Approved: April 30, 2004
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on Wednesday, March 3, 2004, in Room 123-S of the Capitol.

All members were present except:
Senator David Haley - Arrived 9:45 a.m.
Senator Edward Pugh - Arrived 10:10 a.m.
Senator Greta Goodwin - Arrived 9:40 a.m.

Committee staff present:
Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor Statutes
Helen Pedigo, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:
Representative Mike O'Neal
Rose Rozmiarek, Chief of Investigations, State Fire Marshal's Office
Judge Steve Becker, Reno County District Court
Rick Fleming, General Counsel for Securities Commission
Don Schnacke, Kansas Independent Oil and Gas Association
Leslie Kaufman, Director of Government Relations, Kansas Cooperative Council
Kathy Taylor-Olsen, Kansas Bankers' Association Roger Walter, Kansas Bar Association

Others attending: See attached list.

HB 2525 - Increasing severity levels on criminal use of explosives

Chairman Vratil opened the hearing on **HB 2525**. Representative Mike O'Neal, sponsor of the proposed bill, appeared before the Committee to support the bill. He distributed written request and testimony from Chief Judge, Steven R. Becker, Reno County, asking consideration be given to elevating the severity level for the criminal use of explosives. Representative O'Neal expressed his personal support of the proposed legislation. He explained the bill would increase the penalty from the current Level 8 to a Level 6. He stated that the Legislature is mindful of the bed space impact situation, but this bill would give the court discretion in dangerous type cases. (Attachment 1)

The Chairman noted that a copy of the Fiscal Note on **HB 2525** had been completed by the Kansas Sentencing Commission, and showed the bed impact was not significant. (Attachment 2)

Brief discussion and questions followed Representative's O'Neal's testimony.

Rose Rozmiarek, Chief of Investigations, Deputy State Fire Marshall, testified in favor of **HB 2525**. She explained that the State Fire Marshall's office not only investigates fires, but also investigates explosions and explosive issues. The State Fire Marshall's office licenses all users, blasters, and storage facilities in the State of Kansas as well as Class 'B' fireworks. Ms. Rozmiarek stated that increasing the severity level for criminal use of explosives would send a message that individuals will be punished properly for their unlawful acts.

Ms. Rozmiarek proposed a language amendment to **HB 2525** to include other explosive devises that are being constructed and are dangerous and destructive such as common Class 'C', 1.4 fireworks. (Attachment 3)

The Chairman clarified that the proposed amendment does not intend to include Class 'C' fireworks as prohibited, but if they are not used for the purpose for which they are intended then they would be prohibited.

Chairman Vratil closed the hearing on **HB 2525**.

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Wednesday, March 3, 2004, in Room 123-S of the Capitol.

HB 2347 - Kansas uniform securities act

Rick Fleming, General Counsel for the Securities Commission, testified in support of **HB 2347**. Mr. Fleming introduced Chris Biggs, Securities Commissioner for the State of Kansas, who was in attendance and would also be available for questions. Mr. Fleming provided background and historical information on regulating securities in Kansas. He explained that as changes occurred at the federal level, states have tried to keep up by amending securities statutes and regulations, but in the process the states drifted further and further away from uniformity among the 50 states. He said it has become difficult to understand state securities laws unless one is familiar with federal law.

Mr. Fleming explained that the National Conference of Commissioners on Uniform State Laws (NCCUSL) overhauled the model state securities law with its adoption of the Uniform Securities Act (2002). The overhaul was an attempt to address problems in Kansas and other states. He said the new model act varies in many respects from current Kansas law, and he attempted to analyze the difference in a large 5-column spreadsheet distributed to Committee members. (Attachment 4)

Mr. Fleming stated that the Office of the Securities Commissioner did not necessarily agree with every provision of the new Uniform Securities Act, but recognized the value of uniform laws. He added that the Kansas Securities Commissioner's office did not believe it was necessary to create uniformity with respect to the punishment for violating the rules. He said that except for the removal of variable annuities from the definition of a security in Section 2(28), the Office of the Securities Commissioner is comfortable with the bill as it passed the House. Mr. Fleming stated their opposition of any attempt by the Kansas Bar Association to strip away their enforcement authority or ability to protect Kansas investors. He urged the Senate Judiciary Committee to reject any amendment that would remove the Commissioner's authority to order restitution or disgorgement in an administrative proceeding, or to remove the authority to conduct examinations of securities issuers. He outlined two further proposed amendments that are detailed in his written testimony.

Committee questions and discussion followed.

Don Schnacke, Kansas Independent Oil & Gas Association, testified in support of **HB 2347**, and expressed concern that K.S.A. 17-126a was being removed from **HB 2347**. He said that preserving the oil and gas securities exemption was important since the vast majority of Kansas oil and gas operators are small business entities. He stated that the Securities Commission had assured the Association that the oil and gas industry will have a seat at the table when regulatory language is developed replacing K.S.A. 17-1262a definitions. (Attachment 5)

Leslie Kaufman, Kansas Cooperative Council, testified as neutral on **HB 2347**, but there was one provision which would change current law regarding cooperative instruments and negatively impact co-op members. He said they were unable to raise concern or come up with the precise language needed to address issues with Section 6 (8) (page 11, lines 11-16) as the House Judiciary Committee worked the bill. He submitted a proposed amendment that would alleviate the Cooperative Council's concerns with the current language. (Attachment 6)

Kathleen Olsen, Kansas Bankers Association, submitted written testimony as neutral on **HB 2347**. (Attachment 7)

Roger Walter, Kansas Bar Association (KBA), testified in opposition to **HB 2347**. He submitted five proposed amendments for the KBA as outlined in his written testimony. He also identified five sections of HB 2347 that should conform with the language of the Security Commissioner's USA-2002 counterpart sections. He said that KBA feels the changes proposed by the Security Commissioner's staff should not be made. These are labeled as Attachments 1, 2, 3 and 5 within Mr. Walter's written testimony. Mr. Walter submitted one instance when the KBA felt a compelling reason exists to depart from the uniform language of USA-2002. It is labeled Attachment 4, "Section 39. Rescission Offers." (Attachment 8)

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Wednesday, March 3, 2004, in Room 123-S of the Capitol.

Following Committee discussion and questions, the Chairman asked Representative O'Neal, who was in attendance, if he had any comments he wanted to make to the Committee. Representative O'Neal stated that the House Judiciary Committee wanted to be careful because the bill was not exactly uniform language, and he insisted that amendments the House Committee considered would have to pass the Uniform Law Commission. He said that John McCabe and Michelle Clayton were in attendance at the House meeting, and they could live with most of the changes. He added the one exception to that was the one year Statute of Limitations, and that was a big deal. He expressed concern that Kansas is out of compliance there, but it was what the House Committee decided to do.

Chairman Vratil stated that he had talked to John McCable and Michelle Clayton the day before. He agreed that the two year Statute of Limitations amended into the bill was a big deal with the Uniform Securities Commission (USC). He explained it was a "big deal" because in drafting **HB 2347** there were a number of interested parties who participated. There was a lot of negotiation and a lot of give and take, and one of the things certain interested parties gave up was the one year Statute of Limitations. They received consideration in other areas in exchange for that.

Committee discussion continued.

The Chairman asked Mr. Biggs, Securities Commissioner, if he had any comments for the Committee. Mr. Biggs stated that since he had been the Commissioner, the Commission had had only one contested administrative hearing. He would like to keep the administrative hearings within the Commission's authority because of the large amount of expertise within the Commission. If a party does not agree with a ruling, then the party can always go to the District Judge.

The Chairman announced that time had elapsed for the meeting. He adjourned the meeting at 10:30 a.m.

The next scheduled meeting is March 4, 2004.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Weds., March 3, 2004

NAME	REPRESENTING
Jeff Bottenberg	Kansas Sheriffs' Ass'n
[illegible]	Hein Law Firm
Natalie Haag	Security Benefit
Kathy Porter	Judicial Branch
Rose Raymond	KS State Fire Marshal Ofc.
[illegible]	KS Ins Dept
Leslie Kaufman	Ks Co-op Council
Shawn Jeffery	KS Farm Bureau - Graham Co.
Mike Dinkel	KS. Farm Bureau - Graham Co.
Brody Jeffery	KS. Farm Bureau - Graham CO.
Kiley Cooper	KS. Farm Bureau - Graham CO.
Cassandra Dinkel	" "
Dale Dinkel	" - "
Kyle Smith	KBI
Roger Walter	KBA
Rick Fleming	Securities Commissioner

July 27, 2003

Representative Michael O'Neal
20 W. 2nd Avenue
Hutchinson, Kansas 67501

Representative Janice Pauls
1634 North Baker Street
Hutchinson, Kansas 67501

Re: Sentencing guidelines

Dear Representatives:

A recent case in my court has raised a specific concern about the current sentencing guidelines.

The case involved a routine traffic stop for an expired tag. The 18-year-old driver was in possession of two completed pipe bombs and marijuana. A search of his residence revealed evidence of additional production of explosives.

When the case came to my attention after the arrest, I believed the circumstances to be extremely serious and set an exorbitant bond in consideration of the risk to the community. I was surprised that the appropriate charge was criminal use of explosives, K.S.A. 21-3731(a), a severity level 8 felony, and presumptive probation. The defendant has been released. There seems to be no evidence or information of the defendant's motive or intent. Speculation is frightening.

It gives me pause to reflect if similar charges would have been filed if Timothy McVeigh and Terry Nichols would have been stopped while towing their U-Haul trailer of explosives through Kansas.

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I believe society's mindset has been dramatically altered due to the events of September 11, 2001, and numerous tragedies in our nation's public schools. I therefore respectfully request you review the circumstances I've described and consider elevating the severity level of such conduct.

Respectfully submitted,

Steven R. Becker
Chief Judge

Additional comments:
Defendant promptly waived his rights and pled Guilty. He received a guidelines sentence and was released to community corrections supervision.

I often wonder how many lives were saved by that routine traffic. I also wonder about the defendant's motive and whether he will again pursue his unknown intentions.

I sincerely wish I would have received more advanced notice of your committee meeting so I could have arranged for oral testimony.

Steven R. Becker 3-2-04 4:45 PM

KANSAS

KANSAS SENTENCING COMMISSION
Honorable Ernest L. Johnson, Chairman
District Attorney Paul Morrison, Vice Chairman
Patricia Ann Biggs, Executive Director

KATHLEEN SEBELIUS, GOVERNOR

MEMORANDUM

To: Duane A. Goossen, Director of the Budget
ATTN: Konnie Leffler

From: Patricia Biggs, Executive Director

Date: January 27, 2004

RE: Fiscal Note on HB 2525

SUMMARY OF BILL:

AN ACT concerning crimes and punishment; relating to criminal use of explosives; amending K.S.A. 2003 Supp. 21-3731 and repealing the existing section.

This proposed bill might have some impact upon the Kansas Sentencing Guidelines Act (KSGA). This Bill would change the violation of 21-3731 (a) to a severity level 6, person felony and a violation of 21-3731 (b) (2) to a severity level 5, person felony.

Section 1 of this Bill amends K.S.A. 2003 Supp. 21-3731. **Criminal Use of Explosives.**

(a) Criminal use of explosives is the possession, manufacture or transportation of commercial explosives, chemical compounds that form the explosives;... or any completed explosives devices commonly known as pipe bombs or molotov cocktails. This does not include class "c" fireworks legally obtained and transferred commercial explosives by licensed individuals and ammunition and commercially available loading powders and products used as ammunition.

(b) (1) Criminal use of explosives defined in subsection (a) is a severity level 6, person felony.
(2) Criminal use of explosives defined in subsection (a) if: (A) the possession, manufacture or transportation is intended to be used to commit a crime or is delivered to another person with the knowledge that the other person intends to use it to commit a crime; (B) a public safety officer is put at risk to defuse the explosive; or (C) the explosive is put into a building where there is another human being, is a severity level 5, person felony.

IMPACT ON KANSAS SENTENCING COMMISSION:

Based on the current duties of the Kansas Sentencing Commission, the changes proposed in this bill will have no effect on the following:

1. The current operation or responsibilities of the Commission.
2. The current budget of the Commission.

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3. The current staffing and operating expenditure levels of the Commission.
4. The long-range fiscal estimates of the Commission.

IMPACT ON PRISON ADMISSIONS:

_X_ Increase by an estimated: **1 in FY 2005, 2 in FY 2014**
____ Potential to increase but cannot quantify
___ Decrease by an estimated:
____ Potential to decrease but cannot quantify
____ Remain the same

Note:

- The impact on prison admissions is based on FY 2003 prison and probation sentences. During FY 2003, six offenders were convicted of the crime of criminal use of explosives and sentenced to probation. Of these six:
  - five were classified as severity level 8 person felons and one was classified as a severity level 10 person felon.
    - The average underlying prison sentence for these six offenders is eight months.
- During FY 2003, two offenders convicted of the crime of criminal use of explosives violated their probation conditions.
  - One was under severity level 6 and sentenced to prison for 26 months.
  - One was under severity level 8 and was continued on probation.
- The increase in severity levels for criminal use of explosives will result in one additional prison admission by the year 2005 and 2 additional admissions by the year 2014. The details for the prison admission impact are contained in the table below.
- This impact assumes no increase in the prevalence, enforcement, or prosecution for criminal use of explosives beyond the one point five percent annual average growth rate assumed in the model.

Prison Admission Impact Assessment

JUNE OF EACH YEAR	CURRENT ADMISSION POLICY WITH NO CHANGE *(PRE-HB 2525)*	ADMISSIONS WITH SEVERITY LEVELS INCREASED *(HB 2525 APPLIED)*	ADDITIONAL ADMISSION(S)
2005	1	2	1
2006	1	3	2
2007	1	3	2
2008	1	3	2
2009	1	3	2
2010	1	3	2
2011	1	3	2
2012	1	3	2
2013	1	3	2
2014	1	3	2

IMPACT ON OFFENDER POPULATION LEVELS:

____ have impact on offender population as noted below
__X__ have the potential to impact offender population as noted below. **1 by 2005; 4 by 2014**
____ have minimal or no impact on offender population
____ have impact but cannot be quantified with data available.

Note:
The additional prison beds required are the result of an increase in the number of prison admissions (indicated in the table above) and an increase in the length of stay in prison for these offenders. Presented below are the assumptions, data findings, and prison bed impact for the changes proposed in this bill.

Key Assumptions:

- The target offenders as defined in this bill include any person who engages in criminal use of explosives.
- The impact on prison admissions is based on sentencing data from FY 2003 and includes both probation and prison sentences.
- The percentage of target inmate sentences served in prison is assumed to be 85 percent, which is in consistent with the official projections released in September 2003 and Revised in November 2003.
- Increasing the severity levels for criminal use of explosives will increase the underlying prison sentence.
- Projected admission to prison is assumed to increase by an annual average of one point five percent. Bed space impacts are in relation to the baseline forecast produced in September 2003 and Revised in November 2003 by the Kansas Sentencing Commission.
- The severity level of criminal use of explosives defined in subsection (a) is to be raised from a severity level 8, person felony to a severity level 6, person felony.
    - It is assumed that the average underlying prison sentences from severity level 8 to severity level 6 will increase the length of sentences by 16 months.
    - It is assumed that a person convicted of the crime under severity level 6 will receive a probation sentence.
- The severity level of criminal use of explosives defined in subsection (a) (A), (B) or (C) increases from a severity level 6, person felony to a severity level 5, person felony.
    - It is assumed that the average underlying prison sentences from severity level 6 to severity level 5 will increase the length of sentences by 19 months.
    - It is assumed that a person convicted of the crime under severity level 5 will be sentenced to prison.

Findings:

- During FY 2003, six offenders convicted of the crime of criminal use of explosives were sentenced on probation.
    - Of this number, five offenders were classified as severity level 8, person felons and one was classified as severity level 10, person felon. The average length of underlying prison sentence for the six offenders is 8 months.
- During FY 2003, two offenders violated their probation conditions.
    - One was under severity level 6 and sentenced to prison with a 26 month sentence.
    - One was under severity level 8 and was continued on probation.

- The increase of the severity levels of criminal use of explosives will result in one additional prison admission by the year 2005 and 2 additional admissions by the year 2014.
- The impact of this bill will result in one additional prison bed by the year 2005 and 4 additional beds by the 2014.

Prison Bed Space Impact Assessment

June of Each Year	Current Beds Needed - No Policy Change	Severity Levels Increase - Number of Beds Needed	Additional Prison Beds
2005	1	2	1
2006	2	5	3
2007	2	5	3
2008	2	6	4
2009	2	5	3
2010	2	4	2
2011	2	6	4
2012	2	6	4
2013	2	6	4
2014	2	6	4

SUMMARY OF HB 2525 IMPACT:

- The impact of this bill will result in 1 additional prison admission by FY 2005 and 2 additional admissions by FY 2014.
- The impact of this bill will also result in the need for 1 additional prison bed by FY 2005 and 4 additional prison beds by FY 2014.

K A N S A S

JOSEPH P. ODLE
FIRE MARSHAL

OFFICE OF THE KANSAS STATE FIRE MARSHAL

KATHLEEN SEBELIUS
GOVERNOR

TESTIMONY ON HB 2525
SENATE JUDICIARY COMMITTEE

CONCERNING INCREASING SEVERITY LEVELS
OF THE
CRIMINAL USE OF EXPLOSIVES STATUTE

Date: March 3, 2004

By: Rose Rozmiarek
Chief of Investigations
Deputy State Fire Marshal

The office of the State Fire Marshal stands as a proponent of HB 2525. The legal use of commercial explosives have had an important place in our society in the areas of construction, development, and agricultural. We license all users, blasters, and storage facilities in the State of Kansas as well as Class 'B' fireworks. We do not want to restrict the legal use of these materials. But when these materials get into the hands of persons who are not properly trained or have criminal intentions the result can be devastating.

Explosives are deadly materials in the hands of the wrong people. Explosives are still and will remain the weapon on choice for terrorist, domestic and international. We have in the last few years tried and still are strengthening our explosive licensing statutes and regulations to assure the explosive materials are not getting into the wrong hands. We will be introducing more legislation this year addressing this issue. The Kansas State Fire Marshal's Office has also obtained federal grant money to assist in improving our licensing and information availability on explosives in the State of Kansas.

Increasing the severity level of the criminal use of explosives will only send a message to the persons who intend to commit this act that due to the devastating impact of the material or devise has, they will be punished properly.

We would also propose a language amendment to this bill to clarify other explosive devises that are being constructed and are very dangerous and destructive. People, including teenagers are constructing explosive devises from, what is known as common Class 'C', 1.4 fireworks. These fireworks are the type you can purchases during the forth

700 SW JACKSON STREET, SUITE 600, TOPEKA, K
Voice 785-296-3401 Fax 785-296-0151 www.acces

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of July for kids to celebrate the holiday. One type of devise law enforcement agencies in Kansas as well as across the nation are seeing is what is referred to as 'sparkler bombs'. These devises utilize sparklers taped together in confinement and once lit can have a devastating effect. We had one in July of 2002 move a 350 pound monument off of its pedestal. They can go off in the kids hand and cause major debilitating injuries.

We ask that you consider this language change to incorporate other potential materials that are being used to make explosive devises.

We encourage passage of this bill with the additional language change.

Session of 2004

HOUSE BILL No. 2525

By Representative O'Neal

1-15

AN ACT concerning crimes and punishment; relating to criminal use of explosives; amending K.S.A. 2003 Supp. 21-3731 and repealing the existing section.

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

Section 1. K.S.A. 2003 Supp. 21-3731 is hereby amended to read as follows: 21-3731. (a) Criminal use of explosives is the possession, manufacture or transportation of commercial explosives; chemical compounds that form explosives; incendiary or explosive material, liquid or solid; detonators; blasting caps; military explosive fuse assemblies; squibs; electric match or functional improvised fuse assemblies; or any completed explosive devices commonly known as pipe bombs or molotov cocktails. For purposes of this section, explosives shall not include ~~class "c" fireworks~~, legally obtained and transferred commercial explosives by licensed individuals, ~~and~~ ammunition, ~~and~~ commercially available loading powders and products used as ammunition, *and class "c" 1.4 fireworks unless the class "c" 1.4 fireworks are used for a purpose not intended by manufacturers of class "c" 1.4 fireworks.*

(b) (1) Criminal use of explosives as defined in subsection (a) is a severity level ~~8~~ *6*, person felony.

(2) Criminal use of explosives as defined in subsection (a) if: (A) The possession, manufacture or transportation is intended to be used to commit a crime or is delivered to another with knowledge that such other intends to use such substance to commit a crime; (B) a public safety officer is placed at risk to defuse such explosive; or (C) the explosive is introduced into a building in which there is another human being, is a severity level ~~6~~ *5*, person felony.

Sec. 2. K.S.A. 2003 Supp. 21-3731 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

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
Senate Committee on Judiciary

Rick A. Fleming, General Counsel
March 3, 2004

Mr. Chairman and members of the committee,

The State of Kansas is the home of securities regulation. We began regulating the sale of securities in 1911, and other states and the federal government followed our lead. I am proud to represent the Office of the Kansas Securities Commissioner as we continue to strive to protect investors while promoting legitimate capital formation.

The first model "blue sky" law was adopted in 1956, and the current Kansas Securities Act is still based upon that model. As you can imagine, a lot has changed in the securities industry in half a century. In particular, we have seen monumental shifts at the federal level in the past decade. I joined the Office of the Securities Commissioner in 1996, the same year that Congress passed the National Securities Market Improvement Act (NSMIA). This act preempted the states from reviewing several types of securities offerings (e.g., mutual funds, New York Stock Exchange listed securities, etc.), and it split up the oversight of small and large investment advisers between the states and federal government. Since that time, the federal Gramm-Leach-Bliley Act tore down the walls between the banking, insurance, and securities industries, and this has created new challenges for the regulators of the three industries. Along the way, other federal legislation such as the Philanthropy Protection Act has taken away smaller slices of state authority over specific types of securities.

As these changes have occurred at the federal level, states have tried to keep up by amending our securities statutes and regulations, but in the process we have drifted further and further from uniformity between the 50 states. Over time, it has also become very difficult to understand state securities laws unless you are familiar with federal law. As a result, a business that wants to raise capital must go through a daunting analysis and synthesis of federal and state securities laws.

618 S. KANSAS AVENUE, TOPEKA, KS
Voice 785-296-3307 Fax 785-296-6872 Investor Se
http://www.securities.state.ks.us

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2. Section 39(3) on page 52, line 20, as follows:

   (3) the offer under paragraph (1) discloses whether the offeror has the present ability to pay the amount offered or to tender the security ~~under paragraph (1)~~.

   Explanation: The bill provides a mechanism for the issuer of a security to make a "rescission offer" to investors when the security is sold improperly. In a rescission offer, the investors are given the opportunity to get a refund of their principal plus interest. Under the Uniform Securities Act, an issuer cannot make a rescission offer unless the issuer can demonstrate an ability to repay all of the investors, even though 100% of the investors rarely accept the rescission offer. The Kansas Bar Association asked the House Judiciary Committee to remove subsection 39(3) in its entirety. We opposed the KBA proposal, and the committee rejected it, but we have developed the amendment set forth above as an alternative proposal. It makes the issuer's ability to pay a matter of disclosure rather than a hard and fast requirement.

The Kansas Bar Association offered a number of other amendments before the House Judiciary Committee, and the Office of the Securities Commissioner supported some of them. However, we oppose any attempt by the KBA to strip away our enforcement authority or our ability to protect Kansas investors. In particular, we urge the Senate Judiciary Committee to reject any amendment to remove the Commissioner's authority to order restitution or disgorgement in an administrative proceeding, or to remove our authority to conduct examinations of securities issuers. These are important powers that exist under current law.

Thank you for the opportunity to testify in support of House Bill 2347. I would be happy to answer questions about the bill.

Respectfully submitted,

Rick A. Fleming
General Counsel

NIFORM SECURITIES ACT	*KANSAS SECURITIES ACT*	*NCCUSL COMMENTS*	*KSC COMMENTS*	*NEW SECURITIES ACT*
NOTE: This column contains the text of the Uniform Securities Act (2002), as originally drafted by NCCUSL.	*NOTE: This column contains the current provisions of the Kansas Securities Act (and selected regulations) that correspond to the provisions of USA-2002. It includes the amendments in L. 2003, ch. 117, effective July 1, 2003 (SB 110).*	*NOTE: This column contains Official Comments from the drafters of USA-2002. The numbers correspond with the numbering in the Official Comments. The comments have been edited for length, and not all comments are included.*	*NOTE: This column contains comments from staff of the Securities Commissioner. The comments explain differences between current law and the USA-2002, as well as the rationale for changes to USA-2002 language.*	*NOTE: This column includes the text of the new Kansas Uniform Securities Act as contained in HB 2347 as passed by the House of Representatives. It contains strikethroughs of deleted USA-2002 language, underlines of added language, and italics of optional or bracketed language from USA-2002.*
SECTION 101. SHORT TITLE. This [Act] may be cited as the Uniform Securities Act (2002).	**17-1274. Citation of act.** This act may be cited as the Kansas securities act.		The new name should be different from the current "Kansas Securities Act" and should not include "2002" if it is enacted later.	**SECTION 1** ~~**101. SHORT TITLE.**~~ *Sections 1 through 52, and amendments thereto,* may be cited as the Kansas uniform securities act ~~(2002)~~.
SECTION 102. DEFINITIONS. In this [Act], unless the context otherwise requires:	**17-1252. Definitions.** When used in this act, unless the context otherwise requires:	1. Under § 605(a) the administrator has the power to define by rule any term, whether or not used in this Act, as long as the definitions are not inconsistent with the Act. 2. All definitions include corresponding meanings. E.g., "filing" would include "file" or "filed"; "sale" would include "sell."		**SECTION 2** ~~**102. DEFINITIONS.**~~ In this *act*, unless the context otherwise requires:
(1) "Administrator" means the [insert title of administrative agency or official].	1252(a) "Commissioner" means the securities commissioner of Kansas, appointed as provided in K.S.A. 75-6301, and amendments thereto.			(1) "Administrator" means the *securities commissioner of Kansas, appointed 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].	1252(b) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer only in transactions in securities exempted by K.S.A. 17-1261, and amendments thereto or who represents a broker-dealer in effecting transactions in this state limited to those transactions described in section 15(h)(2) of the securities and exchange act of 1934. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if such person otherwise comes within this definition.	4. Certain exclusions from the 1956 Act are exemptions in this Act. See § 402(b). § 102(2) is intended to include any individual who acts as an agent, whether or not the individual is an employee or independent contractor. The word "individual" in the definition of "agent" is limited to human beings and does not include a "person" such as a corporation. Cf. definition of "person" in § 102(20). An individual whose acts are solely clerical or ministerial would not be an agent under § 102(2). Cf. § 402(b)(8). Ministerial or clerical acts might include preparing written communications or responding to inquiries.	1252(b) creates an exclusion for issuer agents who sell exempt securities. 402(b)(4) creates an exemption for issuer agents who engage in exempt transactions. § 15(h)(2) of the '34 Act preempts state regulation of de minimus transactions by an associated person of a BD whose customer is traveling through a state or newly relocated to the state. USA-2002 handles this preemption through an exemption rather than an exclusion. See 402(b)(1). The exclusions in the second sentence of 1252(b) could be continued by adopting them in a regulation.	(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,~~ 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 ·tantial portion of the business of which sts of receiving deposits or exercising ·iciary powers similar to those permitted to be exercised by national banks under the authority of the Comptroller of the Currency pursuant to		5. Prior Provision: Subsection 3(a)(6) of the Securities Exchange Act of 1934 (the '34 Act). A United States branch of a foreign bank that otherwise satisfies this definition would be a bank.		(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 exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the comptroller of the currency pursuant to

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tion 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 over banks, and which is not operated for the purpose of evading this [Act]; and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in subparagraph (A), (B), or (C).				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 over banks, and which is not operated for the purpose of evading this *act*; and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in subparagraph (A), (B), or (C).
(4) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include: (A) an agent; (B) an issuer; (C) a bank or savings institution if its activities as a broker-dealer are limited to those specified in subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the Securities Exchange Act of 1934 (15 U.S.C. Sections 78c(a)(4) and (5)) or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78c(a)(4)); (D) an international banking institution; or (E) a person excluded by rule adopted or order issued under this [Act].	1252(c) "Broker-dealer" means any person engaged in the business of purchasing, offering for sale or selling securities for the account of others or for such person's own account; but the term does not include an agent, issuer, bank, savings institution, insurance company, or a person who effects transactions in this state exclusively with the issuer of the securities involved in the transactions or with any person to whom a sale is exempt under subsection (f) of K.S.A. 17-1262, and amendments thereto.	6. The use of the compound term is meant to include either a broker or a dealer. The recognized distinction is that a broker acts for the benefit of another while a dealer acts for itself in buying for or selling securities from its own inventory. The Gramm-Leach-Bliley Act (GLBA) rescinded the blanket exemption of banks from the definition of broker and dealer in §§ 3(a)(4) & (5) of the '34 Act. GLBA permits a bank to avoid registration as a broker or dealer at the federal level if the bank limits its activities to those specified in the '34 Act. This Act generally adopts the activity focused exceptions for banks included in GLBA, with minor modifications relating to the private placement and de minimis brokerage activities of banks (15 U.S.C. 78c(a)(4)(B)(vii) and (xi)). This Act also reaches savings institutions. A state may decide to adopt an exclusion in § 102(4)(C) that fully conforms with the bank exceptions contained in GLBA. For states that choose this approach, the language of § 102(4)(C) should read: (C) a bank or savings institution if its activities as broker-dealer are limited to those specified in § 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(4) and (5)), or a bank that satisfies the conditions specified in § 3(a)(4)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)). § 102(4)(E) of this Act also permits a securities administrator to adopt additional exclusions that exclude banks and other depository institutions, in whole or in part, from the definition of "broker-dealer" (BD). States that promptly adopt this Act should consider whether it is appropriate to provide banks a transition period to comply with the Act's	1252(c) provided a blanket exclusion for banks, but 102(4) limits the exclusion. Under the federal Gramm-Leach-Bliley Act, banks are excluded from the definition of BD if their activities are limited to certain types of transactions. 102(4)(C) follows the GLBA approach with two exceptions: it would not exclude banks that engage in private placement offerings, and it would require accommodation trades to be unsolicited. See the handout "Banks and the KUSA" for more details re: the bank exclusion. "If limited to unsolicited transactions" in 102(4)(C) is intended to only modify "(xi)" and not the rest of 3(a)(4)(B). The language should be subdivided with semicolons to avoid the potential for an erroneous interpretation. 102(4) does not contain the following exclusions that are currently found in 1252(c): 1) Insurance companies. 201(4) creates an exemption for securities issued by insurance companies, rather than the exclusion from the BD definition in 1252(c). See Official Comment 4 to § 201. 2) "A person who effects transactions in this state exclusively with the issuer of the securities involved in the transactions." Instead of an exclusion from the definition of BD, 401(b)(1)(A) creates an exemption from BD registration for an out-of-state person who effects transactions exclusively with the issuer. 3) "A person who effects transactions in this state exclusively with any person to whom a sale is exempt under subsection (f) of K.S.A. 17-1262." This creates an exclusion from the definition of BD for anyone who sells securities exclusively to banks, trust, insurance companies, investment companies, institutional buyers, other BDs, etc. Instead of an exclusion from the definition of BD, 401(b)(1)(B)-(D) creates an exemption from BD registration for an out-of-	(4) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include: (A) an agent; (B) an issuer; (C) a bank ~~or~~, savings institution, or trust company if: (i) its activities as a broker-dealer are limited to those specified in subsections 3(a)(4)(B)(i) through (vi)~~,~~ and (viii) through (x)~~, and~~; 3(a)(4)(B)(xi) if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the securities exchange act of 1934 (15 U.S.C. sections 78c(a)(4) and (5)), or (ii) it is a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the securities exchange act of 1934 (15 U.S.C. section 78c(a)(4)); (D) an international banking institution; or (E) a person excluded by rule adopted or order issued under this *act*.

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		new activity focused exceptions. The SEC has delayed the effective date of the GLBA activity focused exceptions for banks and thus continued the blanket exemption for banks. The SEC has commenced a rulemaking designed to clarify and define the scope of the bank exceptions in GLBA. To avoid disrupting the activities of banks, states should consider delaying implementation of the activity focused exceptions in this Act until these exceptions are implemented at the federal level.	state person who sells exclusively to other BDs, institutional investors, and large federal covered IAs. 102(4) adds an exclusion for international banking institutions, as defined by 102(14). This exclusion was not contained in 1252(c). For a mere offer and no sale, we have historically alleged a 1254(a) violation for "engaging in the business of offering securities" without registration. Under § 102(4), a mere offer may not rise to the level of "engaging in the business of effecting transactions in securities." The Kansas Bankers Association requested the addition of "trust companies" to the bank exclusion.	
(5) "Depository institution" means: (A) a bank; or (B) a savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a State or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a State or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law. The term does not include: (i) an insurance company or other organization primarily engaged in the business of insurance; (ii) a Morris Plan bank; or (iii) an industrial loan company.		7. No Prior Provision. A depository institution's securities are addressed by the exemption in § 201(3). A depository institution is an institutional investor in § 102(11)(A).		(5) "Depository institution" means: (A) a bank; or (B) a savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a State or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a State or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law. The term does not include: (i) an insurance company or other organization primarily engaged in the business of insurance; (ii) a Morris Plan bank; or (iii) an industrial loan company.
(6) "Federal covered investment adviser" means a person registered under the Investment Advisers Act of 1940.	1252(o) "Federal covered adviser" means a person who is registered under section 203 of the investment advisers act of 1940 or excluded from the definition of "investment adviser" under section 202(a)(11) of the investment advisers act of 1940.	8. This provision is necessitated by § 203A of the Investment Advisers Act of 1940 (the IA Act), added by Title III of the National Securities Markets Improvement Act (NSMIA), which allocates to primary state regulation most advisers with assets under management of less than $25 million. SEC registration is permitted, but not required, for IAs having between $25 and $30 million of assets under management and is required of IAs having at least $30 million of assets under management.	§ 202(a)(11) of the IA Act excludes banks, lawyers, accountants, publishers, etc., from the definition of investment adviser. This leads to results that make no sense when 1252(o) is read literally. For example, a bona fide publisher would be deemed a federal covered adviser in Kansas because the publisher is excluded from the federal definition. The 102(6) definition should be adopted 'as is' to fix this problem.	(6) "Federal covered investment adviser" means a person registered under the Investment Advisers Act of 1940.
(7) "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under Section 18(b) of the	1252(n) "Federal covered security" means any security that is a covered security under section 18(b) of the securities act of 1933 or rules or	9. NSMIA preempts aspects of the securities registration and reporting processes for specified 'federal covered securities.' The Act does not		(7) "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under Section 18(b) of the

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curities Act of 1933 (15 U.S.C. Section 77r(b)) or rules or regulations adopted pursuant to that provision.	regulations promulgated thereunder.	diminish state authority to investigate and bring enforcement actions generally with respect to securities transactions. [See Official Comment for details regarding NSMIA preemption.]		Securities Act of 1933 (15 U.S.C. Section 77r(b)) or rules or regulations adopted pursuant to that provision.
(8) "Filing" means the receipt under this [Act] of a record by the administrator or a designee of the administrator.	1270(f) [see Section 607 below] A document is filed when it is received by the commissioner.... 81-2-1(a) Filing. A document shall be considered filed when it is received in the office of the securities commissioner, or filed through the CRD system or other electronic filing system approved by the commissioner.	10. RUSA § 101(4) was revised to recognize that records may be filed in paper form or electronically with the administrator, or designees such as the Web-CRD, IARD, EDGAR or successor systems. The definition is intended to permit an administrator to accept filings over the Internet or through a direct modem system, both of which are now used to transmit documents to EDGAR, or through new electronic systems as they evolve. If a deficient form was provided to a designee, but not provided to the administrator because of the deficiency, it would not be filed under this definition.		(8) "Filing" means the receipt under this *act* of a record by the administrator or a designee of the administrator.
(9) "Fraud," "deceit," and "defraud" are not limited to common law deceit.		11. "Fraud" as used in the federal and state securities statutes is not limited to common law deceit.		(9) "Fraud," "deceit," and "defraud" are not limited to common law deceit.
(10) "Guaranteed" means guaranteed as to payment of all principal and all interest.	1252(d) "Guaranteed" means guaranteed as to payment of principal, interest or dividends.	12. The 1956 Act definition of "guaranteed" applies generally to payment of "principal, interest, or dividends." The RUSA definition of "guaranteed," which was solely applicable to exempt securities, applied to the guarantee of "all or substantially all of principal and interest or dividends." § 102(10) follows the 1956 Act approach. This definition does not address whether or not a guarantee, whether whole or partial, is itself a security. See the definition of "security" in § 102(28).	The USA-2002 definition clarifies that the term "guarantee" refers to *all* principal and interest, but it drops dividends from the definition.	(10) "Guaranteed" means guaranteed as to payment of all principal and all interest.
(11) "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity: (A) a depository institution or international banking institution; (B) an insurance company; (C) a separate account of an insurance company; (D) an investment company as defined in the Investment Company Act of 1940; (E) a broker-dealer registered under the Securities Exchange Act of 1934; (F) an employee pension, profit-sharing, or it plan if the plan has total assets in excess 10,000,000 or its investment decisions are		13. Prior Provisions: RUSA § 101(5); Securities Act of 1933 Rules 144A and 501(a). §§ 102(11)(A) through (K) are based on Rule 501(a) of the Securities Act of 1933 (the '33 Act), but do not include the paragraphs of Rule 501(a) that address individuals. Given the significant period of time since Rule 501(a) was adopted, this Act has used a $10 million minimum for several categories of institutional investor rather than $5 million minimum used in Rule 501(a). § 102(11)(H) concludes with an except clause meant to exclude self-directed plans for individuals from this definition. With respect to the exclusion of Rule 144A(a)(1)(H) from § 102(11)(M), the substance	Offers and sales to institutional investors are exempt under 202(13). 102(11)(I) would include all large businesses and non-profit organizations (over $10M in assets) within the definition of an institutional investor. 102(11)(M) refers to "qualified institutional buyer," which is defined in Rule 144A(a)(1) to include many of the entities listed in 11(A) through (L) that own and invest on a discretionary basis at least $100M in securities of issuers that are not affiliated with the entity. 102(11)(M) refers to "Rule 144A(a)(1)(H)." There is no such subsection in Rule 144(a). It should refer to Rule 144A(a)(1)(i)(H).	(11) "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity: (A) a depository institution or international banking institution; (B) an insurance company; (C) a separate account of an insurance company; (D) an investment company as defined in the Investment Company Act of 1940; (E) a broker-dealer registered under the Securities Exchange Act of 1934; (F) an employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of $10,000,000 or its investment decisions are

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made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this [Act], a depository institution, or an insurance company; (G) a plan established and maintained by a State, a political subdivision of a State, or an agency or instrumentality of a State or a political subdivision of a State for the benefit of its employees, if the plan has total assets in excess of $10,000,000 or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this [Act], a depository institution, or an insurance company; (H) a trust, if it has total assets in excess of $10,000,000, its trustee is a depository institution, and its participants are exclusively plans of the types identified in subparagraph (F) or (G), regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans; (I) an organization described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $10,000,000; (J) a small business investment company licensed by the Small Business Administration under Section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. Section '(c)) with total assets in excess of $10,000,000; (K) a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22)) with total assets in excess		of Rule 144A(a)(1)(H) appears in § 102(11)(I), but with a requirement of total assets in excess of $10,000,000. § 102(11)(O) is meant to reach persons similar to those listed in §§ 102(11)(A) through (N), but not otherwise listed.	Rule 144A(a)(1)(i)(H) defines as a "qualified institutional buyer" any non-profit organization, corporation, partnership, etc., that owns and invests at least $100M. § 102(11)(M) excludes these organizations from the USA-2002 definition of "institutional investor," but these same types of organizations are included within the definition under 102(11)(I) if they have assets of at least $10M. The rationale for this is not explained in the Official Comments. 102(11)(N) refers to "major U.S. institutional investor," which is defined in '34 Act Rule 15a-6(b)(4)(i) as an institutional investor that has, or has under management, total assets in excess of $100M.	made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this *Act*, a depository institution, or an insurance company; (G) a plan established and maintained by a State, a political subdivision of a State, or an agency or instrumentality of a State or a political subdivision of a State for the benefit of its employees, if the plan has total assets in excess of $10,000,000 or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this *Act*, a depository institution, or an insurance company; (H) a trust, if it has total assets in excess of $10,000,000, its trustee is a depository institution, and its participants are exclusively plans of the types identified in subparagraph (F) or (G), regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans; (I) an organization described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $10,000,000; (J) a small business investment company licensed by the Small Business Administration under Section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. Section 681(c)) with total assets in excess of $10,000,000; (K) a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22)) with total assets in excess

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$10,000,000; (L) a federal covered investment adviser acting for its own account; (M) a "qualified institutional buyer" as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(H), adopted under the Securities Act of 1933 (17 C.F.R. 230.144A); (N) a "major U.S. institutional investor" as defined in Rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934 (17 C.F.R. 240.15a-6); (O) 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) any other person specified by rule adopted or order issued under this [Act].				of $10,000,000; (L) a federal covered investment adviser acting for its own account; (M) a "qualified institutional buyer" as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted under the Securities Act of 1933 (17 C.F.R. 230.144A); (N) a "major U.S. institutional investor" as defined in Rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934 (17 C.F.R. 240.15a-6); (O) 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) any other person specified by rule adopted or order issued under this *Act*.
(12) "Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a State.		14. No Prior Provision. This definition is based on the '33 Act § 2(a)(13).		(12) "Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a State.
(13) "Insured" means insured as to payment of all principal and all interest.		15. The RUSA definition of "insured" (§401(a)(2)), which was solely applicable to exempt securities, applied to the insurance of "all or substantially all of principal, interest, or dividends." § 102(13) is applicable generally but is limited to "payment of all principal and all interest."	This parallels the definition for "guaranteed" above.	(13) "Insured" means insured as to payment of all principal and all interest.
(14) "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933.		16. No Prior Provision. Securities issued or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, and the International Finance Corporation are treated as exempt securities under § 3(a)(2) of the '33 Act.		(14) "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933.
(15) "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a	1252(l) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term does not include:	17. This term generally follows the definition in § 202(a)(11) of the IA Act, but has been updated to take into account new media such as the Internet. The first sentence in 102(15) is identical to the first sentence in the 1956 Act § 401(f) and the counterpart language in § 202(a)(11). The RUSA definition deleted the phrases "either directly or through publications or writings" and "regular"	1252(l)(2) specifically excludes trust companies along with banks. As drafted, 102(15) would not continue the explicit exclusion for trust companies. It appears that trust companies would fall within the definition of a "bank" in 102(3), but the Kansas Bankers Association requested the explicit mention of trust companies in 102(15). 1252(l)(5) places a condition on the publisher exclusion—namely, that the publication cannot	(15) "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a

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financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include: (A) an investment adviser representative; (B) a lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession; (C) a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice; (D) a publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation; (E) a federal covered investment adviser; (F) a bank or savings institution; (G) any other person that is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser; or (H) any other person excluded by rule adopted or order issued under this [Act].	(1) An investment adviser representative; (2) A bank, savings institution, or trust company; (3) a lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of the individual's profession; (4) a broker-dealer or its agent whose performance of these services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for them; (5) a publisher of any bona fide newspaper, news column, news magazine, newsletter, or business or financial publication or service, whether communicated in hard copy form or by electronic means, or otherwise that does not consist of the rendering of advice on the basis of the specific investment situation of each client; (6) any person that is a federal covered adviser; or (7) such other persons not within the intent of this definition as the commissioner designates by order or by rules and regulations.	before business. These terms have been returned to § 102(15) because of the intention that this definition be construed uniformly with the definition in § 202(a)(11) of the IA Act. This first sentence would not reach the author of a book who did not receive compensation as part of a regular business for providing investment advice. The second sentence in the term addressing financial planners is new. [See Official Comment for rationale and details.] §§ 102(15)(A) through (H) are exclusions from the term "investment adviser." An excluded person can be held liable for fraud in providing investment advice, see § 502, but would not be subject to the registration and regulatory provisions in Art. 4. [See Official Comment for details regarding the exclusions, particularly the meaning of "special compensation" and the publisher exclusion.] The exclusion in § 102(15)(G) is required by NSMIA. This exclusion will reach banks and bank holding companies as described in IA Act § 202(a)(11)(A) and persons whose advice solely concerns U.S. government securities as described in 202(a)(11)(E).	"consist of the rendering of advice on the basis of the specific investment situation of each client." This condition, which was derived from RUSA, is removed in 102(15). In the opinion of the USA-2002 drafters, "recent experience at the federal and state levels suggests that the 1956 Act and RUSA approaches may be too broad. The retention of the IA Act approach provides a better balance between First Amendment concerns and protection of investors from non-'bona fide' publicizing of investment advice." See Official Comment 17 at p. 29. 102(15)(G) excludes the following additional persons from the definition of "investment adviser" because they are excluded from the federal definition in § 202(a)(11) of the IA Act: 1) Any person whose advice relates only to government securities. See 202(a)(11)(E). 2) Any other person that the SEC excludes from the definition of IA at the federal level. See 202(a)(11)(F). (However, future federal changes would not become effective in Kansas until the federal provisions become effective under sections 3 or they are adopted in a regulation under 102(15)(H)). The Official Comment says the exclusion in § 102(15)(G) is required by NSMIA, but that assertion is doubtful. NSMIA preempts state regulation of "federal covered investment advisers," as defined above, but does not mandate a specific definition of "investment adviser" at the state level. We could achieve the same effect as 102(15)(G) by simply replacing the current language with an exclusion for people whose advice relates only to government securities, then adopting future SEC exclusions by regulation under 102(15)(H).	financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include: (A) an investment adviser representative; (B) a lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession; (C) a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice; (D) a publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation; (E) a federal covered investment adviser; (F) a bank ~~or~~, savings institution, or trust company; (G) any other person that is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser; or (H) any other person excluded by rule adopted or order issued under this *Act*.
(16) "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of nts, determines which recommendation or ice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or	1252(m)(1) "Investment adviser representative" means any partner, officer or director, or a person occupying a similar status or performing similar functions or any other individual except clerical or ministerial personnel, who is employed by or associated with: (A) An investment adviser that is registered or required to be registered under this act and who does any of the following: (i) makes any recommendations or otherwise renders advice regarding securities;	18. Investment adviser representatives (IARs) have not been required to register under the federal IA Act, before or after NSMIA. The term IAR is not intended to preclude persons who hold a formally recognized financial planning or consulting title, designation, or certification from using such a designation. The use by a person of a title, designation or certification as a financial planner, or other similar title, designation, or certification alone does not require registration as an IAR.	102(16) includes an individual who "holds herself of himself out as providing investment advice" within the definition of an IA. This provision is not currently in 1252(m). 102(16) would require solicitors to receive compensation to be deemed IAs. This is not currently required in 1252(m)(1)(A)(iv). 102(16)(B) excludes agents from the definition of IA if their investment advice is solely incidental to their work as an agent. Agents are not currently excluded.	(16) "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or

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negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who: (A) performs only clerical or ministerial acts; (B) is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services; (C) is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this State 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) and is (i) an "investment adviser representative" 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); or (ii) not a "supervised person" as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(25)); or (D) is excluded by rule adopted or order issued under this [Act].	(ii) manages accounts or portfolios of clients; (iii) determines which recommendation or advice regarding securities should be given; (iv) solicits, offers or negotiates for the sale of or sells investment advisory services; or (v) supervises employees who perform any of the foregoing; or (B) A federal covered adviser, subject to the limitations of section 203A of the investment advisers act of 1940, as the commissioner may designate by rule or order. (2) "Investment adviser representative" does not include such other persons employed by or associated with either an investment adviser or federal covered adviser not within the intent of this subsection as the commissioner may designate by rule or order. K.A.R. 81-14-8. The term "investment adviser representative," as defined in K.S.A. 17-1252(m) and amendments thereto, shall not include a person employed by or associated with a federal covered adviser unless both of the following conditions are met: (a) The person has a "place of business" in Kansas, as that term is defined in SEC rule 203A-3(b), 17 C.F.R. 275.203A-3(b), as in effect on April 1, 2001 and hereby adopted by reference. (b)(1) The person is an "investment adviser representative" as that term is defined in SEC rule 203A-3(a), 17 C.F.R. 275.203A-3(a), as in effect on April 1, 2001 and hereby adopted by reference; or (b)(2) the person solicits, offers, or negotiates for the sale of or sells investment advisory services on behalf of a federal covered adviser, and the person is not a "supervised person" as that term is defined under the federal investment advisers act of 1940, section 202(a)(25), 15 U.S.C. 80b-2(a)(25), as in effect on July 8, 1997 and hereby adopted by reference.		"Place of business" in 102(16)(C) is defined in Rule 203A-3(b) under the IA Act. The federal definition is substantially identical to the definition in § 102(21) below, but staff has been informed that incorporation by reference of the federal definition is important to the drafters. "Investment adviser representative" in 102(16)(C)(i) is defined in Rule 203A-3(a). The Rule 203A-3(a) definition refers to IARs who deal primarily with clients who are not "natural persons."	negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who: (A) performs only clerical or ministerial acts; (B) is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services; (C) is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this State, 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), and is (i) an "investment adviser representative" 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); or (ii) not a "supervised person" as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(25)); or (D) is excluded by rule adopted or order issued under this *Act*.
(17) "Issuer" means a person that issues or proposes to issue a security, subject to the following: (A) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals	1252(e) "Issuer" means any person who issues or proposes to issue any security. With respect to certificates of deposit, voting-trust certificates, collateral trust certificates, or certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed,	19. This section generally follows the 1956 Act and RUSA. In paragraph (B), the phrase "or that is otherwise contractually responsible for assuring payment of the certificate" is intended to address forms of payment other than leases or conditional sales contracts. It would also reach guarantors.	§ 17(B) is new. The remainder is reasonably consistent with the current definition of "issuer" in 1252(e).	(17) "Issuer" means a person that issues or proposes to issue a security, subject to the following: (A) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals

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performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued. (B) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate. (C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.	restricted management or unit type; the term "issuer" also means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued. The issuer of a certificate of interest in an oil and gas royalty, lease or mineral deed is the owner of the interest in the oil and gas royalty, lease or mineral deed who creates the certificate of interest for purpose of sale.			performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued. (B) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate. (C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.
(18) "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer.	1252(f) "Nonissuer" means not directly or indirectly for the benefit of the issuer.	20. This definition is relevant to several exempt transactions in § 202. The term 'benefit' is not limited to monetary benefits. Transactions by officers, directors, promoters, and other insiders of the issuer may benefit the issuer and may not qualify as non-issuer transactions.		(18) "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer.
(19) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to Section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)).		21. No Prior Provision: A rescission offer under § 510 would be an offer to purchase with respect to a security that earlier had been sold.	§ 14(d) of the '34 Act governs tender offers by people who own 5% of the outstanding securities.	(19) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to Section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)).
(20) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.	1252(g) "Person" means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government or a political subdivision of a government.	22. This is the standard definition used by NCCUSL with the addition of "limited liability company" to reflect current usage. The use of the concluding phrase "or any other legal or commercial entity" is intended to be broad enough to include other forms of business entities that may be created or popularized in the future.	The USA-2002 definition of "person" does not specifically list "joint-stock companies," which are included in 1252(g), but the new definition includes all trusts and several new items: estates, business trusts, and public corporations, as well as the catch-all category of "any other legal or commercial entity."	(20) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.
(21) "Place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means: (A) an office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or (B) any other location that is held out to the		23. Prior Provision: Rules 203A-3(b) and 222-1 of the IA Act.		(21) "Place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means: (A) an office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or (B) any other location that is held out to the

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neral public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.				general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.
(22) "Predecessor act" means the act repealed by Section 702.				(22) "Predecessor act" means the act repealed by Section ~~720~~ 67.
(23) "Price amendment" means the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.	1257(d) [see Section 304(d)] ..."Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price....	24. A price amendment may be used in a registration coordinated with the SEC procedure in § 303(d). In the case of non-cash offerings, required information concerning such matters as the offering price and underwriting arrangements is normally filed in a "price" amendment after the rest of the registration statement has been reviewed by the SEC staff.		(23) "Price amendment" means the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.
(24) "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.		25. Prior provision: Rule 222-1(b) of the IA Act.		(24) "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.
(25) "Record," except in the phrases "of record," "official record," and "public record," means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.		26. The Uniform Electronic Transactions Act § 2(13) defines record in nearly identical terms. The Official Comment explains: "This is a standard definition designed to embrace all means of communicating or storing information except human memory." This term is intended to embrace new forms of records that are created or popularized in the future. A record would include a registration statement, report, application, book, publication, account, paper, correspondence, memorandum, agreement, document, computer file, or disk, microfilm, photograph, or audio or visual tape.		(25) "Record," except in the phrases "of record," "official record," and "public record," means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
(26) "Sale" includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value, and "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms ude: (A) a security given or delivered with, or as bonus on account of, a purchase of securities or	1252(h)(1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. (2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. (3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or	27. Both the 1956 Act and RUSA definition of "sale" are modeled on § 2(a)(3) of the '33 Act. Language in § 401(j) of the 1956 Act addressed the now rescinded SEC "no sale" doctrine and has been eliminated. Merger transactions are usually sales under § 102(26), but may be exempted from the securities registration requirements by § 202(18).	102(26)(A) through (C) significantly alter the meaning of the corresponding provisions in 1252(h)(3) through (5). Compare, for example: Current 1252(h)(5) states: "A purported gift of assessable stock is considered to involve an offer and sale of such stock. Proposed 102(26)(B) states: "Sale" includes...a gift of assessable stock involving an offer and sale.	(26) "Sale" includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value, and "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. ~~Both terms include:~~ (A) ~~a~~ A security given or delivered with, or as a bonus on account of, a purchase of securities

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any other thing constituting part of the subject of the purchase and having been offered and sold for value; (B) a gift of assessable stock involving an offer and sale; and (C) a sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.	any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. (4) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, and every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security. (5) A purported gift of assessable stock is considered to involve an offer and sale of such stock.		Currently, 1252(h)(3) through (5) follow a pattern of saying that a type of event "is considered to" be an offer or sale. Conversely, 102(26)(A) through (C) follow circular reasoning by saying that a type of event will be deemed an offer or sale if it involves an offer or sale. That doesn't make sense. Our current language is derived from the 1956 Act, and the rationale for the change from the 1956 Act language to the USA-2002 language is not adequately explained in the Official Comment. For example, § 2(a)(3) of the '33 Act follows 1252(h)(3) nearly verbatim, so that part of the definition has not been rescinded at the federal level. The reason for the change in the 1252(h)(3) language is left unexplained.	or any other thing ~~constituting~~ is considered to constitute part of the subject of the purchase and ~~having~~ to have been offered and sold for value~~;~~. (B) ~~a~~ A gift of assessable stock ~~involving~~ is considered to involve an offer and sale~~; and~~. (C) ~~a~~ A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, ~~including~~ is considered to include an offer of the other security.
(27) "Securities and Exchange Commission" means the United States Securities and Exchange Commission.				(27) "Securities and Exchange Commission" means the United States Securities and Exchange Commission.
(28) "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term: (A) includes both a certificated and an uncertificated security; (B) does not include an insurance or ›owment policy or annuity contract under ı an insurance company promises to pay a ›d [or variable] sum of money either in a lump sum or periodically for life or other specified period;	(j) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificates; thrift certificates or investment certificates, or thrift notes issued by investment companies; certificate of deposit for a security; certificate of interest in oil and gas royalties, leases or mineral deeds; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.	28. State courts interpreting the Uniform Securities Act definition of security have often looked to interpretations of the federal definition of security. [See Official Comments for detailed discussion regarding commodities futures.] § 102(28) uses RUSA's "fractional undivided interest in oil, gas or other mineral rights" formulation, which originated in § 2(a)(1) of the '33 Act, rather than the 1956 Act formulation, "certificate of interest or participation in an oil, gas or mining title." In recent years, courts interpreting § 2(a)(1) of the '33 Act have found certain oil, gas or mineral rights to be investment contracts. A new sentence was added in 102(28)(A) referring to certificated or uncertificated securities to indicate that the term is intended to apply whether or not a security is evidenced by a writing. This is intended to reject Thomas v. Texas, 65 S.W.3d 38. [See Official Comments for detailed discussion regarding the inclusion of variable products in the definition of security.] § 102(28)(C) includes the exclusion in RUSA from the 1956 definition of security for "an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974."	USA-2002 removes the following items from our current definition of security: "thrift certificates or investment certificates, or thrift notes issued by investment companies." USA-2002 adds the following items that are not currently in our definition of security: 1. security future; 2. put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; 3. put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency. USA-2002 changes the oil and gas provision from "certificate of interest in oil and gas royalties, leases or mineral deeds" to "fractional undivided interest in oil, gas, or other mineral rights." See Official Comment for explanation. In 17-1262a(b), we currently have a registration exemption for "any fractional or undivided interest…in any oil or gas royalty, lease or deed" if certain conditions are met, which is similar to the new language in the definition of security. § 102(28)(A) through (E) address policy issues that have arisen. See Official Comment for details. § 102(28)(D) defines "common enterprise" to include both horizontal and strict vertical	(28) "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term: (A) includes both a certificated and an uncertificated security; (B) does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed *or variable* sum of money either in a lump sum or periodically for life or other specified period;

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(C) does not include an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974; (D) includes as an "investment contract" an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors; and (E) includes as an "investment contract," among other contracts, an interest in a limited partnership and a limited liability company and an investment in a viatical settlement or similar agreement.		[See Official Comments for detailed discussion regarding the test for an investment contract.] …§ 102(28)(D) adopts a more restrictive form of vertical commonality that occurs only when there is profit sharing between two persons even if, for example, one is a conventional investor and one is a promoter. In interpreting all elements of the investment contract, the courts have emphasized substance, not form.… Interests in an entity called a general partnership may be a security when the general partnership functions like a limited partnership. See, e.g., Williamson v. Tucker, 645 F.2d 404, 424. In addition to the investment contract analysis, a number of states, by statute, rule, or case law have also adopted the "risk capital" test to find a security when an investment is subject to the risks of an enterprise with the expectation of profit or other valuable benefit and the investor has no direct control over the management of the enterprise.	commonality. It excludes broad vertical commonality, which finds a common enterprise if the fortunes of the investor are merely "dependent upon" the promoter (this has been criticized as a mere duplication of the "efforts of others" prong of the investment contract test). In Kansas, the Court in Activator Supply seemed to adopt broad vertical commonality, so the scope of our definition of investment contract would arguably be narrowed under 102(28)(D). However, the new definition will eliminate substantial uncertainty and inconsistency between the various jurisdictions. The House Judiciary Committee removed variable annuities from the definition of a security. The changes to 28(E) were recommended by the Kansas Bar Association. A definition of "viatical investment" is included in a new NASAA SOP, and the KBA prefers the use of the investment contract analysis for LP and LLC interests.	(C) does not include an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974; (D) includes as an "investment contract" an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor~~, and a~~ A "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors; and (E) ~~includes as an~~ "investment contract~~,~~" ~~among other contracts,~~ may include an interest in a limited partnership and a limited liability company and ~~an investment in~~ shall include a viatical ~~settlement or similar agreement~~ investment as defined by rule adopted or order issued under this act.
(29) "Self-regulatory organization" means a national securities exchange registered under the Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency registered under the Securities Exchange Act of 1934, or the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934.		29. This definition was added by RUSA and is based on a counterpart provision in the American Law Institute Federal Securities Code. At the current time national securities exchanges are registered under § 6 of the '34 Act; national securities associations under § 15A; clearing agencies under § 17A; and the Municipal Securities Rulemaking Board under § 15B.		(29) "Self-regulatory organization" means a national securities exchange registered under the Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency registered under the Securities Exchange Act of 1934, or the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934.
(30) "Sign" means, with present intent to authenticate or adopt a record: (A) to execute or adopt a tangible symbol; or (B) to attach or logically associate with the record an electronic symbol, sound, or process.		30. No Prior Provision. This definition is intended to facilitate electronic signatures, to the extent permitted by § 105.		(30) "Sign" means, with present intent to authenticate or adopt a record: (A) to execute or adopt a tangible symbol; or (B) to attach or logically associate with the record an electronic symbol, sound, or process.
(31) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.	1252(k) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.	31. This is the standard definition used by NCCUSL.		(31) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
			USA-2002 simply refers to "rules," while the convention in the Kansas statutes is to use the phrase "rules and regulations." By adding this definition, we can keep the uniform reference to "rules" in other sections.	(32) "Rules" when used in the context of the rules adopted by the administrator, means rules and regulations adopted by the administrator pursuant to this act.
…ION 103. REFERENCES TO …RAL STATUTES. "Securities Act of	1252(i) "Securities act of 1933," "securities exchange act of 1934," "public utility holding	1. One of the main objectives of this Act is to take account of those provisions in the federal	Automatic effectiveness of subsequent federal amendments is not permitted in Kansas, so the	**SECTION 3 ~~103. REFERENCES TO FEDERAL STATUTES.~~** "Securities Act of

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1933" (15 U.S.C. Section 77a et seq.), "Securities Exchange Act of 1934" (15 U.S.C. Section 78a et seq.), "Public Utility Holding Company Act of 1935"(15 U.S.C. Section 79 et seq.), "Investment Company Act of 1940" (15 U.S.C. Section 80a-1 et seq.), "Investment Advisers Act of 1940" (15 U.S.C. Section 80b-1 et seq.), "Employee Retirement Income Security Act of 1974" (29 U.S.C. Section 1001 et seq.), "National Housing Act" (12 U.S.C. Section 1701 et seq.), "Commodity Exchange Act" (7 U.S.C. Section 1 et seq.), "Internal Revenue Code" (26 U.S.C. Section 1 et seq.), "Securities Investor Protection Act of 1970" (15 U.S.C. Section 78aaa et seq.), "Securities Litigation Uniform Standards Act of 1998" (112 Stat. 3227), "Small Business Investment Act of 1958" (15 U.S.C. Section 661 et seq.), and "Electronic Signatures in Global and National Commerce Act" (15 U.S.C. Section 7001 et seq.) mean those statutes and the rules and regulations adopted under those statutes, as in effect on the date of enactment of this [Act] [, or as later amended].	company act of 1935," "investment advisers act of 1940" and "investment company act of 1940" mean the federal statutes of those names.	laws that are preemptive, and to coordinate with other non-preemptive provisions of the federal laws where coordination between federal and state securities law is in the public interest. 2. § 12(d) of the Uniform Statute and Rule Construction Act, adopted by NCCUSL in 1995, provides: "A statute or rule that incorporates by reference a statute or rule of another jurisdiction does not incorporate a later enactment or adoption or amendment of the other statute or rule." Nevertheless, it is not uncommon for States to permit later amendments to statutes and rules referenced in enacted legislation to become automatically effective. In those states the final bracketed language in this Section should be included in the Act. 3. In those states which do not permit automatic effectiveness of later amendments and that follow § 12(d) of the USRCA, this problem has been addressed by either giving the administrator the power to update by rule or the duty to notify the legislature when amendment is necessary. When the legislature notification approach is adopted, to prevent a gap period, the administrator might be given the power to act by rule until the legislature has acted.	phrase "or as later amended" should be stricken. Tying the effectiveness of the federal statutes to "the date of enactment of this act" creates a problem because it doesn't allow for updating in the future. For example, § 102(7) defines a federal covered security by reference to § 18(b) of the '33 Act and regulations adopted thereunder. If we incorporate by reference the federal provisions "as in effect on the date of enactment of this act," the definition of federal covered security would always incorporate the federal provisions as they existed on the date USA-2002 was originally enacted in Kansas (e.g., July 1, 2005). An amendment to § 102(7) in 2010 would not automatically incorporate the updated provisions of the federal law. A better alternative would be to incorporate the federal provisions "as in effect on the date of the latest amendment to any provision of this Act" because that language would automatically update all the federal provisions whenever we amend any portion of the Act.	1933" (15 U.S.C. Section 77a et seq.), "Securities Exchange Act of 1934" (15 U.S.C. Section 78a et seq.), "Public Utility Holding Company Act of 1935"(15 U.S.C. Section 79 et seq.), "Investment Company Act of 1940" (15 U.S.C. Section 80a-1 et seq.), "Investment Advisers Act of 1940" (15 U.S.C. Section 80b-1 et seq.), "Employee Retirement Income Security Act of 1974" (29 U.S.C. Section 1001 et seq.), "National Housing Act" (12 U.S.C. Section 1701 et seq.), "Commodity Exchange Act" (7 U.S.C. Section 1 et seq.), "Internal Revenue Code" (26 U.S.C. Section 1 et seq.), "Securities Investor Protection Act of 1970" (15 U.S.C. Section 78aaa et seq.), "Securities Litigation Uniform Standards Act of 1998" (112 Stat. 3227), "Small Business Investment Act of 1958" (15 U.S.C. Section 661 et seq.), and "Electronic Signatures in Global and National Commerce Act" (15 U.S.C. Section 7001 et seq.) mean those statutes and the rules and regulations adopted under those statutes, as in effect on the date of ~~enactment~~ the latest amendment to any provision of this *act* ~~[, or as later amended]~~.
SECTION 104. REFERENCES TO FEDERAL AGENCIES. A reference in this [Act] to an agency or department of the United States is also a reference to a successor agency or department.		No prior provision.		**SECTION 4 ~~104. REFERENCES TO FEDERAL AGENCIES.~~** A reference in this *Act* to an agency or department of the United States is also a reference to a successor agency or department.
SECTION 105. ELECTRONIC RECORDS AND SIGNATURES. This [Act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)). This [Act] authorizes the filing of records and signatures, when specified by provisions of this [Act] or by a rule adopted or order issued under this [Act], in a manner consistent with Section 104(a) of that act (15 U.S.C. Section 7004(a)).	1270(f) [see Section 607 below] …The commissioner may receive a document filed by electronic format that is submitted by direct digital transmission, magnetic tape or diskette, and may maintain and provide the document in such an electronic format….	No prior provision. The purpose of this Section is to permit the filing of electronic signatures and electronic records.		**SECTION 5 ~~105. ELECTRONIC RECORDS AND SIGNATURES.~~** This *Act* modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)). This *Act* authorizes the filing of records and signatures, when specified by provisions of this *Act* or by a rule adopted or order issued under this *Act*, in a manner consistent with Section 104(a) of that act (15 U.S.C. Section 7004(a)).
SECTION 201. EXEMPT SECURITIES. The following securities are exempt from the requirements of Sections 301 through 306 and	**17-1261. Exempt securities.** The following securities shall be exempt from the registration requirements of K.S.A. 17-1255 through 17-	§ 201 includes exempt securities and § 202 includes exempt transactions. Both exempt securities and exempt transactions are exempt		**SECTION 6 ~~201. EXEMPT SECURITIES.~~** The following securities are exempt from the requirements of Sections ~~*301 through 306 and*~~

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504:	1260, and amendments thereto:	from the securities registration, notice filing requirement of § 302, and the filing of sales literature § 504 of this Act. Neither § 201 nor § 202 provides an exemption from the Act's antifraud provisions in Article 5, nor the BD, agent, IA, or IA registration requirements in Article 4. A § 201 exempt security retains its exemption when initially issued and in subsequent trading. A § 202 transaction exemption must be established for each transaction. Neither the exempt security nor the transaction exemptions are meant to be mutually exclusive. A security or transaction may qualify for two or more exemptions.		*~~504~~ 11 through 16 and section 33, and amendments thereto:*
(1) a security, including a revenue obligation or a separate security as defined in Rule 131 (17 C.F.R. 230.131) adopted under the Securities Act of 1933, issued, insured, or guaranteed by the United States; by a State; by a political subdivision of a State; by a public authority, agency, or instrumentality of one or more States; by a political subdivision of one or more States; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress; or a certificate of deposit for any of the foregoing;	1261(a) Any security issued or guaranteed by the United States or by any state, territory or insular possession thereof, or by any political subdivision of any such state, territory or insular possession, or by the District of Columbia, or by any public agency or instrumentality of one or more of any of the foregoing.	1. This exemption generally follows the 1956 Act except that it adds securities "insured" by a specified government to those "issued" or "guaranteed." …Rule 131 issued under the '33 Act defines separate securities issued under governmental obligations. A significant minority of states have excluded from the § 201(1) exemption industrial revenue bonds. Interest on these securities is solely repayable from revenues received from a nongovernmental industrial or commercial enterprise. Typically this exclusion will not operate if (A) the payments are made or unconditionally guaranteed by a person whose securities are exempt from registration under § 18(b)(1) of the '33 Act, or (B) in accordance with a rule under this [Act], the issuer first files a notice in a record specifying the terms of the proposed offer or sale and a copy of the offering statement and the administrator does not disallow the exemption within the time period established by the rule.	Although they are not specifically mentioned, IRBs are currently exempt under 1261(a). § 201(1) makes the exemption for IRBs explicit. The last clause of 201(1) is new: "or a certificate of deposit for any of the foregoing."	(1) a security, including a revenue obligation or a separate security as defined in Rule 131 (17 C.F.R. 230.131) adopted under the Securities Act of 1933, issued, insured, or guaranteed by the United States; by a State; by a political subdivision of a State; by a public authority, agency, or instrumentality of one or more States; by a political subdivision of one or more States; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress; or a certificate of deposit for any of the foregoing;
(2) a security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor;	1261(b) Any security issued, insured or guaranteed by any foreign government with which the United States currently maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer or guarantor.	2. The 1956 Act, as amended, and RUSA both reached foreign governments as specified in § 201(2), and separately treated "a security issued, insured, or guaranteed by Canada…." The separate treatment of Canadian securities is largely redundant and has been eliminated from this Section.		(2) a security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor;
(3) a security issued by and representing or that represent an interest in or a direct obligation or be guaranteed by: (A) an international banking institution;	1261(c) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, credit	3. § 402(a)(3) of the 1956 Act exempts specified bank and similar depository institutions; § 402(a)(4) exempts specified savings and loan and similar thrift institution securities; and §	§ 402(3)(A) creates a new exemption for securities issued by international banking institutions. "Bank" is defined in §102(3) and "depository	(3) a security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by: (A) an international banking institution;

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(B) a banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the Comptroller of Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a); or (C) any other depository institution, unless by rule or order the administrator proceeds under Section 204;	union or trust company organized and supervised under the laws of this state except that the issuer of such security is subject to the supervision of the banking department, or credit union administrator of this state. 1261(d) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any savings and loan association organized under the laws of this state and authorized to do business in this state.	402(a)(6) exempts specified credit union securities. RUSA § 401(b)(3) combines the three types of depository institutions into a common definition (see RUSA § 101(13)) which are adopted in this Act as §§ 102(3) and 102(5)) and a common exemption (see RUSA § 401(b)(3)) which is adopted in this subsection. Banks specified in § 3(a)(2) of the '33 Act issue federal covered securities under § 18(b)(4)(C) of the '33 Act. § 201(3)(C) applies to securities issued by depository institutions without depository insurance. Under § 204, the administrator will have the ability to revoke or limit this exemption.	institution" is defined in §102(5). The definitions cover the entities listed in 1261(c).	(B) a banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the Comptroller of Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a); or (C) any other depository institution, unless by rule or order the administrator proceeds under Section ~~204~~ *9, and amendments thereto*;
(4) a security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this State;	1261(e) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this state when such securities are sold by the issuer.	4. The issuance, insurance, or guarantee of securities by an insurance company is extensively regulated by state insurance commissions or other state agencies. Unless brackets are removed from the words "or variable" in § 102(28)(B), a variable annuity or other variable insurance product would be considered a security under this Act and under federal securities law. A variable annuity or other variable insurance product issued by an investment company registered with the SEC under the Investment Company Act of 1940 would be a "federal covered security," see § 102(7). A variable annuity or other variable insurance product not issued by a registered investment company would be exempted by § 201(4), but would be subject to the antifraud provisions in Article 5.		(4) a security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this State;
(5) a security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is: (A) regulated in respect to its rates and charges by the United States or a State; (B) regulated in respect to the issuance or ›rantee of the security by the United States, a ›, Canada, or a Canadian province or ›itory; or (C) a public utility holding company registered under the Public Utility Holding	1261(f) Any security issued or guaranteed by any railroad, or public utility which is: (1) a registered holding company under the public utility holding company act of 1935 or a subsidiary of such a company within the meaning of that act; or (2) regulated by a governmental authority of the United States or any state in respect to the issuance or guarantee of the security.	5. Public utility holding companies covered by this exemption are subject both to the Public Utility Holding Company Act and to state or Canadian utility regulation.	§ 201(5)(A) is new. Previously, the utility or railroad had to be regulated with respect to the issuance of securities, not just with respect to rates, in order to qualify for the securities exemption. § 201(5)(B) extends the exemption to Canadian utilities and railroads.	(5) a security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is: (A) regulated in respect to its rates and charges by the United States or a State; (B) regulated in respect to the issuance or guarantee of the security by the United States, a State, Canada, or a Canadian province or territory; or (C) a public utility holding company registered under the Public Utility Holding

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pany Act of 1935 or a subsidiary of such a registered holding company within the meaning of that act;				Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that act;
(6) a federal covered security specified in Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)) or by rule adopted under that provision or a security listed or approved for listing on another securities market specified by rule under this [Act]; a put or a call option contract; a warrant; a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the Securities and Exchange Commission under Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78i(b));	See 17-1255(a). It is unlawful for any person to intentionally offer or sell any security in this state, unless… (3) it is a federal covered security for which the fee has been paid and documents have been filed as required by K.S.A. 17-1270a. 81-5-7. Exchange & NASDAQ/NMS exemption. (a) The following securities shall be exempt under K.S.A. 17-1261(g): (1) a security listed or approved for listing upon notice of issuance on: (A) the New York stock exchange; (B) the American stock exchange; (C) the Chicago stock exchange; (D) the Chicago board options exchange; (E) tier I of the Philadelphia stock exchange; (F) tier I of the Pacific stock exchange; or (G) tier II of the Pacific stock exchange; (2) a security designated or approved for designation upon notice of issuance as a NASDAQ national market system security; (3) any other security of the issuer of the listed or designated security which is of senior or substantially equal rank to the listed or designated security; (4) a security issuable under rights or warrants so listed or designated; and (5) a warrant or right to purchase or subscribe to any of the foregoing. (b) Securities described as small-cap or emerging companies by an exchange or market system named under subsection (a) shall not be exempt under K.S.A. 17-1261(g). (c) When deemed necessary to protect the public interest, the exemption for a specific security or category of securities may be disallowed by order of the commissioner. See Interpretive Opinion 2002-004.	6. No Prior Provision. The 1956 Act § 402(a)(8) provided an exemption for securities listed on the New York, American, Midwest (now Chicago), or other designated stock exchanges…. RUSA essentially retained this exemption in § 401(b)(7) and added securities designated for inclusion in the NASD-NMS in § 401(b)(8) and specified options issued by a clearing agency registered under the '34 Act in § 401(b)(9). In 1996 NSMIA provided in § 18(b)(1) that securities listed on the New York, American or Nasdaq Stock Exchange, or designated by rule of the SEC, as well as any security of the same issuer that is equal in seniority or senior to any of these securities will be a federal covered security. Under Rule 146 the SEC has designated as federal covered securities under § 18(b)(1) Tier I of the Pacific Exchange; Tier I of the Philadelphia Stock Exchange; and The Chicago Board Options Exchange on condition that the relevant listing standards continue to be substantially similar to those of the New York, American, or Nasdaq stock markets. A federal covered security subject to § 18(b)(1) of the '33 Act will not be subject to the securities registration requirements of §§ 301 and 303 through 306. [See Official Comment for details about options, warrants, & other derivatives.]	§ 302 adopts notice filing requirements for federal covered securities as defined in § 18(b)(2) of the '33 Act (i.e., mutual funds). § 201(6) creates an exemption for other types of federal covered securities, including those defined in § 18(b)(1) of the '33 Act (i.e., listed securities), as well as options, warrants, and rights that are not federal covered securities but would have been exempt under RUSA. For federal covered securities that fit within § 201(6), they are exempt from the notice filing requirements of § 302. The final clause refers to Rule 9b-1 adopted under § 9(b) of the '34 Act. 201(6) should be subdivided for clarity.	(6)(A) a federal covered security specified in Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)) or by rule adopted under that provision; ~~or~~ (B) a security listed or approved for listing on another securities market specified by rule under this *Act*; (C) a put or a call option contract; a warrant; or a subscription right on or with respect to ~~such~~ securities described in subsections (A) or (B); ~~or~~ (D) an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934; ~~or~~ (E) an offer or sale~~,~~ of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or (F) an option or a derivative security designated by the Securities and Exchange Commission under Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78i(b));
(7) a security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of merce, and not for pecuniary profit, no part of t earnings of which inures to the benefit of a te stockholder or other person, or a security	1261(h) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, fire protection, fire fighting or reformatory purposes, or as a chamber of commerce or trade or professional association if no part of the net	7. § 402(a)(9) of the 1956 Act and § 401(b)(10) of RUSA exempt specified nonprofit securities. Both are modeled on § 3(a)(4) of the '33 Act. Securities issued under § 3(a)(4) of the '33 Act are not treated as federal covered securities in § 18(b)(4)(C), although a separate § 3(a)(13)	201(7) contains an incorrect citation. "Investment company" is defined in 15 USC § 80a-3, not 80b-3. 1261(h) gives the Commissioner broad authority to restrict this exemption by regulation. In contrast, § 201(6) carefully defines the Commissioner's authority.	(7) a security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security

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of a company that is excluded from the definition of an investment company under Section 3(c)(10)(B) of the Investment Company Act of 1940 (15 U.S.C. Section 80b-3(c)(10)(B)); except that with respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by such a person, a rule may be adopted under this [Act] limiting the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying with respect to paragraph (B) the scope of the exemption and the grounds for denial or suspension, and requiring an issuer: (A) to file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the administrator does not disallow the exemption within the period established by the rule; (B) to file a request for exemption authorization for which a rule under this [Act] may specify the scope of the exemption, the requirement of an offering statement, the filing of sales and advertising literature, the filing of consent to service of process complying with Section 611, and grounds for denial or suspension of the exemption; or (C) to register under Section 304;	earnings of such person inures to the benefit of any private stockholder. The commissioner, by rule and regulation or order, may require the filing of a notice and specify conditions for this exemption.	exemption which addresses certain church plan securities are federal covered securities under 18(b)(4)(C). RUSA included an optional notice and review requirement for nonprofit securities in § 401(b)(10).... The nonprofit exemption is of particular concern to state securities administrators. Under § 6 of the Philanthropy Protection Act, Congress preempted application of the registration provisions of state securities laws to issuance of securities covered by § 3(c)(10) of the Investment Company Act of 1940.... ...For states that do not wish to provide an automatic exemption from registration for a particular type of nonprofit debt instrument or offering, § 201(7) creates three categories of regulatory review that may be required by rule: (a) exemption by notice filing, (b) exemption by state authorization, and (c) registration by qualification.	1261(h) specifically mentions organizations involved in "fire protection" and "fire fighting." § 201(6) does not explicitly mention these groups, but they would probably fall within one or more of the other exempted categories. 1261(h) also specifically mentions "trade or professional associations." Those groups are not explicitly mentioned in §201(6), and they may not fall within one of the other exempted categories. § 201(6) includes the following provision that is not contained in 1261(h): "a security of a company that is excluded from the definition of an investment company under Section 3(c)(10)(B) of the Investment Company Act of 1940" (i.e., a charitable organization that maintains a pooled income fund or similar fund for investing assets of the organization). This is included because of the preemption created by § 6 of the Philanthropy Protection Act of 1995. The term "company" is defined in § 2(a)(8) of the Investment Company Act to include nonprofits, whether or not they are actually incorporated.	of a company that is excluded from the definition of an investment company under Section 3(c)(10)(B) of the Investment Company Act of 1940 (15 U.S.C. Section ~~80b-3(c)(10)(B)); except that~~ 80a-3(c)(10)(B)). With respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by such a person, a rule may be adopted under this *Act* limiting the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying with respect to paragraph (B) the scope of the exemption and the grounds for denial or suspension, and requiring an issuer: (A) to file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the administrator does not disallow the exemption within the period established by the rule; (B) to file a request for exemption authorization for which a rule under this *Act* may specify the scope of the exemption, the requirement of an offering statement, the filing of sales and advertising literature, the filing of consent to service of process complying with Section 611, and grounds for denial or suspension of the exemption; or (C) to register under Section ~~*304*~~ *14*;
(8) a member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a State, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative; and	1261(k) Any security evidencing membership in, or issued as a patronage dividend by, a cooperative association organized under the laws of this state exclusively for the purpose of conducting an agricultural, dairy, livestock or produce business, or selling, processing, storing, marketing or otherwise handling any agricultural, dairy, livestock or produce, and any activities incidental to these purposes. 1261(l) Any security issued by and representing an interest in or debt of, or evidencing membership in, or issued as a patronage dividend to residents or landowners of not to exceed five contiguous counties in Kansas by a cooperative association organized under the laws of this state exclusively for the purpose of conducting an agricultural, dairy, livestock or produce business, or selling, processing, storing, marketing,	8. § 201(8) is derived from RUSA § 401(b)(13) which was included in that act after a number of states had adopted exemptions for securities issued by cooperatives. § 201(8) is not intended to be available if securities are offered or sold to the public generally. The 1956 Act § 402(a)(12) had instead provided: "insert any desired exemption for cooperatives." The Reporter for the 1956 Act had found such sharp variation among the 18 states that then had adopted a cooperative exemption that "no common pattern can be found."	1261(k) and (l) are self-executing, so we do not know how often they are actually used. § 201(8) is not limited to agricultural cooperatives, but it would be broad enough to cover the securities that are currently exempt under 1261(k) and (l). § 201(8) only exempts interests in nonprofit membership cooperatives. However, agricultural cooperatives are organized as nonprofits, per K.S.A. 17-1602(b). The Kansas Cooperative Council has proposed alternative language for this exemption.	(8) a member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a State, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative; and

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	retailing, or otherwise handling any agricultural, dairy, livestock or produce, or farm supplies, and any activities incidental to these purposes.			
(9) an equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)).		9. The '33 Act § 3(a)(6) includes a narrower exemption for railroad equipment trusts. § 201(9) follows RUSA. The Official Comment to RUSA § 401(b)(6) explained: "The new paragraph (b)(6) reflects the extensive development of equipment lease financing through leveraged leases, conditional sales, and other devices. The underlying premise is that if the securities of the person using such a financing device would be exempt under some other paragraph of § 401, the equipment trust certificate or other security issued to acquire the property in question also is exempt."		(9) an equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)).
	1261(i) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal. 1261(m) Securities constituting part of an issue, which, in whole or in part has been lawfully sold and distributed to the public in this or any other state, when offered for resale in good faith and not directly or indirectly for the benefit of the issuer or for the direct or indirect purpose of promoting any scheme or enterprise having the effect of violating or evading any provisions of this act, except that this exemption shall not apply (1) where the authority to sell such securities has been prohibited or denied under the provisions of this act, or (2) where the sale of such securities in this state has been enjoined as provided in this act or (3) until there shall have been filed with the securities commissioner of Kansas by any registered broker-dealer a prospectus in such form as may be prescribed by the commissioner containing: (A) Latest available financial statement of the issuer; (B) management personnel; and (C) such other available information as the commissioner may require. The filing of the prospectus and its approval by the commissioner shall constitute the exemption		These exemptions are contained in the Kansas Securities Act but not USA-2002. For exemptions that are not listed in USA-2002, we can adopt them as regulations rather than statutes (under the authority of Section 203) to preserve the uniformity of the Act. USA-2002 would convert 1261(j) from a securities exemption into a transactional exemption. (Any securities issued in connection with an employee's stock purchase, savings, pension, profit-sharing or similar benefit plan, or a self-employed person's retirement plan.) See Section 202(21). It appears that after-market transactions (currently exempt under 1261(m)) are now addressed as transactional exemptions in §§ 202(2) & (4). See Official Comment 5 to § 202.	

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	herein provided. Any prospectus may be disapproved at any time, if after a reasonable notice and a hearing, the commissioner shall find that the further exemption of the securities would be fraudulent or tend to work imposition or fraud upon the purchaser thereof. 1261(n) Any security issued by a bank holding company wholly or partially in exchange for the capital stock of a bank that is, or will become upon consummation of such exchange, a subsidiary of such bank holding company; or any security issued by a savings and loan holding company wholly or partially in exchange for the capital stock of an insured institution that is, or will become upon consummation of such exchange, a subsidiary of such savings and loan holding company. As used in this subsection, "bank," "bank holding company" and "subsidiary" shall have the same meanings as are set forth in the federal bank holding company act of 1956, as amended and "savings and loan holding company" and "insured institution" shall have the same meanings as are set forth in section 408 of the national housing act, as amended.			
SECTION 202. EXEMPT TRANSACTIONS. The following transactions are exempt from the requirements of Sections 301 through 306 and 504:	**17-1262. Exempt transactions.** Except as expressly provided in this section, the following transactions shall be exempt from the registration requirements of K.S.A. 17-1254, 17-1255, 17-1257, 17-1258, 17-1259 and 17-1260, and amendments thereto:	1. §§ 202(1) through (8) are available only for nonissuer transactions. An issuer selling securities in an initial public offering or other offering may not rely on 202(1) through (8). A nonissuer, however, can rely on any issuer transaction exemption such as § 202(13), when the exemption would be applicable to a nonissuer. "Nonissuer transaction or nonissuer distribution" is defined in 102(18); "issuer" is defined in 102(17).	§ 202 creates an exemption from the *securities* registration provisions of 301-306 & 504. The exemption for *agent* registration is found in § 402(b)(4), which creates an exemption for agents of issuers who effect transactions exempted by 202, except 202(11) & (14). However, §§ 202(1) through (8) and (23) involve nonissuer transactions, so the exemption for agents of issuers really only applies to transactions exempted by 202(9) – (10), (12) – (13), and (15) – (22).	**SECTION 7 ~~202. EXEMPT TRANSACTIONS.~~** The following transactions are exempt from the requirements of Sections *~~301 through 306 and 504~~ 11 through 16 and section 33, and amendments thereto:*
(1) an isolated nonissuer transaction, whether effected by or through a broker-dealer or not;	1262(a) Any isolated transaction, whether effected through a broker-dealer or not.	2. The term "isolated transaction" is not defined in this Act, but left to the states to develop. Historically under state law there has been somewhat varied case law development of the term "isolated transactions." See, e.g., Blinder, Robinson & Co., Inc. v. Goettsch, 403 N.W.2d 772 (Iowa 1987) (isolated nonissuer transaction exemption is not unconstitutionally vague). Limited issuer offering transactions are separately addressed in § 202(14).	202(1) clarifies that the isolated transaction exemption applies only to nonissuer transactions. The exemption for limited issuer offerings is found in 202(14).	(1) an isolated nonissuer transaction, whether effected by or through a broker-dealer or not;
(2) a nonissuer transaction by or through a broker-dealer registered, or exempt from	1262(b) Any nonissuer distribution by or through a registered broker-dealer of outstanding	3. This Section represents a modernization of the securities manual exemption which was	202(2)(A) and (C) place restrictions on the exemption that do not currently exist in 1262(b).	(2) a nonissuer transaction by or through a broker-dealer registered, or exempt from

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ration under this [Act], and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least 90 days, if, at the date of the transaction: (A) the issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person; (B) the security is sold at a price reasonably related to its current market price; (C) the security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution; and (D) a nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this [Act] or a record filed with the Securities and Exchange Commission that is publicly available contains: (i) a description of the business and operations of the issuer; (ii) the names of the issuer's executive officers and the names of the issuer's directors, if any; (iii) an audited balance sheet of the issuer as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and (iv) an audited income statement for each of the issuer's two immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; or (E) the issuer of the security has a class of securities listed on a national securities	securities at a price reasonably related to the current market price of such securities, if any recognized securities manual approved by the commissioner, pursuant to rules and regulations or orders contains: (1) The names of the issuer's officers and directors; and (2) Audited financial statements, including a balance sheet of the issuer as of a date within 18 months and an income or loss statement for either the full fiscal year preceding that date or the most recent full year of operations. If the commissioner finds that the sale of certain securities in this state under this exemption would work or tend to work a fraud on purchasers thereof, the commissioner may revoke the exemption provided by this subsection with respect to such securities by issuing an order to that effect and providing notice of such order to all registered broker-dealers.	included in both the 1956 Act and RUSA. NASAA recommended an amendment to the 1956 Act § 402(b) after discussion with the SIA and others in the securities industry. This Section generally follows the NASAA amendment. Rule 419 issued under the '33 Act defines a "blank check company" to be a company that "is a development stage company that has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person." A "blind pool" is similar and would involve an investment in a blank check or other entity with no identified business plan or purpose. A "shell company" is also similar and would involve an entity which, to date, has no significant business assets, plan, or purpose.	202(2) also specifies that the securities must by outstanding for at least 90 days. On the other hand, 202(2)(D) accepts "a record filed with the SEC" in lieu of publication in a recognized securities manual. 202(2)(E) also creates several new circumstances in which the transactions are exempt without publication in a recognized securities manual. To avoid an excessive broadening of the exemption, the "or" in 202(2)(E) should be changed to "and." 202(2) extends the exemption to include a "resale transaction by a sponsor of a unit investment trust…" The use of the term "and" at the end of (C) and the term "or" at the end of (D)(iv) causes confusion and two possible interpretations: 1. To qualify for the exemption, you must either satisfy A, B, C, & D, or you must satisfy E. 2. To qualify for the exemption, you must satisfy A, B, & C, and you must also satisfy either D or E. The correct interpretation seems to be the first option, so the exemption should be renumbered accordingly. Also, (E) should be subdivided for clarity.	registration under this *Act*, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least 90 days, if, at the date of the transaction: (A)(i) the issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person; ~~(B)~~ (ii) the security is sold at a price reasonably related to its current market price; ~~(C)~~ (iii) the security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution; and ~~(D)~~ (iv) a nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this *Act* or a record filed with the Securities and Exchange Commission that is publicly available contains: ~~(i)~~ (a) a description of the business and operations of the issuer; ~~(ii)~~ (b) the names of the issuer's executive officers and the names of the issuer's directors, if any; ~~(iii)~~ (c) an audited balance sheet of the issuer as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and ~~(iv)~~ (d) an audited income statement for each of the issuer's two immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; or ~~(E)~~ (B)(i) the issuer of the security has a class of equity securities listed on a national

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exchange registered under the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless the issuer of the security is a unit investment trust registered under the Investment Company Act of 1940; or the issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; or the issuer of the security has total assets of at least $2,000,000 based on an audited balance sheet as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had the audited balance sheet, a pro forma balance sheet for the combined organization;				securities exchange registered under the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless the issuer of the security is a unit investment trust registered under the Investment Company Act of 1940; ~~or~~ (ii) the issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; ~~or~~ and (iii) the issuer of the security has total assets of at least $2,000,000 based on an audited balance sheet as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had the audited balance sheet, a pro forma balance sheet for the combined organization;
(3) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this [Act] in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;		4. No Prior Provision. The NASAA recommendation that was the basis of § 202(2) also included specified foreign non-issuer transactions subject to a manual exemption when there was disclosure of the issuer's officers and directors in the issuer's country of domicile. This subsection uses margin securities as an alternative approach to identify sufficiently seasoned foreign securities. Margin securities are required to be in compliance with Regulation T.		(3) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this *Act* in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;
(4) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this [Act] in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d));		5. RUSA added this exemption to authorize nonissuer secondary trading in the securities of issuers that were subject to the periodic reporting requirements of the '34 Act. To bar immediate secondary trading in non-registered initial public offerings, there was a further requirement that these securities be subject to the reporting requirements of §§ 13 or 15(d) of the '34 Act for not less than 90 days. 202(4) only covers the guarantor because if the issuer of the security is a reporting company under §§ 13 or 15(d) of the '34 Act, the transaction is preempted by § 18(b)(4)(A) of the '33 Act. § 18(b)(4)(A) of NSMIA defines nonissuer transactions under § 4(1) of the '33 Act ("transactions by persons other than an issuer, underwriter, or dealer") as "federal covered securities" if the issuer files reports with the SEC under §§ 13 or 15(d) of the '34 Act. To harmonize 202(4) with 18(a) and 18(b)(4)(A) of		(4) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this *Act* in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d));

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		the '33 Act, the 90 day reporting period in RUSA § 402(2) is not adopted in this Act.		
(5) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this [Act] in a security that: (A) is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories; or (B) has a fixed maturity or a fixed interest or dividend, if: (i) a default has not occurred during the current fiscal year or within the three previous fiscal years or during the existence of the issuer and any predecessor if less than three fiscal years, in the payment of principal, interest, or dividends on the security; and (ii) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous 12 months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;		6. The concept of a fixed income security rated by a nationally recognized statistical rating organization in one of its four highest rating categories described in § 202(5)(A) is well established in federal securities law in Form S-3 adopted under the '33 Act and the net capital Rule 15c3-1(c)(2)(vi)(F) adopted under the '34 Act. Nationally recognized statistical rating organizations have been identified by the SEC and include such organizations as Moody's and Standard and Poor's. Rating categories typically begin with AAA and under this Act would include BBB as the fourth highest rating category. § 202(5)(B) follows the 1956 Act and RUSA, but also addresses blank check and similar offerings, which became major concerns at the state and federal levels during the past two decades. This subsection includes both debt securities with fixed maturity or a fixed interest rate and preferred stock with fixed dividend provisions.	Not all securities with a fixed maturity or fixed interest would be exempt under this provision—only those that are sold in nonissuer transactions through a BD. However, this exemption would allow the sale of unregistered "junk bonds" of an issuer that has existed less than 3 years. A company should have at least three years of satisfactory performance before its bonds are sold to the public without the protections afforded by the registration process.	(5) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this *Act* in a security that: (A) is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories; or (B) has a fixed maturity or a fixed interest or dividend, if: (i) a default has not occurred during the current fiscal year or within the three previous fiscal years ~~or during the existence~~ of the issuer and any predecessor ~~if less than three fiscal years,~~ in the payment of principal, interest, or dividends on the security; and (ii) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous 12 months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;
(6) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this [Act] effecting an unsolicited order or offer to purchase;	1262(c) Any nonissuer transaction by a registered broker-dealer pursuant to an unsolicited order or offer to buy. The commissioner may require, by rules and regulations, that: (1) The customer acknowledge upon a specified form that the sale was unsolicited; and (2) a signed copy of each such form be preserved by the broker-dealer for a specified period.	7. § 18(b)(4)(B) of the '33 Act defines as federal covered securities those subject to § 4(4) of the '33 Act: "brokerage transactions executed upon customers' orders on any exchange or in the over-the-counter market but not the solicitation of such orders." § 202(6) is intended to provide exemption for non-agency transactions by dealers not within the scope of § 4(4). The 1956 Act § 402(b)(3) said the administrator "may by rule require that the customer acknowledge upon a specified form that the same was unsolicited, and that a signed copy of each such form be preserved by the BD for a specified period." This is preempted by § 18(a) of the '33 Act for federal covered securities and is viewed as unnecessary for the limited class of dealer non-agency transactions that will be exempted by 202(6).	The Official Comment explains the removal of the second sentence of 1262(c).	(6) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this *Act* effecting an unsolicited order or offer to purchase;
(7) a nonissuer transaction executed by a bona fide pledgee without the purpose of evading this	1262(e) ~~Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator;~~ any transaction executed by a bona fide pledgee	8. This subsection is identical to the 1956 Act and substantively identical to RUSA.	1262(e) is split into three separate exemptions in §§202(7), (12), and (22).	(7) a nonissuer transaction executed by a bona fide pledgee without the purpose of evading this *Act*;

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	without any purpose of evading this act ~~or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests~~ [see §§ 202(12) & (22)].			
(8) a nonissuer transaction by a federal covered investment adviser with investments under management in excess of $100,000,000 acting in the exercise of discretionary authority in a signed record for the account of others;		9. No Prior Provision. This exemption was added because of a recognition that federal covered investment advisers are sophisticated financial professionals capable of determining the merits of a security and do not require the protections provided by requiring registration in a particular state.		(8) a nonissuer transaction by a federal covered investment adviser with investments under management in excess of $100,000,000 acting in the exercise of discretionary authority in a signed record for the account of others;
(9) a transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the administrator after a hearing;		10. No Prior Provision. § 202(9) provides a state counterpart to the exemption in § 3(a)(10) of the '33 Act.	These types of securities are federal covered securities under § 18(b)(4)(C) of the '33 Act, as long as the issuer has gone through a fairness hearing as required by § 3(a)(10). The fairness hearing could be conducted by the SEC, insurance department, banking regulator, KCC, etc., or the KSC. However, in all likelihood, the hearing would be conducted by someone other than the KSC, so the exemption should not be written to require a hearing by the KSC. Most likely, we would simply issue a "no action" letter after someone else conducted the fairness hearing, so 202(9) should be amended to read "approved by the administrator after a hearing or otherwise." We cannot simply delete "after a hearing" because the hearing by the KSC must be "expressly authorized by law" to satisfy 3(a)(10).	(9) a transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the administrator after a hearing <u>or otherwise</u>;
(10) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;		11. This subsection is substantively identical to the 1956 Act and RUSA.		(10) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
(11) a transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if: (A) the note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit; (B) a general solicitation or general advertisement of the transaction is not made; and (C) a commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this [Act] as a broker-dealer or as an agent;	1262(d) Any transactions in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit.	12. In recent years the application of this exemption has been one of concern to state securities administrators. The conditions that conclude this exemption are new and are intended to address these concerns.	202(11)(B) & (C) are new restrictions on this exemption. They are improvements.	(11) a transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if: (A) the note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit; (B) a general solicitation or general advertisement of the transaction is not made; and (C) a commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this *Act* as a broker-dealer or as an agent;
(12) a transaction by an executor, administrator of an estate, sheriff, marshal,	1262(e) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in	13. This subsection is identical to that in the 1956 Act and RUSA.	1262(e) is split into three separate exemptions in §§202(7), (12), and (22).	(12) a transaction by an executor, administrator of an estate, sheriff, marshal,

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iver, trustee in bankruptcy, guardian, or conservator;	bankruptcy, guardian or conservator; ~~any transaction executed by a bona fide pledgee without any purpose of evading this act or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests~~ [see §§ 202(7)&(22)].			receiver, trustee in bankruptcy, guardian, or conservator;
(13) a sale or offer to sell to: (A) an institutional investor; (B) a federal covered investment adviser; or (C) any other person exempted by rule adopted or order issued under this [Act];	1262(f) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the investment company act of 1940, pension or profit-sharing trust or other financial institution or institutional buyer or to a broker-dealer or underwriter.	14. The 1956 Act contains similar but less inclusive language in § 402(b)(8). If the SEC adopts a rule defining "qualified purchaser" as used in § 18(b)(3) of the '33 Act to specify certain purchasers of federal covered securities, part or all of this exemption will be redundant. As of September 2002, the Commission has proposed, but not adopted, Rule 146(c). § 202(13)(B) is limited to transactions for the account of a federal covered IA and is not intended to reach transactions on behalf of others by such adviser.	"Institutional investor" is very broadly defined in 102(11).	(13) a sale or offer to sell to: (A) an institutional investor; (B) a federal covered investment adviser; or (C) any other person exempted by rule adopted or order issued under this *Act*;
(14) a sale or an offer to sell securities of an issuer, if part of a single issue in which: (A) not more than 25 purchasers are present in this State during any 12 consecutive months, other than those designated in paragraph (13); (B) a general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities; (C) a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this [Act] or an agent registered under this [Act] for soliciting a prospective purchaser in this State; and (D) the issuer reasonably believes that all the purchasers in this State, other than those designated in paragraph (13), are purchasing for investment;	1262(l) The offer or sale of securities by an issuer that is a corporation, limited partnership or limited liability company formed under the laws of the state of Kansas if: (1) The aggregate number of sales by the issuer in the twelve-month period ending on the date of the sale does not exceed 20 sales; (2) the seller believes that the purchaser is purchasing for investment; (3) no commission nor other remuneration is paid or given, directly or indirectly, for soliciting the purchaser; and (4) neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following: (A) Any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio or (B) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising. In calculating the number of sales in a twelve-month period, sales made in violation of K.S.A. 17-1255, and amendments thereto, and sales exempt from registration under subsection (a) or (l) shall be taken into account. For purposes of the exemption in this subsection, a husband and wife shall be considered as one purchaser. A corporation, partnership, association, joint-stock company, trust or other unincorporated	15. The reference in the prefatory language to "a single issue" signifies that two or more issues can be "integrated" and potentially destroy the exemption. There are two general tests for integration.... [see Official Comment for details] § 402(b)(9) of the 1956 Act and § 402(11) of the 1985 Act provide alternative limited offering transaction exemptions.... [see Official Comment for details] This Section would apply to preorganization limited offerings as well as operating company limited offerings. The '33 Act §§ 3(b) and 4(2) also apply to both. In contrast, the 1956 Act § 402(b)(10) and RUSA § 402(12) used similar concepts in separate Sections to apply to preorganization limited offerings. § 18(b)(4)(D) of the '33 Act defines as federal covered securities those issued under SEC rules under § 4(2) of the '33 Act. This includes Rule 506, which uses the "accredited investor" definition in Rule 501(a). When a transaction involves Rule 506, § 18(b)(4)(D) further provides "that this paragraph does not prohibit a state from imposing notice filing requirements that are substantially similar to those required by rule or regulation under § 4(2) that are in effect on September 1, 1996." These notice requirements	202(14) is for limited issuer offerings. The isolated transaction exemption for nonissuer transactions is found in 202(1). As written, 202(14) would greatly expand our current 1262(l) exemption to allow 25 sales in Kansas by any issuer, instead of a limit of 20 sales (either in-state or out-of-state) by a Kansas-based issuer. The NASAA USA Project Group informed KSC staff that the introductory clause should be amended from "of an issuer" to "by an issuer" to clarify that the exemption is not available for nonissuer transactions. In addition, the Project Group believes the phrase "the transaction is" was inadvertently left out of the final draft of USA-2002. "General solicitation" should be carefully defined in a regulation because it is not defined in § 102. Also, the last part of 1262(l) regarding the counting of sales should be adopted in a regulation. The exemption for preorganization subscriptions in 1262(g) is rarely used and unnecessary, particularly in light of the "testing the waters" exemption in K.A.R. 81-5-12.	(14) a sale or an offer to sell securities ~~of~~ by an issuer, if the transaction is part of a single issue in which: (A) not more than 25 purchasers are present in this State during any 12 consecutive months, other than those designated in paragraph (13); (B) a general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities; (C) a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this *Act* or an agent registered under this *Act* for soliciting a prospective purchaser in this State; and (D) the issuer reasonably believes that all the purchasers in this State, other than those designated in paragraph (13), are purchasing for investment;

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	organization shall be considered as one purchaser unless it was organized for the purpose of acquiring the purchased securities. In such case each beneficial owner of equity interest or equity securities in the entity shall be considered a separate purchaser. The commissioner may withdraw this exemption or impose conditions upon its use. 1262(g) Any offer or sale of a preorganization certificate or subscription if: (1) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber and no advertising has been published in connection with any such sale; (2) no payment is made by any subscriber; and (3) such certificate or subscription is expressly voidable by the subscriber until such subscriber has been notified of final acceptance or completion of the organization and until the securities subscribed for have been registered. The commissioner may require, by rules and regulations or by order, reports of sales under this exemption.	are found in § 302(c) of this Act. A majority of states have adopted a Uniform Limited Offering Exemption, coordinate to varying degrees with Reg D. The authority to adopt this and other exemptive rules is provided in § 203.		
(15) 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;	1262(h) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants or transferable warrants exercisable within 90 days of their issuance, if: (1) No commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or (2) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow the exemption within the next five full business days.	16. § 3(a)(9) of the '33 Act exempts exchange offerings with existing security holders. Under § 18(b)(4)(C) transactions subject to § 3(a)(9) are federal covered securities. Notice requirements in the earlier 1956 Act and RUSA accordingly would be preempted by the '33 Act. See § 18(a) of the '33 Act. Otherwise this exemption is substantively identical to the 1956 Act and RUSA.	202(15) does not distinguish between transferable and nontransferable warrants. 202(15) also eliminates the notice filing option of 1262(h)(2).	(15) 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;
(16) an offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if: (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 ~~f~~er is made in compliance with Rule 165 ted under the Securities Act of 1933 (17 .R. 230.165); and (B) a stop order of which the offeror is aware has not been issued against the offeror by the	1262(i) Any offer (but not a sale) of a security if: (1) Registration statements for such security have been filed under both this act and the securities act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act; or	17. This exemption generally follows the 1956 Act and RUSA. Rule 165 of the '33 Act allows the offeror of securities in a business combination to make written communications that offer securities for sale before a registration statement is filed as long as specified conditions are satisfied. RUSA § 402(15)(ii) also required that a registration statement be filed under this Act, but not yet be effective. By eliminating the filing requirement this exemption will reach the offer	1262(i) required the registration statement to be filed at the state level. See Official Comment for rationale for eliminating this requirement. 202(16) makes it clear that it does not apply to securities that are exempt at the federal level. This was implicit in 1262(i). Exempt securities are addressed in 202(17).	(16) an offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if: (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 (B) a stop order of which the offeror is aware has not been issued against the offeror by the

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inistrator 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;		(but not the sale) of a security that is anticipated to be a federal covered security by applying for listing on the NYSE or other exchange specified in § 18(b)(1) of the '33 Act, but the listing and federal covered security status has not yet become effective.		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;
(17) an offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if: (A) a registration statement has been filed under this [Act], but is not effective; (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 (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;	1262(i)(2) a registration statement for such security has been filed under K.S.A. 17-1258, and amendments thereto, no stop order or emergency order issued pursuant to K.S.A. 17-1260, and amendments thereto, is in effect and the offer is made on behalf of the issuer by a registered broker-dealer.	18. Prior Provisions: RUSA § 402(16). If a rule is adopted by the administrator a solicitation of interest document must accompany a registration by qualification as specified in § 304(b)(13). Oral offers may be made after a registration statement has been filed, both before and after a registration statement is effective. This exemption does not operate unless the administrator adopts a rule under 202(17)(B).	1262(i)(2) explicitly requires the offer to be made by a BD, and 202(17) removes this requirement. However, 202(17) only creates a securities registration exemption, not a BD exemption. Issuer agents would be exempt under 402(b)(4), but there is no BD exemption in 401 for these transactions.	(17) an offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if: (A) a registration statement has been filed under this *Act*, but is not effective; (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 (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;
(18) 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;	1262(k) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets or other reorganizations to which the issuer, or its parent or subsidiary, and the other person, or its parent or subsidiary, are parties, if: (1) The securities to be distributed are registered under the securities act of 1933 before the consummation of the transaction; or (2) the securities to be distributed are not required to be registered under the securities act of 1933, written notice of the transaction and a copy of the materials, if any, by which approval of the transaction will be solicited is given to the commissioner at least 10 days before the consummation of the transaction and the commissioner does not disallow, by order, the exemption within the next 10 days.	19. In 1972 the SEC adopted Rule 145 defining many mergers and similar transactions to be sales and abandoned its earlier "no sale" doctrine. Because most merger and similar transactions require shareholder approval and shareholders often have appraisal rights if they choose to dissent, the potential for abuse is less than in an offering of securities for cash. When appropriate the administrator can deny, condition, limit or revoke this exemption under § 204. § 202(18) does not follow the requirement in RUSA § 402(17) that written notice of the transactions and a copy of the solicitation materials be given to the administrator 10 days before the consummation of the transaction and that the administrator is empowered to disallow the exemption within the next 10 days.	1262(k) requires a notice filing if the merger involves unregistered securities. 202(18) removes this condition from the exemption. The Official Comment says we can deny the exemption under § 204 in appropriate circumstances, but when the exemption is self-executing § 204 is almost useless.	(18) 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;
(19) a rescission offer, sale, or purchase under Section 510;		20. No Prior Provision. See § 510 for discussion of rescission offers.		(19) a rescission offer, sale, or purchase under Section ~~*510*~~ *39, and amendments thereto*;
(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 i diction in which the offeree or purchaser is t and is not part of an unlawful plan or e to evade this [Act];		21. Source of law: Colo. § 11-51-102(7). Compare A.S. Goldmen & Co., Inc. v. New Jersey Bur. of Sec., 163 F.3d 780 (3d Cir. 1999), which held that under the United States Constitution's Commerce Clause a State could authorize a securities administrator to prevent a BD from selling securities from a State to	As drafted, this provision would create a loophole that would harm our ability to protect investors. It puts the burden on the regulator to determine whether an offering complies with laws in other jurisdictions, including foreign countries, and it flies in the face of coordinated, efficient securities regulation by removing our ability to	(20) an offer or sale of a security <u>through a broker-dealer registered under this Act</u> 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

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		purchasers in other States where purchase of the securities was authorized. The concluding phrase "and is not part of an unlawful plan or scheme to evade this [Act]" is intended to preclude reliance on this exemption by boiler rooms and others engaged in illegal activities. § 202(20) provides an exemption from securities registration and does not address an administrator's power to investigate and bring enforcement actions under Articles 5 and 6.	clean up our own backyards (e.g., Triton Exploration). We would still have anti-fraud authority in those cases, but registration violations give us quick grounds for asset freezes, search warrants, etc., before we can prove a fraud case. As a compromise with the SIA, the exemption has been restricted to transactions through a registered BD. In effect, this will allow in-state BDs to sell securities that are not blue skied in Kansas to out-of-state residents, but agents would not be exempt from the ethical rules under 412. The compromise language also prevents us from losing jurisdiction over unlicensed sales activity originating from our state.	scheme to evade this *Act*;
(21) 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 subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to: (A) directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors; (B) family members who acquire such securities from those persons through gifts or domestic relations orders; (C) former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and (D) insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than 50 percent of their annual income from those organizations;	1261(j) Any securities issued in connection with an employee's stock purchase, savings, pension, profit-sharing or similar benefit plan, or a self-employed person's retirement plan.	22. Prior Provision: RUSA § 401(b)(12). The 1956 Act § 402(a)(11) was limited to investment contracts issued in connection with specified employee benefit plans if the administrator was given 30 days notice. In 1979, the Supreme Court held that a noncontributory, mandatory pension plan subject to the ERISA was not a security within the meaning of the '33 Act or the '34 Act. The SEC staff subsequently took the position that the interests of employees in involuntary, contributory plans are not securities. Both contributory and noncontributory pension or welfare plans subject to ERISA are excluded from the definition of security in § 102(28). In this definition, the term "advisors" does not mean "investment advisers." With respect to employee benefit plans that are securities, § 202(21) provides an exemption, but follows RUSA in not limiting the exemption to investment contracts and not requiring 30 days notice to the administrator. § 202(21) is modeled, in part, on Rule 701(c) adopted under the '33 Act. Compliance with Rule 701will provide compliance with this exemption. Resale of employee benefit plan securities can occur under appropriate § 202 transaction exemptions. § 202(21) is not intended to provide a new method of publicly issuing securities.	1261(j) is a securities exemption, not a transactional exemption. USA-2002 would convert it to a transactional exemption. 202(21)(A) through (D) expand 1261(j). However, as a matter of policy we have recognized the provisions of SEC Rule 701, so 202(21) does not substantially change our current practice.	(21) 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 subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to: (A) directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors; (B) family members who acquire such securities from those persons through gifts or domestic relations orders; (C) former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and (D) insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than 50 percent of their annual income from those organizations;
(22) a transaction involving: (A) a stock dividend or equivalent equity distribution, whether the corporation or other	1262(j) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of	23. § 202(22)(A) and (B) generally follow exclusions from the definition of sale in the 1956 Act and RUSA. § 202(22)(C) is new and	1262(e) is split into three separate exemptions in §§202(7), (12), and (22)(B). See 202(7).	(22) a transaction involving: (A) a stock dividend or equivalent equity distribution, whether the corporation or other

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ness organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock; (B) an act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or (C) the solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933 (17 C.F.R. 230.162); or	value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock. 1262(e) [see Section 202(7) & (12)] ~~Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator; any transaction executed by a bona fide pledgee without any purpose of evading this act or~~ any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests.	corresponds to Rule 162, recently adopted under the '33 Act, which allows the offeror in a stock exchange offer to solicit tenders of securities before a registration statement is effective as long as no securities are purchased until the registration statement is effective and the tender offer has expired.		business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock; (B) an act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or (C) the solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933 (17 C.F.R. 230.162); or
(23) a nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this [Act], if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under this [Act]; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than 180 days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by rule adopted or order issued under this [Act], or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing in compliance with [the state administrative procedure act], the administrator, by rule adopted or order issued under this [Act], may revoke the designation of a securities exchange under this paragraph, if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors.		24. This exemption expressly covers Toronto Stock Exchange issuers that are public reporting companies under Canadian securities law and meet the 180 day continuous reporting requirement. In conformance with the North American Free Trade Agreement and General Agreement on Trade in Services, the exemption separately provides authority for the administrator to designate by rule or order other specific foreign jurisdictions and their trading exchanges upon an adequate showing. The exemption also provides authority for an administrator to revoke any designation if necessary or appropriate in the public interest and for the protection of investors.		(23) a nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this *Act*, if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under this *Act*; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than 180 days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by rule adopted or order issued under this *Act*, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing in compliance with *the Kansas administrative procedure act*, the administrator, by rule adopted or order issued under this *Act*, may revoke the designation of a securities exchange under this paragraph, if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors.
	1262(n) Any transaction pursuant to rules and regulations adopted by the commissioner		Under the authority of Section 203, exemptions that are not contained within USA-2002 could be	

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	concerning the offer or sale of an oil, gas or mining lease, fee or title if the commissioner finds that registration is not necessary or appropriate for the protection of investors. 1262(o) The offer or sale of a security, issued by Kansas Venture Capital, Inc., or its successors. 1262(p) Any transaction through a registered broker-dealer or agent involving a viatical investment. By rules, regulation or order, the commissioner may require the filing of a notice and specify conditions for this exemption. **17-1262a. Exempt oil and gas transactions--Fractional or undivided interest--Definitions.** (a) As used in this section: (1) "Commission or other remuneration" shall include any consideration, compensation or fees paid or given to an agent in exchange for the agent's services, except that "commission or other remuneration" shall not include any interest in the oil and gas estate, including any overriding royalty interest, or the production therefrom so long as the identity of the person or persons owning or holding any such interest and the extent of such interest is fully disclosed to all purchasers. (2) "Public advertising or public solicitation" means any offers to sell or sales that are effected by means of any advertising or general solicitation printed in any brochure, prospectus, offering memoranda, handbill, newspaper, magazine, periodical or other publication of general circulation and mailed or delivered to its subscribers or addressees, or communicated by radio, public seminar, television, general telephone solicitation, or similar means. (3) "Purchasers" means any individual, corporation, partnership, association, joint stock company, trust or unincorporated organization, except that if such entity was organized for the specific purpose of acquiring the oil or gas interests offered, each beneficial owner of equity interests or equity securities in such entity shall count as a separate purchaser. (b) Except as hereinafter expressly provided, K.S.A. 17-1254, 17-1255, 17-1257, 17-1258, 17-1259 and 17-1260, and amendments thereto, shall not apply to any offer to sell or sale of any limited partnership interest involving, or any fractional or		adopted as regulations rather than statutes.	

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	undivided interest, or any certificate based upon any fractional or undivided interest in any oil or gas royalty, lease or deed, including subsurface gas storage and payments out of production, if the land subject to the interest or certificate is situated in Kansas and: (1) All sales are made to persons who are and have been during the preceding two years engaged primarily in the business of drilling for, producing, or refining oil or gas or whose corporate predecessor, in the case of a corporation, has been so engaged or whose officers and 2/3 of the directors, in the case of a corporation having an existence of less than two years, have each been so engaged; or (2) all sales are made to not more than a total of 32 purchasers without regard to whether the purchasers reside within or without the state of Kansas, and: (A) The seller of such interests reasonably believes that all purchasers of such interests are purchasing for investment and not for resale; and (B) no commission or other remuneration is paid or given directly or indirectly for the solicitation, offer to sell or sale of any such interests; and (C) no public advertising or public solicitation is used in connection with the solicitation, offer to sell or sale of any such interest; or (3) all sales of such interests involve properties that produce oil or gas or petroleum products in paying quantities on the date of sale and the seller, subsequent to the sale, does not retain any ownership interest in or control over the lease or the interest or interests that are being sold. (c) The exemption provided by this section shall not be cumulative to or used in conjunction with any other exemption provided under K.S.A. 17-1262 and amendments thereto, nor shall any exemption provided by K.S.A. 17-1262 and amendments thereto, other than the exemption provided by subsections (a), (e), (m) or (n) of that section or by this section, be available for any offer to sell or sale of any limited partnership interest involving, or any fractional or undivided interest, or any certificate based upon any fractional or undivided interest in any oil or gas royalty, lease or deed, including subsurface gas			

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	storage and payments out of production.			
SECTION 203. ADDITIONAL EXEMPTIONS AND WAIVERS. A rule adopted or order issued under this [Act] may exempt a security, transaction, or offer; a rule under this [Act] may exempt a class of securities, transactions, or offers from any or all of the requirements of Sections 301 through 306 and 504; and an order under this [Act] may waive, in whole or in part, any or all of the conditions for an exemption or offer under Sections 201 and 202.	17-1261. Exempt securities. The following securities shall be exempt from the registration requirements of K.S.A. 17-1255 through 17-1260, and amendments thereto… (g) Any security as to which the commissioner by rule and regulation finds that registration is not necessary or appropriate for the protection of investors. 1262(m) Any transaction pursuant to rules and regulations adopted by the commissioner for limited offerings which was adopted for the purpose of furthering the objectives of compatibility with federal exemptions and uniformity among the states.	1. 50 of 53 jurisdictions have adopted the Uniform Limited Offering Exemption (ULOE) or a Reg D exemption, and 32 jurisdictions have adopted a Rule 144A exemption. This Act does not incorporate ULOE or a Rule 144A exemption because of their complexity and the likelihood of periodic updating of their provisions. Rule 144A, and similar exemptions in ULOE, can be most effectively implemented by rule rather than statute. 2. Under § 203 a state would also be authorized to adopt by rule or order new exemptions as circumstances warrant for new technologies such as the Internet. 3. It is the intent of this Section that ULOE, Rule 144A, and additional exemptions or waivers be adopted uniformly by states to the extent this is practicable.		**SECTION 8 ~~203. ADDITIONAL EXEMPTIONS AND WAIVERS.~~** A rule adopted or order issued under this *Act* may exempt a security, transaction, or offer; a rule under this *Act* may exempt a class of securities, transactions, or offers from any or all of the requirements of Sections *~~301 through 306 and 504~~ 11 through 16 and section 33, and amendments thereto*; and an order under this *Act* may waive, in whole or in part, any or all of the conditions for an exemption or offer under Sections *~~201and 202~~ 6 and 7, and amendments thereto.*
SECTION 204. DENIAL, SUSPENSION, REVOCATION, CONDITION, OR LIMITATION OF EXEMPTIONS. (a) **[Enforcement related powers.]** Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this [Act] may deny, suspend application of, condition, limit, or revoke an exemption created under Section 201(3)(C), (7) or (8) or 202 or an exemption or waiver created under Section 203 with respect to a specific security, transaction, or offer. An order under this section may be issued only pursuant to the procedures in Section 306(d) or 604 and only prospectively.		1. § 204 is potentially far reaching. The ability to deny, condition, limit, or revoke the exemptions specified in §§ 201(3)(C), 201(7), 201(8), 202, or 203 is adopted concomitant with the breadth of these exemptions. One or more than one security, transaction, or offer can be covered by a § 204 order. 2. The courts have given a securities administrator's decision to deny or revoke an exemption substantial deference when there was compliance with applicable due process and statutory requirements.	The drafters' assertion that "§ 204 is potentially far reaching" is doubtful. Because we can only take action "with respect to a specific security, transaction or offer," and orders can only be issued "prospectively," this section gives us very little ability to take action when a self-executing exemption applies, and we have no authority to limit an exemption in its entirety. § 203 gives us the authority to create new exemptions or expand existing exemptions, but not to restrict existing exemptions. Therefore, to closed any problematic loopholes in the exemptions, we will have to go to the legislature for a statutory change rather than relying on § 204.	**SECTION 9 ~~204. DENIAL, SUSPENSION, REVOCATION, CONDITION, OR LIMITATION OF EXEMPTIONS.~~** (a) **Enforcement related powers.** Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this *Act* may deny, suspend application of, condition, limit, or revoke an exemption created under Section *~~201(3)(C), (7) or (8) or 202~~ 6(3)(C), (7) or (8) or section 7, and amendments thereto,* or an exemption or waiver created under section *~~203~~ 8, and amendments thereto,* with respect to a specific security, transaction, or offer. An order under this section may be issued only pursuant to the procedures in section *~~306(d) or 604~~ 16(d) or section 43, and amendments thereto,* and only prospectively.
(b) **[Knowledge of order required.]** A person does not violate Section 301, 303 through 306, 504, or 510 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.			204(b) creates an anomaly. If we don't officially deny an exemption, the salesman is liable for selling unregistered securities unless he can prove compliance with the exemption. But, if we issue an order to officially deny the exemption, the salesman is not liable unless we can prove that he knew of the order. In effect, the salesman is placed in a better position by virtue of the fact that we issue an order.	(b) **Knowledge of order required.** A person does not violate Section *~~301, 303 through 306, 504, or 510~~ 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.
	1259(b)(3) The commissioner may by rule and regulation set a fee not to exceed $2,500 for an application or filing made in connection with any		The current statutory maximum for notice filing fees is $2,500, although we actually only charge $100 under KAR 81-5-8.	**SECTION 10. ~~EXEMPTION FILING FEES.~~** The administrator may by rule and regulation set a fee not to exceed $2,500 for an application or

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	exemption from securities registration.			filing made in connection with any exemption from securities registration.
SECTION 301. SECURITIES REGISTRATION REQUIREMENT. It is unlawful for a person to offer or sell a security in this State unless: (1) the security is a federal covered security; (2) the security, transaction, or offer is exempted from registration under Sections 201 through 203; or (3) the security is registered under this [Act].	**17-1255. Unlawful to intentionally sell or offer for sale certain unregistered securities--Penalty.** (a) It is unlawful for any person to intentionally offer or sell any security in this state, unless: (1) It is registered under this act; (2) the security or transaction is exempt under K.S.A. 17-1261 or 17-1262, and amendments thereto; or (3) it is a federal covered security for which the fee has been paid and documents have been filed as required by K.S.A. 17-1270a. (b) (1) Any violation of this section resulting in a loss of $25,000 or more, regardless of its location on the sentencing grid block, shall have a presumptive sentence of imprisonment. (2) A conviction for an intentional violation of this section resulting in a loss of $100,000 or more is a severity level 5, nonperson felony. (3) A conviction for an intentional violation of this section resulting in a loss of at least $25,000 but less than $100,000 is a severity level 6, nonperson felony. (4) A conviction for an intentional violation of this section resulting in a loss of less than $25,000 is a severity level 7, nonperson felony.	1. This Section is substantively identical to the 1956 Act and RUSA except for the addition of § 301(1), which is necessitated by NSMIA. 2. "Sale" is defined in § 102(26); "in this State" is addressed in § 610. 3. The '33 Act permits certain types of offers during the "waiting period" between the filing and effectiveness of a registration statement. The exemptive provisions of §§ 202(16) and (17) operate to permit similar offers for securities that are not federal covered securities and are in the process of registration under federal or state statutes or both.	USA-2002 puts all criminal sanctions within Section 508. Currently, 1255 establishes criminal penalties for the failure to make a notice filing for federal covered securities. § 508 decriminalizes it, which leaves a stop order under 302(d) as our only remedy.	**SECTION 11 ~~301. SECURITIES REGISTRATION REQUIREMENT.~~** It is unlawful for a person to offer or sell a security in this State unless: (1) the security is a federal covered security; (2) the security, transaction, or offer is exempted from registration under Sections ~~*201 through 203*~~ *6 through 8, and amendments thereto*; or (3) the security is registered under this *Act*.
SECTION 302. NOTICE FILING. (a) [**Required filing of records.**] With respect to a federal covered security, as defined in Section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(2)), that is not otherwise exempt under Sections 201 through 203, a rule adopted or order issued under this [Act] may require the filing of any or all of the following records: (1) before the initial offer of a federal covered security in this State, all records that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 and a consent to service of process complying with Section 611 signed by the issuer and the payment of a fee of $[____]; (2) after the initial offer of the federal d security in this State, all records that are an amendment to a federal registration	**17-1270a. Commissioner's powers and duties--Filing of fees and documents--Orders.** (a) The commissioner, by rules and regulations or order, may require the payment of a filing fee and the filing of documents with respect to a covered security under section 18(b)(2) of the securities act of 1933, as follows: (1) Prior to the initial offer of such federal covered security in this state, all documents that are part of a federal registration statement filed with the United States securities and exchange commission under the securities act of 1933, together with a consent to service of process, and a fee not to exceed $2,500; (2) After the initial offer of such federal covered security in this state, all documents that are a part of an amendment to a federal registration statement filed with the United States securities and exchange commission under the securities act of 1933, which shall be filed	1. No Prior Provision. The little used "registration by notification" in the 1956 Act or "registration by filing" in RUSA are omitted from this Act because of the notice filing approach required by § 18(b)(2) of the '33 Act for federal covered securities, which, in essence, replaces the need for registration by notification. 3. The definition of "filing" in § 102(8) will permit states to receive electronic filing of records under this Section, including a signed consent. See § 105. 4. If a State prefers to have the fees in this section established by rule, replace the phrase "a fee of $[___]" in subsections (a), (b), and (c) with the phrase "a fee established by the administrator by rule". Comment 9 to §102(7). Under NSMIA, the States are authorized to require filings of any document filed with the SEC for notice purposes "together with annual or periodic reports of the	§ 18(b)(2) of the '33 Act applies to mutual funds. Other types of federal covered securities (e.g., listed securities) are defined in 18(b)(1), which are exempt under 201(6), and no notice filing is required for those types of federal covered securities. Rule 506 offerings are deemed federal covered securities in 18(d)(4)(D) of the '33 Act. Those are addressed in 302(c), and a notice filing is required. A regulation or order must be adopted to implement § 302. 81-5-14 currently addresses mutual fund notice filings.	**SECTION 12 ~~302. NOTICE FILING.~~** (a) ***Required filing of records.*** With respect to a federal covered security, as defined in Section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(2)), that is not otherwise exempt under Sections ~~*201 through 203*~~ *6 through 8, and amendments thereto*, a rule adopted or order issued under this *Act* may require the filing of any or all of the following records: (1) before the initial offer of a federal covered security in this State, all records that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 and a consent to service of process complying with Section ~~*611*~~ *50* signed by the issuer and the payment of a fee ~~*of*~~ *not to exceed $2,500*; (2) after the initial offer of the federal covered security in this State, all records that are part of an amendment to a federal registration

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statement filed with the Securities and Exchange Commission under the Securities Act of 1933; and (3) to the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this State, if the sales data are not included in records filed with the Securities and Exchange Commission and payment of a fee of $[___].	concurrently with the commissioner, together with a fee not to exceed $100; (3) An annual or periodic report of sales of such federal covered securities in this state;	value of securities sold or offered to be sold to persons located in the State, solely for notice purposes and the assessment of any fee, together with a consent to service of process and any required fee." § 18(c)(2). However, no filing or fee may be required with respect to any listed security that is a covered security under § 18(b)(1).		statement filed with the Securities and Exchange Commission under the Securities Act of 1933; and (3) to the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this State, if the sales data are not included in records filed with the Securities and Exchange Commission and payment of a fee ~~of~~ *not to exceed $2,500.*
(b) **[Notice filing effectiveness and renewal.]** A notice filing under subsection (a) is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the Securities and Exchange Commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission that are required by rule or order under this [Act] to be filed and by paying a renewal fee of $[___]. A previously filed consent to service of process complying with Section 611 may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.	(4) Each notice filing under this subsection (a) shall be effective for one year from its original filing date, or such other date required by the commissioner by rules and regulations or order, and shall be renewed annually, so long as the covered security continues to be offered in this state, by payment of an annual renewal fee not to exceed $2,500.			(b) ***Notice filing effectiveness and renewal.*** A notice filing under subsection (a) is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the Securities and Exchange Commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission that are required by rule or order under this *Act* to be filed and by paying a renewal fee ~~of~~ *not to exceed $2,500*. A previously filed consent to service of process complying with Section ~~*611*~~ *50* may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.
(c) **[Notice filings for federal covered securities under Section 18(b)(4)(D).]** With respect to a security that is a federal covered security under Section 18(b)(4)(D) of the Securities Act of 1933(15 U.S.C. Section 77r(b)(4)(D)), a rule under this [Act] may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as promulgated by the Securities and Exchange Commission, and a consent to service of process complying with Section 611 signed by the issuer not later than 15 days after the first sale of the federal covered security in this State and the payment of a fee of $[____]; and the payment of a fee of $[___] for any late filing.	(b) With respect to a covered security under section 18(b)(4)(D) of the securities act of 1933, the commissioner, by rules and regulations or order, may require the issuer to file a notice on form D together with a fee not to exceed the amount authorized by paragraph (3) of subsection (b) of K.S.A. 17-1259, and amendments thereto.	2. For Rule 506 offerings which are addressed by § 18(d)(4)(D) of the '33 Act, the SEC requires the filing of Form D. When an issuer meets the conditions of Rule 506, § 302(c) is intended to limit required state filings to no more than a requirement of filing a copy of Form D, including the Appendix, a consent to service of process, and a fee.	Rule 506 offerings are deemed federal covered securities in 18(d)(4)(D) of the '33 Act. Those are addressed in 302(c), and a notice filing is required. Rule 506 requirements are currently specified by order and a new regulation has been drafted to replace KAR 81-5-6. 1259(b)(3) authorizes a fee "not to exceed $2,500" for exemption filings, although we currently charge only $100. We do not currently have a separate fee for late filings. The proposed maximum late filing fee ($5,000) is double the currently authorized fee for a timely filing, but much less than the maximum fine for a violation of the act under sections 412 and 604.	(c) ***Notice filings for federal covered securities under Section 18(b)(4)(D).*** With respect to a security that is a federal covered security under Section 18(b)(4)(D) of the Securities Act of 1933(15 U.S.C. Section 77r(b)(4)(D)), a rule under this *Act* may require (1) a notice filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as promulgated by the Securities and Exchange Commission, and a consent to service of process complying with Section ~~*611*~~ *50* signed by the issuer, not later than 15 days after the first sale of the federal covered security in this State; and (2) the payment of a fee ~~of~~ *not to exceed $2,500 for a timely filing*; and the payment of a fee ~~of~~ *not to exceed $5,000* for any late filing.
	(c) The commissioner, by rules and regulations or otherwise, may require the filing of any document filed with the United States securities and exchange commission with respect to a covered security under section 18(b)(3) and (4) of the securities act of 1933, together with a fee not		18(b)(3) deems sales to qualified purchasers to be federal covered securities. These are now exempt under the exemption for institutional investors in 202(13). 18(b)(4) contains several categories of federal covered securities. The SEC does not require	

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	to exceed the amount authorized by paragraph (3) of subsection (b) of K.S.A. 17-1259, and amendments thereto.		filings for these categories of federal covered securities, so we can't either.	
(d) [**Stop orders.**] Except with respect to a federal security under Section 181(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)), if the administrator finds that there is a failure to comply with a notice or fee requirement of this section, the administrator may issue a stop order suspending the offer and sale of a federal covered security in this State. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the administrator.	(d) The commissioner may issue a stop order suspending the offer and sale of a federal covered security, except a covered security under section 18(b)(1) of the securities act of 1933, if it finds that: (1) The order is in the public interest; and (2) There is a failure to comply with any condition established under this section.		The reference to Section 181(b)(1) is wrong. The drafters meant "18(b)(1)" instead of "181(b)(1)." 302(d) allows a violator to cure a deficiency without penalty. Arguably, this conflicts with 302(c), which provides for increased fees for late filings of Form D. The phrase "other than a late filing fee" should be inserted at the end of 302(d) to cure any potential conflict.	(d) ***Stop orders.*** Except with respect to a federal security under Section ~~181(b)(1)~~ 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)), if the administrator finds that there is a failure to comply with a notice or fee requirement of this section, the administrator may issue a stop order suspending the offer and sale of a federal covered security in this State. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the administrator other than a late filing fee.
	(e) The commissioner, by rules and regulations or order, may waive any and all of the provisions of this section.			
SECTION 303. SECURITIES REGISTRATION BY COORDINATION. (a) [**Registration permitted.**] A security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination under this section.	**17-1257. Registration of securities by coordination--Requirements--Effective, when.** (a) Any security may be registered by coordination under this act if a registration statement has been filed but has not been declared effective under the securities act of 1933 in connection with the same offering.	1. As in the 1956 Act, § 303 streamlines the content of the registration statement and the procedure by which a registration statement becomes effective, but not the substantive standards governing the effectiveness of a registration statement. 2. The phrase "in connection with the same offering" does not require that the federal and state registration statements be filed or become effective simultaneously. A registration by coordination can be filed in a State after the effectiveness of the federal registration statement as long as the administrator does not conclude that the interval was too long to consider the State registration statement "the same offering."	1257(a) only permits registration by coordination if the registration has not yet been declared effective by the SEC. This limitation is removed in 303(a), and the Official Comment declares that 303(a) would permit post-effective filings. However, 303(c)(2) gives us 20 days to review it before it becomes effective in Kansas.	**SECTION 13 ~~303. SECURITIES REGISTRATION BY COORDINATION.~~** (a) ***Registration permitted.*** A security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination under this section.
(b) [**Required records.**] A registration statement and accompanying records under this section must contain or be accompanied by the following records in addition to the information specified in Section 305 and a consent to service of process complying with Section 611: (1) a copy of the latest form of prospectus filed under the Securities Act of 1933; (2) a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, ~~r~~iption of the security that is required by ~~o~~pted or order issued under this [Act];	(b) ~~A registration statement under this section may be filed by the issuer, any other person on whose behalf the securities will be offered or by any registered broker-dealer.~~ [see Section 305(a)] The registration statement shall be filed in the office of the commissioner and shall contain the following information and be accompanied by the following documents: (1) One copy of the prospectus filed under the securities act of 1933 together with all amendments as of the date of filing; (2) the amount of securities to be offered in this state; (3) any adverse order, judgment or decree entered in connection with the offering by the regulatory authorities in any state or by any court	3. § 303 is similar to the 1956 Act except that these provisions have been modernized to include electronic filing and electronic notification. It is anticipated that this will facilitate simultaneous filing with the SEC and the States which is consistent with the uniformity intended by this Act. Simultaneous or sequential filing could be administered through a designee similar to the current Web-CRD or in conjunction with the SEC's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system or otherwise. 4. § 303(b) is not intended to limit the administrator to requiring only the information and records filed with the SEC.	303(b)(2) requires the adoption of a regulation to establish the filing requirements. That isn't currently required in 1257(b)(4) and appears unnecessary. Similarly, 303(b)(3) says the registrant must produce any records filed with the SEC that are "requested by the administrator." We currently require the filing of all SEC-filed documents, so that phrase could be deleted to avoid the inefficiency of having to request the documents in every application for registration. However, the language is retained at the request of SIA. 305(c) requires the registration statement to contain the information currently required by 1257(b)(2) and (3). The registration fee is established in 305(b).	(b) ***Required records.*** A registration statement and accompanying records under this section must contain or be accompanied by the following records in addition to the information specified in Section ~~305~~ *15* and a consent to service of process complying with Section ~~611~~ *50, and amendments thereto*: (1) a copy of the latest form of prospectus filed under the Securities Act of 1933; (2) a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by rule

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(3) copies of any other information or any other records filed by the issuer under the Securities Act of 1933 requested by the administrator; and (4) an undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the Securities and Exchange Commission.	or by the securities and exchange commission; (4) a copy of the articles of incorporation and by-laws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security; (5) payment of the registration fee prescribed in K.S.A. 17-1259, and amendments thereto; (6) if required under K.S.A. 17-1263, and amendments thereto, a consent to service of process meeting the requirements of that section; and (7) an undertaking to forward promptly all amendments to the federal registration statement, other than an amendment which merely delays the effective date.			adopted or order issued under this *Act*; (3) copies of any other information or any other records filed by the issuer under the Securities Act of 1933 requested by the administrator; and (4) an undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the Securities and Exchange Commission.
(c) **[Conditions for effectiveness of registration statement.]** A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied: (1) a stop order under subsection (d) or Section 306 or issued by the Securities and Exchange Commission is not in effect and a proceeding is not pending against the issuer under Section 412; and (2) the registration statement has been on file for at least 20 days or a shorter period provided by rule adopted or order issued under this [Act].	(c) A registration statement under this section will automatically become effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied: (1) No stop order is in effect and no proceeding is pending under K.S.A. 17-1260, and amendments thereto; (2) the registration statement has been on file with the commissioner for at least 10 days; and (3) a statement of the maximum and minimum offering prices and the maximum underwriting discounts and commissions has been on file for two full business days or such shorter period as the commissioner may permit by rules and regulations or otherwise and the offering is made within those limitations. (e) The commissioner may by rule and regulation or otherwise waive either or both of the conditions specified in paragraphs (2) and (3) of subsection (c).... [see 303(e)]	5. §§ 303(c) through (e) describe the conditions to be satisfied to achieve effectiveness of a coordinated filing. "Price amendment" is defined in § 102(23). The administrator retains the right to test the registration statement by the substantive standards of § 306(a) and may issue a stop or denial order if the administrator believes any of those provisions are applicable.	The reference to a "proceeding...under Section 412" is wrong. 412 does not apply to issuers—it involves formal sanctions against BDs, agents, IAs and IARs. Instead, 303(c)(1) should refer to pending proceedings under § 306, which is the equivalent of our current 1260. See 304(c) for the corresponding section for registration by qualification, which refers to 306. 303(c) does not require a statement of the maximum and minimum offering prices, as currently required by 1257(c)(3). The common practice is to send a deficiency letter to an issuer to try to resolve problems before a formal stop order is issued. Issuers would probably prefer an informal deficiency letter instead of a formal stop order, so this practice should be authorized by statute. A regulation should specify whether "20 days" is 20 calendar days or 20 business days.	(c) ***Conditions for effectiveness of registration statement.*** A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied: (1) a stop order under subsection (d) or Section ~~*306*~~ *16, and amendments thereto,* or issued by the Securities and Exchange Commission is not in effect, and a proceeding is not pending against the issuer under Section ~~412~~ ~~*306*~~ *16, and amendments thereto,* and the administrator has not given written notice of deficiencies that are unresolved and that would constitute grounds for a stop order under section 16, and amendments thereto; and (2) the registration statement has been on file for at least 20 days or a shorter period provided by rule adopted or order issued under this *Act*.
(d) **[Notice of federal registration statement effectiveness.]** The registrant shall promptly notify the administrator in a record of the date when the federal registration statement becomes effective and the content of any price amendment shall promptly file a record containing the price amendment. If the notice is not timely received, the administrator may issue a stop order, without prior notice or hearing, retroactively	(d) The registrant shall promptly notify the commissioner of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. ~~"Price amendment" means the final federal amendment which includes a statement of the offering price,~~		Notification by telegram seems out of place in an act that purports to modernize securities regulation. It has already been dropped from 1257(d).	(d) ***Notice of federal registration statement effectiveness.*** The registrant shall promptly notify the administrator in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the administrator may issue a stop order, without prior notice or hearing, retroactively

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...nying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The administrator shall promptly notify the registrant of an order by telegram, telephone, or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.	~~underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.~~ [see Section 102(23).] Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection, if the commissioner promptly notifies the registrant by telephone or electronic means and promptly confirms in writing the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment, the stop order is void as of the time of its entry.			denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The administrator shall promptly notify the registrant of an order by ~~telegram,~~ telephone~~,~~ or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.
(e) [**Effectiveness of registration statement.**] If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the administrator, the registration statement is automatically effective under this [Act] when all the conditions are satisfied or waived. If the registrant notifies the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly notify the registrant by telegram, telephone, or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the administrator intends the institution of a proceeding under Section 306. The notice by the administrator does not preclude the institution of such a proceeding.	(e) ~~The commissioner may by rule and regulation or otherwise waive either or both of the conditions specified in paragraphs (2) and (3) of subsection (c).~~ [see 303(c)] If the federal registration becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement is expected to become effective, the commissioner shall promptly advise the registrant whether all the conditions are satisfied and whether the commissioner then contemplates the institution of a proceeding under K.S.A. 17-1260 and amendments thereto; but this advice by the commissioner does not preclude the institution of such a proceeding at any time.		As written, 303(e) requires prompt notification by phone, "promptly" followed up by a letter. As long as the written notice is prompt, the phone call is unnecessary. This type of notice also does not have the same level of urgency as notice of a stop order in 303(d), so double notice should not be mandated.	(e) ***Effectiveness of registration statement.*** If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the administrator, the registration statement is automatically effective under this *Act* when all the conditions are satisfied or waived. If the registrant notifies the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly notify the registrant ~~by telegram, telephone, or electronic means and promptly confirm this notice~~ by a record, indicating whether all the conditions are satisfied or waived and whether the administrator intends the institution of a proceeding under Section ~~306~~ *16, and amendments thereto*. The notice by the administrator does not preclude the institution of such a proceeding.
SECTION 304. SECURITIES REGISTRATION BY QUALIFICATION. (a) [**Registration permitted.**] A security may be registered by qualification under this section. (b) [**Required records.**] A registration statement under this section must contain the information or records specified in Section 305, a consent to service of process complying with Section 611, and, if required by rule adopted ...this [Act], the following information or ...s:	**17-1258. Registration of securities by qualification--Requirements--Effective, when.** (a) Any security may be registered by qualification. ~~A registration statement under this section may be filed by the issuer, any other person on whose behalf the securities will be offered or by a registered broker-dealer.~~ [see Section 305(a).] The registration statement shall be filed in the office of the commissioner and shall contain the following information and be accompanied by the following documents:	1. This Section generally follows the 1956 Act and RUSA. Any security may be registered by qualification, whether or not another type of registration is available. Ordinarily, however, registration by qualification will only be used by an issuer when no other procedure is available. 2. § 304(b) originally was modeled on Schedule A of the '33 Act.	A regulation adopted under 304(b) would simply duplicate the items listed in the statute, so the requirement of a regulation is unnecessary, particularly if the statute is amended to allow the administrator to waive the requirements for good cause shown. Section 305(c) states that the issuer must file a registration statement, and the registration statement must specify the amount of securities to be offered in this state.	**SECTION 14 ~~304. SECURITIES REGISTRATION BY QUALIFICATION.~~** (a) ***Registration permitted.*** A security may be registered by qualification under this section. (b) ***Required records.*** A registration statement under this section must contain the information or records specified in Section ~~*305 15, and amendments thereto*~~, a consent to service of process complying with Section ~~*611 50, and amendments thereto*~~, and~~, if required by rule adopted under this Act,~~ the following information

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	(3) amount of securities to be offered in this state;			or records unless waived by the administrator for good cause shown:
(1) with respect to the issuer and any significant subsidiary, its name, address, and form of organization; the State or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;	(1) The name and address of the issuer and the location of its principal office, if any, in this state; (4) the state (or foreign jurisdiction) and date of organization of the issuer; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;		304(b)(1) does not require the location of the issuer's principal office in Kansas, as is currently required in 1258(a)(1).	(1) with respect to the issuer and any significant subsidiary, its name, address, and form of organization; the State or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;
(2) with respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five years; the amount of securities of the issuer held by the person as of the 30th day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three years or proposed to be effected;	(5) with respect to every director and officer of the issuer (or person occupying a similar status or performing similar functions): The person's name, address, and principal occupation for the past five years; the amount of securities of the issuer held by the person as of a specified date within ninety days of the filing of the registration statement; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected;		304(b)(2) would require officers and directors to disclose their holdings as of 30 days before the filing. 1258(a)(5) currently requires it for any date within 90 days of filing. 304(b)(2) adds: "the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe."	(2) with respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five years; the amount of securities of the issuer held by the person as of the 30th day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three years or proposed to be effected;
(3) with respect to persons covered by paragraph (2), the aggregate sum of the remuneration paid to those persons during the previous 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer;	(6) with respect to persons covered by clause (5): The remuneration paid during the past twelve months, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries, and affiliates) to all those persons in the aggregate;		304(b)(3) requires disclosure of future compensation, not just past compensation.	(3) with respect to persons covered by paragraph (2), the aggregate sum of the remuneration paid to those persons during the previous 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer;
(4) with respect to a person owning of record or owning beneficially, if known, 10 percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in paragraph (2) other than the person's occupation;	(7) with respect to any person owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer: The information specified in clause (5) other than the person's occupation;			(4) with respect to a person owning of record or owning beneficially, if known, 10 percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in paragraph (2) other than the person's occupation;
(5) with respect to a promoter, if the issuer was organized within the previous three years, the information or records specified in paragraph (2), any amount paid to the promoter within that riod or intended to be paid to the promoter, and consideration for the payment;	(8) with respect to every promoter if the issuer was organized within the past three years: The information specified in clause (5), any amount paid to the promoter within that period or intended to be paid to him, and the consideration for any such payment;			(5) with respect to a promoter, if the issuer was organized within the previous three years, the information or records specified in paragraph (2), any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment;
(6) with respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and	(9) with respect to any person on whose behalf any part of the offering is to be made in a non-issuer distribution: The person's name and			(6) with respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and

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dress; the amount of securities of the issuer eld by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three years or proposed to be effected; and a statement of the reasons for making the offering;	address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected; and a statement of the person's reasons for making the offering;			address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three years or proposed to be effected; and a statement of the reasons for making the offering;
(7) the capitalization and long term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two years or is obligated to issue its securities;	(10) the capitalization and long-term debt of the issuer, including (A) a description of each security outstanding or being registered or otherwise offered, and (B) a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer has issued any of its securities within the past five years or is obligated to issue any of its securities;		304(b)(7) is more specific regarding the accounting terminology, but shortens the window from five years to two.	(7) the capitalization and long term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two years or is obligated to issue its securities;
(8) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter;	(2) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any portion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash, securities, contracts, or anything else of value to accrue to the underwriters in connection with the offering) or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of underwriters, a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;		304(b)(8) requires identification of finders.	(8) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter;
(9) the estimated monetary proceeds to be d by the issuer from the offering; the	(11) the estimated cash proceeds to be received by the issuer from the offering and the		The italicized portions of 304(b)(9) below are not currently in 1258(a)(11):	(9) the estimated monetary proceeds to be received by the issuer from the offering; the

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purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition;	purposes for which the proceeds are to be used by the issuer; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price;		(9) the estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; *the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds*; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, *the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition*;	purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition;
(10) a description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in paragraph (2), (4), (5), (6), or (8) and by any person that holds or will hold 10 percent or more in the aggregate of those options;	(12) a description of any stock options (or other security options) outstanding, or to be created in connection with the offering; together with the amount of any such options held or to be held by every person required to be named in clause (2), (5), (7), (8), or (9), and by any person who holds or will hold ten percent or more in the aggregate of any such options;			(10) a description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in paragraph (2), (4), (5), (6), or (8) and by any person that holds or will hold 10 percent or more in the aggregate of those options;
(11) the dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two years, and a copy of the contract;				(11) the dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two years, and a copy of the contract;
(12) a description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities;		3. In § 304(b)(12) pending litigation can include litigation that has not yet been filed.		(12) a description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities;
(13) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be d in connection with the offering and any itation of interest used in compliance with tion 202(17)(B);				(13) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with Section ~~*202(17)(B)*~~ *7(17)(B), and amendments thereto*;
(14) a specimen or copy of the security being	(13) a specimen or copy of the security being			(14) a specimen or copy of the security being

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stered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered;	registered; a copy of the issuer's articles of incorporation and bylaws (or their substantial equivalents) as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;			registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered;
(15) a signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer;				(15) a signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer;
(16) a signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement;			This provides the foundation for our new crime of improperly influencing an accountant or appraiser. We could also require filing of the actual accounting papers or appraisal by regulation under 304(b)(18).	(16) a signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record~~,~~ that is public, which is used in connection with the registration statement;
(17) a balance sheet of the issuer as of a date within four months before the filing of the registration statement; a statement of income and changes in financial position for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and	(14) a balance sheet or statement of financial condition of the issuer as of a date within four months prior to the filing of the registration statement, and other financial statements required by and presented in conformity with generally accepted accounting principles for each of the three fiscal years preceding the date of the balance sheet or statement of financial condition and for any period between the close of the last fiscal year and the date of the balance sheet or statement of financial condition, or for the period of the issuer's and any predecessors' existence if less than three years; and [Note: new 1258(b) provides: "The commissioner, by rule and regulation or order, may require financial statements of an issuer to be reviewed or audited by independent certified public accountants." See Section 605(c)]	4. § 304(b)(17) uses the same terminology as is used currently in Regulation S-X of the SEC. Under §§ 605(a) and (c) the administrator is authorized to specify the form and content of rules and forms governing registration statements and the form and content of financial statements required under this Act	The statement of cash flows is required by GAAP and replaced the statement of changes in financial position several years ago, so 304(b)(17) should be amended accordingly. A "balance sheet" and a "statement of financial condition" are the same thing.	(17) a balance sheet of the issuer as of a date within four months before the filing of the registration statement; a statement of income and ~~changes in financial position~~ a statement of cash flows for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and
(18) any additional information or records required by rule adopted or order issued under this [Act].	(15) such additional information as the commissioner may require by rule or order.	5. § 304(b)(18), for example, would authorize the administrator to require that a report by an accountant, engineer, appraiser or other professional person be filed, and would also authorize that securities of designated classes under a trust indenture contain additional specified information.		(18) any additional information or records required by rule adopted or order issued under this *Act*.
[**Conditions for effectiveness of ration statement.**] A registration statement	(c) A registration statement under this section will become effective when the commissioner so		304(c) gives us 30 days to review the offering. We currently deem a deficiency letter to be a	(c) ***Conditions for effectiveness of registration statement.*** A registration statement under this

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under this section becomes effective 30 days, or any shorter period provided by rule adopted or order issued under this [Act], after the date the registration statement or the last amendment other than a price amendment is filed, if: (1) a stop order is not in effect and a proceeding is not pending under Section 306; (2) the administrator has not issued an order under Section 306 delaying effectiveness; and (3) the applicant or registrant has not requested that effectiveness be delayed.	orders.		"pending proceeding" that delays effectiveness. See KSC Comment to 303(c)(1). This may need to be addressed by regulation, and 304(d) may be construed to limit our authority in that regard.	section becomes effective 30 days, or any shorter period provided by rule adopted or order issued under this *Act*, after the date the registration statement or the last amendment other than a price amendment is filed, if: (1) a stop order is not in effect and a proceeding is not pending under Section ~~*306*~~ *16, and amendments thereto*; (2) the administrator has not issued an order under Section ~~*306*~~ *16, and amendments thereto*, delaying effectiveness; and (3) the applicant or registrant has not requested that effectiveness be delayed.
(d) **[Delay of effectiveness of registration statement.]** The administrator may delay effectiveness once for not more than 90 days if the administrator determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The administrator may also delay effectiveness for a further period of not more than 30 days if the administrator determines that the delay is necessary or appropriate.				(d) ***Delay of effectiveness of registration statement.*** The administrator may delay effectiveness once for not more than 90 days if the administrator determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The administrator may also delay effectiveness for a further period of not more than 30 days if the administrator determines that the delay is necessary or appropriate.
(e) **[Prospectus distribution may be required.]** A rule adopted or order issued under this [Act] may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection (b) be sent or given to each person to which an offer is made, before or concurrently, with the earliest of: (1) the first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution; (2) the confirmation of a sale made by or for the account of the person; (3) payment pursuant to such a sale; or (4) delivery of the security pursuant to such sale.				(e) ***Prospectus distribution may be required.*** A rule adopted or order issued under this *Act* may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection (b) be sent or given to each person to which an offer is made, before or concurrently, with the earliest of: (1) the first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution; (2) the confirmation of a sale made by or for the account of the person; (3) payment pursuant to such a sale; or (4) delivery of the security pursuant to such a sale.
SECTION 305. SECURITIES REGISTRATION FILINGS. (a) **[Who may file.]** A registration statement may be filed by the issuer, a person on whose	1257(b) [Registration by coordination.] A registration statement under this section may be filed by the issuer, any other person on whose behalf the securities will be offered or by any	1. § 305 generally follows the 1956 Act and RUSA except that earlier provisions in both Acts referring to Investment Company Act of 1940 securities, which are federal covered securities,		**SECTION 15 ~~305. SECURITIES REGISTRATION FILINGS.~~** (a) ***Who may file.*** A registration statement may be filed by the issuer, a person on whose

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alf the offering is to be made, or a broker-dealer registered under this [Act].	registered broker-dealer. ~~The registration statement shall be filed in the office of the commissioner and shall contain the following information and be accompanied by the following documents:~~ [see Section 303(b). 1258(a). [Registration by qualification.] (a) ~~Any security may be registered by qualification~~. A registration statement under this section may be filed by the issuer, any other person on whose behalf the securities will be offered or by a registered broker-dealer. ~~The registration statement shall be filed in the office of the commissioner and shall contain the following information and be accompanied by the following documents:~~ [see Section 304(b)]	see § 102(7), have been deleted. 2. § 305 is applicable both to registration by coordination, § 303, and to registration by qualification, § 304. 3. § 305(a) expressly authorizes registration by "a person on whose behalf the offering is to be made." This would permit a nonissuer, cf. § 102(18), or a BD to file a registration statement independent of the issuer.		behalf the offering is to be made, or a broker-dealer registered under this *Act*.
(b) **[Filing fee.]** A person filing a registration statement shall pay a filing fee of $[___]. If a registration statement is withdrawn before the effective date or a preeffective stop order is issued under Section 306, the administrator shall retain $[___] of the fee.	1259(b)(1) Every person filing a registration statement shall pay a fee of .05% of the maximum aggregate offering price at which the securities are to be offered in this state, but not less than $100 or more than $2,500 for each year of effectiveness. The commissioner shall establish registration fees by rules and regulations. If a registration statement is voluntarily withdrawn prior to being examined by the staff of the commissioner, the commissioner may refund 50% of the fee so paid.	4. This Act is intended, to the extent practicable, to be revenue neutral in its impact on existing state law. Accordingly, § 305(b) does not specify what fees states should provide. If a State prefers to have the fees in this section established by rule, replace the phrase "a fee of $[___]" in subsections (b) and (j) with the phrase "a fee established by the administrator by rule pursuant to the [state administrative procedure act]" and replace the phrase "$[___] of the fee" in subsection (b) with the phrase "an amount of the fee established by the administrator by rule".	The alternative language from the Official Comment should be used to give us the flexibility to adjust fees by regulation. Typically, a registration statement is withdrawn after staff reviews the offering and issues a deficiency letter, and before a formal stop order is issued. The original language of 305(b) would require the same refund regardless of the staff time expended. However, this could be addressed in a regulation that is adopted under the alternative language for 305(b).	(b) ***Filing fee.*** A person filing a registration statement shall pay a *fee established by the administrator by rule or order, but not more than $2,500 for each year that the registration statement is effective*. If a registration statement is withdrawn before the effective date or a preeffective stop order is issued under Section ~~*306*~~ *16, and amendments thereto*, the administrator shall retain *an amount of the fee established by the administrator by rule or order*.
(c) **[Status of offering.]** A registration statement filed under Section 303 or 304 must specify: (1) the amount of securities to be offered in this State; (2) the States in which a registration statement or similar record in connection with the offering has been or is to be filed; and (3) any adverse order, judgment, or decree issued in connection with the offering by a State securities regulator, the Securities and Exchange Commission, or a court.		5. § 305(c) does not require in § 305(c)(3) disclosure of an order permitting the withdrawal of a registration statement. The administrator may, however, require disclosure of this information in a registration by qualification under § 304(b)(18). 6. § 305(c), like every other provision concerned with the content of the registration statement, must be read with § 306(a)(1) which judges the accuracy and completeness of the registration statement as of its effective date. A registration statement must be kept current with changing developments until the effectiveness date, but a registration statement is not required to be amended after the effective date except to correct inaccuracies or deficiencies which existed as of the effective date. An administrator, however, separately may require under § 305(i) or (j) periodic reports or amendments to keep reasonably current the information contained in the registration statement.	1257(b)(2) & (3) and 1258(a)(3) have similar requirements.	(c) ***Status of offering.*** A registration statement filed under Section ~~*303 or 304*~~ *13 or 14, and amendments thereto,* must specify: (1) the amount of securities to be offered in this State; (2) the States in which a registration statement or similar record in connection with the offering has been or is to be filed; and (3) any adverse order, judgment, or decree issued in connection with the offering by a State securities regulator, the Securities and Exchange Commission, or a court.

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(d) [**Incorporation by reference.**] A record filed under this [Act] or the predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.		7. Under Section 305(d) incorporation by reference is permitted as a matter of administrative practice.		(d) ***Incorporation by reference.*** A record filed under this *Act* or the predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.
(e) [**Nonissuer distribution.**] In the case of a nonissuer distribution, information or a record may not be required under subsection (i) or Section 304, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense		8. § 305(e) is designed to address nonissuer offerings where the seller cannot obtain certified financial statements and other normally required records. The phrase "without unreasonable effort or expense" originated in § 10(a)(3) of the '33 Act. It is not meant to apply to expenses incidental to supplying required information required for registration in the case of a nonissuer distribution by a person in a control relationship with the issuer or otherwise having access to or contractual rights to obtain the required information. § 305(e) applies only to registration by qualification under § 304 and periodic reports for either registration by coordination or registration by qualification under § 305(i).		(e) ***Nonissuer distribution***. In the case of a nonissuer distribution, information or a record may not be required under subsection (i) or Section ~~304~~ *14, and amendments thereto*, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.
(f) [**Escrow and impoundment.**] A rule adopted or order issued under this [Act] may require as a condition of registration that a security issued within the previous five years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this State be impounded until the issuer receives a specified amount from the sale of the security either in this State or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this [Act], but the administrator may not reject a depository institution solely because of its location in another State.	1259(d) Before any authorization to sell securities shall be issued by the commissioner as herein provided, all stock or securities of any kind issued, or to be issued, for consideration less than the public offering price or for consideration other than cash may be required to be deposited in escrow according to such conditions as the commissioner shall provide by rule and regulation. See 81-7-1(c) & (e) for the current regulations governing cheap stock and impoundment.	9. § 305(f) follows the 1956 Act and RUSA and authorizes the administrator to require the impoundment of funds until the issuer receives a specified amount from the sale of the security in this State or elsewhere and to require the escrow of promotional stock until specific conditions are met. This Section is limited to a security issued within the past five years or to be issued to a promoter for a consideration substantially different from the public offering price or to a person for a consideration other than cash. The typical distribution subject to § 305(f) will be a relatively new promotional or speculative offering. § 305(f) follows the 1956 Act and RUSA and provides that the administrator may not reject a depository solely because of its location in another state.	305(f) is limited to securities held by a "promoter," which is not defined in § 102 but is defined in a NASAA SOP for corporate equity securities. 305(f) limits the look-back period to 5 years. It also authorizes impoundment as well as escrow.	(f) ***Escrow and impoundment***. A rule adopted or order issued under this *Act* may require as a condition of registration that a security issued within the previous five years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this State be impounded until the issuer receives a specified amount from the sale of the security either in this State or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this *Act*, but the administrator may not reject a depository institution solely because of its location in another State.
(g) [**Form of subscription.**] A rule adopted or order issued under this [Act] may require as a condition of registration that a security registered under this [Act] be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under [Act] or preserved for a period specified by rule or order, which may not be longer than five years.		10. § 305(g) follows the 1956 Act in authorizing the administrator to specify the form of a subscription or sale contract.	NASAA SOPs include provisions for subscription agreements and a model form was developed by the NASAA Small Business Project Group. It is available on the NASAA website, and could be adopted by reference in a regulation.	(g) ***Form of subscription.*** A rule adopted or order issued under this *Act* may require as a condition of registration that a security registered under this *Act* be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this *Act* or preserved for a period specified by the rule or order, which may not be longer than five years.
(h) [**Effective period.**] Except while a stop	1259(a) When securities are registered by	11. A sale by a nonissuer would have to be	Instead of issuing an order for each extension,	(h) ***Effective period.*** Except while a stop order

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r is in effect under Section 306, a registration statement is effective for one year after its effective date, or for any longer period designated in an order under this [Act] during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this [Act] are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the administrator.	coordination or by qualification, they may be offered and sold by a registered agent of the issuer or by any registered broker-dealer. Every registration shall remain effective for one year after its effective date unless the commissioner by rules and regulations or order extends the period of effectiveness or until terminated upon request of the registrant with the consent of the commissioner. No registration is effective while a stop order is in effect under K.S.A. 17-1260, and amendments thereto. So long as a registration remains effective, all outstanding securities of the same class shall be considered to be registered for the purpose of any nonissuer distribution. Any registration statement may be amended after its effective date so as to increase the securities specified therein as proposed to be offered. The commissioner may permit the omission of any document or item of information from any registration statement. ~~Upon completion of a registered offering a registrant shall file a final report of sales.~~ [See 305(k)]	registered under § 301 unless it is exempted or involves a federal covered security. § 202(1) exempts "isolated nonissuer transactions." When a nonissuer transaction is not exempt under § 202(1), it may still be exempted under other transaction exemptions. For the purposes of a nonissuer transaction, all outstanding securities of the same class as a registered security are considered to be registered as long as the registration statement remains effective. This means that during the effective period of a registration statement under this Act all outstanding securities of the same class can be traded by anyone, including nonissuers, as if they were registered. § 305(h) also provides that, unless the administrator determines otherwise, a registration statement cannot be withdrawn until one year after its effective date if any securities of the same class are outstanding. This is designed to protect sellers who would be unaware of a withdrawal from being subject to civil liability.	it would be more efficient to set the parameters for extensions by regulation.	is in effect under Section ~~306~~ *16, and amendments thereto,* a registration statement is effective for one year after its effective date, or for any longer period designated by rule adopted or ~~in an~~ order issued under this *Act* during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this *Act* are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the administrator.
(i) **[Periodic reports.]** While a registration statement is effective, a rule adopted or order issued under this [Act] may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.				(i) ***Periodic reports.*** While a registration statement is effective, a rule adopted or order issued under this *Act* may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.
(j) **[Posteffective amendments.]** A registration statement may be amended after its effective date. The posteffective amendment becomes effective when the administrator so orders. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a registration fee of $[__]. A posteffective amendment relates back to the date of the offering of the additional securities being registered if, within one year after the date of the sale, the amendment is filed and the additional registration fee is paid.	1259(b)(2) The commissioner may by rules and regulations set a fee not to exceed $100 for filing to amend an effective registration statement. If an application to amend increases the maximum aggregate offering price of securities to be offered in this state, an additional fee shall be paid based upon the increase in such price calculated in accordance with the rate and annual minimum and maximum fee specified in paragraph (1) of this section.	12. § 305(j) follows RUSA and a procedure limited to investment companies in the 1956 Act in allowing posteffective date amendments. Under § 305(j), when a posteffective amendment increases the number of securities to be offered or sold, an additional registration fee is required.	This subsection is problematic in various respects. For example, it would require us to issue an order to accept an amendment to a registration statement, rather than a simple acknowledgement of receipt (in practice, the registrants just ask us to send them a file-stamped copy of the cover letter to the amendment). In addition, the section should *require* an amendment if there is a material change. The last sentence is nearly incomprehensible, so substitute language should be inserted to try to accomplish the intended purpose.	(j) ***Posteffective amendments.*** A registration statement ~~may~~ shall be amended after its effective date if there are material changes in information or documents in the registration statement or if there is an increase in the aggregate amount of securities offered or sold in this state. The posteffective amendment becomes effective when the administrator ~~so orders~~ provides written notice that the amendment has been accepted. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a registration fee *based upon the increase in such price calculated in accordance with the rate and fee specified in subsection (b).* ~~A posteffective amendment relates back to the date of the offering of the additional securities being registered if, within one year after the date of the sale, the~~

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				~~amendment is filed and the additional registration fee is paid.~~ If a posteffective amendment for registration of additional securities and payment of additional fees is not filed in a timely manner, there shall be no penalty assessed if the amendment is filed and the additional registration fee is paid within one year after the date the additional securities are sold in this state.
	1259(a) …Upon completion of a registered offering a registrant shall file a final report of sales. [See 305(h)] 1259(g) Upon termination of a registration the filing of a final report as required by section (a) shall satisfy the filing requirements of subsection (m)(3) K.S.A. 17-1261, and amendments thereto.			
SECTION 306. DENIAL, SUSPENSION, AND REVOCATION OF SECURITIES REGISTRATION. (a) [**Stop orders.**] The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the administrator finds that the order is in the public interest and that:	**17-1260. Denial--Suspension or revocation of registration, when--Notice and hearing--Modification or vacation of stop order.** (a) The commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds that such an order would be in the public interest, and that:	1. This Section generally follows the 1956 Act and RUSA and applies to both registration by coordination under § 303 and registration by qualification under § 304.		**SECTION 16 ~~306. DENIAL, SUSPENSION, AND REVOCATION OF SECURITIES REGISTRATION.~~** (a) ***Stop orders.*** The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the administrator finds that the order is in the public interest and that:
(1) the registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under Section 305(j) as of its effective date, or a report under Section 305(i), is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;	(5) the statements or circulars filed are misleading, incorrect or incomplete;	2. § 306(a)(1) follows the 1956 Act and RUSA in testing the completeness and accuracy of a registration statement as of the registration statement's effective date. A registration statement that becomes misleading because of a development that occurs after its effective date is not a ground for the issuance of a stop order under 306(a)(1). An administrator, however, may require periodic reports under § 305(i) or a posteffective amendment under § 305(j), and a misleading report would be the basis of a stop order under § 306(a)(1) if it is materially inaccurate as of the date it was filed.		(1) the registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under Section ~~*305(j)*~~ *15(j), and amendments thereto*, as of its effective date, or a report under Section ~~*305(i)*~~ *15(i), and amendments thereto*, is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;
(2) this [Act] or a rule adopted or order issued under this [Act] or a condition imposed under this [Act] has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer; or a person directly or indirectly controlling or controlled by the issuer; but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an	(7) there has been a violation of any of the provisions of this act or of the orders of the commissioner of which such issuer has notice; or	3. On the meaning of "willfully," see Comment under § 508. 4. A violation by an issuer has the same consequences whether the issuer has filed a registration statement or has had a BD file it. But this is not the case when the registration statement is filed by a BD acting independently.	306(a)(2) needs to be subdivided for clarity, and the "but only if" phrase should be moved into the portion it is intended to modify.	(2) this *Act* or a rule adopted or order issued under this *Act* or a condition imposed under this *Act* has been willfully violated, in connection with the offering, by: (A) the person filing the registration statement, but only if such person is directly or indirectly controlled by or acting for the issuer; (B) ~~by~~ the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function; (C) a promoter of the issuer; ~~or~~ (D) a person directly or indirectly

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lerwriter;				controlling or controlled by the issuer~~; but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer~~; or (E) ~~by~~ an underwriter;
(3) the security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this [Act] applicable to the offering, but the administrator may not institute a proceeding against an effective registration statement under this paragraph more than one year after the date of the order or injunction on which it is based, and the administrator may not issue an order under this paragraph on the basis of an order or injunction issued under the securities act of another State unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;		5. The verb "is" at the beginning of § 306(a)(3) means that a stop order or injunction that has expired or been vacated is not the ground for action under this paragraph.	This provision allows states to bootstrap onto other stop orders.	(3) the security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this *Act* applicable to the offering, but the administrator may not institute a proceeding against an effective registration statement under this paragraph more than one year after the date of the order or injunction on which it is based, and the administrator may not issue an order under this paragraph on the basis of an order or injunction issued under the securities act of another State unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;
(4) the issuer's enterprise or method of business includes or would include activities that are unlawful where performed;	(4) the enterprise or business of the issuer, promoter or guarantor is unlawful;	6. § 306(a)(4) is not meant to apply to activity which is lawful where conducted but would be illegal if conducted in the State where the registration statement is filed.	306(a)(4) should be changed to allow us to deny a registration for a business whose activities would be unlawful in this state. E.g., we have historically denied registrations for brothels, internet gambling, etc., that are legal in some states but not Kansas.	(4) the issuer's enterprise or method of business includes or would include activities that are unlawful where performed or in this state;
(5) with respect to a security sought to be registered under Section 303, there has been a failure to comply with the undertaking required by Section 303(b)(4);		7. §§ 306(a)(5) and (6) follow the 1956 Act and RUSA.	Section 303(b)(4) requires the issuer to agree to promptly forward copies of amendments to the federal prospectus.	(5) with respect to a security sought to be registered under Section ~~*303*~~ *13, and amendments thereto*, there has been a failure to comply with the undertaking required by Section ~~*303(b)(4)*~~ *13(b)(4), and amendments thereto*;
(6) the applicant or registrant has not paid the filing fee, but the administrator shall void the order if the deficiency is corrected; or				(6) the applicant or registrant has not paid the filing fee, but the administrator shall void the order if the deficiency is corrected; or
(7) the offering: (A) will work or tend to work a fraud upon purchasers or would so operate; [or] (B) has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options[; or (C) is being made on terms that are unfair, , or inequitable].	(1) The issuer's plan of business is unfair, inequitable, dishonest or fraudulent;	8. §§ 306(a)(7) and (b) address merit regulation. [See Official Comment for development of merit regulation.] NSMIA preempts merit regulation of federal covered securities. See § 102(7). §§ 306(a)(7) and (b) take a different approach than the 1956 Act and RUSA. Subject to NSMIA, merit standards are retained but paragraph 306(b) encourages the administrator to adopt standards that provide notice of a state's merit standards. NASAA SOP's adopted by a state would provide such notice. Similarly, other	See 81-7-1(b) for current limits on commissions and 81-7-1(d) for current limits on options.	(7) the offering: (A) will work or tend to work a fraud upon purchasers or would so operate; ~~[or]~~ (B) has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options*; or* *(C) is being made on terms that are unfair, unjust, or inequitable*;

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		state rules or orders could be adopted in the future to address new types of securities as they occur. 12. As of September 2002 46 jurisdictions had adopted a form of § 306(a)(7)(A) ("will tend to work a fraud or would so operate"); 34 jurisdictions had adopted a form of § 306(a)(7)(B) ("unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoter profits or participations, or unreasonable amounts or kinds of options"); and 16 jurisdictions had adopted a form of bracketed § 306(a)(7)(C) ("terms that are unfair, unjust, or inequitable").		
	(2) the issuer's or registrant's literature or advertising is misleading and calculated to deceive the purchaser or investor; (3) the securities offered or to be offered, or issued or to be issued, in payment for property, patents, formulae, goodwill, promotion or intangible assets, are in excess of the reasonable value thereof, or the offering has been, or would be, made with unreasonable amounts of options; (6) there is a refusal to furnish information required by the commissioner within a reasonable time to be fixed by the commissioner; (8) there has been a failure to keep and maintain sufficient records to permit of an audit satisfactorily disclosing to the commissioner the true situation or condition of such issuer. 1259(c) The commissioner at the time of the granting of the authorization to sell securities as herein provided, may determine and fix the maximum amount that may be paid as or in the way of commission, advertising expense and all other expenses from the sale of such securities.		306(b) (see below) would permit us to define "unfair and inequitable" by regulation, and we could define it to include 1260(a)(2) & (3) within the regulation (and not detract from the uniformity of the statute). Current 1260(a)(6) is sufficiently addressed in 306(a)(1), which says a registration statement is materially incomplete unless information required by the administrator is provided. Current 1260(a)(8) would rarely, if ever, apply because of the requirement for independently audited financial statements. We could continue to place limitations on commissions, options, offering price, etc., under the authority of 306(b). See 81-7-1(b), (d), & (i).	
(b) [**Enforcement of subsection (a)(7).**] To the extent practicable, the administrator by rule adopted or order issued under this [Act] shall publish standards that provide notice of conduct that violates subsection (a)(7).		8. (cont'd) An order under § 306(b) can be adopted after a securities registration statement has been filed. Under § 306(b) an administrator, by rule or order, for example, could adopt a standard that would provide the basis for a stop order denying effectiveness to a development stage company that has no specific business purpose or plan or has indicated that its primary business plan is to engage in a merger or acquisition with an unidentified company, entity, or person. "Blank check offerings" are subject to Rule 419 adopted under the '33 Act. See		(b) ***Enforcement of subsection (a)(7).*** To the extent practicable, the administrator by rule adopted or order issued under this *Act* shall publish standards that provide notice of conduct that violates subsection (a)(7).

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		Comment 3 to § 202.		
(c) **[Institution of stop order.]** The administrator may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the administrator when the registration statement became effective unless the proceeding is instituted within 30 days after the registration statement became effective.		9. § 306(c) follows the 1956 Act and RUSA and allows an administrator up to 30 days after a registration statement becomes effective to institute a stop order proceeding on the basis of a fact or transaction known when the registration statement became effective. This is to avoid the necessity of an administrator issuing a stop order prematurely.	304(c) gives us 30 days to review an offering before it becomes effective. 306(c) gives us another 30 days if it becomes automatically effective, but after 60 days we can no longer stop the offering except under our general antifraud authority.	(c) ***Institution of stop order.*** The administrator may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the administrator when the registration statement became effective unless the proceeding is instituted within 30 days after the registration statement became effective.
(d) **[Summary process.]** The administrator may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the administrator shall promptly notify each person specified in subsection (e) that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator, within 30 days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.	(b) The commissioner may by emergency order postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section. Such order, even though not an order within the meaning of section 2 of the Kansas administrative procedures act, shall be subject to the same procedures as an emergency order issued under section 36 of such act. Upon the entry of such an order, the commissioner shall promptly notify the applicant or registrant, the issuer and the person on whose behalf the securities are to be or have been offered that the order has been entered and of the reasons therefor and that, upon written request, the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act.	10. §§ 306(d) and (e) assure each person subject to a stop order of notice, opportunity for a hearing, and findings of fact and conclusions of law contained in a record.		(d) ***Summary process.*** The administrator may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the administrator shall promptly notify each person specified in subsection (e) that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator, within 30 days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.
(e) **[Procedural requirements for stop order.]** A stop order may not be issued under this section without: (1) appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered; (2) an opportunity for hearing; and (3) findings of fact and conclusions of law in a record [in accordance with the state administrative procedure act].			All procedures, not just 306(e)(3), should be governed by KAPA, including service of process. The section should be renumbered accordingly.	(e) ***Procedural requirements for stop order.*** (1) A stop order may not be issued under this section without: ~~(1)~~ (A) appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered; ~~(2)~~ (B) an opportunity for hearing; and ~~(3)~~ (C) findings of fact and conclusions of law in a record. (2) Any proceeding under this section shall be done *in accordance with the state administrative procedure act.*
(f) **[Modification or vacation of stop order.]** The administrator may modify or vacate a stop order issued under this section if the administrator finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of		11. An administrator must consider the public interest when issuing a stop order and may under § 306(f) consider the public interest when modifying or vacating a stop order.		(f) ***Modification or vacation of stop order.*** The administrator may modify or vacate a stop order issued under this section if the administrator finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of

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investors.				investors.
SECTION 307. WAIVER AND MODIFICATION. The administrator may waive or modify, in whole or in part, any or all of the requirements of Sections 302, 303, and 304(b) or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to Section 305(i).		An example of a § 307 waiver would be the expedited procedure several states have adopted to coordinate with shelf registration under Rule 415 of the '33 Act. In waiving or modifying requirements the administrator must make a finding satisfying the requirements of § 605(b).		**SECTION 17 ~~307. WAIVER AND MODIFICATION.~~** The administrator may waive or modify, in whole or in part, any or all of the requirements of Sections ~~*302, 303, and 304(b)*~~ *12, 13, and 14(b), and amendments thereto*, or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to Section ~~*305(i)*~~ *15(i), and amendments thereto.*
SECTION 401. BROKER-DEALER REGISTRATION REQUIREMENT AND EXEMPTIONS. (a) **[Registration requirement.]** It is unlawful for a person to transact business in this State as a broker-dealer unless the person is registered under this [Act] as a broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d).	**17-1254. Registration required for broker-dealer, agent, investment adviser--Bond--Register--Penalty--Fees--Termination, denial, suspension, revocation or cancellation of registration--Central registration repository.** (a) It is unlawful for any person to transact business in this state as a broker-dealer or agent unless that person is registered under this act, except in transactions exempt under K.S.A. 17-1262 and amendments thereto.	1. The scope of the § 401(a) reference "to transact business in this State" is specified in § 610. "Transacts a business" has been held to mean "more than a trivial or *de minimis* business." United States v. Schwartz, 464 F.2d 499, 506 (2d Cir. 1972). 2. Under § 401(a) a person can be required to register as a securities BD only if the person transacts business in securities.	In 1254, BDs and agents are lumped together, and IAs and IARs are lumped together. USA-2002 treats them all separately, and they each have their own exemptions.	**SECTION 18 ~~401. BROKER-DEALER REGISTRATION REQUIREMENT AND EXEMPTIONS.~~** (a) ***Registration requirement.*** It is unlawful for a person to transact business in this State as a broker-dealer unless the person is registered under this *Act* as a broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d).
(b) **[Exemptions from registration.]** The following persons are exempt from the registration requirement of subsection (a):				(b) ***Exemptions from registration.*** The following persons are exempt from the registration requirement of subsection (a):
(1) a broker-dealer without a place of business in this State if its only transactions effected in this State are with:				(1) a broker-dealer without a place of business in this State if its only transactions effected in this State are with:
(A) the issuer of the securities involved in the transactions;				(A) the issuer of the securities involved in the transactions;
(B) a person registered as a broker-dealer under this [Act] or not required to be registered as a broker-dealer under this [Act];			Taken literally, the USA-2002 provision exempts all out-of-state BDs because the typical Kansas investor is "a person…not required to be registered as a BD," so the exception swallows the rule. The NASAA USA Project Group informed KSC staff that this exemption was intended to exempt out-of-state BDs who deal only with in-state BDs who are either registered or exempt from registration. The Project Group recommended the amended language to fix the problem with the exemption.	(B) a ~~person~~ broker-dealer registered ~~as a broker-dealer~~ under this *Act* or not required to be registered as a broker-dealer under this *Act*;
(C) an institutional investor;				(C) an institutional investor;
(D) a nonaffiliated federal covered investment adviser with investments under management in excess of $100,000,000 acting for account of others pursuant to discretionary ority in a signed record;		4. § 401(b)(1)(D) was added to provide relief in situations where a BD is accepting orders from a sophisticated financial professional who is making the investment decisions for its customers.		(D) a nonaffiliated federal covered investment adviser with investments under management in excess of $100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;
(E) a bona fide preexisting customer whose principal place of residence is not in this State and the person is registered as a broker-		5. Under 401(b)(1)(E) and (F) preexisting customers must be bona fide. A principal place of residence, for example, normally would be the	It is ambiguous whether the term "person" in 401(b)(1)(E) refers to the BD or the customer, so it should be identified as a BD.	(E) a bona fide preexisting customer whose principal place of residence is not in this State and the ~~person~~ broker-dealer is registered as

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ealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the State in which the customer maintains a principal place of residence;		residence where the customer spends a majority of time. These exemptions were intended to facilitate ongoing broker-customer relationships with customers who have established a second or other residence for such purposes as a winter home (i.e. "snowbirds").		a broker-dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the State in which the customer maintains a principal place of residence;
(F) a bona fide preexisting customer whose principal place of residence is in this State but was not present in this State when the customer relationship was established, if: (i) the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the State in which the customer relationship was established and where the customer had maintained a principal place of residence; and (ii) within 45 days after the customer's first transaction in this State, the person files an application for registration as a broker-dealer in this State and a further transaction is not effected more than 75 days after the date on which the application is filed, or, if earlier, the date on which the administrator notifies the person that the administrator has denied the application for registration or has stayed the pendency of the application for good cause;		3. "Bona fide" is a much construed term particularly in the U.C.C. context. See, e.g., MCC Proceeds, Inc. v. Advest, Inc., 743 N.Y.S.2d 1 (2002).		(F) a bona fide preexisting customer whose principal place of residence is in this State but was not present in this State when the customer relationship was established, if: (i) the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the State in which the customer relationship was established and where the customer had maintained a principal place of residence; and (ii) within 45 days after the customer's first transaction in this State, the person files an application for registration as a broker-dealer in this State and a further transaction is not effected more than 75 days after the date on which the application is filed, or, if earlier, the date on which the administrator notifies the person that the administrator has denied the application for registration or has stayed the pendency of the application for good cause;
(G) not more than three customers in this State during the previous 12 months, in addition to those customers specified in subparagraphs (A) through (F) and under subparagraph (H), if the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the State in which the broker-dealer has its principal place of business; and				(G) not more than three customers in this State during the previous 12 months, in addition to those customers specified in subparagraphs (A) through (F) and under subparagraph (H), if the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the State in which the broker-dealer has its principal place of business; and
(H) any other person exempted by rule adopted or order issued under this [Act]; and				(H) any other person exempted by rule adopted or order issued under this *Act*; and
(2) a person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit urance Corporation, or the Office of Thrift rvision.				(2) a person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision.
c) **[Limits on employment or association.]** It		6. § 401(c) prohibits a BD or issuer from		(c) ***Limits on employment or association.*** It is

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is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this State, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this State if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the administrator under this [Act], the Securities and Exchange Commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this [Act] may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer.		employing or associating with an individual in a capacity for which that individual has been suspended by the administrator. Violation of this provision does not result in strict liability. In order for a BD or issuer to be liable, the BD or issuer must have known or should have known of the administrator's order to the individual suspended or barred. Cf. Comment to § 412.		unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this State, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this State if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the administrator under this *Act*, the Securities and Exchange Commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this *Act* may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer.
(d) [**Foreign transactions.**] A rule adopted or order issued under this [Act] may permit: (1) a broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in this State to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by: (A) an individual from Canada or other foreign jurisdiction who is temporarily present in this State and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States; (B) an individual from Canada or other foreign jurisdiction who is present in this State and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction; or (C) an individual who is present in this State, with whom the broker-dealer customer relationship arose while the individual was porarily or permanently resident in Canada or other foreign jurisdiction; and (2) an agent who represents a broker-dealer that is exempt under this subsection to effect		7. § 401(d) recognizes the increasingly transnational nature of securities brokerage and permits, if the administrator adopts a rule or order, transactions by a Canadian or a foreign BD with a person from Canada or other foreign jurisdiction who is resident in this State. This subsection is not self-executing and is effective only if the administrator adopts a rule or order. 8. To give effect to action taken by rule or order under § 401(d), there must be a transaction registration exemption that will enable securities transactions to take place in customer accounts involving the BDs and agents contemplated in § 401(d). See §§ 202 and 203.	We have already adopted the Canadian cross-border trading order to permit this type of activity.	(d) ***Foreign transactions.*** A rule adopted or order issued under this *Act* may permit: (1) a broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in this State to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by: (A) an individual from Canada or other foreign jurisdiction who is temporarily present in this State and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States; (B) an individual from Canada or other foreign jurisdiction who is present in this State and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction; or (C) an individual who is present in this State, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction; and (2) an agent who represents a broker-dealer that is exempt under this subsection to effect

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ransactions in securities or attempt to effect the purchase or sale of securities in this State as permitted for a broker-dealer described in paragraph (1).				transactions in securities or attempt to effect the purchase or sale of securities in this State as permitted for a broker-dealer described in paragraph (1).
	(f) (1) Any violation of this section resulting in a loss of $25,000 or more, regardless of its location on the sentencing grid block, shall have a presumptive sentence of imprisonment. (2) A conviction for an intentional violation of subsection (a) through (d) resulting in a loss of $100,000 or more is a severity level 5, nonperson felony. (3) A conviction for an intentional violation of subsection (a) through (d) resulting in a loss of at least $25,000 but less than $100,000 is a severity level 6, nonperson felony. (4) A conviction for an intentional violation of subsection (a) through (d) resulting in a loss of less than $25,000 is a severity level 7, nonperson felony. (5) The provisions of this subsection shall not apply to a failure to notify the commissioner of termination of employment or association as an agent or investment adviser representative.		USA-2002 puts all criminal sanctions within Section 508.	
SECTION 402. AGENT REGISTRATION REQUIREMENT AND EXEMPTIONS. (a) **[Registration requirement.]** It is unlawful for an individual to transact business in this State as an agent unless the individual is registered under this [Act] as an agent or is exempt from registration as an agent under subsection (b).	1254(a) It is unlawful for any person to transact business in this state as a broker-dealer or agent unless that person is registered under this act, except in transactions exempt under K.S.A. 17-1262 and amendments thereto.	1. "Agent" is defined in § 102(2). The scope of the § 402(a) reference to "transact business in this State" is specified in § 610. 3. A BD in violation of § 402(a) may be disciplined under § 412 and be subject to a civil or administrative enforcement action under § 603 or 604.	The prohibitions against unregistered BD's and agents are currently together in 1254(a). USA-2002 splits them into Section 401 for unregistered BD's and Section 402 for unregistered agents.	**SECTION 19 ~~402. AGENT REGISTRATION REQUIREMENT AND EXEMPTIONS.~~** (a) ***Registration requirement.*** It is unlawful for an individual to transact business in this State as an agent unless the individual is registered under this *Act* as an agent or is exempt from registration as an agent under subsection (b).
(b) **[Exemptions from registration.]** The following individuals are exempt from the registration requirement of subsection (a):				(b) ***Exemptions from registration.*** The following individuals are exempt from the registration requirement of subsection (a):
(1) an individual who represents a broker-dealer in effecting transactions in this State limited to those described in Section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78(o)(2));			Section 15(h)(2) of the '34 Act preempts state registration of agents when their customers travel through other states or relocate to other states. 1252(b) addressed this preemption through an exclusion from the definition of "agent," but USA-2002 handles it through this exemption.	(1) an individual who represents a broker-dealer in effecting transactions in this State limited to those described in Section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78(o)(2));
(2) an individual who represents a broker-dealer that is exempt under Section 401(b) or (d);			401(b) contains the BD exemptions and 401(d) involves foreign transactions. In essence, agents are given the benefit of all the BD exemptions, plus some additional exemptions.	(2) an individual who represents a broker-dealer that is exempt under Section ~~*401*~~ *18*(b) or (d), *and amendments thereto*;
(3) an individual who represents an issuer h respect to an offer or sale of the issuer's own ities or those of the issuer's parent or any of ssuer's subsidiaries, and who is not		4. Under §§ 402(b)(3) and (5) an agent may be exempt if acting for an issuer and receiving compensation (for example, as a corporate executive), as long as the compensation is not a	This is a change of policy. In Kansas, an issuer agent may have to register, but we would probably waive the exam requirements. 402(b)(3) creates a blanket exemption for issuer agents	(3) an individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not

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compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;		commission or other remuneration based on transactions in the issuer's own securities. Such an agent could receive a salary with conventional benefits, including an annual bonus (related to his or her performance) as an executive, and still be within this exemption unless the agent is also being compensated directly or indirectly for participation in the specified securities transactions.	unless they are paid a commission.	compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;
(4) an individual who represents an issuer and who effects transactions in the issuer's securities exempted by Section 202, other than Section 202(11) and (14);			Section 202 contains the transactional exemptions. 202(11) exempts mortgage-backed securities, and 202(14) exempts limited issuer transactions (up to 25 sales per year). 402(b)(4) would allow an issuer agent to receive commissions in exempt transactions. The transactional exemptions in 1262 currently apply to agents, not just BDs.	(4) an individual who represents an issuer and who effects transactions in the issuer's securities exempted by Section ~~202~~ *7, and amendments thereto*, other than Section ~~202(11) and (14)~~ *7(11) and (14), and amendments thereto*;
(5) an individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under Section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;			Section 18(b) of the '33 Act confers federal covered security status (federal preemption) on certain securities. 18(b)(3) preempts sales to qualified purchasers. 18(b)(4)(D) defines as federal covered securities those issued under Rule 506.	(5) an individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under Section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;
(6) an individual who represents a broker-dealer registered in this State under Section 401(a) or exempt from registration under Section 401(b) in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of $100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;		5. § 402(b)(6) was added to provide relief in situations where an agent is accepting orders from a sophisticated financial professional who is making the investment decisions for its customers.		(6) an individual who represents a broker-dealer registered in this State under Section ~~401(a)~~ *18(a), and amendments thereto*, or exempt from registration under Section ~~401(b)~~ *18(b), and amendments thereto*, in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of $100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;
(7) an individual who represents an issuer in connection with the purchase of the issuer's own securities;				(7) an individual who represents an issuer in connection with the purchase of the issuer's own securities;
(8) an individual who represents an issuer d who restricts participation to performing ical or ministerial acts; or		6. Ministerial or clerical acts in 402(b)(8) might include preparing routine written communications or responding to inquiries.		(8) an individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or
(9) any other individual exempted by rule adopted or order issued under this [Act].				(9) any other individual exempted by rule adopted or order issued under this *Act*.
(c) [**Registration effective only while**	1254(b) ~~It is unlawful for any broker-dealer~~			(c) ***Registration effective only while employed***

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mployed or associated.] The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this [Act] or an issuer that is offering, selling, or purchasing its securities in this State.	~~registered under this act or issuer to employ or associate with an agent transacting business in this state unless the agent is registered under this act or engages only in transactions exempt under K.S.A. 17-1262, and amendments thereto.~~ The registration of an agent is not effective during any period when the agent is not associated with a particular broker-dealer registered under this act or a particular issuer. ~~When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make the person an agent, the agent as well as the broker-dealer or issuer shall promptly notify the commissioner.~~ [see § 408]			***or associated.*** The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this *Act* or an issuer that is offering, selling, or purchasing its securities in this State.
(d) **[Limit on employment or association.]** It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this State, to employ or associate with an agent who transacts business in this State on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) or exempt from registration under subsection (b).	1254(b) It is unlawful for any broker-dealer registered under this act or issuer to employ or associate with an agent transacting business in this state unless the agent is registered under this act or engages only in transactions exempt under K.S.A. 17-1262, and amendments thereto. ~~The registration of an agent is not effective during any period when the agent is not associated with a particular broker-dealer registered under this act or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make the person an agent, the agent as well as the broker-dealer or issuer shall promptly notify the commissioner.~~			(d) ***Limit on employment or association.*** It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this State, to employ or associate with an agent who transacts business in this State on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) or exempt from registration under subsection (b).
(e) **[Limit on affiliations.]** An individual may not act as an agent for more than one broker-dealer or one issuer at a time, unless the broker-dealer or the issuer for which the agent acts are affiliated by direct or indirect common control or are authorized by rule or order under this [Act].	81-3-1(a)(2) An agent shall not register in association with more than one broker-dealer or issuer at any one time, unless management and control of the broker-dealers or issuers are substantially identical.	7. § 402(e) limits agents to a single employment or affiliation unless a rule or order of the administrator authorizes multiple affiliations. In any event an agent must be registered or exempt from registration.	This is currently prohibited by a regulation.	(e) ***Limit on affiliations***. An individual may not act as an agent for more than one broker-dealer or one issuer at a time, unless the broker-dealer or the issuer for which the agent acts are affiliated by direct or indirect common control or are authorized by rule or order under this *Act*.
	(f) (1) Any violation of this section resulting in a loss of $25,000 or more, regardless of its location on the sentencing grid block, shall have a presumptive sentence of imprisonment. (2) A conviction for an intentional violation of subsection (a) through (d) resulting in a loss of $100,000 or more is a severity level 5, nonperson felony. (3) A conviction for an intentional violation of subsection (a) through (d) resulting in a loss of at least $25,000 but less than $100,000 is a severity level 6, nonperson felony. (4) A conviction for an intentional violation of		USA-2002 puts all criminal sanctions within Section 508.	

IFORM SECURITIES ACT	*KANSAS SECURITIES ACT*	*NCCUSL COMMENTS*	*KSC COMMENTS*	*NEW SECURITIES ACT*
	subsection (a) through (d) resulting in a loss of less than $25,000 is a severity level 7, nonperson felony. (5) The provisions of this subsection shall not apply to a failure to notify the commissioner of termination of employment or association as an agent or investment adviser representative.			
SECTION 403. INVESTMENT ADVISER REGISTRATION REQUIREMENT AND EXEMPTIONS. (a) **[Registration requirement.]** It is unlawful for a person to transact business in this State as an investment adviser unless the person is registered under this [Act] as an investment adviser or is exempt from registration as an investment adviser under subsection (b).	1254(c) It is unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless: 1254(c)(1) The person is so registered under this act; or [see (c)(2) below for exemption]	1. "Transact business in this State" is specified in § 610. 2. Excluded from the definition of IA in § 102(15)(C) is a BD who receives no special compensation for investment advisory services. Such a BD would not have to register as both a BD and IA in this State. A BD that does receive special compensation, on the other hand, would also meet the statutory definition of IA and would be required to register in both capacities.		SECTION 20 ~~403. INVESTMENT ADVISER REGISTRATION REQUIREMENT AND EXEMPTIONS.~~ (a) ***Registration requirement.*** It is unlawful for a person to transact business in this State as an investment adviser unless the person is registered under this *Act* as an investment adviser or is exempt from registration as an investment adviser under subsection (b).
(b) **[Exemptions from registration.]** The following persons are exempt from the registration requirement of subsection (a): (1) a person without a place of business in this State that is registered under the securities act of the State in which the person has its principal place of business if its only clients in this State are: (A) federal covered investment advisers, investment advisers registered under this [Act], or broker-dealers registered under this [Act]; (B) institutional investors; (C) bona fide preexisting clients whose principal places of residence are not in this State if the investment adviser is registered under the securities act of the State in which the clients maintain principal places of residence; or (D) any other client exempted by rule adopted or order issued under this [Act]; (2) a person without a place of business in this State if the person has had, during the preceding 12 months, not more than five clients that are resident in this State in addition to those specified under paragraph (1); or (3) any other person exempted by rule adopted or order issued under this [Act].	1254(c)(2) The person has no place of business in this state and: (A) The person's only clients in this state are investment companies as defined in the investment company act of 1940, other investment advisers, federal covered advisers, broker-dealers, banks, trust companies, savings institutions, insurance companies, employee benefit plans with assets of not less than $1,000,000 and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rules and regulations or order of the commissioner; or (B) During the preceding twelve-month period has had not more than five clients, other than those specified in subparagraph (A), who are residents of this state.	3. § 403(b)(2) is consistent with NSMIA which prohibits a State from regulating an IA that does not have a place of business in this State and had fewer than six clients who were state residents during the preceding 12 months.	17-1262 states: "Except as expressly provided in this section, *the following transactions shall be exempt from the registration requirements of K.S.A. 17-1254*, 17-1255, 17-1257, 17-1258, 17-1259 and 17-1260, and amendments thereto...." Technically, the 1262 exemptions apply to IA and IAR registration, even though the exemptions don't make sense in that context. The 1262 exemptions are designed for agent and BD registration rather than IA and IAR registration. USA-2002 takes a better approach, by tying the exemptions directly to the types of registration. "Institutional investor" is broadly defined in § 102.	(b) ***Exemptions from registration.*** The following persons are exempt from the registration requirement of subsection (a): (1) a person without a place of business in this State that is registered under the securities act of the State in which the person has its principal place of business if its only clients in this State are: (A) federal covered investment advisers, investment advisers registered under this *Act*, or broker-dealers registered under this *Act*; (B) institutional investors; (C) bona fide preexisting clients whose principal places of residence are not in this State if the investment adviser is registered under the securities act of the State in which the clients maintain principal places of residence; or (D) any other client exempted by rule adopted or order issued under this *Act*; (2) a person without a place of business in this State if the person has had, during the preceding 12 months, not more than five clients that are resident in this State in addition to those specified under paragraph (1); or (3) any other person exempted by rule adopted or order issued under this *Act*.
(c) **[Limits on employment or association.]** unlawful for an investment adviser, directly indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this State if the registration		4. § 403(c) prohibits an IA from employing an individual who is prohibited from such employment or association by the administrator. Violation of this provision does not result in strict liability. To be liable the IA must have known or		(c) ***Limits on employment or association.*** It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this State if the registration

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of the individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this [Act], the Securities and Exchange Commission, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the administrator, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.		should have known of the administrator's order to the individual suspended or barred.		of the individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this *Act*, the Securities and Exchange Commission, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the administrator, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.
(d) **[Investment adviser representative registration required.]** It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this [Act] as an investment adviser representative who transacts business in this State on behalf of the investment adviser unless the individual is registered under Section 404(a) or is exempt from registration under Section 404(b).	1254(d) It is unlawful for: (1) Any person required to be registered as an investment adviser under this act to employ or associate with an investment adviser representative unless the investment adviser representative is registered under this act or is exempt from registration. ~~The registration of an investment adviser representative is not effective during any period when such person is not associated with an investment adviser registered under this act;~~ or…. [see Section 405 for 1254(d)(2) prohibition for federal covered advisers.]			(d) ***Investment adviser representative registration required.*** It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this *Act* as an investment adviser representative who transacts business in this State on behalf of the investment adviser unless the individual is registered under Section ~~*404(a)*~~ *21(a), and amendments thereto*, or is exempt from registration under Section ~~*404(b)*~~ *21(b), and amendments thereto.*
	(f) (1) Any violation of this section resulting in a loss of $25,000 or more, regardless of its location on the sentencing grid block, shall have a presumptive sentence of imprisonment. (2) A conviction for an intentional violation of subsection (a) through (d) resulting in a loss of $100,000 or more is a severity level 5, nonperson felony. (3) A conviction for an intentional violation of subsection (a) through (d) resulting in a loss of at least $25,000 but less than $100,000 is a severity level 6, nonperson felony. (4) A conviction for an intentional violation of subsection (a) through (d) resulting in a loss of less than $25,000 is a severity level 7, nonperson felony. (5) The provisions of this subsection shall not apply to a failure to notify the commissioner of termination of employment or association as an agent or investment adviser representative.		USA-2002 puts all criminal sanctions within Section 508.	
CTION 404. INVESTMENT ADVISER	1254(c) It is unlawful for any person to transact	1. "Transacts business in this State" is	1254(c) contains both the IA and IAR	**SECTION 21 ~~404. INVESTMENT ADVISER~~**

IFORM SECURITIES ACT	*KANSAS SECURITIES ACT*	*NCCUSL COMMENTS*	*KSC COMMENTS*	*NEW SECURITIES ACT*
REPRESENTATIVE REGISTRATION REQUIREMENT AND EXEMPTIONS. (a) [**Registration requirement.**] It is unlawful for an individual to transact business in this State as an investment adviser representative unless the individual is registered under this [Act] as an investment adviser representative or is exempt from registration as an investment adviser under subsection (b).	business in this state as an investment adviser or as an investment adviser representative unless: 1254(c)(1) The person is so registered under this act; or [see (c)(2) above for exemptions, which apply to IAs rather than IARs.]	specified in § 610. 2. Neither the 1956 Act nor RUSA provided for registration of IARs. In recent years, the states increasingly have done so. 3. Under this Act a sole practitioner may register as an IA.... A sole practitioner is not required to register as an IAR unless the administrator requires such registration.	registration requirement. USA-2002 splits them into Section 403 for IAs and 404 for IARs. 404(a) mistakenly omits the term "representative" in the last clause.	~~**REPRESENTATIVE REGISTRATION REQUIREMENT AND EXEMPTIONS.**~~ (a) ***Registration requirement.*** It is unlawful for an individual to transact business in this State as an investment adviser representative unless the individual is registered under this *Act* as an investment adviser representative or is exempt from registration as an investment adviser representative under subsection (b).
(b) [**Exemptions from registration.**] The following individuals are exempt from the registration requirement of subsection (a): (1) an individual who is employed by or associated with an investment adviser that is exempt from registration under Section 403(b) or a federal covered investment adviser that is excluded from the notice filing requirements of Section 405; and (2) any other individual exempted by rule adopted or order issued under this [Act].			17-1262 states: "Except as expressly provided in this section, *the following transactions shall be exempt from the registration requirements of K.S.A. 17-1254*, 17-1255, 17-1257, 17-1258, 17-1259 and 17-1260, and amendments thereto...." Technically, the 1262 exemptions apply to IA and IAR registration, even though the exemptions don't make sense in that context. The 1262 exemptions are designed for agent and BD registration rather than IA and IAR registration. Because this act permits dual registration of IAR's, 402(b)(1) should not apply to an IAR who works for both an exempt and non-exempt IA.	(b) ***Exemptions from registration.*** The following individuals are exempt from the registration requirement of subsection (a): (1) an individual who is exclusively employed by or associated with an investment adviser that is exempt from registration under Section ~~*403(b)*~~ *20(b), and amendments thereto*, or a federal covered investment adviser that is excluded from the notice filing requirements of Section ~~*405*~~ *22, and amendments thereto*; and (2) any other individual exempted by rule adopted or order issued under this *Act*.
(c) [**Registration effective only while employed or associated.**] The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this [Act] or a federal covered investment adviser that has made or is required to make a notice filing under Section 405.	1254(d) ~~It is unlawful for:~~ (1) ~~Any person required to be registered as an investment adviser under this act to employ or associate with an investment adviser representative unless the investment adviser representative is registered under this act or is exempt from registration.~~ The registration of an investment adviser representative is not effective during any period when such person is not associated with an investment adviser registered under this act;		1254(d) does not extend to notice filing federal covered IAs. 404(c) corrects this oversight.	(c) ***Registration effective only while employed or associated.*** The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this *Act* or a federal covered investment adviser that has made or is required to make a notice filing under Section ~~*405*~~ *22, and amendments thereto*.
(d) [**Limit on affiliations.**] An individual may transact business as an investment adviser representative for more than one investment adviser or federal covered investment adviser unless a rule adopted or order issued under this [Act] prohibits or limits an individual from acting as an investment adviser representative for more than one investment adviser or federal covered investment adviser.				(d) ***Limit on affiliations.*** An individual may transact business as an investment adviser representative for more than one investment adviser or federal covered investment adviser unless a rule adopted or order issued under this *Act* prohibits or limits an individual from acting as an investment adviser representative for more than one investment adviser or federal covered investment adviser.
(e) [**Limits on employment or association.**] It unlawful for an individual acting as an stment adviser representative, directly or ...irectly, to conduct business in this State on behalf of an investment adviser or a federal covered investment adviser if the registration of		4. § 404(e) prohibits an IAR from association with a federal covered IA when such association is prohibited by an order of the administrator. Unlike similar provisions in §§ 401 and 403, there is no culpability requirement that the IAR "knows or in the exercise of reasonable care		(e) ***Limits on employment or association.*** It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this State on behalf of an investment adviser or a federal covered investment adviser if the registration of the

UNIFORM SECURITIES ACT	*KANSAS SECURITIES ACT*	*NCCUSL COMMENTS*	*KSC COMMENTS*	*NEW SECURITIES ACT*
he individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this [Act], the Securities and Exchange Commission, or a self-regulatory organization. Upon request from a federal covered investment adviser and for good cause, the administrator, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.		should have known" of a suspension or bar because the order should be received by the IAR. As with §§ 401 and 403, the administrator may waive this prohibition.		individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this *Act*, the Securities and Exchange Commission, or a self-regulatory organization. Upon request from a federal covered investment adviser and for good cause, the administrator, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.
(f) **[Referral fees.]** An investment adviser registered under this [Act], a federal covered investment adviser that has filed a notice under Section 405, or a broker-dealer registered under this [Act] is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this [Act], a federal covered investment adviser who has filed a notice under Section 405, or a broker-dealer registered under this [Act] with which the individual is employed or associated as an investment adviser representative.		5. The administrator may adopt rules or orders under § 404(f) in accordance with § 605. The SEC has adopted a rule that addresses referral fees in Rule 206(4)-3 of the IA Act. 6. For a state that intends to extend § 404(f) to those BDs and IAs who are not required to register and those federal covered IAs not required to file a notice, this subsection should read: (f) **[Referral Fees.]** An IA registered under this *act*, a federal covered IA that has filed a notice under § 405, or a BD registered under this *act* is not required to employ or associate with an individual as an IAR if the only compensation paid to the individual for a referral of investment advisory clients is paid to an IA registered under this *act*, or not required to register under this *act*, a federal covered investment who has filed a notice under Section 405 or is not required to file a notice under Section 405, or a BD registered under this *act* or not required to register under this *act* with which the individual is employed or associated as an IAR.		(f) ***Referral fees.*** An investment adviser registered under this *Act*, a federal covered investment adviser that has filed a notice under Section ~~*405*~~ *22, and amendments thereto*, or a broker-dealer registered under this *Act* is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this *Act*, a federal covered investment adviser who has filed a notice under Section ~~*405*~~ *22, and amendments thereto*, or a broker-dealer registered under this *Act* with which the individual is employed or associated as an investment adviser representative.
	(f) (1) Any violation of this section resulting in a loss of $25,000 or more, regardless of its location on the sentencing grid block, shall have a presumptive sentence of imprisonment. (2) A conviction for an intentional violation of subsection (a) through (d) resulting in a loss of $100,000 or more is a severity level 5, nonperson felony. (3) A conviction for an intentional violation of subsection (a) through (d) resulting in a loss of at		USA-2002 puts all criminal sanctions within Section 508.	

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	least $25,000 but less than $100,000 is a severity level 6, nonperson felony. (4) A conviction for an intentional violation of subsection (a) through (d) resulting in a loss of less than $25,000 is a severity level 7, nonperson felony. (5) The provisions of this subsection shall not apply to a failure to notify the commissioner of termination of employment or association as an agent or investment adviser representative.			
SECTION 405. FEDERAL COVERED INVESTMENT ADVISER NOTICE FILING REQUIREMENT. (a) [**Notice filing requirement.**] Except with respect to a federal covered investment adviser described in subsection (b), it is unlawful for a federal covered investment adviser to transact business in this State as a federal covered investment adviser unless the federal covered investment adviser complies with subsection (c). (b) [**Notice filing requirement not required.**] The following federal covered investment advisers are not required to comply with subsection (c): (1) a federal covered investment adviser without a place of business in this State if its only clients in this State are: (A) federal covered investment advisers, investment advisers registered under this [Act], and broker-dealers registered under this [Act]; (B) institutional investors; (C) bona fide preexisting clients whose principal places of residence are not in this State; or (D) other clients specified by rule adopted or order issued under this [Act]; (2) a federal covered investment adviser without a place of business in this State if the person has had, during the preceding 12 months, not more than five clients that are resident in this State in addition to those specified under paragraph (1); and (3) any other person excluded by rule adopted or order issued under this [Act].	1254(e) Except with respect to federal covered advisers whose only clients are those described in paragraph (2) of subsection (c) of this section, it is unlawful for any federal covered adviser to conduct advisory business in this state unless [see Section 405(c) & (d) below] ~~such person files with the commissioner such documents as have been filed with the securities and exchange commission together with a consent to service of process, and pays an initial and renewal notice filing fee, if the commissioner by rules and regulations or order requires. Each notice filing under this section shall be effective from its original filing date and expire on December 31 each year, unless renewed.~~ [Note: 1254(c)(2) states the following: (2) The person has no place of business in this state and: (A) The person's only clients in this state are investment companies as defined in the investment company act of 1940, other investment advisers, federal covered advisers, broker-dealers, banks, trust companies, savings institutions, insurance companies, employee benefit plans with assets of not less than $1,000,000 and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rules and regulations or order of the commissioner; or (B) During the preceding twelve-month period has had not more than five clients, other than those specified in subparagraph (A), who are residents of this state.]	1. No prior provision. "Federal covered investment adviser" is defined in § 102(6). The scope of the § 405(a) reference to "transacts business in this State" is specified in § 610. 2. § 405(b)(2) is necessitated by NSMIA and is intended to coordinate this Act with the IA Act.	405(b) basically says that, if a small IA would not have to register under these circumstances (see 403(b)) a federal covered IA should not have to file a notice.	**SECTION 22 ~~405. FEDERAL COVERED INVESTMENT ADVISER NOTICE FILING REQUIREMENT.~~** (a) ***Notice filing requirement.*** Except with respect to a federal covered investment adviser described in subsection (b), it is unlawful for a federal covered investment adviser to transact business in this State as a federal covered investment adviser unless the federal covered investment adviser complies with subsection (c). (b) ***Notice filing requirement not required.*** The following federal covered investment advisers are not required to comply with subsection (c): (1) a federal covered investment adviser without a place of business in this State if its only clients in this State are: (A) federal covered investment advisers, investment advisers registered under this *Act*, and broker-dealers registered under this *Act*; (B) institutional investors; (C) bona fide preexisting clients whose principal places of residence are not in this State; or (D) other clients specified by rule adopted or order issued under this *Act*; (2) a federal covered investment adviser without a place of business in this State if ~~the person~~ it has had, during the preceding 12 months, not more than five clients that are resident in this State in addition to those specified under paragraph (1); and (3) any other person excluded by rule adopted or order issued under this *Act*.
:) [**Notice filing procedure.**] A person acting a federal covered investment adviser, not excluded under subsection (b), shall file a notice, a consent to service of process complying with	1254(e) [see above.] ~~Except with respect to federal covered advisers whose only clients are those described in paragraph (2) of subsection (c) of this section, it is unlawful for any federal~~			(c) ***Notice filing procedure.*** A person acting as a federal covered investment adviser, not excluded under subsection (b), shall file a notice, a consent to service of process complying with

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Section 611, and such records as have been filed with the Securities and Exchange Commission under the Investment Advisers Act of 1940 required by rule adopted or order issued under this [Act] and pay the fees specified in Section 410(e).	~~covered adviser to conduct advisory business in this state~~ unless such person files with the commissioner such documents as have been filed with the securities and exchange commission together with a consent to service of process, and pays an initial and renewal notice filing fee, if the commissioner by rules and regulations or order requires….			Section ~~611~~ *50, and amendments thereto*, and such records as have been filed with the Securities and Exchange Commission under the Investment Advisers Act of 1940 required by rule adopted or order issued under this *Act* and pay the fees specified in Section ~~410(e)~~ *27(e), and amendments thereto.*
(d) **[Effectiveness of filing.]** The notice under subsection (c) becomes effective upon its filing.	1254(e) [see above] …Each notice filing under this section shall be effective from its original filing date and expire on December 31 each year, unless renewed.		405(d) fails to require an annual renewal of the notice filing. 410(e) provides for an initial and annual renewal fee.	(d) ***Effectiveness of filing.*** The notice under subsection (c) becomes effective upon its filing, and shall expire on December 31 each year, unless renewed.
	1254(d) It is unlawful for: (1) [see Section 403(d)(1) above.] (2) Any federal covered adviser to employ, or associate with an investment adviser representative having a place of business located in this state, unless such investment adviser representative is registered under this act, or is exempt from registration. ~~When an investment adviser representative described in paragraphs (1) or (2) begins or terminates employment or association with an investment adviser or federal covered adviser, the investment adviser or federal covered adviser shall promptly notify the commissioner.~~ [see § 408] (f) (1) Any violation of this section resulting in a loss of $25,000 or more, regardless of its location on the sentencing grid block, shall have a presumptive sentence of imprisonment. (2) A conviction for an intentional violation of subsection (a) through (d) resulting in a loss of $100,000 or more is a severity level 5, nonperson felony. (3) A conviction for an intentional violation of subsection (a) through (d) resulting in a loss of at least $25,000 but less than $100,000 is a severity level 6, nonperson felony. (4) A conviction for an intentional violation of subsection (a) through (d) resulting in a loss of less than $25,000 is a severity level 7, nonperson felony. (5) The provisions of this subsection shall not apply to a failure to notify the commissioner of termination of employment or association as an agent or investment adviser representative.		Currently 1254(f) makes it criminal for a federal covered IA to employ or associate with an unregistered IAR, but 1254(f) doesn't apply if a federal covered IA does business in Kansas without filing a notice. USA-2002 says the latter is "unlawful" in 405(a), but doesn't even address the former.	
CTION 406. REGISTRATION BY ROKER-DEALER, AGENT, INVESTMENT	1254(g) A broker-dealer, agent, investment adviser or investment adviser representative may	1. Under § 406(a), the administrator is authorized to accept standardized forms such as	406(a) accommodates filing through the CRD and IARD using a uniform process.	**SECTION 23 ~~406. REGISTRATION BY BROKER-DEALER, AGENT, INVESTMENT~~**

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ADVISER, AND INVESTMENT ADVISER REPRESENTATIVE. (a) **[Application for initial registration.]** A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with Section 611, and paying the fee specified in Section 410 and any reasonable fees charged by the designee of the administrator for processing the filing. The application must contain: (1) the information or record required for the filing of a uniform application; and (2) upon request by the administrator, any other financial or other information or record that the administrator determines is appropriate.	be registered after filing with the commissioner, or the commissioner's designee as permitted by subsection (p), a written application containing such relevant information and in such form as the commissioner may require. The applicant shall be registered if the commissioner finds that the applicant and, if applicable, the officers, directors or partners are of good character and reputation, that the applicant's knowledge of the securities business and the applicant's financial responsibility are such that the applicant is suitable to engage in the business, that the applicant has supplied all information required by the commissioner and that the applicant has paid the necessary fee. ~~The commissioner may require as a condition of registration that the applicant and any officers, directors or partners or, in the case of an investment adviser, any persons who represent or will represent the investment adviser in doing or performing any acts or functions which make such person an investment adviser pass a written examination as evidence of knowledge of the securities business.~~ [See Section 412(e).] In determining the character and reputation of the applicant, the commissioner may take into consideration any criminal conviction of such person.	Form B-D for BDs; Form U-4 for agents and IARs; and Form ADV for IAs, which are filed today through such designees as the Web-CRD or the Investment Adviser Registration Depository (IARD). While this Act generally encourages uniformity, §§ 406(a) and (e) are intended to give the administrator authority to augment or waive disclosure requirements in appropriate cases. 2. § 406(a) eliminates the listing of specified information delineated in § 202 of the 1956 Act. As with RUSA § 205, the intent is to facilitate coordination with widely used standardized forms. 3. Under this Act a single person may act both as an agent and IAR if the person satisfies applicable registration requirements to be both an agent and IAR.	406(a) removes our ability to challenge an applicant for bad character or reputation, financial irresponsibility, etc.	~~**ADVISER, AND INVESTMENT ADVISER REPRESENTATIVE.**~~ (a) ***Application for initial registration.*** A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with Section ~~*611*~~ *50, and amendments thereto*, and paying the fee specified in Section ~~*410*~~ *27, and amendments thereto*, and any reasonable fees charged by the designee of the administrator for processing the filing. The application must contain: (1) the information or record required for the filing of a uniform application; and (2) upon request by the administrator, any other financial or other information or record that the administrator determines is appropriate.
(b) **[Amendment.]** If the information or record contained in an application filed under subsection (a) is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.				(b) ***Amendment.*** If the information or record contained in an application filed under subsection (a) is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.
(c) **[Effectiveness of registration.]** If an order is not in effect and a proceeding is not pending under Section 412, registration becomes effective at noon on the 45th day after a completed application is filed, unless the registration is denied. A rule adopted or 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 completing the application.			The common practice is to send a deficiency letter to an applicant to try to resolve problems before a formal order of denial. Applicants would certainly prefer an informal deficiency letter instead of a formal denial, so this practice should be accommodated in the statute or a regulation.	(c) ***Effectiveness of registration.*** If an order is not in effect and a proceeding is not pending under section ~~*412*~~ *29, and amendments thereto*, registration becomes effective at noon on the 45th day after a completed application is filed, unless the registration is denied 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. A rule adopted or 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 completing the application.
(d) **[Registration renewal.]** A registration is effective until midnight on December 31 of the	1254(k) ~~The commissioner shall maintain records of registration, notice filings and orders~~			(d) ***Registration renewal.*** A registration is effective until midnight on December 31 of the

UNIFORM SECURITIES ACT	KANSAS SECURITIES ACT	NCCUSL COMMENTS	KSC COMMENTS	NEW SECURITIES ACT
year for which the application for registration is filed. Unless an order is in effect under Section 412, 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 paying the fee specified in Section 410, and by paying costs charged by the designee of the administrator for processing the filings.	~~pertaining to broker-dealers, agents, investment advisers, federal covered advisers, and investment advisers representatives.~~ [See Section 607.] Unless the commissioner has designated alternative registration expiration dates as permitted by subsection (p), every registration under this section shall expire December 31 each year, but any registration for the succeeding year shall be renewed upon written application and payment of the fee as herein provided without filing a further statement or furnishing any further information unless specifically required by the commissioner. Unless the commissioner has designated alternative registration renewal dates as permitted by subsection (p), application for renewals must be made not later than December 31 in each year; otherwise, they shall be treated as original applications.			year for which the application for registration is filed. Unless an order is in effect under Section ~~412~~ *29, and amendments thereto*, 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 paying the fee specified in Section ~~410~~ *27, and amendments thereto*, and by paying costs charged by the designee of the administrator for processing the filings.
(e) [**Additional conditions or waivers.**] A rule adopted or order issued under this [Act] may impose such other conditions, not inconsistent with the National Securities Markets Improvement Act of 1996. An order issued 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 of investors.				(e) ***Additional conditions or waivers.*** A rule adopted or order issued under this *Act* may impose ~~such~~ other conditions~~,~~ not inconsistent with the National Securities Markets Improvement Act of 1996. An order issued 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 of investors.
SECTION 407. SUCCESSION AND CHANGE IN REGISTRATION OF BROKER-DEALER OR INVESTMENT ADVISER. (a) [**Succession.**] A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration pursuant to Section 401 or 403 or a notice pursuant to Section 405 for the unexpired portion of the current registration or notice filing.		1. § 407 is intended to avoid unnecessary interruptions of business by specifying procedures for a successor BD or IA; a BD or IA to maintain its registration if it changes its form of organization or name; or, in accordance with a rule or order adopted under this Act, a change of control of a BD or IA. 2. There is no filing fee under § 407.		**SECTION 24 ~~407. SUCCESSION AND CHANGE IN REGISTRATION OF BROKER-DEALER OR INVESTMENT ADVISER.~~** (a) ***Succession.*** A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration pursuant to Section ~~401 or 403~~ *18 or 20, and amendments thereto*, or a notice pursuant to Section ~~405~~ *22, and amendments thereto*, for the unexpired portion of the current registration or notice filing.
(b) [**Organizational change.**] A broker-dealer investment adviser that changes its form of nization or State of incorporation or anization may continue its registration by				(b) ***Organizational change.*** A broker-dealer or investment adviser that changes its form of organization or State of incorporation or organization may continue its registration by

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filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this [Act]. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under this [Act] shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within 45 days after filing its amendment to effect succession.				filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this *Act*. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under this *Act* shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within 45 days after filing its amendment to effect succession.
(c) [**Name change.**] A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.				(c) ***Name change.*** A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.
(d) [**Change of control.**] A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or order issued under this [Act].				(d) ***Change of control.*** A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or order issued under this *Act*.
SECTION 408. TERMINATION OF EMPLOYMENT OR ASSOCIATION OF AGENT AND INVESTMENT ADVISER REPRESENTATIVE AND TRANSFER OF EMPLOYMENT OR ASSOCIATION. (a) [**Notice of termination.**] If an agent registered under this [Act] terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this [Act] terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, ɛr, investment adviser, or federal covered ɛstment adviser has not filed the notice, the registrant may do so.	1254(b) …When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make the person an agent, the agent as well as the broker-dealer or issuer shall promptly notify the commissioner. [see § 402(c)] 1254(d)(2) …When an investment adviser representative described in paragraphs (1) or (2) begins or terminates employment or association with an investment adviser or federal covered adviser, the investment adviser or federal covered adviser shall promptly notify the commissioner.	1. Under §§ 402(c) and 404(c) registration of an agent or IAR is effective only while the agent or IAR is employed by or associated with a BD, issuer, or IA, as may be the case. § 408(a) specifies a procedure to inform the administrator of a notice of termination.		**SECTION 25 ~~408. TERMINATION OF EMPLOYMENT OR ASSOCIATION OF AGENT AND INVESTMENT ADVISER REPRESENTATIVE AND TRANSFER OF EMPLOYMENT OR ASSOCIATION.~~** (a) ***Notice of termination.*** If an agent registered under this *Act* terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this *Act* terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant may do so.
(b) [**Transfer of employment or association.**]		2. To expedite transfer to a new BD or IA, §	This section contains several grammatical and	(b) ***Transfer of employment or association.*** If

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If an agent registered under this [Act] terminates employment by or association with a broker-dealer registered under this [Act] and begins employment by or association with another broker-dealer registered under this [Act]; or if an investment adviser representative registered under this [Act] terminates employment by or association with an investment adviser registered under this [Act]; or, if a federal covered investment adviser, who has filed a notice under Section 405 and begins employment by or association with another investment adviser registered under this [Act]; or if a federal covered investment adviser, who has filed a notice under Section 405, upon the filing by or on behalf of the registrant, within 30 days after the termination, of an application for registration that complies with the requirement of Section 406(a) and payment of the filing fee required under Section 410, the registration of the agent or investment adviser representative, is: (1) immediately effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record does not contain a new or amended disciplinary disclosure within the previous 12 months; or (2) temporarily effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record contains a new or amended disciplinary disclosure within the preceding 12 months.		408(b) provides a procedure by which agents or IAR registration will be effective immediately as of the date of new employment when there is no new or added disciplinary disclosure in the relevant CRD or IARD records. Both electronic systems are currently administered by the NASD. § 408(d) is intended to ensure that the administrator has the authority to prevent immediate effectiveness in appropriate cases.	punctuation errors.	an agent registered under this *Act* terminates employment by or association with a broker-dealer registered under this *Act* and begins employment by or association with another broker-dealer registered under this *Act*; or if an investment adviser representative registered under this *Act* terminates employment by or association with an investment adviser registered under this *Act*~~;~~ or~~, if~~ a federal covered investment adviser~~,~~ who has filed a notice under Section ~~*405*~~ *22, and amendments thereto*, and begins employment by or association with another investment adviser registered under this *Act*~~;~~ or ~~if~~ a federal covered investment adviser~~,~~ who has filed a notice under Section ~~*405*~~ *22, and amendments thereto*, <u>then</u> upon the filing by or on behalf of the registrant, within 30 days after the termination, of an application for registration that complies with the requirement of Section ~~*406(a)*~~ *23(a), and amendments thereto*, and payment of the filing fee required under Section ~~*410*~~ *27, and amendments thereto*, the registration of the agent or investment adviser representative~~,~~ is: (1) immediately effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record does not contain a new or amended disciplinary disclosure within the previous 12 months; or (2) temporarily effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record contains a new or amended disciplinary disclosure within the preceding 12 months.
(c) [**Withdrawal of temporary registration.**] The administrator may withdraw a temporary registration if there are or were grounds for discipline as specified in Section 412 and the administrator does so within 30 days after the filing of the application. If the administrator does not withdraw the temporary registration within the 30 day period, registration becomes automatically effective on the 31st day after				(c) ***Withdrawal of temporary registration.*** The administrator may withdraw a temporary registration if there are or were grounds for discipline as specified in Section ~~*412*~~ *29, and amendments thereto*, and the administrator does so within 30 days after the filing of the application. If the administrator does not withdraw the temporary registration within the 30 day period, registration becomes automatically

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filing.				effective on the 31st day after filing.
(d) [**Power to prevent temporary registration.**] The administrator may prevent the effectiveness of a transfer of an agent or investment adviser representative under subsection (b)(1) or (2) based on the public interest and the protection of investors.			The deletion of "temporary" was recommended by the NASAA USA Project Group.	(d) ***Power to prevent ~~temporary~~ registration.*** The administrator may prevent the effectiveness of a transfer of an agent or investment adviser representative under subsection (b)(1) or (2) based on the public interest and the protection of investors.
(e) [**Termination of registration or application for registration.**] If the administrator determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule adopted or order issued under this [Act] may require the registration be canceled or terminated or the application denied. The administrator may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.	1254(o) The commissioner may cancel the registration or application in accordance with the provisions of the Kansas administrative procedure act, if the commissioner finds that any registrant or applicant for registration is: (1) no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser or investment adviser representative; (2) an adjudged incapacitated person; or (3) cannot be located after reasonable search.		A regulation is unnecessary because the grounds for cancellation are clearly stated in the statute.	(e) ***Termination of registration or application for registration.*** The administrator may cancel a registration or deny an application for registration in accordance with the provisions of the Kansas administrative procedure act if the administrator ~~determines~~ finds that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located~~, a rule adopted or order issued under this *Act* may require the registration be canceled or terminated or the application denied~~. The administrator may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.
SECTION 409. WITHDRAWAL OF REGISTRATION OF BROKER-DEALER, AGENT, INVESTMENT ADVISER, AND INVESTMENT ADVISER REPRESENTATIVE. Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective 60 days after the filing of the application to withdraw or within any shorter period as provided by rule adopted or order issued under this [Act] unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by rule adopted or order issued under this [Act]. The administrator may institute a revocation or suspension proceeding under Section 412 within one year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.		1. This section generally follows the 1956 Act § 204(e) and RUSA § 214. This section does not affect any applicant's privilege of withdrawal of an application from registration before the registration becomes effective. It is simply designed to prevent withdrawal of an effective registration under fire. The last sentence preserves the ability of the administrator to initiate an action under § 412 when the administrator does not know of a reason to object to withdrawal until after withdrawal has become effective. 2. Ordinarily today a registrant will file a standardized form such as Form U-5, BD-W or ADV-W to withdraw registration.		**SECTION 26 ~~409. WITHDRAWAL OF REGISTRATION OF BROKER-DEALER, AGENT, INVESTMENT ADVISER, AND INVESTMENT ADVISER REPRESENTATIVE.~~** Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective 60 days after the filing of the application to withdraw or within any shorter period as provided by rule adopted or order issued under this *Act* unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by rule adopted or order issued under this *Act*. The administrator may institute a revocation or suspension proceeding under Section ~~*412*~~ *29, and amendments thereto*, within one year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.

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SECTION 410. FILING FEES. (a) **[Broker-dealers.]** A person shall pay a fee of $[___] when initially filing an application for registration as a broker-dealer and a fee of $[___] when filing a renewal of registration as a broker-dealer. If the filing results in a denial or withdrawal, the administrator shall retain $[___] of the fee. (b) **[Agents.]** The fee for an individual is $[___] when filing an application for registration as an agent, a fee of $[___] when filing a renewal of registration as an agent, and a fee of $[___] when filing for a change of registration as an agent. If the filing results in a denial or withdrawal, the administrator shall retain $[___] of the fee. (c) **[Investment advisers.]** A person shall pay a fee of $[___] when filing an application for registration as an investment adviser and a fee of $[___] when filing a renewal of registration as an investment adviser. If the filing results in a denial or withdrawal, the administrator shall retain $[___] of the fee. (d) **[Investment adviser representatives.]** The fee for an individual is $[___] when filing an application for registration as an investment adviser representative, a fee of $[___] when filing a renewal of registration as an investment adviser representative, and a fee of $[___] when filing a change of registration as an investment adviser representative. If the filing results in a denial or withdrawal, the administrator shall retain $[___] of the fee. (e) **[Federal covered investment advisers.]** A federal covered investment adviser required to file a notice under Section 405 shall pay an initial fee of $[___] and an annual notice fee of $[___].	1254(l) The fee for original or renewal registration of each broker-dealer and each investment adviser shall be not more than $300. The fee for an original or renewal notice filing of each federal covered adviser shall be not more than $300. The fee for original or renewal registration of each agent and investment adviser representative shall be not more than $50. Each fee for original registration shall be payable with the application for original registration and each fee for renewal of registration shall be payable with the application for renewal and, in either case, the fee shall not be returned if the application is withdrawn. The commissioner shall establish such fees by rules and regulations.	1. Each state should determine the appropriate fee for each type of registration and for each type of renewal, denial, or withdrawal of a registration. 3. If a State prefers to have the fees in this section established by rule, amend this section to read as follows, inserting the appropriate reference to the State's administrative procedure act: **[SECTION 410. FILING FEES.** (a) **[Fee established by administrator.]** The administrator shall establish fees by rule pursuant to the [state administrative procedure act] for: (1) an initial filing of an application as a BD and renewal of an application by a BD for registration, but, if the filing results in a denial or withdrawal, the administrator shall retain an amount of the fee established by the administrator; (2) an application for registration as an agent and renewal of registration as an agent, but, if the filing results in a denial or withdrawal, the administrator shall retain an amount of the fee established by the administrator; (3) an application for registration as an IA and renewal of registration as an IA, but, if the filing results in a denial or withdrawal, the administrator shall retain an amount of the fee established by the administrator. (4) an application for registration as an IAR, a renewal of registration as an IAR, and a change of registration as an IAR, but, if the filing results in a denial or withdrawal, the administrator shall retain an amount of the fee established by the administrator; and (5) an initial fee and annual notice fee for a federal covered investment adviser required to file a notice under § 405. (b) **[Payment.]** A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order provides under this *act*. [(c) **[Dual agent/IAR.]** An IAR who is registered as an agent under Section 402 and who represents a person that is both	The authority for agent and IAR fees is currently capped at $50. Those fee caps are raised to $100 in HB 2347, although the actual fees are set by regulation so the increase will not take effect unless the regulations are amended to increase the fees. The BD and IA fees caps are unchanged in HB 2347.	SECTION 27 ~~410. FILING FEES.~~ (a) The administrator shall establish fees by regulation, subject to the following limitations: ~~(a)~~ (1) ***Broker-dealers.*** A person shall pay a fee of *not more than $300* when initially filing an application for registration as a broker-dealer and ~~a fee of $[___]~~ when filing a renewal of registration as a broker-dealer. If the filing results in a denial or withdrawal, the administrator shall retain ~~$[___] of~~ the fee. ~~(b)~~ (2) ***Agents***. The fee for an individual is *not more than $100* when filing an application for registration as an agent, ~~a fee of $[___]~~ when filing a renewal of registration as an agent, and ~~a fee of $[___]~~ when filing for a change of registration as an agent. If the filing results in a denial or withdrawal, the administrator shall retain ~~$[___] of~~ the fee. ~~(c)~~ (3) ***Investment advisers.*** A person shall pay a fee of *not more than $300* when filing an application for registration as an investment adviser and ~~a fee of $[___]~~ when filing a renewal of registration as an investment adviser. If the filing results in a denial or withdrawal, the administrator shall retain ~~$[___] of~~ the fee. ~~(d)~~ (4) ***Investment adviser representatives.*** The fee for an individual is *not more than $100* when filing an application for registration as an investment adviser representative, ~~a fee of $[___]~~ when filing a renewal of registration as an investment adviser representative, and ~~a fee of $[___]~~ when filing a change of registration as an investment adviser representative. If the filing results in a denial or withdrawal, the administrator shall retain ~~$[___] of~~ the fee. ~~(e)~~ (5) ***Federal covered investment advisers.*** A federal covered investment adviser required to file a notice under Section ~~405~~ *22, and amendments thereto*, shall pay an initial fee ~~of $[___]~~ and an annual notice fee of *not more than $300*.

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		registered as a BD under Section 401 and registered as an IA under Section 403 or required as a federal covered IA to make a notice filing under Section 405 is not required to pay an initial or annual registration fee for registration as an IAR.]		
(f) [**Payment.**] A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order provides under this [Act].				~~(f)~~ (b) ***Payment.*** A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order provides under this *Act*.
[(g) **[Dual agent/investment adviser representative.]** An investment adviser representative who is registered as an agent under Section 402 and who represents a person that is both registered as a broker-dealer under Section 401 and registered as an investment adviser under Section 403 or required as a federal covered investment adviser to make a notice filing under Section 405 is not required to pay an initial or annual registration fee for registration as an investment adviser representative.]		2. Each state should determine whether it wishes to remove the brackets from § 410(g) and charge a single fee for dually registered agents and IARs.	We currently do not charge a single fee for dually registered agents and IARs. This provision would decrease our fee revenues.	~~[(g) [Dual agent/investment adviser representative.] An investment adviser representative who is registered as an agent under Section 402 and who represents a person that is both registered as a broker-dealer under Section 401 and registered as an investment adviser under Section 403 or required as a federal covered investment adviser to make a notice filing under Section 405 is not required to pay an initial or annual registration fee for registration as an investment adviser representative.]~~
SECTION 411. POSTREGISTRATION REQUIREMENTS. (a) [**Financial requirements.**] Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued under this [Act] may establish minimum financial requirements for broker-dealers registered or required to be registered under this [Act] and investment advisers registered or required to be registered under this [Act].	1254(h) The commissioner may, by rules or regulations or order, require a minimum capital for registered broker-dealers, subject to the limitations of section 15 of the securities exchange act of 1934, and establish minimum financial requirements for investment advisers, subject to the limitations of section 222 of the investment advisers act of 1940, which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over the same and those investment advisers who do not.	1. §§ 411(a) through (c) and (e) through (f) implicitly refer to "capital, custody, margin, financial responsibility, making and keeping records, bonding, or financial or operational reporting requirements." Under NSMIA, States may not impose such requirements on covered BDs and IAs greater than those specified in § 15(h) of the '34 Act and § 222 of the Investment Advisors Act of 1940. 2. Minimum financial requirements must be maintained during the entire time a person is registered and not merely at the time of the registration.	§ 15(h) of the '34 Act and § 222 of the IA Act say that states' recordkeeping requirements, margin and custody rules, etc., can't be any more strict than the federal rules.	**SECTION 28 ~~411. POSTREGISTRATION REQUIREMENTS.~~** (a) ***Financial requirements.*** Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued under this *Act* may establish minimum financial requirements for broker-dealers registered or required to be registered under this *Act* and investment advisers registered or required to be registered under this *Act*.
(b) [**Financial reports.**] Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222(b) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a broker-dealer registered or required to be registered under this [Act] and an investment adviser registered or required to be registered under this [Act] shall file such financial reports as are required by a rule adopted or order issued under this [Act]. If the information contained in a record filed under this subsection becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.		3. The duty in § 411(b) to correct or update information is limited to material information which a reasonable investor would continue to consider important in deciding whether to purchase or sell securities.		(b) ***Financial reports.*** Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222(b) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a broker-dealer registered or required to be registered under this *Act* and an investment adviser registered or required to be registered under this *Act* shall file such financial reports as are required by a rule adopted or order issued under this *Act*. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

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(c) [**Recordkeeping.**] Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22): (1) a broker-dealer registered or required to be registered under this [Act] and an investment adviser registered or required to be registered under this [Act] shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by rule adopted or order issued under this [Act]; (2) broker-dealer records required to be maintained under paragraph (1) may be maintained in any form of data storage acceptable under Section 17(a) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78q(a)) if they are readily accessible to the administrator; and (3) investment adviser records required to be maintained under paragraph (1) may be maintained in any form of data storage required by rule adopted or order issued under this [Act].	1254(j)(1) Every registered broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books and other records as the commissioner prescribes by rules and regulations or order, subject to the limitations provided by section 15 of the securities exchange act of 1934, in the case of a broker-dealer, and section 222 of the investment advisers act of 1940, in the case of an investment adviser. All records so required with respect to an investment adviser, shall be preserved for such period as the commissioner prescribes by rules and regulations or order.	4. § 411(c)(1) authorizes the administrator to require all records to be preserved for the period the administrator prescribes by rule or order. 5. Rule 17a-4 is the current rule under § 17(a) of the Securities Exchange Act referred to in § 411(c)(2) that addresses acceptable forms of data storage.		(c) ***Recordkeeping.*** Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22): (1) a broker-dealer registered or required to be registered under this *Act* and an investment adviser registered or required to be registered under this *Act* shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by rule adopted or order issued under this *Act*; (2) broker-dealer records required to be maintained under paragraph (1) may be maintained in any form of data storage acceptable under Section 17(a) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78q(a)) if they are readily accessible to the administrator; and (3) investment adviser records required to be maintained under paragraph (1) may be maintained in any form of data storage required by rule adopted or order issued under this *Act*.
(d) [**Audits or inspections.**] The records of a broker-dealer registered or required to be registered under this [Act] and of an investment adviser registered or required to be registered under this [Act] are subject to such reasonable periodic, special, or other audits or inspections by a representative of the administrator, within or without this State, as the administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The administrator may copy, and remove for audit or inspection copies of, all records the administrator reasonably considers necessary or appropriate to conduct the audit or inspection. The administrator may assess a reasonable charge for conducting an audit or inspection under this subsection.	1270(d) The books and records of every person issuing or guaranteeing any securities subject to the provisions of this act and of every broker-dealer, agent, investment adviser or investment adviser representative registered under this act shall, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors, be subject at any time, or from time to time, to such periodic or special examinations by the commissioner, or such accountant or examiner as the commissioner may determine. The commissioner may require the person, broker-dealer or investment adviser subject to the examination to reimburse the agency for all reasonable costs of the examination. For the purpose of avoiding unnecessary duplication of examinations, the commissioner may cooperate with other proper authorities.	6. The administrator's power to copy and examine records in § 411(d) is subject to all applicable privileges. The power in § 411(d) to conduct audits or inspections is distinguishable from the administrator's enforcement powers under § 602. No subpoena is necessary under § 411(d). Failure to submit to a reasonable audit or inspection is a violation of this Act which may result in an action by the administrator under § 412(d)(8), a criminal prosecution under § 508, or an injunction under § 603. An unreasonable audit, inspection or demand for information or documents would be subject to challenge in an appropriate court.	1270(d) gives us the authority to audit issuers. 411(d) does not contain that authority, and it should be amended to reinstate it. Otherwise, we will not be able to audit Kansas-based Rule 506 issuers. Unlike 1270(d), 411(d) does not explicitly contain authority to audit agents or IARs. 411(d) does not explicitly authorize joint exams, but that is authorized in 608(c). 411(d) specifically permits unannounced exams.	(d) ***Audits or inspections.*** The records of ~~a broker-dealer registered or required to be registered under this *Act* and of an investment adviser registered or required to be registered under this *Act*~~ every person issuing or guaranteeing any securities subject to the provisions of this Act and of every broker-dealer, agent, investment adviser or investment adviser representative registered or required to be registered under this Act are subject to such reasonable periodic, special, or other audits or inspections by a representative of the administrator, within or without this State, as the administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The administrator may copy, and remove for audit or inspection copies of, all records the administrator reasonably considers necessary or appropriate to conduct the audit or inspection. The administrator may assess a reasonable charge for conducting an audit or inspection under this subsection.
) [**Custody and discretionary authority** **d or insurance.**] Subject to Section 15(h) of	1254(i) The commissioner may, by rules or regulations or order, require registered broker-		1254(i) allows the Commissioner to require agents as well as BDs to post a bond. 411(e)	(e) ***Custody and discretionary authority bond or insurance.*** Subject to Section 15(h) of the

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the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued under this [Act] may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount not to exceed $[___]. The administrator may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this [Act] whose net capital exceeds, or of an investment adviser registered under this [Act] whose minimum financial requirements exceed, the amounts required by rule or order under this [Act]. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in Section 509(j)(2).	dealers, agents and investment advisers who have custody of or discretionary authority over clients funds or securities, to post bonds in amounts as the commissioner may prescribe, subject to the limitations of section 15 of the securities and exchange act of 1934 for broker-dealers and section 222 of the investment advisers act of 1940 for investment advisers, and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. No bond may be required of any registrant whose net capital, or, in the case of an investment adviser, whose minimum financial requirements exceeds the amounts required by the commissioner. Every bond shall provide for suit thereon by an person who has a cause of action under K.S.A. 17-1268, and amendments thereto, and, if the commissioner by rules and regulations or order requires, by any person who has a cause of action not arising under this act. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time limitations provided by law.		doesn't extend to agents. 1254(i) doesn't set a limit on the amount of the bond. 411(e) doesn't explicitly permit a cash deposit in lieu of a bond, but that provision could be adopted in the regulations.	Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued under this *Act* may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security ~~in an amount not to exceed $[___]~~. The administrator may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this *Act* whose net capital exceeds, or of an investment adviser registered under this *Act* whose minimum financial requirements exceed, the amounts required by rule or order under this *Act*. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in Section ~~*509(j)(2)*~~ *38(j)(2), and amendments thereto.*
(f) **[Requirements for custody.]** Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this [Act] may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.		7. § 411(f) broadens 1956 Act § 102(c) and RUSA § 215 to apply to agents as well as IARs. Subject to § 15(h) of the '34 Act and § 222 of the IA Act of 1940, the administrator is given broad authority to prohibit, limit, or condition custody arrangements.		(f) ***Requirements for custody.*** Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this *Act* may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.
(g) **[Investment adviser brochure rule.]** With respect to an investment adviser registered or required to be registered under this [Act], a rule ed or order issued under this [Act] may re that information or other record be furnished or disseminated to clients or prospective clients in this State as necessary or	1254(j)(2) With respect to investment advisers, the commissioner may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the commissioner, information furnished to clients or	8. § 411(g) parallels Rule 204-3, adopted under the IA Act, popularly known as the brochure rule, which authorizes the SEC to require dissemination to IA clients of specified information about the IA and investment advice.	411(g) doesn't include the second sentence of 1254(j)(2), but it can be adopted as part of a regulation.	(g) ***Investment adviser brochure rule.*** With respect to an investment adviser registered or required to be registered under this *Act*, a rule adopted or order issued under this *Act* may require that information or other record be furnished or disseminated to clients or prospective clients in this State as necessary or

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propriate in the public interest and for the protection of investors and advisory clients.	prospective clients of an investment adviser that would be in compliance with the investment advisers act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement.			appropriate in the public interest and for the protection of investors and advisory clients.
(h) [**Continuing education.**] A rule adopted or order issued under this [Act] may require an individual registered under Section 402 or 404 to participate in a continuing education program approved by the Securities and Exchange Commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this [Act] may require continuing education for an individual registered under Section 404.				(h) ***Continuing education.*** A rule adopted or order issued under this *Act* may require an individual registered under Section ~~*402 or 404*~~ *19 or 21, and amendments thereto*, to participate in a continuing education program approved by the Securities and Exchange Commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this *Act* may require continuing education for an individual registered under Section ~~*404*~~ *21, and amendments thereto.*
SECTION 412. DENIAL, REVOCATION, SUSPENSION, WITHDRAWAL, RESTRICTION, CONDITION, OR LIMITATION OF REGISTRATION. (a) [**Disciplinary conditions-applicants.**] If the administrator finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this [Act] may deny an application, or may condition or limit registration: (1) of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative, and (2) if the applicant is a broker-dealer or investment adviser, of any partner, officer, director, person having a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser. (b) [**Disciplinary conditions – registrants.**] If the administrator finds that the order is in the public interest and subsection (d) authorizes the action an order issued under this [Act] may revoke, suspend, condition, or limit the registration of a registrant and if the registrant is a broker-dealer or investment adviser, 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 nsion proceeding under this subsection d on an order issued by another State that is	1254(m) The commissioner may by order deny, suspend or revoke the registration of any broker-dealer, agent, investment adviser or investment adviser representative if the commissioner finds that such an order is in the public interest and that the applicant or registrant, or, in the case of a broker-dealer or investment adviser, any partner, officer or director or any person occupying a similar status or performing similar functions: [see 1254(m)(1) – (13) below]	1. § 412 generally follows § 204 of the 1956 Act and §§ 207 and 212-213 of RUSA, but has been modified to reflect subsequent developments that have broadened the scope and remedies of counterpart federal and state statutes. 2. § 412 authorizes the administrator to seek a sanction based on the seriousness of the misconduct. Under § 412 the administrator must prove that the denial, revocation, suspension, cancellation, withdrawal, restriction, condition, or limitation both is (1) in the public interest and (2) involves one of the enumerated grounds in § 412(d). The "public interest" is a much litigated concept that has come to have settled meanings. The public interest will not require imposition of a sanction for every minor or technical violation of subsection (d). 4. § 412(a) through (c) authorizes the administrator to proceed against an entire firm, regardless of whether the administrator proceeds against any individual, when an individual partner, officer, or director or person occupying a similar status or performing similar functions, or a controlling person is disciplined under subsection (d), but only if proceeding against the entire firm is in the public interest. The discipline of such an individual may not automatically be used against a BD or IA. When, however, there is a failure to reasonably supervise, see § 412(d)(9) or control person liability, see § 412(h), the administrator is empowered to proceed against a firm in an appropriate case. In § 412, "any partner, officer,	Official Comment 4 says "§ 412(a) through (c) authorizes the administrator to proceed against an entire firm…when an individual partner, officer, or…controlling person is disciplined under subsection (d)." The proposed text of 412(a)(2), (b) & (c) does not accomplish this purpose. The literal reading of 412(a)(2) says: "an order issued under this Act may deny an application, or may condition or limit registration…of any partner, officer, director…." Similarly, 412(b) says: "an order issued under this Act may revoke, suspend, condition, or limit the registration of…any partner, officer, or director…. Likewise, 412(c) makes all the officers and directors subject to fines and censure whenever an order is entered against the firm. 412(a) through (c) do *not* say that the firm can be sanctioned for a problem of a control person—in fact, they have the opposite effect. 1254(m) currently achieves the objective stated by the USA-2002 drafters, so 412 should be amended to more closely parallel 1254(m). 412(b)(1) puts a new time limit of one year on our ability to bootstrap onto other state orders.	**SECTION 29** ~~**412. DENIAL, REVOCATION, SUSPENSION, WITHDRAWAL, RESTRICTION, CONDITION, OR LIMITATION OF REGISTRATION.**~~ (a) ***Disciplinary conditions-applicants.*** ~~If the administrator finds that the order is in the public interest and subsection (d) authorizes the action,~~ An order issued under this *Act* may deny an application, or may condition or limit registration~~:~~ ~~(1)~~ of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative 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 applicant or, ~~and (2)~~ if the applicant is a broker-dealer or investment adviser, ~~of~~ against any partner, officer, director, person having a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser. (b) ***Disciplinary conditions – registrants.*** ~~If the administrator finds that the order is in the public interest and subsection (d) authorizes the action~~ 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, ~~and~~ 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

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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.		or director, any person occupying a similar status or performing similar function." can include a branch manager, assistant branch manager, or other supervisor.		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 subsection (d)(1) through (6), (8), (9), (10), or (12) and (13) authorizes the action, an order under this [Act] may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of $[___] for a single violation or $[___] for several violations on a registrant and if the registrant is a broker-dealer or investment adviser, any partner, officer, or director, any person having similar functions or any person directly or indirectly controlling the broker-dealer or investment adviser.	1266a(c) If the commissioner reasonably believes that a person has violated this act or a rule and regulation or order of the commissioner under this act, the commissioner, in addition to any specific power granted under this act, after notice and hearing in an administrative proceeding, unless the right to notice and hearing is waived by the person against whom the sanction is imposed, may: (1) Censure the person if the person is a registered broker-dealer, agent, investment adviser or investment adviser representative; or (2) issue an order against an applicant, registered person or other person who knowingly violates this act or a rule or order of the commissioner under this act, imposing a civil penalty up to a maximum of $25,000 for each violation. 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 commissioner may impose an additional penalty not to exceed $15,000 for each such violation; (3) bar or suspend the person from association with a broker-dealer or investment adviser registered in this state; or (4) issue an order requiring the person to pay restitution for any loss arising from the violation or requiring the person to disgorge any profits arising from the violation. Such order may include the assessment of interest not to exceed		USA-2002 splits the sanctions for registrants into Section 412(c) and the sanctions for non-registrants into Section 604. Under 604, non-registrants are only subject to cease & desist orders, fines, and costs. We recently obtained the authority to order disgorgement and restitution against registrants and non-registrants. We commonly enter cease and desist orders, as well as restitution and disgorgement orders, against registrants. They should be added to the list of potential sanctions against registrants. 412(c) contains the same problem discussed above regarding control person liability. See 412(a)(2) and (b). For violations of 412(d)(7), (11) & (14), the only sanction authorized by 412 would be suspension or revocation under 412(b). The $25,000/$1,000,000 fine levels reflect a compromise with SIA. The fine per violation was increased in L. 2003, ch. 117, effective July 1, 2003, but a cap for multiple violations was not instituted. The interest rate has been reduced from 15% in current law to the judgment interest rate.	(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), ~~or~~ (12) ~~and~~ or (13) ~~authorizes the action, an order under this *Act* may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of $[___] for a single violation or $[___] for several violations on a registrant and~~ 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 $25,000 for each violation. 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; (4) an order requiring the registrant to pay restitution for any loss or disgorge any profits

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	15% per annum from the date of the violation.			arising from a violation, including, in the administrator's discretion, the assessment of interest from the date of the violation at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto; (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:				(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 an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;	1254(m)(1) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;	5. In § 412(d)(1) the completeness and accuracy of an effective application for registration is tested as of the appropriate effective date. An application that becomes incomplete or inaccurate after its effective date is not a ground for discipline under paragraph (d)(1). In an appropriate case, an action might be available under paragraph (d)(2) and § 406(b). On the other hand, in a proceeding to deny effectiveness to a pending application for registration, the completeness and accuracy of the application is not limited to the effective date and can be judged on any date after filing.		(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 an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;
(2) willfully violated or willfully failed to comply with this [Act] or the predecessor act or a rule adopted or order issued under this [Act] or the predecessor act within the previous 10 years;	1254(m)(2) has willfully violated or willfully failed to comply with any provision of this act or any rules and regulations or order under this act;	6. The term "willfully" in § 412(d)(2) and (11)(A) is discussed in Comment 2 to § 508.	412(d)(2) puts a 10 year limit on this provision.	(2) willfully violated or willfully failed to comply with this *Act* or the predecessor act or a rule adopted or order issued under this *Act* or the predecessor act within the previous 10 years;
(3) has been convicted of a felony or within the previous 10 years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;	1254(m)(3) has been convicted, within the past 10 years, of any misdemeanor involving a security or any aspect of the securities business or of any felony if the commissioner determines, after investigation, that such person has not been sufficiently rehabilitated to warrant the public trust;	7. There is no time limit or statute of limitations on felony convictions in § 412(d)(3) as a ground for disciplinary action.	412(d)(3) creates a lifetime ban for felonies and adds insurance- & banking-related misdemeanors to the grounds for revocation.	(3) has been convicted of a felony or within the previous 10 years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;
(4) is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this [Act] or the predecessor act, a State, the Securities and Exchange Commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a ness involving securities, commodities, stments, franchises, insurance, banking, or nance;	1254(m)(4) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice as an investment adviser, broker-dealer, or as an affiliated person or employee of an investment company, depository institution, insurance company, or involving any aspect of the securities business or commodities investment business;	8. The present tense of the verb "is" in §§ 412(d)(4) through (6) and (12) means that an injunction, order, adjudication, or determination that has expired or been vacated is no longer a ground for discipline.	412(d)(4) requires the injunctive action to be initiated by a regulator. Under 1254(m)(4), an injunction brought by an investor could create grounds for suspension or revocation.	(4) is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this *Act* or the predecessor act, a State, the Securities and Exchange Commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

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(5) is the subject of an order, issued after notice and opportunity for hearing by: (A) the securities, depository institution, insurance, or other financial services regulator of a State or by the Securities and Exchange Commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative; (B) the securities regulator of a State or by the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser; (C) the Securities and Exchange Commission or by a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization; (D) a court adjudicating a United States Postal Service fraud order; (E) the insurance regulator of a State denying, suspending, or revoking the registration of an insurance agent; or (F) a depository institution regulator suspending or barring a person from the depository institution business;	1254(m)(6) is the subject of an order entered within the past five years by the securities administrator of any other state or by the securities and exchange commission denying, suspending or revoking registration as a broker-dealer, agent, investment adviser or investment adviser representative, or the substantial equivalent of those terms as defined in this act, or is the subject of an order of the securities and exchange commission suspending or expelling the person from a national securities exchange or national securities association registered under the federal securities exchange act of 1934, or is the subject of an order by the commodities futures trading commission denying, suspending or revoking registration under the commodities exchange act, or is the subject of an order suspending or expelling from membership in or association with a member of a self-regulatory organization registered under the securities exchange act of 1934 or the commodities exchange act, or is the subject of a United States post office fraud order; but the commissioner may not enter any order under this clause on the basis of an order under any other state act unless that order was based on facts which would currently constitute a ground for an order under this section;	9. In §§ 412(d)(5) and (6) the administrator is not required to prove the validity of the ground which led to the earlier disciplinary order.	Under 412(d)(5)(A) & (B), the order must be based on conduct that would violate our act if it had happened here. See 412(b)(2). 412(d)(5) is much broader than 1254(m)(6). It allows us to bootstrap onto orders by insurance and banking regulators, postal service fraud orders, and <u>any</u> order by a securities administrator or the SEC against a registrant. Theoretically, then, if Missouri issues a C&D, we can bootstrap onto it for a revocation. 412(d)(5) removes the 5 year limit in 1254(m)(6).	(5) is the subject of an order, issued after notice and opportunity for hearing by: (A) the securities, depository institution, insurance, or other financial services regulator of a State or by the Securities and Exchange Commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative; (B) the securities regulator of a State or by the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser; (C) the Securities and Exchange Commission or by a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization; (D) a court adjudicating a United States Postal Service fraud order; (E) the insurance regulator of a State denying, suspending, or revoking the registration of an insurance agent; or (F) a depository institution regulator suspending or barring a person from the depository institution business;
(6) is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodity Futures Trading Commission; the Federal Trade Commission; a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a State that the person willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities law of a State, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;				(6) is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Trade Commission, a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a State that the person willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities law of a State, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;
7) is insolvent, either because the person's ..ies exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the administrator may not	1254(m)(8) in the case of a broker-dealer or investment adviser, is insolvent, either in the sense that such person's liabilities exceed such person's assets or in the sense that such person	10. Under § 412(d)(7) the administrator may not proceed against a BD or IA firm on the basis of the insolvency of a partner, officer, director, controlling person or other person specified in		(7) is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the administrator may not

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enter an order against an applicant or registrant under this paragraph without a finding of insolvency as to the applicant or registrant;	cannot meet such person's obligations as they mature;	subsection (b), unless it is a sole proprietorship.		enter an order against an applicant or registrant under this paragraph without a finding of insolvency as to the applicant or registrant;
(8) refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under Section 411(d) or refuses access to a registrant's office to conduct an audit or inspection under Section 411(d);	1254(m)(10) is failing to keep or maintain sufficient records to permit an audit disclosing the condition of the registrant's business; 1254(m)(13) has willfully and without cause failed to comply with a request for information by the commissioner or person designated by the commissioner in conducting investigations or examinations under this act.	11. § 412(d)(8) can be violated by a refusal to cooperate with an administrator's reasonable audit or inspection, including by withholding or concealing records, refusing to furnish required records, or refusing the administrator reasonable access to any office or location within an office to conduct an audit or inspection under this Act. However, a request by a person subject to an audit or inspection for a reasonable delay to obtain assistance of counsel does not constitute a violation of § 412(d)(8).	412(d)(8) is good, but we need to also keep old 1254(m)(10) to prevent the registrants from avoiding audits by simply failing to keep records. We also need to keep 1254(m)(13) because it gives us leverage for investigations of customer complaints where we might not be conducting a formal or on-site audit.	(8) refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under Section ~~411(d)~~ *28(d), and amendments thereto*, ~~or~~ refuses access to a registrant's office to conduct an audit or inspection under Section ~~411(d)~~ *28(d), and amendments thereto*, fails to keep or maintain sufficient records to permit an audit disclosing the condition of the registrant's business, or fails willfully and without cause to comply with a request for information by the administrator or person designated by the administrator in conducting investigations or examinations under this Act;
(9) has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this [Act] or the predecessor act or a rule adopted or order issued under this [Act] or the predecessor act within the previous 10 years;	1254(m)(12) has failed reasonably to supervise an agent, investment adviser representative or employee to ensure compliance with this act; or	12. The term "failed to supervise reasonably" in § 412(d)(9) includes not having reasonable supervisory procedures in place as well as a proper system of supervision and internal control. § 15(b)(4)(E) of the '34 Act similarly addresses "failure to supervise reasonably."	412(d)(9) requires an actual underlying violation by the supervised person. 1254(m)(12) would theoretically give us grounds to sanction poor supervisory practices that could potentially lead to violations. 412(d)(9) also establishes a new 10 year limit.	(9) has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this *Act* or the predecessor act or a rule adopted or order issued under this *Act* or the predecessor act within the previous 10 years;
(10) has not paid the proper filing fee within 30 days after having been notified by the administrator of a deficiency, but the administrator shall vacate an order under this paragraph when the deficiency is corrected;	1254(m)(11) has failed to pay the proper registration fee; but the commissioner may not enter a revocation order under this clause, and the commissioner shall vacate any denial order entered under this clause when the deficiency has been corrected;		412(d)(10) allows us to revoke for non-payment of fees.	(10) has not paid the proper filing fee within 30 days after having been notified by the administrator of a deficiency, but the administrator shall vacate an order under this paragraph when the deficiency is corrected;
(11) after notice and opportunity for a hearing, has been found within the previous 10 years: (A) by a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated; (B) to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or (C) to have been suspended or expelled from membership by or participation in a securities exchange or securities association		3. The term "foreign" means a jurisdiction outside of the United States, not a different state within the United States.	This is a new provision.	(11) after notice and opportunity for a hearing, has been found within the previous 10 years: (A) by a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated; (B) to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or (C) to have been suspended or expelled from membership by or participation in a securities exchange or securities association

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operating under the securities laws of a foreign jurisdiction;				operating under the securities laws of a foreign jurisdiction;
(12) is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a State;			This is a significant expansion of our ability to bootstrap.	(12) is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a State;
(13) has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years; or	1254(m)(7) has engaged in dishonest or unethical practices in the securities business;	13. The term "dishonest and unethical practices" in § 412(d)(13) has been held not to be unconstitutionally vague. Ministerial or clerical violations of a statute or rule, if immaterial and occurring without intent or recklessness, typically would not constitute dishonest or unethical practices.	This is another significant expansion of our authority.	(13) has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years; or
(14) is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this paragraph if the individual has successfully completed all examinations required by subsection (e). The administrator may require an applicant for registration under Section 402 or 404 who has not been registered in a State within the two years preceding the filing of an application in this State to successfully complete an examination.	1254(m)(9) is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, but the commissioner may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both;	14. Under the counterparts to § 412(d)(14) and (e) applicants to become agents of BDs typically take standardized tests administered by the National Association of Securities Dealers, Inc.	412(d)(14) is more limited than old 1254(m)(9), particularly when a person passes his or her exams.	(14) is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this paragraph if the individual has successfully completed all examinations required by subsection (e). The administrator may require an applicant for registration under Section ~~*402 or 404*~~ *19 or 21, and amendments thereto*, who has not been registered in a State within the two years preceding the filing of an application in this State to successfully complete an examination.
	1254(m)(5) is the subject of an order of the commissioner denying, suspending or revoking registration as a broker-dealer, agent, investment adviser or investment adviser representative;		This is covered in 412(d)(5)(A).	
(e) [**Examinations.**] A rule adopted or order issued under this [Act] may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this [Act] may waive, in whole or in part, an examination as to an individual and a rule adopted under this [Act] may waive, in whole or in part, an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.	1254(g) …The commissioner may require as a condition of registration that the applicant and any officers, directors or partners or, in the case of an investment adviser, any persons who represent or will represent the investment adviser in doing or performing any acts or functions which make such person an investment adviser pass a written examination as evidence of knowledge of the securities business….		412(e) is written different than 1254(g), but 412(e) would allow us flexibility to adopt regulations to set forth whatever examination requirements we deem appropriate.	(e) ***Examinations.*** A rule adopted or order issued under this *Act* may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this *Act* may waive, in whole or in part, an examination as to an individual and a rule adopted under this *Act* may waive, in whole or in part, an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.
(f) [**Summary process.**] The administrator may suspend or deny an application summarily;	1254(n) The commissioner may by emergency order suspend registration pending final	15. §§ 412(f) and (g) amplify the earlier procedures found in § 204(f) of the 1956 Act and	412(f) requires a hearing within 15 days. That is not feasible in a small agency without an in-	(f) ***Summary process.*** ~~The administrator may~~ In accordance with the Kansas administrative

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strict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator within 30 days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.	determination of any proceeding under this section. Upon the entry of any order under this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, that it has been entered and of the reasons therefore and that upon written request the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act.	are intended to facilitate summary disciplinary proceedings, when these are appropriate.	house hearing officer. Instead, we should refer to the KAPA provisions. 77-537(b) sets forth similar types of requirements for emergency procedures, but without the 15 day deadline.	procedure act, the administrator may use summary or emergency proceedings to suspend or deny an application ~~summarily~~; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty or cease and desist order on a registrant before final determination of an administrative proceeding. ~~Upon the issuance of an order, the administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing.~~ If a hearing is not requested and none is ordered by the administrator within 30 days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.
(g) [**Procedural requirements.**] An order issued may not be issued under this section, except under subsection (f), without: (1) appropriate notice to the applicant or registrant; (2) opportunity for hearing; and (3) findings of fact and conclusions of law in a record [in accordance with the state administrative procedure act].				(g) ***Procedural requirements.*** (1) An order issued may not be issued under this section, except under subsection (f), without: ~~(1)~~ (A) appropriate notice to the applicant or registrant; ~~(2)~~ (B) opportunity for hearing; and ~~(3)~~ (C) findings of fact and conclusions of law in a record. (2) Proceedings under this subsection shall be conducted *in accordance with the Kansas administrative procedures act.*
(h) [**Control person liability.**] A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under subsections (a) through (c) to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.			This is new, although it probably doesn't add much that we don't already have under "failure to supervise."	(h) ***Control person liability.*** A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under subsections (a) through (c) to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.
(i) [**Limit on investigation or proceeding.**] The administrator may not institute a proceeding under subsection(a), (b), or (c) based solely on terial facts actually known by the administrator s an investigation or the proceeding is tuted within one year after the administrator		16. § 412(i) parallels the language of § 204 of the 1956 Act and § 212(b) of RUSA with some significant changes. The time period in which the administrator can act has been extended to one year from 30 days in the 1956 Act and 90 days in RUSA. The limitation on instituting a proceeding	412(i) is a significant restriction of our authority because it puts a new time limit on the initiation of administration actions. If something falls through the cracks, this could impair our ability to bring enforcement action. Therefore, if this creates a significant problem, we should	(i) ***Limit on investigation or proceeding.*** The administrator may not institute a proceeding under subsection (a), (b), or (c) based solely on material facts actually known by the administrator unless an investigation or the proceeding is instituted within one year after the administrator

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actually acquires knowledge of the material facts.		can also be tolled by instituting a formal investigation. The addition of the word "solely" is intended to make it clear that an administrator may consider the prior history of an applicant or registrant even if that prior history had been known to the administrator for more than one year if there are additional material facts which are actually known to the administrator within the last year. 17. "Actually known" in § 412(i) is used to signify that the mere filing of material facts in the CRD or IARD systems does not constitute actual knowledge, unless that information was received by the administrator, or, but for a decision by the administrator, would have been received by the administrator.	reconsider this provision in the future.	actually acquires knowledge of the material facts.
SECTION 501. GENERAL FRAUD. It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly: (1) to employ a device, scheme, or artifice to defraud; (2) to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading; or (3) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.	**17-1253. Unlawful acts in connection with offer, sale or purchase of securities--Qualifications--"Assignment" defined--Penalty.** (a) It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly: (1) To employ any device, scheme or artifice to defraud; (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or (3) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.	1. § 501, which was § 101 in the 1956 Act, was modeled on Rule 10b-5 and on § 17(a) of the '33 Act, but is not identical to either. 3. § 501 applies to any securities offer, sale or purchase, including offers, sales, or purchases involving registered, exempt, or federal covered securities. It would also apply to a rescission offer under § 510. 5. Because § 501, like Rule 10b-5, reaches market manipulation, this Act does not include RUSA § 502 re: market manipulation. 6. The culpability required to be pled or proved under § 501 is addressed in the relevant enforcement context. See, e.g., § 508, criminal penalties, where "willfulness" must be proven; § 509, civil liabilities, which includes a reasonable care defense; or civil and administrative enforcement actions under §§ 603 and 604, where no culpability is required to be pled or proven. 7. There is no private cause of action, express or implied, under § 501. See 509(m).	"*The* statement" in 501(2) seems to imply that the omission must be tied to an untrue statement. Historically, it has been considered fraudulent to omit material facts about an investment, even though everything that is actually said is true—in other words, securities fraud includes the failure to tell the *whole* truth. To avoid the potential for misinterpretation of the meaning, "the statement" should be changed to "a statement."	**SECTION 30 ~~501. GENERAL~~ ~~SECURITIES FRAUD.~~** It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly: (1) to employ a device, scheme, or artifice to defraud; (2) to make an untrue statement of a material fact, or ~~to~~ omit to state a material fact necessary in order to make ~~the~~ a statement made, in the light of the circumstances under which it is made, not misleading; or (3) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.
	1253(f)(1) Any violation of this section resulting in a loss of $25,000 or more, regardless of its location on the sentencing grid block, shall have a presumptive sentence of imprisonment. (2) A conviction for an intentional violation of this section resulting in a loss of $100,000 or more is a severity level 4, nonperson felony. (3) A conviction for an intentional violation of this section resulting in a loss of at least $25,000 but less than $100,000 is a severity level 5, nonperson felony.		USA-2002 puts all penalty provisions in Section 508.	

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	(4) A conviction for an intentional violation of this section resulting in a loss of less than $25,000 is a severity level 7, nonperson felony.			
SECTION 502. PROHIBITED CONDUCT IN PROVIDING INVESTMENT ADVICE. (a) [**Fraud in providing investment advice.**] It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities: (1) to employ a device, scheme, or artifice to defraud another person; or (2) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person. (b) [**Rules defining fraud.**] A rule adopted under this [Act] may define an act, practice, or course of business of an investment adviser or an investment adviser representative, other than a supervised person of a federal covered investment adviser, as fraudulent, deceptive, or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, other than supervised persons of a federal covered investment adviser, from engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.	1253(b) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise: (1) To employ any device, scheme or artifice to defraud the other person; (2) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon the other person; (3) to knowingly sell any security to or purchase any security from a client while acting as a principal for such person's own account without disclosing to such client in writing before the completion of such transaction the capacity in which the person is acting and obtaining the consent of the client to such transaction; (4) to knowingly effect any sale or purchase of any security for the account of a client while acting as a broker for a person other than such client without disclosing to such client in writing before the completion of such transaction the capacity in which the person is acting and obtaining the consent of the client to the transaction; and (5) to engage in any dishonest or unethical practice as the commissioner may define by rule or regulation. The prohibitions of subsections (3) and (4) shall not apply to any transaction with a customer of a broker-dealer if such broker-dealer is not acting as an investment adviser in relation to such transaction. 1253(d) In the solicitation of clients of a person described in subsection (b), it is unlawful for any person to make any untrue statement of material fact, or to omit to state a material fact necessary in order to make the statement made, in light of the circumstances under which the statement is made, not misleading. 1253(e) It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if: (1) The commissioner by rules and regulations prohibits custody; or	1. § 502(a) applies to any person that commits fraud in providing investment advice. § 502(b) is not limited to persons registered as IAs or IARs. 2. A person can violate both § 501 and § 502 if the person violates § 502 in connection with the offer, purchase, or sale of a security. 3. The rulemaking authority under §§ 502(b) and (c) would provide the basis for existing NASAA rules concerning IAs, to the extent these rules are not preempted by NSMIA. 4. Under § 203A(b)(2) of the IA Act States retain their authority to investigate and bring enforcement actions with respect to fraud or deceit against a federal covered IA or a person associated with a federal covered investment adviser. Under § 502(a), which applies to any person, a State could bring an enforcement action against a federal covered investment adviser, including a federal covered investment adviser excluded from the definition of IA in § 102(15)(E). 5. There is no private cause of action, express or implied, under § 502. § 509(m) expressly provides that only § 509 provides for a private cause of action for prohibited conduct in providing investment advice that could violate § 502.	1253(f) treats all violations of 1253 the same as fraud. If we move 1253(b)(3)-(5), (d), and (e) into a general regulation, the punishment could come under the general provision for violating a regulation, currently a level 7 felony in 17-1267. Or, in the alternative, we could adopt a regulation under 502(b) that defines those violations as fraudulent practices, and they would continue to carry the criminal penalties for fraud under 502(a).	SECTION 31 ~~502. PROHIBITED CONDUCT IN PROVIDING INVESTMENT ADVICE.~~ (a) ***Fraud in providing investment advice.*** It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities: (1) to employ a device, scheme, or artifice to defraud another person; or (2) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person. (b) ***Rules defining fraud.*** A rule adopted under this *Act* may define an act, practice, or course of business of an investment adviser or an investment adviser representative, other than a supervised person of a federal covered investment adviser, as fraudulent, deceptive, or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, other than supervised persons of a federal covered investment adviser, from engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.

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	(2) in the absence of such rules and regulations, the investment adviser fails to notify the commissioner that such adviser has or may have custody. 1253(f)(1) Any violation of this section resulting in a loss of $25,000 or more, regardless of its location on the sentencing grid block, shall have a presumptive sentence of imprisonment. (2) A conviction for an intentional violation of this section resulting in a loss of $100,000 or more is a severity level 4, nonperson felony. (3) A conviction for an intentional violation of this section resulting in a loss of at least $25,000 but less than $100,000 is a severity level 5, nonperson felony. (4) A conviction for an intentional violation of this section resulting in a loss of less than $25,000 is a severity level 7, nonperson felony.			
(c) **[Rules specifying contents of advisory contract.]** A rule adopted under this [Act] may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.	1253(c) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract if the contract: (1) Provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client; (2) fails to provide in writing that no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; or (3) fails to provide in writing that the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change. Subsection (c)(1) shall not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date, or in any other manner authorized by rules and regulations adopted by the commissioner for the purposes of furthering compatibility with federal regulations authorizing fees based upon a share of the capital gains upon or capital appreciation of client assets. "Assignment," as used in this subsection, includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's		1253(f) treats violations of 1253(c) the same as fraud. If we move the substantive provisions of 1253(c) into a regulation, the punishment would come under the general provision for violating a regulation, currently a level 7 felony in 17-1267.	(c) ***Rules specifying contents of advisory contract.*** A rule adopted under this *Act* may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

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	outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.			
SECTION 503. EVIDENTIARY BURDEN. (a) **[Civil.]** In a civil action or administrative proceeding under this [Act], a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim. (b) **[Criminal.]** In a criminal proceeding under this [Act], a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.	**17-1272. Burden of proof of exemptions.** It will not be necessary to negative any of the exemptions or exclusions provided in this act in any complaint, information, indictment, or any other writ or proceedings laid or brought under this act, and the burden of proof of any such exemption, exclusion or of status as a federal covered security shall be upon the party claiming the benefit of such exemption, exclusion or status.	1. In a civil or administrative action, the person claiming an exemption, preemption, or exclusion has the burden of persuasion. 2. In contrast, in a criminal action, the prosecutor is required to prove each element "beyond a reasonable doubt." The defendant only has the burden of producing evidence of an exemption, exception, preemption, or exclusion. Some court decisions have characterized this burden as an affirmative defense. [See official comment for citations.]		**SECTION 32 ~~503. EVIDENTIARY BURDEN.~~** (a) ***Civil.*** In a civil action or administrative proceeding under this *Act*, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim. (b) ***Criminal.*** In a criminal proceeding under this *Act*, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.
SECTION 504. FILING OF SALES AND ADVERTISING LITERATURE. (a) **[Filing requirement.]** Except as otherwise provided in subsection (b), a rule adopted or order issued under this [Act] may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this [Act]. (b) **[Excluded communications.]** This section does not apply to sales and advertising literature specified in subsection (a) which relates to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by Section 201, 202, or 203 except as required pursuant to Section 201(7).	1270(c) The commissioner, by rules and regulations or order may require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, unless the security is a federal covered security for which no filing can be required by the commissioner under the securities act of 1933 and K.S.A. 2001 Supp. 17-1270a, and amendments thereto.	1. The prospectuses, pamphlets, circulars, form letters, advertisements, sales literature or advertising communications, include material disseminated electronically or available on a web site. 2. The administrator may bring a civil enforcement action in a court under § 603 or institute administrative enforcement under § 604 to prevent publication, circulation or use of any materials required by the administrator to be filed under § 504 that have not been filed. 3. § 504(b) is meant to refer to the communications described in § 504(a).	504(b) says we cannot require sales literature from exempt offerings. This may conflict with some of the exemptions where notice filings are required. 504(b) makes an exception for 201(7), i.e., church bonds, but not viaticals or future exemptions that may require a notice filing.	**SECTION 33 ~~504. FILING OF SALES AND ADVERTISING LITERATURE.~~** (a) ***Filing requirement.*** Except as otherwise provided in subsection (b), a rule adopted or order issued under this *Act* may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this *Act*. (b) ***Excluded communications.*** This section does not apply to sales and advertising literature specified in subsection (a) which relates to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by Section ~~*201, 202, or 203*~~ *6, 7, or 8, and amendments thereto*, except as required ~~pursuant to Section 201(7)~~ for a notice filing under Section ~~201, 202, or 203~~ 6, 7, or 8, and amendments thereto.
~~TION 505. MISLEADING FILINGS.~~ It ~~is~~ unlawful for a person to make or cause to be	**17-1264. Filing false or misleading statements--Penalty.**	The definition of "materiality" in TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976)	"Filed" and "record" are defined broadly in § 102 to cover any document the commissioner	**SECTION 34 ~~505. FALSE OR MISLEADING FILINGS; COERCION;~~**

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made, in a record that is used in an action or proceeding or filed under this [Act], a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.	(a) It is unlawful for any person to intentionally make or cause to be made, in any document filed with the commissioner or in any proceeding under this act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect while knowing the statement made to be false or misleading in any material respect. (b) A conviction for a violation of this section is a severity level 8, nonperson felony.	("an omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote") has generally been followed in both federal and state securities law.	receives. 505 adds omissions to the prohibited conduct.	~~OBSTRUCTION.~~ (a) It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this *Act*, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.
	17-1264a. Unlawful activities rendering financial statements or appraisals misleading; penalites. (a) It is unlawful for any person to intentionally influence, coerce, manipulate or mislead any person in connection with financial statements or appraisals to be used in the offer, sale or purchase of securities for the purpose of rendering such financial statements or appraisals materially misleading. (b) A conviction for a violation of this section is a severity level 8, nonperson felony.		17-1264a became effective July 1, 2003 (L. 2003, ch. 117). It mirrors a provision of the federal Sarbanes-Oxley Act passed in 2002.	(b) It is unlawful for any person to intentionally influence, coerce, manipulate or mislead any person in connection with financial statements or appraisals to be used in the offer, sale or purchase of securities for the purpose of rendering such financial statements or appraisals materially misleading.
	17-1265a. Unlawful alteration, destruction or concealment of records to impede commissioner's investigation or proceeding; retaliation against witness; penalty. (a) It is unlawful for any person to: (1) Alter, destroy, shred, mutilate, conceal, cover up or falsify any record with the intent to impede, obstruct or influence any investigation by the commissioner or the commissioner's designee; (2) alter, destroy, shred, mutilate or conceal a record with the intent to impair the object's integrity or availability for use in a proceeding before the commissioner or a proceeding brought by the commissioner; or (3) take action harmful to a person with the intent to retaliate, including, but not limited to, interference with lawful employment of such person, for providing truthful information relating to a violation of the Kansas securities act. (b) Violation of this section is a severity level 8, nonperson felony.		17-1265a became effective July 1, 2003 (L. 2003, ch. 117). It mirrors a provision of the federal Sarbanes-Oxley Act passed in 2002.	(c) It is unlawful for any person to: (1) Alter, destroy, shred, mutilate, conceal, cover up or falsify any record with the intent to impede, obstruct or influence any investigation by the administrator or the administrator's designee; (2) alter, destroy, shred, mutilate or conceal a record with the intent to impair the object's integrity or availability for use in a proceeding before the administrator or a proceeding brought by the administrator; or (3) take action harmful to a person with the intent to retaliate, including, but not limited to, interference with lawful employment of such person, for providing truthful information relating to a violation of this Act.
TION 506. MISREPRESENTATIONS CERNING REGISTRATION OR EXEMPTION. The filing of an application for registration, a registration statement, a notice		This § follows the 1956 Act and RUSA, as well as state securities statutes generally, in providing that a misrepresentation concerning registration or an exemption is unlawful.	This is new.	SECTION 35 ~~506. MISREPRESENTATIONS CONCERNING REGISTRATION OR EXEMPTION.~~ The filing of an application for registration, a registration statement, a notice

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ing under this [Act], the registration of a person, the notice filing by a person, or the registration of a security under this [Act] does not constitute a finding by the administrator that a record filed under this [Act] is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the administrator has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.				filing under this *Act*, the registration of a person, the notice filing by a person, or the registration of a security under this *Act* does not constitute a finding by the administrator that a record filed under this *Act* is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the administrator has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.
SECTION 507. QUALIFIED IMMUNITY. A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the administrator, or designee of the administrator, the Securities and Exchange Commission, or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.		1. [See Official Comment for history and development of qualified immunity… to prevent "rogue brokers" from moving from one BD firm to another without full and complete disclosure of disciplinary problems because of BD firms' fear of state law defamation claims.] 5. As is generally the law, truth is a complete defense to a defamation action. 6. An agent who has been the subject of a Form U-5 may respond to adverse disclosures and have responses reprinted on the U-5. 7. Through September 2002 no state had adopted an immunity provision in its securities statute. No state has rejected immunity in this context by judicial decision. A number of states have adopted qualified immunity by judicial decision.		**SECTION 36 ~~507. QUALIFIED IMMUNITY.~~** A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the administrator, or designee of the administrator, the Securities and Exchange Commission, or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.
SECTION 508. CRIMINAL PENALTIES. (a) **[Criminal penalties.]** A person that willfully violates this [Act], or a rule adopted or order issued under this [Act], except Section 504 *[filing of sales literature]* or the notice filing requirements of Section 302 *[federal covered securities]* or 405 *[federal covered advisers]*, or that willfully violates Section 505 *[false filing]* knowing the statement made to be false or misleading in a material respect, upon conviction, shall be fined not more than $[___] or imprisoned not more than [___] years, or both. An individual convicted of violating a rule or order under this ct] may be fined, but may not be imprisoned, if ndividual did not have knowledge of the rule rder.	**17-1267. Violations of act or rules and regulations; prosecution, commencement and limitations.** (a) It is unlawful for any person to violate any rule and regulation adopted or order issued under this act. A conviction for an intentional violation of this subsection is a severity level 7, nonperson felony. Any violation of this subsection committed on or after July 1, 1993, resulting in a loss of $25,000 or more, regardless of its location on the sentencing grid block, shall have a presumptive sentence of imprisonment. No person may be imprisoned for the violation of this subsection if such person proves that such person had no knowledge of the rule and regulation or order.	1. This § follows the 1956 Act and the federal securities laws in imposing criminal penalties for any willful violation of the Act. RUSA § 604 distinguished between felonies and misdemeanors, limiting willful violations of cease and desist orders to a misdemeanor. 2. The term "willfully" has the same meaning in § 508 as it did in the 1956 Act. All that is required is proof that a person acted intentionally in the sense that the person was aware of what he or she was doing. Proof of evil motive or intent to violate the law or knowledge that the law was being violated is not required. (See Comment 6.) 3. The final sentence of § 508(a) is based on § 32(a) of the '34 Act. The "no knowledge" clause in § 508(a) is relevant only to sentencing. The	The crimes in USA-2002 are listed below, with their corresponding sections in the current act. 301 - unreg security – 1255(a) & (b) 401(a) - unreg BD – 1254(a) & (f) 401(c) – employing barred agent 402(a) – unregistered agent – 1254(a) & (f) 402(d) – employing unreg agent – 1254(b)&(f) 403(a) – unreg IA – 1254(c) & (f) 403(c) – employing barred IAR 403(d) – employing unreg IAR – 1254(d) & (f) 404(a) – unreg IAR – 1254(c) & (f) 404(e) – IAR violation of a bar 405(a) – no notice filing by FCIA–1254(e)&(f) 501 – securities fraud – 1253(a) & (f) 502(a) – IA fraud – 1253(b) & (f)	**SECTION 37 ~~508. CRIMINAL PENALTIES; STATUTE OF LIMITATIONS.~~** (a) ***Criminal penalties.*** ~~A person that willfully violates~~ (1) Except as provided in subsections (a)(2) through (a)(4), a conviction for an intentional violation of this *Act*, or a rule adopted or order issued under this *Act*, except Section ~~*504*~~, *33, and amendments thereto,* ~~*[filing of sales literature]*~~ or the notice filing requirements of Section ~~*302*~~ *12* ~~*[federal covered securities]*~~ or ~~*405*~~ *22, and amendments thereto,* ~~*[federal covered advisers]*~~, ~~or that willfully violates Section 505 *[false filing]* knowing the statement made to be false or misleading in a material respect, upon conviction, shall be fined not more than $[___] or imprisoned~~

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		person convicted has the burden of persuasion to prove no knowledge at sentencing. Because this does not impose a burden on the defendant to disprove the elements of a crime, § 32(a) of the '34 Act has been held not to raise a constitutional problem. 5. This section does not specify maximum dollar amounts for criminal fines, maximum terms for imprisonment, nor the years of limitation, but does provide for each state to specify appropriate magnitudes for criminal fines or maximum terms for imprisonment.	505 – false filing - 1264 506 – misreps re: registration 508(a)(1) – violation of act, reg or order - 1267 This section is drafted to conform to L. 2003, ch. 117, effective July 1, 2003 (SB 110).	~~not more than [ ] years, or both,~~ is a severity level 7, nonperson felony. An individual convicted of violating a rule or order under this *Act* may be fined, but may not be imprisoned, if the individual did not have knowledge of the rule or order. *(2) A conviction for an intentional violation of section ~~501 or 502~~ 30 or 31, and amendments thereto, is:* *(A) a severity level 4, nonperson felony if the violation resulted in a loss of $100,000 or more;* *(B) a severity level 5, nonperson felony if the violation resulted in a loss of at least $25,000 but less than $100,000; or* *(C) a severity level 7, nonperson felony if the violation resulted in a loss of less than $25,000.* *(3) A conviction for an intentional violation of section ~~301, 401(a), 401(c), 402(a), 402(d), 403(a), 403(c), 403(d), 404(a), or 404(c)~~ 11, 18(a), 18(c), 19(a), 19(d), 20(a), 20(c), 20(d), 21(a), or 21(e), and amendments thereto, is:* *(A) a severity level 5, nonperson felony if the violation resulted in a loss of $100,000 or more;* *(B) a severity level 6, nonperson felony if the violation resulted in a loss of at least $25,000 but less than $100,000; or* *(C) a severity level 7, nonperson felony if the violation resulted in a loss of less than $25,000.* *(4) A conviction for an intentional violation of section ~~505 or 506~~ 34 or 35, and amendments thereto, is a severity level 8, nonperson felony.* *(5) Any violation of section ~~301, 401(a), 401(c), 402(a), 402(d), 403(a), 403(c), 403(d), 404(a), 404(c), 501 or 502~~ 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.*
	1267(b) No prosecution for any 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		USA-2002 does not specify a criminal statute of limitations. See Official Comment 5 to Section 508. The tolling provisions of KSA 21-3106(9) were added to HB 2347 by the House Judiciary	*(b) **Statute of Limitations**. Except as provided by subsection (9) of K.S.A. 21-3106, and amendments thereto, no prosecution for any crime under this act may be commended more than 10 years after the alleged violation if the*

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	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.		Committee.	*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. 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.*
(b) [**Criminal reference not required.**] The [Attorney General or the proper prosecuting attorney] with or without a reference from the administrator, may institute criminal proceedings under this [Act].	1267(c) The commissioner may refer such evidence as may be available concerning violations of this act or of any rule and regulation or order hereunder to the attorney general or the proper county or district attorney, who may in the prosecutor's discretion, with or without such a reference, institute the appropriate criminal proceedings under this act. Upon receipt of such reference, the attorney general or the county attorney or district attorney may request that a duly employed attorney of the commissioner prosecute or assist in the prosecution of such violation or violations on behalf of the state. Upon approval of the commissioner, such employee shall be appointed a special prosecutor for the attorney general or the county attorney or district attorney to serve without compensation from the attorney general or the county attorney or district attorney. Such special prosecutor shall have all the powers and duties prescribed by law for assistant attorneys general or assistant county or district attorneys and such other powers and duties as are lawfully delegated to such special prosecutor by the attorney general or the county attorney or district attorney.	4. The appropriate state prosecutor under § 508(b) may decide whether to bring a criminal action under this statute, another statute, or, when applicable, common law. In certain states the administrator has full or limited criminal enforcement powers.	Current law does not provide authority for the Securities Commissioner to pay witness and extradition expenses. However, securities fraud cases are complex, and the expense of witnesses and extradition can lead counties to decline our offer to prosecute cases on their behalf, so that authority has been inserted into 508(c).	~~(b)~~ (c) ***Criminal reference ~~not required~~.*** ~~The [Attorney General or the proper prosecuting attorney] with or without a reference from the administrator, may institute criminal proceedings under this Act.~~ The administrator may refer such evidence as may be available concerning violations of this Act or of any rule and regulation or order hereunder to the attorney general or the proper county or district attorney, who may in the prosecutor's discretion, with or without such a reference, institute the appropriate criminal proceedings under this Act. Upon receipt of such reference, the attorney general or the county attorney or district attorney may request that a duly employed attorney of the administrator prosecute or assist in the prosecution of such violation or violations on behalf of the state. Upon approval of the administrator, such employee shall be appointed a special prosecutor for the attorney general or the county attorney or district attorney to serve without compensation from the attorney general or the county attorney or district attorney. Such special prosecutor shall have all the powers and duties prescribed by law for assistant attorneys general or assistant county or district attorneys and such other powers and duties as are lawfully delegated to such special prosecutor by the attorney general or the county attorney or district attorney. If an attorney employed by the administrator acts as a special prosecutor, the administrator may pay extradition and witness expenses associated with the case.
(c) [**No limitation on other criminal enforcement.**] This [Act] does not limit the ...er of this State to punish a person for conduct ...constitutes a crime under other laws of this State.	1267(d) Nothing in this act limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.			~~(c)~~ (d) ***No limitation on other criminal enforcement.*** This *Act* does not limit the power of this State to punish a person for conduct that constitutes a crime under other laws of this State.

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SECTION 509. CIVIL LIABILITY. (a) **[Securities Litigation Uniform Standards Act.]** Enforcement of civil liability under this section is subject to the Securities Litigation Uniform Standards Act of 1998.		1. Under § 509 violations of two or more sections can be proven, but the remedy is limited either to rescission or actual damages. Actual damages means compensatory damages. Punitive or "double" damages are not provided by this section which also is the standard under § 28(a) of the '34 Act. 2. SLUSA cited in § 509(a) modifies the entire § 509.		**SECTION 38 ~~509. CIVIL LIABILITY.~~** (a) ***Securities Litigation Uniform Standards Act.*** Enforcement of civil liability under this section is subject to the Securities Litigation Uniform Standards Act of 1998.
(b) **[Liability of seller to purchaser.]** A person is liable to the purchaser if the person sells a security in violation of Section 301 or, by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following: (1) The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest [at the legal rate of interest] from the date of the purchase, costs, and reasonable attorneys' fees determined by the court, upon the tender of the security, or for actual damages as provided in paragraph (3). (2) The tender referred to in paragraph (1) may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in paragraph (3). (3) Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, and interest [at the legal rate of interest] from the date ` purchase, costs, and reasonable attorneys' etermined by the court.	**17-1268. Civil liabilities.** (a) Any person, who offers or sells a security in violation of K.S.A. 17-1254 or 17-1255, and amendments thereto, or offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made in the light of the circumstances under which they are made not misleading (the buyer not knowing of the untruth or omission) and who does not sustain the burden of proof that such person did not know and in the exercise of reasonable care could not have known of the untruth or omission, is liable to the person buying the security from such person, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at 15% per annum from the date of payment, costs, and reasonable attorney fees, less the amount of any income received on the security, upon the tender of the security, or for damages if the buyer no longer owns the security. Damages are the amount that would be recoverable upon a tender less: (1) the value of the security when the buyer disposed of it; and (2) interest at 15% per annum from the date of disposition.	3. As with § 12(a)(2) of the '33 Act, § 509(b) contains a type of privity requirement in that the purchaser is required to bring an action against the seller. § 509(b) is broader than § 12(a)(2) in that it will reach all sales in violation of § 301, not just sales "by means of a prospectus" as is the law under § 12(a)(2). 4. Unlike the current standards on implied rights of action under Rule 10b-5, neither causation nor reliance has been held to be an element of a private cause of action under the precursor to § 509(b). 5. The measure of damages in § 509(b)(3) is that contemplated by § 12 of the Securities of 1933. The measure of damages in § 509(c)(3), however, is that contemplated by Rule 10b-5. In providing for damages as an alternative to rescission, § 509(b)(3) follows the 1956 Act and is an improvement upon many earlier state provisions, which conditioned the plaintiff's right of recovery on his or her being in a position to make a good tender. A plaintiff is not given the right under this type of statutory formula to retain stock and also seek damages.	1268(a) applies to BD, agent, IA & IAR registration violations, as well as securities registration violations and fraud. 509 splits them up. 509(b) gives recovery for securities registration violations and fraud; BD and agent registration violations are covered in 509(d), and IA & IAR registration violations are covered in 509(e). See comment to 508 for the importance of the distinction between "the statement" and "a statement."	(b) ***Liability of seller to purchaser.*** A person is liable to the purchaser if the person sells a security in violation of Section ~~*301*~~ *11, and amendments thereto*, or~~,~~ by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make ~~the~~ a statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following: (1) The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest from the date of the purchase *at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto*, costs, and reasonable attorneys' fees determined by the court, upon the tender of the security, or for actual damages as provided in paragraph (3). (2) The tender referred to in paragraph (1) may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in paragraph (3). (3) Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, and interest from the date of the purchase *at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto*, costs, and

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				reasonable attorneys' fees determined by the court.
(c) [**Liability of purchaser to seller.**] A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following: (1) The seller may maintain an action to recover the security, and any income received on the security, costs, and reasonable attorneys' fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in paragraph (3). (2) The tender referred to in paragraph (1) may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in paragraph (3). (3) Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and interest [at the legal rate of interest] from the date of the sale of the security, costs, and reasonable attorneys' fees determined by the court.			This is new.	(c) ***Liability of purchaser to seller.*** A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following: (1) The seller may maintain an action to recover the security, and any income received on the security, costs, and reasonable attorneys' fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in paragraph (3). (2) The tender referred to in paragraph (1) may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in paragraph (3). (3) Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and interest from the date of the sale of the security *at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto*, costs, and reasonable attorneys' fees determined by the court.
(d) [**Liability of unregistered broker-dealer and agent.**] A person acting as a broker-dealer or agent that sells or buys a security in violation of Section 401(a), 402(a), or 506 is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages specified in subsections (b)(1) through (3), or, seller, for a remedy as specified in subsections (c)(1) through (3).				(d) ***Liability of unregistered broker-dealer and agent.*** A person acting as a broker-dealer or agent that sells or buys a security in violation of Section ~~*401(a), 402(a), or 506*~~ *18(a), 19(a), or 35, and amendments thereto*, is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in subsections (b)(1) through (3), or, if a seller, for a remedy as specified in subsections

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				(c)(1) through (3).
(e) **[Liability of unregistered investment adviser and investment adviser representative.]** A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of Section 403(a), 404(a), or 506 is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest [at the legal rate of interest] from the date of payment, costs, and reasonable attorneys' fees determined by the court.		6. §§ 509(e) and (f) are based on a proposed NASAA amendment to the Uniform Securities Act adopted in order "to establish civil liability for individuals who willfully violate § 102 dealing with fraudulent practices pertaining to advisory activities." Neither provision is intended to limit other state law claims for providing investment advice. 12. The "reasonable attorneys' fees" specified in § 509 are permissive, not mandatory.		(e) ***Liability of unregistered investment adviser and investment adviser representative.*** A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of Section ~~*403(a), 404(a), or 506*~~ *20(a), 21(a), or 35, and amendments thereto*, is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest from the date of payment *at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto*, costs, and reasonable attorneys' fees determined by the court.
(f) **[Liability for investment advice.]** A person that receives directly or indirectly any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person, is liable to the other person. An action under this subsection is governed by the following: (1) The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest [at the legal rate of interest] from the date of the fraudulent conduct, costs, and reasonable attorneys' fees determined by the court, less the amount of any income received as a result of the fraudulent conduct. (2) This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.		7. BD employees, including research analysts, who receive no special compensation from third parties for investment advice would not be liable under § 509(f).		(f) ***Liability for investment advice.*** A person that receives directly or indirectly any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person, is liable to the other person. An action under this subsection is governed by the following: (1) The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest from the date of the fraudulent conduct *at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto*, costs, and reasonable attorneys' fees determined by the court, less the amount of any income received as a result of the fraudulent conduct. (2) This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.
(g) **[Joint and several liability.]** The following persons are liable jointly and severally with and to the same extent as persons liable subsections (b) through (f): 1) a person that directly or indirectly controls a person liable under subsections (b) through (f), unless the controlling person sustains	1268(b) Every person who directly or indirectly controls a seller liable under subsection (a), every partner, officer, or director (or person occupying a similar status or performing similar functions) or employee of such a seller who materially aids in the sale, and every broker-dealer or agent who materially aids in the sale is also liable jointly and	8. The control liability provision in § 509(g)(1) is modeled on that in the 1956 Act. 9. The defense of lack of knowledge in §§ 509(g) is also modeled on the 1956 Act. 10. Under § 509(g)(2) partners, officers, and directors are liable, subject to the defense afforded by that subsection, without proof that	509(g)(4) adds IAs and IARs who materially aid the wrongdoer to the list of persons held liable.	(g) ***Joint and several liability***. The following persons are liable jointly and severally with and to the same extent as persons liable under subsections (b) through (f): (1) a person that directly or indirectly controls a person liable under subsections (b) through (f), unless the controlling person sustains

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the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist; (2) an individual who is a managing partner, executive officer, or director of a person liable under subsections (b) through (f), including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist; (3) an individual who is an employee of or associated with a person liable under subsections (b) through (f) and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist; and (4) a person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (b) through (f), unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.	severally with and to the same extent as the seller, unless the nonseller who is so liable sustains the burden of proof that such nonseller did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. ~~There is contribution as in cases of contract among the several persons so liable.~~ [See 509(h)]	they aided in the sale. In § 509(g)(2), the term "partner" is intended to be limited to partners with management responsibilities, rather than a partner with a passive investment. 11. Under 509(g)(4), the performance by a clearing broker of the clearing broker's contractual functions – even though necessary to the processing of a transaction – without more would not constitute material aid or result in liability under this subsection.		the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist; (2) an individual who is a managing partner, executive officer, or director of a person liable under subsections (b) through (f), including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist; (3) an individual who is an employee of or associated with a person liable under subsections (b) through (f) and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist; and (4) a person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (b) through (f), unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.
(h) **[Right of contribution.]** A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.	1268(b) [see 509(g)] …There is contribution as in cases of contract among the several persons so liable.	13. The contribution provision in § 509(h) is a safeguard to avoid the common law principle that prohibited contribution among joint tortfeasors.		(h) ***Right of contribution.*** A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.
(i) **[Survival of cause of action.]** A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.	1268(c) [see § 510] …Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant….			(i) ***Survival of cause of action.*** A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.
(j) **[Statute of limitations.]** A person may not obtain relief: (1) under subsection (b) for violation of Section 301, or under subsection (d) or (e), unless the action is instituted within one year after the ~~…~~tion occurred; or (2) under subsection (b), other than for violation of Section 301, or under subsection (c)		14. The statute of limitations in § 509(j) is a hybrid of the 1956 Act and federal securities law approaches. The 1956 Act § 410(p) provided that: "No person may sue under this section more than two years after the contract of sale." Under this provision, the state courts generally decline to extend a statute of limitations period on grounds of fraudulent concealment or equitable tolling.	The statute of limitations for actions brought under 17-1268 is 3 years. See K.S.A. 60-512(2) and Kelly v. Primeline Advisory, 889 P2d 130. The new one year statute of limitations would apply to cases involving unregistered securities (509(b)), an unregistered agent or BD (509(d)), or an unregistered IA or IAR (509(e)). The new 2/5 year statute of limitations would	(j) ***Statute of limitations.*** A person may not obtain relief: (1) under subsection (b) for violation of Section ~~*301*~~ *11, and amendments thereto*, or under subsection (d) or (e), unless the action is instituted within ~~one year~~ two years after the violation occurred; or (2) under subsection (b), other than for

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or (f), unless the action is instituted within the earlier of two years after discovery of the facts constituting the violation and five years after the violation.		Before the Sarbanes-Oxley Act, Rule 10b-5 prohibited equitable tolling under the federal securities law one year after discovery and three years after the act formula. Sarbanes-Oxley added 28 U.S.C. §1658(b) which provides. . . a private right of action that involves a claim of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning the securities laws, as defined in § 3(a)(47) of the '34 Act, may be brought not later than the earlier of --- (1) 2 years after the discovery of the facts constituting the violation; or (2) 5 years after such violation. § 509(j)(1), as with the 1956 Act, is a unitary statute of repose, requiring an action to be commenced within one year after a violation occurred. It is not intended that equitable tolling be permitted. § 509(j)(2), in contrast, generally follows the federal securities law model. An action must be brought within the earlier of two years after discovery or five years after the violation. As with federal courts construing the statute of limitations under Rule 10b-5, it is intended that the plaintiff's right to proceed is limited to two years after actual discovery or after such discovery should have been made by the exercise of reasonable diligence, or five years after the violation. The rationale for replicating the basic federal statute of limitations in this Act is to discourage forum shopping. If the statute of limitations applicable to Rule 10b-5 were to be changed in the future, identical changes should be made in § 509(j)(2).	apply to fraud by either the buyer or seller of securities, or fraudulent investment advice. This statute of limitations is intended to mirror the Sarbanes-Oxley Act. That act used the disjunctive "or" instead of the conjunctive "and" in the last clause. This change was recommended by the NASAA USA Project Group. The House Judiciary Committee adopted an amendment offered by the Kansas Bar Association to extend the statute of limitations for registration violations from one year to two years.	violation of Section ~~301~~ *11, and amendments thereto*, or under subsection (c) or (f), unless the action is instituted within the earlier of two years after discovery of the facts constituting the violation ~~and~~ or five years after the violation.
(k) **[No enforcement of violative contract.]** A person that has made, or has engaged in the performance of, a contract in violation of this [Act] or a rule adopted or order issued under this [Act], or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this [Act], may not base an action on contract. (l) **[No contractual waiver.]** A condition, stipulation, or provision binding a person purchasing or selling a security or receiving	1268(d) No person who has made or engaged in the performance of any contract in violation of any provision of this act or any rule and regulation or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security or receiving any investment advice to waive compliance with any provision of this act or any rule and regulation or	15. § 509(k) is similar to § 29(b) of the Securities Exchange Act and is intended to apply only to actions to enforce illegal contracts. See Louis Loss, Commentary on the Uniform Securities Act 150 (1976).		(k) ***No enforcement of violative contract.*** A person that has made, or has engaged in the performance of, a contract in violation of this *Act* or a rule adopted or order issued under this *Act*, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this *Act*, may not base an action on the contract. (l) ***No contractual waiver.*** A condition, stipulation, or provision binding a person purchasing or selling a security or receiving

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investment advice to waive compliance with this [Act] or a rule adopted or order issued under this [Act] is void.	order hereunder is void.			investment advice to waive compliance with this *Act* or a rule adopted or order issued under this *Act* is void.
(m) **[Survival of other rights or remedies.]** The rights and remedies provided by this [Act] are in addition to any other rights or remedies that may exist, but this [Act] does not create a cause of action not specified in this section or Section 411(e).		16. § 509(m) follows the 1956 Act. 17. § 509 and § 411(e) provide the exclusive private causes of action under this Act.		(m) ***Survival of other rights or remedies.*** The rights and remedies provided by this *Act* are in addition to any other rights or remedies that may exist, but this *Act* does not create a cause of action not specified in this section or Section ~~*411(e)*~~ *28(e), and amendments thereto.*
SECTION 510. RESCISSION OFFERS. A purchaser, seller, or recipient of investment advice may not maintain an action under Section 509 if: (1) The purchaser, seller, or recipient of investment advice receives in a record, before the action is instituted: (A) an offer stating the respect in which liability under Section 509 may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this [Act] to be furnished to that person at the time of the purchase, sale, or investment advice; (B) if the basis for relief under this section may have been a violation of Section 509(b), an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest [at the legal rate of interest] from the date of the purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest [at the legal rate of interest] from the date of the purchase in cash equal to the damages computed in the manner provided in this subsection; (C) if the basis for relief under this section may have been a violation of Section 509(c), an offer to tender the security, on payment by the ller of an amount equal to the purchase price d, less income received on the security by the purchaser and interest [at the legal rate of interest]	1268(c) Any tender specified in this section may be made at any time before entry of judgment. ~~Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.~~ [See 509(i)] No person may sue under this section if: (1) the buyer received a written offer, before suit and at a time when the buyer owned the security, to refund the consideration paid, together with interest at 15% per annum from the date of payment, less the amount of any income received on the security, and the buyer failed to accept the offer within 30 days of its receipt; or (2) the buyer received such an offer before suit and at a time when the buyer did not own the security, unless the buyer rejected the offer in writing within 30 days of its receipt.	1. A rescission offer must meet the specific requirements of § 510 for civil liability under § 509 to be extinguished. 2. A rescission offer that does not comply with § 510 is subject to civil liability, administrative enforcement, or criminal penalties under this Act. A rescission offer, for example, could violate § 501, the general fraud provision. 3. The administrator may publish a form that would comply with § 510, but the form would not be the only one that could be used by the parties. 4. A valid rescission offer will be exempt from securities registration. See § 202(19). 5. If a state chooses to add a notice or filing provision, it could provide this provision in § 510(6), which would state: 6. The offer [or a notice] is required to be filed with the administrator 10 business days before the offering and conform in form and content with a rule prescribed by the administrator.		**SECTION 39 ~~510. RESCISSION OFFERS.~~** A purchaser, seller, or recipient of investment advice may not maintain an action under Section ~~*509*~~ *38, and amendments thereto*, if: (1) The purchaser, seller, or recipient of investment advice receives in a record, before the action is instituted: (A) an offer stating the respect in which liability under Section ~~*509*~~ *38, and amendments thereto,* may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this *Act* to be furnished to that person at the time of the purchase, sale, or investment advice; (B) if the basis for relief under this section may have been a violation of Section ~~*509(b)*~~ *38(b), and amendments thereto*, an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest from the date of the purchase *at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto*, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest from the date of the purchase *at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto*, in cash equal to the damages computed in the manner provided in this subsection; (C) if the basis for relief under this section may have been a violation of Section ~~*509(c)*~~

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from the date of the sale; or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest [at the legal rate of interest] from the date of the sale; (D) if the basis for relief under this section may have been a violation of Section 509(d); and if the customer is a purchaser, an offer to pay as specified in subparagraph (B); or, if the customer is a seller, an offer to tender or to pay as specified in subparagraph (C); (E) if the basis for relief under this section may have been a violation of Section 509(e), an offer to reimburse in cash the consideration paid for the advice and interest [at the legal rate of interest] from the date of payment; or (F) if the basis for relief under this section may have been a violation of Section 509(f), an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest [at the legal rate of interest] from the date of the violation causing the loss; (2) the offer under paragraph 1 states that it must be accepted by the purchaser, seller, or recipient of investment advice within 30 days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period, of not less than three days, that the administrator, by order, specifies; (3) the offeror has the present ability to pay the amount offered or to tender the security under paragraph (1); (4) the offer under paragraph (1) is delivered to the purchaser, seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and (5) the purchaser, seller, or recipient of estment advice that accepts the offer under graph (1) in a record within the period pecified under paragraph (2) is paid in accordance with the terms of the offer.				*38(c), and amendments thereto*, an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest from the date of the sale *at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto*; or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest from the date of the sale *at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto*; (D) if the basis for relief under this section may have been a violation of Section ~~*509(d)*~~ *38(d), and amendments thereto*; and if the customer is a purchaser, an offer to pay as specified in subparagraph (B); or, if the customer is a seller, an offer to tender or to pay as specified in subparagraph (C); (E) if the basis for relief under this section may have been a violation of Section ~~*509(e)*~~ *38(e), and amendments thereto*, an offer to reimburse in cash the consideration paid for the advice and interest from the date of payment *at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto*; or (F) if the basis for relief under this section may have been a violation of Section ~~*509(f)*~~ *38(f), and amendments thereto*, an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest from the date of the violation causing the loss *at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto*; (2) the offer under paragraph (1) states that it must be accepted by the purchaser, seller, or recipient of investment advice within 30 days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period, of not less than three days, that the administrator, by order, specifies; (3) the offeror has the present ability to pay the

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				amount offered or to tender the security under paragraph (1); (4) the offer under paragraph (1) is delivered to the purchaser, seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and (5) the purchaser, seller, or recipient of investment advice that accepts the offer under paragraph (1) in a record within the period specified under paragraph (2) is paid in accordance with the terms of the offer.
SECTION 601. ADMINISTRATION. (a) **[Administration.]** The administrator shall administer this [Act] [insert any related provisions on such matters as method of selection, salary, term of office, selection and remuneration of personnel, and annual reports to the legislature or governor that are appropriate to the particular State].	**17-1270. Administration of act--Commissioner--Powers and duties--Fees--Expenses--Rules and regulations--Sales literature, filing--Books and records, examination--Reports--Hearings--Documents, filing, registration, copies of information.** (a) This act shall be administered by the securities commissioner of Kansas. (b) All fees herein provided for shall be collected by the commissioner. All salaries and expenses necessarily incurred in the administration of this act shall be paid from the securities act fee fund. **17-1271. Disposition of fees, charges, deposits and penalties--Securities act fee fund, fiscal year beginning balance--Reimbursements to state general fund.** (a) The securities commissioner shall remit all moneys received from all fees, charges, deposits or penalties which have been collected under the Kansas securities act or other laws of this state regulating the issuance, sale or disposal of securities or regulating dealers in this state or under the uniform land sales practices act, to the state treasurer at least monthly. Upon receipt of any such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury. In accordance with subsection (a) of K.S.A. 75-3170, and amendments thereto, 20% of each such deposit shall be credited to the state general fund and, except as provided in subsection (d), the balance shall be credited to the securities act fee fund. (b) On the last day of each fiscal year, the director of accounts and reports shall transfer from the securities act fee fund to the state			**SECTION 40 ~~601. ADMINISTRATION.~~** (a) ***Administration.*** ~~The administrator shall administer this *Act*~~ (1) This Act shall be administered by the securities commissioner of Kansas. *(2) All fees herein provided for shall be collected by the administrator. All salaries and expenses necessarily incurred in the administration of this Act shall be paid from the securities act fee fund.* *(3) The administrator shall remit all moneys received from all fees, charges, deposits or penalties which have been collected under this Act or other laws of this state regulating the issuance, sale or disposal of securities or regulating dealers in this state or under the uniform land sales practices act, to the state treasurer at least monthly. Upon receipt of any such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury. In accordance with subsection (a) of K.S.A. 75-3170, and amendments thereto, 20% of each such deposit shall be credited to the state general fund and, except as provided in subsection (d), the balance shall be credited to the securities act fee fund.* *(4) On the last day of each fiscal year, the director of accounts and reports shall transfer from the securities act fee fund to the state general fund any remaining unencumbered amount in the securities act fee fund exceeding $50,000 so that the beginning unencumbered balance in the securities act fee fund on the first day of each fiscal year is $50,000. All expenditures from the securities act fee fund shall be made in accordance with appropriation acts*

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	general fund any remaining unencumbered amount in the securities act fee fund exceeding $50,000 so that the beginning unencumbered balance in the securities act fee fund on the first day of each fiscal year is $50,000. All expenditures from the securities act fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the securities commissioner or by a person or persons designated by the securities commissioner. (c) All amounts transferred from the securities act fee fund to the state general fund under subsection (b) are to reimburse the state general fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services and any other governmental services which are performed on behalf of the state agency involved by other state agencies which receive appropriations from the state general fund to provide such services. Such reimbursements are in addition to those authorized by K.S.A. 75-3170a and amendments thereto.			*upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the administrator or by a person or persons designated by the administrator.* *(5) All amounts transferred from the securities act fee fund to the state general fund under subsection (b) are to reimburse the state general fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services and any other governmental services which are performed on behalf of the state agency involved by other state agencies which receive appropriations from the state general fund to provide such services. Such reimbursements are in addition to those authorized by K.S.A. 75-3170a and amendments thereto.*
(b) **[Unlawful use of records or information.]** It is unlawful for the administrator or an officer, employee, or designee of the administrator to use for personal benefit or the benefit of others records or other information obtained by or filed with the administrator that are not public under Section 607(b). This [Act] does not authorize the administrator or an officer, employee, or designee of the administrator to disclose the record or information, except in accordance with Section 602, 607(c), or 608.		1. § 601(b) should be read with § 607. § 601(b) prohibits the administrator or the administrator's officers and employees from using for personal benefit records or information that § 607(b) specifies do not constitute public records. § 601(b) is not intended to limit the operation of § 607(a). Neither § 601(b) nor 607(b) is intended to impede the ability of the agencies specified in § 608(a) from sharing records or other information in connection with an examination or an investigation.		(b) ~~**Unlawful use of records or information**~~ **Prohibited conduct.** (1) It is unlawful for the administrator or an officer, employee, or designee of the administrator to use for personal benefit or the benefit of others records or other information obtained by or filed with the administrator that are not public under Section ~~*607(b)*~~ *46(b), and amendments thereto.* This *act* does not authorize the administrator or an officer, employee, or designee of the administrator to disclose the record or information, except in accordance with Section ~~*602, 607(c), or 608*~~ *41, 46(c), or 47, and amendments thereto.*
	1259(f) Neither the commissioner nor any employee of the securities department shall be interested as an officer, director, or stockholder in securing any authorization to sell securities under the provisions of this act.		The conflict of interest prohibition in 1259(f) should be retained. It is not a uniform provision, but it impacts KSC staff rather than the industry.	(2) Neither the administrator nor any employee of the administrator shall be interested as an officer, director, or stockholder in securing any authorization to sell securities under the provisions of this act.
(c) **[No privilege or exemption created or ished.]** This [Act] does not create or sh a privilege or exemption that exists at common law, by statute or rule, or otherwise.		2. § 601(c) makes clear that nothing in this Act alters the availability of evidentiary privileges. That question is left to the general law of the particular state.		(c) ***No privilege or exemption created or diminished.*** This *act* does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.
(d) **[Investor education.]** The administrator	1271(d) There is hereby established in the state	3. §§ 601(d) and (e) were adopted in	Current law does not provide for industry	(d) ***Investor education.***

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may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the administrator may collaborate with public and nonprofit organizations with an interest in investor education. The administrator may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the administrator to require participation or monetary contributions of a registrant in an investor education program. (e) **[The Securities Investor Education and Training Fund.]** The Securities Investor Education and Training Fund is created to provide funds for the purposes specified in subsection (d). [All monies received by the State by reason of civil penalties pursuant to this [Act] shall be deposited in the Securities Investor Education and Training Fund. The State may insert any other provision concerning appropriations to support this fund as well as procedures for its operations.]	treasury the investor education fund. Such fund shall be administered by the securities commissioner for the purpose of providing for the education of consumers in matters concerning securities regulation and investments. Moneys collected as civil penalties under K.S.A. 17-1266a, and amendments thereto, shall be credited to the investor education fund. The securities commissioner may also receive payments designated to be credited to the investor education fund as a condition in settlements of cases arising out of investigations or examinations. All expenditures from the investor education fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the securities commissioner or by a person or persons designated by the securities commissioner. Five years after the effective date of this act, the securities commissioner shall conduct a review and submit a report to the governor and the legislature concerning the expenditures from the investor education fund and the results achieved from the investor education program.	recognition of the importance of investor education. An increasing number of jurisdictions are earmarking specific funds for this purpose. The lack of financial acumen among public investors, seniors, and students continues to be demonstrated in recent industry and regulatory studies. The importance of investor financial literacy is increasingly crucial given the decades long shift from defined benefit retirement plans toward defined contribution plans where employees are left to direct their own retirement accounts.	education along with investor education. In the past few years, we have provided training to registrants regarding the developments in securities regulation, problems we have been finding in examinations, enforcement trends, etc. This is a very popular program, and it seems appropriate to use money obtained from fines for this purpose through the investor education fund. To pay for refreshments for attendees, we also need the authority to pay "official hospitality" from the investor education fund. (d)(2) should retain the current deadline for a report to the governor and legislature (July 1, 2007).	(1) The administrator may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the administrator may collaborate with public and nonprofit organizations with an interest in investor education. The administrator may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the administrator to require participation or monetary contributions of a registrant in an investor education program. ~~(e) [The Securities Investor Education and Training Fund.] The Securities Investor Education and Training Fund is created to provide funds for the purposes specified in subsection (d).~~ (2) There is hereby established in the state treasury the investor education fund. Such fund shall be administered by the administrator for the purposes described in subsection (d)(1) and for the education of registrants, including official hospitality. *Moneys collected as civil penalties under this act shall be credited to the investor education fund. The administrator may also receive payments designated to be credited to the investor education fund as a condition in settlements of cases arising out of investigations or examinations. All expenditures from the investor education fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the administrator or by a person or persons designated by the administrator. Two years after the effective date of this act, the administrator shall conduct a review and submit a report to the governor and the legislature concerning the expenditures from the investor education fund and the results achieved from the investor education program.*

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SECTION 602. INVESTIGATIONS AND SUBPOENAS. (a) [**Authority to investigate.**] The administrator may: (1) conduct public or private investigations within or outside of this State which the administrator considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this [Act] or a rule adopted or order issued under this [Act], or to aid in the enforcement of this [Act] or in the adoption of rules and forms under this [Act]; (2) require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and (3) publish a record concerning an action, proceeding, or an investigation under, or a violation of, this [Act] or a rule adopted or order issued under this [Act] if the administrator determines it is necessary or appropriate in the public interest and for the protection of investors.	**17-1265. Investigations--Powers of commissioner--Appointment of special investigator--Exemption from prosecution, when.** (a) The commissioner may: (1) Make public or private investigations within or outside of this state as necessary to determine whether any registration should be granted, denied or revoked or whether any person has violated or is about to violate any provision of this act or any rule or order hereunder, or to aid in the enforcement of this act or in the prescribing of forms or adoption of rules and regulations; (2) require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, of all the facts and circumstances concerning the matter to be investigated; and (3) publish information concerning any violation of this act or any rule or order hereunder.	1. §§ 602(a) and (b) follow the 1956 Act, which was modeled generally on §§ 21(a) through (d) of the '34 Act as it then read.	1265(a) specifically says we can conduct investigations to "determine whether any registration should be granted, denied or revoked." That authority is only implicit in 602(a)(1).	**SECTION 41 ~~602. INVESTIGATIONS AND SUBPOENAS.~~** (a) ***Authority to investigate.*** The administrator may: (1) conduct public or private investigations within or outside of this State which the administrator considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this *act* or a rule adopted or order issued under this *act*, or to aid in the enforcement of this *act* or in the adoption of rules and forms under this *act*; (2) require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and (3) publish a record concerning an action, proceeding, or an investigation under, or a violation of, this *act* or a rule adopted or order issued under this *act* if the administrator determines it is necessary or appropriate in the public interest and for the protection of investors.
	1265(b) The commissioner may appoint special investigators to aid in investigations conducted pursuant to the Kansas securities act. Such special investigators shall have authority to make arrests, serve subpoenas and all other process, conduct searches and seizures, store evidence, and carry firearms, concealed or otherwise while investigating violations of this act and to generally enforce all the criminal laws of this state as violations of such laws are encountered by such special investigators. The director as defined in K.S.A. 74-5602 and amendments thereto is authorized to offer and carry out a special course of instruction for special investigators performing law enforcement duties under authority of this subsection (b). Such special investigators shall not carry firearms without having first successfully completed such special law enforcement training course.		Section 602(a)(4) should be added to insert the language of 1265(b).	(4) appoint special investigators to aid in investigations conducted pursuant to this Act. Such special investigators shall have authority to make arrests, serve subpoenas and all other process, conduct searches and seizures, store evidence, and carry firearms, concealed or otherwise while investigating violations of this act and to generally enforce all the criminal laws of the state as violations of those laws are encountered by such special investigators. The director of police training at the law enforcement training center is authorized to offer and carry out a special course of instruction for special investigators performing law enforcement duties under authority of this subsection. Such special investigators shall not carry firearms without having first successfully completed such special law enforcement training course.
(b) [**Administrator powers to investigate.**] · the purpose of an investigation under this .t], the administrator or its designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take	1265(c) For the purpose of any investigation or proceeding under this act, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence,			(b) ***Administrator powers to investigate.*** For the purpose of an investigation under this *act*, the administrator or its designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take

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evidence, require the filing of statements, and require the production of any records that the administrator considers relevant or material to the investigation.	and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.			evidence, require the filing of statements, and require the production of any records that the administrator considers relevant or material to the investigation.
(c) [**Procedure and remedies for noncompliance.**] If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the administrator under this [Act], the administrator [may refer the matter to the Attorney General or the proper attorney, who] may apply to [insert name of the appropriate court] or a court of another State to enforce compliance. The court may: (1) hold the person in contempt; (2) order the person to appear before the administrator; (3) order the person to testify about the matter under investigation or in question; (4) order the production of records; (5) grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice; (6) impose a civil penalty of not less than $[__] and not greater than $[__] for each violation; and (7) grant any other necessary or appropriate relief.	1265(d) In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring the person to appear before the commissioner, or the officer designated by the commissioner, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.	2. Standards for issuance of subpoenas have been generally established in federal and state securities law. 3. § 602 is intended to apply generally to securities offers and sales under Article 3 and BD and IA activity under Article 4, when there is noncompliance with the first sentence of § 602(c). This subsection does not limit the powers of an administrator under other provisions of this Act.	602(c)(5) – (7) are new.	(c) ***Procedure and remedies for noncompliance.*** If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the administrator under this *act*, the administrator ~~[may refer the matter to the Attorney General or the proper attorney, who]~~ may apply to *any court of competent jurisdiction* or a court of another State to enforce compliance. The court may: (1) hold the person in contempt; (2) order the person to appear before the administrator; (3) order the person to testify about the matter under investigation or in question; (4) order the production of records; (5) grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice; (6) impose a civil penalty of ~~not less than $[__] and~~ not greater than *$25,000* for each violation; and (7) grant any other necessary or appropriate relief.
(d) [**Application for relief.**] This section does not preclude a person from applying to [insert name of appropriate court] or a court of another State for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.		4. A court may quash a subpoena for good cause under § 602(d). The court may decline to enforce a subpoena that is arbitrary, capricious, or oppressive.		(d) ***Application for relief.*** This section does not preclude a person from applying to *any court of competent jurisdiction* or a court of another State for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.
(e) [**Use immunity procedure.**] An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the administrator under this [Act] or in an action or proceeding instituted by the administrator under this [Act] on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege	1265(e) No person is excused from attending and testifying or from producing any document or record before the commissioner, or in obedience to the subpoena of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. No individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which such person is	2. [cont'd] Under § 602, an individual subpoenaed to testify by the administrator is not compelled to testify within the meaning of these sections simply by service of a subpoena. Under § 602(b) the individual can be subpoenaed and compelled to attend. Once in attendance an individual can assert an evidentiary privilege or exemption, see § 601(c), including the Fifth Amendment privilege against self-incrimination. If an individual refuses to testify or give evidence, the administrator may apply (or have the appropriate State attorney apply) to the appropriate court for the relief specified in §	602(e), as written, would require us to go to court before we could grant someone immunity. This is not currently required, probably because we have in-house criminal prosecutors.	(e) ***Use immunity procedure.*** An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the administrator under this *act* or in an action or proceeding instituted by the administrator under this *act* on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against

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against self-incrimination, the administrator may apply [to the name of the appropriate court] to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under such an order may not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.	compelled, after claiming privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.	602(c). If the individual invokes the privilege against self-incrimination, § 602(d) allows the administrator to apply to the appropriate court to compel testimony under the "use immunity" provision barring the record compelled or other evidence obtained from being used in a criminal case. The phrase "directly or indirectly" in 602(e) is intended to include testimony, other evidence, or other information derived from immunized testimony, statements, records, or evidence.		self-incrimination, the administrator may ~~apply [to the name of the appropriate court] to~~ compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under such an order may not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.
(f) [**Assistance to securities regulator of another jurisdiction.**] At the request of the securities regulator of another State or a foreign jurisdiction, the administrator may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other State or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The administrator may provide the assistance by using the authority to investigate and the powers conferred by this section as the administrator determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this [Act] or other law of this State if occurring in this State. In deciding whether to provide the assistance, the administrator may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its State or foreign jurisdiction to the administrator on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of this State; and the availability of resources and employees of the administrator to carry out the request for assistance.	1265(f) The commissioner may issue and apply to enforce subpoenas in this state at the request of a securities agency or administrator of another state if the activities constituting an alleged violation for which the information is sought would be a violation of the Kansas securities act if the activities had occurred in this state.	5. Where appropriate under § 602(f), an administrator could move to authorize admission of a requesting state's attorney under existing *pro hac vice* rules. 6. § 602(f) is consistent with the Securities Litigation Uniform Standard Act of 1998 which provides in § 102(e): The SEC, in consultation with State securities commissions (or any agencies or offices performing like functions), shall seek to encourage the adoption of State laws providing for reciprocal enforcement by State securities commissions of subpoenas issued by another State securities commission seeking to compel persons to attend, testify in, or produce documents or records in connection with an action or investigation by a State securities commission of an alleged violation of State securities laws. 7. There are limitations on financial institutions being subject to visitorial powers by State officials, such as those affecting national banks contained in 12 U.S.C. 484 and 12 C.F.R. Sec. 7.4000. Law outside this Act may place similar limits on state chartered financial institutions being subjected to visitorial powers. This Act does not negate these limitations.		(f) ***Assistance to securities regulator of another jurisdiction.*** At the request of the securities regulator of another State or a foreign jurisdiction, the administrator may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other State or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The administrator may provide the assistance by using the authority to investigate and the powers conferred by this section as the administrator determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this *act* or other law of this State if occurring in this State. In deciding whether to provide the assistance, the administrator may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its State or foreign jurisdiction to the administrator on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of this State; and the availability of resources and employees of the administrator to carry out the request for assistance.

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SECTION 603. CIVIL ENFORCEMENT. (a) **[Civil action instituted by administrator.]** If the administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this [Act] or a rule adopted or order issued under this [Act] or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this [Act] or a rule adopted or order issued under this [Act], the administrator may maintain an action in the [insert the name of the court] to enjoin the act, practice, or course of business and to enforce compliance with this [Act] or a rule adopted or order issued under this [Act]. (b) **[Relief available.]** In an action under this section and on a proper showing, the court may: (1) issue a permanent or temporary injunction, restraining order, or declaratory judgment; (2) order other appropriate or ancillary relief, which may include: (A) an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant's assets; (B) ordering the administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property; (C) imposing a civil penalty up to $[__] for a single violation or up to $[__] for more than one violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this [Act] or the predecessor act or a rule adopted or order issued under this [Act] or the predecessor act; and (D) ordering the payment of prejudgment and postjudgment interest; or (3) order such other relief as the court considers appropriate. (c) **[No bond required.]** The administrator may not be required to post a bond in an action or proceeding under this [Act].	**17-1266. Injunction or other equitable relief to enforce act.** Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule and regulation or order hereunder, the commissioner may bring an action in any court of competent jurisdiction to enjoin the acts or practices and to enforce compliance with this act or any rule and regulation or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order, restitution, writ of mandamus or other equitable relief shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond.	1. § 408 of the 1956 Act was limited to injunctions. This § follows RUSA in broadening the civil remedies available when the administrator believes that a violation has occurred. A primary purpose of a broad range of potential sanctions is to enable administrators to better tailor appropriate sanctions to particular misconduct. 2. The administrator alternatively may proceed to seek administrative enforcement under § 604; to deny, suspend, or revoke a securities registration under § 306; or to deny, suspend, revoke, or take other action against a BD, agent, IA, or IAR registration under § 412. 3. Constitutional due process considerations can also be addressed by rulemaking or incorporation of the applicable administrative procedure act provisions of each jurisdiction. The term "upon a proper showing" has a settled meaning in the federal securities laws. See, e.g., '33 Act § 20(b). 4. As with §§ 509(g)(3) and (4), materially aid in § 603(a) does not include ministerial or clerical acts.	603(a) authorizes action against aiders and abetters. 603(b) authorizes declaratory judgments, asset freezes, etc., and allows the commissioner to be appointed as a receiver. 603(b) does not include writs of mandamus.	SECTION 42 ~~603. CIVIL ENFORCEMENT.~~ (a) ***Civil action instituted by administrator.*** If the administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this *act* or a rule adopted or order issued under this *act* or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this *act* or a rule adopted or order issued under this *act*, the administrator may maintain an action in *any court of competent jurisdiction* to enjoin the act, practice, or course of business and to enforce compliance with this *act* or a rule adopted or order issued under this *act*. (b) ***Relief available.*** In an action under this section and on a proper showing, the court may: (1) issue a permanent or temporary injunction, restraining order, or declaratory judgment; (2) order other appropriate or ancillary relief, which may include: (A) an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant's assets; (B) ordering the administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property; (C) imposing a civil penalty up to *$25,000 for each violation.* <u>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.</u> *The total penalty against a person shall not exceed $1,000,000*; <u>(D)</u> an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this *act* or the predecessor act or a rule adopted or order issued

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				under this *act* or the predecessor act; and ~~(D)~~ (E) ordering the payment of prejudgment and postjudgment interest; or (3) order such other relief as the court considers appropriate. (c) ***No bond required.*** The administrator may not be required to post a bond in an action or proceeding under this *act*.
SECTION 604. ADMINISTRATIVE ENFORCEMENT. (a) **[Issuance of an order or notice.]** If the administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this [Act] or a rule adopted or order issued under this [Act] or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this [Act] or a rule adopted or order issued under this [Act], the administrator may: (1) issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this [Act]; (2) issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under Section 401(b)(1)(D) or (F) or an investment adviser under Section 403(b)(1)(C); or (3) issue an order under Section 204.	**17-1266a. Cease and desist orders--Emergency temporary orders--Penalties.** (a) If the commissioner determines after notice and opportunity for a hearing that any person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of this act or any rule and regulation or order hereunder, the commissioner by order may require that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the commissioner will carry out the purposes of this act.	1. § 604, unlike § 603, may be initiated by the administrator without prior judicial process or a prior hearing. The section, among other matters, empowers the administrator to act summarily in appropriate circumstances. 2. §§ 603 and 604 are intended to be available to the administrator against persons not subject to stop orders under § 306 or proceedings against registered BDs, agents, IAs, or IARs under § 412. All persons or securities not subject to § 306 or 412 will be subject to §§ 603 and 604. A person must be covered by either (1) §§ 306 or 412 or (2) §§ 603 or 604. 3. Service of an order or notice under this Section is not effective unless made in accordance with § 611.	604(a) extends to people who "materially aid" the violation, not just the primary violators. 1266a does not have a similar provision. 604(a)(2) & (3) are not currently in 1266a(a). 604(a) allows the administrator to issue a C&D if the respondent is "about to" violate the act. 604(c) never requires the administrator to actually find a violation of the act. 1266a(c) makes this distinction, so its language should be kept. The section would be easier to read and understand if the sanctions were placed closer together—with the C&D in (a) and other sanctions in (b), following by the procedural requirements in (c). 412(d) grants the commissioner authority to assess fines. We currently have authority under 1266a to assess fines of $25,000 per violation under L. 2003, ch. 117, effective July 1, 2003. As a compromise, SIA did not oppose the increase in the amount of fine per violation, but requested a cap of $1,000,000 for multiple violations. We currently have the authority under 1266a to enter bars and order restitution or disgorgement against non-registrants. These sanctions need to be added to this section. 412(e) grants the commissioner authority to assess costs.	**SECTION 43 ~~604. ADMINISTRATIVE ENFORCEMENT.~~** (a) ~~**[Issuance of an order or notice.]**~~ **Cease and desist order.** If the administrator ~~determines~~ finds that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this *act* or a rule adopted or order issued under this *act* or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this *act* or a rule adopted or order issued under this *act*, the administrator may: (1) issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this *act*; (2) issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under Section ~~*401(b)(1)(D) or (F)*~~ *18(b)(1)(D) or (F), and amendments thereto*, or an investment adviser under Section ~~*403(b)(1)(C)*~~ *20(b)(1)(C), and amendments thereto*; or (3) issue an order under Section ~~*204*~~ *9, and amendments thereto*. (b) **Additional administrative sanctions and remedies.** If the administrator finds, by written findings of fact and conclusions of law, that a person has violated this Act or a rule adopted or order issued under this Act, the administrator, in addition to any other power granted under this act, may enter an order against the person containing one or more of the following sanctions or remedies: (1) a civil penalty up to $25,000 for each violation. 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

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				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; (2) a bar or suspension from association with a broker-dealer or investment adviser registered in this state; (3) an order requiring the person to pay restitution for any loss or disgorge any profits arising from the violation, including, in the administrator's discretion, the assessment of interest from the date of the violation at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto; or (4) an order charging the person with the actual cost of the investigation or proceeding.
(b) [**Summary process.**] An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement whether the administrator will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within 15 days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the administrator within 30 days after the date of service of the order, the order becomes final as to that person by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination. (c) [**Procedure for final order.**] If a hearing is requested or ordered pursuant to subsection (b), a hearing must be held [pursuant to the state administrative procedure act]. A final order may not be issued unless the administrator makes findings of fact and conclusions of law in a record [in accordance with the state administrative procedure act]. The final order may make final, [te, or modify the order issued under [ection (a). (d) [**Civil penalty.**] In a final order under	1266a(b) If the commissioner makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under subsection (a), the commissioner may issue an emergency temporary cease and desist order. Such order, even when not an order within the meaning of K.S.A. 77-502 and amendments thereto shall be subject to the same procedures as an emergency order issued under K.S.A. 77-536 and amendments thereto. Upon the entry of such an order, the commissioner shall promptly notify the person subject to the order that it has been entered, of the reasons and that upon written request the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to the person subject to the order, shall by written findings of fact and conclusions of law vacate, modify or make permanent the order. 1266a(c) If the commissioner reasonably believes that a person has violated this act or a rule and regulation or order of the commissioner under this act, the commissioner, in addition to any specific power granted under this act, after notice and hearing in an administrative		As written, 604(b) says we can give notice of our intent to fine within the C&D. If the respondent requests a hearing, a fine can be imposed. However, if the respondent doesn't request a hearing, it does not appear possible to fine the respondent. The procedural requirements for the various sanctions need to be clarified. 604(b) requires us to give the recipient of a C&D a hearing within 15 days after the request for hearing is filed. This is impossible unless we have a hearing officer on staff, so we should simply refer to the KAPA procedures.	~~(b) [Summary process.]~~ (c) **Procedures for orders.** (1) An order under subsection (b) shall not be entered unless the administrator first provides notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedures act. (2) An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the administrator shall promptly serve each person subject to the order with a copy of the order ~~and a notice that the order has been entered~~. The order must include ~~a statement whether the administrator will seek a civil penalty or costs of the investigation,~~ a statement of the reasons for the order~~,~~ and notice that~~, within 15 days after receipt of a request in a record from the person, the matter will be scheduled for a hearing~~ upon receipt of a written request the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedures act. If a person subject to the order does not request a hearing and none is ordered by the administrator within 30 days after the date of service of the order, the order becomes final as to that person by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

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subsection (c), the administrator may impose a civil penalty up to $[ ] for a single violation or up to $[ ] for more than one violation. (e) **[Costs.]** In a final order, the administrator may charge the actual cost of an investigation or proceeding for a violation of this [Act] or a rule adopted or order issued under this [Act].	proceeding, unless the right to notice and hearing is waived by the person against whom the sanction is imposed, may: (1) Censure the person if the person is a registered broker-dealer, agent, investment adviser or investment adviser representative; or (2) issue an order against an applicant, registered person or other person who knowingly violates this act or a rule or order of the commissioner under this act, imposing a civil penalty up to a maximum of $25,000 for each violation. 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 commissioner may impose an additional penalty not to exceed $15,000 for each such violation; (3) bar or suspend the person from association with a broker-dealer or investment adviser registered in this state; or (4) issue an order requiring the person to pay restitution for any loss arising from the violation or requiring the person to disgorge any profits arising from the violation. Such order may include the assessment of interest not to exceed 15% per annum from the date of the violation.			(3) An order under subsection (a) may contain a notice of the administrator's intent to seek administrative sanctions or remedies under subsection (b). If the person subject to the order does not request a hearing and none is ordered by the administrator within 30 days after service of the order, the administrator may modify the order to include sanctions or remedies under subsection (b). If a hearing is requested or ordered, the administrator, after notice and opportunity for hearing, shall by written findings of fact and conclusions of law vacate, modify, or make permanent the order, and the administrator may modify the order to include sanctions or remedies under subsection (b). ~~(c) [**Procedure for final order.**] If a hearing is requested or ordered pursuant to subsection (b), a hearing must be held [pursuant to the state administrative procedure act]. A final order may not be issued unless the administrator makes findings of fact and conclusions of law in a record [in accordance with the state administrative procedure act]. The final order may make final, vacate, or modify the order issued under subsection (a).~~ ~~(d) [**Civil penalty.**] In a final order under subsection (c), the administrator may impose a civil penalty up to $[ ] for a single violation or up to $[ ] for more than one violation.~~ ~~(e) [**Costs.**] In a final order, the administrator may charge the actual cost of an investigation or proceeding for a violation of this *act* or a rule adopted or order issued under this *act*.~~
(f) [**Filing of certified final order with court; effect of filing.**] If a petition for judicial review of a final order is not filed in accordance with Section 609, the administrator may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.				~~(f)~~ (d) ***Filing of certified final order with court; effect of filing.*** If a petition for judicial review of a final order is not filed in accordance with Section ~~609~~ *48, and amendments thereto*, the administrator may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.
(g) [**Enforcement by court; further civil penalty.**] If a person does not comply with an order under this section, the administrator may petition a court of competent jurisdiction to enforce the order. The court may not require the				~~(g)~~ (e) ***Enforcement by court; further civil penalty.*** If a person does not comply with an order under this section, the administrator may petition a court of competent jurisdiction to enforce the order. The court may not require the

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administrator to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than $[ ] but not greater than $[ ] for each violation and may grant any other relief the court determines is just and proper in the circumstances.				administrator to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount ~~not less than $[ ] but~~ not greater than *$25,000* for each violation and may grant any other relief the court determines is just and proper in the circumstances.
SECTION 605. RULES, FORMS, ORDERS, INTERPRETATIVE OPINIONS, AND HEARINGS. (a) **[Issuance and adoption of forms, orders, and rules.]** The administrator may: (1) issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this [Act] and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records; (2) by rule, define terms, whether or not used in this [Act], but those definitions may not be inconsistent with this [Act]; and (3) by rule, classify securities, persons, and transactions and adopt different requirements for different classes.	1270(e) The commissioner may from time to time adopt, amend, and revoke such rules and regulations, orders and forms as may be necessary to carry out the provisions of this act. ~~In prescribing rules and regulations and forms, the commissioner may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable. All rules and regulations and forms of the commissioner shall be published. No provision of this act imposing any liability applies to any act done or omitted in good faith in conformity with any rules and regulations, form, or order of the commissioner, notwithstanding that the rules and regulations, form or order may later be amended, revoked or rescinded or be determined by judicial or other authority to be invalid for any reason.~~ [Strike-through portions correspond to sections below.]	1. It is anticipated that the administrator will propose amendments or make rules under § 605(a) to remain coordinate with relevant federal law, as well as appropriate rules of the National Association of Securities Dealers, and to achieve uniformity among the States.		**SECTION 44 ~~605. RULES, FORMS, ORDERS, INTERPRETATIVE OPINIONS, AND HEARINGS.~~** (a) ***Issuance and adoption of forms, orders, and rules.*** The administrator may: (1) issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this *act* and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records; (2) by rule, define terms, whether or not used in this *act*, but those definitions may not be inconsistent with this *act*; and (3) by rule, classify securities, persons, and transactions and adopt different requirements for different classes.
(b) **[Findings and cooperation.]** Under this [Act], a rule or form may not be adopted or amended, or an order issued or amended, unless the administrator finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this [Act]. In adopting, amending, and repealing rules and forms, Section 608 applies in order to achieve uniformity among the States and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.	1270(e) [see above] …In prescribing rules and regulations and forms, the commissioner may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable….	2. Uniform forms such as Form B-D, U-4, U-5, and NF are today common in the securities industry and are authorized by § 605(b).	605(b) requires findings before a regulation can be adopted. This is new.	(b) ***Findings and cooperation.*** Under this *act*, a rule or form may not be adopted or amended, or an order issued or amended, unless the administrator finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this *act*. In adopting, amending, and repealing rules and forms, Section ~~*608*~~ *47, and amendments thereto*, applies in order to achieve uniformity among the States and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.

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(c) [**Financial statements.**] Subject to Section 15(h) of the Securities Exchange Act and Section 222 of the Investment Advisers Act of 1940, the administrator may require that a financial statement filed under this [Act] be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this [Act]. A rule adopted or order issued under this [Act] may establish: (1) subject to Section 15(h) of the Securities Exchange Act and Section 222 of the Investment Advisors Act of 1940, the form and content of financial statements required under this [Act]; (2) whether unconsolidated financial statements must be filed; and (3) whether required financial statements must be audited by an independent certified public accountant.	1258(b) [registration by qualification] The commissioner, by rule and regulation or order, may require financial statements of an issuer to be reviewed or audited by independent certified public accountants.	3. § 605(c) refers to generally accepted accounting principles in the United States which currently are promulgated by the Financial Accounting Standards Board and the SEC.		(c) ***Financial statements.*** Subject to Section 15(h) of the Securities Exchange Act and Section 222 of the Investment Advisers Act of 1940, the administrator may require that a financial statement filed under this *act* be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this *act*. A rule adopted or order issued under this *act* may establish: (1) subject to Section 15(h) of the Securities Exchange Act and Section 222 of the Investment Advisers Act of 1940, the form and content of financial statements required under this *act*; (2) whether unconsolidated financial statements must be filed; and (3) whether required financial statements must be audited by an independent certified public accountant.
(d) [**Interpretative opinions.**] The administrator may provide interpretative opinions or issue determinations that the administrator will not institute a proceeding or an action under this [Act] against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this [Act]. A rule adopted or order issued under this [Act] may establish a reasonable charge for interpretative opinions or determinations that the administrator will not institute an action or a proceeding under this [Act].	1270(g) The commissioner in the commissioner's discretion may honor requests from interested persons for interpretative opinions.			(d) ***Interpretative opinions.*** The administrator may provide interpretative opinions or issue determinations that the administrator will not institute a proceeding or an action under this *act* against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this *act*. A rule adopted or order issued under this *act* may establish a reasonable charge for interpretative opinions or determinations that the administrator will not institute an action or a proceeding under this *act*.
(e) [**Effect of compliance.**] A penalty under this [Act] may not be imposed for, and liability does not arise from conduct that is engaged in or omitted in good faith believing it conforms to a rule, form, or order of the administrator under this [Act].	1270(e) [see above] ...No provision of this act imposing any liability applies to any act done or omitted in good faith in conformity with any rules and regulations, form, or order of the commissioner, notwithstanding that the rules and regulations, form or order may later be amended, revoked or rescinded or be determined by judicial or other authority to be invalid for any reason....	5. § 605(e) does not apply to staff no action or interpretative opinions, but does apply to rules, forms, orders, statements of policy or interpretations adopted by the administrator.	605(e) creates too broad of a "good faith" defense. The current language of 1270(e) is much better.	(e) ***Effect of compliance.*** ~~A penalty under this *act* may not be imposed for, and liability does not arise from conduct that is engaged in or omitted in good faith believing it conforms to a rule, form, or order of the administrator under this *act*.~~ No provision of this act imposing any liability applies to any act done or omitted in good faith in conformity with any rules and regulations, form, or order of the commissioner, notwithstanding that the rules and regulations, form or order may later be amended, revoked or rescinded or be determined by judicial or other authority to be invalid for any reason.
[**Presumption for public hearings.**] A ...ing in an administrative proceeding under this [Act] must be conducted in public unless the administrator for good cause consistent with this	1266a(d) Every hearing in an administrative proceeding shall be public unless the commissioner in the commissioner's discretion grants a request joined in by all the respondents	4. It is anticipated that the states will employ websites, e-mail or other electronic means to provide notice of proposed rulemaking or rule amendments, forms or form amendments,		(f) ***Presumption for public hearings.*** A hearing in an administrative proceeding under this *act* must be conducted in public unless the administrator for good cause consistent with this

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...ct] determines that the hearing will not be so conducted.	that the hearing be conducted privately.	statements of policy or interpretations adopted by the administrator, and issuance of orders to registrants and others who have provided a current e-mail or similar address and expressed an interest in receiving such notice.		*act* determines that the hearing will not be so conducted.
SECTION 606. ADMINISTRATIVE FILES AND OPINIONS. (a) **[Public register of filings.]** The administrator shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this [Act] or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this [Act] or the predecessor act; and interpretative opinions or no action determinations issued under this [Act].	1254(k) The commissioner shall maintain records of registration, notice filings and orders pertaining to broker-dealers, agents, investment advisers, federal covered advisers, and investment advisers representatives.... 1259(e) The commissioner shall maintain records of securities registrations, exemption filings, notice filings and orders issued as required or authorized by this act.	1. "Record" is defined in § 102(25). 2. Compliance with a state records law will typically satisfy the requirements of § 606(a).		**SECTION 45 ~~606. ADMINISTRATIVE FILES AND OPINIONS.~~** (a) ***Public register of filings.*** The administrator shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this *act* or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this *act* or the predecessor act; and interpretative opinions or no action determinations issued under this *act*.
(b) **[Public availability.]** The administrator shall make all rules, forms, interpretative opinions, and orders available to the public.	1270(e) [see above] ...All rules and regulations and forms of the commissioner shall be published....			(b) ***Public availability.*** The administrator shall make all rules, forms, interpretative opinions, and orders available to the public.
(c) **[Copies of public records.]** The administrator shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so requests. A rule adopted under this [Act] may establish a reasonable charge for furnishing the record or certification. A copy of the record certified or a certificate by the administrator of a record's nonexistence is prima facie evidence of a record or its nonexistence.	1270(f) [see below] ...Upon request and after payment of a fee per page in an amount fixed by the commissioner and approved by the director of accounts and reports under K.S.A. 45-204, and amendments thereto, the commissioner shall furnish to any person photostatic or other copies of any entry in the register or any document which is a matter of public record, which copies shall be certified under the commissioner's seal of office if requested. In any proceeding or prosecution under this act, any copy so certified is prima facie evidence of the contents of the entry or document certified.			(c) ***Copies of public records.*** The administrator shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so requests. A rule adopted under this *act* may establish a reasonable charge for furnishing the record or certification. A copy of the record certified or a certificate by the administrator of a record's nonexistence is prima facie evidence of a record or its nonexistence.
SECTION 607. PUBLIC RECORDS; CONFIDENTIALITY. (a) **[Presumption of public records.]** Except as otherwise provided in subsection (b), records obtained by the administrator or filed under this [Act], including a record contained in or filed with a registration statement, application, notice ...ng, or report, are public records and are ...lable for public examination.	1270(f) [Strike-through portions correspond to other sections.] ~~A document is filed when it is received by the commissioner.~~ [See 102(8)] ~~The commissioner may receive a document filed by electronic format that is submitted by direct digital transmission, magnetic tape or diskette, and may maintain and provide the document in such an electronic format.~~ [See 105] Records maintained by the commissioner, as required by this act, and copies of such records shall be made	1. Prior Provisions: RUSA § 703; SEC Rule § 200.80(b)(4); '34 Act §§ 24(d) and (e). § 607(a) reflects the extensive development of freedom of information and open records laws since the 1956 Act was adopted.		**SECTION 46 ~~607. PUBLIC RECORDS; CONFIDENTIALITY.~~** (a) ***Presumption of public records.*** Except as otherwise provided in subsection (b), records obtained by the administrator or filed under this *act*, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination in accordance with the open records act.

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	available to the public in accordance with the open records act. Copies shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules and regulations as the commissioner may adopt. ~~Upon request and after payment of a fee per page in an amount fixed by the commissioner and approved by the director of accounts and reports under K.S.A. 45-204, and amendments thereto, the commissioner shall furnish to any person photostatic or other copies of any entry in the register or any document which is a matter of public record, which copies shall be certified under the commissioner's seal of office if requested. In any proceeding or prosecution under this act, any copy so certified is prima facie evidence of the contents of the entry or document certified.~~ [See 606(c)]			
(b) **[Nonpublic records.]** The following records are not public records and are not available for public examination under subsection (a): (1) a record obtained by the administrator in connection with an audit or inspection under Section 411(d) or an investigation under Section 602; (2) a part of a record filed in connection with a registration statement under Sections 301 and 303 through 305 or a record under Section 411(d) that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law; (3) a record that is not required to be provided to the administrator or filed under this [Act] and is provided to the administrator only on the condition that the record will not be subject to public examination or disclosure; (4) a nonpublic record received from a person specified in Section 608(a); [and] (5) any social security number, residential ·-ess, and residential telephone number .ined in a record that is filed[; and (6) a record obtained by the administrator through a designee of the administrator that a rule or order under this [Act] determines has been:		2. § 607(b) may insulate from public disclosure records or other information that may be available under a state freedom of information or open records act. Unless the state freedom of information or open records act implements a constitutional provision, this Act as the later and more specific enactment should control as a matter of statutory construction. A state may amend its freedom of information act, open records act or this section to eliminate any inconsistencies. 3. Records and other information obtained by an administrator in connection with an audit or inspection under subsection 411(d) or an investigation under § 602 may be made public in the enforcement action, even if records and other information would otherwise be subject to subsection 607(b)(1).	Many of our registrants use a home office, so 607(b)(5) should treat the home address as a public record if it is used as the business address. We do not currently have the authority to expunge CRD or IARD records, and we do not wish to obtain the authority. Our current practice is to issue a new order to vacate a prior order. When this occurs, the CRD will reflect that an order was entered and later vacated. In contrast, an expunged order would be completely erased from the CRD.	(b) ***Nonpublic records.*** The following records are not public records and are not available for public examination under subsection (a): (1) a record obtained by the administrator in connection with an audit or inspection under Section ~~*411(d)*~~ *28(d), and amendments thereto*, or an investigation under Section ~~*602*~~ *41, and amendments thereto*; (2) a part of a record filed in connection with a registration statement under Sections ~~*301 and 303 through 305*~~ *11 and 13 through 15, and amendments thereto*, or a record under Section ~~*411(d)*~~ *28(d), and amendments thereto*, that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law; (3) a record that is not required to be provided to the administrator or filed under this *act* and is provided to the administrator only on the condition that the record will not be subject to public examination or disclosure; (4) a nonpublic record received from a person specified in Section ~~*608(a)*~~ *47(a), and amendments thereto*; *and* (5) any social security number, residential address unless used as a business address, and residential telephone number contained in a record that is filed~~[; and~~

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(A) expunged from the administrator's records by the designee; or (B) determined to be nonpublic or nondisclosable by that designee if the administrator finds the determination to be in the public interest and for the protection of investors].				~~(6) a record obtained by the administrator through a designee of the administrator that a rule or order under this *act* determines has been:~~ ~~(A) expunged from the administrator's records by the designee; or~~ ~~(B) determined to be nonpublic or nondisclosable by that designee if the administrator finds the determination to be in the public interest and for the protection of investors~~].
(c) [**Administrator discretion to disclose.**] If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in Section 608(a), the administrator may disclose a record obtained in connection with an audit or inspection under Section 411(d) or a record obtained in connection with an investigation under Section 602.		4. An administrator may orally disclose information under § 607(c) to a person specified in § 608(a) for the purposes specified in § 607(c).		(c) ***Administrator discretion to disclose.*** If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in Section ~~*608(a)*~~ *47(a), and amendments thereto*, the administrator may disclose a record obtained in connection with an audit or inspection under Section ~~*411(d)*~~ *28(d), and amendments thereto*, or a record obtained in connection with an investigation under Section ~~*602*~~ *41, and amendments thereto*.
SECTION 608. UNIFORMITY AND COOPERATION WITH OTHER AGENCIES. (a) [**Objective of uniformity.**] The administrator shall, in its discretion, cooperate, coordinate, consult, and, subject to Section 607, share records and information with the securities regulator of another State, Canada, a Canadian province or territory, a foreign jurisdiction, the Securities and Exchange Commission, the United States Department of Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection Corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking and insurance regulator, and a governmental law enforcement agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, States, and foreign governments.	**17-1270b. Cooperation with other securities agencies and administrators.** (a) To encourage uniform interpretation and administration of the Kansas securities act and effective securities regulation and enforcement, the commissioner may cooperate with the securities agencies or administrators of other states, Canadian provinces or territories, or other countries, the securities and exchange commission, the commodity futures trading commission, the securities investor protection corporation, any self-regulatory organization, any national or international organization of securities officials or agencies and any governmental law enforcement or regulatory agency.	1. Uniformity of regulation among the states and coordination with the SEC is a principal objective of this Act. § 608 is intended to encourage such cooperation to the maximum extent appropriate. Operative phrases such as "shall, in its discretion" in §§ 608(a) and (b) are intended to be precisely coordinate with the directive that Congress gave to the SEC in § 19(c) of the '33 Act. 2. The goals of uniformity among the states and coordination with related federal regulation, including self regulatory organizations, may be enhanced by greater use of information technology systems such as the Web-CRD, IARD, and EDGAR. These types of techniques are consistent with a potential system of "one stop filing" of all federal and state forms that is encouraged by this Act. 3. This Act is intended, to the extent practicable, to be revenue neutral in its impact on existing state laws.	1270b broadly refers to "any governmental law enforcement or regulatory agency." 608(a) refers to all law enforcement agencies, but not to all regulatory agencies.	**SECTION 47 ~~608. UNIFORMITY AND COOPERATION WITH OTHER AGENCIES.~~** (a) ***Objective of uniformity.*** The administrator ~~shall, in its discretion,~~ may cooperate, coordinate, consult, and, subject to Section ~~*607*~~ *46, and amendments thereto*, share records and information with the securities regulator of another State, Canada, a Canadian province or territory, a foreign jurisdiction, the Securities and Exchange Commission, the United States Department of Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection Corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking ~~and~~ or insurance regulator, and a governmental law enforcement or regulatory agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, States, and foreign governments.
(b) [**Policies to consider.**] In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under this [Act], the administrator shall, in its discretion, take into			The administrator should not be referred to with the possessive pronoun "its."	(b) ***Policies to consider.*** In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under this *act*, the administrator shall, in ~~its~~ the administrator's

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consideration in carrying out the public interest the following general policies: (1) maximizing effectiveness of regulation for the protection of investors; (2) maximizing uniformity in federal and state regulatory standards; and (3) minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.				discretion, take into consideration in carrying out the public interest the following general policies: (1) maximizing effectiveness of regulation for the protection of investors; (2) maximizing uniformity in federal and state regulatory standards; and (3) minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.
(c) [**Subjects for cooperation.**] The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes: (1) establishing or employing one or more designees as a central depository for registration and notice filings under this [Act] and for records required or allowed to be maintained under this [Act]; (2) developing and maintaining uniform forms; (3) conducting a joint examination or investigation; (4) holding a joint administrative hearing; (5) instituting and prosecuting a joint civil or administrative proceeding; (6) sharing and exchanging personnel; (7) coordinating registrations under Sections 301 and 401 through 404 and exemptions under Section 203; (8) sharing and exchanging records, subject to Section 607; (9) formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases; (10) formulating common systems and procedures; (11) notifying the public of proposed rules, forms, statements of policy, and guidelines; (12) attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, deemed necessary or appropriate to ⁿote or achieve uniformity; and 13) developing and maintaining a uniform ⁿption from registration for small issuers, and taking other steps to reduce the burden of raising investment capital by small businesses.	1270b(b) The cooperation authorized by this section includes, but is not limited to, the following: (1) Establishing a central depository for registration under the Kansas securities act and for documents and fees required under such act. The commissioner shall by rules and regulations establish procedures and requirements for filing documents and fees; (2) Making a joint registration examination or enforcement investigation; (3) Holding a joint administrative hearing; (4) Filing and prosecuting a joint civil or administrative proceeding; (5) Sharing and exchanging personnel; (6) Sharing and exchanging information and documents subject to the restrictions of the Kansas open records act; and (7) Formulating, in accordance with the Kansas administrative procedure act, rules and regulations on matters such as statements of policy, guidelines, and interpretive opinions and releases. (c) This section shall be part of and supplemental to the Kansas securities act.	4. § 608(c) lists some joint or coordinated efforts which might be undertaken. Other appropriate cooperative activities are also encouraged. 5. Court decisions interpreting the securities laws have construed these acts to achieve "broad protection to investors," a remedial approach that "embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek to use the money of others on the promise of profits." SEC v. W.J. Howey Co, 328 U.S. 293, 299, 301 (1946).	1270b(b) does not contain the equivalent of 608(c)(2), (7), or (10) through (13).	(c) ***Subjects for cooperation.*** The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes: (1) establishing or employing one or more designees as a central depository for registration and notice filings under this *act* and for records required or allowed to be maintained under this *act*; (2) developing and maintaining uniform forms; (3) conducting a joint examination or investigation; (4) holding a joint administrative hearing; (5) instituting and prosecuting a joint civil or administrative proceeding; (6) sharing and exchanging personnel; (7) coordinating registrations under Sections ~~*301 and 401 through 404*~~ *13, 14 and 18 through 21, and amendments thereto*, and exemptions under Section ~~*203*~~ *8, and amendments thereto*; (8) sharing and exchanging records, subject to Section ~~*607*~~ *46, and amendments thereto*; (9) formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases; (10) formulating common systems and procedures; (11) notifying the public of proposed rules, forms, statements of policy, and guidelines; (12) attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, deemed necessary or appropriate to promote or achieve uniformity; and (13) developing and maintaining a uniform exemption from registration for small issuers, and taking other steps to reduce the burden of raising

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				investment capital by small businesses.
	1254(p)(1) The commissioner may participate, in whole or in part, with any national securities association or national securities exchange registered with the United States securities and exchange commission under the federal securities exchange act of 1934 or with any association of state securities administrators in any registration depository where the broker-dealer, agent, investment adviser, or investment adviser representative registrations required by subsection (g) may be centrally or simultaneously effected and the accompanying registration fees may be collected for all states that require the registration of such persons and participate in the registration depository. (2) If the commissioner finds that participation in the registration depository is in the public interest, the commissioner may by rules and regulations or by order require that: (A) Applications for the registration or the renewal of the registration of any broker-dealer, agent, investment adviser or investment adviser representative as required by this section may be made through the registration depository; (B) alternative registration expiration and renewal dates for registered broker-dealers, agents, investment advisers and investment adviser representatives be utilized in lieu of the registration expiration and renewal dates provided under subsection (k); (C) all fees for the registration or the renewal of the registration of any broker-dealer, agent, investment adviser or investment adviser representative be collected by the registration depository in the dollar amounts required by subsection (l), provided that such fees are subsequently submitted to the commissioner pursuant to K.S.A. 17-1270 and amendments thereto and remitted by the commissioner pursuant to K.S.A. 17-1271 and amendments thereto. (3) Subsequent to the effective date of any rules and regulations or order of the commissioner that is adopted under subsection (p)(2): (A) All applications for the registration or the renewal of the registration of any broker-dealer, agent, investment adviser or investment adviser		Sufficient authority is found elsewhere to replace 1254(p). See, e.g., § 406(a). The CRD and IARD requirements are woven throughout the act.	

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	representative, and all documents supporting such applications, which shall be filed with or received by the registration depository shall be deemed to be filed with or received by the commissioner pursuant to subsection (g), when such applications or documents are received by the registration depository; and (B) any statement which is contained in any application for the registration or the renewal of the registration of any broker-dealer, agent, investment adviser or investment adviser representative or contained in any document supporting such applications, which is filed with or received by the registration depository and which is, at the time and in light of the circumstances under which it is made, false or misleading in any material respect shall constitute a violation of K.S.A. 17-1264 and amendments thereto.			
SECTION 609. JUDICIAL REVIEW. (a) **[Judicial review of orders.]** A final order issued by the administrator under this [Act] is subject to judicial review in accordance with [the state administrative procedure act]. [(b) **[Judicial review of rules.]** A rule adopted under this [Act] is subject to judicial review in accordance with [the state administrative procedure act].]	**17-1269. Review of orders.** Any person aggrieved by a final order of the commissioner may obtain a review of the order in accordance with the provisions of the act for judicial review and civil enforcement of agency actions.	1. The 1956 Act § 411 specified procedures for judicial review of orders, in part modeled on § 12 of the Model Administrative Procedure Act and partly on § 25 of the '34 Act. 2. A rule adopted under this Act may be subject to judicial review in accordance with the state administrative procedure act. 3. In those states in which judicial review of rules is permitted, a state may choose to add § 609(b). In those states in which judicial review of rules is not permitted, § 609(b) should be deleted.		**SECTION 48 ~~609. JUDICIAL REVIEW.~~** ~~(a) [Judicial review of orders.]~~ A final order issued by the administrator under this *act* is subject to judicial review in accordance with *the provisions of the act for judicial review and civil enforcement of agency actions.* ~~[(b) [Judicial review of rules.] A rule adopted under this *act* is subject to judicial review in accordance with [the state administrative procedure act].]~~
SECTION 610. JURISDICTION. (a) **[Sales and offers to sell.]** Sections 301, 302, 401(a), 402(a), 403(a), 404(a), 501, 506, 509, and 510 do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in this State or the offer to purchase or the purchase is made and accepted in this State.		1. § 610 defines the application of the Act to interstate or international transactions when only some of the elements of a violation occur in this State. This Section applies to all types of proceedings specified by the Act – administrative, civil, and criminal. The law is now settled that a person may violate the law of a particular state without ever being within the state or performing each act necessary to violate the law within that state. 2. § 610 generally follows § 414 of the 1956 Act, but has been modernized to reflect the development of the Internet and other electronic communications after 1956.		**SECTION 49 ~~610. JURISDICTION.~~** (a) ***Sales and offers to sell.*** Sections ~~*301, 302, 401(a), 402(a), 403(a), 404(a), 501, 506, 509, and 510*~~ *11, 12, 18(a), 19(a), 20(a), 21(a), 30, 35, 38, and 39, and amendments thereto*, do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in this State or the offer to purchase or the purchase is made and accepted in this State.
[**Purchases and offers to purchase.**] …ions 401(a), 402(a), 403(a), 404(a), 501, 506, 509, and 510 do not apply to a person that purchases or offers to purchase a security unless		4. Under subsection 202(20) certain out-of-state offers or sales are exempt from securities registration.		(b) ***Purchases and offers to purchase.*** Sections ~~*401(a), 402(a), 403(a), 404(a), 501, 506, 509, and 510*~~ *18(a), 19(a), 20(a), 21(a), 30, 35, 38, and 39, and amendments thereto*, do not

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e offer to purchase or the purchase is made in this State or the offer to sell or the sale is made and accepted in this State.				apply to a person that purchases or offers to purchase a security unless the offer to purchase or the purchase is made in this State or the offer to sell or the sale is made and accepted in this State.
(c) [**Offers in this State.**] For the purpose of this section, an offer to sell or to purchase a security is made in this State, whether or not either party is then present in this State, if the offer: (1) originates from within this State; or (2) is directed by the offeror to a place in this State and received at the place to which it is directed.		3. § 610 can be illustrated in the context of a civil action under § 509(b) by a purchaser in State A against a seller in State B: § 610(a) would apply when an "offer to sell is made in this State." § 610(c) provides that an offer which originates in State B and is directed to State A is made in both states. The securities act of State A would apply under § 610(c)(2). The act of State B would apply also, under § 610(c)(1). The intent is to prevent a seller in State B from using that state as a base of operations for defrauding person in other states.	This would provide some much-needed clarity, but is narrower than the jurisdiction we currently assert.	(c) ***Offers in this State.*** For the purpose of this section, an offer to sell or to purchase a security is made in this State, whether or not either party is then present in this State, if the offer: (1) originates from within this State; or (2) is directed by the offeror to a place in this State and received at the place to which it is directed.
(d) [**Acceptances in this State.**] For the purpose of this section, an offer to purchase or to sell is accepted in this State, whether or not either party is then present in this State, if the acceptance: (1) is communicated to the offeror in this State and the offeree reasonably believes the offeror to be present in this State and the acceptance is received at the place in this State to which it is directed; and (2) has not previously been communicated to the offeror, orally or in a record, outside this State.		3. (cont'd) § 610(d), however, provides that a person in State A who makes an offer to purchase as a result of communication described in § 610(e) may cause the act to be applicable if the offeror accepts the offer "in this State." § 610(d) defines when an offer is accepted "in this State." If a selling BD in State B solely sends a confirmation into State A, or the purchaser in State A sends a check from within State A, the act will not apply unless, under § 610(d), the confirmation or delivery constitutes the seller's acceptance of the purchaser's offer to buy in State A. The applicability of the act to purchaser is addressed by § 610(b) which is the converse of § 610(a). Under § 509(c) there can be liability of purchasers to sellers.		(d) ***Acceptances in this State.*** For the purpose of this section, an offer to purchase or to sell is accepted in this State, whether or not either party is then present in this State, if the acceptance: (1) is communicated to the offeror in this State and the offeree reasonably believes the offeror to be present in this State and the acceptance is received at the place in this State to which it is directed; and (2) has not previously been communicated to the offeror, orally or in a record, outside this State.
(e) [**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 ctronic communication originating outside this is received in this State. A radio or vision program, or other electronic		3. (cont'd) § 610(e) addresses offers made through publications, radio, television, or electronic communications. The subsection provides a series of safe harbors for advertisements in newspapers, magazines, radio, television, or electronic media that either originate outside State A or that originate in State A but are directed outside the state to the general public. With respect to bona fide newspapers or other publications of general, regular, and paid circulation, the safe harbor requires that more than two thirds of its circulation be outside State A. With respect to radio, television, or other electronic communications, safe harbors are	This provision would exclude offers in the Kansas City Star and other KCMO media from our jurisdiction, even though they are clearly intended to reach Kansas investors. Under this provision, we will need to make sure the advertiser has contacted a Kansas resident directly before we can take enforcement action. We will also need to define "general solicitation" in a regulation to clarify that out-of-state publications still constitute a general solicitation for purposes of registration exemptions.	(e) **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

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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.		specified in §§ 610(e)(1) through (4). 5. The phrase "other electronic means" is coextensive with computer or other information technology permitted by subsections 102(8), 102(25). 6. Under § 610 the administrator may adopt interpretative rules or orders to specify when particular uses of new electronic communications, including the Internet, involve an offer to sell or to purchase a security, acceptance of an order to purchase or sell a security, or an act or practice involving prohibited conduct, within a State, whether or not a purchaser, seller, or other party is then present in the State. The NASAA Interpretive Order Concerning BDs, Agents, and IARs Using the Internet for General Dissemination of Information for Products and Services (Apr. 23, 1997) is an illustration of an interpretative order that would be in compliance with the administrator's authority under § 610.		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) **[Investment advice and misrepresentations.]** Sections 403(a), 404(a), 405(a), 502, 505, and 506 apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this State, whether or not either party is then present in this State.		3. (cont'd) § 610(f) is a new provision that specifies jurisdictions in cases involving investment advice and misrepresentations.		(f) ***Investment advice and misrepresentations.*** Sections ~~*403(a), 404(a), 405(a), 502, 505, and 506*~~ *20(a), 21(a), 22(a), 31, 34, and 35, and amendments thereto*, apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this State, whether or not either party is then present in this State.
SECTION 611. SERVICE OF PROCESS. (a) **[Signed consent to service of process.]** A consent to service of process complying with Section 611 required by this [Act] must be signed and filed in the form required by a rule or order under this [Act]. A consent appointing the administrator the person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor or personal representative under this [Act] or a rule adopted or order issued under this [Act] after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an	**17-1263. Consent to service of process.** (a) Every nonresident applicant for registration under this act and every nonresident issuer which proposes to offer its securities in this state through an agent or broker-dealer on an agency basis, unless its securities are exempt under K.S.A. 17-1261, and amendments thereto, or are offered in transactions exempt under K.S.A. 17-1262, and amendments thereto, shall file with the commissioner, in such form as the commissioner may by rules and regulations prescribe, an irrevocable consent appointing the secretary of state of Kansas or the secretary's successor in office to be such applicant's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against such applicant or such applicant's successor, executor or	1. § 611 follows the 1956 Act and RUSA in providing for a signed consent to service of process in § 611(a); a substituted service of process in § 611(b); and process and opportunity to defend in §§ 611(c) through (e). 2. An issuer is not required to file a consent to service of process unless it proposes to offer a security in this State through someone acting on an agency basis. Since the civil liability provisions of § 509(b) apply only in a suit by a purchaser against a seller, the issuer in a firm commitment underwriting is civilly liable only to the underwriter, who, in turn, may be liable to the dealer, who, in turn, may be liable to the purchaser. In contrast, in a best efforts underwriting, when the security is sold on an agency basis and title passes directly to the	This is a very welcome change. 1263 is out-dated and requires the appointment of the Secretary of State to receive service of process. The phrase "complying with section 611" is superfluous language.	**SECTION 50 ~~611. SERVICE OF PROCESS.~~** (a) ***Signed consent to service of process.*** A consent to service of process ~~complying with Section 611~~ required by this *act* must be signed and filed in the form required by a rule or order under this *act*. A consent appointing the administrator the person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor or personal representative under this *act* or a rule adopted or order issued under this *act* after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an

UNIFORM SECURITIES ACT	*KANSAS SECURITIES ACT*	*NCCUSL COMMENTS*	*KSC COMMENTS*	*NEW SECURITIES ACT*
ditional consent. (b) [**Conduct constituting appointment of agent for service.**] If a person, including a nonresident of this State, engages in an act, practice, or course of business prohibited or made actionable by this [Act] or a rule adopted or order issued under this [Act] and the person has not filed a consent to service of process under subsection (a), the act, practice, or course of business constitutes the appointment of the administrator as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.	administrator which arises under this act or any rule and regulation or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Registration of securities by a broker-dealer shall not subject the issuer of such securities to the requirements of this section. A person who has filed such a consent in connection with a previous registration need not file another.	purchaser, the issuer can be liable to the purchaser. 3. § 611(b) generally follows § 414(h) of the 1956 Act and § 708(c) of RUSA. The intent is to provide for substituted service of process when a seller in one state directs an offer into a second state either in violation of the laws of the second state or fraudulently. Under § 611(b) the purchaser may sue the seller in the purchaser's state and then bring an action on the judgment in the seller's state. The constitutionality of this type of statute has long been sustained.		additional consent. (b) ***Conduct constituting appointment of agent for service.*** If a person, including a nonresident of this State, engages in an act, practice, or course of business prohibited or made actionable by this *act* or a rule adopted or order issued under this *act* and the person has not filed a consent to service of process under subsection (a), the act, practice, or course of business constitutes the appointment of the administrator as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.
(c) [**Procedure for service of process.**] Service under subsection (a) or (b) may be made by providing a copy of the process to the office of the administrator, but it is not effective unless: (1) the plaintiff, which may be the administrator, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice; and (2) the plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the administrator in a proceeding before the administrator, allows.	1263(b) Service may be made by leaving a copy of the process in the office of the secretary of state of Kansas, and it is not effective unless: (1) the plaintiff (who may be the commissioner in a suit, action, or proceeding instituted by the commissioner) sends notice of the service and a copy of the process by registered mail to the defendant or respondent at such person's last address on file with the commissioner; and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court may allow.	4. This section was originally based on the type of nonresident motorist statute whose constitutionality was sustained in Hess v. Pawlowski, 274 U.S. 352 (1927) and subsequently in other contexts. See, e.g., International Shoe Co. v. State of Wash., 326 U.S. 310 (1945); Travelers Health Ass'n v. Commonwealth of Va., 339 U.S. 643 (1950).		(c) ***Procedure for service of process.*** Service under subsection (a) or (b) may be made by providing a copy of the process to the office of the administrator, but it is not effective unless: (1) the plaintiff, which may be the administrator, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice; and (2) the plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the administrator in a proceeding before the administrator, allows.
(d) [**Service in administrative proceedings or civil actions by administrator.**] Service pursuant to subsection (c) may be used in a proceeding before the administrator or by the administrator in a civil action in which the administrator is the moving party.	1263(d) In an administrative proceeding under this act, service of process may be made in accordance with the Kansas administrative procedure act.			(d) ***Service in administrative proceedings or civil actions by administrator.*** Service pursuant to subsection (c) may be used in a proceeding before the administrator or by the administrator in a civil action in which the administrator is the moving party. <u>In an administrative proceeding under this Act, service of process may also be made in accordance with the Kansas administrative procedure act.</u>
(e) [**Opportunity to defend.**] If process is served under subsection (c), the court, or the administrator in a proceeding before the administrator, shall order continuances as are ssary or appropriate to afford the defendant spondent reasonable opportunity to defend.	1263(c) When process is served under subsection (b), the court, or the commissioner in a proceeding before the commissioner, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.			(e) ***Opportunity to defend.*** If process is served under subsection (c), the court, or the administrator in a proceeding before the administrator, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.
CTION 612. SEVERABILITY CLAUSE.	**17-1273. Invalidity of part.** If any provision of	Prior Provisions: 1956 Act § 417; RUSA §		SECTION 51 ~~612. SEVERABILITY~~

UNIFORM SECURITIES ACT	*KANSAS SECURITIES ACT*	*NCCUSL COMMENTS*	*KSC COMMENTS*	*NEW SECURITIES ACT*
y provision of this [Act] or its application to ...y person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.	this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or application, and to this end the provisions of this act are severable.	805.		~~CLAUSE.~~ If any provision of this *act* or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this *act* that can be given effect without the invalid provision or application, and to this end the provisions of this *Act* are severable.
SECTION 701. EFFECTIVE DATE. This [Act] takes effect on [insert date, which should be at least 60 days after enactment].			The effective date of July , 2005, will provide sufficient time to revise the securities regulations and will enable our advisory group to thoroughly review the act before it takes effect.	**SECTION 68** ~~**701. EFFECTIVE DATE.**~~ This *Act shall take effect and be in force from and after July 1, 2005, and its publication in the statute book.*
SECTION 702. REPEALS. The following act is repealed: [Insert name of former State securities act].	**17-1275. Repeals--Savings clauses.** Sections 17-1223, 17-1226 to 17-1251, both sections inclusive, of the General Statutes of 1949, and sections 17-1224 and 17-1225 of the General Statutes Supplement of 1955, are hereby repealed, subject to the following limitations: [see 1275(a)-(c) below]		The language in 702 and 703 has been modified to the revisor's preferred format. Sections 702 and 703 are combined into section 52 in HB 2347.	**SECTION 52** ~~**702. REPEALS.**~~ ~~The following act is repealed:~~ *The Kansas Securities Act, K.S.A. 17-1252 through K.S.A. 17-1275, is hereby repealed subject to the following limitation:*
SECTION 703. APPLICATION OF ACT TO EXISTING PROCEEDING AND EXISTING RIGHTS AND DUTIES. (a) [**Applicability of predecessor act to pending proceedings and existing rights.**] The predecessor act exclusively governs all actions or proceedings that are pending on the effective date of this [Act] or may be instituted on the basis of conduct occurring before the effective date of this [Act], but a civil action may not be maintained to enforce any liability under the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within five years after the effective date of this [Act], whichever is earlier.	17-1275(a) Prior law exclusively governs all suits, actions, prosecutions, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of this act, except that no civil suit or action may be maintained to enforce any liability under prior law unless brought within any period of limitation which applied when the cause of action accrued and in any event within two years after the effective date of this act.	Prior law governs all suits, actions, prosecutions, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of a State blue sky statute.		**SECTION 52 (cont'd)** ~~**703. APPLICATION OF ACT TO EXISTING PROCEEDING AND EXISTING RIGHTS AND DUTIES.**~~ (a) ***Applicability of predecessor act to pending proceedings and existing rights.*** The predecessor act exclusively governs all actions or proceedings that are pending on the effective date of this *Act* or may be instituted on the basis of conduct occurring before the effective date of this *Act*, but a civil action may not be maintained to enforce any liability under the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within five years after the effective date of this *Act*, whichever is earlier.
(b) [**Continued effectiveness under predecessor act.**] All effective registrations under the predecessor act, all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no action determinations, and conditions imposed on the registrations under the predecessor act remain in effect while they would have remained in effect if this [Act] had not been enacted. They are considered to have been filed, issued, or imposed under this [Act], but are exclusively governed by the predecessor act.	1275(b) Any brokers registered under repealed section 17-1230 on the effective date of this act shall be deemed to have been registered as brokers-dealers under K.S.A. 17-1254 for the period expiring on March 1 following the effective date of this act and subject to renewal as provided in K.S.A. 17-1254. Any salesman registered under the repealed section 17-1230 of the General Statutes of 1949 on the effective date of this act, and any agent registered under the repealed section 17-1233 of the General Statutes of 1949 on the effective date of this act, shall be deemed to have been registered as agents under K.S.A. 17-1254 for the period expiring on March 1 following the effective date of this act and			(b) ***Continued effectiveness under predecessor act.*** All effective registrations under the predecessor act, all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no action determinations, and conditions imposed on the registrations under the predecessor act remain in effect while they would have remained in effect if this *Act* had not been enacted. They are considered to have been filed, issued, or imposed under this *Act*, but are exclusively governed by the predecessor act.

UNIFORM SECURITIES ACT	*KANSAS SECURITIES ACT*	*NCCUSL COMMENTS*	*KSC COMMENTS*	*NEW SECURITIES ACT*
	subject to renewal as provided in K.S.A. 17-1254. All securities for which registration by notification is in effect on the effective date of this act shall be deemed to have been registered by notification under K.S.A. 17-1256, and all securities for which registration by qualification is in effect on the effective date of this act shall be deemed to have been registered by qualification under K.S.A. 17-1258.			
(c) [**Applicability of predecessor act to offers or sales.**] The predecessor act exclusively applies to an offer or sale made within one year after the effective date of this [Act] pursuant to an offering made in good faith before the effective date of this [Act] on the basis of an exemption available under the predecessor act.	1275(c) Prior law applies in respect of any offer or sale made within one year after the effective date of this act pursuant to an offering begun in good faith before its effective date on the basis of an exemption available under prior law.			(c) ***Applicability of predecessor act to offers or sales.*** The predecessor act exclusively applies to an offer or sale made within one year after the effective date of this *Act* pursuant to an offering made in good faith before the effective date of this *Act* on the basis of an exemption available under the predecessor act.
			HB 2347 contains additional sections, 53 through 67. These sections update references to the Kansas Securities Act that are contained within other statutes. Those changes are not addressed in this analysis.	

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

Testimony to the Senate Judiciary Committee
House Bill 2347 – Kansas Uniform Securities Act
Donald P. Schnacke, for the
Kansas Independent Oil & Gas Association
March 3, 2004

I am Don Schnacke representing 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 to advise the Committee that K.S.A. 17-1262a is being removed from HB 2347, and with an understanding with the Securities Commissioner that 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 at a later date.

Since the vast majority of Kansas oil and gas operators are small business entities, preserving the oil and gas securities exemption is very important. 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.

Senate Judiciary
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Attachment 5

Leslie Kaufman, Director
Governmental Relations
Kansas Cooperative Council

Senate Judiciary Committee
March 3, 2004

HB 2437 – Uniform Securities Act.

Chairman Vratil and members of the Senate Judiciary Committee. Thank you for the opportunity to appear today on behalf of the Kansas Cooperative Council (Council/KCC) regarding HB 2347, the Uniform Securities Act. I am Leslie Kaufman and I serve the Council as Director of Government Relations. The Council has a membership of 186 cooperative businesses. Together, they have a combined membership of nearly 200,000 Kansans.

At this point, the Council does not have an overall position on the bill, but there is one provision, which would change current law regarding cooperative instruments and negatively impact our co-op members. For us, the effect of this change came to light following the hearing earlier this year in House Judiciary Committee and our interest in this issue really centers on farmer cooperatives. It is clear that there was no intention to do any harm to the manner in which cooperatives are doing business in Kansas, but the language in the bill as it currently exists, will have negative impacts, no matter how unintentional.

We were able to raise our concern with Section 6 (8) (page 11, lines 11-16) as the House Committee worked the bill. We were unable to work out the precise language needed to address our issues, and not pose additional concerns for the Securities Commissioner's office, prior to the bill moving out of Committee and the House of Representatives. The Council, with the understanding of the House Judiciary Committee and the Commissioner's staff, did agree to allow the bill to move out of the House so as to not stall the process in the chamber of origin, with the caveat that we would work with the Commissioner's staff to develop a proposed solution to present on the Senate side.

The Council has spent a great deal of time working on language, and we believe the attached proposal will alleviate our concerns with the current language. Several

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Attachment 6

ersions for rewording paragraph (8) have gone back and forth between Commission staff and our General Counsel. We are satisfied with the language and it is our hope the Commissioner's staff will not find it objectionable.

Under the language originally proposed in HB 2347, if an out-of-state cooperative was organized under certain other state's governing statutes, they would have been able to recruit patron and "non-patron members" across the entire state of Kansas. Their ability to accept "non-patron members", regardless of county of residence, would give them an advantage in raising capital that Kansas cooperatives do not have. The possibility of out-of-state entities organizing as a "co-op", but being afforded a business advantage in this state that domestic cooperatives do not have is quite concerning to us.

The proposed new language (see attachment) will prevent this possibility from occurring. It allows our cooperative members to keep what we have now. The language will allow the issuance of instruments to members intrastate, and to any person intrastate but subject to the possible regulation of issues to non-members.

We appreciate the opportunity to share our concerns with you. We do respectfully request that you replace current Section 6 (8) with our suggested language or a mutually agreeable equivalent. Thank you for your consideration and we stand ready to work with you and the Securities Commissioner to remedy this concern.

Kansas Cooperative Council
Proposed Amendment – HB 2347

In HB 2347 as Amended by House Committee

Strike all of Section 6 (8) on page 11, lines 11-16 and replace with:

(8) Any stock or other security evidencing membership or ownership in, evidencing the right to patronize, issued in lieu of a cash patronage dividend by, or representing a debt of a cooperative organized under K.S.A. 17-1601 et seq., and amendments thereto, but the administrator, by rule or order, may require the filing of a notice and place conditions upon the exemption for sales of instruments to persons who are not members within the meaning of K.S.A. 17-1606, and amendments thereto.

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

March 3, 2004

To: Senate 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.

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610 SW Corporate View 66615 • P.O. Box 4407, Topeka, KS 66604
e-mail kbaoffice@ksbankers.com • Home Page: www.ksbankers.com

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.

Thank you for your time and attention to these matters.

KANSAS

OFFICE OF THE SECURITIES COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR
CHRIS BIGGS, COMMISSIONER

August 19, 2003

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

7-3

KANSAS BAR ASSOCIATION

1200 SW Harrison St.
P.O. Box 1037
Topeka, Kansas 66601-1037
Telephone (785) 234-5696
FAX (785) 234-3813
www.ksbar.org

KBA Legislative Subcommittee on the Uniform Securities Act

Rick Fleming, The Office of the Kansas Securities Commissioner, Topeka

Jeffrey Kruske, Law Offices of Jeffrey A. Kruske, Overland Park

Fred Lovitch, University of Kansas School of Law, Lawrence

Steve Ramirez, Washburn University School of Law, Topeka

William Schutte, Polsinelli, Shalton & Welte P.C., Overland Park

Roger Walter, Morris, Laing, Evans, Brock & Kennedy, Chtd., Topeka

William R. Wood II, Foulston Siefkin, Wichita

Senate Judiciary
3-3-04
Attachment 8

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MORRIS LAING
Evans Brock & Kennedy, Chtd.

Ralph R. Brock
Joseph W. Kennedy
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Of Counsel
Gerald L. Michaud
Rick E. Bailey
Robert P. Burns
Kelly S. Herzik
Gladys Hoefer

*Resident in Topeka Office

Lester L. Morris
1901 - 1966
Verne M. Laing
1907 - 2000
Ferd E. Evans, Jr.
1919 - 1991
Dennis M. Feeney
1953 – 2001

Sender's email: rwalter@morrislaing.com

TESTIMONY OF ROGER N. WALTER
BEFORE THE SENATE JUDICIARY COMMITTEE
ON HB 2347
March 3, 2004

I appreciate this opportunity to present these remarks with respect to House bill 2347, on behalf of the KBA Legislative Subcommittee on the Uniform Securities Act.

My name is Roger N. Walter, I am in attorney engaged in private practice with the law firm of Morris, Laing, Evans, Brock & Kennedy, Chartered. I specialize in corporate and securities matters. I have been actively involved with securities regulation, the Kansas Securities Act and other states' securities acts since 1986. From 1986 through 1999 I served as general counsel to the Kansas Securities Commissioner. From 1999 to the present I have been engaged in the private practice of law specializing in securities regulatory issues. I have a varied securities practice. I represent investors as plaintiffs in arbitration litigation against brokerage firms and investment professionals. I also represent the industry in defense of such claims and in defending regulatory matters before state agencies and the NASD. I also do transactional work for issuers and underwriters. Since 1993 I have been an adjunct professor at the Washburn University School of Law teaching the Securities Regulation class.

As a regulator I served on various special and standing committees of North American Securities Administrators Association ("NASAA"), the national organization of state securities regulators. I served on the Small Business Capital Formation Committee, the Broker-Dealer Regulation Committee, the Lloyds of London Task Force, and I was Chairman of the Special Task Force of Viatical Investment Contracts. I also served on an ad hoc committee formed to draft an amendment to the existing Uniform Securities Act in response to the federal preemption legislation passed in 1996, NSMIA.

The K.B.A. would propose the following amendments to HB 2347:

1. Attachment No. 1 p. 15, line 4, strike the language after "security" through "this act" on line 5.

2. Attachment No. 2 p. 19, line 5 to 7, strike language after "thereto" through "thereto" on line 7.

TESTIMONY OF ROGER N. WALTER
BEFORE THE SENATE JUDICIARY COMMITTEE
ON HB 2347
March 3, 2004

3. Attachment No. 3 p. 58, line 6 strike the language after "records" through "of this act and" on line 7.

4. Attachment No. 4 p. 52, lines 20 and 21, strike all of subsection (3) and renumber subsequent subsections of new Sec. 39.

5. Attachment No. 5 p. 57, line 43 through line 6, p. 58, strike all of subsections (3) and (4) .F New Sec. 43.

Instances Where Departure from the Language of Uniform Securities Act is Not Appropriate.

As with any uniform legislation, uniformity of regulation is a key goal of the Uniform Securities Act of 2002 ("USA-2002") as originally drafted by NCCUSL. Accordingly, departures from the language of USA-2002 in the new Kansas Uniform Securities Act, as contained in HB 2347, should only be permitted for compelling reasons. At the request of the staff of the Kansas Securities Commissioner (the "Staff), HB 2347 departs in several instances from the language of USA-2002. I submit that the following sections of House Bill 2347 should conform with the language of their USA-2002 counterpart sections and that the changes proposed by the staff not be made:

Attachment No. 1

- Section 7(20). Exempt Transactions. Section 202(20) of USA-2002 provides a transactional exemption for the 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 the act. This is a key exemption in USA-2002, which permits issuers conducting small multi-state offerings to utilize the de minimis exemptions of more than one state. Section 7(20) of HB 2347 would further condition the availability of this exemption to only offers and sales through a Kansas registered broker-dealer. The Staff believes that this change is needed to permit the Commissioner's office to protect out-of-state investors from Kansas-based issuers. However the Staff's change would effectively deny to Kansas-based issuers the ability to utilize the de minimis exemptions of other states unless they retained the services of a broker-dealer as their placement agent. For example, an issuer located in Overland Park, Kansas conducting a self-underwritten private offering utilizing, for federal securities law purposes, Rule 504 of Regulation D would be precluded from offering and selling its securities to Missouri investors in reliance on that state's de minimis exemption. The Uniform Missouri Securities Act permits the offer and sale of securities to not more than

25 Missouri residents of that state, irrespective of whether a broker-dealer is involved in the offering. Unfortunately, small business issuers do not have the ability to attract or engage broker-dealers to act as their placement agents. Accordingly, the limitation proposed by the Staff would impose a significant impediment to the ability of Kansas-based issuers to raise capital on a multi-state basis.

Attachment No. 2

- Section 13(c). Securities Registration by Coordination – Conditions for Effectiveness of Registration Statement. Section 303(c) of USA-2002 that a registration statement registered by coordination becomes effective when no stop orders are issued or pending and the registration statement has been on file for at least 20 days. Section 13(c) of HB 2347 would add as a third condition that all Staff deficiency letter comments have been resolved. The Staff believes that issuers would prefer an informal deficiency letter instead of a formal stop order. To the contrary, issuers need the ability to force the Commissioner to issue a stop order (which can be appealed) if Staff's comments can not be resolved. An issuer has no legal recourse from a comment letter. The original language of the USA-2002 section is actually in the best interest of issuers.

Attachment No. 3

- Section 28(d). Post-Registration Requirements – Audits and Inspections. Section 411(d) of USA-2002 imposes a post-registration requirement on registered broker-dealers and investment advisors that their records are subject to reasonable periodic audits and inspections by the securities regulator. Section 28(d) of HB 2347 would expand this audits and inspection requirement to the records of issuers and guarantors of any security subject to the provisions of the Act. The Staff asserts that the Commissioner's office should have the ability to audit and inspect the records of securities issuers, including the audit of the records of Kansas-based issuers relying on Rule 506 of Regulation D. This change is objectionable for the following reasons:

    - Administrative inspections and audits of the records of licensed entities in the broker-dealer and investment adviser businesses is clearly an appropriate exercise of regulatory authority (where the form and content of books and records are themselves the subject of regulation). The same cannot be said for inspections of the records of securities issuers, who are not in the securities business or otherwise subject to regulation by the Kansas Securities Commissioner, except of the securities transaction (either exempt or registered) at hand.

    - With respect to a securities issuer, the language of the statute regarding audits and inspections is extremely broad and could be used as a guise for unlawful searches without appropriate court oversight.

TESTIMONY OF ROGER N. WALTER
BEFORE THE SENATE JUDICIARY COMMITTEE
ON HB 2347
March 3, 2004

- If the right to inspect the records of issuers is permitted, it is recommended that this provision be placed elsewhere in the act and not buried in a section dealing with the post-registration conditions of broker-dealers and investment advisors.

Attachment No. 5

- A final concern noted with respect to a departure from the uniform act language is found in new Section 43(b)(3), pp. 57-58 HB 2347. This section gives the Kansas Securities Commissioner the authority to impose restitution on a respondent in an administrative action commenced by the Commissioner. Historically, under the original 1957 Uniform Securities Act and the current 2002 Uniform Securities Act the authority to seek restitution requires the commencement of a civil action in a court of competent jurisdiction by the state securities administrator. The adjudication of liability for restitution would reside with a district court judge. The proposed section is atypical and a departure from the Uniform Act. It potentially allows the Securities Commissioner to adjudicate liability on millions of dollars in liability through administrative actions filed inhouse. All of us who have had any familiarity with the administrative law know that the administrative forum does not insure an independent tribual nor does it provide the other procedural safeguards to litigants that are available in a court of law. The potential liability at stake that could result from a finding of restitution is inappropriate to administrative law forum. It should be limited to an action filed in district court.

Instances When the Language of the Uniform Securities Act Should Not be Adopted.

As a general statement, USA-2002 strikes a fair balance between the State's need to protect investors while at the same time fostering capital formation by legitimate business. Hopefully, USA-2002 will bring much needed uniformity to state securities regulation. However, I submit that in the following instance, a compelling reason exists to depart from the uniform language of USA-2002:

Attachment No. 4

- Section 39. Rescission Offers. Both the HB 2347, at 39(3) and the Uniform Securities Act, at 510(3), condition to the extinguishment of civil liability by means of a rescission offer on the requirement that the rescission offeror must have the "present ability" to pay the amount offered for the securities tendered in response to the rescission offer. This section offers a significant and unnecessary impediment to the rescission offer process, which is otherwise beneficial for issuers, their control persons, and investors. While the ability of the rescission offeror to fund the rescission offer is clearly a material disclosure item in any rescission offer, it is submitted that it should not be a condition to extinguishing civil liability.

person, or its parent or subsidiary, are parties;

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

(20) **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;** #1

(21) 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 subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

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

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

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

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

~~(21)~~ **(22)** a transaction involving:

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

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

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

~~(22)~~ **(23)** a nonissuer transaction in an outstanding security by or

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ATTACHMENT #1

conditions are satisfied:

(1) A stop order under subsection (d) or section 16, and amendments thereto, or issued by the securities and exchange commission is not in effect, and a proceeding is not pending against the issuer under section 16, and amendments thereto~~, and the administrator has not given written notice of deficiencies that are unresolved and that would constitute grounds for a stop order under section 16, and amendments thereto~~; and #2

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

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

(e) *Effectiveness of registration statement.* If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the administrator, the registration statement is automatically effective under this act when all the conditions are satisfied or waived. If the registrant notifies the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly notify the registrant by a record, indicating whether all the conditions are satisfied or waived and whether the administrator intends the institution of a proceeding under section 16, and amendments thereto. The notice by the administrator does not preclude the institution of such a proceeding.

New Sec. 14. (a) *Registration permitted.* A security may be registered by qualification under this section.

(b) *Required records.* A registration statement under this section must contain the information or records specified in section 15, and amendments thereto, a consent to service of process complying with section 50, and amendments thereto, and the following information or records unless waived by the administrator for good cause shown:

(1) With respect to the issuer and any significant subsidiary, its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement

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ATTACHMENT #2

tion 17(a) of the securities exchange act of 1934 (15 U.S.C. section 78q(a)) if they are readily accessible to the administrator; and

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

(d) *Audits or inspections.* The records ~~of every person issuing or guaranteeing any securities subject to the provisions of this act and~~ of every broker-dealer, agent, investment adviser or investment adviser representative registered or required to be registered under this act are subject to such reasonable periodic, special, or other audits or inspections by a representative of the administrator, within or without this state, as the administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The administrator may copy, and remove for audit or inspection copies of, all records the administrator reasonably considers necessary or appropriate to conduct the audit or inspection. The administrator may assess a reasonable charge for conducting an audit or inspection under this subsection. #3

(e) *Custody and discretionary authority bond or insurance.* Subject to section 15(h) of the securities exchange act of 1934 (15 U.S.C. section 78o(h)) or section 222 of the investment advisers act of 1940 (15 U.S.C. section 80b-22), a rule adopted or order issued under this act may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security. The administrator may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this act whose net capital exceeds, or of an investment adviser registered under this act whose minimum financial requirements exceed, the amounts required by rule or order under this act. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in section 38 (j)(2), and amendments thereto.

(f) *Requirements for custody.* Subject to section 15(h) of the securities exchange act of 1934 (15 U.S.C. section 78o(h)) or section 222 of the investment advisers act of 1940 (15 U.S.C. section 80b-22), an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this act may prohibit, limit,

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of section 38 (d), and amendments thereto; and if the customer is a purchaser, an offer to pay as specified in subparagraph (B); or, if the customer is a seller, an offer to tender or to pay as specified in subparagraph (C);

(E) if the basis for relief under this section may have been a violation of section 38 (e), and amendments thereto, an offer to reimburse in cash the consideration paid for the advice and interest ~~at 15% per annum~~ from the date of payment **at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto**; or

(F) if the basis for relief under this section may have been a violation of section 38 (f), and amendments thereto, an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest ~~at 15% per annum~~ from the date of the violation causing the loss **at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto**;

(2) the offer under paragraph (1) states that it must be accepted by the purchaser, seller, or recipient of investment advice within 30 days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period, of not less than three days, that the administrator, by order, specifies;

~~(3) the offeror has the present ability to pay the amount offered or to tender the security under paragraph (1);~~ #4

(3) ~~(4)~~ the offer under paragraph (1) is delivered to the purchaser, seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and

(4) ~~(5)~~ the purchaser, seller, or recipient of investment advice that accepts the offer under paragraph (1) in a record within the period specified under paragraph (2) is paid in accordance with the terms of the offer.

New Sec. 40. (a) *Administration.* (1) This act shall be administered by the securities commissioner of Kansas.

(2) All fees herein provided for shall be collected by the administrator. All salaries and expenses necessarily incurred in the administration of this act shall be paid from the securities act fee fund.

(3) The administrator shall remit all moneys received from all fees, charges, deposits or penalties which have been collected under this Act or other laws of this state regulating the issuance, sale or disposal of securities or regulating dealers in this state or under the uniform land sales practices act, to the state treasurer at least monthly. Upon receipt of any such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury. In accordance with subsection (a) of K.S.A. 75-3170, and amendments thereto, 20% of each such deposit shall be credited to the state general fund and, except as provided in subsection (d), the balance shall be credited to the securities act fee fund.

(4) On the last day of each fiscal year, the director of accounts and

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violation. The total penalty against a person shall not exceed $1,000,000;

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

(E) ordering the payment of prejudgment and postjudgment interest; or

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

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

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

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

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

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

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

(1) A civil penalty up to ~~a maximum of $10,000~~ **$25,000** for each violation. **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**;

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

~~(3) an order requiring the person to pay restitution for any loss or~~

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ATTACHMENT #5

~~disgorge any profits arising from the violation, including, in the administrator's discretion, the assessment of interest not to exceed 15% per annum from the date of the violation at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto; or~~

~~(4) an order charging the person with the actual cost of the investigation or proceeding.~~

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

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

(3) An order under subsection (a) may contain a notice of the administrator's intent to seek administrative sanctions or remedies under subsection (b). If the person subject to the order does not request a hearing and none is ordered by the administrator within 30 days after service of the order, the administrator may modify the order to include sanctions or remedies under subsection (b). If a hearing is requested or ordered, the administrator, after notice and opportunity for hearing, shall by written findings of fact and conclusions of law vacate, modify, or make permanent the order, and the administrator may modify the order to include sanctions or remedies under subsection (b).

(d) *Filing of certified final order with court; effect of filing.* If a petition for judicial review of a final order is not filed in accordance with section 48, and amendments thereto, the administrator may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(e) *Enforcement by court; further civil penalty.* If a person does not comply with an order under this section, the administrator may petition a court of competent jurisdiction to enforce the order. The court may not