

GUIDANCE DOCUMENT

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NEBRASKA FINANCIAL INNOVATION ACT
STATEMENT OF POLICY #1

BOOKS AND RECORDS

The Nebraska Department of Banking and Finance (“Department”) sets forth Statement of Policy #1 regarding the keeping of accurate and complete books and records by a Digital Asset Depository Institution or a Digital Asset Depository Department (collectively referred to as “charters”). All statutory citations are to the Nebraska Financial Innovation Act (the “Act”).

This Statement of Policy clarifies the guidelines under Neb. Rev. Stat. § 8-3010 of the Act concerning the customer identification and beneficial ownership of digital assets.

ASSET SEPARATION AND IDENTIFICATION

To protect customers, including in the event of the custodian's insolvency or bankruptcy, customer assets must be kept separate from the charter's own assets. This separation must be facilitated and evidenced with robust books and records best practices to ensure customer assets are appropriately identified and fully segregated from the assets of the charter.

CUSTODIAL AGREEMENT

If the charter offers services for digital assets other than stablecoins issued by such charter, a custodial agreement is required. A custodial agreement is not required solely for the minting or destroying of charter issued digital tokenization of fiat currency on deposit. The custodial agreement must provide that the custodian possesses, but does not own, the digital assets that are subject to the custodial agreement. The custodial agreement must also provide that the charter owes a fiduciary duty to the customer for the return of the digital assets to the holder upon request or under specified conditions. The custodial agreement must explicitly outline the custodian's responsibilities and obligations, including, but not limited to:

- The rights and responsibilities of both the custodian and the customer, including terms of asset handling, hypothecation, risk disclosure, liability limits, and dispute resolution mechanisms;
- The protocols for secure asset safekeeping;
- The mechanisms for verifying the identity of digital asset holders and linking these identities to their assets;
- The management of cryptographic keys for asset access and transfer; and
- Procedures for deposits, withdrawals, and the disclosure of any applicable fees or charges.

NOTIFICATION PROTOCOLS

Charters are expected to develop and maintain a robust notification system to inform customers of important events affecting their assets, including, but not limited to, security breaches, significant operational changes, or legal proceedings. Charters should ensure that these notifications are timely, clear, and compliant with regulatory requirements.

RECORDS REQUIREMENTS

Charters must maintain detailed, accurate, and secure records of all activities and transactions related to customers and their deposits, payments, and withdrawals in terms of both fiat and digital assets or tokens. These records must support the charter's ability to demonstrate compliance with applicable laws and regulations, facilitate effective audit trails, and ensure the protection of customer assets. As a part of maintaining records, charters are required to undertake, at a minimum, the following items:

- Provide disclosures in accordance with Neb. Rev. Stat. § 8-3008;
- Identify and confirm customers in accordance with Neb. Rev. Stat. § 8-3007, if identity is associated with technical intermediaries, such as digital wallets;
- Define by policy, practice, and routine reports the tokens held by customers, with full Know Your Customer ("KYC") compliance having been completed, and the tokens held by parties not yet achieving KYC compliance;
- Develop and implement KYC safeguards to prevent wallet ownership transfer that does not provide or comport with appropriate KYC policies and practices;
- Construct records in a manner identifying a deposit recorded in accordance with GAAP and the associated issuance of a stablecoin on a one-to-one value;
- Keep detailed records of all transactions, including date, amount, parties involved, and transaction purpose. Additionally, records of customer interactions, custodial agreements, risk management policies, compliance efforts, and security incidents must be meticulously documented. The charter must be able to provide periodic or on demand statements reflecting activity of funds in and out of the account from which stablecoin have been minted, issued, redeemed, and/or destroyed;
- Store records in a secure, immutable format, in an access-controlled environment, with digital records encrypted and securely backed up to prevent data loss or tampering;
- Ensure all records are easily accessible for auditing and examination purposes, with clear audit trails that allow for the reconstruction of financial positions and movements of assets. These records must be made available for law enforcement or examination purposes;
- Retain records pursuant to the Nebraska Banking Act, which requires retention for a minimum period of six years, but may be longer if required by specific regulations or agreements;
- Establish secure and compliant procedures for the disposal of records once the retention period expires, ensuring that customer privacy and data protection laws are adhered to. This includes the proper deletion or destruction of all records, noting exceptions, as necessary, that are unique to data fields embedded in the

- distributed ledger;
- Maintain minutes of board meetings, which are to be made available to regulators upon request and during examination process; and
 - Make audit reports available to regulators upon request and during the examination process.

The list above should not be considered exhaustive, and depending on the complexity and business activities of the charter, additional recordkeeping procedures or considerations may be appropriate.

In appropriate cases, the Department is empowered to refer matters to the proper authorities for further investigation and/or criminal prosecution. Charters shall provide the Department and applicable law enforcement with a transaction history for transactions subject to criminal or regulatory review. Charters shall comply with AML/CFT and OFAC requirements which may include closing accounts, halting redemptions for such accounts, or other appropriate actions, when it is determined that the account is conducting illegal activity or is conducting high-risk activities outside of the accepted risk profile for the charter.

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