

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

**INTERPRETATIVE OPINION NO. 2 – EXCLUSION FROM DEFINITION OF SECURITY FOR
LIMITED LIABILITY COMPANIES WHICH ARE ACTIVELY MANAGED BY MEMBERS**

This Interpretative Opinion discusses the exclusion from the definition of a security under the Securities Act of Nebraska (“Act”), for limited liability companies which are actively managed by its members.

Section 8-1101(15) provides that the definition of a security shall include a membership interest in a limited liability company unless otherwise excluded. Section 8-1101(15) further provides that the definition of a security shall 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.

In determining whether a limited liability company is excluded from the definition of a security, the following factors will be considered:

1. Whether the members retain, under the limited liability company’s operating agreement, the right to exercise practical and actual control over the management decisions of the enterprise;
2. Whether the number of members of the limited liability company is so great as to render the managerial power afforded the members by the operating agreement insignificant and meaningless;
3. Whether the members are so geographically dispersed as to render the managerial power afforded the members by the operating agreement insignificant and meaningless;
4. Whether the promoter has some particular skill which is necessary for the successful operation of the limited liability company and, without which, the enterprise will likely be unsuccessful; and
5. Whether any other special circumstances exist which render meaningless the managerial powers given to the members by the operating agreement.

This list of factors is not intended to be exhaustive. Any other fact or circumstance which bears on the exercise of management authority by the members of a limited liability company may be considered in determining the status of the membership interests of a limited liability company under the Act.

Questions regarding this opinion should be addressed to:

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