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21 February 2006

Eric T. Bishop, Esq.
Bishop & Bishop
171 West Main Street
Post Office Box 609
Ashdown, Arkansas 71822

Re: Issuance of Shares of Stock Constituting Memberships in
Walnut Bayou Hunting Club, Inc.
No Action Letter No. 06-90000343-NA01

Dear Mr. Bishop:

We are in receipt of your letter dated 5 January 2006 in which you request on behalf of Walnut Bayou Hunting Club, Inc. (the Club) that the Staff of the Arkansas Securities Department (the Staff) take a no action position on the issuance of shares of stock in the Club. Because these shares of stock represent memberships in the Club, you opine that these shares are not securities within the definition of that term found in the Arkansas Securities Act at Ark. Code Ann. § 23-42-102(15)(A)(ii) (Supp. 2005).

With your letter of 5 January you sent a copy of the by-laws and a copy of the articles of incorporation of the Club. From the representations in your letter and the attachments I gather several salient facts. The Club is an Arkansas corporation formed to own and manage some 2,090 acres of land located in Little River County, Arkansas for hunting and fishing activities by members and their guests. Attached to a letter dated 9 January 2006, you sent me a copy of an easement deed from the previous owner of the land in question to the federal government for wildlife and environmental conservation in accordance with the Wetlands Preserve Program, authorized at 16 U.S.C. § 3837. This deed prevents this land from being used in any agricultural manner or for timber operations and severely limits any operations on the land, including draining, dredging or diverting the flow of water or building any structures on the land. By telephone call of this date, you informed me that there are a few acres not included in this deed upon which the Club plans on building a club house. The easement deed even prevents the Club from gathering firewood on the land it covers. Of the 2,090 acres the Club plans on purchasing, this deed covers some 1,958.2 acres.

The Club is authorized to issue ten shares of stock, each costing \$100,000. According to

the by-laws, only shareholders can be members of the Club. A member/shareholder's ability to sell or transfer his share is limited. The Club has a right of first refusal and a right to veto the sale. To sell one's share of stock, a member must present a copy of the proposed contract of sale to the Club, which shall have the right to purchase the share in its own name or the name of a nominee for the price and terms stated in the contract within thirty days. If the Club does not take advantage of this right of first refusal, the member may proceed to sell the share of stock for the same price and terms presented to the Club but only if the proposed buyer is approved by the Club's board of directors. All ten members are members of the board of directors. At any meeting of the board to vote on new members, at least seven members must be present, and the new member must receive at least six votes for acceptance or approval. In the case of expulsion of a member the Club may "refund . . . the current value [of the share of stock], as determined by the Board of Directors taking into consideration recent sales and demand for stock."

The purposes of the Club include maintenance of the Club "for the promotion of fellowship, recreation, hunting, fishing and similar sports among Shareholders." Solicitation of member is a stated purpose, but only "on the basis of the recreational facilities available," and "no representations or inducements of any kind" shall be made to prospective members, and "nor shall prospective members expect any economic advantage from being Shareholders or members of the Club." Although the by-laws provide that the board of directors may declare a dividend, "It is highly unlikely, however, that the Corporation will ever pay dividends." It appears that the Club is not organized to make a profit. To the contrary, its members will pay dues and assessments for the costs of making improvements to the land and running the activities of the Club. The by-laws provide that no shareholder of the Club shall have any proprietary interest in any asset or property of the corporation.

Normally, stock is a security. However, it has been held in regard to the definition of a security in federal law that legal formalisms and the form of an instrument should be disregarded for economic reality when determining whether the instrument is a security. *Reves v. Ernst & Young*, 494 U.S. 56 (1990). The definition of security found at § 23-42-102(15) is virtually identical to that under federal law. *Casali v. Schultz*, 292 Ark. 602, 732 S.W.2d 836 (1987); *Hogg v. Jerry*, 299 Ark. 283, 773 S.W.2d 84 (1989). Merely naming an instrument stock has also been held not to be determinative in Arkansas law. See *Cook v. Wills*, 305 Ark. 442, 808 S.W.2d 758 (1991). Five significant factors inherent in securities under the Act have been identified:

- 1) the investment of money or money's worth, 2) investment in a venture, 3) the expectation of some benefit to the investor as a result of the investment, 4) contribution towards the risk capital of the venture, and 5) the absence of direct control over the investment or policy decisions concerning the venture

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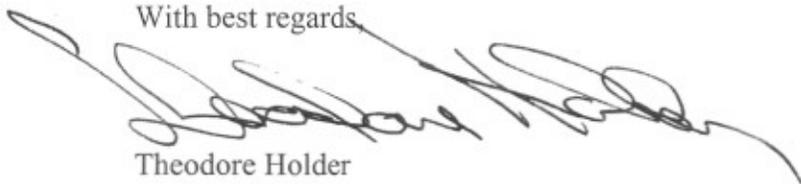
and *Schultz v. Rector, Phillips, Morris, Inc.*, 261 Ark. 769, 552 S.W.2d 4 (1977).

According to your letter and the by-laws attached thereto, there is no investment of money in a venture here with the expectation of profits. Rather, the price of a share is more akin to an initiation fee, and the expectations of members are not of profits, but of the use of the Club facilities and participation in activities to further the Club's purposes, which one would expect each member/shareholder to share. What is shown is not a profitable business, but a cooperative association of sportsmen interested solely in recreation. If any economic benefit should accrue to any shareholder, it would be purely incidental.

Accordingly, the Staff will recommend that the Arkansas Securities Commissioner take no enforcement action against the Club for not registering its stock or filing a proof of exemption for it if the facts remain as stated in your letter.

Please note that the position of the Staff is based solely upon the representations made to us in your letter and the attached by-laws and applies only to the facts set out therein. Different facts or circumstances might and often would require a different response. The position expressed deals only with anticipated enforcement action and does not purport to be a legal opinion. Lastly, it is important to note that this position applies only to sales in Arkansas. If you are planning on selling shares to persons in other states, it is recommended that you obtain a similar no action letter from the securities regulatory agency in that state or seek a legal opinion from counsel in that state.

With best regards,

A handwritten signature in black ink, appearing to read 'Theodore Holder', written over a horizontal line.

Theodore Holder
ASSISTANT SECURITIES COMMISSIONER