

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 DEPARTMENT OF BANKING AND FINANCE
BUREAU OF SECURITIES**

**INTERPRETATIVE OPINION NO. 4: – OFFERS OF “FREE” SECURITIES WITH PURCHASE
OF ITEM FOR VALUE AND SECTION 8-1101(10)**

This Interpretative Opinion discusses offers and sales of “free” securities with the purchase of items for value, under the Securities Act of Nebraska (“Act”).

Section 8-1101(13) of the Act provides:

“Sale” or “sell” shall include every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value . . . Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered or sold for value. (Emphasis added).

In order to have a “sale” of a security, the seller does not necessarily have to receive cash for the security. A security given as a bonus with the purchase of any other thing constitutes the sale of a security. The securities being offered as a bonus must be registered with the Department of Banking and Finance (“Department”) under Section 8-1104 of the Act, unless an exemption from registration is available under Section 8-1110 to 8-1111 of the Act.

Section 8-1101(3) reads, in part: “ ‘Broker-dealer’ shall mean any person engaged in the business of effecting transactions in securities for the account of others. . . .” A person who offers a “free” security with the purchase of any other item acts as a broker-dealer by either personally providing the security or by sending the purchaser to an agent and the agent actually tendering the security. A person offering a “free” security with the sale of any other item of value must be registered as a broker-dealer or agent with the Department under Section 8-1103 of the Act.

Section 8-1111(19) of the Act provides an exemption from registration of the securities and registration as a broker-dealer for transactions in which United States Series EE Savings bonds are given or delivered with or as a bonus for the purpose of another item. Series EE bonds may be used as a bonus with the purchase of another item without registration under Sections 8-1103 or 8-1104.

Questions regarding this opinion should be addressed to:

Nebraska Department of Banking and Finance
P.O. Box 95006
Lincoln, NE 68509-5006
(402) 471-3445

Originally issued: November 1, 1984

Revised: July 1, 1985

Revised: January 6, 1994 (Interpretative Opinion No. 3)

Revised and Renumbered: September 15, 2017