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Nebraska Financial Innovation Act and Title 47 Rules Update

Thursday, June 6, 2024 (LINCOLN, NE) – The Nebraska Department of Banking and Finance (“Department”) is responsible for enforcing and administering the Nebraska Financial Innovation Act (“NFIA” or “Act”). The Act authorizes new charters for digital asset banks and puts the state of Nebraska on the forefront of financial innovation and regulation of the blockchain/digital asset industry. While many companies provide digital asset services using a money transmitter license, the NFIA charter provides a different track for companies seeking to provide digital asset custody services, issue stablecoins, and use independent node verification networks while leveraging standards for safety and soundness based on state law and federal guidance.

The Department is pleased to announce that Title 47 of the Nebraska Administrative Code governing this emerging industry became effective May 29, 2024, following notice, hearing, approval by Governor Pillen and filing with the Nebraska Secretary of State. The Title 47 Rules are available at <https://rules.nebraska.gov/rules?agencyId=9&titleId=250> and include these provisions:

1. 47 NAC 1 – Adopts requirements for applicants of digital asset depository charters. Upon determination an application is substantially complete, the Director shall provide notice and schedule a public hearing in accordance with the Nebraska Financial Innovation Act and Administrative Procedure Act. Requires prior approval before a digital asset depository may conduct business in foreign markets or expand activities beyond what is disclosed in initial application. Provides guidance on filing fees, computation of time, and additional review of applications.
2. 47 NAC 2 – Sets surety bond and insurance requirements of digital asset depositories in case of potential liquidation, conservatorship, or receivership and to protect applicants by ensuring sufficient coverage to protect safety and soundness of business operations against insurable risk.
3. 47 NAC 3 – Harmonizes capital requirements for digital asset depository departments and digital asset depository institutions. Identifies examples

of operating expenses to meet the three-year operating expense requirements provided for in the Nebraska Financial Innovation Act.

4. 47 NAC 4 – Allows state banks to amend existing financial institution charter with application to the Department of Banking and Finance to operate a digital asset depository department. Mandates separation of operations between digital asset depository department and other bank operations. A bank's capital structure will be evaluated using a risk-based analysis of the proposed digital asset depository department. Separation of FDIC-insured activities and non-insured digital asset activities and products to prevent customer confusion.
5. 47 NAC 5 – Provides standards and penalties for required reporting to the Department of Banking and Finance. Provides for digital signatures under Nebraska law. Defines a call report. Requires digital asset depositories to comply with federal reporting and notice requirements. Provides for computation of time to fulfill report timing requirements.
6. 47 NAC 6 – Sets requirements for digital asset depositories to have a documented system for addressing customer complaints. Provides for administrative proceedings in the case of failure to acknowledge and respond to complaints.
7. 47 NAC 7 – Provides that digital asset depositories must provide notice that digital asset products are not FDIC-insured and that it can provide notice that traditional banking products are FDIC-insured.
8. 47 NAC 8 – Establishes that digital asset depositories must have a written response program with detailed methods for handling data breaches or other cybersecurity events. Requires immediate notification to the Department of Banking and Finance of such incident at the time of awareness of occurrence and reviews of the Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006 to determine further necessary notifications. Requires reporting to the Department of Banking and Finance where incident occurrence is reported federally.

The Department is further implementing the NFIA and will post periodic updates of rules, regulations, and other guidance documents for the digital assets banking industry. All rules will have a formal rulemaking process with opportunity for public comment. The materials presented are to provide industry and interested parties with greater accessibility to the ongoing process.

To inquire about the chartering process, please send an email to the team at dob.digitalassets@nebraska.gov.

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