

**NEBRASKA DEPARTMENT OF BANKING AND FINANCE
BUREAU OF SECURITIES**

INTERPRETATIVE OPINION NO. 1: – CERTIFICATES OF DEPOSIT

This Interpretative Opinion discusses the treatment of certificates of deposits under the Securities Act of Nebraska (“Act”).

For the purposes of this Interpretative Opinion, the Department defines a “certificate of deposit” as an instrument issued and sold directly by a financial institution to a purchaser against money deposited for a specific period of time. The term “certificate of deposit” includes share certificates sold by credit unions.

The Nebraska Supreme Court, in *Wrede v. Exchange Bank of Gibbon*, 247 Neb. 907, 531 N.W. 2d 523 (1995), addressed the question of whether the Act covered the certificates of deposit issued by Nebraska banks. The Court found the plaintiff had loaned money to a heavily regulated banking institution at a fixed rate of interest with virtually no risk of loss. “Under the circumstances, [the] certificate of deposit. . . was not a security as contemplated by the Securities Act of Nebraska.” *Wrede* 247 Neb. at 914, 531 N.W. 2d at 529. In reaching its decision, the Nebraska court relied heavily on the ruling in *Marine Bank v. Weaver*, 455 U.S. 551 (1982), interpreting federal securities laws similarly.

In order to fit within the scope of the *Wrede* decision, the certificate of deposit must have the following elements:

1. The certificate of deposit must be sold directly by the issuing financial institution to the customer.
2. The certificate of deposit must be directly and fully insured by the Federal Deposit Insurance Corporation or a similar federal entity.
3. The financial institution must be subject to reserve, reporting and governmental inspection requirements that minimize the risk of the certificate of deposit investment.

In all other instances, certificates of deposit will likely be classified as notes under the Act and will be subject to all registration and disclosure requirements.

Questions regarding this opinion should be addressed to:

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