

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

A Bill

SENATE BILL 363

5 By: Senator Teague
6 By: Representative Ingram
7

For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS PROVISIONS OF THE SECURITIES
10 LAWS; AND FOR OTHER PURPOSES.
11

Subtitle

14 TO AMEND VARIOUS PROVISIONS OF THE
15 SECURITIES LAWS.
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17
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code § 23-42-102(1)(A), concerning the definition
21 of "agent" under the Arkansas Securities Act, is amended to read as follows:

22 (1)(A) "Agent" means ~~any~~ an individual, other than a broker-
23 dealer, who:

24 (i) ~~represents~~ Represents a broker-dealer or issuer
25 in effecting or attempting to effect purchases or sales of securities; and

26 (ii) Supervises individuals who effect or attempt to
27 effect purchases or sales of securities for a broker-dealer.
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29 SECTION 2. Arkansas Code § 23-42-102(9)(E), concerning the definition
30 of "issuer" under the Arkansas Securities Act, is amended to read as follows:

31 (E) ~~With respect to viatical~~ For life settlement
32 contracts, ~~the term~~ "issuer" means:

33 (i) ~~In the case of~~ For a fractional or pooled
34 interest in ~~viatical~~ a life settlement ~~contracts~~ contract, the person ~~who~~
35 that creates for the purpose of sale the fractional or pooled interest; and

36 (ii) ~~In the case of~~ For a ~~viatical~~ life settlement



1 contract that is not fractionalized or pooled, the person effecting the
2 transaction with the investor in ~~such a~~ the contract, but does not include a
3 broker-dealer or agent of a broker-dealer;

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5 SECTION 3. Arkansas Code § 23-42-102(15)(A)(xiii), concerning the
6 definition of "security", is amended to read as follows:

7 (xiii) ~~Viatical Life~~ Life settlement contract or
8 fractionalized or pooled interest ~~therein~~ in a life settlement contract;

9
10 SECTION 4. Arkansas Code § 23-42-209(b), concerning remedies available
11 to the Securities Commissioner, is amended to read as follows:

12 (b) The commissioner may also ~~seek and the appropriate court shall,~~
13 obtain upon proper showing, ~~grant~~ any other ancillary relief ~~which may be in~~
14 the public interest, including without limitation:

15 (1) ~~the~~ The appointment of a receiver, temporary receiver, or
16 conservator;

17 (2) ~~declaratory~~ A declaratory judgment;

18 (3) ~~obtaining an~~ An accounting;

19 (4) ~~disgorgement~~ Disgorgement of profits;

20 (5) Restitution; or

21 (6) ~~assessment~~ The assessment of a fine in an amount of not more
22 than the total amount of money received in connection with ~~any a~~ a violation of of
23 this chapter, ~~or other relief as may be appropriate in the public interest.~~

24
25 SECTION 5. Arkansas Code § 23-42-306(d)(2)(B), concerning examination
26 fees, is amended to read as follows:

27 (B) In addition to the fee, the commissioner may require
28 the applicant, issuer, broker-dealer, or investment adviser ~~shall~~ to pay the
29 actual hotel and traveling expenses of each authorized examiner traveling to
30 and from the office of the commissioner while the examiner is conducting the
31 examination.

32
33 SECTION 6. Arkansas Code § 23-42-308(a)(2)(E), concerning denial,
34 suspension, revocation, or withdrawal of registration, is amended to read as
35 follows:

36 (E) Is the subject of an order of the commissioner

1 denying, suspending, ~~or~~ revoking, or making conditional or probationary a
 2 registration as a broker-dealer, agent, investment adviser, or
 3 representative;

4
 5 SECTION 7. Arkansas Code § 23-42-308(a)(2)(J), concerning denial,
 6 suspension, revocation, or withdrawal of registration, is amended to read as
 7 follows:

8 (J) Has failed reasonably to supervise the agents or
 9 employees of the broker-dealer or the representatives or employees of the
 10 investment adviser; or

11
 12 SECTION 8. The introductory language of Arkansas Code § 23-42-401(b),
 13 concerning registration by notification, is amended to read as follows:

14 (b) A registration statement under this section shall contain the
 15 following information and be accompanied by the following documents in
 16 addition to the information specified in ~~§ 23-42-404(d)~~ § 23-42-404(c) and
 17 the consent to service of process required by § 23-42-107(a):

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 19 SECTION 9. The introductory language of Arkansas Code § 23-42-402(b),
 20 concerning registration by coordination, is amended to read as follows:

21 (b) A registration statement under this section shall contain the
 22 following information and be accompanied by the following documents in
 23 addition to the information specified in ~~§ 23-42-404(d)~~ § 23-42-404(c) and
 24 the consent to service of process required by § 23-42-107(a):

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 26 SECTION 10. The introductory language of Arkansas Code § 23-42-403(b),
 27 concerning registration by qualification, is amended to read as follows:

28 (b) A registration statement under this section shall contain the
 29 following information and be accompanied by the following documents in
 30 addition to the information specified in ~~§ 23-42-404(d)~~ § 23-42-404(c), and
 31 the consent to service of process required by § 23-42-107:

32
 33 SECTION 11. Arkansas Code § 23-42-404, concerning registration
 34 statements, is amended to add an additional subsection to read as follows:

35 (p) The commissioner may consider a registration statement abandoned
 36 and withdrawn by the applicant if the:

1 (1) Registration statement has not been completed within one
 2 hundred eighty (180) days after filing with the commissioner; and

3 (2) Applicant has been notified of the deficiencies in the
 4 application and provided a reasonable opportunity to correct the
 5 deficiencies.

6
 7 SECTION 12. Arkansas Code § 23-42-405(a)(2)(A), concerning denying the
 8 effectiveness of a registration statement, is amended to read as follows:

9 (2)(A) The registration statement, ~~as of its effective date or~~
 10 ~~as of any earlier date in the case of an order denying effectiveness, or any~~
 11 ~~amendment under § 23-42-404(o) as of its effective date, or any report under~~
 12 ~~§ 23-42-404(o),~~ is incomplete in any material respect or contains any
 13 statement ~~which~~ that was, in the light of the circumstances under which it
 14 was made, false or misleading with respect to any material fact, ~~as of the~~
 15 effective date of:

16 (i) The registration statement or an earlier date
 17 from an order denying the effective date of the registration statement;

18 (ii) An amendment under § 23-42-404(n); or

19 (iii) A report under § 23-42-404(m);

20
 21 SECTION 13. Arkansas Code § 23-42-405(a)(2)(C), concerning denying the
 22 effectiveness of a registration statement, is amended to read as follows:

23 (C) The security registered or sought to be registered is
 24 the subject of an administrative stop order or similar order or a permanent
 25 or temporary injunction of ~~any~~ a court of competent jurisdiction entered
 26 under any other federal or state act applicable to the offering, but:

27 (i) The commissioner ~~may~~ shall not institute a
 28 proceeding against an effective registration statement under this subdivision
 29 ~~(a)(1)(G)~~ (a)(2)(C) more than one (1) year from the date of the order or
 30 injunction relied on; and

31 (ii) The commissioner ~~may~~ shall not enter an order
 32 under this subdivision (a)(2)(C) on the basis of an order or injunction
 33 entered under ~~any other~~ another state act unless that order or injunction was
 34 based on facts ~~which~~ that would currently constitute ~~a ground~~ grounds for a
 35 stop order under this section;

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1 SECTION 14. Arkansas Code § 23-42-504(a)(2)(E), concerning exempted
2 transactions, is amended to read as follows:

3 (E) The issuer of the security has a class of equity
4 securities listed on a national securities exchange registered under the
5 Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as it existed on
6 ~~January 1, 2009~~ January 1, 2011, unless:

7 (i) The issuer of the security is a unit investment
8 trust registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1
9 et seq., as it existed on ~~January 1, 2009~~ January 1, 2011;

10 (ii) The issuer and predecessors of the issuer of
11 the security have been engaged in continuous business for at least three (3)
12 years; or

13 (iii) The issuer of the security has total assets of
14 at least two million dollars (\$2,000,000) based on:

15 (a) An audited balance sheet dated within the
16 past eighteen (18) months; or

17 (b) In the case of a reorganization or merger
18 of parties with audited balance sheets dated within the past eighteen (18)
19 months showing total assets of at least two million dollars (\$2,000,000), a
20 pro forma balance sheet;

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