

GUIDANCE DOCUMENT

This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

NEBRASKA FINANCIAL INNOVATION ACT
STATEMENT OF POLICY #4

PROMPT CORRECTIVE ACTION

The Nebraska Department of Banking and Finance (“Department”) sets forth Statement of Policy #4 regarding prompt corrective action, which may be required of a Digital Asset Depository Institution or a Digital Asset Depository Department (collectively referred to as “charters”) where capitalization issues arise. All statutory citations are to the Nebraska Financial Innovation Act (the “Act”).

Pursuant to the Act, the Director of the Department has general supervision and control over charters. If the Director finds that a charter is operating in an unsafe or unsound condition or is endangering the interests of its customers, the charter will be subject to enhanced monitoring, restrictions on its activities, and the Director may require the charter to institute remediation of such condition within prescribed time limits. If the charter fails to remedy the condition or conditions within the prescribed time limits or has failed and/or becomes insolvent, the Director shall conduct a liquidation of such charter and appoint a receiver over such charter.

The Director may take several different factors into account when determining whether a charter is operating in an unsafe and unsound condition, including its ongoing capital ratios, its most recent CAMELS ratings, other examination findings or noted violations, findings related to investigations or consumer complaints, ongoing monitoring of the charter’s activities (through call reports or other reporting mechanisms), and any other means by which the Director supervises such charter.

The Department generally determines charters that are less than adequately capitalized to be those that exhibit the following:

- Total risk-based capital ratio of less than 8%;
- Tier 1 risk-based capital ratio of less than 6%;
- Common equity tier 1 capital ratio of below 4.5%;
- Leverage ratio of less than 4%; and
- Does not meet the definition of a well-capitalized Insured Depository Institution, under the FDIC’s rules and regulations.

As the capital position of the charter decreases in these key ratios, the charter will be subject to more severe restriction and more enhanced monitoring.

The Department’s capital categories are stratified into five capital categories, as described in Section 38 and Subpart H of Title 12, Chapter III, Subchapter B of Part 325 of the Code of Federal Regulations.

CAPITAL RESTORATION PLANS

For charters which are found by the Director to lack sufficient capital, the Director may require the board of directors to develop and file a written capital restoration plan ("Plan"). The board of directors shall provide an initial acknowledgment to the Director, within forty-eight (48) hours from the receipt of the Director's notice, confirming their intent to develop and file the Plan with the Department. The Plan shall be filed with the Director for his or her approval within thirty (30) days from the date that the Director provides notice of the requirement to the charter's board.

The Plan shall specify the following:

- The steps the charter will take to become adequately capitalized;
- The levels of capital to be attained during the time that the Plan will be in effect;
- How the institution will comply with any restrictions or requirements in effect due to the charter being found to be less than adequately capitalized;
- The types and levels of activities in which the charter will engage; and
- Any other such information as the Director may require to supplement the Plan.

All financial data submitted in connection with a Plan shall be prepared in accordance with the instructions provided in the Call Report, unless the Director instructs otherwise. Where other issues may be present regarding activities or practices found to be unsafe or unsound, the Plan shall include a description of the steps the institution will take to correct such unsafe or unsound condition or practice(s).

In order for the Director to accept a Plan, the Plan must:

- Include all requirements set forth by the Director;
- Be based on realistic assumptions that are likely to succeed in restoring the charter's capital position;
- Reflect a return to at least Adequately Capitalized status within a reasonable time period;
- Contain reasonable and supported financial projections, including pro-forma statements and an explanation of any assumptions;
- Contain interim target capital levels to facilitate monitoring progress towards meeting the goals of the Plan;
- Include detailed information regarding any potential capital sources or injections that are included in the Plan;
- Not appreciably increase the risk to which the charter is exposed; and
- Provide that each entity having control over the charter has guaranteed that the institution will comply with the Plan until the institution has been at least Adequately Capitalized, on average, during each of four consecutive calendar quarters and has provided appropriate assurances of performance.

Upon filing of a Plan, Department staff shall review to determine whether all required information has been included within the submitted Plan. The Department may require the charter to revise or further supplement the Plan or provide additional information, as may be needed. The Department may inform the charter that parts of the Plan are acceptable and should be implemented while the remainder of the Plan is still under consideration; however, approving partial implementation of a Plan is uncommon, since only significant shortcomings are expected to preclude approval of a Plan.

The Director, after reviewing all relevant information, including the proposed Plan and the memorandum prepared by assigned Department staff, will provide notice to the charter of approval or disapproval of the Plan. For notices including the approval of a Plan, the letter should indicate that approval of the Plan does not represent approval of any actions included in the Plan that are subject to prior regulatory approval or notification. For letters including disapproval, the letter should include the requirement to submit a revised Plan by a specific due date and, if the charter is less than Adequately Capitalized, indicate that there may be restrictions or prohibitions placed upon the charter's activities or practices, until such time as the Director informs the charter that such restrictions or prohibitions have been lifted or reduced.

The Department intends to evaluate a charter's compliance with its approved Plan at least monthly and document the review. The Department will review the Plan, restrictions, and requirements applicable to the charter at least quarterly to determine whether those measures are achieving the goals of the Plan, or whether any other supervisory action may be required.

CAPITAL CALLS

In instances where the insufficiency of the charter's capital position is found to put the charter in a position of pending insolvency, the Director may provide notice to the board of directors, and stockholders of the charter of a capital call. This notice of capital call will set forth the requirements for the total dollar amount of capital infusion to be required and shall provide the date by which the capital call shall be fulfilled by the board of the charter. If the capital call identifies a requirement for multiple rounds of capital infusions or other means of timed delivery of increases, such amounts, and deadlines for the rounds of each such infusion shall be provided within the notice.

RESTRICTIONS OR PROHIBITIONS ON ACTIVITY DUE TO INSUFFICIENT CAPITAL

Along with notices of capital calls, the Director may put into place orders or other administrative actions or notices that restrict or prohibit certain activities for charters that are found to be less than adequately capitalized. Such restrictions or prohibitions may become more severe as the charter's capital position declines. The Department may place prohibitions or restrictions on activities that include, but are not limited to:

- Issuing or redeeming stablecoins;
- Increasing payments, rates, or yields associated with digital asset activities,

- including staking, lending, or custodial activity;
- Making capital distributions or dividend distributions;
- Engaging in acquisitions, branching, and operating new lines of business;
- Paying bonuses and increased compensation for the members of its board or management;
- Making payments of principal or interest on subordinated debts;
- Entering into material transactions other than in the usual course of its business. Materiality may be determined on a case-by-case basis;
- Extending credit for any highly leveraged transaction as defined by state or federal law;
- Amending the chartering document or bylaws of the charter, except to the extent necessary to carry out any other requirement of any law, regulation, or order;
- Making any material change to the charter's accounting methods;
- Conducting certain transactions with the charter's affiliates, such as extending credit, purchasing investments or securities issued by the affiliate, purchasing assets from the affiliate, accepting securities issued by the affiliate as collateral for extensions of credit, or issuing guarantees or endorsements on behalf of an affiliate; or
- Paying excessive compensation or bonuses.

Charters wishing to engage in any of these activities after being notified of their less than adequately capitalized status must obtain the approval of the Director prior to undertaking them. Such request may be made in a form prescribed by the Director, which may include any and all information deemed relevant to the request, by the Director.

After the submission of the request and all other information required by the Director to review the request, the Director will then notify the charter of approval or disapproval of the request. The Director may condition approval of the request with appropriate limitations, as may be deemed necessary. If the Director disapproves of the request, the Director's notice shall state the reasons for such disapproval and provide any instructions for the resubmission of the request.

Along with placing prohibitions or restrictions on a charter's activities, the Department may also require a charter to take specific affirmative actions due to the charter being in a less than adequately capitalized position, which include, but are not limited to:

- Taking all appropriate and reasonable steps to account for all outstanding stablecoins, including those that may be held by customers that have not undergone Know Your Customer compliance by the charter;
- Engaging in additional stress testing; or
- Conducting additional consumer education, outreach, or providing appropriate notices.

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