

NEBRASKA ADMINISTRATIVE CODE

TITLE 45 – DEPARTMENT OF BANKING AND FINANCE

Chapter ~~30~~ 18 – REQUIREMENTS FOR PURCHASES OF SHARES OF INVESTMENT COMPANIES

001 SCOPE AND APPLICATION.

~~001.01~~ 001.01 ~~This rule will govern certain investments made by a state bank pursuant to the provisions of Neb. Rev. Stat. section § 8-148 (2) (Reissue 1987). provides that a bank may subscribe to, invest, purchase, and own shares of investment companies.~~

001.02 Such investments include only the purchase of shares of an investment company registered under the Investment Company Act of 1940.

~~001.02~~ 001.03 This rule addresses a state bank's purchases of investment company shares for its own account.

001.04 For purposes of this Rule:

~~003.04~~ 001.04A "Obligations that are eligible for investment" means those specified in Neb. Rev. Stat. §§ 8-141, 8-147, 8-148, 8-148.01, 8-148.02, 8-148.03, 8-148.05, and 8-148.10.

001.04B "Unimpaired capital" is as defined in Neb. Rev. Stat. § 8-141.

002 STATUTORY LIMITATION- COMPOSITION.

002.01 The assets of the investment company must consist solely of and are limited to obligations that are eligible for investment by ~~the~~ a bank.

003 DEFINITIONS.

~~003.01~~ 003.01 "Obligations that are eligible for investment" shall mean those specified in ~~Neb. Rev. Stat. sections 8-141, 8-147, 8-148, 8-148.01, 8-148.02, and 8-148.03.~~

004 003 INVESTMENT LIMITS.

~~004.01~~ 003.01 When an investment company's assets consist solely of and are limited to obligations that are eligible for unlimited investment by a ~~state~~ bank, there is no limit on a bank's investment.

004.02 003.02 When an investment company's assets contain obligations which are subject to the bank's investment or lending limitations, investment by the bank must be limited to twenty-five percent ~~(25%)~~ of ~~the~~ its paid-up capital, surplus, capital notes, and debentures ~~of such bank or fifteen percent of its unimpaired capital and unimpaired surplus, whichever is greater.~~

~~004.03~~ 003.03 When an investment company makes use of repurchase agreements, the bank's investment is limited to twenty-five percent ~~(25%)~~ of ~~the~~ its paid-up

capital, surplus, capital notes, and debentures ~~of the bank, or fifteen percent of its unimpaired capital and unimpaired surplus, whichever is greater,~~ provided that all of the following conditions are met:

~~004.03A~~ 003.03A The repurchase agreements are fully secured by securities of the United States government or any authorized agency thereof.

~~004.03B~~ 003.03B Possession of the collateral is obtained by either the bank or a third-party custodian designated by the bank under a written custodial agreement which explicitly recognizes the bank's interest in the securities as superior to that of any other person, or, in the case of book-entry securities, by appropriate entry in an account maintained in the name of the bank by a Federal Reserve Bank;

~~004.03C~~ 003.03C The collateral is marked to market on a daily basis.

~~004.04~~ 003.04 When an investment company makes use of repurchase agreements which do not contain the elements set forth in ~~section 004.03~~ Subsection 003.03 of this Rule, and/or securities lending arrangements, the bank's investment is limited to ten percent ~~(10%) of the its~~ paid-up capital, surplus, capital notes and debentures ~~of the bank or ten percent of its unimpaired capital and unimpaired surplus, whichever is greater.~~

~~004.05~~ 003.05 When an investment company makes use of futures and options, or has the ability to do so, the fund is not an eligible investment for ~~state~~ banks.

003.06 A ~~state~~ bank may invest in an investment company which makes use of forward contracts, provided that the investment company maintains, in a segregated account, cash or cash equivalents or other portfolio securities equal in value to commitments to purchase securities, so that no leverage is employed.

~~005~~ 004 INVESTMENT COMPANY REQUIREMENTS OF THE INVESTMENT COMPANY.

~~005.01~~ 004.01 In addition to the eligibility requirements of the underlying assets of the investment company, the fund must provide that:

~~005.01A~~ 004.01A The shareholder must have a proportionate undivided interest in the underlying assets of the investment company.

~~005.01B~~ 004.01B The shareholders of the fund must be shielded from personal liability for acts or obligations of the investment company.

~~004~~ 005 REVIEW AND DOCUMENTATION REQUIREMENTS.

~~004.01~~ 005.01 The bank's formal investment policy, as adopted and approved by its Board of Directors ("Board"), ~~shall~~ must specifically provide for the investments addressed by this Rule.

~~004.02~~ 005.02 Specific prior approval of the bank's Board ~~of directors~~ is required for the initial investment in specific investment companies. Such approval ~~shall~~ must be noted in the official Board minutes.

~~004.03~~ 005.03 Procedures, standards, and controls for managing such investments shall be implemented prior to the investment being made. Such procedures, standards, and controls shall be in written form and approved by the Board. ~~of directors.~~

~~004.04~~ 005.04 A copy of the prospectus for each such investment shall be maintained in the bank's ~~files~~ records for a period of one year after the investment is no longer held in the bank's own portfolio.

~~004.05~~ 005.05 The bank shall conduct a review at least quarterly of its holdings of investment company shares to ensure that such investments are in accordance with its investment policy and statutory and regulatory requirements. Such review ~~shall~~ must be noted in the official Board minutes.

005 006 REPORTING AND ACCOUNTING REQUIREMENTS.

~~005.01~~ 006.01 ~~Existing instructions for the~~ Quarterly Reports of Condition require bank holdings of investment company shares to be reported at the lower of the aggregate cost or market value in Schedule RC-B SECURITIES. Reference the ~~instructions for the Report of Condition,~~ glossary entry for "marketable equity securities," ~~and Statement of Financial Accounting Standards No. 12, Accounting for Certain Marketable Securities ("FAS 12")~~

~~005.01A~~ 006.01A Market value of "open-end" investment companies should be based on net asset value rather than offering price.

~~005.01B~~ 006.01B Shares in "closed-end" investment companies should be marked to the bid price.

~~005.01C~~ 006.01C At no time may the carrying value of investment company holdings be increased above their aggregate cost as a result of net unrealized gains.

~~005.02~~ 006.02 Net unrealized losses on marketable equity securities and subsequent recoveries of net unrealized losses ~~should~~ must be excluded from ~~Schedule~~ RI-INCOME STATEMENT and ~~instead~~ be reported (reduced by applicable income tax effect) in Schedule RI-A CHANGES IN EQUITY CAPITAL as an adjustment to "Undivided Profits and Capital Reserves." A loss on an individual investment which is other than temporary should be charged to noninterest expense on Schedule RI-INCOME STATEMENT.

~~005.03~~ 006.03 As part of the market value determination referred to above, mutual fund sales fees, both "front end load" and "deferred contingency", must be deducted ~~in calculating market value to more accurately reflect~~ the current value of fund shares. Unless the market value of such shares increases sufficiently to offset these fees, the ~~amount of these~~ fees will be reflected as unrealized losses and effectively charged against "Undivided Profits and Capital Reserves."