

GUIDANCE DOCUMENT

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

NEBRASKA FINANCIAL INNOVATION ACT
STATEMENT OF POLICY #7

FORMAL AND INFORMAL ADMINISTRATIVE ACTIONS

The Nebraska Department of Chartering and Finance (“Department”) sets forth Statement of Policy #7 regarding formal and informal administrative actions. All statutory citations are to the Nebraska Financial Innovation Act (the “Act”).

When evaluating a Digital Asset Depository Institution or a Digital Asset Depository Department (collectively referred to as “charters”) in an examination, the Department uses a “CAMELS” ratings and, where appropriate, a “GNAT” rating for each relevant electronic controllable record issued by the charter.

The CAMELS ratings focus on a charter's: Capital, Assets, Management, Earnings, Liquidity, and Sensitivity to Market Risk. The ratings that examiners ascribe to a charter are listed within the Report of Examination (“Report”). In order to assure uniformity in charter regulations with federal regulatory agencies, the Department has adopted similar regulatory policies as those of the federal agencies. The CAMELS ratings determine the assignment of the composite, or over-all, rating for a charter.

Additionally, where appropriate, based upon the business model and product and service offerings of the charter, the Department will provide one or more GNAT ratings. GNAT ratings focus on a charter's: Governance, Network, Asset, and Token, and relate specifically to electronic controllable records issued by the charter. Each focus within the GNAT rating will have a component score that will influence the composite GNAT rating. While the CAMELS and GNAT ratings will have separate composite ratings, GNAT ratings may have an impact on various component ratings within the CAMELS rating, and may indirectly contribute to the overall composite CAMELS rating. The GNAT ratings will be included within the Report.

A composite rating of “3” may subject the charter to an informal administrative action, such as a “Memorandum of Understanding.” A “4” or “5” rating will often result in a formal action. Exceptions to this policy may be appropriate in certain circumstances and will be considered on an individual basis. This policy does not preclude taking more serious action against any charter, regardless of its rating, if the circumstances warrant such action.

The examiner-in-charge (“EIC”) who assigns a composite rating of “3” to the charter under examination will detail the specific problems of the charter in the Report. The principal requirements that should be incorporated by the Department into the Memorandum of Understanding should be listed in the confidential section of the Report or a separate confidential memorandum. The composite “3” rating implies that a charter is operating in a less than satisfactory condition and has some degree of supervisory concern in one or more of the component areas. Additionally, the identifiable weaknesses range from

moderate to severe; however, the degree of the deficiencies generally will not impact a component to be rated more severely than a "4" rating.

A "3" rating has weaknesses which, if not corrected, could deteriorate into a more severe situation. Remedial action is therefore appropriate. Accordingly, unless exceptions are present which are considered appropriate to warrant not commencing action, or to commence more severe action, when a charter is rated "3," the Director may take action through use of a Memorandum of Understanding.

The EIC should discuss with the board those topics which the EIC is recommending be included in the Memorandum of Understanding and report the board's intention regarding the signing of the draft agreement. These comments should be included in the confidential section of the examination report. Reasons for any exception to this policy should also be documented and discussed in the confidential section of the Report.

Any Memorandum of Understanding will be drafted by the Department to be signed jointly by the Director of the Department and the charter's board of directors. The contents of a Memorandum of Understanding will be uniquely fashioned to address the specific problems of the charter. Use of a Memorandum of Understanding, as opposed to a formal action, is particularly appropriate where the Department believes the problems discussed with management and the board of directors of the charter have been adequately detailed, and the charter, in good faith, will move to eliminate the problem(s).

A CAMELS composite rating of "4" or "5" will generally initiate formal corrective action, unless exceptions are present which warrant less severe action. Charters rated "4" or "5" will, by definition, have problems of sufficient severity to warrant formal action which may include a Cease and Desist Order. If the EIC believes that a charter rated "4" or "5" should not be subject to formal corrective action, the EIC should document the reasons for recommending no formal action in the confidential section of the Report.

If the Department decides that corrective action should be initiated, the Report should be prepared in a manner to provide documented information in support of such action without the necessity of another visit to the charter. Examiners should contact the designated Review Examiner and discuss the condition of the charter before the exit of the examination. In the case of charters rated "4" or "5," the EIC should discuss the Department's policy with the board of directors and inform them that formal corrective action may be considered under any applicable statute within the Nebraska Financial Innovation Act or under Section 8-1,134 of the Nebraska Banking Act.

A Memorandum of Understanding or other similar informal written agreement is not considered an Order of the Department. Any formal action, including a Consent Order, is a formal Order of the Department, and is considered a public document.

Original Issue Date: August 1, 2024