



# KANSAS

OFFICE OF THE SECURITIES COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR  
CHRIS BIGGS, COMMISSIONER

August 1, 2005

Roger N. Walter, Esq.  
Morris, Laing, Evans, Brock & Kennedy, Chtd.  
800 SW Jackson, Suite 1310  
Topeka, KS 66612-1216

RE: Interpretive Opinion No. 2006-001  
MMR Investment Bankers, Inc.  
File No. 2006X0000001

Synopsis: A broker-dealer located in Kansas may sell securities of non-profit issuers to out-of-state residents under KUSA section 7(20) and to Kansas residents under section 7(14) instead of satisfying the requirements of section 6(7).

Dear Mr. Walter:

You have requested confirmation that your client, MMR Investment Bankers, Inc., may sell debt securities of non-profit issuers without registering the securities under the Kansas Uniform Securities Act (KUSA) or meeting the qualifications for an exemption under section 6(7) of KUSA. Your client, as a broker-dealer located and registered in Kansas, seeks confirmation that it may rely upon KUSA section 7(14) for sales to Kansas clients and section 7(20) for sales to out-of-state clients.

You correctly state in your letter that, under the former Kansas Securities Act, the Office of the Securities Commissioner took the position that sales from a broker-dealer in Kansas to out-of-state customers were subject to Kansas registration requirements. This position found support in *A.S. Goldmen & Co., Inc. v. New Jersey Bureau of Securities*, 163 F.3d 780 (3d Cir. 1999). However, the Kansas Securities Act was repealed on July 1, 2005 and replaced with KUSA, which is modeled upon the Uniform Securities Act (2002). Section 7(20) of KUSA, which is derived from section 202(20) of the model act, allows a Kansas broker-dealer to make out-of-state sales without registration of the securities in Kansas. Furthermore, the official comment to section 202(20) contrasts the language of the exemption with the *A.S. Goldmen* holding, so it is clear that our former policy is no longer valid under the new act.

Of course, a broker-dealer located in Kansas must meet certain conditions to qualify for the 7(20) exemption. Most importantly, the sale must not violate the law of the purchaser's state. This

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would include that state's registration and exemption rules, so the offering must comply with the other state's standards regarding debt securities of non-profit issuers unless the offering is exempt under a separate provision of that state's law. In addition, the offering must comply with the ethical and sales practice rules of the purchaser's state, and a violation of those rules would result in the loss of the registration exemption in Kansas.

With respect to in-state sales by a Kansas broker-dealer, KUSA does not appear to prohibit stacking of the exemptions in sections 7(14) and 7(20). Therefore, your client may simultaneously rely upon section 7(20) for out-of-state sales and section 7(14) for in-state sales. Furthermore, even though section 6(7) of KUSA provides specific provisions for the sale of securities issued by non-profit organizations (typically church bonds or church extension fund notes), nothing in KUSA prohibits your client from taking advantage of other exemptions for the sale of these types of securities.

Please note that our agency retains its examination authority over a registered broker-dealer, even with respect to transactions that are exempt from securities registration under KUSA section 7(14) or 7(20). In addition, the transactions would not be exempt from the Kansas anti-fraud provisions or our ethical rules for broker-dealers and agents. Accordingly, we may initiate enforcement action if we find that a sale is unsuitable or the sale is conducted in an unethical manner, even if the customer resides in another state. We may also take enforcement action if we determine that an offering operates as a fraud or deceit upon investors, and we may look to the appropriate NASAA Statement of Policy (SOP) to determine whether the disclosures in an offering document are incomplete or misleading in a material respect. In our view, substantial noncompliance with a NASAA SOP could constitute a business practice which operates as a fraud or deceit upon investors.

With the foregoing caveats, staff concludes that your client may underwrite securities offerings and sell securities of non-profit issuers from its Kansas location to out-of-state residents under KUSA section 7(20) and to in-state residents under section 7(14). Assuming all the requirements of those sections are met, staff confirms that this office will not take enforcement action if the securities of non-profit issuers are sold without satisfying the requirements of section 6(7).

This opinion is based on the written representations provided by you, and it does not extend to any other fact situation. Furthermore, any variance from the facts expressed in your letter could result in a different conclusion. This opinion is intended solely as an expression of enforcement policy, and its legal conclusions are not binding on any court, legal tribunal, or any other person.

Sincerely,



Rick A. Fleming  
General Counsel