

Kansas Administrative Regulations

Department of Insurance Assistant Commissioner, Securities Division

Article 5.—Exemptions

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

(a) Exemption. Each transaction made in compliance with SEC regulation D, rule 505, 17 C.F.R. 230.505, as adopted by reference in K.A.R. 81-2-1, shall be exempt from the registration requirements of K.S.A. 17-12a301 through 17-12a306 and K.S.A. 17-12a504, and amendments thereto, if all of the following requirements are met:

(1) No commission, finders fee, or other remuneration shall be paid or given, directly or indirectly, for soliciting any prospective purchaser, or in connection with the sale of securities in reliance on this exemption, unless the recipient is appropriately registered in this state as a broker-dealer or agent.

(2) No later than 15 days after the first sale of the security in this state, the issuer shall pay the fee specified in K.A.R. 81-5-8 and file a notice on form D, including the appendix. The form D shall be manually signed on part E by a person authorized by the issuer.

(3) Each sale to a non-accredited investor shall be suitable for the investor, or the issuer and any person acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that the investment is suitable for the investor. Suitability shall be based upon the facts disclosed by the investor concerning the investor's other security holdings, financial situation, and needs. For the limited purpose of this exemption only, it may be presumed that the investment is suitable if it does not exceed 10 percent of the investor's liquid net worth.

(b) Disqualifications.

(1) The exemption under subsection (a) shall not be available if the issuer, any one of the issuer's directors, officers, or general partners, any beneficial owner of 10 percent or more of any class of the issuer's equity securities, any promoter currently connected with the issuer in any capacity, or any other person, other than a broker-dealer currently

registered under the act, who has been or will be paid or given any commission or similar remuneration in connection with an offer or sale of the security meets any of the following conditions:

(A) Has filed a registration statement that is subject to a currently effective stop order entered pursuant to any state law within five years before the commencement of the offering;

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

(C) is subject to any current state administrative order or judgment entered by a state securities administrator within five years before the commencement of the offering or is subject to any state administrative order or judgment in which fraud or deceit was found and the order or judgment was entered within five years before the commencement of the offering;

(D) is subject to any current state administrative order or judgment that prohibits the use of any exemption from registration in connection with the purchase or sale of securities; or

(E) is subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining the person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state, or is subject to any order, judgment, or decree of any court of competent jurisdiction entered within five years before the commencement of the offering permanently restraining or enjoining the person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state.

(2) Upon application by the issuer, disqualification from the exemption specified in paragraph (b)(1) may be waived in writing by the administrator under any of the following conditions:

(A) The issuer demonstrates that it did not know and in the exercise of reasonable care could not have known that a disqualification existed.

(B) The person subject to a disqualifying order under paragraph (b)(1)(A) through (b)(1)(C) is currently licensed to conduct securities-related business in the state in which the administrative order or judgment was entered against the person.

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

(D) The issuer demonstrates good cause that a disqualification should be waived by the administrator.

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

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

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

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

(d) Stacking of exemptions. Offers and sales that are exempt under this regulation shall not be combined with offers and sales exempt under any other provision of the act or these regulations.

(e) Intrastate offerings. The exemption in subsection (a) shall be available to each issuer offering and selling securities in reliance upon the federal exemption for intrastate offerings in section 3(a)(11) of the federal securities act of 1933, 15 U.S.C. § 77c(a)(11), as adopted by reference in K.A.R. 81-2-1, if the issuer complies with the requirements of this regulation.

(f) Technical compliance insufficient. The exemption in subsection (a) shall not be available for any transaction that technically complies with this regulation but is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this regulation.

(g) Recordkeeping. The issuer shall maintain, for at least five years, a written record of all information furnished by it to all offerees, and the issuer shall file copies of the record with the administrator upon written request.

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

***** Authenticated Kansas Administrative Regulation *****