

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

**INTERPRETATIVE OPINION NO. 10: – INSTITUTIONAL INVESTORS AND THE SECTION
8-1111(8) EXEMPTION**

This Interpretative Opinion discusses the “institutional investor” exemption provided by Section 8-1111(8) of the Securities Act of Nebraska.

Section 8-1111(8) provides an exemption from registration for:

- (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.

For purposes of Section 8-1111(8), the following definitions shall apply:

1. “Bank” means a bank as defined in Section 3(a)(2) of the Securities Act of 1933, 15 U.S.C. § 77c(a)(2);
2. “Insurance Company” means an insurance company as defined in Section 2(13) of the Securities Act of 1933, 15 U.S.C. § 77b(13);
3. A “pension or profit-sharing trust” means an employee benefit plan, as defined in Title I of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(2) if:
 - a. The investment decisions are made by a “plan fiduciary”, as defined in Section 3(21) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(21), which is either a bank, insurance company or registered investment adviser; or
 - b. The employee benefit plan has total assets in excess of \$5,000,000.

4. "Financial institution" means a bank, savings bank, building and loan association, savings and loan association, or credit union, whether chartered by the United States, the department, or a foreign state agency; any other similar organization which is covered by federal deposit insurance; or a trust company.
5. "Corporation" includes domestic corporations as defined by the Nebraska Model Business Corporation Act, Neb. Rev. Stat. § 21-214(4), and foreign corporations as defined by Neb. Rev. Stat. §21-214(20).
6. "Partnership" means a partnership as defined by Nebraska Uniform Partnership Act, Neb. Rev. Stat. § 67-402(6).

Questions regarding this opinion should be addressed to:

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