

State of Arkansas
76th General Assembly
Regular Session, 1987
By: Representative Mahony

HOUSE BILL 1606

"AN ACT TO AMEND VARIOUS SECTIONS OF ACT 254 OF 1959, AS
AMENDED, THE ARKANSAS SECURITIES ACT."

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

SECTION 1. Section 2 of Act 254 of 1959, as amended, the same being Ark. Stat. Ann. §67-1236 (Repl. 1980), is hereby amended to read as follows:

"Section 2. Unlawful acts in Giving Advice as to Value, Purchase or Sale of Securities.

(a) It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise,

(1) to employ any device, scheme, or artifice to defraud the other person;

(2) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person; or

(3) to engage in dishonest or unethical practices as the Commissioner may by rule define.

(b) In the solicitation of advisory clients, it is unlawful for any person to make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made, in light of the circumstances under which they are made, not misleading.

(c) Except as may be permitted by rule or order of the Commissioner, it is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing,

(1) that the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(2) that no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(3) that the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(d) Subsection (c)(1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. 'Assignment', as used in (c)(2), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(e) It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if:

(1) the Commissioner by rule prohibits custody; or

(2) in the absence of rule, the investment adviser fails to notify the Commissioner that he has or may have custody.

SECTION 2. Section 3 of Act 254 of 1959, as amended, the same being Ark. Stat. Ann. §67-1237 (Cum. Supp. 1985), is hereby amended to read as follows:

"Section 3. (a) It is unlawful for any person to transact business in this State as a broker-dealer or agent unless he is registered under this Act.

(b) It is unlawful for any registered broker-dealer or issuer to employ an unregistered agent except a nonresident agent registered by any other state securities administrator who effects transactions in this State exclusively with registered broker-dealers. The registration of an agent is not effective during any period when he is not associated with a particular broker-dealer registered under this Act or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the broker-dealer or

issuer shall promptly notify the Commissioner or the Commissioner's designee. When an agent terminates his registration with or withdraws his registration from a broker-dealer or issuer, a subsequent application by the agent for registration shall be considered an initial registration and shall be deemed a notification by the agent of termination or withdrawal of the previous registration or application. The Commissioner may by rule establish provisions for concurrent registration with more than one broker-dealer or issuer.

(c) It is unlawful for any person to transact business in this State as an investment adviser or as an investment adviser representative unless he is so registered under this Act.

(d) Every registration expires December 31 of each year unless such registration is renewed.

(e) At least one officer or partner, who shall have direct supervision over the purchase and sale of securities in Arkansas, shall be registered as (1) an agent and designated a principal of a broker-dealer or (2) an agent of the issuer and shall satisfy qualifications set by the Commissioner. Upon the removal of such officer or partner from the broker-dealer or issuer or upon the removal of such principal from the direct supervision of the purchase and sale of securities in Arkansas, the issuer or broker-dealer must again satisfy this provision.

(f) It is unlawful for any investment adviser required to be registered under this Act to employ an investment adviser representative unless the investment adviser representative is registered under this Act. The registration of an investment adviser representative is not effective during any period when he is not employed by an investment adviser registered under this Act. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser shall promptly notify the Commissioner.

(g) Each person who exercises direct control or has substantial influence over the day to day operations of a broker-dealer firm, or who acts in a supervisory or managerial capacity, must be qualified as a securities principal and designated as such with the Arkansas Securities Department."

SECTION 3. Subsection (a) of Section 4 of Act 254 of 1959, as amended, the same being Ark. Stat. Ann. §67-1238(a), is hereby amended to read as follows:

"(a) A broker-dealer, agent, investment adviser, or investment adviser representative may obtain an initial or renewal registration by filing with the Commissioner or the Commissioner's designee an application and fee together with a consent to service of process pursuant to Section 26(g). The Commissioner may by rule set forth the form and content of the application and establish a procedure for renewal registration or initial registration whereby registration may become effective prior to the filing of a completed application or fee. The application shall contain whatever information the Commissioner by rule requires concerning such matters as the applicant's form and place or organization; the applicant's proposed method of doing business; the qualification, disciplinary history, and business history of the applicant including, in the case of a broker-dealer or investment adviser, the qualifications and history of any partner, officer, director, person occupying a similar status or performing similar functions, or any persons directly or indirectly controlling the broker-dealer or investment adviser; any investigation, proceeding, order, injunction, arrest or conviction of any felony or misdemeanor; an applicant's financial condition and history; any information to be furnished or distributed to any client or prospective client if the applicant is an investment adviser; and such other information as the Commissioner may deem necessary or appropriate. The Commissioner may provide for a written examination to be taken by each class of applicants to be used as one of the bases in determining an applicant's qualifications to be registered.

The Commissioner may by rule or order waive the examination requirement as to a person or class of persons if the Commissioner determines that the examination is not necessary for the protection of investors or advisory clients. Any agent, broker-dealers, or investment adviser shall be exempt from examination, except such part as relates to this Act, if he was engaged in the securities business in Arkansas on July 1, 1959, and was registered with the National Association of Securities Dealers or the Federal Securities and Exchange Commission.

If no denial order is in effect, no application to withdraw has been received, or no proceeding is pending under Section 6, registration becomes effective on the thirtieth day after the application is completed and all general eligibility requirements have been met. The Commissioner may by order postpone the date on which a registration is to become effective for an addi-

tional length of time not to exceed thirty (30) days if such additional time is deemed necessary to complete an examination or investigation of the applicant, provided such examination or investigation is instituted within the initial thirty (30) day period. The Commissioner may determine an earlier effective date upon review of the application."

SECTION 4. Subsections (d) and (e) of Section 4 of Act 254 of 1959, as amended, the same being Ark. Stat. Ann. §67-1238(d) and (e) [Cum.Supp. 1985], are hereby amended to read as follows:

"(d) The Commissioner shall require a minimum net capital for registered broker-dealers in the amount of \$25,000, and may by rule establish minimum financial requirements for investment advisers which may include different requirements for those investment advisers who maintain custody of client's funds or securities or who have discretionary authority over the same and those investment advisers who do not. No registered broker-dealer shall permit his aggregate indebtedness to exceed 1500 percent of the net capital of such broker-dealer; provided, however, this shall not apply to broker-dealers registered with the Securities and Exchange Commission who are also members of the National Association of Securities Dealers or investment advisers registered or exempt from registration with the Securities and Exchange Commission who do not maintain customer funds or securities. The Commissioner shall by rule define net capital and aggregate indebtedness.

(e) The Commissioner shall require registered broker-dealers to post a corporate surety bond in the amount of one hundred thousand dollars (\$100,000.00), registered investment advisers to post a corporate surety bond in the amount of fifty thousand dollars (\$50,000.00) and an agent for the issuer to post a corporate surety bond in the amount of twenty-five thousand dollars (\$25,000.00). In no event shall the total liability of the surety, to all persons, cumulative or otherwise, exceed the amounts specified in the bond. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within five (5) years after the sale or other act upon which it is based. Every bond shall provide for suit thereon by any person who has a cause of action under this Act. Provided, however, in lieu of a corporate surety bond:

(i) a broker-dealer registered with the Securities and Exchange Commission who is also a member of the National Association of Securi-

ties Dealers and a member of the Securities Investor Protection Corporation and whose agents are registered with the National Association of Securities Dealers may maintain a fidelity bond covering each agent in a form substantially similar to the standard form of Brokers Blanket Bond promulgated by the Surety Association of America, in the following amounts

Dealer with 1 to 5 agents-----	\$40,000.00
Dealer with 6 to 10 agents-----	\$50,000.00
Dealer with 10 to 15 agents-----	\$60,000.00
Dealer with 16 to 20 agents-----	\$70,000.00
Dealer with 21 to 30 agents-----	\$80,000.00
Dealer with over 30 agents-----	\$100,000.00

and covering at least fidelity on premises, in transit, misplacement, forgery and alteration (including check forgery), securities loss (including securities forgery), fraudulent trading, and providing that no cancellation or termination of the bond shall take effect prior to the expiration of thirty (30) days after written notice of such cancellation or termination has been filed with the Commissioner; or

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

(iii) an investment adviser who is registered or exempted from registration with the Securities and Exchange Commission and who does not maintain customer funds or securities shall keep and maintain at least twenty-five thousand dollars (\$25,000) net worth evidenced by an annual audited financial statement accompanied by an opinion acceptable to the Commissioner prepared by an independent certified public accountant filed with the Commissioner; or

(iv) the Commissioner shall accept any appropriate deposit of cash or securities issued by the United States, the State of Arkansas, or any political subdivision thereof, having a market value of an amount equal to the required corporate surety bond. Such deposits of

cash and securities shall not be withdrawn until five (5) years after the last effective date of registration or the last effective date for which such deposit was used as a requirement, whichever is later."

SECTION 5. Section 3 of Act 6 of 1979, the same being Ark. Stat. Ann. §67-1238.1 (Repl. 1980), is hereby amended to read as follows:

"Section 3. Authority to Refund. The Commissioner, in his discretion, has the authority to immediately refund any deposit of cash or securities pledged in lieu of a fidelity bond by a broker-dealer who operates as a sole proprietorship which has no agents other than the sole proprietor and who is registered with the Securities and Exchange Commission and is a member of the National Association of Securities Dealers and Securities Investor Protection Corporation."

SECTION 6. Section 5 of Act 254 of 1959, as amended, the same being Ark. Stat. Ann. §67-1239 (Cum. Supp. 1985), is hereby amended to read as follows:

"Section 5. Records and Reports of Agents, Broker-Dealers, Issuers and Investment Advisers.

(a) Every applicant, registered issuer, registered broker-dealer or investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books and other records as the Commissioner by rule prescribes. All records so required shall be preserved for five (5) years unless the Commissioner by rule prescribes otherwise for particular types of records.

(b) With respect to investment advisers, the Commissioner may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the Commissioner in his discretion, information furnished to clients or prospective clients of an investment adviser pursuant to the Investment Advisers Act of 1940 and the rules promulgated thereunder may be used in whole or partial satisfaction of this requirement.

(c) Every registered broker-dealer, issuer or investment adviser shall file such financial reports as the Commissioner by rule prescribes.

(d) If the information contained in any document filed with the

Commissioner or the Commissioner's designee is or becomes inaccurate or incomplete in any material respect, the registrant shall within ten (10) days file a correcting amendment.

(e) All of the records referred to in subsection (a) are subject at any time or from time to time to such reasonable, periodic, special, or other examinations by representatives of the Commissioner, within or without this State, as the Commissioner deems necessary or appropriate in the public interest or for the protection of investors. Such applicant, issuer, broker-dealer or investment adviser shall pay a fee for each such examination not to exceed one hundred dollars (\$100.00) per day, or fraction thereof, for each examiner who is absent from the office of the Commissioner for the purpose of making such examination, and in addition thereto, shall pay the actual hotel and traveling expenses of such authorized examiner(s) from Little Rock and return. For the purpose of avoiding unnecessary duplication of examination, the Commissioner, insofar as he deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commissioner, any national securities exchange or national securities association registered under the Securities Exchange Act of 1934 (U.S.C., tit. 15, Sections 78a-78hh; F.C.A., tit., 15 Sections 78a-78hh), or any other jurisdiction, agency or organization charged by law or statute with regulating or prosecuting any aspect of the securities business, and in so cooperating may share any information he or his representatives may obtain as a result of any investigation or examination. 'Examination' shall include the right to reproduce copies of the records referred to in subsection (a)."

SECTION 7. Section 6 of Act 254 of 1959, as amended, the same being Ark. Stat. Ann. §67-1240 (Cum. Supp. 1985), is hereby amended to read as follows:

"Section 6. Denial, Suspension or Revocation of Registration. Bar and Censure. Civil Penalty. Withdrawal of Registration.

(a) The Commissioner may by order deny, suspend, or revoke any registration, or bar or censure any registrant or any officer, director, partner or person occupying a similar status or performing similar functions for a registrant, from employment with a registered broker-dealer or investment adviser, or restrict or limit a registrant as to any function or activity of the business for which registration is required in this State, or impose a civil penalty against any appropriate person, if he finds:

- (1) that the order is in the public interest and,
- (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(A) has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(B) has wilfully violated or wilfully failed to comply with any provision of this Act or a predecessor Act or any rule under this Act or a predecessor Act, or any provision of or rule promulgated under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, or the Commodity Exchange Act, or any order issued by the Commissioner to which the individual or firm was a party;

(C) has been convicted of, or pled guilty or nolo contendere to, within the past ten (10) years, any misdemeanor involving any aspect of the securities business, or any felony;

(D) has pending against him a charge of unlawful conduct involving any aspect of the securities business;

(E) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(F) is the subject of an order of the Commissioner denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, or investment adviser representative;

(G) is the subject of an adjudication or determination made within the past five (5) years by the securities or commodities agency or administrator of any other state, any banking or insurance agency of any state, any national securities, commodities, or banking agency or jurisdiction, any national securities or commodities exchange, any securities or commodities self-regulatory

organization or any registered securities association or clearing agency denying, revoking, suspending or expelling him from registration as a broker-dealer, agent or investment adviser or the substantial equivalent of those terms, or is the subject of a United States Postal fraud order;

(H) has engaged in dishonest or unethical practices in the securities business or in other segments of the financial products or services industry;

(I) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the Commissioner may not enter an order against a broker-dealer or investment adviser under this clause without a finding of insolvency as to the broker-dealer or investment adviser; or

(J) is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except that:

(i) The Commissioner may not enter an order against a broker-dealer on the basis of the lack of qualifications of any person other than (A) the broker-dealer himself if he is an individual or (B) a designated principal of the broker-dealer acting in a supervisory or managerial capacity.

(ii) The Commissioner may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than (A) the investment adviser himself if he is an individual or (B) any other person who represents the investment adviser in doing any of the acts which make him an investment adviser.

(iii) The Commissioner may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both and reasonable assurances are given to the Commissioner that the applicant or registrant will be properly supervised by persons possessing the requisite experience.

(iv) The Commission shall consider that an agent who will work under the supervision of a registered principal of a broker-dealer need not have the same qualifications as a

principal of a broker-dealer, and that an investment adviser representative who will work under the supervision of a registered investment adviser need not have the same qualifications as an investment adviser.

(v) The Commissioner shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a principal or agent of a broker-dealer.

(K) has failed reasonably to supervise his agents or employees if he is a broker-dealer, or his employees or investment adviser representatives if he is an investment adviser, to assure compliance with this Act;

(L) has failed to pay the proper filing fee: but the Commissioner may enter only a denial order under this clause, and he shall vacate any such order when the deficiency has been corrected;

(M) has failed to become or remain qualified and registered as a securities principal under this Act if he is required under Section 3(g) of this Act to be designated as a securities principal with the Arkansas Securities Department; or

(N) has demonstrated that he is unworthy to transact business as a broker-dealer, agent, investment adviser, or investment adviser representative within the State of Arkansas. The Commissioner may by rule establish criteria for a determination of the lack of worthiness to transact business in this State, which may include consideration of the applicant's or registrant's disciplinary history as a whole in order to demonstrate that the applicant or registrant has repeatedly violated the securities laws of any jurisdiction and thus is undeserving of a license to transact business under the laws of the State of Arkansas as administered by the Securities Commissioner.

(b) The Commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within one hundred eighty (180) days after registration or unless the applicant or registrant waives such time limitation.

(c) The Commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon

the entry of the order the Commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, that it has been entered, and of the reasons therefor, and that within fifteen (15) days after the receipt of a written request the matter will be set for hearing. If no hearing is requested and none is ordered by the Commissioner, the order will remain in effect until it is modified or vacated by the Commissioner. If a hearing is requested or ordered, the Commissioner, after notice of an opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) If the Commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser, or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the Commissioner may by order cancel or revoke the registration or application.

(e) Withdrawal from registration or withdrawal of an application for registration as a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the Commissioner may determine, unless a proceeding under subsection (a) hereof is pending when the application to withdraw is filed or such a proceeding or a proceeding to impose conditions upon the withdrawal is instituted within thirty (30) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Commissioner by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Commissioner may nevertheless institute a revocation or suspension proceeding under Section 6(a)(2)(B) within one year after withdrawal became effective and may enter a revocation or suspension order, or other order, as of the last date on which registration was effective.

(f) A civil penalty levied under subsection (a) hereof shall not exceed five thousand dollars (\$5,000.00) per violation per person nor fifty thousand dollars (\$50,000.00) in a single proceeding against any one person. Nothing herein shall limit the authority of the Commissioner to enter consent orders

or settlement orders that, pursuant to agreement of the parties, provide for payment of a civil penalty in excess of the limits prescribed herein.

(g) No order may be entered under any part of this section except the first sentence of subsection (c) without (1) appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative), (2) opportunity for hearing, and (3) written findings of fact and conclusions of law; provided, however, that nothing herein shall limit the authority of the Commissioner to enter consent orders or settlement orders that, pursuant to agreement of the parties, do not contain written findings of fact and conclusions of law."

SECTION 8. Subsections (b) and (c) of Section 9 of Act 254 of 1959, the same being Ark. Stat. Ann. §67-1243(b) and (c) (Repl. 1980), are hereby amended to read as follows:

"(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Section 11(c) and the consent to service of process required by Section 26(g):

(1) one (1) copy of the prospectus together with all amendments filed under the Securities Act of 1933;

(2) if the Commissioner by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(3) if the Commissioner requests, any other information, or copies of any other documents, filed under the Securities Act of 1933; and

(4) an undertaking to forward all amendments to the federal registration statement, other than an amendment which merely delays the effective date, promptly and in any event not later than the first business day after the day they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

(c) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective

if all the following conditions are satisfied:

(1) no stop order is in effect, no proceeding is pending under Section 12, and all deficiencies cited by the Commissioner of which the issuer has been given notice have been cured.

(2) the registration statement has been on file with the Commissioner for at least ten days; and

(3) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two full business days or such shorter period as the Commissioner permits by rule or otherwise and the offering is made within those limitations.

The registrant shall promptly notify the Commissioner by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. 'Price amendment' means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the Commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection, if he promptly notifies the registrant by telephone or telegram (and promptly confirms by letter or telegram when he notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment, the stop order is void as of the time of its entry. The Commissioner may by rule or otherwise waive either or both of the conditions specified in clauses (2) and (3). If the federal registration statement becomes effective before all the conditions in this subsection are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the Commissioner of the date when the federal registration statement is expected to become effective, the Commissioner

shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under Section 12; but this advice by the Commissioner does not preclude the institution of such a proceeding at any time."

SECTION 9. Section 13 of Act 254 of 1959, as amended, the same being Ark. Stat. Ann. §67-1247 (Cum. Supp. 1985), is hereby amended to read as follows:

"Section 13. Definitions of terms Used. When used in this Act, unless the context otherwise requires:

(a) 'Commissioner' means the Arkansas Securities Commissioner.

(b) 'Agent' means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. 'Agent' does not include an individual who represents an issuer in (1) effecting transactions in a security exempted by clauses (1), (2), (3), (4), (5), (9) or (10) of Section 14 (a) and such other transaction in a security exempted by other clauses of Section 14(a) as the Commissioner may by rule or order prescribe; (2) effecting transactions exempted by Section 14(b) unless otherwise required by Section 14(b); or, (3) effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this State. A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition.

(c) 'Broker-dealer' means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. 'Broker-dealer' does not include (1) an agent, (2) an issuer, (3) a bank, a savings institution, savings and loan association or trust company, or (4) a person who has no place of business in this State and is registered as a broker-dealer with the Securities and Exchange Commission or the National Association of Securities Dealers if (A) he effects transactions in this State exclusively with or through (i) the issuer of the securities involved in the transactions, (ii) other broker-dealers, or (iii) banks, savings institutions, savings and loan associations, trust companies, insurance companies, invest-

ment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) during any period of twelve (12) consecutive months he does not direct more than fifteen (15) offers to sell or buy into this State in any manner to persons other than those specified in clause (A), whether or not the offeror or any of the offerees are then present in this State.

(d) 'Fraud', 'deceit', and 'defraud' are not limited to common law deceit.

(e) 'Guaranteed' means guaranteed as to payment of principal, interest, or dividends.

(f) 'Investment Adviser' means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who for compensation, issues or promulgates analysis or reports concerning securities. 'Investment adviser' includes financial planners and other persons who, as an integral component of other financially related services, provide investment advisory services to others for compensation or who hold themselves out as providing investment advisory services to others for compensation. 'Investment adviser' does not include (1) an investment adviser representative; (2) a bank, savings and loan association, credit union or trust company; (3) a lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of his profession; (4) a broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them; (5) a publisher of any bona fide newspaper, news column, news letter, news magazine, or business or financial publication or service of general, regular, and paid circulation whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client; (6) a person who has no place of business in this State if (A) his only clients in this State are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B)

during any period of twelve (12) consecutive months he does not direct business communications into this State in any manner to more than five (5) clients other than those specified in clause (A), whether or not he or any of the persons to whom the communications are directed is then present in this State; or (6) such other persons not within the intent of this subsection as the Commissioner may by rule or order designate.

(g) 'Investment Adviser Representative' means any partner, officer, director of (or a person occupying a similar status or performing similar functions) or other individual employed by or associated with, an investment adviser except clerical or ministerial employees who (1) makes any recommendation or otherwise renders advice regarding securities, (2) manages accounts or portfolios of clients, (3) determines which recommendations or advice regarding securities should be given, (4) solicits, offers or negotiates for the sale of or sells investment advisory services or (5) supervises employees who perform any of the foregoing.

(h) 'Issuer' means every person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term 'issuer' means the person or persons performing the acts and assuming the duties of depositors or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; except that in the case of an unincorporated association which provides by its articles for limited liability of any or all of its members, or in the case of a trust, committee, or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust committee, or other legal entity; except that with respect to equipment-trust certificates or like securities, the term 'issuer' means the person by whom the equipment or property is or is to be used; and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term 'issuer' means the owner of any such right or of any interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of the offering.

(i) 'Mortgage Related Securities' means any securities that are

offered and sold pursuant to Section 4(5) of the Securities Act of 1933 or that are 'mortgage related securiaties' as that term is defined in Section 3(a)(41) of the Securities and Exchange Act of 1934.

(j) 'nonissuer' means not directly or indirectly for the benefit of the issuer.

(k) 'Person' means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(1)(1) 'Sale' or "Sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(2) 'Offer' or "offer to Sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value, and any offer to rescind the sale of a security.

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

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

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

(6) The terms defined in this subsection do not include (A) any bona fide pledge or loan; (B) any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; (C) any stock split, reverse stock split, or change in par value, which involves the substitution of a security of an issuer for another security of the same issuer; or (D) any act incident to a judicially approved reorganization in which a security is issued in exchange for one (1) or more outstanding securities, claims, or property intrests, or partly in such

exchange and partly for cash.

(m) 'Securities Act of 1933', 'Securities Exchange Act of 1934', 'Public Utility Holding Company Act of 1935', and 'Investment Company Act of 1940' mean the federal statutes of those names as amended before or after the effective date of this Act.

(n) 'Security' means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; variable annuity contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a 'security' or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. 'Security' does not include any insurance or endowment policy or annuity contract or variable annuity contract issued by any insurance company.

(o) 'State' means any state, territory, or possession of the United States, the District of Columbia and Puerto Rico."

SECTION 10. Subsection (a) of Section 14 of Act 254 of 1959, as amended, the same being Ark. Stat. Ann. §67-1248(a) [Cum. Supp. 1985], which exempts certain securities from registration under the Arkansas Securities Act, is hereby amended by inserting an additional subsection at the end thereof to read as follows:

"(14) Mortgage related securities, as defined in this Act, are not securities exempt from registration under Section 14(a) of this Act in the same manner as obligations issued or guaranteed as to principal and interest by the United States or any instrumentality or agency thereof. Such instruments, commonly referred to as mortgage-backed securities, may be exempt from the registration requirements of the Act provided that the securities or the transactions are exempt under other provisions of Section 14 of this Act. This provision specifically overrides the preemption of State law contained in Section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984, P.L. 98-440 of the United States."

SECTION 11. Paragraph (9) of subsection (b) of Section 14 of Act 254 of 1959, as amended, the same being Ark. Stat. Ann. §67-1248(b)(14) [Cum Supp. 1985], which exempts certain transactions from registration under the Arkansas Securities Act, is hereby amended to read as follows:

"(9) any transaction pursuant to the offer or sale of a security provided there shall be no more than twenty-five (25) purchasers of the securities being offered, and (A) the seller reasonably believes that all the buyers in this State are purchasing for investment, and (B) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer; but the Commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of purchasers permitted, or waive the conditions in clauses (A) and (B) with or without the substitution of a limitation on remuneration;"

SECTION 12. Paragraph (1) of subsection (b) of Section 14 of Act 254 of 1959, as amended, the same being Ark. Stat. Ann. §67-1248(b)(14) [Cum Supp. 1985], which exempts certain transactions from registration under the Arkansas Securities Act, is hereby amended to read as follows:

"(11) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, non-transferable warrants, or transferable warrants, if no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this State, unless the Commissioner shall, upon written application, permit the payment of a commission or other remuneration with or without the substitution of a limitation on remuneration;"

SECTION 13. Subparagraph (iv) of paragraph (14) of subsection (b) of Section 14 of Act 254 of 1959, as amended, the same being Ark. Stat. Ann. §67-1248(b)(14)(iv) [Cum. Supp. 1985], which exempts certain transactions from registration under the Arkansas Securities Act, is hereby amended to read as follows:

"(iv) The securities may only be sold through a broker-dealer or agent of the issuer registered under this Act, or a person not included within the

definition of 'broker-dealer' or 'agent' as defined in this Act who meets such qualifications as may be established by the Commissioner pursuant to rule making authority."

SECTION 14. Subsection (f) of Section 14 of Act 254 of 1959, as amended, the same being Ark. Stat. Ann. §67-1248(f) [Cum. Supp. 1985], is hereby amended to read as follows:

"(f) Before any transaction shall be executed as an exempted transaction under Section 14(b)(9), (10), (11), or (14), except in the case of dividend reinvestment programs pursuant to Section 14(b)(11), a proof of exemption must first be filed with the Commissioner and the Commissioner by order shall not have disallowed the exemption within the next five (5) full business days. Before any dividend reinvestment program shall be executed as an exempt transaction under Section 14(b)(11) an initial proof of exemption shall be filed and thereafter in every fifth year such proof of exemption must be first filed with the Commissioner and the Commissioner by order shall not have disallowed the exemption within the next five (5) full business days.

The proof of exemption shall contain a statement of the grounds upon which the exemption is claimed and a statement setting forth the subsection of Section 14 under which the exemption is claimed. For every such proof of exemption filed with the Commissioner under subsection (b)(9) there shall be paid to the Commissioner a filing fee of one-tenth of one percent (1/10 of 1%) of the maximum aggregate offering price at which the securities are to be offered in this State, but the fee shall in no case be less than twenty-five dollars (\$25.00) or more than five hundred dollars (\$500.00). For every such proof of exemption filed with the Commissioner under subsection (b)(10) or (b)(11) there shall be paid to the Commissioner a filing fee of fifty dollars (\$50.00). For every proof of exemption filed with the Commissioner under subsection (b)(14) there shall be paid to the Commissioner a filing fee of one-tenth of one percent (1/10 of 1%) of the maximum aggregate offering price at which the securities are to be offered in this State, but the fee shall in no case be less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00). The Commissioner shall have authority to amend or rescind under this subsection filing fees by rule or order if the Commissioner determines that such fee is

excessive under the circumstances."

SECTION 15. Section 16 of Act 254 of 1959, as amended, the same being Ark. Stat. Ann. §67-1250 [Cum. Supp. 1985], is hereby amended to read as follows:

"Section 16. False or Misleading Statements. It is unlawful for any person to make or cause to be made, in any document filed with the Commissioner or the Commissioner's designee, or in any oral statement given or made to the Commissioner or the Commissioner's designee, or in any formal or informal proceeding under this Act, any statement which is, at the time in light of the circumstances under which it is made, false or misleading in any material respect."

SECTION 16. Subsection (b) of Section 18 of Act 254 of 1959, as amended, the same being Ark. Stat. Ann. §67-1252(b) [Cum. Supp. 1985], is hereby amended to read as follows:

"(b) It is unlawful for the Commissioner or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the Commissioner and which is not made public. Neither the Commissioner nor any of his officers or employees shall disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under this Act, or in any judicial proceedings when such information is not privileged. No provision of this Act with creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the Commissioner or any of his officers or employees. Provided, however, that nothing herein shall prevent the Commissioner or any officers or employees of the Arkansas Securities Department from sharing with law enforcement authorities or other authorities having jurisdiction over securities matters, State or federal, or self-regulatory organizations authorized by law, or other State or federal regulatory authorities that supervise various segments of the financial services industry, such information as they may have or obtain in aid of the enforcement of this or any other securities act or the criminal provisions of any laws."

SECTION 17. Subsections (f) and (g) of Section 19 of Act 254 of 1959,

as amended, the same being Ark. Stat. Ann. §67-1253(f) and (g) [Repl. 1980], are hereby amended to read as follows:

"(f) The Commissioner may delegate to any appropriate staff member or other employee of the Department, under such conditions as he deems appropriate, any responsibilities of the Commissioner as set forth in this Act, the Savings and Loan Act, the Credit Union Act or any other Act for which the Commissioner is responsible.

(g) The Commissioner, subject to such restrictions as he in his discretion deems appropriate, may delegate to any appropriate staff member or other employee of the Department, the exercise or discharge in the Commissioner's name of any power, duty, or function, whether ministerial, discretionary or of whatever character, vested by this Act in the Commissioner."

SECTION 18. Subsection (a) of Section 20 of Act 254 of 1959, as amended, the same being Ark. Stat. Ann. §67-1254(a) [Repl. 1980], is hereby amended to read as follows:

"(a) Whenever it appears to the Commissioner, upon sufficient grounds or evidence satisfactory to the Commissioner, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Act or any rule or order hereunder, he may summarily order the person to cease and desist from such act or practice. Such cease and desist order shall be temporary and may be made permanent only after notice and an opportunity for a hearing. If the Commissioner desires to make the temporary cease and desist order permanent, the Commissioner shall promptly notify all interested parties that the temporary order has been entered, of the reasons therefor, and that within fifteen (15) days of the receipt of a written request, the matter will be set for hearing. If no hearing is requested and none is ordered by the Commissioner, the order may be made permanent and will remain in effect until it is modified or vacated by the Commissioner. If a hearing is requested or ordered, the Commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the temporary order or enter a permanent order. The Commissioner may, subsequent to the entry of any such temporary or permanent order, apply to the Chancery Court of Pulaski County to temporarily or permanently enjoin the act or practice and to enforce compliance with this Act or any rule or

order hereunder. The Commissioner may, without issuing a cease and desist order, apply directly to the Chancery Court of Pulaski County for the aforesaid relief. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted. The court may not require the Commissioner to post a bond."

SECTION 19. Subsection (e) of Section 25 of Act 254 of 1959, as amended, the same being Ark. Stat. Ann. §67-1259(e) [Repl. 1980], is hereby amended to read as follows:

"(e) The Commissioner in his discretion, and upon payment of such fees and compliance with such conditions as the Commissioner may by rule prescribe may honor requests from interested persons for interpretative opinions."

SECTION 20. Paragraph (5) of subsection (f) of Section 25 of Act 254 of 1959, as amended, the same being Ark. Stat. Ann. §67-1259(f)(5) [Cum Suppl. 1985], which lists information which the Securities Commissioner must keep confidential, is hereby amended to read as follows:

"(5) Information contained in or related to examinations, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;"

SECTION 21. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 22. It is hereby found and determined that certain provisions of this Act, most particularly those pertaining to the oversight, supervision and discipline of those persons who engage in the securities business and to the enforcement powers of the Securities Department in regard to its duty to protect the public from fraud and incompetence in the marketplace, are inadequate. Therefore, in order to insure that the State possesses adequate authority under this Act to protect the citizens of the State of Arkansas from the incidence of fraud and incompetence in the securities business, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from the date of its passage and

approval.