

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS.

The meeting was called to order by Chairperson Ray Cox at 3:30 p.m. on January 24, 2001 in Room 527-S of the Capitol.

All members were present except:

Committee staff present:

Dr. Bill Wolff, Legislative Research
Bruce Kinzie, Revisor's Office
Maggie Breen, Committee Secretary

Conferees appearing before the committee:

David Brant, Securities Commissioner
Ashley Sherard - Johnson County Intergovernmental
Relations Manager
Derl Treff - Pooled Money Investment Board

Others attending: See attached list

Representative Cox called for the introduction of bills.

Ashley Sherard, Johnson County Intergovernmental Relations Manager, said there are six jurisdictions in the state that have been permitted expanded investment powers by the Pooled Money Investment Board. Generally they are allowed to invest in longer-term and slightly higher-yields than local governments. Currently, the state is allowed to invest 50% of its portfolio in commercial paper. She requested a bill be introduced to authorize local governments the same expanded investment powers. (**Attachment 1**)

Representative Cox said without objection the bill would be introduced.

Derl Treff, Pooled Money Investment Board (PMIB), requested the introduction of a bill that has two purposes. First it amends K.S.A. 45-4221, which basically requires state agencies who have bank accounts, to insure that proper collateral is there on their bank balances. Currently, the Pooled Money Investment Board is supposed to insure that they are properly collateralized. They aren't in a position to do so because they only see a bank statement once a month. The PMIB asks that the responsibility be moved from them to the agencies who know their balances on a daily basis and are in a much better position to do a good job. Secondly, the bill proposed that a reference in K.S.A. 75-4237 be changed. The word "bid" is used in several places but the operative word is really "request." That's the way it works and the bill would change the wording to reflect that. It just cleans up the language.

(**Attachment 2**)

Representative Cox said without objection the bill would be introduced.

Representative Cox presented the committee minutes of the January 22 meeting.

Representative Grant made a motion to approve the minutes as written. Representative Dreher seconded the motion. The motion carried.

David Brant, Securities Commissioner, gave an overview of his office. The agency's mission is to protect and inform Kansas investors, to promote integrity and full disclosure in financial services, and to foster capital formation. The agency has 27.8 employees. Presently there are 1,711 brokerage firms from across the country that are registered to sell securities in Kansas, 38 of them based in Kansas. There are 691 investment advisor firms doing business in Kansas, 183 of them based in Kansas. The 691 firms employ 1,904 investment advisor representatives. In the last fiscal year, 173 cases were investigated. There were 6 criminal convictions achieved last year and 67 administrative orders issued. Investor education continues to be an important function of the agency. The Investment Adviser Registration Depository (IARD) is an electronic filing registration database system being built for investment advisers similar to the Central Registration

CONTINUATION SHEET

MINUTES OF THE FINANCIAL INSTITUTIONS, Room 527-S Statehouse, at 3:30 p.m. on January 24, 2001.

Depository (CRD) for broker-dealers and agents. Kansas-registered investment advisers, managing \$25 million or less in assets, will be required to begin using IARD by October 1, 2001. **(Attachment 3)**

David Brant ask the committee to introduce a bill which would: a) Amend various statutes from the Kansas Securities Act to update or remove obsolete provisions, promote uniformity with other states and federal securities laws. b) Authorize the use of fines and settlement for investor education purposes. c) Formalize authority to require disgorgement of illegal profits and the payment of restitution to investors. And d) Amend the definition of "securities" under the Kansas Securities Act to include variable annuities and variable life insurance products. **(Attachment 4)**

Representative Cox said without objection the bill would be introduced.

The meeting was adjourned at 3:57 p.m.

The next meeting is scheduled for Monday, January 29, 2001.



Johnson County, Kansas

ADMINISTRATOR'S OFFICE

To: Representative Ray Cox, Chairman
Members, House Financial Institutions Committee

From: Ashley Sherard
Intergovernmental Relations Manager

Date: January 24, 2001

Subject: Requested Bill Introduction – Commercial Paper Investments

Under KSA 12-1677b, Johnson County, along with Sedgwick County and the cities of Lawrence, Manhattan, Olathe, and Wichita, have applied for and been granted expanded powers to invest public moneys by the Pooled Money Investment Board. Generally, local governments with “expanded powers” are allowed to invest in longer-term and higher-yield securities, namely U.S. government agencies, than local governments without the powers.

Commercial paper, issued by corporations to finance their short-term cash obligations, is a slightly higher yield investment than U.S. government agencies. Currently, the state is authorized to invest 50% of its portfolio in commercial paper. Permitting local governments with expanded investment powers to invest in commercial paper as well would allow them to enjoy the same higher yields at minimal additional risk.

For this reason, we would request that a bill be introduced authorizing local governments with expanded investment powers under KSA 12-1677b to be permitted to invest in commercial paper.

Thank you.



POOLED MONEY INVESTMENT BOARD

Landon State Office Building
900 S. W. Jackson Street
Suite 209
Topeka, KS 66612-1220

DIRECTOR OF INVESTMENTS
Derl S. Treff

Ph.(785)296-3372
Fax (785) 296-1085
<http://www.ink.org/public/pmib/>

January 19, 2001

The Honorable Ray L. Cox, Chairman
House Committee on Financial Institutions
Statehouse, Room 431-N
Topeka, Kansas 66612

Dear Representative Cox:

I am requesting the introduction of a bill on behalf of the Pooled Money Investment Board. This bill proposes two things. First, it amends K.S.A. 45-4221 by requiring state agencies to ensure that banks pledge sufficient collateral to secure deposits in the agency's fee agency account rather than the PMIB. The agency is in a much better position to determine this as they work with their banks on a daily basis. PMIB on the other hand receives only a monthly statement from the bank, which is not a timely enough basis to insure that adequate securities have been pledged based on fluctuating balances throughout the month.

Secondly, the bill proposes that the reference in K.S.A. 75-4237 that banks may bid to obtain investment accounts of state moneys be changed to request to obtain investments of state moneys. Practically speaking, regardless of the rate "bid" by the bank, the interest rate for the deposit is determined by the market rate established by the PMIB. This change recognizes that banks simply request deposits at the rate and maturity offered by the PMIB.

Sincerely,

A handwritten signature in black ink that reads "Derl S. Treff".

DERL S. TREFF
Director of Investments

DST:mcg
attachment

cc: Bruce Kinzie, Revisor of Statutes
Alan Conroy, Legislative Research Department



KANSAS

Bill Graves
Governor

OFFICE OF THE SECURITIES COMMISSIONER

David Brant
Commissioner

Annual Update to the Legislature
January 2001

OFFICE OF THE SECURITIES COMMISSIONER

History

Kansas was the first state in the nation to adopt a "blue sky" law in 1911 to regulate securities. The Banking Commissioner at the time, J.N. Dolley, promoted the legislation because the state was a hunting ground of promoters of fraudulent investment schemes. It was said that some of the frauds "became so barefaced that promoters would sell building lots in the blue sky in fee simple." Thus, the term "blue sky" was coined to refer to state securities laws.

Statutory Authority

Securities Act	K.S.A. 17-1252 et seq.
Uniform Land Sales Practices Act	K.S.A. 58-3301 et seq.
Loan Brokers Act	K.S.A. 50-1001 et seq.

Agency Mission

To protect and inform Kansas investors, to promote integrity and full disclosure in financial services, and to foster capital formation.

Agency Staff, Budget, and Revenues

27.8 FTEs: 1 Commissioner, 4 Attorneys, 8 Investigators (certified law enforcement), 2 Certified Public Accountants, 6 Examiners (auditors), 1 Investor Education, 1 Office Administrator and 4.8 Support Staff. Six of the staff work out of the agency's branch office in Wichita.

	<u>FY 1999</u>	<u>FY 2000</u>
Revenues	7,651,891	8,730,903
Expenditures	1,863,909	1,898,514
Transfer to General Fund	5,787,489	6,835,568
Authorized Budget	1,899,959	1,988,672

Advisory Council

Since 1983, the Commissioner has appointed an Advisory Council. Currently, the 20 member council meets once or twice a year to discuss agency operations, industry and regulatory developments, and proposed legislation.

Agency Functions

Registration: Our agency reviews the disclosure and fairness of smaller offerings of stocks, bonds, and limited partnerships and we accept filings for exempt offerings such as mutual funds and non-profit organizations.

	<u>FY 1999</u>	<u>FY 2000</u>
Registration reviews	76	73
Exemption filings	372	595
New mutual fund filings	1,360	1,652
Renewal mutual fund filings	5,341	5,641
Deficient offerings withdrawn	28	22

Compliance and Licensing: Our agency conducts on-site examinations of main and branch offices and we license investment professionals. In addition, we handle investor complaints regarding sales practices, churning, or misleading information.

Broker Dealer Firms	1,593	1,711
(based in Kansas)	37	38
Broker Dealer agents	63,871	69,703
Investment Adviser firms	633	691
(based in Kansas)	168	183
Investment Adviser representatives	1,539	1,904
Broker Dealer exams	33	39
Investment Adviser exams	59	39
License Applications Withdrawn	208	123
License Denials or Revocations	8	5

Enforcement: Our agency has investigators and attorneys that investigate and prosecute fraud, "white collar crime," and unregistered activity. Current enforcement cases include prime bank investments, promissory notes, viatical settlements, internet offerings, telephone solicitations, in addition to the usual variety of pyramid and Ponzi schemes.

Cases investigated	172	173
Administrative Orders	232	67
Criminal Convictions	12	6
Fines	\$42,000	\$34,750
Restitution and Rescission	\$6,284,510	6,257,877

Investor Education: In October 1999, the agency added a full-time Director of Investor Education. The agency continues to place Yellow Page ads in over 2 million telephone directories which encourages investors to "*Investigate Before You Invest*" by calling our 800 number hotline to inquire about the disciplinary background and registration of brokers, investment advisers, and the investment products being promoted. Our staff is available to make presentations at senior fairs, service clubs meetings, and schools.

Telephone directories with Yellow Page Ads	2,164,100	2,152,100
"Investor Hotline" 800 calls	2,133	2,153
Internet Website "visits"	8,000	18,000

The agency continues to provide \$20,000 annually to the Kansas Council on Economic Education ("KCEE") to sponsor *The Stock Market Game*.

Federal and Industry Regulation

The shared system of state and federal regulation of securities began in 1933 when the federal Securities and Exchange Commission (the "SEC") was created by Congress. In addition, the S.E.C. has authorized certain self-regulatory organizations ("SROs") such as the National Association of Securities Dealers (the "NASD").

Proposed 2001 Legislation

The House Financial Institutions Committee is being asked to introduce a bill proposing various amendments to the Securities Act. The proposed House Bill would also amend the definition of "securities" to include variable annuities and would establish an Investor Education Fund.

Investment Adviser Registration Depository (IARD)

An electronic filing and registration database system known as IARD has been developed for investment advisers similar to the Central Registration Depository (CRD) for broker-dealers and agents. Development of the IARD is a joint effort by the SEC and the North American Securities Administrators Association (NASAA). The IARD is being built and will be operated by the National Association of Securities Dealers Regulation, Inc. (NASDR).

Using modern information technology and the Internet, this one-stop electronic filing system will offer investment advisers several advantages: 1) eliminate paper filings; 2) single filing will satisfy SEC and state notice filing requirements; 3) automatic payment of state fees; and 4) easy public access to information.

Kansas -registered investment advisers (those managing \$25 million or less in assets) will be required to begin using IARD by October 1, 2001. The agency will host two continuing education seminars in June for investment advisers to learn about IARD.

Attachments

Various Press Clips

10 tips for Online Investors

Letter to Kansas Insurance Agents

Press Clipping Division
Kansas Press Assn., Inc.
5423 SW 7th Street
Topeka, Kansas 66606-2330

KANSAS
Wichita Eagle
D. 103,983

SEP 28 2000

The Faith Metro-David Brace case appeared in 14 Kansas newspapers: in the following cities: Derby, Hays, Lawrence, Parsons, Lyons, Ottawa, Winfield, Independence, Goodland, Wellington, Salina, Abilene, Wichita, and Russell. Reports also appeared on Wichita-area television.

Firm that sold Faith Metro bonds settles lawsuit

■ MMR Investment Bankers of Andover will pay the state \$150,000, to be divided among the church's investors.

BY HURST LAVIANA
The Wichita Eagle

The leader of an Andover company that sold bonds to finance the church led by the Rev. David Brace has agreed to pay \$150,000 to settle a state lawsuit. A settlement announcement the Kansas securities commissioner's office released Wednesday said the company, MMR

Investment Bankers Inc., had voluntarily withdrawn its Kansas securities license.

Under the agreement, neither MMR nor its chief executive, Gerald Martin, admitted to any securities law violations. "We're just relieved that it's over," Martin said. "I think all parties are glad that it's over."

Securities Commissioner David Brant said the \$150,000 settlement would be divided among investors who lost money when Faith Metro Church's financing collapsed.

Brant said more than 800 investors bought \$10.8 million in bonds that were used to finance the church.

Authorities arrested Brace in Texas in

1995 and charged him with laundering money for federal undercover agents posing as members of a Colombian drug cartel. Bankruptcy proceedings were later filed against his church.

Bondholders initially faced \$8.3 million in losses but eventually recovered about half the total in court. Brant said those who bought bonds would get back about 40 percent of their investment.

During his trial, Brace insisted he was only trying to raise money for his troubled church, but he was nevertheless convicted and sentenced to 14½ years in prison.

He later pleaded no contest to fraud in Sedgwick County District Court and received a three- to 10-year sentence, to

run concurrently with the federal sentence. He is scheduled to be released in 2011.

After the lawsuit was filed, Martin said MMR moved its headquarters from Andover to Nevada, Mo. He said the company was still doing business in 26 states.

Brant said the settlement ends his agency's involvement in the case.

"It's taken a lot of time and a lot of resources over the last five years," he said.

Wichita State University bought the Faith Metro Church building at 29th North and Oliver in July 1997. The building is now WSU's Hughes Metropolitan Complex.

Reach Hurst Laviana at 268-6499 or hlaviana@wichitaeagle.com.



Brace

Press Clipping Division
Kansas Press Assn., Inc.
5423 SW 7th Street
Topeka, Kansas 66606-2330

KANSAS
Arkansas City Traveler
D. 5,024

NOV 09 2000

Regulators charge felon with Internet fraud

WICHITA (AP) — Federal authorities have charged a Wichita man, a convicted murderer and felon with branching out into newer criminal territory — Internet investment fraud.

The U.S. Securities and Exchange Commission filed suit Tuesday in U.S. District Court alleging that Edward Williamson, 53, of Wichita, made false claims to investors about several small companies he controlled — and then diverted investors' money.

Regulators allege Williamson "masterminded" a fraudulent scheme in which he sold \$1.3 million in unregistered stock in tiny companies to more than 1,000 investors.

Authorities also said Williamson was convicted of unpremeditated murder in 1967 and of theft from his

elderly mother in 1992.

Regulators now allege he made false claims about the companies through a Web site to boost their share price.

Williamson told investors that the companies soon would be listed on the NASDAQ or other stock exchanges, said the SEC associate director for the Fort Worth office, Spencer Barasch.

Barasch said Williamson had no reason to make those claims and that the companies were vehicles for fraud.

Williamson refused comment to The Wichita Eagle. His lawyer, Michael Quinn, declined comment Wednesday.

The case was jointly investigated by the SEC and the Kansas Securities Commission.

The Investment Adviser Competency Exam article appeared in nine Kansas newspapers in the following cities: Abilene, El Dorado, Independence, Johnson, Russell, St. Mary's, Topeka, and WaKeeney.

Press Clipping Division
Kansas Press Assn., Inc.
5423 SW 7th Street
Topeka, Kansas 66606-2330

KANSAS
Johnson Pioneer
W. 940

JAN 06 2000

New Investment Advisers Must Take "Competency Exam"

Starting January 1, new investment adviser representatives applying for a license in Kansas will have to take a new "competency exam" to show that they know what they're talking about. In general, money managers and financial planners that provide investment advice need to obtain a license as an investment adviser.

The new exam consists of 130 questions, which will cover economics, investment products, investment strategies and ethics. This exam replaces Kansas' current requirements, which include the 75-question Series 65 exam, which focused mainly on securities law. Applicants will have 180 minutes to complete the new exam, which will cost \$110.

"The number one goal of the exam is to achieve a higher level of investor protection," said David Brant, Kansas Securities Commissioner. Brant noted that investment advisers are one of the fastest growing seg-

ments of the financial services industry.

Kansas has issued licenses to 1,539 investment adviser representatives and 63,871 stockbrokers from across the country. By contrast, there are an estimated 125,000 investment adviser representatives and more than 500,000 stockbrokers nationwide.

Kansas, and at least forty-one other states, will adopt the new exam, which was developed by the North American Securities Administrators Association (NASAA). Practicing investment advisers with professional certifications such as Certified Financial Planner (CFP) and Chartered Financial Analyst (CFA) will be exempt from the new testing requirement.

For more information about the new exam requirements, prospective investment advisers can call the Kansas Securities Commissioner's Office at 785-296-3307 or visit the NASAA web site at www.nasaa.org.

Commissioner warns students about dangers, laws of investing

Speakers address HCC, stress knowing fine print

By Wes Johnson
 Hutchinson News

With the stock market soaring and plummeting almost daily, Kansas Securities Commissioner David Brant offers these words of warning.

"The most dangerous animal on Wall Street isn't the bull or the bear," Brant said. "It's the bum steer. We're here to help you avoid the bum steer."

Brant was in Hutchinson last week speaking to macroeconomics students at Hutchinson Community College.

He said tumultuous times in the investment business make it all the more important for people to ask a lot of questions before turning over their hard-earned money to a broker or investment firm.

The Kansas Securities Commission investigates complaints of fraud or dishonest investment practices. With links to a national database, the commission also offers background information about brokers or investment companies even if they're not in Kansas.

Brant's office typically receives 150

to 200 complaints a year from Kansas investors.

"About 20 or 30 of those are serious enough that it ends up in some kind of official action," Brant said. "We average about 14 criminal convictions a year - half against Kansans and half against others who are out of state."

His office currently is pursuing three high-profile cases in Kansas:

- An Abilene man is being investigated for allegedly bilking investors out of more than \$1 million.

"His clients just trusted him so much that they went along with whatever he told them," Brant said.

- Three weeks ago Brant's office shut down a Wichita businessman who allegedly was posting news alerts on the Internet involving penny stocks he owned.

"He was issuing these press releases over the Internet to entice people to invest in his stocks," Brant said. "We shut him down and seized his assets, including his home. We think people lost between \$500,000 and \$1 million."

- His office also is dealing with a case in the Kansas City area involving a "viatical" insurance investment plan. A company targeted AIDS patients, offering to give them cash

'The most dangerous animal on Wall Street isn't the bull or the bear. It's the bum steer. We're here to help you avoid the bum steer.'

- Kansas Securities Commissioner David Brant

up front to pay for their costly medicines if the patients agreed to sign over their life insurance policies to the company when they died.

The company sought investors, marketing it as a low-risk, high-yield opportunity, Brant said. One investor was a Kansas City woman who invested her entire \$225,000 in retirement savings.

"The good news for the AIDS patients is that the new cocktails are keeping them alive a lot longer than expected," he said. "But that's bad news for the investors because they're not getting the returns they thought they would, and may even lose it all."

Angela Cichoski, director of investor education at the Kansas Securities Commission, told the HCC students that Kansas was the first state in the country to enact laws governing the sale of securities.

"In the early 1900s investors in the United States were losing \$100 million a year through fraud," Cichoski said.

"These came to be known as 'blue-sky laws' because these wildcat investment promoters were selling nothing but blue sky. The name stuck and you still hear them called that today."

Kansas regulations took effect in 1911, followed by the Federal Securities Acts of 1933 and 1934 in response to the stock market crash of 1929.

Kansas required brokers and investment firms to apply for a revocable state license.

"That first year 550 applied for a license, but the state only approved 44," Cichoski said.

When investment fraud occurs, Cichoski said it may be possible for investors to recover some or all of their losses. She said broker misconduct generally falls into four categories, all of which can give an investor an avenue to reclaim lost funds.

Brokers must follow the "know your customer rule," Cichoski said. If a client wants to stay with low-risk

investments, a broker can't sell him on high-risk ventures.

Reputable brokers use an investor profile document that details what the investor's goals are and his willingness to take financial risks. The document can help protect both broker and client.

Brokers can't do unauthorized trading, Cichoski said. Unless a client gives power of attorney to his broker, the broker has a legal obligation to get a stock trade order from his client before he acts.

"Without the order the broker has no business doing business," Cichoski said.

Brokers cannot misrepresent stocks by exaggerating their potential for return, failing to reveal a stock's risks or failing to provide adequate details about the stock.

Cichoski said brokers also are barred from excessive trading in a client's portfolio to produce high commissions from each stock trade. The strategy is called "churning," she said.

"There is an inherent conflict of interest because brokers make money by charging commissions on broker-

age deals," Cichoski said. "That process can be abused."

Despite the words of warning, one HCC student said he was looking forward to becoming a stock market investor.

Paul Erickson, 19, of Buhler, said his class was playing an investment game, using \$100,000 in fake money to invest over a 10-week period. Each student had \$10,000 to work with.

"It's not going very well," Erickson admitted. "I've invested \$7,000 of my \$10,000 in five technology stocks, but I've lost \$800 over the last seven weeks. But the way I see it, I'm gaining a lot from this experience so I'll do better when I start investing for real."

Investment educator warns Kansans of scams

By Mike Surbrung
Globe Staff Writer

COLUMBUS, Kan. — A lot of time has passed since P.T. Barnum was credited with saying "a sucker is born every minute."

"The birth rate of suckers is (perennial) and there is no birth control," Angela C. Cichocki said during a gathering recently in Columbus. "Scams are not new; they are just faster and look more professional."

The director of investor education

for the Office of the Kansas Securities Commissioner visited the area recently to speak with seniors and others interested in learning about the potential pitfalls of investing.

None of the 26 members of her office gives advice on what to invest in. They do, however, help people steer clear of scams and fraud.

In 1911, Kansas became the first state to develop regulations governing the sale of securities, she said. Federal regulation began in 1933. A security is any profit-sharing agreement and often involves the

buyer wanting to earn money from work done by others, she said.

Most individuals selling securities and other investments comply with laws and provide investors information needed to make investment decisions, she said.

"Any time somebody tries to sell you a security, ask to see their Central Registration Depository (CRD) federal registration number," she said. An individual needs to know his or her financial skills, goals, needs, risk tolerance and how much money he or she can afford to invest.

Investors should keep written records, stay informed and invest only in something suited to their needs, Cichocki said.

"You cannot afford to bet the whole farm on one investment," she said.

The broker or dealer is not to blame if the purchased securities or stock price goes lower with market trends.

However, fraud and abuse occur if investors are not given accurate information for transactions made without prior written authority from

the investor, not telling the truth about an offered securities, or for churning.

Churning means a broker making a lot of transactions for fees at the expense of the investor.

Each state has background information on brokers and dealers. Investors with any problems should first write the broker, Cichocki said.

If it is not resolved, a letter should be sent to the broker's branch manager, then to the compliance department of the firm and then to the state securities office.

"Pump and dump" is a scheme where promoters buy quantities of cheap stock they then promote to get the value to increase. They sell their own stock before the market collapses at the expense of later-arriving investors.

Internet trading has brought brave new worlds of opportunity to the scan artist, she said.

"We need to teach investment education in high school," she said. Information about the Kansas securities program: (800) 232-9580.

123 SW 7th Street
Kansas 66606-2330

KANSAS
SECURITIES
COMMISSIONER
DAVID BRANT
W. L. 1150

JUN 9 2000

Securities Commissioner offers tips to online investors

Some 200 securities firms offer on-line brokerage services and there are an estimated 10 million-plus on-line accounts. On-line firms are spending hundreds of millions of dollars on advertising to attract new customers, many who are new to investing and the stock market.

Kansas Securities Commissioner David Brant says that this represents a radical change in the relationship between brokerages and their customers. "It is critical that investors understand what to expect as they invest on-line," said Brant. "As technology changes, educating investors is the key to empowering them to understand their choices and avoid mistakes."

As technology changes, educating investors is the key to empowering them to understand their choices and avoid mistakes."

David Brant, Kansas Securities Commissioner

Recent studies of on-line investing by the New York State Attorney General and the U. S. Securities and Exchange Commission highlight a number of complaints lodged by on-line investors, from delayed execution of orders to slow response times, inadequate customer support and possibly misleading advertising claims.

Brant, along with other members of the North American Securities Administrators Association (NASAA), which represents state and provincial securities regulators in the U.S., Canada and Mexico, offer the following tips to help on-line investors to think carefully about making an investment on-line.

When you invest on-line, be sure to:

1. Receive full disclosure prior to opening your account about the alternatives for buying and selling securities and how to obtain account information if you cannot access the firm's Web site.
 2. Understand that most likely you are not linked directly to the market, and that the click of your mouse does not instantly execute the trade.
 3. Receive information from the firm to substantiate any advertised claims concerning the ease and speed of on-line trading.
 4. Receive information from the firm about significant Web site outages, delays and other interruptions to securities trading and account access.
 5. Obtain information before trading about entering and canceling orders (market, limit and stop loss), and the details and risks of margin accounts (borrowing to buy stocks).
 6. Determine whether you are receiving delayed or real-time stock quotes and when your account information was last updated.
 7. Review the firm's privacy and Web site security policies and whether your name may be used for mailing lists or other promotional activities by the firm or any other party.
 8. Receive clear information about sales commissions and fees and conditions that apply to any advertised discount on commissions.
 9. Know how to, and if necessary, contact a customer service representative with your concerns and request prompt attention and fair consideration.
 10. Contact the Kansas Securities Commissioner to verify the registration/licensing status and disciplinary history of the on-line brokerage firm, or to file a complaint, if appropriate.
- For more information on this and other investor education topics? Kansas residents may call the Securities Commissioner at 1-800-232-9580, or visit the web site at www.ink.org/public/ksecom.

Investor services at Kansas securities commissioner's office: (800) 232-9580; Web site, www.ink.org/public/ksecom

Investor services at the Missouri Division of Securities, (800) 721-7996; Web site, <http://mosl.sos.state.mo.us/sossec/complnt.html>

Investor information hot line at the Securities and Exchange Commission, (800) 732-0330; Web site, www.sec.gov

KANSAS CITY STAR
MONEY WISE INSERT
JULY 9, 2000



10 Tips for Online Investors

Office of the Kansas Securities Commissioner
Investor Education

Developments in technology now allow investors to manage their own investments online. However, there are differences to consider between investing online and working in person with a broker or an investment adviser. The following tips were developed by the **North American Securities Administrators Association** to educate investors and help them to think carefully about making an investment online. For more information about online investing, visit the **Investing Online Resource Center** at <http://www.investingonline.org>.

Before beginning an online investment program, be sure to:

1. Receive **full disclosure** about the alternatives for buying and selling securities and obtaining account information if you cannot access the firm's website.
2. **Understand** that most likely, you are not linked directly to the market, and that the click of your mouse does not instantly execute trades or cancel orders.
3. Receive information from the firm to **substantiate any advertised claims** concerning the ease and speed of online trading.
4. Receive information from the firm about significant **website outages, delays, and other interruptions**.
5. Obtain information about **entering and canceling orders** (market, limit, and stop loss), and the details and risks of margin accounts (borrowing to buy stocks).
6. Determine whether you are receiving **delayed or real-time** stock quotes and account updates.
7. Review the firm's website **privacy and security policies**. Determine if your name will be used for mailing lists or other promotional activities by the firm or any other party.
8. **Receive clear information** about sales commissions, fees, and conditions that apply to any advertised discount on commissions.
9. Know how to **contact a customer service representative** if problems occur. Request prompt attention and fair consideration. Be sure to keep good records to substantiate any problems that may occur.
10. **Contact the Kansas Securities Commissioner** to verify the registration/licensing status and disciplinary history of the online brokerage firm, or to file a complaint, if appropriate.

Office of the Kansas Securities Commissioner

618 S. Kansas Avenue, Topeka, KS 66603-3804
230 E. William, Suite 7080, Wichita, KS 67202-4003

Investor Services: 1-800-232-9580

ksecom@cjnetworks.com
<http://www.ink.org/public/ksecom>

Investigate before you invest.

The Office of the Kansas Securities Commissioner registers and monitors securities broker-dealers and investment advisers and investigates complaints of securities fraud and dishonest sales practices. We cannot recommend or endorse individual investment advisers or investment opportunities, nor can we provide individual investment advice. However, if you feel you have become a victim of securities fraud or dishonest sales practices, contact the Securities Commissioner immediately.



KANSAS

Bill Graves
Governor

OFFICE OF THE SECURITIES COMMISSIONER

David R. Brant
Securities Commissioner

November 20, 2000

To Kansas Insurance Agents:

One year ago, the Kansas Insurance Commissioner and the Kansas Securities Commissioner issued a joint letter explaining that the sale of a viatical settlement contract was considered subject to the provisions of the Kansas Securities Act and that agents were urged not to sell viaticals unless both the agent and the product were registered with the Securities Commissioner. Since that time, we have received substantially fewer complaints regarding sales of viatical settlement contracts by Kansas insurance agents.

Unfortunately, we have received numerous complaints about other investment products being offered by insurance agents. These products include customer owned coin operated telephones (COCOT's), automatic teller machines (ATM's), Prime Bank notes and debentures, promissory notes, nine-month notes, commercial paper and various other investment vehicles. All of these products generally meet the definition of a security per K.S.A. 17-1252(j) of the Kansas Securities Act (the "Act") either by being specifically named, as in the case of notes, or by virtue of meeting the test as an investment contract.

We understand that issuers and others frequently approach insurance agents to sell their products. You should not rely on representations that any investment product is not subject to securities regulation made by the issuer or any affiliate or agent of the issuer. Likewise, you should not rely on an opinion of counsel provided to the issuer. While such an opinion may be accurate, many fraudulent investment vehicles investigated by this agency have involved such letters. We encourage you to contact us with any questions regarding investment products you are solicited to sell. You may make an informal inquiry or, for a nominal fee, you may formally request a written interpretive opinion or a "no-action letter".

Please also take note of the additional restrictions placed on agents registered with the Securities Commissioner. The Act prohibits any registered broker-dealer agent from selling any security that is not specifically approved by the broker-dealer. The NASD recommends the appropriate penalty for this practice (commonly referred to as "selling away" may be an Order (generally a Censure) and a fine of \$5,000. Selling away is also grounds for suspension or revocation of the agent's license and will likely result in disciplinary action from the broker-dealer. Additionally, the Act prohibits an agent from

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Letter to Insurance Agents
November 20, 2000
Page 2

guaranteeing a customer against loss. Most of the investment opportunities described above, as well as many others, purport to guarantee both the investors' principal and anticipated return. Finally, the Act prohibits the charging of excessive fees. While there is no absolute guideline, agents should be wary of any product offering an agent's commission higher than 5% or where the total expenses of the offering, including commissions, exceed 15%.

This letter is intended to notify you of some of the potential pitfalls that exist which could subject you to civil litigation by investors and action by the Securities Commissioner, including criminal prosecution. We discourage you from selling any products which have not been reviewed and approved by the insurance companies or brokerage firms that you represent. We encourage you to contact us with questions regarding this letter and any investment product you are solicited to sell.

Please, protect your clients and yourself. **Investigate before you ask others to invest.**

Very truly yours,



DAVID BRANT
Securities Commissioner

2001 LEGISLATIVE PROPOSAL
Office of the Kansas Securities Commissioner
January 24, 2001

PART A: Miscellaneous Amendments

Proposal Amend various statutes under the Kansas Securities Act to update or remove obsolete provisions, promote uniformity with other states' and federal securities laws.

Summary The following amendments are proposed:

17-1252 Amend the definitions subsections (e), (h), and (m)(1) for clarity. The amendments are not substantive, but the grammatical edits are important because the definitions are used for jury instructions and the current language is confusing to laymen. The new language in (h) is modeled after the latest draft of a new Uniform Securities Act being considered by NCCUSL. Amend subsection (i) to add the Investment Adviser Act of 1940 to the list of federal statutes, because it is frequently cited in the act.

17-1254 Amend subsection (b) to be consistent with subsection (a) regarding sales made in compliance with exemptions provided by KSA 17-1262.

Amend subsection (d) because the current language technically requires out-of-state firms to register all their investment adviser representatives in Kansas, even those IAR's who do not have customers in Kansas. The proposed language mirrors the language at the end of (d)(2).

Amend subsection (e) to delete obsolete language that expired on October 10, 1999.

Amend subsection (g) to give the commissioner broader discretion in determining whether the criminal convictions of an applicant warrant the denial of a securities license. We increasingly see applicants with a series of misdemeanors or serious crimes of dishonesty pled down to misdemeanors. The new language would allow the commissioner to take into account all convictions, not just felonies.

Amend subsection (i) to delete language which merely duplicates authority already granted in (h).

Amend subsection (m) to delete obsolete language in subpart (2), and to clarify and correct the terminology in (m)(12) regarding a failure by management of broker-dealers and investment advisers to reasonably supervise their agents, investment adviser representatives or other

17-1254 employees. The proposed amendment to (m)(12) is based on the Uniform
(cont'd) Securities Act.

Amend subsections (n) – (p) to add “investment adviser representatives” to all the provisions which list “broker-dealers, agents, and investment advisers.” Before the National Securities Market Improvement Act of 1996, the term “investment adviser” referred to both firms and individuals. Now the term “investment adviser” refers to the firm, and the term “investment adviser representative” refers to the individual. This portion of the statute has not been updated to take into account the change in terminology after NSMIA.

Amend (p) to facilitate the use of a new “investment adviser registration depository” (IARD), a centralized computer system for investment advisers. It is similar to the “central registration depository” (CRD), a system that is already in place for broker-dealers and agents. The current language of the statute explicitly authorizes our participation in the CRD system. The proposed amendments broaden our authority and permit participation in any registration depository.

17-1257(a) Amend subsection (a) to clarify that registration of securities by coordination with federal registration at the SEC does not apply if the federal registration is already in effect at the time an application is filed in Kansas. Applications for registration of securities in Kansas filed after the federal registration is effective would need to be filed by Qualification under KSA 17-1258. The effect of this change is that securities already registered with the SEC could not become registered automatically in Kansas as provided under KSA 17-1257(c), but would become registered when ordered by the Commissioner. Amend subsection (b) for clarity, and to correct an error in the current wording of (b)(3), which says “of” rather than “or.” Amend subsection (c) for clarity, to delete superfluous language, to delete obsolete language permitting the use of a telegraph for notification, and to permit the agency to give notice to a registrant without charging the registrant for it. Subdivide paragraph (c) into new (c), (d), and (e).

17-1258 Amend subpart (a)(14) to update descriptions of financial statements in conformity with current generally accepted accounting principles, and add new (b) to provide that the Commissioner may require financial statements to be audited by independent certified public accountants in accordance with generally accepted auditing standards. The remaining proposed amendments edit for clarity and adopt neutral pronouns.

17-1261 Amend subsection (b) to adopt NCCUSL language and eliminate confusion arising from the use of the term “corporate” (i.e., securities issued by Canadian corporations are not exempt.) Delete subsections (n)

- and (o) which specify exempt securities issued by Kansas-based nonprofit organizations, because those provisions are non-uniform, redundant and confusing in relation to other exemptions and laws. The types of securities specified in these subsections are also exempt under subsection (h) of this statute. Charitable gift annuities and similar securities are not subject to registration or exemption conditions due to preemption of state law under the federal Philanthropy Protection Act of 1995.
- 17-1263 Amend the exclusions from the requirements for filing a consent to service of process form with respect to exempt securities under KSA 17-1261 in order to be consistent with the exclusions from the definition of agent under KSA 17-1252(b). Subdivide the statute for greater clarity, and add language to permit service of process under the less burdensome KAPA procedure rather than service through the Secretary of State.
- 17-1265 Amend (e) to replace obsolete immunity language by incorporating the new provisions of K.S.A. 22-3415 concerning transactional immunity and use immunity. Move old (f) to new (d).
- 17-1266a Amend (c) to change “licensed” to “registered” and “sales representative” to “agent,” to be consistent with the terminology used in the act. Amend (c)(1) to add investment adviser representatives to the list of registered people (the list was not updated after NSMIA—see notes to 17-1254(n) above.) Move language governing hearings from the last sentence of 17-1270(e) to new 1266a(d).
- 17-1270 Delete the last phrase from subsection (c), which indicates that the Commissioner may not require the filing of documents or information by issuers whose securities or transactions are exempt under KSA 17-1261 or 17-1262. This conflicts with authority provided under other sections which require such filings. Amend subsection (d) to delete the authority to set fees for reimbursement of examination costs by rules and regulations because the authority is sufficiently provided by statute and a regulation would be redundant. Move the last sentence of (e) to 17-1266a(d), and subdivide (f) for clarity.
- 17-1271 Delete obsolete language regarding the collection of money under other securities laws. Adopt changes proposed in SB15 regarding 75-4212, and incorporate the requirements of 75-3170(a). We currently follow 75-3170(a), but 75-3170(a) conflicts with the current language of 17-1271(a).
- 50-1009 Amend subsection (a) to insert “or the commissioner’s designee.” Similar authority is given in 17-1265 under the securities act and, in reality, the commissioner’s staff currently performs several of the duties on the list. Also, amend (a)(2) to insert “public or private” because that is a critical phrase under 17-1265 which allows us to maintain the confidentiality of

our investigations. Insert “within or outside the state” to make (a)(2) consistent with 17-1265, and delete “to a deputy” because the commissioner does not have a deputy. Replace obsolete immunity language by incorporating the new immunity provisions of 22-3415.

Fiscal Impact

None of the amendments described above would increase costs of agency operations and there would be no effect on staffing requirements or funding sources.

Policy Impact

The proposed clarifications, updates and corrections are intended to improve the understandability and uniformity of the Kansas Securities Act. Improved uniformity benefits persons regulated by the agency by reducing costs of compliance with different requirements among several states, and it also reduces the likelihood of noncompliance due to misunderstanding.

PART B: Use of Fines and Settlements for Investor Education

Proposal Authorize the use of fines and settlements for investor education purposes.

Summary The amendment outlined below would authorize the use of fines and settlements for investor education programs.

17-1271 Amend K.S.A. 17-1271 to establish a Securities Act Investor Education Fund. The proposed amendment would add a new subsection (b), as follows:

The commissioner may establish and administer an investor education fund for the education of consumers in matters concerning securities regulation and investments, and civil penalties collected under K.S.A. 17-1266a shall be credited to the investor education fund to be expended as directed by the commissioner for such purposes. The commissioner may also receive payments designated for the investor education fund as a condition in settlements of investigations or examinations.

Fiscal Impact No additional staffing costs would be required and investor education expenditures would be limited by the extent of receipts from fines and settlements.

Historically, the amount of fines has varied from year to year. Since 1996, fines have totaled between \$6,500 to \$70,600. If fines would be deposited in a separate fund and used only for education, the excess funds available for transfer to the State General Fund pursuant to KSA 17-1271(b) would be reduced accordingly.

Policy Impact The use of fines and settlements for investor education programs could significantly enhance the ability of the agency to inform Kansas investors as provided under its Mission Statement. The use of investor education funds could help inform and educate Kansans about illegal investment schemes and unethical sales practices or investment advice. It is expected that a significant portion of the investor education funds would be used for personal finance education in K-12 schools, curriculum and teacher training.

Currently, 12 states, including the states of Delaware, Missouri, Utah and Wisconsin, allow fines and settlements for securities violations to be used for investor education.

PART C: Authority to Order Disgorgement and Restitution

- Proposal Formalize authority to require disgorgement of illegal profits and the payment of restitution to investors.
- Summary The amendment outlined below would enable the commissioner to order the disgorgement of illegal investment income and the payment of restitution to compensate investors for losses arising from violations of the securities laws.
- 17-1266a Add a new subpart (4) to subsection (c) to provide specific authority for the commissioner to order payment of disgorgement or restitution, plus interest not to exceed fifteen percent (the same rate authorized under 17-1268 for private causes of action under the securities act).
- Fiscal Impact No additional staffing costs would be required. The restricted funds from disgorgement and restitution would not impact the agency budget because such funds are paid to investors.
- Policy Impact The proposed legislation would enhance the commissioner's authority to order disgorgement and restitution. The additional authority would be subject to the Kansas Administrative Procedures Act so that alleged violators would have an opportunity for due process and the right to appeal findings of an administrative hearing.

PART D: Variable Annuities and Variable Life Products

Proposal Amend the definition of "securities" under the Kansas Securities Act to include variable annuities and variable life insurance products.

Summary "Financial modernization" is becoming a reality due to the federal changes contained in the Gramm-Leach-Bliley Act of 1999. Congress passed the Act to modernize the delivery of financial services by removing depression-era barriers that separate banking, securities, and insurance functions. The new federal act provides for "**functional regulation**" of financial entities and their products – banks by banking regulators, securities affiliates by the Securities and Exchange Commission (SEC) and state securities regulators; and insurance companies by state insurance regulators.

A variable annuity is a hybrid product involving both investment and insurance components which is typically marketed as a long-term investment for retirement. A variable annuity is a life insurance contract which provides future payments, the amount of which depends on the performance of the portfolio's securities.

The U.S. Supreme Court has confirmed that variable annuities are securities and are subject to regulation by the SEC. At the state level, the original version of the Uniform Securities Act adopted by Kansas included variable annuities and only excluded fixed annuities from the definition of securities. However, the Kansas law was amended in 1968, as it was in many states at the time, to also exclude variable annuities and to grant exclusive jurisdiction to the Insurance Commissioner.

With the advent of financial modernization and functional regulation, it is time that variable annuities be regarded as securities under state law in the same manner as under federal law.

The proposed amendments are summarized as follows:

- 17-1252(b) Include agents who offer/sell variable products under the definition of "Agent" by inserting a reference to subsection (e) of KSA 17-1261 (as not excluded).
- 17-1252(j) Include variable annuities issued by insurance companies under the definition of "Security" by amending the definition to exclude only fixed annuities.
- 17-1261(e) Delete the following phrase at the end of the existing statute which provides an exemption from registration of securities issued or guaranteed

by insurance companies: "...when such securities are sold by the issuer." With this change, securities issued by insurance companies will be exempt from registration regardless of who sells the securities, but the persons selling the securities would need to be registered.

40-436(1) Amend this subsection in the Insurance Code to clarify 1) that the Insurance Commissioner continues to retain exclusive jurisdiction over the issuers (insurance companies) and variable annuity contracts and 2) that agents selling variable annuities are now subject to functional regulation.

Fiscal Impact None anticipated at this time. If the bill is enacted, there would be some additional responsibility. However, the Securities Commissioner will not be asking for any additional budget authority for staff or other expenses. There could be minimal effect on the revenues to the Securities Act Fee Fund since most of the broker dealers and agents that sell variable annuities are already licensed to sell securities in Kansas.

Policy Impact The amendments will only allow functional jurisdiction by Securities and Insurance over the agents who sell variable annuities. Exclusive jurisdiction over the insurance companies issuing variable annuity products will be retained by the Insurance Commissioner.

The benefit for Kansans is better investor protection. The Securities Commissioner has dealt with several cases in which a salesperson's securities license (to sell most products including mutual funds) has been suspended or revoked due to fraud or a serious violation. In one case, the sales agent then resorted to soliciting clients to "roll over" their mutual fund investments into variable annuities. In addition, there have been a number of media reports in recent years regarding sales practice problems.

It appears that 8 states may treat variable annuities as securities by statute or regulation with Kentucky being the most recent to change its laws in 1998. In addition, an insurance licensing guide shows that 17 states already require a sales agent to be licensed both by securities and insurance in order to sell variable annuities.