

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS.

The meeting was called to order by Chairperson Ray Cox at 3:30 p.m. on March 11, 2002 in Room 527-S of the Capitol.

All members were present except: Representative Toelkes - Excused

Committee staff present: Bruce Kinzie, Revisor's Office
Maggie Breen, Committee Secretary

Conferees appearing before the committee: Lynn Nelson, State Bank Commissioner
David Brant, State Securities Commissioner

Others attending: See attached list

Chairman Cox presented the committee minutes for February 20, 2002. Representative Grant made a motion to approve the minutes for February 20 as written. Representative Dreher seconded the motion. The motion carried.

Chairman Cox opened the hearing on SB 470 - Bank Commissioner: Certain positions in the unclassified services

Proponent:

Lynn Nelson, Bank Commissioner testified in favor of **SB 470** which would create a new statute and allow for the bank commissioner to appoint regional managers and financial examiner administrators in the unclassified service. The creation of the position will allow for more flexibility. It will allow the bank commissioner to deploy personnel as supervisory needs and circumstances dictate. (Attachment 1)

Chairman Cox closed the hearing on **SB 470** and opened the hearing on SB 398 - Regulating securities - Powers of the commissioner.

Proponent:

David Brant, Securities Commissioner, testified in favor of **SB 398**. It amends various statutes under the Kansas Securities Act to update or remove obsolete provisions, and to promote uniformity with other states' and federal securities laws. He said all of the proposed amendments were also proposed last year in **HB 2243**. The bill was tabled due to several provisions which would have provided for the functional regulation of agents selling variable annuities. All references to variable annuities have been deleted and will not be proposed this year. He asked the committee to vote favorably for the passage of the bill. (Attachment 2)

Chairman Cox closed the hearing on **SB 398** and asked the committee what their pleasure was concerning the bill.

Representative Grant made a motion to pass SB 398 out of committee favorable. Representative Sharp seconded the motion. The motion carried.

Chairman Cox asked the committee what their pleasure was concerning **SB 470**.

Representative Burroughs made a motion to pass SB 470 out favorably. A substitute motion was made by Representative Tomlinson to amend SB 470 to include the words "subject to appropriations process." Representative Gatewood seconded the substitute motion to amend. The substitute motion carried.

Representative Minor made a motion to pass SB 470 as amended. Representative Sharp seconded the motion. The motion carried.

Chairman Cox thanked the committee members for their work this year and said there were no plans for the committee to meet again this session. Meeting adjourned at 4:07 p.m.

Minutes were sent to committee members for additions or corrections to be made by March 27th at noon. None were received.

STATE OF KANSAS
BILL GRAVES
GOVERNOR

Franklin W. Nelson
Bank Commissioner

Judi M. Stork
Deputy Bank Commissioner



Sonya L. Allen
General Counsel

Kevin C. Glendening
*Deputy Commissioner
Consumer and Mortgage Lending*

OFFICE OF THE
STATE BANK COMMISSIONER

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS

March 11, 2002

Mr. Chairman and Members of the Committee:

My name is Franklin Nelson. I am the Bank Commissioner for the State of Kansas. I am here today to request your favorable consideration of SB 470. This bill creates a new statute and allows for the bank commissioner to appoint regional managers and financial examiner administrators in the unclassified service.

By way of background, let me tell you about our recent initiatives relating to the structure of our examining personnel. We have had numerous problems during the last several years relating to the retention of our examining staff. During the last year and one-half, we have worked with the Division of Personnel Services who did a comprehensive classification study. One of the end results of this cooperative effort provided for the consolidation of five levels of financial examiners into three levels. As you can see on the charts that I have attached to my testimony, the lowest two ranges of examiners were consolidated into the new position titled Financial Examiner. The middle range examiner was changed to a Financial Examiner Senior. The top two ranges of examiners were consolidated into the Financial Examiner Principal. The individuals contained in this upper range of examiners are the focus of my discussion today. Under the old system, the individuals contained in the Financial Examiner IV class were the senior, seasoned examiners who took primary

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Attachment 1

responsibility at the examination of our financial entities. The individuals who were in the Financial Examiner V class are divided into two groups – the Field Office Supervisors and the Review Examiners. The Field Office Supervisors are responsible for supervising a crew of field examiners at our field office locations throughout the state. The Review Examiners are responsible for caseloads of financial entities here within the main office.

With all this background in mind, it is our proposal to create an unclassified regional manager position that will perform duties similar to the field office supervisor, but with increased regional managerial duties. The creation of this position in the unclassified service allows for more flexibility. It will allow us to deploy agency personnel as supervisory needs and circumstances dictate.

There also exists a concern that the current supervisors and those under their supervision are now in the same class – Financial Examiner Principal. This concern will be magnified if a current supervisor leaves their job and we need to have someone assume those supervisory duties. Since those most likely to succeed to the position are already on the same pay range, no additional monies can be paid to an individual to assume the job and the additional supervisory duties. It is unlikely qualified candidates will take the job without additional compensation. An unclassified position would allow us to promote candidates and provide adequate compensation.

It is our intent that each person who is in a Field Office Supervisor position at the time legislation is enacted will be given the choice of retaining his or her classified status, or be appointed an unclassified Regional Manager. If a person chooses to retain their classified position, when that position becomes vacant in the future (due to retirement, an employee's decision to leave the agency, or otherwise), the commissioner will consider multiple factors in determining the necessity of appointing an unclassified Regional Manager in place of that classified position. This would also be the case in the future when an unclassified Regional Manager position would become vacant. Allowing the bank commissioner discretion to appoint Regional Managers to the unclassified service as needed, will provide more flexibility to deploy agency personnel as supervisory needs and circumstances dictate.

The Agency has two Director of Examination positions, one in the Banking Division and one in the Consumer and Mortgage Lending Division. We wish to unclassify these Director of Examination positions, and make them into Financial Examiner Administrators in the unclassified service. As these positions supervise the current Field Office Supervisors, we think they should be unclassified as well.

We are not asking for additional FTEs as part of this legislative change. Unclassified appointments will only be made when a classified position is open and available to convert to an unclassified job.

Thank You. I would be happy to answer any questions you have.

Chart 1

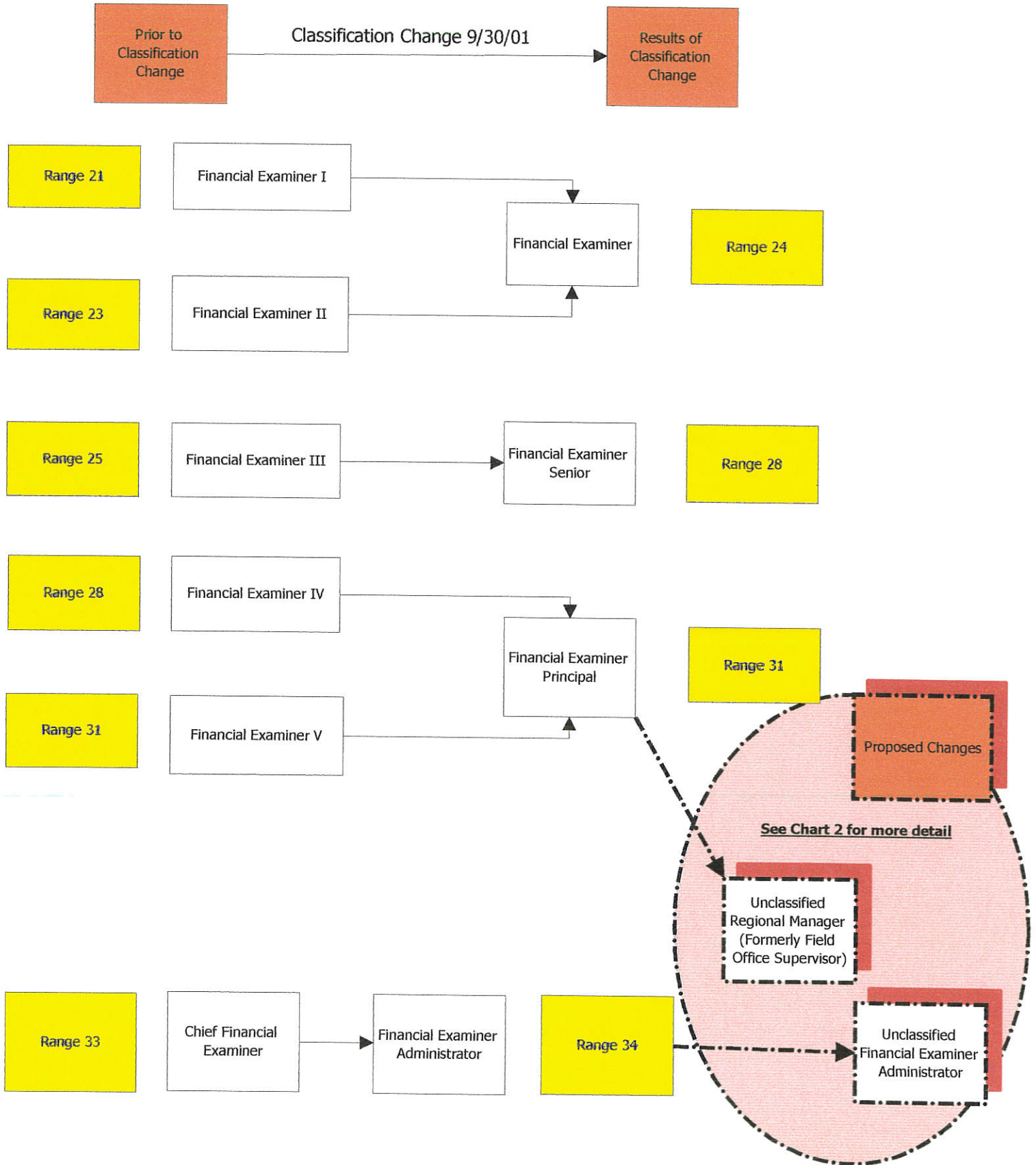
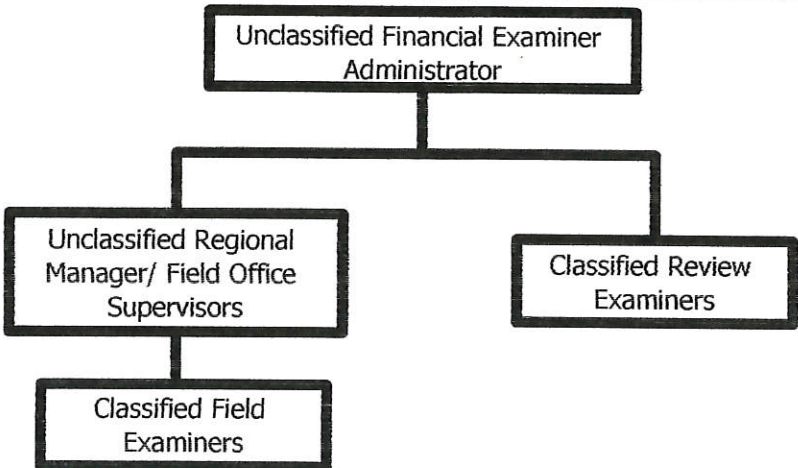
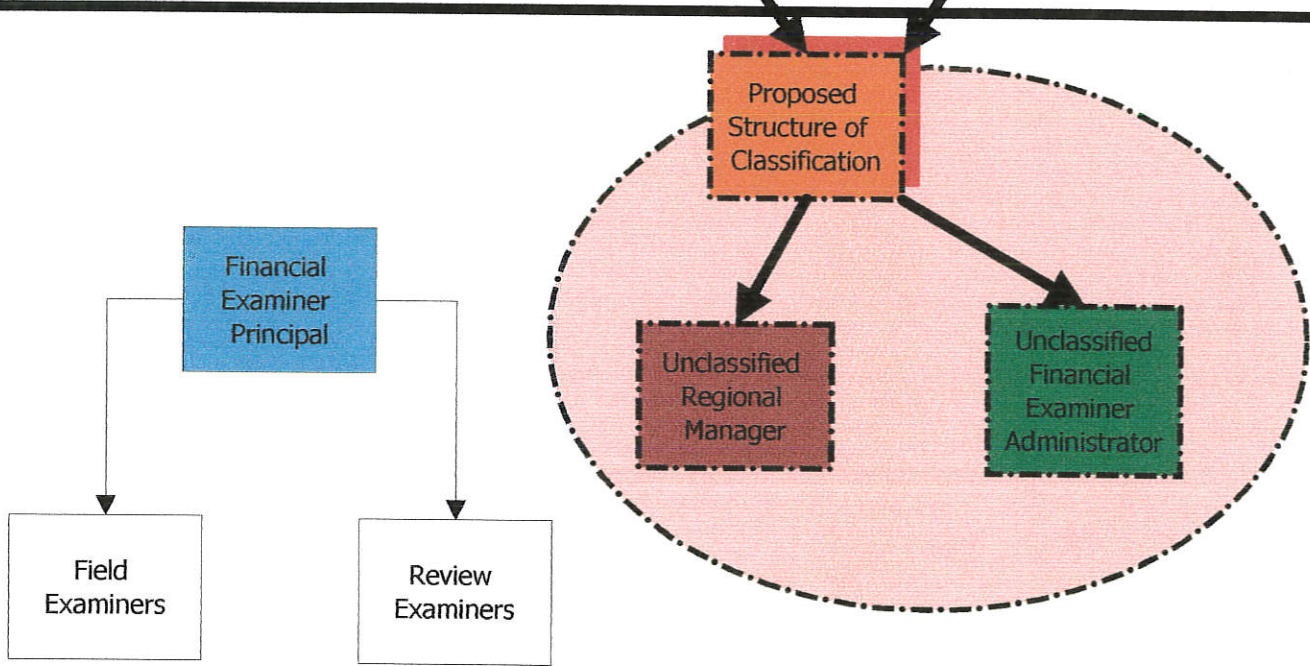
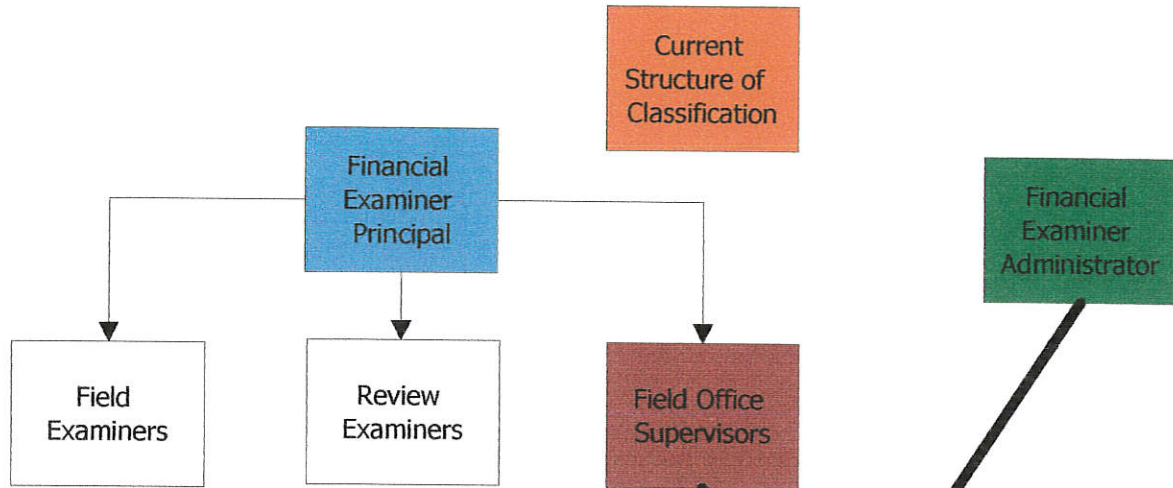


Chart 2



The newly created unclassified regional manager role would not necessarily translate to a one to one relationship with the current Field Office Supervisors. The Field Office Supervisors will be allowed to retain their current classification if so desired. At the point of a Field Office Supervisor vacancy, multiple factors will be taken into consideration when determining the necessity of replacing them with an Unclassified Regional Manager.



KANSAS

Bill Graves
Governor

OFFICE OF THE SECURITIES COMMISSIONER

David Brant
Commissioner

TESTIMONY IN SUPPORT OF SENATE BILL No. 398
Amendments to the Kansas Securities Act
House Financial Institutions Committee

DAVID BRANT
Securities Commissioner
March 11, 2002

Mr. Chairman and members of the committee, thank you for this opportunity to testify in support of Senate Bill No. 398.

- Summary Amend various statutes under the Kansas Securities Act (the "Act") to update or remove obsolete provisions, and to promote uniformity with other states' and federal securities laws.
- Fiscal Impact None of the following amendments 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 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.

All of the proposed amendments in Senate Bill No. 398 were also proposed last year in House Bill No. 2243. The House bill was tabled last year due to several provisions which would have provided for the functional regulation of agents selling variable annuities. All references to variable annuities have been deleted and will not be proposed this year. The provisions in this year's bill are described as follows:

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|---|--|--------------------|
| Sec. 1 | <u>K.S.A. 17-1252</u> | DEFINITIONS |
| Page 1, Line 25 | The reference to K.S.A. 17-1261(h) is obsolete because of federal preemption under the Philanthropy Protection Act of 1995. | |
| Page 1, Line 41
Page 2, Line 17
Page 3, Line 32 | Amend the definitions in 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. | |
| Page 2, Line 34 | 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. | |

Sec. 2

K.S.A. 17-1254

BD AND IA REGISTRATION

- Page 4, Line 24 Amend subsection (b) to be consistent with subsection (a) regarding sales made in compliance with exemptions provided by K.S.A. 17-1262.
- Page 5, Line 7 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).
- Page 5, Line 26 Amend subsection (e) to delete obsolete language that expired on October 10, 1999.
- Page 6, Line 16 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 pleaded down to misdemeanors. The new language would allow the Commissioner to take into account all convictions, not just felonies.
- Page 6, Line 36 Amend subsection (i) to delete language which merely duplicates authority already granted in (h).
- Page 8, Line 10 Amend subsection (m) to delete obsolete language in subpart (2).
- Page 9, Line 16 Amend subsection (m)(12) to clarify and correct the terminology regarding a failure by management of broker-dealers and investment advisers to reasonably supervise their agents, investment adviser representatives or other employees. The proposed amendment to (m)(12) is based on the Uniform Securities Act.
- Page 9, Lines 26-39 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 (NSMIA), 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.
- Page 10, Lines 1-39 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 permits participation in any registration depository which would include IARD.

Sec. 3

K.S.A. 17-1257

REGISTRATION BY COORDINATION

- Page 11, Line 1 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 K.S.A. 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 K.S.A. 17-1257(c), but would become registered when ordered by the Commissioner.
- Page 11, Lines 7-15 Amend subsection (b) for clarity, and to correct an error in the current wording of (b)(3), which says “of” rather than “or.”

- Page 11, Line 32 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.
- Page 12, Line 12 Subdivide paragraph (c) into new (c), (d), and (e).
- Sec. 4 K.S.A. 17-1258 **REGISTRATION BY QUALIFICATION**
- Page 14, Line 26 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.
- Sec. 5 K.S.A. 17-1261 **EXEMPT SECURITIES**
- Page 15, Line 9 Amend subsection (b) to adopt proposed Uniform Securities Act language and eliminate confusion arising from the use of the term “corporate” (i.e., securities issued by Canadian corporations are not exempt.)
- Page 17, Lines 4-21 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.
- Sec. 6 K.S.A. 17-1263 **CONSENT TO SERVICE OF PROCESS**
- Page 17, Line 38 Amend the exclusions from the requirements for filing a consent to service of process form with respect to exempt securities under K.S.A. 17-1261 in order to be consistent with the exclusions from the definition of agent under K.S.A. 17-1252(b).
- Page 18, Line 23 Add subsection (d) to permit service of process under the less burdensome KAPA procedure rather than service through the Secretary of State.
- Sec. 7 K.S.A. 17-1266a **C&D ORDERS; PENALTIES**
- Page 19, Lines 14-20 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.)
- Page 19, Lines 23-26 Amendment enables 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. Also permits the Commissioner to assess interest up to 15% (the same interest rate that is permissible in civil suits under K.S.A. 17-1268).
- Page 19, Lines 27-29 Move language governing hearings from the last sentence of 17-1270(e) to new 1266a(d).

Sec. 8

K.S.A. 17-1270

ADMINISTRATION OF THE ACT; FEES

- Page 19, Line 40 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 K.S.A. 17-1261 or 17-1262. This conflicts with authority provided under other sections which require such filings.
- Page 20, Line 9 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.
- Page 20, Line 28 Move the last sentence of (e) to 17-1266a(d), and subdivide (f) for clarity.

In conclusion, all of these proposed amendments were also proposed last year in House Bill No. 2243. These amendments have been reviewed and endorsed by the Advisory Council to the Securities Commissioner. The Advisory Council is comprised of industry representatives of broker-dealer and investment advisory firms, attorneys, legislators, and former Commissioners.

I would be glad to answer any questions.