

STATE OF KANSAS

OFFICE OF THE SECURITIES COMMISSIONER

NOTICE OF PUBLIC HEARING ON ADMINISTRATIVE REGULATIONS

A public hearing will be conducted at 10:00 a.m., Thursday, November 19, 2015, at the Office of the Securities Commissioner of Kansas (“the Agency”), 109 SW 9th Street, Suite 600, Topeka, Kansas 66612, to consider amendments to **Kansas Administrative Regulations 81-1-1, 81-2-1, 81-3-1, 81-3-5, 81-3-6, 81-3-7, 81-4-1, 81-4-4, 81-5-7, 81-5-15, 81-5-17, 81-5-21, 81-6-1, 81-7-1, 81-7-2, 81-14-1, 81-14-5, and 81-14-11**, on a permanent basis. All proposed amendments are to regulations adopted by the Commissioner for administration and enforcement of the Kansas Uniform Securities Act (the “KUSA”), K.S.A. 17-12a101 *et seq.* and amendments thereto.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed amendments of regulations. All interested parties may submit written comments prior to the hearing to the attention of the Commissioner at the address above or by email to ksc@ksc.ks.gov. All interested parties will be given a reasonable opportunity to present their views orally regarding the adoption of the proposed amendments of regulations during the public hearing. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation. Following the hearing, all written and oral comments submitted by interested parties will be considered by the Commissioner as a basis for making changes to the proposed amendments of regulations.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an

accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Nichole Oathout, Legal Assistant, at (785) 296-5266 or the Kansas Relay Center at 1-800-766-3777. Handicapped parking is located on SW 9th Street near the office building, and the hearing room is accessible to individuals with disabilities.

Summaries of the proposed amended regulations and their economic impacts follow. Copies of the full text of the proposed amended regulations and the economic impact statements may be obtained by writing to the Office of the Securities Commissioner at the address above or by email to ksc@ksc.ks.gov. Copies of the proposed amended regulations can also be viewed on the website of the Kansas Secretary of State at: http://www.kssos.org/pubs/pubs_kar.aspx by clicking the link for “View proposed regulations currently open for comment” and scrolling down to the “Securities Commissioner, Office of the” and then clicking the “View PDF” link.

Amendments to K.A.R. 81-1-1. Definition of terms. This regulation provides definitions for administration and enforcement of the Kansas Uniform Securities Act and amendments are proposed to add or make technical changes to definitions of the following terms: “EFD”, “FINRA”, “IARD”, “NASD”, and “Nasdaq”. The proposed amendments to definitions do not result in any economic impacts on the Agency, persons regulated by the Agency, other government agencies or the public.

Amendments to K.A.R. 81-2-1. Forms and adoptions by reference. This regulation specifies forms required or allowed for use by persons regulated by the Agency and also lists statutes, rules and other documents that are adopted by reference for use throughout the other regulations of the Agency. Forms and adoptions by reference provide for uniformity, cooperation and coordination of regulatory requirements among agencies and regulatory organizations with regard to policies and subjects for uniformity as specified under K.S.A. 17-12a608. The proposed

amendments delete forms no longer in use, add new or updated forms that are specified in other regulations being amended, and update adoptions by reference due to changes in statutes and rules of the SEC and FINRA. New subsection (e) is proposed as an amendment to clarify that definitions within SEC statutes, SEC rules and regulations, and FINRA rules adopted by reference apply if the definitions are in conflict with definitions in KUSA and regulations under KUSA. A new subsection (f) is proposed to clarify that there is no intent within the regulations adopted by the Commissioner to require the SEC, FINRA or other regulatory organizations to comply, administer or enforce the statutes, rules or policies under their jurisdiction that are adopted by reference in K.A.R. 81-2-1, or to require the Commissioner to act on behalf of the SEC, FINRA or other regulatory organizations. None of the proposed amendments result in any economic impacts on the Agency, persons regulated by the Agency, other government agencies or the public.

Amendments to K.A.R. 81-3-1. Registration procedures for broker-dealers and agents.

The proposed amendments to this regulation provide technical updates including: deletion of (a)(2) which duplicates a statutory provision; replacement of NASD with FINRA as defined in proposed K.A.R. 81-1-1; addition of registration requirements for broker-dealers that are not required to file with the CRD system; replacement of financial statement and net capital disclosure requirements of broker-dealers with an adoption by reference to the FINRA and SEC requirements for annual reports with audited financial statements; clarification of requirements for new broker-dealers not yet subject to the FINRA and SEC annual report requirements; and other technical updates regarding filing requirements for agents of intrastate broker-dealers and renewals of registrations. None of the proposed amendments are expected to result in any material or determinable economic impacts on the Agency, persons regulated by the Agency, other government agencies or the public.

Amendments to K.A.R. 81-3-5. Sales of securities at financial institutions. This regulation pertains to broker-dealers that provide services on the premises of financial institutions

where retail deposits are received, and specifies various requirements intended to ensure that customers understand the distinction between the physical location and services of the financial institution and the location and services of the broker-dealer. The proposed amendments update the definition of “broker-dealer services” within the regulation, and add a requirement for broker-dealers on the premises of credit unions to disclose to customers that securities purchased or sold in broker-dealer transactions are not insured by the National Credit Union Share Insurance Fund (“NCUSIF”). Previously, the regulation made reference only to FDIC insurance which pertains to retail deposits at banks. None of the proposed amendments to this regulation are expected to result in any economic impacts on the Agency, persons regulated by the Agency, other government agencies or the public.

Amendments to K.A.R. 81-3-6. Dishonest or unethical practices of broker-dealers and agents. This regulation implements K.S.A. 17-12a412(d) which prohibits unethical practices of broker-dealers by specifying the conduct or failures to comply with standards that constitute unethical practices. The proposed amendments to this regulation update references to NASD conduct rules and FINRA rules in subsection (d). FINRA continues to administer and enforce NASD conduct rules that have not been replaced or updated by FINRA rules since the consolidation of NASD and the regulatory functions of the New York Stock Exchange into FINRA as described in definitions of FINRA and NASD in the proposed amendments to K.A.R. 81-1-1. The proposed amendments to this regulation do not result in any economic impacts on the Agency, persons regulated by the Agency, other government agencies or the public.

Amendments to K.A.R. 81-3-7. Supervisory, financial reporting, recordkeeping, net capital, and operational requirements for broker-dealers. The proposed amendments to this regulation provide technical updates by reference to terms defined in K.A.R. 81-1-1 and to update SEC net capital rules adopted by reference in proposed amendments to K.A.R. 81-2-1. The updates

are necessary for purposes of uniformity as provided for under K.S.A. 17-12a608. The proposed amendments to this regulation do not result in any economic impacts on the Agency, persons regulated by the Agency, other government agencies or the public.

Amendments to K.A.R. 81-4-1. Registration of securities. This regulation specifies filing and fee requirements for applications to register securities by coordination or qualification. The proposed amendments update subsection (b) with respect to Regulation A offerings by inserting a reference to Tier 1 offerings as a result of amendments to SEC rules under Regulation A that became effective on June 19, 2015. Regulation A now includes Tier 1 and Tier 2 offerings with different parameters and treatment under federal and state securities laws. Tier 1 offerings continue to be subject to registration requirements of state securities laws, but states are preempted from requiring registration of Tier 2 offerings. Anti-fraud provisions of state securities laws still apply to Tier 2 offerings. Although the federal preemption of registration requirements of KUSA and K.A.R. 81-4-1 for Tier 2 offerings could possibly result in fiscal effects on the Agency and persons conducting Tier 2 offerings, the impact is expected to be immaterial in relation to overall Agency operations and aggregate offerings of securities in Kansas. The economic impact on issuers conducting Tier 2 offerings under Regulation A would include cost savings related to applications for registration, such as the registration fee and costs to resolve compliance deficiencies, however, it is not deemed possible to estimate those savings. The volume of Regulation A offerings has been very limited in recent years and it is not deemed possible to accurately estimate whether federal preemption will result in increased volumes of Tier 2 offerings.

Amendments to K.A.R. 81-4-4. Registration requirements for not-for-profit issuers. This regulation specifies that debt offerings of not-for-profit issuers are required to be registered as provided for under K.S.A. 17-12a201(7)(C) unless an exemption under other provisions of KUSA can be claimed, or unless the issuer meets other conditions with reference to Sec. 3(c)(10)(B) under

the Investment Company Act of 1940. The proposed amendments update statute references and add a clarification for the exception from registration for an issuer excluded from the definition of investment company under Sec. 3(c)(10)(B) of the Investment Company Act of 1940. The clarification requires that the security is to be issued in exchange for assets contributed to a fund pursuant to Sec. 3(c)(10)(B) of the Investment Company Act of 1940. The proposed amendments to this regulation do not result in any economic impacts on the Agency, persons regulated by the Agency, other government agencies or the public.

Amendments to K.A.R. 81-5-7. Exchange exemption. This regulation specifies securities that are exempt from registration under KUSA as provided for under K.S.A. 17-12a201(6)(B) by designating securities markets on which the securities are listed or approved for listing. The proposed amendments delete a substantial portion of existing provisions in this regulation that duplicate the exemption provisions of K.S.A. 17-12a201(6)(A) for federal covered securities that are exempt as a matter of federal preemption under Sec. 18(b)(1) of the Securities Act of 1933. The proposed amendments to this regulation do not result in any economic impacts on the Agency, persons regulated by the Agency, other government agencies or the public.

Amendments to K.A.R. 81-5-15. Notice filings and fees for rule 506 offerings. This regulation specifies notice filing and fee requirements for offerings for which exemption is claimed under SEC Rule 506 as authorized under K.S.A. 17-12a302(c). The proposed amendments add a provision for electronic filings of Form D through the EFD system as defined in proposed amendments to K.A.R. 81-1-1, and add a reference to K.S.A. 17-12a307 with regard to authority of the Commissioner to modify the fee required for a late filing of Form D. The proposed amendments to this regulation do not result in any economic impacts on the Agency, persons regulated by the Agency, other government agencies or the public. The electronic filing provision does not alter the

fee requirement for filing Form D and the referenced statutory authority for allowing modified late fees does not affect past and current practice.

Amendments to K.A.R. 81-5-17. Standard manuals exemption. The proposed amendments to this regulation update the names of manuals designated by the Commissioner for the transactional exemption from securities registration that is provided by K.S.A. 17-12a202(2)(A)(iv). The amendments also clarify that the manuals may be in printed or electronic form. The proposed amendments to this regulation do not result in any economic impacts on the Agency, persons regulated by the Agency, other government agencies or the public.

Amendments to K.A.R. 81-5-21. Invest Kansas Exemption. This regulation specifies requirements and conditions for an exemption from securities registration for Kansas-based issuers to offer securities to Kansas residents only, with a limit of \$1,000,000 for all sales of securities of the issuer within a 12-month period. The proposed amendments modify or clarify some of the conditions under subsection (a) of the regulation and reduce limitations currently in subsection (b) with regard to combination of this exemption with other exemptions under KUSA. Proposed amendments increase the maximum amount that any non-accredited purchaser of securities can invest from \$1,000 to \$5,000 along with a provision that two or more non-accredited purchasers residing at the same primary residence who have a close family relationship are treated as a single purchaser for purposes of the \$5,000 limit. The requirements for the notice filing are being amended to specify that Form IKE is required to be filed before the use of general solicitation, but the alternative requirement to file a notice before the twenty-fifth sale of securities, if that occurs before using general solicitation, is eliminated. Subsection (b) is being amended to eliminate a restriction on the use of exemptions under K.S.A. 17-12a202 in conjunction with the Invest Kansas Exemption. That subsection continues to proscribe use of exemptions under other regulations in conjunction with this exemption. The proposed amendments to this regulation do not result in any

economic impacts on the Agency, persons regulated by the Agency, other government agencies or the public. The increase in the maximum allowable investment from \$1,000 to \$5,000 was previously authorized by Special Order, so the amendment for that increase in this regulation will have no additional economic impact on non-accredited purchasers or the issuer.

Amendments to K.A.R. 81-6-1. Prospectus. This regulation specifies form and content requirements for the prospectus to be used in registration statements for registrations by coordination or qualification, and the prospectus delivery requirements for registrations by qualification. The regulation is being amended to replace the reference to discontinued SEC form SB-2 with SEC form S-1 which is used for registrations by coordination with SEC registrations, unless some other form is required by the SEC and allowed by the Commissioner as provided for in this regulation. The proposed amendments to this regulation do not result in any economic impacts on the Agency, persons regulated by the Agency, other government agencies or the public.

Amendments to K.A.R. 81-7-1. General statements of policy for registration of securities. This regulation requires compliance with NASAA Statements of Policy, as applicable, that are adopted by reference in the regulation and also specifies financial statement requirements for registration statements of issuers subject to this regulation. The proposed amendments update the adoptions by reference to include the dates the statements of policy were last amended by NASAA so that compliance with the most recent versions of the statements of policy is required by this regulation. A new subsection (c) is proposed to clarify that whenever definitions of terms within the context of statements of policy adopted by reference are in conflict with definitions in KUSA or regulations under KUSA, the definitions in the NASAA statements of policy shall apply. The proposed amendments to this regulation do not result in any economic impacts on the Agency, persons regulated by the Agency, other government agencies or the public.

Amendments to K.A.R. 81-7-2. Statements of policy for specific types of securities offerings. This regulation requires compliance with NASAA Guidelines and Statements of Policy, as applicable for specific types of securities or issuers that are adopted by reference in the regulation and it also specifies suitability provisions that may be required for registration and financial statement requirements for registration statements of issuers subject to this regulation. The proposed amendments update the adoptions by reference to include the dates the guidelines and statements of policy were last amended or adopted by NASAA so that compliance with the most recent versions of the statements of policy is required by this regulation. A new subsection (g) is proposed to clarify that whenever definitions of terms within the context of guidelines or statements of policy adopted by reference are in conflict with definitions in KUSA or regulations under KUSA, the definitions in the NASAA guidelines or statements of policy shall apply. The proposed amendments to this regulation do not result in any economic impacts on the Agency, persons regulated by the Agency, other government agencies or the public.

Amendments to K.A.R. 81-14-1. Registration procedures for investment advisers and investment adviser representatives. The proposed amendments to this regulation provide technical updates including deletion of (b)(1)(B)(i) which requires filing a copy of the investment adviser's surety bond if a surety bond is required by K.A.R. 81-14-9(e), and replacement of NASD with FINRA as defined in proposed K.A.R. 81-1-1. Subsection (e) that specified surety bond requirements for investment advisers was deleted from K.A.R. 81-14-9, and therefore, the reference to that subsection in this regulation should be deleted. The proposed amendments to this regulation do not result in any economic impacts on the Agency, persons regulated by the Agency, other government agencies or the public.

Amendments to K.A.R. 81-14-5. Dishonest and unethical practices of investment advisers, investment adviser representatives, and federal covered investment advisers. The

proposed amendments to this regulation provide technical updates including the addition of references to K.A.R. 81-2-1 to adopt sections of the federal Investment Advisers Act of 1940 by reference, addition of a reference to FINRA rules, and wording and sentence structure changes for improved readability and clarity. The proposed amendments to this regulation do not result in any economic impacts on the Agency, persons regulated by the Agency, other government agencies or the public.

Amendments to K.A.R. 81-14-11. Kansas private adviser exemption. This regulation provides an exemption from registration for investment advisers and associated investment adviser representatives having their principal place of business in Kansas if they provide investment advice solely to fewer than 15 clients, do not hold out generally to the public as investment advisers, do not act as an investment adviser to investment companies or business development companies pursuant to provisions of the federal Investment Company Act of 1940, and are not subject to any disqualification provisions described in Rule 262 of SEC Regulation A. The proposed amendments include technical updates for adoptions by reference in K.A.R. 81-2-1, and a new provision (B) under subsection (b)(2) to clarify that investment advisers that file reports with the IARD system as exempt reporting advisers pursuant to SEC Rule 204-4 are exempt from the notice filing requirements specified by subsection (b)(1) of this regulation. That exemption has existed as a matter of interpretation and practice by the Agency under the regulation, but not stated in the regulation as proposed by the amendment described above. The proposed amendments to this regulation do not result in any economic impacts on the Agency, persons regulated by the Agency, other government agencies or the public.

Amendments to history sections of regulations. Several of the regulations described above are being amended to update authorizing and implementing statute references.

81-1-1. Definition of terms. As used in the act, these regulations, and the forms, instructions, and orders of the administrator, each of the following terms shall have the meaning ~~set forth~~ specified in this regulation, unless the context indicates otherwise.:

(a) “The act” means the Kansas uniform securities act, K.S.A. 17-12a101 et seq., and amendments thereto.

(b) “Administrator” means the securities commissioner of Kansas, appointed pursuant to K.S.A. 75-6301 and amendments thereto, or the commissioner’s designee.

(c) “Affiliate” means a person who directly or indirectly controls, is controlled by, or is under common control with another person, or who aids and abets or is aided and abetted by another person.

(d) “AICPA” means the American institute of certified public accountants.

(e) “Branch office” means any location where one or more agents or investment adviser representatives regularly conduct business on behalf of a broker-dealer or investment adviser, or that is held out as such a location, with the exception of the following locations:

(1) Any location that is established solely for customer service or back office-type functions, where no sales activities are conducted, and that is not held out to the public as a branch office;

(2) any location that is the agent’s or investment adviser representative’s primary residence if all of the following conditions are met:

(A) Only agents or investment adviser representatives who reside at the location and are members of the same immediate family conduct business at the location;

(B) the location is not held out to the public as an office, and the agent or investment adviser representative does not meet with customers at the location;

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(C) neither customer funds nor securities are handled at the location;

(D) the agent or investment adviser representative is assigned to a designated branch office, and the designated branch office is reflected on all business cards, stationery, advertisements, and other communications to the public by the agent or investment adviser representative;

(E) the agent's or investment adviser representative's correspondence and communications with the public are subject to the supervision of the broker-dealer or investment adviser with which the individual is associated;

(F) electronic communications are made through the electronic system of the broker-dealer or investment adviser;

(G) all orders for securities are entered through the designated branch office or an electronic system established by a broker-dealer or investment adviser;

(H) written supervisory procedures pertaining to supervision of activities conducted at residence locations are maintained by the broker-dealer or investment adviser; and

(I) a list of all residence locations is maintained by the broker-dealer or investment adviser;

(3) any location, other than a primary residence, that is used for securities or investment advisory business for less than 30 business days in any one calendar year, if the broker-dealer or investment adviser complies with the provisions of paragraphs (e)(2)(B) through (H). For purposes of this paragraph, a business day shall not include any partial business day if the agent or investment adviser representative spends at least four hours of the business day at the agent's or investment adviser representative's designated branch office during the hours that the office is normally open for business;

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(4) any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, that is not held out to the public as an office;

(5) any location that is used primarily to engage in non-securities activities and from which the agents or investment adviser representatives effect no more than 25 securities transactions in any one calendar year, if any advertisement or sales literature identifying the location also sets forth the address and telephone number of the location from which the agents or investment adviser representatives conducting business at the non-branch locations are directly supervised;

(6) the floor of a registered national securities exchange where a broker-dealer conducts a direct access business with public customers; and

(7) a temporary location established in response to the implementation of a business continuity plan.

(f) “Close family relationship” means either a person within the third degree of relationship, by blood or adoption, or a spouse, stepchild, or fiduciary of a person within the third degree of relationship.

(g) “Commission” means any consideration, compensation, fee, or other remuneration that is directly or indirectly incurred, paid, or given in exchange for services in connection with the offer, sale, or purchase of securities, the rendering of investment advice, or the solicitation of prospective purchasers or clients.

(h) “Control” means the possession of the power to direct or influence the direction of the management or policies of a person, directly or indirectly, through the ownership of voting securities, by contract, or by other means.

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(i) "Controlling person" means a person who has control of any other person. Either of the following persons shall be presumed to be a controlling person:

(1) An officer, director, partner, or trustee or an individual occupying similar status or performing similar functions; or

(2) a person owning 10 percent or more of the outstanding shares of any class or classes of securities.

(j) "CPA" means certified public accountant or a firm of certified public accountants.

(k) "CRD" means the central registration depository jointly administered by NASD FINRA and NASAA.

(l) "Designated security" means any equity security other than the following:

(1) A security registered, or approved for registration upon notice of issuance, on a national securities exchange;

(2) a security authorized, or approved for authorization upon notice of issuance, for listing on the ~~national market system~~ of the Nasdaq stock market;

(3) a security issued by an investment company registered under the investment company act of 1940;

(4) a security that is a put option or call option issued by the options clearing corporation; or

(5) a security whose issuer has net tangible assets in excess of \$4,000,000 as demonstrated by financial statements dated within the previous 15 months that the broker-dealer has reviewed and has a reasonable basis to believe are true and complete in relation to the date of the

transaction with the person, if either of the following conditions is met:

(i) The issuer is other than a foreign private issuer, and the financial statements are the most

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recent financial statements for the issuer that have been audited and reported on by a CPA in accordance with the provisions of 17 C.F.R. 210.2-02, as adopted by reference in K.A.R. 81-2-1; or

(ii) the issuer is a foreign private issuer, and the financial statements are the most recent financial statements for the issuer that have been filed with the SEC; ~~furnished to the SEC~~ published electronically in English pursuant to 17 C.F.R. 240.12g3-2(b), as adopted by reference in K.A.R. 81-2-1; or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

(m) “EFD” means the electronic filing depository administered by NASAA.

(n) “FINRA” means the financial industry regulatory authority, inc., a self-regulatory organization registered with the SEC pursuant to section 15A of the securities exchange act of 1934, 15 U.S.C. § 78o-3, as adopted by reference in K.A.R. 81-2-1, that was organized upon consolidation with NASD, its predecessor, and the regulatory functions of the New York stock exchange.

(o) “GAAP” means generally accepted accounting principles in the United States.

~~(n)~~(p) “General solicitation” means an offer to one or more persons by any of the following means or as a result of contact initiated through any of these means:

- (1) Television, radio, or any broadcast medium;
- (2) newspaper, magazine, periodical, or any other publication of general circulation;
- (3) poster, billboard, internet posting, or other communication posted for the general public;

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(4) brochure, flier, handbill, or similar communication, unless the offeror has a substantial preexisting business relationship or close family relationship with each of the offerees;

(5) seminar or group meeting, unless the offeror has a substantial preexisting business relationship or close family relationship with each of the offerees; or

(6) telephone, facsimile, mail, delivery service, social media, or electronic communication, unless the offeror has a substantial preexisting business relationship or close family relationship with each of the offerees.

(q) "IARD" means the investment adviser registration depository jointly administered by the SEC and NASAA and operated by FINRA in conjunction with the CRD system.

(e)(r) "NASAA" means the North American securities administrators association, inc.

(p)(s) "NASD" means the national association of securities dealers, inc., a self-regulatory organization that was registered with the SEC pursuant to section 15A of the securities exchange act of 1934, 15 U.S.C. § 78o-3, as adopted by reference in K.A.R. 81-2-1, until its consolidation with the regulatory functions of the New York stock exchange upon organization of its successor, FINRA.

(t) "Nasdaq" means the Nasdaq stock market, which is comprised of the Nasdaq global select market; the Nasdaq global market, formerly the Nasdaq national market; and the Nasdaq capital market, formerly the Nasdaq smallcap market.

(q)(u) "Officer" means a person charged with managerial responsibility or control over a person, including the president, vice president, secretary, treasurer, partner, and any other controlling person.

(p)(v) "Parent" means an affiliate who controls another person.

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(s)(w) "PCAOB" means the public company accounting oversight board.

(t)(x) "Predecessor" means a person, a major portion of whose business, assets, or control has been acquired by another.

(u)(y) "Promoter" means a person who, acting alone or in conjunction with one or more other persons, directly or indirectly founds, organizes, reorganizes, or controls the business, financing, or operations of an issuer.

(v)(z) "Prospectus" means any prospectus defined in section 2(a)(10) of the securities act of 1933, 15 U.S.C. 77b(a)(10), as adopted by reference in K.A.R. 81-2-1. This term shall not include any communication meeting the requirements of K.S.A. 17-12a202(16), and amendments thereto, or SEC rule 134, 17 C.F.R. 230.134, as adopted by reference in K.A.R. 81-2-1.

(w)(aa) "Registrant" means a person registered under the act.

(x)(bb) "SCOR" means small company offering registration.

(y)(cc) "SEC" means the United States securities and exchange commission.

(z)(dd) "Subsidiary" means an affiliate who is controlled by another person. (Authorized by and implementing K.S.A 2005 ~~Supp.~~ 17-12a605(a); effective Jan. 1, 1966; amended, T-85-45, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended May 31, 1996; amended Jan. 19, 2007; amended P-_____.)

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81-2-1. Forms and adoptions by reference. (a) Forms. Whenever any of these regulations requires the filing of any of the following forms, the filer shall use the form as issued or approved by the administrator:

(1) Uniform forms:

FORM	TITLE
ADV	Uniform application for investment adviser registration
ADV-W	Notice of withdrawal from registration as investment adviser
BD	Uniform application for broker-dealer registration
BDW	Uniform request for broker-dealer withdrawal
BR	Uniform branch office registration form
D	Notice of sale <u>exempt offering</u> of securities
NF	Uniform investment company notice filing
U-1	Uniform application to register securities
U-2	Uniform consent to service of process
U-2A	Uniform form of corporate resolution
U-4	Uniform application for securities industry registration or transfer
U-5	Uniform termination notice for securities industry registration
U-7	Disclosure document
U-SB	Uniform surety bond form
	Model accredited investor exemption uniform notice of transaction

(2) Kansas forms:

FORM	TITLE
<u>IKE</u>	<u>Notice of reliance on the invest Kansas exemption</u>

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KSC-1 Sales report or renewal application

KSC-15 Solicitation of interest form for issuers organized or based in Kansas

(3) SEC forms:

FORM TITLE

1-A Regulation A offering statement under the securities act of 1933

~~SB-2~~ S-1 Registration statement under the securities act of 1933

X-17A-5 FOCUS report (financial and operational combined uniform single report)

(b) Federal statutes. The following federal statutes, as in effect on ~~July 21, 2010~~ May 12, 2015, are hereby adopted by reference:

(1) Sections 2, 3, and 17 of the securities act of 1933, 15 U.S.C. §§ 77b, 77c, and 77q;

(2) sections 9, 10, 13, ~~and 15,~~ and 15A of the securities exchange act of 1934, 15 U.S.C. §§ 78i, 78j, 78m, ~~and 78o,~~ and 78o-3;

(3) sections 203, 204A, 205, and 215 of the investment advisers act of 1940, 15 U.S.C. §§ 80b-3, 80b-4a, 80b-5, and 80b-15; and

(4) sections 3, and 5, 8, and 54 of the investment company act of 1940, 15 U.S.C. §§ 80a-3, ~~and 80a-5, 80a-8, and 80a-53;~~ and

~~(5) section 6f of the commodity exchange act, 7 U.S.C. § 6f.~~

(c) SEC rules and regulations. The following rules and regulations of the securities and exchange commission, as in effect on ~~October 21, 2010~~ May 12, 2015, except as otherwise specified, are hereby adopted by reference:

(1) 17 C.F.R. 210.2-02;

(2) rule 134, 17 C.F.R. 230.134;

(3) rule 147, 17 C.F.R. 230.147;

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(4) regulation A, 17 C.F.R. 230.251 through 230.263, as amended by 80 fed. reg. 21895-21902 (2015) and effective June 19, 2015;

(5) rules 501, 504, 505, and 506 of regulation D, 17 C.F.R. 230.501, 230.504, 230.505, and 230.506;

(6) rule 8c-1, 17 C.F.R. 240.8c-1;

(7) rule 10b-10, 17 C.F.R. 240.10b-10;

(8) rule 12g3-2(b), 17 C.F.R. 240.12g3-2(b);

(9) rule 15c2-1, 17 C.F.R. 240.15c2-1;

(9) (10) rules 15c3-1, ~~15c3-2~~, and 15c3-1a through 15c3-1g, 15c3-3, and 15c3-3a, 17 C.F.R. 240.15c3-1, ~~240.15c3-2~~, and 240.15c3-1a through 240.15c3-1g, 240.15c3-3, and 240.15c3-3a;

(10) (11) rules 17a-3, 17a-4, and 17a-5, 17 C.F.R. 240.17a-3, 240.17a-4, and 240.17a-5;

(11) (12) rule 17a-11, 17 C.F.R. 240.17a-11;

(12) (13) regulation M, 17 C.F.R. 242.100 through 242.105;

(13) (14) regulation SHO, 17 C.F.R. 242.200 through 242.204;

(14) (15) regulation FD, 17 C.F.R. 243.100 through 243.103;

(15) (16) regulation S-P, 17 C.F.R. 248.1 through 248.18 and 248.30;

(16) (17) rule 12b-1, 17 C.F.R. 270.12b-1;

(17) (18) rule 204-4, 17 C.F.R. 275.204-4;

(18) (19) rule 205-3, 17 C.F.R. 275.205-3; and

(17) (20) rule 206(4)-1, 17 C.F.R. 275.206(4)-1.

(d) FINRA, NASD, and New York stock exchange rules and bylaws. The following rules and bylaws, as in effect on July 1, 2005 in the "FINRA manual," dated September 2014 and published by the financial industry regulatory authority, inc., are hereby adopted by reference:

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(1) ~~Article I of the NASD bylaws;~~

(2) ~~The NASD “conduct rules (2000-3000)”~~ within the series of rules 2300, 2400, 2500, 2700, 2800, 3000, and 3100;

(2) FINRA rules within the series of rules 2100, 2200, 2300, 3100, 3200, 3300, 5100, 5200, and 5300; and

(3) rule 472 of the New York stock exchange, “communications with the public.”

(e) Whenever terms within the context of statutes, rules, or documents adopted by reference in these regulations are in conflict with definitions under the act and this regulation, the definition within the statutes, rules, and documents adopted by reference shall apply.

(f) Nothing within these regulations shall be construed to require the SEC, FINRA, or any other regulatory organizations to comply, administer, or enforce the statutes, rules, or policies under their jurisdiction that are adopted by reference under these regulations, or to require the administrator to act on behalf of the SEC, FINRA, or any other regulatory organizations to enforce the statutes, rules, or policies under their jurisdiction. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a608; effective Jan. 1, 1966; amended, E-70-15, Feb. 4, 1970; amended Jan. 1, 1971; amended, E-77-40, Aug. 12, 1976; amended Feb. 15, 1977; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-88-29, Aug. 19, 1987; amended May 1, 1988; amended March 25, 1991; amended Oct. 7, 1991; amended April 17, 1995; amended May 31, 1996; amended Dec. 19, 1997; amended Aug. 18, 2006; amended Aug. 12, 2011; amended P-_____.)

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81-3-1. Registration procedures for broker-dealers and agents. (a) General provisions.

(1) Each applicant shall be at least 18 years of age. If the applicant is not an individual, then the directors, officers, or managing partners, or managing members of the applicant shall be at least 18 years of age.

~~(2) An agent shall not register in association with more than one broker-dealer or issuer at any one time, unless management and control of the broker-dealers or issuers are substantially identical.~~

(b) Registration requirements for broker-dealers.

(1) Initial application.

(A) CRD filing requirements. Each applicant for initial registration as a broker-dealer shall complete form BD in accordance with the form instructions and shall file the form with the CRD, unless the applicant is not required to file with the CRD for FINRA membership or SEC registration. Each applicant application filed with the CRD shall include the following ~~with the application:~~

- (i) ~~The filing registration~~ fee specified in K.A.R. 81-3-2(a);
- (ii) any reasonable fee charged by ~~the NASD~~ FINRA for filing through the CRD system; and
- (iii) a current list of the addresses of all branch offices and the names of all branch ~~managers~~ supervisors.

(B) Direct filing requirements. Each applicant for initial registration as a broker-dealer that is required to file with the CRD pursuant to paragraph (b)(1)(A) shall file either of the following, as applicable, directly with the administrator: ~~audited financial statements for a date or period ending within 30 days before the date of filing, or audited financial statements for the applicant's~~

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~~last fiscal year and interim financial statements that may be unaudited for a date or period ending within 30 days before the date of filing. The financial statements shall include a statement of financial condition and notes to the statement of financial condition presented in conformity with generally accepted accounting principles. The financial statements shall also include disclosure of net capital or shall be accompanied by a supplemental schedule of net capital, as required by K.A.R. 81-3-7. Unless otherwise permitted, an independent certified public accountant shall audit the financial statements in accordance with generally accepted auditing standards.~~

(i) The annual report for the applicant's last fiscal year pursuant to SEC rule 17a-5(d), 17 C.F.R. 240.17a-5(d), as adopted by reference in K.A.R. 81-2-1, unless the applicant was not required to file an annual report with FINRA and the SEC, and part II of the applicant's most recent FOCUS report on form X-17A-5 that includes a statement of financial condition dated within 90 days of filing for registration, unless the applicant was not required to file a FOCUS report with FINRA and the SEC; or

(ii) a statement of financial condition with notes to the statement presented in conformity with GAAP dated within 90 days of filing for registration, including disclosure of the applicant's net capital or a supplemental schedule of net capital pursuant to K.A.R. 81-3-7(d).

(C) Filing requirements for an applicant that is not required to file with CRD for FINRA membership or SEC registration. An applicant that is not required to file with CRD shall file the following directly with the administrator:

- (i) A printed form BD, completed in accordance with the form instructions;
- (ii) the registration fee specified in K.A.R. 81-3-2(a); and
- (iii) the statement of financial condition specified in paragraph (b)(1)(B)(ii).

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(2) Effective date of registration. Each registration shall become effective the 45th day after a completed application is filed unless approved earlier by the administrator. If the administrator or the administrator's staff has given written notice of deficiencies in the application, the application shall not be considered complete until an amendment is filed to resolve the deficiencies.

(3) Expiration and annual renewal of registration. Each broker-dealer registration shall expire on December 31, and each application for renewal of registration shall be filed as follows:

(i) If the initial application for registration was filed with the CRD, the renewal application shall be filed with the CRD not later than the deadline established by the CRD. Each application for renewal of registration shall include the ~~filing~~ fee specified in K.A.R. 81-3-2(a) and any reasonable fee charged by ~~the NASD FINRA~~ for filing through the CRD system. Each applicant for renewal shall also ~~file with the administrator~~ update information in the CRD system as necessary, on or before December 31, ~~a current list of~~ including the addresses of all branch offices and the names of all branch ~~managers~~ supervisors.

(ii) If the initial application for registration was filed directly with the administrator pursuant to paragraph (b)(1)(C), the renewal application shall be filed directly with the administrator and shall include the fee specified in K.A.R. 81-3-2(a). Each application for renewal filed directly with the administrator shall include an updated form BD with amendments for material changes, if any, as specified in paragraph (b)(4).

(4) Updates and amendments. Each registered broker-dealer shall promptly file an amendment to form BD, in accordance with the instructions to form BD, whenever there is any material change in any information, exhibits, or schedules submitted, or circumstances disclosed

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in its last filed form BD. An amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of an amendment.

Material changes shall include the following:

(A) A change in firm name, ownership, management, or control of a broker-dealer, or a change in any of its ~~partners, officers, or persons in similar positions~~ controlling persons; a change of business address; or the creation or termination of a branch office in Kansas;

(B) a change in the type of entity, general plan, or nature of a broker-dealer's business, method of operation, or type of securities in which it is dealing or trading;

(C) insolvency, dissolution, liquidation, or a material adverse change or impairment of working capital, or noncompliance with the minimum net capital as required by K.A.R. 81-3-7;

(D) termination of business or discontinuance of activities as a broker-dealer;

(E) the filing of a criminal charge or civil action against a registrant, or a ~~partner or officer~~ controlling person, in which a fraudulent, dishonest, or unethical act is alleged or a violation of a securities law is involved; or

(F) the entry of an order or proceeding by any court or administrative agency against a registrant denying, suspending, or revoking a registration, or threatening to do so, or enjoining the registrant from engaging in or continuing any conduct or practice in the securities business.

(5) Withdrawal and termination of registration.

(A) Each application that has been on file for six months without any action taken by the applicant shall be considered withdrawn.

(B) If a broker-dealer desires to withdraw and terminate registration or registration is terminated by the administrator, the broker-dealer shall immediately file a completed form BDW

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either with the CRD or, if the broker-dealer was registered pursuant to paragraph (b)(1)(C), directly with the administrator.

(c) Registration requirements for agents.

(1) Initial application. Each applicant for registration as an agent shall complete form U-4 in accordance with the form instructions. The form for an agent of a broker-dealer shall be filed electronically with the CRD, ~~except that a paper filing may be accepted by~~ A form U-4 shall be filed directly, in either paper or electronic form, with the administrator for an agent who is associated solely with an issuer or with an intrastate broker-dealer registered pursuant to paragraph (b)(1)(C). Each application for initial registration shall include the following items:

(A) The filing registration fee specified in K.A.R. 81-3-2(b);

(B) any reasonable fee charged by ~~the NASD~~ FINRA for filing through the CRD system;
and

(C) proof of completion of the series 63 or series 66 examination with a passing score, in addition to successful completion of one other examination approved by the administrator and required for registration with ~~the NASD~~ FINRA. This examination requirement may be waived by the administrator for an applicant who has previously passed the required written examinations and whose last effective registration was not more than two years before the date of the filing of the present registration application. Additional examination requirements may be imposed by the administrator, or any applicant ~~or class of applicants~~ may be exempted from examination requirements, ~~for good cause shown~~ pursuant to K.S.A. 17-12a412(e), and amendments thereto.

(2) Effective date of registration.

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(A) Initial registration. Each registration shall become effective the 45th day after a completed application is filed unless the application is approved earlier by the administrator. If the administrator or the administrator's staff has given written notice of deficiencies in the application, the application shall not be considered complete until an amendment is filed to resolve the deficiencies.

(B) Transfer of employment or association. If an agent terminates employment by or association with a broker-dealer and begins employment by or association with another broker-dealer, and the second broker-dealer files an application for registration for the agent within 30 days after the termination, the application shall become effective ~~in accordance with~~ pursuant to K.S.A. 17-12a408(b), and amendments thereto.

(3) Expiration and annual renewal of registration. Each agent registration shall expire on December 31, and each application for renewal of registration shall be filed not later than the deadline established by the CRD or the administrator, if filed directly with the administrator. Each application for renewal of registration shall include the ~~filing~~ fee specified in K.A.R. 81-3-2(b) and any reasonable fee charged by ~~the NASD~~ FINRA for filing through the CRD system.

(4) Updates and amendments. Each agent's employing or associated broker-dealer or issuer shall promptly file with the CRD or the administrator an amendment to form U-4, in accordance with the instructions to form U-4, whenever there is any material change in any information, exhibits, or schedules submitted, or circumstances disclosed in the agent's last filed form U-4. An amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of an amendment. Material changes shall include any change

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in the registrant's name, residential address, office of employment address, and matters disclosed in the "disclosure questions" portion of form U-4.

(5) Withdrawal and termination of registration.

(A) Each application that has been on file for six months without any action taken by the applicant shall be considered withdrawn.

(B) If an agent's employment by or association with a broker-dealer or issuer is discontinued or terminated, the broker-dealer or issuer shall file a notice of termination within 30 days. If the agent commences employment by or association with another broker-dealer or issuer, that broker-dealer or issuer shall file an original application for registration.

(C) Termination of a broker-dealer's or issuer's registration for any reason shall automatically constitute cancellation of all associated agents' registrations. (Authorized by K.S.A. ~~2005 Supp. 17-12a406~~ and 17-12a605(a); implementing K.S.A. ~~2005 Supp. 17-12a406~~, 17-12a407, and 17-12a408, and 17-12a412(e); effective Jan. 1, 1966; amended, E-70-15, Feb. 4, 1970; amended Jan. 1, 1971; amended, E-77-40, Aug. 12, 1976; amended Feb. 15, 1977; amended May 1, 1987; amended Oct. 7, 1991; amended June 28, 1993; amended May 31, 1996; amended Oct. 26, 2001; amended Aug. 18, 2006; amended P-_____.)

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81-3-5. Sales of securities at financial institutions. (a) Definitions. For purposes of this regulation, the following definitions shall apply:

(1) “Affiliate” means a company that controls, is controlled by, or is under common control with a broker-dealer as defined in ~~conduct rule 2720 of the NASD~~ FINRA rule 5121, as which is adopted by reference in K.A.R. 81-2-1.

(2) “Broker-dealer services” means the investment banking or securities business ~~as defined in article I of the NASD bylaws, which is adopted by reference in K.A.R. 81-2-1~~ that is conducted by a broker-dealer or a municipal or government securities broker or dealer other than a financial institution or department or division of a financial institution and consists of any of the following:

(A) Underwriting or distributing issues of securities;

(B) purchasing securities and offering the securities for sale as a dealer; or

(C) purchasing and selling securities upon the order and for the account of others.

(3) “Financial institution” means any federal-chartered or state-chartered bank, savings and loan association, savings bank, credit union, and any service corporation of these institutions located in Kansas.

(4) “Networking arrangement” and “brokerage affiliate arrangement” mean a contractual or other arrangement between a broker-dealer and a financial institution pursuant to which the broker-dealer conducts broker-dealer services on the premises of the financial institution where retail deposits are taken.

(b) Applicability. This regulation shall apply exclusively to broker-dealer services conducted by any broker-dealer on the premises of a financial institution where retail deposits are taken. This regulation shall not alter or abrogate a broker-dealer’s obligations to comply with

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other applicable laws or regulations that may govern the operations of broker-dealers and their agents, including supervisory obligations. This regulation shall not apply to broker-dealer services provided to nonretail customers.

(c) Standards for broker-dealer conduct. No broker-dealer shall conduct broker-dealer services on the premises of a financial institution where retail deposits are taken unless the broker-dealer complies initially and continuously with the following requirements:

(1) Setting. Broker-dealer services shall be conducted in a physical location distinct from the area in which the financial institution's retail deposits are taken. In all situations, the broker-dealer shall identify its services in a manner that clearly distinguishes those services from the financial institution's retail deposit-taking activities. The broker-dealer's name shall be clearly displayed in the area in which the broker-dealer conducts its broker-dealer services.

(2) Networking and brokerage affiliate arrangements and program management. Networking and brokerage affiliate arrangements shall be governed by a written agreement that sets forth the responsibilities of the parties and the compensation arrangements. Networking and brokerage affiliate arrangements shall stipulate that supervisory personnel of the broker-dealer and representatives of state securities authorities, where authorized by state law, will be permitted access to the financial institution's premises where the broker-dealer conducts broker-dealer services in order to inspect the books and records and other relevant information maintained by the broker-dealer with respect to its broker-dealer services. The broker-dealer shall be responsible for ensuring that the networking and brokerage affiliate arrangement clearly outlines the duties and responsibilities of all parties.

(3) Customer disclosure and written acknowledgment.

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(A) ~~At~~ When or before ~~the time that~~ a customer's securities brokerage account is opened by a broker-dealer on the premises of a financial institution where retail deposits are taken, the broker-dealer shall perform the following:

(i) Disclose, orally and in writing, that the securities products purchased or sold in a transaction with the broker-dealer are not insured by the federal deposit insurance corporation ("FDIC") or the national credit union share insurance fund ("NCUSIF"), as applicable, are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution, and are subject to investment risks, including possible loss of the principal invested; and

(ii) make reasonable efforts to obtain from each customer during the account opening process a written acknowledgment of the disclosures required by paragraph (c)(3)(A)(i).

(B) If broker-dealer services include any written or oral representations concerning insurance coverage other than FDIC or NCUSIF insurance coverage, then clear and accurate written or oral explanations of the coverage shall also be provided to the customers when these representations are first made.

(4) Communications with the public.

(A) All of the broker-dealer's written confirmations and account statements shall indicate clearly that the broker-dealer services are provided by the broker-dealer.

(B) Recommendations by a broker-dealer concerning nondeposit investment products with a name similar to that of the financial institution shall occur only pursuant to a sales program designed to minimize the risk of customer confusion.

(C) Advertisements and sales literature.

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(i) Advertisements and sales literature that announce the location of a financial institution where broker-dealer services are provided by the broker-dealer, or that are distributed by the broker-dealer on the premises of a financial institution, shall disclose that the securities products are not insured by the FDIC or the NCUSIF, as applicable, are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution, and are subject to investment risks, including possible loss of the principal invested.

(ii) To comply with the requirements of paragraph (c)(4)(C)(i), the following logo format disclosures may be used by a broker-dealer in advertisements and sales literature, including material published or designed for use in radio or television broadcasts, internet sites, automated teller machine screens, billboards, signs, posters, and brochures, if these disclosures, as applicable, are displayed in a conspicuous manner: “not FDIC insured,” “no bank guarantee,” “not NCUSIF insured,” “no credit union guarantee,” and “may lose value.”

(iii) If the omission of the disclosures required by paragraph (c)(4)(C)(i) would not cause the advertisement or sales literature to be misleading in light of the context in which the material is presented, the disclosures shall not be required with respect to messages contained in radio broadcasts of 30 seconds or less; signs, including banners and posters, when used only as location indicators; and electronic signs, including billboard-type signs that are electronic, time and temperature signs, and ticker tape signs. However, the requirements of paragraph (c)(4)(C)(i) shall apply to messages contained in other media, including television, online computer services, and automated teller machines.

(5) Notification of termination. The broker-dealer shall promptly notify the financial institution if any agent of the broker-dealer who is employed by the financial institution is terminated for cause by the broker-dealer.

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(d) "Dishonest or unethical practices," as used in K.S.A. 17-12a412(d)(13) and amendments thereto, shall include any conduct that violates subsection (c). (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a412; effective Oct. 26, 2001; amended Aug. 18, 2006; amended P-_____.)

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81-3-6. Dishonest or unethical practices of broker-dealers and agents. (a) Unethical conduct. “Dishonest or unethical practices,” as used in K.S.A. 17-12a412(d)(13) and amendments thereto, shall include the conduct prohibited in this regulation and the failure to adhere to standards of conduct specified in this regulation.

(b) Fraudulent conduct. “An act, practice, or course of business that operates or would operate as a fraud or deceit,” as used in K.S.A. 17-12a501(3) and amendments thereto, shall include the conduct prohibited in paragraphs (e)(9)(A), (9)(B), (10), (11), (14) through (18), (20), (21), (24), and (27), paragraphs (f)(1) through (6), and subsections (g) and (i).

(c) General standard of conduct. A person registered as a broker-dealer or agent under the act shall not fail to observe high standards of commercial honor and just and equitable principles of trade in the conduct of the person’s business.

(d) ~~Conduct rules: FINRA, NASD, New York stock exchange, and SEC rules and laws.~~ A person registered as a broker-dealer or agent under the act shall not fail Failure by a person registered as a broker-dealer or agent under the act to comply with each any of the following rules and laws, as adopted by reference in K.A.R. 81-2-1, shall constitute unethical conduct in violation of this regulation:

(1) ~~The NASD “conduct rules (2000-3000)”~~ within the series of rules 2300, 2400, 2500, 2700, 2800, 3000, and 3100 and FINRA rules within the series of rules 2100, 2200, 2300, 3100, 3200, 3300, 5100, 5200, and 5300;

(2) rule 472 of the New York stock exchange, “communications with the public”;

(3) section 17 of the securities act of 1933, 15 U.S.C. § 77q;

(4) sections 9 and 10 of the securities exchange act of 1934, 15 U.S.C. §§ 78i and 78j;

(5) SEC regulation M, 17 C.F.R. 242.100 through 242.105;

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(6) SEC regulation SHO, 17 C.F.R. 242.200 through 242.203; and

(7) SEC regulation FD, 17 C.F.R. 243.100 through 243.103.

(e) Prohibited conduct: sales and business practices. Each person registered as a broker-dealer or agent under the act shall refrain from the following practices in the conduct of the person's business. For purposes of this subsection, a security shall include any security as defined by K.S.A. 17-12a102, and amendments thereto, including a federal covered security as defined by K.S.A. 17-12a102, and amendments thereto, or section 2 of the securities act of 1933, 15 U.S.C. § 77b, as adopted by reference in K.A.R. 81-2-1.

(1) Delays in delivery or payment. A broker-dealer shall not engage in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of the broker-dealer's customers or in the payment upon request of free credit balances reflecting completed transactions of any of its customers.

(2) Excessive trading. A broker-dealer or agent shall not induce trading in a customer's account that is excessive in size or frequency in view of the financial resources and character of the account.

(3) Unsuitable recommendations. A broker-dealer or agent shall not recommend to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer or agent.

(4) Unauthorized trading. A broker-dealer or agent shall not execute a transaction on behalf of a customer without authorization to do so.

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(5) Improper use of discretionary authority. A broker-dealer or agent shall not exercise any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders.

(6) Failure to obtain margin agreement. A broker-dealer or agent shall not execute any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account.

(7) Failure to segregate. A broker-dealer shall not hold securities carried for the account of any customer that have been fully paid for or that are excess margin securities, unless the securities are segregated and identified by a method that clearly indicates the interest of the customer in those securities.

(8) Improper hypothecation. A broker-dealer shall not hypothecate a customer's securities without having a lien on the securities unless the broker-dealer has secured from the customer a properly executed written consent, except as permitted by SEC rule 8c-1, 17 C.F.R. 240.8c-1, or SEC rule 15c2-1, 17 C.F.R. 240.15c2-1, as adopted by reference in K.A.R. 81-2-1.

(9) Unreasonable charges. A broker-dealer or agent shall not engage in any of the following conduct:

(A) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security;

(B) receiving an unreasonable commission or profit; or

(C) charging unreasonable and inequitable fees for services performed, including the collection of monies due for principal, dividends, or interest; exchange or transfer of securities;

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appraisals; safekeeping or custody of securities; and other miscellaneous services related to the broker-dealer's securities business.

(10) Failure to timely deliver prospectus. A broker-dealer or agent shall not fail to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document that together include all information set forth in the final prospectus.

(11) Contradicting prospectus. A broker-dealer or agent shall not contradict or negate the importance of any information contained in a prospectus or any other offering materials with the intent to deceive or mislead.

(12) Non-bona fide offers. A broker-dealer shall not offer to buy from or sell to any person any security at a stated price, unless the broker-dealer is prepared to purchase or sell at the price and under the conditions that are stated at the time of the offer to buy or sell.

(13) Misrepresentation of market price. A broker-dealer shall not represent that a security is being offered to a customer "at the market" or at a price relevant to the market price, unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than a market made, created, or controlled by the broker-dealer, any person for whom the broker-dealer is acting or with whom the broker-dealer is associated in the distribution of securities, or any person controlled by, controlling, or under common control with the broker-dealer.

(14) Market manipulation. A broker-dealer or agent shall not effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design, or contrivance, including the following:

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(A) Effecting any transaction in a security that involves no change in its beneficial ownership;

(B) entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of the same security for substantially the same volume, time, and price have been or will be entered for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security. However, nothing in this paragraph shall prohibit a broker-dealer from entering bona fide agency cross transactions for the broker-dealer's customers;

(C) effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security for the purpose of inducing the purchase or sale of the security by others;

(D) engaging in general solicitation and using aggressive, high-pressure, or deceptive marketing tactics to affect the market price of the security; and

(E) using fictitious or nominee accounts.

(15) Guarantees against loss. A broker-dealer shall not guarantee a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer.

(16) Deceptive advertising. A broker-dealer or agent shall not use any advertising or sales presentation in a manner that is deceptive or misleading, including the following:

(A) Using words, pictures, or graphs in an advertisement, brochure, flyer, or display to present any nonfactual data or material; any conjecture, unfounded claims or assertions, or

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unrealistic claims or assertions; or any information that supplements, detracts from, supersedes or defeats the purpose or effect of any prospectus or disclosure; and

(B) publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind that purports to report any transaction as a purchase or sale of any security unless the broker-dealer or agent believes that the transaction was a bona fide purchase or sale of the security or that purports to quote the bid price or asked price for any security unless the broker-dealer or agent believes that the quotation represents a bona fide bid for or offer of the security.

(17) Failure to disclose conflicts of interest. A broker-dealer shall not fail to disclose to any customer that the broker-dealer is controlled by, controlling, affiliated with, or under common control with the issuer of a security that is offered or sold to the customer. The disclosure shall be made before entering into any contract with or for the customer for the purchase or sale of the security, and if the disclosure is not made in writing, the disclosure shall be supplemented by the giving or sending of written disclosure before the completion of the transaction.

(18) Withholding securities. A broker-dealer shall not fail to make a bona fide public offering of all of the securities allotted to the broker-dealer for distribution, whether acquired as an underwriter, as a selling group member, or from a member participating in the distribution as an underwriter or selling group member, by engaging in conduct including the following:

(A) Parking or withholding securities; and

(B) transferring securities to a customer, another broker-dealer, or a fictitious account with the understanding that those securities will be returned to the broker-dealer or the broker-dealer's nominees.

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(19) Failure to respond to customer. A broker-dealer shall not fail or refuse to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint.

(20) Misrepresenting the possession of nonpublic information. A broker-dealer or agent shall not falsely lead a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information that would impact the value of a security.

(21) Contradictory recommendations. A broker-dealer or agent shall not engage in a pattern or practice of making contradictory recommendations to different investors of similar investment objectives for some to sell and others to purchase the same security, at or about the same time, if not justified by the particular circumstances of each investor.

(22) Lending, borrowing, or maintaining custody. An agent shall not lend or borrow money or securities from a customer, or act as a custodian for money, securities, or an executed stock power of a customer.

(23) Selling away. An agent shall not effect a securities transaction that is not recorded on the regular books or records of the broker-dealer that the agent represents, unless the transaction is authorized in writing by the broker-dealer before the execution of the transaction.

(24) Fictitious account information. An agent shall not establish or maintain an account containing fictitious information.

(25) Unauthorized profit-sharing. An agent shall not share directly or indirectly in the profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer that the agent represents.

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(26) Commission splitting. An agent shall not divide or otherwise split the agent's commissions, profits, or other compensation from the purchase or sale of securities with any person who is not also registered as an agent for the same broker-dealer or a broker-dealer under direct or indirect common control.

(27) Misrepresenting solicited transactions. A broker-dealer or agent shall not mark any order ticket or confirmation as unsolicited if the transaction was solicited.

(28) Failure to provide account statements. A broker-dealer or agent shall not fail to provide to each customer, for any month in which activity has occurred in a customer's account and at least every three months, a statement of account that contains a value for each over-the-counter non-Nasdaq equity security in the account based on the closing market bid on a date certain, if the broker-dealer has been a market maker in the security at any time during the period covered by the statement of account.

(f) Prohibited conduct: over-the-counter transactions. A broker-dealer or agent shall not engage in the following conduct in connection with the solicitation of a purchase or sale of an over-the-counter, unlisted non-Nasdaq equity security:

(1) Failing to disclose to a customer, at the time of solicitation and on the confirmation, any and all compensation related to a specific securities transaction to be paid to the agent, including commissions, sales charges, and concessions;

(2) in connection with a principal transaction by a broker-dealer that is a market maker, failing to disclose to a customer, both at the time of solicitation and on the confirmation, the existence of a short inventory position in the broker-dealer's account of more than three percent of the issued and outstanding shares of that class of securities of the issuer;

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(3) conducting sales contests in a particular security;

(4) failing or refusing to promptly execute sell orders after a solicited purchase by a customer in connection with a principal transaction;

(5) soliciting a secondary market transaction if there has not been a bona fide distribution in the primary market;

(6) engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security; and

(7) failing to promptly provide the most current prospectus or the most recently filed periodic report filed under section 13 of the securities exchange act of 1934 when requested to do so by the customer.

(g) Prohibited conduct: designated security transactions.

(1) Except as specified in paragraph (g)(2), a broker-dealer or agent shall not engage in the following conduct in connection with the solicitation of a purchase of a designated security:

(A) Failing to disclose to the customer the bid and ask price at which the broker-dealer effects transactions of the security with individual retail customers, as well as the price spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents; and

(B) failing to include with the confirmation a written explanation of the bid and ask price in a form that substantially complies with part II of the NASAA statement of policy titled "~~fraudulent and unethical sales practices — manipulative conduct,~~" as amended by NASAA on April 29, 1992 and hereby adopted by reference, or in an equivalent form approved by the administrator.

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(2) Exceptions. Paragraph (g)(1) shall not apply to the following transactions:

(A) Transactions in which the price of the designated security is five dollars or more, exclusive of costs or charges. However, if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities shall be five dollars or more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible security shall have an exercise price or conversion price of five dollars or more;

(B) transactions that are not recommended by the broker-dealer or agent;

(C) transactions by a broker-dealer whose commissions, commission equivalents, and markups from transactions in designated securities during each of the immediately preceding three months, and during 11 or more of the preceding 12 months, did not exceed five percent of its total commissions, commission-equivalents, and markups from transactions in securities during those months and who has not executed principal transactions in connection with the solicitation to purchase the designated security that is the subject of the transaction in the immediately preceding 12 months; and

(D) any transaction or transactions that, upon prior written request or upon the administrator's own motion, the administrator conditionally or unconditionally exempts as not encompassed within the scope of paragraph (g)(1).

(h) Prohibited conduct: investment company shares.

(1) A broker-dealer or agent shall not engage in the following conduct in connection with the solicitation of a purchase or sale of investment company shares:

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(A) Failing to adequately disclose to a customer all sales charges, including asset-based and contingent deferred sales charges, that could be imposed with respect to the purchase, retention, or redemption of investment company shares;

(B) stating or implying to a customer, either orally or in writing, that the shares are sold without a commission, are “no load,” or have “no sales charge” if there is associated with the purchase of the shares a front-end charge; a contingent deferred sales charge; ~~an SEC rule 12b-1~~ a fee pursuant to SEC rule 12b-1, 17 C.F.R. § 270.12b-1, as adopted by reference in K.A.R. 81-2-1, or a service fee that in total exceeds .25 percent of average net fund assets per year; or, in the case of closed-end investment company shares, underwriting fees, commissions, or other offering expenses;

(C) failing to disclose to a customer any relevant sales charge discount on the purchase of shares in dollar amounts at or above a breakpoint, or failing to disclose any relevant letter of intent feature, if available, that will reduce the sales charges;

(D) recommending to a customer the purchase of a specific class of investment company shares in connection with a multiclass sales charge or fee arrangement without reasonable grounds to believe that the sales charge or fee arrangement associated with the class of shares is suitable and appropriate based on the customer’s investment objectives, financial situation, other securities holdings, and the associated transaction or other fees;

(E) recommending to a customer the purchase of investment company shares that results in the customer’s simultaneously holding shares in different investment company portfolios having similar investment objectives and policies without reasonable grounds to believe that the

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recommendation is suitable and appropriate based on the customer's investment objectives, financial situation, other securities holdings, and any associated transaction charges or other fees;

(F) recommending to a customer the liquidation or redemption of investment company shares for the purpose of purchasing shares in a different investment company portfolio having similar investment objectives and policies without reasonable grounds to believe that the recommendation is suitable and appropriate based on the customer's investment objectives, financial situation, other securities holdings, and any associated transaction charges or other fees;

(G) stating or implying to a customer the fund's current yield or income without disclosing the fund's average annual total return, as stated in the fund's most recent form N-1A filed with the SEC, for one-year, five-year, and 10-year periods and without fully explaining the difference between current yield and total return. However, if the fund's registration statement under the securities act of 1933 has been in effect for less than one, five, or 10 years, the time during which the registration statement was in effect shall be substituted for the periods otherwise prescribed;

(H) stating or implying to a customer that the investment performance of an investment company portfolio is comparable to that of a savings account, certificate of deposit, or other bank deposit account without disclosing to the customer the fact that the shares are not insured or otherwise guaranteed by the ~~FDIC~~ federal deposit insurance corporation ("FDIC") or any other government agency and the relevant differences regarding risk, guarantees, fluctuation of principal or return or both, and any other factors that are necessary to ensure that the comparisons are fair, complete, and not misleading;

(I) stating or implying to a customer the existence of insurance, credit quality, guarantees, or similar features regarding securities held, or proposed to be held, in the investment company's

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portfolio without disclosing to the customer the other kinds of relevant investment risks, including interest rate, market, political, liquidity, and currency exchange risks, that could adversely affect investment performance and result in loss or fluctuation of principal ~~notwithstanding~~ despite the creditworthiness of the portfolio securities;

(J) stating or implying to a customer that the purchase of shares shortly before an ex dividend date is advantageous to the customer unless there are specific, clearly described tax or other advantages to the customer, or stating or implying that a distribution of long-term capital gains by an investment company is part of the income yield from an investment in the shares; and

(K) making projections of future performance, statements not warranted under existing circumstances, or statements based upon nonpublic information.

(2) In connection with the solicitation of investment company shares, the delivery of a prospectus shall not be dispositive that the broker-dealer or agent has given the customer full and fair disclosure or has otherwise fulfilled the duties specified in this subsection.

(i) Prohibited conduct: use of senior-specific certifications and professional designations.

(1) A broker-dealer or agent shall not use a senior-specific certification or designation that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in any way that misleads any person. This prohibition shall include the following:

(A) The use of a certification or professional designation by a person who has not earned or is otherwise ineligible to use the certification or designation;

(B) the use of a nonexistent or self-conferred certification or professional designation;

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(C) the use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

(D) the use of a certification or professional designation that was obtained from a designating or certifying organization that meets any of the following conditions:

(i) Is primarily engaged in the business of instruction in sales or marketing;

(ii) does not have reasonable standards or procedures for ensuring the competency of its designees or ~~certificants~~ certificate holders;

(iii) does not have reasonable standards or procedures for monitoring and disciplining its designees or ~~certificants~~ certificate holders for improper or unethical conduct; or

(iv) does not have reasonable continuing education requirements for its designees or ~~certificants~~ certificates holders to maintain the professional designation or certification.

(2) There shall be a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph (i)(1)(D) if the organization has been accredited by any of the following:

(A) The American national standards institute;

(B) the national commission for certifying agencies; or

(C) an organization that is on the United States department of education's list titled "accrediting agencies recognized for title IV purposes," if the designation or credential does not primarily apply to sales or marketing, or both.

(3) In determining whether a combination of words or an acronym or initialism standing for a combination of words constitutes a certification or professional designation indicating or

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implying that a person has special certification or training in advising or servicing senior citizens or retirees, the factors to be considered shall include the following:

(A) The use of one or more words including “senior,” “retirement,” “elder,” or similar words, combined with one or more words including “certified,” “registered,” “chartered,” “adviser,” “specialist,” “consultant,” “planner,” or similar words, in the name of the certification or professional designation; and

(B) the manner in which the words are combined.

(4) For purposes of this subsection, the terms “certification” and “professional designation” shall not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, including an agency that regulates broker-dealers, investment advisers, or investment companies, if that job title indicates seniority or standing within the organization or specifies an individual’s area of specialization within the organization. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a412(d)(13), ~~and 17-12a501(3), and 17-12a608~~; effective Aug. 18, 2006; amended May 22, 2009; amended P-_____.)

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81-3-7. Supervisory, financial reporting, recordkeeping, net capital, and operational requirements for broker-dealers. (a) Supervision.

(1) Annual review. Each broker-dealer shall conduct a review, at least annually, of the businesses in which it engages. The review shall be reasonably designed to assist in detecting and preventing violations of and achieving compliance with the act, these regulations, and other applicable laws, regulations, and rules of self-regulatory organizations.

(2) Supervisory procedures. Each broker-dealer shall establish and maintain supervisory procedures that shall be reasonably designed to assist in detecting violations of, preventing violations of, and achieving compliance with the act, these regulations, and other applicable laws, regulations, and rules of self-regulatory organizations. In determining whether supervisory procedures are reasonably designed, relevant factors including the following may be considered by the administrator:

- (A) The firm's size;
- (B) the organizational structure;
- (C) the scope of business activities;
- (D) the number and location of offices;
- (E) the nature and complexity of products and services offered;
- (F) the volume of business done;
- (G) the number of agents assigned to a location;
- (H) the presence of an on-site principal at a location;
- (I) the specification of the office as a non-branch location; and
- (J) the disciplinary history of the registered agents.

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(3) Supervision of non-branch offices. The procedures established and the reviews conducted shall provide sufficient supervision at remote offices to ensure compliance with all applicable securities laws and regulations and self-regulatory organization rules. Based on the factors specified in paragraph (a)(2), certain non-branch offices may require more frequent reviews or more stringent supervision.

(4) Failure to supervise. If a broker-dealer fails to comply with this subsection, the broker-dealer ~~shall~~ may be deemed to have “failed to reasonably supervise” its agents under K.S.A. 17-12a412(d)(9), and amendments thereto.

(b) Annual reports. Each broker-dealer registered under the act shall make and maintain an annual report for the broker-dealer’s most recent fiscal year.

(1) Filing. Each broker-dealer shall file the annual report with the administrator within five days of a request by the administrator or the administrator’s staff.

(2) Contents of annual report. Each annual report shall contain financial statements that include the following:

(A) A statement of financial condition and notes to the statement of financial condition presented in conformity with ~~generally accepted accounting principles~~ GAAP; and

(B) disclosure of the broker-dealer’s net capital, which shall be calculated in accordance with subsection (c).

(3) Auditing. Unless otherwise permitted, an independent ~~certified public accountant~~ CPA shall audit the financial statements in accordance with generally accepted auditing standards.

(4) Recognition of federal standards. For purposes of uniformity, a copy of audited financial statements in compliance with SEC rule 17a-5(d), 17 C.F.R. 240.17a-5(d), as adopted by reference in K.A.R. 81-2-1, shall be deemed to comply with paragraphs (b)(2) and (b)(3).

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(c) Books and records. Each registered broker-dealer shall maintain and preserve records in compliance with SEC rule 17a-3, 17 C.F.R. 240.17a-3, and SEC rule 17a-4, 17 C.F.R. 240.17a-4, which are adopted by reference in K.A.R. 81-2-1.

(d) Minimum net capital requirements.

(1) Each broker-dealer registered under the act shall comply with ~~the following SEC rules~~ SEC rule 15c3-1, 17 C.F.R. 240.15c3-1, SEC rule 15c3-3, 17 C.F.R. 240.15c3-3, and SEC rule 15c3-3a, 17 C.F.R. 240.15c3-3a, as applicable, as adopted by reference in K.A.R. 81-2-1:

~~(A) SEC rule 15c3-1, 17 C.F.R. 240.15c3-1;~~

~~(B) SEC rule 15c3-2, 17 C.F.R. 240.15c3-2; and~~

~~(C) SEC rule 15c3-3, 17 C.F.R. 240.15c3-3.~~

(2) Each registered broker-dealer shall comply with SEC rule 17a-11, 17 C.F.R. 240.17a-11, as adopted by reference in K.A.R. 81-2-1, and shall simultaneously file with the administrator copies of notices and reports required by that rule.

(e) Confirmations. At or before completion of each transaction with a customer, the broker-dealer shall give or send to the customer a written notification that conforms with SEC rule 10b-10, 17 C.F.R. 240.10b-10, as adopted by reference in K.A.R. 81-2-1. (Authorized by K.S.A. ~~2005~~ 2014 Supp. 17-12a411 and K.S.A. 17-12a605(a); implementing K.S.A. ~~2005~~ 2014 Supp. 17-12a411, K.S.A. 17-12a412(d)(9), and 17-12a605(c), and 17-12a608; effective Aug. 18, 2006; amended P-_____.)

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81-4-1. Registration of securities. (a) Original applications. The following documents and fee shall be required with each original application submitted for registration of securities:

(1) Forms U-1 and U-2;

(2) form U-2A, if applicable;

(3) the documents and exhibits required for registration by coordination as specified in K.S.A. 17-12a303(b), and amendments thereto, or registration by qualification as specified in K.S.A. 17-12a304(b), and amendments thereto, if not already included as required by form U-1;

(4) any other document or information requested by the administrator; and

(5) a registration fee of .05 percent (one twentieth of one percent) of the maximum aggregate offering price at which the securities are to be offered in this state, but not less than \$100 and not more than \$1,500 for each year that the registration is effective. If a registration statement or application is withdrawn before the effective date or a pre-effective stop order is issued under K.S.A. 17-12a306 and amendments thereto, the administrator shall retain the full amount of the registration fee.

(b) Regulation A tier 1 offerings. Each registration application for which an offering statement on form 1-A has been filed with the SEC under regulation A, for a tier 1 offering pursuant to SEC rule 251, 17 C.F.R. 230.251, as adopted by reference in K.A.R. 81-2-1, shall be filed by qualification under K.S.A. 17-12a304, and amendments thereto.

(c) Post-effective amendments. If a post-effective amendment for material changes in information or documents is required by K.S.A. 17-12a305(j) and amendments thereto, the amendment shall be filed within two business days after an amendment is filed with the SEC for securities registered by coordination, or within five business days after a material change occurs for securities registered by qualification.

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The amendment filing shall include a cover letter that explains the nature of the material changes and copies of all amended documents that are clearly marked to identify the material changes. The registrant shall provide further explanation or information upon request by the administrator. Upon approval by the administrator, the amendment may be filed electronically.

(d) Extensions of registration. The effective period of a registration statement may be extended for an additional year after the original or previously extended registration period expires, or for less than one year if the registered offering is completed and terminated in compliance with subsection (f).

(1) The following documents and fee shall be required with each application submitted to extend the effective period of a registration statement:

(A) Form KSC-1 or a uniform form or document that includes the information required by form KSC-1;

(B) a registration fee as specified in paragraph (a)(5), based on the aggregate amount of securities to be offered during the extended effective period; and

(C) one copy of the prospectus to be delivered to prospective investors for offers during the extended period of effectiveness, which shall include audited financial statements for the most recent fiscal year of the issuer, unless a prospectus meeting this requirement is already on file with the administrator. If the extension application is filed before the most recent audited financial statements are available, the issuer shall undertake to file an updated prospectus containing the statements no later than 90 days after the end of the issuer's fiscal year.

(2) The effective date of each extended registration shall be one year after the previous effective date.

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(3) The due date for filing each extension application shall be 10 business days before the date on which the registration is due to expire.

(e) Abandoned applications. If an applicant for registration of securities does not respond in writing within six months after receiving a written inquiry or deficiency letter from the administrator or the applicant takes no action on a pending application and fails to communicate in writing with the administrator for six months, the application shall be deemed abandoned. Each abandoned application shall be disregarded, and a notice of abandonment shall be issued by the administrator. To obtain further consideration of an abandoned application, the applicant shall file a new, complete application.

(f) Final report. Upon completion of a registered offering or upon expiration of the effective period of a registration statement that is not being extended, the registrant shall file with the administrator a final report of sales of securities in this state on form KSC-1 or a document that includes the information required by form KSC-1. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A 2005 Supp. 17-12a303, 17-12a304, and 17-12a305, as amended by L. 2006, Ch. 47, § 3; effective Jan. 1, 1966; amended, E-70-15, Feb. 4, 1970; amended Jan. 1, 1971; amended, T-88-29, Aug. 19, 1987; amended May 1, 1988; amended, T-81-8-23-91, Aug. 23, 1991; amended Oct. 7, 1991; amended May 31, 1996; amended Jan. 19, 2007; amended P-_____.)

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81-4-4. Registration requirements for not-for-profit issuers. Before the offer or sale of any note, bond, debenture, or other evidence of indebtedness by a not-for-profit issuer specified in ~~L. 2004, Ch. 154, § 6(7), K.S.A. 17-12a201(7)~~ and amendments thereto, the issuer shall register the security pursuant to ~~L. 2004, Ch. 154, § 14, K.S.A. 17-12a304~~ and amendments thereto, unless one of the following conditions is met:

(a) The security or transaction is exempt under any provision of the Kansas uniform securities act other than ~~L. 2004, Ch. 154, § 6(7) K.S.A. 17-12a201(7)~~, and amendments thereto.

(b) The issuer is excluded from the definition of an investment company ~~under, and the security is issued in exchange for assets contributed to a fund pursuant to~~ section 3(c)(10)(B) of the investment company act of 1940, 15 U.S.C. section 80a-3(c)(10)(B), ~~as in effect on January 1, 2005 and hereby as~~ adopted by reference in K.A.R. 81-2-1. (Authorized by ~~L. 2004, Ch. 154, §§ 6(7) and 44(a) K.S.A. 17-12a605(a)~~; implementing ~~L. 2004, Ch. 154, § 6(7) K.S.A. 17-12a201(7)(C)~~; effective, T-81-8-22-05, Aug. 22, 2005; effective Dec. 16, 2005; amended P-_____.)

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81-5-7. Exchange exemption. ~~(a) A security shall be exempt under K.S.A. 17-12a201(6)(A), and amendments thereto, if the security is listed or authorized for listing on any of the following exchanges or if the security has seniority equal to or greater than the seniority of a security of the same issuer that is listed or authorized for listing on any of the following exchanges:~~

~~(1) The New York stock exchange;~~

~~(2) the American stock exchange;~~

~~(3) the NASDAQ global market, including the global select market, or the NASDAQ capital market of the NASDAQ stock market LLC;~~

~~(4) the Chicago board options exchange, incorporated;~~

~~(5) tier I of the Philadelphia stock exchange, inc.;~~

~~(6) tier I of the NYSE Arca, inc.; or~~

~~(7) the international securities exchange, LLC, if the listed security is an option.~~

~~(b) Unless a security is described as small cap or the issuer is described as an emerging company by the exchange, the A security shall be exempt under K.S.A. 17-12a201(6)(B), and amendments thereto, if the security is listed or authorized for listing on either of the following exchanges or if the security has seniority equal to or greater than the seniority of a security of the same issuer that is listed or authorized for listing on either of the following exchanges:~~

~~(1) (a) Tier I of the Chicago stock exchange; or~~

~~(2) (b) tier II of the NYSE Arca, inc. (Authorized by K.S.A. 2006 Supp. 17-12a605(a); implementing K.S.A. 2006 Supp. 17-12a201(6)(B) and 17-12a203; effective, T-87-28, Oct. 1, 1986; amended May 1, 1987; amended Oct. 24, 1994; amended May 31, 1996; amended Oct. 26, 2001; amended Jan. 19, 2007; amended Aug. 15, 2008; amended P-_____.)~~

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81-5-15. Notice filings and fees for rule 506 offerings. (a) Each issuer of a security under SEC rule 506, 17 C.F.R. 230.506, as ~~in effect on January 1, 2005 and hereby adopted by~~ reference in K.A.R. 81-2-1, shall file a notice of sale on form D, ~~including the appendix~~, with the administrator within 15 days after the first sale of the security in Kansas. The form D ~~and appendix~~ shall be completed in accordance with the instructions for the form and shall be filed either through the EFD system electronically or on a paper form D that is mailed to the administrator.

(b)(1) ~~Fee for timely filing.~~ Each issuer of a security specified in subsection (a) shall pay a fee of \$250 to the administrator with each timely filing under subsection (a).

(2) ~~Fee for late filing.~~ If a form D, ~~including the appendix~~, is not filed as required by subsection (a) within 15 days after the first sale of the security in Kansas, the issuer of the security shall pay to the administrator the greater of the following amounts, unless the administrator agrees to assess a lesser fee ~~for good cause shown pursuant to K.S.A. 17-12a307, and amendments thereto:~~

(A) \$500; or

(B) one-tenth of one percent of the dollar value of the securities that were sold to Kansas residents before the date on which the form D is filed, not to exceed \$5,000.

(3) For each electronic filing of form D, the fee shall be remitted to the EFD.

(c) This regulation shall not apply if the security or transaction is otherwise exempt from registration under any provision of the Kansas uniform securities act.

~~This regulation shall be effective on and after December 20, 2005. (Authorized by L. 2004, Ch. 154, § 44(a) K.S.A. 17-12a605(a); implementing L. 2004, Ch. 154, § 12(e) K.S.A. 2014 Supp. 17-12a302(c) and K.S.A. 17-12a307; effective, T-81-8-22-05, Aug. 22, 2005; effective Dec. 20, 2005; amended P-_____.)~~

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81-5-17. Standard manuals exemption. The following printed or electronic versions of securities manuals shall be designated by the administrator for use under K.S.A. 17-12a202(2)(A)(iv), and amendments thereto:

(a) ~~“Standard & poor’s manual of standard corporation descriptions”~~ “S&P capital IQ standard corporation descriptions”; and

(b) ~~“mergent’s manuals,” formerly known as “moody’s manuals.”~~ (Authorized by K.S.A. ~~2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a202, as amended by L. 2006, Ch. 47, § 2(2); effective Jan. 19, 2007; amended P-~~_____.)

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81-5-21. Invest Kansas exemption. (a) Exemption from registration requirements. The offer or sale of a security by an issuer shall be exempt from the requirements of K.S.A. 17-12a301 through 17-12a306 and K.S.A. 17-12a504, and amendments thereto, ~~and each individual who represents an issuer in an offer or sale shall be exempt from the requirements of K.S.A. 17-12a402(a), and amendments thereto,~~ if the offer or sale is conducted in accordance with each of the following requirements:

(1) The issuer of the security shall be a business or organization formed under the laws of the state of Kansas and registered with the secretary of state.

(2) The transaction shall meet the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the securities act of 1933, 15 U.S.C. § 77c(a)(11), and SEC rule 147, 17 C.F.R. 230.147, as adopted by reference in K.A.R. 81-2-1.

(3) The sum of all cash and other consideration to be received for all sales of ~~the security~~ securities in reliance upon this exemption shall not exceed \$1,000,000, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance upon this exemption.

(4) The issuer shall not accept more than ~~\$1,000~~ \$5,000 from any single purchaser unless the purchaser is an accredited investor as defined by rule 501 of SEC regulation D, 17 C.F.R. 230.501, as adopted by reference in K.A.R. 81-2-1. Two or more individual purchasers residing at the same primary residence who are not accredited investors and have a close family relationship shall be treated as a single purchaser for purposes of the \$5,000 limit.

(5) A commission or other remuneration shall not be paid or given, directly or indirectly, for any person's participation in the offer or sale of securities for the issuer unless the person is registered as a broker-dealer or agent under the act.

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(6) All funds received from investors shall be deposited into a bank or depository institution authorized to do business in Kansas, and all the funds shall be used in accordance with representations made to investors.

~~(7) Before the use of any general solicitation or the twenty-fifth sale of the security, whichever occurs first, the issuer shall provide a notice to the administrator in writing or in electronic form. The notice shall specify that the issuer is conducting an offering in reliance upon this exemption and shall contain~~ Before the use of any general solicitation, the issuer shall file a notice with the administrator on form IKE, providing the names and addresses of the following persons:

(A) The issuer;

(B) all persons who will be involved in the offer or sale of securities on behalf of the issuer;

and

(C) the bank or other depository institution in which investor funds will be deposited.

(8) The issuer shall not be, either before or as a result of the offering, an investment company as defined in section 3 of the investment company act of 1940, 15 U.S.C. § 80a-3, or subject to the reporting requirements of section 13 or 15(d) of the securities exchange act of 1934, 15 U.S.C. § 78m and 78o(d), as adopted by reference in K.A.R. 81-2-1.

(9) The issuer shall inform all purchasers that the securities have not been registered under the act and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under K.S.A. 17-12a202 and amendments thereto, K.A.R. 81-5-3, or another regulation. In addition, the issuer shall make the disclosures required by subsection (f) of SEC rule 147, 17 C.F.R. 230.147(f), as adopted by reference in K.A.R. 81-2-1.

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(b) Offers Interaction with other exemptions and sales to controlling persons. This exemption shall not be used in conjunction with any other exemption under these regulations or ~~K.S.A. 17-12a202 and amendments thereto, except for offers and sales to controlling persons of the issuer.~~ Sales to controlling persons shall not count toward the limitation in paragraph (a)(3).

(c) Disqualifications. This exemption shall not be available if the issuer is subject to a disqualifying event specified in K.A.R. 81-5-13(b), except as permitted under K.A.R. 81-5-13(c). (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a203 and ~~17-12a402(b)(9)~~; effective Aug. 12, 2011; amended P-_____.)

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81-6-1. Prospectus. (a) Filing. Each application for the registration of securities shall include the prospectus to be used in connection with the proposed securities offering.

(b) Form and content.

(1) Registration by coordination. Each prospectus for a securities offering filed for registration by coordination under K.S.A. 17-12a303, and amendments thereto, shall contain the information required in part I of the registration statement filed by the issuer under the securities act of 1933, unless the administrator modifies or waives the requirements pursuant to K.S.A. 17-12a307, and amendments thereto.

(2) Registration by qualification. Each prospectus for a securities offering filed for registration by qualification under K.S.A. 17-12a304, and amendments thereto, shall contain the information required by that statute unless the administrator modifies or waives the requirements pursuant to K.S.A. 17-12a304 or 17-12a307, and amendments thereto. The prospectus may be submitted on one of the following forms that is applicable to the type of securities offering, in accordance with the instructions to the form:

(A) Part II of SEC form 1-A, regulation A offering statement under the securities act of 1933;

(B) part I of SEC form ~~SB-2~~ S-1, registration statement under the securities act of 1933;

(C) form U-7 if the issuer meets the requirements of K.A.R. 81-4-2; or

(D) any other form allowed by the administrator, if the prospectus is filed in compliance with the applicable requirements of the securities act of 1933.

(c) Delivery requirements. As a condition of registration under K.S.A. 17-12a304 and amendments thereto, the issuer shall deliver a copy of the entire prospectus to each person to whom an offer is made, before or concurrently, with the earliest of the events specified in K.S.A.

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17-12a304, and amendments thereto. (Authorized by K.S.A. 2005-Supp. 17-12a605(a);
implementing K.S.A. 2005-Supp. 17-12a303 and 17-12a304; effective Jan. 1, 1966; amended
Jan. 1, 1971; amended May 1, 1987; amended March 25, 1991; amended May 31, 1996;
amended Jan. 19, 2007; amended P-_____.)

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81-7-1. General statements of policy for registration of securities. (a) NASAA statements of policy. Each registration statement shall meet the requirements of each NASAA statement of policy that is applicable to the issuer, registration statement, type of security, or other circumstances of the offering. The following NASAA statements of policy are hereby adopted by reference:

(1) “Statement of policy regarding corporate securities definitions,” as amended on ~~September 28, 1999~~ March 31, 2008;

(2) “statement of policy regarding the impoundment of proceeds,” as amended on ~~September 28, 1999~~ March 31, 2008;

(3) “statement of policy regarding loans and other material ~~affiliated~~ transactions,” as amended on ~~November 18, 1997~~ March 31, 2008;

(4) “statement of policy regarding options and warrants,” as amended on ~~September 28, 1999~~ March 31, 2008;

(5) “statement of policy regarding preferred stock,” as amended on ~~April 27, 1997~~ March 31, 2008;

(6) “statement of policy regarding promoter’s equity investment,” as ~~adopted on April 27, 1997~~ amended on March 31, 2008;

(7) “statement of policy regarding promotional shares,” as amended on ~~September 28, 1999~~ March 31, 2008;

(8) “statement of policy regarding specificity in use of proceeds,” as amended on ~~September 28, 1999~~ March 31, 2008;

(9) “statement of policy regarding underwriting expenses, underwriter’s warrants, selling expenses and selling security holders,” as amended on ~~September 28, 1999~~ March 31, 2008;

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(10) “statement of policy regarding unsound financial condition,” as amended on ~~September 28, 1999~~ March 31, 2008; and

(11) “statement of policy regarding unequal voting rights,” as ~~adopted on October 24, 1991~~ amended on March 31, 2008.

(b) Financial statements. Each registration statement shall meet the requirements for financial statements under K.A.R. 81-7-3, unless the administrator waives or modifies the requirements for good cause shown under one of the following circumstances:

(1) The registration statement contains financial statements that ~~satisfy~~ meet specific requirements of a statement of policy adopted under subsection (a) or another regulation, and the administrator determines that the financial statements are sufficient in light of the issuer, registration statement, type of security, or other circumstances of the offering.

(2) The registration statement was filed for registration by coordination under K.S.A. 17-12a303, and amendments thereto, and contains financial statements that ~~satisfy~~ meet SEC requirements.

(3) The registration statement was submitted for coordinated review under K.S.A. 17-12a608(c)(7), and amendments thereto, and the administrator determines that a waiver or modification would promote uniformity with other states.

(c) Whenever terms within the context of NASAA statements of policy adopted by reference in this regulation are in conflict with definitions under the act and these regulations, the definitions in the NASAA statements of policy shall apply. (Authorized by K.S.A. 2005-Supp. 17-12a605(a); implementing K.S.A. 2005-Supp. 17-12a306(b) and 17-12a608(c); effective Jan. 1, 1966; amended, E-70-15, Feb. 4, 1970; amended Jan. 1, 1971; amended Jan. 1, 1972; amended, T-88-65, Dec. 30, 1987; amended May 1, 1988; amended Oct. 24, 1988; amended June 28, 1993; amended Jan. 19, 2007; amended P-_____.)

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81-7-2. Statements of policy for specific types of securities offerings. (a) If one of the NASAA guidelines or statements of policy adopted in subsection (b) applies to a securities offering, the registration statement shall meet the requirements of the applicable NASAA guideline or statement of policy.

(b) The following NASAA guidelines and statements of policy are hereby adopted by reference, except as modified in paragraph (b)(13):

- (1) “Registration of asset-backed securities,” as amended on May ~~7, 2007~~ 6, 2012;
- (2) “registration of publicly offered cattle-feeding programs,” as adopted on September 17, 1980;
- (3) “statement of policy regarding church bonds” and the related “cross reference sheet,” as adopted on April 14, 2002;
- (4) “statement of policy regarding church extension fund securities,” as amended on April 18, 2004;
- (5) “registration of commodity pool programs,” as amended ~~and adopted~~ on May ~~7, 2007~~ 6, 2012;
- (6) “statement of policy regarding debt securities,” as adopted on April 25, 1993;
- (7) “equipment programs,” as amended on May ~~7, 2007~~ 6, 2012;
- (8) “NASAA mortgage program guidelines,” as amended on May 7, 2007;
- (9) “registration of oil and gas programs,” as amended on May ~~7, 2007~~ 6, 2012;
- (10) “omnibus guidelines,” as amended on May 7, 2007;
- (11) “statement of policy regarding real estate investment trusts,” as revised and adopted on May 7, 2007;
- (12) “statement of policy regarding real estate programs,” as revised on May 7, 2007; and

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(13) “guidelines regarding viatical investments,” including appendix A, as in effect on January 1, 2006, which shall be modified as follows:

(A) In section I.B.14.a of the guidelines, the phrase “[reference to state statute or most recent version of the National Association of Insurance Commissioners (“NAIC”) Model Viatical Settlement Act]” shall be replaced with “K.S.A. 40-5002(o), and amendments thereto”;

(B) in section I.B.16, the phrase “[broker dealer]” shall be replaced with “broker-dealer,” the term “[agent]” shall be replaced with “agent,” and the phrase “[reference to statutory definition of issuer]” shall be replaced with “K.S.A. 17-12a102(17), and amendments thereto”;

(C) in section I.B.17, the phrase “[reference to state statute or most recent version of the NAIC Model Viatical Settlement Act]” shall be replaced with “K.S.A. 40-5002(n), and amendments thereto”;

(D) in section III.B, the brackets shall be removed, and the bracketed amounts shall remain in effect;

(E) in section VI.14, the phrase “[NAIC Model Viatical Settlement Act or similar viatical regulatory act of the particular state]” shall be replaced with “viatical settlement act of 2002, K.S.A. 40-5002 et seq., and amendments thereto”; and

(F) in the last sentence of section VI, the phrase “[statutory reference]” shall be replaced with “K.S.A. 17-12a411(d), and amendments thereto.”

(c) The omnibus guidelines adopted in paragraph (b)(10) shall be applied to limited partnership programs or other entities for which more specific guidelines or statements of policy have not been adopted by NASAA, unless the administrator waives or modifies the requirements

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of the omnibus guidelines or applies other NASAA guidelines or statements of policy for good cause shown.

(d) In addition to the income and net worth standards and other suitability requirements contained within the NASAA guidelines and statements of policy adopted under subsection (b), the administrator may require that the registration statement include a statement that recommends or requires each purchaser to limit the purchaser's aggregate investment in the securities of the issuer and other similar investments to not more than 10 percent of the purchaser's liquid net worth. For purposes of this subsection, liquid net worth shall be defined as that portion of the purchaser's total net worth that is comprised of cash, cash equivalents, and readily marketable securities, as determined in conformity with GAAP.

(e) Each registration statement subject to a guideline or statement of policy adopted under subsection (b) shall meet the requirements for financial statements under K.A.R. 81-7-3, unless the administrator waives or modifies the requirements for good cause shown under any of the following circumstances:

(1) The registration statement contains financial statements that meet the specific requirements of another guideline or statement of policy adopted under subsection (b) or another regulation, and the administrator determines that the financial statements are sufficient for the particular type of securities registration.

(2) The registration statement was filed for registration by coordination under K.S.A. 17-12a303, and amendments thereto, and contains financial statements that meet the SEC requirements.

(3) The registration statement was submitted for coordinated review under K.S.A. 17-

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12a608(c)(7) and amendments thereto, and the administrator determines that a waiver or modification would promote uniformity with other states.

(f) Each application for registration subject to a guideline or statement of policy adopted under subsection (b) shall include a cross-reference table to indicate compliance with the various sections of the applicable guideline or statement of policy.

(g) Whenever terms within the context of NASAA guidelines or statements of policy adopted by reference in this regulation are in conflict with definitions under the act and these regulations, the definitions in the NASAA guidelines or statements of policy shall apply.

(Authorized by K.S.A. 2006-Supp. 17-12a605(a); implementing K.S.A. 2006-Supp. 17-12a306(b) and 17-12a608(c); effective June 28, 1993; amended May 31, 1996; amended Jan. 19, 2007; amended Aug. 15, 2008; amended P-_____.)

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81-14-1. Registration procedures for investment advisers and investment adviser representatives. (a) General provisions.

(1) Each applicant shall be at least 18 years of age. If the applicant is not an individual, then the directors, officers, ~~or~~ managing partners, or managing members of the applicant shall be at least 18 years of age.

(2) Each applicant shall be registered or qualified to engage in business as an investment adviser or investment adviser representative in the state of the applicant's principal place of business.

(3) Each registered investment adviser shall maintain registration under the act for at least one investment adviser representative.

(b) Application requirements for investment advisers.

(1) Initial application.

(A) IARD filing requirements. Each applicant for initial registration as an investment adviser shall complete form ADV in accordance with the form instructions and shall file the form, including parts 1 and 2 and all applicable schedules, with the IARD. In addition, the applicant shall submit to the IARD the fee required by K.A.R. 81-14-2 and any reasonable fee charged by ~~the NASD~~ FINRA for filing through the IARD system.

(B) Direct filing requirements. Each applicant for initial registration as an investment adviser shall file the following documents with the administrator, unless the documents are filed electronically with the IARD:

(i) ~~A copy of the investment adviser's surety bond, if a surety bond is required under K.A.R. 81-14-9(e);~~

(ii) The proposed client contract written in accordance with K.A.R. 81-14-5(d)(13);

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(iii)(ii) a privacy policy written in accordance with K.A.R. 81-14-5(d)(12)(B);

(iv)(iii) supervisory procedures written in accordance with K.A.R. 81-14-4(b)(19);

(v)(iv) financial statements that demonstrate compliance with the requirements of K.A.R. 81-14-9(d);

(vi)(v) a brochure written in accordance with K.A.R. 81-14-10(b), unless the applicant intends to use part 2 of form ADV as its brochure; and

(vii)(vi) any other document related to the applicant's business, if requested by the administrator.

(2) Annual renewal. The application for annual renewal registration as an investment adviser shall be filed with the IARD. The application for annual renewal registration shall include the fee required by K.A.R. 81-14-2 and any reasonable fee charged by ~~the NASD~~ FINRA for filing through the IARD system.

(3) Updates and amendments.

(A) Each investment adviser shall file with IARD, in accordance with the instructions in form ADV, any amendments to the investment adviser's form ADV. An amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment.

(B) Within 90 days after the end of an investment adviser's fiscal year, the investment adviser shall file with the IARD an annual updating amendment to form ADV.

(c) Application requirements for investment adviser representatives.

(1) Initial application. Each applicant for initial registration as an investment adviser representative under the act shall complete form U-4 in accordance with the form instructions

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and shall file the form U-4 with the CRD, except as otherwise provided by order of the administrator. The application for initial registration shall include the following items:

(A) Proof of compliance by the investment adviser representative with the examination requirements of subsection (e);

(B) the fee required by K.A.R. 81-14-2; and

(C) any reasonable fee charged by ~~the NASD~~ FINRA for filing through the CRD system.

(2) Annual renewal. The application for annual renewal registration as an investment adviser representative shall be filed with the CRD. The application for annual renewal registration shall include the fee required by K.A.R. 81-14-2 and any reasonable fee charged by ~~the NASD~~ FINRA for filing through the CRD system.

(3) Updates and amendments. Each investment adviser representative shall be under a continuing obligation to update the information required by form U-4 as changes occur. Each investment adviser representative and any associated investment adviser shall file promptly with the CRD any amendments to the representative's form U-4. An amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment.

(d) Effective date of registration.

(1) Initial registration. Each registration shall become effective on the 45th day after the completed application is filed, unless the application is approved earlier by the administrator. However, if the administrator or the administrator's staff has notified the applicant of deficiencies in the application, the application shall not be considered complete until an amendment is filed to resolve the deficiencies.

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(2) Transfer of employment or association. If an investment adviser representative terminates employment by or association with an investment adviser registered under the act or a federal covered investment adviser who has filed a notice under K.S.A. 17-12a405, and amendments thereto, and begins employment by or association with another investment adviser registered under the act or a federal covered investment adviser who has filed a notice under K.S.A. 17-12a405, and amendments thereto, and the successor investment adviser or federal covered investment adviser files an application for registration for the investment adviser representative within 30 days after the termination, then the application shall become effective in accordance with K.S.A. 17-12a408(b), and amendments thereto.

(e) Examination requirements.

(1) General requirements. Each individual applying to be registered as an investment adviser or investment adviser representative under the act shall provide the administrator with proof of obtaining a passing score on either of the following:

(A) The series 65 uniform investment adviser law examination; or

(B) the series 7 general securities representative examination and the series 66 uniform combined state law examination.

(2) Requirements for individuals registered on January 1, 2000. An individual who was registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on January 1, 2000, shall not be required to ~~satisfy~~ meet the examination requirements for continued registration, except under either of the following conditions:

(A) If the administrator requires examinations for any individual found to have violated any state or federal securities law; or

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(B) if the administrator requires examinations for any individual whose registration has lapsed, as specified in paragraph (e)(3).

(3) Lapsed registration. If an individual has met the examination requirements of paragraph (e)(1) but has not been registered as an agent or investment adviser representative in any jurisdiction for the previous two years, the individual shall be required to comply with the examination requirements of paragraph (e)(1) again before applying for registration.

(4) Waivers. The examination requirement may be waived or modified by the administrator ~~for good cause shown~~ pursuant to K.S.A. 17-12a412(e), and amendments thereto, and the examination requirement shall not apply to any individual who currently holds one of the following professional designations:

(A) Certified financial planner (CFP), awarded by the certified financial planner board of standards, inc.;

(B) chartered financial consultant (ChFC), awarded by the American college, Bryn Mawr, Pennsylvania;

(C) personal financial specialist (PFS), awarded by the American institute of certified public accountants;

(D) chartered financial analyst (CFA), awarded by the institute of chartered financial analysts;

(E) chartered investment counselor (CIC), awarded by the investment counsel association of America, inc.; or

(F) any other professional designation that the administrator may by regulation or order recognize.

(f) Expiration, renewal, withdrawal, and termination.

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(1) Each registration shall expire on December 31, and each application for renewal shall be filed not later than the deadline established by the IARD or CRD.

(2) ~~When~~ If an investment adviser representative's association with an investment adviser is discontinued or terminated, the investment adviser shall immediately file a form U-5 with the CRD. If the investment adviser representative commences association with another investment adviser, that investment adviser shall file an initial application for registration for the investment adviser representative.

(3) If an investment adviser desires to withdraw from registration or if registration is terminated by the administrator, the investment adviser shall immediately file a form ADV-W with the IARD. The form ADV-W shall be completed in accordance with the instructions to the form.

(4) Termination of an investment adviser's registration for any reason shall automatically constitute cancellation of the registration of each investment adviser representative that is affiliated with the investment adviser.

(5) Each application that has been on file for six months without any action taken by the applicant shall be considered withdrawn. (Authorized by K.S.A. ~~2006 Supp. 17-12a406~~ and 17-12a605(a); implementing K.S.A. ~~2006 Supp. 17-12a406, 17-12a407, and 17-12a408,~~ and 17-12a412(e); effective Oct. 26, 2001; amended Aug. 18, 2006; amended Aug. 15, 2008; amended P-_____.)

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81-14-5. Dishonest and unethical practices of investment advisers, investment adviser representatives, and federal covered investment advisers. (a) Unethical conduct. “Dishonest or unethical practices,” as used in K.S.A. 17-12a412(d)(13) and amendments thereto, shall include the conduct prohibited in this regulation.

(b) Fraudulent conduct. “An act, practice, or course of business that operates or would operate as a fraud or deceit,” as used in K.S.A. 17-12a502(a)(2) and amendments thereto, shall include the conduct prohibited in paragraphs (d)(6), (9), (10), and (11) and subsections (e), (f), (g), and (h).

(c) General standard of conduct. Each person registered as an investment adviser or investment adviser representative under the act shall not fail to observe high standards of commercial honor and just and equitable principles of trade in the conduct of the person’s business. An investment adviser or investment adviser representative is a fiduciary and shall act primarily for the benefit of its clients.

(d) Prohibited conduct: sales and business practices. Each person registered as an investment adviser or investment adviser representative under the act shall refrain from the practices specified in this subsection in the conduct of the person’s business. For purposes of this subsection, a security shall include any security as defined by K.S.A. 17-12a102, and amendments thereto, including a federal covered security as defined by K.S.A. 17-12a102, and amendments thereto, or section 2 of the securities act of 1933, 15 U.S.C. § 77b, as adopted by reference in K.A.R. 81-2-1.

(1) Unsuitable recommendations. An investment adviser or investment adviser representative shall not recommend to any client to whom investment supervisory, management, or consulting services are provided the purchase, sale, or exchange of any security without

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reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative.

(2) Improper use of discretionary authority. An investment adviser or investment adviser representative shall not exercise any discretionary power in placing an order for the purchase or sale of securities for any client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power is limited to the price at which and the time when an order shall be executed for a definite amount of a specified security.

(3) Excessive trading. An investment adviser or investment adviser representative shall not induce trading in a client's account that is excessive in size or frequency in light of the financial resources, investment objectives, and character of the account.

(4) Unauthorized trading. An investment adviser or investment adviser representative shall not perform either of the following:

(A) Place an order to purchase or sell a security for the account of a client without authority to do so; or

(B) place an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(5) Borrowing from or loaning to a client. An investment adviser or investment adviser representative shall not perform either of the following:

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(A) Borrow money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds; or

(B) loan money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(6) Misrepresenting qualifications, services, or fees. An investment adviser or investment adviser representative shall not misrepresent to any advisory client or prospective client the qualifications of the investment adviser, investment adviser representative, or any employee of the investment adviser, or misrepresent the nature of the advisory services being offered or fees to be charged for the service. An investment adviser or investment adviser representative shall not omit to state a material fact that is necessary to make any statements made regarding qualifications, services, or fees, in light of the circumstance under which the statements are made, not misleading.

(7) Failure to disclose source of report. An investment adviser or investment adviser representative shall not provide a report or recommendation to any advisory client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition shall not apply to a situation in which the adviser uses published research reports or statistical analyses to render advice or in which an adviser orders a research report in the normal course of providing service.

(8) Unreasonable fee. An investment adviser or investment adviser representative shall not charge a client an unreasonable advisory fee.

(9) Failure to disclose conflicts of interest. An investment adviser or investment adviser representative shall not fail to disclose to a client, in writing and before any advice is rendered, any material conflict of interest relating to the investment adviser, investment adviser

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representative, or any of the investment adviser's employees that could reasonably be expected to impair the rendering of unbiased and objective advice, including the following:

(A) Compensation arrangements connected with advisory services to the client that are in addition to compensation from the client for the advisory services; and

(B) charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to the advice will be received by the investment adviser, investment adviser representative, or any of the adviser's employees.

(10) Guaranteeing performance. An investment adviser or investment adviser representative shall not guarantee a client that a specific result will be achieved with advice that is rendered.

(11) Deceptive advertising. An investment adviser or investment adviser representative shall not publish, circulate, or distribute any advertisement that does not comply with SEC rule 206(4)-1, 17 C.F.R. 275.206(4)-1, as adopted by reference in K.A.R. 81-2-1, ~~notwithstanding~~ despite the fact that the adviser may be exempt from federal registration pursuant to section 203(b) of the investment advisers act of 1940, 15 U.S.C. § 80b-3(b) as adopted by reference in K.A.R. 81-2-1.

(12) Failure to protect confidential information.

(A) An investment adviser or investment adviser representative shall not disclose the identity, affairs, or investments of any client unless required by law to do so or unless the client consents to the disclosure.

(B) An investment adviser shall not fail to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of section 204A of the investment advisers act of 1940, 15 U.S.C. § 80b-4a, as adopted by reference in K.A.R. 81-2-1, ~~notwithstanding~~ despite the fact that the

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adviser may be exempt from federal registration pursuant to section 203(b) of the investment advisers act of 1940, 15 U.S.C. § 80b-3(b), as adopted by reference in K.A.R. 81-2-1.

(13) Improper advisory contract. An investment adviser shall not engage in the following conduct, ~~notwithstanding the fact that~~ even though the adviser may be exempt from federal registration pursuant to section 203(b) of the investment advisers act of 1940, 15 U.S.C. § 80b-3(b), as adopted by reference in K.A.R. 81-2-1:

(A) Enter into, extend, or renew any investment advisory contract unless the contract is in writing ~~and~~, discloses the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, and an indication of whether the contract grants discretionary power to the adviser, and contains a provision that no assignment of the contract shall be made by the investment adviser without the consent of the other party to the contract;

(B) enter into, extend, or renew any advisory contract containing performance-based fees contrary to the provisions of section 205 of the investment advisers act of 1940, 15 U.S.C. § 80b-5, as adopted by reference in K.A.R. 81-2-1, except as permitted by SEC rule 205-3, 17 C.F.R. 275.205-3, as adopted by reference in K.A.R. 81-2-1; and

(C) include in an advisory contract any indication of a condition, stipulation, or provision binding a person to waive compliance with any provision of the act or of the investment advisers act of 1940, or engage in any other practice contrary to the provisions of section 215 of the investment advisers act of 1940, 15 U.S.C. § 80b-15, as adopted by reference in K.A.R. 81-2-1.

(14) Indirect misconduct. An investment adviser or investment adviser representative shall not engage in any conduct or any act, indirectly or through or by any other person, that would be unlawful for the person to do directly under the provisions of the act or these regulations.

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(e) Prohibited conduct: failure to disclose financial condition and disciplinary history.

(1) Definitions. For purposes of this subsection, the following definitions shall apply:

(A) “Found” means determined or ascertained by adjudication or consent in a final self-regulatory organization proceeding, administrative proceeding, or court action.

(B) “Investment-related” means pertaining to securities, commodities, banking, insurance, or real estate, including acting as or being associated with a broker, dealer, investment company, investment adviser, government securities broker or dealer, municipal securities broker or dealer, bank, savings and loan association, commodities broker or dealer, or fiduciary.

(C) “Involved” means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

(D) “Management person” means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an investment adviser that is a company or to determine the general investment advice given to clients.

(E) “Self-regulatory organization” means any national securities or commodities exchange, registered association, or registered clearing agency.

(2) An investment adviser registered or required to be registered under the act shall not fail to disclose to any client or prospective client all material facts with respect to either of the following:

(A) A failure to meet the ~~adjusted~~ positive net worth requirements of K.A.R. 81-14-9(d); or

(B) any financial condition of the investment adviser or legal or disciplinary event that is material to an evaluation of the investment adviser’s integrity or ability to meet contractual commitments to clients.

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(3) It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the investment adviser or a management person of the investment adviser are material to an evaluation of the adviser's integrity for a period of 10 years from the date of the event, unless the legal or disciplinary event was resolved in the investment adviser's or management person's favor or was subsequently reversed, suspended, or vacated:

(A) A criminal or civil action in a court of competent jurisdiction resulting in any of the following:

(i) The individual was convicted of a felony or misdemeanor, or is the named subject of a pending criminal proceeding, for a crime involving an investment-related business or fraud, false statements, omissions, wrongful taking of property, bribery, forgery, counterfeiting, extortion, or crimes of a similar nature;

(ii) the individual was found to have been involved in a violation of an investment-related statute or regulation; or

(iii) the individual was the subject of any order, judgment, or decree permanently or temporarily enjoining the person or otherwise limiting the person from engaging in any investment-related activity;

(B) any administrative proceedings before any federal or state regulatory agency resulting in any of the following:

(i) The individual was found to have caused an investment-related business to lose its authorization to do business; or

(ii) the individual was found to have been involved in a violation of an investment-related statute or regulation and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's

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association with, an investment-related business, or otherwise significantly limiting the person's investment-related activities; and

(C) any self-regulatory organization proceeding resulting in either of the following:

(i) The individual was found to have caused an investment-related business to lose its authorization to do business; or

(ii) the individual was found to have been involved in a violation of the self-regulatory organization's rules and was the subject of an order by the self-regulatory organization barring or suspending the person from association with other members, expelling the person from membership, fining the person more than \$2,500, or otherwise significantly limiting the person's investment-related activities.

(4) The information required to be disclosed by paragraph (e)(2) shall be disclosed to clients before further investment advice is given to the clients. The information shall be disclosed to prospective clients at least 48 hours before entering into any written or oral investment advisory contract, or no later than the time of entering into the contract if the client has the right to terminate the contract without penalty within five business days after entering into the contract.

(5) For purposes of calculating the 10-year period during which events shall be presumed to be material under paragraph (e)(3), the date of a reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.

(6) Compliance with this subsection shall not relieve any investment adviser from any other disclosure requirement under any federal or state law.

(f) Prohibited conduct: cash payment for client solicitations. An investment adviser registered or required to be registered under the act shall not pay a cash fee, directly or indirectly,

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to a solicitor with respect to solicitation activities unless the solicitation arrangement meets all of the requirements of paragraphs (f)(2) through (f)(7).

(1) Definitions. For the purposes of this subsection, the following definitions shall apply:

(A) "Client" shall include any prospective client.

(B) "Impersonal advisory services" means investment advisory services provided solely by means of any of the following:

(i) Written materials or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts;

(ii) statistical information containing no expression of opinion as to the investment merits of a particular security; or

(iii) any combination of the materials, statements, or information specified in paragraphs (f)(1)(B)(i) and (ii).

(C) "Solicitor" means any person or entity who, for compensation, directly or indirectly solicits any client for, or refers any client to, an investment adviser.

(2) The investment adviser shall be properly registered under the act.

(3) The solicitor shall not be a person who meets any of the following conditions:

(A) Is subject to an order by any regulatory body that censures or places limitations on the person's activities; or that suspends or bars the person from association with an investment adviser;

(B) was convicted within the previous 10 years of any felony or misdemeanor involving the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent

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concealment, embezzlement, fraudulent conversion, misappropriation of funds or securities, or conspiracy to commit any such act;

(C) has been found to have engaged in the willful violation of any provision of these regulations, the act, the federal securities act of 1933, the federal securities exchange act of 1934, the federal investment company act of 1940, the federal investment advisers act of 1940, the federal commodity exchange act, the federal rules under any of these federal acts, or the rules of the NASD, FINRA, or the municipal securities rulemaking board; or

(D) is subject to an order, judgment, or decree by which the person has been convicted anytime during the preceding 10-year period of any crime that is punishable by imprisonment for one or more years or a substantially equivalent crime by a foreign court of competent jurisdiction.

(4) The cash fee shall be paid pursuant to a written agreement to which the investment adviser is a party.

(5) The cash fee shall be paid to a solicitor only under any of the following circumstances:

(A) The cash fee is paid to the solicitor with respect to solicitation activities for the provision of impersonal advisory services only;

(B) the cash fee is paid to a solicitor who is a partner, officer, director, or employee of the investment adviser, or a partner, officer, director, or employee of a person who controls, is controlled by, or is under common control with the investment adviser, if the status of the solicitor as a partner, officer, director, or employee of the investment adviser or other person, and any affiliation between the investment adviser and the other person, is disclosed to the client at the time of the solicitation or referral; or

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(C) the cash fee is paid to a solicitor other than a solicitor specified in paragraph (f)(5)(A) or (B), if all of the following conditions are met:

(i) The written agreement required by paragraph (f)(4) describes the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received, contains an undertaking by the solicitor to perform the solicitor's duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the act and the implementing regulations, and requires the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, to provide the client with a current copy of the investment adviser's written disclosure statement required under the brochure delivery requirements of K.A.R. 81-14-10(b) and a separate written disclosure document described in paragraph (f)(6).

(ii) The investment adviser receives from the client, before or when entering into any written or oral investment advisory contract with the client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document.

(iii) The investment adviser makes a bona fide effort to ascertain whether the solicitor has complied with the written agreement required by paragraph (f)(4), and the investment adviser has a reasonable basis for believing that the solicitor has complied with the agreement.

(6) The separate written disclosure document required to be furnished by the solicitor to the client shall contain the following information:

- (A) The name of the solicitor;
- (B) the name of the investment adviser;

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(C) the nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

(D) a statement that the solicitor will be compensated for the solicitation services by the investment adviser;

(E) the terms of the compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and

(F) the amount in addition to the advisory fee that the client will be charged for the costs of the solicitor's services, and any difference in fees paid by clients if the difference is attributable to the existence of any arrangement in which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.

(7) Nothing in this subsection shall be deemed to relieve any person of any fiduciary or other obligation to which a person may be subject under any law.

(g) Prohibited conduct: agency cross transactions.

(1) For the purposes of this subsection, "agency cross transaction for an advisory client" shall mean a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with the investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction. Each person acting in this capacity shall be required to be registered as a broker-dealer in this state unless excluded from the definition of broker-dealer under K.S.A. 17-12a102, and amendments thereto.

(2) An investment adviser shall not effect an agency cross transaction for an advisory client unless all of the following conditions are met:

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(A) The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for the client.

(B) Before obtaining this written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker-dealer for both parties to the transaction, receive commissions from both parties, and have a potentially conflicting division of loyalties and responsibilities.

(C) At or before the completion of each agency cross transaction, the investment adviser sends the client a written confirmation. The written confirmation shall include all of the following information:

- (i) A statement of the nature of the transaction;
- (ii) the date the transaction took place;
- (iii) an offer to furnish, upon request, the time when the transaction took place; and
- (iv) the source and amount of any other remuneration that the investment adviser received or will receive in connection with the transaction.

~~In the case of~~ For a purchase in which the investment adviser was not participating in a distribution, or a sale in which the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser has received or will receive any other remuneration and that the investment adviser will furnish the source and amount of remuneration to the client upon the client's written request.

(D) At least annually, the investment adviser sends each client a written disclosure statement identifying the total number of agency cross transactions during the period since the date of the last disclosure statement and the total amount of all commissions or other remuneration that the

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investment adviser received or will receive in connection with agency cross transactions for the client during the period.

(E) Each written disclosure and confirmation required by this subsection includes a conspicuous statement that the client may revoke the written consent required under paragraph (g)(2)(A) of this regulation at any time by providing written notice to the investment adviser.

(F) No agency cross transaction is ~~effected~~ in which the same investment adviser recommended the transaction to both any seller and any purchaser is effected.

(3) Nothing in this subsection shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfilling fiduciary duties with respect to the best price and execution for the particular transaction for the client, nor shall this subsection relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the act or the regulations under the act.

(h) Prohibited conduct: use of senior-specific certifications and professional designations.

(1) An investment adviser or investment adviser representative shall not use a senior-specific certification or designation that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in any way that misleads any person.

This prohibition shall include the following:

(A) The use of a certification or professional designation by a person who has not earned or is otherwise ineligible to use that certification or designation;

(B) the use of a nonexistent or self-conferred certification or professional designation;

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(C) the use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

(D) the use of a certification or professional designation that was obtained from a designating or certifying organization that meets any of the following conditions:

(i) Is primarily engaged in the business of instruction in sales or marketing;

(ii) does not have reasonable standards or procedures for ensuring the competency of its designees or ~~certificants~~ certificate holders;

(iii) does not have reasonable standards or procedures for monitoring and disciplining its designees or ~~certificants~~ certificate holders for improper or unethical conduct; or

(iv) does not have reasonable continuing education requirements for its designees or ~~certificants~~ certificate holders to maintain the professional designation or certification.

(2) There shall be a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph (h)(1)(D) if the organization has been accredited by any of the following:

(A) The American national standards institute;

(B) the national commission for certifying agencies; or

(C) an organization that is on the United States department of education's list titled "accrediting agencies recognized for title IV purposes," if the designation or credential does not primarily apply to sales or marketing, or both.

(3) In determining whether a combination of words or an acronym or initialism standing for a combination of words constitutes a certification or professional designation indicating or

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implying that a person has special certification or training in advising or servicing senior citizens or retirees, the factors to be considered shall include the following:

(A) The use of one or more words including “senior,” “retirement,” “elder,” or similar words, combined with one or more words including “certified,” “registered,” “chartered,” “adviser,” “specialist,” “consultant,” “planner,” or similar words, in the name of the certification or professional designation; and

(B) the manner in which the words are combined.

(4) For purposes of this subsection, the terms “certification” and “professional designation” shall not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, including an agency that regulates broker-dealers, investment advisers, or investment companies, if that job title indicates seniority or standing within the organization or specifies an individual’s area of specialization within the organization.

(i) Applicability to federal covered investment advisers. To the extent permitted by federal law, the provisions of this regulation governing investment advisers shall also apply to federal covered investment advisers. (Authorized by K.S.A. ~~17-12a502(b)~~ and 17-12a605(a); implementing K.S.A. 17-12a412(d)(13) and 17-12a502(a)(2) and (b); effective Oct. 26, 2001; amended Aug. 18, 2006; amended Aug. 15, 2008; amended May 22, 2009; amended P-_____.)

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81-14-11. Kansas private adviser exemption. (a) Exemption from registration. An investment adviser shall be exempt from the registration requirements of K.S.A. 17-12a403, and amendments thereto, if both of the following requirements are met:

(1) The investment adviser shall meet each of the following conditions:

(A) Maintain its principal place of business in Kansas;

(B) provide investment advice solely to fewer than 15 clients;

(C) not hold itself out generally to the public as an investment adviser; and

(D) not act as an investment adviser to any investment company registered ~~under~~ pursuant to section 8 of the investment company act of 1940, 15 U.S.C. § 80a-1 et seq. 80a-8, as adopted by reference in K.A.R. 81-2-1, or a company that has elected and has not withdrawn its election to be a business development company pursuant to section 54 of the investment company act of 1940, 15 U.S.C. § 80a-54, as adopted by reference in K.A.R. 81-2-1.

(2) Neither the investment adviser nor any of its advisory affiliates or associated investment adviser representatives shall be subject to a disqualification provision as described in rule 262 of SEC regulation A, 17 C.F.R. § 230.262, as adopted by reference in K.A.R. 81-2-1.

(b) Notice filing. Each investment adviser that qualifies for exemption under subsection (a) shall be subject to or exempt from filing a notice with the administrator as follows:

(1) Notice filing requirement. Each investment adviser that manages assets of no more than \$25 million on December 31 each year shall complete the identifying information required by item 1 of form ADV, part 1A and file the printed form with the administrator on or before February 1 of the following year. No fee shall be required with the notice filing required by this subsection.

(2) Exemption from notice filing requirement.

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(A) Each investment adviser that manages assets in excess of \$25 million and is registered with the SEC shall be exempt from the notice filing requirements of K.S.A. 17-12a405, and amendments thereto, and of paragraph (1) of this subsection.

(B) Each investment adviser that manages assets in excess of \$25 million, is an exempt reporting adviser, and files reports with the IARD system pursuant to SEC rule 204-4, 17 C.F.R. 275.204-4, as adopted by reference in K.A.R. 81-2-1, shall be exempt from the notice filing requirements of paragraph (1) of this subsection.

(c) Exemption for investment adviser representatives. An investment adviser representative shall be exempt from the registration requirements of K.S.A. 17-12a404, and amendments thereto, if the individual meets the following requirements:

(1) Is employed by or associated with an investment adviser that meets the exemption requirements under subsection (a);

(2) is not subject to a disqualification as described in rule 262 of SEC regulation A, 17 C.F.R. § 230.262; and

(3) does not otherwise act as an investment adviser representative.

(d) Transition. Each investment adviser or investment adviser representative who becomes ineligible for the exemption specified in this regulation shall comply with the registration or notice filing requirements under the act within 90 days after the date of ineligibility. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a403(b)(3), 17-12a404(b)(2), and 17-12a405(b)(3); effective Oct. 25, 2013; amended P-_____.)

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OFFICE OF THE SECURITIES COMMISSIONER OF KANSAS

ECONOMIC IMPACT STATEMENT

Amendments to Kansas Administrative Regulations

81-1-1, 81-2-1, 81-3-1, 81-3-5, 81-3-6, 81-3-7, 81-4-1, 81-4-4, 81-5-7, 81-5-15, 81-5-17, 81-5-21, 81-6-1, 81-7-1, 81-7-2, 81-14-1, 81-14-5, and 81-14-11

DESCRIPTIONS OF PROPOSED AMENDMENTS

Most of the proposed amendments to these regulations are technical in nature to update and clarify the applicable contexts of definitions, to update adoptions of SEC statutes and rules and FINRA rules by reference, to update references to authorizing and implementing statutes under the Kansas Uniform Securities Act (the “KUSA”), and to make improvements in wording and sentence structure to enhance readability and understandability of the regulations. Further descriptions and explanations of the regulations and proposed amendments are as follows.

K.A.R. 81-1-1 provides definitions for administration and enforcement of the Kansas Uniform Securities Act. Amendments are proposed to add or make technical changes to definitions of the following terms: “EFD”, “FINRA”, “IARD”, “NASD”, and “Nasdaq”.

K.A.R. 81-2-1 specifies forms required or allowed for use by persons regulated by the Agency and lists statutes, rules and other documents that are adopted by reference for use throughout the other regulations of the Agency. The proposed amendments delete or replace forms no longer in use, add new or updated forms that are specified in other regulations being amended, and update adoptions by reference due to changes in statutes and rules of the SEC and FINRA. New subsection (e) is proposed as an amendment to clarify that definitions within SEC statutes, SEC rules and regulations and FINRA rules adopted by reference apply if the definitions are in conflict with definitions in KUSA and regulations under KUSA. A new subsection (f) is proposed to clarify that there is no intent within the regulations adopted by the Commissioner to require the SEC, FINRA or other regulatory organizations to comply, administer or enforce the statutes, rules or policies under their jurisdiction that are adopted

by reference in K.A.R. 81-2-1, or to require the Commissioner to act on behalf of the SEC, FINRA or other regulatory organizations.

K.A.R. 81-3-1 specifies registration procedures for broker-dealers and agents. The proposed amendments to this regulation provide technical updates including: deletion of (a)(2) which duplicates a statutory provision; replacement of NASD with FINRA as defined in proposed K.A.R. 81-1-1; addition of registration requirements for broker-dealers that are not required to file with the CRD system; replacement of financial statement and net capital disclosure requirements of broker-dealers with an adoption by reference to the FINRA and SEC requirements for annual reports with audited financial statements; clarification of requirements for new broker-dealers not yet subject to the FINRA and SEC annual report requirements; and other technical updates regarding filing requirements for agents of intrastate broker-dealers and renewals of registrations.

K.A.R. 81-3-5 pertains to broker-dealers that provide services on the premises of financial institutions where retail deposits are received, and specifies various requirements intended to ensure that customers understand the distinction between the physical location and services of the financial institution and the location and services of the broker-dealer. The proposed amendments update the definition of “broker-dealer services” within the regulation, and add a requirement for broker-dealers on the premises of credit unions to disclose to customers that securities purchased or sold in broker-dealer transactions are not insured by the National Credit Union Share Insurance Fund (“NCUSIF”). Previously, the regulation made reference only to FDIC insurance which pertains to retail deposits at banks.

K.A.R. 81-3-6 implements K.S.A. 17-12a412(d)(13) which prohibits unethical practices of broker-dealers and agents by specifying the conduct or failures to comply with standards that constitute unethical practices. The proposed amendments to this regulation update references to NASD conduct rules and FINRA rules in subsection (d). FINRA continues to administer and enforce NASD conduct

rules that have not been replaced or updated by FINRA rules since the consolidation of NASD and the regulatory functions of the New York Stock Exchange into FINRA as described in definitions of FINRA and NASD in the proposed amendments to K.A.R. 81-1-1.

K.A.R. 81-3-7 specifies supervisory, financial reporting, recordkeeping, net capital, and operational requirements for broker-dealers. The proposed amendments provide technical updates by reference to terms defined in K.A.R. 81-1-1 and to update SEC net capital rules adopted by reference in proposed amendments to K.A.R. 81-2-1. The updates are necessary for purposes of uniformity as provided for under K.S.A. 17-12a608.

K.A.R. 81-4-1 specifies filing and fee requirements for applications to register securities by coordination or qualification. The proposed amendments update subsection (b) with respect to Regulation A offerings by inserting a reference to Tier 1 offerings as a result of amendments to SEC rules under Regulation A that became effective on June 19, 2015. Regulation A now includes Tier 1 and Tier 2 offerings with different parameters and treatment under federal and state securities laws. Tier 1 offerings continue to be subject to registration requirements of state securities laws, but states are preempted from requiring registration of Tier 2 offerings. Anti-fraud provisions of state securities laws still apply to Tier 2 offerings.

K.A.R. 81-4-4 specifies that debt offerings of not-for-profit issuers are required to be registered as provided for under K.S.A. 17-12a201(7)(C) unless an exemption under other provisions of KUSA can be claimed, or unless the issuer meets other conditions with reference to Sec. 3(c)(10)(B) under the Investment Company Act of 1940. The proposed amendments update statute references and add a clarification for the exception from registration for an issuer excluded from the definition of investment company under Sec. 3(c)(10)(B) of the Investment Company Act of 1940. The clarification requires that the security is to be issued in exchange for assets contributed to a fund pursuant to Sec. 3(c)(10)(B) of the Investment Company Act of 1940.

K.A.R. 81-5-7 specifies securities that are exempt from registration under KUSA as provided for under K.S.A. 17-12a201(6)(B) by designating securities markets on which the securities are listed or approved for listing. The proposed amendments delete a substantial portion of existing provisions in this regulation which duplicate provisions of K.S.A. 17-12a201(6)(A) for federal covered securities that are exempt as a matter of federal preemption under Sec. 18(b)(1) of the Securities Act of 1933.

K.A.R. 81-5-15 specifies notice filing and fee requirements for offerings for which exemption is claimed under SEC Rule 506 as authorized under K.S.A. 17-12a302(c). The proposed amendments add a provision for electronic filings of Form D through the EFD system as defined in proposed amendments to K.A.R. 81-1-1, and add a reference to K.S.A. 17-12a307 with regard to authority of the Commissioner to modify the fee required for a late filing of Form D. The electronic filing provision does not alter the fee requirement for filing Form D and the referenced statutory authority for allowing modified late fees does not affect past and current practice.

K.A.R. 81-5-17 provides the Standard Manuals Exemption. The proposed amendments update the names of manuals designated by the Commissioner for the transactional exemption from securities registration that is provided by K.S.A. 17-12a202(2)(A)(iv). The amendments also clarify that the manuals may be in printed or electronic form.

K.A.R. 81-5-21 provides the “Invest Kansas Exemption” and specifies requirements and conditions for exemption from securities registration for Kansas-based issuers to offer securities to Kansas residents only, with a limit of \$1,000,000 for all sales of securities of the issuer within a 12-month period. The proposed amendments modify or clarify some of the conditions under subsection (a) of the regulation and reduce limitations currently in subsection (b) with regard to combination of this exemption with other exemptions under KUSA. Proposed amendments increase the maximum amount that any non-accredited purchaser of securities can invest from \$1,000 to \$5,000 along with a provision that two or more non-accredited purchasers residing at the same primary residence who have

a close family relationship are treated as a single purchaser for purposes of the \$5,000 limit. The requirements for the notice filing are being amended to specify that Form IKE is required to be filed before the use of general solicitation, but the alternative requirement to file a notice before the twenty-fifth sale of securities, if that occurs before using general solicitation, is eliminated. Subsection (b) is being amended to eliminate a restriction on the use of exemptions under K.S.A. 17-12a202 in conjunction with the Invest Kansas Exemption. That subsection continues to proscribe use of exemptions under other regulations in conjunction with this exemption.

K.A.R. 81-6-1 specifies form and content requirements for the prospectus to be used in registration statements for registrations by coordination or qualification, and the prospectus delivery requirements for registrations by qualification. The regulation is being amended to replace the reference to discontinued SEC form SB-2 with SEC form S-1 which is used for registrations by coordination with SEC registrations, unless some other form is required by the SEC and allowed by the Commissioner as provided for in this regulation. The proposed amendments to this regulation do not result in any economic impacts on the Agency, persons regulated by the Agency, other government agencies or the public.

K.A.R. 81-7-1 requires compliance with NASAA Statements of Policy, as applicable, that are adopted by reference in the regulation and also specifies financial statement requirements for registration statements of issuers subject to this regulation. The proposed amendments update the adoptions by reference to include the dates the statements of policy were last amended by NASAA so that compliance with the most recent versions of the statements of policy is required by this regulation. A new subsection (c) is proposed to clarify that whenever definitions of terms within the context of statements of policy adopted by reference are in conflict with definitions in KUSA or regulations under KUSA, the definitions in the NASAA statements of policy shall apply.

K.A.R. 81-7-2 requires compliance with NASAA Guidelines and Statements of Policy, as applicable for specific types of securities or issuers, which are adopted by reference in the regulation, and it also specifies suitability provisions that may be required for registration and financial statement requirements for registration statements of issuers subject to this regulation. The proposed amendments update the adoptions by reference to include the dates the guidelines and statements of policy were last amended or adopted by NASAA so that compliance with the most recent versions of the statements of policy is required by this regulation. A new subsection (g) is proposed to clarify that whenever definitions of terms within the context of guidelines or statements of policy adopted by reference are in conflict with definitions in KUSA or regulations under KUSA, the definitions in the NASAA guidelines or statements of policy shall apply.

K.A.R. 81-14-1 specifies registration procedures and requirements for investment advisers and investment adviser representatives. The proposed amendments provide technical updates including deletion of (b)(1)(B)(i) which requires filing a copy of the investment adviser's surety bond if a surety bond is required by K.A.R. 81-14-9(e) and replacement of NASD with FINRA as defined in proposed K.A.R. 81-1-1. Subsection (e) that specified surety bond requirements for investment advisers was deleted from K.A.R. 81-14-9, and therefore, the reference to that subsection in this regulation should be deleted.

K.A.R. 81-14-5 implements K.S.A. 17-12a412(d)(13) and 17-12a502 which prohibit dishonest, unethical and fraudulent practices of investment advisers and investment adviser representatives. The proposed amendments to this regulation provide technical updates including the addition of references to K.A.R. 81-2-1 to adopt sections of the federal Investment Advisers Act of 1940 by reference, addition of a reference to FINRA rules, and wording and sentence structure changes for improved readability and clarity.

K.A.R. 81-14-11 provides the “Kansas Private Adviser Exemption”, an exemption from registration for investment advisers and associated investment adviser representatives having their principal place of business in Kansas if: they provide investment advice solely to fewer than 15 clients; do not hold out generally to the public as investment advisers; do not act as an investment adviser to investment companies or business development companies pursuant to provisions of the federal Investment Company Act of 1940; and are not subject to any disqualification provisions described in Rule 262 of SEC Regulation A. The proposed amendments include technical updates for adoptions by reference in K.A.R. 81-2-1, and a new provision (B) under subsection (b)(2) to clarify that investment advisers that file reports with the IARD system as exempt reporting advisers pursuant to SEC Rule 204-4 are exempt from the notice filing requirements specified by subsection (b)(1) of this regulation. That notice filing exemption has existed as a matter of interpretation and practice by the Agency, but was not stated in the regulation as proposed by the amendment described above.

FEDERAL LAW MANDATE CONSIDERATIONS

None of the regulations or proposed amendments to the regulations described above are mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program and the proposed amendments do not exceed requirements of federal law.

DESCRIPTION OF COSTS AND ECONOMIC IMPACTS

None of the proposed amendments to regulations described above result in any material or measurable costs or economic impacts on the Agency, persons regulated by the Agency, other government agencies or the public. Although the federal preemption of securities registration requirements under the Kansas Uniform Securities Act and K.A.R. 81-4-1 for SEC Regulation A Tier 2 offerings could possibly result in fiscal effects on the Agency, the impact is expected to be immaterial

in relation to overall Agency operations. The Agency will not receive applications and registration fees for Tier 2 offerings, but will not incur variable examination costs for Tier 2 offerings, and staff time that would be required for examinations of Tier 2 offerings can be allocated to other regulatory work. The volume of Regulation A offerings has been very limited in recent years and it is not deemed possible to accurately estimate whether federal preemption will result in increased volumes of Tier 2 offerings. The economic impact on issuers conducting Tier 2 offerings under Regulation A would include cost savings related to applications for registration, such as the registration fee and costs to resolve compliance deficiencies, however, it is not deemed possible to estimate those savings. The amendment to the Invest Kansas Exemption proposed in K.A.R. 81-5-21 which increases the purchase limit per non-accredited investor from \$1,000 to \$5,000 was previously authorized by a Special Order that is currently in effect, so that amendment will have no economic impact on non-accredited investors or issuers of securities in IKE offerings.

LESS COSTLY OR LESS INTRUSIVE ALTERNATIVES

The proposed amendments to regulations are not more costly to the Agency, persons regulated by the Agency, other government agencies or the public as compared to current versions of the regulations, and the proposed amendments do not involve more intrusive methods for accomplishing the purposes of the regulations and administering and enforcing the Kansas Uniform Securities Act.