a user hereunder in order to service existing accounts shall file with the Director, at least ten days prior to becoming a user, written notice of such bank's intention to do so, on forms prescribed by the Department of Banking. Upon request, the Director may shorten the ten day notice.

002 A user bank shall have the responsibility of requesting and executing a user-establishing bank agreement from each establishing bank whose facilities they desire to use. A user bank shall not be required to become an establishing bank.

003 A user bank shall designate the processing center or centers which the user bank has made an agreement with for processing user bank transactions, and file such information with the Director on such forms as may be prescribed by the Director.

004 The Director will establish an approved minimum requirement form of information to be used by user banks under paragraph 002 of this section.

005 A user bank shall notify the Department of Banking and Finance within 10 days after the execution of any user bank agreement of the names of such establishing bank or banks not originally reported on its notification to become a user bank.

~~Title 47 - DEPARTMENT OF BANKING AND FINANCE~~

~~Chapter 3 - ELECTRONIC TRANSMISSION TERMINALS - BANK~~

~~001~~ ~~Any establisher, user or switch, desiring to alter the scope of an already approved system shall file with the Director, at least ten days prior to implementing any changes, written notice of their intention to do so, on forms prescribed by the Department of Banking. Upon request, the Director may shorten the ten day notice.~~

Title 47 - DEPARTMENT OF BANKING AND FINANCE

Chapter 4 - ELECTRONIC TRANSMISSION TERMINALS - BANK

001 Processing Centers.

001.01 Processing centers shall receive and respond to all transaction messages from an approved switch which have been originated by a customer of a user bank, which has signed and is in compliance with an agreement with the processing center for processing user bank transactions.

002 Switching Requirements.

002.01 Every switch shall receive and route any transaction messages that it receives from an establishing bank's processing center to a processing center designated by a user bank in a form readable by such processing center.

002.02 Every switch shall receive and route any transaction messages that it receives back from a processing center to the establishing bank's processing center designated by the user bank in a form readable by such processing center.

002.03 Every switch shall file such information with the Director that he may require to determine that such switch can be operated without discrimination, and that such switch is capable of providing adequate settlement information. Such filing will be made on forms prescribed by the Director at least thirty days prior to the commencement of operation unless such time limit be shortened by the Director.

Title 47 - DEPARTMENT OF BANKING AND FINANCE

Chapter 5 - ELECTRONIC TRANSMISSION TERMINALS - BANK

001 Reports.

001.01 The Department may require periodic reports as deemed necessary to determine if any discrimination may exist as it would apply to any establisher, user or switching operation. Should the Director find that discrimination may exist, he shall, upon notice, require certain modifications to the system which, in his judgment, will prevent further discrimination. The Department shall also have access to any establishing, using or switching operations, and their records, for the purpose of carrying out the duties imposed upon them.

002 Definitions.

002.01 Advertisement.

002.01A The following are permissible types of advertising on facility premises:

002.01A1 A general logo of identification.

002.01A2 The name of the establishing bank in greater prominence so long as the names of user banks to which the facility will be available are also identified to the consumer in a clear and conspicuous manner. This will not require equal size identification but will require that the establishing bank not discriminate in disclosing the names of the establishing bank and the user bank.

002.01A3 An alphabetical listing of user banks.

002.01B Any proposed on facility premises advertisement may be submitted to the Director for a determination of possible discrimination prior to the conducting of EFT transactions or advertisements at any particular facility.

002.02 Transaction Message.

002.02A A transaction message shall include orders and instructions transmitted by an electronic impulse to affect banking transactions.

Title 47 - DEPARTMENT OF BANKING AND FINANCE

Chapter 6 - ELECTRONIC TRANSMISSION TERMINALS - DEFINITIONS

001 An establishing financial institution shall mean any financial institution establishing an electronic satellite facility or a manned electronic satellite facility.

002 A user financial institution shall mean any financial institution which desires to avail itself and its customers of an electronic satellite facility or manned electronic satellite facility services.

003 Switch shall mean an installation where a transaction impulse is received and the transaction message is immediately routed and electronically transmitted to a processing center. A switch may be a processing center.

004 For purposes of 47 NAC 6, 7, 8, 9, 10, and 11, "financial institution" shall mean a state-chartered credit union, building and loan association, or industrial loan and investment company.

Title 47 - DEPARTMENT OF BANKING AND FINANCE

Chapter 7 - ELECTRONIC TRANSMISSION TERMINALS - ESTABLISHER INSTITUTION

001 Any financial institution, as defined in 47 NAC 6-004, desiring to become an establisher hereunder in order to service pre-existing accounts, shall file with the Director, at least thirty days prior to such establishment, a notice of such financial institution's intention to do so, such information as shall be required on forms prescribed by the Department of Banking and Finance. Upon request, the Director may shorten the thirty day notice.

Title 47 - DEPARTMENT OF BANKING AND FINANCE

Chapter 8 - ELECTRONIC TRANSMISSION TERMINALS - USER INSTITUTION

001 Any financial institution, as defined in 47 NAC 6-004, desiring to become a user hereunder in order to service pre-existing accounts, shall file with the Director, at least ten days prior to becoming a user, a notice of such financial institution's intention to do so, on forms prescribed by the Department of Banking and Finance. Upon request, the Director may shorten the ten day notice.

Title 47 - DEPARTMENT OF BANKING AND FINANCE

Chapter 9 - ELECTRONIC TRANSMISSION TERMINALS - ALTERING THE SCOPE

001 Any establisher or user, as defined in 47 NAC 6-004, or switch, desiring to alter the scope of an already approved system, shall file with the Director, at least ten days prior to implementing any change, a notice of their intention to do so, on forms prescribed by the Department of Banking and Finance. Upon request, the Director may shorten the ten day notice.

Title 47 - DEPARTMENT OF BANKING AND FINANCE

Chapter 10 - ELECTRONIC TRANSMISSION TERMINALS - OPERATION OF A SWITCH

001 Operation of a switch shall be with the approval of the Director. Approval shall be sought on forms prescribed by the Department of Banking and Finance at least thirty days prior to the establishment of such switch. Upon request, the Director may shorten the thirty day notice.

~~Title 47 - DEPARTMENT OF BANKING AND FINANCE~~

~~Chapter 11 - ELECTRONIC TRANSMISSION TERMINALS~~

~~001~~ ~~The Department may require such periodic reports as it deems necessary, may have access to any establishing, using, or switching operation and their records for the purpose of carrying out the duties imposed upon them, and may order, with reasonable notice, such modifications as it deems necessary.~~

NEBRASKA ADMINISTRATIVE CODE

Title 48 - DEPARTMENT OF BANKING AND FINANCE

Chapter 6 - AGENTS OF BROKER-DEALERS

001 GENERAL.

001.01 This Rule has been promulgated pursuant to 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 agents of 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 ~~shall~~ apply to the provisions of this Rule, unless otherwise specified.

001.05 Federal statutes and rules of the Securities and Exchange Commission ("SEC") and of 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 www.ndbf.nebraska.gov.

002 REGISTRATION. An agent may be registered to transact business in Nebraska if he or she complies with the Act and the rules promulgated thereunder.

003 CENTRAL REGISTRATION DEPOSITORY. The Department utilizes the Central Registration Depository/Investment Advisor Registration Depository ("CRD/IARD") to register agents, and to terminate, renew, and transfer agent registrations.

004 APPLICATION. An agent's application for registration must be submitted to the Director by the employing broker-dealer.

004.01 Broker-dealers that are affiliated with the Financial Industry Regulatory Authority ("FINRA broker-dealers") must submit a Uniform Application for Securities Industry Registration or Transfer ("Form U4") and application fee of forty dollars ($40.00) to the Director through CRD/IARD. For purposes of Section 8-1103(4)(a) of the Act, a form submitted through CRD/IARD ~~shall be~~is deemed filed with the Director when the record is transmitted to the Director for review.

004.02 Broker-dealers that are not affiliated with FINRA ("non-FINRA broker-dealers") must submit the agent's Form U4 and application fee of forty dollars ($40.00) directly to the Director.

005 RENEWAL. An agent's registration must be renewed annually by the employing broker-dealer prior to the broker-dealer's December 31 renewal date.

005.01 FINRA broker-dealers must submit the agent's renewal fee to the Director through CRD/IARD.

005.02 Non-FINRA broker-dealers must submit the agent's renewal fee directly to the Director.

006 TERMINATION. To terminate an agent's registration under the Act, a Uniform Termination Notice For Securities Industry Registration ("Form U5") must be submitted by the former employing broker-dealer within thirty days after the agent's termination.

006.01 FINRA broker-dealers must submit the agent's Form U5 to the Director through the CRD/IARD system.

006.02 Non-FINRA broker-dealers must submit the agent's Form U5 directly to the Director.

007 DUAL AND MULTIPLE REGISTRATION. Dual and multiple registration is prohibited in Nebraska except when an agent is in the process of transferring his or her registration or when the broker-dealers involved are affiliates.

007.01 Dual registration pending transfer is permitted only if the following conditions are satisfied:

007.01A The agent's new broker-dealer notifies the Director about the transfer within seven days after the agent's termination with his or her former broker-dealer.

007.01B The agent's new broker-dealer submits the agent's Form U4 to the Director within twenty-one days after the notice of termination has been submitted.

007.01C The agent does not have a disciplinary history that must be disclosed on Form U4.

007.02 An agent can be registered with more than one broker-dealer if the broker-dealers involved are affiliates.

007.02A Affiliate means a person who, directly or indirectly, controls, is controlled by, or is under common control with, another person.

007.02B For purposes of this section, control is defined as ownership, directly or beneficially, of eighty percent or more of the outstanding voting securities of another company.

008 QUALIFYING EXAMINATIONS. An agent is required to take and pass the following examinations administered by FINRA:

008.01 The Uniform Securities Agent State Law Examination (Series 63 examination); and

008.02 The examinations required by FINRA pursuant to FINRA Rule 1220. ~~One of the following examinations or any predecessor examination:~~

~~008.02A The General Securities Representative Examination (Series 7 examination);~~

~~008.02B The Investment Company/Variable Contracts Limited Representative Examination (Series 6 examination) if the agent's registration will be limited to investment company products or if the agent will sell interests in viatical settlement contracts;~~

~~008.02C The Direct Participation Programs Limited Representative Examination (Series 22 examination), if the agent's registration will be limited to direct participation programs; or~~

~~008.02D Investment Banking Representative Qualification Examination (Series 79 examination), if the agent's registration will be limited to investment banking activities.~~

008.03 The Uniform Combined State Law Examination (Series 66 examination) may be taken in lieu of the Series 63 examination by any agent who also takes and passes the General Securities Representative Examination (Series 7 examination).

008.04 This examination requirement shall be waived for an applicant who has previously passed the required written examinations provided that such applicant does not have a gap in registration longer than two years before the date of the filing of the present registration application.

008.05 The Director may waive the requirement of this ~~su~~bsection if the Director finds the waiver is consistent with investor protection and is in the public interest.

009 CORRECTION OF DOCUMENTS. If the information contained in any document filed with the Director is or becomes inaccurate or incomplete in any material respect, the agent shall file a correcting amendment on Form U4 within the time period specified in the instructions to that form.

010 USING THE INTERNET FOR GENERAL DISSEMINATION OF INFORMATION ON PRODUCTS AND SERVICES. Agents 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:

010.01 The Internet Communications contain a disclosure statement which clearly states that:

010.01A The agent in question may only transact business in this state if first registered or excluded or exempted from the agent registration requirements of the Act; and

010.01B The agent 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 agent has complied with, or has qualified for an applicable exemption or exclusion from, the agent registration requirements of the Act.

010.02 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 agent is first registered in this state or qualifies for an exemption or exclusion from such requirement.

010.02A Nothing in this paragraph shall be construed to relieve an agent from any applicable securities registration requirement in this state~~;~~.

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

010.04 The Internet Communications meet the following requirements:

010.04A The affiliation with the broker-dealer of the agent is disclosed in a non-italicized font, of at least ten points, within the Internet Communications;

010.04B The broker-dealer with whom the agent is associated retains responsibility for reviewing and approving the content of any Internet Communications by the agent;

010.04C The broker-dealer with whom the agent is associated first authorizes the distribution of information on the particular products through the Internet Communications; and

010.04D In disseminating information through the Internet Communications, the agent acts within the scope of the authority granted by the broker-dealer.

011 DISHONEST AND UNETHICAL BUSINESS PRACTICES.

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

011.02 The conduct set forth in 48 NAC 12.003, 48 NAC 12.004 and 48 NAC 12.005 ~~shall~~ constitutes "dishonest or unethical business practices" by an agent for purposes of Section 8-1103(9)(a)(vii) of the Act.

011.03 The delineation of certain acts and practices is not intended to be all inclusive. Acts or practices not enumerated therein may also be deemed fraudulent and dishonest.

NEBRASKA ADMINISTRATIVE CODE

Title 48 - DEPARTMENT OF BANKING AND FINANCE

Chapter 13 - ~~INFORMATION REQUIREMENTS~~APPROVED EXCHANGES FOR THE SECTION 8-1110(5) EXCHANGE EXEMPTION

001 GENERAL.

001.01 This Rule has been promulgated pursuant to authority delegated to the Director in Sections 8-1120~~(3)~~ and 8-1110(5) of the Securities Act of Nebraska ("Act").

001.02 The Department has determined that this Rule relating to Section 8-1110(5) of 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.~~

001.0~~3~~4 The definitions in 48 NAC 2 ~~shall~~ apply to the provisions of this Rule, unless otherwise specified.

001.04 Federal statutes and rules of the Securities and Exchange Commission ("SEC") and of 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 www.ndbf.nebraska.gov.

001.05 The provisions of this Rule ~~shall~~ do not apply to any security that is a federal covered security pursuant to the provisions of Section 18(b)(1) of the Securities Act of 1933.

002 DESIGNATION OF APPROVED EXCHANGES: Stock exchanges specified by or approved under Section 8-1110(5) of the Securities Act of Nebraska, are as follows:

002.01 The securities exchanges specified by Section 18(b)(1) of the Securities Act of 1933 and 17 CFR 230.146; and

002.02 The Chicago Stock Exchange.

~~002 NOTICE FILING REQUIREMENT. The notice required by Section 8-1110(5)(b) of the Act will be satisfied if the following conditions of this Rule are met.~~

~~002.01 Such notice shall be filed with the Nebraska Department of Banking and Finance, P.O. Box 95006, Lincoln, Nebraska 68509-5006.~~

~~002.02 Such notice shall be filed by, or on behalf of, the issuer prior to the first use of a disclosure document covering a security which has been approved for listing on~~

~~a recognized exchange if no quotations have been available and no public trading has taken place for any securities of such issuer.~~

~~003 CONTENTS OF NOTICE. The notice of exemption shall contain the following information:~~

~~003.01 The name and address of the issuer;~~

~~003.02 One of the following:~~

~~003.02A The name and address of the Nebraska-registered broker-dealer(s) that will be selling the securities,~~

~~003.02B If the issuer is selling its own securities, the name, business address and business telephone number of the person responsible for such activities, or~~

~~003.02C A statement by the issuer or issuer's counsel that all securities transactions with Nebraska residents will be executed by a Nebraska-registered broker-dealer or a person properly exempt from broker-dealer registration in Nebraska;~~

~~003.03 A description of the business of the issuer;~~

~~003.04 The type of security to be sold and the total dollar amount of the offering;~~

~~003.05 The name of the exchange or market system on which the securities will be listed; and~~

~~003.06 A check or money order in the amount of two hundred dollars ($200.00), payable to Nebraska Department of Banking and Finance.~~

~~004~~003 DISCLOSURE. Nothing in this exemption is intended to relieve, or should be construed as in any way relieving, sellers or persons acting on behalf of sellers from providing to prospective investors disclosure adequate to satisfy the provisions of Section 8-1102(1) of the Act.

~~004~~005 BURDEN OF PROOF. In any proceeding involving this Rule, the burden of proving the exemption from registration is upon the person claiming the exemption.

~~006 CURE ORDERS. If the notice required by Section 8-1110(5) of this Act and this Rule is not filed prior to the first sale made in reliance on this exemption, the issuer shall file, with the notice described in Section 003 above:~~

~~006.01 The information required by 48 NAC 19; and~~

~~006.02 The date the subject security was listed.~~

NEBRASKA ADMINISTRATIVE CODE

Title 48 - DEPARTMENT OF BANKING AND FINANCE

Chapter 16 - INFORMATION REQUIREMENTS FOR THE SECTION 8-1111(15) ~~AGRICULTURAL~~ COOPERATIVE AND LIMITED COOPERATIVE ASSOCIATON EXEMPTION

001 GENERAL.

001.01 This Rule has been promulgated pursuant to the authority delegated to the Director in Sections 8-1120~~(3)~~ and 8-1111(15) of the Securities Act of Nebraska ("Act").

001.02 The Department has determined that this Rule relating to Section 8-1111(15) 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 the provisions of this Rule, unless otherwise specified.

002 NOTICE FILING REQUIREMENT. The notice required by Section 8-1111(15) of the Act will be satisfied if the conditions of this Rule are met.

002.01 Such notice shall be filed with the Nebraska Department of Banking and Finance, P.O. Box 95006, Lincoln, Nebraska 68509-5006.

002.02 Such notice shall be filed prior to the issuance of any security made in reliance upon this exemption.

003 CONTENTS OF NOTICE. The notice shall contain the following information:

003.01 The name and address of the ~~agricultural~~ cooperative or limited cooperative association;

003.02 The date of incorporation and the statute under which the ~~agricultural~~ cooperative or limited cooperative association was organized;

003.03 The amount of its authorized capital stock;

003.04 The type of security being issued: identify whether it is a certificate of participation or interest, a certificate of indebtedness, common stock, preferred stock, or other;

003.05 The total amount of the securities to be sold by the issuer in Nebraska;

003.06 An indication as to whom sales will be made: present members, patrons, or the general public;

003.07 A brief description of the methods by which the securities will be sold;

003.08 The names and addresses of the persons who will be selling the securities and their relationship to the cooperative or limited cooperative association;

003.09 A complete copy of the financial statements for the past two years;

003.10 A brief description of the intended use of the proceeds;

003.11 The interest rate to be paid, if the offering involves debt securities; and

003.12 A copy of the disclosure document to be provided to prospective investors, if the ~~agricultural~~ cooperative or limited cooperative association does not have a past history of offering securities.

004 AMENDMENTS. If, during the offering period, ~~there shall occur~~ an event occurs which would materially affect the issuer, its prospects or properties, or otherwise materially affect the accuracy or completeness of the information required in Section 003, above, the notice shall be promptly revised to reflect such event and filed with the Director.

005 EFFECTIVENESS. A notice of exemption filed pursuant to Section 8-1111(15) of the Act remains in effect until the earliest of the following occurrences:

005.01 The amount of securities stated in the notice submitted to the Director is sold;

005.02 Until the issue is discontinued by resolution of the Board of Directors of the ~~agricultural~~ cooperative or limited cooperative association; or

005.03 Three years from the date of the initial filing of the notice under this Rule.

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

~~NEBRASKA ADMINISTRATIVE CODE~~

~~TITLE 48 - DEPARTMENT OF BANKING AND FINANCE~~

~~Chapter 35 - REPEALED~~

NEBRASKA ADMINISTRATIVE CODE

Title 48 - DEPARTMENT OF BANKING AND FINANCE

Chapter 38 - INFORMATION REQUIREMENTS FOR THE SECTION 8-1111(23) NOTICE

001 GENERAL.

001.01 This Rule has been promulgated pursuant to authority delegated to the Director in Section 8-1120 and Section 8-1111(23) ~~and Section 8-1120(3)~~ 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 ~~shall~~ 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 ~~shall~~ 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 ~~attached hereto.~~available as an appendix at www.ndbf.nebraska.gov.

002 CONDITIONS OF EXEMPTION. Transactions meeting the following conditions will be deemed exempt from the registration provisions of the Act:

002.01 The proceeds from all sales of securities by the issuer in any two year period do not exceed ~~two~~ seven hundred fifty thousand dollars ~~($250,000.00~~$750,000.00) and at least eighty percent of the proceeds are used in Nebraska;

002.02 No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer;

002.03 The issuer is not disqualified under Section 006, below;

002.04 The issuer shall file a notice, as specified in Section 003, below, with the Department of Banking and Finance, P.O. Box 95006, Lincoln, Nebraska 68509-5006, no later than fifteen business days prior to any sales for which an exemption under this Rule is claimed; and

002.05 The issuer shall, within thirty days after the completion of the offering, file with the Director a statement setting forth the number of investors, the total dollar amount raised, and disclosure of the use of proceeds.

002.06 The offering shall be conducted in compliance with the federal ~~intrastate offering~~ "Intrastate Offers and Sales" exemption, 17 CFR 230.147, or the federal "Intrastate Offering Exemption", 17 CFR 230.147A.

003 CONTENTS OF NOTICE. The notice submitted prior to making any sales in reliance on this exemption shall include the following information:

003.01 The name, address, telephone number, and email address of the issuer;

003.02 The name and address of each person holding direct or indirect ownership or beneficial interest in the issuer;

003.03 The dollar amount of the offering;

003.04 The type of security being offered;

003.05 The manner in which purchasers will be solicited; and

003.06 A statement that the conditions of this exemption will be met, signed under oath or affirmation by an authorized representative of the issuer.

003.07 Every notice and disclosure document filed with the Director shall be manually signed by a person duly authorized by the issuer.

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

004 DELIVERY OF DISCLOSURE DOCUMENT. The issuer shall give each prospective investor a copy of the offering disclosure document at least twenty-four hours prior to the investor signing any agreement to purchase the securities or paying any consideration for the securities. The offering disclosure document shall include:

004.01 A description of the proposed use of the proceeds of the offering;

004.02 The name of each partner or limited liability company member of the issuer, officer, director, or person occupying a similar status of the issuer or performing similar functions for the issuer; and

004.03 The financial condition of the issuer.

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

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

005.02 Transactions by existing security holders of the issuer;

005.03 Offerings, including "blind pool offerings", for which the specific business to be engaged in, the specific property to be acquired, or the specific use of the offering proceeds by the issuer is not identified.

006 DISQUALIFICATION FACTORS. This exemption ~~shall~~ is not be available for use by an issuer if the issuer, or any partner or limited liability company member of the issuer, any officer, director, or any person occupying a similar status of the issuer, any person performing similar functions for the issuer, or any person holding a direct or indirect ownership interest in the issuer or in any way a beneficial interest in such sale of securities of the issuer is subject to a disqualification factor enumerated in Section 8-1111(23)(c) of the Act.

007 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.

008 AVAILABILITY OF EXEMPTION.

008.01 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.

008.02 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.

009 EFFECTIVENESS. A notice of exemption filed pursuant to Section 8-1111(23) of the Act ~~shall~~ remains effective until the earliest of the following events:

009.01 ~~Two~~ Seven hundred fifty thousand dollars ~~($250,000.00~~$750,000.00) in proceeds is raised;

009.02 Two years from the date of the first sale; or

009.03 The issuer files the statement required by Section 002.05, above.

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

011 INTEGRATION. All offers or sales that are part of the same offering must meet all of the terms and conditions of this Rule. Offers and sales that are made more than six months before the start, or more than six months after completion, of an offering made in reliance on this Rule, will not be considered part of that offering, provided no offers or sales of securities are made by or for the issuer during such periods. 48 NAC 41 identifies the factors that will be considered in determining whether offers and sales should be integrated.

012 CURE ORDER. An issuer which fails to file the notice at least fifteen business days prior to any sale made in reliance on this exemption may request the late filing be cured by complying with 48 NAC 19.

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) ~~and Section 8-1120(3)~~ 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 ~~shall~~ 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 ~~shall~~ 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 i~~s attached hereto~~is available as an appendix to this rule at www.ndbf.nebraska.gov.

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 ~~shall~~ is not ~~be~~ 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 ~~shall~~ does not count towards the monetary limitations in subsections 006.01 and 006.02.

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 ~~shall~~ does not apply to sales to an accredited investor. There ~~shall be~~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 9, below;

008.01D The escrow agreement required by Section 10, 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 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 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 or 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. 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

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 ~~and may only be distributed within Nebraska~~.

~~012.03 An issuer may post this general announcement on its website provided that it obtain an affirmative representation that a person is a resident of Nebraska prior to allowing such person to view the general announcement.~~

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.