

TITLE 45 - DEPARTMENT OF BANKING AND FINANCE

Chapter 18 - REQUIREMENTS FOR PURCHASES OF SHARES OF INVESTMENT COMPANIES

001 SCOPE AND APPLICATION.

001.01 Neb. Rev. Stat. § 8-148 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.

001.03 This Rule addresses a bank's purchases of investment company shares for its own account.

001.04 For purposes of this Rule:

001.01A "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.

001.02B "Unimpaired capital" is as defined in Neb. Rev. Stat. § 8-141.

002 COMPOSITION.

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

003 INVESTMENT LIMITS.

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

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 of its paid-up capital, surplus, capital notes, and debentures or fifteen percent of its unimpaired capital and unimpaired surplus, whichever is greater.

003.03 When an investment company makes use of repurchase agreements, the bank's investment is limited to twenty-five percent of its paid-up capital, surplus, capital notes, and debentures or fifteen percent of its unimpaired capital and unimpaired surplus, whichever is greater, provided that all of the following conditions are met:

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

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.

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

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

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 banks.

003.06 A 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.

004 INVESTMENT COMPANY REQUIREMENTS.

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

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

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

005 REVIEW AND DOCUMENTATION.

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

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

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.

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

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 must be noted in the official Board minutes.

006 REPORTING AND ACCOUNTING.

006.01 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 RC-B SECURITIES. Reference the glossary entry for "marketable equity securities."

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

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

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.

006.02 Net unrealized losses on marketable equity securities and subsequent recoveries of net unrealized losses must be excluded from RI-INCOME STATEMENT and be reported (reduced by applicable income tax effect) in 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 RI-INCOME STATEMENT.

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 the current value of fund shares. Unless the market value of such shares increases to offset these fees, these fees will be reflected as unrealized losses and effectively charged against "Undivided Profits and Capital Reserves."

