Seminar Guide

Agenda

Speakers' Biographies

Presentation Materials

Office of the Kansas Securities Commissioner
www.ksc.ks.gov
109 SW 9th Street, Suite 600
Topeka, KS 66612
785-296-3307
785-296-6872 (Fax)

Seminar Agenda

8:30 AM – 9:00 AM	**Check- In**
9:00 AM – 9:15 AM	**Opening Remarks by Kansas Securities Commissioner Josh Ney**
9:15 AM – 10:05 AM	**Registration: Filings and Disclosures** *Shelly Welch, BD/IA Registration Manager, KSC* This session will cover updates to the ADV, U-4, and U-5 forms, how to navigate pertinent registrant information on the KSC website, requirements for BD/IA registration (including solicitors), the three most important areas of disclosure on Part 2A, and will provide an introduction to our new IA Guidelines handbook.
10:05 AM – 10:15 AM	**Break**
10:15 AM – 11:05 AM	**Creating Effective Compliance Systems & Processes** *Jason Vinsonhaler, Senior Special Agent, KSC* This presentation will provide best practices for establishing the infrastructure necessary to maintain compliance with pertinent laws and regulations. Information will also be provided on the benefits and potential pitfalls of social media and other technology used by investment advisers and how those technologies fit in the overall compliance structure.
11:05 AM – 12:00 PM	**Compliance Roundtable** *Panel members include:* • *Randy Mullikin, Director of Enforcement & Compliance, KSC* • *Nicholas Madsen & Denise Saxon, Assistant Regional Directors, Denver Regional SEC Office* • *Jennifer Luginbill, Associate District Director, FINRA's Kansas City District Office* This presentation will focus on examinations of investment advisers and broker-dealers conducted by the staff of the KSC, SEC, and FINRA. Topics to be covered are how examinations are conducted, current priorities on examinations, Kansas Open Records Act, and cross-over broker-dealer activities.
12:00 PM – 12:45 PM	**Lunch**
12:45 PM – 1:15 PM	**Investor Education and Protection** *Shannon Stone, Caley Love, Chris Mann and Jason Vinsonhaler, KSC* Presenters will provide a brief overview of the Investor Education Fund including information on its development, priorities, programming and partnerships. The second part of this presentation will include an overview of the role of enforcement within the KSC. Common indicators of questionable opportunities will be presented to equip advisers to assist the agency in protecting the advisers' clients and other Kansas investors from suspicious investments.

1:15 PM – 2:15 PM **Responding to a Regulatory Investigation**

Panel members include:

- *Jeff Kruske, General Counsel, KSC*
- *Tom Piccone, Denver Associate Regional Director, SEC*
- *Amy E. Rush, VP & Senior Regulatory Counsel, Waddell & Reed, Inc.*
- *Jeff Jamieson, Resolution Compliance Counsel, Edward Jones & Co.*

Our speakers, who have been advocates in this active and complex arena (as prosecutors, defense counsel, plaintiff's counsel, and corporate counsel), will explain the general regulatory framework governing the securities industry and will present an in-depth discussion of some of the finer points and nuances of regulatory investigations.

2:15 PM – 2:45 PM **Administrative Enforcement and Procedures**

Ryan Kriegshauser, Director of Policy & Special Counsel, KSC

This presentation will focus on administrative proceedings in front of the Office of the Kansas Securities Commissioner's Office. Topics to be covered are an overview of the administrative process, interactions between the Kansas Uniform Securities Act and the Kansas Administrative Procedure Act, and best practices.

2:45 PM – 2:55 PM **Break**

2:55 PM – 3:45 PM **Regulatory Changes / Updates and Corporate Finance**

- *Steve Wassom, Randy Mullikin and Lynn Hammes, KSC*
- *Kenny Bossert, Assistant Regional Director, Denver Regional SEC Office*

This presentation by the KSC and SEC staff members will examine regulations governing the changes to financial requirements, the adoption by the KSC of the Private Adviser Exemption, and the overview by the SEC of the exemption for a "Family Office." It will also provide an overview of the more common exemptions from the securities registration requirements provided by the Kansas Uniform Securities Act and the Kansas Administrative Regulations.

3:45 PM – 4:00 PM **Closing Remarks by Jason Vinsonhaler, KSC**

Time will be allotted at the end of the day for informal networking and Q&A.

Speakers' Biographies

Josh Ney
Securities Commissioner
Office of the Kansas Securities Commissioner

The Kansas Senate confirmed Josh Ney for the position of Kansas Securities Commissioner on September 4, 2013. He had served as Acting Commissioner since February of 2013. Prior to his appointment, Mr. Ney served as a Special Assistant Attorney General and policy staff attorney for the office, handling securities fraud felony prosecutions and providing policy and legal support to the commissioner. In 2012, Mr. Ney authored a legal article entitled "Securities-Related Prosecution in Kansas: A Primer," published in the Fall/Winter 2012 edition of the Kansas Prosecutor, the legal publication of the Kansas County and District Attorneys Association. He came to the Securities Commissioner's Office in 2011 from a criminal law enforcement background, having served as the First Assistant County Attorney in Jefferson County, Kansas. As a county prosecutor, Mr. Ney handled a diverse caseload of person and non-person felony, misdemeanor, traffic, juvenile offender, and child in need of care matters. He has also practiced privately in northeast Kansas and has served as a city attorney, municipal prosecutor, and county counselor. Mr. Ney previously served on the Kansas Human Rights Commission as the Commissioner representing the Kansas legal profession. He was appointed by the Governor and confirmed by the Senate to that position and served from 2011-2013. Mr. Ney graduated with dean's honors from the Washburn University School of Law and served as a published staff writer on the Washburn Law Journal. He is a member of several professional organizations, including the Kansas Bar Association, the Kansas County and District Attorneys Association, Oskaloosa Rotary Club, and the Jefferson County Chamber of Commerce. Mr. Ney is active in his church in Lawrence, Kansas and lives on a farm with his wife, Carol, and their five children in rural Jefferson County.

Shelly Welch
BD/IA Registration Manager
Office of the Kansas Securities Commissioner

Shelly Welch has been with the office for 11 years and is currently the BD/IA Registration Manager. In that capacity, she reviews the registration applications for broker-dealer and investment adviser firms as well as their agents and representatives. As a Senior Examiner, Ms. Welch previously conducted broker-dealer and investment adviser examinations and helped train new Examiners. Prior to working for the Securities Commissioner, she was a Special Agent for the Kansas Attorney General and a paralegal for the State of Kansas and a private law firm. She graduated from Washburn University in Topeka, Kansas, and enjoys reading, watching her children's sporting and theater events, and spending time with family and friends.

Jason Vinsonhaler
Senior Special Agent
Office of the Kansas Securities Commissioner

Jason Vinsonhaler has been with the Office of the Kansas Securities Commissioner for 3 years and is currently a Senior Special Agent. In this role, he investigates alleged violations of Kansas securities law as a sworn law enforcement officer. He also continues to work in the compliance department, where he started with the office in 2011, conducting investment adviser and broker-dealer examinations. Prior to working for the Securities Commissioner, Mr. Vinsonhaler worked in the financial and insurance industries as an agent of a broker-dealer and an insurance adjuster. He is a graduate of Kansas State University in Manhattan, Kansas, and the Kansas Law Enforcement Training Center in Hutchinson, Kansas. Mr. Vinsonhaler enjoys spending time with family and friends, practicing martial arts, reading, and helping his children with their scouting activities and projects.

Randy Mullikin
Director, Compliance and Enforcement
Office of the Kansas Securities Commissioner

Randy Mullikin serves as the Director of Compliance and Enforcement and is responsible for the regulatory oversight of broker-dealers and investment advisers in Kansas as well as supervision of administrative and criminal investigations of alleged violations of the Kansas Uniform Securities Act and Kansas Loan Brokers Act. Mr. Mullikin began his regulatory career with the Office of the Securities Commissioner in 1997 as an investigator on enforcement cases alleging fraud, unregistered securities and unregistered loan brokers. Mr. Mullikin has also served as Examiner for NASD from 2002 to 2005 assigned to the Boston District Office. In 2006, he rejoined the KSC office and became Assistant Director of Compliance. From 2006 to 2011, Mr. Mullikin served as volunteer member of the NASAA (North American Securities Administrators Association) Investment Adviser Training Project Group. Prior to his regulatory career, he served for 20 years as a member of the Wichita Police Department, retiring in 1997 at the rank of sergeant. Mr. Mullikin resides in Wichita with his wife Carol. He is a graduate of Friends University with a bachelor's degree in History.

Not Available

Nicholas F. Madsen

Assistant Regional Director

U.S. Securities & Exchange Commission, Denver Regional Office

Nicholas F. Madsen is an Assistant Regional Director for the investment adviser and investment company examination program in the Securities and Exchange Commission's Denver Regional Office. Mr. Madsen joined the SEC's staff in 2003, initially serving as a Staff Accountant for the broker-dealer examination program in the SEC's Chicago Regional Office, then transitioning to the same role in the in the Denver Regional Office's investment adviser and investment company examination program. In 2010, Mr. Madsen became an Examination Manager in the Denver Regional Office investment adviser and investment company examination program before moving into his current position in 2014. He graduated with honors from the University of Wisconsin-La Crosse College of Business Administration in 2003, majoring in finance and minoring in accounting; and he became a CPA in Illinois (current status inactive) in 2006. Prior to joining the SEC, Mr. Madsen worked at a branch office of A.G. Edwards & Sons, Inc.

Not Available

Denise S. Saxon

Co-Acting Associate Regional Director

U.S. Securities & Exchange Commission, Denver Regional Office

Denise Saxon is currently Co-Acting Associate Regional Director and also Assistant Regional Director for the Broker-Dealer/Transfer Agent Examination Program in the Securities and Exchange Commission's Denver Regional Office. In this position, she is responsible for identifying and managing examinations with a view toward preventing fraud, improving compliance in the industry, monitoring for risk, and informing SEC policy. Prior to joining the SEC's Denver Office, she was an Associate General Counsel of Fiserv Investment Support Services in Denver, Colorado, where she provided legal counsel to a trust company and affiliated brokerage firm on a wide range of securities, contract, and privacy related matters. Prior to that, Ms. Saxon was an Associate in the Investment Management Practice Group of Morgan Lewis in Washington, DC and Los Angeles, California; a Staff Attorney and Branch Chief in the SEC's Office of Compliance Inspections and Examinations in Washington, DC; and an Examiner and Regulatory Coordinator with the NASD (now FINRA) in Denver, Colorado and Washington, DC. Ms. Saxon holds a BSBA in Finance from Creighton University; a JD from the University of Denver; and a LLM, *with distinction*, in Securities and Financial Regulation from Georgetown University. She is admitted to the State of Colorado and DC Bars.

Not Available

Jennifer Luginbill
Associate District Director
FINRA's Kansas City District Office

Jennifer Anne Luginbill is the Associate District Director of FINRA's Kansas City District Office where she oversees the planning and execution of the Kansas City District Office's cycle and cause programs and is responsible for guiding staff in the development of investigations and regulatory matters. Ms. Luginbill began her career with NASD in 2000 as a Compliance Examiner conducting routine examinations of member firms and completing cause related investigations. Prior to joining NASD/FINRA, Ms. Luginbill obtained banking and financial experience while employed at a regional bank broker-dealer in several different capacities including registered investment representative. In addition, Ms. Luginbill was also employed as a Compliance Examiner for the Kansas Securities Commissioner's Office where she was responsible for reviewing both Broker-Dealers and Investment Advisers for regulatory compliance. She holds a B.S. in Business Administration from Drake University and obtained the Certified Regulatory and Compliance Professional (CRCP) designation from the FINRA Institute at Wharton in 2008.

Shannon Stone
Director, Investor Education
Office of the Kansas Securities Commissioner

Shannon Stone serves as the Director of Investor Education at the Office of the Kansas Securities Commissioner. In this capacity, she oversees and promotes comprehensive financial literacy programming for Kansans of all ages. Ms. Stone has served in the public sector for the past 17 years, beginning her professional career as a teacher for Topeka Public Schools in 1997. From 2003 to 2011, she worked for United States Senator Sam Brownback. Ms. Stone is a graduate of the Eisenhower Women's Leadership Series, an active member of her church, and enjoys spending time with her family. She is a graduate of Kansas State University and holds a bachelor's degree in Education.

Caley Love
Director, Communications
Office of the Kansas Securities Commissioner

Caley Love is the Director of Communications at the Office of the Kansas Securities Commissioner. In the Director's capacity, she coordinates all communication from the Commissioner's office to the public. Ms. Love holds a B.A. from Washburn University and an M.B.A. from Fort Hays State University with an emphasis in Marketing. Prior to her experience at the Office of the Kansas Securities Commissioner, she served as Student Body President at Washburn University. From 2010-2012, she served as Communications Director for, her now husband, Garrett Love's campaign for Kansas Senate. Ms. Love enjoys graphic design and photography, and in 2012, started her own photography business. She is a member of the Kansas Association of Public Information Officers, the Eisenhower Women's Leadership Series and also was appointed by the Governor to serve on the Kansas Advisory Group on Juvenile Justice and Delinquency Prevention.

Chris Mann
Senior Staff Attorney
Office of the Kansas Securities Commissioner

Chris Mann has been with the Office of the Kansas Securities Commissioner since October of 2013 and is a Senior Staff Attorney and Special Assistant Attorney General. Mr. Mann handles complex criminal, civil and administrative cases along with the other members of the legal department. Prior to joining the office, he was an Assistant District Attorney at the Wyandotte County District Attorney's Office, where he handled a large felony caseload. Mr. Mann also teaches criminal law courses and lectures on trial advocacy. Before graduating from Washburn School of Law and becoming an attorney, Mr. Mann was a police officer in Lawrence, Kansas.

Jeffrey Kruske
General Counsel
Office of the Kansas Securities Commissioner

Jeffrey Kruske is the General Counsel for the Kansas Securities Commissioner. He received his undergraduate degree in Business Administration from William Jewell College and his law degree from Washburn University School of Law. Prior to joining the agency, Mr. Kruske maintained a private legal practice, concentrating in securities arbitration and in related estate, trust and business litigation matters, both regionally and nationally. He also represented individual brokers in employment-related disputes with brokerage firms. Mr. Kruske frequently lectures on the topics of securities arbitration and litigation, and has authored articles on the same topic in the Journal of the Kansas Trial Lawyers Association, the Kansas Bar Journal, the Johnson County Bar Letter, and the Kansas City Star. He is a member of the Johnson County, Kansas and Missouri Bar Associations, Kansas City Metropolitan Bar Association, the Public Investors Arbitration Bar Association, and has been an arbitrator for the Financial Industry Regulatory Authority and the National Futures Association. Mr. Kruske was listed in the 2008, 2009, 2010 and 2011 Kansas/Missouri Superlawyers Rising Stars for securities litigation.

Not Available

Thomas M. Piccone
Associate Regional Director
U.S. Securities & Exchange Commission, Denver Regional Office

Thomas M. Piccone is the Associate Regional Director managing the examination program in the Securities and Exchange Commission's Denver Regional Office ("DRO"). Mr. Piccone joined the Commission's staff in 1997, and worked in the Enforcement Division as an Attorney, Branch Chief, Trial Counsel, and Special Counsel before transitioning into the Commission's examination program. He served as the Assistant Regional Director for the DRO's investment adviser and investment company examination program from 2009 until moving into his current position in 2014. Prior to joining the SEC, Mr. Piccone worked as an attorney with Gibson, Dunn & Crutcher LLP, where his practice emphasized litigation involving accounting and securities. He also served as a law clerk for U.S. District Court Judge Alfred A. Arraj, and prior to law school he was employed as a member of the management information consulting division of Arthur Andersen & Co. Mr. Piccone received his bachelor's degree in business (accounting) *magna cum laude* from the University of Colorado at Boulder in 1983. He earned his law degree from the University of Colorado Law School in 1987, where he was awarded the Order of the Coif. He became a certified public accountant in Colorado (currently inactive) in 1988. Mr. Piccone has worked with a number of civic and charitable organizations in the Denver area, including serving as a member of the Board of Directors of Easter Seals Colorado and as the President of the Governing Board (Board of Directors) of Littleton Preparatory Charter School.

Amy E. Rush
Vice President and Senior Regulatory Counsel
Waddell & Reed, Inc.

Ms. Rush's area of specialization at Waddell & Reed is regulatory affairs. Ms. Rush's main responsibility is to respond on behalf of the broker dealers (Waddell & Reed, Inc. and Ivy Funds Distributor, Inc.) regarding issues of regulatory concern. In this capacity, Ms. Rush interacts with the SEC, FINRA, State Attorney Generals, the Labor Department, State Securities and Insurance Commissioners and counsel for claimants. Prior to joining Waddell & Reed, Ms. Rush was employed by a national law firm, Sonnenschein Nath & Rosenthal, as a trial attorney. Ms. Rush's areas of expertise were Securities Litigation and Complex Commercial Litigation. While at Sonnenschien, Ms. Rush represented clients in NASD and NYSE arbitrations, NASD regulatory inquiries, SEC inquiries, trade secret and unfair competition disputes, non-competition agreement disputes, breach of contract disputes, bankruptcy litigation, bankruptcy preference matters, and insurance company extra-contractual liability cases. Prior to law school, Ms. Rush focused on marketing and management, obtaining international recognition as the Kansas City Marketing Coordinator for American-Multi Cinema. During law school, she was an editor of the Law Review at the University of Missouri-Kansas City Law School and a published author. Ms. Rush is highly involved in community and professional association activities. She is Past President of the Kansas City Hispanic Bar Association, an alumnus of the Inn of Court, and a member of The Missouri Bar and Kansas Bar. Ms. Rush is admitted to practice law in both Missouri and Kansas.

Not Available

Jeff Jamieson
Resolution Compliance Counsel
Edward Jones & Co.

A 1983 graduate of the University of Missouri law school and a longtime resident of St. Louis, Missouri, Mr. Jamieson has worked continuously in the securities industry since 1991. He currently works for Edward Jones' Compliance Resolution Department where his duties include responding to regulatory inquiries. For ten years before joining Edward Jones, he was part of a securities practice group at Husch Blackwell and Bryan Cave. He spent the twelve years before going into private practice at A.G. Edwards.

Mr. Jamieson has extensive regulatory and litigation experience having represented clients before FINRA, the NYSE, the SEC and various state regulatory agencies.

Ryan Kriegshauser
Director of Policy and Special Counsel
Office of the Kansas Securities Commissioner

Ryan Kriegshauser serves as Director of Policy and Special Counsel at the Office of the Kansas Securities Commissioner. Prior to joining the agency, Mr. Kriegshauser served as the Deputy Assistant Secretary of State for the Office of Legal Counsel and Policy. He has also served on the Kansas Judicial Counsel's Lien Law Advisory Committee, the State Rules and Regulation Board, was a member of the Kansas Bar Association's Limited Liability Company Study Group, and was a voting member of the Kansas Governor's Commission on Emergency Planning & Response (CEPR) Continuity of Operations (COOP) Planning Committee. Before entering public service, Mr. Kriegshauser practiced law in Kansas City, primarily focusing in the areas of complex commercial litigation, securities, and constitutional rights. He was involved in the successful defense of various class action lawsuits and governmental regulatory actions. Additionally, Mr. Kriegshauser has written scholarly articles on property rights and taught continuing legal education in Kansas. Mr. Kriegshauser spent two years working in Washington, DC, both on and off Capitol Hill. He holds a B.A. and a J.D., graduating from Georgetown University and the University of Missouri at Kansas City. He is also an alumnus of the Fund for American Studies – Bryce Harlow Institute of Business-Government Affairs. In his spare time, he proudly serves as an officer in the Navy Reserve. He currently resides in Topeka, Kansas, with his wife Christie.

Steve Wassom
Executive Director
Office of the Kansas Securities Commissioner

Steve Wassom is the Executive Director at KSC after previously serving as Director of Finance and Administration from 1996 to 2011, and Chief Securities Regulatory Auditor from 1983 to 1996. He has served as Interim Securities Commissioner on two occasions between appointments of Commissioners in 1996 and 2010. Mr. Wassom was in public practice with a national CPA firm in Wichita and Topeka, Kansas from 1976 to 1983. In 1974 and 1975, he was employed as a Business Manager / Controller for a private business and was an adjunct faculty member at a private liberal arts college. Mr. Wassom is a member of the American Institute of Certified Public Accountants and the Kansas Society of Certified Public Accountants (KSCPA) and has served on several KSCPA committees. He served as Chairman of the Non-Profit Debt Offerings Project Group for the Corporate Finance Section of the North American Securities Administrators Association, Inc. (NASAA) during 2001 through 2004. He previously served on the NASAA Small Business Project Group, participated in organizing the Midwest Regional Review Program, and continues to be involved with various other NASAA activities and conferences. NASAA presented an Outstanding Service Award to him at the 85th Annual Conference in Philadelphia, Pennsylvania on September 29, 2002. Mr. Wassom obtained his bachelor's degree in psychology with a minor in business, and his MBA in management from Kansas State University. He completed post-graduate coursework in accounting at Wichita State University and became a certified public accountant in 1978 and has maintained a permit to practice in Kansas since that time.

Lynn Hammes
Director, Finance and Administration
Office of the Kansas Securities Commissioner

Lynn Hammes has been with the Office of the Kansas Securities Commissioner since 2003 and currently serves as Director, Finance and Administration. In this position he is primarily responsible for securities registration and financial reporting of registrants, as well as serving as the Chief Financial and Administrative Officer of the agency. He has over 40 years of experience in the areas of accounting, finance, operations, and leadership in both the public and private sector. Prior to joining the Office of the Securities Commissioner he served as an executive officer of a publicly held company whose shares traded on the New York Stock Exchange. In that capacity he was involved in bringing a number of public offerings to market. Mr. Hammes served on the NASAA Direct Participation Programs Policy Project Group from 2006 - 2012, and on the Non-Profit Debt Offerings Project Group from 2004 - 2005. A Kansas native, Mr. Hammes received his B.S. degree in Business Administration with an Accounting emphasis from Kansas State University in 1973. He resides in Topeka with his wife Kristin.

Not Available

Kenneth Bossert

Assistant Regional Director

U.S. Securities & Exchange Commission, Denver Regional Office

Kenneth Bossert serves as an Assistant Regional Director in the Investment Adviser/Investment Company examination program for the Office of Compliance Inspections and Examinations in the U.S. Securities and Exchange Commission's Denver Regional Office. Most recently, he served as an Examination Manager in the SEC Broker-Dealer examination program in the Denver Regional Office. Prior to 2010, he spent five years working in the Los Angeles Regional Office of the SEC in the Investment Adviser/Investment Company examination program. Before joining the SEC, Mr. Bossert worked in public accounting with KPMG and as a financial analyst for several large firms. He holds a B.B.A. degree from The University of North Texas and an M.B.A. from Southern Methodist University in Dallas, TX. Mr. Bossert is also a C.P.A. licensed in the state of California.

Table of Contents

Registration Filings and Disclosures - PowerPoint 14

Creating Effective Compliance Systems and Processes - PowerPoint 23

Compliance Roundtable - PowerPoint 31

Investor Education and Protection - PowerPoint 39

Administrative Enforcement and Procedures - PowerPoint 46

Common Exemptions under the KUSA - PowerPoint 52

Regulatory Changes and Updates - PowerPoint 58

Regulatory Changes and Updates – Some of the Supplemental Materials 68

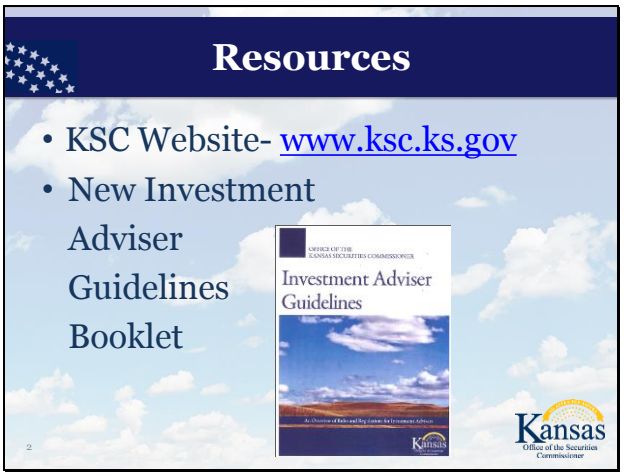
PowerPoint Presentation:

Registration Filings and Disclosures

By Shelly Welch

Slide 1

Slide 2



Slide 3

Slide 4

KSC Website Homepage

Slide 5

Tab: Industry Professionals

- Compliance & Registration
- Broker-Dealers
- Investment Advisers
- Industry Links
- Kansas Uniform Securities Act
- Kansas Securities Regulations
- 2014 Compliance Seminar

Slide 6

Tab: Investment Advisers

- IA Registration Requirements
- IA Representative Registration Requirements
- IA Notice Filing Requirements
- IA Disclosure Check
- IARD Information and Forms
- IA Statutes and Regulations
- IA FAQs

Slide 7

Tab: IARD Information and Forms

- Re-directed to NASAA website
- Form ADV
  - Instructions/Glossary
  - Part 1 (A & B)
  - Part 2
    - Firm Brochure (2A)
    - Wrap Fee Brochure
    - Brochure Supplement (2B)

Kansas Office of the Securities Commissioner

7

Slide 8

Regulatory Filings

- Annual Renewal
- Annual Updating Amendments to Form ADV
  - Part 1A & 1B
  - Part 2A
  - Part 2B
- Other Updates and Amendments to Form ADV
- Form U-4
- Form U-5
- Form ADV-W

Kansas Office of the Securities Commissioner

8

Slide 9

Annual Renewal

- Letter from our office in November
- Renewal fees due to IARD in December
- FINRA Gateway Call Center:

  (240) 386-4848

Kansas Office of the Securities Commissioner

9

Slide 10

Question: If your fiscal year end is Dec. 31, can you submit your firm's annual updating amendment to Form ADV on Dec. 29?

- Yes
- No

10

Kansas Office of the Securities Commissioner

Slide 11

When am I required to update my Form ADV?

- Annual Updating Amendments
  - Within 90 days of fiscal year end
  - Update responses to all items
  - Summary of material changes in Item 2 or as exhibit to 2A
  - Part 2B may be confirmed

11

Kansas Office of the Securities Commissioner

Slide 12

When am I required to update my Form ADV?

- Other-than-Annual Amendments
  - Promptly (within 30 days)
  - Part 1A
    - *If inaccurate in any way: Items 1, 3, 9 [except 9A(2), 9B(2), 9E and 9F] or 11
    - *If materially inaccurate: Items 4, 8, or 10
  - Part 1B
    - *If inaccurate in any way: Items 1, 2A through 2F, or 2I
    - *If materially inaccurate: Item 2G
  - Part 2A and 2B
    - *If materially inaccurate

12

Kansas Office of the Securities Commissioner

Slide 13

When am I required to update my Form ADV?

- Other-than-Annual Amendment Update Exceptions
  - Part 1A- Not required to update Items 2, 5, 6, 7, 9A(2), 9B(2), 9E, 9F or 12
  - Part 1B- Not required to update Items 2H or 2J
  - Part 2A- Not required to update Item 2, client asset calculations or fee changes
- EVEN IF YOUR RESPONSES TO THOSE ITEMS HAVE BECOME INACCURATE

13

Kansas Office of the Securities Commissioner

Slide 14

When am I required to update my Form ADV?

- Caveat: Not required to update brochure between annual amendments solely because amount of client assets you manage has changed or because fee schedule has changed; however, if you update your brochure for a separate reason in between annual amendments and the amount of client assets you manage listed in response to Item 4E or your fee schedule in Item 5A has become materially inaccurate, you should update those items as part of the interim amendment

14

Kansas Office of the Securities Commissioner

Slide 15

Delivery of Updates and Amendments

- To clients promptly (within 30 days) if information in brochure or brochure supplement becomes materially inaccurate

15

Kansas Office of the Securities Commissioner

Slide 16

Question: Under Kansas regs, if an IA rep has an amendment to their Form U-4, how many days do they have to update the form?

A) 10 days

B) 30 days

C) 90 days

D) As long as they want

16

Kansas Office of the Securities Commissioner

Slide 17

Form U-4 Updates and Disclosures

- Individual responsible for updates
- Continuing obligation
- Update within 30 days of event requiring amendment

17

Kansas Office of the Securities Commissioner

Slide 18

Question: What type of disclosure event is most often reported late or not reported at all?

A) Criminal charges

B) Customer complaints

C) Regulatory actions

D) Bankruptcies/liens

18

Kansas Office of the Securities Commissioner

Slide 19

Form U-5

- Filed by firm when IAR is terminated or discharged
- Regulation requires filing immediately

19

Kansas Office of the Securities Commissioner

Slide 20

Form ADV-W

- Firm files if withdrawing from registration
- All associated investment adviser representatives (IARs) cease to be registered

20

Kansas Office of the Securities Commissioner

Slide 21

Brochure Disclosures

- 3 Most Important
  1. Description of Business
  2. Conflicts of Interest
  3. Fees

21

Kansas Office of the Securities Commissioner

Slide 22

Description of Business- Part 2A, Item 4

- Plain English language required.
- Types of services offered- are they limited to specific types of investments?
- Tailored to individual client needs?
- Restrictions allowed?

22

Kansas Office of the Securities Commissioner

Slide 23

Conflicts of Interest- Part 2A

- Item 10- Other Financial Industry Activities and Affiliations
- Item 11 - Participation or Interest in Client Transactions and Personal Trading
- Item 12- Brokerage Practices (Research and Soft Dollar)
- Item 14- Economic Benefit from a Non-Client

23

Kansas Office of the Securities Commissioner

Slide 24

Fees- Part 2A, Item 5

- Fee schedule- type and how often
- Direct deduction or billed
- Other fees (custodial, mutual fund, etc.)
- In advance or in arrears
- Refund policy
- Commissions accepted in addition to advisory fees

24

Kansas Office of the Securities Commissioner

PowerPoint Presentation:

Creating Effective Compliance Systems and Processes

By Jason Vinsonhaler

Slide 1

OFFICE OF THE KANSAS SECURITIES COMMISSIONER

Creating Effective Compliance Systems and Processes

Presenter: Jason Vinsonhaler

Kansas
Office of the Securities Commissioner

1

Slide 2

Supervisory Procedures

- Requirements [K.A.R. 81-14-10(a)(2)]
- Where to Find Regulatory Updates
  - www.ksc.ks.gov

Kansas
Office of the Securities Commissioner

2

Slide 3

Considerations for Developing Effective Procedures

- [K.A.R. 81-14-10(a)(2)(A-I)]
- Tailor procedures to your business.
- Do not include unnecessary or "boiler plate" material.

Kansas
Office of the Securities Commissioner

3

Slide 4

Considerations for Developing Effective Procedures

- Ensure staff are up to date on any regulatory changes.
- Update procedures as necessary.

4

Kansas Office of the Securities Commissioner

Slide 5

Detecting and Preventing Violations

- Annual Internal Review [K.A.R 81-14-10(a)(1)]
  - Client File Contents
  - ADV up to date
  - Procedures current

5

Kansas Office of the Securities Commissioner

Slide 6

Detecting and Preventing Violations

- Client Information Updates [K.A.R. 81-14-4(b)(18)]
- Trade Review
- Client File Review

6

Kansas Office of the Securities Commissioner

Slide 7

Recordkeeping

- Requirements
  - [K.S.A. 17-12a411(c)(1)]
  - [K.A.R. 81-14-4]
- IAR U4 File [K.A.R. 81-14-4(b)(21)]
- Check Logs [K.A.R. 81-14-4(b)(22)]

7

Kansas Office of the Securities Commissioner

Slide 8

Recordkeeping

- Custody defined [K.A.R. 81-14-9(a)(1)]
  - (A) Holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them or the ability to appropriate them.
    - Possession of client funds or securities unless received inadvertently and returned promptly (3 business days)
    - General power of attorney
    - Trustee of a trust, general partner of a limited partnership, managing member of an LLC or a comparable position for a pooled investment vehicle.

8

Kansas Office of the Securities Commissioner

Slide 9

Recordkeeping

- Custody defined [K.A.R. 81-14-9(a)(1)] (cont'd)
  - (B) Receipt of checks from clients payable to an unrelated third-party do not meet the definition of custody if the IA forwards the check to the third party within three days of receipt and maintains records in accordance with K.A.R. 81-14-4(b)(22).

9

Kansas Office of the Securities Commissioner

Slide 10

Recordkeeping

- Financial Records and Requirements
  - [K.A.R. 81-14-4(b)(6)]
  - Solvency [K.A.R. 81-14-9(d)]

10

Kansas Office of the Securities Commissioner

Slide 11

What social media outlets to you use most often?

a) Facebook
b) Twitter
c) LinkedIn
d) Pinterest
e) Instagram
f) YouTube
g) Other

11

Kansas Office of the Securities Commissioner

Slide 12

Social Media and Technology

- Defining Social Media
  - Facebook, Twitter, LinkedIn, Pinterest, Instagram, YouTube, Etc.
- Blogs, Forums, Online Commentary

12

Kansas Office of the Securities Commissioner

Slide 13

Social Media and Technology

- Online Content and Communication
  - Static Content
    - Blog or "wall" posts
    - Retention issues – leaving content online too long.
  - Real-time Electronic Communication
    - Considered a "Public Appearance"

13

Kansas Office of the Securities Commissioner

Slide 14

Social Media and Technology

- Online Content and Communication
  - Third Party Posts
    - Entanglement – firm involved in preparation of the content.
    - Adoption – firm explicitly or implicitly endorsed or approved content.
    - Linking to Third Party content.

14

Kansas Office of the Securities Commissioner

Slide 15

Social Media and Technology

- Online Content and Communication
  - Third Party Posts
    - Establish appropriate usage guidelines for those allowed to post on firm-sponsored websites.
    - Establish processes for screening third-party content.
    - Disclose firm policies regarding its responsibility for third-party posts.

15

Kansas Office of the Securities Commissioner

Slide 16

Social Media and Technology

- Online Content and Communication
  - Other Considerations:
    - News Feeds
    - Streaming Quotes
    - Google ads (or similar)

16

Kansas Office of the Securities Commissioner

Slide 17

Social Media and Technology

- Recordkeeping and Supervision
  - Advertising [K.A.R. 81-14-4(b)(11)]
    - Testimonials
    - Monitoring and Approval
    - Recordkeeping
  - Written Communication [K.A.R. 81-14-4(b)(7)(A)]
    - Recordkeeping

17

Kansas Office of the Securities Commissioner

Slide 18

Social Media and Technology

- Mobile Devices
  - Text Messaging Issues
  - SnapChat, et al.

18

Kansas Office of the Securities Commissioner

Slide 19

How do you store client files and data?

a) Paper files

b) On my computer hard drive

c) Online

d) External hard drive, jump drive, etc.

19

Kansas Office of the Securities Commissioner

Slide 20

Social Media and Technology

- Data Storage and Back-Up [K.A.R. 81-14-4(h)]
  - Cloud Security
  - Data Breaches
  - Off-site vs. On-Site Back-Up

20

Kansas Office of the Securities Commissioner

Slide 21

Creating Effective Compliance Systems and Processes

Questions?

21

Kansas Office of the Securities Commissioner

PowerPoint Presentation:

Compliance Roundtable

By Randy Mullikin, Nicholas Madsen, Denise Saxon, and Jennifer Luginbill

Slide 1

OFFICE OF THE KANSAS SECURITIES COMMISSIONER

Compliance Roundtable

Randy Mullikin
KSC

Nicholas Madsen
SEC

Denise Saxon
SEC

Jennifer Luginbill
FINRA

Kansas
Office of the Securities Commissioner

1

Slide 2

Kansas IA & BD Registration

- Investment Advisers – 150 domiciled in Kansas.
- Broker Dealers- 27 domiciled in Kansas and 1,700 branch offices.
- Denver Regional SEC Territory – Federally Registered Investment Advisers
- SEC Registration Requirements for Investment Advisers.

2

Slide 3

Is your investment adviser likely to register in the upcoming year with the SEC?

- Yes
- No

3

Slide 4

Examination Authority

- Examinations are authorized by K.S.A. 17-12a411(d).
- Covers both broker dealers and investment advisers.
- Examinations may be conducted without prior notice.
- May copy and remove all records considered necessary to conduct the examination.

4

Kansas Office of the Securities Commissioner

Slide 5

Kansas Open Records Act (KORA) K.S.A. 45-215

- Records obtained during an examination are not subject to dissemination under KORA.
- Records can be shared with other regulators or disclosed for purpose of a civil or administrative action.
- Correspondence between the KSC and registrant may be subject to KORA, including informal resolution of deficiencies.

5

Kansas Office of the Securities Commissioner

Slide 6

What is the primary goal for an examination program?

- General compliance with regulations.
- Detect unethical practices.

6

Kansas Office of the Securities Commissioner

Slide 7

Business models of a state registered investment adviser

- AUM/Financial Planner
- Affiliate Broker Dealer
- Agent for a Branch Office of a Broker Dealer
- Investment Adviser Representative of an Investment Adviser registered with the U.S. SEC
- Insurance Agent
- Tax Preparation
- Accounting Firm
- Law Office

7

Kansas Office of the Securities Commissioner

Slide 8

Do you provide a financial plan for which you collect a fee?

- Yes
- No

8

Kansas Office of the Securities Commissioner

Slide 9

What to expect during an examination by KSC?

- Receive a phone call from an examiner announcing the exam.
- Phone interview to verify aspects of your business model.
- Receive a letter requesting the production of documents and information.
- Use sampling techniques to determine compliance.
- Conduct field work, generally no more than a day on a mutually agreed date.

9

Kansas Office of the Securities Commissioner

Slide 10

Has your investment adviser been examined by another state?

- Yes
- No

10

Kansas Office of the Securities Commissioner

Slide 11

Standard areas for review by the KSC

- What services are provided by the investment adviser?
- Are the adviser's personnel properly registered as an IAR?
- Does the adviser maintain the required books and records?
- Does the adviser meet the minimum financial requirement?
- Does the adviser maintain adequate client financial information to justify recommendations?
- Does the adviser conduct an annual compliance review of its business?

11

Kansas Office of the Securities Commissioner

Slide 12

What are the current examination priorities for KSC?

- Does the ADV Part 2 accurately describe business model?
- Are electronic records being properly maintained?
- What potential conflicts of interest exist?
- Do the adviser's representatives have recent CRD disclosures?
- Does the adviser have repeat violations from the prior exam?

12

Kansas Office of the Securities Commissioner

Slide 13

Heightened areas of review for KSC

- Does the adviser recommend third-party advisers – due diligence/disclosure/services?
- Does the adviser utilize complex products or high-risk strategies – non-traditional ETFs/margin?
- Suitability/Risk – concentration, expenses, time horizon.
- Fees on illiquid products – non-traded REITs/Annuities.
- Does the adviser have access to client funds or securities?

13

Kansas Office of the Securities Commissioner

Slide 14

Examinations for Cause by the KSC

- You should receive an explanation for the inquiry, i.e., complaint or disclosure matter.
- For a complaint you should be provided a copy of the complaint so you can determine if the matter is reportable on form U-4.
- You will be expected to provide a written statement and supporting records in response to the inquiry.
- You may be required to appear for testimony to KSC staff.

14

Kansas Office of the Securities Commissioner

Slide 15

How are Examinations Resolved by the KSC

- Deficiency Letter
- Letter of Caution
- Memorandum of Understanding "MOU"
- Administrative Action

15

Kansas Office of the Securities Commissioner

Slide 16

Is a broker dealer required to supervise the actions of an IAR that is also a registered representative?

- Yes
- No

16

Kansas Office of the Securities Commissioner

Slide 17

Broker Dealer Examinations

- Investment Advisory transactions are generally executed through a broker dealer.
- FINRA and SEC exam practices for broker dealers whose business model includes an advisory component.
- State Registered Adviser is an Outside Business Activity – FINRA Rule 3270.

17

Kansas Office of the Securities Commissioner

Slide 18

Duty of Care for Broker Dealer versus Investment Adviser

- Suitability versus Fiduciary – what is the discernible difference in levels of service.
- FINRA Rule 2110 "Standards of Commercial Honor and Principals of Trade."

18

Kansas Office of the Securities Commissioner

Slide 19

Supervision by a Broker Dealer

- Broker Dealer – written agreement with an independent IAR.
- Periodic review of exception reports.
- Internal audits by the broker dealer.
- Private Securities Transactions, FINRA NTMs 94-44 & 96-33.

19

Kansas Office of the Securities Commissioner

Slide 20

If you are a registered representative of a broker dealer, does your broker dealer review the content of your ADV, Part 2?

- Yes
- No

20

Kansas Office of the Securities Commissioner

Slide 21

Crossover considerations for a Broker Dealer

- Which type of account – commissioned or asset based fees?
- Levels of trading – buy and hold strategy.
- Advisory fees on top of commissions.
- Consolidated client account statements by the investment adviser.
- Advertising/Correspondence.
- CRD disclosures and customer complaints – form U-4 filings.

21

Kansas Office of the Securities Commissioner

PowerPoint Presentation:

Investor Education and Protection

By Shannon Stone, Caley Love, Chris Mann, and Jason Vinsonhaler

Slide 1

OFFICE OF THE KANSAS SECURITIES COMMISSIONER

Investor Education and Protection

Shannon Stone Caley Love Chris Mann Jason Vinsonhaler

Kansas
Office of the Securities Commissioner

1

Slide 2

KSC Mission

- The mission of the Office of the Kansas Securities Commissioner (KSC) is to **protect and inform Kansas investors;** to promote integrity, fairness, and full disclosure in financial services; and to foster capital formation.

2

Slide 3

Protect and Inform Kansas Investors by:

- Encouraging investors to check the registration status of companies and persons offering investments or investment advice in Kansas
- Investigating potential violations of state securities laws and regulations
- Prosecuting individuals who commit securities fraud
- Providing investor education resources to the public
- Registering broker-dealers, agents, investment advisers, and representatives
- Registering securities offerings, unless exempt

3

Slide 4

Legal Background

- Kansas Uniform Securities Act (KUSA):
  - K.S.A. 17-12a601 (d) 1-2 (recently amended)
  - Investor Education Initiatives
    - To inform the public about financial literacy and investing, with emphasis on prevention and detection of securities fraud
  - Investor Education and Protection Fund
    - Moneys collected from civil penalties and settlements from cases

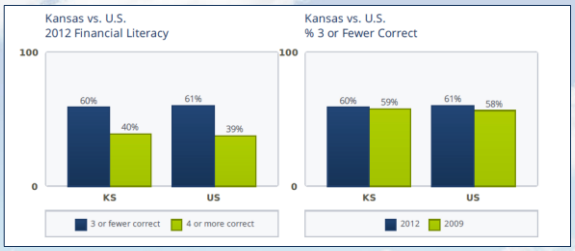
4

Kansas Office of the Securities Commissioner

Slide 5

A Need for Financial Education

Results from 2012 FINRA 5-Question Survey



Only 40% of Kansans would've received a passing score on this very basic financial knowledge quiz.

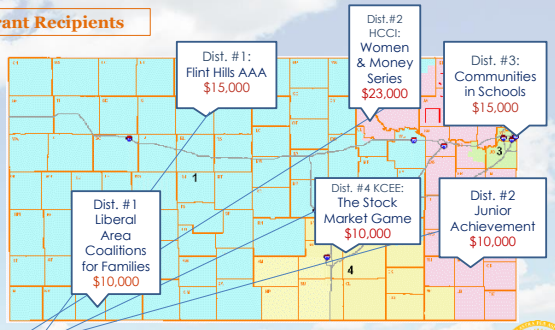
5

Kansas Office of the Securities Commissioner

Slide 6

Investing in Kansans

2014 Grant Recipients



6

Kansas Office of the Securities Commissioner

Slide 7

Investing in Kansans: How to Get Involved

- Help identify quality, effective programs and organizations that may qualify for funding through our grants program.
- Support existing programs by volunteering with our partners and area schools.

7

Kansas Office of the Securities Commissioner

Slide 8

Reality U: Communities in Schools of Mid-America

Reality U focuses on student preparation for an employable future. It is a multi-day financial literacy exercise that provides a hands-on learning experience in a simulation setting for students to prepare them for life after high school.

School districts across the state are requesting this program. Communities in Schools is working diligently to meet the demand.

With the help of 498 volunteers, Reality U served 3,688 students during the 2013-14 school year. This year Reality U is poised to serve well over 4,000 students.

8

Kansas Office of the Securities Commissioner

Slide 9

Junior Achievement

- Mission: To help students prepare for the real world of the future and help them learn the skills they need for success.
- Junior Achievement of Kansas will work with nearly 28,000 children this school year in Shawnee, Douglas, Sedgwick, Jackson, Nemaha, Marshall and Phillips counties.
- Volunteer mentors help students to:
  - Manage finances
  - Develop in-demand job skills
  - Discover the spirit of entrepreneurship

9

Kansas Office of the Securities Commissioner

Slide 10

Women & Money Series
Housing & Credit Counseling of Topeka

7-week series developed by women for women, designed to:

- ✓ increase women's financial knowledge
- ✓ aid women's confidence in decision-making
- ✓ help women gain control of their life through informed money management

Topics Covered:
Budgeting, Saving, Banking, investment products, Investor rights/responsibilities, Risk tolerance, Avoiding fraud, Choosing a financial planner, etc.

Audience:
122 women enrolled in 2013. Ages 22-60's, Diverse ethnicities. Low to moderately high incomes.

10 **Recently expanded Series to Johnson County**

Kansas Office of the Securities Commissioner

Slide 11

Flint Hills Area Agency on Aging

- The North Central-Flint Hills Area Agency on Aging, Inc. plans, coordinates and sponsors services in 18 north central Kansas counties to enhance the quality and dignity of life for older Kansans and their families.

Seniors are a prime target for con-artists.

- *Keynotes* publication articles
- Answers for Older Kansans workshops
- *Keeping Kansans in the Game* initiative

11

Kansas Office of the Securities Commissioner

Slide 12

Financial Peace, Jr.

Children's series which teaches character and the foundational principles of personal money management including: working, budgeting, avoiding debt, saving, generosity and integrity. Recommended for ages 6-12.

Our office started supporting this program in classrooms in KCK in 2012, and are looking to expand it on a per-request basis.

➢**Refer a teacher. We will either present lessons once a week to the class or we'll purchase the program for the teacher.**

12

Kansas Office of the Securities Commissioner

Slide 13

Kansas Financial Scholars Program

This program is offered to ALL high school-aged students in the state.
The Securities Commissioner as well as the State Bank Commissioner and local banks across the state partner to sponsor this so schools will never have to pay for this cutting-edge technology.

Target Audience: High school students – (Public, private and home-schooled)

Standards: State and National Jump$tart Standards for Personal Financial Literacy

Measures: Knowledge gains, as well as attitude and behavior changes

Time: 6 hours (30 min. per module)

LEARNING MODULES

1. Saving
2. Banking
3. Payments, Interest Rates, and Credit Cards
4. Credit Score
5. Financing Higher Ed
6. Renting vs. Owning
7. Taxes and Insurance
8. Consumer Fraud
9. Investing

Real-Life Simulations: Students apply their learning in virtual environments to weigh the consequences of their decisions

13

Kansas Office of the Securities Commissioner

Slide 14

EverFi @Work

- We have partnered with other state agencies to provide this program for all Kansans at no charge to businesses or individuals. At only 10 minutes a module, this program could be completed in 1.5 hours.

August 2014

2,141 state employees participated in @Work
7,937 modules completed by employees.
809 completed all 8 modules (only 5 were required)

- **We'd like to connect with more organizations, businesses, community colleges/adult learning centers, or other places in your area that would be interested in having their members go through @Work**

14

Kansas Office of the Securities Commissioner

Slide 15

Address Affinity Fraud

- Identify locations/groups where we may have a receptive audience.
- Partner through FPA or your professional organization to promote awareness of affinity fraud.

15

Kansas Office of the Securities Commissioner

Slide 16

How You Can Help

- Report Questionable Investments and Practices
  - Name and contact information for both the person offering the security and the person to whom the offer was made
  - Note the name of the investment and terms of the offer
  - Gather any documents provided
  - Submit all documents and information to KSC

16

Slide 17

How You Can Help

- Questionable Investment Red Flags
  - "Guaranteed" or "Risk Free" Claims
  - Unusually High Rate of Return
  - Minimal Documentation Provided
  - Unsolicited Contact Offering Securities
  - Pressure for Immediate Decision or Payment

17

Slide 18

Investor Education and Protection

Questions?

Kansas
Office of the Securities Commissioner

18

PowerPoint Presentation:

Administrative Enforcement and Procedures

By Ryan Kriegshauser

Slide 1

OFFICE OF THE KANSAS SECURITIES COMMISSIONER

Administrative Procedures

Presenter: Ryan Kriegshauser

Kansas
Office of the Securities Commissioner

1

Slide 2

Question: Who can be subject to a KSC Administrative Hearing?

A) Only Kansas Registrants.

B) Registrants in Kansas or any other state.

C) Anyone who violates the Kansas Uniform Securities Act if the KSC can get service of process.

D) Anyone who violates the Kansas Uniform Securities Act with a connection to Kansas.

See K.S.A. 17-12a604(a); K.S.A. 17-12a610; and K.S.A. 17-12a611

Kansas
Office of the Securities Commissioner

2

Slide 3

Legal Background

- Kansas Uniform Securities Act (KUSA): K.S.A. 17-12a101 *et seq.*
- Kansas Administrative Procedure Act (KAPA): K.S.A. 77-501 *et seq.*
- Kansas Judicial Review Act: K.S.A. 77-601 *et seq.*
- Kansas Regulations: K.A.R. 81-11-1 *et seq.*

Kansas
Office of the Securities Commissioner

3

Slide 4

Overview

- Types of Administrative Cases:
  - Registered Cases
    - Suitability
    - Churning
    - Non-disclosure/Misrepresentation
    - Unregistered Sales
  - Unregistered Cases
    - Fraud
    - Unregistered Sales

4

Kansas Office of the Securities Commissioner

Slide 5

Overview Cont'd

- Types of Administrative Actions
  - Orders
  - Notice of Intent
- Types of Hearings
  - Formal Hearings
  - Conference Hearings
  - Summary Hearings

5

Kansas Office of the Securities Commissioner

Slide 6

Question: How many days does a party have to request a hearing?

A) 30 days from the when the Respondent was handed the initiating document in person.

B) 30 days from when the initiating document was mailed.

C) 33 days from when the initiating document was mailed.

D) 30 days from when the initiating document was left at the Respondent's place of business.

E) 30 days from when the KSC receives the initiating document.

6 *See* K.S.A. 17-12a604(c); K.S.A. 77-531; and K.S.A. 17-12a611

Kansas Office of the Securities Commissioner

Slide 7

Requesting a Hearing

- K.A.R. 81-11-5 Requires:
  - Title of the matter
  - Docket Number
  - Request for hearing stating the type of hearing requested
  - Disputed allegations
  - Contact information for counsel
  - Verification

7

Kansas Office of the Securities Commissioner

Slide 8

Prehearing Activities

- Scheduling Conferences
- Discovery
- Motions

See K.S.A.77-516-517; K.S.A. 77-519; and K.S.A. 77-522

8

Kansas Office of the Securities Commissioner

Slide 9

Question: Is hearsay evidence allowed in a KSC administrative hearing?

A) Strictly in accordance with the Rules of Evidence.

B) Always.

C) Only if the Commissioner finds that the evidence will aid in ascertaining facts.

D) If it is reasonable to admit it.

E) Not if a party objects.

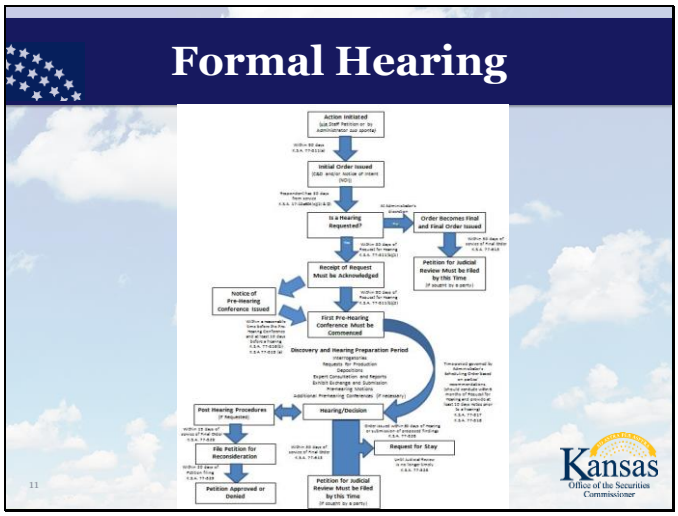
See K.S.A. 77-524; K.A.R. 81-11-10

9

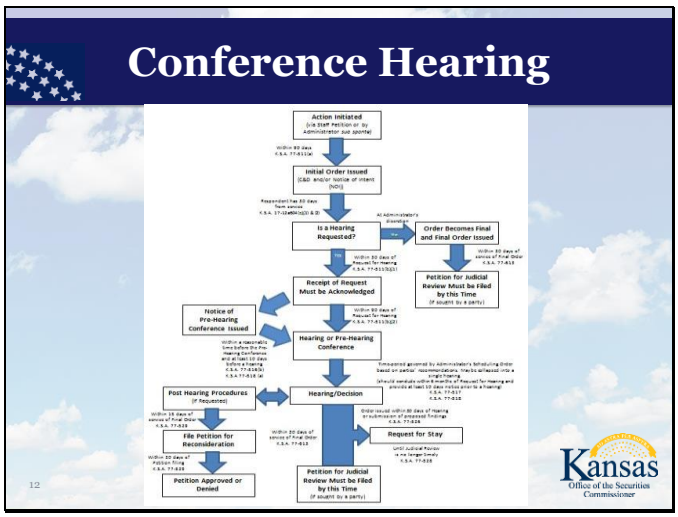
Kansas Office of the Securities Commissioner

Slide 10

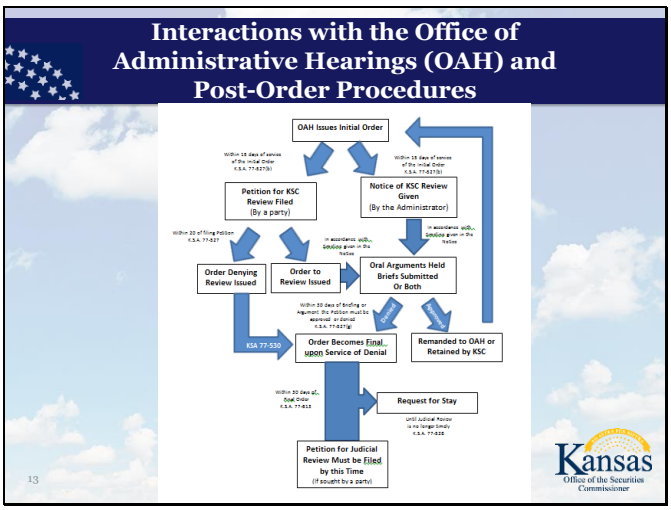
Slide 11



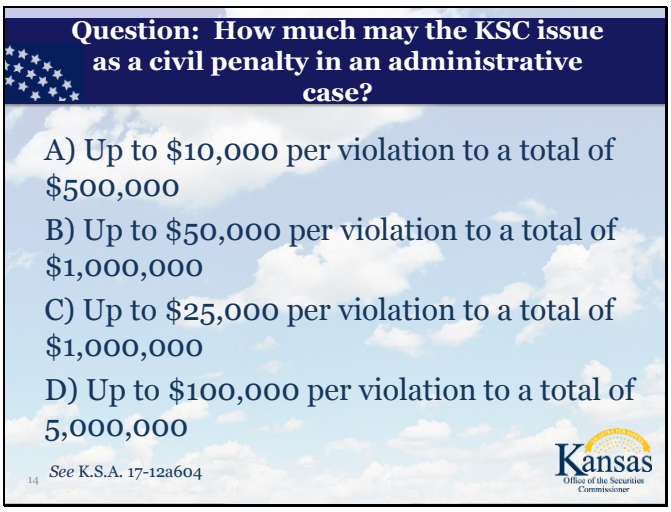
Slide 12



Slide 13



Slide 14



Slide 15

PowerPoint Presentation:

Common Exemptions under the Kansas Uniform Securities Act

By Lynn Hammes

Slide 1

OFFICE OF THE KANSAS SECURITIES COMMISSIONER

Common Exemptions Under the Kansas Uniform Securities Act

Presenter: Lynn Hammes

Kansas
Office of the Securities Commissioner

1

Slide 2

All Sales of Securities Fall Into One of the Following Categories:

K.S.A. 17-12a301

- Federally Covered
  - §18(b)(2) of the 33 Act
  - Notice filing requirement (K.S.A. 17-12a302)
- Registered
  - By Coordination (K.S.A. 17-12a303)
  - By Qualification (K.S.A. 17-12a304)
- Exempt
  - Exempt Securities (K.S.A. 17-12a201)
  - Exempt Transactions (K.S.A. 17-12a202)
  - Other (K.S.A.17-12a203)
- Illegal

2

Slide 3

Every offer or sale of a security in Kansas is either:

1. Federally Covered,
2. Registered,
3. Exempt, or
4. Illegal

3

Slide 4

Institutional Investor

K.S.A. 17-12a202(13)

- Transactional exemption
- Allows for sales to:
  - Institutional investors
  - Federally covered investment advisors
- Self-executing
- No fees

4

Kansas Office of the Securities Commissioner

Slide 5

Limited Offering

K.S.A. 17-12a202(14)

- Transactional exemption
- Allows an issuer to sell securities:
  - In a single issue
  - To no more than 25 purchasers in Kansas during any 12 consecutive months
  - No general solicitation
  - No commissions other than to a broker-dealer or agent registered in Kansas
  - Purchase is made for investment and not for resale
- Self-executing
- No fees

5

Kansas Office of the Securities Commissioner

Slide 6

Existing Security Holder

K.S.A. 17-12a202(15)

- Transactional Exemption
- Includes Holders of:
  - Convertible Securities
  - Options
  - Warrants
- No Commissions
- Self-executing
- No fees

6

Kansas Office of the Securities Commissioner

Slide 7

Employee Benefit Plans

K.S.A. 17-12a202(21)

- Transactional exemption
- Generally modeled after Rule 701 of the 33 Act
- In addition to employees, the exemption covers offers or sales to:
  - Directors, general partners, trustees, officers, consultants and advisors
  - Family members
  - Former employees, directors, general partners, trustees, officers, consultants and advisors
  - Insurance agents
- Self-executing
- No fees

7

Kansas Office of the Securities Commissioner

Slide 8

Oil & Gas

K.A.R. 81-5-10
(Implementing K.S.A. 17-12a203)

- Applies to any offer or sale of the following:
  - Limited partnership interests
  - Fractional undivided interests (FUI)
  - Certificate based FUI involving royalties, leases or deeds
- Land <u>must be</u> located in Kansas

8

Kansas Office of the Securities Commissioner

Slide 9

Oil & Gas Cont'd

- Sales must meet one of the following:
  - Made to a person primarily engaged in oil and gas business during the preceding 2 years
  - Made to not more than 32 purchasers, regardless of state of residence.
    - Purchased for investment and not for resale
    - No general solicitation
    - No commissions
    - Property must produce oil, gas or petroleum products in paying quantities on and after the date of sale, seller cannot retain ownership interest or control over the lease or interest(s) being sold
- Self-executing
- No fees

9

Kansas Office of the Securities Commissioner

Slide 10

Invest Kansas Exemption (IKE)

K.A.R. 81-4-21

(Implementing K.S.A. 17-12a203)

- Issuer is a business or organization formed under the laws of the state of Kansas
- Sales to Kansas residents only (§3(a)(11) and Rule 147 of the 33 Act)
- Limited to $1,000,000 reduced by sales during the preceding 12 month period

10

Kansas Office of the Securities Commissioner

Slide 11

IKE Cont'd

- Sales to any one purchaser limited to $5,000, unless "accredited" as defined by Regulation D, Rule 501 of the 33 Act
- No commissions other than to a broker-dealer or agent registered in Kansas
- General solicitation
- Notice on Form IKE
- No fees

11

Kansas Office of the Securities Commissioner

Slide 12

OFFICE OF THE KANSAS SECURITIES COMMISSIONER

Form IKE
Notice of Reliance on the
INVEST KANSAS EXEMPTION ("IKE")

This form provides the notice for claiming the "Invest Kansas Exemption" and the information required by K.A.R. 81-5-21(a)(7). The exemption is available only to issuers organized and based in Kansas, and all offers and sales of securities under the exemption must be limited to Kansas residents. The filing of this form is due before any general solicitation or the 25th sale of securities to Kansas residents, whichever occurs first. Please enter the information requested below and file with the Office of the Securities Commissioner of Kansas at 109 SW 9th Street, Suite 600, Topeka, KS 66612, or the form may be submitted by attachment to email at ksc@ksc.ks.gov.

All provisions of K.A.R. 81-5-21 should be reviewed carefully for compliance with the regulation.

1. Issuer Name and Address (the issuer is the entity issuing securities):

2. All persons involved in making offers and sales of the Issuer's securities in Kansas:

Name _____ Street Address, City, State & Zip Code _____ Phone Number _____

3. The name and address of bank or other depository institution where investors' funds are to be deposited:

_____ Representative of Issuer _____ Signature ___/___/___ Date

(Aug-2011)

12

Kansas Office of the Securities Commissioner

Slide 13

Audits or Inspections

K.S.A. 17-12a411(d)

- Subjects the records of every issuer subject to the Kansas Uniform Securities Act to audit or inspection

13

Kansas Office of the Securities Commissioner

Slide 14

Evidentiary Burden

K.S.A. 17-12a503

- In a civil action, as well as an administrative or criminal proceeding, the person claiming the exemption has the burden of proof

14

Kansas Office of the Securities Commissioner

Slide 15

Contact Information

www.ksc.ks.gov

Lynn Hammes, Director, Finance and Administration
lynn.hammes@ksc.ks.gov
785-296-5449

Steve Wassom, Executive Director
steve.wassom@ksc.ks.gov
785-296-3309

Office of the Kansas Securities Commissioner
109 SW 9th St., Suite 600
Topeka, KS 66612
785-296-3307

15

Kansas Office of the Securities Commissioner

PowerPoint Presentation:

Regulatory Changes and Updates

By Steve Wassom, Randy Mullikin and Kenny Bossert

Slide 1

OFFICE OF THE KANSAS SECURITIES COMMISSIONER

Regulatory Changes and Updates

Steve Wassom
KSC

Randy Mullikin
KSC

Kenneth Bossert
SEC

Kansas
Office of the Securities Commissioner

1

Slide 2

Elimination of Certain Requirements For Investment Advisers With Custody of Client Funds or Securities

- Surety Bond
- Notice of Fee Deduction
- Independent Audit of Balance Sheet
- Minimum Adjusted Net Worth

Kansas
Office of the Securities Commissioner

2

Slide 3

Have you ever submitted a written comment in connection with a proposed rule change?

a) Yes

b) No

Kansas
Office of the Securities Commissioner

3

Slide 4

Disclosure Requirement For All Investment Advisers Regarding Insurance Coverage

- Special Order 13E009 (11/7/2012)
- Supplement to Form ADV, Part 2 for delivery to all clients and prospective clients.
- State the presence or absence of professional liability insurance coverage for investment advisory services.
- Must provide evidence of coverage within 30 days of a request from a client.

4

Kansas Office of the Securities Commissioner

Slide 5

Professional Liability Insurance

Coverage that an insurer will pay on behalf of an insured adviser and its insured persons, the loss which they shall become legally obligated to pay as a result of a claim first made and reported during the policy period against the insured adviser or its insured persons for a wrongful act involving the rendering of or failure to render investment advisory services, which takes place during or prior to the policy period.

5

Kansas Office of the Securities Commissioner

Slide 6

"Investment Advisory Services"

Means financial, economic or investment advice regarding investments or investment management services performed or required to be performed for or on behalf of a customer pursuant to a written agreement between such customer and the insured adviser for a fee, commission or other monetary consideration or other remuneration which inures to the benefit of the insured adviser.

6

Kansas Office of the Securities Commissioner

Slide 7

Current Requirements Under K.A.R. 81-14-9, As Amended

- Safekeeping of client funds and securities (for IAs with custody)
- Financial reporting to KSC
- Positive net worth requirement

Kansas Office of the Securities Commissioner

7

Slide 8

Safekeeping Requirements

- Must use a "Qualified Custodian" to maintain funds and securities in account for client(s) of the investment adviser
- In most cases, the qualified custodian is a broker-dealer that holds client assets in compliance with SEC net capital rules as adopted by reference under K.A.R. 81-3-7(d)
- Notice to KSC (on form ADV) and to client to identify the qualified custodian

Kansas Office of the Securities Commissioner

8

Slide 9

Safekeeping Requirements Cont'd

- Account statements are required to be sent to clients at least quarterly
  - by the qualified custodian, or
  - by the investment adviser if it engages a CPA firm annually to attest to the accuracy of the account statements sent in comparison with qualified custodian records

Kansas Office of the Securities Commissioner

9

Slide 10

Safekeeping Requirements Cont'd

- An "Independent Representative" may be designated by clients to receive notice and account statements
- Written authorization is required from client for IA fees to be deducted from account maintained by qualified custodian
- Other requirements or exceptions are specified in K.A.R. 81-14-9(b) for safekeeping involving pooled investments, mutual funds, accounts of investment companies or beneficial trusts.

10

Kansas Office of the Securities Commissioner

Slide 11

Financial Reporting Requirements For Kansas-based Investment Advisers

- Maintain financial statements required by K.A.R. 81-14-4(b)(6):
  - Balance sheet prepared in accordance with GAAP
  - Income statement
  - Cash flow statement
- Balance sheets as of the end of each month are to be prepared within 10 days after the end of the month and available for filing with KSC within 5 days after a request by KSC staff.

11

Kansas Office of the Securities Commissioner

Slide 12

Financial Condition Requirements For Kansas-based Investment Advisers

- An investment adviser must maintain a positive net worth at all times.
- If an investment adviser is insolvent because its net worth is negative as reported on its balance sheet, it must notify the KSC by the close of business on the next business day, and
- Must file its balance sheet that states the insolvent financial condition.

12

Kansas Office of the Securities Commissioner

Slide 13

Kansas Private Adviser Exemption Provided by K.A.R. 81-14-11

To qualify for this exemption, an investment adviser must:

- Maintain its principal place of business in Kansas
- Provide investment advice solely to fewer than 15 clients
- Not hold out generally to the public as an investment adviser, and
- Not act as investment adviser to any investment company or to a business development company under the federal Investment Company Act of 1940

Investment adviser representatives associated with an IA that meets the conditions for exemption are also exempt from registration.

13

Kansas Office of the Securities Commissioner

Slide 14

Kansas Private Adviser Notice Filing Requirement

- If Assets under management are no more than $25 million as of December 31 each year,
- File notice with KSC by February 1 of following year with identifying information on form ADV Part 1A, Item 1
- No filing fee is required

14

Kansas Office of the Securities Commissioner

Slide 15

Kansas Private Adviser Exemption Cont'd

- If assets under management are in excess of $25 million, and
- The investment adviser is subject to SEC requirements to either:
  - Register with the SEC or
  - File with the SEC as an exempt reporting adviser, then
- No notice filing with KSC is required.

15

Kansas Office of the Securities Commissioner

Slide 16

Federal Regulatory Information Presented by SEC Staff

- Family Offices
- Exempt Reporting Advisers
- Mid-Size Advisers

16

Kansas Office of the Securities Commissioner

Slide 17

Solicitor

An "investment adviser representative" includes a person that receives compensation to solicit on behalf of an investment adviser. An investment adviser is prohibited from paying a solicitor a referral fee unless the individual is exempt from registration.

17

Kansas Office of the Securities Commissioner

Slide 18

Services of a Solicitor

- Generally the services of a solicitor are not "impersonal."
- A solicitor will conduct some level of due diligence of a third-party investment adviser.
- A solicitor will provide some level of analysis concerning suitability or performance.
- A solicitor may recommend terminating a third-party investment adviser.

18

Kansas Office of the Securities Commissioner

Slide 19

Disclosure Required by Solicitor Under K.A.R. 81-14-5(f)(6)

A disclosure document is required to be provided by the solicitor to client and must contain the name of the solicitor, the name of the investment adviser, the nature of the relationship between the solicitor and investment adviser, notice that the solicitor will be compensated for the solicitation by the investment adviser, and the terms of the compensation, including the amount in addition to the advisory fee that a client will be charged for the costs of the solicitor's services.

19

Kansas Office of the Securities Commissioner

Slide 20

Can an investment adviser compensate an existing client for referring a new client?

a) Yes

b) No

20

Kansas Office of the Securities Commissioner

Slide 21

What is the maximum dollar amount for the current gift rule administered by FINRA?

a) $100

b) $200

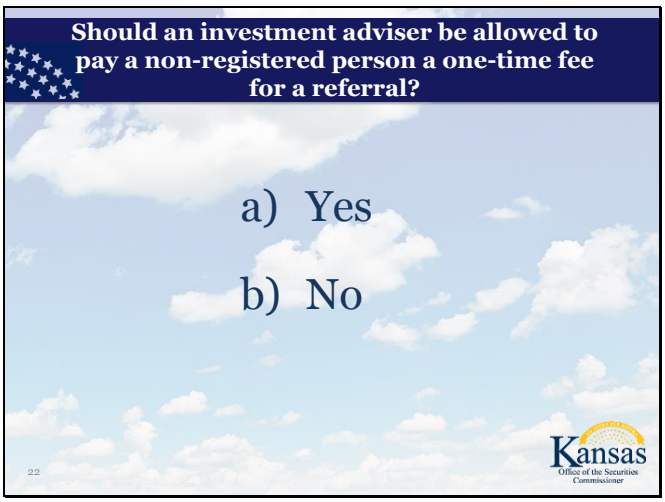
c) $300

d) $500

21

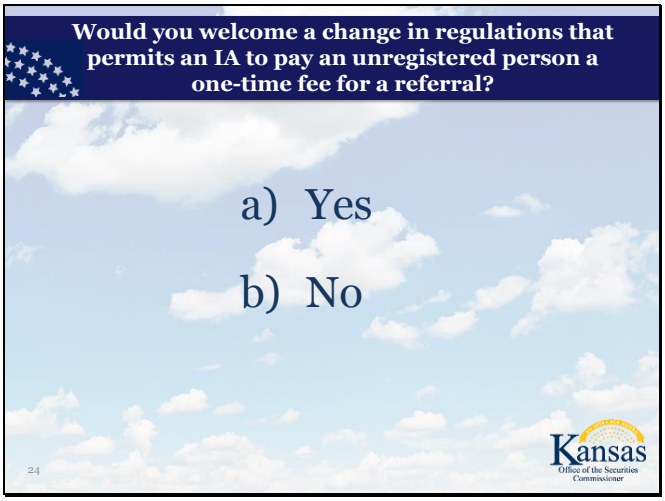
Kansas Office of the Securities Commissioner

Slide 22



Slide 23

Slide 24



Slide 25

Plans to Propose or Research Other Regulatory Changes

- Technical updates for references to laws or rules of other regulatory organizations
- Further study of solicitors and referral fees
- Consideration of alternatives to GAAP based on AICPA's "FRF for SMEs"

25

Kansas Office of the Securities Commissioner

Slide 26

Regulatory Changes and Updates

Questions?

26

Kansas Office of the Securities Commissioner

Supplemental Materials:

Regulatory Changes and Updates

By Steve Wassom, Randy Mullikin and Kenny Bossert

1. **Press Release and Facts: SEC Adopts Rule Under Dodd-Frank Defining "Family Offices" p. 69**
2. **Press Release and Facts: SEC Adopts Dodd-Frank Act Amendments to Investment Advisers Act p. 72**
3. **SEC FAQs Regarding Mid-Sized Advisers p. 79**

(This is only some of the supplemental materials for this presentation. You can find the full set online in a .pdf format.)

U.S. Securities and Exchange Commission

SEC Adopts Rule Under Dodd-Frank Act Defining "Family Offices"

FOR IMMEDIATE RELEASE
2011-134

Washington, D.C., June 22, 2011 — The Securities and Exchange Commission today approved a new rule to define "family offices" that are to be excluded from the Investment Advisers Act of 1940.

The rulemaking stems from the Dodd-Frank Wall Street Reform and Consumer Protection Act.

"Family offices" are entities established by wealthy families to manage their wealth and provide other services to family members, such as tax and estate planning services. Historically, family offices have not been required to register with the SEC under the Advisers Act because of an exemption provided to investment advisers with fewer than 15 clients.

Video: Open Meeting

Chairman Schapiro discusses family offices: Windows Media Player

Text of Chairman's statement

The Dodd-Frank Act removed that exemption so the SEC can regulate hedge fund and other private fund advisers. However, Dodd-Frank also included a new provision requiring the SEC to define family offices in order to exempt them from regulation under the Advisers Act.

The new rule adopted by the SEC enables those managing their own family's financial portfolios to determine whether their "family offices" can continue to be excluded from the Investment Advisers Act.

The rule is effective 60 days after its publication in the *Federal Register*.

# # #

FACT SHEET

Defining A Family Office

How are family offices impacted by the Dodd-Frank Act?

Family offices typically are considered to be investment advisers under the Advisers Act because of the investment advisory services that they provide.

As such, they are subject to the registration requirements set forth in that Act. Historically, however, most family offices have been structured to take advantage of an exemption from registration for firms that advise less than fifteen clients and meet certain other conditions.

The Dodd-Frank Act repeals the 15-client exemption to enable the SEC to regulate hedge fund and other private fund advisers. But, the Dodd-Frank Act includes a new provision requiring the SEC to define family offices in order to exempt them from regulation under the Advisers Act.

Today, the Commission is considering adopting a final rule defining family offices that will be excluded from regulation under the Advisers Act.

Which family offices will be excluded from Advisers Act regulation under the rule?

Any company that:

- Provides investment advice only to "family clients," as defined by the rule.
- Is wholly owned by family clients and is exclusively controlled by family members and/or family entities, as defined by the rule.
- Does not hold itself out to the public as an investment adviser.

Which family members and employees can the family office advise under the exclusion?

- *Family members.* Family members include all lineal descendants (including by adoption, stepchildren, foster children, and, in some cases, by legal guardianship) of a common ancestor (who is no more than 10 generations removed from the youngest generation of family members), and such lineal descendants' spouses or spousal equivalents.
- *Key employees.* Key employees include:
  - Executive officers, directors, trustees, general partners, or persons serving in a similar capacity for the family office or its affiliated family office.
  - Any other employee of the family office or its affiliated family office (other than a clerical or secretarial employee) who, in connection with his or her regular duties, has participated in the investment activities of the family office or affiliated family office, or similar functions or duties for another company, for at least 12 months.
- *Other family clients.* Other family clients generally include:
  - Any non-profit or charitable organization funded exclusively by family clients.

- Any estate of a family member, former family member, key employee, or subject to certain conditions a former key employee.
- Certain family client trusts.
- Any company wholly-owned by and operated for the sole benefit of family clients.

When will family offices have to register with the Commission under the Advisers Act or with applicable state securities authorities if they do not meet the terms of the exclusion?

By March 30, 2012.

Will existing family office exemptive orders be rescinded?

No. Family offices that obtained exemptive orders from the Commission will be able to continue operating under their existing exemptive orders or they may operate under the new rule.

What if a family office will not meet the exclusion on March 30, 2012?

That family office will have to obtain a Commission exemptive order or register as an investment adviser.

Grandfathering Provision

The Dodd-Frank Act requires that the Commission not preclude certain family offices from meeting the new exclusion solely because they provide investment advice to certain clients (and provided that advice prior to January 1, 2010). The adopted rule incorporates this grandfathering provision.

http://www.sec.gov/news/press/2011/2011-134.htm

SEC Adopts Dodd-Frank Act Amendments to Investment Advisers Act

FOR IMMEDIATE RELEASE
2011-133

Washington, D.C., June 22, 2011 – The Securities and Exchange Commission today adopted rules that require advisers to hedge funds and other private funds to register with the SEC, establish new exemptions from SEC registration and reporting requirements for certain advisers, and reallocate regulatory responsibility for advisers between the SEC and states.

Video: Open Meeting

Chairman Schapiro discusses amendments to Investment Advisers Act:
Windows Media Player

Text of Chairman's statement

The rules adopted by the Commission implement core provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act regarding investment advisers, including those that advise hedge funds.

"These rules will fill a key gap in the regulatory landscape," said SEC Chairman Mary L. Schapiro. "In particular, our proposal will give the Commission, and the public, insight into hedge fund and other private fund managers who previously conducted their work under the radar and outside the vision of regulators."

In addition, the Commission amended rules to expand disclosure by investment advisers, particularly about the private funds they manage, and revised the Commission's pay-to-play rule.

The rules implement a transitional exemption period so that private advisers, including hedge fund and private equity fund advisers, newly required to register do not have to do so until March 30, 2012. The rules regarding exemptions for venture capital fund and certain private fund advisers are effective July 21, 2011.

# # #

FACT SHEET

Dodd-Frank Act Amendments to the Investment Advisers Act

Background

A large number of individuals and institutions invest a significant amount of assets in private funds, such as hedge funds and private equity funds. However, until the passage of the Dodd-Frank Act, advisers managing those assets were subject to little regulatory oversight.

With the Dodd-Frank Act, Congress closed this regulatory gap by generally extending the registration requirements under the Investment Advisers Act to the advisers of these funds. The new law also provided the Commission with the ability to require the limited number of advisers to private funds that will not have to register to file reports about their business activities.

Further, in acknowledging the Commission's limited examination resources – and in light of the new responsibilities for private fund advisers – the Dodd-Frank Act reallocated regulatory responsibility for certain mid-sized investment advisers to the state securities authorities.

Private Fund Advisers and Commission Registration

For many years, advisers to private funds have been able to avoid registering with the Commission because of an exemption that applies to advisers with fewer than 15 clients – an exemption that counted each fund as a client, as opposed to each investor in a fund. As a result, some advisers to hedge funds and other private funds have remained outside of the Commission's regulatory oversight even though those advisers could be managing large sums of money for the benefit of hundreds of investors.

Title IV of the Dodd-Frank Act eliminated this private adviser exemption. Consequently, many previously unregistered advisers, particularly those to hedge funds and private equity funds, will have to register with the Commission and be subject to its regulatory oversight, rules and examination.

These advisers will be subject to the same registration requirements, regulatory oversight, and other requirements that apply to other SEC-registered investment advisers. To provide these advisers with a window to meet their new obligations, the transition provisions the Commission is adopting today will require these advisers to be registered with the Commission by March 30, 2012.

Reporting Requirements for Hedge Fund and Other Investment Advisers

Background

When investment advisers register with the Commission, they provide information in their registration form that is not only used for registration purposes, but that is used by the Commission in its regulatory program to support its mission to protect investors.

To enhance its ability to oversee investment advisers to private funds, the Commission is requiring advisers to provide additional information about the private funds they manage. The information obtained as a result of these amendments will assist the Commission in fulfilling its increased responsibility for private fund advisers arising from the Dodd-Frank Act.

The Form

Under the amended adviser registration form, advisers to private funds will have to provide:

- Basic organizational and operational information about each fund they manage, such as the type of private fund that it is (e.g., hedge fund, private equity fund, or liquidity fund), general information about the size and ownership of the fund, general fund data, and the adviser's services to the fund.
- Identification of five categories of "gatekeepers" that perform critical roles for advisers and the private funds they manage (i.e., auditors, prime brokers, custodians, administrators and marketers).

These reporting requirements are designed to help identify practices that may harm investors, deter advisers' fraud, and facilitate earlier discovery of potential misconduct. And this information will provide for the first time a census of this important area of the asset management industry.

In addition, the Commission is adopting other amendments to the adviser registration form to improve its regulatory program. These amendments will require all registered advisers to provide more information about their advisory business, including information about:

- The types of clients they advise, their employees, and their advisory activities.
- Their business practices that may present significant conflicts of interest (such as the use of affiliated brokers, soft dollar arrangements and compensation for client referrals).

The rules also will require advisers to provide additional information about their non-advisory activities and their financial industry affiliations.

Reporting Requirements for Exempt Advisers

Background

While many private fund advisers will be required to register, some of those advisers may not need to if they are able to rely on one of three new exemptions from registration under the Dodd-Frank Act, including exemptions for:

- Advisers solely to venture capital funds.
- Advisers solely to private funds with less than $150 million in assets under management in the U.S.
- Certain foreign advisers without a place of business in the U.S.

The Commission can still impose certain reporting requirements upon advisers relying upon either of the first two of these exemptions ("exempt reporting advisers").

The Rules

Under the new rules, exempt reporting advisers will nonetheless be required to file, and periodically update, reports with the Commission, using the same registration form as registered advisers.

Rather than completing all of the items on the form, exempt reporting advisers will fill out a limited subset of items, including:

- Basic identifying information for the adviser and the identity of its owners and affiliates.
- Information about the private funds the adviser manages and about other business activities that the adviser and its affiliates are engaged in that present conflicts of interest that may suggest significant risk to clients.
- The disciplinary history (if any) of the adviser and its employees that may reflect on the integrity of the firm. Exempt reporting advisers will file reports on the Commission's investment adviser electronic filing system (IARD), and these reports will be publicly available on the Commission's website. These advisers will be required to file their first reports in the first quarter of 2012.

Reallocation of Regulatory Responsibility

Background

Since 1996, regulatory responsibility for investment advisers has been divided between the Commission and the states, primarily based on the amount of money an adviser manages for its clients. Under existing law, advisers generally may not register with the Commission unless they manage at least $25 million for their clients.

The Dodd-Frank Act raises the threshold for Commission registration to $100 million by creating a new category of advisers called "mid-sized advisers." A mid-sized adviser, which generally may not register with the Commission and will be subject to state registration, is defined as an adviser that:

- Manages between $25 million and $100 million for its clients.
- Is required to be registered in the state where it maintains its principal office and place of business.
- Would be subject to examination by that state, if required to register.

As a result of this amendment to the Investment Advisers Act, about 3,200 of the current 11,500 registered advisers will switch from registration with the Commission to registration with the states. These advisers will continue to be subject to the Advisers Act's general anti-fraud provisions.

The Rules

The Commission is adopting amendments to several of its current rules and

forms to:

- Reflect the higher threshold required for Commission registration.
- Provide a buffer to prevent advisers from having to frequently switch between Commission and state registration.
- Clarify when an adviser will be a mid-sized adviser.
- Facilitate the transition of advisers between federal and state registration in accordance with the new requirements. Advisers registered with the Commission will have to declare that they are permitted to remain registered in a filing in the first quarter of 2012, and those no longer eligible for Commission registration will have until June 28, 2012 to complete the switch to state registration.

Pay-to-Play

The Rule

The Commission also is amending the investment adviser "pay-to-play" rule in response to changes made by the Dodd-Frank Act. The pay to play rule is designed to prevent an adviser from seeking to influence government officials' awards of advisory contracts through political contributions.

Under the amendment, an adviser will be permitted to pay a registered municipal advisor to act as a placement agent to solicit government entities on its behalf, if the municipal advisor is subject to a pay-to-play rule adopted by the MSRB that is at least as stringent as the investment adviser pay-to-play rule. The MSRB received new authority over municipal advisors under the Dodd-Frank Act. Advisers will also continue to be permitted to hire as a placement agent an SEC registered investment adviser or a broker-dealer that is subject to a pay-to-play rule adopted by FINRA that is at least as stringent as the investment adviser pay-to-play rule.

* * *

Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers

Background

As previously described, the Dodd-Frank Act eliminated the private adviser exemption and created three new exemptions for:

- Advisers solely to venture capital funds.
- Advisers solely to private funds with less than $150 million in assets under management in the United States.
- Certain foreign advisers without a place of business in the United States.

The Commission is adopting rules that would implement these exemptions and define various terms.

New Exemptions

Definition of Venture Capital Fund

The Dodd-Frank Act amended the Advisers Act to exempt from registration advisers that only manage venture capital funds, and directed the Commission to define the term "venture capital fund." The Commission is adopting a definition of "venture capital fund" that is designed to effect Congress' intent in enacting this exemption.

Under the definition, a venture capital fund is a private fund that:

- Invests primarily in "qualifying investments" (generally, private, operating companies that do not distribute proceeds from debt financings in exchange for the fund's investment in the company); may invest in a "basket" of non-qualifying investments of up to 20 percent of its committed capital; and may hold certain short-term investments.
- Is not leveraged except for a minimal amount on a short-term basis.
- Does not offer redemption rights to its investors.
- Represents itself to investors as pursuing a venture capital strategy.

Under a grandfathering provision, funds that began raising capital by the end of 2010 and represented themselves as pursuing a venture capital strategy would generally be considered venture capital funds. The Commission is adopting this approach because it could be difficult or impossible for advisers to conform these pre-existing funds, which generally have terms in excess of 10 years, to the new definition.

Private Fund Advisers With Less Than $150 Million in Assets Under Management in U.S.

The Commission also is adopting a rule that would implement the new statutory exemption for private fund advisers with less than $150 million in assets under management in the United States. The rule largely tracks the provision of the statute.

Foreign Private Advisers

The Dodd-Frank Act also amended the Advisers Act to provide for an exemption from registration for foreign advisers that do not have a place of business in the United States, and have:

- Less than $25 million in aggregate assets under management from U.S. clients and private fund investors.
- Fewer than 15 U.S. clients and private fund investors.

The Commission is adopting rules to define certain terms included in the statutory definition of "foreign private adviser" in order to clarify the application of the foreign private adviser exemption and reduce the potential burdens for advisers that seek to rely on it. The rule incorporates

definitions set forth in other Commission rules, all of which are likely to be familiar to foreign advisers active in the U.S. capital markets.

http://www.sec.gov/news/press/2011/2011-133.htm

Home | Previous Page Modified: 06/22/2011

U.S. Securities and Exchange Commission

Division of Investment Management: Frequently Asked Questions Regarding Mid-Sized Advisers

What is a "mid-sized adviser"?

A "mid-sized adviser" is an investment adviser that has between $25 million and $100 million of assets under management.

Are mid-sized advisers required to register with the Securities and Exchange Commission?

After July 21, 2011, a mid-sized adviser must register with the Securities and Exchange Commission if it:

i. is not required to be registered as an adviser with the state securities authority in the state where it maintains its principal office and place of business; or
ii. is not subject to examination as an adviser by the state where it maintains its principal office and place of business.

A mid-sized adviser that does not meet either one of these two requirements is prohibited from registering as an adviser with the Commission after July 21, 2011, but will have to register with the state securities authorities. There are a few exceptions to the general prohibition from SEC registration in rule 203A-2, such as for certain multi-state investment advisers and pension consultants. In addition, a mid-sized adviser that is required to register with the SEC, may elect to not register if it can rely on an exemption from registration, such as those for certain advisers to private funds.

In which states would a mid-sized adviser not be "subject to examination" by the state securities authority?

New York or Wyoming.

A mid-sized adviser with its principal office and place of business in either of those states is not "subject to examination" by the state securities authority and would have to register with the SEC. A mid-sized adviser with its principal office and place of business in any other state is "subject to examination." This information will be updated promptly upon notification by a state securities authority of any change to examination status.

How does a mid-sized adviser determine if it is "required to be registered" in the state where it maintains its principal office and place of business?

A mid-sized adviser should consult the investment adviser laws or the state securities authority for that state to determine if it is required to register as an investment adviser in that state.

When is a mid-sized adviser that is no longer eligible for Commission registration required to switch to state registration?

A mid-sized adviser registered with the Commission as of July 21, 2011 must remain registered with the Commission until January 1, 2012 (unless an exemption from Commission registration is available). Each adviser registered with the Commission on January 1, 2012 must file an amendment to its Form ADV no later than March 30, 2012, which for most advisers will be their annual updating amendment. A mid-sized adviser that is no longer eligible for Commission registration will need to be registered with the state securities authorities by June 28, 2012, and must withdraw its Commission registration by filing Form ADV-W, indicating it is filing a "partial withdrawal," no later than that date.

The adopting release amending Form ADV, dated June 22, 2011 (the "Adopting Release") can be found at:
http://www.sec.gov/rules/final/2011/ia-3221.pdf .

Amended Form ADV can be found at:
http://www.sec.gov/rules/final/2011/ia-3221-appd.pdf .

Amended Form ADV instructions can be found at:
http://www.sec.gov/rules/final/2011/ia-3221-appa.pdf and
http://www.sec.gov/rules/final/2011/ia-3221-appb.pdf .

http://www.sec.gov/divisions/investment/midsizedadviserinfo.htm

---

Home | Previous Page Modified: 06/28/2011

Notes