Office of the Securities Commissioner of Kansas

KANSAS SECURITIES REGULATIONS

Regulations as of January, 2016

ARTICLE 1 – DEFINITION OF TERMS

81-1-1. Definition of terms. As used in the act, these regulations, and the forms, instructions, and orders of the administrator, each of the following terms shall have the meaning specified in this regulation, unless the context indicates otherwise:

(a) ''The act'' means the Kansas uniform securities act, K.S.A. 17-12a101 et seq., and amendments thereto.

(b) ''Administrator'' means the securities commissioner of Kansas, appointed pursuant to K.S.A. 75-6301 and amendments thereto, or the commissioner's designee.

(c) ''Affiliate'' means a person who directly or indirectly controls, is controlled by, or is under common control with another person, or who aids and abets or is aided and abetted by another person.

(d) ''AICPA'' means the American institute of certified public accountants.

(e) ''Branch office'' means any location where one or more agents or investment adviser representatives regularly conduct business on behalf of a broker-dealer or investment adviser, or that is held out as such a location, with the exception of the following locations:

(1) Any location that is established solely for customer service or back office-type functions, where no sales activities are conducted, and that is not held out to the public as a branch office;

(2) any location that is the agent's or investment adviser representative's primary residence if all of the following conditions are met:

(A) Only agents or investment adviser representatives who reside at the location and are members of the same immediate family conduct business at the location;

(B) the location is not held out to the public as an office, and the agent or investment adviser representative does not meet with customers at the location;

(C) neither customer funds nor securities are handled at the location;

(D) the agent or investment adviser representative is assigned to a designated branch office, and the designated branch office is reflected on all business cards, stationery, advertisements, and other communications to the public by the agent or investment adviser representative;

(E) the agent's or investment adviser representative's correspondence and communications with the public are subject to the supervision of the broker-dealer or investment adviser with which the individual is associated;

(F) electronic communications are made through the electronic system of the broker-dealer or investment adviser;

(G) all orders for securities are entered through the designated branch office or an electronic system established by a broker-dealer or investment adviser;

(H) written supervisory procedures pertaining to supervision of activities conducted at residence locations are maintained by the broker-dealer or investment adviser; and

(I) a list of all residence locations is maintained by the broker-dealer or investment adviser;

(3) any location, other than a primary residence, that is used for securities or investment advisory business for less than 30 business days in any one calendar year, if the broker-dealer or investment adviser complies with the provisions of paragraphs (e)(2)(B) through (H). For purposes of this paragraph, a business day shall not include any partial business day if the agent or investment adviser representative spends at least four hours of the business day at the agent's or investment adviser representative's designated branch office during the hours that the office is normally open for business;

(4) any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, that is not held out to the public as an office;

(5) any location that is used primarily to engage in non-securities activities and from which the agents or investment adviser representatives effect no more than 25 securities transactions in any one calendar year, if any advertisement or sales literature

identifying the location also sets forth the address and telephone number of the location from which the agents or investment adviser representatives conducting business at the non-branch locations are directly supervised;

(6) the floor of a registered national securities exchange where a broker-dealer conducts a direct access business with public customers; and

(7) a temporary location established in response to the implementation of a business continuity plan.

(f) ''Close family relationship'' means either a person within the third degree of relationship, by blood or adoption, or a spouse, stepchild, or fiduciary of a person within the third degree of relationship.

(g) ''Commission'' means any consideration, compensation, fee, or other remuneration that is directly or indirectly incurred, paid, or given in exchange for services in connection with the offer, sale, or purchase of securities, the rendering of investment advice, or the solicitation of prospective purchasers or clients.

(h) ''Control'' means the possession of the power to direct or influence the direction of the management or policies of a person, directly or indirectly, through the ownership of voting securities, by contract, or by other means.

(i) ''Controlling person'' means a person who has control of any other person. Either of the following persons shall be presumed to be a controlling person:

(1) An officer, director, partner, or trustee or an individual occupying similar status or performing similar functions; or

(2) a person owning 10 percent or more of the outstanding shares of any class or classes of securities.

(j) ''CPA'' means certified public accountant or a firm of certified public accountants.

(k) ''CRD'' means the central registration depository jointly administered by FINRA and NASAA.

(l) ''Designated security'' means any equity security other than the following:

(1) A security registered, or approved for registration upon notice of issuance, on a national securities exchange;

(2) a security authorized, or approved for authorization upon notice of issuance, for listing on the Nasdaq stock market;

(3) a security issued by an investment company registered under the investment company act of 1940;

(4) a security that is a put option or call option issued by the options clearing corporation; or

(5) a security whose issuer has net tangible assets in excess of $4,000,000 as demonstrated by financial statements dated within the previous 15 months that the broker-dealer has reviewed and has a reasonable basis to believe are true and complete in relation to the date of the transaction with the person, if either of the following conditions is met:

(i) The issuer is other than a foreign private issuer, and the financial statements are the most

recent financial statements for the issuer that have been audited and reported on by a CPA in accordance with the provisions of 17 C.F.R. 210.2-02, as adopted by reference in K.A.R. 81-2-1; or

(ii) the issuer is a foreign private issuer, and the financial statements are the most recent financial statements for the issuer that have been filed with the SEC; published electronically in English pursuant to 17 C.F.R. 240.12g3-2(b), as adopted by reference in K.A.R. 81-2-1; or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

(m) "EFD" means the electronic filing depository administered by NASAA.

(n) "FINRA" means the financial industry regulatory authority, inc., a self-regulatory organization registered with the SEC pursuant to section 15A of the securities exchange act of 1934, 15 U.S.C. § 78o-3, as adopted by reference in K.A.R. 81-2-1, that was organized upon consolidation with NASD, its predecessor, and the regulatory functions of the New York stock exchange.

(o) ''GAAP'' means generally accepted accounting principles in the United States.

(p) ''General solicitation'' means an offer to one or more persons by any of the following means or as a result of contact initiated through any of these means:

(1) Television, radio, or any broadcast medium;

(2) newspaper, magazine, periodical, or any other publication of general circulation;

(3) poster, billboard, internet posting, or other communication posted for the general public;

(4) brochure, flier, handbill, or similar communication, unless the offeror has a substantial preexisting business relationship or close family relationship with each of the offerees;

(5) seminar or group meeting, unless the offeror has a substantial preexisting business relationship or close family relationship with each of the offerees; or

(6) telephone, facsimile, mail, delivery service, social media, or electronic communication, unless the offeror has a substantial preexisting business relationship or close family relationship with each of the offerees.

(q) ‘‘IARD’’ means the investment adviser registration depository jointly administered by the SEC and NASAA and operated by FINRA in conjunction with the CRD system.

(r) ‘‘NASAA’’ means the North American securities administrators association, inc.

(s) ‘‘NASD’’ means the national association of securities dealers, inc., a self-regulatory organization that was registered with the SEC pursuant to section 15A of the securities exchange act of 1934, 15 U.S.C. § 78o-3, as adopted by reference in K.A.R. 81-2-1, until its consolidation with the regulatory functions of the New York stock exchange upon organization of its successor, FINRA.

(t) “Nasdaq” means the Nasdaq stock market, which is comprised of the Nasdaq global select market; the Nasdaq global market, formerly the Nasdaq national market; and the Nasdaq capital market, formerly the Nasdaq smallcap market.

(u) ‘‘Officer’’ means a person charged with managerial responsibility or control over a person, including the president, vice president, secretary, treasurer, partner, and any other controlling person.

(v) ‘‘Parent’’ means an affiliate who controls another person.

(w) ‘‘PCAOB’’ means the public company accounting oversight board.

(x) ‘‘Predecessor’’ means a person, a major portion of whose business, assets, or control has been acquired by another.

(y) ‘‘Promoter’’ means a person who, acting alone or in conjunction with one or more other persons, directly or indirectly founds, organizes, reorganizes, or controls the business, financing, or operations of an issuer.

(z) ‘‘Prospectus’’ means any prospectus defined in section 2(a)(10) of the securities act of 1933, 15 U.S.C. 77b(a)(10), as adopted by reference in K.A.R. 81-2-1. This term shall not include any communication meeting the requirements of K.S.A. 17-12a202(16), and amendments thereto, or SEC rule 134, 17 C.F.R. 230.134, as adopted by reference in K.A.R. 81-2-1.

(aa) ‘‘Registrant’’ means a person registered under the act.

(bb) ‘‘SCOR’’ means small company offering registration.

(cc) ‘‘SEC’’ means the United States securities and exchange commission.

(dd) ‘‘Subsidiary’’ means an affiliate who is controlled by another person. (Authorized by and implementing K.S.A 17-12a605(a); effective Jan. 1, 1966; amended, T-85-45, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended May 31, 1996; amended Jan. 19, 2007; amended Jan. 4, 2016.)

ARTICLE 2 – FILING, FEES, AND FORMS

81-2-1. Forms and adoptions by reference.

(a) *Forms*. Whenever any of these regulations requires the filing of any of the following forms, the filer shall use the form as issued or approved by the administrator:

(1) Uniform forms:

FORM	TITLE
ADV	Uniform application for investment adviser registration
ADV-W	Notice of withdrawal from registration as investment adviser
BD	Uniform application for broker-dealer registration
BDW	Uniform request for broker-dealer withdrawal
D	Notice of exempt offering of securities
NF	Uniform investment company notice filing
U-1	Uniform application to register securities
U-2	Uniform consent to service of process
U-2A	Uniform form of corporate resolution
U-4	Uniform application for securities industry registration or transfer
U-5	Uniform termination notice for securities industry registration
U-7	Disclosure document Model accredited investor exemption uniform notice of transaction

(2) Kansas forms:

FORM	TITLE
IKE	Notice of reliance on the invest Kansas exemption
KSC-1	Sales report or renewal application
KSC-15	Solicitation of interest form for issuers organized or based in Kansas

(3) SEC forms:

FORM	TITLE
1-A	Regulation A offering statement under the securities act of 1933
S-1	Registration statement under the securities act of 1933
X-17A-5	FOCUS report (financial and operational combined uniform single report)

(b) *Federal statutes*. The following federal statutes, as in effect on May 12, 2015, are hereby adopted by reference:

(1) Sections 2, 3, and 17 of the securities act of 1933, 15 U.S.C. §§ 77b, 77c, and 77q;

(2) sections 9, 10, 13, 15, and 15A of the securities exchange act of 1934, 15 U.S.C. §§ 78i, 78j, 78m, 78o, and 78o-3;

(3) sections 203, 204A, 205, and 215 of the investment advisers act of 1940, 15 U.S.C. §§ 80b-3, 80b-4a, 80b-5, and 80b-15; and

(4) sections 3, 5, 8, and 54 of the investment company act of 1940, 15 U.S.C. §§ 80a-3, 80a-5, 80a-8, and 80a-53.

(c) *SEC rules and regulations*. The following rules and regulations of the securities and exchange commission, as in effect on May 12, 2015, except as otherwise specified, are hereby adopted by reference:

(1) 17 C.F.R. 210.2-02;

(2) rule 134, 17 C.F.R. 230.134;

(3) rule 147, 17 C.F.R. 230.147;

(4) regulation A, 17 C.F.R. 230.251 through 230.263, as amended by 80 fed. reg. 21895-21902 (2015) and effective June 19, 2015;

(5) rules 501, 504, 505, and 506 of regulation D, 17 C.F.R. 230.501, 230.504, 230.505, and 230.506;

(6) rule 8c-1, 17 C.F.R. 240.8c-1;

(7) rule 10b-10, 17 C.F.R. 240.10b-10;

(8) rule 12g3-2(b), 17 C.F.R. 240.12g3-2(b);

(9) rule 15c2-1, 17 C.F.R. 240.15c2-1;

(10) rules 15c3-1, 15c3-1a through 15c3-1g, 15c3-3, and 15c3-3a, 17 C.F.R. 240.15c3-1, 240.15c3-1a through 240.15c3-1g, 240.15c3-3, and 240.15c3-3a;

(11) rules 17a-3, 17a-4, and 17a-5, 17 C.F.R. 240.17a-3, 240.17a-4, and 240.17a-5;

(12) rule 17a-11, 17 C.F.R. 240.17a-11;

(13) regulation M, 17 C.F.R. 242.100 through 242.105;

(14) regulation SHO, 17 C.F.R. 242.200 through 242.204;

(15) regulation FD, 17 C.F.R. 243.100 through 243.103;

(16) regulation S-P, 17 C.F.R. 248.1 through 248.18 and 248.30;

(17) rule 12b-1, 17 C.F.R. 270.12b-1;

(18) rule 204-4, 17 C.F.R. 275.204-4;

(19) rule 205-3, 17 C.F.R. 275.205-3; and

(20) rule 206(4)-1, 17 C.F.R. 275.206(4)-1.

(d) *FINRA, NASD, and New York stock exchange rules*. The following rules in the "FINRA manual," dated September 2014 and published by the financial industry regulatory authority, inc., are hereby adopted by reference:

(1) NASD ''conduct rules'' within the series of rules 2300, 2400, 2500, 2700, 2800, 3000, and 3100;

(2) FINRA rules within the series of rules 2100, 2200, 2300, 3100, 3200, 3300, 5100, 5200, and 5300; and

(3) rule 472 of the New York stock exchange, ''communications with the public.''

(e) Whenever terms within the context of statutes, rules, or documents adopted by reference in these regulations are in conflict with definitions under the act and this regulation, the definition within the statutes, rules, and documents adopted by reference shall apply.

(f) Nothing within these regulations shall be construed to require the SEC, FINRA, or any other regulatory organizations to comply, administer, or enforce the statutes, rules, or policies under their jurisdiction that are adopted by reference under these regulations, or to require the administrator to act on behalf of the SEC, FINRA, or any other regulatory organizations to enforce the statutes, rules, or policies under their jurisdiction. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a608; effective Jan. 1, 1966; amended, E-70-15, Feb. 4, 1970; amended Jan. 1, 1971; amended, E-77-40, Aug. 12, 1976; amended Feb. 15, 1977; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-88-29, Aug. 19, 1987; amended May 1, 1988; amended March 25, 1991; amended Oct. 7, 1991; amended April 17, 1995; amended May 31, 1996; amended Dec. 19, 1997; amended Aug. 18, 2006; amended Aug. 12, 2011; amended Jan. 4, 2016.)

ARTICLE 3 – LICENSING; BROKER-DEALERS AND AGENTS

81-3-1. Registration procedures for broker-dealers and agents.

(a) *General provisions*. Each applicant shall be at least 18 years of age. If the applicant is not an individual, then the directors, officers, managing partners, or managing members of the applicant shall be at least 18 years of age.

(b) *Registration requirements for broker-dealers*.

(1) Initial application.

(A) CRD filing requirements. Each applicant for initial registration as a broker-dealer shall complete form BD in accordance with the form instructions and shall file the form with the CRD, unless the applicant is not required to file with the CRD for FINRA membership or SEC registration. Each application filed with the CRD shall include the following:

(i) The registration fee specified in K.A.R. 81-3-2(a);

(ii) any reasonable fee charged by FINRA for filing through the CRD system; and

(iii) a current list of the addresses of all branch offices and the names of all branch supervisors.

(B) Direct filing requirements. Each applicant for initial registration as a broker-dealer that is required to file with the CRD pursuant to paragraph (b)(1)(A) shall file either of the following, as applicable, directly with the administrator:

(i) The annual report for the applicant's last fiscal year pursuant to SEC rule 17a-5(d), 17 C.F.R. 240.17a-5(d), as adopted by reference in K.A.R. 81-2-1, unless the applicant was not required to file an annual report with FINRA and the SEC, and part II of the applicant's most recent FOCUS report on form X-17A-5 that includes a statement of financial condition dated within 90 days of filing for registration, unless the applicant was not required to file a FOCUS report with FINRA and the SEC; or

(ii) a statement of financial condition with notes to the statement presented in conformity with GAAP dated within 90 days of filing for registration, including disclosure of the applicant's net capital or a supplemental schedule of net capital pursuant to K.A.R. 81-3-7(d).

(C) Filing requirements for an applicant that is not required to file with CRD for FINRA membership or SEC registration. An applicant that is not required to file with CRD shall file the following directly with the administrator:

(i) A printed form BD, completed in accordance with the form instructions;

(ii) the registration fee specified in K.A.R. 81-3-2(a); and

(iii) the statement of financial condition specified in paragraph (b)(1)(B)(ii).

(2) Effective date of registration. Each registration shall become effective the 45th day after a completed application is filed unless approved earlier by the administrator. If the administrator or the administrator's staff has given written notice of deficiencies in the application, the application shall not be considered complete until an amendment is filed to resolve the deficiencies.

(3) Expiration and annual renewal of registration. Each broker-dealer registration shall expire on December 31, and each application for renewal of registration shall be filed as follows:

(i) If the initial application for registration was filed with the CRD, the renewal application shall be filed with the CRD not later than the deadline established by the CRD. Each application for renewal of registration shall include the fee specified in K.A.R. 81-3-2(a) and any reasonable fee charged by FINRA for filing through the CRD system. Each applicant for renewal shall also update information in the CRD system as necessary, on or before December 31, including the addresses of all branch offices and the names of all branch supervisors.

(ii) If the initial application for registration was filed directly with the administrator pursuant to paragraph (b)(1)(C), the renewal application shall be filed directly with the administrator and shall include the fee specified in K.A.R. 81-3-2(a). Each application for renewal filed directly with the administrator shall include an updated form BD with amendments for material changes, if any, as specified in paragraph (b)(4).

(4) Updates and amendments. Each registered broker-dealer shall promptly file an amendment to form BD, in accordance with the instructions to form BD, whenever there is any material change in any information, exhibits, or schedules submitted, or circumstances disclosed in its last filed form BD. An amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of an amendment. Material changes shall include the following:

(A) A change in firm name, ownership, management, or control of a broker-dealer, or a change in any of its controlling persons; a change of business address; or the creation or termination of a branch office in Kansas;

(B) a change in the type of entity, general plan, or nature of a broker-dealer's business, method of operation, or type of securities in which it is dealing or trading;

(C) insolvency, dissolution, liquidation, or a material adverse change or impairment of working capital, or noncompliance with the minimum net capital as required by K.A.R. 81-3-7;

(D) termination of business or discontinuance of activities as a broker-dealer;

(E) the filing of a criminal charge or civil action against a registrant, or a controlling person, in which a fraudulent, dishonest, or unethical act is alleged or a violation of a securities law is involved; or

(F) the entry of an order or proceeding by any court or administrative agency against a registrant denying, suspending, or revoking a registration, or threatening to do so, or enjoining the registrant from engaging in or continuing any conduct or practice in the securities business.

(5) Withdrawal and termination of registration.

(A) Each application that has been on file for six months without any action taken by the applicant shall be considered withdrawn.

(B) If a broker-dealer desires to withdraw and terminate registration or registration is terminated by the administrator, the broker-dealer shall immediately file a completed form BDW either with the CRD or, if the broker-dealer was registered pursuant to paragraph (b)(1)(C), directly with the administrator.

(c) *Registration requirements for agents*.

(1) Initial application. Each applicant for registration as an agent shall complete form U-4 in accordance with the form instructions. The form for an agent of a broker-dealer shall be filed electronically with the CRD. A form U-4 shall be filed directly, in either paper or electronic form, with the administrator for an agent who is associated solely with an issuer or with an intrastate broker-dealer registered pursuant to paragraph (b)(1)(C). Each application for initial registration shall include the following items:

(A) The registration fee specified in K.A.R. 81-3-2(b);

(B) any reasonable fee charged by FINRA for filing through the CRD system; and

(C) proof of completion of the series 63 or series 66 examination with a passing score, in addition to successful completion of one other examination approved by the administrator and required for registration with FINRA. This examination requirement may be waived by the administrator for an applicant who has previously passed the required written examinations and whose last effective registration was not more than two years before the date of the filing of the present registration application. Additional examination requirements may be imposed by the administrator, or any applicant may be exempted from examination requirements pursuant to K.S.A. 17-12a412(e), and amendments thereto.

(2) Effective date of registration.

(A) Initial registration. Each registration shall become effective the 45th day after a completed application is filed unless the application is approved earlier by the administrator. If the administrator or the administrator's staff has given written notice of deficiencies in the application, the application shall not be considered complete until an amendment is filed to resolve the deficiencies.

(B) Transfer of employment or association. If an agent terminates employment by or association with a broker-dealer and begins employment by or association with another broker-dealer, and the second broker-dealer files an application for registration for the agent within 30 days after the termination, the application shall become effective pursuant to K.S.A. 17-12a408(b), and amendments thereto.

(3) Expiration and annual renewal of registration. Each agent registration shall expire on December 31, and each application for renewal of registration shall be filed not later than the deadline established by the CRD or the administrator, if filed directly with the administrator. Each application for renewal of registration shall include the fee specified in K.A.R. 81-3-2(b) and any reasonable fee charged by FINRA for filing through the CRD system.

(4) Updates and amendments. Each agent's employing or associated broker-dealer or issuer shall promptly file with the CRD or the administrator an amendment to form U-4, in accordance with the instructions to form U-4, whenever there is any material change in any information, exhibits, or schedules submitted, or circumstances disclosed in the agent's last filed form U-4. An amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of an amendment. Material changes shall include any change in the registrant's name, residential address, office of employment address, and matters disclosed in the ''disclosure questions'' portion of form U-4.

(5) Withdrawal and termination of registration.

(A) Each application that has been on file for six months without any action taken by the applicant shall be considered withdrawn.

(B) If an agent's employment by or association with a broker-dealer or issuer is discontinued or terminated, the broker-dealer or issuer shall file a notice of termination within 30 days. If the agent commences employment by or association with another broker-dealer or issuer, that broker-dealer or issuer shall file an original application for registration.

(C) Termination of a broker-dealer's or issuer's registration for any reason shall automatically constitute cancellation of all associated agents' registrations. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a406, 17-12a407, 17-12a408, and 17-12a412(e); effective Jan. 1, 1966; amended, E-70-15, Feb. 4, 1970; amended Jan. 1, 1971; amended, E-77-40, Aug. 12, 1976; amended Feb. 15, 1977; amended May 1, 1987; amended Oct. 7, 1991; amended June 28, 1993; amended May 31, 1996; amended Oct. 26, 2001; amended Aug. 18, 2006; amended Jan. 4, 2016.)

81-3-2. Broker-dealer and agent registration fees.

(a) The fee for initial registration or renewal of the registration of each broker-dealer shall be $200.

(b) The fee for initial registration or renewal of the registration of each agent shall be $60.

(c) The CRD shall be authorized to receive and store filings and collect related fees from broker-dealers and agents on behalf of the administrator.

(Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a410; effective, E-82-24, Dec. 9, 1981; effective May 1, 1982; amended, T-87-41, Dec. 8, 1986; amended May 1, 1987; amended, T-81-9-12-88, Sept. 12, 1988; amended Oct. 25, 1988; amended Jan. 15, 1990; amended Oct. 7, 1991; amended Dec. 19, 1997; amended Oct. 26, 2001; amended Aug. 18, 2006; amended Dec. 19, 2008; amended Oct. 9, 2015.)

81-3-3. Revoked. (Authorized by K.S.A. 1992 Supp. 17-1270(f); implementing K.S.A. 17-1253; effective, T-87-28, Oct. 1, 1986; effective May 1, 1987; amended June 28, 1993; revoked Oct. 26, 2001.)

81-3-4. Revoked. (Authorized by K.S.A. 1992 Supp. 17-1270(d); implementing K.S.A. 1992 Supp. 17-1270(d); effective June 28, 1993; revoked May 31, 1996.)

81-3-5. Sales of securities at financial institutions.

(a) *Definitions*. For purposes of this regulation, the following definitions shall apply:

(1) ''Affiliate'' means a company that controls, is controlled by, or is under common control with a broker-dealer as defined in FINRA rule 5121, which is adopted by reference in K.A.R. 81-2-1.

(2) ''Broker-dealer services'' means the investment banking or securities business that is conducted by a broker-dealer or a municipal or government securities broker or dealer other than a financial institution or department or division of a financial institution and consists of any of the following:

(A) Underwriting or distributing issues of securities;

(B) purchasing securities and offering the securities for sale as a dealer; or

(C) purchasing and selling securities upon the order and for the account of others.

(3) ''Financial institution'' means any federal-chartered or state-chartered bank, savings and loan association, savings bank, credit union, and any service corporation of these institutions located in Kansas.

(4) ''Networking arrangement'' and ''brokerage affiliate arrangement'' mean a contractual or other arrangement between a broker-dealer and a financial institution pursuant to which the broker-dealer conducts broker-dealer services on the premises of the financial institution where retail deposits are taken.

(b) *Applicability*. This regulation shall apply exclusively to broker-dealer services conducted by any broker-dealer on the premises of a financial institution where retail deposits are taken. This regulation shall not alter or abrogate a broker-dealer's obligations to comply with other applicable laws or regulations that may govern the operations of broker-dealers and their agents, including supervisory obligations. This regulation shall not apply to broker-dealer services provided to nonretail customers.

(c) *Standards for broker-dealer conduct*. No broker-dealer shall conduct broker-dealer services on the premises of a financial institution where retail deposits are taken unless the broker-dealer complies initially and continuously with the following requirements:

(1) Setting. Broker-dealer services shall be conducted in a physical location distinct from the area in which the financial institution's retail deposits are taken. In all situations, the broker-dealer shall identify its services in a manner that clearly distinguishes those services from the financial institution's retail deposit-taking activities. The broker-dealer's name shall be clearly displayed in the area in which the broker-dealer conducts its broker-dealer services.

(2) Networking and brokerage affiliate arrangements and program management. Networking and brokerage affiliate arrangements shall be governed by a written agreement that sets forth the responsibilities of the parties and the compensation arrangements. Networking and brokerage affiliate arrangements shall stipulate that supervisory personnel of the broker-dealer and representatives of state securities authorities, where authorized by state law, will be permitted access to the financial institution's premises where the broker-dealer conducts broker-dealer services in order to inspect the books and records and other relevant information maintained by the broker-dealer with respect to its broker-dealer services. The broker-dealer shall be responsible for ensuring that the networking and brokerage affiliate arrangement clearly outlines the duties and responsibilities of all parties.

(3) Customer disclosure and written acknowledgment.

(A) When or before a customer's securities brokerage account is opened by a broker-dealer on the premises of a financial institution where retail

deposits are taken, the broker-dealer shall perform the following:

(i) Disclose, orally and in writing, that the securities products purchased or sold in a transaction with the broker-dealer are not insured by the federal deposit insurance corporation (‘‘FDIC’’) or the national credit union share insurance fund (“NCUSIF”), as applicable, are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution, and are subject to investment risks, including possible loss of the principal invested; and

(ii) make reasonable efforts to obtain from each customer during the account opening process a written acknowledgment of the disclosures required by paragraph (c)(3)(A)(i).

(B) If broker-dealer services include any written or oral representations concerning insurance coverage other than FDIC or NCUSIF insurance coverage, then clear and accurate written or oral explanations of the coverage shall also be provided to the customers when these representations are first made.

(4) Communications with the public.

(A) All of the broker-dealer’s written confirmations and account statements shall indicate clearly that the broker-dealer services are provided by the broker-dealer.

(B) Recommendations by a broker-dealer concerning nondeposit investment products with a name similar to that of the financial institution shall occur only pursuant to a sales program designed to minimize the risk of customer confusion.

(C) Advertisements and sales literature.

(i) Advertisements and sales literature that announce the location of a financial institution where broker-dealer services are provided by the broker-dealer, or that are distributed by the broker-dealer on the premises of a financial institution, shall disclose that the securities products are not insured by the FDIC or the NCUSIF, as applicable, are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution, and are subject to investment risks, including possible loss of the principal invested.

(ii) To comply with the requirements of paragraph (c)(4)(C)(i), the following logo format disclosures may be used by a broker-dealer in advertisements and sales literature, including material published or designed for use in radio or television broadcasts, internet sites, automated teller machine screens, billboards, signs, posters, and brochures, if these disclosures, as applicable, are displayed in a conspicuous manner: ‘‘not FDIC insured,’’ ‘‘no bank guarantee,’’ “not NCUSIF insured,” “no credit union guarantee,” and ‘‘may lose value.’’

(iii) If the omission of the disclosures required by paragraph (c)(4)(C)(i) would not cause the advertisement or sales literature to be misleading in light of the context in which the material is presented, the disclosures shall not be required with respect to messages contained in radio broadcasts of 30 seconds or less; signs, including banners and posters, when used only as location indicators; and electronic signs, including billboard-type signs that are electronic, time and temperature signs, and ticker tape signs. However, the requirements of paragraph (c)(4)(C)(i) shall apply to messages contained in other media, including television, online computer services, and automated teller machines.

(5) Notification of termination. The broker-dealer shall promptly notify the financial institution if any agent of the broker-dealer who is employed by the financial institution is terminated for cause by the broker-dealer.

(d) ‘‘Dishonest or unethical practices,’’ as used in K.S.A. 17-12a412(d)(13) and amendments thereto, shall include any conduct that violates subsection (c). (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a412; effective Oct. 26, 2001; amended Aug. 18, 2006; amended Jan. 4, 2016.)

81-3-6. Dishonest or unethical practices of broker-dealers and agents.

(a) *Unethical conduct*. “Dishonest or unethical practices,” as used in K.S.A. 17-12a412(d)(13) and amendments thereto, shall include the conduct prohibited in this regulation and the failure to adhere to standards of conduct specified in this regulation.

(b) *Fraudulent conduct*. “An act, practice, or course of business that operates or would operate as a fraud or deceit,” as used in K.S.A. 17-12a501(3) and amendments thereto, shall include the conduct prohibited in paragraphs (e)(9)(A), (9)(B), (10), (11), (14) through (18), (20), (21), (24), and (27), paragraphs (f)(1) through (6), and subsections (g) and (i).

(c) *General standard of conduct*. A person registered as a broker-dealer or agent under the act shall not fail to observe high standards of commercial honor and just and equitable principles of trade in the conduct of the person’s business.

(d) *FINRA, NASD, New York stock exchange, and SEC rules and laws*. Failure by a person registered as a broker-dealer or agent under the act to comply with any of the following rules and laws, as adopted by reference in K.A.R. 81-2-1, shall constitute unethical conduct in violation of this regulation:

(1) NASD conduct rules within the series of rules 2300, 2400, 2500, 2700, 2800, 3000, and 3100 and FINRA rules within the series of rules 2100, 2200, 2300, 3100, 3200, 3300, 5100, 5200, and 5300;

(2) rule 472 of the New York stock exchange, "communications with the public";

(3) section 17 of the securities act of 1933, 15 U.S.C. § 77q;

(4) sections 9 and 10 of the securities exchange act of 1934, 15 U.S.C. §§ 78i and 78j;

(5) SEC regulation M, 17 C.F.R. 242.100 through 242.105;

(6) SEC regulation SHO, 17 C.F.R. 242.200 through 242.203; and

(7) SEC regulation FD, 17 C.F.R. 243.100 through 243.103.

(e) *Prohibited conduct: sales and business practices*. Each person registered as a broker-dealer or agent under the act shall refrain from the following practices in the conduct of the person's business. For purposes of this subsection, a security shall include any security as defined by K.S.A. 17-12a102, and amendments thereto, including a federal covered security as defined by K.S.A. 17-12a102, and amendments thereto, or section 2 of the securities act of 1933, 15 U.S.C. § 77b, as adopted by reference in K.A.R. 81-2-1.

(1) Delays in delivery or payment. A broker-dealer shall not engage in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of the broker-dealer's customers or in the payment upon request of free credit balances reflecting completed transactions of any of its customers.

(2) Excessive trading. A broker-dealer or agent shall not induce trading in a customer's account that is excessive in size or frequency in view of the financial resources and character of the account.

(3) Unsuitable recommendations. A broker-dealer or agent shall not recommend to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer or agent.

(4) Unauthorized trading. A broker-dealer or agent shall not execute a transaction on behalf of a customer without authorization to do so.

(5) Improper use of discretionary authority. A broker-dealer or agent shall not exercise any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders.

(6) Failure to obtain margin agreement. A broker-dealer or agent shall not execute any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account.

(7) Failure to segregate. A broker-dealer shall not hold securities carried for the account of any customer that have been fully paid for or that are excess margin securities, unless the securities are segregated and identified by a method that clearly indicates the interest of the customer in those securities.

(8) Improper hypothecation. A broker-dealer shall not hypothecate a customer's securities without having a lien on the securities unless the broker-dealer has secured from the customer a properly executed written consent, except as permitted by SEC rule 8c-1, 17 C.F.R. 240.8c-1, or SEC rule 15c2-1, 17 C.F.R. 240.15c2-1, as adopted by reference in K.A.R. 81-2-1.

(9) Unreasonable charges. A broker-dealer or agent shall not engage in any of the following conduct:

(A) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security;

(B) receiving an unreasonable commission or profit; or

(C) charging unreasonable and inequitable fees for services performed, including the collection of monies due for principal, dividends, or interest; exchange or transfer of securities; appraisals; safekeeping or custody of securities; and other miscellaneous services related to the broker-dealer's securities business.

(10) Failure to timely deliver prospectus. A broker-dealer or agent shall not fail to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document that together include all information set forth in the final prospectus.

(11) Contradicting prospectus. A broker-dealer or agent shall not contradict or negate the importance of any information contained in a prospectus or any other offering materials with the intent to deceive or mislead.

(12) Non-bona fide offers. A broker-dealer shall not offer to buy from or sell to any person any security at a stated price, unless the broker-dealer is prepared to purchase or sell at the price and under the conditions that are stated at the time of the offer to buy or sell.

(13) Misrepresentation of market price. A broker-dealer shall not represent that a security is being offered to a customer ''at the market'' or at a price relevant to the market price, unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than a market made, created, or controlled by the broker-dealer, any person for whom the broker-dealer is acting or with whom the broker-dealer is associated in the distribution of securities, or any person controlled by, controlling, or under common control with the broker-dealer.

(14) Market manipulation. A broker-dealer or agent shall not effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design, or contrivance, including the following:

(A) Effecting any transaction in a security that involves no change in its beneficial ownership;

(B) entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of the same security for substantially the same volume, time, and price have been or will be entered for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security. However, nothing in this paragraph shall prohibit a broker-dealer from entering bona fide agency cross transactions for the broker-dealer's customers;

(C) effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security for the purpose of inducing the purchase or sale of the security by others;

(D) engaging in general solicitation and using aggressive, high-pressure, or deceptive marketing tactics to affect the market price of the security; and

(E) using fictitious or nominee accounts.

(15) Guarantees against loss. A broker-dealer shall not guarantee a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer.

(16) Deceptive advertising. A broker-dealer or agent shall not use any advertising or sales presentation in a manner that is deceptive or misleading, including the following:

(A) Using words, pictures, or graphs in an advertisement, brochure, flyer, or display to present any nonfactual data or material; any conjecture, unfounded claims or assertions, or unrealistic claims or assertions; or any information that supplements, detracts from, supersedes or defeats the purpose or effect of any prospectus or disclosure; and

(B) publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind that purports to report any transaction as a purchase or sale of any security unless the broker-dealer or agent believes that the transaction was a bona fide purchase or sale of the security or that purports to quote the bid price or asked price for any security unless the broker-dealer or agent believes that the quotation represents a bona fide bid for or offer of the security.

(17) Failure to disclose conflicts of interest. A broker-dealer shall not fail to disclose to any customer that the broker-dealer is controlled by, controlling, affiliated with, or under common control with the issuer of a security that is offered or sold to the customer. The disclosure shall be made before entering into any contract with or for the customer for the purchase or sale of the security, and if the disclosure is not made in writing, the disclosure shall be supplemented by the giving or sending of written disclosure before the completion of the transaction.

(18) Withholding securities. A broker-dealer shall not fail to make a bona fide public offering of all of the securities allotted to the broker-dealer for distribution, whether acquired as an underwriter, as a selling group member, or from a member participating in the distribution as an underwriter or selling group member, by engaging in conduct including the following:

(A) Parking or withholding securities; and

(B) transferring securities to a customer, another broker-dealer, or a fictitious account with the understanding that those securities will be returned to the broker-dealer or the broker-dealer's nominees.

(19) Failure to respond to customer. A broker-dealer shall not fail or refuse to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint.

(20) Misrepresenting the possession of nonpublic information. A broker-dealer or agent shall not falsely lead a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information that would impact the value of a security.

(21) Contradictory recommendations. A broker-dealer or agent shall not engage in a pattern or practice of making contradictory recommendations to different investors of similar investment objectives for some to sell and others to purchase the same

security, at or about the same time, if not justified by the particular circumstances of each investor.

(22) Lending, borrowing, or maintaining custody. An agent shall not lend or borrow money or securities from a customer, or act as a custodian for money, securities, or an executed stock power of a customer.

(23) Selling away. An agent shall not effect a securities transaction that is not recorded on the regular books or records of the broker-dealer that the agent represents, unless the transaction is authorized in writing by the broker-dealer before the execution of the transaction.

(24) Fictitious account information. An agent shall not establish or maintain an account containing fictitious information.

(25) Unauthorized profit-sharing. An agent shall not share directly or indirectly in the profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer that the agent represents.

(26) Commission splitting. An agent shall not divide or otherwise split the agent's commissions, profits, or other compensation from the purchase or sale of securities with any person who is not also registered as an agent for the same broker-dealer or a broker-dealer under direct or indirect common control.

(27) Misrepresenting solicited transactions. A broker-dealer or agent shall not mark any order ticket or confirmation as unsolicited if the transaction was solicited.

(28) Failure to provide account statements. A broker-dealer or agent shall not fail to provide to each customer, for any month in which activity has occurred in a customer's account and at least every three months, a statement of account that contains a value for each over-the counter non-NASDAQ equity security in the account based on the closing market bid on a date certain, if the broker-dealer has been a market maker in the security at any time during the period covered by the statement of account.

(f) *Prohibited conduct: over-the-counter transactions*. A broker-dealer or agent shall not engage in the following conduct in connection with the solicitation of a purchase or sale of an over-the-counter, unlisted non-NASDAQ equity security:

(1) Failing to disclose to a customer, at the time of solicitation and on the confirmation, any and all compensation related to a specific securities transaction to be paid to the agent, including commissions, sales charges, and concessions;

(2) in connection with a principal transaction by a broker-dealer that is a market maker, failing to disclose to a customer, both at the time of solicitation and on the confirmation, the existence of a short inventory position in the broker-dealer's account of more than three percent of the issued and outstanding shares of that class of securities of the issuer;

(3) conducting sales contests in a particular security;

(4) failing or refusing to promptly execute sell orders after a solicited purchase by a customer in connection with a principal transaction;

(5) soliciting a secondary market transaction if there has not been a bona fide distribution in the primary market;

(6) engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security; and

(7) failing to promptly provide the most current prospectus or the most recently filed periodic report filed under section 13 of the securities exchange act of 1934 when requested to do so by the customer.

(g) *Prohibited conduct: designated security transactions*.

(1) Except as specified in paragraph (g)(2), a broker-dealer or agent shall not engage in the following conduct in connection with the solicitation of a purchase of a designated security:

(A) Failing to disclose to the customer the bid and ask price at which the broker-dealer effects transactions of the security with individual retail customers, as well as the price spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents; and

(B) failing to include with the confirmation a written explanation of the bid and ask price.

(2) Exceptions. Paragraph (g)(1) shall not apply to the following transactions:

(A) Transactions in which the price of the designated security is five dollars or more, exclusive of costs or charges. However, if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities shall be five dollars or more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible security shall have an exercise price or conversion price of five dollars or more;

(B) transactions that are not recommended by the broker-dealer or agent;

(C) transactions by a broker-dealer whose commissions, commission equivalents, and markups from transactions in designated securities during each of the immediately preceding three months, and during 11 or more of the preceding 12 months, did not

exceed five percent of its total commissions, commission-equivalents, and markups from transactions in securities during those months and who has not executed principal transactions in connection with the solicitation to purchase the designated security that is the subject of the transaction in the immediately preceding 12 months; and

(D) any transaction or transactions that, upon prior written request or upon the administrator's own motion, the administrator conditionally or unconditionally exempts as not encompassed within the scope of paragraph (g)(1).

(h) *Prohibited conduct: investment company shares*.

(1) A broker-dealer or agent shall not engage in the following conduct in connection with the solicitation of a purchase or sale of investment company shares:

(A) Failing to adequately disclose to a customer all sales charges, including asset-based and contingent deferred sales charges, that could be imposed with respect to the purchase, retention, or redemption of investment company shares;

(B) stating or implying to a customer, either orally or in writing, that the shares are sold without a commission, are ''no load,'' or have ''no sales charge'' if there is associated with the purchase of the shares a front-end charge; a contingent deferred sales charge; a fee pursuant to SEC rule 12b-1, 17 C.F.R. § 270.12b-1, as adopted by reference in K.A.R. 81-2-1, or a service fee that in total exceeds .25 percent of average net fund assets per year; or, in the case of closed-end investment company shares, underwriting fees, commissions, or other offering expenses;

(C) failing to disclose to a customer any relevant sales charge discount on the purchase of shares in dollar amounts at or above a breakpoint, or failing to disclose any relevant letter of intent feature, if available, that will reduce the sales charges;

(D) recommending to a customer the purchase of a specific class of investment company shares in connection with a multiclass sales charge or fee arrangement without reasonable grounds to believe that the sales charge or fee arrangement associated with the class of shares is suitable and appropriate based on the customer's investment objectives, financial situation, other securities holdings, and the associated transaction or other fees;

(E) recommending to a customer the purchase of investment company shares that results in the customer's simultaneously holding shares in different investment company portfolios having similar investment objectives and policies without reasonable grounds to believe that the recommendation is suitable and appropriate based on the customer's investment objectives, financial situation, other securities holdings, and any associated transaction charges or other fees;

(F) recommending to a customer the liquidation or redemption of investment company shares for the purpose of purchasing shares in a different investment company portfolio having similar investment objectives and policies without reasonable grounds to believe that the recommendation is suitable and appropriate based on the customer's investment objectives, financial situation, other securities holdings, and any associated transaction charges or other fees;

(G) stating or implying to a customer the fund's current yield or income without disclosing the fund's average annual total return, as stated in the fund's most recent form N-1A filed with the SEC, for one-year, five-year, and 10-year periods and without fully explaining the difference between current yield and total return. However, if the fund's registration statement under the securities act of 1933 has been in effect for less than one, five, or 10 years, the time during which the registration statement was in effect shall be substituted for the periods otherwise prescribed;

(H) stating or implying to a customer that the investment performance of an investment company portfolio is comparable to that of a savings account, certificate of deposit, or other bank deposit account without disclosing to the customer the fact that the shares are not insured or otherwise guaranteed by the federal deposit insurance corporation ("FDIC") or any other government agency and the relevant differences regarding risk, guarantees, fluctuation of principal or return or both, and any other factors that are necessary to ensure that the comparisons are fair, complete, and not misleading;

(I) stating or implying to a customer the existence of insurance, credit quality, guarantees, or similar features regarding securities held, or proposed to be held, in the investment company's portfolio without disclosing to the customer the other kinds of relevant investment risks, including interest rate, market, political, liquidity, and currency exchange risks, that could adversely affect investment performance and result in loss or fluctuation of principal despite the creditworthiness of the portfolio securities;

(J) stating or implying to a customer that the purchase of shares shortly before an ex dividend date is advantageous to the customer unless there are specific, clearly described tax or other advantages to the customer, or stating or implying that a distribution of long-term capital gains by an investment company

is part of the income yield from an investment in the shares; and

(K) making projections of future performance, statements not warranted under existing circumstances, or statements based upon nonpublic information.

(2) In connection with the solicitation of investment company shares, the delivery of a prospectus shall not be dispositive that the broker-dealer or agent has given the customer full and fair disclosure or has otherwise fulfilled the duties specified in this subsection.

(i) *Prohibited conduct: use of senior-specific certifications and professional designations*.

(1) A broker-dealer or agent shall not use a senior-specific certification or designation that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in any way that misleads any person. This prohibition shall include the following:

(A) The use of a certification or professional designation by a person who has not earned or is otherwise ineligible to use the certification or designation;

(B) the use of a nonexistent or self-conferred certification or professional designation;

(C) the use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

(D) the use of a certification or professional designation that was obtained from a designating or certifying organization that meets any of the following conditions:

(i) Is primarily engaged in the business of instruction in sales or marketing;

(ii) does not have reasonable standards or procedures for ensuring the competency of its designees or certificate holders;

(iii) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificate holders for improper or unethical conduct; or

(iv) does not have reasonable continuing education requirements for its designees or certificate holders to maintain the professional designation or certification.

(2) There shall be a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph (i)(1)(D) if the organization has been accredited by any of the following:

(A) The American national standards institute;

(B) the national commission for certifying agencies; or

(C) an organization that is on the United States department of education's list titled ''accrediting agencies recognized for title IV purposes,'' if the designation or credential does not primarily apply to sales or marketing, or both.

(3) In determining whether a combination of words or an acronym or initialism standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, the factors to be considered shall include the following:

(A) The use of one or more words including "senior," "retirement," "elder," or similar words, combined with one or more words including "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or similar words, in the name of the certification or professional designation; and

(B) the manner in which the words are combined.

(4) For purposes of this subsection, the terms "certification" and "professional designation" shall not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, including an agency that regulates broker-dealers, investment advisers, or investment companies, if that job title indicates seniority or standing within the organization or specifies an individual's area of specialization within the organization. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a412(d)(13), 17-12a501(3), and 17-12a608; effective Aug. 18, 2006; amended May 22, 2009; amended January 4, 2016.)

81-3-7. Supervisory, financial reporting, recordkeeping, net capital, and operational requirements for broker-dealers.

(a) *Supervision.*

(1) Annual review. Each broker-dealer shall conduct a review, at least annually, of the businesses in which it engages. The review shall be reasonably designed to assist in detecting and preventing violations of and achieving compliance with the act, these regulations, and other applicable laws, regulations, and rules of self-regulatory organizations.

(2) Supervisory procedures. Each broker-dealer shall establish and maintain supervisory procedures that shall be reasonably designed to assist in detecting violations of, preventing violations of, and achieving compliance with the act, these regulations, and other

applicable laws, regulations, and rules of self-regulatory organizations. In determining whether supervisory procedures are reasonably designed, relevant factors including the following may be considered by the administrator:

(A) The firm's size;

(B) the organizational structure;

(C) the scope of business activities;

(D) the number and location of offices;

(E) the nature and complexity of products and services offered;

(F) the volume of business done;

(G) the number of agents assigned to a location;

(H) the presence of an on-site principal at a location;

(I) the specification of the office as a non-branch location; and

(J) the disciplinary history of the registered agents.

(3) Supervision of non-branch offices. The procedures established and the reviews conducted shall provide sufficient supervision at remote offices to ensure compliance with all applicable securities laws and regulations and self-regulatory organization rules. Based on the factors specified in paragraph (a)(2), certain non-branch offices may require more frequent reviews or more stringent supervision.

(4) Failure to supervise. If a broker-dealer fails to comply with this subsection, the broker-dealer shall be deemed to have "failed to reasonably supervise" its agents under K.S.A. 17-12a412(d)(9), and amendments thereto.

(b) *Annual reports*. Each broker-dealer registered under the act shall make and maintain an annual report for the broker-dealer's most recent fiscal year.

(1) Filing. Each broker-dealer shall file the annual report with the administrator within five days of a request by the administrator or the administrator's staff.

(2) Contents of annual report. Each annual report shall contain financial statements that include the following:

(A) A statement of financial condition and notes to the statement of financial condition presented in conformity with GAAP; and

(B) disclosure of the broker-dealer's net capital, which shall be calculated in accordance with subsection (c).

(3) Auditing. Unless otherwise permitted, an independent CPA shall audit the financial statements in accordance with generally accepted auditing standards.

(4) Recognition of federal standards. For purposes of uniformity, a copy of audited financial statements in compliance with SEC rule 17a-5(d), 17 C.F.R. 240.17a-5(d), as adopted by reference in K.A.R. 81-2-1, shall be deemed to comply with paragraphs (b)(2) and (b)(3).

(c) *Books and records*. Each registered broker-dealer shall maintain and preserve records in compliance with SEC rule 17a-3, 17 C.F.R. 240.17a-3, and SEC rule 17a-4, 17 C.F.R. 240.17a-4, which are adopted by reference in K.A.R. 81-2-1.

(d) *Minimum net capital requirements*.

(1) Each broker-dealer registered under the act shall comply with SEC rule 15c3-1, 17 C.F.R. 240.15c3-1, SEC rule 15c3-3, 17 C.F.R. 240.15c3-3, and SEC rule 15c3-3a, 17 C.F.R. 240.15c3-3a, as applicable, as adopted by reference in K.A.R. 81-2-1.

(2) Each registered broker-dealer shall comply with SEC rule 17a-11, 17 C.F.R. 240.17a-11, as adopted by reference in K.A.R. 81-2-1, and shall simultaneously file with the administrator copies of notices and reports required by that rule.

(e) *Confirmations*. At or before completion of each transaction with a customer, the broker-dealer shall give or send to the customer a written notification that conforms with SEC rule 10b-10, 17 C.F.R. 240.10b-10, as adopted by reference in K.A.R. 81-2-1. (Authorized by K.S.A. 2014 Supp. 17-12a411 and K.S.A. 17-12a605(a); implementing K.S.A. 2014 Supp. 17-12a411, K.S.A. 17-12a412(d)(9), 17-12a605(c), and 17-12a608; effective Aug. 18, 2006; amended January 4, 2016.)

ARTICLE 4 – REGISTRATION OF SECURITIES

81-4-1. Registration of securities.

(a) *Original applications*. The following documents and fee shall be required with each original application submitted for registration of securities:

(1) Forms U-1 and U-2;

(2) form U-2A, if applicable;

(3) the documents and exhibits required for registration by coordination as specified in K.S.A. 17-12a303(b), and amendments thereto, or registration by qualification as specified in K.S.A. 17-12a304(b), and amendments thereto, if not already included as required by form U-1;

(4) any other document or information requested by the administrator; and

(5) a registration fee of .05 percent (one twentieth of one percent) of the maximum aggregate offering price at which the securities are to be offered in this state, but not less than $100 and not more than $1,500 for each year that the registration is effective. If a registration statement or application is withdrawn

before the effective date or a pre-effective stop order is issued under K.S.A. 17-12a306 and amendments thereto, the administrator shall retain the full amount of the registration fee.

(b) *Regulation A tier 1 offerings*. Each registration application for which an offering statement on form 1-A has been filed with the SEC under regulation A for a tier 1 offering pursuant to SEC rule 251, 17 C.F.R. 230.251, as adopted by reference in K.A.R. 81-2-1, shall be filed by qualification under K.S.A. 17-12a304, and amendments thereto.

(c) *Post-effective amendments*. If a post-effective amendment for material changes in information or documents is required by K.S.A. 17-12a305(j) and amendments thereto, the amendment shall be filed within two business days after an amendment is filed with the SEC for securities registered by coordination, or within five business days after a material change occurs for securities registered by qualification. The amendment filing shall include a cover letter that explains the nature of the material changes and copies of all amended documents that are clearly marked to identify the material changes. The registrant shall provide further explanation or information upon request by the administrator. Upon approval by the administrator, the amendment may be filed electronically.

(d) *Extensions of registration*. The effective period of a registration statement may be extended for an additional year after the original or previously extended registration period expires, or for less than one year if the registered offering is completed and terminated in compliance with subsection (f).

(1) The following documents and fee shall be required with each application submitted to extend the effective period of a registration statement:

(A) Form KSC-1 or a uniform form or document that includes the information required by form KSC-1;

(B) a registration fee as specified in paragraph (a)(5), based on the aggregate amount of securities to be offered during the extended effective period; and

(C) one copy of the prospectus to be delivered to prospective investors for offers during the extended period of effectiveness, which shall include audited financial statements for the most recent fiscal year of the issuer, unless a prospectus meeting this requirement is already on file with the administrator. If the extension application is filed before the most recent audited financial statements are available, the issuer shall undertake to file an updated prospectus containing the statements no later than 90 days after the end of the issuer's fiscal year.

(2) The effective date of each extended registration shall be one year after the previous effective date.

(3) The due date for filing each extension application shall be 10 business days before the date on which the registration is due to expire.

(e) *Abandoned applications*. If an applicant for registration of securities does not respond in writing within six months after receiving a written inquiry or deficiency letter from the administrator or the applicant takes no action on a pending application and fails to communicate in writing with the administrator for six months, the application shall be deemed abandoned. Each abandoned application shall be disregarded, and a notice of abandonment shall be issued by the administrator. To obtain further consideration of an abandoned application, the applicant shall file a new, complete application.

(f) *Final report*. Upon completion of a registered offering or upon expiration of the effective period of a registration statement that is not being extended, the registrant shall file with the administrator a final report of sales of securities in this state on form, KSC-1 or a document that includes the information required by form KSC-1. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a303, 17-12a304, and 17-12a305; effective Jan. 1, 1966; amended, E-70-15, Feb. 4, 1970; amended Jan. 1, 1971; amended, T-88-29, Aug. 19, 1987; amended May 1, 1988; amended, T-81-8-23-91, Aug. 23, 1991; amended Oct. 7, 1991; amended May 31, 1996; amended Jan. 19, 2007; amended January 4, 2016.)

81-4-2. Small company offering registration (SCOR).

(a) Any application for registration of securities by qualification may be filed using form U-7 as the disclosure document if the issuer complies with the statement of policy regarding small company offering registration ("SCOR statement of policy") adopted by NASAA on April 28, 1996, which is hereby adopted by reference.

(b) Any SCOR application may be reviewed by the administrator in coordination with one or more securities administrators in other states where the issuer has filed a SCOR application.

(c) A form of disclosure in a SCOR application other than form U-7 may be allowed by the administrator, including an application for coordinated review under subsection (b), as provided under K.A.R. 81-6-1(b)(2). (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a304, 17-12a307, and 17-12a608; effective March 25, 1991; amended Jan. 19, 2007.)

81-4-3. Revoked. (Authorized by K.S.A. 17-1270(f); implementing K.S.A. 17-1270(f); effective Nov. 12. 1991; revoked Oct. 26, 2001.)

81-4-4. Registration requirements for not-for-profit issuers. Before the offer or sale of any note, bond, debenture, or other evidence of indebtedness by a not-for-profit issuer specified in K.S.A. 17-12a201(7) and amendments thereto, the issuer shall register the security pursuant to K.S.A. 17-12a304 and amendments thereto, unless one of the following conditions is met:

(a) The security or transaction is exempt under any provision of the Kansas uniform securities act other than K.S.A. 17-12a201(7), and amendments thereto.

(b) The issuer is excluded from the definition of an investment company, and the security is issued in exchange for assets contributed to a fund pursuant to section 3(c)(10)(B) of the investment company act of 1940, 15 U.S.C. section 80a-3(c)(10)(B), as adopted by reference in K.A.R. 81-2-1. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a201(7)(C); effective, T-81-8-22-05, Aug. 22, 2005; effective Dec. 16, 2005; amended Jan. 4, 2016.)

ARTICLE 5 – EXEMPTIONS

81-5-1. Revoked. (Authorized by K.S.A. 1982 Supp. 17-1270(f); implementing K.S.A. 1982 Supp. 17-1261 (g); effective Jan. 1, 1966; amended E-77-40, Aug. 12, 1976; amended Feb. 15, 1977; amended, E-80-23, Dec. 12, 1979; amended May 1, 1980; amended May 1, 1983; revoked May 31, 1996.)

81-5-2. Revoked. (Authorized by K.S.A. 1984 Supp. 17-1270(f); implementing K.S.A. 1984 Supp. 17-1261 (h); effective May 1, 1983; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986; revoked May 31, 1996.)

81-5-3. Isolated nonissuer transactions.

(a) An "isolated nonissuer transaction" under K.S.A. 17-12a202(1), and amendments thereto, shall mean an offer or sale of a security that meets both of the following conditions:

(1) No 12-month period in which the date of the sale can be included contains more than three sales of the security in Kansas by the seller or affiliates.

(2) No person offers or sells the security by means of a general solicitation, except as permitted under subsection (c).

(b) For purposes of this regulation, a husband and wife shall be considered as one purchaser. A corporation, partnership, limited liability company, association, joint stock company, trust, or unincorporated organization shall be considered as one purchaser unless the entity was organized for the purpose of acquiring the purchased securities. If that is the case, each beneficial owner of equity interest or equity securities in the entity shall be considered a separate purchaser.

(c) For purposes of this regulation, if an offer or sale is conducted through an issuer-controlled trading system maintained in an electronic form or another form for the purpose of facilitating trades of that issuer's securities between nonissuers, the offer or sale shall not be considered to have been made by general solicitation. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a202, as amended by L. 2006, Ch. 47, § 2(1); effective, T-83-40, Nov. 23, 1982; effective May 1, 1983; amended, T-87-41, Dec. 8, 1986; amended May 1, 1987; amended June 28, 1993; amended May 31, 1996; amended Jan. 19, 2007.)

81-5-4. Revoked. (Authorized by K.S.A. 17-1270(f); implementing K.S.A. 17-1262(c); effective, T-83-40, Nov. 23, 1982; effective May 1, 1983; amended May 1, 1987; amended May 31, 1996; revoked Jan. 19, 2007.)

81-5-5. Revoked. (Authorized by K.S.A. 1982 Supp. 17-1270(f); implementing K.S.A. 1982 Supp. 17-1262(f); effective, T-83-40, Nov. 23, 1982; effective May 1, 1983; revoked Jan. 19, 2007.)

81-5-6. Uniform limited offering exemption for rule 505 offerings.

This regulation is being revoked because SEC Rule 505 was repealed. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a203; effective, T-83-40, Nov. 23, 1982; effective May 1, 1983; amended May 1, 1984; amended, T-87-28, Oct. 1, 1986; amended May 1, 1987; amended, T-81-2-23-89, Feb. 23, 1989; amended March 20, 1989; amended, T-81-12-28-89, Dec. 28, 1989; amended Jan. 15, 1990; amended Jan. 19, 2007.)

81-5-7. Exchange exemption. A security shall be exempt under K.S.A. 17-12a201(6)(B), and amendments thereto, if the security is listed or authorized for listing on either of the following exchanges or if the security has seniority equal to or greater than the seniority of a security of the same issuer that is listed or authorized for listing on either of the following exchanges:

(a) Tier I of the Chicago stock exchange; or

(b) tier II of the NYSE Arca, inc. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a201(6)(B); effective, T-87-28, Oct. 1, 1986; amended May 1, 1987; amended Oct. 24, 1994; amended May 31, 1996; amended Oct. 26, 2001; amended Jan. 19, 2007; amended Aug. 15, 2008; amended Jan. 4, 2016.)

81-5-8. Fees for exemption filings and interpretive opinions. (a) A fee of $250 shall be remitted with each form D or notice filed in connection with the following exemptions:

(1) The uniform limited offering exemption for rule 505 offerings as specified in K.A.R. 81-5-6;

(2) the accredited investor exemption as specified in K.A.R. 81-5-13; and

(3) the exemption for securities of agricultural associations as specified in K.A.R. 81-5-18.

(b) A fee of $250 shall be remitted with each request for a no-action letter or interpretive opinion letter from the administrator. (Authorized by K.S.A.2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a205 and 17-12a605(d); effective, T-88-29, Aug. 19, 1987; amended May 1, 1988; amended Oct. 7, 1991; amended June 28, 1993; amended Dec. 19, 1997; amended Jan. 19, 2007.)

81-5-9. Revoked. (Authorized by K.S.A. 17-1270(f); implementing K.S.A. 17-1261(g) and 17-1259; effective Nov. 12, 1991; amended June 28, 1993; amended May 31, 1996; revoked Dec. 19, 1997.)

81-5-10. Oil and gas exemptions. (a) *Definitions*. For purposes of this regulation, the following definitions shall apply:

(1) "Commission" shall be defined as specified in K.A.R. 81-1-1. However, the term shall not include any interest in the oil and gas estate being sold, including any overriding royalty interest and any interest in the production from the oil and gas estate, if the identity of the person or persons owning or holding the interest and the extent of the interest are fully disclosed to all purchasers.

(2) "Public auction" means the public sale of an interest in an oil and gas royalty, lease, or mineral deed to the highest bidder when the offer of the interest and the bids are communicated through open, public outcry and the sale is complete when the auctioneer so announces by the fall of the hammer or other customary manner.

(3) "Purchaser" means any individual, corporation, limited liability company, partnership, association, joint stock company, trust, or unincorporated organization. However, if an entity was organized for the specific purpose of acquiring the oil or gas interests offered, each beneficial owner of an equity interest or equity security in the entity shall count as a separate purchaser.

(b) *Oil and gas transactions*.

(1) K.S.A. 17-12a301 through 17-12a306 and K.S.A. 17-12a401, 17-12a402, and 17-12a504, and amendments thereto, shall not apply to any offer or sale of any limited partnership interest, fractional undivided interest, or certificate based upon any fractional undivided interest involving 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 located in Kansas and all sales are made in accordance with one of the following conditions:

(A) Each sale is made to a person who is or has been during the preceding two years engaged primarily in the business of drilling for, producing, or refining oil or gas or whose corporate predecessor, for a corporation, has been so engaged or whose officers and two-thirds of the directors, for a corporation having an existence of less than two years, have each been so engaged.

(B) 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; the seller reasonably believes that every purchaser is purchasing the interest or certificate for investment purposes and not for resale; no general solicitation is used in connection with the offer or sale of the interest or certificate to any person; and no commission is paid or given for the offer or sale of the interest or certificate or the solicitation of prospective purchasers.

(C) Each sale involves property that produces oil, gas, or petroleum products in paying quantities on the date of sale, and the seller, after the sale, does not retain any ownership interest in or control over the lease or the interest or interests that are being sold.

(2) The exemption provided by this subsection shall not be cumulative to or used in conjunction with any other exemption provided under K.S.A. 17-12a202, and amendments thereto.

(c) *Oil and gas auctions*. The offer and sale of any interest in an oil and gas royalty, lease, or mineral deed shall be exempt from the requirements of K.S.A. 17-12a301 through 17-12a306 and K.S.A. 17-12a401, 17-12a402, and 17-12a504, and amendments thereto, if the interest is sold at a public auction. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a203; effective June 28, 1993; amended Jan. 19, 2007.)

81-5-11. Revoked. (Authorized by and implementing K.S.A. 17-1270(f); effective Jan. 31, 1994; revoked Jan. 19, 2007.)

81-5-12. Solicitations of interest before the filing of the registration statement. (a) *Exemption*. Each offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus for the security shall be exempt from the requirements of K.S.A. 17-12a301 through 17-12a306 and K.S.A. 17-12a504 and amendments thereto, if all of the following requirements are met:

(1) The issuer shall be a business entity organized under the laws of the state of Kansas having, both before and upon completion of the offering, its principal office and a majority of its full-time employees located in this state.

(2) At least 80 percent of the net proceeds from the offering shall be used in connection with the operations of the issuer in this state.

(3) The issuer shall not be engaged in or propose to engage in petroleum exploration or production, mining, or other extractive industries and shall not be a development stage company that either has no specific business plan or purpose or has indicated that its business plan is to engage in merger or acquisition with an unidentified company or companies or other entity or person.

(4) The offeror shall intend to register the security in this state and conduct its offering pursuant to one of the following federal laws or regulations, as adopted by reference in K.A.R. 81-2-1:

(A) Section 3(a)(11) of the securities act of 1933;

(B) SEC regulation A, 17 C.F.R. 230.251 et seq.; or

(C) rule 504 of SEC regulation D, 17 C.F.R. 230.504.

(5) Ten business days before the initial solicitation of interest under this regulation, the offeror shall file with the administrator a solicitation of interest form KSC-15 along with any other materials to be used to conduct solicitations of interest, including the script of any broadcast to be made and a copy of any notice to be published.

(6) Five business days before usage, the offeror shall file with the administrator any amendments to the foregoing materials or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular offeree pursuant to a request by that offeree.

(7) No solicitation of interest form, script, advertisement, or other material shall be used to solicit indications of interest if the administrator has instructed the offeror not to distribute the material.

(8) Except for scripted broadcasts and published notices, the offeror shall not communicate with any offeree about the contemplated offering, unless the offeree is provided with the most current solicitation of interest form at or before the time of the communication or within five days after the communication.

(9) During the solicitation of interest period, the offeror shall not solicit or accept money or a commitment to purchase securities.

(10) No sale shall be made until seven days after the delivery of a prospectus to the purchaser.

(b) *Each offeror shall comply with each of the following requirements*:

(1) Each published notice or script for broadcast shall contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:

(A) "NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED."

(B) "NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF AN OFFERING CIRCULAR THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING."

(C) "AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND."

(D) "THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS REGISTERED IN THIS STATE."

(2) All communications with prospective investors made in reliance on this regulation shall cease after a registration statement is filed in Kansas, and no sale may be made until at least 20 calendar days after the last communication made in reliance on this regulation.

(3) A preliminary prospectus or its equivalent may be used only in connection with an offering for which indications of interest have been solicited under this regulation if the offering is conducted by a registered broker-dealer.

(c) *Disqualifications.* The exemption specified in subsection (a) shall not be available to an offeror who knows, or in the exercise of reasonable care should know, that the issuer or any one of its officers, directors, 10 percent shareholders, or promoters meets any of the following conditions:

(1) Has filed a registration statement that is subject to a currently effective registration stop order entered pursuant to any federal or state securities law within five years before the filing of the solicitation of interest form;

(2) has been convicted, within five years before the filing of the solicitation of interest form, of any felony or misdemeanor in connection with the offer, purchase, or sale of any security, or any felony involving fraud or deceit, including forgery, embezzlement, obtaining money under false pretenses, larceny, and conspiracy to defraud;

(3) is subject to any current federal or state administrative enforcement order or judgment entered by any state securities administrator or the securities and exchange commission within five years before the filing of the solicitation of interest form;

(4) is subject to any federal or state administrative enforcement order or judgment entered within five years before the filing of the solicitation of interest in which fraud or deceit;

(5) is subject to any federal or state administrative enforcement order or judgment that prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities; or

(6) is subject to any current order, judgment, or decree of any court of competent jurisdiction that temporarily, preliminarily, or permanently restrains or enjoins the party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security, or involves the making of any false filing with the state, entered within five years before the filing of the solicitation of interest form.

(d) *Effect of noncompliance*.

(1) Failure to comply with any condition of subsection (a) shall constitute grounds for denying or revoking the exemption for a specific security or transaction and shall be grounds for other relief and sanctions under K.S.A. 17-12a603 and 17-12a604, and amendments thereto. However, upon application by the offeror, the failure to comply shall not result in the loss of the exemption for any offer to a particular individual or entity if the administrator determines that all of the following conditions are met:

(A) The failure to comply did not pertain to a condition directly intended to protect that particular individual or entity.

(B) The failure to comply was insignificant with respect to the offering as a whole.

(C) A good faith and reasonable attempt was made to comply with all applicable conditions of subsection (a).

(2) Failure to comply with any requirement in subsection (b) shall constitute grounds for denying or revoking the exemption for a specific security or transaction and shall be grounds for other relief and sanctions under K.S.A. 17-12a603 and 17-12a604, and amendments thereto, but shall not result in the loss of the exemption for the entire offering.

(e) *Waivers*.

(1) Upon application by the offeror and the showing of good cause, any condition of this exemption may be waived in writing by the administrator.

(2) Upon application by the offeror and the showing of good cause, the disqualification specified in subsection (c) may be waived in writing by the administrator under any of the following circumstances:

(A) The person subject to the disqualification is currently licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against the person.

(B) The broker-dealer employing the person is registered in Kansas, and the form BD filed in Kansas discloses the order, conviction, judgment, or decree relating to the person.

(C) The agency that created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied, and the administrator concurs with that determination.

(3) The absence of any objection or order by the administrator with respect to any offer of securities undertaken pursuant to this regulation shall not be deemed to be a waiver of any condition of the regulation and shall not be deemed to be a confirmation by the administrator of compliance with this regulation.

(f) *Integration*. An offer made in reliance on this regulation shall not result in a violation of the registration requirements by virtue of being integrated with subsequent offers or sales of securities, unless the subsequent offers and sales would be integrated under federal securities laws.

(g) *Effect on other exemptions*. Issuers on whose behalf indications of interest are solicited under this regulation shall not make offers or sales in reliance on K.S.A. 17-12a202(1) or 17-12a202(14) and amendments thereto, or K.A.R. 81-5-6, until six months after the last communication with a prospective investor made pursuant to this regulation. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a202, as amended by L. 2006, Ch. 47, § 2(17) and K.S.A. 2005

Supp. 17-12a203; effective April 17, 1995; amended Jan. 19, 2007.)

81-5-13. Accredited investor exemption.

(a) *Exemption*. Each offer or sale of a security by an issuer shall be exempt from the registration requirements of K.S.A. 17-12a301 through 17-12a306 and K.S.A. 17-12a504, and amendments thereto, if each of the following requirements is met:

(1) Sales shall be made only to persons who are or whom the issuer reasonably believes to be accredited investors, as defined in SEC regulation D, rule 501(a), 17 C.F.R. § 230.501(a), as adopted by reference in K.A.R. 81-2-1.

(2) The issuer shall reasonably believe that all purchasers are purchasing for investment and not with the view to or for resale in connection with a distribution of the security. Each resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under K.S.A. 17-12a305(h) and amendments thereto or a resale to an accredited investor pursuant to an exemption available under the act.

(3) Each communication with a prospective investor shall meet the requirements of subsection (d).

(4) Within 15 days after the first sale in this state, the issuer shall file with the administrator a notice of transaction on form D or the NASAA model accredited investor exemption uniform notice of transaction, a copy of the general announcement, and the fee specified in K.A.R. 81-5-8.

(b) *Disqualifications*. The exemption specified in subsection (a) shall not be available to an issuer under either of the following conditions:

(1) The issuer is in the development stage and either 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.

(2) The issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of the underwriter meets any of the following conditions:

(A) Has filed a registration statement that is subject to a currently effective registration stop order entered by any state securities administrator or the SEC within the last five years;

(B) has been convicted within the last five years of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;

(C) is subject to any current state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(D) is subject to any current order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining the party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(c) *Waivers*. Upon application by the issuer, any disqualification specified in paragraph (b)(2) may be waived in writing by the administrator if one of the following conditions is met:

(1) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against the party.

(2) Before the first offer under this exemption, the court or regulatory authority that entered the order, judgment, or decree waives the disqualification, and the administrator determines that there was good cause for the waiver.

(3) The issuer establishes that it did not know and, in the exercise of reasonable care and based on a factual inquiry, could not have known that a disqualification existed.

(d) *Communication with prospective investors*.

(1) A general announcement of a proposed offering may be made and may be disseminated to persons who are not accredited investors. However, the general announcement shall include only the following information, unless additional information is specifically authorized in writing by the administrator:

(A) The name, address, and telephone number of the issuer of the securities;

(B) the name, a brief description, and the price, if known, of any security to be issued;

(C) a brief description of the business of the issuer in 25 or fewer words;

(D) the type, number, and aggregate amount of securities being offered;

(E) the name, address, and telephone number of the person to contact for additional information; and

(F) the following statements:

(i) Sales will be made only to accredited investors;

(ii) no money or other consideration is being solicited or will be accepted by way of this general announcement; and

(iii) the securities have not been registered with or approved by any state securities agency or the United States securities and exchange commission and are being offered and sold pursuant to an exemption from registration.

(2) The issuer, in connection with an offer, may provide information in addition to the general announcement under paragraph (d)(1) if the information meets either of the following conditions:

(A) The information is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors.

(B) The information is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(3) No telephone solicitation shall be permitted, unless, before placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a203; effective Dec. 19, 1997; amended Jan. 19, 2007.)

81-5-14. Notice filings and fees for offerings of investment company securities. (a) Before the initial offer in this state of a security that is a federal covered security as described in K.S.A. 17-12a302(a) and amendments thereto, an investment company shall file the following for each portfolio or series:

(1) A notice of intention to sell on form NF, completed in accordance with the instructions to the form; and

(2) a filing fee of $500 for a unit investment trust or $750 for a portfolio or series of an investment company other than a unit investment trust.

(b) Upon written request of the administrator and within the time period specified in the request, an investment company that has filed a registration statement under the securities act of 1933 shall file a form U-2 and a copy of any other requested document that is part of the registration statement or an amendment to the registration statement filed with the SEC.

(c) Each notice filed under subsection (a) shall be effective for one year as provided by K.S.A. 17-12a302(b), and amendments thereto. The notice may be renewed on or before expiration by filing a form NF and the appropriate fee as specified under paragraph (a)(2).

(d) If an investment company has filed a notice under subsection (a) and the name of the investment company, portfolio, or series changes, the investment company shall file an additional form NF and pay a fee of $100 for each portfolio or series of the investment company that is affected by a name change before the initial offer in this state of a security under the new name. The investment company shall indicate the former name of the investment company, portfolio, or series on the new form NF.

(e) If an investment company desires confirmation of filing or effectiveness of a form NF, the investment company shall file an additional copy of form NF with an addressed return envelope or shall obtain confirmation through an electronic filing system as provided under subsection (f).

(f) Any investment company may file notice filings and fees electronically through a centralized securities registration depository or other electronic filing system, in accordance with the procedures and controls established by that depository or system and approved by the administrator. (Authorized by and implementing K.S.A. 17-12a302 and K.S.A. 17-12a605(a); effective Dec. 19, 1997; amended Jan. 19, 2007; amended May 15, 2009.)

81-5-15. Notice filings and fees for rule 506 offerings. (a) Each issuer of a security under SEC rule 506, 17 C.F.R. 230.506, as adopted by reference in K.A.R. 81-2-1, shall file a notice of sale on form D with the administrator within 15 days after the first sale of the security in Kansas. The form D shall be completed in accordance with the instructions for the form and shall be filed either through the EFD system electronically or on a paper form D that is mailed to the administrator.

(b)(1) Each issuer of a security specified in subsection (a) shall pay a fee of $250 to the administrator with each timely filing under subsection (a).

(2) If a form D is not filed as required by subsection (a) within 15 days after the first sale of the security in Kansas, the issuer of the security shall pay to the administrator the greater of the following amounts, unless the administrator agrees to assess a lesser fee pursuant to K.S.A. 17-12a307, and amendments thereto:

(A) $500; or

(B) one-tenth of one percent of the dollar value of the securities that were sold to Kansas residents before the date on which the form D is filed, not to exceed $5,000.

(3) For each electronic filing of form D, the fee shall be remitted to the EFD.

(c) This regulation shall not apply if the security or transaction is otherwise exempt from registration

under any provision of the Kansas uniform securities act. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 2014 Supp. 17-12a302(c) and K.S.A. 17-12a307; effective, T-81-8-22-05, Aug. 22, 2005; effective Dec. 20, 2005; amended Jan. 4, 2016.)

81-5-16. Exemption for internet communication.

(a) *General communication*. Communication concerning a security directed generally to anyone having access to the internet shall not be deemed an offer under K.S.A. 17-12a301, and amendments thereto, based solely on the internet communication if all of the following conditions are met:

(1) The internet communication indicates that the security is not being offered to residents of Kansas.

(2) The internet communication is not specifically directed to any person in Kansas, and the internet communication contains a mechanism, including technical firewalls or other implemented policies and procedures, designed reasonably to prevent direct communication with residents of Kansas.

(3) No sale of the security is made in Kansas as a direct or indirect result of the internet communication until the security is registered under the act or unless the security is exempt from registration. For the purpose of determining whether the security is exempt, each sale made in Kansas as a direct or indirect result of the internet communication shall be deemed to be made through a general solicitation.

(b) *Communication by broker-dealers, agents, investment advisers and investment adviser representatives*. A person who distributes information on available products and services through internet communications directed generally to anyone having access to the internet shall not be deemed to be transacting business in Kansas for purposes of K.S.A. 17-12a401 through 17-12a404, and amendments thereto, based solely on the internet communication if all of the following conditions are met:

(1) The internet communication contains a legend in which the following information is clearly stated:

(A) The person cannot transact business in this state as a broker-dealer, agent, investment adviser, or investment adviser representative unless the person is properly registered under the act or exempt from registration.

(B) The person cannot provide individualized communications or responses to prospective customers or clients in this state to effect or attempt to effect transactions in securities, or to render personalized investment advice for compensation, unless the person is properly registered under the act or exempt from registration.

(2) The internet communication contains a mechanism, which may include technical firewalls or other implemented policies and procedures, designed reasonably to ensure that before any direct communication with prospective customers or clients in this state, the person is properly registered under the act or exempt from registration.

(3) The internet communication is limited to the dissemination of general information on products and services and does not involve effecting or attempting to effect transactions in securities or the rendering of personalized investment advice in this state.

(4) For an agent or investment adviser representative, the following conditions are met:

(A) The affiliation of the agent or investment adviser representative with a broker-dealer or investment adviser is prominently disclosed within the internet communication.

(B) The broker-dealer or investment adviser with whom the agent or investment adviser representative is associated retains responsibility for reviewing and approving the content of any internet communication by the agent or investment adviser representative.

(C) The broker-dealer or investment adviser with whom the agent or investment adviser representative is associated first authorizes the distribution of information on the particular products and services through the internet communication.

(D) In disseminating information through the internet communication, the agent or investment adviser representative acts within the scope of the authority granted by the broker-dealer or investment adviser.

(c) "Other electronic communication" under K.S.A. 17-12a610(e), and amendments thereto, shall not include internet communication.

(d) Nothing in this regulation shall create an exemption from the antifraud provisions of K.S.A. 17-12a501 and 17-12a502, and amendments thereto, or from the requirements of any other provision of the act or these regulations. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a301, 17-12a401, 17-12a402, 17-12a403, 17-12a404, 17-12a608(c)(9) and 17-12a610(e); effective Jan. 19, 2007.)

81-5-17. Standard manuals exemption. The following printed or electronic versions of securities manuals shall be designated by the administrator for use under K.S.A. 17-12a202(2)(A)(iv), and amendments thereto:

(a) "S&P capital IQ standard corporation descriptions"; and

(b) ‘‘mergent’s manuals.’’ (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a202; effective Jan. 19, 2007; amended Jan. 4, 2016.)

81-5-18. Notice filing requirements for securities of agricultural associations. (a) *Exemption*. The sale of a security of a cooperative organized under K.S.A. 17-1601 et seq., and amendments thereto, to a person who is not a member pursuant to K.S.A. 17-1606, and amendments thereto, shall be exempt from the requirements of K.S.A. 17-12a301 through 17-12a306 and K.S.A. 17-12a504, and amendments thereto, if the following requirements are met:

(1) The cooperative shall file a notice with the administrator that includes the following items:

(A) A filing fee as specified in K.A.R. 81-5-8;

(B) a copy of any underwriting or selling agreements;

(C) a copy of the cooperative’s bylaws, operating agreement, or similar document;

(D) A copy of a prospectus that discloses all material facts concerning the investment, including the following information:

(i) The name and address of the cooperative;

(ii) a description of the security being offered;

(iii) the total amount of securities being issued;

(iv) a brief summary of key aspects of the offering;

(v) a description of the material risks associated with the offering, which may include risk factors related to unprofitable operations, unsound financial condition, absence of a market for the cooperative’s securities, inexperience of management, and dependence upon a particular customer or group of customers; risks affecting the industry as a whole; and any other facts that tend to make the offering more risky;

(vi) a description of the business or proposed business;

(vii) a description of the proposed use of proceeds, in an itemized format;

(viii) a description of the responsibilities, experience, and compensation of directors, officers, and any other persons having similar status or performing similar functions for the cooperative;

(ix) a description of the plan of distribution for the securities;

(x) a summary of the cooperative’s capitalization;

(xi) a description of any pending litigation, action, or proceeding to which the cooperative is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities;

(xii) a description of the general federal and state tax consequences of owning the security; and

(xiii) the historical financial statements for the past three fiscal years or since the cooperative’s inception, whichever period is shorter, that are in conformity with GAAP, the most recent of which have been audited by a CPA. If the balance sheet in the financial statements is more than 120 days old on the date the notice is filed with the administrator, then interim financial statements made in conformity with GAAP and not more than 120 days old shall be included in the prospectus;

(E) a copy of any advertising materials or any summaries of the offering document to be used in the offer or sale of the securities in Kansas.

(F) a copy of the subscription agreement;

(G) the name, business address, and a brief description of the employment responsibilities of each agent who will represent the cooperative in the offer or sale of the securities in Kansas;

(H) a copy of the trust indenture if the offering involves debt securities; and

(I) any other relevant information or document requested by the administrator.

(2) If the security is a debt instrument, the cooperative shall sell no more securities than it can reasonably repay in the ordinary course of its operations. The cooperative shall demonstrate, to the administrator, its ability to repay the debt as it comes due.

(3) If the security is a debt instrument issued to finance the purchase or improvement of real property, the cooperative shall demonstrate that the project can be completed with the proposed proceeds from the offering and other available funds. The debt shall be secured by a trust indenture that obligates the cooperative to make payments and to pledge properties owned or to be acquired by the cooperative. The cooperative shall provide an independent appraisal report to the administrator and shall demonstrate that the value of the pledged property is sufficient to secure the debt.

(4) If the security is not subject to a firm underwriting agreement, the proceeds shall be deposited and held in an escrow account until a specified minimum amount of proceeds has been deposited so that the cooperative can accomplish the primary purpose of its financing plan or complete a specified stage of a construction project in which a mortgage can be recorded to secure the debt.

(b) *Review*. Within 30 days after the notice is filed under subsection (a), the notice filing and related documents shall be reviewed by the administrator, and a letter shall be issued by the administrator either to advise the cooperative that the administrator has no objection to the cooperative’s claim of exemption

under this regulation or to inform the cooperative that the filing is incomplete or fails to meet the requirements for this exemption. In reviewing the issuer's compliance with the conditions specified in subsection (a), the analogous provisions of the statement of policy regarding church bonds, as adopted by reference in K.A.R. 81-7-2, may be applied by the administrator.

(c) *Waivers*. For good cause shown, the requirements of this regulation may be waived, in whole or in part, by the administrator. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a201(8); effective Jan. 19, 2007.)

81-5-19. Cross-border trading exemption.

(a) *Exemption from broker-dealer registration*. Each broker-dealer that is a resident of Canada and has no place of business in Kansas shall be exempt from registration under K.S.A. 17-12a401, and amendments thereto, if the broker-dealer meets each of the following conditions:

(1) It is registered with or is a member of a self-regulatory organization, stock exchange, or the bureau des services financiers in Canada.

(2) It maintains in good standing its provincial or territorial registration and its registration with or membership in a self-regulatory organization, stock exchange, or the bureau des services financiers in Canada.

(3) It effects or attempts to effect transactions in securities only with or for the following individuals:

(A) An individual who is a permanent resident of Canada and who is temporarily resident in or visiting Kansas, with whom the broker-dealer had a bona fide customer relationship before the individual entered the state; or

(B) an individual who is present in this state and whose transactions are in a Canadian self-directed tax advantaged retirement account of which the individual is the holder or contributor.

(b) *Exemption from agent registration*. Each agent who represents a Canadian broker-dealer meeting the conditions specified in subsection (a) shall be exempt from the registration requirements of K.S.A. 17-12a402, and amendments thereto, if the agent maintains in good standing the agent's provincial or territorial registration and the agent effects or attempts to effect transactions in Kansas only as permitted for a broker-dealer under subsection (a).

(c) *Transactional exemption from securities registration*. Each offer or sale of a security effected by a Canadian broker-dealer or agent who is exempt from registration under subsection (a) or (b) shall be exempt from the requirements of K.S.A. 17-12a301 through 17-12a306 and 17-12a504, and amendments thereto. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a203 and 17-12a401(d); effective Jan. 19, 2007.)

81-5-20. Kansas venture capital, inc. exemption.

The offer or sale of any security issued by Kansas venture capital, inc. (KVCI) or its successors shall be exempt from the registration requirements of K.S.A. 17-12a301 through 17-12a306 and K.S.A. 17-12a504, and amendments thereto. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a203; effective Jan. 19, 2007.)

81-5-21. Invest Kansas exemption. (a) *Exemption from registration requirements*. The offer or sale of a security by an issuer shall be exempt from the requirements of K.S.A. 17-12a301 through 17-12a306 and K.S.A. 17-12a504, and amendments thereto, if the offer or sale is conducted in accordance with each of the following requirements:

(1) The issuer of the security shall be a business or organization formed under the laws of the state of Kansas and registered with the secretary of state.

(2) The transaction shall meet the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the securities act of 1933, 15 U.S.C. § 77c(a)(11), and SEC rule 147, 17 C.F.R. 230.147, as adopted by reference in K.A.R. 81-2-1.

(3) The sum of all cash and other consideration to be received for all sales of securities in reliance upon this exemption shall not exceed $1,000,000, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance upon this exemption.

(4) The issuer shall not accept more than $5,000 from any single purchaser unless the purchaser is an accredited investor as defined by rule 501 of SEC regulation D, 17 C.F.R. 230.501, as adopted by reference in K.A.R. 81-2-1. Two or more individual purchasers residing at the same primary residence who are not accredited investors and have a close family relationship shall be treated as a single purchaser for purposes of the $5,000 limit.

(5) A commission or other remuneration shall not be paid or given, directly or indirectly, for any person's participation in the offer or sale of securities for the issuer unless the person is registered as a broker-dealer or agent under the act.

(6) All funds received from investors shall be deposited into a bank or depository institution authorized to do business in Kansas, and all the funds

shall be used in accordance with representations made to investors.

(7) Before the use of any general solicitation, the issuer shall file a notice with the administrator on form IKE, providing the names and addresses of the following persons:

(A) The issuer;

(B) all persons who will be involved in the offer or sale of securities on behalf of the issuer; and

(C) the bank or other depository institution in which investor funds will be deposited.

(8) The issuer shall not be, either before or as a result of the offering, an investment company as defined in section 3 of the investment company act of 1940, 15 U.S.C. § 80a-3, or subject to the reporting requirements of section 13 or 15(d) of the securities exchange act of 1934, 15 U.S.C. §78m and 78o(d), as adopted by reference in K.A.R. 81-2-1.

(9) The issuer shall inform all purchasers that the securities have not been registered under the act and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under K.S.A. 17-12a202 and amendments thereto, K.A.R. 81-5-3, or another regulation. In addition, the issuer shall make the disclosures required by subsection (f) of SEC rule 147, 17 C.F.R. 230.147(f), as adopted by reference in K.A.R. 81-2-1.

(b) *Interaction with other exemptions and sales to controlling persons*. This exemption shall not be used in conjunction with any other exemption under these regulations. Sales to controlling persons shall not count toward the limitation in paragraph (a)(3).

(c) *Disqualifications*. This exemption shall not be available if the issuer is subject to a disqualifying event specified in K.A.R. 81-5-13(b), except as permitted under K.A.R. 81-5-13(c). (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a203; effective Aug. 12, 2011; amended Jan. 4, 2016 .)

ARTICLE 6 – PROSPECTUS

81-6-1. Prospectus. (a) *Filing*. Each application for the registration of securities shall include the prospectus to be used in connection with the proposed securities offering.

(b) *Form and content*.

(1) Registration by coordination. Each prospectus for a securities offering filed for registration by coordination under K.S.A.17-12a303, and amendments thereto, shall contain the information required in part I of the registration statement filed by the issuer under the securities act of 1933, unless the administrator modifies or waives the requirements pursuant to K.S.A. 17-12a307, and amendments thereto.

(2) Registration by qualification. Each prospectus for a securities offering filed for registration by qualification under K.S.A. 17-12a304, and amendments thereto, shall contain the information required by that statute unless the administrator modifies or waives the requirements pursuant to K.S.A. 17-12a304 or 17-12a307, and amendments thereto. The prospectus may be submitted on one of the following forms that is applicable to the type of securities offering, in accordance with the instructions to the form:

(A) Part II of SEC form 1-A, regulation A offering statement under the securities act of 1933;

(B) part I of SEC form S-1, registration statement under the securities act of 1933;

(C) form U-7 if the issuer meets the requirements of K.A.R. 81-4-2; or

(D) any other form allowed by the administrator, if the prospectus is filed in compliance with the applicable requirements of the securities act of 1933.

(c) *Delivery requirements*. As a condition of registration under K.S.A. 17-12a304 and amendments thereto, the issuer shall deliver a copy of the entire prospectus to each person to whom an offer is made, before or concurrently, with the earliest of the events specified in K.S.A. 17-12a304, and amendments thereto. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a303 and 17-12a304; effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1987; amended March 25, 1991; amended May 31, 1996; amended Jan. 19, 2007; amended January 4, 2016.)

ARTICLE 7 – POLICIES RELATING TO REGISTRATION

81-7-1. General statements of policy for registration of securities. (a) *NASAA statements of policy*. Each registration statement shall meet the requirements of each NASAA statement of policy that is applicable to the issuer, registration statement, type of security, or other circumstances of the offering. The following NASAA statements of policy are hereby adopted by reference:

(1) ‘‘Statement of policy regarding corporate securities definitions,’’ as amended on March 31, 2008;

(2) ‘‘statement of policy regarding the impoundment of proceeds,’’ as amended on March 31, 2008;

(3) ‘‘statement of policy regarding loans and other material transactions,’’ as amended on March 31, 2008;

(4) ‘‘statement of policy regarding options and warrants,’’ as amended on March 31, 2008;

(5) ‘‘statement of policy regarding preferred stock,’’ as amended on March 31, 2008;

(6) ‘‘statement of policy regarding promoter’s equity investment,’’ as amended on March 31, 2008;

(7) ‘‘statement of policy regarding promotional shares,’’ as amended on March 31, 2008;

(8) ‘‘statement of policy regarding specificity in use of proceeds,’’ as amended on March 31, 2008;

(9) ‘‘statement of policy regarding underwriting expenses, underwriter’s warrants, selling expenses and selling security holders,’’ as amended on March 31, 2008;

(10) ‘‘statement of policy regarding unsound financial condition,’’ as amended on March 31, 2008; and

(11) ‘‘statement of policy regarding unequal voting rights,’’ as amended on March 31, 2008.

(b) *Financial statements*. Each registration statement shall meet the requirements for financial statements under K.A.R. 81-7-3, unless the administrator waives or modifies the requirements for good cause shown under one of the following circumstances:

(1) The registration statement contains financial statements that meet specific requirements of a statement of policy adopted under subsection (a) or another regulation, and the administrator determines that the financial statements are sufficient in light of the issuer, registration statement, type of security, or other circumstances of the offering.

(2) The registration statement was filed for registration by coordination under K.S.A. 17-12a303, and amendments thereto, and contains financial statements that meet SEC requirements.

(3) The registration statement was submitted for coordinated review under K.S.A. 17-12a608(c)(7), and amendments thereto, and the administrator determines that a waiver or modification would promote uniformity with other states.

(c) Whenever terms within the context of NASAA statements of policy adopted by reference in this regulation are in conflict with definitions under the act and these regulations, the definitions in the NASAA statements of policy shall apply. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a306(b) and 17-12a608(c); effective Jan. 1, 1966; amended, E-70-15, Feb. 4, 1970; amended Jan. 1, 1971; amended Jan. 1, 1972; amended, T-88-65, Dec. 30, 1987; amended May 1, 1988; amended Oct. 24, 1988; amended June 28, 1993; amended Jan. 19, 2007; amended Jan. 4, 2016.)

81-7-2. Statements of policy for specific types of securities offerings. (a) If one of the NASAA guidelines or statements of policy adopted in subsection (b) applies to a securities offering, the registration statement shall meet the requirements of the applicable NASAA guideline or statement of policy.

(b) The following NASAA guidelines and statements of policy are hereby adopted by reference, except as modified in paragraph (b)(13):

(1) “Registration of asset-backed securities,” as amended on May 6, 2012;

(2) “registration of publicly offered cattle-feeding programs,” as adopted on September 17, 1980;

(3) “statement of policy regarding church bonds” and the related “cross reference sheet,” as adopted on April 14, 2002;

(4) “statement of policy regarding church extension fund securities,” as amended on April 18, 2004;

(5) “registration of commodity pool programs,” as amended on May 6, 2012;

(6) “statement of policy regarding debt securities,” as adopted on April 25, 1993;

(7) “equipment programs,” as amended on May 6, 2012;

(8) “NASAA mortgage program guidelines,” as amended on May 7, 2007;

(9) “registration of oil and gas programs,” as amended on May 6, 2012;

(10) “omnibus guidelines,” as amended on May 7, 2007;

(11) “statement of policy regarding real estate investment trusts,” as revised and adopted on May 7, 2007;

(12) “statement of policy regarding real estate programs,” as revised on May 7, 2007; and

(13) “guidelines regarding viatical investments,” including appendix A, as in effect on January 1, 2006, which shall be modified as follows:

(A) In section I.B.14.a of the guidelines, the phrase “[reference to state statute or most recent version of the National Association of Insurance Commissioners (“NAIC”) Model Viatical Settlement Act]” shall be replaced with “K.S.A. 40-5002(o), and amendments thereto”;

(B) in section I.B.16, the phrase “[broker dealer]” shall be replaced with “broker-dealer,” the term “[agent]” shall be replaced with “agent,” and the phrase “[reference to statutory definition of issuer]”

shall be replaced with "K.S.A. 17-12a102(17), and amendments thereto";

(C) in section I.B.17, the phrase "[reference to state statute or most recent version of the NAIC Model Viatical Settlement Act]" shall be replaced with "K.S.A. 40-5002(n), and amendments thereto";

(D) in section III.B, the brackets shall be removed, and the bracketed amounts shall remain in effect;

(E) in section VI.14, the phrase "[NAIC Model Viatical Settlement Act or similar viatical regulatory act of the particular state]" shall be replaced with "viatical settlement act of 2002, K.S.A. 40-5002 et seq., and amendments thereto"; and

(F) in the last sentence of section VI, the phrase "[statutory reference]" shall be replaced with "K.S.A. 17-12a411(d), and amendments thereto."

(c) The omnibus guidelines adopted in paragraph (b)(10) shall be applied to limited partnership programs or other entities for which more specific guidelines or statements of policy have not been adopted by NASAA, unless the administrator waives or modifies the requirements of the omnibus guidelines or applies other NASAA guidelines or statements of policy for good cause shown.

(d) In addition to the income and net worth standards and other suitability requirements contained within the NASAA guidelines and statements of policy adopted under subsection (b), the administrator may require that the registration statement include a statement that recommends or requires each purchaser to limit the purchaser's aggregate investment in the securities of the issuer and other similar investments to not more than 10 percent of the purchaser's liquid net worth. For purposes of this subsection, liquid net worth shall be defined as that portion of the purchaser's total net worth that is comprised of cash, cash equivalents, and readily marketable securities, as determined in conformity with GAAP.

(e) Each registration statement subject to a guideline or statement of policy adopted under subsection (b) shall meet the requirements for financial statements under K.A.R. 81-7-3, unless the administrator waives or modifies the requirements for good cause shown under any of the following circumstances:

(1) The registration statement contains financial statements that meet the specific requirements of another guideline or statement of policy adopted under subsection (b) or another regulation, and the administrator determines that the financial statements are sufficient for the particular type of securities registration.

(2) The registration statement was filed for registration by coordination under K.S.A. 17-12a303, and amendments thereto, and contains financial statements that meet the SEC requirements.

(3) The registration statement was submitted for coordinated review under K.S.A. 17-12a608(c)(7) and amendments thereto, and the administrator determines that a waiver or modification would promote uniformity with other states.

(f) Each application for registration subject to a guideline or statement of policy adopted under subsection (b) shall include a cross-reference table to indicate compliance with the various sections of the applicable guideline or statement of policy.

(g) Whenever terms within the context of NASAA guidelines or statements of policy adopted by reference in this regulation are in conflict with definitions under the act and these regulations, the definitions in the NASAA guidelines or statements of policy shall apply. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a306(b) and 17-12a608(c); effective June 28, 1993; amended May 31, 1996; amended Jan. 19, 2007; amended Aug. 15, 2008; amended January 4, 2016.)

81-7-3. Financial statements required for securities registration. (a) The historical financial statements in each registration statement or prospectus required under the act shall be presented in conformity with GAAP. In addition, each of the financial statements shall be audited by an independent CPA in accordance with standards of the PCAOB, or in accordance with generally accepted auditing standards in the United States if the audit is not subject to standards of the PCAOB, except under either of the following circumstances:

(1) If an issuer complies with K.A.R. 81-4-2 or K.A.R. 81-7-2(b)(3), as applicable, the financial statements in a registration statement filed by qualification under K.S.A. 17-12a304, and amendments thereto, may be reviewed by an independent CPA rather than audited.

(2) Interim financial statements in a registration statement may be unaudited.

(b) Prospective financial statements may be included in a registration statement or prospectus if the prospective financial statements are presented in the form of financial forecasts, conform with guidelines established by the AICPA, and are accompanied by an examination report of an independent CPA prepared in accordance with standards established by the AICPA. Prospective financial statements shall not be delivered in connection with an offer of securities, unless they are

included in the prospectus. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a605(c); effective Jan. 19, 2007.)

ARTICLE 8 – EFFECTIVENESS AND POST-EFFECTIVE REQUIREMENTS

81-8-1. Revoked. (Authorized by K.S.A. 1986 Supp. 17-1270(f); implementing K.S.A. 17-1256; 17-1257; 17-1264; effective Jan. 1, 1966; amended, T-88-29, Aug. 19, 1987; amended May 1, 1988; revoked May 31, 1996.)

ARTICLE 9 – ANNUAL REPORTS

81-9-1. Revoked. (Authorized by K.S.A. 17-1270(f); implementing K.S.A. 17-1259 as amended by SB 66; effective Jan. 1, 1966; amended, E-70-15, Feb. 4, 1970; amended Jan. 1, 1971; amended, T-88-29, Aug. 19, 1987; amended May 1, 1988; revoked May 31, 1996.)

ARTICLE 10 – ADVERTISING

81-10-1. Advertising. (a) *Definitions*. For purposes of this regulation, the following definitions shall apply:

(1) "Sales and advertising literature" shall mean the following, if intended for distribution to prospective investors:

(A) Any advertisement, pamphlet, circular, brochure, form letter, or other written or electronic sales literature or material; and

(B) any script for an oral advertisement or promotional effort.

(2) "Tombstone advertisement" shall mean sales and advertising literature in which the content is limited to the information specified in subsection (a) of SEC rule 134, as adopted by reference in K.A.R. 81-2-1.

(b) *Filing requirement*. Except as provided in subsection (d), all sales and advertising literature proposed to be used in connection with the sale of securities in Kansas shall be filed with the administrator at least five days before its proposed use.

(c) *False or misleading advertisements*. Sales and advertising literature shall not contain any statement that is false or misleading in a material respect or that is inconsistent with information contained in a registration statement or offering document. In addition, the sales and advertising literature shall not omit to state any material fact necessary to make a statement made, in the light of the circumstances under which the statement was made, not false or misleading. Sales and advertising literature shall be deemed to be false and misleading if it contains any exaggerated statements, emphasizes positive information while minimizing negative information, or compares alternative investments without disclosing all material differences between the investments, including expenses, liquidity, safety, and tax features.

(d) *Exception*. A tombstone advertisement placed in a newspaper, periodical, or other medium shall not be subject to the requirements of subsection (b) if the tombstone advertisement contains the following information:

(1) A statement that the advertisement does not constitute an offer to sell or the solicitation of an offer to buy a security; and

(2) the name and address of a person from whom a written prospectus can be obtained. (Authorized by K.S.A. 2005 Supp. 17-12a504 and 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a504 and 17-12a505; effective Jan. 1, 1966; amended, E-70-15, Feb. 4, 1970; amended Jan. 1, 1971; amended Jan. 19, 2007.)

ARTICLE 11 – ADMINISTRATIVE PROCEDURE

81-11-1. Revoked. (Authorized by K.S.A. 17-1270(f); effective Jan. 1, 1966; revoked May 1, 1984.)

81-11-2. Scope of administrative procedure regulations. (a) This article is supplemental to the Kansas administrative procedures act and to administrative procedures otherwise provided by the Kansas securities act.

(b) If it is in the interest of promoting substantial justice, the commissioner may waive any provision of this article. (Authorized by K.S.A. 1984 Supp. 17-1270 and K.S.A. 17-1282; implementing K.S.A. 17-1254, as amended by L. 1985, Ch. 88, Sec. 1, K.S.A. 17-1254a, K.S.A. 17-1260, as amended by L. 1985, Ch. 88, Sec. 2, K.S.A. 1984 Supp. 17-1261, K.S.A. 1984 Supp. 17-1262, as amended by L. 1985, Ch. 89, Sec. 1, K.S.A. 1984 Supp. 17-1265, K.S.A. 17-1266a, as amended by L. 1985, Ch. 88, Sec. 4, K.S.A. 17-1277, and K.S.A. 17-1281; effective May 1, 1984; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986.)

81-11-3. Form of pleadings. (a) Except as otherwise provided by K.A.R. 81-2-1(d), each written request, motion, notice, and other pleading filed in any proceeding shall contain the caption "BEFORE THE

SECURITIES COMMISSIONER OF THE STATE OF KANSAS," the title of the proceeding, the docket number and the name of the pleading, and shall be in substantial compliance with K.S.A. 1984 Supp. 60-2702a, Rule No. 111.

(b) Any oral statement or request not given on the record during a proceeding and any letter, memo, or note not in substantial compliance with subsection (a) above shall not constitute a filing in the proceeding. (Authorized by K.S.A. 1984 Supp. 17-1270 and K.S.A. 17-1282; implementing K.S.A. 17-1254, as amended by L. 1985, Ch. 88, Sec. 1, K.S.A. 17-1254a, K.S.A. 17-1260, as amended by L. 1985, Ch. 88, Sec. 2, K.S.A. 1984 Supp. 17-1261, K.S.A. 1984 Supp. 17-1262, as amended by L. 1985, Ch. 89, Sec. 1, K.S.A. 17-1266a, as amended by L. 1985, Ch. 88, Sec. 4, K.S.A. 17-1277, and K.S.A. 17-1281; effective May 1, 1984; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986.)

81-11-4. Summary adjudicative proceedings. The commissioner may grant an application, registration, certification, license, exemption or effectiveness by summary adjudicative proceeding. (Authorized by K.S.A. 1984 Supp. 17-1270 and K.S.A. 17-1282; implementing K.S.A. 17-1254, as amended by L. 1985, Ch. 88, Sec. 1, K.S.A. 17-1254a, K.S.A. 17-1256, K.S.A. 17-1257, K.S.A. 17-1258, K.S.A. 1984 Supp. 17-1261, K.S.A. 1984 Supp. 17-1262, as amended by L. 1985, Ch. 89, Sec. 1, K.S.A. 17-1277, K.S.A. 17-1281, as amended by L. 1984 Ch. 313, Sec. 13, and L. 1984, Ch. 313, Sec. 37; effective May 1, 1984; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986.)

81-11-5. Request for hearing. (a) When the commissioner has entered any emergency or summary order or given notice of intent to issue any order, an aggrieved party may file a written request for a hearing. The request shall be filed in the office of the commissioner within 30 days of service of the order or notice of intent.

(b) The request for hearing shall contain the following:

(1) the title of the matter as written on the commissioner's order or notice;

(2) the docket number of the matter;

(3) a request for a hearing and if allegations of the commissioner's staff are disputed and the aggrieved party desires a formal adjudicatory proceeding, a statement to that effect;

(4) a detailed statement of what allegations in the staff's pleadings are disputed by the aggrieved party. All allegations not disputed in the request shall be found to be admitted by the aggrieved party;

(5) the name, address, and phone number of any local and any foreign counsel; and

(6) a sworn verification by the requesting party that the contents of the request are true. If the aggrieved party is an individual, the verification shall be signed by the individual. If the aggrieved party is a corporation, the verification shall be signed by the president or the chairman of the board of directors. If the aggrieved party is a partnership, the verification shall be signed by a general partner. If the aggrieved party is a governmental unit, the verification shall be signed by the highest official in the unit or a deputy.

(c) Failure of an aggrieved party to file a request for hearing in substantial compliance with this section shall constitute grounds for denial of the request.

(d) No hearing shall be granted to an aggrieved party unless a timely request for hearing has been filed, but the commissioner may grant a hearing upon the commissioner's own motion or upon the request of the commissioner's staff. (Authorized by K.S.A. 1984 Supp. 17-1270 and K.S.A. 17-1282; implementing K.S.A. 17-1254, as amended by L. 1985, Ch. 88, Sec. 1, K.S.A. 17-1254a, K.S.A., as amended by L. 1985, Ch. 88, Sec. 2, K.S.A. 1984 Supp. 17-1261, K.S.A. 1984 Supp. 17-1262, as amended by L. 1985, Ch. 89, Sec. 1, K.S.A. 17-1266a, as amended by L. 1985 Ch. 88, Sec. 4, K.S.A. 17-1277, and K.S.A. 17-1281; effective May 1, 1984; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986.)

81-11-6. Conference adjudicative proceedings

Unless an aggrieved party has requested a formal adjudicatory proceeding in accordance with K.A.R 81-11-5(b) (3) and has disputed staff allegations in accordance with K.A.R. 81-11-5(b) (4), or unless another type of proceeding is ordered or otherwise required, any proceeding granted shall be a conference adjudicative proceeding. (Authorized by K.S.A. 1984 Supp. 17-1270; and K.S.A. 17-1282; implementing K.S.A. 17-1254, as amended by L. 1985, Ch. 88, Sec. 1, K.S.A. 17-1254a, K.S.A. 17-1260, as amended by L. 1985, Ch. 88, Sec. 2, K.S.A. 1984 Supp. 17-1261, K.S.A. 1984 Supp. 17-1262, as amended by L. 1985, Ch. 89, Sec. 1, K.S.A. 17-1266a, as amended by L. 1985, Ch. 88, Sec. 4, K.S.A. 17-1277, K.S.A. 17-1281, as amended by L. 1984, Ch. 313, Sec. 13, and L. 1984, Ch. 313, Sec. 33; effective May 1, 1984; amended, T-86-38, Dec. 11, 1984; amended May 1, 1986.)

81-11-7. Appearances. (a) The filing of a request for hearing shall constitute a general appearance before the commissioner by the requesting party and shall act as an acknowledgment that service of the order or notice was complete upon the requesting party. No special appearance shall be recognized.

(b) If an aggrieved party appears in any proceeding with an attorney, service upon the aggrieved party is complete upon service of the attorney.

(c) Any attorney who will appear with an aggrieved party and who was not named in the request for hearing, shall file a written appearance stating the attorney's name, address and telephone number, and specifying whom the attorney will represent in the proceeding.

(d) The person who signed the verification on the request for hearing shall appear personally at the hearing. Failure to so appear shall constitute grounds for default against the aggrieved party who filed the request for hearing. Appearance by attorney only or by another controlling person shall be insufficient unless permitted by the commissioner for good cause shown. Any person so permitted to appear shall verify an amended request for hearing. (Authorized by K.S.A. 1984 Supp. 17-1270; and K.S.A. 17-1282; implementing K.S.A. 17-1254, as amended by L. 1985, Ch. 88, Sec. 1, K.S.A. 17-1254a, K.S.A. 17-1260, as amended by L. 1985, Ch. 88, Sec. 2, K.S.A. 1984 Supp. 17-1261, K.S.A. 1984 Supp. 17-1262, as amended by L. 1985, Ch. 89, Sec. 1, K.S.A. 17-1266a as amended by L. 1985, Ch. 88, Sec. 4, K.S.A. 17-1277, and K.S.A. 17-1281; effective May 1, 1984; amended, T-86-38, Dec 11, 1985; amended May 1, 1986.)

81-11-8. Formal adjudicative proceedings.

(a) Formal adjudicative proceedings shall be conducted on a trial format unless the presiding officer finds that deviation from a trial format is necessary to aid in ascertaining the facts or for the convenience of the presiding officer, a witness or a party.

(b) No witness shall testify by telephone or other electronic means unless by agreement of the parties. (Authorized by K.S.A. 1984 Supp. 17-1270 and K.S.A. 17-1282; implementing K.S.A. 17-1254, as amended by L. 1985, Ch. 88, Sec. 1, K.S.A. 17-1254a, K.S.A. 17-1260, as amended by L. 1985, Ch. 88, Sec. 2, K.S.A. 1984 Supp. 17-1261, K.S.A. 1984 Supp. 17-1262, as amended by L. 1985, Ch. 89, Sec. 1, K.S.A. 17-1266a, as amended by L. 1985, Ch. 88, Sec. 4, K.S.A. 17-1277, and K.S.A. 17-1281; effective May 1, 1984; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986.)

81-11-9. Subpoenas. (a) Subpoenas may be served upon any party or upon any controlling person of any party by serving the attorney for the party.

(b) If any party or any controlling person of any party fails to testify or produce items when so subpoenaed and the presiding officer finds that the evidence would be relevant to the proceeding, the presiding officer may make such orders as are provided for by paragraphs (A), (B) and (C) of K.S.A. 60-237(b)(2). (Authorized by K.S.A. 1984 Supp. 17-1270 and K.S.A. 17-1282; implementing K.S.A. 17-1254, as amended by L. 1985, Ch. 88, Sec. 1, K.S.A. 17-1254a, K.S.A. 17-1260, as amended by L. 1985, Ch. 88, Sec. 2, K.S.A. 1984 Supp. 17-1261, K.S.A. 1984 Supp. 17-1262, as amended by L. 1985, Ch. 89, Sec. 1, K.S.A. 17-1266a, as amended by L. 1985, Ch. 88, Sec. 4, K.S.A. 17-1277, and K.S.A. 17-1281; effective May 1, 1984; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986.)

81-11-10. Evidence. The presiding officer may relax the rules of evidence if it will aid in ascertaining the facts. The presiding officer shall admit hearsay evidence not otherwise admissible:

(a) unless a party objects to the proffered evidence and states that;

(1) the party knows that a fact contained therein and offered to prove the truth of the matter is false; or

(2) the party does not know whether a fact contained therein and offered to prove the truth of the matter is true and the presiding officer finds that after being given a reasonable time the party has been unable to ascertain the truth of the matter and has made a diligent effort to do so; or

(b) if the presiding officer finds that the evidence will aid in ascertaining the facts; or

(c) if the evidence proffered consists of answers to questionnaires directed to persons allegedly solicited to purchase or sell securities who are so numerous that it is impractical to call them as witnesses, all answers to questionnaires which were returned to the questioning party are proffered, and the evidence is offered to show a pattern in the alleged solicitations or in the class of persons allegedly solicited. The presiding officer may allow any other party a reasonable time to direct cross-examination questionnaires to and receive answers from such or similar persons allegedly solicited. (Authorized by K.S.A. 1984 Supp. 17-1270 and K.S.A. 17-1282; implementing K.S.A. 17-1254, as amended by L. 1985, Ch. 88, Sec. 1, K.S.A. 17-1254a, K.S.A. 17-1260, as amended by L. 1985, Ch. 88, Sec. 2, K.S.A. 1984 Supp. 17-1261, K.S.A. 1984 Supp. 17-1262, as

amended by L. 1985, Ch. 89, Sec. 1, K.S.A. 17-1266a, as amended by L. 1985, Ch. 88, Sec. 4, K.S.A. 17-1277, and K.S.A. 17-1281; effective May 1, 1984; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986.)

81-11-11. Hearing officers. (a) In any proceeding initiated under a provision of the Kansas securities act which requires a final determination by the commissioner, a hearing officer may be appointed by the commissioner to conduct the proceeding.

(b) Upon the written request of a party, any interim ruling of the hearing officer may be modified by the commissioner, but no hearing on the request is required to be provided. (Authorized by K.S.A. 1992 Supp. 17-1270; implementing K.S.A. 1992 Supp. 17-1254, K.S.A. 17-1260 and 17-1266a; effective May 1, 1984; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986; amended June 28, 1993.)

81-11-12. Immunity. Any person claiming privilege against self-incrimination in matters described by K.S.A. 1984 Supp. 17-1265 shall do so personally and not by attorney or other person. No person after claiming the privilege shall be considered compelled unless the claimant is first granted immunity by the commissioner or the commissioner's designee. A hearing officer shall not have the power to grant immunity. (Authorized by K.S.A. 1984 Supp. 17-1270 and K.S.A. 17-1282; implementing K.S.A. 1984 Supp. 17-1265 and K.S.A. 17-1281; effective May 1, 1984; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986).

ARTICLE 12 – NON-PROFIT CORPORATIONS

81-12-1. Revoked. (Authorized by K.S.A. 17-1261(h); effective, E-70-15, Feb. 4, 1970; effective Jan. 1, 1971; revoked May 1, 1983.)

ARTICLE 13 – INSTRUCTION PROGRAMS FOR AGENT LICENSING

81-13-1. Revoked. (Authorized by K.S.A. 17-1270(f); effective Jan. 1, 1972; revoked May 31, 1996.)

ARTICLE 14 – INVESTMENT ADVISERS AND REPRESENTATIVES

81-14-1. Registration procedures for investment advisers and investment adviser representatives.

(a) *General provisions.*

(1) Each applicant shall be at least 18 years of age. If the applicant is not an individual, then the directors, officers, managing partners, or managing members of the applicant shall be at least 18 years of age.

(2) Each applicant shall be registered or qualified to engage in business as an investment adviser or investment adviser representative in the state of the applicant's principal place of business.

(3) Each registered investment adviser shall maintain registration under the act for at least one investment adviser representative.

(b) *Application requirements for investment advisers*.

(1) Initial application.

(A) IARD filing requirements. Each applicant for initial registration as an investment adviser shall complete form ADV in accordance with the form instructions and shall file the form, including parts 1 and 2 and all applicable schedules, with the IARD. In addition, the applicant shall submit to the IARD the fee required by K.A.R. 81-14-2 and any reasonable fee charged by FINRA for filing through the IARD system.

(B) Direct filing requirements. Each applicant for initial registration as an investment adviser shall file the following documents with the administrator, unless the documents are filed electronically with the IARD:

(i) the proposed client contract written in accordance with K.A.R. 81-14-5(d)(13);

(ii) a privacy policy written in accordance with K.A.R. 81-14-5(d)(12)(B);

(iii) supervisory procedures written in accordance with K.A.R. 81-14-4(b)(19);

(iv) financial statements that demonstrate compliance with the requirements of K.A.R. 81-14-9(d);

(v) a brochure written in accordance with K.A.R. 81-14-10(b), unless the applicant intends to use part 2 of form ADV as its brochure; and

(vi) any other document related to the applicant's business, if requested by the administrator.

(2) Annual renewal. The application for annual renewal registration as an investment adviser shall be filed with the IARD. The application for annual renewal registration shall include the fee required by K.A.R. 81-14-2 and any reasonable fee charged by FINRA for filing through the IARD system.

(3) Updates and amendments.

(A) Each investment adviser shall file with IARD, in accordance with the instructions in form ADV, any amendments to the investment adviser's form ADV. An amendment shall be considered to be filed

promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment.

(B) Within 90 days after the end of an investment adviser's fiscal year, the investment adviser shall file with the IARD an annual updating amendment to form ADV.

(c) *Application requirements for investment adviser representatives*.

(1) Initial application. Each applicant for initial registration as an investment adviser representative under the act shall complete form U-4 in accordance with the form instructions and shall file the form U-4 with the CRD, except as otherwise provided by order of the administrator. The application for initial registration shall include the following items:

(A) Proof of compliance by the investment adviser representative with the examination requirements of subsection (e);

(B) the fee required by K.A.R. 81-14-2; and

(C) any reasonable fee charged by FINRA for filing through the CRD system.

(2) Annual renewal. The application for annual renewal registration as an investment adviser representative shall be filed with the CRD. The application for annual renewal registration shall include the fee required by K.A.R. 81-14-2 and any reasonable fee charged by FINRA for filing through the CRD system.

(3) Updates and amendments. Each investment adviser representative shall be under a continuing obligation to update the information required by form U-4 as changes occur. Each investment adviser representative and any associated investment adviser shall file promptly with the CRD any amendments to the representative's form U-4. An amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment.

(d) *Effective date of registration*.

(1) Initial registration. Each registration shall become effective on the 45th day after the completed application is filed, unless the application is approved earlier by the administrator. However, if the administrator or the administrator's staff has notified the applicant of deficiencies in the application, the application shall not be considered complete until an amendment is filed to resolve the deficiencies.

(2) Transfer of employment or association. If an investment adviser representative terminates employment by or association with an investment adviser registered under the act or a federal covered investment adviser who has filed a notice under K.S.A. 17-12a405, and amendments thereto, and begins employment by or association with another investment adviser registered under the act or a federal covered investment adviser who has filed a notice under K.S.A. 17-12a405, and amendments thereto, and the successor investment adviser or federal covered investment adviser files an application for registration for the investment adviser representative within 30 days after the termination, then the application shall become effective in accordance with K.S.A. 17-12a408(b), and amendments thereto.

(e) *Examination requirements*.

(1) General requirements. Each individual applying to be registered as an investment adviser or investment adviser representative under the act shall provide the administrator with proof of obtaining a passing score on either of the following:

(A) The series 65 uniform investment adviser law examination; or

(B) the series 7 general securities representative examination and the series 66 uniform combined state law examination.

(2) Requirements for individuals registered on January 1, 2000. An individual who was registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on January 1, 2000, shall not be required to meet the examination requirements for continued registration, except under either of the following conditions:

(A) If the administrator requires examinations for any individual found to have violated any state or federal securities law; or (B) if the administrator requires examinations for any individual whose registration has lapsed, as specified in paragraph (e)(3).

(3) Lapsed registration. If an individual has met the examination requirements of paragraph (e)(1) but has not been registered as an agent or investment adviser representative in any jurisdiction for the previous two years, the individual shall be required to comply with the examination requirements of paragraph (e)(1) again before applying for registration.

(4) Waivers. The examination requirement may be waived or modified by the administrator pursuant to K.S.A. 17-12a412(e), and amendments thereto, and the examination requirement shall not apply to any individual who currently holds one of the following professional designations:

(A) Certified financial planner (CFP), awarded by the certified financial planner board of standards, inc.;

(B) chartered financial consultant (ChFC), awarded by the American college, Bryn Mawr, Pennsylvania;

(C) personal financial specialist (PFS), awarded by the American institute of certified public accountants;

(D) chartered financial analyst (CFA), awarded by the institute of chartered financial analysts;

(E) chartered investment counselor (CIC), awarded by the investment counsel association of America, inc.; or

(F) any other professional designation that the administrator may by regulation or order recognize.

(f) *Expiration, renewal, withdrawal, and termination*.

(1) Each registration shall expire on December 31, and each application for renewal shall be filed not later than the deadline established by the IARD or CRD.

(2) If an investment adviser representative's association with an investment adviser is discontinued or terminated, the investment adviser shall immediately file a form U-5 with the CRD. If the investment adviser representative commences association with another investment adviser, that investment adviser shall file an initial application for registration for the investment adviser representative.

(3) If an investment adviser desires to withdraw from registration or if registration is terminated by the administrator, the investment adviser shall immediately file a form ADV-W with the IARD. The form ADV-W shall be completed in accordance with the instructions to the form.

(4) Termination of an investment adviser's registration for any reason shall automatically constitute cancellation of the registration of each investment adviser representative that is affiliated with the investment adviser.

(5) Each application that has been on file for six months without any action taken by the applicant shall be considered withdrawn. (Authorized by 17-12a605(a); implementing K.S.A. 17-12a406, 17-12a407, 17-12a408, and 17-12a412(e); effective Oct. 26, 2001; Aug. 18, 2006; amended Aug. 15, 2008; amended January 4, 2016.)

81-14-2. Investment advisers, investment adviser representatives, and federal covered investment advisers; registration fees. (a) The fee for initial registration or renewal of the registration of an investment adviser shall be $100.

(b) The fee for initial registration or renewal of the registration of an investment adviser representative shall be $60.

(c) The fee for an initial notice filing or a renewal notice filing for a federal covered investment adviser shall be $100. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a410; effective Oct. 26, 2001; amended Aug. 18, 2006; amended Dec. 19, 2008; amended Oct. 9, 2015.)

81-14-3. Revoked. (Authorized by K.S.A. 2000 Supp. 17-1270; implementing K.S.A. 2000 Supp. 17-1253; effective Oct. 26, 2001; revoked Aug. 18, 2006.)

81-14-4. Recordkeeping requirements for investment advisers. (a) *Definitions*. For purposes of this regulation, the following definitions shall apply:

(1) "Control" means the power to exercise a controlling influence over the management or policies of a company, unless the power is solely the result of an official position with the company. Each person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control the company.

(2) "Discretionary power" shall not include discretion regarding the price or the time at which a transaction is to be effected if the client has directed or approved the purchase or sale of a definite amount of a particular security before the order is given by the investment adviser.

(3) "Investment supervisory services" means the giving of continual advice about the investment of funds on the basis of each client's individual needs.

(4) "Solicitor" means any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients.

(b) Except as otherwise provided in subsection (j) of this regulation, each investment adviser registered or required to be registered under the act shall make and keep true, accurate, and current all of the following books, ledgers, and records:

(1) Each investment adviser shall maintain a journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(2) Each investment adviser shall maintain general and auxiliary ledgers or other comparable records reflecting asset, liability, equity, capital, income, and expense accounts.

(3)(A) Each investment adviser shall maintain memoranda concerning orders, instructions, modifications, or cancellations, including memoranda of the following:

(i) Each order given by the investment adviser for the purchase or sale of any security;

(ii) any instruction received by the investment adviser from the client concerning the purchase, sale, receipt, or delivery of a particular security; and

(iii) any modification or cancellation of an order or instruction.

(B) Each memorandum shall show the following information:

(i) The terms and conditions of the order, instruction, modification, or cancellation;

(ii) the name of the person connected with the investment adviser who recommended the transaction to the client and the name of the person who placed the order;

(iii) the account for which the order, instruction, modification, or cancellation was entered;

(iv) the date of entry; and

(v) the bank, broker, or dealer by or through whom the transaction was executed, if appropriate.

(C) Each order entered pursuant to the exercise of discretionary power shall be so designated.

(4) Each investment adviser shall maintain all checkbooks, bank statements, canceled checks, and cash reconciliations.

(5) Each investment adviser shall maintain all bills or statements, paid or unpaid, relating to the adviser's business as an investment adviser.

(6) Each investment adviser shall maintain all trial balances, financial statements, and internal audit working papers relating to the adviser's business as an investment adviser. For purposes of this paragraph, "financial statements" shall mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement, and a net worth computation if a net worth computation is required by K.A.R. 81-14-9.

(7)(A) Each investment adviser shall maintain originals of all written communications received and copies of all written communications sent by the investment adviser relating to the following:

(i) Any recommendation made or proposed to be made and any advice given or proposed to be given;

(ii) any receipt, disbursement, or delivery of funds or securities; and

(iii) the placing or execution of any order to purchase or sell any security.

(B) The investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser.

(C) If the investment adviser sends any notice, circular, or other advertisement offering any report, analysis, publication, or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom the notice, circular, or advertisement was sent. However, if the notice, circular, or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular, or advertisement a memorandum describing the list and its source.

(8) Each investment adviser shall maintain a list or other record of all accounts that identifies the accounts in which the adviser is vested with any discretionary power with respect to the funds, securities, or transactions of any client.

(9) Each investment adviser shall maintain a copy of all powers of attorney and other evidence of the granting of any discretionary authority by any client to the investment adviser.

(10) Each investment adviser shall maintain a copy in writing of each agreement entered into by the adviser with any client, and all other written agreements otherwise relating to the adviser's business as an investment adviser.

(11) Each investment adviser shall maintain a file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication that the adviser circulates or distributes, directly or indirectly, including by electronic media, to two or more persons who are not connected with the investment adviser. If the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, the file shall contain a memorandum of the investment adviser indicating the reasons for the recommendation.

(12)(A) For purposes of paragraph (b)(12), the term "advisory representative" shall mean any of the following:

(i) Any partner, officer, or director of the investment adviser;

(ii) any employee who participates in any way in the determination of which recommendations shall be made;

(iii) any employee who, in connection with the employee's duties, obtains any information concerning which securities are being recommended before the effective dissemination of the recommendations; or

(iv) any person in a control relationship to the investment adviser, any affiliated person of a controlling person, or any affiliated person of an affiliated person who obtains information concerning securities recommendations being made by the investment adviser before the effective dissemination of the recommendations.

(B) Each investment adviser shall maintain a record of every transaction in a security, except as provided

in paragraph (b)(12)(E), in which the adviser or any advisory representative of the adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership. Each record shall state the following:

(i) The title and amount of the security involved;

(ii) the date and nature of the transaction, including whether it is a purchase, sale, or other acquisition or disposition;

(iii) the price at which the transaction was effected; and

(iv) the name of the broker-dealer or bank with or through whom the transaction was effected.

(C) The record may contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security.

(D) A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(E) A record shall not be required for either of the following:

(i) Any transaction effected in an account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; or

(ii) any transaction in a security that is a direct obligation of the United States.

(F) An investment adviser shall not be deemed to have violated the provisions of paragraph (b)(12) because of the failure to record securities transactions of any advisory representative if the adviser establishes that it instituted adequate procedures and used reasonable diligence to promptly obtain reports of all transactions required to be recorded.

(13)(A) For purposes of this paragraph (b)(13), the term "advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean either of the following:

(i) Any partner, officer, director, or employee of the investment adviser who participates in any way in the determination of which recommendations shall be made, or whose functions or duties relate to the determination of which securities are being recommended before the effective dissemination of the recommendations; or

(ii) any person in a control relationship to the investment adviser, any affiliated person of a controlling person, or any affiliated person of an affiliated person who obtains information concerning securities recommendations being made by the investment adviser before the effective dissemination of the recommendations or of the information concerning the recommendations.

For purposes of this paragraph (b)(13), an investment adviser shall be deemed to be "primarily engaged in a business or businesses other than advising investment advisory clients" if, for each of its most recent three fiscal years or for the period of time since organization, whichever is less, the investment adviser derived, on an unconsolidated basis, more than 50 percent of total sales and revenues, and more than 50 percent of income or loss before income taxes and extraordinary items, from other business or businesses that did not primarily involve the giving of investment advice.

(B) Notwithstanding the provisions of paragraph (b)(12), if the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, the adviser shall maintain a record of every transaction in a security, except as provided in paragraph (b)(13)(E), in which the adviser or any advisory representative of the adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership. The record shall state the following:

(i) The title and amount of the security involved;

(ii) the date and nature of the transaction, including whether it is a purchase, sale, or other acquisition or disposition;

(iii) the price at which the transaction was effected; and

(iv) the name of the broker-dealer or bank with or through whom the transaction was effected.

(C) The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security.

(D) Each transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(E) A record shall not be required for either of the following:

(i) Any transaction effected in an account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; or

(ii) any transaction in a security that is a direct obligation of the United States.

(F) An investment adviser shall not be deemed to have violated the provisions of paragraph (b)(13) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that the adviser instituted adequate

procedures and used reasonable diligence to promptly obtain reports of all transactions required to be recorded.

(14) Each investment adviser shall maintain the following records:

(A) A copy of each written statement and each amendment or revision given or sent to any client or prospective client of the adviser in accordance with the provisions of K.A.R. 81-14-10(b);

(B) any summary of material changes that is required by part 2 of form ADV but is not contained in the written statement; and

(C) a record of the date that each written statement, each amendment or revision to the written statement, and each summary of material changes was given or offered to any client or prospective client who subsequently became a client.

(15)(A) Each investment adviser shall maintain the following documents for each client that was obtained for the adviser by means of a solicitor to whom a cash fee was paid by the investment adviser:

(i) Evidence of any written agreement in which the investment adviser agrees to pay a fee to the solicitor;

(ii) a signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and the written disclosure statement of the solicitor; and

(iii) a copy of the solicitor's written disclosure statement.

(B) The written agreement, acknowledgment, and solicitor disclosure statement shall satisfy the requirements of paragraph (b)(15)(A) if the documents are in compliance with K.A.R. 81-14-5(f).

(16) Each investment adviser shall maintain all accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication that the investment adviser circulates or distributes, directly or indirectly, including electronic media, to two or more persons other than persons connected with the investment adviser. With respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and the retention of all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts, shall satisfy the requirements of this paragraph.

(17) Each investment adviser shall maintain a file containing a copy of all communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any customer or client complaint.

(18) Each investment adviser shall maintain written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to the client.

(19) Each investment adviser shall maintain written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with the act and these regulations.

(20) Each investment adviser shall maintain a file containing a copy of each document, other than any notice of general dissemination, that was filed with or received from any state or federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives. The file shall contain all applications, amendments, renewal filings, and correspondence.

(21) Each investment adviser shall retain copies, with the original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial form U-4 and each amendment to the disclosure reporting pages filed on behalf of an investment advisor representative. The copies shall be made available for inspection upon request by the administrator or the administrator's staff.

(22) If the adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or has forwarded third-party checks within 24 hours, the adviser shall keep the following records relating to the inadvertent custody:

(A) The issuer, type of security and series, and date of issue;

(B) for debt instruments, the denomination, interest rate, and maturity date;

(C) the certificate number, including alphabetical prefix or suffix;

(D) the name in which the securities are registered, the date given to the adviser, the date sent to the client or sender, the form of delivery to the client or sender, and a copy of proof of delivery to the client or sender; and

(E) the mail confirmation number, if applicable, or confirmation by the client or sender of the return of the funds or securities.

(23) If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or series of transactions that meets the requirements of the exception from custody under

K.A.R. 81-14-9(b)(2)(B), the adviser shall keep the following records:

(A) A record showing the issuer's or current transfer agent's name, address, phone number, and other applicable contact information pertaining to the party responsible for recording client interests in the securities; and

(B) a copy of any legend, shareholder agreement, or other agreement showing that those securities are transferable only with the prior consent of the issuer or holders of the outstanding securities of the issuer.

(c)(1) If an investment adviser has custody, as that term is defined in K.A.R. 81-14-9, the records required to be made and kept by the investment adviser shall include the following:

(A) A copy of any and all documents executed by the client, including a limited power of attorney, under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian;

(B) a journal or other record showing all purchases, sales, receipts, and deliveries of securities, including certificate numbers, for all accounts and all other debits and credits to the accounts;

(C) a separate ledger account for each client showing all purchases, sales, receipts, and deliveries of securities, the date and price of each purchase and sale, and all debits and credits;

(D) copies of confirmations of all transactions effected by or for the account of any client;

(E) a record for each security in which any client has a position that shows the name of each client having any interest in each security, the amount or interest of each client, and the location of each security;

(F) a copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain a copy of each statement along with the date the statement was sent to the client;

(G) if applicable to the adviser's situation, a copy of the auditor's report and financial statements and letter verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination;

(H) a record of any finding by the independent certified public accountant of any material discrepancies found during the examination; and

(I) if applicable, evidence of the client's designation of an independent representative.

(2) If an investment adviser has custody because it advises a pooled investment vehicle, the adviser shall also keep the following records:

(A) True, accurate, and current account statements;

(B) if the adviser qualifies for the exception in K.A.R. 81-14-9(b)(2)(C), the date of each audit, a copy of the financial statements, and evidence of the mailing of the audited financial statements to all limited partners, members, or other beneficial owners within 120 days of the end of the adviser's fiscal year; and

(C) if the adviser complies with K.A.R. 81-14-9(b)(1)(G), a copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party, and copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.

(3) If an investment adviser has custody because it is acting as the trustee for a beneficial trust but qualifies for the exception in K.A.R. 81-14-9(b)(2)(E), the adviser shall also keep the following records until the account is closed or the adviser is no longer acting as the trustee:

(A) A copy of the written statement given to each beneficial owner setting forth a description of the requirements of K.A.R. 81-14-9(b)(1) and the reason why the adviser will not be complying with those requirements; and

(B) a written acknowledgement signed and dated by each beneficial owner, evidencing receipt of the statement required under paragraph (c)(3)(A).

(d) Each investment adviser subject to subsection (b) who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, perform the following:

(1) Make and keep true, accurate, and current records showing separately for each client the securities purchased and sold, and the date, amount, and price of each purchase and sale; and

(2) make and keep true, accurate, and current information from which the investment adviser can promptly furnish the name of each client, and the current amount or interest of the client, for each security in which any client has a current position.

(e) Any books or records required by this regulation may be maintained by the investment adviser so that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or a similar designation.

(f) Each investment adviser subject to subsection (b) of this regulation shall preserve the following records in the manner prescribed:

(1) All books and records required to be made under the provisions of subsection (b) through paragraph (d)(1), except for books and records required to be made under the provisions of paragraphs (b)(11) and (b)(16) through (b)(20), shall be maintained and preserved in an easily accessible place for at least five years from the end of the fiscal year during which the last entry was made on the record. The records shall be maintained during the first two years in the principal office of the investment adviser.

(2) Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and any predecessor shall be maintained in the principal office of the investment adviser until termination of the enterprise, and then preserved in an easily accessible place until at least three years after termination of the enterprise.

(3) The books and records required to be made under the provisions of paragraphs (b)(11) and (b)(16) shall be maintained and preserved in an easily accessible place for at least five years from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including by electronic media. The records shall be maintained during the first two years in the principal office of the investment adviser.

(4) The books and records required to be made under the provisions of paragraphs (b)(17) through (b)(20) shall be maintained and preserved in an easily accessible place for at least five years from the end of the fiscal year during which the last entry was made on the record, with the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in this state, whichever is less.

(5) Notwithstanding any other record preservation requirements of this regulation, the following records or copies shall be maintained, for the periods described in this subsection, at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(A) The records required to be preserved under paragraphs (b)(3), (b)(7) through (b)(10), (b)(14), (b)(15), (b)(17) through (b)(19), and subsections (c) and (d); and

(B) the records or copies required under paragraphs (b)(11) and (b)(16) that identify the name of the investment adviser representative providing investment advice from that business location, or that identify the business location's physical address, mailing address, electronic mailing address, or telephone number.

(g) Before ceasing to conduct or discontinuing business as an investment adviser, each investment adviser shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this regulation for the remainder of each period specified in this regulation, and shall notify the administrator in writing of the exact address where the books and records will be maintained.

(h) The records required by this regulation may be maintained and preserved by electronic imaging or by photograph on film. Any investment adviser may also maintain and preserve records on computer tape, disk, or other computer storage medium if, in the ordinary course of the adviser's business, the records are created by the adviser on electronic media or received by the adviser solely on electronic media or by electronic data transmission. In whatever form, the records shall be maintained and preserved for the time required by this regulation. If records are produced or reproduced by photographic film, electronic imaging, or computer storage medium, the investment adviser shall meet the following criteria:

(1) Arrange the records and index the films, electronic images, or computer storage media to permit the immediate location of any particular record;

(2) be ready at all times to promptly provide a facsimile enlargement of film, a computer printout, or a copy of the electronic images or computer storage medium that the administrator by its examiners or other representatives may request;

(3) store, separately from the original, one other copy of each film, electronic image, or computer storage medium for the time required;

(4) with respect to electronic images and records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records in order to reasonably safeguard these records from loss, alteration, or destruction; and

(5) with respect to records stored on photographic film, at all times have facilities available for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

(i) Any book or other record made, kept, maintained, and preserved in compliance with SEC rule 17a-3, 17 C.F.R. 240.17a-3, and SEC rule 17a-4,

17 C.F.R. 240.17a-4, both of which are adopted by reference in K.A.R. 81-2-1, that is substantially the same as the book or other record required to be made, kept, maintained, and preserved under this regulation, shall be deemed to comply with this regulation.

(j) Each investment adviser that is registered or required to be registered in this state and that has its principal place of business in a state other than this state shall be exempt from the requirements of this regulation, if the investment adviser is licensed in that state and is in compliance with that state's recordkeeping requirements. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a411; effective Oct. 26, 2001; amended Aug. 18, 2006.)

81-14-5. Dishonest and unethical practices of investment advisers, investment adviser representatives, and federal covered investment advisers. (a) *Unethical conduct*. "Dishonest or unethical practices," as used in K.S.A. 17-12a412(d)(13) and amendments thereto, shall include the conduct prohibited in this regulation.

(b) *Fraudulent conduct*. "An act, practice, or course of business that operates or would operate as a fraud or deceit," as used in K.S.A. 17-12a502(a)(2) and amendments thereto, shall include the conduct prohibited in paragraphs (d)(6), (9), (10), and (11) and subsections (e), (f), (g), and (h).

(c) *General standard of conduct*. Each person registered as an investment adviser or investment adviser representative under the act shall not fail to observe high standards of commercial honor and just and equitable principles of trade in the conduct of the person's business. An investment adviser or investment adviser representative is a fiduciary and shall act primarily for the benefit of its clients.

(d) *Prohibited conduct*: sales and business practices. Each person registered as an investment adviser or investment adviser representative under the act shall refrain from the practices specified in this subsection in the conduct of the person's business. For purposes of this subsection, a security shall include any security as defined by K.S.A. 17-12a102, and amendments thereto, including a federal covered security as defined by K.S.A. 17-12a102, and amendments thereto, or section 2 of the securities act of 1933, 15 U.S.C. § 77b, as adopted by reference in K.A.R. 81-2-1.

(1) Unsuitable recommendations. An investment adviser or investment adviser representative shall not recommend to any client to whom investment supervisory, management, or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative.

(2) Improper use of discretionary authority. An investment adviser or investment adviser representative shall not exercise any discretionary power in placing an order for the purchase or sale of securities for any client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power is limited to the price at which and the time when an order shall be executed for a definite amount of a specified security.

(3) Excessive trading. An investment adviser or investment adviser representative shall not induce trading in a client's account that is excessive in size or frequency in light of the financial resources, investment objectives, and character of the account.

(4) Unauthorized trading. An investment adviser or investment adviser representative shall not perform either of the following:

(A) Place an order to purchase or sell a security for the account of a client without authority to do so; or

(B) place an order to purchase or sell a security for the account of a client upon instruction of a third party with out first having obtained a written third-party trading authorization from the client.

(5) Borrowing from or loaning to a client. An investment adviser or investment adviser representative shall not perform either of the following:

(A) Borrow money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds; or

(B) loan money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(6) Misrepresenting qualifications, services, or fees. An investment adviser or investment adviser representative shall not misrepresent to any advisory client or prospective client the qualifications of the investment adviser, investment adviser representative, or any employee of the investment adviser, or misrepresent the nature of the advisory services being offered or fees to be charged for the service. An investment adviser or investment adviser representative shall not omit to state a material fact

that is necessary to make any statements made regarding qualifications, services, or fees, in light of the circumstance under which the statements are made, not misleading.

(7) Failure to disclose source of report. An investment adviser or investment adviser representative shall not provide a report or recommendation to any advisory client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition shall not apply to a situation in which the adviser uses published research reports or statistical analyses to render advice or in which an adviser orders a research report in the normal course of providing service.

(8) Unreasonable fee. An investment adviser or investment adviser representative shall not charge a client an unreasonable advisory fee.

(9) Failure to disclose conflicts of interest. An investment adviser or investment adviser representative shall not fail to disclose to a client, in writing and before any advice is rendered, any material conflict of interest relating to the investment adviser, investment adviser representative, or any of the investment adviser's employees that could reasonably be expected to impair the rendering of unbiased and objective advice, including the following:

(A) Compensation arrangements connected with advisory services to the client that are in addition to compensation from the client for the advisory services; and

(B) charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to the advice will be received by the investment adviser, investment adviser representative, or any of the adviser's employees.

(10) Guaranteeing performance. An investment adviser or investment adviser representative shall not guarantee a client that a specific result will be achieved with advice that is rendered.

(11) Deceptive advertising. An investment adviser or investment adviser representative shall not publish, circulate, or distribute any advertisement that does not comply with SEC rule 206(4)-1, 17 C.F.R. 275.206(4)-1, as adopted by reference in K.A.R. 81-2-1, despite the fact that the adviser may be exempt from federal registration pursuant to section 203(b) of the investment advisers act of 1940, 15 U.S.C. § 80b-3(b) as adopted by reference in K.A.R. 81-2-1.

(12) Failure to protect confidential information.

(A) An investment adviser or investment adviser representative shall not disclose the identity, affairs, or investments of any client unless required by law to do so or unless the client consents to the disclosure.

(B) An investment adviser shall not fail to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of section 204A of the investment advisers act of 1940, 15 U.S.C. § 80b-4a, as adopted by reference in K.A.R. 81-2-1, despite the fact that the adviser may be exempt from federal registration pursuant to section 203(b) of the investment advisers act of 1940, 15 U.S.C. § 80b-3(b), as adopted by reference in K.A.R. 81-2-1.

(13) Improper advisory contract. An investment adviser shall not engage in the following conduct, even though the adviser may be exempt from federal registration pursuant to section 203(b) of the investment advisers act of 1940, 15 U.S.C. § 80b-3(b), as adopted by reference in K.A.R. 81-2-1:

(A) Enter into, extend, or renew any investment advisory contract unless the contract is in writing and discloses the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, and an indication of whether the contract grants discretionary power to the adviser, and contains a provision that no assignment of the contract shall be made by the investment adviser without the consent of the other party to the contract;

(B) enter into, extend, or renew any advisory contract containing performance-based fees contrary to the provisions of section 205 of the investment advisers act of 1940, 15 U.S.C. § 80b-5, as adopted by reference in K.A.R. 81-2-1, except as permitted by SEC rule 205-3, 17 C.F.R. 275.205-3, as adopted by reference in K.A.R. 81-2-1; and

(C) include in an advisory contract any indication of a condition, stipulation, or provision binding a person to waive compliance with any provision of the act or of the investment advisers act of 1940, or engage in any other practice contrary to the provisions of section 215 of the investment advisers act of 1940, 15 U.S.C. § 80b-15, as adopted by reference in K.A.R. 81-2-1.

(14) Indirect misconduct. An investment adviser or investment adviser representative shall not engage in any conduct or any act, indirectly or through or by any other person, that would be unlawful for the person to do directly under the provisions of the act or these regulations.

(e) *Prohibited conduct: failure to disclose financial condition and disciplinary history*.

(1) Definitions. For purposes of this subsection, the following definitions shall apply:

(A) ''Found'' means determined or ascertained by adjudication or consent in a final self-regulatory organization proceeding, administrative proceeding, or court action.

(B) ''Investment-related'' means pertaining to securities, commodities, banking, insurance, or real estate, including acting as or being associated with a broker, dealer, investment company, investment adviser, government securities broker or dealer, municipal securities broker or dealer, bank, savings and loan association, commodities broker or dealer, or fiduciary.

(C) ''Involved'' means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

(D) ''Management person'' means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an investment adviser that is a company or to determine the general investment advice given to clients.

(E) ''Self-regulatory organization'' means any national securities or commodities exchange, registered association, or registered clearing agency.

(2) An investment adviser registered or required to be registered under the act shall not fail to disclose to any client or prospective client all material facts with respect to either of the following:

(A) A failure to meet the positive net worth requirements of K.A.R. 81-14-9(d); or

(B) any financial condition of the investment adviser or legal or disciplinary event that is material to an evaluation of the investment adviser's integrity or ability to meet contractual commitments to clients.

(3) It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the investment adviser or a management person of the investment adviser are material to an evaluation of the adviser's integrity for a period of 10 years from the date of the event, unless the legal or disciplinary event was resolved in the investment adviser's or management person's favor or was subsequently reversed, suspended, or vacated:

(A) A criminal or civil action in a court of competent jurisdiction resulting in any of the following:

(i) The individual was convicted of a felony or misdemeanor, or is the named subject of a pending criminal proceeding, for a crime involving an investment-related business or fraud, false statements, omissions, wrongful taking of property, bribery, forgery, counterfeiting, extortion, or crimes of a similar nature;

(ii) the individual was found to have been involved in a violation of an investment-related statute or regulation; or

(iii) the individual was the subject of any order, judgment, or decree permanently or temporarily enjoining the person or otherwise limiting the person from engaging in any investment-related activity;

(B) any administrative proceedings before any federal or state regulatory agency resulting in any of the following:

(i) The individual was found to have caused an investment-related business to lose its authorization to do business; or

(ii) the individual was found to have been involved in a violation of an investment-related statute or regulation and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-related business, or otherwise significantly limiting the person's investment-related activities; and

(C) any self-regulatory organization proceeding resulting in either of the following:

(i) The individual was found to have caused an investment-related business to lose its authorization to do business; or

(ii) the individual was found to have been involved in a violation of the self-regulatory organization's rules and was the subject of an order by the self-regulatory organization barring or suspending the person from association with other members, expelling the person from membership, fining the person more than $2,500, or otherwise significantly limiting the person's investment-related activities.

(4) The information required to be disclosed by paragraph (e)(2) shall be disclosed to clients before further investment advice is given to the clients. The information shall be disclosed to prospective clients at least 48 hours before entering into any written or oral investment advisory contract, or no later than the time of entering into the contract if the client has the right to terminate the contract without penalty within five business days after entering into the contract.

(5) For purposes of calculating the 10-year period during which events shall be presumed to be material under paragraph (e)(3), the date of a reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.

(6) Compliance with this subsection shall not relieve any investment adviser from any other disclosure requirement under any federal or state law.

(f) *Prohibited conduct: cash payment for client solicitations*. An investment adviser registered or required to be registered under the act shall not pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless the solicitation arrangement meets all of the requirements of paragraphs (f)(2) through (f)(7).

(1) Definitions. For the purposes of this subsection, the following definitions shall apply:

(A) ''Client'' shall include any prospective client.

(B) ''Impersonal advisory services'' means investment advisory services provided solely by means of any of the following:

(i) Written materials or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts;

(ii) statistical information containing no expression of opinion as to the investment merits of a particular security; or

(iii) any combination of the materials, statements, or information specified in paragraphs (f)(1)(B)(i) and (ii).

(C) ''Solicitor'' means any person or entity who, for compensation, directly or indirectly solicits any client for, or refers any client to, an investment adviser.

(2) The investment adviser shall be properly registered under the act.

(3) The solicitor shall not be a person who meets any of the following conditions:

(A) Is subject to an order by any regulatory body that censures or places limitations on the person's activities or that suspends or bars the person from association with an investment adviser;

(B) was convicted within the previous 10 years of any felony or misdemeanor involving the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, misappropriation of funds or securities, or conspiracy to commit any such act;

(C) has been found to have engaged in the willful violation of any provision of these regulations, the act, the federal securities act of 1933, the federal securities exchange act of 1934, the federal investment company act of 1940, the federal investment advisers act of 1940, the federal commodity exchange act, the federal rules under any of these federal acts, or the rules of the NASD, FINRA, or the municipal securities rulemaking board; or

(D) is subject to an order, judgment, or decree by which the person has been convicted anytime during the preceding 10-year period of any crime that is punishable by imprisonment for one or more years or a substantially equivalent crime by a foreign court of competent jurisdiction.

(4) The cash fee shall be paid pursuant to a written agreement to which the investment adviser is a party.

(5) The cash fee shall be paid to a solicitor only under any of the following circumstances:

(A) The cash fee is paid to the solicitor with respect to solicitation activities for the provision of impersonal advisory services only;

(B) the cash fee is paid to a solicitor who is a partner, officer, director, or employee of the investment adviser, or a partner, officer, director, or employee of a person who controls, is controlled by, or is under common control with the investment adviser, if the status of the solicitor as a partner, officer, director, or employee of the investment adviser or other person, and any affiliation between the investment adviser and the other person, is disclosed to the client at the time of the solicitation or referral; or

(C) the cash fee is paid to a solicitor other than a solicitor specified in paragraph (f)(5)(A) or (B), if all of the following conditions are met:

(i) The written agreement required by paragraph (f)(4) describes the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received, contains an undertaking by the solicitor to perform the solicitor's duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the act and the implementing regulations, and requires the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, to provide the client with a current copy of the investment adviser's written disclosure statement required under the brochure delivery requirements of K.A.R. 81-14-10(b) and a separate written disclosure document described in paragraph (f)(6).

(ii) The investment adviser receives from the client, before or when entering into any written or oral investment advisory contract with the client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document.

(iii) The investment adviser makes a bona fide effort to ascertain whether the solicitor has complied with the written agreement required by paragraph

(f)(4), and the investment adviser has a reasonable basis for believing that the solicitor has complied with the agreement.

(6) The separate written disclosure document required to be furnished by the solicitor to the client shall contain the following information:

(A) The name of the solicitor;

(B) the name of the investment adviser;

(C) the nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

(D) a statement that the solicitor will be compensated for the solicitation services by the investment adviser;

(E) the terms of the compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and

(F) the amount in addition to the advisory fee that the client will be charged for the costs of the solicitor's services, and any difference in fees paid by clients if the difference is attributable to the existence of any arrangement in which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.

(7) Nothing in this subsection shall be deemed to relieve any person of any fiduciary or other obligation to which a person may be subject under any law.

(g) *Prohibited conduct: agency cross transactions.*

(1) For the purposes of this subsection, ''agency cross transaction for an advisory client'' shall mean a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with the investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction. Each person acting in this capacity shall be required to be registered as a brokerdealer in this state unless excluded from the definition of broker-dealer under K.S.A. 17-12a102, and amendments thereto.

(2) An investment adviser shall not effect an agency cross transaction for an advisory client unless all of the following conditions are met:

(A) The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for the client.

(B) Before obtaining this written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker-dealer for both parties to the transaction, receive commissions from both parties, and have a potentially conflicting division of loyalties and responsibilities.

(C) At or before the completion of each agency cross transaction, the investment adviser sends the client a written confirmation. The written confirmation shall include all of the following information:

(i) A statement of the nature of the transaction;

(ii) the date the transaction took place;

(iii) an offer to furnish, upon request, the time when the transaction took place; and

(iv) the source and amount of any other remuneration that the investment adviser received or will receive in connection with the transaction.

For a purchase in which the investment adviser was not participating in a distribution, or a sale in which the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser has received or will receive any other remuneration and that the investment adviser will furnish the source and amount of remuneration to the client upon the client's written request.

(D) At least annually, the investment adviser sends each client a written disclosure statement identifying the total number of agency cross transactions during the period since the date of the last disclosure statement and the total amount of all commissions or other remuneration that the investment adviser received or will receive in connection with agency cross transactions for the client during the period.

(E) Each written disclosure and confirmation required by this subsection includes a conspicuous statement that the client may revoke the written consent required under paragraph (g)(2)(A) at any time by providing written notice to the investment adviser.

(F) No agency cross transaction in which the same investment adviser recommended the transaction to both any seller and any purchaser is effected.

(3) Nothing in this subsection shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfilling fiduciary duties with respect to the best price and execution for the particular transaction for the client, nor shall this subsection relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the act or the regulations under the act.

(h) *Prohibited conduct: use of senior-specific certifications and professional designations*.

(1) An investment adviser or investment adviser representative shall not use a senior-specific certification or designation that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in any way that misleads any person. This prohibition shall include the following:

(A) The use of a certification or professional designation by a person who has not earned or is otherwise ineligible to use that certification or designation;

(B) the use of a nonexistent or self-conferred certification or professional designation;

(C) the use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

(D) the use of a certification or professional designation that was obtained from a designating or certifying organization that meets any of the following conditions:

(i) Is primarily engaged in the business of instruction in sales or marketing;

(ii) does not have reasonable standards or procedures for ensuring the competency of its designees or certificate holders;

(iii) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificate holders for improper or unethical conduct; or

(iv) does not have reasonable continuing education requirements for its designees or certificate holders to maintain the professional designation or certification.

(2) There shall be a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph (h)(1)(D) if the organization has been accredited by any of the following:

(A) The American national standards institute;

(B) the national commission for certifying agencies; or

(C) an organization that is on the United States department of education's list titled "accrediting agencies recognized for title IV purposes," if the designation or credential does not primarily apply to sales or marketing, or both.

(3) In determining whether a combination of words or an acronym or initialism standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, the factors to be considered shall include the following:

(A) The use of one or more words including "senior," "retirement," "elder," or similar words, combined with one or more words including "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or similar words, in the name of the certification or professional designation; and

(B) the manner in which the words are combined.

(4) For purposes of this subsection, the terms "certification" and "professional designation" shall not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, including an agency that regulates broker-dealers, investment advisers, or investment companies, if that job title indicates seniority or standing within the organization or specifies an individual's area of specialization within the organization.

(i) *Applicability to federal covered investment advisers*. To the extent permitted by federal law, the provisions of this regulation governing investment advisers shall also apply to federal covered investment advisers. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a412(d)(13) and 17-12a502(a)(2) and (b); effective Oct. 26, 2001; amended Aug. 18, 2006; amended Aug. 15, 2008; amended May 22, 2009; amended January 4, 2016.)

81-14-6. Electronic filing for investment advisers and investment adviser representatives.

(a) *Designated entity*. The IARD and CRD shall be authorized to receive and store filings and collect related fees from investment advisers and investment adviser representatives, respectively, on behalf of the administrator.

(b) *Electronic filing*. Unless otherwise required by this regulation, all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings, and fees required to be filed with the administrator pursuant to the act and these regulations shall be filed electronically with and transmitted to the IARD and the CRD.

(c) *Electronic signatures*. When a signature is required on any filing to be made through the IARD or CRD, the applicant or a duly authorized officer of the applicant shall affix an electronic signature to the filing by typing the individual's name in the appropriate field and submitting the filing to the IARD or CRD. Submission of a filing in this manner shall constitute a legal signature by any individual whose name is typed on the filing.

(d) *Exception to electronic filing*. Any documents or fees required to be filed with the administrator that are not permitted to be filed with or cannot be accepted by the IARD or CRD shall be filed directly with the administrator.

(e) *Hardship exemptions*.

(1) Temporary hardship exemption.

(A) Criterion for exemption. Investment advisers registered or required to be registered under the act who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD or CRD may request a temporary hardship exemption from the requirements to file electronically.

(B) Application for exemption. To apply for a temporary hardship exemption, the investment adviser shall file a written request with the securities administrator in the state where the investment adviser's principal place of business is located. The request shall be submitted in a form approved by the securities administrator, and the request shall be filed no later than one business day after the due date for the filing that is the subject of request. The investment adviser shall also submit the filing that is the subject of the request in electronic format to IARD or CRD no later than seven business days after the filing was due.

(C) Effective date: upon filing. If the request is in proper form, the temporary hardship exemption shall be deemed effective upon receipt by the securities administrator. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the securities administrator.

(2) Continuing hardship exemption.

(A) Criterion for exemption. A continuing hardship exemption shall not be granted unless the investment adviser is able to demonstrate that the electronic filing requirements of this regulation are prohibitively burdensome.

(B) Application for exemption. To apply for a continuing hardship exemption, the investment adviser shall file a written request with the securities administrator in the state where the investment adviser's principal place of business is located. The request shall be submitted in a form approved by the securities administrator, and the request shall be filed no later than 20 business days before the due date for the filing that is the subject of the request. If the investment adviser's principal place of business is located in Kansas and the request is filed with the administrator in a form approved by the administrator, the request shall be either granted or denied by the administrator within 10 business days after the filing of the request.

(C) Effective date: upon approval. The exemption shall be effective upon approval by the securities administrator in the state where the investment adviser's principal place of business is located. The time period of the exemption shall be no longer than one year after the date on which the request is filed. If the securities administrator approves the request, the investment adviser shall, no later than five business days after the exemption approval date, submit filings to the IARD or CRD in paper form, along with the appropriate processing fees, for the period of time for which the exemption is granted.

(3) Recognition of exemption. The decision to grant or deny a request for a hardship exemption shall be made by the securities administrator in the state where the investment adviser's principal place of business is located, and the decision shall be adhered to by the administrator. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a105 and 17-12a608(c); effective Oct. 26, 2001; amended Aug. 18, 2006.)

81-14-7. Notice filing requirements for federal covered investment advisers.

(a) *Initial notice filing*. The notice filing for a federal covered investment adviser pursuant to K.S.A. 17-12a405, and amendments thereto, shall be filed on form ADV with the IARD. A notice filing of a federal covered investment adviser shall be deemed filed when the fee required by K.A.R. 81-14-2 and the form ADV are filed with and accepted by the IARD on behalf of the administrator.

(b) *Part 2 of form ADV*. Until the IARD accepts the electronic filing of part 2 of form ADV, part 2 shall be deemed by the administrator to be filed if a federal covered investment adviser provides part 2 to the administrator within five business days of a request by the administrator.

(c) *Renewal notice filing*. The annual renewal of the notice filing for a federal covered investment adviser pursuant to K.S.A. 17-12a405, and amendments thereto, shall be filed with the IARD. The renewal of the notice filing for a federal covered investment adviser shall be deemed filed when the fee required by K.A.R. 81-14-2 is filed with and accepted by the IARD on behalf of the administrator.

(d) *Updates and amendments*. Each federal covered investment adviser shall file with the IARD, in accordance with the instructions in the form ADV, any amendments to the federal covered investment adviser's form ADV. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a405(c); effective Oct. 26, 2001; amended Aug. 18, 2006.)

81-14-8. Revoked. (Authorized by K.S.A. 2000 Supp. 17-1270; implementing K.S.A. 2000 Supp. 17-1252(m)(2); effective Oct. 26, 2001; revoked Aug. 18, 2006.)

81-14-9. Custody of client funds or securities; safekeeping; financial reporting.

(a) *Definitions*. For the purposes of this regulation, the following definitions shall apply:

(1) ''Custody'' means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them or the ability to appropriate them.

(A) Each of the following circumstances shall be deemed to constitute custody:

(i) Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving the funds or securities;

(ii) any arrangement, including a general power of attorney, under which an investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the adviser's instruction to the custodian; and

(iii) any arrangement that gives an investment adviser or its supervised person legal ownership of or access to client funds or securities, which may include an arrangement in which the investment adviser or its supervised person is the trustee of a trust, the general partner of a limited partnership, the managing member of a limited liability company, or a comparable position for a pooled investment vehicle.

(B) Receipt of a check drawn by a client and made payable to an unrelated third party shall not meet the definition of custody if the investment adviser forwards the check to the third party within three business days of receipt and the adviser maintains the records required under K.A.R. 81-14-4(b)(22).

(2) ''Independent party'' means a person that meets the following conditions:

(A) Is engaged by an investment adviser to act as a gatekeeper for the payment of fees, expenses, and capital withdrawals from a pooled investment;

(B) does not control, is not controlled by, and is not under common control with the investment adviser; and

(C) does not have, and has not had within the past two years, a material business relationship with the investment adviser.

(3) ''Independent representative'' means a person who meets the following conditions:

(A) Acts as an agent for an advisory client, which may include a person who acts as an agent for limited partners of a pooled investment vehicle structured as a limited partnership, members of a pooled investment vehicle structured as a limited liability company, or other beneficial owners of another type of pooled investment vehicle;

(B) is obliged by law or contract to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;

(C) does not control, is not controlled by, and is not under common control with the investment adviser; and

(D) does not have, and has not had within the past two years, a material business relationship with the investment adviser.

(4) ''Qualified custodian'' means any of the following independent institutions or entities:

(A) A bank or savings association that has deposits insured by the federal deposit insurance corporation;

(B) a broker-dealer registered under the act who holds client assets in customer accounts and complies with K.A.R. 81-3-7(d);

(C) a futures commission merchant registered under section 6f of the commodity exchange act, 7 U.S.C. § 6f, who holds client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity and options of the commodity for future delivery; and

(D) a foreign financial institution that customarily holds financial assets for its customers, if the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

(b) *Safekeeping of client funds and securities*.

(1) Requirements. An investment adviser registered or required to be registered under the act shall not have custody of client funds or securities unless the investment adviser meets each of the following conditions. "An act, practice, or course of business that operates or would operate as a fraud or deceit,'' as used in K.S.A. 17-12a502 and amendments thereto, shall include any violation of this subsection.

(A) Notice to administrator. The investment adviser shall notify the administrator promptly on form ADV that the investment adviser has or will have custody.

(B) Qualified custodian. A qualified custodian shall maintain the funds and securities in a separate account for each client under each client's name, or in accounts that contain only funds and securities of the investment adviser's clients under the name of the investment adviser as agent or trustee for each client.

(C) Notice to clients. If an investment adviser opens an account with a qualified custodian on behalf of its

client, either under the client's name or under the investment adviser's name as agent, the investment adviser shall notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained. The notice shall be given promptly when the account is opened and following any changes to the information.

(D) Account statements. The investment adviser shall ensure that account statements are sent to each client for whom the adviser has custody of funds or securities.

(i) Statements sent by the qualified custodian. If a qualified custodian maintains accounts containing funds or securities, the qualified custodian may send account statements to clients if the investment adviser has a reasonable basis for believing that the qualified custodian sends an account statement at least quarterly to each of the adviser's clients for whom the custodian maintains funds or securities and that the account statement sets forth all transactions in the account during the period and identifies the amount of funds and amount of each security in the account at the end of the period.

(ii) Statements sent by the adviser. If account statements are not sent by the qualified custodian in accordance with paragraph (b)(1)(D)(i), the investment adviser shall send an account statement at least quarterly to each client for whom it has custody of funds or securities. The account statement shall set forth all transactions in the account during the period and identify the amount of funds and amount of each security of which it has custody at the end of the period. At least once during each calendar year, a CPA firm that is registered and authorized to provide attest services in compliance with requirements of the state where the investment adviser is domiciled shall be engaged by the investment adviser to attest to the accuracy, in all material respects, of the account statements sent to clients by the investment adviser based on a comparison with records of transactions and balances of funds and securities maintained by the qualified custodian. The attest engagement shall be performed in accordance with attestation standards established by the AICPA and contained in the ''AICPA professional standards,'' as specified in K.A.R. 74-5-2. The CPA firm shall perform the attest engagement without prior notice or announcement to the adviser on a date that changes from year to year as chosen by the CPA firm. The CPA firm shall file a copy of its independent accountant's report with the administrator within 30 days after the completion of the attest engagement. The CPA firm, upon finding any material exceptions during the course of the engagement, shall notify the administrator of the finding within two business days by means of a facsimile transmission or electronic mail, followed by first-class mail, directed to the attention of the administrator.

(iii) Special rule for pooled investment vehicles. If the investment adviser is a general partner of a pooled investment vehicle structured as a limited partnership, is a managing member of a pooled investment vehicle structured as a limited liability company, or holds a comparable position for another type of pooled investment vehicle, the account statements required under this subsection shall be sent to each limited partner, member, or other beneficial owner or that person's independent representative.

(E) Independent representatives. A client may designate an independent representative to receive, on the client's behalf, notices and account statements as required under paragraphs (b)(1)(C) and (b)(1)(D). Thereafter, the investment adviser shall send all notices and statements to the independent representative.

(F) Direct fee deduction. Each investment adviser who has custody, as defined in paragraph (a)(1)(A)(ii), by having fees directly deducted from client accounts held by a qualified custodian shall obtain prior written authorization from the client to deduct advisory fees from the account held with the qualified custodian.

(G) Pooled investments. Each investment adviser who has custody, as defined in paragraph (a)(1)(A)(iii), and who does not meet the exception provided under paragraph (b)(2)(C) shall comply with each of the following requirements:

(i) Engage an independent party. The investment adviser shall hire an independent party to review all fees, expenses, and capital withdrawals from the pooled accounts.

(ii) Review of fees. The investment adviser shall send all invoices or receipts to the independent party, detailing the amount of the fee, expenses, or capital withdrawal and the method of calculation so that the independent party can determine that the payment is in accordance with the agreement governing the pooled investment vehicle and so that the independent party can forward to the qualified custodian approval for payment of an invoice with a copy to the investment adviser.

(iii) Notice of safeguards. The investment adviser shall notify the administrator on form ADV that the investment adviser intends to use the safeguards specified in this subsection.

(2) Exceptions.

(A) Shares of mutual funds. With respect to shares of a mutual fund that is an open-end company as

defined in section 5(a)(1) of the investment company act of 1940, 15 U.S.C. 80a-5(a)(1), as adopted by reference in K.A.R. 81-2-1, any investment adviser may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with paragraph (b)(1).

[Note: A Special Order was issued July 25, 2016 to correct the provisions of paragraph (B) below. The Special Order is available at http://ksc.ks.gov/DocumentCenter/View/350**. The changes made by the Special Order are shown below in bold font within brackets.]**

(B) Certain privately offered securities. An investment adviser shall not be required to comply with paragraph (b)(1)**[(B)]** with respect to securities that meet the following conditions:

(i) Are acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(ii) are uncertificated, with ownership of the securities recorded only on the books of the issuer or its transfer agent in the name of the client; **[and]**

(iii) are transferable only with the prior consent of the issuer or holders of the outstanding securities of the issuer**[.; and]**

[(iv) with respect to securities held for a limited partnership, limited liability company or other type of pooled investment vehicle, the provisions of this paragraph (b)(2)(B) are available only if the limited partnership, limited liability company or other type of pooled investment vehicle is audited and the audited financial statements are distributed as described in paragraph (b)(2)(C) of this regulation.]

(C) Limited partnerships subject to annual audit. An investment adviser shall not be required to comply with paragraph (b)(1) with respect to the account of a limited partnership, limited liability company, or other type of pooled investment vehicle that is subject to audit at least annually and that distributes its audited financial statements presented in conformity with GAAP to all limited partners, members, or other beneficial owners within 120 days after the end of its fiscal year. The investment adviser shall notify the administrator on form ADV that the investment adviser intends to distribute audited financial statements.

(D) Registered investment companies. An investment adviser shall not be required to comply with paragraph (b)(1) with respect to the account of an investment company registered under the investment company act of 1940, 15 U.S.C. 80a-1 et seq.

(E) Beneficial trusts. An investment adviser shall not be required to comply with the safekeeping requirements of paragraph (b)(1) if the investment adviser has custody solely because the investment adviser or an investment adviser representative is the trustee for a beneficial trust, if all of the following conditions are met for each trust:

(i) The beneficial owner of the trust is a parent, grandparent, spouse, sibling, child, or grandchild of the investment adviser representative, including ''step'' relationships.

(ii) The investment adviser provides a written statement to each beneficial owner of each account setting forth a description of the requirements of paragraph (b)(1) and the reasons why the investment adviser will not be complying with those requirements.

(iii) The investment adviser obtains from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement.

(iv) The investment adviser maintains a copy of both documents described in paragraphs (b)(2)(E)(ii) and (iii) until the account is closed or the investment adviser or investment adviser representative is no longer trustee.

(F) Upon written request and for good cause shown, the requirement to use a qualified custodian may be waived by the administrator. As a condition of granting a waiver, the investment adviser may be required by the administrator to perform the duties of a qualified custodian as specified in paragraph (b)(1).

(c) *Financial reporting requirements for investment advisers*.

(1) Balance sheet. Each registered investment adviser shall prepare and maintain a balance sheet, as required by K.A.R. 81-14-4(b)(6), each month. The balance sheet shall be dated the last day of the month and shall be prepared within 10 business days after the end of the month. The investment adviser shall file the balance sheet with the administrator, for any month specified by the administrator, within five days after a request by the administrator.

(2) Exemptions. An investment adviser shall be exempt from the requirements of this subsection if the investment adviser has its principal place of business in a state other than Kansas, is properly registered in that state, and satisfies the financial reporting requirements of that state.

(d) *Positive net worth requirement*.

(1) Each investment adviser that is registered or required to be registered under the act shall maintain at all times a positive net worth.

(2) Notification. Each investment adviser registered or required to be registered under the act shall, by the close of business on the next business day, notify the administrator if the investment adviser is insolvent because its net worth is negative as determined in conformity with GAAP. The notification of insolvency shall include the investment adviser's balance sheet that states the insolvent financial condition on the date the insolvency occurred. Upon receiving the balance sheet, the administrator may require the investment adviser to file additional information by a specified date.

(3) Exception for out-of-state advisers. If an investment adviser has its principal place of business in a state other than Kansas and is properly registered in that state, the investment adviser shall be required to maintain the minimum capital required by the state in which the investment adviser maintains its principal place of business. (Authorized by K.S.A. 17-12a502(b) and 17-12a605(a); implementing K.S.A. 17-12a411, as amended by L. 2013, ch. 65, sec. 3, and 17-12a502(a)(2); effective Aug. 18, 2006; amended Aug. 15, 2008; amended Oct. 25, 2013.)

81-14-10. Operational requirements for investment advisers; supervisory procedures; brochure delivery. (a) *Supervision of investment adviser representatives and employees*.

(1) Annual review. Each investment adviser shall conduct a review, at least annually, of the businesses in which the adviser engages, which shall be reasonably designed to assist in detecting and preventing violations of and achieving compliance with the act, these regulations, and other applicable laws and regulations.

(2) Supervisory procedures. Each investment adviser shall establish and maintain supervisory procedures that shall be reasonably designed to assist in detecting and preventing violations of and achieving compliance with the act, these regulations, and other applicable laws, regulations, and rules of self-regulatory organizations. In determining whether the supervisory procedures are reasonably designed, factors including the following may be considered by the administrator:

(A) The firm's size;

(B) the organizational structure;

(C) the scope of business activities;

(D) the number and location of the offices;

(E) the nature and complexity of products and services offered;

(F) the volume of business done;

(G) the number of investment adviser representatives assigned to a location;

(H) the specification of the office as a non-branch location; and

(I) the disciplinary history of the registered investment adviser representatives.

(3) Supervision of non-branch offices. The procedures established and the reviews conducted shall provide sufficient supervision at remote offices to ensure compliance with applicable securities laws and regulations. Based on the factors specified in paragraph (a)(2), certain non-branch offices may require more frequent reviews or more stringent supervision.

(4) Failure to supervise. If an investment adviser fails to comply with this subsection, the investment adviser shall be deemed to have "failed to reasonably supervise" its investment adviser representatives under K.S.A. 17-12a412(d)(9), and amendments thereto.

(b) *Brochure delivery requirements*.

(1) Definitions. For purposes of this subsection, the following definitions shall apply:

(A) "Current brochure" and "current brochure supplement" mean the most recent versions of the brochure or brochure supplements, including all sticker amendments.

(B) "Entering into," in reference to an investment advisory contract, shall not include an extension or renewal unless the extension or renewal involves a material change to the contract.

(C) "Sponsor" of a wrap fee program means an investment adviser that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting or providing advice to clients regarding the selection of other investment advisers in the program.

(D) "Wrap fee program" means an advisory program under which one or more specified fees, not based directly upon transactions in a client's account, are charged for investment advisory services and the execution of client transactions. The investment advisory services may include portfolio management or advice concerning the selection of other investment advisers.

(2) General requirements. Unless otherwise provided in this subsection, each investment adviser registered or required to be registered under the act shall provide to each client and prospective client a firm brochure and one or more supplements as required by this subsection. The brochure and supplements shall contain all information required by part 2 of form ADV and any other relevant information that the administrator may require.

(3) Offer and delivery requirements.

(A) Each investment adviser shall deliver a current firm brochure to each client or prospective client. Each investment adviser shall also deliver current brochure supplements for each investment adviser representative who will provide advisory services to the client. For purposes of this subsection, an investment adviser representative shall be deemed to provide advisory services to a client if the investment adviser representative does any of the following:

(i) Regularly communicates investment advice to the client;

(ii) formulates investment advice for assets of the client;

(iii) makes discretionary investment decisions for assets of the client; or

(iv) sells investment advisory services or solicits, offers, or negotiates for the sale of investment advisory services.

(B) The documents required in paragraph (b)(3)(A) shall be delivered to the client at least 48 hours before entering into any investment advisory contract with the client or prospective client, or at the time of entering into a contract if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

(C) An investment adviser shall, at least once a year and without charge, deliver or offer in writing to deliver to each of its clients the current brochure and any current brochure supplements required by this subsection. If a client accepts the written offer, the investment adviser shall send the current brochure and supplements to that client within seven days after the investment adviser is notified of the acceptance.

(4) Delivery to limited partners. If the investment adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this subsection the investment adviser shall treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners as a client. For purposes of this subsection, a limited liability partnership or limited liability limited partnership shall be deemed to be a limited partnership.

(5) Wrap fee program brochures.

(A) If the investment adviser is a sponsor of a wrap fee program, then the brochure required to be delivered to a client or prospective client of the wrap fee program shall be a wrap fee brochure containing all information required by form ADV. Any additional information in a wrap fee brochure shall be limited to information applicable to wrap fee programs that the investment adviser sponsors.

(B) The investment adviser shall not be required to offer or deliver a wrap fee brochure to the client or prospective client of the wrap fee program if another sponsor of the wrap fee program offers or delivers a wrap fee program brochure containing all the information that the investment adviser's wrap fee program brochure is required to contain.

(C) A wrap fee brochure shall not take the place of any brochure supplements that the investment adviser is required to deliver under paragraph (b)(3)(A).

(6) Delivery of updates and amendments. The investment adviser shall amend its brochure and any brochure supplements and deliver the amendments to clients promptly if information contained in the brochure or brochure supplements becomes materially inaccurate. The investment adviser shall follow the updating and delivery instructions for part 2 of form ADV. An amendment shall be considered to be delivered promptly if the amendment is delivered within 30 days of the event that requires the filing of the amendment.

(7) Multiple brochures. If an investment adviser renders substantially different types of investment advisory services to different clients, the investment adviser may provide them with different brochures, if each client receives all applicable information about services and fees. The brochure delivered to a client may omit any information required by part 2 of form ADV if this information is applicable only to a type of investment advisory service or fee that is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(8) Other disclosure obligations. Nothing in this subsection shall relieve any investment adviser from any obligation to disclose any information to its advisory clients or prospective advisory clients pursuant to any state or federal law. (Authorized by K.S.A. 2005 Supp. 17-12a411(g) and 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a411(g) and 17-12a412(d)(9), as amended by L. 2006, Ch. 47, § 6; effective Aug. 18, 2006.)

81-14-11. Kansas Private Adviser Exemption.

(a) *Exemption from registration*. An investment adviser shall be exempt from the registration requirements of K.S.A. 17-12a403, and amendments thereto, if both of the following requirements are met:

(1) The investment adviser shall meet each of the following conditions:

(A) Maintain its principal place of business in Kansas;

(B) provide investment advice solely to fewer than 15 clients;

(C) not hold itself out generally to the public as an investment adviser; and

(D) not act as an investment adviser to any investment company registered pursuant to section 8 of the investment company act of 1940, 15 U.S.C. § 80a-8, as adopted by reference in K.A.R. 81-2-1, or a company that has elected and has not withdrawn its election to be a business development company pursuant to section 54 of the investment company act of 1940, 15 U.S.C. § 80a-54, as adopted by reference in K.A.R. 81-2-1.

(2) Neither the investment adviser nor any of its advisory affiliates or associated investment adviser representatives shall be subject to a disqualification provision as described in rule 262 of SEC regulation A, 17 C.F.R. 230.262, as adopted by reference in K.A.R. 81-2-1.

(b) *Notice filing*. Each investment adviser that qualifies for exemption under subsection (a) shall be subject to or exempt from filing a notice with the administrator as follows:

(1) Notice filing requirement. Each investment adviser that manages assets of no more than $25 million on December 31 each year shall complete the identifying information required by item 1 of form ADV, part 1A and file the printed form with the administrator on or before February 1 of the following year. No fee shall be required with the notice filing required by this subsection.

(2) Exemption from notice filing requirement.

(A) Each investment adviser that manages assets in excess of $25 million and is registered with the SEC shall be exempt from the notice filing requirements of K.S.A. 17-12a405, and amendments thereto, and of paragraph (1) of this subsection.

(B) Each investment adviser that manages assets in excess of $25 million, is an exempt reporting adviser, and files reports with the IARD system pursuant to SEC rule 204-4, 17 C.F.R. 275.204-4, as adopted by reference in K.A.R. 81-2-1, shall be exempt from the notice filing requirements of paragraph (1) of this subsection.

(c) *Exemption for investment adviser representatives*. An investment adviser representative shall be exempt from the registration requirements of K.S.A. 17-12a404, and amendments thereto, if the individual meets the following requirements:

(1) Is employed by or associated with an investment adviser that meets the exemption requirements under subsection (a);

(2) is not subject to a disqualification as described in rule 262 of SEC regulation A, 17 C.F.R. 230.262; and

(3) does not otherwise act as an investment adviser representative.

(d) *Transition*. Each investment adviser or investment adviser representative who becomes ineligible for the exemption specified in this regulation shall comply with the registration or notice filing requirements under the act within 90 days after the date of ineligibility. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a403(b)(3), 17-12a404(b)(2), and K.S.A. 17-12a405(b)(3); effective Oct. 25, 2013; amended Jan. 4, 2016.)