

BEFORE THE SECURITIES COMMISSIONER  
OF THE STATE OF KANSAS



In re: )  
)  
Correction of K.A.R. 81-14-9(b)(2)(B) )  
)  
\_\_\_\_\_ )

Docket No. 17E002

**Special Order – To Correct Provisions of K.A.R. 81-14-9(b)(2)(B)**

WHEREAS, K.S.A. 17-12a605, and amendments thereto, grants the Securities Commissioner the authority to issue special orders as necessary or appropriate in the public interest to carry out and to be consistent with the purposes of the Act; and

WHEREAS, K.S.A. 17-12a411(f), and amendments thereto, authorizes the Commissioner to adopt a rule or issue an order to impose conditions on an investment adviser regarding custody or securities or funds of a client; and

WHEREAS, K.S.A. 17-12a608, and amendments thereto, provides for uniformity in securities matters among securities regulatory agencies and organizations, including NASAA and the SEC; and

WHEREAS, the Commissioner adopted K.A.R. 81-14-9 to specify requirements and conditions for custody and safekeeping of client funds or securities; and

WHEREAS, to maximize uniformity, consistency and effectiveness of regulation for the protection of investors, K.A.R. 81-14-9 was intended to be substantially comparable and consistent with rules of other state and federal regulatory agencies; and

WHEREAS, the provisions of K.A.R. 81-14-9, when originally adopted, were based on the provisions of a model rule adopted and recommended by NASAA, which is consistent with similar provisions under SEC Rule 206(4)-2 under the federal Investment Advisers Act of 1940; and

WHEREAS, the Commissioner's staff recently discovered a cross-referencing error and an omission of a provision under K.A.R. 81-14-9(b)(2)(B) that should be corrected based on a review and comparison with the relevant similar provisions of the NASAA model rule and SEC rule 206(4)-2; and

WHEREAS, in order to achieve uniformity and consistency in regulation of investment advisers among state and federal agencies it is necessary to correct the internal reference within subsection (b)(2), paragraph (B) under K.A.R. 81-14-9 by changing the reference from paragraph (b)(1) of the regulation to paragraph (b)(1)(B); and

WHEREAS, to further correct K.A.R. 81-14-9(b)(2)(B) in order to be consistent with the NASAA model rule and SEC rule 206(4)-2, it is necessary to insert a new paragraph (iv) under paragraph (B) with provisions as follows: "(iv) with respect to securities held for a limited partnership, limited liability company or other type of pooled investment vehicle, the provisions of this paragraph (b)(2)(B) are available only if the limited partnership, limited liability company or other type of pooled investment vehicle is audited and the audited financial statements are distributed as described in paragraph (b)(2)(C) of this regulation."

IT IS, THEREFORE, ORDERED BY THE COMMISSIONER that K.A.R. 81-14-9(b)(2)(B) is hereby revised to specify as follows:

(B) Certain privately offered securities. An investment adviser shall not be required to comply with paragraph (b)(1)(B) with respect to securities that meet the following conditions:

(i) Are acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(ii) are uncertificated, with ownership of the securities recorded only on the books of the issuer or its transfer agent in the name of the client;

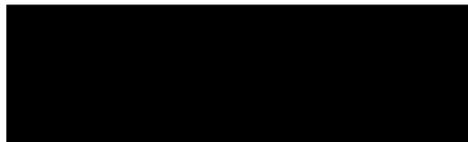
(iii) are transferable only with the prior consent of the issuer or holders of the outstanding securities of the issuer; and

(iv) with respect to securities held for a limited partnership, limited liability company or other type of pooled investment vehicle, the provisions of this paragraph (b)(2)(B) are available only if the limited partnership, limited liability company or other type of pooled investment vehicle is audited and the audited financial statements are distributed as described in paragraph (b)(2)(C) of this regulation.

IT IS FURTHER ORDERED that this order shall be effective on the date indicated below and that it shall be automatically vacated upon the adoption of any future amendment to K.A.R. 81-14-9.

IT IS SO ORDERED.

Entered at Topeka, Kansas, on this 25<sup>th</sup> day of July, 2016.



Joshua A. Ney  
Commissioner

