

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Michael O'Neal at 3:30 p.m. on January 21, 2004 in Room 313-S of the Capitol.

All members were present except:

Representative Ward Loyd- excused  
Representative Dale Swenson- excused  
Representative Dan Williams- excused

Committee staff present:

Jill Wolters, Revisor of Statutes  
Diana Lee, Revisor of Statutes  
Jerry Ann Donaldson, Kansas Legislative Research Department  
Cindy O'Neal, Secretary

Conferees appearing before the committee:

Kathy Olsen, Kansas Bankers Association  
Rick Fleming, Office of Kansas Securities Commissioner  
Chris Biggs, Kansas Securities Commissioner  
Ed Cross, Kansas Independent Oil & Gas Association  
Jim Clark, Kansas Bar Association  
Roger Walter, Kansas Bar Association

The committee received request for bill introductions.

Kathy Olsen, Kansas Bankers Association, requested a bill which would correct printing errors in the Uniform Commercial Code, Revised Article 9. (Attachment 1)

Representative Patterson made the motion to have the request introduced as a committee bill. Representative Long-Mast seconded the motion. The motion carried.

Representative Ward requested a bill which would modify the landlord tenant act allowing the tenant ten days after a judgement has been reached for the removal of property. He made the motion to have the request introduced as a committee bill. Representative Patterson seconded the motion. The motion carried.

Representative Davis requested several bills:

1. Extend the terms of the Court of Appeals from four years to six.
2. Increase the hourly rate from \$50 to \$80 for attorneys doing indigent defense work
3. Uniform Interstate Enforcement of Domestic Violence Protection Act
4. Amend K.S.A. 12-1617 (e), clean up the notice provision from ten days to forty days

Representative Davis made the motion to have the requests introduced as committee bills. Representative Patterson seconded the motion. The motion carried.

Representative O'Neal received a bill request to amend to the worthless check statute concerning mailing requirements. Amendments had been made to K.S.A. 60-2610 but 60-2611 was not amended and two other changes did not get amended regarding first class and restricted mail. Representative Patterson made the motion to have the request introduced as a committee bill. Representative Long-Mast seconded the motion. The motion carried.

Hearings on **HB 2347- Uniform Securities Act**, were reopened.

Rick Fleming, Office of Kansas Securities Commissioner, remarked that the balloon (Attachment 2) was the amendments which were adopted by the Special Committee on Judiciary this past summer. It reflects some technical amendments, conforms **HB 2347** with SB 110, which was passed last year and addresses the compromise amendments between the National Conference of Commissioners on Uniform State Laws (NCCUSL), Kansas Department of Insurance and Office of Kansas Securities Commissioner.

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on January 21, 2003 in Room 313-S of the Capitol.

Chris Biggs, Kansas Securities Commissioner, supported the interim committee balloon but had strong objections to variable annuities being taken out of the definition of securities. He informed the members that Oklahoma & Missouri had adopted the uniform act without variable annuities included. However, he urged the committee to not let the issue of variable annuities hold up the bill.

Chairman O'Neal asked if Mr. Biggs would like to request a bill be drafted including variable annuities in the definition of securities. Mr. Biggs responded he would. Representative Patterson made the motion to have a bill drafted. Representative Long-Mast seconded the motion. The motion carried.

He also suggested an amendment involving the statute of limitations for criminal offenses found in section 37 (b) on page 46 of the bill. It should be made clear that Chapter 21 tolling provisions apply to securities issues. (Attachment 3)

Ed Cross, Kansas Independent Oil & Gas Association, expressed concerns with K.S.A. 17-1262(a) being removed from the bill. After speaking with the Kansas Securities Commissioner, there has been the assurance that they will keep the exemption in through their rules and regulations. (Attachment 4)

Jim Clark, Kansas Bar Association appeared before the committee with a request for several amendments. (Attachment 5)

1. Delay the effective date by one year
2. Allow for the sale of a security to a person not a resident of the state would not be in violation of registration
3. Strike language on page 18 lines 25 thru 27
4. Issuer exams
5. Change civil statute of limitations
6. Include viatical investments as defined in the North American Securities Administrators Association Guidelines.

Rick Fleming opposed the majority of the Kansas Bar Associations proposed amendments.

- #1 change in effective date is fine
- #2 would create a loophole for registration
- #3 would cause different guidelines for each type of security filed
- #4 securities may not be sold through a broker firm
- #5 a change to the civil statute of limitations is not needed currently there is up to a five year period depending on the type of crime committee
- #6 the definition of viatical investments does need to be fixed but the committee should wait till they receive recommendations from NCCUSL

Kansas Bankers Association provided written testimony requesting an amendment which would change the definition of a broker-dealer to strike including banks. (Attachment 6)

Written testimony was provided from Waddell & Reed in favor of the uniform bill. (Attachment 7)

The hearings on **HB 2347** were closed.

The next committee meeting was scheduled for January 26, 2004.



The KANSAS BANKERS ASSOCIATION  
A Full Service Banking Association

January 21, 2004

To: House Committee on Judiciary

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: Proposed Amendment to UCC: Revised Article 9

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today to request introduction of a bill that would make some very technical corrections to two sections of Revised Article 9.

As you will recall the Kansas Legislature passed Revised Article 9 in the 2000 legislative session. It was an expansive piece of legislation that totally revamped Article 9 of the Uniform Commercial Code.

This proposal brings to your attention two clerical errors that need to be corrected. The first is found in K.S.A. 84-9-506(c), and would correct an erroneous reference to another section of Article 9.

The second is found in K.S.A. 84-9-509(a)(1), where the word "or" was omitted in the final printing.

While seemingly innocuous, these errors are misleading to practitioners and do need to be cleared up. Thank you for your time and attention to this matter.

House Judiciary Committee

1-21-04

Attachment 1

## KBA Request for Legislation - 2004

### Technical Corrections to Article 9

**84-9-506. Effect of errors or omissions.** (a) **Minor errors and omissions.** A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) **Financing statement seriously misleading.** Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with K.S.A. 2002 Supp. 84-9-503(a) and amendments thereto, is seriously misleading.

(c) **Financing statement not seriously misleading.** If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with K.S.A. 2002 Supp. ~~84-9-508(a)~~ **84-9-503(a)** and amendments thereto, the name provided does not make the financing statement seriously misleading.

(d) **"Debtor's correct name."** For purposes of K.S.A. 2002 Supp. 84-9-508(b) and amendments thereto, the "debtor's correct name" in subsection (c) means the correct name of the new debtor.

**84-9-509. Persons entitled to file a record.** (a) **Person entitled to file record.** A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) The debtor authorizes the filing in an authenticated record **or** pursuant to subsection (b) or (c); or

(2) the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) **Security agreement as authorization.** By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

**84-9-509**

(1) The collateral described in the security agreement; and

(2) property that becomes collateral under K.S.A. 2002 Supp. 84-9-315(a)(2) and amendments thereto, whether or not the security agreement expressly covers proceeds.

(c) **Acquisition of collateral as authorization.** By acquiring collateral in which a security interest or agricultural lien continues under K.S.A. 2002 Supp. 84-9-315(a)(1) and amendments thereto, a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under K.S.A. 2002 Supp. 84-9-315(a)(2) and amendments thereto.

(d) **Person entitled to file certain amendments.** A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) The secured party of record authorizes the filing; or

(2) the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by K.S.A. 2002 Supp. 84-9-513(a) or (c) and amendments thereto, the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) **Multiple secured parties of record.** If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d).

HOUSE BILL No. 2347

By Representative O'Neal

2-12

Amendments adopted by the Special Committee on Judiciary, 2003 Int  
Drafted January 16, 2004

[NCCUSL means National Conference of Commissioners on Uniform  
Laws]

[If a page is not included, there are no amendments on that page]

House Judiciary Committee  
1-21-04  
Attachment 2

AN ACT enacting the Kansas uniform securities act; amending K.S.A.  
12-1675, 12-1677b, 12-4516, 16-214, 17-4632, 50-1009, 50-1016, 66-  
1508, 74-8229 and 75-6302 and K.S.A. ~~2002~~ Supp. 17-49a01, 21-4619, ~~21-4703~~  
and 75-3170a and repealing the existing sections; also repealing  
K.S.A. 17-1260, ~~17-1264, 17-1265~~, 17-1266, 17-1267, 17-1269, 17-  
1273, 17-1274 and 17-1275 and K.S.A. ~~2002~~ Supp. 17-1252, 17-1253,  
17-1254, 17-1255, 17-1257, 17-1258, 17-1259, 17-1261, 17-1262, 17-  
1262a, 17-1263, ~~17-1266a, 17-1268, 17-1270, 17-1270a, 17-1270b, 17-  
1271 and 17-1272.~~

2003

17-1264, 17-1264a, 17-1265, 17-1265a,

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

Now Section 1. Sections 1 through 52, and amendments thereto,  
may be cited as the Kansas uniform securities act.

Now Sec. 2. In this act, unless the context otherwise requires:

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

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

(3) "Bank" means:

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

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

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

[NOTE: 2002 references amended to 2003 on the following: page 71, line  
29; page 72, line 18; page 74, line 6; page 75, line 12; page 85, line 31]

1 over banks, and which is not operated for the purpose of evading this act;  
2 and

3 (D) a receiver, conservator, or other liquidating agent of any insti-  
4 tution or firm included in subparagraph (A), (B), or (C).

5 (4) "Broker-dealer" means a person engaged in the business of ef-  
6 fecting transactions in securities for the account of others or for the per-  
7 son's own account. The term does not include:

8 (A) An agent;

9 (B) an issuer;

10 (C) a bank ~~or~~ savings institution ~~if~~ \_\_\_\_\_,

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

15 (ii) it is a bank that satisfies the conditions described in subsection  
16 3(a)(4)(E) of the securities exchange act of 1934 (15 U.S.C. section  
17 78c(a)(4));

18 (D) an international banking institution; or

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

20 (5) "Depository institution" means:

21 (A) A bank; or

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

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

32 (ii) a morris plan bank; or

33 (iii) an industrial loan company.

34 (6) "Federal covered investment adviser" means a person registered  
35 under the investment advisers act of 1940.

36 (7) "Federal covered security" means a security that is, or upon com-  
37 pletion of a transaction will be, a covered security under section 18(b) of  
38 the securities act of 1933 (15 U.S.C. section 77r(b)) or rules or regulations  
39 adopted pursuant to that provision.

40 (8) "Filing" means the receipt under this act of a record by the ad-  
41 ministrator or a designee of the administrator.

42 (9) "Fraud," "deceit," and "defraud" are not limited to common law  
43 deceit.

, or trust company  
[requested by the Kansas Bankers Association, supported by the Office of the  
Securities Commissioner]

1 (K) a private business development company as defined in section  
2 202(a)(22) of the investment advisers act of 1940 (15 U.S.C. section 80b-  
3 2(a)(22)) with total assets in excess of \$10,000,000;

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

5 (M) a "qualified institutional buyer" as defined in rule 144A(a)(1),  
6 other than rule 144A(a)(1)(i)(D), adopted under the securities act of 1933  
7 (17 C.F.R. 230.144A);

8 (N) a "major U.S. institutional investor" as defined in rule 15a-  
9 6(b)(4)(i) adopted under the securities exchange act of 1934 (17 C.F.R.  
10 240.15a-6); ~~(O)~~

11 ~~(O) any other person specified by rule adopted or order issued under  
12 this act.~~

13 (12) "Insurance company" means a company organized as an insur-  
14 ance company whose primary business is writing insurance or reinsuring  
15 risks underwritten by insurance companies and which is subject to su-  
16 pervision by the insurance commissioner or a similar official or agency of  
17 a state.

18 (13) "Insured" means insured as to payment of all principal and all  
19 interest.

20 (14) "International banking institution" means an international finan-  
21 cial institution of which the United States is a member and whose secur-  
22 ities are exempt from registration under the securities act of 1933.

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

33 (A) An investment adviser representative;

34 (B) a lawyer, accountant, engineer, or teacher whose performance of  
35 investment advice is solely incidental to the practice of the person's  
36 profession;

37 (C) a broker-dealer or its agents whose performance of investment  
38 advice is solely incidental to the conduct of business as a broker-dealer  
39 and that does not receive special compensation for the investment advice;

40 (D) a publisher of a bona fide newspaper, news magazine, or business  
41 or financial publication of general and regular circulation;

42 (E) a federal covered investment adviser;

43 (F) a bank ~~(G)~~ savings institution;

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

(P)

[Compromise amendment between the Office of the Securities Commissioner,  
the Securities Industry Association and NCCUSL]

, or trust company  
[requested by the Kansas Bankers Association, supported by the Office of the  
Securities Commissioner]



1 (C) any other person that is excluded by the investment advisers act  
2 of 1940 from the definition of investment adviser; or

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

5 (16) "Investment adviser representative" means an individual em-  
6 ployed by or associated with an investment adviser or federal covered  
7 investment adviser and who makes any recommendations or otherwise  
8 gives investment advice regarding securities, manages accounts or port-  
9 folios of clients, determines which recommendation or advice regarding  
10 securities should be given, provides investment advice or holds herself or  
11 himself out as providing investment advice, receives compensation to so-  
12 licit, offer, or negotiate for the sale of or for selling investment advice, or  
13 supervises employees who perform any of the foregoing. The term does  
14 not include an individual who:

15 (A) Performs only clerical or ministerial acts;

16 (B) is an agent whose performance of investment advice is solely in-  
17 cidental to the individual acting as an agent and who does not receive  
18 special compensation for investment advisory services;

19 (C) is employed by or associated with a federal covered investment  
20 adviser, unless the individual has a "place of business" in this state, and  
21 is:

22 (i) An "investment adviser representative" as that term is defined by  
23 rule adopted under section 203A of the investment advisers act of 1940  
24 (15 U.S.C. section 80b-3a); or

25 (ii) not a "supervised person" as that term is defined in Section  
26 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. Section  
27 80b-2(a)(25)); or

28 (D) is excluded by rule adopted or order issued under this act.

29 (17) "Issuer" means a person that issues or proposes to issue a se-  
30 curity, subject to the following:

31 (A) The issuer of a voting trust certificate, collateral trust certificate,  
32 certificate of deposit for a security, or share in an investment company  
33 without a board of directors or individuals performing similar functions  
34 is the person performing the acts and assuming the duties of depositor  
35 or manager pursuant to the trust or other agreement or instrument under  
36 which the security is issued.

37 (B) The issuer of an equipment trust certificate or similar security  
38 serving the same purpose is the person by which the property is or will  
39 be used or to which the property or equipment is or will be leased or  
40 conditionally sold or that is otherwise contractually responsible for assur-  
41 ing payment of the certificate.

42 (C) The issuer of a fractional undivided interest in an oil, gas, or other  
43 mineral lease or in payments out of production under a lease, right, or

as that term is defined by rule adopted under section 203A of the investment  
advisers act of 1940 (15 U.S.C. section 80b-3a),

[Compromise amendment between the Office of the Securities Commissioner,  
the Securities Industry Association and NCCUSL]

1 position of, a security or interest in a security for value, and "offer to sell"  
2 includes every attempt or offer to dispose of, or solicitation of an offer to  
3 purchase, a security or interest in a security for value.

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

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

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

14 (27) "Securities and exchange commission" means the United States  
15 securities and exchange commission.

16 (28) "Security" means a note; stock; treasury stock; security future;  
17 bond; debenture; evidence of indebtedness; certificate of interest or partic-  
18 ipation in a profit-sharing agreement; collateral trust certificate; preor-  
19 ganization certificate or subscription; transferable share; investment con-  
20 tract; voting trust certificate; certificate of deposit for a security; fractional  
21 undivided interest in oil, gas, or other mineral rights; put, call, straddle,  
22 option, or privilege on a security, certificate of deposit, or group or index  
23 of securities, including an interest therein or based on the value thereof;  
24 put, call, straddle, option, or privilege entered into on a national securities  
25 exchange relating to foreign currency; or, in general, an interest or in-  
26 strument commonly known as a "security"; or a certificate of interest or  
27 participation in, temporary or interim certificate for, receipt for, guar-  
28 antee of, or warrant or right to subscribe to or purchase, any of the fore-  
29 going. The term:

30 (A) Includes both a certificated and an uncertificated security;

31 (B) does not include an insurance or endowment policy or annuity  
32 contract under which an insurance company promises to pay a fixed sum  
33 of money either in a lump sum or periodically for life or other specified  
34 period;

35 (C) does not include an interest in a contributory or noncontributory  
36 pension or welfare plan subject to the employee retirement income se-  
37 curity act of 1974;

38 (D) includes as an "investment contract" an investment in a common  
39 enterprise with the expectation of profits to be derived primarily from  
40 the efforts of a person other than the investor. A "common enterprise"  
41 means an enterprise in which the fortunes of the investor are interwoven  
42 with those of either the person offering the investment, a third party, or  
43 other investors; and

or variable  
[Specifically recommended by the Special Committee on Judiciary]

1 act or an agent registered under this act for soliciting a prospective purchaser in this state; and

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

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

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

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

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

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

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

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

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

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

12 (I) a rescission offer, sale, or purchase under section 39, and amendments thereto;

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

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

(21)

[Compromise amendment between the Office of the Securities Commissioner, the Securities Industry Association and NCCUSL]

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

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

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

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

10 (D) insurance agents who are exclusive insurance agents of the issuer,  
11 or the issuer's subsidiaries or parents, or who derive more than 50% of  
12 their annual income from those organizations; (22)

13 ~~(21)~~ a transaction involving:

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

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

26 (C) the solicitation of tenders of securities by an offeror in a tender  
27 offer in compliance with rule 162 adopted under the securities act of  
28 1933 (17 C.F.R. 230.162) or (23)

29 ~~(22)~~ a nonissuer transaction in an outstanding security by or through  
30 a broker-dealer registered or exempt from registration under this act, if  
31 the issuer is a reporting issuer in a foreign jurisdiction designated by this  
32 paragraph or by rule adopted or order issued under this act; has been  
33 subject to continuous reporting requirements in the foreign jurisdiction  
34 for not less than 180 days before the transaction; and the security is listed  
35 on the foreign jurisdiction's securities exchange that has been designated  
36 by this paragraph or by rule adopted or order issued under this act, or is  
37 a security of the same issuer that is of senior or substantially equal rank  
38 to the listed security or is a warrant or right to purchase or subscribe to  
39 any of the foregoing. For purposes of this paragraph, Canada, together  
40 with its provinces and territories, is a designated foreign jurisdiction and  
41 the Toronto stock exchange, inc., is a designated securities exchange.  
42 After an administrative hearing in compliance with the Kansas adminis-  
43 trative procedure act, the administrator, by rule adopted or order issued

1 under this act, may revoke the designation of a securities exchange under  
2 this paragraph, if the administrator finds that revocation is necessary or  
3 appropriate in the public interest and for the protection of investors.

4 New Sec. 8. A rule adopted or order issued under this act may exempt a  
5 security, transaction, or offer; a rule under this act may exempt a  
6 class of securities, transactions, or offers from any or all of the require-  
7 ments of sections 11 through 16 and section 33, and amendments thereto;  
8 and an order under this act may waive, in whole or in part, any or all of  
9 the conditions for an exemption or offer under sections 6 and 7, and  
10 amendments thereto.

11 ~~New Sec. 9. Except with respect to a federal covered security or a  
12 transaction involving a federal covered security, an order under this act  
13 may deny, suspend application of, condition, limit, or revoke an exemp-  
14 tion created under section 6 (3)(C), (7) or (8) or section 7, and amend-  
15 ments thereto, or an exemption or waiver created under section 8, and  
16 amendments thereto, with respect to a specific security, transaction, or  
17 offer. An order under this section may be issued only pursuant to the  
18 procedures in section 16(d) or section 43, and amendments thereto, and  
19 only prospectively.~~

(a)

20 New Sec. 10. The administrator may by rules and regulations set a  
21 fee not to exceed \$2,500 for an application or filing made in connection  
22 with any exemption from securities registration.

23 New Sec. 11. It is unlawful for a person to offer or sell a security in  
24 this state unless:

25 (1) The security is a federal covered security ~~[and, if required by sec-  
26 tion 12, and amendments thereto, notice or documents have been filed  
27 and the fee has been paid]~~

28 (2) the security, transaction, or offer is exempted from registration  
29 under sections 6 through 8, and amendments thereto; or

30 (3) the security is registered under this act.

31 New Sec. 12. (a) *Required filing of records.* With respect to a federal  
32 covered security, as defined in section 18(b)(2) of the securities act of  
33 1933 (15 U.S.C. section 77r(b)(2)), that is not otherwise exempt under  
34 sections 6 through 8, and amendments thereto, a rule adopted or order  
35 issued under this act may require the filing of any or all of the following  
36 records:

37 (1) Before the initial offer of a federal covered security in this state,  
38 all records that are part of a federal registration statement filed with the  
39 securities and exchange commission under the securities act of 1933 and  
40 a consent to service of process complying with section 50, and amend-  
41 ments thereto, signed by the issuer and the payment of a fee not to exceed  
42 \$2,500;

43 (2) after the initial offer of the federal covered security in this state,

(b) Knowledge of order required. A person does not violate section 11, 13  
through 16, 33, or 39, and amendments thereto, by an offer to sell, offer to  
purchase, sale, or purchase effected after the entry of an order issued under this  
section if the person did not know, and in the exercise of reasonable care could  
not have known, of the order.  
[Compromise amendment between the Office of the Securities Commissioner,  
the Securities Industry Association and NCCUSL]

1 cords under this section must contain or be accompanied by the following  
2 records in addition to the information specified in section 15, and amend-  
3 ments thereto, and a consent to service of process complying with section  
4 50, and amendments thereto:

5 (1) A copy of the latest form of prospectus filed under the securities  
6 act of 1933;

7 (2) a copy of the articles of incorporation and bylaws or their sub-  
8 stantial equivalents currently in effect, a copy of any agreement with or  
9 among underwriters; a copy of any indenture or other instrument gov-  
10 erning the issuance of the security to be registered; and a specimen, copy,  
11 or description of the security;

12 (3) copies of any other information or any other records filed by the  
13 issuer under the securities act of 1933; and

14 (4) an undertaking to forward each amendment to the federal pros-  
15 pectus, other than an amendment that delays the effective date of the  
16 registration statement, promptly after it is filed with the securities and  
17 exchange commission.

18 (c) *Conditions for effectiveness of registration statement.* A registra-  
19 tion statement under this section becomes effective simultaneously with  
20 or subsequent to the federal registration statement when all the following  
21 conditions are satisfied:

22 (1) A stop order under subsection (d) or section 16, and amendments  
23 thereto, or issued by the securities and exchange commission is not in  
24 effect, and a proceeding is not pending against the issuer under section  
25 16, and amendments thereto, and the administrator has not given written  
26 notice of deficiencies that are unresolved and that would constitute  
27 grounds for a stop order under section 16, and amendments thereto; and

28 (2) the registration statement has been on file for at least 20 days or  
29 a shorter period provided by rule adopted or order issued under this act.

30 (d) *Notice of federal registration statement effectiveness.* The regis-  
31 trant shall promptly notify the administrator in a record of the date when  
32 the federal registration statement becomes effective and the content of  
33 any price amendment and shall promptly file a record containing the price  
34 amendment. If the notice is not timely received, the administrator may  
35 issue a stop order, without prior notice or hearing, retroactively denying  
36 effectiveness to the registration statement or suspending its effectiveness  
37 until compliance with this section. The administrator shall promptly notify  
38 the registrant of an order by telephone or electronic means and promptly  
39 confirm this notice by a record. If the registrant subsequently complies  
40 with the notice requirements of this section, the stop order is void as of  
41 the date of its issuance.

42 (e) *Effectiveness of registration statement.* If the federal registration  
43 statement becomes effective before each of the conditions in this section

that is required by rule adopted or order issued under this act

requested by the administrator

[Compromise amendment between the Office of the Securities Commissioner,  
the Securities Industry Association and NCCUSL]

1 being offered or distributed in a nonexempted transaction by or for the  
 2 account of the issuer or other person on whose behalf the offering is  
 3 being made or by an underwriter or broker-dealer that is still offering  
 4 part of an unsold allotment or subscription taken as a participant in the  
 5 distribution. For the purposes of a nonissuer transaction, all outstanding  
 6 securities of the same class identified in the registration statement as a  
 7 security registered under this act are considered to be registered while  
 8 the registration statement is effective. If any securities of the same class  
 9 are outstanding, a registration statement may not be withdrawn until one  
 10 year after its effective date. A registration statement may be withdrawn  
 11 only with the approval of the administrator.

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

17 (j) *Posteffective amendments.* A registration statement shall be  
 18 amended after its effective date if there are material changes in infor-  
 19 mation or documents in the registration statement or if there is an in-  
 20 crease in the aggregate amount of securities offered or sold in this state.  
 21 The posteffective amendment becomes effective when the administrator  
 22 provides written notice that the amendment has been accepted. If a pos-  
 23 teffective amendment is made to increase the number of securities spec-  
 24 ified to be offered or sold, the person filing the amendment shall pay a  
 25 registration fee based upon the increase in such price calculated in ac-  
 26 cordance with the rate and fee specified in subsection (b). ~~[[A post-effective~~  
 27 ~~amendment relates back to the date of the offering of the additional~~  
 28 ~~securities being registered if, within one year after the date of the sale,~~  
 29 ~~the amendment is filed and the additional registration fee is paid.]]~~ If a  
 30 posteffective amendment for registration of additional securities and pay-  
 31 ment of additional fees is not filed in a timely manner, there shall be no  
 32 penalty assessed if the amendment is filed and the additional registration  
 33 fee is paid within one year after the date the additional securities are sold  
 34 in this state.

35 *New Sec. 16. (a) Stop orders.* The administrator may issue a stop  
 36 order denying effectiveness to, or suspending or revoking the effective-  
 37 ness of, a registration statement if the administrator finds that the order  
 38 is in the public interest and that:

39 (1) The registration statement as of its effective date or before the  
 40 effective date in the case of an order denying effectiveness, an amend-  
 41 ment under section 15 (j), and amendments thereto, as of its effective  
 42 date, or a report under section 15 (i), and amendments thereto, is incom-  
 43 plete in a material respect or contains a statement that, in the light of the

[Technical amendment, requested by the Office of the Securities  
 Commissioner]

1 stop order proceeding against an effective registration statement on the  
 2 basis of conduct or a transaction known to the administrator when the  
 3 registration statement became effective unless the proceeding is insti-  
 4 tuted within 30 days after the registration statement became effective.

5 (d) *Summary process.* The administrator may summarily revoke,  
 6 deny, postpone, or suspend the effectiveness of a registration statement  
 7 pending final determination of an administrative proceeding. Upon the  
 8 issuance of the order, the administrator shall promptly notify each person  
 9 specified in subsection (e) that the order has been issued, the reasons for  
 10 the revocation, denial, postponement, or suspension, and that within 15  
 11 days after the receipt of a request in a record from the person the matter  
 12 will be scheduled for a hearing. If a hearing is not requested and none is  
 13 ordered by the administrator, within 30 days after the date of service of  
 14 the order, the order becomes final. If a hearing is requested or ordered,  
 15 the administrator, after notice of and opportunity for hearing for each  
 16 person subject to the order, may modify or vacate the order or extend  
 17 the order until final determination.

18 (e) *Procedural requirements for stop order.* (1) A stop order may not  
 19 be issued under this section without:

20 (A) Appropriate notice to the applicant or registrant, the issuer, and  
 21 the person on whose behalf the securities are to be or have been offered;

22 (B) an opportunity for hearing; and

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

24 (2) Any proceeding under this section shall be done in accordance  
 25 with the Kansas administrative procedure act.

26 (f) *Modification or variation of stop order.* The administrator may  
 27 modify or vacate a stop order issued under this section if the administrator  
 28 finds that the conditions that caused its issuance have changed or that it  
 29 is necessary or appropriate in the public interest or for the protection of  
 30 investors.

31 New Sec. 17. The administrator may waive or modify, in whole or in  
 32 part, any or all of the requirements of sections 12, 13, and 14(b), and  
 33 amendments thereto, or the requirement of any information or record in  
 34 a registration statement or in a periodic report filed pursuant to section  
 35 15~~(b)~~ and amendments thereto.

36 New Sec. 18. (a) *Registration requirement.* It is unlawful for a person  
 37 to transact business in this state as a broker-dealer unless the person is  
 38 registered under this act as a broker-dealer or is exempt from registration  
 39 as a broker-dealer under subsection (b) or (d).

40 (b) *Exemptions from registration.* The following persons are exempt  
 41 from the registration requirement of subsection (a):

42 (1) A broker-dealer without a place of business in this state if its only  
 43 transactions effected in this state are with:

(i)

[Technical amendment, requested by the Office of the Securities  
 Commissioner]



1 register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of  
 2 process complying with section 59, and amendments thereto, and paying  
 3 the fee specified in section 27, and amendments thereto, and any reasonable fees charged by the designee of the administrator for processing the  
 4 filing. The application must contain:

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

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

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

11 (c) *Effectiveness of registration.* If an order is not in effect and a proceeding is not pending under section 29, and amendments thereto,  
 12 registration becomes effective at noon on the 45th day after a completed application is filed, unless the registration is denied. A rule adopted or  
 13 order issued under this act may set an earlier effective date or may defer the effective date until noon on the 45th day after the filing of any amendment  
 14 completing the application.

15 (d) *Registration renewal.* A registration is effective until midnight on  
 16 December 31 of the year for which the application for registration is filed. Unless an order is in effect under section 29, and amendments thereto,  
 17 a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued under this act, by  
 18 paying the fee specified in section 27, and amendments thereto, and by paying costs charged by the designee of the administrator for processing  
 19 the filings.

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

24 New Sec. 24. (a) *Succession.* A broker-dealer or investment adviser  
 25 may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser,  
 26 and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal  
 27 covered investment adviser, by filing as a successor an application for registration pursuant to section 18 or 20, and amendments thereto, or a  
 28 notice pursuant to section 22, and amendments thereto, for the unexpired

or the administrator has given written notice of deficiencies that are unresolved and that would constitute grounds for denial under section 29, and amendments thereto

[Requested by the Office of the Securities Commissioner]

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

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

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

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

- (1) A censure;
- (2) a bar or suspension from association with a broker-dealer or investment adviser registered in this state;
- (3) a civil penalty up to ~~the maximum of \$10,000~~ for each violation;
- (4) an order requiring the registrant to pay restitution for any loss or disgorge any profits arising from a violation, including, in the administrator's discretion, the assessment of interest ~~[not to exceed 15% per annum]~~ from the date of the violation;
- (5) an order charging the registrant with the actual cost of an investigation or proceeding; or
- (6) an order requiring the registrant to cease and desist from any action that constitutes a ground for discipline, or to take other action necessary or appropriate to comply with this Act.

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

(1) has filed an application for registration in this state under this act or the predecessor act within the previous 10 years, which, as of the effective date of registration or as of any date after filing in the case of

\$25,000

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

at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto  
 [Compromise amendment between the Office of the Securities Commissioner, the Securities Industry Association and NCCUSL]

1 in subsection (b), a rule adopted or order issued under this act may re-  
2 quire the filing of a prospectus, pamphlet, circular, form letter, adver-  
3 tisement, sales literature, or other advertising record relating to a security  
4 or investment advice, addressed or intended for distribution to prospec-  
5 tive investors, including clients or prospective clients of a person regis-  
6 tered or required to be registered as an investment adviser under this act.

7 (b) *Excluded communications.* This section does not apply to sales  
8 and advertising literature specified in subsection (a) which relates to a  
9 federal covered security, a federal covered investment adviser, or a secu-  
10 rity or transaction exempted by section 6, 7, or 8, and amendments  
11 thereto, except as required for a notice filing under section 6, 7, or 8, and  
12 amendments thereto.

13 New Sec. 34. (a) It is unlawful for a person to make or cause to be  
14 made, in a record that is used in an action or proceeding or filed under  
15 this act, a statement that, at the time and in the light of the circumstances  
16 under which it is made, is false or misleading in a material respect, or, in  
17 connection with the statement, to omit to state a material fact necessary  
18 to make the statement made, in the light of the circumstances under  
19 which it was made, not false or misleading.

20 (b) It is unlawful for any person to influence, coerce, manipulate or  
21 mislead any person in connection with financial statements or appraisals  
22 to be used in the offer, sale or purchase of securities for the purpose of  
23 rendering such financial statements or appraisals materially misleading.

24 (c) It is unlawful for any person to:

25 (1) Alter, destroy, shred, mutilate, conceal, cover up or falsify any  
26 record with the intent to impede, obstruct or influence any investigation  
27 by the administrator or the administrator's designee;

28 (2) alter, destroy, shred, mutilate or conceal a record with the intent  
29 to impair the object's integrity or availability for use in a proceeding be-  
30 fore the administrator or a proceeding brought by the administrator; or

31 (3) take action harmful to a person with the intent to retaliate, in-  
32 cluding, but not limited to, interference with lawful employment of such  
33 person, for providing truthful information relating to a violation of this  
34 act.

35 New Sec. 35. The filing of an application for registration, a registra-  
36 tion statement, a notice filing under this act, the registration of a person,  
37 the notice filing by a person, or the registration of a security under this  
38 act does not constitute a finding by the administrator that a record filed  
39 under this act is true, complete, and not misleading. The filing or regis-  
40 tration or the availability of an exemption, exception, preemption, or ex-  
41 clusion for a security or a transaction does not mean that the administrator  
42 has passed upon the merits or qualifications of, or recommended or given  
43 approval to, a person, security, or transaction. It is unlawful to make, or

intentionally

[Conforming amendment with '03 SB 110, requested by the Office of the  
Securities Commissioner. FYI Sec. 34 (b) is K.S.A. 2003 Supp. 17-1264a; Sec.  
34 (c) is K.S.A. 2003 Supp. 17-1265a, both sections being repealed upon the  
effective date of this act ]

1 cause to be made, to a purchaser, customer, client, or prospective cus-  
2 tomer or client a representation inconsistent with this section.

3 New Sec. 36. A broker-dealer, agent, investment adviser, federal  
4 covered investment adviser, or investment adviser representative is not  
5 liable to another broker-dealer, agent, investment adviser, federal covered  
6 investment adviser, or investment adviser representative for defamation  
7 relating to a statement that is contained in a record required by the ad-  
8 ministrator, or designee of the administrator, the securities and exchange  
9 commission, or a self-regulatory organization, unless the person knew, or  
10 should have known at the time that the statement was made, that it was  
11 false in a material respect or the person acted in reckless disregard of the  
12 statement's truth or falsity.

13 New Sec. 37. (a) *Criminal penalties.* (1) Except as provided in sub-  
14 sections (a)(2) through (a)(4), a conviction for an intentional violation of  
15 this act, or a rule adopted or order issued under this act, except section  
16 33, and amendments thereto, or the notice filing requirements of section  
17 12 or 22, and amendments thereto, is a severity level 7, nonperson felony.  
18 An individual convicted of violating a rule or order under this act may be  
19 fined, but may not be imprisoned, if the individual did not have knowl-  
20 edge of the rule or order.

21 (2) A conviction for an intentional violation of section 30 or 31, and  
22 amendments thereto, is:

- 23 (A) a severity level ~~6~~ nonperson felony if the violation resulted in a 4  
24 loss of ~~[\$1,000,000]~~ or more: \$100,000
- 25 (B) ~~a severity level 4, nonperson felony if the violation resulted in a~~  
26 ~~loss of at least \$100,000 but less than \$1,000,000.~~
- 27 ~~(C)~~ a severity level 5, nonperson felony if the violation resulted in a (C)  
28 loss of at least \$25,000 but less than \$100,000; or
- 29 ~~(D)~~ a severity level ~~6~~ nonperson felony if the violation resulted in a 7  
30 loss of less than \$25,000.

31 (3) A conviction for an intentional violation of section 11, 18 (a), 18  
32 (c), 19 (a), 19 (d), 20 (a), 20 (c), 20 (d), 21 (a), or 21 (e), and amendments  
33 thereto, is:

- 34 (A) a severity level ~~4~~ nonperson felony if the violation resulted in a 5  
35 loss of ~~[\$1,000,000]~~ or more: \$100,000 (C)
- 36 (B) ~~a severity level 5, nonperson felony if the violation resulted in a~~  
37 ~~loss of at least \$100,000 but less than \$1,000,000.~~
- 38 ~~(C)~~ a severity level 6, nonperson felony if the violation resulted in a  
39 loss of at least \$25,000 but less than \$100,000; or
- 40 ~~(D)~~ a severity level 7, nonperson felony if the violation resulted in a  
41 loss of less than \$25,000.

42 (4) A conviction for an intentional violation of section 34 or 35, and  
43 amendments thereto, is a severity level 8, nonperson felony.

(5) Any violation of section 11, 18 (a), 18 (c), 19 (a), 19 (d), 20 (a), 20 (c),  
20 (d), 21 (a), 21 (e), 30 or 31, and amendments thereto, resulting in a loss of  
\$25,000 or more shall have a presumptive sentence of imprisonment regardless  
of its location on the sentencing grid block.  
[Conforming amendments with '03 SB 110, requested by the Office of the  
Securities Commissioner]

1 (b) *Statute of Limitations.* No prosecution for any crime under this  
 2 act may be commenced more than five years after the alleged violation,  
 3 except that no prosecution for any crime under this act may be com-  
 4 menced more than 10 years after the alleged violation if the victim is the  
 5 Kansas public employees retirement system. A prosecution is commenced  
 6 when a complaint or information is filed, or an indictment returned, and  
 7 a warrant thereon is delivered to the sheriff or other officer for execution,  
 8 except that no prosecution shall be deemed to have been commenced if  
 9 the warrant so issued is not executed without unreasonable delay.

10 (c) *Criminal reference.* The administrator may refer such evidence as  
 11 may be available concerning violations of this act or of any rules and  
 12 regulations or order hereunder to the attorney general or the proper  
 13 county or district attorney, who may in the prosecutor's discretion, with  
 14 or without such a reference, institute the appropriate criminal proceed-  
 15 ings under this act. Upon receipt of such reference, the attorney general  
 16 or the county attorney or district attorney may request that a duly em-  
 17 ployed attorney of the administrator prosecute or assist in the prosecution  
 18 of such violation or violations on behalf of the state. Upon approval of the  
 19 administrator, such employee shall be appointed a special prosecutor for  
 20 the attorney general or the county attorney or district attorney to serve  
 21 without compensation from the attorney general or the county attorney  
 22 or district attorney. Such special prosecutor shall have all the powers and  
 23 duties prescribed by law for assistant attorneys general or assistant county  
 24 or district attorneys and such other powers and duties as are lawfully  
 25 delegated to such special prosecutor by the attorney general or the county  
 26 attorney or district attorney. ~~\_\_\_\_\_~~

27 (d) *No limitation on other criminal enforcement.* This act does not  
 28 limit the power of this state to punish a person for conduct that constitutes  
 29 a crime under other laws of this state.

30 New Sec. 38. (a) *Securities litigation uniform standards act.* En-  
 31 forcement of civil liability under this section is subject to the securities  
 32 litigation uniform standards act of 1998.

33 (b) *Liability of seller to purchaser.* A person is liable to the purchaser  
 34 if the person sells a security in violation of section 11, and amendments  
 35 thereto, or by means of an untrue statement of a material fact or an  
 36 omission to state a material fact necessary in order to make a statement  
 37 made, in light of the circumstances under which it is made, not mislead-  
 38 ing, the purchaser not knowing the untruth or omission and the seller not  
 39 sustaining the burden of proof that the seller did not know and, in the  
 40 exercise of reasonable care, could not have known of the untruth or omis-  
 41 sion. An action under this subsection is governed by the following:

42 (1) The purchaser may maintain an action to recover the considera-  
 43 tion paid for the security, less the amount of any income received on the

If an attorney employed by the administrator acts as a special prosecutor, the administrator may pay extradition and witness expenses associated with the case.

[Requested by the Office of the Securities Commissioner]

1 security, and interest ~~[at 15% per annum]~~ from the date of the purchase,  
2 costs, and reasonable attorneys' fees determined by the court, upon the  
3 tender of the security, or for actual damages as provided in paragraph (3).

4 (2) The tender referred to in paragraph (1) may be made any time  
5 before entry of judgment. Tender requires only notice in a record of  
6 ownership of the security and willingness to exchange the security for the  
7 amount specified. A purchaser that no longer owns the security may re-  
8 cover actual damages as provided in paragraph (3).

9 (3) Actual damages in an action arising under this subsection are the  
10 amount that would be recoverable upon a tender less the value of the  
11 security when the purchaser disposed of it, and interest ~~[at 15% per annum]~~  
12 from the date of the purchase, costs, and reasonable attorneys' fees de-  
13 termined by the court.

14 (c) *Liability of purchaser to seller.* A person is liable to the seller if  
15 the person buys a security by means of an untrue statement of a material  
16 fact or omission to state a material fact necessary in order to make the  
17 statement made, in light of the circumstances under which it is made,  
18 not misleading, the seller not knowing of the untruth or omission, and  
19 the purchaser not sustaining the burden of proof that the purchaser did  
20 not know, and in the exercise of reasonable care, could not have known  
21 of the untruth or omission. An action under this subsection is governed  
22 by the following:

23 (1) The seller may maintain an action to recover the security, and any  
24 income received on the security, costs, and reasonable attorneys' fees  
25 determined by the court, upon the tender of the purchase price, or for  
26 actual damages as provided in paragraph (3).

27 (2) The tender referred to in paragraph (1) may be made any time  
28 before entry of judgment. Tender requires only notice in a record of the  
29 present ability to pay the amount tendered and willingness to take delivery  
30 of the security for the amount specified. If the purchaser no longer owns  
31 the security, the seller may recover actual damages as provided in para-  
32 graph (3).

33 (3) Actual damages in an action arising under this subsection are the  
34 difference between the price at which the security was sold and the value  
35 the security would have had at the time of the sale in the absence of the  
36 purchaser's conduct causing liability, and interest ~~[at 15% per annum]~~  
37 from the date of the sale of the security, costs, and reasonable attorneys' fees  
38 determined by the court.

39 (d) *Liability of unregistered broker-dealer and agent.* A person acting  
40 as a broker-dealer or agent that sells or buys a security in violation of  
41 section 18 (a), 19 (a), or 35, and amendments thereto, is liable to the  
42 customer. The customer, if a purchaser, may maintain an action for re-  
43 covery of actual damages as specified in subsections (b)(1) through (3).

at the rate provided for interest on judgments by K.S.A. 16-204, and  
amendments thereto

[Compromise amendment between the Office of the Securities Commissioner,  
the Securities Industry Association and NCCUSL]

1 or, if a seller, for a remedy as specified in subsections (c)(1) through (3).

2 (e) *Liability of unregistered investment adviser and investment ad-*  
3 *viser representative.* A person acting as an investment adviser or invest-  
4 ment adviser representative that provides investment advice for compensa-  
5 tion in violation of section 20 (a), 21 (a), or 35, and amendments thereto,  
6 is liable to the client. The client may maintain an action to recover the  
7 consideration paid for the advice, interest ~~at 15% per annum~~ from the  
8 date of payment, costs, and reasonable attorneys' fees determined by the  
9 court.

10 (f) *Liability for investment advice.* A person that receives directly or  
11 indirectly any consideration for providing investment advice to another  
12 person and that employs a device, scheme, or artifice to defraud the other  
13 person or engages in an act, practice, or course of business that operates  
14 or would operate as a fraud or deceit on the other person, is liable to the  
15 other person. An action under this subsection is governed by the  
16 following:

17 (1) The person defrauded may maintain an action to recover the con-  
18 sideration paid for the advice and the amount of any actual damages  
19 caused by the fraudulent conduct, interest ~~at 15% per annum~~ from the  
20 date of the fraudulent conduct, costs, and reasonable attorneys' fees de-  
21 termined by the court, less the amount of any income received as a result  
22 of the fraudulent conduct.

23 (2) This subsection does not apply to a broker-dealer or its agents if  
24 the investment advice provided is solely incidental to transacting business  
25 as a broker-dealer and no special compensation is received for the in-  
26 vestment advice.

27 (g) *Joint and several liability.* The following persons are liable jointly  
28 and severally with and to the same extent as persons liable under subsec-  
29 tions (b) through (f):

30 (1) A person that directly or indirectly controls a person liable under  
31 subsections (b) through (f), unless the controlling person sustains the  
32 burden of proof that the person did not know, and in the exercise of  
33 reasonable care could not have known, of the existence of conduct by  
34 reason of which the liability is alleged to exist;

35 (2) an individual who is a managing partner, executive officer, or di-  
36 rector of a person liable under subsections (b) through (f), including an  
37 individual having a similar status or performing similar functions, unless  
38 the individual sustains the burden of proof that the individual did not  
39 know and, in the exercise of reasonable care could not have known, of  
40 the existence of conduct by reason of which the liability is alleged to exist;

41 (3) an individual who is an employee of or associated with a person  
42 liable under subsections (b) through (f) and who materially aids the con-  
43 duct giving rise to the liability, unless the individual sustains the burden

at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto

[Compromise amendment between the Office of the Securities Commissioner, the Securities Industry Association and NCCUSL]

1 and amendments thereto, may have arisen and fairly advising the pur-  
2 chaser, seller, or recipient of investment advice of that person's rights in  
3 connection with the offer, and any financial or other information neces-  
4 sary to correct all material misrepresentations or omissions in the infor-  
5 mation that was required by this act to be furnished to that person at the  
6 time of the purchase, sale, or investment advice:

7 (B) if the basis for relief under this section may have been a violation  
8 of section 38 (b), and amendments thereto, an offer to repurchase the  
9 security for cash, payable on delivery of the security, equal to the consid-  
10 eration paid, and interest ~~[at 15% per annum]~~ from the date of the pur-  
11 chase, less the amount of any income received on the security, or, if the  
12 purchaser no longer owns the security, an offer to pay the purchaser upon  
13 acceptance of the offer damages in an amount that would be recoverable  
14 upon a tender, less the value of the security when the purchaser disposed  
15 of it, and interest ~~[at 15% per annum]~~ from the date of the purchase, in  
16 cash equal to the damages computed in the manner provided in this  
17 subsection;

18 (C) if the basis for relief under this section may have been a violation  
19 of section 38 (c), and amendments thereto, an offer to tender the security,  
20 on payment by the seller of an amount equal to the purchase price paid,  
21 less income received on the security by the purchaser and interest ~~[at 15%  
22 per annum]~~ from the date of the sale, or if the purchaser no longer owns  
23 the security, an offer to pay the seller upon acceptance of the offer, in  
24 cash, damages in the amount of the difference between the price at which  
25 the security was purchased and the value the security would have had at  
26 the time of the purchase in the absence of the purchaser's conduct that  
27 may have caused liability and interest ~~[at 15% per annum]~~ from the date  
28 of the sale;

29 (D) if the basis for relief under this section may have been a violation  
30 of section 38 (d), and amendments thereto; and if the customer is a pur-  
31 chaser, an offer to pay as specified in subparagraph (B); or, if the customer  
32 is a seller, an offer to tender or to pay as specified in subparagraph (C);

33 (E) if the basis for relief under this section may have been a violation  
34 of section 38 (e), and amendments thereto, an offer to reimburse in cash  
35 the consideration paid for the advice and interest ~~[at 15% per annum]~~ from  
36 the date of payment; or

37 (F) if the basis for relief under this section may have been a violation  
38 of section 38 (f), and amendments thereto, an offer to reimburse in cash  
39 the consideration paid for the advice, the amount of any actual damages  
40 that may have been caused by the conduct, and interest ~~[at 15% per annum]~~  
41 from the date of the violation causing the loss;

42 (2) the offer under paragraph (1) states that it must be accepted by  
43 the purchaser, seller, or recipient of investment advice within 30 days

at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto

[Compromise amendment between the Office of the Securities Commissioner, the Securities Industry Association and NCCUSL]



1 (b) *Prohibited conduct.* (1) It is unlawful for the administrator or an  
 2 officer, employee, or designee of the administrator to use for personal  
 3 benefit or the benefit of others records or other information obtained by  
 4 or filed with the administrator that are not public under section 46 (b),  
 5 and amendments thereto. This act does not authorize the administrator  
 6 or an officer, employee, or designee of the administrator to disclose the  
 7 record or information, except in accordance with section 41, 46 (c), or  
 8 47, and amendments thereto.

9 (2) Neither the administrator nor any employee of the administrator  
 10 shall be interested as an officer, director, or stockholder in securing any  
 11 authorization to sell securities under the provisions of this act.

12 (c) *No privilege or exemption created or diminished.* This act does  
 13 not create or diminish a privilege or exemption that exists at common  
 14 law, by statute or rule, or otherwise.

15 (d) *Investor education.* (1) The administrator may develop and im-  
 16 plement investor education initiatives to inform the public about investing  
 17 in securities, with particular emphasis on the prevention and detection of  
 18 securities fraud. In developing and implementing these initiatives, the  
 19 administrator may collaborate with public and nonprofit organizations  
 20 with an interest in investor education. The administrator may accept a  
 21 grant or donation from a person that is not affiliated with the securities  
 22 industry or from a nonprofit organization, regardless of whether the or-  
 23 ganization is affiliated with the securities industry, to develop and imple-  
 24 ment investor education initiatives. This subsection does not authorize  
 25 the administrator to require participation or monetary contributions of a  
 26 registrant in an investor education program.

27 (2) There is hereby established in the state treasury the investor ed-  
 28 ucation fund. Such fund shall be administered by the administrator for  
 29 the purposes described in subsection (d)(1). ~~Moneys collected as civil~~  
 30 ~~penalties under this act shall be credited to the investor education fund.~~  
 31 The administrator may also receive payments designated to be credited  
 32 to the investor education fund as a condition in settlements of cases aris-  
 33 ing out of investigations or examinations. All expenditures from the in-  
 34 vestor education fund shall be made in accordance with appropriation  
 35 acts upon warrants of the director of accounts and reports issued pursuant  
 36 to vouchers approved by the administrator or by a person or persons  
 37 designated by the administrator. ~~Two~~ years after the effective date of this  
 38 act, the administrator shall conduct a review and submit a report to the  
 39 governor and the legislature concerning the expenditures from the in-  
 40 vestor education fund and the results achieved from the investor educa-  
 41 tion program.

42 New Sec. 41. (a) *Authority to investigate.* The administrator may:

43 (1) Conduct public or private investigations within or outside of this

and for the education of registrants, including official hospitality

Two

[Requested by the Office of the Securities Commissioner]

1 (6) impose a civil penalty of not greater than ~~(\$10,000)~~ for each viola-  
2 tion, and

\$25,000

3 (7) grant any other necessary or appropriate relief.

[Compromise amendment between the Office of the Securities Commissioner,  
the Securities Industry Association and NCCUSL]

4 (d) *Application for relief.* This section does not preclude a person  
5 from applying to any court of competent jurisdiction or a court of another  
6 state for relief from a request to appear, testify, file a statement, produce  
7 records, or obey a subpoena.

8 (e) *Use immunity procedure.* An individual is not excused from at-  
9 tending, testifying, filing a statement, producing a record or other evi-  
10 dence, or obeying a subpoena of the administrator under this act or in an  
11 action or proceeding instituted by the administrator under this act on the  
12 ground that the required testimony, statement, record, or other evidence,  
13 directly or indirectly, may tend to incriminate the individual or subject  
14 the individual to a criminal fine, penalty, or forfeiture. If the individual  
15 refuses to testify, file a statement, or produce a record or other evidence  
16 on the basis of the individual's privilege against self-incrimination, the  
17 administrator may compel the testimony, the filing of the statement, the  
18 production of the record, or the giving of other evidence. The testimony,  
19 record, or other evidence compelled under such an order may not be  
20 used, directly or indirectly, against the individual in a criminal case, except  
21 in a prosecution for perjury or contempt or otherwise failing to comply  
22 with the order.

23 (f) *Assistance to securities regulator of another jurisdiction.* At the  
24 request of the securities regulator of another state or a foreign jurisdic-  
25 tion, the administrator may provide assistance if the requesting regulator  
26 states that it is conducting an investigation to determine whether a person  
27 has violated, is violating, or is about to violate a law or rule of the other  
28 state or foreign jurisdiction relating to securities matters that the request-  
29 ing regulator administers or enforces. The administrator may provide the  
30 assistance by using the authority to investigate and the powers conferred  
31 by this section as the administrator determines is necessary or appropri-  
32 ate. The assistance may be provided without regard to whether the con-  
33 duct described in the request would also constitute a violation of this act  
34 or other law of this state if occurring in this state. In deciding whether to  
35 provide the assistance, the administrator may consider whether the re-  
36 questing regulator is permitted and has agreed to provide assistance re-  
37 ciprocally within its state or foreign jurisdiction to the administrator on  
38 securities matters when requested; whether compliance with the request  
39 would violate or prejudice the public policy of this state; and the avail-  
40 ability of resources and employees of the administrator to carry out the  
41 request for assistance.

42 New Sec. 42. (a) *Civil action instituted by administrator.* If the ad-  
43 ministrator believes that a person has engaged, is engaging, or is about

1 to engage in an act, practice, or course of business constituting a violation  
2 of this act or a rule adopted or order issued under this act or that a person  
3 has, is, or is about to engage in an act, practice, or course of business that  
4 materially aids a violation of this act or a rule adopted or order issued  
5 under this act, the administrator may maintain an action in any court of  
6 competent jurisdiction to enjoin the act, practice, or course of business  
7 and to enforce compliance with this act or a rule adopted or order issued  
8 under this act.

9 (b) *Relief available.* In an action under this section and on a proper  
10 showing, the court may:

11 (1) Issue a permanent or temporary injunction, restraining order, or  
12 declaratory judgment;

13 (2) order other appropriate or ancillary relief, which may include:

14 (A) An asset freeze, accounting, writ of attachment, writ of general  
15 or specific execution, and appointment of a receiver or conservator, that  
16 may be the administrator, for the defendant or the defendant's assets;

17 (B) ordering the administrator to take charge and control of a de-  
18 fendant's property, including investment accounts and accounts in a de-  
19 pository institution, rents, and profits; to collect debts; and to acquire and  
20 dispose of property;

21 (C) imposing a civil penalty up to ~~(\$10,000 per)~~ violation;

\$25,000 for each

22 (D) an order of rescission, restitution, or disgorgement directed to a  
23 person that has engaged in an act, practice, or course of business consti-  
24 tuting a violation of this act or the predecessor act or a rule adopted or  
25 order issued under this act or the predecessor act; and

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

26 (E) ordering the payment of pre-judgment and post-judgment interest;  
27 or

28 (3) order such other relief as the court considers appropriate.

29 (c) *No bond required.* The administrator may not be required to post  
30 a bond in an action or proceeding under this act.

[Compromise amendment between the Office of the Securities Commissioner, the Securities Industry Association and NCCUSL]

31 New Sec. 43. (a) *Cease and desist order.* If the administrator finds  
32 that a person has engaged, is engaging, or is about to engage in an act,  
33 practice, or course of business constituting a violation of this act or a rule  
34 adopted or order issued under this act or that a person has materially  
35 aided, is materially aiding, or is about to materially aid an act, practice,  
36 or course of business constituting a violation of this act or a rule adopted  
37 or order issued under this act, the administrator may:

38 (1) Issue an order directing the person to cease and desist from en-  
39 gaging in the act, practice, or course of business or to take other action  
40 necessary or appropriate to comply with this act;

41 (2) issue an order denying, suspending, revoking, or conditioning the  
42 exemptions for a broker-dealer under section 18 (b)(1)(D) or (F), and  
43 amendments thereto, or an investment adviser under section 20 (b)(1)(C).

1 and amendments thereto; or

2 (3) issue an order under section 9, and amendments thereto.

3 (b) *Additional administrative sanctions and remedies.* If the admin-  
4 istrator finds, by written findings of fact and conclusions of law, that a  
5 person has violated this act or a rule adopted or order issued under this  
6 act, the administrator, in addition to any other power granted under this  
7 act, may enter an order against the ~~registrant~~<sup>person</sup> containing one or more of  
8 the following sanctions or remedies:

9 (1) A civil penalty up to ~~maximum of \$10,000~~<sup>\$25,000</sup> for each violation;

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

12 (3) an order requiring the person to pay restitution for any loss or  
13 disgorge any profits arising from the violation, including, in the admin-  
14 istrator's discretion, the assessment of interest ~~not to exceed 15% per~~  
15 ~~annum~~ from the date of the violation; or

16 (4) an order charging the person with the actual cost of the investi-  
17 gation or proceeding.

18 (c) *Procedures for orders.* (1) An order under subsection (b) shall not  
19 be entered unless the administrator first provides notice and opportunity  
20 for hearing in accordance with the provisions of the Kansas administrative  
21 procedures act.

22 (2) An order under subsection (a) is effective on the date of issuance.  
23 Upon issuance of the order, the administrator shall promptly serve each  
24 person subject to the order with a copy of the order. The order must  
25 include a statement of the reasons for the order and notice that upon  
26 receipt of a written request the matter will be set for a hearing which  
27 shall be conducted in accordance with the provisions of the Kansas ad-  
28 ministrative procedures act. If a person subject to the order does not  
29 request a hearing and none is ordered by the administrator within 30 days  
30 after the date of service of the order, the order becomes final as to that  
31 person by operation of law. If a hearing is requested or ordered, the  
32 administrator, after notice of and opportunity for hearing to each person  
33 subject to the order, may modify or vacate the order or extend it until  
34 final determination.

35 (3) An order under subsection (a) may contain a notice of the admin-  
36 istrator's intent to seek administrative sanctions or remedies under sub-  
37 section (b). If the person subject to the order does not request a hearing  
38 and none is ordered by the administrator within 30 days after service of  
39 the order, the administrator may modify the order to include sanctions  
40 or remedies under subsection (b). If a hearing is requested or ordered,  
41 the administrator, after notice and opportunity for hearing, shall by writ-  
42 ten findings of fact and conclusions of law vacate, modify, or make per-  
43 manent the order, and the administrator may modify the order to include

person

[Technical amendment, requested by the Office of the Securities  
Commissioner]

\$25,000

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

[Compromise amendment between the Office of the Securities Commissioner,  
the Securities Industry Association and NCCUSL]

at the rate provided for interest on judgments by K.S.A. 16-204, and  
amendments thereto

[Compromise amendment between the Office of the Securities Commissioner,  
the Securities Industry Association and NCCUSL]

1 New Sec. 48. A final order issued by the administrator under this act  
 2 is subject to judicial review in accordance with the provisions of the act  
 3 for judicial review and civil enforcement of agency actions.

4 New Sec. 49. (a) *Sales and offers to sell.* Sections 11, 12, 18 (a), 19  
 5 (a), 20 (a), 21 (a), 30, 35, 38, and 39, and amendments thereto, do not  
 6 apply to a person that sells or offers to sell a security unless the offer to  
 7 sell or the sale is made in this state or the offer to purchase or the purchase  
 8 is made and accepted in this state.

9 (b) *Purchases and offers to purchase.* Sections 18 (a), 19 (a), 20 (a),  
 10 21 (a), 30, 35, 38, and 39, and amendments thereto, do not apply to a  
 11 person that purchases or offers to purchase a security unless the offer to  
 12 purchase or the purchase is made in this state or the offer to sell or the  
 13 sale is made and accepted in this state.

14 (c) *Offers in this State.* For the purpose of this section, an offer to  
 15 sell or to purchase a security is made in this state, whether or not either  
 16 party is then present in this state, if the offer:

- 17 (1) Originates from within this state; or
- 18 (2) is directed by the offeror to a place in this state and received at  
 19 the place to which it is directed.

20 (d) *Acceptances in this State.* For the purpose of this section, an offer  
 21 to purchase or to sell is accepted in this state, whether or not either party  
 22 is then present in this state, if the acceptance:

- 23 (1) Is communicated to the offeror in this state and the offeree rea-  
 24 sonably believes the offeror to be present in this state and the acceptance  
 25 is received at the place in this state to which it is directed; and
- 26 (2) has not previously been communicated to the offeror, orally or in  
 27 a record, outside this state.

28 (e) *Investment advice and misrepresentations.* Sections 20 (a), 21 (a),  
 29 22 (a), 31, 34, and 35, and amendments thereto, apply to a person if the  
 30 person engages in an act, practice, or course of business instrumental in  
 31 effecting prohibited or actionable conduct in this state, whether or not  
 32 either party is then present in this state.

33 New Sec. 50. (a) *Signed consent to service of process.* A consent to  
 34 service of process required by this act must be signed and filed in the  
 35 form required by a rule or order under this act. A consent appointing the  
 36 administrator the person's agent for service of process in a noncriminal  
 37 action or proceeding against the person, or the person's successor or per-  
 38 sonal representative under this act or a rule adopted or order issued under  
 39 this act after the consent is filed, has the same force and validity as if the  
 40 service were made personally on the person filing the consent. A person  
 41 that has filed a consent complying with this subsection in connection with  
 42 a previous application for registration or notice filing need not file an  
 43 additional consent.

*Publications, radio, television, or electronic communications.* An offer to  
 sell or to purchase is not made in this state when a publisher circulates or there  
 is circulated on the publisher's behalf in this state a bona fide newspaper or  
 other publication of general, regular, and paid circulation that is not published  
 in this state, or that is published in this state but has had more than two thirds of  
 its circulation outside this state during the previous 12 months or when a radio  
 or television program or other electronic communication originating outside  
 this state is received in this state. A radio or television program, or other  
 electronic communication is considered as having originated in this state if  
 either the broadcast studio or the originating source of transmission is located  
 in this state, unless:

- (1) the program or communication is syndicated and distributed from outside  
 this state for redistribution to the general public in this state;
- (2) the program or communication is supplied by a radio, television, or other  
 electronic network with the electronic signal originating from outside this state  
 for redistribution to the general public in this state;
- (3) the program or communication is an electronic communication that  
 originates outside this state and is captured for redistribution to the general  
 public in this state by a community antenna or cable, radio, cable television, or  
 other electronic system; or
- (4) the program or communication consists of an electronic communication that  
 originates in this state, but which is not intended for distribution to the general  
 public in this state.

(f)

[Compromise amendment between the Office of the Securities Commissioner,  
 the Securities Industry Association and NCCUSL]

1 statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;

4 (7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;

10 (8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

15 (9) the governor or the Kansas racing commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;

22 (10) the Kansas sentencing commission;

23 (11) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-gaming compact;

28 (12) the Kansas securities commissioner or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged; or

34 (13) the department of wildlife and parks and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a permit as a commercial guide or associate guide under K.S.A. 32-964, and amendments thereto.

38 ~~[Sec. 60. K.S.A. 2002 Supp. 21-4704 is hereby amended to read as follows: 21-4704. (a) For purposes of sentencing, the following sentencing guidelines grid for nondrug crimes shall be applied in felony cases for crimes committed on or after July 1, 1993.]~~

Also, strike all on pages 78 through 81, renumber remaining sections accordingly.

[Conforming amendments with '03 SB 110, requested by the Office of the Securities Commissioner]

1 cies which receive appropriations from the state general fund to provide  
2 such services.

3 (b) Nothing in this act or in the sections amended by this act or  
4 referred to in subsection (a), shall be deemed to authorize remittances to  
5 be made less frequently than is authorized under K.S.A. 75-4215 and  
6 amendments thereto.

7 (c) Notwithstanding any provision of any statute referred to in or  
8 amended by this act or referred to in subsection (a), whenever in any  
9 fiscal year such 20% credit to the state general fund in relation to any  
10 particular fee fund is \$200,000, in that fiscal year the 20% credit no longer  
11 shall apply to moneys received from sources applicable to such fee fund  
12 and for the remainder of such year the full 100% so received shall be  
13 credited to such fee fund, except as otherwise provided in subsection (d)  
14 and except that during the fiscal year ending June 30, 1993, with respect  
15 to the fire marshal fee fund, when the 20% credit to the state general  
16 fund prescribed by K.S.A. 31-133a, 31-134 and 75-1514 and amendments  
17 thereto, in the aggregate, is \$400,000, then in that fiscal year such 20%  
18 credit no longer shall apply to moneys received from sources applicable  
19 to the fire marshal fee fund and for the remainder of such fiscal year the  
20 full 100% so received shall be credited to the fire marshal fee fund.

21 Sec. 66. K.S.A. 75-6302 is hereby amended to read as follows: 75-  
22 6302. (a) On July 1, 1982, the office of the securities commissioner of  
23 Kansas provided for by K.S.A. 17-1270, prior to its amendment ~~by this~~  
24 ~~act~~ in 1982, and prior to its repeal by this act, shall be and is hereby  
25 abolished and all of the powers, duties and functions of such securities  
26 commissioner shall be and are hereby transferred to and conferred and  
27 imposed upon the securities commissioner of Kansas provided for by this  
28 act.

29 (b) Except as otherwise provided in this act, the securities commis-  
30 sioner provided for by this act shall be the successor in every way to the  
31 powers, duties and functions of the securities commissioner, in which the  
32 same were vested prior to the effective date of this act.

33 (c) Whenever the securities commissioner of Kansas, or words of like  
34 effect, is referred to or designated by a statute, contract or other docu-  
35 ment, such reference or designation shall be deemed to apply to the  
36 securities commissioner provided for by this act.

37 (d) All rules and regulations and all orders and directives of the se-  
38 curities commissioner of Kansas in existence immediately prior to the  
39 effective date of this act shall continue to be effective and shall be deemed  
40 to be the rules and regulations and orders or directives of the securities  
41 commissioner of Kansas provided for by this act, until revised, amended,  
42 repealed or nullified pursuant to law.

43 Sec. 67. K.S.A. 12-1675, 12-1677b, 12-4516, 16-214, 17-1260, 17-

2-27

1 1264, 17-1265, 17-1266, 17-1267, 17-1269, 17-1273, 17-1274, 17-1275,  
 2 17-4632, 50-1009, 50-1016, 66-1508, 74-8229 and 75-6302 and K.S.A. ~~2003~~  
 3 ~~2002~~ Supp. 17-1252, 17-1253, 17-1254, 17-1255, 17-1257, 17-1258, 17-  
 4 1259, 17-1261, 17-1262, 17-1262a, 17-1263, 17-1266a, 17-1268, 17-1270,  
 5 17-1270a, 17-1270b, 17-1271, 17-1272, 17-49301, 21-4619 ~~21-1704~~ and  
 6 75-3170a are hereby repealed.

17-1264, 17-1264a, 17-1265, 17-1265a,

7 Sec. 68. This act shall take effect and be in force from and after July  
 8 1, ~~2004~~ and its publication in the statute book. ~~2005~~

[Requested by the Office of the Securities Commissioner]

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# KANSAS

OFFICE OF THE SECURITIES COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR  
CHRIS BIGGS, COMMISSIONER

**TESTIMONY IN SUPPORT OF HOUSE BILL No. 2347**  
**Adoption of the Kansas Uniform Securities Act**  
House Judiciary Committee

**Chris Biggs, Securities Commissioner**  
January 21, 2004

Mr. Chairman and members of the committee, thank you for the opportunity to speak in support of House Bill 2347 and several amendments that were recommended by the Special Committee on Judiciary.

After last year's session, staff from the Office of the Securities Commissioner met with representatives of the Securities Industry Association and the National Conference of Commissioners on Uniform State Laws (NCCUSL) to discuss HB 2347 and to negotiate compromises on numerous points in the language of the bill. As a result of those discussions, several proposed amendments were presented to the Special Committee on Judiciary with the support of all three parties. In addition, the Office of the Securities Commissioner presented a package of amendments to clean up technical errors and to make HB 2347 conform with the final version of SB 110 that passed last year and increased the penalties for securities violations. Those amendments were recommended for passage by the Special Committee on Judiciary, and they are contained within a balloon amendment prepared by Jill Wolters. My staff and I would be happy to answer any questions you may have concerning those amendments.

A few important issues remain, however. Over our strong objections, the Special Committee on Judiciary recommended that HB 2347 be amended to remove variable annuities from the definition of a security. We urge you to reject that recommendation. Just this past week, the National Association of Securities Dealers filed a complaint charging Waddell & Reed with recommending 6,700 variable annuity exchanges to its customers without determining the suitability of the transactions. The transactions generated \$37 million in commissions for Waddell & Reed and cost the customers nearly \$10 million in surrender fees. Many of those dollars came from Kansas citizens, and the case involves a Kansas-based brokerage firm, but we have no jurisdiction because annuities are not currently defined as securities in Kansas. We urge you to include variable annuities within the definition of a security so that the Office of the Securities Commissioner can assist Kansans who are victimized by abusive sales practices related to this type of investment product.

Another issue I ask you to consider involves the statute of limitations for criminal offenses found in section 37(b) on page 46, line 1 of the bill. The language in section 37(b) was imported from the current Kansas Securities Act, K.S.A. 17-1267(b), but when I became Securities Commissioner last July I immediately became concerned with the lack of a tolling provision in K.S.A. 17-1267(b). With securities fraud cases, including a case I am preparing to file in the next few weeks, the investment may not mature for five years or more. As a result, the investor may not become aware that his or her money was stolen through a phony investment scam until the statute of limitations has already expired.

Our office corresponded with NCCUSL to determine whether they would be concerned about an amendment to section 37(b). In essence, we were told that NCCUSL would oppose an amendment to the *civil* statute of limitations in 38(j) because it was the subject of much dispute and negotiation in the drafting process, but the *criminal* statutes of limitations are left entirely up to the states. In light of NCCUSL's acquiescence, we would propose the following amendment to 37(b). The substantive part of the amendment is the addition of "except as provided by 21-3106(9)"—the KPERS provision is merely shifted to avoid two "except" clauses.

**Except as provided by K.S.A. 21-3106(9), and amendments thereto, no prosecution for any crime under this act may be commenced more than 10 years after the alleged violation if the victim is the Kansas public employees retirement system and no prosecution for any other crime under this act may be commenced more than five years after the alleged violation, except that no prosecution for any crime under this act may be commenced more than 10 years after the alleged violation if the victim is the Kansas public employees retirement system. A prosecution is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution, except that no prosecution shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay.**

In addition to the amendments sought by my office, we have recently been informed that the Kansas Bar Association may propose some amendments to the bill. Those proposals have not been formalized yet, and we will not necessarily agree with all of the proposals, but we have indicated our willingness to discuss the issues in an effort to reach a compromise wherever possible. Through that process, we may develop further amendments that we support in the future.

I thank the Committee for the opportunity to speak, wish you well in your endeavor, and hope that HB 2347 will move forward and become law in a form that fosters efficient capital formation while protecting Kansas investors.

# THE WALL STREET JOURNAL.

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THURSDAY, JANUARY 15, 2004 C1

## NASD Charges Waddell & Reed Over Annuities

By THEO FRANCIS

**I**N WHAT COULD herald a new front in regulatory inquiries into improper investment-product sales practices, the National Association of Securities Dealers accused a unit of Waddell & Reed Financial Inc. of improperly switching thousands of customers from older variable-annuity contracts into versions that were more profitable for the company and often costlier for investors.

The Overland Park, Kan., financial-services firm reaped \$37 million in commissions and \$700,000 in fees—and cost investors \$9.8 million in “surrender” charges for closing out as many as 6,700 investment contracts in favor of “very similar” new ones, many of which were likely to generate more money for Waddell & Reed at the expense of investors, the NASD said in a 22-page complaint lodged yesterday.

Variable annuities—a clunky name for what amounts to mutual funds wrapped in an insurance policy—became one of the hottest investment products of the late 1990s, thanks to favorable tax treatment and a booming stock market.

In a statement, Waddell & Reed said NASD’s complaint was marred by “misrepresentations, factual omissions and half-truths,” and questioned the organization’s methodology in quantifying whether and how investors were harmed. It also maintained that it adequately considered whether the replacements were suitable for each investor and gave its sales force tools for evaluating the exchange.

The complaint against Waddell & Reed comes a day after the Securities and Exchange Commission said it had found questionable sales practices widespread in the mutual-fund industry, and amid months-long inquiries by state and federal regulators into the conduct of mutual-fund companies, many of which also sell variable annuities. In addition, New York state’s attorney general, Eliot Spitzer, who has led widely publicized investiga-

*Please Turn to Page C5, Column 1*

### On Annuity Switches

*Continued From Page C1*

tions into stock-analyst conflicts of interest and mutual-fund trading improprieties, intends to look into annuity sales practices, but isn’t yet actively investigating, a spokesman said.

Although annuity sales overall slumped after the stock bubble burst, they have rebounded heartily with the improving stock market. Their complexity and high cost long have led consumer advocates to caution that securities brokers were peddling them to people who didn’t fully understand the intricacies or costs. Among the costs: the surrender charges, which are steep fees for cashing out an annuity within the first few years after purchase, and which typically vanish after five to eight years.

The NASD also charged Robert Hechler, president and chief executive of Waddell & Reed Inc. from 1993 to 2001, with encouraging the firm’s sales force to embark on the torrent of annuity exchanges. And it charged Robert Williams, the unit’s national sales director since 1996, with failing to supervise adequately the sales force to ensure that contracts were switched only when the move was suitable for a given investor.

An attorney for Mr. Williams said he “has had a long and distinguished career in the financial-services industry, and he looks forward to being vindicated.” An attorney for Mr. Hechler couldn’t be reached to comment. Waddell & Reed and the two executives have 25 days to respond to the complaint, and ultimately a hearing may be held before a three-person panel under NASD rules. Either side could appeal the resulting decision within the organization, and ultimately bring the case to court.

More than 1,400 of the Waddell exchanges probably led to investors losing money, the NASD complaint said. More than 700 investors had their existing annuities switched into new ones that were “more costly, had higher fees, less benefits—but a greater payout for the [sales] rep and the firm,” said Barry R. Goldsmith, NASD’s executive vice president for enforcement.

In 18 other cases cited in the complaint, investors swapping existing annuities for nearly identical ones paid a penalty of least 5% of the account value for surrendering their initial annuities soon after buying them.

In its statement, Waddell & Reed said the NASD arrived at its figures showing harm to investors “based on the retroactive application of a hypothetical academic predictive model” that failed to reflect all the benefits of the new annuities, which it called “far superior to the policies being replaced.” Waddell & Reed, which in June had disclosed the NASD’s inquiry, also said it believed the NASD had initiated its inquiry “without a single investor complaint” and at the behest of United Investors.

“We believe our actions were consistent with NASD rules and guidance,” Waddell & Reed Chairman Keith A. Tucker said in the company’s statement, which also said Messrs. Hechler and Williams acted responsibly. “Waddell & Reed strenuously denies the NASD’s allegations and plans to vigorously defend its sales practices and compliance procedures.”

*—Tom Iauricella*

**Kansas Independent Oil & Gas Association**  
800 S.W. Jackson Street, Suite 1400  
Topeka, Kansas 66612  
www.kioga.org

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**Testimony to the Judiciary Committee**  
House Bill 2347 – Kansas Uniform Securities Act  
Edward P. Cross, Executive Vice President  
Kansas Independent Oil & Gas Association  
January 21, 2004

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Good afternoon Chairman O'Neal and members of the committee. I am Edward Cross, Executive Vice President of the Kansas Independent Oil & Gas Association (KIOGA). KIOGA represents oil and gas producers in Kansas, a vast majority of which are small business entities. We appear this afternoon to express our concern that K.S.A. 17-1262a is being removed from HB 2347, but without an understanding of how these definitions that are contained therein, which were last amended into the Act in 1990, and have been relied upon by Kansas oil and gas operators throughout Kansas, will be addressed.

Since the vast majority of Kansas oil and gas operators are small business entities, preserving the oil and gas securities exemption is very important. After speaking with the Securities Commission, we understand that the Commission's intent is to preserve the oil and gas securities exemption. To our understanding, the definitions preserving the oil and gas securities exemption will be developed through regulatory language. The Securities Commission has assured us that the oil and gas industry will have a seat at the table when they develop the regulatory language replacing K.S.A 17-1262a definitions.

Thank you for your time and consideration.



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January 21, 200

TO: Members of the House Judiciary Committee

FROM: Kansas Bar Association

RE: **HB 2347**

The Kansas Bar Association appears in support of HB 2347, but would recommend the following changes:

Page 14, line 39, insert “(20) an offer or sale of a security to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this act; and renumber subsequent sections.

Page 18, lines 25 – 27, strike language after “thereto” on line 25 through “thereto” on line 27.

Page 37, lines 23 and 24, strike after “records” on line 23 through “and” in line 24.

Page 49, line 19, strike “one year” and insert “two years”.

Page 51, lines 4 and 5, strike all of section 3 and renumber subsequent sections.

Page 87, line 8, strike “2004” and insert “2005”.

1 act or an agent registered under this act for soliciting a prospective purchaser in this state; and

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

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

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

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

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

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

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

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

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

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

35 (19) a rescission offer, sale, or purchase under section 39, and amend-  
36 ments thereto;

37 ~~(19) employees' stock purchase, savings, option, profit-sharing, pen-  
38 sion, or similar employees' benefit plan, including any securities, plan  
39 interests, and guarantees issued under a compensatory benefit plan or  
40 compensation contract, contained in a record, established by the issuer,  
41 its parents, its majority-owned subsidiaries, or the majority-owned sub-  
42~~

{ Insert attached language }

21

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

1 investment advisers act of 1940 (15 U.S.C. section 80b-22), a broker-  
2 dealer registered or required to be registered under this act and an in-  
3 vestment adviser registered or required to be registered under this act  
4 shall file such financial reports as are required by a rule adopted or order  
5 issued under this act. If the information contained in a record filed under  
6 this subsection is or becomes inaccurate or incomplete in a material re-  
7 spect, the registrant shall promptly file a correcting amendment.

8 (c) *Recordkeeping.* Subject to section 15(h) of the securities exchange  
9 act of 1934 (15 U.S.C. section 78o(h)) or section 222 of the investment  
10 advisers act of 1940 (15 U.S.C. section 80b-22):

11 (1) A broker-dealer registered or required to be registered under this  
12 act and an investment adviser registered or required to be registered  
13 under this act shall make and maintain the accounts, correspondence,  
14 memoranda, papers, books, and other records required by rule adopted  
15 or order issued under this act;

16 (2) broker-dealer records required to be maintained under paragraph  
17 (1) may be maintained in any form of data storage acceptable under sec-  
18 tion 17(a) of the securities exchange act of 1934 (15 U.S.C. section 78q(a))  
19 if they are readily accessible to the administrator; and

20 (3) investment adviser records required to be maintained under par-  
21 agraph (1) may be maintained in any form of data storage required by  
22 rule adopted or order issued under this act.

23 (d) *Audits or inspections.* The records of every person issuing or guar-  
24 anteeing any securities subject to the provisions of this act and of every  
25 broker-dealer, agent, investment adviser or investment adviser represen-  
26 tative registered or required to be registered under this act are subject  
27 to such reasonable periodic, special, or other audits or inspections by a  
28 representative of the administrator, within or without this state, as the  
29 administrator considers necessary or appropriate in the public interest  
30 and for the protection of investors. An audit or inspection may be made  
31 at any time and without prior notice. The administrator may copy, and  
32 remove for audit or inspection copies of, all records the administrator  
33 reasonably considers necessary or appropriate to conduct the audit or  
34 inspection. The administrator may assess a reasonable charge for con-  
35 ducting an audit or inspection under this subsection.

36 (e) *Custody and discretionary authority bond or insurance.* Subject  
37 to section 15(h) of the securities exchange act of 1934 (15 U.S.C. section  
38 78o(h)) or section 222 of the investment advisers act of 1940 (15 U.S.C.  
39 section 80b-22), a rule adopted or order issued under this act may require  
40 a broker-dealer or investment adviser that has custody of or discretionary  
41 authority over funds or securities of a customer or client to obtain insur-  
42 ance or post a bond or other satisfactory form of security. The adminis-  
43 trator may determine the requirements of the insurance, bond, or other

1 or the date of its receipt by the purchaser, seller, or recipient of in-  
2 vestment advice or any shorter period, of not less than three days, that  
3 the administrator, by order, specifies;  
4 ~~(3) the offeror has the present ability to pay the amount offered or~~  
5 ~~to tender the security under paragraph (1);~~  
6 <sup>3</sup> ~~(4)~~ the offer under paragraph (1) is delivered to the purchaser, seller,  
7 or recipient of investment advice, or sent in a manner that ensures receipt  
8 by the purchaser, seller, or recipient of investment advice; and  
9 <sup>4</sup> ~~(5)~~ the purchaser, seller, or recipient of investment advice that ac-  
10 cepts the offer under paragraph (1) in a record within the period specified  
11 under paragraph (2) is paid in accordance with the terms of the offer.  
12 New Sec. 40. (a) *Administration.* (1) This act shall be administered  
13 by the securities commissioner of Kansas.  
14 (2) All fees herein provided for shall be collected by the administra-  
15 tor. All salaries and expenses necessarily incurred in the administration  
16 of this act shall be paid from the securities act fee fund.  
17 (3) The administrator shall remit all moneys received from all fees,  
18 charges, deposits or penalties which have been collected under this Act  
19 or other laws of this state regulating the issuance, sale or disposal of  
20 securities or regulating dealers in this state or under the uniform land  
21 sales practices act, to the state treasurer at least monthly. Upon receipt  
22 of any such remittance, the state treasurer shall deposit the entire amount  
23 thereof in the state treasury. In accordance with subsection (a) of K.S.A.  
24 75-3170, and amendments thereto, 20% of each such deposit shall be  
25 credited to the state general fund and, except as provided in subsection  
26 (d), the balance shall be credited to the securities act fee fund.  
27 (4) On the last day of each fiscal year, the director of accounts and  
28 reports shall transfer from the securities act fee fund to the state general  
29 fund any remaining unencumbered amount in the securities act fee fund  
30 exceeding \$50,000 so that the beginning unencumbered balance in the  
31 securities act fee fund on the first day of each fiscal year is \$50,000. All  
32 expenditures from the securities act fee fund shall be made in accordance  
33 with appropriation acts upon warrants of the director of accounts and  
34 reports issued pursuant to vouchers approved by the administrator or by  
35 a person or persons designated by the administrator.  
36 (5) All amounts transferred from the securities act fee fund to the  
37 state general fund under paragraph (4) are to reimburse the state general  
38 fund for accounting, auditing, budgeting, legal, payroll, personnel and  
39 purchasing services and any other governmental services which are per-  
40 formed on behalf of the state agency involved by other state agencies  
41 which receive appropriations from the state general fund to provide such  
42 services. Such reimbursements are in addition to those authorized by  
43 K.S.A. 75-3170a and amendments thereto.



1 ~~(E) includes as an "investment contract," among other contracts, an~~  
 2 ~~interest in a limited partnership and a limited liability company and an~~  
 3 ~~investment in a viatical settlement or similar agreement.~~

4 (29) "Self-regulatory organization" means a national securities  
 5 exchange registered under the securities exchange act of 1934, a nation  
 6 securities association of broker-dealers registered under the securities  
 7 exchange act of 1934, a clearing agency registered under the securities  
 8 exchange act of 1934, or the municipal securities rulemaking board es-  
 9 tablished under the securities exchange act of 1934.

10 (30) "Sign" means, with present intent to authenticate or adopt a  
 11 record:

12 (A) To execute or adopt a tangible symbol; or

13 (B) to attach or logically associate with the record an electronic sym-  
 14 bol, sound, or process.

15 (31) "State" means a state of the United States, the District of Co-  
 16 lumbia, Puerto Rico, the United States Virgin Islands, or any territory or  
 17 insular possession subject to the jurisdiction of the United States.

18 (32) "Rules" when used in the context of the rules adopted by the  
 19 administrator, means rules and regulations adopted by the administrator  
 20 pursuant to this act.

21 New Sec. 3. "Securities act of 1933" (15 U.S.C. section 77a et seq.),  
 22 "securities exchange act of 1934" (15 U.S.C. section 78a et seq.), "public  
 23 utility holding company act of 1935" (15 U.S.C. section 79 et seq.), "in-  
 24 vestment company act of 1940" (15 U.S.C. section 80a-1 et seq.), "in-  
 25 vestment advisers act of 1940" (15 U.S.C. section 80b-1 et seq.), "em-  
 26 ployee retirement income security act of 1974" (29 U.S.C. section 1001  
 27 et seq.), "national housing act" (12 U.S.C. section 1701 et seq.), "com-  
 28 modity exchange act" (7 U.S.C. Section 1 et seq.), "internal revenue code"  
 29 (26 U.S.C. section 1 et seq.), "securities investor protection act of 1970"  
 30 (15 U.S.C. section 78aaa et seq.), "securities litigation uniform standards  
 31 act of 1998" (112 Stat. 3227), "small business investment act of 1958" (15  
 32 U.S.C. section 661 et seq.), and "electronic signatures in global and na-  
 33 tional commerce act" (15 U.S.C. section 7001 et seq.) mean those statutes  
 34 and the rules and regulations adopted under those statutes, as in effect  
 35 on the date of the latest amendment to any provision of this act.

36 New Sec. 4. A reference in this act to an agency or department of  
 37 the United States is also a reference to a successor agency or department.

38 New Sec. 5. This act modifies, limits, and supersedes the federal  
 39 electronic signatures in global and national commerce act, but does not  
 40 modify, limit, or supersede section 101(c) of that act (15 U.S.C. section  
 41 7001(c)) or authorize electronic delivery of any of the notices described  
 42 in section 103(b) of that act (15 U.S.C. section 7003(b)). This act author-  
 43 izes the filing of records and signatures, when specified by provisions of

(E) In this paragraph, an "investment contract" ~~includes among~~  
~~other contracts; may include~~ an interest in a limited partnership and  
 a limited liability company and ~~an investment in a viatical~~  
~~settlement or similar agreement shall include a VIATICAL~~  
INVESTMENT as defined in the North American Securities  
Administrators Association ("NASAA") Guidelines Regarding  
Viatical Investments.



The KANSAS BANKERS ASSOCIATION  
A Full Service Banking Association

January 21, 2004

To: House Committee on Judiciary

From: Kathleen Taylor Olsen, Kansas Bankers Association

**Re: HB 2347: Uniform Securities Act**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to offer testimony regarding **HB 2347**, enacting the Kansas Uniform Securities Act.

Of interest to our industry is the change in the definition of "broker-dealer" that is found on Page 2 of the bill, beginning on line 4. As you can see, there is a **qualified** exclusion from the definition (**and** the securities registration requirements) for banks and savings institutions.

Banks, savings institutions and trust companies (collectively referred to here as "banks") have traditionally been excluded from the definition of "broker-dealer" and therefore, securities regulation, because bank securities activities are already being regulated by the institution's primary federal or state bank regulator. Having banks' activities also overseen by the Securities Commissioner could lead to unnecessary and duplicate regulation.

Current state law provides a very broad exclusion, generally excluding banks, savings institutions and trust companies entirely from the term "broker-dealer". HB 2347 excludes a bank or savings institution from the definition of broker-dealer only if its activities are limited to those specified in subsections (i) and (ii).

This new limited exclusion is also more restrictive than the securities activities allowed by federal law under the Gramm-Leach-Bliley Act (GLBA). While the Uniform Securities Act (USA) exempts many of the same activities from securities regulation as GLBA, the USA does not exempt two activities that are available under GLBA. Those two activities relate to certain private placement offerings and de minimus brokerage transactions.

House Judiciary Committee

1-21-04

Attachment 6

January 20, 2004

**HB 2347: USA**

Page Two

Thus, if the USA is enacted as drafted, there will be inconsistency between our state law and the federal law, with the state law being more restrictive. We believe this creates a potential unfair playing field for state-chartered banks versus their national-chartered brethren. The federal banking regulator for national-chartered banks (the Office of the Comptroller of the Currency or OCC) has been very aggressive and successful in asking courts to preempt state laws that are more restrictive than federal law. If such a challenge were to be successful here, it would (at least philosophically) put our state-chartered banks at a disadvantage with regard to this Act.

We have discussed this concern with the Securities Commissioner and have graciously received acknowledgment (see attached letter) not only of our concern, but also assurance that should a successful preemption of our state law occur in the future, the Commissioner would take action, either through a legislative initiative or by regulation, to ensure that state-chartered banks would not be put at a competitive disadvantage with national-chartered banks.

With his assurance and the knowledge that currently, none of our members would be disadvantaged by the enactment of this law, we will not be asking this committee for an amendment regarding this issue at this time.

It is our understanding that an amendment requested by the Kansas Bankers Association Trust Division has already been included in the package of suggested amendments that you have received from the Securities Commissioner. The amendment would include the words, "or trust company" on line 10 of Page Two.

This change would be consistent with the definition of broker-dealer that exists under current state law as described above. We believe trust companies are excluded from the definition under current law because many of their securities activities are already being regulated at either the federal level or the state level, just as bank securities activities are already being regulated at some level.

Thank you for your time and attention to these matters.

# KANSAS

OFFICE OF THE SECURITIES COMMISSIONER

August 19, 2003

KATHLEEN SEBELIUS, GOVERNOR  
CHRIS BIGGS, COMMISSIONER

Charles A. Stones  
Senior Vice-President  
Kansas Bankers Association  
PO Box 4407  
Topeka, Kansas 66604-0407

Dear Mr. Stones,

During our meeting this morning, you raised an issue concerning the exclusion of banks from the definition of a broker-dealer in section 2(4) of the Kansas Uniform Securities Act, House Bill 2347. The exclusion in section 2(4), which is drawn from section 102(4) of the model act, is narrower in some respects than the exclusion in the federal Gramm-Leach-Bliley Act. As a result, under some circumstances a bank may be excluded from the definition of a broker-dealer at the federal level but still be required to register as a broker-dealer at the state level. You are concerned that the Office of the Comptroller of the Currency may successfully argue that the states are preempted from giving federally chartered banks a more restrictive exclusion than federal law provides, which would result in a competitive disadvantage for state chartered banks.

I understand your concern, and it is not my intention to create a playing field that is uneven for state chartered banks. However, I do not wish to disturb this particular model provision to address preemption that has been threatened but has not yet occurred. Section 102(4) was the subject of much debate in the drafting process and it reflects a delicate balance, including the concerns of the securities firms that the federal bank exclusion places securities firms at a competitive disadvantage to banks.

Consequently, I would oppose a current effort to amend section 2(4) to conform with the federal bank exclusion. However, in the event that the OCC is successful in carrying out its preemption threat, I assure you that I will take action to ensure that state chartered banks are not put at a competitive disadvantage with federally chartered banks. This could be accomplished by legislation or by simply expanding the bank exclusion by regulation, as authorized by section 2(4)(E) of the bill.

It was a pleasure meeting you this morning, and I look forward to working with your organization in the days ahead. I hope my position on this issue sufficiently allays your concerns.

Sincerely,

  
Chris Biggs  
Securities Commissioner

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September 11, 2003

Senator John Vratil  
Chairman, The Special Committee  
on Judiciary  
State Capitol Building  
Topeka, KS 66612

Dear Chairman Vratil,

Waddell & Reed is in favor of robust regulatory oversight to protect the integrity of the securities industry and capital markets. However, Waddell & Reed does not support duplicative regulation that does not result in increased investor protection and that may result in inconsistent, contradictory or confusing regulatory framework. For these reasons, we support the concept of House Bill 2347 (implementing the Uniform Security Act as proposed by the National Conference of Commissioners on Uniform State Laws) to the extent it seeks to promote uniformity of securities regulation among the various states. Waddell & Reed also supports the inclusion of variable annuities in the definition of "security" to the extent it ensures that variable annuities sold in Kansas will be subject to the exclusive jurisdiction of the Kansas Securities Commission and not the duplicative and contradictory jurisdiction of multiple federal and state regulators.

By defining variable annuities as securities instead of insurance, the Act would be more consistent with federal regulation and the treatment afforded to variable annuities by federal regulators. Federal regulators treat variable annuities as securities and as such they are subject to stringent regulation by the National Association of Security Dealers ("NASD") and the SEC. It is more difficult for Waddell & Reed and others to be regulated one way by the states and another way by federal regulators and adds another unnecessary regulatory burden to the cost of doing business.

Waddell & Reed also thinks that the character of variable annuities is more similar to an investment product than an insurance product. Clearly variable annuities have insurance features, but most customers buy variable annuities as a method to purchase the underlying mutual funds – securities. Many customers are primarily seeking the returns of equity and fixed income securities within a vehicle that provides them income tax deferral. The life insurance protection is extremely important for most people purchasing variable annuities, but typically secondary to the investment features of such products. Therefore the financial planning process that Waddell & Reed uses with its customers focuses on variable annuities as if they were primary securities.

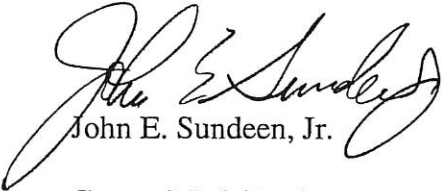
House Judiciary Committee  
1-21-04  
Attachment 7

Senator John Vratil  
September 11, 2003  
Page 2

In other words, we are in favor of the Act because it would ostensibly prevent disparate treatment of the same activity by federal and state regulators.

Please feel free to contact Mark Buyle at 913.236.1928 who is our Associate General Counsel or Kathy Damron at 785.235.2525 who is our registered lobbyist in Topeka.

Sincerely,



John E. Sundeen, Jr.

C: Mark Buyle  
Kathy Damron ✓

1 act or an agent registered under this act for soliciting a prospective purchaser in this state; and

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

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

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

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

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

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

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

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

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

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

37 (19) a rescission offer, sale, or purchase under section 39, and amend-  
38 ments thereto;

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

[ Insert attached languages ]

21

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

1 cords under this section must contain or be accompanied by the following  
 2 records in addition to the information specified in section 15, and amend-  
 3 ments thereto, and a consent to service of process complying with section  
 4 50, and amendments thereto:

5 (1) A copy of the latest form of prospectus filed under the securities  
 6 act of 1933;

7 (2) a copy of the articles of incorporation and bylaws or their sub-  
 8 stantial equivalents currently in effect; a copy of any agreement with or  
 9 among underwriters; a copy of any indenture or other instrument gov-  
 10 erning the issuance of the security to be registered; and a specimen, copy,  
 11 or description of the security;

12 (3) copies of any other information or any other records filed by the  
 13 issuer under the securities act of 1933; and

14 (4) an undertaking to forward each amendment to the federal pro-  
 15 spectus, other than an amendment that delays the effective date of the  
 16 registration statement, promptly after it is filed with the securities and  
 17 exchange commission.

18 (c) *Conditions for effectiveness of registration statement.* A registra-  
 19 tion statement under this section becomes effective simultaneously with  
 20 or subsequent to the federal registration statement when all the following  
 21 conditions are satisfied:

22 (1) A stop order under subsection (d) or section 16, and amendments  
 23 thereto, or issued by the securities and exchange commission is not in  
 24 effect, and a proceeding is not pending against the issuer under section  
 25 16, and amendments thereto, ~~and the administrator has not given written~~  
 26 ~~notice of deficiencies that are unresolved and that would constitute~~  
 27 ~~grounds for a stop order under section 16, and amendments thereto;~~ and

28 (2) the registration statement has been on file for at least 20 days or  
 29 a shorter period provided by rule adopted or order issued under this act.

30 (d) *Notice of federal registration statement effectiveness.* The regis-  
 31 trant shall promptly notify the administrator in a record of the date when  
 32 the federal registration statement becomes effective and the content of  
 33 any price amendment and shall promptly file a record containing the price  
 34 amendment. If the notice is not timely received, the administrator may  
 35 issue a stop order, without prior notice or hearing, retroactively denying  
 36 effectiveness to the registration statement or suspending its effectiveness  
 37 until compliance with this section. The administrator shall promptly notify  
 38 the registrant of an order by telephone or electronic means and promptly  
 39 confirm this notice by a record. If the registrant subsequently complies  
 40 with the notice requirements of this section, the stop order is void as of  
 41 the date of its issuance.

42 (e) *Effectiveness of registration statement.* If the federal registration  
 43 statement becomes effective before each of the conditions in this section



1 investment advisers act of 1940 (15 U.S.C. section 80b-22), a broker-  
2 dealer registered or required to be registered under this act and an in-  
3 vestment adviser registered or required to be registered under this act  
4 shall file such financial reports as are required by a rule adopted or order  
5 issued under this act. If the information contained in a record filed under  
6 this subsection is or becomes inaccurate or incomplete in a material re-  
7 spect, the registrant shall promptly file a correcting amendment.

8 (c) *Recordkeeping.* Subject to section 15(h) of the securities exchange  
9 act of 1934 (15 U.S.C. section 78o(h)) or section 222 of the investment  
10 advisers act of 1940 (15 U.S.C. section 80b-22):

11 (1) A broker-dealer registered or required to be registered under this  
12 act and an investment adviser registered or required to be registered  
13 under this act shall make and maintain the accounts, correspondence,  
14 memoranda, papers, books, and other records required by rule adopted  
15 or order issued under this act;

16 (2) broker-dealer records required to be maintained under paragraph  
17 (1) may be maintained in any form of data storage acceptable under sec-  
18 tion 17(a) of the securities exchange act of 1934 (15 U.S.C. section 78q(a))  
19 if they are readily accessible to the administrator; and

20 (3) investment adviser records required to be maintained under par-  
21 agraph (1) may be maintained in any form of data storage required by  
22 rule adopted or order issued under this act.

23 (d) *Audits or inspections.* The records of every person issuing or guar-  
24 anteeing any securities subject to the provisions of this act and of every  
25 broker-dealer, agent, investment adviser or investment adviser represen-  
26 tative registered or required to be registered under this act are subject  
27 to such reasonable periodic, special, or other audits or inspections by a  
28 representative of the administrator, within or without this state, as the  
29 administrator considers necessary or appropriate in the public interest  
30 and for the protection of investors. An audit or inspection may be made  
31 at any time and without prior notice. The administrator may copy, and  
32 remove for audit or inspection copies of, all records the administrator  
33 reasonably considers necessary or appropriate to conduct the audit or  
34 inspection. The administrator may assess a reasonable charge for con-  
35 ducting an audit or inspection under this subsection.

36 (e) *Custody and discretionary authority bond or insurance.* Subject  
37 to section 15(h) of the securities exchange act of 1934 (15 U.S.C. section  
38 78o(h)) or section 222 of the investment advisers act of 1940 (15 U.S.C.  
39 section 80b-22), a rule adopted or order issued under this act may require  
40 a broker-dealer or investment adviser that has custody of or discretionary  
41 authority over funds or securities of a customer or client to obtain insur-  
42 ance or post a bond or other satisfactory form of security. The adminis-  
43 trator may determine the requirements of the insurance, bond, or other

2 care could not have known, of the existence of conduct by reason of which  
3 liability is alleged to exist; and  
4 a person that is a broker-dealer, agent, investment adviser, or  
5 investment adviser representative that materially aids the conduct giving  
6 rise to the liability under subsections (b) through (f), unless the person  
7 sustains the burden of proof that the person did not know and, in the  
8 exercise of reasonable care could not have known, of the existence of  
9 conduct by reason of which liability is alleged to exist.

10 (h) *Right of contribution.* A person liable under this section has a  
11 right of contribution as in cases of contract against any other person liable  
12 under this section for the same conduct.

13 (i) *Survival of cause of action.* A cause of action under this section  
14 survives the death of an individual who might have been a plaintiff or  
15 defendant.

16 (j) *Statute of limitations.* A person may not obtain relief:

17 (1) Under subsection (b) for violation of section 11, and amendments  
18 thereto, or under subsection (d) or (e), unless the action is instituted  
19 within ~~one~~ year after the violation occurred; or

two

20 (2) under subsection (b), other than for violation of section 11, and  
21 amendments thereto, or under subsection (c) or (f), unless the action is  
22 instituted within the earlier of two years after discovery of the facts con-  
23 stituting the violation or five years after the violation.

24 (k) *No enforcement of violative contract.* A person that has made, or  
25 has engaged in the performance of, a contract in violation of this act or  
26 a rule adopted or order issued under this act, or that has acquired a  
27 purported right under the contract with knowledge of conduct by reason  
28 of which its making or performance was in violation of this act, may not  
29 base an action on the contract.

30 (l) *No contractual waiver.* A condition, stipulation, or provision bind-  
31 ing a person purchasing or selling a security or receiving investment ad-  
32 vice to waive compliance with this act or a rule adopted or order issued  
33 under this act is void.

34 (m) *Survival of other rights or remedies.* The rights and remedies  
35 provided by this act are in addition to any other rights or remedies that  
36 may exist, but this act does not create a cause of action not specified in  
37 this section or section 28 (e), and amendments thereto.

38 New Sec. 39. A purchaser, seller, or recipient of investment advice  
39 may not maintain an action under section 38, and amendments thereto,  
40 if:

41 (1) The purchaser, seller, or recipient of investment advice receives  
42 in a record, before the action is instituted:

43 (A) An offer stating the respect in which liability under section 38,

1 or the date of its receipt by the purchaser, seller, or recipient of in-  
2 vestment advice or any shorter period, of not less than three days, that  
3 the administrator, by order, specifies;  
4 ~~(3) the offeror has the present ability to pay the amount offered or~~  
5 ~~to tender the security under paragraph (1);~~  
6 ~~(4)~~ <sup>3</sup> the offer under paragraph (1) is delivered to the purchaser, seller,  
7 or recipient of investment advice, or sent in a manner that ensures receipt  
8 by the purchaser, seller, or recipient of investment advice; and  
9 ~~(5)~~ <sup>4</sup> the purchaser, seller, or recipient of investment advice that ac-  
10 cepts the offer under paragraph (1) in a record within the period specified  
11 under paragraph (2) is paid in accordance with the terms of the offer.  
12 New Sec. 40. (a) *Administration.* (1) This act shall be administered  
13 by the securities commissioner of Kansas.  
14 (2) All fees herein provided for shall be collected by the administra-  
15 tor. All salaries and expenses necessarily incurred in the administration  
16 of this act shall be paid from the securities act fee fund.  
17 (3) The administrator shall remit all moneys received from all fees,  
18 charges, deposits or penalties which have been collected under this Act  
19 or other laws of this state regulating the issuance, sale or disposal of  
20 securities or regulating dealers in this state or under the uniform land  
21 sales practices act, to the state treasurer at least monthly. Upon receipt  
22 of any such remittance, the state treasurer shall deposit the entire amount  
23 thereof in the state treasury. In accordance with subsection (a) of K.S.A.  
24 75-3170, and amendments thereto, 20% of each such deposit shall be  
25 credited to the state general fund and, except as provided in subsection  
26 (d), the balance shall be credited to the securities act fee fund.  
27 (4) On the last day of each fiscal year, the director of accounts and  
28 reports shall transfer from the securities act fee fund to the state general  
29 fund any remaining unencumbered amount in the securities act fee fund  
30 exceeding \$50,000 so that the beginning unencumbered balance in the  
31 securities act fee fund on the first day of each fiscal year is \$50,000. All  
32 expenditures from the securities act fee fund shall be made in accordance  
33 with appropriation acts upon warrants of the director of accounts and  
34 reports issued pursuant to vouchers approved by the administrator or by  
35 a person or persons designated by the administrator.  
36 (5) All amounts transferred from the securities act fee fund to the  
37 state general fund under paragraph (4) are to reimburse the state general  
38 fund for accounting, auditing, budgeting, legal, payroll, personnel and  
39 purchasing services and any other governmental services which are per-  
40 formed on behalf of the state agency involved by other state agencies  
41 which receive appropriations from the state general fund to provide such  
42 services. Such reimbursements are in addition to those authorized by  
43 K.S.A. 75-3170a and amendments thereto.

1 17-1265, 17-1266, 17-1267, 17-1269, 17-1273, 17-1274, 17-1275,  
2 32, 50-1009, 50-1016, 66-1508, 74-8229 and 75-6302 and K.S.A.  
3 2002 Supp. 17-1252, 17-1253, 17-1254, 17-1255, 17-1257, 17-1258, 17-  
4 1259, 17-1261, 17-1262, 17-1262a, 17-1263, 17-1266a, 17-1268, 17-1270,  
5 17-1270a, 17-1270b, 17-1271, 17-1272, 17-49a01, 21-4619, 21-4704 and  
6 75-3170a are hereby repealed.

7 Sec. 68. This act shall take effect and be in force from and after July  
8 1, ~~2004~~, and its publication in the statute book.

9 2005

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1 ~~(E) includes as an "investment contract," among other contracts, an~~  
 2 ~~interest in a limited partnership and a limited liability company and an~~  
 3 ~~investment in a viatical settlement or similar agreement.~~

4 (29) "Self-regulatory organization" means a national securities  
 5 exchange registered under the securities exchange act of 1934, a nation  
 6 securities association of broker-dealers registered under the securities  
 7 exchange act of 1934, a clearing agency registered under the securities  
 8 exchange act of 1934, or the municipal securities rulemaking board es-  
 9 tablished under the securities exchange act of 1934.

10 (30) "Sign" means, with present intent to authenticate or adopt a  
 11 record:

12 (A) To execute or adopt a tangible symbol; or

13 (B) to attach or logically associate with the record an electronic sym-  
 14 bol, sound, or process.

15 (31) "State" means a state of the United States, the District of Co-  
 16 lumbia, Puerto Rico, the United States Virgin Islands, or any territory or  
 17 insular possession subject to the jurisdiction of the United States.

18 (32) "Rules" when used in the context of the rules adopted by the  
 19 administrator, means rules and regulations adopted by the administrator  
 20 pursuant to this act.

21 New Sec. 3. "Securities act of 1933" (15 U.S.C. section 77a et seq.),  
 22 "securities exchange act of 1934" (15 U.S.C. section 78a et seq.), "public  
 23 utility holding company act of 1935" (15 U.S.C. section 79 et seq.), "in-  
 24 vestment company act of 1940" (15 U.S.C. section 80a-1 et seq.), "in-  
 25 vestment advisers act of 1940" (15 U.S.C. section 80b-1 et seq.), "em-  
 26 ployee retirement income security act of 1974" (29 U.S.C. section 1001  
 27 et seq.), "national housing act" (12 U.S.C. section 1701 et seq.), "com-  
 28 modity exchange act" (7 U.S.C. Section 1 et seq.), "internal revenue code"  
 29 (26 U.S.C. section 1 et seq.), "securities investor protection act of 1970"  
 30 (15 U.S.C. section 78aaa et seq.), "securities litigation uniform standards  
 31 act of 1998" (112 Stat. 3227), "small business investment act of 1958" (15  
 32 U.S.C. section 661 et seq.), and "electronic signatures in global and na-  
 33 tional commerce act" (15 U.S.C. section 7001 et seq.) mean those statutes  
 34 and the rules and regulations adopted under those statutes, as in effect  
 35 on the date of the latest amendment to any provision of this act.

36 New Sec. 4. A reference in this act to an agency or department of  
 37 the United States is also a reference to a successor agency or department.

38 New Sec. 5. This act modifies, limits, and supersedes the federal  
 39 electronic signatures in global and national commerce act, but does not  
 40 modify, limit, or supersede section 101(c) of that act (15 U.S.C. section  
 41 7001(c)) or authorize electronic delivery of any of the notices described  
 42 in section 103(b) of that act (15 U.S.C. section 7003(b)). This act author-  
 43 izes the filing of records and signatures, when specified by provisions of

(E) In this paragraph, an "investment contract" ~~includes among~~  
~~other contracts, may include~~ an interest in a limited partnership and  
 a limited liability company and ~~an investment in a viatical~~  
~~settlement or similar agreement shall include a VIATICAL~~  
INVESTMENT as defined in the North American Securities  
Administrators Association ("NASAA") Guidelines Regarding  
Viatical Investments.

1 and amendments thereto; or

(3) issue an order under section 9, and amendments thereto.

4 (b) *Additional administrative sanctions and remedies.* If the admin-  
5 istrator finds, by written findings of fact and conclusions of law, that a  
6 person has violated this act or a rule adopted or order issued under this  
7 act, the administrator, in addition to any other power granted under this  
8 act, may enter an order against the registrant containing one or more of  
9 the following sanctions or remedies:

9 (1) A civil penalty up to a maximum of \$10,000 for each violation;

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

12 ~~(3) an order requiring the person to pay restitution for any loss or~~  
13 ~~disgorge any profits arising from the violation, including, in the admin-~~  
14 ~~istrator's discretion, the assessment of interest not to exceed 15% per~~  
15 ~~annum from the date of the violation; or~~ *or*

16 ~~3 (4)~~ an order charging the person with the actual cost of the investi-  
17 gation or proceeding.

18 (c) *Procedures for orders.* (1) An order under subsection (b) shall not  
19 be entered unless the administrator first provides notice and opportunity  
20 for hearing in accordance with the provisions of the Kansas administrative  
21 procedures act.

22 (2) An order under subsection (a) is effective on the date of issuance.  
23 Upon issuance of the order, the administrator shall promptly serve each  
24 person subject to the order with a copy of the order. The order must  
25 include a statement of the reasons for the order and notice that upon  
26 receipt of a written request the matter will be set for a hearing which  
27 shall be conducted in accordance with the provisions of the Kansas ad-  
28 ministrative procedures act. If a person subject to the order does not  
29 request a hearing and none is ordered by the administrator within 30 days  
30 after the date of service of the order, the order becomes final as to that  
31 person by operation of law. If a hearing is requested or ordered, the  
32 administrator, after notice of and opportunity for hearing to each person  
33 subject to the order, may modify or vacate the order or extend it until  
34 final determination.

35 (3) An order under subsection (a) may contain a notice of the admin-  
36 istrator's intent to seek administrative sanctions or remedies under sub-  
37 section (b). If the person subject to the order does not request a hearing  
38 and none is ordered by the administrator within 30 days after service of  
39 the order, the administrator may modify the order to include sanctions  
40 or remedies under subsection (b). If a hearing is requested or ordered,  
41 the administrator, after notice and opportunity for hearing, shall by writ-  
42 ten findings of fact and conclusions of law vacate, modify, or make per-  
43 manent the order, and the administrator may modify the order to include



The KANSAS BANKERS ASSOCIATION  
A Full Service Banking Association

January 21, 2004

To: House Committee on Judiciary

From: Kathleen Taylor Olsen, Kansas Bankers Association

**Re: HB 2347: Uniform Securities Act**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to offer testimony regarding **HB 2347**, enacting the Kansas Uniform Securities Act.

Of interest to our industry is the change in the definition of "broker-dealer" that is found on Page 2 of the bill, beginning on line 4. As you can see, there is a **qualified** exclusion from the definition (**and** the securities registration requirements) for banks and savings institutions.

Banks, savings institutions and trust companies (collectively referred to here as "banks") have traditionally been excluded from the definition of "broker-dealer" and therefore, securities regulation, because bank securities activities are already being regulated by the institution's primary federal or state bank regulator. Having banks' activities also overseen by the Securities Commissioner could lead to unnecessary and duplicate regulation.

Current state law provides a very broad exclusion, generally excluding banks, savings institutions and trust companies entirely from the term "broker-dealer". HB 2347 excludes a bank or savings institution from the definition of broker-dealer only if its activities are limited to those specified in subsections (i) and (ii).

This new limited exclusion is also more restrictive than the securities activities allowed by federal law under the Gramm-Leach-Bliley Act (GLBA). While the Uniform Securities Act (USA) exempts many of the same activities from securities regulation as GLBA, the USA does not exempt two activities that are available under GLBA. Those two activities relate to certain private placement offerings and de minimus brokerage transactions.

House Judiciary Committee

1-21-04

Attachment 6

January 20, 2004

**HB 2347: USA**

Page Two

Thus, if the USA is enacted as drafted, there will be inconsistency between our state law and the federal law, with the state law being more restrictive. We believe this creates a potential unfair playing field for state-chartered banks versus their national-chartered brethren. The federal banking regulator for national-chartered banks (the Office of the Comptroller of the Currency or OCC) has been very aggressive and successful in asking courts to preempt state laws that are more restrictive than federal law. If such a challenge were to be successful here, it would (at least philosophically) put our state-chartered banks at a disadvantage with regard to this Act.

We have discussed this concern with the Securities Commissioner and have graciously received acknowledgment (see attached letter) not only of our concern, but also assurance that should a successful preemption of our state law occur in the future, the Commissioner would take action, either through a legislative initiative or by regulation, to ensure that state-chartered banks would not be put at a competitive disadvantage with national-chartered banks.

With his assurance and the knowledge that currently, none of our members would be disadvantaged by the enactment of this law, we will not be asking this committee for an amendment regarding this issue at this time.

It is our understanding that an amendment requested by the Kansas Bankers Association Trust Division has already been included in the package of suggested amendments that you have received from the Securities Commissioner. The amendment would include the words, "or trust company" on line 10 of Page Two.

This change would be consistent with the definition of broker-dealer that exists under current state law as described above. We believe trust companies are excluded from the definition under current law because many of their securities activities are already being regulated at either the federal level or the state level, just as bank securities activities are already being regulated at some level.

Thank you for your time and attention to these matters.



# KANSAS

OFFICE OF THE SECURITIES COMMISSIONER

August 19, 2003

KATHLEEN SEBELIUS, GOVERNOR  
CHRIS BIGGS, COMMISSIONER

Charles A. Stones  
Senior Vice-President  
Kansas Bankers Association  
PO Box 4407  
Topeka, Kansas 66604-0407

Dear Mr. Stones,

During our meeting this morning, you raised an issue concerning the exclusion of banks from the definition of a broker-dealer in section 2(4) of the Kansas Uniform Securities Act, House Bill 2347. The exclusion in section 2(4), which is drawn from section 102(4) of the model act, is narrower in some respects than the exclusion in the federal Gramm-Leach-Bliley Act. As a result, under some circumstances a bank may be excluded from the definition of a broker-dealer at the federal level but still be required to register as a broker-dealer at the state level. You are concerned that the Office of the Comptroller of the Currency may successfully argue that the states are preempted from giving federally chartered banks a more restrictive exclusion than federal law provides, which would result in a competitive disadvantage for state chartered banks.

I understand your concern, and it is not my intention to create a playing field that is uneven for state chartered banks. However, I do not wish to disturb this particular model provision to address preemption that has been threatened but has not yet occurred. Section 102(4) was the subject of much debate in the drafting process and it reflects a delicate balance, including the concerns of the securities firms that the federal bank exclusion places securities firms at a competitive disadvantage to banks.

Consequently, I would oppose a current effort to amend section 2(4) to conform with the federal bank exclusion. However, in the event that the OCC is successful in carrying out its preemption threat, I assure you that I will take action to ensure that state chartered banks are not put at a competitive disadvantage with federally chartered banks. This could be accomplished by legislation or by simply expanding the bank exclusion by regulation, as authorized by section 2(4)(E) of the bill.

It was a pleasure meeting you this morning, and I look forward to working with your organization in the days ahead. I hope my position on this issue sufficiently allays your concerns.

Sincerely,

  
Chris Biggs  
Securities Commissioner

618 S. KANSAS AVENUE, TOPEKA, KS 66603  
Voice 785-296-3307 Fax 785-296-6872 Investor Services 1-800-232-9580  
<http://www.securities.state.ks.us>



Kathy Dannon  
JOHN E. SUNDEEN, JR., CFA  
Senior Vice President  
Chief Financial Officer and Treasurer



6300 Lamar Avenue  
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913-236-1810 Fax 913-236-1799  
Email jsundeen@waddell.com

September 11, 2003

Senator John Vratil  
Chairman, The Special Committee  
on Judiciary  
State Capitol Building  
Topeka, KS 66612

Dear Chairman Vratil,

Waddell & Reed is in favor of robust regulatory oversight to protect the integrity of the securities industry and capital markets. However, Waddell & Reed does not support duplicative regulation that does not result in increased investor protection and that may result in inconsistent, contradictory or confusing regulatory framework. For these reasons, we support the concept of House Bill 2347 (implementing the Uniform Security Act as proposed by the National Conference of Commissioners on Uniform State Laws) to the extent it seeks to promote uniformity of securities regulation among the various states. Waddell & Reed also supports the inclusion of variable annuities in the definition of "security" to the extent it ensures that variable annuities sold in Kansas will be subject to the exclusive jurisdiction of the Kansas Securities Commission and not the duplicative and contradictory jurisdiction of multiple federal and state regulators.

By defining variable annuities as securities instead of insurance, the Act would be more consistent with federal regulation and the treatment afforded to variable annuities by federal regulators. Federal regulators treat variable annuities as securities and as such they are subject to stringent regulation by the National Association of Security Dealers ("NASD") and the SEC. It is more difficult for Waddell & Reed and others to be regulated one way by the states and another way by federal regulators and adds another unnecessary regulatory burden to the cost of doing business.

Waddell & Reed also thinks that the character of variable annuities is more similar to an investment product than an insurance product. Clearly variable annuities have insurance features, but most customers buy variable annuities as a method to purchase the underlying mutual funds – securities. Many customers are primarily seeking the returns of equity and fixed income securities within a vehicle that provides them income tax deferral. The life insurance protection is extremely important for most people purchasing variable annuities, but typically secondary to the investment features of such products. Therefore the financial planning process that Waddell & Reed uses with its customers focuses on variable annuities as if they were primary securities.

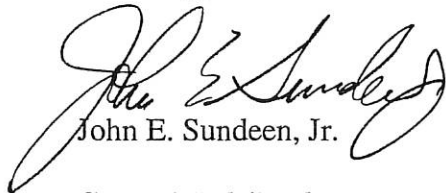
House Judiciary Committee  
1-21-04  
Attachment 7

Senator John Vratil  
September 11, 2003  
Page 2

In other words, we are in favor of the Act because it would ostensibly prevent disparate treatment of the same activity by federal and state regulators.

Please feel free to contact Mark Buyle at 913.236.1928 who is our Associate General Counsel or Kathy Damron at 785.235.2525 who is our registered lobbyist in Topeka.

Sincerely,



John E. Sundeen, Jr.

C: Mark Buyle  
Kathy Damron ✓