

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairperson Ruth Teichman at 9:30 a.m. on January 28 2004 in Room 234-N of the Capitol.

All members were present except:
Senator David Adkins- Absent

Committee staff present:
Bill Wolff, Legislative Research
Ken Wilke, Office of the Revisor of Statutes
Nancy Shaughnessy, Committee Secretary

Conferees appearing before the committee:
Doug Wareham, Senior Vice-President Kansas, Agribusiness Retailers Association
Others attending:
See Attached List.

Chris Biggs, Securities Exchange Commission presented a report(Attachment 1) of the functions and responsibilities of the Commission. The mission of the Agency *is to protect and inform Kansas investors, to promote integrity and full disclosure in financial services and to foster capital formation.* Kansas was the first state to regulate the sale of securities with the Kansas Securities Act of 1911. This Act precedes the Federal Securities Act of 1933. The Agency employees twenty-five (25) people with an office in Topeka and Wichita. The SEC is primarily fee funded and operates on a two and a half million dollars (\$2.5 M) budget and return six to eight million(\$ 6-8M) annually to the state coffers.

Senator Buhler introduced a bill related to city bonds and insurance. Senator Steineger made a motion to accept the bill introduction. Seconded by Senator Brungardt. Motion passed.

The chair then opened the hearing on **SB 338**. Doug Wareham Senior Vice-President, Kansas Agribusiness Retailers Association presented testimony(Attachment 2). Mr. Wareham represents approx. 700 Ag-Business interests across the state. The bill amends KS58-244 which is a statute found within the Kansas agriculture production input lien law. The bill extends the time period in which a supplier(agribusiness retailer) in which they can file and perfect and agricultural production input lien for twenty (20) days to sixty (60) days. The change is being sought because the current twenty(20) day restriction requires the supplier that is supplying the crop production input to file and perfect a lien on their customers before that customer is even 30 days past due.

Senator Corbin moved and Senator Brungardt, seconded to pass the bill favorably out of committee. The motion passed.

The meeting was adjourned at 10:25 A.M..

The next meeting is scheduled for January 29, 2004.

SENATE FINANCIAL INSTITUTIONS & INSURANCE

Date: 1-28-04

Name:

Representing:

[Handwritten signature]

KID

Rick Fleming

KSC

Chris Biggs

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Steve Wasson

✓

Leigh Weld

Apostolic Academy

Priscila Gomez

" "

Liffany Atkins

" "

Matthew Goddard

HCBA

Kathy Olsen

KBA

Dan Murray

Federico Consulting

Kathy Sachs

Sec. of State

Fariba Pouraryan

SOS

Cheryl Spicer

Rose Hill

Cheryl Berry

Rose Hill

Paul Spicer

Rose Hill

Gracia Burnham

Rose Hill

Karnie Ann Lower

KATP

Chuck Stones

KBA

Shari Kelly

Community Bankers Association of KS

Bill Henry

KCA

Jim Byrnes

Ass. Sec. SALMANS

**NARRATIVE INFORMATION -- DA 400
FOR BIENNIAL BUDGET AGENCIES**

DIVISION OF THE BUDGET
STATE OF KANSAS

Updated September, 2003

AGENCY NAME Office of the Securities Commissioner
AGENCY NUMBER 625-00 FUNCTION NC _____
PROGRAM TITLE AND NUMBER Operations -- 64000
SUBPROGRAM TITLE AND NUMBER _____ PAGE _____

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AGENCY MISSION

The mission of the Office of the Securities Commissioner is to protect and inform Kansas investors, to promote integrity and full disclosure in financial services, and to foster capital formation.

AGENCY PHILOSOPHY

The philosophy of the agency is a reflection of the mission which is based on values and principles of fairness, openness, accountability, and integrity. Just as the agency demands these values of the companies and individuals it regulates, it endeavors to adhere to these values in its operations. The Commissioner and staff are committed to providing high quality services in an efficient and professional manner. Agency conduct is guided by the ethical principles of the legal, accounting and law enforcement professions. While the agency diligently administers and enforces the laws and regulations under its jurisdiction to accomplish its mission, it is also sensitive to the impact of regulatory requirements on affected businesses and individuals. The agency seeks a fair and reasonable balance between providing adequate investor protection and avoiding overly restrictive or duplicative regulation.

STATUTORY HISTORY

Kansas was the first state to regulate the sale of securities for protection of its investor citizens and capital markets when the original version of the Kansas Securities Act was passed in 1911. This act also preceded the federal Securities Act of 1933. Securities regulation began in Kansas because, based on a quote from an early fraud case, the "state was the happy hunting ground of promoters of fraudulent enterprises...so barefaced...that they might as well have been selling the blue sky". This rather dramatic portrayal is significant because since that time, all state securities laws throughout the nation have become referred to collectively as "Blue Sky" laws. The Kansas Securities Act has been supplemented and refined since 1911 to its current version (KSA 17-1252 et seq.).

The agency mission is specifically provided for and supported by the Kansas Securities Act. Various statute sections define, describe or refer to unlawful, unethical or unfair conduct that the agency seeks to prevent, detect and correct (KSA 17-1253, 1255 1260, 1264, 1267 and 1268). Statutes defining registration requirements provide the basis for legal, fair and ethical offerings and practices (KSA 17-1254 and 1257 through 1260). Several exemptions are provided for securities or transactions to avoid duplicative or unnecessary regulation (KSA 17-1261 and 1262). Investigative and prosecution powers and authority are provided for correction of violations (KSA 17-1265 through KSA 17-1267). Penalties for violations were increased in several sections by enactment of 2003 Senate Bill No. 110. KSA 17-1270a and 17-1270b provide for compatibility with federal securities laws and cooperation with other regulatory agencies.

Senate F I & I Committee

Meeting Date: 1-27-04

Attachment No.: 1

NARRATIVE INFORMATION -- DA 400

FOR BIENNIAL BUDGET AGENCIES

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STATUTORY HISTORY (continued)

The Securities Commissioner and staff also administer some similar statutes and regulations which require full and fair disclosures of services for protection of Kansans. These include: the Kansas Uniform Land Sales Practices Act (KSA 58-3301 et seq.) for offerings of undeveloped land subdivisions (such as resort properties and lots for vacation homes); and the Kansas Loan Broker's Act (KSA 50-1001 et seq.) to regulate the services of loan brokers in Kansas who are not otherwise regulated or exempt. Both of these laws require registration and use of adequate disclosure documents, and both provide remedial enforcement powers for the Commissioner.

SUMMARY EXPLANATION OF SERVICES

PREVENTIVE REGULATION

The purpose of Regulation is to protect Kansas investors: from securities offerings which are unfair, inequitable or fraudulent, without inhibiting the legitimate capital formation process; from financial loss due to financial failure, inadequate controls and procedures, or unethical practices of broker-dealers, investment advisers and agents; by requiring registrants to demonstrate sufficient knowledge and competence to engage in the securities business in Kansas and to provide useful information to investors and professionals serving the public and businesses which participate in public offerings. The promotion of fairness and ethical practices is intended to benefit investors and the securities industry, and to enable the economic success of viable development stage businesses.

Regulation services involve: the registration of securities offerings, broker-dealers, agents, investment advisers, loan brokers and subdivided land offerings; and continuous monitoring of registrants for compliance with the requirements of related statutes and administrative regulations. Various exemptions from registration may apply, and several types require filing of documentation for determination of compliance with statutory provisions.

Examinations of securities registration statements require the analysis of complex financial and legal documents (including a prospectus and numerous exhibits) to determine whether full and fair disclosures of material facts exist, and to determine whether certain unfair or inequitable aspects may exist which would tend to work a fraud on investors. The analysis of disclosures in offering documents requires the evaluation of technical compliance with statutes and regulations, and may require analysis of generally accepted accounting principles and generally accepted auditing standards. Technical deficiencies may result in withdrawal of the offering if amendments to enable compliance are not possible or feasible.

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Regulation of broker-dealers, agents and investment advisers involves: reviews of original and amended applications for registration; and compliance reviews and financial surveillance of broker-dealers and investment advisers. The registration reviews focus on the regulatory requirements for adequate knowledge or experience in securities, character and reputation (disciplinary background), and financial responsibility. The compliance reviews and financial surveillance of registrants require the monitoring for actions of other regulatory agencies or other legal proceedings, and analysis of annual reports and financial statements which are required for broker-dealers and certain investment advisers. Deficiencies detected by the reviews described above are communicated to applicants or registrants for corrective action, if possible, and satisfactory disposition is monitored. Routine field audits are conducted to examine operations for compliance or to detect violations of regulations pertaining to unethical practices. When evidence of violations indicating significant risk of financial harm or abuse to Kansas investors is detected, Enforcement is necessary through further investigation and/or remedial legal action.

ENFORCEMENT SERVICES

Enforcement involves: the investigation of alleged violations of the Kansas Securities Act, the Uniform Land Sales Practices Act and Kansas Loan Broker's Act; field examinations of registrants where there is reason to suspect violations; and remedial provisions of the statutes for cases where evidence of violations exists. An effective enforcement program not only provides remedies for violations and criminal activities, but also provides a general deterrence against future violations.

Violations of the Acts generally involve: failure to register offerings, services or persons in compliance with requirements explained under "Regulation Services" above; fraud in the offer of securities or services; and unethical or unlawful practices of registered persons. Investigations may be initiated based on complaints from investors, referrals from other law enforcement agencies, information from other regulatory agencies, and referrals from Regulation staff or the broker-dealer examination section. Remedies available under the Kansas Securities Act include: administrative cease and desist orders; suspension or revocation of registration; civil actions for injunctions, restitution or rescission offers, orders of censure, and authority to assess fines up to \$25,000 per violation (\$40,000 if victims are elderly or disabled); and criminal referral to county and district attorneys. Criminal penalties include imprisonment based on severity levels of felonies for which defendants are convicted. Because of the technical and specialized nature of securities law violations, attorneys on the Securities Commissioner's staff ordinarily handle prosecutions through appointment as either Special Assistant Attorneys General, or special prosecutors for the local county and district attorneys.

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EDUCATION SERVICES

There is a vital need to provide educational services and information to Kansans who are currently investing or raising capital. An important indicator of satisfactory agency performance is reflected in the degree of public awareness and satisfaction with services rendered, and the extent to which the agency is able to protect the financial interests of Kansans. Agency management believes that investor protection can be significantly enhanced at a relatively low cost through increased public awareness of investment alternatives and regulatory services of this agency. Many unnecessary investment losses can probably be prevented by simply informing more Kansans about abusive types of securities offerings and sales practices.

Education services are provided through a combination of several types of information resources and media, including publications such as brochures, speeches and presentations by staff and the Commissioner at small conferences for various investor groups, professional and business organizations throughout the state and various special events. The agency also provides information through its Internet website at www.securities.state.ks.us. These services should help reduce the extent of investment problems, losses and violations due to lack of awareness and knowledge of securities laws and regulations. The agency is currently emphasizing an investor awareness program to familiarize Kansas investors with agency services.

There is also a need for the agency to provide positive regulatory services to owners of small businesses (entrepreneurs) in Kansas through expanded education services. The agency provides extensive information and guidance about regulations that facilitate capital formation at lower costs than previously possible. Information concerning various exemptions from securities registration is also provided through telephone conferences or meetings along with distribution of written materials. Legal, accounting and financial professionals serving the legitimate securities industry and businesses seeking capital require thorough information and explanations of current requirements under the laws administered by the agency. This type of service can enhance legitimate business and economic development activities in relation to the "Small Company Offering Registration" (SCOR) program. SCOR is intended to facilitate the financing of smaller businesses by reducing some of the costs and technicalities of securities registration.

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GOALS

PRIMARY GOAL

To prevent, detect or correct unlawful, unfair, or unethical conduct in connection with securities transactions and investment services. KSA 17-1253 provides the statutory basis for this goal and defines "unlawful acts" which include: making any untrue statements of fact; omitting material facts resulting in misleading statements; and any acts or practices which would be fraudulent or deceptive.

SUPPORTING GOALS

To diligently require that investors are provided full and fair disclosure of all material information that they need for their investment decisions (KSA 17-1257 through 1260 and related regulations); and that investors are treated fairly and ethically by persons who sell securities or provide investment advice (KSA 17-1254 and related regulations).

To aggressively enforce provisions of the Kansas Securities Act through investigation of apparent violations and prosecution or other remedial actions as necessary (KSA 17-1265 through 1269 and related regulations).

To educate the public in order to prevent or detect investment problems and violations of the Kansas Securities Act. This goal also includes education of entrepreneurs and persons representing issuers so that they are aware of the requirements and opportunities for raising capital.

To ensure that information processing systems are adequate to handle current levels of technology that are being used for the electronic delivery of information in relation to securities offerings and desired by the public for education services.

To provide, and if possible, expand exemptions when warranted in order to avoid unnecessarily restrictive or duplicative regulation (KSA 17-1261, 1262, 1262a and related regulations).

To promote uniformity, consistency and efficiency of regulation and enforcement, cooperate and participate with other state and federal regulatory agencies and participate in centralized registration and fee collection systems when feasible. Participate and cooperate in joint-enforcement efforts with other agencies (KSA 17-1270(e) and KSA 17-1270b).

To effectively administer and enforce other laws under the jurisdiction of the agency (see "Statutory History").

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OBJECTIVES

1. PREVENTIVE REGULATION SERVICES

Administer the registration and exemption provisions of the Kansas Securities Act in a timely and professional manner for securities offerings in Kansas and services of broker-dealers, agents, investment advisers and their representatives to Kansas investors.

STRATEGIES

Examine all securities registration statements or other disclosure documents to the extent necessary to determine compliance with statutes, regulations and policies ("merit" or fairness standards).

Communicate notices of deficiency for registration applications that do not comply with relevant disclosure standards or fairness criteria and attain satisfactory disposition of deficiencies or withdrawal of the registration application.

Review amendments and renewals of securities registrations for compliance with relevant regulations and updating of registration information.

Review exemption filings and inquiries for analysis of compliance or interpretation of statutory provisions and issue no-action letters or appropriate responses.

Examine broker-dealer, investment adviser and agent applications to the extent necessary to determine compliance with licensing requirements. This also requires careful review and evaluation of any significant disciplinary history of applicants to determine whether the application should be withdrawn or denied.

Monitor for continued compliance of registered broker-dealers and investment advisers by reviewing amendments, annual reports and other published sources of regulatory information.

Perform field examinations of broker-dealers and investment advisers on a regular basis in proportion to the volume of registrants for which potential violations exist. Evaluate operations and especially sales or advisory practices for possible unethical conduct, and when necessary evaluate compliance with financial responsibility regulations.

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In performance of all services above, utilize automated information processing equipment and systems to the fullest extent possible to maximize speed and efficiency of handling substantial volumes of filings and information. When feasible, change documentation systems from paper to electronic form.

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OUTCOME MEASURES

| | <u>FY 2001</u> <u>Actual</u> | <u>FY 2002</u> <u>Actual</u> | <u>FY 2003</u> <u>Actual</u> | <u>FY 2004</u> <u>Approved</u> | <u>FY 2004</u> <u>Updated</u> | <u>FY 2005</u> <u>Approved</u> | <u>FY 2005</u> <u>Updated</u> |
|---|---------------------------------|---------------------------------|---------------------------------|-----------------------------------|----------------------------------|-----------------------------------|----------------------------------|
| Percent of securities registration statements withdrawn due to substantial deficiencies | 36% | 31% | 22% | 33% | 24% | 33% | 25% |
| Number of deficient offerings withdrawn | 20 | 15 | 10 | 20 | 12 | 20 | 15 |
| License applications withdrawn | 139 | 106 | 144 | 110 | 130 | 120 | 120 |
| Orders to Deny, Suspend, Revoke or Censure Licensees | 6 | 6 | 2 | * | * | * | * |
| Percent of compliance exams that detect and correct noncompliance | 83% | 72% | 48% | 69% | 63% | 67% | 67% |

* This measure is not projected because it is dependent upon findings or judgments resulting from administrative proceedings for which results can not be predicted.

OUTPUT MEASURES

| | <u>FY 2001</u> <u>Actual</u> | <u>FY 2002</u> <u>Actual</u> | <u>FY 2003</u> <u>Actual</u> | <u>FY 2004</u> <u>Approved</u> | <u>FY 2004</u> <u>Updated</u> | <u>FY 2005</u> <u>Approved</u> | <u>FY 2005</u> <u>Updated</u> |
|--------------------------------------|---------------------------------|---------------------------------|---------------------------------|-----------------------------------|----------------------------------|-----------------------------------|----------------------------------|
| Number of securities: | | | | | | | |
| Registration statements examined | 55 | 49 | 45 | 60 | 50 | 60 | 60 |
| Exemption filings reviewed | 535 | 439 | 460 | 500 | 480 | 540 | 500 |
| New mutual fund notice filings (NFs) | 1,592 | 950 | 979 | 1,000 | 1,000 | 1,100 | 1,100 |
| Renewal filings (mostly NFs) | 5,802 | 6,023 | 6,838 | 6,200 | 7,000 | 6,300 | 7,200 |
| Amendments | 840 | 1,014 | 684 | 1,000 | 700 | 1,000 | 800 |
| Totals | <u>8,824</u> | <u>8,475</u> | <u>9,006</u> | <u>8,760</u> | <u>9,230</u> | <u>9,000</u> | <u>9,660</u> |

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| | FY 2001 | FY 2002 | FY 2003 | FY 2004 | FY 2004 | FY 2005 | FY 2005 |
|--|----------------|---------------|---------------|-----------------|----------------|-----------------|----------------|
| | <u>Actual</u> | <u>Actual</u> | <u>Actual</u> | <u>Approved</u> | <u>Updated</u> | <u>Approved</u> | <u>Updated</u> |
| Number of license & renewal filings: | | | | | | | |
| Broker-dealers (BDs) | 1,939 | 1,819 | 1,756 | 1,900 | 1,700 | 2,000 | 1,800 |
| BD Agents | 101,084 | 87,929 | 83,730 | 88,000 | 84,000 | 90,000 | 85,000 |
| Investment Advisers (IAs) | 788 | 872 | 950 | 1,000 | 1,000 | 1,200 | 1,100 |
| IA Representatives | 2,347 | 2,497 | 3,148 | 2,600 | 3,200 | 2,800 | 3,400 |
| Totals | <u>106,158</u> | <u>93,117</u> | <u>89,584</u> | <u>93,500</u> | <u>89,900</u> | <u>96,000</u> | <u>91,300</u> |
| Number of BD & IA compliance exams | 53 | 46 | 21 | 65 | 48 | 75 | 60 |
| Number of compliance exams that detect and correct noncompliance | 44 | 33 | 10 | 45 | 30 | 50 | 40 |

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NOTE

The outcome measure for the "Percent of securities registration statements withdrawn..." reflects the proportion of offerings subject to merit and disclosure review which had substantial deficiencies. This measure is based on the output measure for securities registration reviews subject to merit or fairness criteria and is deemed significant for showing the effects of preventive merit regulation. The filings subject to merit review standards are mostly high risk initial public offerings of newer companies that can not qualify for listing on one of the national or regional stock exchanges. When withdrawn, the initial public offerings can not be sold in Kansas which may prevent substantial amounts of investment losses by Kansans. Nearly all of these offerings are from companies located in other states.

Most of the license applications withdrawn involve persons or firms with a significant history of disciplinary actions by other national and state regulatory agencies or self-regulatory organizations. The agency believes that preventing the licensing of such applicants prevents investment problems for Kansans due to unethical conduct.

The measure for the "Number of BD & IA compliance exams" includes routine field audits for detecting possible violations or unethical practices, but does not include the number of cases investigated based on investor complaints. The agency intended to expand the number of routine exams in recent years, with more attention to investment adviser firms and representatives with offices in Kansas. However, the volumes of routine exams during FY 2002 and FY 2003 were lower than normal and planned because of a significant increase in investor complaints that required Examiners to focus more attention on those investigations rather than the routine exams. Several of the complaints involved Variable Annuities. Case data for investigations of investor complaints by Examiners are included under measures for Enforcement Services below. The lower volumes of exams for FYs 2002 and 2003 are also due to vacant Examiner positions for portions of those years.

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2. ENFORCEMENT (CORRECTIVE) SERVICES

To detect and investigate potential violations of the Kansas Securities Act and other laws enforced by the agency in a professional and efficient manner in order to obtain sufficient high-quality evidence to enable the highest possible rate of success in administrative actions, criminal prosecutions or other remedial actions. When appropriate, the agency should assess fines or other penalties, and/or seek recovery of investment damages through restitution or rescission offers as a part of case dispositions.

STRATEGIES

Perform and complete investigations in a timely and effective manner so that cases can be closed with satisfactory remedies, and thereby maintain the number of open cases at a manageable level. This requires assignment of cases to investigators with sufficient expertise and law enforcement training to handle complex financial crimes. Final disposition of cases requires timely and effective legal services of staff attorneys with expertise in securities law.

Through effective administrative management and direction of investigations, maintain the case load per investigator at a level which enables adequate efficiency and timely completion of investigations.

Increase the number of investigations initiated in proportion to the volume of incoming referrals of alleged violations.

Increase the number of criminal referrals and civil actions in proportion to the volume of alleged violations.

Maintain or increase the success rate of prosecutions and administrative actions where there is sufficient evidence of fraud, illegal conduct or other significant violations.

Impose fines when justified for relevant violations of statutes or regulations.

When justified and appropriate, obtain financial restitution or rescission offers for investors who have incurred losses due to violations of statutes.

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| | FY 2001 | FY 2002 | FY 2003 | FY 2004 | FY 2004 | FY 2005 | FY 2005 | DOB USE ONLY |
|--|---------------|---------------|---------------|-----------------|----------------|-----------------|----------------|--------------|
| | <u>Actual</u> | <u>Actual</u> | <u>Actual</u> | <u>Approved</u> | <u>Updated</u> | <u>Approved</u> | <u>Updated</u> | |
| <u>OUTCOME MEASURES</u> | | | | | | | | |
| Criminal convictions | 12 | 11 | 9 | * | * | * | * | |
| Administrative orders | 63 | 56 | 44 | * | * | * | * | |
| Percent of cases resolved by criminal prosecution or administrative action | 35.5% | 36.6% | 34.0% | * | * | * | * | |
| Percent of cases resulting in remedial actions (formal and informal) | 68.7% | 68.3% | 53.8% | 70% | 70% | 70% | 70% | |
| Number of Kansas Investor-Victims | 489 | 323 | 1,060 | * | * | * | * | |
| Restitution & rescission offers | \$12,278,104 | \$2,577,495 | \$4,018,801 | * | * | * | * | |
| <u>OUTPUT MEASURES</u> | | | | | | | | |
| Open cases at beginning of year | 238 | 174 | 196 | 206 | 224 | 221 | 214 | |
| Cases opened during year | 147 | 205 | 184 | 220 | 200 | 220 | 210 | |
| Cases closed during year | 211 | 183 | 156 | 205 | 210 | 240 | 220 | |
| Open cases at end of year | 174 | 196 | 224 | 221 | 214 | 201 | 204 | |
| Average case load per investigator | 13.4 | 15.1 | 17.2 | 17.0 | 16.5 | 15.5 | 15.7 | |
| * Future outcomes are not estimated because of significant fluctuations in actual measures in past years due to the relatively unique circumstances of each case investigated and corrected. | | | | | | | | |
| NOTE: More detailed monthly reports of Enforcement and Compliance activities and data are available from the agency. | | | | | | | | |

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The case data above include routine compliance exams performed by Broker-Dealer/Investment Adviser Examiners and also the investigations that they perform based on investor complaints for determination of possible unethical practices or other violations. The number of criminal convictions and percent of cases resolved by formal legal actions is highly dependent upon the types, volumes and magnitude of cases resulting from complaints or referrals (frauds do not occur in regular patterns as reflected in actual data). It is normal and justified to close a significant portion of cases without action due to unfounded allegations, no jurisdiction, lack of evidence or transfer to other agencies.

New Action Plans for Enforcement

During FY 2004, Commissioner Biggs is developing plans with Directors and Attorneys in the agency to improve the efficiency and timeliness of investigations and outcomes of Enforcement cases. Plans include the following:

Bi-monthly case status meetings for staff and the Commissioner to monitor timely progress on investigations, hearings and trials;

A more formalized protocol for handling administrative cases and a more assertive approach to criminal prosecutions;

New case management systems to improve the tracking, timing and accountability of investigations, prosecutions or hearings;

Development of a "court room" within the current office space of the agency for conducting administrative hearings with the Commissioner serving as the hearing officer;

A new tracking and accountability system for monitoring payment of fines and restitution and results of rescission offerings;

Taking the lead in prosecuting cases in counties that previously managed and staffed the prosecutions through the local county attorney's office.

3. EDUCATION SERVICES

To increase the quality and extent of information and education services to investors, entrepreneurs, representatives of the securities industry and the general public in order to prevent investment problems and unnecessary losses or violations of securities laws due to incomplete, misunderstood or false information. Generally, the quality of investment decisions is dependent upon the extent and quality of relevant information provided to investors. Also, the extent and quality of compliance with securities laws and regulations is dependent upon the extent and quality of information and explanations provided to persons involved with developing, promoting and conducting securities offerings.

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STRATEGIES

Publish and distribute brochures and other informational documents to explain agency services to investors and other persons involved with securities offerings.

Send staff throughout the state to give presentations to various types of groups including investors and business people to explain agency services and requirements, and to provide information about types of investment scams and problems that can and do occur in our state.

Establish and administer an "Investor Awareness Campaign" to inform Kansas investors of the services available from the agency. This campaign emphasizes an "Investigate Before You Invest" approach by encouraging investors to contact the agency to check the background and credentials of investment professionals before doing business with them. This strategy will involve use of Yellow Page advertising, public service announcements, direct mailings and special events such as investor workshops and booths at fairs. An "Investor Hotline" (toll-free) is publicized for investor inquiries.

Provide information to entrepreneurs and others considering involvement with a securities offering in order to explain the regulatory requirements and possible alternatives for satisfactory compliance with the Kansas Securities Act and Regulations.

Conduct pre-filing conferences with small-business owners and their professional advisers regarding securities registration or exemption requirements and alternatives. These conferences improve the extent of compliance with exemption requirements and reduce the extent of deficiencies in filings for registration of securities.

Provide information and guidance for proper compliance with registration or exemption requirements through telephone conversations with representatives of securities issuers, broker-dealers and investment advisers.

Provide information and funding support to other state agencies for investor education programs.

OUTCOME MEASURES

The outcomes of educational services are, or will be reflected in measures for preventive regulation or enforcement services presented above. Education of persons regulated by the agency prevents noncompliance, violations, investment losses and penalties. Education of Kansas investors increases awareness of illegal or unethical conduct and remedial services of the agency which can prevent investment losses or result in increased complaints. At some point in the future, however, it is anticipated that prevention of problems and violations should be sufficient to cause a reduction in filings of complaints and the volume of enforcement cases.

DOB USE ONLY

**NARRATIVE INFORMATION -- DA 400
FOR BIENNIAL BUDGET AGENCIES**

DIVISION OF THE BUDGET
STATE OF KANSAS

Updated September, 2003

AGENCY NAME Office of the Securities Commissioner

AGENCY NUMBER 625-00 FUNCTION NC 1

PROGRAM TITLE AND NUMBER Operations -- 64000

SUBPROGRAM TITLE AND NUMBER _____ PAGE 13

| <u>OUTPUT MEASURES</u> | <u>FY 2001 Actual</u> | <u>FY 2002 Actual</u> | <u>FY 2003 Actual</u> | <u>FY 2004 Approved</u> | <u>FY 2004 Updated</u> | <u>FY 2005 Approved</u> | <u>FY 2005 Updated</u> | DOB USE ONLY |
|--|---------------------------|---------------------------|---------------------------|-----------------------------|----------------------------|-----------------------------|----------------------------|--------------|
| <u>Investor Education</u> | | | | | | | | |
| "Investor Hotline" calls | 1,986 | 1,874 | 1,523 | 2,000 | 1,440 | 2,200 | 1,800 | |
| Brochures distributed to investors | 10,000 | 52,200 | 26,750 | 63,160 | 29,425 | 70,000 | 32,500 | |
| Number of "Visits" at KSC Website | | 16000 | 15600 | 22000 | 16500 | 24000 | 18000 | |
| Participants at Seminars & Workshops | 784 | 634 | 780 | 750 | 850 | 800 | 900 | |
| Press Releases and Radio Broadcasts | 13 | 13 | 14 | 16 | 16 | 18 | 18 | |
| Funding for Stock Market Game | \$ 20,000 | \$ 20,000 | \$ 20,000 | \$ 20,000 | \$ 20,000 | \$ 20,000 | \$ 20,000 | |
| Participants in Stock Market Game | 7,789 | 5,635 | 4,649 | 5,000 | 5,000 | 5,000 | 5,000 | |
| Funding for Teacher Education | \$ 5,000 | \$6,000 | \$5,000 | \$5,000 | \$5,000 | \$5,000 | \$5,000 | |
| Grants for Investor Education | - | - | \$ 100,000 | - | - | - | - | |
| <u>Explanations of Measures</u> | | | | | | | | |
| <p>The agency website is designed for the public, securities professionals and other regulators. The totals above include use of the site by KSC staff as a resource for their services and referrals of information to other users. The agency received 316 e-mail inquiries through its "contact us" address during FY 2003 with 38% regarding registration and filing requirements, 20% regarding enforcement actions and legal proceedings posted on the website, 14% general inquiries from the public and 28% unrelated to KSC services (referred elsewhere).</p> <p>Publications are distributed in a packet format with each packet containing 7 to 10 pieces of educational information. Publications are also distributed in relatively large quantities in response to requests from the public. KDOT requested 125 packets for distribution to employees approaching retirement. Projected FY 2004 amounts reflect a 10% increase due to an anticipated increase in the number of seminars and workshops related to the Kansas State University Extension educational program (see explanation of Grants below).</p> | | | | | | | | |

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**NARRATIVE INFORMATION -- DA 400
FOR BIENNIAL BUDGET AGENCIES**

DIVISION OF THE BUDGET
STATE OF KANSAS

Updated September, 2003

AGENCY NAME Office of the Securities Commissioner
 AGENCY NUMBER 625-00 FUNCTION NC 1
 PROGRAM TITLE AND NUMBER Operations -- 64000
 SUBPROGRAM TITLE AND NUMBER _____ PAGE 14

DOB USE ONLY

In addition to educational presentations, the agency used a Fraud Awareness Quiz at its State Fair Booth in FY 2003 with over 700 fair visitors participating and interacting with KSC staff.

The Stock Market Game is administered by the Kansas Council on Economic Education (KCEE), and that agency has recently implemented a performance based budgeting system. Additional performance data is now available from KCEE. The funding for Teacher Education is paid from the Investor Education Fund. The \$20,000 transfer to KCEE is authorized by a proviso in budget bills each year.

Grants of \$50,000 each were paid from the Investor Education Fund to the Kansas Council on Economic Education and the Cooperative Extension Service at Kansas State University for development and sponsorship of investor education programs. Amounts are not projected for FY 2004 and FY 2005 because grant awards will be dependent upon the extent of funds available in the Investor Education Fund from fine revenues which can not be estimated. The K-State Extension grant will provide for personal finance and investor education through county extension Family & Consumer Sciences programs. An 8-session personal finance / investor education class will be offered targeting adults of pre-retirement age and a 60-minute lesson for senior citizens will be offered by county agents during 2004. The KCEE grant will provide funding to be matched by other donors to establish an endowment fund for educational programs through KCEE.

| <u>Entrepreneur & Registrant Education</u> | <u>FY 2001 Actual</u> | <u>FY 2002 Actual</u> | <u>FY 2003 Actual</u> | <u>FY 2004 Approved</u> | <u>FY 2004 Updated</u> | <u>FY 2005 Approved</u> | <u>FY 2005 Updated</u> |
|--|---------------------------|---------------------------|---------------------------|-----------------------------|----------------------------|-----------------------------|----------------------------|
| Information packages sent | 171 | 67 | 51 | 50 | 50 | 40 | 40 |
| Meetings & Telephone Consultations | 3,410 | 2,880 | 2,455 | 2,250 | 2,250 | 2,000 | 2,000 |
| Attendance at BD & IA Seminars | - | 165 | 175 | - | 180 | - | 200 |

The number of meetings and phone discussions with entrepreneurs and Attorneys to discuss SCOR and other alternatives for securities offerings of small businesses continues to decrease due to increased use of the Internet, e-mail and teleconferences. Extensive information is now available through the agency's Internet site with links to sites maintained by NASAA. A reduction in telephone consultations is also expected to continue as observed during FY 2002 and FY 2003 due to increased use of the agency's website, links to related websites and e-mail.

The Broker-Dealer (BD) and Investment Adviser (IA) seminars were developed in FY 2002 and have been held in Wichita and the Kansas City area each year to provide continuing education updates for licensed agents and representatives of firms with offices in Kansas. These seminars help prevent compliance problems for the individuals and firms which benefits their investor-customers.



KANSAS

OFFICE OF THE SECURITIES COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR
CHRIS BIGGS, COMMISSIONER

PRESS RELEASE

January 27, 2004

Wichita Resident Sentenced for Securities Fraud

Topeka, Kansas (January 26, 2004) – Kirk McNab, Wichita, was sentenced January 23 in Sherman County District Court for his role in an illegal investment scheme that raised over \$1 million from bogus oil and gas well leases sold over the telephone.

District Court Judge Jack Burr sentenced McNab to 50 months in prison and ordered him to pay restitution to the victims in the amount of \$1,635,030.19. McNab pled guilty in Sherman County District Court on September 8, 2003 to three felony charges, including one count of securities fraud, one count of sale of securities by an unregistered broker-dealer or agent, and one count of conspiracy to commit securities fraud.

An investigation by the Office of the Kansas Securities Commissioner confirmed that McNab and his step-father, co-defendant Philip McGuckin (now deceased) solicited investors for two oil and gas ventures: Triton Exploration, Inc. operating in Gove, Hamilton, and Sumner Counties and Cambrian Oil, Inc., operating in Sedgwick County.

Potential investors were solicited over the phone using a “cold call.” Although none of the investors were from Kansas, 52 people invested approximately \$1.2 million in Triton and 39 people invested approximately \$558,000 in Cambrian. Less than 30% of the investors' funds were used for the production of oil or gas. Some investors received checks that were characterized as profits from production although the leases did not produce revenue. McNab and McGuckin also converted a significant portion of the investors' funds to their personal use.

McNab also faces sentencing in Sedgwick County District Court for charges related to the illegal sales of Cambrian, Inc. McNab pled guilty last September to two felony charges, including one count of securities fraud and one count of sale of securities by an unregistered broker-dealer or agent. Sentencing is set for January 30 before Judge William Woolley.

Kansas Securities Commissioner Chris Biggs said that information and awareness are essential to investors concerned about fraud, “Protect your nest egg. If a stranger calls asking for your money, the next call you should make is to our office to check out the investment company and the salesperson. If our office has no record of the company or the salesperson, that’s a big red flag.”

Wichita Resident Sentenced for Securities Fraud
January 27, 2004
Page 2

Kansans may contact the Office of the Kansas Securities Commissioner at 1-800-232-9580 to verify that the person offering or selling an investment is licensed and that the investment opportunity is registered. For more information about investor education, visit www.securities.state.ks.us.

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The Office of the Kansas Securities Commissioner is charged with administration and enforcement of the Kansas Securities Act under Chapter 17 of the Kansas Statutes. The Office investigates and prosecutes securities fraud, the offer or sale of unregistered securities and the offer or sale of securities by unlicensed stockbrokers or investment advisers. For more information and investor education resources, visit <http://www.securities.state.ks.us>.

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Contact: Frances Brunner, Associate General Counsel: (785) 296-3307

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Press Release

Date: January 23, 2004

Kings REIT Promoter Arrested SEC, FBI and United States Postal Inspector Join Investigation

Note to Readers: This announcement describes a joint law enforcement operation between the Office of the Kansas Securities Commissioner and the United States Securities and Exchange Commission.

(Topeka, Kansas)— Kansas Securities Commissioner Chris Biggs announced today that he has filed multiple felony charges against a promoter for Kings Real Estate Investment Trust (“Kings REIT”) for alleged violations of state securities laws.

Manhattan, Kansas resident Van E. Brighton, 55, was arrested Friday on a Geary County warrant after investigators for the Securities Commissioner executed a search warrant at his home. Brighton is charged with 5 counts of sale of an unregistered security and 1 count of sale of securities by an unregistered broker-dealer. The charges were filed with the cooperation of the Geary County Attorneys Office.

Charges are only that. A defendant is presumed to be innocent unless and until proven guilty beyond a reasonable doubt. Bond has been set in the amount of \$50,000 pending first appearance in Geary County District Court.

Under the Kansas Securities Act, most investment offerings must be registered

with the Kansas Securities Commissioner before they can be sold in Kansas. Brokers and other salespeople must have a securities license in order to solicit and sell to potential investors. There are some exemptions allowed.

Biggs claims that Kings REIT had not been registered for sale and that Brighton did not have a license to sell the security, although he was allegedly recruiting investors into the program. Kansas residents have allegedly invested over \$746,000 in Kings REIT since March of 2003.

The case has been investigated by the Office of the Kansas Securities Commissioner and has also been referred to the U.S. Securities and Exchange Commission, the Federal Bureau of Investigation, and the United States Postal Inspector. There are allegations that the investment has also been sold in other states.

Kansans who have invested in Kings REIT are encouraged to contact the Office of the Kansas Securities Commissioner at 1-800-232-9580 for assistance.

Biggs also urges investors to contact the Office of the Kansas Securities Commissioner to verify that the person offering or selling an investment is licensed and that the investment is registered before making an investment. For more information about investor education, visit www.securities.state.ks.us.

End of Article

The Office of the Kansas Securities Commissioner is charged with administration and enforcement of the Kansas Securities Act under Chapter 17 of the Kansas Statutes. The Office investigates and prosecutes securities fraud, the offer or sale of unregistered securities and the offer or sale of securities by unlicensed stockbrokers or investment advisers. For more information and investor education resources, visit <http://www.securities.state.ks.us>.

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

SEC SUES TO HALT INVESTMENT SCAM AND FREEZE ASSETS FOR INVESTORS

KANSAS SECURITIES COMMISSIONER SIMULTANEOUSLY FILES FELONY CHARGES

On January 23, 2004, in a civil action filed in the United States District Court for the District of Kansas, the U.S. Securities and Exchange Commission ("SEC") obtained a temporary restraining to halt an investment scam and freeze more than \$1 million of misappropriated funds for the benefit of investors. The SEC alleges that Kings Real Estate Investment Trust ("Kings REIT"), Monte R. Swanzy, Stephen P. Swanzy, David L. Knudson, Reliance Enterprises, LLC ("Reliance") and Van E. Brighton, individually and d/b/a Brighton Funding Group, committed securities fraud and offering registration violations in connection with a scheme which has raised at least \$1.9 million from investors.

Simultaneously with the SEC's civil action, Kansas Securities Commissioner Chris Biggs announced today that he has filed multiple felony charges against Van Brighton, a promoter and sales agent for Kings REIT for alleged violations of Kansas state securities laws. Brighton was arrested Friday on a Geary County warrant after investigators for the Securities Commissioner executed a search warrant at his home. Brighton is charged with five counts of sale of an unregistered security and one count of sale of securities by an unregistered broker-dealer. The charges were filed with the cooperation of the Geary County Attorneys Office.

In its civil complaint, the SEC alleges that the defendants defrauded investors by making the following false claims: 1) that Kings REIT has \$100 million in assets; 2) that Kings REIT would pool the initial \$1 million of investor funds raised, and maintain the funds for one year intact and free of risk in a Kings REIT account; 3) that the Kings REIT investment is "very safe"; and 4) that Kings REIT would pay to its investors returns of four to seven percent monthly (or 48 to 90 percent annually). The SEC further alleges that the defendants failed to disclose that, in reality, Kings REIT engages in no legitimate

business or investment activities, and that the defendants were systematically misappropriating the investors' funds for their own benefit and to pay undisclosed sales commissions.

More particularly, the defendants in the SEC civil action are alleged to be participating in the scheme as follows:

Monte R. Swanzy, age 52, operates Kings REIT from his Dallas residence;

Stephen P. Swanzy, age 25, is believed to be Monte Swanzy's son and is a signatory on the Kings REIT bank accounts;

Van E. Brighton, age 55, of Manhattan, Kansas, is a promoter of Kings REIT;

David L. Knudson, age 45, of Lees Summit, Kansas, is a Kings REIT promoter.

The SEC named in its complaint, as relief defendants, Romerian Trust, Patricia Swanzy (Monty Swanzy's wife) and Brighton Enterprises, Inc., based on their alleged illicit receipt of investor funds. The SEC seeks to freeze any investor funds in their control.

Securities and Exchange Commission v. Kings Real Estate Investment Trust, Reliance Enterprises, LLC, Monte R. Swanzy, Stephen P. Swanzy, David L. Knudson, and Van E. Brighton, individually and d/b/a Brighton Funding Group, Defendants, and Romerian Trust, Patricia Swanzy and Brighton Enterprises, Inc., Relief Defendants,

Civil Action No. No. 04-4006 RDR (United States District Court; District of Kansas; Topeka Division)

SEC Contact: Spencer C. Barasch, Associate Administrator, 817/978-6425
Kansas Securities Commission Contact: Chris Biggs, Commissioner, 785/296-3307

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KANSAS

OFFICE OF THE SECURITIES COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR
CHRIS BIGGS, COMMISSIONER

Press Release

Office of the Kansas Securities Commissioner
618 S. Kansas Avenue
Topeka, Kansas 66603-3804

Date of release: November 14, 2003

Contact: Chris Biggs

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E-mail: securities@securities.state.ks.us

Web: <http://www.securities.state.ks.us>

Kansas Resident Arrested on Securities Fraud Charges

Topeka, Kansas-- Chris Biggs, the Kansas Securities Commissioner, with cooperation of the McPherson County Attorney, has filed six criminal charges against Moundridge, Kansas resident Anthony M. Montana (DOB 11/26/70) A/K/A Anthony W. Whetstine, A/K/A Tyson Gates. The defendant appeared in McPherson County District Court today for first appearance. He was arrested yesterday on a warrant and formally charged with 5 felony counts alleging violations of the Kansas Securities Act and one count of attempted felony theft. His bond has been set at \$75,000.00, and his preliminary hearing is set for November 21st at 9:00 a.m. In a related civil lawsuit, the defendant's bank account and a vehicle were seized.

A search warrant was also executed yesterday at a Moundridge residence by investigators from the Office of the Securities Commissioner, officers from the McPherson County Sheriff's Department and from the Moundridge Police Department. Assistance was also provided by the United States Postal Inspector.

The Office of the Securities Commissioner requests that anyone who has invested with or been contacted on behalf of the Venture Capital Investment Group or Free Market Brokers and Consulting contact the Wichita Office of the Kansas Securities Commissioner at (316) 337-6280.

Charges are only that. A defendant is presumed to be innocent unless and until proof is presented of guilt beyond a reasonable doubt and a finding is made by a court of law.

End of Article

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<http://www.securities.state.ks.us/>

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Kansas to get \$4.3 million in securities settlement

158 TOPEKA — Securities Commissioner Chris Biggs recently informed Governor Kathleen Sebelius that Kansas had received \$4,375,000 under the terms of a settlement between securities regulators and Wall Street firms.

The settlement is the result of joint investigations by state and federal regulators into whether brokerage analysts deceived investors with stock market research tainted by investment banking conflicts of interest.

Biggs said: "Kansas was the first state in the nation to regulate the securities industry. The Office of the Kansas Securities Commissioner and other state regulators continue to play a vital role in the regulation of the securities industry. This settlement requires that safeguards be put in place to avoid future conflicts of interest and this will

provide greater protection for investors."

The amounts received from the firms are: Bear, Stearns & Co., Inc., \$250,000; Credit Suisse First Boston, LLC, \$750,000; Goldman Sachs & Co., \$250,000; J. P. Morgan Securities, Inc., \$250,000; Lehman Brothers, Inc., \$250,000; Merrill Lynch, Pierce, Fenner & Smith, Inc., \$500,000; Morgan Stanley & Co, Inc., \$250,000; U.S. Bancorp Piper Jaffray, Inc., \$125,000; Citigroup Global Markets, Inc. (Salomon Smith Barney, Inc.), \$1,500,000; UBS Warburg/PaineWebber, \$250,000.

The cases grew out of inherent conflicts of interest that existed within the brokerage firms. Each of the firms employed investment bankers who sought out lucrative business from companies wanting to raise capital by selling stock.

The firms also employed stock

analysts to advise the investing public whether to buy or sell a company's stock, and an analyst's recommendation could substantially affect the price of a stock.

Over time, the investment bankers began to influence the analysts to issue favorable recommendations for the stocks of the companies who were investment banking clients. As a result, the analysts began advising the investing public to purchase stocks even though the analysts' personal e-mails and other evidence showed that the analysts did not truly believe the stocks were good investments.

Rick Fleming, General Counsel for the Office of the Securities Commissioner said: "The global settlements with the firms were intended to not only punish the firms for this egregious behavior, but to rebuild the walls between the analysts and investment bankers."

Debt reduction, money management program, "Kansas Saves," launched

Trying to reduce debt can be a little like trying to nail jelly to a tree, said Marilyn Toellner, Kansas State University Research and Extension agent in Sedgwick County, Kan.

While Toellner is enthusiastic about a new educational program, "Kansas Saves: Financial Management for Life," a large part of her current efforts focus on helping people reduce—and eliminate—debt while they learn about money management.

Some of those she has counseled have credit card debt from consumer spending. Others have experienced a job loss or layoff and placed basic living expenses on a credit card, she said.

One family she helped recently faced a minimum credit card payment of about \$125. Interest on the balance, plus a \$35 late charge, exceeded the minimum monthly payment.

"It can take a long time to reduce debt," said Toellner, who quickly added: "Learning how to manage your money to meet your needs (now and in the future) is worth working for."

She and other Extension agents from around the state participated in a two-day "Kansas Saves" training session in Manhattan Oct. 28 and 29 on the new money management program initiated by Esther Maddux, Extension's state financial management

specialist.

"Learning to manage your money can make what you have go farther, but there's more. Successful money managers have fewer financial stresses and also build financial security for the future," Maddux said.

The "Kansas Saves" program will be open to any Kansas resident. Depending on the county, the training involves seminars and a workbook, the "Personal Financial Toolkit" that will provide guidance on how to reduce and stay out of debt, and how to build savings.

To develop and launch the program, she sought the help of Donna Purchase, national project coordinator for the Fannie Mae Foundation.

Purchase, who is based in Washington, D.C., made the trip to Manhattan to help launch the financial educational effort.

"We're becoming a nation of working poor. A high school or college diploma doesn't necessarily mean that someone knows how to write a check, balance a checkbook or make change. Financial literacy is an essential life skill," said Purchase, who praised Extension's effort in launching the educational campaign.

Kansas Securities Commissioner, Chris Biggs, who participated in a panel discussion, said that the educational effort could

help people learn to make good decisions.

While the securities office is charged with legal issues pertaining to securities, investor education also is a priority, he said.

That effort currently is directed by Angela Cichocki, who works in Biggs' office as the investor education director.

"Extension's statewide network makes it a great fit for the new financial education effort," said Cichocki, who is a former county Extension agent.

Kansas State Treasurer, Lynn Jenkins, who also spoke at the kickoff session, said financial management should begin at an early age. Her enthusiasm for money management would seem to work well with her interest in people. She said she envisions a money management camp for kids and that "we're never too old to learn."

The "Kansas Saves" program includes money management strategies for all ages and income levels, Maddux said.

For more information and how to enroll in "Kansas Saves: Financial Management for Life," contact the local K-State Research and Extension office.

For information on other educational Extension programs, visit Extension's website at: <http://www.oznet.ksu.edu>

High Plains
Journal
Dodge City, KS
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Wait to spend

MANHATTAN, Kan.—One key to money management is learning to wait before spending, said Kate Clark Archer, who spoke about money management.

Archer, who helped underwrite the cost of the conference, is a former Extension specialist, who returned to Kansas to help kick off "Kansas Saves: Financial Management for Life."

Archer, shared what she considered a key part of her successful financial manage-

ment strategies:

"One of the most valuable lessons I have learned in life is to wait. I had to wait to go to school and wait to join 4-H. And, if I needed—or wanted—something, I had to wait so that I could save the money I needed to buy it," Archer said.

"Very soon after marriage, my husband and I learned that if we didn't spend every cent we earned, we'd have the money to take advantage of opportunities as they came along," she said.

*Office of the Kansas Securities Commissioner
Administrative Hearing Room
Chris Biggs, Commissioner*



October 7, 2003

1-25

1-26

REGION AND STATE

Rancher says he will appeal state fine

By PHYLLIS J. ZORN
HAYS DAILY NEWS

A Hays rancher said he intends to appeal a \$5,000 fine for securities violations.

Kansas Securities Commissioner Chris Biggs ruled Monday that Maurice J. Rohr violated four provisions of the Kansas Securities Act by selling investments without being a registered agent, offering unregistered securities for sale, failing to disclose to a would-be investor that he had been ordered not to sell securities and offering an investment contract for sale after being ordered not to sell investments.

The securities commission in January 2000 had ordered Rohr not to market unregistered securities after receiving complaints from unhappy investors.

Biggs could have imposed a fine up to \$20,000 for four violations. He set Rohr's fine at \$5,000 — \$2,500 for offering unregistered securities for sale and another \$2,500 for violating the earlier order not to sell them.

Rohr and his attorney, Roger Walter of Topeka, argued their case last week at a hearing in Biggs' Topeka office.

"Basically, the commissioner found all of our violations we alleged to be true," said

Rick Fleming, the prosecutor for the Securities Commission. Fleming added that he interprets Biggs' rationale for assessing two fines of \$2,500 each as that the other two violations were an inherent part of the first two.

Fleming said the securities commissioner does not intend to file criminal charges against Rohr. The Ellis County attorney could file criminal charges if he wants to, Fleming said, because the statute of limitations on violating the securities act is five years.

"Any county attorney has the authority to bring criminal charges independent of our office, although that would be unusual," Fleming said.

Fleming said if Rohr only had sold investments to people he knew, he would not have run afoul of the Securities Act. It was advertising on the Internet and in newspapers that got Rohr in trouble, Fleming said.

Rohr said it no doubt would be easier and cheaper to pay the fine than to appeal the ruling, but money no longer is the issue.

"I want to clear my name completely," Rohr said.

Rohr points to the way the Ellis County attorney and the Kansas Bureau of Investigation handled complaints from unhappy investors as a key issue.

"Subsequent to the issuance of the consent order, the Ellis County attorney, Tom Drees, advised agents of the Kansas Bureau of Investigation that he had received citizen complaints about Rohr and his cattle program," Biggs' order reads.

"He then contacted the KBI agent without going to the Securities Commission," Rohr contends.

Biggs' ruling notes that the KBI has authority to investigate all crimes in Kansas. It also notes Rohr's testimony at the hearing that he gave the lease to the KBI agent only to find out his name and investigate him. Biggs wrote that he did not find that testimony "credible or believable."

Biggs' ruling also notes Rohr denied publishing an advertisement in The High Plains Journal prior to the KBI agent coming to his ranch.

"The whole question comes down to whether there was an offer that violated the Kansas Securities Act, and our whole position is that the issue is that he was solicited by the KBI agent," Rohr's attorney said. "Then you get into a question of whether the ad in The High Plains Journal was published by Mr. Rohr. The commissioner ruled that a reasonable inference could be made

that Mr. Rohr had published the ad."

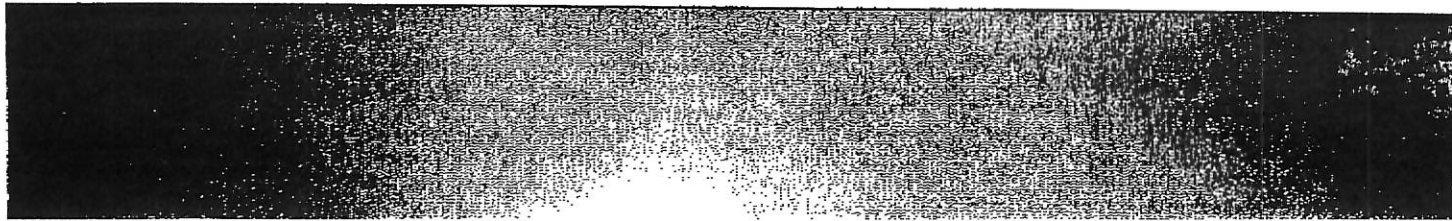
The KBI conducted an undercover investigation April 6, 2000. Rohr was arrested and bonded out of jail the next day. The matter was turned over to the Kansas Securities Commission, which last year issued a notice of its intention to impose a fine. Rohr hired an attorney and appealed, resulting in last week's hearing.

The actual sequence of events began six years ago when a Hays teacher invested \$20,000 in a cattle lease and filed the first of two lawsuits against Rohr a year later when his payment was late.

In Rohr's investment plan, investors purchased 10 or more Charolais cattle from Rohr, who would lease the cattle from the investors. The cows would be bred every year. One calf would belong to the investor and the rest to Rohr. Rohr would pay \$400 per cow each year to the investor. At the end of five years, the cows would revert to the investor and could be leased again or sold.

The teacher prevailed in his first lawsuit but was unable to collect the money the judge ordered paid. He filed a second lawsuit, but that was dismissed because he already had received a judgment in the first lawsuit and did not make any new claims.

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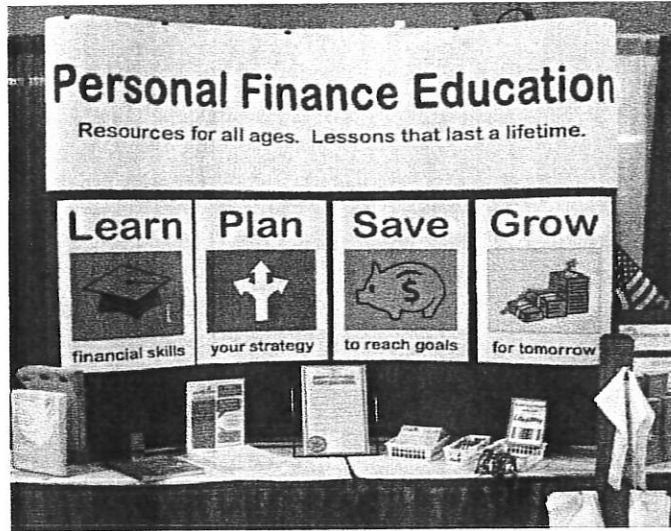
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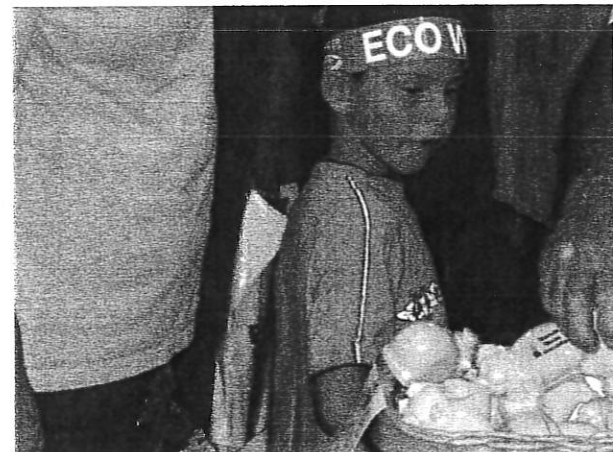
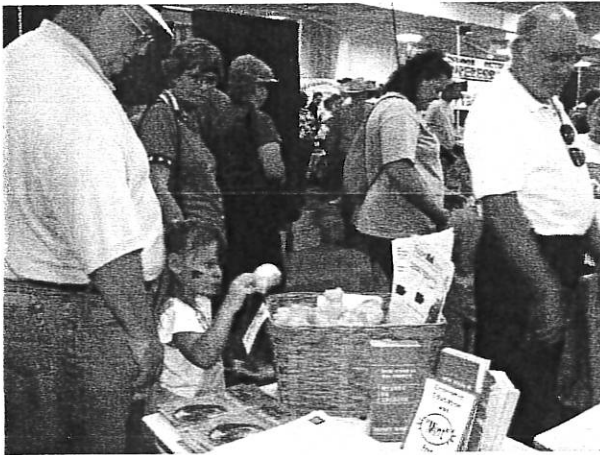
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2003 Kansas State Fair



**Great Weather + Steady Crowds + Team Enthusiasm =
Informed (Future) Investors!**

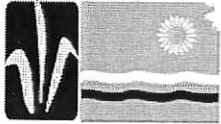




NASAA APPOINTMENTS 2004

| | |
|-----------------|--|
| Chris Biggs | Litigation Forum Project Group |
| Dave Ruhnke | Special Project Development & Coordination Project Group |
| Angela Cichocki | Investor Education Coordination |
| Alan Ford | CRD/IARD Steering Project Group Vice-Chair, CRD/IARD Forms and Process Project Group |
| Wiley Kannarr | Chair, Viaticals Project Group |
| Steve Wassom | Chair, Non-Profit Debt Offerings Project Group |
| Rick Fleming | Federal Legislation Project Group |

KANSAS AGRIBUSINESS RETAILERS ASSOCIATION



KARA is
*"Committed to
Professional
Development
and Business
Viability for
the Retail Crop
Production
Industry"*

Statement of the

Kansas Agribusiness Retailers Association

Presented to the

Senate Financial Institutions and Insurance Committee

Senator Ruth Teichman, Chairman

January 28, 2004

Presented by

Doug Wareham
Senior Vice President

Kansas Agribusiness Retailers Association
(785) 234-0463

Senate FI & I Committee

Meeting Date: Jan 27, 2004

Attachment No.: 2

Madam Chair and Members of the Senate Financial Institutions and Insurance Committee
I am Doug Wareham appearing on behalf of the Kansas Agribusiness Retailers Association (KARA). KARA's membership includes nearly 750 agribusiness firms that are primarily retail facilities that supply fertilizers, crop protection chemicals, seed, petroleum products and agronomic expertise to Kansas farmers. KARA's membership base also includes ag-chemical and equipment manufacturing firms, distribution firms and various other businesses associated with the retail crop production industry. I appear before you in support of S.B. 338.

Senate Bill 338 amends K.S.A. 58-244 by extending the time period in which a supplier can perfect an agricultural production input lien from 20 days to 60 days. For your information, the term "supplier" is defined as a person who furnishes agricultural production inputs, which includes fertilizers, ag-chemicals, seed and other crop production inputs. This change is being sought because the current 20 day restriction requires the crop input supplier to file a lien before the farmer customer has been greater than 30 days past due on any payment owed for crop inputs and/or related services.

By allowing the crop input supplier this additional time, we believe some liens that otherwise may have been filed will not. We do believe the ability to file and perfect a crop input lien should be afforded to suppliers that feel the need to seek financial protection once a debtor is past 30 days on payment for purchased products or services.

I do want to mention that our review of the statutes relating to agricultural production input liens and subsequent meetings/discussions with the Kansas Secretary of State's Business Services Department Staff has identified the fact that there are statutory references changes and other possible changes that need to be made to bring the agricultural production lien statutes in sync with the recent changes the Kansas Legislature has adopted regarding the Uniform Commercial Code.

Our general counsel will work with the Secretary of State's office, the Kansas Bankers Association and any other stakeholders that are interested in pursuing a more thorough review of these statutes to ensure they are consistent with other Kansas laws pertaining to the UCC and filing of liens. At this time, we do ask for the committee's action on this bill, because we believe the benefits of this proposed change should be realized as soon as possible.

I have attached copies of the UCC-4 Form, which is utilized by crop input suppliers, as well as the UCC-1 (Financing Statement) and UCC 1 Addendum which are required as supplement information when a crop input lien is filed with the Secretary of State's office. I want to note that the UCC-4 does require the signature of the debtor (farmer), so they are fully aware of the lien being filed for the crop inputs they have purchased.

I appreciate the opportunity to appear in support of S.B. 338 and I would be happy to stand for questions.

Contact Information

Kansas Secretary of State
Ron Thornburgh
Memorial Hall, 1st Floor
120 S.W. 10th Avenue
Topeka, KS 66612-1594
(785) 296-4564
kssos@kssos.org
www.kssos.org

KANSAS SECRETARY OF STATE
Agriculture Production Input Lien **UCC-4**

All information must be completed or this document will not be accepted for filing.

1. Name and residential address of agricultural input purchaser:

Name Street Address City State Zip

2. Name and address of supplier claiming lien:

Name Street Address City State Zip

3. Date or anticipated date of furnishing the input: _____

4. Description of the input:

5. Retail cost or anticipated retail cost of input: \$ _____

6. Name and residential address of crop owner (if different from purchaser):

Name Street Address City State Zip

7. Name and business address of lender:

Name Street Address City State Zip

8. Description of real estate where crops are growing or will be grown (if applicable):

Note: The products or proceeds of the crops are covered by the lien.

9. Describe livestock and location where they will be or are being raised or fed (if applicable):

Note: The products or proceeds of the livestock are covered by the lien.

Purchaser's Signature Day Month Year

Supplier's Signature Date notice sent to lender Day Month Year

By signing here, the undersigned certifies that the lender has not responded to the lien notification statement

2-2

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

| | | | | |
|-----------------------------|-----------------------------------|--------------------------|----------------------------------|---------------------------------|
| 1d. <u>SEE INSTRUCTIONS</u> | ADD'L INFO RE ORGANIZATION DEBTOR | 1e. TYPE OF ORGANIZATION | 1f. JURISDICTION OF ORGANIZATION | 1g. ORGANIZATIONAL ID #, if any |
|-----------------------------|-----------------------------------|--------------------------|----------------------------------|---------------------------------|

NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

| | | | | |
|-----------------------------|-----------------------------------|--------------------------|----------------------------------|---------------------------------|
| 2d. <u>SEE INSTRUCTIONS</u> | ADD'L INFO RE ORGANIZATION DEBTOR | 2e. TYPE OF ORGANIZATION | 2f. JURISDICTION OF ORGANIZATION | 2g. ORGANIZATIONAL ID #, if any |
|-----------------------------|-----------------------------------|--------------------------|----------------------------------|---------------------------------|

NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

| | | | | | | |
|--|--|--|--|---------------------------------------|-----------------------------------|---|
| 5. ALTERNATIVE DESIGNATION [if applicable]: | <input type="checkbox"/> LESSEE/LESSOR | <input type="checkbox"/> CONSIGNEE/CONSIGNOR | <input type="checkbox"/> BAILEE/BAILOR | <input type="checkbox"/> SELLER/BUYER | <input type="checkbox"/> AG. LIEN | <input type="checkbox"/> NON-UCC FILING |
| 6. <input type="checkbox"/> This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum | <input type="checkbox"/> If applicable | 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] | <input type="checkbox"/> optional | <input type="checkbox"/> All Debtors | <input type="checkbox"/> Debtor 1 | <input type="checkbox"/> Debtor 2 |
| 8. OPTIONAL FILER REFERENCE DATA | | | | | | |

2-4

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

| | | | |
|-------------------------|----------------------------|------------|---------------------|
| 9a. ORGANIZATION'S NAME | | | |
| OR | 9b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME, SUFFIX |

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

| | | | | | |
|------------------------------|-----------------------------------|---------------------------|-----------------------------------|----------------------------------|-------------------------------|
| 11a. ORGANIZATION'S NAME | | | | | |
| OR | 11b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX | |
| 11c. MAILING ADDRESS | | CITY | STATE | POSTAL CODE | COUNTRY |
| 11d. <u>SEE INSTRUCTIONS</u> | ADD'L INFO RE ORGANIZATION DEBTOR | 11e. TYPE OF ORGANIZATION | 11f. JURISDICTION OF ORGANIZATION | 11g. ORGANIZATIONAL ID #, if any | <input type="checkbox"/> NONE |

12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

| | | | | | |
|--------------------------|-----------------------------|------------|-------------|-------------|---------|
| 12a. ORGANIZATION'S NAME | | | | | |
| OR | 12b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX | |
| 12c. MAILING ADDRESS | | CITY | STATE | POSTAL CODE | COUNTRY |

13. This FINANCING STATEMENT covers timber to be cut or as-extracted collateral, or is filed as a fixture filing.

14. Description of real estate:

16. Additional collateral description:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

17. Check only if applicable and check only one box.

Debtor is a Trust or Trustee acting with respect to property held in trust or Decedent's Estate

18. Check only if applicable and check only one box.

- Debtor is a TRANSMITTING UTILITY
- Filed in connection with a Manufactured-Home Transaction — effective 30 years
- Filed in connection with a Public-Finance Transaction — effective 30 years