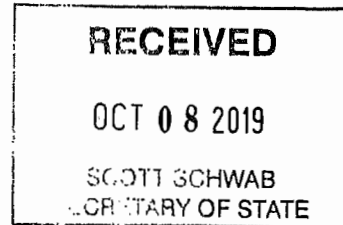


State of Kansas

Office of the State Bank Commissioner

Notice of Hearing on Proposed Revocation of Administrative Regulation



A public hearing will be conducted on Friday, December 20, 2019 at 9:00 a.m. in Conference Room A of the Jayhawk Tower Building, 700 SW Jackson, Fourth Floor, Topeka, KS 66603 to consider revocation of Kansas Administrative Regulation 17-23-9, a rule and regulation promulgated by the Office of the State Bank Commissioner regarding custody of trust investments.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed revocation. All interested parties may submit written comments prior to the hearing to the Office of the State Bank Commissioner, 700 S.W. Jackson, Suite 300, Topeka, Kansas 66603-3796 or by email to Melissa.Wangemann@osbckansas.org. All interested parties will be given a reasonable opportunity to present their views orally or in writing regarding the revocation of K.A.R. 17-23-9 during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to ten minutes.

Copies of the current regulation, proposed revocation, and the economic impact statement may be obtained from the Office of the State Bank Commissioner by contacting Melissa Wangemann at 785-296-1545, Melissa.Wangemann@osbckansas.org or the mailing address given above.

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed revocation and economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Melissa Wangemann at the Office of the State Bank Commissioner. The west entrance to the Jayhawk Tower Building is accessible and there is one accessible parking spot at 720 SW Jackson. There is additional accessible parking on the northwest corner of Jackson and 8th Street.

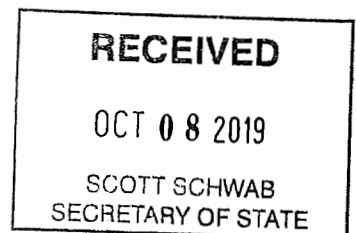
A summary of the proposed revocation and its economic impact follow. Copies of the proposed revocation and the economic impact statement can be viewed at the Office of the State Bank Commissioner's website, www.osbckansas.org.

K.A.R. 17-23-9. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1603, K.S.A. 9-1607, K.S.A. 9-1608, and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1; effective Feb. 28, 1994; amended Jan. 18, 2002; revoked P-_____.)

The revocation eliminates the requirement for a written custodial agreement when a bank's trust department or a trust company places investments from a fiduciary account with a

third-party custodian. There are no expected costs associated with revocation of the regulation. The revocation will allow banks and trust companies to use brokerage firms for investments of trust assets, a practice that is hindered under the current regulation.

Melissa A. Wangemann
General Counsel



K.A.R. 17-23-9. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1603, K.S.A. 9-1607, K.S.A. 9-1608, and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1; effective Feb. 28, 1994; amended Jan. 18, 2002; revoked P-_____.)

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SECRETARY OF STATE

**Kansas Administrative Regulations
Economic Impact Statement
For the Kansas Division of the Budget**

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Division of the Budget
296-1545
Contact Phone Number

Office of the State Bank Commissioner
Agency

Melissa Wangemann
Agency Contact

17-23-9
K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to: Division of the Budget
900 SW Jackson, Room 504-N
Topeka, KS 66612

I. Brief description of the proposed rule(s) and regulation(s).

The Kansas Banking Board voted to revoke this regulation at its September 16, 2019 board meeting. The revocation eliminates the requirement for a written custodial agreement when a bank's trust department or a trust company places investments from a fiduciary account with a third-party custodian.

II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. (If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)

This regulation is not mandated by the federal government and is not part of federal law. This regulation is different from contingency states' laws, dating back to the original regulation promulgated in 1994. While current OSBC employees cannot document why the regulation was originally adopted, the regulation was likely created to protect beneficiaries of a trust account. The regulation ensures that a written custodial agreement exists that requires segregation of the trust assets along with other safety measures intended to protect the beneficiary.

The revocation of this regulation removes the requirement for the written custodial agreement. Current staff at the OSBC believe that application of other laws can provide the same protections to trust beneficiaries, and the detailed listing for a custodial agreement is no longer necessary, and in fact, the custodial agreement hinders smaller banks and trust companies from providing trust services to their customers.

III. Agency analysis specifically addressing following:

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A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The proposed revocation will enhance the business activities of smaller trust departments (within banks) and trust companies by enabling them to place custody of securities with a brokerage firm. A professional custodian is expensive for small banks and trust companies, and using a brokerage firm to hold custody and invest trust assets is more affordable. The use of a brokerage firm also allows for continuance of a brokerage firm relationship that the customer may already have.

Most brokerage firms will not sign the custodial agreement outlined in K.A.R. 17-23-9 because of liability concerns; thus, the current regulation essentially prohibits the use of brokerage firms for custody of trust investments. At the time of writing the original regulation in 1994, brokerage firms would accept and sign the agreement. Refusal by brokerage firms to enter into a contract means the trust department or trust company must resign from the relationship (or violate the regulation). There is evidence that several large firms including Charles Schwab, Morgan Stanley and Waddell & Reed will not sign the custodial agreement that is outlined in the current regulation.

B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;

There are no expected quantifiable costs associated with revocation of the regulation. Banks and trust companies will no longer have to create written custodial agreements in order to invest trust assets with third-party custodians. The regulation will free up banks and trust companies to use brokerage firms for investments of trust assets. There are no effects on utility payers or local governments.

C. Businesses that would be directly affected by the proposed rule and regulation;

Kansas banks with trust departments and trust companies.

D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

The benefit is the elimination of a written custody agreement in order to invest funds with a third-party. The elimination of the requirement should reduce costs (and time) because banks and trust companies will no longer need to draft and finalize these agreements. Because brokerage firms will not generally sign the agreement anyway, the removal of the written agreement also frees up banks and trust companies to use brokerage firms. There are no associated costs compared to the benefits.

E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

The revocation of the regulation should reduce costs to Kansas banks and trust companies.

F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are

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reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

\$There are no new costs incurred with the revocation of K.A.R. 17-23-9.

Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?

YES NO

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

The data and methodology are limited to discussions with banks and trust companies during OSBC examinations and conversations with the Kansas Bankers Association.

Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

YES NO

G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

The proposed regulation does not impact local government or school districts.

H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

In the last several years, trusts examiners have consulted and solicited information from the presidents and trust officers of trusts and trusts companies they have visited. The proposed regulation reflects suggested changes that came from those interactions. Also, the OSBC has requested input from the Kansas Bankers Association and the Community Bankers Association of Kansas on the proposed regulation. The KBA Trust Division's membership includes 2/3 of the trust industry, and this group provided feedback to the OSBC on the proposed change.

I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

N/A

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