

HOUSE BILL No. 2663

AN ACT amending the Kansas uniform securities act; amending K.S.A. 2005 Supp. 17-12a102, 17-12a202, 17-12a305, 17-12a405, 17-12a406 and 17-12a412 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2005 Supp. 17-12a102 is hereby amended to read as follows: 17-12a102. In this act, unless the context otherwise requires:

(1) “Administrator” means the securities commissioner of Kansas, appointed as provided in K.S.A. 75-6301, and amendments thereto.

(2) “Agent” means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer’s securities, but a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this act.

(3) “Bank” means:

(A) A banking institution organized under the laws of the United States;

(B) a member bank of the federal reserve system;

(C) any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the comptroller of the currency pursuant to section 1 of Public Law 87-722 (12 U.S.C. section 92a), and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this act; and

(D) a receiver, conservator, or other liquidating agent of any institution or firm included in subparagraph (A), (B), or (C).

(4) “Broker-dealer” means a person engaged in the business of effecting transactions in securities for the account of others or for the person’s own account. The term does not include:

(A) An agent;

(B) an issuer;

(C) a bank, savings institution, or trust company if:

(i) Its activities as a broker-dealer are limited to those specified in subsections 3(a)(4)(B)(i) through (vi) and (viii) through (x); 3(a)(4)(B)(xi) if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the securities exchange act of 1934 (15 U.S.C. sections 78c(a)(4) and (5)); or

(ii) it is a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the securities exchange act of 1934 (15 U.S.C. section 78c(a)(4));

(D) an international banking institution; or

(E) a person excluded by rule adopted or order issued under this act.

(5) “Depository institution” means:

(A) A bank; or

(B) a savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund, or a successor authorized by federal law. The term does not include:

(i) An insurance company or other organization primarily engaged in the business of insurance;

(ii) a morris plan bank; or

(iii) an industrial loan company.

(6) “Federal covered investment adviser” means a person registered under the investment advisers act of 1940.

(7) “Federal covered security” means a security that is, or upon completion of a transaction will be, a covered security under section 18(b) of the securities act of 1933 (15 U.S.C. section 77r(b)) or rules or regulations adopted pursuant to that provision.

(8) “Filing” means the receipt under this act of a record by the administrator or a designee of the administrator.

(9) “Fraud,” “deceit,” and “defraud” are not limited to common law deceit.

(10) “Guaranteed” means guaranteed as to payment of all principal and all interest.

(11) “Institutional investor” means any of the following, whether acting for itself or for others in a fiduciary capacity:

(A) A depository institution or international banking institution;

(B) an insurance company;

(C) a separate account of an insurance company;

(D) an investment company as defined in the investment company act of 1940;

(E) a broker-dealer registered under the securities exchange act of 1934;

(F) an employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a named fiduciary, as defined in the employee retirement income security act of 1974, that is a broker-dealer registered under the securities exchange act of 1934, an investment adviser registered or exempt from registration under the investment advisers act of 1940, an investment adviser registered under this act, a depository institution, or an insurance company;

(G) a plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the employee retirement income security act of 1974, that is a broker-dealer registered under the securities exchange act of 1934, an investment adviser registered or exempt from registration under the investment advisers act of 1940, an investment adviser registered under this act, a depository institution, or an insurance company;

(H) a trust, if it has total assets in excess of \$10,000,000, its trustee is a depository institution, and its participants are exclusively plans of the types identified in subparagraph (F) or (G), regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

(I) an organization described in section 501(c)(3) of the internal revenue code (26 U.S.C. section 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$10,000,000;

(J) a small business investment company licensed by the small business administration under Section 301(c) of the small business investment act of 1958 (15 U.S.C. section 681(c)) with total assets in excess of \$10,000,000;

(K) a private business development company as defined in section 202(a)(22) of the investment advisers act of 1940 (15 U.S.C. section 80b-2(a)(22)) with total assets in excess of \$10,000,000;

(L) a federal covered investment adviser acting for its own account;

(M) a “qualified institutional buyer” as defined in rule 144A(a)(1), other than rule 144A(a)(1)(i)(H), adopted under the securities act of 1933 (17 C.F.R. 230.144A);

(N) a “major U.S. institutional investor” as defined in rule 15a-6(b)(4)(i) adopted under the securities exchange act of 1934 (17 C.F.R. 240.15a-6);

(O) any other person, other than an individual, of institutional character with total assets in excess of \$10,000,000 not organized for the specific purpose of evading this act; or

(P) any other person specified by rule adopted or order issued under this act.

(12) “Insurance company” means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state.

(13) “Insured” means insured as to payment of all principal and all interest.

(14) “International banking institution” means an international finan-

cial institution of which the United States is a member and whose securities are exempt from registration under the securities act of 1933.

(15) “Investment adviser” means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include:

- (A) An investment adviser representative;
- (B) a lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person’s profession;
- (C) a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;
- (D) a publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;
- (E) a federal covered investment adviser;
- (F) a bank, savings institution or trust company;
- (G) any other person that is excluded by the investment advisers act of 1940 from the definition of investment adviser; or
- (H) any other person excluded by rule adopted or order issued under this act.

(16) “Investment adviser representative” means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:

- (A) Performs only clerical or ministerial acts;
- (B) is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;
- (C) is employed by or associated with a federal covered investment adviser, unless the individual has a “place of business” in this state, as that term is defined by rule adopted under section 203A of the investment advisers act of 1940 (15 U.S.C. section 80b-3a), and is:
 - (i) An “investment adviser representative” as that term is defined by rule adopted under section 203A of the investment advisers act of 1940 (15 U.S.C. section 80b-3a); or
 - (ii) not a “supervised person” as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(25)); or
- (D) is excluded by rule adopted or order issued under this act.

(17) “Issuer” means a person that issues or proposes to issue a security, subject to the following:

- (A) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued.
- (B) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.
- (C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of

production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

(18) “Nonissuer transaction” or “nonissuer distribution” means a transaction or distribution not directly or indirectly for the benefit of the issuer.

(19) “Offer to purchase” includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to section 14(d) of the securities exchange act of 1934 (15 U.S.C. 78n(d)).

(20) “Person” means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(21) “Place of business” of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

(A) An office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or

(B) any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

(22) “Predecessor act” means the Kansas securities act repealed by ~~section 67~~ *K.S.A. 2005 Supp. 17-12a703, and amendments thereto.*

(23) “Price amendment” means the amendment to a registration statement filed under the securities act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the securities act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(24) “Principal place of business” of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

(25) “Record,” except in the phrases “of record,” “official record,” and “public record,” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) “Sale” includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value, and “offer to sell” includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value.

(A) A security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(B) A gift of assessable stock is considered to involve an offer and sale.

(C) A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, is considered to include an offer of the other security.

(27) “Securities and exchange commission” means the United States securities and exchange commission.

(28) “Security” means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a “security”; or a certificate of interest or

participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term:

- (A) Includes both a certificated and an uncertificated security;
- (B) does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or other specified period;
- (C) does not include an interest in a contributory or noncontributory pension or welfare plan subject to the employee retirement income security act of 1974;
- (D) includes as an “investment contract” an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor. A “common enterprise” means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party or other investors; and
- (E) “investment contract” may include an interest in a limited partnership and a limited liability company and shall include a viatical investment as defined by rule adopted or order issued under this act.

(29) “Self-regulatory organization” means a national securities exchange registered under the securities exchange act of 1934, a national securities association of broker-dealers registered under the securities exchange act of 1934, a clearing agency registered under the securities exchange act of 1934, or the municipal securities rulemaking board established under the securities exchange act of 1934.

(30) “Sign” means, with present intent to authenticate or adopt a record:

- (A) To execute or adopt a tangible symbol; or
- (B) to attach or logically associate with the record an electronic symbol, sound, or process.

(31) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(32) “Rules” when used in the context of the rules adopted by the administrator, means rules and regulations adopted by the administrator pursuant to this act.

Sec. 2. K.S.A. 2005 Supp. 17-12a202 is hereby amended to read as follows: 17-12a202. The following transactions are exempt from the requirements of K.S.A. 2005 Supp. 17-12a301 through 17-12a306 and 17-12a504, and amendments thereto:

(1) An isolated nonissuer transaction, whether effected by or through a broker-dealer or not;

(2) a nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this act, and a resale transaction by a sponsor of a unit investment trust registered under the investment company act of 1940, in a security of a class that has been outstanding in the hands of the public for at least 90 days, if, at the date of the transaction:

(A) (i) The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(ii) the security is sold at a price reasonably related to its current market price;

(iii) the security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution; and

(iv) a nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this act or a record filed with the securities and exchange commission that is publicly available contains:

- (a) A description of the business and operations of the issuer;
- (b) the names of the issuer’s executive officers and the names of the issuer’s directors, if any;
- (c) an audited balance sheet of the issuer as of a date within 18

months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and

(d) an audited income statement for each of the issuer's two immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; or

(B) (i) the issuer of the security has a class of equity securities listed on a national securities exchange registered under the securities exchange act of 1934 or designated for trading on the national association of securities dealers automated quotation system, unless the issuer of the security is a unit investment trust registered under the investment company act of 1940;

(ii) the issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; and

(iii) the issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had the audited balance sheet, a pro forma balance sheet for the combined organization;

(3) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the board of governors of the federal reserve system;

(4) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in an outstanding security if the guarantor of the security files reports with the securities and exchange commission under the reporting requirements of section 13 or 15(d) of the securities exchange act of 1934 (15 U.S.C. 78m or 78o(d));

(5) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in a security that:

(A) Is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories; or

(B) has a fixed maturity or a fixed interest or dividend, if:

(i) A default has not occurred during the current fiscal year or within the three previous fiscal years of the issuer and any predecessor in the payment of principal, interest, or dividends on the security; and

(ii) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous 12 months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(6) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act effecting an unsolicited order or offer to purchase;

(7) a nonissuer transaction executed by a bona fide pledgee without the purpose of evading this act;

(8) a nonissuer transaction by a federal covered investment adviser with investments under management in excess of \$100,000,000 acting in the exercise of discretionary authority in a signed record for the account of others;

(9) a transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the administrator after a hearing or otherwise;

(10) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(11) a transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:

(A) The note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;

(B) a general solicitation or general advertisement of the transaction is not made; and

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this act as a broker-dealer or as an agent;

(12) a transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(13) a sale or offer to sell to:

(A) An institutional investor;

(B) a federal covered investment adviser; or

(C) any other person exempted by rule adopted or order issued under this act;

(14) a sale or an offer to sell securities by an issuer, if the transaction is part of a single issue in which:

(A) Not more than 25 purchasers are present in this state during any 12 consecutive months, other than those designated in paragraph (13);

(B) a general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this act or an agent registered under this act for soliciting a prospective purchaser in this state; and

(D) the issuer reasonably believes that all the purchasers in this state, other than those designated in paragraph (13), are purchasing for investment;

(15) a transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state;

(16) an offer to sell, but not a sale, of a security not exempt from registration under the securities act of 1933 if:

(A) A registration or offering statement or similar record as required under the securities act of 1933 has been filed, but is not effective, or the offer is made in compliance with rule 165 adopted under the securities act of 1933 (17 C.F.R. 230.165); and

(B) a stop order of which the offeror is aware has not been issued against the offeror by the administrator or the securities and exchange commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;

(17) an offer to sell, but not a sale, of a security exempt from registration under the securities act of 1933 if:

(A) A registration statement has been filed under this act, but is not effective;

(B) a solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the administrator under this act; and

(C) a stop order of which the offeror is aware has not been issued by the administrator under this act and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending;

(18) a transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties;

(19) a rescission offer, sale, or purchase under K.S.A. 2005 Supp. 17-12a510, and amendments thereto;

(20) an offer or sale of a security through a broker-dealer registered under this act to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this act;

(21) employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned sub-

subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

(A) Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors;

(B) family members who acquire such securities from those persons through gifts or domestic relations orders;

(C) former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and

(D) insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than 50% of their annual income from those organizations;

(22) a transaction involving:

(A) A stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;

(B) an act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or

(C) the solicitation of tenders of securities by an offeror in a tender offer in compliance with rule 162 adopted under the securities act of 1933 (17 C.F.R. 230.162); ~~or~~

(23) a nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this act, if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under this act; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than 180 days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by rule adopted or order issued under this act, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and the Toronto stock exchange, inc., is a designated securities exchange. After an administrative hearing in compliance with the Kansas administrative procedure act, the administrator, by rule adopted or order issued under this act, may revoke the designation of a securities exchange under this paragraph, if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors; or

(24) *a transaction involving an interest in oil, gas or other mineral rights that is conducted in compliance with a rule adopted or order issued under this act. In the rule or order, the administrator may limit the availability of other exemptions provided herein for transactions involving interests in oil, gas or other mineral rights.*

Sec. 3. K.S.A. 2005 Supp. 17-12a305 is hereby amended to read as follows: 17-12a305. (a) *Who may file.* A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this act.

(b) *Filing fee.* A person filing a registration statement shall pay a fee established by the administrator by rule or order, but not more than \$2,500 for each year that the registration statement is effective. If a registration statement is withdrawn before the effective date or a preeffective stop order is issued under K.S.A. 2005 Supp. 17-12a306, and amendments thereto, the administrator shall retain an amount of the fee established by the administrator by rule or order.

(c) *Status of offering.* A registration statement filed under K.S.A. 2005 Supp. 17-12a303 or 17-12a304, and amendments thereto, must specify:

(1) The amount of securities to be offered in this state;

(2) the states in which a registration statement or similar record in connection with the offering has been or is to be filed; and

(3) any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the securities and exchange commission, or a court.

(d) *Incorporation by reference.* A record filed under this act or the predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

(e) *Nonissuer distribution.* In the case of a nonissuer distribution, information or a record may not be required under subsection (i) or K.S.A. 2005 Supp. 17-12a304, and amendments thereto, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

(f) *Escrow and impoundment.* A rule adopted or order issued under this act may require as a condition of registration that a security issued within the previous five years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this act, but the administrator may not reject a depository institution solely because of its location in another state.

(g) *Form of subscription.* A rule adopted or order issued under this act may require as a condition of registration that a security registered under this act be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this act or preserved for a period specified by the rule or order, which may not be longer than five years.

(h) *Effective period.* Except while a stop order is in effect under K.S.A. 2005 Supp. 17-12a306, and amendments thereto, a registration statement is effective for one year after its effective date, or for any longer period designated by rule adopted or order issued under this act during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this act are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the administrator.

(i) *Periodic reports.* While a registration statement is effective, a rule adopted or order issued under this act may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

(j) *Posteffective amendments.* A registration statement shall be amended after its effective date if there are material changes in information or documents in the registration statement or if there is an increase in the aggregate amount of securities offered or sold in this state. The posteffective amendment becomes effective when *filed with* the administrator ~~provides written notice that the amendment has been accepted.~~ If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a registration fee based upon the increase in such price calculated in accordance with the rate and fee specified in subsection (b). If a posteffective amendment for registration of additional securities and payment of additional fees is not filed in a timely manner, there shall be no penalty assessed if the amendment is filed and the additional registration fee is paid within one year after the date the additional securities are sold in this state.

Sec. 4. K.S.A. 2005 Supp. 17-12a405 is hereby amended to read as

follows: 17-12a405. (a) *Notice filing requirement.* Except with respect to a federal covered investment adviser described in subsection (b), it is unlawful for a federal covered investment adviser to transact business in this state as a federal covered investment adviser unless the federal covered investment adviser complies with subsection (c).

(b) *Notice filing requirement not required.* The following federal covered investment advisers are not required to comply with subsection (c):

(1) A federal covered investment adviser without a place of business in this state if its only clients in this state are:

(A) Federal covered investment advisers, investment advisers registered under this act, and broker-dealers registered under this act;

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this state; or

(D) other clients specified by rule adopted or order issued under this act;

(2) a federal covered investment adviser without a place of business in this state if it has had, during the preceding 12 months, not more than five clients that are resident in this state in addition to those specified under paragraph (1); and

(3) any other person excluded by rule adopted or order issued under this act.

(c) *Notice filing procedure.* A person acting as a federal covered investment adviser, not excluded under subsection (b), shall file a notice, a consent to service of process complying with K.S.A. 2005 Supp. 17-12a611, and amendments thereto, and such records as have been filed with the securities and exchange commission under the investment advisers act of 1940 required by rule adopted or order issued under this act and pay the fees specified in K.S.A. 2005 Supp. ~~17-12a410(e)~~ 17-12a410(a)(5), and amendments thereto.

(d) *Effectiveness of filing.* The notice under subsection (c) becomes effective upon its filing, and shall expire on December 31 each year, unless renewed.

Sec. 5. K.S.A. 2005 Supp. 17-12a406 is hereby amended to read as follows: 17-12a406. (a) *Application for initial registration.* A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with K.S.A. 2005 Supp. 17-12a611, and amendments thereto, and paying the fee specified in K.S.A. 2005 Supp. 17-12a410, and amendments thereto, and any reasonable fees charged by the designee of the administrator for processing the filing. The application must contain:

(1) The information or record required for the filing of a uniform application; and

(2) upon request by the administrator, any other financial or other information or record that the administrator determines is appropriate.

(b) *Amendment.* If the information or record contained in an application filed under subsection (a) is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) *Effectiveness of registration.* If the administrator finds that the applicant and, if applicable, the officers, directors or partners of the applicant are of sufficient character and reputation to warrant the public trust, and an order is not in effect and a proceeding is not pending under K.S.A. 2005 Supp. 17-12a412, and amendments thereto, registration becomes effective at noon on the 45th day after a completed application is filed, unless the registration is denied or the administrator has given written notice of deficiencies that are unresolved and that would constitute grounds for denial under K.S.A. 2005 Supp. 17-12a412, and amendments thereto. A rule adopted or order issued under this act may set an earlier effective date or may defer the effective date until noon on the 45th day after the filing of any amendment completing the application.

(d) *Registration renewal.* A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under K.S.A. 2005 Supp. 17-12a412, and amendments thereto, a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued

under this act, by paying the fee specified in K.S.A. 2005 Supp. 17-12a410, and amendments thereto, and by paying costs charged by the designee of the administrator for processing the filings.

(e) *Additional conditions or waivers.* A rule adopted or order issued under this act may impose other conditions not inconsistent with the national securities markets improvement act of 1996. An order issued under this act may waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

Sec. 6. K.S.A. 2005 Supp. 17-12a412 is hereby amended to read as follows: 17-12a412. (a) *Disciplinary conditions-applicants.* An order issued under this act may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative if the administrator finds that the order is in the public interest and that there is a ground for discipline under subsection (d) against the applicant or, if the applicant is a broker-dealer or investment adviser, against any partner, officer, director, person having a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser.

(b) *Disciplinary conditions — registrants.* An order issued under this act may revoke, suspend, condition, or limit the registration of a registrant if the administrator finds that the order is in the public interest and that there is a ground for discipline under subsection (d) against the registrant or, if the registrant is a broker-dealer or investment adviser, against any partner, officer, or director, any person having a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser. However, the administrator:

(1) May not institute a revocation or suspension proceeding under this subsection based on an order issued by another state that is reported to the administrator or designee later than one year after the date of the order on which it is based; and

(2) under subsection (d)(5)(A) and (B), may not issue an order on the basis of an order under the state securities act of another state unless the other order was based on conduct for which subsection (d) would authorize the action had the conduct occurred in this state.

(c) *Disciplinary penalties — registrants.* If the administrator finds that the order is in the public interest and that there is a ground for discipline under subsection (d)(1) through (6), (8), (9), (10), (12) or (13) against a registrant or, if the registrant is a broker-dealer or investment adviser, against any partner, officer, or director, any person having similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser, then the administrator may enter an order against the registrant containing one or more of the following sanctions or remedies:

(1) A censure;

(2) a bar or suspension from association with a broker-dealer or investment adviser registered in this state;

(3) a civil penalty up to \$25,000 for each violation. If any person is found to have violated any provision of this act, and such violation is committed against elder or disabled persons, as defined in K.S.A. 50-676, and amendments thereto, in addition to any civil penalty otherwise provided by law, the administrator may impose an additional penalty not to exceed \$15,000 for each such violation. The total penalty against a person shall not exceed \$1,000,000;

(4) an order requiring the registrant to pay restitution for any loss or disgorge any profits arising from a violation, including, in the administrator's discretion, the assessment of interest from the date of the violation at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto;

(5) an order charging the registrant with the actual cost of an investigation or proceeding; or

(6) an order requiring the registrant to cease and desist from any action that constitutes a ground for discipline, or to take other action necessary or appropriate to comply with this act.

(d) *Grounds for discipline.* A person may be disciplined under subsections (a) through (c) if the person:

(1) Has filed an application for registration in this state under this act

or the predecessor act within the previous 10 years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) willfully violated or willfully failed to comply with this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous 10 years;

(3) has been convicted of a felony or within the previous 10 years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(4) is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this act or the predecessor act, a state, the securities and exchange commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(5) is the subject of an order, issued after notice and opportunity for hearing by:

(A) The securities, depository institution, insurance, or other financial services regulator of a state or by the securities and exchange commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;

(B) the securities regulator of a state or by the securities and exchange commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser;

(C) the securities and exchange commission or by a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;

(D) a court adjudicating a United States postal service fraud order;

(E) the insurance regulator of a state denying, suspending, or revoking the registration of an insurance agent; or

(F) a depository institution regulator suspending or barring a person from the depository institution business;

(6) is the subject of an adjudication or determination, after notice and opportunity for hearing, by the securities and exchange commission, the commodity futures trading commission, the federal trade commission, a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated the securities act of 1933, the securities exchange act of 1934, the investment advisers act of 1940, the investment company act of 1940, or the commodity exchange act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;

(7) is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the administrator may not enter an order against an applicant or registrant under this paragraph without a finding of insolvency as to the applicant or registrant;

(8) refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under K.S.A. 2005 Supp. 17-12a411(d), and amendments thereto, refuses access to a registrant's office to conduct an audit or inspection under K.S.A. 2005 Supp. 17-12a411(d), and amendments thereto, fails to keep or maintain sufficient records to permit an audit disclosing the condition of the registrant's business, or fails willfully and without cause to comply with a request for information by the administrator or person designated by the administrator in conducting investigations or examinations under this act;

(9) has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous 10 years;

(10) has not paid the proper filing fee within 30 days after having been notified by the administrator of a deficiency, but the administrator

shall vacate an order under this paragraph when the deficiency is corrected;

(11) after notice and opportunity for a hearing, has been found within the previous 10 years:

(A) By a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;

(B) to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or

(C) to have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;

(12) is the subject of a cease and desist order issued by the securities and exchange commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state;

(13) has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years; ~~or~~

(14) is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this paragraph if the individual has successfully completed all examinations required by subsection (e). The administrator may require an applicant for registration under K.S.A. 2005 Supp. 17-12a402 or 17-12a404, and amendments thereto, who has not been registered in a state within the two years preceding the filing of an application in this state to successfully complete an examination; *or*

(15) *lacks sufficient character or reputation to warrant the public trust.*

(e) *Examinations.* A rule adopted or order issued under this act may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this act may waive, in whole or in part, an examination as to an individual and a rule adopted under this act may waive, in whole or in part, an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(f) *Summary process.* In accordance with the Kansas administrative procedures act, the administrator may use summary or emergency proceedings to suspend or deny an application; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty or cease and desist order on a registrant before final determination of an administrative proceeding. If a hearing is not requested and none is ordered by the administrator within 30 days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(g) *Procedural requirements.* (1) An order issued may not be issued under this section, except under subsection (f), without:

(A) Appropriate notice to the applicant or registrant;

(B) opportunity for hearing; and

(C) findings of fact and conclusions of law in a record.

(2) Proceedings under this subsection shall be conducted in accordance with the Kansas administrative procedures act.

(h) *Control person liability.* A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under subsections (a) through (c) to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

(i) *Limit on investigation or proceeding.* The administrator may not

institute a proceeding under subsection (a), (b), or (c) based solely on material facts actually known by the administrator unless an investigation or the proceeding is instituted within one year after the administrator actually acquires knowledge of the material facts.

Sec. 7. K.S.A. 2005 Supp. 17-12a102, 17-12a202, 17-12a305, 17-12a405, 17-12a406 and 17-12a412 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.