

Kansas Administrative Regulations

Department of Insurance Assistant Commissioner, Securities Division

Article 5.—Exemptions

81-5-16. Exemption for internet communication.

(a) General communication. Communication concerning a security directed generally to anyone having access to the internet shall not be deemed an offer under K.S.A. 17-12a301, and amendments thereto, based solely on the internet communication if all of the following conditions are met:

(1) The internet communication indicates that the security is not being offered to residents of Kansas.

(2) The internet communication is not specifically directed to any person in Kansas, and the internet communication contains a mechanism, including technical firewalls or other implemented policies and procedures, designed reasonably to prevent direct communication with residents of Kansas.

(3) No sale of the security is made in Kansas as a direct or indirect result of the internet communication until the security is registered under the act or unless the security is exempt from registration. For the purpose of determining whether the security is exempt, each sale made in Kansas as a direct or indirect result of the internet communication shall be deemed to be made through a general solicitation.

(b) Communication by broker-dealers, agents, investment advisers and investment adviser representatives. A person who distributes information on available products and services through internet communications directed generally to anyone having access to the internet shall not be deemed to be transacting business in Kansas for purposes of K.S.A. 17-12a401 through 17-12a404, and amendments thereto, based solely on the internet communication if all of the following conditions are met:

(1) The internet communication contains a legend in which the following information is clearly stated:

(A) The person cannot transact business in this state as a broker-dealer, agent, investment adviser, or investment adviser representative unless the person is properly registered under the act or exempt from registration.

(B) The person cannot provide individualized communications or responses to prospective customers or clients in this state to effect or attempt to effect transactions in securities, or to render personalized investment advice for compensation, unless the person is properly registered under the act or exempt from registration.

(2) The internet communication contains a mechanism, which may include technical firewalls or other implemented policies and procedures, designed reasonably to ensure that before any direct communication with prospective customers or clients in this state, the person is properly registered under the act or exempt from registration.

(3) The internet communication is limited to the dissemination of general information on products and services and does not involve effecting or attempting to effect transactions in securities or the rendering of personalized investment advice in this state.

(4) For an agent or investment adviser representative, the following conditions are met:

(A) The affiliation of the agent or investment adviser representative with a broker-dealer or investment adviser is prominently disclosed within the internet communication.

(B) The broker-dealer or investment adviser with whom the agent or investment adviser representative is associated retains responsibility for reviewing and approving the content of any internet communication by the agent or investment adviser representative.

(C) The broker-dealer or investment adviser with whom the agent or investment adviser representative is associated first authorizes the distribution of information on the particular products and services through the internet communication.

(D) In disseminating information through the internet communication, the agent or investment adviser representative acts within the scope of the authority granted by the broker-dealer or investment adviser.

(c) "Other electronic communication" under K.S.A. 17-12a610(e), and amendments thereto, shall not include internet communication.

(d) Nothing in this regulation shall create an exemption from the antifraud provisions of K.S.A. 17-12a501 and 17-12a502, and amendments thereto, or from the requirements of any other provision of the act or these regulations.

(Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a301, 17-12a401, 17-12a402, 17-12a403, 17-12a404, 17-12a608(c)(9) and 17-12a610(e); effective Jan. 19, 2007.)

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