

Nebraska Securities Act
Chapter 8, Article 11
§§ 8-1101 to 8-1123

8-1101

Terms, defined.

For purposes of the Securities Act of Nebraska, unless the context otherwise requires:

(1) Agent means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but agent does not include an individual who represents (a) an issuer in (i) effecting a transaction in a security exempted by subdivision (6), (7), or (8) of section 8-1110, (ii) effecting certain transactions exempted by section 8-1111, (iii) effecting transactions in a federal covered security as described in section 18(b)(3) of the Securities Act of 1933, or (iv) effecting transactions with existing employees, limited liability company members, partners, or directors of the issuer or any of its subsidiaries if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state or (b) a broker-dealer in effecting transactions described in section 15(h)(2) of the Securities Exchange Act of 1934. A partner, limited liability company member, officer, or director of a broker-dealer is an agent only if he or she otherwise comes within this definition;

(2) Broker-dealer means any person engaged in the business of effecting transactions in securities for the account of others or for his or her own account. Broker-dealer does not include (a) an issuer-dealer, agent, bank, savings institution, or trust company, (b) an issuer effecting a transaction in its own security exempted by subdivision (5)(a), (b), (c), (d), (e), or (f) of section 8-1110 or which qualifies as a federal covered security pursuant to section 18(b)(1) of the Securities Act of 1933, (c) a person who has no place of business in this state if he or she effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, credit unions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, (d) a person who has no place of business in this state if during any period of twelve consecutive months he or she does not direct more than five offers to sell or to buy into this state in any manner to persons other than those specified in subdivision (2)(c) of this section, or (e) a person who is a resident of Canada and who has no office or other physical presence in Nebraska if the following conditions are satisfied: (i) The person must be registered with, or be a member of, a securities self-regulatory organization in Canada or a stock exchange in Canada; (ii) the person must maintain, in good standing, its provisional or territorial registration or membership in a securities self-regulatory organization in Canada, or stock exchange in Canada; (iii) the person effects, or attempts to effect, (A) a transaction with or for a Canadian client who is temporarily present in this state and with whom the Canadian broker-dealer had a bona fide customer relationship before the client entered this state or (B) a transaction with or for a Canadian client in a self-directed tax advantaged retirement plan in Canada of which that client is the holder or contributor; and (iv) the person complies with all provisions of the Securities Act of Nebraska relating to the disclosure of material information in connection with the transaction;

(3) Department means the Department of Banking and Finance. Director means the Director of Banking and Finance of the State of Nebraska except as further provided in section 8-1120;

(4) Federal covered adviser means a person who is registered under section 203 of the Investment Advisers Act of 1940;

(5) Federal covered security means any security described as a covered security under section 18(b) of the Securities Act of 1933 or rules and regulations under the act;

(6) Guaranteed means guaranteed as to payment of principal, interest, or dividends;

(7) Investment adviser means any person who for compensation engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who for compensation and as a part of a regular business issues or promulgates analyses or reports concerning securities. Investment adviser also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. Investment adviser does not include (a) an investment adviser representative, (b) a bank, savings institution, or trust company, (c) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession, (d) a broker-dealer or its agent whose performance of these services is solely incidental to its business as a broker-dealer and who receives no special compensation for them, (e) an issuer-dealer, (f) a publisher of any bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, by electronic means, or otherwise which does not consist of the rendering of advice on the basis of the specific investment situation of each client, (g) a person who has no place of business in this state if (i) his or her only clients in this state are other investment advisers, federal covered advisers, broker-dealers, banks, savings institutions, credit unions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (ii) during the preceding twelve-month period, he or she has had five or fewer clients who are residents of this state other than those persons specified in subdivision (g)(i) of this subdivision, (h) any person that is a federal covered adviser or is excluded from the definition of investment adviser under section 202 of the Investment Adviser Act of 1940, or (i) such other persons not within the intent of this subdivision as the director may by rule and regulation or order designate;

(8) Investment adviser representative means any partner, limited liability company member, officer, or director or any person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser that is registered or required to be registered under the Securities Act of Nebraska or who has a place of business located in this state and is employed by or associated with a federal covered adviser, and who (a) makes any recommendations or otherwise renders advice regarding securities, (b) manages accounts or portfolios of clients, (c) determines which recommendation or advice regarding securities should be given, (d) solicits, offers, or negotiates for the sale of or sells investment advisory services, or (e) supervises employees who perform any of the foregoing;

(9) Issuer means any person who issues or proposes to issue any security, except that (a) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or

unit type, the term issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued and (b) with respect to a fractional or pooled interest in a viatical settlement contract, issuer means the person who creates, for the purpose of sale, the fractional or pooled interest. In the case of a viatical settlement contract that is not fractionalized or pooled, issuer means the person effecting a transaction with a purchaser of such contract;

(10) Issuer-dealer means (a) any issuer located in the State of Nebraska or (b) any issuer which registered its securities by qualification who proposes to sell to the public of the State of Nebraska the securities that it issues without the benefit of another registered broker-dealer. Such securities shall have been approved for sale in the State of Nebraska pursuant to section 8-1104;

(11) Nonissuer means not directly or indirectly for the benefit of the issuer;

(12) Person means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

(13) Sale or sell includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value. Offer or offer to sell includes every attempt or offer to dispose of, or solicitation of an offer to buy, 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 and sold for value. A purported gift of assessable stock shall be considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, shall be considered to include an offer of the other security;

(14) Securities Act of 1933, Securities Exchange Act of 1934, Investment Advisers Act of 1940, Investment Company Act of 1940, Commodity Exchange Act, and the federal Interstate Land Sales Full Disclosure Act means the acts as they existed on January 1, 2023;

(15) Security means any note, stock, treasury stock, bond, debenture, units of beneficial interest in a real estate trust, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, viatical settlement contract or any fractional or pooled interest in such contract, membership interest in any limited liability company organized under Nebraska law or any other jurisdiction unless otherwise excluded from this definition, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, in general any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. Security does not include any insurance or endowment policy or annuity contract issued by an insurance company. Security also does not include a membership interest in a limited liability company when all of the following exist: (a) The member enters into a written commitment to be engaged actively and directly in the management of the limited liability company; and (b) all members of the limited liability company are actively engaged in the management of the limited liability company. For the limited purposes of determining professional

malpractice insurance premiums, a security issued through a transaction that is exempted pursuant to subdivision (23) of section 8-1111 shall not be considered a security;

(16) State means any state, territory, or possession of the United States as well as the District of Columbia and Puerto Rico; and

(17) Viatical settlement contract means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of all or any portion of the death benefit or ownership of a life insurance policy or contract for consideration which is less than the expected death benefit of the life insurance policy or contract. Viatical settlement contract does not include (a) the assignment, transfer, sale, devise, or bequest of a death benefit of a life insurance policy or contract made by the viator to an insurance company or to a viatical settlement provider or broker licensed pursuant to the Viatical Settlements Act, (b) the assignment of a life insurance policy or contract to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan, or (c) the exercise of accelerated benefits pursuant to the terms of a life insurance policy or contract and consistent with applicable law.

Last amended:

~ Supp. 2023, LB92, §13

8-1101.01

Federal rules and regulations; fair practice or ethical rules or standards; defined.

For purposes of the Securities Act of Nebraska:

(1) Federal rules and regulations adopted under the Investment Advisers Act of 1940 or the Securities Act of 1933 means such rules and regulations as they existed on January 1, 2023; and

(2) Fair practice or ethical rules or standards promulgated by the Securities and Exchange Commission, the Financial Industry Regulatory Authority, or a self-regulatory organization approved by the Securities and Exchange Commission means such practice, rules, or standards as they existed on January 1, 2023.

Last amended:

~ Supp. 2023, LB92, §14

8-1102

Fraudulent and other prohibited practices.

(1) It shall be unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) It shall be unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

(a) To employ any device, scheme, or artifice to defraud any person;

(b) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(c) To knowingly sell any security to or purchase any security from a client while acting as principal for his or her own account, act as a broker for a person other than the client, or knowingly effect any sale or purchase of any security for the account of the client, without disclosing to the client in writing before the completion of the transaction the capacity in which he or she is acting and obtaining the consent of the client to the transaction. This subdivision shall not apply to any transaction involving a broker-dealer's client if the broker-dealer is not acting as an investment adviser in the transaction;

(d) To engage in dishonest or unethical practices as the director may define by rule and regulation or order; or

(e) In the solicitation of advisory clients, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(3) Except as may be permitted by rule and regulation or order of the director, it shall be unlawful for any investment adviser or investment adviser representative to enter into, extend, or renew any investment advisory contract:

(a) Which provides for the compensation of the investment adviser or investment adviser representative on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of any client;

(b) Unless the investment advisory contract prohibits in writing the assignment of the contract by the investment adviser or investment adviser representative without the consent of the other party to the contract; and

(c) Unless the investment advisory contract provides in writing that if the investment adviser is a partnership or a limited liability company, the other party to the contract shall be notified of any change in the membership of the partnership or limited liability company within a reasonable time after the change.

(4) Subdivision (3)(a) of this section shall not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date. Assignment, as used in subdivision (3)(b) of this section, shall include any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor, except that if the investment adviser is a partnership or a limited liability company, no assignment of an investment advisory contract shall be considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment

adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(5) It shall be unlawful for any investment adviser or investment adviser representative to take or have custody of any securities or funds of any client if:

(a) The director by rule and regulation or order prohibits the taking or custody; or

(b) In the absence of any rule and regulation or order by the director, the investment adviser or investment adviser representative fails to notify the director that he or she has or may have custody.

(6) The director may by rule and regulation or order adopt and promulgate exemptions from subdivisions (2)(c), (3)(a), (3)(b), and (3)(c) of this section when the exemptions are consistent with the public interest and are within the purposes fairly intended by the Securities Act of Nebraska.

Last amended:

~ Reissue 2022

8-1103

Broker-dealers, issuer-dealers, agents, investment advisers, and investment adviser representatives; registration; procedure; exceptions; conditions; renewal; fees; accounts and other records; revocation or withdrawal of registration; when; powers of director regarding persons engaged or engaging in securities business.

(1) It shall be unlawful for any person to transact business in this state as a broker-dealer, issuer-dealer, or agent, except in certain transactions exempt under section 8-1111, unless he or she is registered under the Securities Act of Nebraska. It shall be unlawful for any broker-dealer to employ an agent for purposes of effecting or attempting to effect transactions in this state unless the agent is registered. It shall be unlawful for an issuer to employ an agent unless the issuer is registered as an issuer-dealer and unless the agent is registered. The registration of an agent shall not be effective unless the agent is employed by a broker-dealer or issuer-dealer registered under the act. When the agent begins or terminates employment with a registered broker-dealer or issuer-dealer, the broker-dealer or issuer-dealer shall promptly notify the director.

(2)(a) It shall be unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless he or she is registered under the act.

(b) Except with respect to federal covered advisers whose only clients are those described in subdivision (7)(g)(i) of section 8-1101, it shall be unlawful for any federal covered adviser to conduct advisory business in this state unless such person files with the director the documents which are filed with the Securities and Exchange Commission, as the director may by rule and regulation or order require, a consent to service of process, and payment of the fee prescribed in subsection (6) of this section prior to acting as a federal covered adviser in this state.

(c)(i) It shall be unlawful for any investment adviser required to be registered under the Securities Act of Nebraska to employ an investment adviser representative unless the investment adviser representative is registered under the act.

(ii) It shall be unlawful for any federal covered adviser to employ, supervise, or associate with an investment adviser representative having a place of business located in this state unless such investment adviser representative is registered under the Securities Act of Nebraska or is exempt from registration.

(d) The registration of an investment adviser representative shall not be effective unless the investment adviser representative is employed by a registered investment adviser or a federal covered adviser. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser shall promptly notify the director. When an investment adviser representative begins or terminates employment with a federal covered adviser, the investment adviser representative shall promptly notify the director.

(3) A broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative may apply for registration by filing with the director an application and payment of the fee prescribed in subsection (6) of this section. If the applicant is an individual, the application shall include the applicant's social security number. Registration of a broker-dealer or issuer-dealer shall automatically constitute registration of all partners, limited liability company members, officers, or directors of such broker-dealer or issuer-dealer as agents, except any partner, limited liability company member, officer, or director whose registration as an agent is denied, suspended, or revoked under subsection (9) of this section, without the filing of applications for registration as agents or the payment of fees for registration as agents. The application shall contain whatever information the director requires concerning such matters as:

(a) The applicant's form and place of organization;

(b) The applicant's proposed method of doing business;

(c) The qualifications and business history of the applicant and, in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, limited liability company member, officer, director, person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or person directly or indirectly controlling the broker-dealer or investment adviser;

(d) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

(e) The applicant's financial condition and history; and

(f) information to be furnished or disseminated to any client or prospective client if the applicant is an investment adviser.

(4)(a) If no denial order is in effect and no proceeding is pending under subsection (9) of this section, registration shall become effective at noon of the thirtieth day after an application is filed, complete with all amendments. The director may specify an earlier effective date.

(b) The director shall require as conditions of registration:

(i) That the applicant, except for renewal, and, in the case of a corporation, partnership, or limited liability company, the officers, directors, partners, or limited liability company members pass such examination or examinations as the director may prescribe as evidence of knowledge of the securities business;

(ii) That an issuer-dealer and its agents pass an examination prescribed and administered by the department. Such examination shall be administered upon request and upon payment of an examination fee of five dollars. Any applicant for issuer-dealer registration who has satisfactorily passed any other examination approved by the director shall be exempted from this requirement upon furnishing evidence of satisfactory completion of such examination to the director;

(iii) That an issuer-dealer have a minimum net capital of twenty-five thousand dollars. In lieu of a minimum net capital requirement of twenty-five thousand dollars, the director may require an issuer-dealer to post a corporate surety bond with a surety company licensed to do business in Nebraska in an amount equal to such capital requirements. When the director finds that a surety bond with a surety company would cause an undue burden on an issuer-dealer, the director may require the issuer-dealer to post a signature bond. Every such surety or signature bond shall run in favor of Nebraska, shall provide for an action thereon by any person who has a cause of action under section 8-1118, and shall provide that no action may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118;

(iv) That a broker-dealer have such minimum net capital as the director may by rule and regulation or order require, subject to the limitations provided in section 15 of the Securities Exchange Act of 1934. In lieu of any such minimum net capital requirement, the director may by rule and regulation or order require a broker-dealer to post a corporate surety bond with a surety company licensed to do business in Nebraska in an amount equal to such capital requirement, subject to the limitations of section 15 of the Securities Exchange Act of 1934. Every such surety bond shall run in favor of Nebraska, shall provide for an action thereon by any person who has a cause of action under section 8-1118, and shall provide that no action may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118; and

(v) That an investment adviser have such minimum net capital as the director may by rule and regulation or order require, subject to the limitations of section 222 of the Investment Advisers Act of 1940, which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over such funds or securities and those investment advisers who do not. In lieu of any such minimum net capital requirement, the director may require by rule and regulation or order an investment adviser to post a corporate surety bond with a surety company licensed to do business in Nebraska in an amount equal to such capital requirement, subject to the limitations of section 222 of the Investment Advisers Act of 1940. Every such surety bond shall run in favor of Nebraska, shall provide for an action thereon by any person who has a cause of action under section 8-1118, and shall provide that no action may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118.

(c) The director may waive the requirement of an examination for any applicant who by reason of prior experience can demonstrate his or her knowledge of the securities business. Registration of a broker-dealer, agent, investment adviser, and investment adviser representative shall be effective for a period of not more than one year and shall expire on December 31 unless renewed. Registration of an issuer-dealer shall be effective for a period of not more than one year and may be renewed as provided in this section. Notice filings by a federal covered adviser shall be effective for a period of not more than one year and shall expire on December 31 unless renewed.

(d) The director may restrict or limit an applicant as to any function or activity in this state for which registration is required under the Securities Act of Nebraska.

(5) Registration of a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative may be renewed by filing with the director or with a registration depository designated by the director prior to the expiration date such information as the director by rule and regulation or order may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative previously filed with the director by the applicant, and payment of the prescribed fee. A federal covered adviser may renew its notice filing by filing with the director prior to the expiration thereof the documents filed with the Securities and Exchange Commission, as the director by rule and regulation or order may require, a consent to service of process, and the prescribed fee.

(6) The fee for initial or renewal registration shall be two hundred fifty dollars for a broker-dealer, two hundred dollars for an investment adviser, one hundred dollars for an issuer-dealer, forty dollars for an agent, and forty dollars for an investment adviser representative. The fee for initial or renewal filings for a federal covered adviser shall be two hundred dollars. When an application is denied or withdrawn, the director shall retain all of the fee.

(7)(a) Every registered broker-dealer, issuer-dealer, and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the director may prescribe by rule and regulation or order, except as provided by section 15 of the Securities Exchange Act of 1934, in connection with broker-dealers, and section 222 of the Investment Advisers Act of 1940, in connection with investment advisers. All records so required shall be preserved for such period as the director may prescribe by rule and regulation or order.

(b) All the records of a registered broker-dealer, issuer-dealer, or investment adviser shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the director, within or without this state, as the director deems necessary or appropriate in the public interest or for the protection of investors and advisory clients. For the purpose of avoiding unnecessary duplication of examinations, the director, insofar as he or she deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934. Costs of such examinations shall be borne by the registrant.

(c) Every registered broker-dealer, except as provided in section 15 of the Securities Exchange Act of 1934, and investment adviser, except as provided by section 222 of the Investment Advisers Act of 1940, shall file such financial reports as the director may prescribe by rule and regulation or order.

(d) If any information contained in any document filed with the director is or becomes inaccurate or incomplete in any material respect, a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative shall promptly file a correcting amendment or a federal covered adviser shall file a correcting amendment when such amendment is required to be filed with the Securities and Exchange Commission.

(8) With respect to investment advisers, the director may require that certain information be furnished or disseminated to clients as necessary or appropriate in the public interest or for the

protection of investors and advisory clients. To the extent determined by the director in his or her discretion, information furnished to clients of an investment adviser that would be in compliance with the Investment Advisers Act of 1940 and the rules and regulations under such act may be used in whole or in part to satisfy the information requirement prescribed in this subsection.

(9)(a) The director may by order deny, suspend, or revoke registration of any broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative or bar, censure, or impose a fine pursuant to subsection (4) of section 8-1108.01 on any registrant or any partner, limited liability company member, officer, director, or person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director for a registrant from employment with any broker-dealer, issuer-dealer, or investment adviser if he or she finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer, issuer-dealer, or investment adviser, any partner, limited liability company member, officer, director, person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or person directly or indirectly controlling the broker-dealer, issuer-dealer, or investment adviser:

(i) Has filed an application for registration under this section which, as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(ii) Has willfully violated or willfully failed to comply with any provision of the Securities Act of Nebraska or any rule and regulation or order under the act;

(iii) Has been convicted, within the past ten years, of any misdemeanor involving a security or commodity or any aspect of the securities or commodities business or any felony;

(iv) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities or commodities business;

(v) Is the subject of an order of the director denying, suspending, or revoking registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative;

(vi) Is the subject of an adjudication or determination, after notice and opportunity for hearing, within the past ten years by a securities or commodities agency or administrator of another state or a court of competent jurisdiction that the person has willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or the securities or commodities law of any other state;

(vii) Has engaged in dishonest or unethical practices in the securities or commodities business;

(viii) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature, but the director may not enter an order against a broker-dealer, issuer-dealer, or investment adviser under this subdivision without a finding of insolvency as to the broker-dealer, issuer-dealer, or investment adviser;

(ix) Has not complied with a condition imposed by the director under subsection (4) of this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

(x) Has failed to pay the proper filing fee, but the director may enter only a denial order under this subdivision, and he or she shall vacate any such order when the deficiency has been corrected;

(xi) Has failed to reasonably supervise his or her agents or employees, if he or she is a broker-dealer or issuer-dealer, or his or her investment adviser representatives or employees, if he or she is an investment adviser, to assure their compliance with the Securities Act of Nebraska;

(xii) Has been denied the right to do business in the securities industry, or the person's respective authority to do business in an investment-related industry has been revoked by any other state, federal, or foreign governmental agency or self-regulatory organization for cause, or the person has been the subject of a final order in a criminal, civil, injunctive, or administrative action for securities, commodities, or fraud-related violations of the law of any state, federal, or foreign governmental unit; or

(xiii) Has refused to allow or otherwise impedes the department from conducting an examination under subsection (7) of this section or has refused the department access to a registrant's office to conduct an examination under subsection (7) of this section.

(b) The director may by order bar any person from engaging in the securities business in this state if the director finds that the order is in the public interest and that the person has:

(i) Willfully violated or willfully failed to comply with any provision of the Securities Act of Nebraska or any rule and regulation or order under the act; or

(ii) Engaged in dishonest or unethical practices in the securities business, which activity at the time was subject to regulation by the Securities Act of Nebraska.

(c)(i) For purposes of subdivisions (9)(a)(vii) and (9)(b)(ii) of this section, the director may, by rule and regulation or order, determine that a violation of any provision of the fair practice or ethical rules or standards promulgated by the Securities and Exchange Commission, the Financial Industry Regulatory Authority, or a self-regulatory organization approved by the Securities and Exchange Commission constitutes a dishonest or unethical practice in the securities or commodities business.

(ii) The director may not institute a proceeding under this section on the basis of a final judicial or administrative order made known to him or her by the applicant prior to the effective date of the registration unless the proceeding is instituted within the next ninety days following registration. For purposes of this subdivision, a final judicial or administrative order does not include an order that is stayed or subject to further review or appeal. This subdivision shall not apply to renewed registrations.

(iii) The director may by order summarily postpone or suspend registration pending final determination of any proceeding under this subsection. Upon the entry of the order, the director shall promptly notify the applicant or registrant, as well as the employer or prospective

employer if the applicant or registrant is an agent or investment adviser representative, that it has been entered and of the reasons therefor and that within fifteen business days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. No order may be entered under this section denying or revoking registration without appropriate prior notice to the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, and opportunity for hearing.

(10)(a) If the director finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative, is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the director may by order cancel the registration or application.

(b) If an applicant for registration does not complete the registration application and fails to respond to a notice or notices from the department to correct the deficiency or deficiencies for a period of one hundred twenty days or more after the date the department sends the initial notice to correct the deficiency, the department may deem the registration application as abandoned and may issue a notice of abandonment of the registration application to the applicant in lieu of proceedings to deny the application.

(c) Withdrawal from registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative shall become effective thirty days after receipt of an application to withdraw or within a shorter period of time as the director may determine unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed. If a revocation or suspension proceeding is pending or instituted, withdrawal shall become effective at such time and upon such conditions as the director shall order.

Last amended:

~ Reissue 2022

8-1103.01

Repealed.

~ Reissue 2022

8-1104

Registration of securities; exceptions.

It shall be unlawful for any person to offer or sell any security in this state unless (1) such security is registered by coordination under section 8-1106 or by qualification under section 8-1107, (2) the security is exempt under section 8-1110 or is sold in a transaction exempt under section 8-1111, or (3) the security is a federal covered security.

Last amended:

~ Reissue 2022

8-1105

Repealed.

~ Reissue 2022

8-1106

Registration by coordination.

(1) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 8-1108 and, if required under section 8-1112, a consent to service of process meeting the requirements of that section:

(i) One copy of the prospectus filed under the Securities Act of 1933 together with all amendments thereto;

(ii) The amount of securities to be offered in this state;

(iii) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(iv) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission;

(v) If the director by rule and regulation or order requires, a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(vi) If the director requests, any other information or copies of any other documents filed under the Securities Act of 1933; and

(vii) An undertaking to forward promptly all amendments to the federal registration statement, other than an amendment which merely delays the effective date.

(3) A registration statement under this section shall automatically become effective at the moment the federal registration statement or qualification becomes effective if all the following conditions are satisfied:

(a) No stop order is in effect and no proceeding is pending under the Securities Act of 1933, as amended, or under section 8-1109;

(b) The registration statement has been on file with the director for at least ten days;
and

(c) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been filed and the offering is made within those limitations. The registrant shall promptly notify the director by facsimile transmission or electronic mail of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. Price amendment means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(4) Upon failure to receive the required notification and posteffective amendment with respect to the price amendment, the director may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until there has been compliance with this subsection, if he or she promptly notifies the registrant by telephone or electronic mail and promptly confirms by letter sent postage prepaid when he or she notifies by telephone or electronic mail of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and posteffective amendment, the stop order shall be void as of the time of its entry.

(5) The director may by rule and regulation or order waive either or both of the conditions specified in subsections (2) and (3) of this section. If the federal registration statement or qualification becomes effective before all these conditions have been satisfied and they are not waived, the registration statement shall automatically become effective as soon as all the conditions have been satisfied.

Last amended:

~ Reissue 2022

8-1107

Registration by qualification.

(1) Any security may be registered by qualification.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 8-1108 and, if required under section 8-1112, a consent to service of process meeting the requirements of that section:

(a) With respect to the issuer and any significant subsidiary, its name, address, and form of organization, the state or foreign jurisdiction and date of its organization, the general character and location of its business, and a description of its physical properties and equipment;

(b) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions, his or her name, address, and principal occupation for the past five years, the amount of securities of the issuer held by him or her as of a specified date within ninety days of the filing of the registration statement, the remuneration paid to all such persons in the aggregate during the past twelve months, and estimated to be paid during the next twelve months, directly or indirectly, by the issuer together with all predecessors, parents and subsidiaries;

(c) With respect to any person not named in subdivision (e) of this subsection, owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in subdivision (b) of this subsection other than his or her occupation;

(d) With respect to every promoter, not named in subdivision (b) of this subsection, if the issuer was organized within the past three years, the information specified in subdivision (b) of this subsection, any amount paid to him or her by the issuer within that period or intended to be paid to him or her, and the consideration for any such payment;

(e) The capitalization and long-term debt, on both a current and a pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration whether in the form of cash, physical assets, services, patents, goodwill, or anything else for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;

(f) The kind and amount of securities to be offered, the amount to be offered in this state, the proposed offering price and any variation therefrom at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions, the estimated aggregate underwriting and selling discounts or commissions and finders' fees including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering, the estimated amounts of other selling expenses, and legal, engineering, and accounting expenses to be incurred by the issuer in connection with the offering, the name and address of every underwriter and every recipient of a finders' fee, a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined, and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(g) The estimated cash proceeds to be received by the issuer from the offering, the purposes for which the proceeds are to be used by the issuer, the amount to be used for each purpose, the order or priority in which the proceeds will be used for the purposes stated, the amounts of any funds to be raised from other sources to achieve the purposes stated, and the sources of any such funds, and, if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price;

(h) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subdivision (b), (c), (d), (e) or (g) of this subsection and by any person who holds or will hold ten percent or more in the aggregate of any such options;

(i) Any adverse order, judgment or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission, and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets including any such litigation or proceeding known to be contemplated by governmental authorities;

(j) A specimen or copy of the security being registered, a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalent as currently in effect, and a copy of any indenture or other instrument covering the security to be registered;

(k) A signed or conformed copy of an opinion of counsel, if available, as to the legality of the security being registered;

(l) A balance sheet of the issuer as of a date within four months prior to the filing of the registration statement, a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant;

(m) If a report or valuation, other than an official record that is public, is used in connection with the registration statement, a signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified the report or valuation;

(n) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed; and

(o) A copy of any prospectus or circular intended as of the effective date to be used in connection with the offering.

(3) In the case of a nonissuer distribution, information may not be required under this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(4) A registration statement under this section shall become effective when the director so orders. The director shall require as a condition of registration under this section that a prospectus containing substantially the information specified in subdivisions (a) to (m) of subsection (2) of this section be sent or given to each person to whom an offer is made before or concurrently with the first written offer made to him or her otherwise than by means of a public advertisement by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him or her as a participant in the distribution, the confirmation of any sale made by or for the account of any such person, payment pursuant to any such sale, or delivery of the security pursuant to any such sale, whichever first occurs, but the director shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or rules and regulations under such act.

Last amended:

~ Reissue 2022

8-1108

Registration of securities; requirements; fees; effective date; reports; director, powers.

(1) A registration statement may be filed by the issuer, by any other person on whose behalf the offering is to be made, or by a registered broker-dealer. Any document filed under the Securities Act of Nebraska within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The director may by rule and regulation or order permit the omission of any item of information or document from any registration statement.

(2) The director may require as a condition of registration by qualification (a) that the proceeds from the sale of the registered security be impounded until the issuer receives a specified amount, (b) that the applicant comply with the Securities Act of 1933 if it appears to the director to be in the public interest or that the registered security is or will be offered in such manner as to be subject to such act, (c) such reasonable conditions, restrictions, or limitations upon the offering as may be in the public interest, or (d) that any security issued within the past three years, or to be issued, to a promoter for a consideration substantially different from the public offering price or to any person for a consideration other than cash, be delivered in escrow to him or her or to some other depository satisfactory to him or her under an escrow agreement that the owners of such securities shall not be entitled to sell or transfer such securities or to withdraw such securities from escrow until all other stockholders who have paid for their stock in cash shall have been paid a dividend or dividends aggregating not less than six percent of the initial offering price shown to the satisfaction of the director to have been actually earned on the investment in any common stock so held. The director shall not reject a depository solely because of location in another state. In case of dissolution or insolvency during the time such securities are held in escrow, the owners of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full.

(3) For the registration of securities by coordination or qualification, there shall be paid to the director a registration fee of one-tenth of one percent of the aggregate offering price of the securities which are to be offered in this state, but the fee shall in no case be less than one hundred dollars. When a registration statement is withdrawn before the effective date or a preeffective stop order is entered under section 8-1109, the director shall retain one hundred dollars of the fee. Any issuer who sells securities in this state in excess of the aggregate amount of securities registered may, at the discretion of the director and while such registration is still effective, apply to register the excess securities sold to persons within this state by paying a registration fee of three-tenths of one percent for the difference between the initial fee paid and the fee required in this subsection. Registration of the excess securities, if granted, shall be effective retroactively to the date of the existing registration.

(4) When securities are registered by coordination or qualification, they may be offered and sold by a registered broker-dealer. Every registration shall remain effective for one year or until sooner revoked by the director or sooner terminated upon request of the registrant with the consent of the director. All outstanding securities of the same class as a registered security shall be considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for one year from its effective date if any securities of the same class are outstanding.

(5) The director may require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which are being offered and sold directly by or for the account of the issuer.

(6) A registration of securities shall be effective for a period of one year or such shorter period as the director may determine.

Last amended:
~ Reissue 2022

8-1108.01

Securities; sale without registration; cease and desist order; fine; lien; hearing.

(1) Whenever it appears to the director that the sale of any security is subject to registration under the Securities Act of Nebraska and is being offered or has been offered for sale without such registration, he or she may order the issuer or offerer of such security to cease and desist from the further offer or sale of such security unless and until it has been registered under the act.

(2) Whenever it appears to the director that any person is acting as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative without registration as such or acting as a federal covered adviser without making a notice filing under the act, he or she may order such person to cease and desist from such activity unless and until he or she has been registered as such or has made the required notice filing under the act.

(3) Whenever it appears to the director that any person is violating section 8-1102, he or she may order the person to cease and desist from such activity.

(4) The director may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed twenty-five thousand dollars per violation, in addition to costs of the investigation, upon a person found to have engaged in any act or practice which would constitute a violation of the act or any rule and regulation or order under the act, except that the director shall not impose a fine upon any person in connection with a transaction made pursuant to subdivision (23) of section 8-1111 for any statement of a material fact made or for an omission of a material fact required to be stated or necessary to make the statement made not misleading unless such statement or omission was made with the intent to defraud or mislead. The fine and costs shall be in addition to all other penalties imposed by the laws of this state. The director shall collect the fines and costs and remit them to the State Treasurer. The State Treasurer shall credit the costs to the Securities Act Cash Fund and distribute the fines in accordance with Article VII, section 5, of the Constitution of Nebraska. Imposition of any fine and payment of costs under this subsection may be appealed pursuant to section 8-1119. If a person fails to pay the fine or costs of the investigation referred to in this subsection, a lien in the amount of the fine and costs shall be imposed upon all of the assets and property of such person in this state and may be recovered by an action by the director and remitted to the State Treasurer. The State Treasurer shall credit the costs to the Securities Act Cash Fund and distribute the fines in accordance with Article VII, section 5, of the Constitution of Nebraska. Failure of the person to pay a fine and costs shall also constitute a forfeiture of his or her right to do business in this state under the Securities Act of Nebraska.

(5) After such an order has been made under subsection (1), (2), (3), or (4) of this section, if a request for a hearing is filed in writing within fifteen business days of the issuance of the order by the person to whom such order was directed, a hearing shall be held by the director within thirty business days after receipt of the request, unless both parties consent to a later date or the director or a hearing officer sets a later date for good cause. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order.

Last amended:

~ Reissue 2022

8-1108.02

Federal covered security; filing; director; powers; sales; requirements; fees; consent to service of process.

(1) The director, by rule and regulation or order, may require the filing of any or all of the following documents with respect to a federal covered security under section 18(b)(2) of the Securities Act of 1933:

(a) Prior to the initial offer of such federal covered security in this state, all documents that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, together with a consent to service of process signed by the issuer and with a filing fee as prescribed by section 8-1108.03;

(b) After the initial offer of such federal covered security in this state, all documents which are part of any amendment to the federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933; and

(c) A sales report of the total amount of such federal covered securities offered or sold in this state, together with the filing fee prescribed by section 8-1108.03.

(2)(a) The director, by rule and regulation or order, may require the filing of any document required to be filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to a federal covered security under section 18(b)(3) of the Securities Act of 1933 together with a filing fee of two hundred dollars.

(b) The director, by rule and regulation or order, may require the filing of any document required to be filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to a federal covered security under section 18(b)(4) of the Securities Act of 1933 together with a filing fee of two hundred dollars. In addition, for federal covered securities under section 18(b)(4)(F) of the Securities Act of 1933, the director may also require the submission of a consent to service of process signed by the issuer. Such filing shall be made no later than fifteen days after the first sale of such federal covered security in this state, except that failure to give such notice may be cured by an order issued by the director at the director's discretion and upon the payment of an additional two hundred dollars as a late filing fee.

(c) In connection with filings made pursuant to subdivisions (a) and (b) of this subsection, the director, by rule and regulation or order, may require the filing of all documents which are part of any amendment which the issuer is required to file with the Securities and Exchange Commission.

(3) The director may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under section 18(b)(1) of the Securities Act of 1933, if he or she finds that (a) the order is in the public interest and (b) there is a failure to comply with any condition established under this section or with any other applicable provision of the Securities Act of Nebraska.

(4) The director, by rule and regulation or order, may waive any or all of the provisions of this section, except that the director does not have the authority to waive the payment of fees as required by this section.

(5) No person may bring an action pursuant to section 8-1118 based on the failure of an issuer to file any notice or pay any fee required by this section.

(6) All federal covered securities offered or sold in this state must be sold through a registered agent of a broker-dealer registered under the Securities Act of Nebraska or by persons duly exempted or excluded from such registration, except that this subsection shall not apply to the offer or sale of the following, so long as no commission or other remuneration is paid directly or indirectly for soliciting any prospective buyer:

(a) A federal covered security under section 18(b)(4)(F) of the Securities Act of 1933;
or

(b) A federal covered security under section 18(b)(3) of the Securities Act of 1933 which is exempt from federal registration pursuant to Tier 2 of federal Regulation A, 17 C.F.R. 230.251(a).

Last amended:

~ Reissue 2022

8-1108.03

Federal covered security; filing fee; notice; open-end management company, face-amount certificate company, or unit investment trust; issue indefinite amount of securities; when.

(1) Except as provided in subsections (2) and (3) of this section, there shall be paid to the director a filing fee of one-tenth of one percent of the aggregate offering price of the federal covered securities under section 18(b)(2) of the Securities Act of 1933 which are to be offered in this state, but the filing fee shall in no case be less than one hundred dollars. If an issuer of securities covered by section 8-1108.02 sells securities in this state in excess of the aggregate amount of securities for which a filing fee has been paid, the director may allow the issuer to amend its filing to include the excess securities sold to persons within this state if the issuer pays a filing fee of three-tenths of one percent for the difference between the initial filing fee paid and the filing fee required under this section for the total amount of securities sold. Any such amendment of a filing to cover the excess securities, if granted, shall be effective retroactively to the date of the existing filing.

Any notice filed pursuant to this section shall be effective for a period of one year from the date received by the director or from such later date as indicated on the notice unless sooner terminated by the issuer. Notice filings must be renewed annually. Notices may be amended by submitting an amended notice filing indicating any material changes and paying any fees, pursuant to this section, that may be required by an increase in the amount of securities covered by the notice.

(2) An open-end management company or a face-amount certificate company, as those terms are defined in the Investment Company Act of 1940, may choose to issue an indefinite amount of securities, if the following conditions are met:

(a) The filing made pursuant to subsection (1) of section 8-1108.02 states the company intends to issue an indefinite amount of securities in this state and is accompanied by a filing fee of one thousand dollars;

(b) Within ninety calendar days after the expiration of the notice, the company files a sales report containing the actual sales that occurred in this state for the one-year notice period just expired. During such ninety-day period, the notice filing shall be considered continuous;

(c) If the sales report required by subdivision (b) of this subsection shows that the company sold securities in excess of the amount of securities for which the filing fee was paid, the company must pay an additional fee to be calculated as follows: One-tenth of one percent of the aggregate amount of securities sold up to the first ten million dollars; and one-twentieth of one percent of the remainder of the aggregate amount of securities sold. The initial filing fee of one thousand dollars shall be deducted from the fee required to be paid pursuant to such subdivision. If this calculation results in a negative amount, no payment shall be made and no credit or refund shall be allowed or returned for such negative amount;

(d) A company may continue the effectiveness of its notice to issue an indefinite amount of securities for another notification period if, upon the filing of a sales report required by subdivision (b) of this subsection, the company pays the renewal filing fee of one thousand dollars pursuant to subdivision (a) of this subsection, plus any additional fee which may be owed pursuant to subdivision (c) of this subsection;

(e) The notification shall be effective for a period of one year beginning on the date the notice is received by the director unless a later date is indicated on the notice; and

(f) Failure to file the sales report and pay any additional fees owed shall be cause for the director to issue an order suspending sales of the securities for which the sales report has not been filed and the appropriate fee has not been paid.

(3) A unit investment trust, as that term is defined in the Investment Company Act of 1940, may choose to issue an indefinite amount of securities for a period of one year or less if the following conditions are met:

(a) The unit investment trust issuer electing to offer an indefinite amount of securities files a notice pursuant to subsection (1) of section 8-1108.02, stating that it intends to issue an indefinite amount of securities for a period of one year or less in this state, and pays an initial filing fee of one hundred dollars with the notice filing;

(b) Within ninety calendar days after the occurrence of the earlier of the expiration of the trust's notice filing period, the termination of the offering by the issuer, or the completion of the offering, each trust files a sales report containing the total aggregate offering price of the securities sold in this state for the offering period just expired or terminated;

(c) If the sales report required by subdivision (b) of this subsection shows that the trust sold securities in excess of the amount of securities for which the filing fee was paid, the trust must pay an additional fee of one-tenth of one percent of the aggregate offering price of the excess securities sold. The initial fee of one hundred dollars shall be deducted from the filing fee paid pursuant to this subdivision. If this calculation results in a negative amount, no payment need be made and no credit or refund shall be allowed or returned for that negative amount; and

(d) Failure to file the sales report and pay any additional fees owed shall be cause for the director to issue an order suspending sales of the securities for which the sales report has not been filed and the appropriate fee has not been paid.

Last amended:

~ Reissue 2022

8-1109

Registration of securities; denial, suspension, or revocation; grounds.

The director may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement to register securities by coordination if he or she finds that the order is in the public interest and that:

(1) Any such registration statement registering securities, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Any provision of the Securities Act of Nebraska or any rule and regulation or order, or condition under the act has been violated, in connection with the offering by the person filing the registration statement, the issuer, any partner, limited liability company member, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer or any underwriter;

(3) The security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering. The director may not institute a proceeding against an effective registration statement under this subdivision more than one year from the date of the injunction relied on, and he or she may not enter an order under this subdivision on the basis of an injunction entered under any other state act unless the injunction was based on facts which would currently constitute a ground for a stop order under this section;

(4) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by subdivision (2)(g) of section 8-1106;

(5) The applicant or registrant has failed to pay the proper registration fee. The director may enter only a denial order under this subdivision and shall vacate any such order when the deficiency has been corrected. The director may not enter an order against an effective registration statement on the basis of a fact or transaction known to him or her when the registration statement became effective;

(6) The authority of the applicant or registrant to do business has been denied or revoked by any other governmental agency;

(7) The issuer's or registrant's literature, circulars, or advertising is misleading, incorrect, incomplete, or calculated to deceive the purchaser or investor;

(8) All or substantially all the enterprise or business of the issuer, promoter, or guarantor has been found to be unlawful by a final order of a court or administrative agency of competent jurisdiction; or

(9) There is a refusal to furnish information required by the director within a reasonable time to be fixed by the director.

Last amended:

~ Reissue 2022

8-1109.01

Registration of securities; denial, suspension, or revocation; additional grounds.

The director may issue an order denying effectiveness to, or suspend or revoke the effectiveness of, a registration statement to register securities by qualification if he or she finds that the conditions in subdivision (1) of section 8-1109, or if he or she finds that any of the following conditions exist:

- (1) Such order is in the public interest;
- (2) The issuer's plan of business, or the plan of financing is either unfair, unjust, inequitable, dishonest, oppressive, or fraudulent or would tend to work a fraud upon the purchaser;
- (3) The issuer's or registrant's literature, circulars, or advertising is misleading, incorrect, incomplete, or calculated to deceive the purchaser or investor;
- (4) The securities offered or to be offered, or issued or to be issued, in payment for property, patents, formulas, goodwill, promotion, or intangible assets, are in excess of the reasonable value thereof, or the offering has been, or would be, made with unreasonable amounts of options;
- (5) The offering has been or would be made with unreasonable amounts of underwriters' or sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options. However, in an application to register the securities for a holding company which is organized for one of its purposes to acquire or start an insurance company, the total commissions, organization and promotion expenses shall not exceed ten percent of the money paid upon stock subscriptions;
- (6) The authority of the applicant or registrant to do business has been denied or revoked by any other governmental agency;
- (7) The enterprise or business of the issuer, promoter, or guarantor is unlawful;
- (8) There is a refusal to furnish information required by the director within a reasonable time to be fixed by the director;
- (9) There has been a violation of the Securities Act of Nebraska, any rule and regulation under the act, or an order of the director of which such issuer or registrant has notice;
- (10) There has been a failure to keep and maintain sufficient records to permit an audit satisfactorily disclosing to the director the true situation or condition of such issuer;
- (11) The applicant or registrant has failed to pay the proper registration, filing, or investigation fee;

(12) Any registration statement registering securities by qualification, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact; or

(13) The security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any federal or state act applicable to the offering.

Last amended:

~ Reissue 2022

8-1109.02

Registration of securities; order of denial, suspension, or revocation; notice; request for hearing; modification of order.

Upon the entry of an order denying effectiveness to or suspending or revoking the effectiveness of a registration statement to register securities under any part of section 8-1109 or 8-1109.01, the director shall promptly notify the issuer of the securities and the applicant or registrant that the order has been entered and of the reasons therefor and that any person to whom the order is directed may request a hearing within fifteen business days after the issuance of the order. Upon receipt of a written request the matter will be set down for hearing to commence within thirty business days after the receipt unless the parties consent to a later date or the director or a hearing officer sets a later date for good cause. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to the issuer and to the applicant or registrant, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. The director may modify or vacate a stop order if he or she finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

Last amended:

~ Reissue 2022

8-1110

Securities exempt from registration.

Sections 8-1104 to 8-1109 shall not apply to any of the following securities:

(1) Any security, including a revenue obligation, issued or guaranteed by the State of Nebraska, any political subdivision, or any agency or corporate or other instrumentality thereof or any certificate of deposit for any of the foregoing;

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) Any security issued or guaranteed by any federal credit union or any credit union or similar association organized and supervised under the laws of this state;

(4) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (a) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality or (b) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(5)(a) Any federal covered security specified in section 18(b)(1) of the Securities Act of 1933 or by rule adopted under that provision;

(b) Any security listed or approved for listing on another securities market specified by rule and regulation or order under the Securities Act of Nebraska;

(c) Any put or a call option contract, a warrant, or a subscription right on or with respect to securities described in subdivisions (a) or (b) of this subdivision;

(d) Any option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934;

(e) Any offer or sale of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or

(f) Any option or a derivative security designated by the Securities and Exchange Commission under section 9(b) of the Securities Exchange Act of 1934;

(6) Any security which meets all of the following conditions:

(i) The issuer is organized under the laws of the United States or a state or has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus;

(ii) A class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been so registered for the three years immediately preceding the offering date;

(iii) Neither the issuer nor a significant subsidiary has had a material default during the last seven years, or during the issuer's existence if such existence is less than seven years, in the payment of (i) principal, interest, dividends, or sinking-fund installments on preferred stock or indebtedness for borrowed money or (ii) rentals under leases with terms of three or more years;

(iv) The issuer has had consolidated net income, without taking into account extraordinary items and the cumulative effect of accounting changes, of at least one million dollars in four of its last five fiscal years, including its last fiscal year, and if the offering is of interest-bearing securities the issuer has had for its last fiscal year net income before deduction for income taxes and depreciation of at least one and one-half times the issuer's annual interest expense, taking into account the proposed offering and the intended use of the proceeds. However, if the issuer of the securities is a finance company which has liquid assets of at least one hundred five percent of its liabilities, other than deferred income taxes, deferred investment tax credit, capital stock, and

surplus, at the end of its last five fiscal years, the net income requirement before deduction for interest expense shall be one and one-fourth times its annual interest expense. For purposes of this subdivision: (i) Last fiscal year means the most recent year for which audited financial statements are available, if such statements cover a fiscal period ending not more than fifteen months from the commencement of the offering; (ii) finance company means a company engaged primarily in the business of wholesale, retail, installment, mortgage, commercial, industrial, or consumer financing, banking, or factoring; and (iii) liquid assets means (A) cash, (B) receivables payable on demand or not more than twelve months following the close of the company's last fiscal year less applicable reserves and unearned income, and (C) readily marketable securities less applicable reserves and unearned income;

(v) If the offering is of stock or shares other than preferred stock or shares, such securities have voting rights which include (i) the right to have at least as many votes per share and (ii) the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law; and

(vi) If the offering is of stock or shares other than preferred stock or shares, such securities are owned beneficially or of record on any date within six months prior to the commencement of the offering by at least one thousand two hundred persons, and on such date there are at least seven hundred fifty thousand such shares outstanding with an aggregate market value of at least three million seven hundred fifty thousand dollars based on the average bid price for such day. When determining the number of persons who are beneficial owners of the stock or shares of an issuer, for purposes of this subdivision, the issuer or broker-dealer may rely in good faith upon written information furnished by the record owners;

(7) Any security issued or guaranteed as to both principal and interest by an international bank of which the United States is a member; or

(8) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, as a chamber of commerce, or as a trade or professional association.

Last amended:

~ Reissue 2022

8-1111

Transactions exempt from registration.

Except as provided in this section, sections 8-1103 to 8-1109 shall not apply to any of the following transactions:

(1) Any isolated transaction, whether effected through a broker-dealer or not;

(2)(a) Any nonissuer transaction by a registered agent of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety days if, at the time of the transaction:

(i) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;

- (ii) The security is sold at a price reasonably related to the current market price of the security;
- (iii) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;
- (iv) A nationally recognized securities manual designated by rule and regulation or order of the director or a document filed with the Securities and Exchange Commission which is publicly available through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) contains:
 - (A) A description of the business and operations of the issuer;
 - (B) The names of the issuer's officers and the names of the issuer's directors, if any, or, in the case of a non-United-States issuer, the corporate equivalents of such persons in the issuer's country of domicile;
 - (C) An audited balance sheet of the issuer as of a date within eighteen months or, in the case of a reorganization or merger when parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and
 - (D) An audited income statement for each of the issuer's immediately preceding two fiscal years, or for the period of existence of the issuer if in existence for less than two years, or, in the case of a reorganization or merger when the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and
- (v) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 unless:
 - (A) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;
 - (B) The issuer of the security has been engaged in continuous business, including predecessors, for at least three years; or
 - (C) The issuer of the security has total assets of at least two million dollars based on an audited balance sheet as of a date within eighteen months or, in the case of a reorganization or merger when parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; or
- (b) Any nonissuer transaction in a security by a registered agent of a registered broker-dealer if:
 - (i) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons; and
 - (ii) The security is senior in rank to the common stock of the issuer both as to payment of dividends or interest and upon dissolution or liquidation of the issuer and such security has been outstanding at least three years and the issuer or any predecessor has not defaulted within

the current fiscal year or the three immediately preceding fiscal years in the payment of any dividend, interest, principal, or sinking fund installment on the security when due and payable.

The director may by order deny or revoke the exemption specified in subdivision (a) or (b) of subdivision (2) of this section with respect to a specific security. Upon the entry of such an order, the director shall promptly notify all registered broker-dealers that such order has been entered and the reasons for such order and that within fifteen business days after receipt of a written request the matter will be set for hearing. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until modified or vacated by the director. If a hearing is requested or ordered, the director shall, after notice of and opportunity for hearing to all interested persons, enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. No such order shall operate retroactively. No person may be considered to have violated the Securities Act of Nebraska by reason of any offer or sale effected after the entry of any such order if he or she sustains the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the order;

(3) Any nonissuer transaction effected by or through a registered agent of a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the director may by rule and regulation or order require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust or by an agreement for the sale of real estate or chattels if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, are offered and sold as a unit. Such exemption shall not apply to any transaction in a bond or other evidence of indebtedness secured by a real estate mortgage or deed of trust or by an agreement for the sale of real estate if the real estate securing the evidences of indebtedness are parcels of real estate the sale of which requires the subdivision in which the parcels are located to be registered under the federal Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701 et seq.;

(6) Any transaction by an executor, personal representative, administrator, sheriff, marshal, receiver, guardian, or conservator;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading the Securities Act of Nebraska;

(8)(a) Any offer or sale to any of the following, whether the purchaser is acting for itself or in some fiduciary capacity:

(i) A bank, savings institution, credit union, trust company, or other financial institution;

(ii) An insurance company;

(iii) An investment company as defined in the Investment Company Act of 1940;

- (iv) A pension or profit-sharing trust;
- (v) A broker-dealer;
- (vi) A corporation with total assets in excess of five million dollars, not formed for the specific purpose of acquiring the securities offered;
- (vii) A Massachusetts or similar business trust with total assets in excess of five million dollars, not formed for the specific purpose of acquiring the securities offered;
- (viii) A partnership with total assets in excess of five million dollars, not formed for the specific purpose of acquiring the securities offered;
- (ix) A trust with total assets in excess of five million dollars, not formed for the specific purpose of acquiring the securities, whose purchase is directed by a person who has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment;
- (x) Any entity in which all of the equity owners are individuals who are individual accredited investors as defined in subdivision (b) of this subdivision;
- (xi) An institutional buyer as may be defined by the director by rule and regulation or order; or
- (xii) An individual accredited investor.

(b) For purposes of subdivision (8)(a) of this section, individual accredited investor means (i) 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, (ii) any manager of a limited liability company that is the issuer of the securities being offered or sold, (iii) 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, excluding the value of the primary residence of such person, or (iv) any natural person who had an individual income in excess of two hundred thousand dollars in each of the two most recent years or joint income with that person's spouse in excess of three hundred thousand dollars in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(9)(a) Any transaction pursuant to an offering in which sales are made to not more than fifteen persons, other than those designated in subdivisions (8), (11), and (17) of this section, in this state during any period of twelve consecutive months if (i) the seller reasonably believes that all the buyers are purchasing for investment, (ii) 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, (iii) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (iv) no general or public advertisements or solicitations are made.

(b) If a seller (i) makes sales pursuant to this subdivision for five consecutive twelve-month periods or (ii) makes sales of at least one million dollars from an offering or offerings pursuant to this subdivision, the seller shall, within ninety days after the earlier of either such

occurrence, file with the director audited financial statements and a sales report which lists the names and addresses of all purchasers and holders of the seller's securities and the amount of securities held by such persons. Subsequent thereto, such seller shall file audited financial statements and sales reports with the director each time an additional one million dollars in securities is sold pursuant to this subdivision or after the elapse of each additional sixty-month period during which sales are made pursuant to this subdivision;

(10) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten, and (c) no payment is made by any subscriber;

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (a) no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting any security holder in this state or (b) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days;

(12) Any offer, but not a sale, of a security for which registration statements have been filed under both the Securities Act of Nebraska and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either the Securities Act of Nebraska or the Securities Act of 1933;

(13) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by the stockholders for the distribution other than the surrender of a right to a cash dividend when the stockholder can elect to take a dividend in cash or stock;

(14) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) Any transaction involving the issuance for cash of any evidence of ownership interest or indebtedness by a cooperative formed as a corporation under section 21-1301 or 21-1401 or a limited cooperative association formed under the Nebraska Limited Cooperative Association Act if the issuer has first filed a notice of intention to issue with the director and the director has not by order, mailed to the issuer by certified or registered mail within ten business days after receipt thereof, disallowed the exemption;

(16) Any transaction in this state not involving a public offering when (a) there is no general or public advertising or solicitation, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, (d) a filing fee of two hundred dollars is paid at the time of filing the notice, and (e) any such transaction is effected in accordance with rules and regulations of the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or

for the protection of investors. For purposes of this subdivision, not involving a public offering means any offering in which the seller has reason to believe that the securities purchased are taken for investment and in which each offeree, by reason of his or her knowledge about the affairs of the issuer or otherwise, does not require the protections afforded by registration under sections 8-1104 to 8-1107 in order to make a reasonably informed judgment with respect to such investment;

(17) Any security issued in connection with an employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees, if 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. This subdivision shall apply to offers and sales to the following individuals:

(a) Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors;

(b) Family members who acquire such securities from those persons through gifts or domestic relations orders;

(c) Former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and

(d) Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent of their annual income from those organizations;

(18) Any interest in a common trust fund or similar fund maintained by a bank or trust company organized and supervised under the laws of any state or a bank organized under the laws of the United States for the collective investment and reinvestment of funds contributed to such common trust fund or similar fund by the bank or trust company in its capacity as trustee, personal representative, administrator, or guardian and any interest in a collective investment fund or similar fund maintained by the bank or trust company for the collective investment of funds contributed to such collective investment fund or similar fund by the bank or trust company in its capacity as trustee or agent which interest is issued in connection with an employee's savings, pension, profit-sharing, or similar benefit plan or a self-employed person's retirement plan, if a notice generally describing the terms of the collective investment fund or similar fund is filed by the bank or trust company with the director within thirty days after the establishment of the fund. Failure to give the notice may be cured by an order issued by the director in his or her discretion;

(19) Any transaction in which a United States Series EE Savings Bond is given or delivered with or as a bonus on account of any purchase of any item or thing;

(20) Any transaction in this state not involving a public offering by a Nebraska issuer selling solely to Nebraska residents, when (a) any such transaction is effected in accordance with rules and regulations of the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or for the protection of investors, (b) no commission

or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director no later than twenty days prior to any sales for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, (d) a filing fee of two hundred dollars is paid at the time of filing the notice, and (e) there is no general or public advertising or solicitation;

(21) Any transaction by a person who is an organization described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 involving an offering of interests in a fund described in section 3(c)(10)(B) of the Investment Company Act of 1940 solely to persons who are organizations described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 when (a) there is no general or public advertising or solicitation, (b) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (c) any such transaction is effected by a trustee, director, officer, employee, or volunteer of the seller who is either a volunteer or is engaged in the overall fundraising activities of a charitable organization and receives no commission or other special compensation based on the number or the value of interests sold in the fund;

(22) Any offer or sale of any viatical settlement contract or any fractionalized or pooled interest therein in a transaction that meets all of the following criteria:

(a) Sales of such securities are made only to the following purchasers:

(i) A natural person who, either individually or jointly with the person's spouse, (A) has a minimum net worth of two hundred fifty thousand dollars and had taxable income in excess of one hundred twenty-five thousand dollars in each of the two most recent years and has a reasonable expectation of reaching the same income level in the current year or (B) has a minimum net worth of five hundred thousand dollars. Net worth shall be determined exclusive of home, home furnishings, and automobiles;

(ii) A corporation, partnership, or other organization specifically formed for the purpose of acquiring securities offered by the issuer in reliance upon this exemption if each equity owner of the corporation, partnership, or other organization is a person described in subdivision (22)(a)(i) of this section;

(iii) A pension or profit-sharing trust of the issuer, a self-employed individual retirement plan, or an individual retirement account, if the investment decisions made on behalf of the trust, plan, or account are made solely by persons described in subdivision (22)(a)(i) of this section; or

(iv) An organization described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01, or a corporation, Massachusetts or similar business trust, or partnership with total assets in excess of five million dollars according to its most recent audited financial statements;

(b) The amount of the investment of any purchaser, except a purchaser described in subdivision (a)(ii) of this subdivision, does not exceed five percent of the net worth, as determined by this subdivision, of that purchaser;

(c) Each purchaser represents that the purchaser is purchasing for the purchaser's own account or trust account, if the purchaser is a trustee, and not with a view to or for sale in connection with a distribution of the security;

(d)(i) Each purchaser receives, on or before the date the purchaser remits consideration pursuant to the purchase agreement, the following information in writing:

(A) The name, principal business and mailing addresses, and telephone number of the issuer;

(B) The suitability standards for prospective purchasers as set forth in subdivision (a) of this subdivision;

(C) A description of the issuer's type of business organization and the state in which the issuer is organized or incorporated;

(D) A brief description of the business of the issuer;

(E) If the issuer retains ownership or becomes the beneficiary of the insurance policy, an audit report from an independent certified public accountant together with a balance sheet and related statements of income, retained earnings, and cash flows that reflect the issuer's financial position, the results of the issuer's operations, and the issuer's cash flows as of a date within fifteen months before the date of the initial issuance of the securities described in this subdivision. The financial statements shall be prepared in conformity with generally accepted accounting principles. If the date of the audit report is more than one hundred twenty days before the date of the initial issuance of the securities described in this subdivision, the issuer shall provide unaudited interim financial statements;

(F) The names of all directors, officers, partners, members, or trustees of the issuer;

(G) A description of any order, judgment, or decree that is final as to the issuing entity of any state, federal, or foreign governmental agency or administrator, or of any state, federal, or foreign court of competent jurisdiction (I) revoking, suspending, denying, or censuring for cause any license, permit, or other authority of the issuer or of any director, officer, partner, member, trustee, or person owning or controlling, directly or indirectly, ten percent or more of the outstanding interest or equity securities of the issuer, to engage in the securities, commodities, franchise, insurance, real estate, or lending business or in the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (II) permanently restraining, enjoining, barring, suspending, or censuring any such person from engaging in or continuing any conduct, practice, or employment in connection with the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (III) convicting any such person of, or pleading nolo contendere by any such person to, any felony or misdemeanor involving a security, commodity, franchise, insurance, real estate, or loan, or any aspect of the securities, commodities, franchise, insurance, real estate, or lending business, or involving dishonesty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property, or (IV) holding any such person liable in a civil action involving breach of a fiduciary duty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property. This subdivision does not apply to any order, judgment, or decree that has been vacated or overturned or is more than ten years old;

(H) Notice of the purchaser's right to rescind or cancel the investment and receive a refund;

(I) A statement to the effect that any projected rate of return to the purchaser from the purchase of a viatical settlement contract or any fractionalized or pooled interest therein is based on an estimated life expectancy for the person insured under the life insurance policy; that the return on the purchase may vary substantially from the expected rate of return based upon the actual life expectancy of the insured that may be less than, may be equal to, or may greatly exceed the estimated life expectancy; and that the rate of return would be higher if the actual life expectancy were less than, and lower if the actual life expectancy were greater than, the estimated life expectancy of the insured at the time the viatical settlement contract was closed;

(J) A statement that the purchaser should consult with his or her tax advisor regarding the tax consequences of the purchase of the viatical settlement contract or any fractionalized or pooled interest therein; and

(K) Any other information as may be prescribed by rule and regulation or order of the director; and

(ii) The purchaser receives in writing at least five business days prior to closing the transaction:

(A) The name, address, and telephone number of the issuing insurance company and the name, address, and telephone number of the state or foreign country regulator of the insurance company;

(B) The total face value of the insurance policy and the percentage of the insurance policy the purchaser will own;

(C) The insurance policy number, issue date, and type;

(D) If a group insurance policy, the name, address, and telephone number of the group and, if applicable, the material terms and conditions of converting the policy to an individual policy, including the amount of increased premiums;

(E) If a term insurance policy, the term and the name, address, and telephone number of the person who will be responsible for renewing the policy if necessary;

(F) That the insurance policy is beyond the state statute for contestability and the reason therefor;

(G) The insurance policy premiums and terms of premium payments;

(H) The amount of the purchaser's money that will be set aside to pay premiums;

(I) The name, address, and telephone number of the person who will be the insurance policyowner and the person who will be responsible for paying premiums;

(J) The date on which the purchaser will be required to pay premiums and the amount of the premium, if known; and

(K) Any other information as may be prescribed by rule and regulation or order of the director;

(e) The purchaser may rescind or cancel the purchase for any reason by giving written notice of rescission or cancellation to the issuer or the issuer's agent within (i) fifteen calendar days after the date the purchaser remits the required consideration or receives the disclosure required under subdivision (d)(i) of this subdivision and (ii) five business days after the date the purchaser receives the disclosure required by subdivision (d)(ii) of this subdivision. No specific form is required for the rescission or cancellation. The notice is effective when personally delivered, deposited in the United States mail, or deposited with a commercial courier or delivery service. The issuer shall refund all the purchaser's money within seven calendar days after receiving the notice of rescission or cancellation;

(f) A notice of the issuer's intent to sell securities pursuant to this subdivision, signed by a duly authorized officer of the issuer and notarized, together with a filing fee of two hundred dollars, is filed with the department before any offers or sales of securities are made under this subdivision. Such notice shall include:

(i) The issuer's name, the issuer's type of organization, the state in which the issuer is organized, the date the issuer intends to begin selling securities within or from this state, and the issuer's principal business;

(ii) A consent to service of process; and

(iii) An audit report of an independent certified public accountant together with a balance sheet and related statements of income, retained earnings and cash flows that reflect the issuer's financial position, the results of the issuer's operations, and the issuer's cash flows as of a date within fifteen months before the date of the notice prescribed in this subdivision. The financial statements shall be prepared in conformity with generally accepted accounting principles and shall be examined according to generally accepted auditing standards. If the date of the audit report is more than one hundred twenty days before the date of the notice prescribed in this subdivision, the issuer shall provide unaudited interim financial statements;

(vii) No commission or remuneration is paid directly or indirectly for soliciting any prospective purchaser, except to a registered agent of a registered broker-dealer or registered issuer-dealer; and

(viii) At least ten days before use within this state, the issuer files with the department all advertising and sales materials that will be published, exhibited, broadcast, or otherwise used, directly or indirectly, in the offer or sale of a viatical settlement contract in this state;

(23) Any transaction in this state not involving a public offering by a Nebraska issuer selling solely to Nebraska residents when:

(a) The proceeds from all sales of securities by the issuer in any two-year period do not exceed seven hundred fifty thousand dollars or such greater amount as from time to time may be set in accordance with rules and regulations adopted and promulgated by the director to adjust the amount to reflect changes in the Consumer Price Index for All Urban Consumers as prepared by the United States Department of Labor, Bureau of Labor Statistics, and at least eighty percent of the proceeds are used in Nebraska;

(b) 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;

(c) The issuer, 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, has not been:

(i) Found by a final order of any state or federal administrative agency or a court of competent jurisdiction to have violated any provision of the Securities Act of Nebraska or a similar act of any other state or of the United States;

(ii) Convicted of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(iii) Found by any state or federal administrative agency or court of competent jurisdiction to have engaged in fraud or deceit, including, but not limited to, making an untrue statement of a material fact or omitting to state a material fact; or

(iv) Temporarily or preliminarily restrained or enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state or with the Securities and Exchange Commission;

(d)(i) At least fifteen business days prior to the offer or sale, the issuer files a notice with the director, which notice shall include:

(A) The name, address, telephone number, and email address of the issuer;

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

(C) The amount of the offering; and

(D) The type of security being offered, the manner in which purchasers will be solicited, and a statement made upon oath or affirmation that the conditions of this exemption have been or will be met.

(ii) Failure to give such notice may be cured by an order issued by the director in his or her discretion;

(i) Prior to payment of consideration for the securities, the offeree receives a written disclosure statement containing (i) a description of the proposed use of the proceeds of the offering; (ii) 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 (iii) the financial condition of the issuer;

(ii) The purchaser signs a subscription agreement in which the purchaser acknowledges that he or she:

- (ix) Has received the written disclosure statement;
- (iii) Understands the investment involves a high level of risk; and
- (iv) Has the financial resources to withstand the total loss of the money invested;

and

(iii) The issuer, within thirty days after the completion of the offering, files with the department a statement indicating the number of investors, the total dollar amount raised, and the use of the offering proceeds; or

(24)(a) An offer or a sale of a security made after August 30, 2015, by an issuer if the offer or sale is conducted in accordance with all the following requirements:

(i) The issuer of the security is a business entity organized under the laws of Nebraska and authorized to do business in Nebraska;

(ii) The transaction meets the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933 and Rule 147 adopted under the Securities Act of 1933, or complies with Rule 147A adopted under the Securities Act of 1933;

(iii) Except as provided in subdivision (c) of this subdivision, 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:

(A) 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, 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

(B) 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, 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;

(iv) The issuer does not accept more than five thousand dollars from any single purchaser except that such limitation shall not apply to an accredited investor;

(v) Unless waived by written consent by the director, not less than ten days before the commencement of an offering of securities in reliance on the exemption under this subdivision, the issuer must do all the following:

(A) Make a notice filing with the department on a form prescribed by the director;

(B) Pay a filing fee of two hundred dollars. However, no filing fee is required to file amendments to the form;

(C) Provide the director a copy of the disclosure document to be provided to prospective investors under subdivision (a)(xi) of this subdivision;

(D) Provide the director a copy of an escrow agreement with a bank, regulated trust company, savings bank, savings and loan association, or credit union authorized to do business in Nebraska in which the issuer will deposit the investor funds or cause the investor funds to be deposited. The bank, regulated trust company, savings bank, savings and loan association, or credit union in which the investor funds are deposited is only responsible to act at the direction of the party establishing the escrow agreement and does not have any duty or liability, contractual or otherwise, to any investor or other person;

(E) The issuer shall not access the escrow funds until the aggregate funds raised from all investors equals or exceeds the minimum amount specified in the escrow agreement; and

(F) An investor may cancel the investor's commitment to invest if the target offering amount is not raised before the time stated in the escrow agreement;

(vi) The issuer is not, either before or as a result of the offering, an investment company, as defined in section 3 of the Investment Company Act of 1940, an entity that would be an investment company but for the exclusions provided in section 3(c) of the Investment Company Act of 1940, or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934;

(vii) The issuer informs all prospective purchasers of securities offered under an exemption under this subdivision that the securities have not been registered under federal or state securities law and that the securities are subject to limitations on resale. The issuer shall display the following legend conspicuously on the cover page of the disclosure document:

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION, DEPARTMENT, OR DIVISION OR OTHER REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF SEC RULE 147 OR SUBSECTION (e) OF RULE 147A ADOPTED UNDER THE SECURITIES ACT OF 1933 AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.;

(viii) The issuer requires each purchaser to certify in writing or electronically as follows:

(ix) I understand and acknowledge that I am investing in a high-risk, speculative business venture. I may lose all of my investment, or under some circumstances more than my investment, and I can afford this loss. This offering has not been reviewed or approved by any

state or federal securities commission, department, or division or other regulatory authority and no such person or authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering. The securities I am acquiring in this offering are illiquid, there is no ready market for the sale of such securities, it may be difficult or impossible for me to sell or otherwise dispose of this investment, and, accordingly, I may be required to hold this investment indefinitely. I may be subject to tax on my share of the taxable income and losses of the company, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the company.;

(x) The issuer obtains from each purchaser of a security offered under an exemption under this subdivision evidence that the purchaser is a resident of Nebraska and, if applicable, is an individual accredited investor;

(xi) All payments for purchase of securities offered under an exemption under this subdivision are directed to and held by the financial institution specified in subdivision (a)(v)(D) of this subdivision. The director may request from the financial institutions information necessary to ensure compliance with this section. This information is not a public record and is not available for public inspection;

(xii) The issuer of securities offered under an exemption under this subdivision provides a disclosure document to each prospective investor at the time the offer of securities is made to the prospective investor that contains all the following:

(A) A description of the company, its type of entity, the address and telephone number of its principal office, its history, its business plan, and the intended use of the offering proceeds, including any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer;

(B) The identity of all persons owning more than twenty percent of the ownership interests of any class of securities of the company;

(C) The identity of the executive officers, directors, managing members, and other persons occupying a similar status or performing similar functions in the name of and on behalf of the issuer, including their titles and their prior experience;

(D) The terms and conditions of the securities being offered and of any outstanding securities of the company; the minimum and maximum amount of securities being offered, if any; either the percentage ownership of the company represented by the offered securities or the valuation of the company implied by the price of the offered securities; the price per share, unit, or interest of the securities being offered; any restrictions on transfer of the securities being offered; and a disclosure of any anticipated future issuance of securities that might dilute the value of securities being offered;

(E) The identity of any person who has been or will be retained by the issuer to assist the issuer in conducting the offering and sale of the securities, including any portal operator but excluding persons acting solely as accountants or attorneys and employees whose primary job responsibilities involve the operating business of the issuer rather than assisting the issuer in raising capital;

(F) For each person identified as required in subdivision (a)(xi)(E) of this subdivision, a description of the consideration being paid to the person for such assistance;

(G) A description of any litigation, legal proceedings, or pending regulatory action involving the company or its management;

(H) The names and addresses of each portal operator that will be offering or selling the issuer's securities under an exemption under this subdivision;

(I) The Uniform Resource Locator for each funding portal that will be used by the portal operator to offer or sell the issuer's securities under an exemption under this subdivision; and

(J) Any additional information material to the offering, including, if appropriate, a discussion of significant factors that make the offering speculative or risky. This discussion must be concise and organized logically and may not be limited to risks that could apply to any issuer or any offering;

(xii) The offering or sale exempted under this subdivision is made exclusively through one or more funding portals and each funding portal is subject to the following:

(A) Before any offer or sale of securities, the issuer must provide to the portal operator evidence that the issuer is organized under the laws of Nebraska and is authorized to do business in Nebraska;

(B) Subject to subdivisions (a)(xii)(C) and (E) of this subdivision, the portal operator must register with the department by filing a statement, accompanied by a two-hundred-dollar filing fee, that includes the following information:

(I) Documentation which demonstrates that the portal operator is a business entity and authorized to do business in Nebraska;

(II) A representation that the funding portal is being used to offer and sell securities pursuant to the exemption under this subdivision; and

(III) The identity and location of, and contact information for, the portal operator;

(C) The portal operator is not required to register as a broker-dealer if all of the following apply with respect to the funding portal and its portal operator:

(I) It does not offer investment advice or recommendations;

(II) It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the funding portal;

(III) It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the funding portal;

(IV) It is not compensated based on the amount of securities sold, and it does not hold, manage, possess, or otherwise handle investor funds or securities;

(V) The fee it charges an issuer for an offering of securities on the funding portal is a fixed amount for each offering, a variable amount based on the length of time that the securities are offered on the funding portal, or a combination of the fixed and variable amounts;

(VI) It does not identify, promote, or otherwise refer to any individual security offered on the funding portal in any advertising for the funding portal;

(VII) It does not engage in any other activities that the director, by rule and regulation or order, determines are prohibited of the funding portal; and

(VIII) Neither the portal operator, nor any director, executive officer, general partner, managing member, or other person with management authority over the portal operator, 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, that would disqualify an issuer under Rule 506(d) adopted under the Securities Act of 1933, from claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act of 1933. However, this subdivision does not apply if both of the following are met:

(1) On a showing of good cause and without prejudice to any other action by the Director of Banking and Finance, the director determines that it is not necessary under the circumstances that an exemption is denied; and

(2) The portal operator 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;

(D) If any change occurs that affects the funding portal's registration exemption, the portal operator must notify the department within thirty days after the change occurs;

(E) A registered broker-dealer who also serves as a portal operator must register with the department as a portal operator pursuant to subdivision (a)(xii)(B) of this subdivision, except that the fee for registration shall be waived;

(F) The issuer and the portal operator must maintain records of all offers and sales of securities effected through the funding portal and must provide ready access to the records to the department, upon request. The records of a portal operator under this subdivision are subject to the reasonable periodic, special, or other audits or inspections by a representative of the director, in or outside Nebraska, as the director considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The director may copy, and remove for audit or inspection copies of, all records the director reasonably considers necessary or appropriate to conduct the audit or inspection. The director may assess a reasonable charge for conducting an audit or inspection under this subdivision;

(G) The portal operator shall limit website access to the offer or sale of securities to only Nebraska residents;

(H) The portal operator shall not hold, manage, possess, or handle investor funds or securities; and

(I) The portal operator may not be an investor in any Nebraska offering under this subdivision.

(b) An issuer of a security, the offer and sale of which is exempt under this subdivision, shall provide, free of charge, a quarterly report to the issuer's investors until no securities issued under an exemption under this subdivision are outstanding. An issuer may satisfy the reporting requirement of this subdivision by making the information available on a funding portal if the information is made available within forty-five days after the end of each fiscal quarter and remains available until the succeeding quarterly report is issued. An issuer shall file each quarterly report under this subdivision with the department and, if the quarterly report is made available on a funding portal, the issuer shall also provide a written copy of the report to any investor upon request. The report must contain all the following:

(i) 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

(ii) An analysis by management of the issuer of the business operations and financial condition of the issuer.

(c) An offer or a sale under this subdivision 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 does not count toward the monetary limitations in subdivision (a)(iii) of this subdivision.

(d) The exemption under this subdivision may not be used in conjunction with any other exemption under the Securities Act of Nebraska, except for offers and sales to individuals identified in the disclosure document, during the immediately preceding twelve-month period.

(e) The exemption under this subdivision does not apply if an 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, that would disqualify an issuer under Rule 506(d) adopted under the Securities Act of 1933, from claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act of 1933. However, this subdivision does not apply if both of the following are met:

(i) On a showing of good cause and without prejudice to any other action by the Director of Banking and Finance, the director determines that it is not necessary under the circumstances that an exemption is denied; and

(ii) 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.

(f) For purposes of this subdivision:

(i) 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;

(ii) Funding portal means an Internet website that is operated by a portal operator for the offer and sale of securities pursuant to this subdivision;

(iii) 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, 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 in each of the two most recent years or joint income with that person's spouse in excess of three hundred thousand dollars in each of those years and has a reasonable expectation of reaching the same income level in the current year; and

(iv) Portal operator means an entity authorized to do business in this state which operates a funding portal and has registered with the department as required by this subdivision.

Last amended:

~ Reissue 2022

8-1112

Registrant; subject to personal jurisdiction.

Registering as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative under the Securities Act of Nebraska or directly or indirectly offering a security or investment adviser services in this state shall constitute sufficient contact with this state for the exercise of personal jurisdiction over such a person in any action which arises under the act.

Last amended:

~ Reissue 2022

8-1113

False or misleading filings; unlawful.

It shall be unlawful for any person to make or cause to be made, in any document filed with the director or in any proceeding under the Securities Act of Nebraska, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

Last amended:

~ Reissue 2022

8-1114

Unlawful representation concerning merits of registration or exemption.

Neither the fact that an application for registration or notice filing under section 8-1103, a notice filing under section 8-1108.02, or a registration statement under section 8-1106 or 8-1107 has been filed, nor the fact that a person or security is effectively registered, shall constitute a finding by the director that any document filed under the Securities Act of Nebraska is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction shall mean that the director has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction. It shall be unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with this section.

Last amended:

~ Reissue 2022

8-1115

Investigations; subpoena; director; powers.

(1) The director in his or her discretion (a) may make such public or private investigations within or without this state as he or she deems necessary to determine whether any registration should be granted, denied, or revoked or whether any person has violated or is about to violate the Securities Act of Nebraska or any rule and regulation or order under the act or to aid in the enforcement of the act or in the adopting and promulgating of rules and regulations and the prescribing of forms under the act, (b) may require or permit any person to file a statement in writing, under oath or otherwise as the director may determine, as to all the facts and circumstances concerning the matter to be investigated, and (c) may publish information concerning any violation of the act or any rule and regulation or order under the act. In the discretion of the director, the actual expense of any such investigation may be charged to the applicant or person who is the subject of the investigation.

(2) For the purpose of any investigation or proceeding under the act, the director or any person designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(3) At the request of an administrator responsible for enforcement of the securities laws of another state, the director may issue subpoenas to compel the attendance of any person or require the production of records in this state if the alleged violation being investigated would be a violation of the Securities Act of Nebraska if the activities had occurred in this state.

(4) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the director, may issue to such person an order requiring him or her to appear before the director, or the officer designated by the director, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

Last amended:

8-1115.01

Investigation or other proceeding; prohibited acts.

It shall be unlawful for any person with respect to any investigation or other proceeding under the Securities Act of Nebraska to: (1) Alter, destroy, mutilate, or conceal; (2) make a false entry in or by any means falsify; or (3) remove from any place or withhold from investigators or officials any record, document, or electronic or physical evidence with the intent to impede, obstruct, avoid, evade, or influence the investigation or administration of any other proceeding under the act.

Last amended:

~ Reissue 2022

8-1116

Violations; injunction; receiver; appointment; additional court orders authorized.

Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of the Securities Act of Nebraska or any rule and regulation or order under the act, the director may in his or her discretion bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with the Securities Act of Nebraska or any rule and regulation or order under the act. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant's assets. Upon a proper showing by the director, the court may invoke its equitable powers under the law and issue an order of rescission, restitution, or disgorgement, an order freezing assets, an order requiring an accounting, or a writ of attachment or writ of general or specific execution, directed to any person who has engaged in or is engaging in any act constituting a violation of any provision of the Securities Act of Nebraska or any rule and regulation or order under the act. The director shall not be required to post a bond.

Last amended:

~ Reissue 2022

8-1117

Violations; penalty.

(1) Any person who willfully violates any provision of the Securities Act of Nebraska except section 8-1113, or who willfully violates any rule and regulation or order under the act, or who willfully violates the provisions of section 8-1113 knowing the statement made to be false or misleading in any material respect is guilty of a Class IV felony. No indictment may be returned or information filed under the act more than five years after the alleged violation.

(2) The director may refer such evidence as may be available concerning violations of the act or any rule and regulation or order under the act to the Attorney General or the proper county attorney, who may in his or her discretion, with or without such a reference, institute the appropriate criminal proceedings under the act.

(3) Nothing in the act shall limit the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.

8-1118

Violations; damages; statute of limitations.

(1) Any person who offers or sells a security in violation of section 8-1104 or offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made in the light of the circumstances under which they are made not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he or she did not know and in the exercise of reasonable care could not have known of the untruth or omission, shall be liable to the person buying the security from him or her, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six percent per annum from the date of payment, costs, and reasonable attorney's fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he or she no longer owns the security, except that in actions brought based on a transaction exempt from registration under subdivision (23) of section 8-1111, no person shall be liable for any statement of a material fact made or for an omission of a material fact required to be stated or necessary to make the statement made not misleading unless such statement or omission was made with the intent to defraud or mislead, with the burden of proof in such cases being on the claimant. Damages shall be the amount that would be recoverable upon a tender less (a) the value of the security when the buyer disposed of it and (b) interest at six percent per annum from the date of disposition.

(2) Any investment adviser who provides investment adviser services to another person which results in a willful violation of subsection (2), (3), or (4) of section 8-1102, subsection (2) of section 8-1103, or section 8-1114 or any investment adviser who employs any device, scheme, or artifice to defraud such person or engages in any act, practice, or course of business which operates or would operate as a fraud or deceit on such person shall be liable to such person. Such person may sue either at law or in equity to recover the consideration paid for the investment adviser services and any loss due to such investment adviser services, together with interest at six percent per annum from the date of payment of the consideration plus costs and reasonable attorney's fees, less the amount of any income received from such investment adviser services and any other economic benefit.

(3) Every person who directly or indirectly controls a person liable under subsections (1) and (2) of this section, including every partner, limited liability company member, officer, director, or person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or employee of such person who materially aids in the conduct giving rise to liability, and every broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative who materially aids in such conduct shall be liable jointly and severally with and to the same extent as such person, unless able to sustain the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution as in cases of contract among the several persons so liable.

(4) Any tender specified in this section may be made at any time before entry of judgment. Every cause of action under the Securities Act of Nebraska shall survive the death of any person who might have been a plaintiff or defendant. No person may sue under this section more than three years after the contract of sale or the rendering of investment advice. No person may sue

under this section (a) if the buyer received a written offer, before an action is commenced and at a time when he or she owned the security, to refund the consideration paid together with interest at six percent per annum from the date of payment, less the amount of any income received on the security, and the buyer failed to accept the offer within thirty days of its receipt, or (b) if the buyer received such an offer before an action is commenced and at a time when he or she did not own the security, unless the buyer rejected the offer in writing within thirty days of its receipt.

(5) No person who has made or engaged in the performance of any contract in violation of any provision of the act or any rule and regulation or order under the act, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any action on the contract. Any condition, stipulation, or provision binding any person acquiring any security or receiving any investment advice to waive compliance with any provision of the act or any rule and regulation or order under the act shall be void.

Last amended:

~ Reissue 2022

8-1119

Appeal; procedure.

Any person aggrieved by a final order of the director may appeal the order, and the appeal shall be in accordance with the Administrative Procedure Act.

Last amended:

~ Reissue 2022

8-1120

Administration of act; Director of Banking and Finance; powers and duties; use of information for personal benefit prohibited; Securities Act Cash Fund; created; use; investment; transfers; document filed, when.

(1) Except as otherwise provided in this section, the Securities Act of Nebraska shall be administered by the Director of Banking and Finance who may employ such deputies, examiners, assistants, or counsel as may be reasonably necessary for the purpose thereof. The employment of any person for the administration of the act is subject to section 49-1499.07. The director may delegate to a deputy director or counsel any powers, authority, and duties imposed upon or granted to the director under the act, such as may be lawfully delegated under the common law or the statutes of this state. The director may also employ special counsel with respect to any investigation conducted by him or her under the act or with respect to any litigation to which the director is a party under the act.

(2) A security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company shall be registered, pursuant to the provisions of sections 8-1104 to 8-1109, with the Director of Insurance who shall as to such registrations administer and enforce the act, and as pertains to the administration and enforcement of such registration of such securities all references in the act to director shall mean the Director of Insurance.

(3)(a) It shall be unlawful for the director or any of his or her employees to use for personal benefit any information which is filed with or obtained by the director and which is not

made public. Neither the director nor any of his or her employees shall disclose any confidential information except among themselves, when necessary or appropriate in a proceeding, examination, or investigation under the act, or as authorized in subdivision (3)(b) of this subsection. No provision of the act shall either create or derogate from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the director or any of his or her employees.

(b)(i) In administering the act, the director may also:

(A) Enter into agreements or relationships with other government officials, including, but not limited to, the securities administrator of a foreign state and the Securities and Exchange Commission, or self-regulatory organizations, to share resources, standardized or uniform methods or procedures, and documents, records, and information; or

(B) Accept and rely on examination or investigation reports made by other government officials, including, but not limited to, the securities administrator of a foreign state and the Securities and Exchange Commission, or self-regulatory organizations.

(ii) For purposes of this subdivision, foreign state means any state of the United States, other than the State of Nebraska, any territory of the United States, including Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, and the District of Columbia.

(4) The director may adopt and promulgate rules and regulations and prescribe forms to carry out the act. No rule and regulation may be adopted and promulgated or form may be prescribed unless the director finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the act. In adopting and promulgating rules and regulations and prescribing forms the director may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of the Securities Act of Nebraska to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable. All rules and regulations and forms of the director shall be published and made available to any person upon request.

(5) No provision of the act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule and regulation, form, or order of the director, notwithstanding that the rule and regulation or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(6) Every hearing in an administrative proceeding shall be public unless the director in his or her discretion grants a request joined in by all the respondents that the hearing be conducted privately.

(7)(a) The Securities Act Cash Fund is created. All filing fees, registration fees, and all other fees and all money collected by or paid to the director under any of the provisions of the act shall be remitted to the State Treasurer for credit to the fund, except that registration fees collected by or paid to the Director of Insurance pursuant to the provisions of the act shall be credited to the Department of Insurance Cash Fund. The Securities Act Cash Fund shall be used for the purpose of administering and enforcing the provisions of the act, except that transfers may be made to the General Fund at the direction of the Legislature. Any money in the Securities Act Cash Fund

available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(b) The State Treasurer shall transfer seven hundred twelve thousand four hundred eighty-nine dollars from the Securities Act Cash Fund to the Financial Institution Assessment Cash Fund on or before October 30, 2021, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

(c) The State Treasurer shall transfer three hundred ninety-seven thousand eighty-nine dollars from the Securities Act Cash Fund to the Financial Institution Assessment Cash Fund on or before October 30, 2022, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

(8) A document is filed when it is received by the director. The director shall keep a register of all applications for registration and registration statements which are or have ever been effective under the Securities Act of Nebraska and all denial, suspension, or revocation orders which have ever been entered under the act. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such conditions as the director may prescribe.

(9) The director may, by rule and regulation or order, authorize or require the filing of any document required to be filed under the act by electronic or other means, processes, or systems.

(10) Upon request and at such reasonable charges as he or she shall prescribe, the director shall furnish to any person photostatic or other copies, certified under his or her seal of office if requested, of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under the act, any copy so certified shall be prima facie evidence of the contents of the entry or document certified.

(11) The director in his or her discretion may honor requests from interested persons for interpretative opinions.

Last amended:
~ Reissue 2022

8-1121

Exemption or exception; burden of proof.

In any proceeding under the Securities Act of Nebraska, the burden of proving an exemption or an exception from a definition shall be upon the person claiming it.

Last amended:
~ Reissue 2022

8-1122

Act; how construed.

The Securities Act of Nebraska shall be construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation and administration of the act with the related federal regulation.

Last amended:

~ Reissue 2022

8-1122.01

Federal limits rejected.

The federal limits on the registration of securities, dealers, brokers, broker-dealers, agents, and investment advisers as provided in the federal Philanthropy Protection Act of 1995, Public Law 104-62, shall not apply in Nebraska and are hereby rejected by the State of Nebraska pursuant to section 6(c) of such act. The State of Nebraska elects to retain the authority to require or not require such registration under the Securities Act of Nebraska and to retain the authority to have such registration requirements apply in all administrative and judicial actions commenced after July 15, 1998.

Last amended:

~ Reissue 2022

8-1123

Act, how cited.

Sections 8-1101 to 8-1123 shall be known and may be cited as the Securities Act of Nebraska.

Last amended:

~ Reissue 2022

8-1124

Repealed.

~ Reissue 2022
