Approved 3/30/92
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by SENATOR RICHARD L. BOND
Chairperson at

9:13 a.m./~~p.m.~~ on Thursday, March 26, 19 92 in room 529-S of the Capitol.

~~All~~ members ~~were~~ present ~~except:~~ Senators Bond, Francisco, McClure, Moran, Parrish, Reilly, Salisbury, Strick, Ward and Yost.

Committee staff present:

Fred Carman, Revisor
Bill Wolff,Research
June Kossover, Committee Secretary

Conferees appearing before the committee:

Securities Commissioner James Parrish
State Treasurer Sally Thompson
Consumer Credit Commissioner William Caton

The meeting was called to order by Chairman Bond at 9:13 a.m.

Senator Moran made a motion, seconded by Senator Strick to approve the minutes of the meeting of March 25 as submitted. The motion carried.

The Chairman opened the hearing on HB 2842. Securities Commissioner James Parrish appeared before the committee to testify and explain the bill. (Attachment #1.) Commissioner Parrish explained that the bill is a series of technical amendments to several statutes relating to the registration of securities, exempt securities transactions, and the regulatory authority of the Securities Commissioner. Mr. Parrish also requested further amendments to the bill, to wit: Section (2), page 8, line 6, add "...and without cause,"; Section (4), page 13, line 21, add "...until July 1, 1993, aggregate number of sales by a limited liability company," and strike existing language; and in Section 4, page 13, line 36, to add (1). In response to Senator Salisbury's question, Commissioner Parrish advised that there would be no statutory limits on fees charged for examinations, that the intent was to recoup the actual expenses incurred by the agency.

There being no further questions and no further conferees, the hearing was closed. Senator Salisbury made a motion to conceptually amend the bill on page 17 to reflect that the Commissioner will set fees that relate to the cost of conducting examinations, and to change the term "rule and regulation" to the more appropriate term "rules and regulations" throughout the bill, and to adopt the amendments suggested by Commissioner Parrish. The motion was seconded by Senator Strick. The motion carried.

Senator Strick made a motion to pass HB 2842 favorably as amended. The motion was seconded by Senator McClure. The motion carried. The bill will be carried by Senator Nancy Parrish.

The Chairman opened the hearing on HB 2809, which would amend a law dealing with the timing of bond and interest payments by municipalities to permit the electronic transfer of bond and interest payments to the State Treasurer's Office. State Treasurer Sally Thompson appeared before the committee to testify in support of the bill. (Attachment #2.) Following discussion and clarification of the process of bond and interest payments and the financial impact on the General Fund, the hearing was closed. Senator McClure made a motion to move HB 2809 favorably and to place it on the Consent Calendar. The motion was seconded by Senator Reilly. The motion carried.

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,

room 529-S, Statehouse, at 9:13 a.m./p.m. on Thursday, March 26, 1992.

Chairman Bond opened the hearing on HB 2748, which would address the Kansas Investment Certificate Guaranty Fund. Consumer Credit Commissioner William Caton appeared as a proponent of the bill and to explain the necessity for this legislation. (Attachment #3.) Senator Moran offered further amendments (Attachment #4), stating that after the House passed the bill, it was found to be necesssary to go one step further and allow the Commissioner to liquidate funds. Mr. Carman suggested that "reorganization" should be added to the title. Following discussion, the hearing was closed. Senator Moran made a motion, seconded by Senator Parrish, to adopt the amendments. The motion carried.

Senator Moran made a motion to pass the bill favorably as amended. Senator Parrish seconded the motion. The motion carried. The bill will be carried by Senator Moran.

The committee adjourned at 10:03 a.m.

STATE OF KANSAS

OFFICE OF THE SECURITIES COMMISSIONER
Second Floor
618 South Kansas Avenue
Topeka, Kansas 66603-3804
(913) 296-3307

Joan Finney
Governor

James W. Parrish
Securities Commissioner

Before the Senate Committee
on Financial Institutions and Insurance

EXPLANATION OF HB 2842
Presented by
James W. Parrish
Securities Commissioner

House Bill No. 2842 proposes several amendments to the Kansas Securities Act.

Section 1

The first amendment appears on page 2, lines 6 through 9 and amends the definition of issuer to clarify who the issuer is in securities transactions involving oil, gas or mineral interests. The current definition without the amendment is somewhat ambiguous. This is significant because an issuer is exempt from the definition of broker-dealer. Therefore, anyone who could be characterised as an issuer would not be amenable to an enforcement action for violating K.S.A. 17-1254, acting as an unregistered broker-dealer.

Section 2

The second group of amendments are to K.S.A. 17-1254 and clarify and amplify the grounds for revoking or denying one's registration as a broker-dealer, agent or investment adviser. These grounds generally are found under K.S.A. 17-1254(g). The first amendment is found under subsection (4) and begins on the top of page 7, lines 1 through 5. Subsection (4) sets forth as grounds for revocation or denial the existence of a permanent or temporary injunction by any court. The amendment expands the scope of the subsection to include court injunctions relating to a broad range of investment activities, including insurance companies and depository institutions, and the commodities investment business.

The next amendment in Section 2, is found in subsection (6) beginning on page 7, in line 11 and lines 18 through 23.

FI&I 3/26/92

Attachment # 1

Subsection (6) sets forth that certain prior administrative orders by regulatory bodies are a basis for revoking or denying a securities registration. The amendments clarify and expand the scope of those prior orders to include orders by the Commodity Futures Trading Commission and orders by securities self regulatory agencies, most notably the National Association of Securities Dealers ("NASD").

The next amendment to this section is found on page 8, lines 2 through 5. Subsection (12) provides the grounds for denying or revoking a registration because of a failure to supervise employees of a broker-dealer or agent. As currently drafted, the provisions only apply to the broker-dealer or investment adviser in its corporate capacity. The proposed amendments make clear that they would also apply to any agent or employee who is charged with the responsibility of supervising other people.

The next amendment in this section is found on page 8, lines 6 through 8. This provides a new basis for denying or revoking registration. New subsection (13) would provide that the willful failure to comply with a request for information by the Commissioner would be a basis for denying or revoking a registration.

An additional amendment to new subsection (13) is being proposed by the balloon submitted by the Securities Commissioner. This amendment responds to concerns expressed by the Commissioner's advisory committee that a registered person not be punished when that person refuses to provide information based on some assented legal right or privilege, i.e. Fifth Amendment. The amendment provides that only if the registered person fails to provide information "willfully and without cause" is it a grounds for administrative sanction.

Section 3

Section 3 of the bill amends K.S.A. 17-1257 found on page 9, line 36. The amendment merely eliminates the requirement of filing three copies of the prospectus with the Commissioner. Those copies are duplicative and not needed and are just extra paperwork.

Some additional amendments are proposed by the revisors office and are found on pages 10 and 11. These are merely housekeeping amendments which bring the statutory language in conformity with current drafting guidelines. It replaces the male pronoun "he" with the word "the Commissioner" and the references to rules from "rules" to "rules and regulations."

Section 4

The next series amends K.S.A. 17-1262 which generally sets forth the transactional exemptions to the registration provisions of the Kansas Securities Act. These series of amendments are designed to eliminate some duplicative sections and to harmonize the conditions and numbers to a variety of exemptions currently available for certain domestic issuers.

The first amendment is found on page 12 to subsection (e), and is found at lines 7 through 9. The amendment provides that securities issued pursuant to a judicially approved settlement in a pending litigation would be exempt from registration. Such a provision is found in almost every state securities act except Kansas. That statutory subsection has been interpreted through opinion letters to apply to the circumstances set forth in the amendment. The amendment just conforms the statutory language to current interpretive opinions and regulatory practice.

The next amendment is found on the same page on lines 26 and 26. The amendment eliminates subsection (h). The redrafting of a domestic issuer exemption found later in this bill makes this statutory section redundant.

The next amendment is found on page 13 on lines 16 through 23. The effect of the amendments is to change the current exemption which is available only to Kansas corporations. It expands the exemption to cover corporations, limited partnerships and the newly-created limited liability companies formed under Kansas law. These amendments would eliminate the need for two subsequent subsections to 17-1262 that pertain specifically to limited partnerships and limited liability companies. It harmonizes the conditions and numbers for these three separate exemptions and makes them uniform. From a regulatory policy standpoint this seems to be more consistent and treats all of these issuers the same. The number is expanded from 15 to 20 for Kansas corporations; is reduced from 30 to 20 for Kansas limited partnerships and limited liability companies. The committee may recall the exemption for the new limited liability companies was quickly created last year within a sunset clause. The bill would make the exemption permanent for such companies with up to 20 members. The other conditions remain the same.

The language of new subsection (l) was amended by the House Committee in response to concerns expressed by the Kansas Society of Certified Public Accountants. The Society wanted another year to convert existing accounting firm partnership to limited liability company under the old terms allowing up to 35 sales. The Commissioner had no objection. However, the language provided by the Revisor's office was significantly broader than what was required and would allow such sales at any point in the future as long as the limited liability company was formed prior to July 1, 1993. We have proposed new language in the submitted herewith in the balloon

which more narrowly and effectively addresses these concerns. Also, a technical amendment is submitted in the second paragraph of subsection (l) to conform cross-references to the new sections in the amended bill.

The next amendment is found on page 14, subsection (n), lines 7 through 10. This provides the Commissioner with authority to exempt transactions involving the offer and sale of oil, gas and mineral leases in an auction format. A more detailed statement of conditions will be provided by rule and regulation. This amendment was in response to requests by the oil and gas industry. This issue was considered by the Commissioner's advisory committee. The conclusion of that committee and the Commissioner and staff is that the sale of interests in an auction format should be allowed without registration, provided appropriate conditions are imposed. Under these circumstances, registration is not essential to the protection of investors.

The next amendment to this section provided by the bill is to K.S.A. 17-1262. This statutory section generally sets forth a comprehensive exemption for oil, gas and mineral interests. The amendment is found on page 14, lines 7 through 10. It simply includes the new oil and gas auction exemptions as one of the other exemptions allowed or encompassed by this exemption.

The remaining amendments to this statutory section simply strike two statutory subsections currently found in subsections (p) and (r). These amendments are found on pages 14 and the top of page 15. These exemptions are eliminated and are now encompassed by the amendments previously discussed and on page 13 of the bill.

Section 5

This section contains a technical relettering amendment in subsection (c).

Section 6

The next amendment in the bill is to K.S.A. 17-1270. The first amendment is found on page 17, lines 13 through 24. It allows the Commissioner to set the fee to be paid by licensed persons who are subject to examinations by the Commissioner's staff. The current statute provides that the fee should not exceed $100.00 a day, plus actual expenses. This limit was set some time ago, and needs to be adjusted to more accurately reflect current costs. The amendment would allow the Commissioner to set the fee to be charged for such examinations by rule and regulation.

The remaining amendment to this section is found on page 18, subsection (g), lines 12 through 15. This amendment

simply clarifies that a document can be filed with the Commissioner by electronic format, a developing practice which is anticipated to become more commonplace after certain contemplated changes are implemented in federal procedures in the near future.

STATE OF KANSAS

Sally Thompson
TREASURER

900 JACKSON, SUITE 201
TOPEKA, KANSAS 66612-1235

TELEPHONE
(913) 296-3171

Testimony before the Senate Committee
on Financial Institutions and Insurance
presented by State Treasurer Sally Thompson
Thursday, March 26, 1992

Thank you Mr. Chairman, Sen. Bond, and members of the financial institutions and insurance committee for allowing this opportunity to discuss with you House Bill 2809.

One of the responsibilities of the state treasurer's office is to register all municipal bonds issued in the state of Kansas. We also act as transfer agent/paying agent (that is, collect bond payments and pay them out to bond holders) on approximately 85 percent of all of the bonds issued. Last year we collected fees for services amounting to $429,000 and generated $1,454,000 in interest income on these payments as they passed through the state treasury.

During the calendar year 1991, we registered 238 bond issues for a total dollar value of $785.0 million. We were selected as paying agent on 202 issues (85%) of the number of issues but only 57% of the dollar value. Part of the reason we were unable to be competitive on the large dollar bond issues is the reason I am here today.

HB 2809 allows the option of bond payment of principle and interest to arrive in the treasurer's office in one working day instead of three working days for funds transferred electronically. It allows the state and the treasurer's office to provide 20th century cash management procedures as well as reduce the cost to repay municipal bonds.

As it currently stands, KSA 10-130 does not contemplate electronic funds transfers of cash which gives us immediate use of

F I+I 3/26/92
Attachment #2

"collected funds". The three-day period in the 10-130 provides time for checks to clear and the assurance of "collected funds" before bond payments were paid out by the fiscal agency of the state treasurer's office. We will only offer the one day options for electronic transfers to keep the integrity of "collected funds" intact.

The most important issue is the revenue that is lost not only for the state's general fund but in the state's economy overall. The three-day funding requirement makes the state noncompetitive with out-of-state large bond servicing agents. I would like to share with you a recent (and dramatic) example of how the current wording impacted on the state in overall revenue lost:

The state treasurer's office was being considered by the City of Wichita to take over the servicing of Wichita's outstanding bond portfolio from their existing service agent, Chase Manhattan. In order to even be considered we had to find a way to achieve a one-day funds' transfer. The treasurer's office, therefore, arranged for the city to issue a check that wouldn't withdraw funds from their bond proceed fund until the day before payment date. In order to keep the city's business, Chase Manhattan offered not only free bond servicing (removed their fees) but also guaranteed a cash rebate of $200,000 the first year and $100,000 each year thereafter for the outstanding life of the bonds. We can only project that Chase Manhattan was earning a minimum of twice that much based on the interest earned on float. This is interest dollars not earned by the state of Kansas. Not to mention, this creates a situation of million dollar checks floating through the mail system.

If you have any questions, I will be happy to answer them. Thank you for your attention to this issue.

1042bst92

THE STATE OF KANSAS

OFFICE OF **Consumer Credit Commissioner**

JOAN FINNEY
Governor

WM. F. CATON
Commissioner

March 25, 1992

SENATE FINANCIAL INSTITUTIONS & INSURANCE

TESTIMONY BY BILL CATON - HOUSE BILL NO. 2748

In 1981, the Kansas Legislature enacted the Kansas Investment Certificate Guaranty Fund Act to provide a limited guarantee to certificate holders of Investment Certificate Corporations that have been regulated since 1961 and in existence long before that. Investment Certificate Corporations were licensed lenders who raised funds to underwrite their loan portfolios by issuing certificates to investors similar to bank savings accounts and certificates of deposit. This Guaranty Fund was set up in a private corporation managed by the member Investment Certificate Companies and overseen by the consumer credit commissioner.

At this time, there are only two Investment Certificate Corporations left in existence that are owned by the same stockholder and are presently in chapter 11 Bankruptcy. The value of the assets of the bankrupt companies plus the Guaranty Fund money (approx $498,000) appears to be short in paying the $8,900,000 of investment certificates off in full.

This problem has not been isolated to Kansas. All other states that this office is aware of that had similar legislation have ended with Investment Certificate Companies going out of business and the Guaranty Fund being depleted. The concept of creating a local guaranty fund without large participation is similar to creating an insurance company that never sold enough policies to spread the risk enough to weather a disaster.

Another problem is the misconception that investors perceived that "Funds in investment certificates owned by a single investor are protected up to an aggregate maximum of $10,000 by the Kansas Investment Certificate Guaranty Fund Corporation" meant that there was NO risk up to that amount. It appeared to be the same as FDIC insurance only on a smaller scale and local level. The concept of the guaranty fund was to limit the risk to investors to insure that funds would be available for credit from a local investor base. This was misconceived to be an "insurance" fund to unconditionally "insure deposits" instead of investments. Even though all certificates and written advertisements disclaim any liability of the State, many of the certificate holders feel the State has allowed them to be misled and consequentially loose money. The fact that bankruptcy proceedings have stayed the State from intervention and liquidation has put an undo burden and hardship on many of the investors.

LANDON STATE OFFICE BUILDING, 900 JACKSON, ROOM 352 • TOPEKA, KANSAS 66612 • (913) 296-3151

F I + I 3/26/92
Attachment #3

The amendments in HB 2748 discontinue any reference to the Kansas Investment Certificate Guaranty Fund Act. This would eliminate the possibility of a new Investment Certificate Company from seeking the Guaranty Fund to guarantee its investment certificates. Once this Chapter 11 Bankruptcy proceedings are completed and the Guaranty Fund Corporation is liquidated and dissolved, the entire Guarantee Fund Act should be repealed to end this era legislative sponsored investment certificate guarantees.

As of March 20, the Consumer Credit Commissioner has officially taken control of the Guaranty Corporation and its assets. Additional amendments requested are necessary for the disbursement of these funds to the certificate holders. Presently, the only circumstance that allows disbursement of funds is liquidation of Bankers by the Commissioner, which will never happen because the bankruptcy court will handle any liquidation. Amendments to Section 16-6a10 will allow the disbursement of Guaranty funds to the certificate holders in the event the bankruptcy court approves a Chapter 11 reorganization or forces a Chapter 7 liquidation.

Thank you for your prompt consideration of this legislation.

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your Committee on Financial Institutions and Insurance

Recommends that House Bill No. 2748

"AN ACT relating to investment companies; concerning investment certificates thereof; amending K.S.A. 16-601, 16-601r, 16-601s and 16-619 and repealing the existing sections; also repealing K.S.A. 16-601p."

Be amended:

On page 2, following line 27, by inserting a new section as follows:

"Sec. 5. K.S.A. 16-6a10 is hereby amended to read as follows: 16-6a10. (a) When the property and business of a member has been liquidated or is in the process of liquidation or reorganization by the commissioner or through a case filed under title 11 of the United States code (11 U.S.C.A. § 101 et seq.) and the proceeds of liquidation distributed ratably are insufficient to pay up to $10,000 for each investment certificate obligation specified in K.S.A. 16-6a05 and amendments thereto the commissioner shall direct the guaranty corporation to pay, and, except as provided in subsection (c) of this section, the guaranty corporation shall pay each such deficiency at the direction of and in amounts as directed by the commissioner or in accordance with a confirmed plan of reorganization under title 11 or applicable bankruptcy law (but not to exceed amounts provided by K.S.A. 16-6a05 and amendments thereto) within 60 days from the date the commissioner makes demand for payment. If the total funds available from the guaranty corporation at such time are insufficient to pay in full the amounts provided by K.S.A. 16-6a05 and amendments thereto, the amount paid to each investment certificate holder shall be ratably reduced in proportion to the amount by which the fund is deficient.

F&I 3/26/92
Attachment #4

Thereafter further payments shall be made ratably to the investment certificate holders in accordance with the directions of the commissioner as additional funds are paid into the guarantee fund from assessments and income accrued on them. The guaranty corporation shall have a claim against any member or the assets of any member which has been liquidated or which is in the process of liquidation for any investment certificate obligation paid under this section, and shall be subrogated to all rights of the owner of such investment certificate obligation to the extent of such payment.

(b) At any time after the expiration of the time fixed for the presentation of claims, the commissioner may direct the guaranty corporation and, except as provided in subsection (c) of this section, within 60 days thereafter, the guaranty corporation shall pay any deficiency up to $10,000 for each investment certificate obligation specified in K.S.A. 16-6a05 and amendments thereto as estimated by the commissioner, except that no such demand for payment shall be made by the commissioner until the commissioner has given the guaranty corporation notice of the member company's default in payment upon its investment certificates and shall have made and filed the inventory of assets and the first list of claims of the member company in default. The commissioner's estimate shall be based upon an analysis of the claims presented prior to the expiration of the time fixed for presentation, and an examination and evaluation of the member's assets, including its loans and receivables. The commissioner shall employ such competent, qualified appraisers as may be required to appraise the defaulting member's assets, and may call upon the guaranty corporation for this purpose.

(c) Any demand for payment made upon the guaranty corporation under this section shall be in writing, shall specify by name and amount each investment certificate obligation to be paid under this section, the amount of each deficiency or estimated deficiency and the basis upon which each such deficiency is determined or estimated. The demand shall be

accompanied by a copy of the inventory of assets, copies of all lists of claims filed by the commissioner and copies of the commissioner appraisals of the member's assets. The demand shall be served upon the guaranty corporation, either by delivery thereof to the president, vice-president or secretary of the guaranty corporation or by mailing the demand certified or registered mail, return receipt requested, postage prepaid, to the registered office of the guaranty corporation. The guaranty corporation may request such additional material and information as may be appropriate. The commissioner shall produce for inspection and copying such books, records, financial data and other documents of the member in liquidation as may be requested by the guaranty corporation. The guaranty corporation may object to a demand for payment. Such objection shall be heard and determined by the district court in which the liquidation proceedings are pending. Objections shall be in writing, shall set forth the reasons therefor and shall be served upon the commissioner and filed with the clerk of said court within 15 days after receipt by the guaranty corporation of the commissioner's demand. Service of such objection upon the commissioner shall be made by delivering a copy to the commissioner or by mailing it to the office of the commissioner. Service by mail is complete upon mailing. Not later than five days after its objection is filed and served, the guaranty corporation shall file and serve notice of the date, time and place of hearing such objection. The court, sitting without a jury, shall hear and determine any such objection at the earliest possible date. Unless the court, upon such hearing, shall determine that the guarantees provided in this act are not applicable to the obligations of the member in liquidation, the court shall order and the guaranty corporation shall pay such deficiencies and such amounts as shall be ordered by the court within 45 days from the date the order of the court is signed and entered in the register of actions.

(d) The commissioner shall not direct the guaranty

corporation in any one calendar year to pay any investment certificate obligations that exceed in the aggregate the total in the fund after allowing for all amounts to be added to these accounts during that year by assessment as provided in this act.

(e) The amount of principal and interest that shall be determined to be owing on each investment certificate obligation of a member shall be the amount owing on the date the commissioner is authorized by order of the district court to liquidate the business and property of such member. The guaranty corporation shall not be liable for any interest on any such obligation that shall accrue thereafter. If the guaranty corporation does not tender payment within the times set forth in subsections (a), (b) or (c) of this section and, in the amount required to be paid by it, such amount shall accrue interest from the last day payment was required to be made by the guaranty corporation until paid. The rate of interest for which the guaranty corporation shall be liable shall be that provided by the investment certificate or the rate of interest provided for judgments in K.S.A. 16-204 and amendments thereto, whichever is less.

(f) In order to assist a member company which has defaulted in payment upon an investment certificate, or when the guaranty corporation has determined that a member company is in danger of defaulting in making payment upon its investment certificates, in order to prevent such a default, the guaranty corporation, with the approval of the commissioner, is authorized, in its sole discretion, to make loans or contributions to, or purchase the assets of, or invest in, such member upon such terms and conditions as the guaranty corporation may agree with such member company. If the member is in liquidation proceedings, any action by the guaranty corporation pursuant to this subsection shall be subject to the approval of the court in which the liquidation proceedings are pending. There shall be no liability on the part of the commissioner or the commissioner's authorized agents or the guaranty corporation or its members, directors, officers,

employees or agents for any action taken pursuant to this subsection or for any omission or failure to act pursuant to this subsection.";

By renumbering sections 5 and 6 as sections 6 and 7, respectively;

Also on page 2, in line 28, by striking "and" and inserting a comma; also in line 28, after "16-619", by inserting "and 16-6a10"; in line 31, by striking "statute book" and inserting "Kansas register";

On page 1, in line 9, by striking "and" and inserting a comma; in line 10, after "16-619", by inserting "and 16-6a10";

And the bill be passed as amended.

_____Chairperson