

17-12a510. Rescission offers. A purchaser, seller, or recipient of investment advice may not maintain an action under K.S.A. 17-12a509, and amendments thereto, if:

(1) The purchaser, seller, or recipient of investment advice receives in a record, before the action is instituted:

(A) An offer stating the respect in which liability under K.S.A. 17-12a509, and amendments thereto, may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this act to be furnished to that person at the time of the purchase, sale, or investment advice;

(B) if the basis for relief under this section may have been a violation of K.S.A. 17-12a509(b), and amendments thereto, an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest from the date of the purchase at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest from the date of the purchase at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto, in cash equal to the damages computed in the manner provided in this subsection;

(C) if the basis for relief under this section may have been a violation of K.S.A. 17-12a509(c), and amendments thereto, an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest from the date of the sale at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto; or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest from the date of the sale at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto;

(D) if the basis for relief under this section may have been a violation of K.S.A. 17-12a509(d), and amendments thereto; and if the customer is a purchaser, an offer to pay as specified in subparagraph (B); or, if the customer is a seller, an offer to tender or to pay as specified in subparagraph (C);

(E) if the basis for relief under this section may have been a violation of K.S.A. 17-12a509(e), and amendments thereto, an offer to reimburse in cash the consideration paid for the advice and interest from the date of payment at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto; or

(F) if the basis for relief under this section may have been a violation of K.S.A. 17-12a509(f), and amendments thereto, an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest from the date of the violation causing the loss at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto;

(2) the offer under paragraph (1) states that it must be accepted by the purchaser, seller, or recipient of investment advice within 30 days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period, of not less than three days, that the administrator, by order, specifies;

(3) the offer under paragraph (1) discloses whether the offeror has the present ability to pay the amount offered or to tender the security;

(4) the offer under paragraph (1) is delivered to the purchaser, seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and

(5) the purchaser, seller, or recipient of investment advice that accepts the offer under paragraph (1) in a record within the period specified under paragraph (2) is paid in accordance with the terms of the offer.

History: L. 2004, ch. 154, § 39; July 1, 2005.