

2012 Kansas Statutes

17-12a306. Denial, suspension and revocation of securities registration. (a) *Stop orders.* The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the administrator finds that the order is in the public interest and that:

(1) The registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under K.S.A. 17-12a305(j), and amendments thereto, as of its effective date, or a report under K.S.A. 17-12a305(i), and amendments thereto, is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) this act or a rule adopted or order issued under this act or a condition imposed under this act has been willfully violated, in connection with the offering, by:

(A) The person filing the registration statement, but only if such person is directly or indirectly controlled by or acting for the issuer;

(B) the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function;

(C) a promoter of the issuer;

(D) a person directly or indirectly controlling or controlled by the issuer; or

(E) an underwriter;

(3) the security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this act applicable to the offering, but the administrator may not institute a proceeding against an effective registration statement under this paragraph more than one year after the date of the order or injunction on which it is based, and the administrator may not issue an order under this paragraph on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;

(4) the issuer's enterprise or method of business includes or would include activities that are unlawful where performed or in this state;

(5) with respect to a security sought to be registered under K.S.A. 17-12a303, and amendments thereto, there has been a failure to comply with the undertaking required by K.S.A. 17-12a303(b)(4), and amendments thereto;

(6) the applicant or registrant has not paid the filing fee, but the administrator shall void the order if the deficiency is corrected;

(7) the offering:

(A) Will work or tend to work a fraud upon purchasers or would so operate;

(B) has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options; or

(C) is being made on terms that are unfair, unjust, or inequitable;

(b) *Enforcement of subsection (a)(7).* To the extent practicable, the administrator by rule adopted or order issued under this act shall publish standards that provide notice of conduct that violates subsection (a)(7).

(c) *Institution of stop order.* The administrator may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the administrator when the registration statement became effective unless the proceeding is instituted within 30 days after the registration statement became effective.

(d) *Summary process.* The administrator may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the administrator shall promptly notify each person specified in subsection (e) that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator, within 30 days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

(e) *Procedural requirements for stop order.* (1) A stop order may not be issued under this section without:

(A) Appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;

(B) an opportunity for hearing; and

(C) findings of fact and conclusions of law in a record.

(2) Any proceeding under this section shall be done in accordance with the Kansas administrative procedure act.

(f) *Modification or vacation of stop order.* The administrator may modify or vacate a stop order issued under this section if the administrator finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

History: L. 2004, ch. 154, § 16; July 1, 2005.