

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

A Bill

SENATE BILL 362

5 By: Senator Teague
6 By: Representative Ingram
7

For An Act To Be Entitled

9 AN ACT TO CLARIFY THE DEFINITION AND RESIDENCY
10 REQUIREMENTS FOR A "BROKER-DEALER" UNDER THE ARKANSAS
11 SECURITIES ACT; TO ESTABLISH SUPERVISION REQUIREMENTS
12 FOR BROKER-DEALERS AND INVESTMENT ADVISERS; TO MAKE
13 TECHNICAL CORRECTIONS; AND FOR OTHER PURPOSES.
14

Subtitle

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17 TO CLARIFY THE DEFINITION AND RESIDENCY
18 REQUIREMENTS FOR A "BROKER-DEALER" UNDER
19 THE ARKANSAS SECURITIES ACT; TO ESTABLISH
20 SUPERVISION REQUIREMENTS FOR BROKER-
21 DEALERS AND INVESTMENT ADVISERS; AND TO
22 MAKE TECHNICAL CORRECTIONS
23

24
25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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27 SECTION 1. Arkansas Code § 23-42-102(2), concerning the definition of
28 "broker-dealer", is amended to read as follows:

29 (2)(A) "Broker-dealer" means ~~any~~ a person engaged in the
30 business of effecting transactions in securities for the account of others or
31 for his or her own account.

32 (B) "Broker-dealer" does not include:

33 ~~(A)(i)~~ An agent;

34 ~~(B)(ii)~~ An issuer;

35 ~~(C)(iii)~~ A bank, savings institution, savings and
36 loan association, or trust company; ~~or~~



1 ~~(D)~~(iv) A person ~~who~~ that has no place of business
2 in this state if:

3 ~~(i)~~(a) ~~He or she effects~~ The person effects
4 transactions in this state exclusively with or through:

5 ~~(a)~~(1) The issuers of the securities
6 involved in the transactions;

7 ~~(b)~~(2) Other broker-dealers; or

8 ~~(c)~~(3) Banks, savings institutions,
9 savings and loan associations, trust companies, insurance companies,
10 investment companies as defined in the Investment Company Act of 1940,
11 pension or profit-sharing trusts, or other financial institutions or
12 institutional buyers, whether acting for themselves or as trustees; or

13 ~~(ii)~~(b) ~~During any period of twelve (12)~~
14 ~~consecutive months, he or she does not direct more than fifteen (15) offers~~
15 ~~to sell or buy into this state in any manner to persons other than those~~
16 ~~specified in subdivision (2)(D)(i) of this subsection, whether or not the~~
17 ~~offeror or any of the offerees are then present in this state;~~ The person:

18 (1) Is registered under the securities
19 law of the state in which it has a principal place of business;

20 (2) Is registered or not required to be
21 registered as a broker-dealer under the Securities Exchange Act of 1934; and

22 (3) Does not effect transactions with
23 more than three (3) persons in this state during any period of twelve (12)
24 consecutive months other than transactions with:

25 (A) The issuer of a security
26 involved in the transaction;

27 (B) Another broker-dealer; or

28 (C) A bank, a savings institution,
29 a savings and loan association, a trust company, an insurance company, an
30 investment company as defined in the Investment Company Act of 1940, a
31 pension or profit-sharing trust, or another financial institution or
32 institutional buyer, whether acting for itself or as a trustee; and

33 ~~(E)~~(v) A person ~~who~~ that is a resident ~~in~~ of Canada,
34 and has no office or other physical presence in this state, ~~and complies with~~
35 ~~the following conditions~~ if the person:

36 ~~(i)~~(a) Only effects or attempts to effect

1 transactions in securities:

2 ~~(a)~~(1) With or through the issuers of
3 the securities involved in the transactions, broker-dealers, banks, savings
4 institutions, trust companies, insurance companies, qualified purchasers as
5 defined by the Securities and Exchange Commission, investment companies as
6 defined in the Investment Company Act of 1940, pension or profit-sharing
7 trusts, or other financial institutions or institutional buyers, whether
8 acting for themselves or as trustees;

9 ~~(b)~~(2) With or for a person from Canada
10 ~~who that~~ is temporarily present in this state, ~~with whom~~ if the person and
11 the ~~Canadian~~ person from Canada had a bona fide business-client relationship
12 before the person from Canada entered this state; or

13 ~~(c)~~(3) With or for a person from Canada
14 ~~who that~~ is present in this state, ~~whose~~ and has transactions that are in a
15 self-directed tax advantaged retirement plan in Canada of which the person is
16 the holder or contributor;

17 ~~(ii)~~(b) Files a notice in the form of ~~his or~~
18 ~~her~~ the person's current application required by the jurisdiction in which
19 ~~his or her~~ the person's ~~head main~~ office is located and a consent to service
20 of process;

21 ~~(iii)~~(c) Is a member of a self-regulatory
22 organization or stock exchange in Canada;

23 ~~(iv)~~(d) Maintains ~~his or her~~ the person's
24 provincial or territorial registration and ~~his or her~~ the person's membership
25 in good standing in a self-regulatory organization or stock exchange ~~in good~~
26 ~~standing~~;

27 ~~(v)~~(e) Discloses to ~~his or her~~ the person's
28 clients in this state that ~~he or she~~ the person is not subject to the full
29 regulatory requirements of this chapter; and

30 ~~(vi)~~(f) Is not in violation of § 23-42-507 ~~and~~
31 ~~all rules promulgated thereunder~~;

32
33 SECTION 2. Arkansas Code § 23-42-301 is amended to read as follows:

34 23-42-301. Registration required - Unlawful acts - Supervision
35 requirements.

36 (a) It is unlawful for ~~any~~ a person to transact business in this state

1 as a broker-dealer or agent unless he or she is registered under this
2 chapter.

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

7 (2) The registration of an agent is not effective during ~~any~~ a
8 period when he or she is not associated with a particular:

9 (A) broker-dealer Broker-dealer registered under this
10 chapter; or

11 (B) with a particular issuer Issuer.

12 (3)(A) ~~When~~ A broker-dealer or issuer shall promptly notify the
13 Securities Commissioner or the commissioner's designee if an agent begins or
14 terminates:

15 (i) a connection An association with a broker-dealer
16 or issuer; or

17 (ii) begins or terminates those The activities which
18 that make him or her an agent, ~~then~~ of the broker-dealer or issuer ~~shall~~
19 ~~promptly notify the Securities Commissioner or the commissioner's designee.~~

20 (B) ~~When~~ If an agent terminates ~~his or her registration~~
21 ~~with~~ or withdraws his or her registration ~~from~~ with a broker-dealer or
22 issuer, a subsequent application by the agent for registration ~~shall be~~
23 ~~considered~~ is treated as:

24 (i) an An initial registration; and

25 (ii) shall be deemed a A notification by the agent
26 of termination or withdrawal of the previous registration or application.

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

29 (c) It is unlawful for ~~any~~ a person to transact business in this state
30 as an investment adviser or representative without first being registered
31 under this chapter unless the person:

32 (1) Is registered as an investment adviser with the Securities
33 and Exchange Commission under Section 203 of the Investment Advisers Act of
34 1940, 15 U.S.C. § 80b-1 et seq., as it existed on January 1, ~~2009~~ 2011, and
35 has filed with the commissioner or the commissioner's designee a notice
36 filing consisting of:

1 (A) a A copy of ~~such~~ documents on file with the Securities
2 and Exchange Commission ~~as~~ that the commissioner may by rule or order
3 prescribe;

4 (B) ~~along with an appropriate~~ The fee ~~as~~ set forth in §
5 23-42-304(a)(3); and

6 (C) a A consent to service of process;

7 (2) Is a “representative” of an investment adviser registered
8 with the Securities and Exchange Commission under Section 203 of the
9 Investment Advisers Act of 1940, 15 U.S.C. § 80b-1 et seq., as it existed on
10 January 1, ~~2009~~ 2011, and has no place of business located in this state; or

11 (3) Is not registered as an investment adviser with the
12 Securities and Exchange Commission under Section 203 of the Investment
13 Advisers Act of 1940, 15 U.S.C. § 80b-1 et seq., as it existed on January 1,
14 ~~2009~~ 2011, because the person is ~~exempted from the definition of~~ not an
15 investment adviser under Section 202(a)(11) of the Investment Advisers Act of
16 1940, 15 U.S.C. § 80b-1 et seq., as it existed on January 1, ~~2009~~ 2011.

17 (d)(1) A notice filing required by subdivision (c)(1) of this section
18 becomes effective upon receipt by the commissioner or the commissioner’s
19 designee of the notice filing, consent to service of process, and the
20 appropriate fee.

21 (2)(A) ~~Every~~ The registration and ~~every~~ notice filing required
22 by subdivision (c)(1) of this section expires December 31 of each year unless
23 renewed.

24 (B)~~(i)~~ An Effective upon the commissioner’s receipt of
25 notification, an investment adviser ~~that has made a notice filing pursuant to~~
26 ~~subdivision (c)(1) of this section~~ may terminate the investment adviser’s
27 notice filing ~~upon~~ under subdivision (c)(1) of this section by providing the
28 commissioner notification of the termination.

29 ~~(ii) The termination is effective upon the~~
30 ~~commissioner’s receipt of notification of termination.~~

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

33 ~~(A) Registered as an agent and designated a principal of a~~
34 ~~broker-dealer; or~~

35 ~~(B) Registered as an agent of the issuer and shall satisfy~~
36 ~~qualifications set by the commissioner.~~

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

4 ~~(B) A broker-dealer with more than one (1) branch office~~
 5 ~~located in Arkansas may designate more than one (1) resident principal and~~
 6 ~~specify the branch office or offices for which each resident principal has~~
 7 ~~supervisory responsibility.~~

8 ~~(3) Upon the removal of the individual or individuals designated~~
 9 ~~under this subsection from the broker-dealer or issuer, or upon the removal~~
 10 ~~of the principal from the direct supervision of the purchase and sale of~~
 11 ~~securities in Arkansas, the issuer or broker-dealer must again satisfy this~~
 12 ~~provision.~~

13 ~~(f) No~~ A broker-dealer or investment adviser shall not conduct
 14 business from a branch office within this state unless the branch office is
 15 registered under this chapter.

16 (f)(1) A broker-dealer shall establish, maintain, and enforce a system
 17 to supervise the activities of its agents and employees that is reasonably
 18 designed to achieve compliance with this chapter, the rules and orders of the
 19 commissioner, all other applicable state and federal securities laws, and the
 20 rules of self-regulatory organizations.

21 (2) A broker-dealer's supervisory system shall include without
 22 limitation the:

23 (A) Establishment and maintenance of written procedures
 24 designed to achieve compliance with subdivision (f)(1) of this section; and

25 (B) Appointment of at least one (1) agent of the broker-
 26 dealer who shall meet the qualifications and carry out the supervisory
 27 responsibilities of the broker-dealer for activities in this state under
 28 rules established by the commissioner.

29 (g)(1) An investment adviser shall establish, maintain, and enforce a
 30 system to supervise the activities of its representatives and employees that
 31 is reasonably designed to achieve compliance with this chapter, the rules and
 32 orders of the commissioner, all other applicable state and federal securities
 33 laws, and the rules of self-regulatory organizations.

34 (2) An investment adviser's supervisory system shall include
 35 without limitation the:

36 (A) Establishment and maintenance of written procedures

1 designed to achieve compliance with subdivision (g)(1) of this section; and
2 (B) Appointment of at least one (1) representative of the
3 investment advisor who shall meet the qualifications and carry out the
4 supervisory responsibilities of the investment advisor for activities in this
5 state under rules established by the commissioner.

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8 **APPROVED: 03/18/2011**
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