

Approved: January 29, 1998
Date

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS.

The meeting was called to order by Chairperson Ray Cox at 3:30 p.m. on January 22, 1998 in Room 527-S of the Capitol.

All members were present except: Rep. Ellen Samuelson - Excused

Committee staff present: Bill Wolff, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Maggie Breen, Committee Secretary

Conferees appearing before the committee: David Brant, Securities Commissioner of Kansas
Chuck Stones, Kansas Bankers Association

Others attending: See attached list

The Chairman introduced and welcomed two new committee members: Representative Vince Cook and Representative Gary Hayzlett.

The Chairman recognized **David Brant**, Securities Commissioner, who requested a bill be introduced which would make several technical amendments to the Kansas Securities Act 17-1252, 17-1261 and 17-1262. Last year, due to the National Securities Markets Improvement Act (NSMIA) of 1996, the Kansas Securities Act was amended to reflect changes in the federal and state securities regulation. The current amendments are needed to reflect new interpretations at the federal level and to make two additional small clean up changes.

(Attachment 1) Representative Geringer made a motion for the committee to introduce this legislation. It was seconded by Representative Correll. The motion carried.

The Chairman recognized **Chuck Stones**, Kansas Bankers Association, who had requests for two bills to be introduced. The first bill would bring Kansas Law into the same guidelines as "Federal Reg E" for machine readable instruments. They would like to change the name to access device and bring some of the liability issues in line with the federal regulation. (Attachment 2) The second bill, requested by KBA's Trust Division, would bring trust estates into the same notice provisions to creditors as probate estates. (Attachment 3) Representative Grant made a motion for the committee to introduce legislation for both requests. Representative Humerickhouse seconded the motion. The motion carried.

On an informational note, Chuck Stones presented an overview of Kansas Bank Facts. (Attachment 4)

The meeting was adjourned at 3:46 p.m.

The next meeting is scheduled for January 28, 1998.



KANSAS

Bill Graves
Governor

OFFICE OF THE SECURITIES COMMISSIONER

David R. Brant
Securities Commissioner

1998 LEGISLATIVE PROPOSAL

BILL TITLE: An act relating to the regulation of securities amending K.S.A. 17-1252, 17-1261 and 17-1262.

BILL SUMMARY: The bill proposes to make the following three technical amendments to the Kansas Securities Act ("Act"):

1) Last year the Act was amended by HB 2094 to conform the Act to the requirements of recent federal legislation, the National Securities Markets Improvement Act ("NSMIA"), which was signed into law on October 11, 1996. Pursuant to NSMIA, the Securities and Exchange Commission ("S.E.C.") adopted rules implementing the Investment Advisers Supervision and Coordination Act of NSMIA. Among other things, the rules provided a definition of "investment adviser representative." The new S.E.C. rules went effective on July 8, 1997.

Since July, the North American Securities Administrators Association ("NASAA") has been drafting model language to revise the definition of investment adviser representative to harmonize the definition under state securities laws with the federal definition adopted by S.E.C. Rule 203A-3(a). NASAA finalized its model language as of December 16, 1997, after it was published for public comment.

The proposed bill, in Section 1, amends the definition of investment adviser representative under K.S.A. 17-1252(m) to adopt the NASAA proposed model wording in order that the Kansas definition will be consistent with the revised federal rule.

2) Section 1 of the bill also amends the definition of agent under K.S.A. 17-1252(b) to encompass an additional exclusion. Currently, individuals representing issuers in transactions in securities exempted under various subsections of K.S.A. 17-1261 are excluded from the definition of agent. The list of exclusions in K.S.A. 17-1252(b) now encompasses most of the subsections of 17-1261. There is no rational basis for excluding subsection (d) from this list (securities of federally chartered or Kansas Savings and Loan Associations). The effect of the amendment is to include this subsection (d) in the list of exclusions and to simplify the description to include all of 17-1261 except one category.

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3) Finally, Sections 2 and 3 of the bill propose to amend the prefatory language contained in K.S.A. 17-1261 and 17-1262. These amendments clarify a minor, technical conflict. Exemptions in these statutes are meant only to exempt the securities and transactions from the requirement to register securities or in the case of 17-1262 to also exempt those selling the securities from the requirement to register as broker-dealers or agents. Other provisions within K.S.A. 17-1254 through 17-1260, such as the authority to revoke or suspend licenses for dishonest or unethical practices or the authority to require filing fees for exemption filings are clearly intended to apply in the case of these exemptions.

FISCAL IMPACT: The proposed legislation will have no material effect on agency operations or revenues.

POLICY IMPLICATIONS/BACKGROUND: The policy implications and background have already been stated in the bill summary. The amendments conform our state securities act to a new federal regulation.

IMPACT ON OTHER AGENCIES: The bill has no impact on other state agencies.

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

Section 1. K.S.A. 1997 Supp. 17-1252 is hereby amended to read as follows: 17-1252. When used in this act, unless the context otherwise requires:

(a) "Commissioner" means the securities commissioner of Kansas, appointed as provided in K.S.A. 17-1270, and amendments thereto.

(b) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer only in transactions in securities exempted by ~~subsections (a), (b), (c), (d), (e), (f), (g), (i), (j), (k), (l) or (p)~~ of K.S.A. 17-1261, and amendments thereto, other than K.S.A. 17-1261(h), or who represents a broker-dealer in effecting transactions in this state limited to those transactions described in section 15(h)(2) of the securities and exchange act of 1934. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if such person otherwise comes within this definition.

(c) "Broker-dealer" means any person engaged in the business of purchasing, offering for sale or selling securities for the account of others or for such person's own account; but the term does not include an agent, issuer, bank, savings institution, insurance company, or a person who effects transactions in this state exclusively with the issuer of the securities involved in the transactions or with any person to whom a sale is exempt under subsection (f) of K.S.A. 17-1262, and amendments thereto.

(d) "Guaranteed" means guaranteed as to payment of principal, interest or dividends.

(e) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates or collateral trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management or unit type; the term "issuer" also means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued. The issuer of a certificate of interest in an oil and gas royalty, lease or mineral deed is the owner of the interest in the oil and gas royalty, lease or mineral deed who creates the certificate of interest for purpose of sale.

(f) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(g) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government or a political subdivision of a

government.

(h) (1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(3) Any security given or delivered with, or as a bonus on account of, any 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.

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

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

(i) "Securities act of 1933," "securities exchange act of 1934," "public utility holding company act of 1935," and "investment company act of 1940" mean the federal statutes of those names.

(j) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificates; thrift certificates or investment certificates, or thrift notes issued by investment companies; certificate of deposit for a security; certificate of interest in oil and gas royalties, leases or mineral deeds; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.

(k) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(l) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term does not include:

(1) An investment adviser representative;

(2) A bank, savings institution, or trust company;

(3) a lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of the individual's profession;

(4) a broker-dealer or its agent whose performance of these services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for them;

(5) a publisher of any bona fide newspaper, news column, news magazine, newsletter, or business or financial publication or service, whether communicated in hard copy form or by electronic means, or otherwise that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(6) any person that is a federal covered adviser; or

(7) such other persons not within the intent of this definition as the commissioner designates by order or by rules and regulations.

(m) (1) "Investment adviser representative" means any partner, officer, director of or a person occupying a similar status or performing similar functions or other individual except clerical or ministerial personnel, who is employed by or associated with

~~(A) an investment adviser that is registered or required to be registered under this act, or who has a place of business located in this state and is employed by or associated with a federal covered adviser; and who does any of the following:~~

~~(1)(i) Makes any recommendations or otherwise renders advice regarding securities;~~

~~(2)(ii) Manages accounts or portfolios of clients;~~

~~(3)(iii) Determines which recommendation or advice regarding securities should be given;~~

~~(4)(iv) Solicits, offers or negotiates for the sale of or sells investment advisory services; or~~

~~(5)(v) Supervises employees who perform any of the foregoing; or~~

(B) a federal covered adviser, subject to the limitations of section 203A of the investment advisers act of 1940, as the commissioner may designate by rule or order.

(2) "Investment adviser representative" does not include such other persons

employed by or associated with either an investment adviser or federal covered adviser not within the intent of this subsection as the commissioner may designate by rule or order.

(n) "Federal covered security" means any security that is a covered security under section 18(b) of the securities act of 1933 or rules or regulations promulgated thereunder, except that, until October 10, 1999, or such other date as may be legally permissible, a covered security for which a fee has not been paid and promptly remedied following written notification to the issuer of the nonpayment or underpayment of such fees, as required by this act, shall not be a federal covered security.

(o) "Federal covered adviser" means a person who is registered under section 203 of the investment advisers act of 1940 or excluded from the definition of "investment adviser" under section 202(a)(11) of the investment advisers act of 1940, except that, until October 10, 1999, or such other due date as may be legally permissible, a person so registered or excluded for which a fee has not been paid and promptly remedied following written notification to the adviser of such nonpayment or underpayment of such fees, as required by this act, shall not be a federal covered adviser.

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

Section 2. K.S.A. 17-1261 is hereby amended to read as follows: 17-1261.

The following securities shall be exempt from the registration requirements of K.S.A. 17-1255 through 17-1260, and amendments thereto, shall not apply to any of the following securities :

(a) Any security issued or guaranteed by the United States or by any state, territory or insular possession thereof, or by any political subdivision of any such state, territory or insular possession, or by the District of Columbia, or by any public agency or instrumentality of one or more of any of the foregoing.

(b) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government or governmental combination or entity with which the United States maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer, insurer or guarantor.

(c) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, credit union or trust company organized and supervised under the laws of this state except that the issuer of such security is subject to the supervision of the banking department, savings and loan department or credit union administrator of this state.

(d) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any savings and loan association organized under the laws of this state and authorized to do business in this state.

(e) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this state when such securities are sold by the issuer.

(f) Any security issued or guaranteed by any railroad, or public utility which is:

(1) a registered holding company under the public utility holding company act of 1935 or a subsidiary of such a company within the meaning of that act; or

(2) regulated by a governmental authority of the United States or any state in respect to the issuance or guarantee of the security.

(g) Any security as to which the commissioner by rule and regulation finds that registration is not necessary or appropriate for the protection of investors.

(h) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, fire protection, fire fighting or reformatory purposes, or as a chamber of commerce or trade or professional association if no part of the net earnings of such person inures to the benefit of any private stockholder and provided that the issuer has filed with the commissioner at least 10 days prior to any sale a notice setting forth the material terms of the proposed sale, copies of any sales and advertising literature to be used, and such other information required by the commissioner, and the commissioner does not by order disallow the exemption within 10 days after filing.

(i) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal.

(j) Any securities issued in connection with an employee's stock purchase, savings, pension, profit-sharing or similar benefit plan, or a self-employed person's retirement plan.

(k) Any security evidencing membership in, or issued as a patronage dividend by, a cooperative association organized under the laws of this state exclusively for the purpose of conducting an agricultural, dairy, livestock or produce business, or selling, processing, storing, marketing or otherwise handling any agricultural, dairy, livestock or produce, and any activities incidental to these purposes.

(l) Any security issued by and representing an interest in or debt of, or evidencing membership in, or issued as a patronage dividend to residents or landowners of not to exceed five contiguous counties in Kansas by a cooperative association organized under the laws of this state exclusively for the purpose of conducting an agricultural, dairy, livestock or produce business, or selling, processing, storing, marketing, retailing, or otherwise handling any agricultural, dairy, livestock or produce, or farm supplies, and any activities incidental to these purposes.

(m) Securities constituting part of an issue, which, in whole or in part has been lawfully sold and distributed to the public in this or any other state, when offered for resale in good faith and not directly or indirectly for the benefit of the issuer or for the direct or indirect purpose of promoting any scheme or enterprise having the effect of violating or evading any provisions of this act, except that this exemption shall not apply (1) where the authority to sell such securities has been prohibited or denied under the provisions of this act, or (2) where the sale of such securities in this state has been enjoined as provided in this act or (3) until there shall have been filed with the securities commissioner of Kansas by any registered broker-dealer a prospectus in such form as may be prescribed by the commissioner containing: (A) Latest available financial statement of the issuer; (B) management personnel; and (C) such other available

information as the commissioner may require. The filing of the prospectus and its approval by the commissioner shall constitute the exemption herein provided. Any prospectus may be disapproved at any time, if after a reasonable notice and a hearing, the commissioner shall find that the further exemption of the securities would be fraudulent or tend to work imposition or fraud upon the purchaser thereof.

(n) Any annuity, gift annuity, charitable remainder unitrust, charitable remainder annuity trust, endowment contract, life income contract, or investment contract issued by the governing body of any four-year liberal arts college situated in the state of Kansas, and the provisions of K.S.A. 17-1254 and amendments thereto shall not apply to any person in the issuance of such securities governed by this subsection.

(o) Any annuity, gift annuity, charitable remainder unitrust, charitable remainder annuity trust, endowment contract, life income contract or investment contract issued by the governing body of any nonprofit corporation or foundation organized under the laws of this state, for religious, charitable or educational purposes, or for the treatment and rehabilitation of children and adolescents, and which corporation or foundation is licensed by the secretary of social and rehabilitation services or secretary of health and environment, if such corporation or foundation has been in existence for more than five years and has fund balances in its endowment fund and unrestricted funds totaling together \$1,000,000 or more, and the provisions of K.S.A. 17-1254 and amendments thereto shall not apply to any person in the issuance of securities governed by this subsection.

(p) Any security issued by a bank holding company wholly or partially in exchange for the capital stock of a bank that is, or will become upon consummation of such exchange, a subsidiary of such bank holding company; or any security issued by a savings and loan holding company wholly or partially in exchange for the capital stock of an insured institution that is, or will become upon consummation of such exchange, a subsidiary of such savings and loan holding company. As used in this subsection, "bank," "bank holding company" and "subsidiary" shall have the same meanings as are set forth in the federal bank holding company act of 1956, as amended and "savings and loan holding company" and "insured institution" shall have the same meanings as are set forth in section 408 of the national housing act, as amended.

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

Section 3. K.S.A. 17-1262 is hereby amended to read as follows: 17-1262.

Except as expressly provided in this section, the following transactions shall be exempt from the registration requirements of K.S.A. 17-1254, 17-1255, 17-1257, 17-1258, 17-1259 and 17-1260, and amendments thereto, shall not apply to any of the following transactions :

(a) Any isolated transaction, whether effected through a broker-dealer or not.

(b) Any nonissuer distribution by or through a registered broker-dealer of outstanding securities at a price reasonably related to the current market price of such securities, if Moody's manual, Standard & Poor's manual, or any recognized securities manual approved by the commissioner, contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations. If the commissioner finds that the sale of certain securities in this state under this exemption would work or tend to work a fraud on purchasers thereof, the commissioner may revoke the exemption provided by this subsection with respect to such securities by issuing an order to that effect and sending copies of such order to all registered broker-dealers.

(c) Any nonissuer transaction by a registered broker-dealer pursuant to an unsolicited order or offer to buy. The commissioner may require, by rules and regulations, that: (1) The customer acknowledge upon a specified form that the sale was unsolicited; and (2) a signed copy of each such form be preserved by the broker-dealer for a specified period.

(d) Any transactions in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit.

(e) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator; any transaction executed by a bona fide pledgee without any purpose of evading this act or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests.

(f) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the investment company act of 1940, pension or profit-sharing trust or other financial institution or institutional buyer or to a broker-dealer or underwriter.

(g) Any offer or sale of a preorganization certificate or subscription if: (1) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber and no advertising has been published in connection with any such sale; (2) no payment is made by any subscriber; and (3) such certificate or subscription is expressly voidable by the subscriber until such subscriber has been notified of final acceptance or completion of the organization and until the securities subscribed for have been registered. The commissioner may require, by rules and regulations or by order, reports of sales under this exemption.

(h) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants or transferable warrants exercisable within 90 days of their issuance, if: (1) No commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or (2) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow the exemption within the next five full business days.

(i) Any offer (but not a sale) of a security if: (1) Registration statements for such security have been filed under both this act and the securities act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act; or (2) a registration statement for such security has been filed under K.S.A. 17-1256 or 17-1258, and amendments thereto, no stop order or emergency order issued pursuant to K.S.A. 17-1260, and amendments thereto, is in effect and the offer is made on behalf of the issuer by a registered broker-dealer.

(j) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock.

(k) 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 reorganizations to which the issuer, or its parent or subsidiary, and the other person, or its parent or subsidiary, are parties, if:

(1) The securities to be distributed are registered under the securities act of 1933 before the consummation of the transaction; or

(2) the securities to be distributed are not required to be registered under the securities act of 1933, written notice of the transaction and a copy of the materials, if any, by which approval of the transaction will be solicited is given to the commissioner at least 10 days before the consummation of the transaction and the commissioner does not disallow, by order, the exemption within the next 10 days.

(l) The offer or sale of securities by an issuer that is a corporation, limited partnership

or limited liability company formed under the laws of the state of Kansas if: (1) The aggregate number of sales by the issuer in the twelve-month period ending on the date of the sale does not exceed 20 sales, except that until July 1, 1993, aggregate number of sales by a limited liability company shall not exceed 35; (2) the seller believes that the purchaser is purchasing for investment; (3) no commission nor other remuneration is paid or given, directly or indirectly, for soliciting the purchaser; and (4) neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following: (A) Any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio or (B) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

In calculating the number of sales in a twelve-month period, sales made in violation of K.S.A. 17-1255, and amendments thereto, and sales exempt from registration under subsection (a) or (l) shall be taken into account. For purposes of the exemption in this subsection, a husband and wife shall be considered as one purchaser. A corporation, partnership, association, joint-stock company, trust or other unincorporated organization shall be considered as one purchaser unless it was organized for the purpose of acquiring the purchased securities. In such case each beneficial owner of equity interest or equity securities in the entity shall be considered a separate purchaser. The commissioner may withdraw this exemption or impose conditions upon its use.

(m) Any transaction pursuant to rules and regulations adopted by the commissioner for limited offerings which was adopted for the purpose of furthering the objectives of compatibility with federal exemptions and uniformity among the states.

(n) Any transaction pursuant to rules and regulations adopted by the commissioner concerning the offer or sale of an oil, gas or mining lease, fee or title if the commissioner finds that registration is not necessary or appropriate for the protection of investors.

(o) Any offer or sale by an investment company, as defined by K.S.A. 16-630 and amendments thereto, of its investment certificates.

(p) The offer or sale of a security, issued by Kansas Venture Capital, Inc., or its successors.



KSA 9-1111d. Access Devices ~~Machine-readable instruments~~; unauthorized transactions; liability; definitions.

(a) The amount of a depositor's liability for an unauthorized transaction or a series of unauthorized transactions by an access device ~~a machine-readable instrument~~ shall not exceed \$50, unless the depositor fails to notify the bank within four business days after learning of the loss or theft of the ~~access device, machine-readable instrument~~, then the depositor's liability shall not exceed \$300. However, if the depositor fails to notify the bank of the unauthorized transaction or series of unauthorized transactions by an access device that appears on a periodic statement within 60 days of the bank's transmittal of the statement, the depositor's liability shall not exceed the amount of the unauthorized transactions that occur after the close of the 60 days and before notice to the bank, and that the bank establishes would not have occurred had the depositor notified the bank within the 60-day period.

(b) For purposes of this section:

(1) "Unauthorized transaction by an access device ~~a machine-readable instrument~~" means an electronic fund transfer initiated by an access device from a depositor's account initiated by a person other than the depositor without actual authority to initiate the transfer and from which the depositor receives no benefit. The term does not include any electronic fund transfer: (A) Initiated by a person who was furnished with the access device to the depositor's account by the depositor, unless the depositor has notified the bank involved that transfers by that person are no longer authorized; (B) initiated with fraudulent intent by the depositor or any person acting in concert with the depositor; or (C) that is initiated by the bank or its employees.

(2) "To notify the bank" means a depositor takes such steps as are reasonably necessary to provide the bank with the pertinent information, whether or not any particular officer, employee or agent of the financial institution does in fact receive the information. Notice may be given to the bank, at the depositor's option, in person, by telephone or in writing. Notice in writing is considered given at the time the depositor deposits the notice in the mail or delivers the notice for transmission by any other usual means to the bank. Notice is also considered given when the bank becomes aware of circumstances that lead to the reasonable belief that an unauthorized electronic fund transfer involving the depositor's account has been or may be made.

(3) "Access device" means a card, code, or other means of access to a depositor's account, or any combination thereof, that may be used by the depositor to initiate electronic fund transfers.

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(1) Any trustee who has a duty or power to pay the debts of a decedent may give notice to creditors thereof. Such notice shall be published in a newspaper, authorized by law to publish legal notices, in the county in which the decedent was domiciled. Such notice shall be published once a week for three consecutive weeks in substantially the following form:

To all persons interested in the trust estate of _____, decedent. The undersigned, _____, is acting as Trustee under a trust, the terms of which provide that the debts of the decedent may be paid by the Trustee(s) upon receipt of proper proof thereof. The address of the Trustee is _____. All creditors of the decedent are hereby notified to present their claims to the undersigned within four (4) months from the date of the first publication of this notice or be forever barred.

(2) Any trustee filing a notice to creditors under the provisions of section (1) above, shall also give actual notice to known or reasonably ascertainable creditors prior to the expiration of the nonclaim statute period.

(3) If such publication is duly made by the Trustee under section (1) above, and actual notice is given to known or reasonably ascertainable creditors under section (2) above, any claims not presented to the trustee within four (4) months from the date of the first publication of the aforesaid notice shall be forever barred as against the decedent, Trustee and the trust property.

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Attachment 3

KANSAS BANK FACTS*

- ** Kansas ranks in a tie for 5th in the nation, with Missouri, in the number of chartered banks with 408. Of that total, 288 are state chartered banks and 120 are national charters. Only Texas, Illinois, Minnesota and Iowa currently have more charters. The peak for bank charters in Kansas came in 1923 when there were 1,344. The peak in modern times was 628 in 1984, the year before multi bank holding company legislation passed in Kansas.
- ** There is at least one chartered bank in every Kansas county except Wallace County and Edwards County. 13 counties have only one chartered bank while Johnson County has the most with 21.
- ** Kansas law has allowed multi-bank holding companies since 1985. There are currently 33 multi-bank holding companies in Kansas which control 74 Kansas banks and 10 out-of-state banks.
- ** Interstate banking began in Kansas in 1992 and full Interstate branching became effective in 1997. To date six Missouri bank holding companies have purchased more than 40 Kansas banks with total assets of more than \$7.5 billion. Five Nebraska holding companies have purchased eight Kansas banks with assets of nearly \$375 million. There are 8 out-of-state banks with 145 branches in Kansas. These branches hold over \$5 billion in deposits.
- ** Six Kansas holding companies control seven banks in Oklahoma, Missouri, and Colorado with total assets in excess of \$500 million.
- ** Limited out-of-town branching was first allowed in Kansas in 1986 and statewide branching has been possible since 1991. Currently 167 Kansas banks operate one or more out-of-town branch offices. There are nearly 400 out-of-town branch offices operating throughout the state.
- ** Approximately 150 Kansas towns have only branch facilities of an out-of-town bank. There are currently seven Missouri banks with more than 125 branch operations in 26 Kansas counties.
- ** There are currently banking facilities in nearly 450 Kansas towns and cities. Over 70% of all chartered banks in Kansas are located in towns of less than 5,000 population. 20% of all chartered banks are located in towns of less than 500. There are currently 36 towns in Kansas with populations of less than 250 which have a chartered bank. The smallest town in the state with a chartered bank is Cedar Point (population 39)

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Attachment 4

- ** Kansas chartered banks have total assets of \$32.1 billion and total deposits of \$27.2 billion. The largest chartered bank in Kansas is Mercantile Bank of Overland Park with over \$2 billion in assets and the Farmers State Bank of Simpson is the smallest with \$2.4 million in assets. While the average asset size of Kansas banks is \$76 million the median asset size is \$33 million. Over 86% of all Kansas banks have less than \$100 million in assets.
- ** At mid-year 1996 Tier I capital (core capital) for all Kansas banks totaled \$2.93 billion which was 9.20% of total assets. The national average for Tier I capital was 7.79%.
- ** Loan volume for Kansas banks at mid-year 1996 totaled \$17.7 billion with a loan to deposit ratio of 65%. The largest segment of loans was real estate (40%) followed by commercial and industrial loans (21%), agricultural production loans (18%), and consumer loans (18%). The statewide ROA for Kansas banks at mid-year 1996 was 1.22 while the national average was 1.20.
- ** Kansas banks employ over 14,000 people. Nearly 80% of the banks have fewer than 25 employees and over 25% of all Kansas banks have fewer than 10 employees.

* as of 6-30-97