

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

As Engrossed: S1/22/97

A Bill

ACT 173 OF 1997
SENATE BILL 48

4
5 By: Senator Webb
6 By: Representative Beatty

For An Act To Be Entitled

9 "AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS
10 SECURITIES ACT; AND FOR OTHER PURPOSES."

Subtitle

13 "AN ACT TO AMEND VARIOUS SECTIONS OF THE
14 ARKANSAS SECURITIES ACT."

15
16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

17
18 SECTION 1. Arkansas Code § 23-42-102 is amended to read as follows:

19 "23-42-102. Definitions.

20 As used in this chapter, unless the context otherwise requires:

21 (1) Commissioner means the Securities Commissioner;

22 (2)(A) Agent means any individual, other than a broker-dealer, who
23 represents a broker-dealer or issuer in effecting or attempting to effect
24 purchases or sales of securities.

25 (B) Agent does not include an individual who represents:

26 (i) who represents an issuer in:

27 (i)(a) Effecting transactions in a security exempted
28 by § 23-42-503(a)(1)-(5)(4), or (9)-(11)(8), and any other transactions in a
29 security exempted by other clauses of § 23-42-503 which the commissioner may
30 by rule or order prescribe;

31 (ii)(b) Effecting transactions exempted by § 23-42-
32 504 unless otherwise required by § 23-42-504;

33 (c) Effecting transactions in covered securities
34 exempted by Sections 18(b)(3) or 18(b)(4)(C) of the Securities Act of 1933,
35 and any other transactions in a covered security which the commissioner may by
36 rule or order prescribe;

1 _____(iii)(d) Effecting transactions with existing
2 employees, partners, or directors of the issuer if no commission or other
3 remuneration is paid or given directly or indirectly for soliciting any person
4 in this state; or

5 _____(iv)(e) Effecting transactions involving a
6 reorganization or any other individual assisting the issuer or any other
7 constituent party in the process of the reorganization, so long as such
8 individual is not employed for the primary purpose of obtaining or soliciting
9 proxies, consents, or other required means of approval from the security
10 holders of the issuer or any other constituent party to the reorganization and
11 receives no compensation other than his regular salary and reimbursement for
12 actual expenses, if any, incurred in good faith in the course of such duties
13 or activities; or

14 (ii) a broker-dealer in effecting a transaction for a
15 customer in this State if:

16 (a) such transaction is effected on behalf of a
17 customer that, for 30 days prior to the day of the transaction, maintained an
18 account with the broker-dealer;

19 (b) such individual is not ineligible to register
20 with this State for any reason;

21 (c) such individual is registered with a registered
22 securities association and at least one State;

23 (d) the broker-dealer with which such individual is
24 associated is registered with this State;

25 (e) such transaction is effected by the individual
26 (1) to which the customer was assigned for 14
27 days prior to the day of the transaction, and

28 (2) who is registered with a State in which the
29 customer was a resident or was present for at least 30 consecutive days during
30 the one-year period prior to the transaction; except that, if the customer is
31 present in this State for 30 or more consecutive days or has permanently
32 changed his or her residence to this State, this subdivision (2)(B)(ii) shall
33 not be applicable unless the individual files with the commissioner an
34 application for registration within 10 calendar days of the later of the date
35 of the transaction or the date of the discovery of the presence of the
36 customer in this State for 30 or more consecutive days or the change in the

1 customer's residence; and

2 (f) the transaction is effected within the period
3 beginning on the date on which such individual files with the commissioner an
4 application for registration and ending on the earlier of

5 (1) 60 days after the date the application is
6 filed, or

7 (2) the time at which the commissioner notifies
8 the individual that he has denied the application for registration or has
9 stayed the pendency of the application for cause.

10 (g) For purposes of § 23-42-102(2)(B)(ii)(e)(2)
11 above, each of up to 3 individuals who are designated to effect transactions
12 during the absence or unavailability of the assigned individual for a customer
13 may be treated as such an assigned individual.

14 (C) A partner, officer, or director of a broker-dealer or issuer,
15 or a person occupying a similar status or performing similar functions, is an
16 agent only if he otherwise comes within this definition;

17 (3) Broker-dealer means any person engaged in the business of
18 effecting transactions in securities for the account of others or for his own
19 account. Broker-dealer does not include:

20 (A) An agent;

21 (B) An issuer;

22 (C) A bank, savings institution, savings and loan association, or
23 trust company; or

24 (D) A person who has no place of business in this state if:

25 (i) He effects transactions in this state exclusively with
26 or through:

27 (a) The issuers of the securities involved in the
28 transactions;

29 (b) Other broker-dealers; or

30 (c) Banks, savings institutions, savings and loan
31 associations, trust companies, insurance companies, investment companies as
32 defined in the Investment Company Act of 1940, pension or profit-sharing
33 trusts, or other financial institutions or institutional buyers, whether
34 acting for themselves or as trustees; or

35 (ii) During any period of twelve (12) consecutive months, he does
36 not direct more than fifteen (15) offers to sell or buy into this state in any

1 manner to persons other than those specified in subdivision (3)(D)(i) of this
2 subsection, whether or not the offeror or any of the offerees are then present
3 in this state;

4 (E) A person who is resident in Canada, has no office or other
5 physical presence in this state, and complies with the following conditions:

6 (i) Only effects or attempts to effect transactions in
7 securities:

8 (a) With or through the issuers of the securities
9 involved in the transactions, broker-dealers, banks, savings institutions,
10 trust companies, insurance companies, qualified purchasers as defined by the
11 Securities and Exchange Commission, investment companies (as defined in the
12 Investment Company Act of 1940), pension or profit-sharing trusts, or other
13 financial institutions or institutional buyers, whether acting for themselves
14 or as trustees;

15 (b) With or for a person from Canada who is
16 temporarily present in this state, with whom the Canadian person had a bona
17 fide business-client relationship before the person entered this state; or

18 (c) With or for a person from Canada who is present
19 in this state, whose transactions are in a self-directed tax advantaged
20 retirement plan in Canada of which the person is the holder or contributor;

21 (ii) Files a notice in the form of his current application
22 required by the jurisdiction in which his head office is located and a consent
23 to service of process;

24 (iii) Is a member of a self-regulatory organization or
25 stock exchange in Canada;

26 (iv) Maintains his provincial or territorial registration
27 and his membership in a self-regulatory organization or stock exchange in good
28 standing;

29 (v) Discloses to his clients in this state that he is not
30 subject to the full regulatory requirements of this chapter; and

31 (vi) Is not in violation of § 23-42-507 and all rules
32 promulgated thereunder.

33 (4) Covered security means any security described as a covered
34 security in Section 18(b) of the Securities Act of 1933;

35 ~~——(4)~~(5)(A) Farm cooperative means any cooperative formed for the purpose
36 of:

1 (i) Purchasing, producing, processing, marketing,
2 distributing, or selling crops or livestock for, or on behalf of, its members;
3 or

4 (ii) Purchasing, marketing, or distributing meat, dairy,
5 bakery, produce, or other food or grocery products for, or on behalf of, its
6 members.

7 (B) Farm cooperative shall not include any association formed for
8 the purpose of purchasing food or grocery products for, or on behalf of,
9 consumers;

10 ~~_____ (5)~~ (6) Fraud, deceit, and defraud are not limited to common-law
11 deceit;

12 ~~_____ (6)~~ (7) Guaranteed means guaranteed as to payment of principal,
13 interest, or dividends;

14 ~~_____ (7)~~ (8) Investment adviser means any person who, for compensation,
15 engages in the business of advising others, either directly or through
16 publications or writings, as to the value of securities or as to the
17 advisability of investing in, purchasing, or selling securities, or who, for
18 compensation, issues or promulgates analyses or reports concerning securities.
19 Investment adviser does not include:

20 (A) A bank, savings and loan association, credit union, or trust
21 company;

22 (B) A lawyer, accountant, engineer, or teacher whose performance
23 of these services is solely incidental to the practice of his profession;

24 (C) A broker-dealer whose performance of these services is solely
25 incidental to the conduct of his business as a broker-dealer and who receives
26 no special compensation for them;

27 (D) A publisher of any bona fide newspaper, news column,
28 newsletter, news magazine, or business or financial publication or service of
29 general, regular, and paid circulation, whether communicated in hard copy
30 form, by electronic means, or otherwise, that does not consist of the
31 rendering of advice on the basis of the specific investment situation of each
32 client;

33 (E) A person who has no place of business in this state if:

34 (i) His only clients in this state are other investment
35 advisers, broker-dealers, banks, savings institutions, trust companies,
36 insurance companies, investment companies as defined in the Investment Company

1 Act of 1940, pension or profit-sharing trusts, or other financial institutions
2 or institutional buyers, whether acting for themselves or as trustees; or
3 (ii) During ~~any~~ the preceding twelve (12) month period of
4 ~~twelve (12) consecutive months he does not direct business communications into~~
5 ~~this state in any manner to more than five (5)~~ he has had fewer than six (6)
6 clients who are residents of this State, other than those persons specified in
7 subdivision ~~(7)~~ (8)(E)(i) of this section, ~~whether or not he or any of the~~
8 ~~persons to whom the communications are directed is then present in this state;~~
9 or

10 (F) Such other persons not within the intent of this paragraph as
11 the commissioner may by rule or order designate;

12 ~~——(8)~~(9) Issuer means every person who issues or proposes to issue any
13 security, except that:

14 (A) With respect to certificates of deposit, voting-trust
15 certificates, or collateral-trust certificates, or with respect to
16 certificates of interest or shares in an unincorporated investment trust not
17 having a board of directors or persons performing similar functions or of the
18 fixed, restricted management, or unit type, the term issuer means the persons
19 performing the acts and assuming the duties of depositor or manager pursuant
20 to the provisions of the trust or other agreement or instrument under which
21 the securities are issued;

22 (B) In the case of an unincorporated association which provides by
23 its articles for limited liability of any or all of its members, or in the
24 case of a trust, committee, or other legal entity, the trustees or members
25 thereof shall not be individually liable as issuers of any security issued by
26 the association, trust, committee, or other legal entity;

27 (C) With respect to equipment-trust certificates or like
28 securities, the term issuer means the person by whom the equipment or
29 property is, or is to be, used; and

30 (D) With respect to fractional undivided interests in oil, gas, or
31 other mineral rights, the term issuer means the owner of the right or of any
32 whole or fractional interest in the right who creates fractional interests
33 therein for the purpose of the offering;

34 ~~——(9)~~(10) Nonissuer means not directly or indirectly for the benefit of
35 the issuer;

36 ~~——(10)~~(11) Person means an individual, a corporation, a limited liability

1 company, a partnership, an association, a joint-stock company, a trust where
2 the interests of the beneficiaries are evidenced by a security, an
3 unincorporated organization, a government, or a political subdivision of a
4 government;

5 ~~_____ (11)~~(12) Representative means any partner, officer, director of an
6 investment adviser, or a person occupying a similar status or performing
7 similar functions, or other individual employed by or associated with an
8 investment adviser, except clerical or ministerial personnel, who

9 (A) Makes any recommendation or otherwise renders advice regarding
10 securities;

11 (B) Manages accounts or portfolios of clients;

12 (C) Determines which recommendation or advice regarding securities
13 should be given; or

14 (D) Supervises employees who perform any of the foregoing;

15 ~~_____ (12)~~(13)(A)(i) Sale or sell includes every contract of sale of,
16 contract to sell, or disposition of, a security or interest in a security for
17 value.

18 (ii) Offer or offer to sell includes every attempt or
19 offer to dispose of, or solicitation of an offer to buy, a security or
20 interest in a security for value.

21 (iii) Any security given or delivered with, or given as a
22 bonus on account of, any purchase of securities or any other thing is
23 considered to constitute part of the subject of the purchase and to have been
24 offered and sold for value.

25 (iv) A purported gift of assessable stock is considered to
26 involve an offer and sale.

27 (v) Every other sale or offer of a warrant or right to
28 purchase or subscribe to another security of the same or another issuer, as
29 well as every sale or offer of a security which gives the holder a present or
30 future right or privilege to convert into another security of the same or
31 another issuer, is considered to include an offer of the other security.

32 (B) The terms defined in this subdivision (12) do not include:

33 (i) Any bona fide pledge or loan;

34 (ii) Any stock dividend, whether the corporation
35 distributing the dividend is the issuer of the stock or not, if nothing of
36 value is given by stockholders for the dividend other than the surrender of a

1 right to a cash or property dividend when each stockholder may elect to take
2 the dividend in cash or property or in stock;

3 (iii) Any stock split, reverse stock split, or change in par
4 value which involves the substitution of a security of an issuer for another
5 security of the same issuer; or

6 (iv) Any act incident to a judicially approved
7 reorganization in which a security is issued in exchange for one (1) or more
8 outstanding securities, claims, or property interests, or partly in such
9 exchange and partly for cash;

10 ~~_____ (13)~~(14) Securities Act of 1933, Securities Exchange Act of 1934,
11 Public Utility Holding Company Act of 1935, Investment Advisers Act of 1940,
12 and Investment Company Act of 1940 mean the federal statutes of those names,
13 as amended;

14 ~~_____ (14)~~(15)(A) Security means any:

15 (i) Note;

16 (ii) Stock;

17 (iii) Treasury stock;

18 (iv) Bond;

19 (v) Debenture;

20 (vi) Evidence of indebtedness;

21 (vii) Certificate of interest or participation in any
22 profit-sharing agreement;

23 (viii) Collateral-trust certificate;

24 (ix) Preorganization certificate or subscription;

25 (x) Transferable share;

26 (xi) Investment contract;

27 (xii) Variable annuity contract;

28 (xiii) Voting-trust certificate;

29 (xiv) Certificate of deposit for a security;

30 (xv) Certificate of interest or participation in an oil,
31 gas, or mining title or lease or in payments out of production under such a
32 title or lease; or

33 (xvi) In general, any interest or instrument commonly known
34 as a security or any certificate of interest or participation in, temporary
35 or interim certificate for, guarantee of, or warrant or right to subscribe to
36 or purchase, any of the foregoing.

1 (B) Security does not include any insurance or endowment policy
2 or annuity contract or variable annuity contract issued by any insurance
3 company;

4 ~~_____ (15)~~(16) State means any state, territory, or possession of the United
5 States, the District of Columbia, and Puerto Rico."
6

7 SECTION 2. Arkansas Code § 23-42-106(a) is amended to read as follows:

8 "(a)(1) Any person who commits the following acts is liable to the
9 person buying the security from him, who may sue either at law or in equity to
10 recover the consideration paid for the security, together with interest at six
11 percent (6%) per year from the date of payment, costs, and reasonable
12 attorney's fees, less the amount of any income received on the security, upon
13 the tender of the security, or for damages if he no longer owns the security:

14 (A) Offers or sells a security in violation of § 23-42-301, § 23-
15 42-212(b), ~~or~~ § 23-42-501(1) or (2), or any rule or order under § 23-42-502
16 which requires the affirmative approval of sales literature before it is used,
17 or in violation of any condition imposed under § 23-42-403(d), § 23-42-
18 404~~(h)~~(g), or § 23-42-404~~(j)~~(i); or

19 (B) Offers or sells a security by means of any untrue statement
20 of a material fact or any omission to state a material fact necessary in order
21 to make the statements made, in the light of circumstances under which they
22 are made, not misleading, the buyer not knowing of the untruth or omission,
23 and who does not sustain the burden of proof that he did not know, and in the
24 exercise of reasonable care could not have known, of the untruth or omission;

25 (2) Damages are the amount that would be recoverable upon a tender
26 less the value of the security when the buyer disposed of it and interest at
27 six percent (6%) per year from the date of disposition."
28

29 SECTION 3. Arkansas Code § 23-42-104 is amended by adding a subsection
30 at the end thereof to read as follows:

31 "(h) The provisions of subsection (e) shall not apply to any violation
32 of § 23-42-509."
33

34 SECTION 4. Arkansas Code § 23-42-107(a) is amended to read as follows:

35 "(a)(1) Every applicant for registration under this chapter, every
36 person making a notice filing, and every issuer for whom a registration, ~~or~~

1 exemption from registration or notice filing is required under this chapter,
2 shall file with the commissioner, in the form which he prescribes by rule, an
3 irrevocable consent appointing the commissioner or his successor in office to
4 be his attorney to receive service of any lawful process in any noncriminal
5 suit, action, or proceeding against him or his successor, executor, or
6 administrator which arises under this chapter or any rule or order hereunder
7 after the consent has been filed, with the same force and validity as if
8 served personally on the person filing the consent. However, this shall not
9 apply to applicants, persons making notice filings, and issuers who have a
10 place of business in Arkansas, have qualified to do business in Arkansas with
11 the Secretary of State, and have either an agent for service of process or
12 have executed a consent appointing the Secretary of State agent for service of
13 process, or may otherwise be subject to service of process.

14 (2) A person who has filed a consent appointing the commissioner in
15 connection with a previous registration or notice filing need not file another
16 when ~~filing an application for~~ renewing a registration or notice filing. ~~under~~
17 ~~the renewal provisions of this chapter.~~

18 (3) Service may be made by leaving a copy of the process in the
19 office of the commissioner, but it is not effective unless:

20 (A) The plaintiff, who may be the commissioner in a suit, action,
21 or proceeding instituted by him, immediately sends notice of the service and a
22 copy of the process by mail with proof of service to the defendant or
23 respondent at his last address on file with the commissioner; and

24 (B) The plaintiffs affidavit of compliance with this subsection
25 is filed in the case on or before the return day of the process, if any, or
26 within such further time as the court allows."

27

28 SECTION 5. Arkansas Code § 23-42-202 is amended to read as follows:

29 "23-42-202. Delegation of authority by commissioner.

30 (a) The commissioner may delegate to any ~~employee of the department~~
31 person under any conditions which he deems appropriate any responsibilities of
32 the commissioner as set forth in this chapter, the Savings and Loan Act, § 23-
33 37-101 et seq., the Credit Union Act, § 23-35-101 et seq., or any other act
34 for which the commissioner is responsible.

35 (b) The commissioner, subject to any restrictions which he in his
36 discretion deems appropriate, may delegate to any ~~employee of the department~~

1 person the exercise or discharge in the commissioner's name of any power,
2 duty, or function, whether ministerial, discretionary, or of whatever
3 character, vested by this chapter in the commissioner."
4

5 SECTION 6. Arkansas Code § 23-42-204(a) is amended to read as follows:

6 "(a) The commissioner, from time to time, may make, amend, and rescind
7 any rules, forms, and orders which are necessary to carry out the provisions
8 of this chapter. This includes rules and forms governing registration
9 statements, applications, notice filings, and reports and defining any terms,
10 whether or not used in this chapter, insofar as the definitions are not
11 inconsistent with the provisions of this chapter. For the purpose of rules
12 and forms, the commissioner may classify securities, persons, and matters
13 within his jurisdiction and prescribe different requirements for different
14 classes."
15

16 SECTION 7. Arkansas Code § 23-42-206(b) is amended to read as follows:

17 "(b) The commissioner shall keep a register of all notice filings,
18 applications for registration and registration statements which are, or have
19 ever been, effective under this chapter and all denial, suspension, or
20 revocation orders which have ever been entered under this chapter. The
21 register shall be open for public inspection."
22

23 SECTION 8. Arkansas Code § 23-42-207 is amended to read as follows:

24 "23-42-207. Public inspection of records - Exceptions.

25 (a)(1) Unless otherwise specified below, all information filed with the
26 commissioner shall be available for public inspection.

27 (2) The information contained in or filed with any registration
28 statement, notice filing, application, or report may be made available to the
29 public under any rules which the commissioner prescribes.

30 (b) Except for reasonable segregable portions which are public
31 information, the commissioner shall not publish or make available the
32 following information:

33 (1) Information contained in reports, summaries, analyses, letters,
34 or memoranda arising out of, in anticipation of, or in connection with an
35 examination or inspection of the books and records of any person or any other
36 investigation;

1 (2) Inter-agency or intra-agency memoranda or letters, including
2 generally records which reflect discussions between or consideration by the
3 commissioner or members of his staff, or both, of any action taken or proposed
4 to be taken by the commissioner or by any members of his staff, and,
5 specifically, reports, summaries, analyses, conclusions, or any other work
6 product of the commissioner or of attorneys, accountants, analysts, or other
7 members of the commissioner's staff, prepared in the course of an inspection
8 of the books or records of any person whose affairs are regulated by the
9 commissioner, or prepared otherwise in the course of an examination or
10 investigation or related litigation conducted by or on behalf of the
11 commissioner, except those which by law would routinely be made to a party
12 other than agency in litigation with the commissioner;

13 (3) Personnel and medical files and similar files the disclosure of
14 which would constitute a clearly unwarranted invasion of personal privacy,
15 including those concerning all employees of the State Securities Department
16 and those concerning persons subject to regulation by employees of broker-
17 dealers reported to the commissioner pursuant to the department's rules
18 concerning registration of broker-dealers and agents;

19 (4) Investigatory records compiled for law enforcement purposes to
20 the extent that production of the records would interfere with enforcement
21 proceedings, deprive a person of a right to a fair trial or an impartial
22 adjudication, or disclose the identity of a confidential source.

23 (A) In a particular case the commissioner may also withhold
24 investigatory records that would constitute an unwarranted invasion of
25 personal privacy, disclose investigative techniques and procedures, or
26 endanger the life or physical safety of law enforcement personnel.

27 (B) Investigatory records include all documents, records,
28 transcripts, correspondence, and related memoranda and work product concerning
29 examinations and other investigations and related litigation as authorized by
30 law, which pertain to or may disclose the possible violations by any person of
31 any provision of any of the statutes, rules, or regulations administered by
32 the commissioner, and all written communications from or to any person
33 confidentially complaining or otherwise furnishing information respecting the
34 possible violations, as well as all correspondence and memoranda in connection
35 with the confidential complaints or information;

36 (5) Information contained in or related to examinations, operating,

1 or condition reports prepared by, on behalf of, or for the use of any agency
2 responsible for the regulation ~~of~~ or supervision of financial institutions;

3 (6)(A) Financial records of broker-dealers, investment advisers,
4 agents, or representatives obtained during or as a result of an examination by
5 the department.

6 (B) However, when those records are required by this chapter to
7 be filed with the department as part of a notice filing, registration, annual
8 renewal, or otherwise, the records, including financial statements prepared by
9 certified public accountants, shall be public unless sections of the
10 information are bound separately and marked privileged and confidential by the
11 broker-dealer, investment adviser, agent, or representative upon its
12 submission, in which case it shall be deemed nonpublic until ten (10) days
13 after the commissioner has given the broker-dealer, investment adviser, agent,
14 or representative notice that an order will be entered deeming the material
15 public.

16 (C) If the broker-dealer, investment adviser, agent, or
17 representative believes the commissioner's order is incorrect, the broker-
18 dealer, investment adviser, agent, or representative may seek an injunction
19 from the Circuit Court or Chancery Court of Pulaski County ordering the
20 department to hold the information as nonpublic pending a final order of a
21 court of competent jurisdiction if the order of the commissioner is appealed
22 pursuant to applicable law;

23 (7) Trade secrets obtained from any person;

24 (8) Any other records which under the Freedom of Information Act of
25 1967, § 25-19-101 et seq., or other laws are required to be closed to the
26 public and are not deemed open to the public inspection."

27 SECTION 9. Arkansas Code § 23-42-209(a)(1) is amended to read as
28 follows:

29 '(a)(1) Whenever it appears to the commissioner, upon sufficient
30 grounds or evidence satisfactory to the commissioner, that any person has
31 engaged or is about to engage in any act or practice constituting a violation
32 of any provision of this chapter, except the provisions of § 23-42-509, or any
33 rule or order under this chapter, including any order issued under § 23-42-
34 509, he may summarily order the person to cease and desist from the act or
35 practice. Upon the entry of the order, the commissioner shall promptly notify
36 such person that the order has been entered, of the reasons therefor, and of

1 his right to a hearing on the order.

2 SECTION 10. Arkansas Code § 23-42-212(a) is amended to read as
3 follows:

4 "(a)(1) Neither the fact that an application for registration, a notice
5 filing, or a registration statement has been filed nor the fact that a person
6 or security is effectively registered constitutes a finding by the
7 commissioner that any document filed under this chapter is true, complete, and
8 not misleading.

9 (2) Neither any such fact nor the fact that an exemption or
10 exception is available for a security or a transaction means that the
11 commissioner has passed in any way upon the merits or qualifications of, or
12 recommended or given approval to, any person, security, or transaction."

13

14 SECTION 11. Arkansas Code § 23-42-301 is amended to read as follows:

15 "23-42-301. Registration required.

16 (a) It is unlawful for any person to transact business in this state as
17 a broker-dealer or agent unless he is registered under this chapter.

18 (b)(1) It is unlawful for any registered broker-dealer or issuer to
19 employ an unregistered agent except a nonresident agent who is registered by
20 any other state securities administrator and who effects transactions in this
21 state exclusively with registered broker-dealers.

22 (2) The registration of an agent is not effective during any period
23 when he is not associated with a particular broker-dealer registered under
24 this chapter, or with a particular issuer.

25 (3)(A) When an agent begins or terminates a connection with a
26 broker-dealer or issuer, or begins or terminates those activities which make
27 him an agent, then the broker-dealer or issuer shall promptly notify the
28 commissioner or the commissioner's designee.

29 (B) When an agent terminates his registration with or withdraws
30 his registration from a broker-dealer or issuer, a subsequent application by
31 the agent for registration shall be considered an initial registration and
32 shall be deemed a notification by the agent of termination or withdrawal of
33 the previous registration or application.

34 (4) The commissioner may by rule establish provisions for concurrent
35 registration with more than one (1) broker-dealer or issuer.

36 (c) It is unlawful for any person to transact business in this state as

1 an investment adviser or representative ~~unless he is so~~ without first being
2 registered under this chapter unless such person:

3 (1) is registered as an investment adviser with the Securities and
4 Exchange Commission under section 203 of the Investment Advisers Act of 1940
5 and has filed with the commissioner a notice filing consisting of a copy of
6 such documents on file with the Securities and Exchange Commission as the
7 commissioner may by rule or order prescribe, along with an appropriate fee as
8 set forth in § 304(a)(3) and a consent to service of process;

9 (2) is a representative of an investment adviser registered with
10 the Securities and Exchange Commission under section 203 of the Investment
11 Advisers Act of 1940 and has no place of business located in this State; or

12 (3) is not registered as an investment adviser under section 203 of
13 the Investment Advisers Act of 1940 because such person is exempted from the
14 definition of investment adviser under section 202(a)(11) of such Act.

15 (d)(1) A notice filing required under subsection (c)(1) shall become
16 effective upon receipt by the commissioner of the notice filing, consent to
17 service of process, and appropriate fee.

18 (2)(A) Every registration and every notice filing required under
19 subsection (c)(1) expires December 31 of each year unless ~~the registration is~~
20 renewed.

21 (B) An investment adviser that has made a notice filing pursuant
22 to subsection (c)(1) may terminate such notice filing upon providing the
23 commissioner notification of such termination. Such termination shall be
24 effective upon the commissioner's receipt of notification of termination.

25 (e)(1) At least one (1) individual, who shall have direct supervision
26 over the purchase and sale of securities in Arkansas, shall be:

27 (A) Registered as an agent and designated a principal of a
28 broker-dealer; or

29 (B) Registered as an agent of the issuer and shall satisfy
30 qualifications set by the commissioner.

31 (2)(A) Each broker-dealer which has a branch office located in
32 Arkansas shall designate at least one (1) principal who is a resident of this
33 state.

34 (B) A broker-dealer with more than one branch office located in
35 Arkansas may designate more than one (1) resident principal and specify the
36 branch office or offices for which each resident principal has supervisory

1 responsibility.

2 (3) Upon the removal of the individual or individuals designated
3 under this subsection from the broker-dealer or issuer, or upon the removal of
4 the principal from the direct supervision of the purchase and sale of
5 securities in Arkansas, the issuer or broker-dealer must again satisfy this
6 provision."

7

8 SECTION 12. Arkansas Code § 23-42-302(h) is amended to read as follows:

9 "(h) A registered broker-dealer, ~~or~~ investment adviser, or person
10 required to make a notice filing pursuant to § 23-42-301(c)(1) may file an
11 application for registration or notice filing of a successor, whether or not
12 the successor is then in existence. Such application or notice filing shall
13 comply with the requirements for an initial application or notice filing."

14

15 SECTION 13. Arkansas Code § 23-42-303 is amended to read as follows:

16 "23-42-303. Minimum net capital requirement.

17 (a) The commissioner shall require a minimum net capital for registered
18 broker-dealers in ~~the such amount of twenty-five thousand dollars (\$25,000) as~~
19 he may by rule prescribe, and for registered investment advisers in the amount
20 of twelve thousand five hundred dollars (\$12,500).

21 ~~—— (b) No registered broker-dealer shall permit his aggregate indebtedness~~
22 ~~to exceed fifteen hundred percent (1500%) of the net capital of the broker-~~
23 ~~dealer.~~

24 (b) However, subsection (a) shall not apply to any registered investment
25 adviser which maintains its principal place of business in a State other than
26 Arkansas that:

27 (1) is registered or licensed as such in the State in which it
28 maintains its principal place of business; and

29 (2) is in compliance with the applicable net capital requirements of
30 the State in which it maintains its principal place of business.

31 ~~—— (c) The commissioner shall define net capital and aggregate~~
32 ~~indebtedness by rule.~~

33 ~~—— (d) Subsections (a) and (b) of this section shall not apply to broker-~~
34 ~~dealers registered with the Securities and Exchange Commission who are also~~
35 ~~members of the National Association of Securities Dealers or investment~~
36 ~~advisers registered with the Securities and Exchange Commission."~~

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SECTION 14. Arkansas Code § 23-42-304(a) is amended to read as follows:

"(a) Every applicant for initial or renewal registration and every person making a notice filing as required by § 301(c) shall pay a filing fee of:

- (1) Three hundred dollars (\$300) in the case of a broker-dealer;
- (2) Seventy-five dollars (\$75.00) in the case of an agent, of which twenty-five dollars (\$25.00) shall be designated as special revenues and shall be deposited in the Securities Department Fund;
- (3) Three hundred dollars (\$300) in the case of an investment adviser; and
- (4) Seventy-five dollars (\$75.00) in the case of a representative, of which twenty-five dollars (\$25.00) shall be designated as special revenues and shall be deposited in the Securities Department Fund."

SECTION 15. Arkansas Code § 23-42-305 is amended to read as follows:

"23-42-305. Corporate surety bonds - Alternatives.

~~(a)(1)~~ The commissioner shall require registered broker-dealers to ~~post~~ maintain a corporate surety bond in the such form and amount of one hundred thousand dollars (\$100,000) as he may by rule prescribe, registered investment advisers who hold customer funds or who have discretionary authority over any customer's account to post a corporate surety bond in the amount of fifty thousand dollars (\$50,000), and, unless the commissioner prescribes otherwise, an agent for the issuer to post a corporate surety bond in the amount of twenty-five thousand dollars (\$25,000). However, this subsection shall not apply to any registered investment adviser which maintains its principal place of business in a State other than Arkansas that:

(1) is registered or licensed as such in the State in which it maintains its principal place of business; and

(2) is in compliance with the applicable bonding requirements of the State in which it maintains its principal place of business.

(b) The following shall apply to those bonds required to be posted with the commissioner under subsection (a):

~~(2)(1)~~ In no event shall the total liability of the surety to all persons, cumulative or otherwise, exceed the amounts specified in the bond.

~~(3)(2)~~ Every bond shall provide that no suit may be maintained to

1 enforce any liability on the bond unless brought within five (5) years after
2 the sale or other act upon which it is based.

3 ~~(4)(3)~~ Every bond shall provide for suit thereon by any person who
4 has a cause of action under this chapter.

5 ~~_____ (b) However, in lieu of a corporate surety bond:~~

6 ~~(1) A broker-dealer registered with the Securities and Exchange
7 Commission, who is also a member of the National Association of Securities
8 Dealers and either a member of the Securities Investor Protection Corporation
9 or excluded from being a member thereof, and whose agents are registered with
10 the National Association of Securities Dealers, may maintain a fidelity bond
11 covering each agent in a form substantially similar to the standard form of
12 brokers' blanket bond promulgated by the Surety Association of America, in
13 the following amounts:~~

14	_____ Dealer with 1 to 5 agents.....	\$40,000
15	_____ Dealer with 6 to 10 agents.....	\$50,000
16	_____ Dealer with 11 to 15 agents.....	\$60,000
17	_____ Dealer with 16 to 20 agents.....	\$70,000
18	_____ Dealer with 21 to 30 agents.....	\$80,000
19	_____ Dealer with over 30 agents.....	\$100,000

20 ~~and covering, at least, fidelity on premises, in transit, misplacement,
21 forgery and alteration including check forgery, securities loss including
22 securities forgery, and fraudulent trading;~~

23 ~~_____ (2) A broker-dealer registered with the Securities and Exchange
24 Commission who is a member of the National Association of Securities Dealers
25 and who operates as a sole proprietor which has no agent other than the sole
26 proprietor shall keep and maintain at least fifty thousand dollars (\$50,000)
27 personal net worth evidenced by an annual audited financial statement prepared
28 by an independent certified public accountant and filed with the commissioner;~~

29 ~~_____ (3) Unless the commissioner by rule or order prescribes otherwise,
30 an investment adviser who is registered with the Securities and Exchange
31 Commission, and who does not maintain customer funds, shall keep and maintain
32 at least twenty-five thousand dollars (\$25,000) net worth evidenced by an
33 annual audited financial statement accompanied by an opinion acceptable to the
34 commissioner prepared by an independent certified public accountant and filed
35 with the commissioner; or~~

36 ~~(4) However, in lieu of the posting of a corporate surety bond, the~~

1 commissioner shall accept any appropriate deposit of cash or securities issued
 2 by the federal government, the State of Arkansas, or any political subdivision
 3 thereof, and having a market value of an amount equal to the required
 4 corporate surety bond. The deposits of cash and securities shall not be
 5 withdrawn until five (5) years after the last effective date of registration
 6 or the last effective date for which the deposit was used as a requirement.
 7 ~~—— (c) The commissioner, in his discretion, has the authority to~~
 8 ~~immediately refund any deposit of cash or securities pledged in lieu of a~~
 9 ~~fidelity bond by a broker-dealer who operates as a sole proprietorship which~~
 10 ~~has no agents other than the sole proprietor and who is registered with the~~
 11 ~~Securities and Exchange Commission and is a member of the National Association~~
 12 ~~of Securities Dealers and the Securities Investor Protection Corporation."~~

14 SECTION 16. Arkansas Code § 23-42-306(a) is amended to read as follows:

15 " (a) Every applicant, registered issuer, registered broker-dealer, or
 16 registered investment adviser shall make and keep any accounts,
 17 correspondence, memoranda, papers, books, and other records which the
 18 commissioner by rule prescribes. However, this subsection shall not apply to
 19 any registered investment adviser which maintains its principal place of
 20 business in a State other than Arkansas that:

21 (1) is registered or licensed as such in the State in which it
 22 maintains its principal place of business; and

23 (2) is in compliance with the applicable net capital requirements of
 24 the State in which it maintains its principal place of business. All records
 25 ~~so required shall be preserved for five (5) years unless the commissioner by~~
 26 ~~rule prescribes otherwise for particular types of records."~~

28 SECTION 17. Arkansas Code § 23-42-404 is amended to read as follows:

29 "23-42-404. Registration statements generally.

30 (a) A registration statement may be filed by the issuer, any other
 31 person on whose behalf the offering is to be made, or a registered broker-
 32 dealer.

33 (b)(1) Every person filing a registration statement shall pay a filing
 34 fee of one-tenth of one percent (0.1%) of the maximum aggregate offering price
 35 at which the registered securities are to be offered in this state, but the
 36 fee shall in no case be less than one hundred fifty dollars (\$150) nor more

1 than two thousand dollars (\$2,000). Any portion of the fee in excess of one
2 thousand dollars (\$1,000) shall be designated as special revenues and shall be
3 deposited in the Securities Department Fund. When a registration statement is
4 withdrawn before the effective date or a preeffective stop order is entered
5 under \S 23-42-405, the commissioner shall retain one hundred fifty dollars
6 (\$150) of the filing fee.

7 (2) Sales of securities in excess of the amount of securities to have
8 been offered in this state shall require the person filing the registration
9 statement to pay a filing fee, calculated in the manner specified in
10 subdivision (b)(1) of this section, for all securities sold. In addition, if
11 the sales are in excess of one hundred five percent (105%) of the amount to
12 have been offered, the person filing the registration statement shall pay a
13 penalty fee of two hundred dollars (\$200).

14 ~~(c)(1) The initial registration statement of an open-end investment~~
15 ~~company, as defined in the Investment Company Act of 1940, as amended, filed~~
16 ~~pursuant to this subsection shall be effective for a period ending two (2)~~
17 ~~months after the registrant's fiscal year end. Thereafter, the open-end~~
18 ~~investment company must renew the registration by submitting the appropriate~~
19 ~~registration forms and fees within two (2) months after the expiration of the~~
20 ~~registrant's fiscal year end.~~

21 ~~(2) The registration statement of a unit investment trust, as defined~~
22 ~~in the Investment Company Act of 1940, as amended, filed pursuant to this~~
23 ~~subsection shall be effective for one (1) year from the date of effectiveness~~
24 ~~granted by the Securities and Exchange Commission.~~

25 ~~(d)(c) Every registration statement shall specify:~~

26 (1) The amount of securities to be offered in this state;

27 (2) The states in which a registration statement or similar document
28 in connection with the offering has been or is to be filed; and

29 (3) Any adverse order, judgment, or decree entered in connection with
30 the offering by the regulatory authorities in each state or by any court or
31 the Securities and Exchange Commission.

32 ~~(e)(d) Any document filed under this chapter or a predecessor act,~~
33 ~~within five (5) years preceding the filing of a registration statement, may be~~
34 ~~incorporated by reference in the registration statement to the extent that the~~
35 ~~document is currently accurate.~~

36 ~~(f)(e) The commissioner may by rule or otherwise permit the omission of~~

1 any item of information or document from any registration statement.

2 ~~_____ (g)(f)~~ In the case of a nonissuer distribution, information may not be
3 required under \S 23-42-403 or subsection ~~(n)(m)~~ of this section unless it is
4 known to the person filing the registration statement or to the persons on
5 whose behalf the distribution is to be made, or can be furnished by them
6 without unreasonable effort or expense.

7 ~~_____ (h)(g)~~(1) The commissioner may, by rule or order, require as a condition
8 of registration by qualification or coordination that:

9 (A) Any security issued within the past three (3) years or to be
10 issued to a promoter for a consideration substantially different from the
11 public offering price, or to any person for a consideration other than cash,
12 be deposited in escrow;

13 (B) The proceeds from the sale of the registered security be
14 impounded until the issuer receives a specified amount.

15 (2) The commissioner may by rule or order determine the conditions of
16 any escrow or impounding required hereunder, but he may not reject a
17 depository solely because of location in another state.

18 ~~_____ (i)(h)~~ The commissioner may require the issuer, as a condition of
19 registration by qualification, to escrow up to ten percent (10%) of the
20 maximum aggregate price of the offering, from the offering proceeds under such
21 terms and conditions as he deems appropriate for up to three (3) years from
22 the date of termination of the offering, or to post a corporate surety bond
23 for up to ten percent (10%) of the maximum aggregate price of the offering for
24 up to (3) years from the date of termination of the offering. Any security
25 holder having a right under this chapter against the issuer shall have a right
26 of action against the escrow or corporate surety bond.

27 ~~_____ (j)(i)~~ The commissioner may by rule or order require as a condition of
28 registration that any security registered by qualification or coordination be
29 sold only on an approved form of subscription or sale contract and that a
30 signed or conformed copy of each subscription or sale contract be filed with
31 the commissioner or preserved for any period up to three (3) years specified
32 in the rule or order.

33 ~~_____ (k)(j)~~ Every registration statement, ~~except those filed pursuant to~~
34 ~~subsection (c) of this section,~~ is effective for one (1) year from its
35 effective date and, upon renewal, for any longer period during which the
36 security is being offered or distributed in a nonexempted transaction, except

1 during the time a stop order is in effect.

2 ~~_____~~(l)(k) Renewal registration for the succeeding twelve-month period may
3 be issued upon written application and upon payment of fees as provided by
4 this section for original registration, even though the maximum fee was paid
5 the preceding period, without filing of further statements or furnishing any
6 further information except as requested by the commissioner. All applications
7 for renewal received after the expiration of the previous registration shall
8 be treated as original applications.

9 ~~(m)~~(l)(1) All outstanding securities of the same class as a registered
10 security are considered to be registered for the purpose of any nonissuer
11 transactions:

12 (A) So long as the registration statement is effective, whether by
13 original or renewal registration; and

14 (B) Between the thirtieth day after the entry of any stop order
15 suspending or revoking the effectiveness of the registration statement under ~~§~~
16 23-42-405, if the registration statement did not relate in whole or in part to
17 a nonissuer distribution, and one (1) year from the effective date of the
18 registration statement.

19 (2) A registration statement may not be withdrawn for one (1) year
20 from its effective date if any securities of the same class are outstanding.
21 A registration statement may be withdrawn otherwise only in the discretion of
22 the commissioner.

23 ~~_____~~(n)(m) So long as a registration statement is effective, the
24 commissioner may by rule or order require the person who filed the
25 registration to keep reasonably current the information contained in the
26 registration statement and to disclose the progress of the offering.

27 ~~_____~~(o)(n) A registration statement relating to a security may be amended
28 after its effective date so as to increase the securities specified as
29 proposed to be offered. The amendment becomes effective when the commissioner
30 so orders. Every person filing such an amendment shall pay a filing fee,
31 calculated in the manner specified in subsection (b) of this section, with
32 respect to the additional securities proposed to be offered.

33 ~~_____~~(p)(o) The State Securities Department is hereby authorized to
34 promulgate such rules and regulations necessary to administer the fees, rates,
35 tolls, or charges for services established by ~~§§~~ 23-42-304 and 23-42-404 and
36 is directed to prescribe and collect such fees, rates, tolls, or charges for

1 the services by the State Securities Department in such manner as may be
2 necessary to support the programs of the department as directed by the
3 Governor and the General Assembly."

4

5 SECTION 18. Arkansas Code § 23-42-501 is amended to read as follows:

6 "23-42-501. Sale of unregistered nonexempt securities.

7 It is unlawful for any person to offer or sell any security in this
8 state unless:

9 (1) It is registered under this chapter; ~~or~~

10 (2) The security or transaction is exempted under §§ 23-42-503 or 23-
11 42-504; or

12 (3) It is a covered security."

13

14 SECTION 19. Arkansas Code § 23-42-502 is amended to read as follows:

15 "23-42-502. Filing of prospectus, sales literature, etc.

16 The Commissioner, by rule or order, may require the filing of any
17 prospectus, pamphlet, circular, form letter, advertisement, television, radio,
18 or other sales literature or advertising communication addressed or intended
19 for distribution to prospective investors, including clients or prospective
20 clients of an investment adviser as part of a registered offering or as part
21 of an ~~exemption~~ offering required to be filed under § 23-42-503(d) or § 23-42-
22 504(b)."

23

24 SECTION 20. Arkansas Code § 23-42-503 is amended to read as follows:

25 "23-42-503. Exempted securities.

26 (a) The following securities are exempted from §§ 23-42-501 and 23-42-
27 502:

28 (1)(A) Any security, including a revenue obligation, issued or
29 guaranteed by ~~the United States, any this state,~~ any political subdivision of
30 ~~a this state,~~ or any agency or corporate or other instrumentality of one (1)
31 or more of the foregoing, or any certificate of deposit for any of the
32 foregoing.

33 (B) Any securities that are offered and sold pursuant to Section
34 4(5) of the Securities Act of 1933 or that are mortgage related securities as
35 that term is defined in section 3(a)(41) of the Securities Exchange Act of
36 1934 are not covered securities ~~exempt from registration under this section~~ in

1 the same manner as obligations issued or guaranteed as to principal and
2 interest by the United States or any agency or instrumentality thereof. These
3 instruments, commonly referred to as private mortgage-backed securities, may
4 be exempt from the registration requirements of this chapter provided that the
5 transaction or the securities are otherwise exempt under this section. This
6 provision specifically overrides the preemption of state law contained in
7 section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984,
8 Public Law 98-440, of the United States;

9 (2) Any security issued or guaranteed by Canada, any Canadian
10 province, any political subdivision of any Canadian province, any agency or
11 corporate or other instrumentality of one (1) or more of the foregoing, or by
12 any other foreign government with which the United States currently maintains
13 diplomatic relations, if the security is recognized as a valid obligation by
14 the issuer or guarantor;

15 (3) Any security issued by and representing an interest in or a debt
16 of any bank organized under the laws of the United States, or any federally
17 insured savings bank, or any bank, savings institution, or trust company
18 organized and supervised under the laws of any state, or any bank holding
19 company regulated under the Bank Holding Company Act of 1956, as amended;

20 (4) Any security issued by and representing an interest in or a debt
21 of any state or federal savings and loan association, or any federally insured
22 savings bank, or any building and loan or similar association organized under
23 the laws of any state and authorized to do business in this state, or any
24 savings and loan holding company regulated by the Office of Thrift Supervision
25 of the United States Department of the Treasury or its successor;

26 ~~(5) Any security issued by any federal credit union or any credit~~
27 ~~union, industrial loan association, or similar association organized and~~
28 ~~supervised under the laws of this state;~~

29 ~~_____ (6)(5) Any security issued or guaranteed by any railroad, other~~
30 ~~common carrier, public utility, or holding company which is:~~

31 ~~_____ (A) Subject to the jurisdiction of the Interstate Commerce~~
32 ~~Commission;~~

33 ~~_____ (B)(A) A registered holding company under the Public Utility~~
34 ~~Holding Company Act of 1935 or a subsidiary of such a company within the~~
35 ~~meaning of that act;~~

36 ~~_____ (C)(B) Regulated in respect of its rates and charges by a~~

1 governmental authority of the United States or any state; or

2 ~~_____ (D)(C) Regulated in respect of the issuance or guarantee of the~~
3 ~~security by a governmental authority of the United States, any state, Canada,~~
4 ~~or any Canadian province;~~

5 ~~(7)(A) Any security listed or approved for listing upon notice of~~
6 ~~issuance on the New York Stock Exchange, the American Stock Exchange, the~~
7 ~~Midwest Stock Exchange, or any other stock exchange approved by the~~
8 ~~commissioner;~~

9 ~~_____ (B) Any security listed or designated, or approved for listing or~~
10 ~~designation upon notice of issuance, on an interdealer quotation system, if~~
11 ~~such interdealer quotation system has adopted the criteria for listing or~~
12 ~~designation as set forth in Securities Act Release No. 6810 (Dec. 16, 1988);~~
13 ~~53 Federal Register 52550 (December 28, 1988); provided, however, that the~~
14 ~~commissioner shall have authority, after notice and hearing, to terminate this~~
15 ~~exemption as to a system upon written findings of fact and conclusions of law~~
16 ~~which are subject to judicial review, that the listing or designation~~
17 ~~standards have been so changed or insufficiently applied that the protection~~
18 ~~to investors contemplated by the exemption no longer exists;~~

19 ~~_____ (C) Any other security of an issuer exempt under subdivision~~
20 ~~(a)(7)(A) or (B) of this section which is of senior or substantially equal~~
21 ~~rank;~~

22 ~~_____ (D) Any security called for by subscription rights or warrants~~
23 ~~listed or approved pursuant to subdivision (a)(7)(A) or (B) of this section;~~

24 ~~_____ (E) Any warrant or right to purchase or subscribe to any of the~~
25 ~~foregoing;~~

26 (6) Any security of a world class foreign issuer that meets the
27 qualifications as set forth by rule of the commissioner;

28 ~~(8)(7)~~ (7) Any security issued by any person organized and operated not
29 for private profit but exclusively for religious, educational, benevolent,
30 charitable, fraternal, social, athletic, or reformatory purposes, or as a
31 chamber of commerce or trade or professional association. Section 6(c) of the
32 Philanthropy Protection Act of 1995, Public Law 104-62, of the United States
33 shall not preempt any provision of this chapter;

34 ~~_____ (9) Any commercial paper which arises out of a current transaction or~~
35 ~~the proceeds of which have been or are to be used for current transactions,~~
36 ~~and which evidences an obligation to pay cash within nine (9) months of the~~

1 ~~date of issuance, exclusive of days of grace, or any renewal of the paper~~
2 ~~which is likewise limited, or any guarantee of the paper or of the renewal;~~
3 ~~_____ (10)(8) Any investment contract or other security issued in~~
4 ~~connection with an employees' stock purchase, savings, pension, profit~~
5 ~~sharing, stock bonus, stock option, or similar benefit plan. if, in the case~~
6 ~~of p Plans which do not meet the requirements for qualification under the~~
7 ~~United States Internal Revenue Code, there is must filed with the commissioner~~
8 ~~prior to any offer or sale a notice specifying the terms of the plan. and~~
9 ~~the commissioner does not may by order disallow the exemption within ten (10)~~
10 ~~days; and~~

11 ~~_____ (11) Any annuity contract issued by any not-for-profit corporation as~~
12 ~~defined in §§ 4-28-202 and 4-33-140(6) under a permit issued by the State~~
13 ~~Insurance Department of the State of Arkansas; and~~

14 ~~_____ (12)(9) Any security as to which the commissioner by rule or order~~
15 ~~finds that registration is not necessary or appropriate in the public interest~~
16 ~~or for the protection of investors.~~

17 (b) The commissioner may, from time to time, by his rules, and subject
18 to any terms, conditions, and fees which may be prescribed therein, add any
19 class of securities to the securities exempted as provided in this section if
20 he finds that the enforcement of this chapter with respect to the securities
21 is not necessary in the public interest and for the protection of investors by
22 reason of the small amount involved or the limited character of the public
23 offering, but no issue of securities shall be exempted under this section
24 where the aggregate amount at which the issue is offered to the public exceeds
25 ~~five hundred thousand dollars (\$500,000) one million dollars (\$1,000,000);~~

26 (c) The following shall apply to farm cooperatives organized under the
27 laws of this state as a business corporation but operated as a cooperative, or
28 organized and operated in this state under § 2-2-101 et seq., §§ 2-2-401 - 2-2-
29 411, 2-2-413 - 2-2-429, 4-30-101 - 4-30-117, 4-30-201, 4-30-202, and 4-30-204
30 - 4-30-207, and to any nonprofit farm cooperative which is qualified to do
31 business in this state:

32 (1) Any common stock, preferred stock, promissory note, debenture, or
33 other security may be issued to any cooperative member after either compliance
34 with subsection (d) of this section or delivery to the cooperative member and
35 filing, with the commissioner, of financial statements of the farm cooperative
36 for each of the two (2) fiscal years as of a date not earlier than four

1 hundred fifty-five (455) days prior to the issuance of the security, all of
2 which statements shall have been audited, examined, and certified by
3 independent public accountants to have been prepared in accordance with
4 generally accepted accounting principles consistently maintained by the
5 cooperative during the fiscal years represented by the statements. No
6 registered agent shall be required if no commission or other remuneration is
7 to be paid in connection with the offer and sale of such securities; or

8 (2) Any interest or agreement which qualifies its holder to be a
9 member or other patron of a farm cooperative or which represents the terms or
10 conditions by which members or other patrons purchase or sell agricultural
11 products or commodities from, to, or through a farm cooperative, or which
12 represents a capital retain, or patronage distribution issued by a farm
13 cooperative solely to its members or other patrons shall not be considered to
14 be a security under this chapter and shall not be subject to the provisions of
15 this chapter, provided:

16 (A) The instruments or interests are properly identified and not
17 labeled with the traditional names of investment securities as defined by ~~§~~
18 23-42-102(14)(15);

19 (B) The instruments or interests are not part of a class of
20 instruments or interests regularly bought or sold for investment purposes or
21 for which an active trading market exists. However, this limitation shall not
22 in any way restrict the bona fide pledge of the instruments or interests; and

23 (C) No commission or other remuneration is paid in connection with
24 the sale or issuance to members or other patrons of the interests and
25 instruments. This exemption shall not apply to those interests or instruments
26 which possess the characteristics of an investment contract or other security
27 as interpreted under the laws of the State of Arkansas.

28 (3) The commissioner may render foreign nonprofit farm cooperatives
29 the privilege afforded Arkansas nonprofit farm cooperatives set forth in
30 subdivision (c)(2) of this section, provided such foreign cooperative first
31 files supporting documents verifying that it is qualified to do business in
32 Arkansas, that members have substantially the same rights as members of farm
33 cooperatives organized under the nonprofit farm cooperative corporate laws of
34 this state, that the offering is within the scope of subdivision (c)(2) of
35 this section, and any other information which the commissioner deems
36 appropriate.

1 (d)(1) Before any security may be issued as an exempted security under
2 subdivision ~~(a)(3)-(6)~~ (a)(3)-(5) or ~~(8)(7)~~, or subsection (c), of this
3 section, a proof of exemption must first be filed with the commissioner, and
4 the commissioner by order shall not have disallowed the exemption within the
5 next five (5) full business days.

6 (2) The proof of exemption shall contain a statement of the grounds
7 upon which the exemption is claimed and a designation of the subsection of
8 this section under which the exemption is claimed.

9 (3) Proofs of exemption which have not been completed within a period
10 of one hundred and eighty (180) days after filing with the commissioner may be
11 deemed abandoned and considered withdrawn by the applicant, provided the
12 applicant has been notified of the deficiencies to the proof and afforded a
13 reasonable opportunity to correct such deficiencies.

14 (4) Each offering shall be effective only for twelve (12) consecutive
15 months, unless the commissioner by rule or order shall extend the period of
16 time to not more than five (5) years.

17 (5) For every proof of exemption filed with the commissioner, there
18 shall be paid to the commissioner a filing fee of one hundred dollars (\$100),
19 except that, for a proof of exemption filed under subdivision ~~(a)(8)(7)~~ of
20 this section, the filing fee is one-tenth of one percent (0.1%) of the maximum
21 aggregate offering price at which the securities are to be offered in this
22 state. The fee shall in no case be less than one hundred dollars (\$100) nor
23 more than five hundred dollars (\$500). The commissioner shall have authority
24 under this subsection to amend or rescind the filing fees by rule or order if
25 the commissioner determines that the fee is excessive under the
26 circumstances. ~~2~~

27

28 SECTION 21. Arkansas Code § 23-42-504 is amended to read as follows:

29 "23-42-504. Exempted transactions.

30 (a) The following transactions are exempted from §§ 23-42-501 and 23-42-
31 502:

32 (1) Any isolated nonissuer transactions, whether effected through a
33 broker-dealer or not. Provided, that repeated or successive transactions
34 shall be prima facie evidence that the transactions are not isolated nonissuer
35 transactions;

36 ~~(2) Any nonissuer distribution of an outstanding security if:~~

1 ~~_____ (A) A recognized securities manual contains the names of the~~
2 ~~issuer's officers and directors, a balance sheet of the issuer as of a date~~
3 ~~within eighteen (18) months, and a profit and loss statement for either the~~
4 ~~fiscal year preceding that date or the most recent year of operations; or~~

5 ~~_____ (B) The security has a fixed maturity or a fixed interest or~~
6 ~~dividend provision and there has been no default during the current fiscal~~
7 ~~year or within the three (3) preceding fiscal years, or during the existence~~
8 ~~of the issuer and any predecessors if less than three (3) years, in the~~
9 ~~payment of principal, interest, or dividends on the security;~~

10 (2) Any nonissuer transaction by a registered agent of a registered
11 broker-dealer, and any resale transaction by a sponsor of a unit investment
12 trust registered under the Investment Company Act of 1940, in a security of a
13 class that has been outstanding in the hands of the public for at least ninety
14 (90) days provided, at the time of the transaction:

15 (A) The issuer of the security is actually engaged in business
16 and not in the organization stage or in bankruptcy or receivership and is not
17 a blank check, blind pool or shell company whose primary plan of business is
18 to engage in a merger or combination of the business with, or an acquisition
19 of, an unidentified person or persons;

20 (B) The security is sold at a price reasonably related to the
21 current market price of the security;

22 (C) The security does not constitute the whole or part of an
23 unsold allotment to, or a subscription or participation by, the broker-dealer
24 as an underwriter of the security;

25 (D) A nationally recognized securities manual designated by rule
26 or order of the commissioner or a document filed with the Securities and
27 Exchange Commission that is publicly available through the Securities and
28 Exchange Commission's Electronic Data Gathering and Retrieval System (EDGAR)
29 and contains:

30 (i) A description of the business and operations of the
31 issuer;

32 (ii) The names of the issuer's officers and directors, if
33 any, or, in the case of an issuer not domiciled in the United States, the
34 corporate equivalents of such persons in the issuer's country of domicile;

35 (iii) An audited balance sheet of the issuer as of a date
36 within eighteen (18) months or, in the case of a reorganization or merger

1 where parties to the reorganization or merger had such audited balance sheets,
2 a pro forma balance sheet; and

3 (iv) An audited income statement for each of the issuer's
4 immediately preceding two fiscal years, or for the period of existence of the
5 issuer, if in existence for less than two years, or, in the case of a
6 reorganization or merger where the parties to the reorganization or merger had
7 such audited income statements, a pro forma income statement; and

8 (E) The issuer of the security has a class of equity securities
9 listed on a national securities exchange registered under the Securities
10 Exchange Act of 1934, or designated for trading on the National Association of
11 Securities Dealers Automated Quotation System, unless:

12 (i) The issuer of the security is a unit investment trust
13 registered under the Investment Company Act of 1940, or

14 (ii) The issuer of the security has been engaged in
15 continuous business (including predecessors) for at least three years, or

16 (iii) The issuer of the security has total assets of at
17 least two million dollars (\$2,000,000) based on an audited balance sheet as of
18 a date within eighteen (18) months or, in the case of a reorganization or
19 merger where parties to the reorganization or merger had such audited balance
20 sheets, a pro forma balance sheet.

21 ~~(3) Any nonissuer transaction effected by or through a registered~~
22 ~~broker-dealer pursuant to an unsolicited order or offer to buy, but the~~
23 ~~commissioner may by rule require that the customer acknowledge, upon a~~
24 ~~specified form, that the sale was unsolicited and that a signed copy of each~~
25 ~~form be preserved by the broker-dealer for a specified period;~~

26 ~~(4)~~(3) Any transaction between the issuer or other person on whose
27 behalf the offering is made and an underwriter, or among underwriters;

28 ~~(5)~~(4) Any transaction in a bond or other evidence of indebtedness
29 secured by a real or chattel mortgage or deed of trust, or by an agreement for
30 the sale of real estate or chattels if the entire mortgage, deed of trust, or
31 agreement, together with all the bonds or other evidences of indebtedness
32 secured thereby, is offered and sold as a unit;

33 ~~(6)~~(5) Any transactions by an executor, administrator, sheriff,
34 marshal, receiver, trustee in bankruptcy, guardian, or conservator;

35 ~~(7)~~(6) Any transaction executed by a bona fide pledgee without any
36 purpose of evading this chapter;

1 (7) Any transactions by a person exempted from registration under §
2 23-42-102(3)(E), provided that the transaction would be lawful in the place of
3 residence of the offeree or purchaser had it occurred there instead of in this
4 state.

5 (8) Any offer or sale to a bank, savings institution, trust company,
6 insurance company, investment company as defined in the Investment Company Act
7 of 1940, pension or profit-sharing trust, or other financial institution or
8 institutional buyer, or to a broker-dealer, whether the purchaser is acting
9 for itself or in some fiduciary capacity. The commissioner may by order, upon
10 petition by any person, determine if the petitioner may be deemed, upon the
11 basis of knowledge, experience, volume, and number of transactions, and other
12 securities background, an institutional buyer for purposes of this
13 subdivision (a)(8);

14 (9)(A) Any transaction pursuant to an offer and sale directed by the
15 offeror to not more than ~~twenty-five (25) persons~~ thirty-five (35) purchasers
16 other than those designated in subdivision (a)(8) of this section ~~in this~~
17 ~~state~~ during any period of twelve (12) consecutive months, ~~whether or not the~~
18 ~~offeror or any of the offerees is then present in this state,~~ if:

19 (i) The seller reasonably believes that all the buyers ~~in~~
20 ~~this state~~ are purchasing for investment; and

21 (ii) No commission or other remuneration ~~is~~ shall be paid or
22 given directly or indirectly for soliciting any prospective buyer in this
23 state unless the person receiving any such commission or remuneration is
24 registered pursuant to § 23-42-301.

25 (B) However, the commissioner may by rule or order, as to any
26 security or transaction or any type of security or transaction, withdraw or
27 further condition this exemption, or increase or decrease the number of
28 ~~offerees~~ purchasers permitted, or waive the conditions in subdivisions
29 (a)(9)(A)(i) and (ii) of this section with or without the substitution of a
30 limitation on remuneration;

31 ~~(10) Any offer or sale of a preorganization certificate or~~
32 ~~subscription if:~~

33 ~~_____ (A) No commission or other remuneration is paid or given directly~~
34 ~~or indirectly for soliciting any prospective subscriber;~~

35 ~~_____ (B) The number of subscribers does not exceed twenty-five (25);~~
36 ~~and~~

1 ~~_____ (C) No payment is made by any subscriber;~~

2 ~~(11)(10) Any transaction pursuant to an offer to existing security~~
3 ~~holders of the issuer, including persons who at the time of the transaction~~
4 ~~are holders of convertible securities or warrants, if no commission or other~~
5 ~~remuneration, other than a standby commission, is paid or given directly or~~
6 ~~indirectly for soliciting any security holder in this state, unless the~~
7 ~~commissioner shall, upon written application, permit the payment of a~~
8 ~~commission or other remuneration with or without the substitution of a~~
9 ~~limitation on remuneration;~~

10 ~~(12)(11) Any offer, but not a sale, of a security for which~~
11 ~~registration statements have been filed under both this chapter and the~~
12 ~~Securities Act of 1933 if no order or refusal order is in effect and no public~~
13 ~~proceeding or examination looking toward such an order is pending under either~~
14 ~~act;~~

15 ~~(13) Any nonissuer transaction by a person who does not control, and~~
16 ~~is not controlled by or under common control with, the issuer if:~~

17 ~~_____ (A) The transaction is at a price reasonably related to the~~
18 ~~current market price;~~

19 ~~_____ (B) The security is registered with the Securities and Exchange~~
20 ~~Commission under section 12 of the Securities Exchange Act of 1934 and the~~
21 ~~issuer files reports with the Securities and Exchange Commission pursuant to~~
22 ~~section 13 or 15(d) of that act; and~~

23 ~~_____ (C) A copy of the registration statement filed with the Securities~~
24 ~~and Exchange Commission has been filed with the commissioner, together with~~
25 ~~copies of any other reports and exhibits which he may by rule or order~~
26 ~~require;~~

27 ~~_____ (14) Any transaction pursuant to an offer or sale provided that all~~
28 ~~of the following conditions are met:~~

29 ~~_____ (A) There shall be no more than thirty-five (35) purchasers of the~~
30 ~~securities being offered;~~

31 ~~_____ (B) The issuer and any person acting on its behalf who offers,~~
32 ~~offers to sell, offers for sale, or sells the securities shall have reasonable~~
33 ~~grounds to believe and shall believe immediately prior to making any sale,~~
34 ~~after making reasonable inquiry, either:~~

35 ~~_____ (i) That the purchaser has such knowledge and experience in~~
36 ~~financial and business matters that he is capable of evaluating the merits and~~

1 ~~risks of the prospective investment; or~~

2 ~~_____ (ii) That the purchaser and his purchaser representatives~~
3 ~~together have such knowledge and experience in financial and business matters~~
4 ~~that they are capable of evaluating the merits and risks of the prospective~~
5 ~~investment, and that the purchaser is able to bear the economic risk of the~~
6 ~~investment;~~

7 ~~_____ (C) Each buyer is purchasing for investment and not taking with a~~
8 ~~view to distribution;~~

9 ~~_____ (D) The securities may only be sold through a broker-dealer or~~
10 ~~agent of the issuer registered under this chapter, or a person exempt from the~~
11 ~~registration requirements who meets the qualifications which are established~~
12 ~~by the commissioner pursuant to rule-making authority;~~

13 ~~_____ (E) An exemption is not claimed nor has an exemption been filed~~
14 ~~pursuant to subdivision (a)(9) of this section within twelve (12) months of~~
15 ~~the effective date of this exemption;~~

16 ~~_____ (F) An offering under this subdivision (a)(14) shall be effective~~
17 ~~for a period of twelve (12) months, and the offeror shall furnish to the~~
18 ~~commissioner a list of purchasers within fifteen (15) days after the~~
19 ~~expiration of the twelve-month period, unless sooner requested by the~~
20 ~~commissioner; and~~

21 ~~_____ (G) The commissioner shall by rule prescribe and subject the~~
22 ~~transaction to the terms, conditions, and fees prescribed therein and may by~~
23 ~~rule or order permit the payment, directly or indirectly, of a commission or~~
24 ~~other remuneration for soliciting any purchaser in this state. The~~
25 ~~commissioner may by rule or order, as to any security or transaction or any~~
26 ~~type of security or transaction, withdraw or further condition this exemption~~
27 ~~or increase or decrease the number of purchasers permitted, or waive the~~
28 ~~conditions in subdivisions (a)(14)(A)-(F) of this section;~~

29 ~~_____ (15)(12) Any other transaction which the commissioner by rule or~~
30 ~~order exempts as not being necessary or appropriate in the public interest for~~
31 ~~the protection of investors.~~

32 (b)(1) Before any transaction shall be executed as an exempted
33 transaction under subdivisions (a)~~(9)-(11)~~ (9) or (10) ~~or (14)~~ of this
34 section, except, in the case of dividend reinvestment and stock purchase
35 programs pursuant to subdivision (a)~~(11)~~(10) of this section, a proof of
36 exemption must first be filed with the commissioner and the commissioner by

1 order shall not have disallowed the exemption within the next five (5) full
2 business days. Before any dividend reinvestment and stock purchase program
3 shall be executed as an exempt transaction under subdivision (a)~~(11)~~(10) of
4 this section, an initial proof of exemption shall be filed; thereafter in
5 every fifth year a proof of exemption must be filed with the commissioner and
6 the commissioner by order must not have disallowed the exemption within the
7 next five (5) full business days.

8 (2) The proof of exemption shall contain a statement of the grounds
9 upon which the exemption is claimed and a designation of the subsection of
10 this section under which the exemption is claimed.

11 (3) Proofs of exemption which have not been completed within a period
12 of one hundred eighty (180) days after filing with the commissioner may be
13 deemed abandoned and considered withdrawn by the applicant, provided the
14 applicant has been notified of the deficiencies to the proof and afforded a
15 reasonable opportunity to correct such deficiencies.

16 (4)(A) For every proof of exemption filed with the commissioner under
17 subdivision (a)(9) of this section, there shall be paid to the commissioner a
18 filing fee of one-tenth of one percent (0.1%) of the maximum aggregate
19 offering price at which the securities are to be offered in this state, but
20 the fee shall in no case be less than twenty-five dollars (\$25.00) or more
21 than five hundred dollars (\$500).

22 (B) For every proof of exemption filed with the commissioner under
23 subdivision (a)(10) of this section, there shall be paid to the commissioner a
24 filing fee of fifty dollars (\$50.00).

25 ~~————— (C) For every proof of exemption filed with the commissioner under
26 subdivision (a)(14) of this section, there shall be paid to the commissioner a
27 filing fee of one-tenth of one percent (1/10 of 1%) of the maximum aggregate
28 offering price at which the securities are to be offered in this state, but
29 the fee shall in no case be less than one hundred dollars (\$100) or more than
30 five hundred dollars (\$500).~~

31 ~~————— (D)(C)~~ The commissioner shall have authority under this subsection
32 to amend or rescind the filing fees by rule or order if the commissioner
33 determines that the fee is excessive under the circumstances."

34

35 SECTION 22. Arkansas Code § 23-42-505 is amended to read as follows:

36 "23-42-505. Denial or revocation of exemption.

1 (a) The commissioner may, by order, deny or revoke any exemption
2 specified in ~~§ 23-42-503(a)(8)(7)~~ or ~~(10)(8)~~, (b), or (c) or § 23-42-504(a)
3 with respect to a specific security or transaction.

4 (b)(1) No such order may be entered without appropriate prior notice to
5 all interested parties, opportunity for hearing, and written findings of fact
6 and conclusions of law, except that the commissioner may by order summarily
7 deny or revoke any of the specified exemptions pending final determination of
8 any proceeding under this section.

9 (2) Upon the entry of a summary order, the commissioner shall
10 promptly notify all interested parties that it has been entered and of the
11 reasons therefor and that within fifteen (15) days of the receipt of a written
12 request the matter will be set down for hearing.

13 (c)(1) If no hearing is requested and none is ordered by the
14 commissioner, the order will remain in effect until it is modified or vacated
15 by the commissioner.

16 (2) If a hearing is requested or ordered, the commissioner, after
17 notice of and opportunity for hearing to all interested persons, may modify or
18 vacate the order or extend it until final determination.

19 (d) No order under this section may operate retroactively.

20 (e) No person may be considered to have violated § 23-42-501 or § 23-42-
21 502 by reason of any offer or sale effected after the entry of an order under
22 this section if he sustains the burden of proof that he did not know and, in
23 the exercise of reasonable care, could not have known of the order."
24

25 SECTION 23. Subchapter 5 of Chapter 42, Title 23, of the Arkansas Code
26 is amended by adding a new section at the end thereof to read as follows:

27 "23-42-509. Covered securities.

28 (a) The Commissioner, by rule or order, may require a notice filing
29 consisting of any or all of the following documents with respect to a covered
30 security under Section 18(b)(2) of the Securities Act of 1933:

31 (1)(A) Prior to the initial offering of such covered security in
32 this state, all documents that are part of a current federal registration
33 statement filed with the Securities and Exchange Commission under the
34 Securities Act of 1933, together with a consent to service of process signed
35 by the issuer and with a fee in the amount of one-tenth of one percent (0.1%)
36 of the maximum aggregate offering price at which the covered securities are to

1 be offered in this state, but the fee shall in no case be less than one
2 hundred fifty dollars (\$150) nor more than two thousand dollars (\$2,000). Any
3 portion of the fee in excess of one thousand dollars (\$1,000) shall be
4 designated as special revenues and shall be deposited in the Securities
5 Department Fund. When a notice filing is withdrawn before the effective date,
6 the commissioner shall retain one hundred fifty dollars (\$150) of the filing
7 fee.

8 (B) Sales of the covered securities in excess of the amount of
9 covered securities to have been offered in this state shall require the person
10 making the notice filing to pay a fee, calculated in the manner specified in
11 subdivision (a)(1)(A) of this section, for all securities sold. In addition,
12 if the sales are in excess of one hundred five percent (105%) of the amount to
13 have been offered, the person making the notice filing shall pay a penalty fee
14 of two hundred dollars (\$200).

15 (C) The initial notice filing of an investment company, as defined
16 in the Investment Company Act of 1940, as amended, shall be effective for a
17 period commencing upon the commissioner's receipt of such notice filing, or,
18 if not yet effective with the Securities and Exchange Commission, concurrently
19 with the Security and Exchange Commission effectiveness, an ending two (2)
20 months after the investment company's fiscal year end. Thereafter, the
21 investment company must renew the notice filing by submitting the appropriate
22 forms and documents as filed with the Securities and Exchange Commission,
23 along with the appropriate fee, calculated in the manner specified in
24 subsection (a)(1) of this section, with respect to the additional securities
25 proposed to be offered, within two (2) months after the expiration of the
26 registrant's fiscal year end.

27 (D) The notice filing of a unit investment trust, as defined in
28 the Investment Company Act of 1940, as amended, shall be effective for one (1)
29 year from the date of effectiveness granted by the Securities and Exchange
30 Commission.

31 (2) After the initial offer of such covered securities in this
32 state, all documents that are part of an amendment to a current federal
33 registration statement filed with the Securities and Exchange Commission under
34 the Securities Act of 1933;

35 (3) An annual or periodic report of the value of such covered
36 securities offered or sold in this state as necessary to compute fees;

1 (b) A notice filing relating to a covered security may be amended after
2 its effective date so as to increase the securities specified as proposed to
3 be offered. The amendment becomes effective upon receipt by the commissioner.
4 Every person filing such an amendment shall pay a filing fee, calculated in
5 the manner specified in subsection (a)(1) of this section, with respect to the
6 additional securities proposed to be offered.

7 (c)(1) With respect to any security that is a covered security under
8 Section 18(b)(4)(D) of the Securities Act of 1933, the Commissioner, by rule
9 or order, may require the issuer to file a notice on SEC Form D and a consent
10 to service of process signed by the issuer no later than fifteen (15) days
11 after the first sale of such covered security in this state, together with a
12 fee in the amount of one-tenth of one percent (0.1%) of the maximum aggregate
13 offering price at which the securities are to be offered in this state, but
14 the fee shall in no case be less than one hundred dollars (\$100) or more than
15 five hundred dollars (\$500).

16 (2) After the initial offer of such covered securities in this
17 state, any amendment to SEC Form D filed with the Securities and Exchange
18 Commission under the Securities Act of 1933 shall be filed concurrently with
19 the commissioner.

20 (d) The Commissioner, by rule or order, may require the filing of any
21 document filed with the Securities and Exchange Commission under the
22 Securities Act of 1933 with respect to a covered security under Section
23 18(b)(3) or (4) of the Securities Act of 1933, other than those securities
24 under subsection (b) of this section, together with a fee in the amount of one
25 hundred dollars (\$100).

26 (e) The Commissioner may issue a stop order suspending the offer and
27 sale of a covered security, except a covered security under Section 18(b)(1)
28 of the Securities Act of 1933, if he finds that:

- 29 (1) The order is in the public interest, and
30 (2) there is a failure to comply with any condition established
31 under this section.

32 (f) The Commissioner, by rule or order, may waive any or all of the
33 provisions of this section."

34

35 SECTION 24. All provisions of this act of a general and permanent
36 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas

1 Code Revision Commission shall incorporate the same in the Code.

2

3 SECTION 25. If any provision of this act or the application thereof to
4 any person or circumstance is held invalid, such invalidity shall not affect
5 other provisions or applications of the act which can be given effect without
6 the invalid provision or application, and to this end the provisions of this
7 act are declared to be severable.

8

9 SECTION 26. All laws and parts of laws in conflict with this act are
10 hereby repealed.

11

12 SECTION 27. Emergency. It is hereby found and determined by the
13 General Assembly that the enactment of the National Securities Markets
14 Improvement Act of 1996 on October 11, 1996 effectively preempted portions of
15 the Arkansas Securities Act, and that because of such enactment, portions of
16 the Arkansas Securities Act are in conflict with federal law. That in order
17 to protect the Arkansas citizens who invest in and are affected by the
18 securities markets, it is necessary that regulation under the Arkansas
19 Securities Act be uniform with both federal law and the laws of other states.
20 It is necessary that this protection begin immediately, except for the
21 portions of the Arkansas Securities Act pertaining to investment advisers
22 which should begin on April 11, 1997. Therefore, an emergency is hereby
23 declared to exist and this act being necessary for the immediate preservation
24 of the public peace, health and safety shall be in full force and effect from
25 and after its passage and approval except for the portions hereof pertaining
26 to investment advisers, which portions shall be in full force and effect from
27 and after April 11, 1997.

28

/s/Webb et al

29

30

APPROVED:2-17-97

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