

Kansas Administrative Regulations

Department of Insurance Assistant Commissioner, Securities Division

Article 5.—Exemptions

81-5-13. Accredited investor exemption.

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

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

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

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

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

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

(1) The issuer is in the development stage and either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

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

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

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

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

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

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

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

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

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

(d) Communication with prospective investors.

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

- (A) The name, address, and telephone number of the issuer of the securities;
- (B) the name, a brief description, and the price, if known, of any security to be issued;
- (C) a brief description of the business of the issuer in 25 or fewer words;
- (D) the type, number, and aggregate amount of securities being offered;
- (E) the name, address, and telephone number of the person to contact for additional information; and
- (F) the following statements:
 - (i) Sales will be made only to accredited investors;
 - (ii) no money or other consideration is being solicited or will be accepted by way of this general announcement; and
 - (iii) the securities have not been registered with or approved by any state securities agency or the United States securities and exchange commission and are being offered and sold pursuant to an exemption from registration.

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

- (A) The information is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors.
- (B) The information is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(3) No telephone solicitation shall be permitted, unless, before placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a203; effective Dec. 19, 1997; amended Jan. 19, 2007.)

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