

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

A Bill

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
 36 purpose 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
 8 for 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)~~ (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
19 persons performing the acts and assuming the duties of depositor or manager
20 pursuant to the provisions of the trust or other agreement or instrument under
21 which 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)~~ (10) _Nonissuer_ means not directly or indirectly for the benefit of
35 the issuer;

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

1 liability company, a partnership, an association, a joint-stock company, a
 2 trust where 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
12 1940_, and _Investment Company Act of 1940_ mean the federal statutes of those
13 names, 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 plaintiff_s 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

28 SECTION 9. Arkansas Code § 23-42-212(a) is amended to read as follows:

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

34 (2) Neither any such fact nor the fact that an exemption or
35 exception is available for a security or a transaction means that the
36 commissioner has passed in any way upon the merits or qualifications of, or

1 recommended or given approval to, any person, security, or transaction."

2

3 SECTION 10. Arkansas Code § 23-42-301 is amended to read as follows:

4 "23-42-301. Registration required.

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

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

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

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

18 (B) When an agent terminates his registration with or withdraws
19 his registration from a broker-dealer or issuer, a subsequent application by
20 the agent for registration shall be considered an initial registration and
21 shall be deemed a notification by the agent of termination or withdrawal of
22 the previous registration or application.

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

25 (c) It is unlawful for any person to transact business in this state as
26 an investment adviser or representative ~~unless he is so~~ without first being
27 registered under this chapter unless such person:

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

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

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

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

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

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

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

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

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

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

23 (B) A broker-dealer with more than one branch office located in
 24 Arkansas may designate more than one (1) resident principal and specify the
 25 branch office or offices for which each resident principal has supervisory
 26 responsibility.

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

32
 33 SECTION 11. Arkansas Code § 23-42-302(h) is amended to read as follows:

34 "(h) A registered broker-dealer, ~~or~~ investment adviser, or person
 35 required to make a notice filing pursuant to § 23-42-301(c)(1) may file an
 36 application for registration or notice filing of a successor, whether or not

1 the successor is then in existence. Such application or notice filing shall
 2 comply with the requirements for an initial application or notice filing."

3

4 SECTION 12. Arkansas Code § 23-42-303 is amended to read as follows:

5 "23-42-303. Minimum net capital requirement.

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

10 ~~_____ (b) No registered broker-dealer shall permit his aggregate indebtedness~~
 11 ~~to exceed fifteen hundred percent (1500%) of the net capital of the broker-~~
 12 ~~dealer.~~

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

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

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

20 ~~_____ (c) The commissioner shall define net capital and aggregate~~
 21 ~~indebtedness by rule.~~

22 ~~_____ (d) Subsections (a) and (b) of this section shall not apply to broker-~~
 23 ~~dealers registered with the Securities and Exchange Commission who are also~~
 24 ~~members of the National Association of Securities Dealers or investment~~
 25 ~~advisers registered with the Securities and Exchange Commission."~~

26

27 SECTION 13. Arkansas Code § 23-42-304(a) is amended to read as follows:

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

31 (1) Three hundred dollars (\$300) in the case of a broker-dealer;

32 (2) Seventy-five dollars (\$75.00) in the case of an agent, of which
 33 twenty-five dollars (\$25.00) shall be designated as special revenues and shall
 34 be deposited in the Securities Department Fund;

35 (3) Three hundred dollars (\$300) in the case of an investment
 36 adviser; and

1 (4) Seventy-five dollars (\$75.00) in the case of a representative,
 2 of which twenty-five dollars (\$25.00) shall be designated as special revenues
 3 and shall be deposited in the Securities Department Fund."
 4

5 SECTION 14. Arkansas Code § 23-42-305 is amended to read as follows:

6 "23-42-305. Corporate surety bonds - Alternatives.

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

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

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

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

23 ~~(2)~~(1) In no event shall the total liability of the surety to all
 24 persons, cumulative or otherwise, exceed the amounts specified in the bond.

25 ~~(3)~~(2) Every bond shall provide that no suit may be maintained to
 26 enforce any liability on the bond unless brought within five (5) years after
 27 the sale or other act upon which it is based.

28 ~~(4)~~(3) Every bond shall provide for suit thereon by any person who
 29 has a cause of action under this chapter.

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

31 ~~(1) A broker-dealer registered with the Securities and Exchange~~
 32 ~~Commission, who is also a member of the National Association of Securities~~
 33 ~~Dealers and either a member of the Securities Investor Protection Corporation~~
 34 ~~or excluded from being a member thereof, and whose agents are registered with~~
 35 ~~the National Association of Securities Dealers, may maintain a fidelity bond~~
 36 ~~covering each agent in a form substantially similar to the standard form of~~

1 ~~brokers' blanket bond promulgated by the Surety Association of America, in the~~
 2 ~~following amounts:~~

3	—— Dealer with 1 to 5 agents.....	\$40,000
4	—— Dealer with 6 to 10 agents.....	\$50,000
5	—— Dealer with 11 to 15 agents.....	\$60,000
6	—— Dealer with 16 to 20 agents.....	\$70,000
7	—— Dealer with 21 to 30 agents.....	\$80,000
8	—— Dealer with over 30 agents.....	\$100,000

9 ~~and covering, at least, fidelity on premises, in transit, misplacement,~~
 10 ~~forgery and alteration including check forgery, securities loss including~~
 11 ~~securities forgery, and fraudulent trading;~~

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

18 ~~—— (3) Unless the commissioner by rule or order prescribes otherwise,~~
 19 ~~an investment adviser who is registered with the Securities and Exchange~~
 20 ~~Commission, and who does not maintain customer funds, shall keep and maintain~~
 21 ~~at least twenty-five thousand dollars (\$25,000) net worth evidenced by an~~
 22 ~~annual audited financial statement accompanied by an opinion acceptable to the~~
 23 ~~commissioner prepared by an independent certified public accountant and filed~~
 24 ~~with the commissioner; or~~

25 ~~(4) However, in lieu of the posting of a corporate surety bond, the~~
 26 ~~commissioner shall accept any appropriate deposit of cash or securities issued~~
 27 ~~by the federal government, the State of Arkansas, or any political subdivision~~
 28 ~~thereof, and having a market value of an amount equal to the required~~
 29 ~~corporate surety bond. The deposits of cash and securities shall not be~~
 30 ~~withdrawn until five (5) years after the last effective date of registration~~
 31 ~~or the last effective date for which the deposit was used as a requirement.~~

32 ~~—— (c) The commissioner, in his discretion, has the authority to~~
 33 ~~immediately refund any deposit of cash or securities pledged in lieu of a~~
 34 ~~fidelity bond by a broker-dealer who operates as a sole proprietorship which~~
 35 ~~has no agents other than the sole proprietor and who is registered with the~~
 36 ~~Securities and Exchange Commission and is a member of the National Association~~

1 ~~of Securities Dealers and the Securities Investor Protection Corporation."~~

2

3 SECTION 15. Arkansas Code § 23-42-306(a) is amended to read as follows:

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

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

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

16

17 SECTION 16. Arkansas Code § 23-42-404 is amended to read as follows:

18 "23-42-404. Registration statements generally.

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

22 (b)(1) Every person filing a registration statement shall pay a filing
23 fee of one-tenth of one percent (0.1%) of the maximum aggregate offering price
24 at which the registered securities are to be offered in this state, but the
25 fee shall in no case be less than one hundred fifty dollars (\$150) nor more
26 than two thousand dollars (\$2,000). Any portion of the fee in excess of one
27 thousand dollars (\$1,000) shall be designated as special revenues and shall be
28 deposited in the Securities Department Fund. When a registration statement is
29 withdrawn before the effective date or a preeffective stop order is entered
30 under § 23-42-405, the commissioner shall retain one hundred fifty dollars
31 (\$150) of the filing fee.

32 (2) Sales of securities in excess of the amount of securities to have
33 been offered in this state shall require the person filing the registration
34 statement to pay a filing fee, calculated in the manner specified in
35 subdivision (b)(1) of this section, for all securities sold. In addition, if
36 the sales are in excess of one hundred five percent (105%) of the amount to

1 have been offered, the person filing the registration statement shall pay a
2 penalty fee of two hundred dollars (\$200).

3 ~~—— (c)(1) The initial registration statement of an open-end investment~~
4 ~~company, as defined in the Investment Company Act of 1940, as amended, filed~~
5 ~~pursuant to this subsection shall be effective for a period ending two (2)~~
6 ~~months after the registrant's fiscal year end. Thereafter, the open-end~~
7 ~~investment company must renew the registration by submitting the appropriate~~
8 ~~registration forms and fees within two (2) months after the expiration of the~~
9 ~~registrant's fiscal year end.~~

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

14 ~~—— (d)(c) Every registration statement shall specify:~~

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

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

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

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

25 ~~—— (f)(e) The commissioner may by rule or otherwise permit the omission of~~
26 ~~any item of information or document from any registration statement.~~

27 ~~—— (g)(f) In the case of a nonissuer distribution, information may not be~~
28 ~~required under § 23-42-403 or subsection ~~(n)(m)~~ of this section unless it is~~
29 ~~known to the person filing the registration statement or to the persons on~~
30 ~~whose behalf the distribution is to be made, or can be furnished by them~~
31 ~~without unreasonable effort or expense.~~

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

34 (A) Any security issued within the past three (3) years or to be
35 issued to a promoter for a consideration substantially different from the
36 public offering price, or to any person for a consideration other than cash,

1 be deposited in escrow;

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

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

7 ~~_____~~(i)(h) The commissioner may require the issuer, as a condition of
8 registration by qualification, to escrow up to ten percent (10%) of the
9 maximum aggregate price of the offering, from the offering proceeds under such
10 terms and conditions as he deems appropriate for up to three (3) years from
11 the date of termination of the offering, or to post a corporate surety bond
12 for up to ten percent (10%) of the maximum aggregate price of the offering for
13 up to (3) years from the date of termination of the offering. Any security
14 holder having a right under this chapter against the issuer shall have a right
15 of action against the escrow or corporate surety bond.

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

22 ~~_____~~(k)(j) Every registration statement, ~~except those filed pursuant to~~
23 ~~subsection (c) of this section,~~ is effective for one (1) year from its
24 effective date and, upon renewal, for any longer period during which the
25 security is being offered or distributed in a nonexempted transaction, except
26 during the time a stop order is in effect.

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

34 ~~(m)~~(1)(1) All outstanding securities of the same class as a registered
35 security are considered to be registered for the purpose of any nonissuer
36 transactions:

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

3 (B) Between the thirtieth day after the entry of any stop order
4 suspending or revoking the effectiveness of the registration statement under §
5 23-42-405, if the registration statement did not relate in whole or in part to
6 a nonissuer distribution, and one (1) year from the effective date of the
7 registration statement.

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

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

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

22 ~~_____ (p)~~(o) The State Securities Department is hereby authorized to
23 promulgate such rules and regulations necessary to administer the fees, rates,
24 tolls, or charges for services established by §§ 23-42-304 and 23-42-404 and
25 is directed to prescribe and collect such fees, rates, tolls, or charges for
26 the services by the State Securities Department in such manner as may be
27 necessary to support the programs of the department as directed by the
28 Governor and the General Assembly."

29

30 SECTION 17. Arkansas Code § 23-42-501 is amended to read as follows:

31 "23-42-501. Sale of unregistered nonexempt securities.

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

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

35 (2) The security or transaction is exempted under §§ 23-42-503 or 23-
36 42-504; or

1 (3) It is a covered security."

2
3 SECTION 18. Arkansas Code § 23-42-502 is amended to read as follows:

4 "23-42-502. Filing of prospectus, sales literature, etc.

5 The Commissioner, by rule or order, may require the filing of any
6 prospectus, pamphlet, circular, form letter, advertisement, television, radio,
7 or other sales literature or advertising communication addressed or intended
8 for distribution to prospective investors, including clients or prospective
9 clients of an investment adviser as part of a registered offering or as part
10 of an ~~exemption~~ offering required to be filed under § 23-42-503(d) or § 23-42-
11 504(b)."

12
13 SECTION 19. Arkansas Code § 23-42-503 is amended to read as follows:

14 "23-42-503. Exempted securities.

15 (a) The following securities are exempted from §§ 23-42-501 and 23-42-
16 502:

17 (1)(A) Any security, including a revenue obligation, issued or
18 guaranteed by ~~the United States, any this~~ state, any political subdivision of
19 ~~a this~~ state, or any agency or corporate or other instrumentality of one (1)
20 or more of the foregoing, or any certificate of deposit for any of the
21 foregoing.

22 (B) Any securities that are offered and sold pursuant to Section
23 4(5) of the Securities Act of 1933 or that are mortgage related securities
24 as that term is defined in section 3(a)(41) of the Securities Exchange Act of
25 1934 are not covered securities ~~exempt from registration under this section~~ in
26 the same manner as obligations issued or guaranteed as to principal and
27 interest by the United States or any agency or instrumentality thereof. These
28 instruments, commonly referred to as private mortgage-backed securities, may
29 be exempt from the registration requirements of this chapter provided that the
30 transaction or the securities are otherwise exempt under this section. This
31 provision specifically overrides the preemption of state law contained in
32 section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984,
33 Public Law 98-440, of the United States;

34 (2) Any security issued or guaranteed by Canada, any Canadian
35 province, any political subdivision of any Canadian province, any agency or
36 corporate or other instrumentality of one (1) or more of the foregoing, or by

1 any other foreign government with which the United States currently maintains
2 diplomatic relations, if the security is recognized as a valid obligation by
3 the issuer or guarantor;

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

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

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

18 ~~—————(6)(5) Any security issued or guaranteed by any railroad, other~~
19 ~~common carrier, public utility, or holding company which is:~~

20 ~~—————(A) Subject to the jurisdiction of the Interstate Commerce~~
21 ~~Commission;~~

22 ~~—————(B)(A) A registered holding company under the Public Utility~~
23 ~~Holding Company Act of 1935 or a subsidiary of such a company within the~~
24 ~~meaning of that act;~~

25 ~~—————(C)(B) Regulated in respect of its rates and charges by a~~
26 ~~governmental authority of the United States or any state; or~~

27 ~~—————(D)(C) Regulated in respect of the issuance or guarantee of the~~
28 ~~security by a governmental authority of the United States, any state, Canada,~~
29 ~~or any Canadian province;~~

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

34 ~~—————(B) Any security listed or designated, or approved for listing or~~
35 ~~designation upon notice of issuance, on an interdealer quotation system, if~~
36 ~~such interdealer quotation system has adopted the criteria for listing or~~

1 ~~designation as set forth in Securities Act Release No. 6810 (Dec. 16, 1988);~~
 2 ~~53 Federal Register 52550 (December 28, 1988); provided, however, that the~~
 3 ~~commissioner shall have authority, after notice and hearing, to terminate this~~
 4 ~~exemption as to a system upon written findings of fact and conclusions of law~~
 5 ~~which are subject to judicial review, that the listing or designation~~
 6 ~~standards have been so changed or insufficiently applied that the protection~~
 7 ~~to investors contemplated by the exemption no longer exists;~~

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

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

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

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

17 ~~(8)(7)~~ Any security issued by any person organized and operated not
 18 for private profit but exclusively for religious, educational, benevolent,
 19 charitable, fraternal, social, athletic, or reformatory purposes, or as a
 20 chamber of commerce or trade or professional association. Section 6(c) of the
 21 Philanthropy Protection Act of 1995, Public Law 104-62, of the United States
 22 shall not preempt any provision of this chapter;

23 ~~_____ (9) Any commercial paper which arises out of a current transaction or~~
 24 ~~the proceeds of which have been or are to be used for current transactions,~~
 25 ~~and which evidences an obligation to pay cash within nine (9) months of the~~
 26 ~~date of issuance, exclusive of days of grace, or any renewal of the paper~~
 27 ~~which is likewise limited, or any guarantee of the paper or of the renewal;~~

28 ~~_____ (10)(8)~~ Any investment contract or other security issued in
 29 connection with an employees' stock purchase, savings, pension, profit
 30 sharing, stock bonus, stock option, or similar benefit plan. if, in the case
 31 of ~~p~~ Plans which do not meet the requirements for qualification under the
 32 United States Internal Revenue Code, there is must filed with the commissioner
 33 prior to any offer or sale a notice specifying the terms of the plan. and
 34 ~~The commissioner does not~~ may by order disallow the exemption within ten (10)
 35 days; and

36 ~~(11) Any annuity contract issued by any not-for-profit corporation as~~

1 ~~defined in §§ 4-28-202 and 4-33-140(6) under a permit issued by the State~~
 2 ~~Insurance Department of the State of Arkansas; and~~

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

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

15 (c) The following shall apply to farm cooperatives organized under the
 16 laws of this state as a business corporation but operated as a cooperative, or
 17 organized and operated in this state under § 2-2-101 et seq., §§ 2-2-401 - 2-
 18 2-411, 2-2-413 - 2-2-429, 4-30-101 - 4-30-117, 4-30-201, 4-30-202, and 4-30-
 19 204 - 4-30-207, and to any nonprofit farm cooperative which is qualified to do
 20 business in this state:

21 (1) Any common stock, preferred stock, promissory note, debenture, or
 22 other security may be issued to any cooperative member after either compliance
 23 with subsection (d) of this section or delivery to the cooperative member and
 24 filing, with the commissioner, of financial statements of the farm cooperative
 25 for each of the two (2) fiscal years as of a date not earlier than four
 26 hundred fifty-five (455) days prior to the issuance of the security, all of
 27 which statements shall have been audited, examined, and certified by
 28 independent public accountants to have been prepared in accordance with
 29 generally accepted accounting principles consistently maintained by the
 30 cooperative during the fiscal years represented by the statements. No
 31 registered agent shall be required if no commission or other remuneration is
 32 to be paid in connection with the offer and sale of such securities; or

33 (2) Any interest or agreement which qualifies its holder to be a
 34 member or other patron of a farm cooperative or which represents the terms or
 35 conditions by which members or other patrons purchase or sell agricultural
 36 products or commodities from, to, or through a farm cooperative, or which

1 represents a capital retain, or patronage distribution issued by a farm
2 cooperative solely to its members or other patrons shall not be considered to
3 be a security under this chapter and shall not be subject to the provisions of
4 this chapter, provided:

5 (A) The instruments or interests are properly identified and not
6 labeled with the traditional names of investment securities as defined by §
7 23-42-102~~(14)~~(15);

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

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

17 (3) The commissioner may render foreign nonprofit farm cooperatives
18 the privilege afforded Arkansas nonprofit farm cooperatives set forth in
19 subdivision (c)(2) of this section, provided such foreign cooperative first
20 files supporting documents verifying that it is qualified to do business in
21 Arkansas, that members have substantially the same rights as members of farm
22 cooperatives organized under the nonprofit farm cooperative corporate laws of
23 this state, that the offering is within the scope of subdivision (c)(2) of
24 this section, and any other information which the commissioner deems
25 appropriate.

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

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

34 (3) Proofs of exemption which have not been completed within a period
35 of one hundred and eighty (180) days after filing with the commissioner may be
36 deemed abandoned and considered withdrawn by the applicant, provided the

1 applicant has been notified of the deficiencies to the proof and afforded a
2 reasonable opportunity to correct such deficiencies.

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

6 (5) For every proof of exemption filed with the commissioner, there
7 shall be paid to the commissioner a filing fee of one hundred dollars (\$100),
8 except that, for a proof of exemption filed under subdivision (a)~~(8)~~(7) of
9 this section, the filing fee is one-tenth of one percent (0.1%) of the maximum
10 aggregate offering price at which the securities are to be offered in this
11 state. The fee shall in no case be less than one hundred dollars (\$100) nor
12 more than five hundred dollars (\$500). The commissioner shall have authority
13 under this subsection to amend or rescind the filing fees by rule or order if
14 the commissioner determines that the fee is excessive under the
15 circumstances."

16

17 SECTION 20. Arkansas Code § 23-42-504 is amended to read as follows:

18 "23-42-504. Exempted transactions.

19 (a) The following transactions are exempted from §§ 23-42-501 and 23-42-
20 502:

21 (1) Any isolated nonissuer transactions, whether effected through a
22 broker-dealer or not. Provided, that repeated or successive transactions
23 shall be prima facie evidence that the transactions are not isolated nonissuer
24 transactions;

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

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

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

35 (2) Any nonissuer transaction by a registered agent of a registered
36 broker-dealer, and any resale transaction by a sponsor of a unit investment

1 trust registered under the Investment Company Act of 1940, in a security of a
2 class that has been outstanding in the hands of the public for at least ninety
3 (90) days provided, at the time of the transaction:

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

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

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

14 (D) A nationally recognized securities manual designated by rule
15 or order of the commissioner or a document filed with the Securities and
16 Exchange Commission that is publicly available through the Securities and
17 Exchange Commission's Electronic Data Gathering and Retrieval System (EDGAR)
18 and contains:

19 (i) A description of the business and operations of the
20 issuer;

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

24 (iii) An audited balance sheet of the issuer as of a date
25 within eighteen (18) months or, in the case of a reorganization or merger
26 where parties to the reorganization or merger had such audited balance sheets,
27 a pro forma balance sheet; and

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

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

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

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

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

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

15 ~~(4)~~(3) Any transaction between the issuer or other person on whose
16 behalf the offering is made and an underwriter, or among underwriters;

17 ~~(5)~~(4) Any transaction in a bond or other evidence of indebtedness
18 secured by a real or chattel mortgage or deed of trust, or by an agreement for
19 the sale of real estate or chattels if the entire mortgage, deed of trust, or
20 agreement, together with all the bonds or other evidences of indebtedness
21 secured thereby, is offered and sold as a unit;

22 ~~(6)~~(5) Any transactions by an executor, administrator, sheriff,
23 marshal, receiver, trustee in bankruptcy, guardian, or conservator;

24 ~~(7)~~(6) Any transaction executed by a bona fide pledgee without any
25 purpose of evading this chapter;

26 (7) Any transactions by a person exempted from registration under §
27 23-42-102(3)(E), provided that the transaction would be lawful in the place of
28 residence of the offeree or purchaser had it occurred there instead of in this
29 state.

30 (8) Any offer or sale to a bank, savings institution, trust company,
31 insurance company, investment company as defined in the Investment Company Act
32 of 1940, pension or profit-sharing trust, or other financial institution or
33 institutional buyer, or to a broker-dealer, whether the purchaser is acting
34 for itself or in some fiduciary capacity. The commissioner may by order, upon
35 petition by any person, determine if the petitioner may be deemed, upon the
36 basis of knowledge, experience, volume, and number of transactions, and other

1 securities background, an institutional buyer for purposes of this
 2 subdivision (a)(8);

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

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

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

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

20 ~~(10) Any offer or sale of a preorganization certificate or~~
 21 ~~subscription if:~~

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

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

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

27 ~~(11)~~(10) Any transaction pursuant to an offer to existing security
 28 holders of the issuer, including persons who at the time of the transaction
 29 are holders of convertible securities or warrants, if no commission or other
 30 remuneration, other than a standby commission, is paid or given directly or
 31 indirectly for soliciting any security holder in this state, unless the
 32 commissioner shall, upon written application, permit the payment of a
 33 commission or other remuneration with or without the substitution of a
 34 limitation on remuneration;

35 ~~(12)~~(11) Any offer, but not a sale, of a security for which
 36 registration statements have been filed under both this chapter and the

1 Securities Act of 1933 if no order or refusal order is in effect and no public
2 proceeding or examination looking toward such an order is pending under either
3 act;

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

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

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

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

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

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

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

24 ~~_____ (i) That the purchaser has such knowledge and experience in
25 financial and business matters that he is capable of evaluating the merits and
26 risks of the prospective investment; or~~

27 ~~_____ (ii) That the purchaser and his purchaser representatives
28 together have such knowledge and experience in financial and business matters
29 that they are capable of evaluating the merits and risks of the prospective
30 investment, and that the purchaser is able to bear the economic risk of the
31 investment;~~

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

34 ~~_____ (D) The securities may only be sold through a broker-dealer or
35 agent of the issuer registered under this chapter, or a person exempt from the
36 registration requirements who meets the qualifications which are established~~

1 ~~by the commissioner pursuant to rule-making authority;~~

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

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

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

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

21 (b)(1) Before any transaction shall be executed as an exempted
 22 transaction under subdivisions (a)~~(9)-(11)~~ (9) or (10) ~~or (14)~~ of this
 23 section, except, in the case of dividend reinvestment and stock purchase
 24 programs pursuant to subdivision (a)~~(11)~~(10) of this section, a proof of
 25 exemption must first be filed with the commissioner and the commissioner by
 26 order shall not have disallowed the exemption within the next five (5) full
 27 business days. Before any dividend reinvestment and stock purchase program
 28 shall be executed as an exempt transaction under subdivision (a)~~(11)~~(10) of
 29 this section, an initial proof of exemption shall be filed; thereafter in
 30 every fifth year a proof of exemption must be filed with the commissioner and
 31 the commissioner by order must not have disallowed the exemption within the
 32 next five (5) full business days.

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

36 (3) Proofs of exemption which have not been completed within a period

1 of one hundred eighty (180) days after filing with the commissioner may be
 2 deemed abandoned and considered withdrawn by the applicant, provided the
 3 applicant has been notified of the deficiencies to the proof and afforded a
 4 reasonable opportunity to correct such deficiencies.

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

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

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

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

23

24 SECTION 21. Arkansas Code § 23-42-505 is amended to read as follows:

25 "23-42-505. Denial or revocation of exemption.

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

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

34 (2) Upon the entry of a summary order, the commissioner shall
 35 promptly notify all interested parties that it has been entered and of the
 36 reasons therefor and that within fifteen (15) days of the receipt of a written

1 request the matter will be set down for hearing.

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

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

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

9 (e) No person may be considered to have violated § 23-42-501 or § 23-42-
10 502 by reason of any offer or sale effected after the entry of an order under
11 this section if he sustains the burden of proof that he did not know and, in
12 the exercise of reasonable care, could not have known of the order."

13

14 SECTION 22. Subchapter 5 of Chapter 42, Title 23, of the Arkansas Code
15 is amended by adding a new section at the end thereof to read as follows:

16 "23-42-509. Covered securities.

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

20 (1)(A) Prior to the initial offering of such covered security in
21 this state, all documents that are part of a current federal registration
22 statement filed with the Securities and Exchange Commission under the
23 Securities Act of 1933, together with a consent to service of process signed
24 by the issuer and with a fee in the amount of one-tenth of one percent (0.1%)
25 of the maximum aggregate offering price at which the covered securities are to
26 be offered in this state, but the fee shall in no case be less than one
27 hundred fifty dollars (\$150) nor more than two thousand dollars (\$2,000). Any
28 portion of the fee in excess of one thousand dollars (\$1,000) shall be
29 designated as special revenues and shall be deposited in the Securities
30 Department Fund. When a notice filing is withdrawn before the effective date,
31 the commissioner shall retain one hundred fifty dollars (\$150) of the filing
32 fee.

33 (B) Sales of the covered securities in excess of the amount of
34 covered securities to have been offered in this state shall require the person
35 making the notice filing to pay a fee, calculated in the manner specified in
36 subdivision (a)(1)(A) of this section, for all securities sold. In addition,

1 if the sales are in excess of one hundred five percent (105%) of the amount to
2 have been offered, the person making the notice filing shall pay a penalty fee
3 of two hundred dollars (\$200).

4 (C) The initial notice filing of an investment company, as defined
5 in the Investment Company Act of 1940, as amended, shall be effective for a
6 period commencing upon the commissioner's receipt of such notice filing, or,
7 if not yet effective with the Securities and Exchange Commission, concurrently
8 with the Security and Exchange Commission effectiveness, an ending two (2)
9 months after the investment company's fiscal year end. Thereafter, the
10 investment company must renew the notice filing by submitting the appropriate
11 forms and documents as filed with the Securities and Exchange Commission,
12 along with the appropriate fee, calculated in the manner specified in
13 subsection (a)(1) of this section, with respect to the additional securities
14 proposed to be offered, within two (2) months after the expiration of the
15 registrant's fiscal year end.

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

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

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

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

32 (c)(1) With respect to any security that is a covered security under
33 Section 18(b)(4)(D) of the Securities Act of 1933, the Commissioner, by rule
34 or order, may require the issuer to file a notice on SEC Form D and a consent
35 to service of process signed by the issuer no later than fifteen (15) days
36 after the first sale of such covered security in this state, together with a

1 fee in the amount of one-tenth of one percent (0.1%) of the maximum aggregate
2 offering price at which the securities are to be offered in this state, but
3 the fee shall in no case be less than one hundred dollars (\$100) or more than
4 five hundred dollars (\$500).

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

9 (d) The Commissioner, by rule or order, may require the filing of any
10 document filed with the Securities and Exchange Commission under the
11 Securities Act of 1933 with respect to a covered security under Section
12 18(b)(3) or (4) of the Securities Act of 1933, other than those securities
13 under subsection (b) of this section, together with a fee in the amount of one
14 hundred dollars (\$100).

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

18 (1) The order is in the public interest, and

19 (2) there is a failure to comply with any condition established
20 under this section.

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

23

24 SECTION 23. All provisions of this act of a general and permanent
25 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
26 Code Revision Commission shall incorporate the same in the Code.

27

28 SECTION 24. If any provision of this act or the application thereof to
29 any person or circumstance is held invalid, such invalidity shall not affect
30 other provisions or applications of the act which can be given effect without
31 the invalid provision or application, and to this end the provisions of this
32 act are declared to be severable.

33

34 SECTION 25. All laws and parts of laws in conflict with this act are
35 hereby repealed.

36

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

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