

**BEFORE THE SECURITIES COMMISSIONER  
OF THE STATE OF KANSAS**

In the Matter of:

JAMES E. OTTO, and  
JOTTO, INC,

Docket No. 11 E 012  
KSC No. 2010-5671

Respondents.

\_\_\_\_\_/   
Pursuant to K.S.A. 17-12a604

**NOTICE OF INTENT TO IMPOSE ADMINISTRATIVE SANCTIONS**

Staff for the Office of the Securities Commissioner alleges there is sufficient evidence exists to provide cause under K.S.A. 17-12a604 to invoke administrative sanctions against Respondents under the Kansas Uniform Securities Act. If the allegations set forth below are found to be true, through either administrative adjudication, failure of the Respondents to make a timely request for hearing, or default of the Respondents, it is the intention of staff to seek an order from the Commissioner to impose sanctions upon the Respondents. Such sanctions may include, *inter alia*, disgorgement, fines, and/or a permanent cease and desist order.

If the Respondents wish to contest the facts alleged below, or offer evidence and argument to mitigate those facts, then they must file a request for hearing within thirty-three (33) days after the date of mailing on the Certificate of Service attached to this Notice. The request for hearing must be in the manner and form prescribed by K.A.R. 81-11-3 and K.A.R. 81-11-5, and it must be filed with the Office of the Securities Commissioner, 109 SW 9<sup>th</sup> St., Suite 600 Topeka, Kansas, 66612. The request for hearing must be verified under oath by the

Respondents, and if the Respondents dispute any of the allegations set forth below, they shall specifically deny those allegations or the allegations will be deemed admitted by the Respondents. If a request for hearing is not timely filed, the Commissioner may issue a final order without further proceedings.

In support of such action, staff for the Securities Commissioner alleges and states:

**Allegation of Fact**

1. Respondent James E. Otto (“Otto”) is Vice President and a Director of JOTTO and has an address of [REDACTED]. Respondent Otto was a registered representative, CRD # 1566081, beginning in 1989. After 2002, Respondent Otto did not renew his representative license and has not registered since 2002. On May 26, 2010, the SEC permanently barred Respondent Otto from associating with a broker-dealer or investment adviser.
2. Respondent JOTTO, INC, (“JOTTO”) is a Kansas corporation with an address of 13425 W. 128<sup>th</sup> Street, Overland Park, KS 66213. The registered agent for JOTTO, Inc, is [REDACTED], wife of James Otto. She is also the President and a Director of JOTTO. Respondent JOTTO was formed on May 10, 2005, and is registered and in good standing with the Kansas Secretary of State. Filings with the Kansas Secretary of State of State office indicate Respondent JOTTO was formed primarily as a real estate company.
3. In 2005, Respondent Otto became employed with Bankers Life and Casualty Company (“Bankers Life”), as an insurance agent. He was assigned to the Lenexa, Kansas office (Lenexa office) of Bankers Life. His branch manager was [REDACTED]. Otto’s employment at Bankers Life was terminated in August 2006.

4. In 2005, Otto developed a way for the Lenexa Office agents to transfer their client's brokerage account proceeds into Bankers Life insurance products. Prior to Otto's plan, agents utilized Bankers Life's brokerage arm to facilitate the transfer.
5. Respondent Otto found that he could set up a client account at Ameritrade and become the authorized agent on the account. He then had the authorization to have funds transferred from a client's previous custodian to Ameritrade and could effect a liquidation of the client's account. Respondent Otto would then direct Ameritrade to send a check to Bankers Life for the benefit of (FBO) the client so that an insurance product could be purchased. [REDACTED] agreed to allow Otto to facilitate the Ameritrade transfers for Bankers Life agents assigned to the Lenexa office.
6. Respondent Otto was invited by Hutchinson Branch manager [REDACTED], to expand the program in the fall of 2005.
7. In both branches, Respondent Otto provided the Bankers Life agents with a packet of forms to capture the information necessary to accomplish securities product transfers to Ameritrade. The forms included an Ameritrade account application, Ameritrade limited trading authorization, and Ameritrade account transfer. The agents were instructed by Respondent Otto to obtain the information contained in, or copies of, the client's quarterly statements from their brokerage accounts. The agents obtained client signatures for the various forms authorizing the conversion of the funds.
8. The forms were sent to Respondent Otto to begin the conversion process with Ameritrade.
9. On occasion, Respondent Otto would contact the insurance agent's client, by telephone, to discuss the process and to obtain a signature to close the Ameritrade account. Once

the Ameritrade account was closed, a check to Bankers Life FBO the client was sent by Ameritrade.

10. In January, 2006, [REDACTED], a Bankers Life agent assigned to the Hutchinson, Kansas, office met on several occasions with a client, [REDACTED], and sold [REDACTED] an equity based annuity.
11. During the presentation, [REDACTED] secured from [REDACTED] a copy of her Vanguard policy, and had her sign several blank documents relating to the Ameritrade application and transfer to Ameritrade. The documents included an Ameritrade application, an authorized agent form, a transfer of funds form, and an assessment of suitability form.
12. [REDACTED] forwarded [REDACTED] signed transfer documents, which contained only the client signature, and a copy of [REDACTED] quarterly Vanguard statement to Respondent Otto. The documents were dated January 31, 2006.
13. Otto initiated the process of opening an Ameritrade account for [REDACTED] and transferring [REDACTED] funds from her Vanguard policy into the Ameritrade account.
14. On or about February 9, 2006, [REDACTED] drafted a check, in the amount of \$155.00, issued to "Jim Otto", as payment of the commission fee for the transfer of [REDACTED] [REDACTED] portfolio funds to Ameritrade and then to Bankers Life. The [REDACTED] check was endorsed by "Jim Otto" and deposited in the business bank account of Respondent JOTTO, Inc, at Blue Valley Bank in Overland Park, KS.
15. On or about March 1, 2006, Respondent Otto initiated the process to liquidate [REDACTED] Ameritrade account by submitting a letter signed by [REDACTED] dated March 1, 2006. This letter may have been obtained during the January 31<sup>st</sup> visit by [REDACTED]

16. On March 31, 2006, Ameritrade mailed to Bankers Life a check “FBO [REDACTED] [REDACTED] in the amount of \$36,611.61.
17. On April 7, 2006, having received the Ameritrade liquidation check, Bankers Life issued an equity based annuity, in the amount of \$36,611.61, to [REDACTED] [REDACTED]
18. According to Ameritrade data records, Respondents Otto and JOTTO performed similar securities transfers, between October 2005 and June 2006, for thirty Kansas residents who purchased Bankers Life & Casualty products.
19. Respondent Otto received compensation from the Bankers Life agents for facilitating the securities transfers. The compensation was a direct personal payment by the agent to Otto usually in the amount of ten percent per transaction. No compensation was made to Respondent Otto by Bankers Life or Ameritrade for the transfers.
20. In the nine months the program operated, Respondent Otto received an estimated \$12,900.00 in compensation from the Bankers Life agents.
21. Respondent Otto acknowledged in interviews, he maintained a client relationship with [REDACTED] [REDACTED] and provided investment advice. Although the arrangement began as a friendship arrangement, Respondent Otto acknowledged [REDACTED] paid him a management fee of approximately ten percent of the portfolio account’s value.
22. A subpoena for the banking records of Respondent JOTTO disclosed, in addition to the Bankers Life agent commission fee checks, two Ameritrade clearing checks issued to JOTTO, Inc. The checks were FBO [REDACTED] [REDACTED] and [REDACTED] [REDACTED]. The [REDACTED] check, dated February 21, 2006, was for \$614.74, and the [REDACTED] check, dated February 10, 2006, was in the amount of \$348.43. The checks were deposited in the business account of Respondent JOTTO, at Blue Valley Bank in Overland Park, KS.

23. Neither [REDACTED] nor [REDACTED] received proceeds from the Ameritrade clearing checks. [REDACTED] states the funds were to pay Respondent Otto for his services. [REDACTED] could not recall the reason for the Ameritrade check FBO [REDACTED]. Respondent Otto cannot remember the reason the checks were deposited into Respondent JOTTO's bank account.

**Allegations of Law**

24. The transactions involving the transfer of portfolio funds into and out of the Ameritrade brokerage accounts involve the sale of securities as defined by K.S.A. 17-12a102(28).
25. On at least two occasions, Respondents James Otto and JOTTO, Inc., transacted business as a broker-dealer while not registered with the Office of the Kansas Securities Commissioner, in violation of K.S.A. 17-12a401.
26. Respondent James Otto provided investment advice for compensation and was not registered with the Office of the Kansas Securities Commissioner, in violation of K.S.A. 17-12a403.

Entered at Topeka, Kansas, this 9th day of March, 2011.

/s/ Erin M. Hoestje

Erin M. Hoestje, #22042  
Associate General Counsel