

NEBRASKA ADMINISTRATIVE CODE

TITLE 45 – DEPARTMENT OF BANKING AND FINANCE

Chapter 12 – DIRECTORS' EXAMINATIONS PERFORMED BY CERTIFIED PUBLIC ACCOUNTANTS OR PUBLIC ACCOUNTANTS

001 GENERAL.

001.01 A copy of the Interagency Policy Statement referenced in this Rule is available as an appendix to this Rule at (*link to be determined*).

002 APPLICATION.

002.01 Neb. Rev. Stat. § 8-124 provides that the Board of Directors of a bank may accept one annual audit by an accountant or accounting firm approved by the Department in lieu of the required annual examination by the Board of Directors.

002.02 The accountant or accounting firm must make application for approval upon forms prescribed by the Department.

002.03 Approval must be obtained for each individual bank audited. Such approval will be perpetual, or until cancelled by the individual bank, accountant, or accounting firm, or revoked by the Department.

003 QUALIFICATIONS.

003.01 The accountant or accounting firm must be a certified public accountant or public accountant. A certified public accountant or public accountant is deemed to be a person who is duly registered and is in good standing under the Nebraska Public Accountancy Act.

004 INDEPENDENCE.

004.01 A certified public accountant or a public accountant will not be considered independent, if the accountant:

004.01A Is connected with the bank or any of its affiliates as an officer, director, attorney, or employee, or is a member of the immediate family of an officer, director, attorney, or employee of the bank or any of its affiliates;

004.01B Is the beneficial owner, directly or indirectly, of any shares of stock of the bank or any of its affiliates;

004.01C Has any proprietary interest in any business or legal entity which, directly or indirectly, controls the bank or any of its affiliates;

004.01D Is a borrower from the bank or any of its affiliates except with respect to:

004.01D1 a loan on the security of his or her residence;

004.01D2 a loan to make alterations, repairs, or improvements to his or her residence; or

004.01D3 a loan secured solely by his or her segregated deposit account in the lending bank.

004.01E Makes entries or postings on the books of account or performs any other operating functions for the bank or any of its affiliates;

004.01F Has any conflict of interest, or the appearance thereof, by reason of business or personal relationships with management or its decisions or functions, or

004.01G Any partner or principal of the accounting firm receives any special consideration in any transaction with the bank or its affiliates or has any interest, directly or indirectly, financial or otherwise, in any real property owned by or securing any loan or otherwise made by the bank or any of its affiliates except as provided in Subsection 004.01D of this Rule, or in any other operating activity or function of the institution or any of its affiliates.

004.02 An accounting firm which has a member who is not considered independent shall exclude such accountant from any personal involvement in the audit.

004.03 The foregoing points are not to be construed as all-inclusive criteria in judging the independence of a certified public accountant, or a public accountant, but rather as setting forth the most common conditions which contribute to a lack of independence.

004.04 The certified public accountant or public accountant must adhere to the American Institute of Certified Public Accountants' rules for independence, unless further restricted by the rules or interpretations of the Department.

004.05 It is the responsibility of the individual or the accounting firm to disclose to the Department any unusual relationships or affiliations which he or she or any member of the accounting firm may have with the bank, any affiliate of the bank, or any persons closely connected with the bank, and to have resolved any question as to his, her, or the firm's independence before proceeding with the engagement.

004.06 The individual or the accounting firm must state specifically in the report of audit or Directors' Examination that he, she, or the accounting firm has met the tests of independence specified in this Rule and that he, she, or the accounting firm is in fact independent.

005 STANDARDS FOR ACCEPTABILITY AND SCOPE OF EXAMINATION FOR DIRECTORS' EXAMINATIONS.

005.01 The Directors' Examination must be conducted in accordance with 45 NAC 13 to be acceptable.

005.02 An opinion audit of a bank holding company is acceptable as a Directors' Examination of a subsidiary bank if:

005.02A the same audit procedures are applied to the subsidiary bank as if the opinion audit was being conducted on the subsidiary bank, and

005.02B such is stated in the opinion audit of the bank holding company.

005.03 The Board of Directors may adopt external auditing programs as outlined in the "Interagency Policy Statement on External Auditing Programs of Banks and Savings Associations [Oct. 15, 1999]" as the minimum requirements for an audit in lieu of provisions outlined in 45 NAC 13. In addition, a financial statement review may be performed if procedures are sufficient to identify misstatements or errors and include verification of accounts as set forth in 45 NAC 13.

006 DIRECTORS' EXAMINATION PERFORMED BY OTHER THAN CERTIFIED PUBLIC ACCOUNTANTS OR PUBLIC ACCOUNTANTS.

006.01 In the event the Board of Directors does not elect to provide for an annual audit by an accountant or an accounting firm, it must of itself, or by appointment of an independent person or persons, make a thorough examination of the books, records, funds, and securities held by the bank.

006.02 The Directors' Examination must be conducted in accordance with 45 NAC 13. The Board of Directors may assign the performance of such a Directors' Examination to one or more persons who may not necessarily be a member of the board, if the person(s) assigned is independent of the activities being examined, has experience with financial institution accounting and auditing, or similar expertise, and is knowledgeable about relevant laws and regulations.

006.03 The report compiled thereof must be:

006.03A made in accordance with 45 NAC 13,

006.03B verified as to its correctness, and

006.03C signed by a majority of the Board of Directors so attesting.

006.04 The report is to be made a part of the record of the bank.

007 PERIODIC DIRECTORS' EXAMINATION.

007.01 A Directors' Examination which is conducted over the course of a calendar year is acceptable. Such an examination must meet all the requirements of this Rule and 45 NAC 13, and submitted to the Department as provided in 45 NAC 13.

008 ENHANCED PROCEDURES.

008.01 The Director of the Department may require a bank presenting safety and soundness concerns or other supervisory concerns to engage an independent certified public accountant to perform external auditing services or may require a financial statement audit or other specified type of external audit.

008.02 Supervisory concerns are further defined in the “Interagency Policy Statement on External Auditing Programs of Banks and Savings Associations [Oct. 15, 1999]”.