Effective October 3, 2003

CHAPTER 1
GENERAL PROVISIONS

RULE 101 TITLE.

[RESERVED]

RULE 102 GENERAL PROVISIONS.

102.01 DEFINITIONS.

When the terms listed below are used in the Act, these Rules, the forms, and the instructions and orders of the State Securities Commissioner, the following definitions shall apply (unless the context indicates otherwise), together with the definitions which may hereinafter appear, to the extent that they are not inconsistent with the definitions provided in Section 23-42-102 of the Act.

1. **ACCESS TO OR FURNISHING OF INFORMATION.** Access to or furnishing of information can only exist by reason of the purchaser's position with respect to the issuer. Position means an employment or family relationship or economic bargaining power that enables the purchaser to obtain information from the issuer in order to evaluate the merits and risks of a prospective investment. In any event, each purchaser or his legal, financial or other representative(s), or both, shall have access to or have been furnished during the course of the transaction and prior to the sale, by the issuer or any person acting on its behalf, the same kind of information that is required by a registration under the Act, to the extent that the issuer possesses such information or can acquire it without reasonable effort or expense. This condition shall be deemed to be satisfied if the purchaser or his legal, financial or other representative(s) is furnished with information, either in the form of documents actually filed with the Commissioner or otherwise. The issuer shall make available, during the course of the transaction and prior to sale, to each purchaser or his legal, financial or other representative(s) or both, the opportunity to ask questions of, and receive answers from, the issuer or any person acting on the issuer's behalf concerning the terms and conditions of the offering and to obtain any additional information, to the extent that the issuer possesses such information or can acquire it without unreasonable effort or expense, necessary to verify the accuracy of

the information obtained. Audited, unaudited or other financial statements must be sworn to with a statement from a responsible representative of the issuer as follows: "To the best of my knowledge and belief these financial statements and supporting schedules or documents of the issuer are true, correct and fairly represent the financial position of the issuer."

(2) **ACCREDITED INVESTOR.** See Securities Act of 1933 definition for "Accredited Investor" found at 17 CFR Section 230.501(a).

(3) **ADVISORY AFFILIATE.** A person that directly or indirectly controls or is controlled by a person who either is registered as an investment adviser or has filed an application to become registered as an investment adviser, including any current employee except one performing only clerical, administrative, support or similar functions.

(4) **AFFILIATE.** The term "affiliate" of or "affiliated" with a person means a person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with such person.

(5) **APPLICANT.** A person who submits an application for registration of securities, for an exemption procedure or for registration as a broker-dealer, agent or investment adviser, or who files an application for an order of the Commissioner.

(6) **APPLICATION.** The form prescribed by the Commissioner for filing in connection with the registration of securities, and as a broker-dealer, agent or investment adviser, including all amendments, papers, documents and exhibits incidental thereto.

(7) **CLIENT.** For purposes of Sections 23-42-102(8)(E)(ii) of the Act and Rule 102.01(27), the following shall be deemed a single client:

(A) A natural person, and:

(i) Any minor child of the natural person;

(ii) Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

(iii) All accounts of which the natural person and/or the persons referred to in this subsection (A) are the only primary beneficiaries; and

(iv) All trusts of which the natural person and/or the persons referred to in this subsection (A) are the only primary beneficiaries;

(B) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in (A) above), or other legal organization that receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries, or any two or more legal organizations that have identical owners, provided however, an owner must be counted as a client if the investment adviser provides investment advisory services to the owner separate and apart from the investment advisory services provided to the legal organization, and a limited partnership shall be deemed a client of any general partner or other person acting as investment adviser to the partnership.

(8) **CONTROL.** The power to direct or cause the direction of the management or policies of a person, whether through ownership of securities, by contract, or otherwise. Any individual or firm that is a director, partner or officer exercising executive responsibility (or having similar status or functions) or that directly or indirectly has the right to vote 25 per cent or more of the voting securities of a person or is entitled to 25 percent or more of the profits of a person is presumed to control that person.

(9) **CONTROL AFFILIATE.** Any person that directly or indirectly controls, is controlled by or under common control with an applicant or registrant, including any current employee except one performing only clerical, administrative, support or similar functions, or who, regardless of title, performs no executive duties or has no senior policy making authority.

(10) **CUSTOMER.** The person being charged a commission or fee, being rendered a service, being sold a security, being solicited to sell a security, or receiving investment advice. However, the term "customer" shall not include the broker-dealer or investment adviser charging the commission or fee, offering the services, or rendering the investment advice.

(11) **DISCRETION or DISCRETIONARY AUTHORITY.** As used in Section 23-42-305(a) of the Act, the term "discretionary authority" or "discretion" means the authority which an investment adviser possesses by virtue of a limited power of attorney or other grant of authority enabling such investment adviser to determine what securities or other property shall be purchased or sold by or for an account, or make decisions as to what securities or other property shall be purchased or sold by or for an account even though some other person may have responsibility for such investment decisions.

The term "discretionary authority" shall not include the authority of an investor adviser to direct purchases or sales of securities in an account provided the following conditions are met:

(A) The limited power of attorney or other grant of authority precludes the possibility of disbursements of cash or securities from the account to the investment adviser other than for the payment of advisory fees due to the investment adviser;

(B) The investment adviser receives no compensation or pecuniary benefit, either directly or indirectly, on account of or as a result of any purchase or sale in the account, other than the compensation which he may receive for investment advice or for purely administrative services under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002, et seq.);

(C) The investment adviser has no direct or indirect ownership interest in the broker-dealer or affiliation with the agent effecting the purchase or sale; or

(D) The purchase or sale does not involve a security in which the investment adviser has an interest unless such security is:

(i) Listed or authorized for listing on the New York Stock Exchange, the American Stock Exchange, the National Market System of the NASDAQ Stock Market, or is otherwise a "covered security" under Section 18(b)(1) of the Securities Act of 1933;

(ii) Traded on the NASDAQ Stock Market; or

(iii) A security which has been determined by rule or order of the Commissioner to be exempt because it is sold on an exchange (or tier or segment thereof) which has listing standards substantially similar to the listing standards of the exchanges set forth in subparagraph (D)(i) of this subsection.

The Commissioner may upon written request and for good cause shown, waive any of the conditions set forth above.

(12) **ENGAGED** IN **THE BUSINESS OF EFFECTING TRANSACTIONS** IN **SECURITIES.** As used in Section 23-42-102(3) of the Act, the term "engaged in the business of effecting transactions in securities" shall not include a

business broker who, as part of the facilitation of the sale of business, including securities of the business, takes a fee provided all of the following conditions are met:

(A) the business broker has a limited role in negotiations between the purchaser and the seller;

(B) the businesses represented by the business broker are going concerns and are not "shell" organizations;

(C) only assets are advertised or otherwise offered for sale by the business broker;

(D) transactions effected by means of securities convey all of the business' equity to a single purchaser or group of purchasers formed without the assistance of the business broker;

(E) the business broker does not advise the parties whether to issue securities or assess the value of any securities sold;

(F) the business broker's compensation does not vary according to the form of conveyance the parties agree to; and

(G) the business broker does not assist purchasers in obtaining financing other than to provide to a party a list of potential lenders.

(13) **EXEMPTION.** As used in Sections 23-42-503 and 23-42-504 of the Act, the term "Exemption from registration" shall mean that the security itself or the transaction as a whole qualifies for the claimed exemption pursuant to Sections 23-42-503 and 23-42-504. The exemption is from Sections 23-42-501 and 23-42-502 only and not from Sections 23-42-106 and 23-42-507.

(A) In order to qualify for an exemption, each applicant must meet each of the technical requirements of the particular exemption claimed under Sections 23-42-503 or 23-42-504. A failure to comply with any one material technical element will render that exemption unavailable to the claimant. The burden of proof for an exemption under Sections 23-42-503 or 23-42-504 shall be on the claimant.

(B) Each of the exemptions set forth in Sections 23-42-503(a)(3), (4), (5), (7); 23-42-503(c); and 23-42-504 (a)(9) and (10) first requires a filing with the Department as the initial step in the exemption process. Such exemption is unavailable unless the required filing is made. An issuer relying on Section 23-42-503(b) should refer to the applicable Rule to ascertain filing and other requirements.

(14) **INDICATIONS OF INTEREST.** Communications and/or actions on the part of a customer, or the solicitation thereof, which give rise to the inference that such customer may purchase the yet-to-be issued securities.

(15) **INVESTMENT INTENT.** Securities purchased under the Act and these Rules with "investment intent" cannot be purchased with a view to, or for resale in connection with any sale or hypothecation. Securities purchased with investment intent cannot be disposed of unless the securities are registered under the Act or, in the opinion of counsel for the issuer, an exemption from the registration requirements of the Act is available. As a result, the purchaser of these securities must be prepared to bear the economic risk of the investment for an indefinite period of time and have no need of liquidity of the investment. Where securities are purchased under the Act for investment, investment intent shall be presumed if the purchaser retains such securities for two (2) years from the date of consummation of the sale. However, any disposition of the securities within two (2) years of the date of purchase, in the absence of an unforeseeable change of circumstances, shall create a presumption that the person did not purchase the securities with investment intent. Securities purchased with investment intent are deemed "restricted" securities and must bear an appropriate legend restricting retransfer.

(16) **MSRB.** Municipal Securities Rulemaking Board.

(17) **NASD.** National Association of Securities Dealers, Inc.

(18) **NOTICE FILING.** A filing made pursuant to Section 23-42-301(c)(1) of the Act in the case of investment advisers, and Section 23-42-509 of the Act in the case persons issuing or offering securities.

(19) **OFFER OR OFFER TO SELL.** For the purposes of Sections 23-42-501 and 23-42-502 of the Act, the term "offer" or "offer to sell" as defined in Section 23-42-102(11)(B) shall not include negotiations, agreements or similar communications with respect to a proposed reorganization provided such negotiations, agreements or similar communications are incidental to the formulation of a proposal of a reorganization and, except for the merger of a subsidiary entity into its parent, a vote of approval and consent of security holders is required to effectuate the proposed transactions.

(20) **PARENT.** An affiliate controlling another person.

(21) **PLACE OF BUSINESS.** The term "place of business" means:

(A) Any office or other location at or from which an investment adviser, investment adviser representative, broker-dealer, or agent regularly provides investment advisory or broker-dealer services, solicits, meets with, or otherwise communicates with clients; and

(B) Any other location that is held out to the general public as a location at which the investment adviser, investment adviser representative, broker-dealer, or agent provides investment advisory or broker-dealer services, solicits, meets with, or otherwise communicates with clients.

(22) **PRINCIPAL PLACE OF BUSINESS.** The executive office of an investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

(23) **PROMOTER.** A person who, acting alone or in conjunction with others, takes the initiative in founding, organizing or incorporating the business or enterprise. A promoter does not include a lawyer or accountant acting as an independent contractor.

(24) **PROOF OF EXEMPTION.** "Proof of Exemption" as used in Sections 23-42-503(d) and 23-42-504(b) shall mean the filing made by an applicant, together with any supporting documents and written statements of the applicant as set forth in the appropriate rule, whereby the applicant describes his expected conduct during the exemption process and demonstrates his disclosure and antifraud responsibilities required in order to qualify for the exemption. A proof of exemption is not in and of itself an exemption. It is merely the filing by which an applicant requests the Commissioner not to withdraw the availability of use of the exemption based on the applicant's demonstration of his recognition of the technical requirements necessary to qualify.

(25) **PUBLIC ADVERTISING.** Public advertising shall mean any form of general solicitation, general advertising or any other communication directed to persons whose background is unknown to the communicant, including but not limited to, the following:

(A) Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar medium or broadcast over television, radio or other electronic media;

(B) Any seminar or meeting or invitation to or promotion of such meeting or seminar;

(C) Any letter, circular, handbill, notice or other written communication; or,

(D) Any solicitation by telephone or other electronic media.

(26) **PURCHASER.** For purposes of computing the number of purchasers, offerees, investors, or subscribers, a husband and wife who purchase or contemplate purchasing in the joint names of both spouses shall be deemed to be one offer or sale.

(27) **REGISTRANT.** An applicant for whom a registration has been declared effective.

(28) **REPRESENTATIVE OF AN INVESTMENT ADVISER REGISTERED WITH THE SEC**. The term "representative of an investment adviser registered with the SEC" shall mean a supervised person of the investment adviser more than ten percent of whose clients are natural persons, but does not include a supervised person who:

(A) Does not on a regular basis solicit, meet with, or otherwise communicate with clients of the investment adviser; or

(B) Provides only investment advisory services by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.

For purposes of this subsection, natural persons who have at least $500,000 under management with the investment adviser immediately after entering into the investment advisory contract, and natural persons whom immediately prior to entering into the investment advisory contract the investment adviser reasonably believes to have a net worth (together with assets held jointly with a spouse) of more than $1,000,000 at the time the investment advisory contract is entered into shall not be included as clients of the investment adviser.

(29) **RESTRICTED SECURITY.** Restricted securities shall mean those securities which require purchase with investment intent and those securities which have additional transfer restrictions, such as shareholder agreements. Each restricted security should bear the appropriate restrictive legend. The following reflects retransfer restriction as to securities law:

"RESTRICTION ON RETRANSFER"

"The security represented by this certificate has been executed pursuant to an exemption from registration under the Securities Act of 1933 and the Arkansas Securities Act in reliance upon the representation of the holder hereof that the same is acquired for investment purposes. This stock may accordingly not be resold or otherwise transferred or conveyed in the absence of registration of the same pursuant to the applicable securities laws or unless an opinion of counsel satisfactory to the issuer is first obtained that such is not then necessary. Any transfer contrary hereto is void."

(30) **REORGANIZATION.** The term "reorganization" shall mean any merger, consolidation, reclassification of securities, sale of assets in consideration of the issuance of securities of another person, exchange of outstanding securities for the issuance of securities or assets of another person, or other similar reorganization, pursuant to applicable statutory provisions of the jurisdiction under which such

corporation or other person is organized, or pursuant to the provisions of its Articles of Incorporation or similar controlling instrument, which the approval or consent of the security holders is required to effectuate, or any merger of a subsidiary entity into its parent where such vote, approval or consent is not required by the applicable statute.

(31) **SEC.** The Securities and Exchange Commission.

(32) **SPONSOR.** A person or a member of the immediate family of a person who acts as a general partner, manager or management company of a program including an affiliate of, or a person associated with, a sponsor, except as otherwise provided.

(33) **SUBSIDIARY.** An affiliate controlled by another person.

(34) **SUPERVISED PERSON.** With regard to investment advisers registered with the SEC, the term "supervised person" means any partner, officer, director, or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

(35) **UNDERWRITER.** The term "underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or broker-dealer not in excess of the usual and customary distributors' or sellers' commission.

(36) **VIATICAL SETTLEMENT CONTRACT.** An agreement for the purchase, sale, assignment, transfer, devise or bequest of any portion of the death benefit or ownership of a life insurance policy or certificate for consideration that is less than the expected death benefit of the life insurance policy or certificate. Viatical settlement contract does not include:

(A) The assignment, transfer, sale, devise or bequest of a death benefit, life insurance policy or certificate of insurance by the viator to the viatical settlement provider pursuant to the Viatical Settlements Act, Ark. Code Ann. §§ 23-81-501, *et seq.* (Supp. *1999);*

(B) The assignment, transfer, sale, devise or bequest of a life insurance policy, for any value less than the expected death benefit, by the viator to a friend or family member who enters into no more than one such agreement in a calendar year;

(C) An assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union or other licensed lending institution as collateral for a loan; or

(D) The exercise of accelerated benefits pursuant to the terms of the Arkansas Insurance Code and of the life insurance policy.

RULE 103 APPLICABILITY.

[RESERVED]

RULE 104 CRIMINAL PENALTIES.

[RESERVED]

RULE 105 PROSECUTION OF CRIMINAL OFFENSES.

[RESERVED]

RULE 106 CIVIL LIABILITY.

[RESERVED]

RULE 107 CONSENT TO SERVICE OF PROCESS.

[RESERVED]

RULE 108 RIGHTS AND REMEDIES CUMULATIVE.

[RESERVED]

RULE 109 WAIVER OF COMPLIANCE VOID.

[RESERVED]

RULE 110 FALSE OR MISLEADING STATEMENTS UNLAWFUL.

[RESERVED]

CHAPTER 2
ADMINISTRATION

RULE 201 ADMINISTRATION BY SECURITIES COMMISSIONER - CONFLICTS OF INTEREST.

[RESERVED]

RULE 202 DELEGATION OF AUTHORITY BY COMMISSIONER.

[RESERVED]

RULE 203 PROCEEDINGS - GENERALLY.

[RESERVED]

RULE 204 RULES, FORMS AND ORDERS OF COMMISSIONER.

204.01 GENERAL.

The following provisions apply to all applications, petitions, notice filings, amendments, reports, complaints or other documents required under the Act or these Rules:

(A) **FILING.** A document required by law is filed when it is received in the office of the State Securities Commissioner.

(1) Address or deliver all communications and inquiries to: Arkansas Securities Commissioner, 201 East Markham, Suite 300, Little Rock, Arkansas 72201, Telephone (501) 324-9260.

(2) The Office of the Securities Commissioner shall be open for business between the hours of 8:00 a.m. and 4:30 p.m. on weekdays, except for legally declared holidays.

(3) The original of each form or exhibit is required. Additional copies of certain documents may be requested.

(4) When a document is required to be signed, such signature shall be an original signature of the person signing. Stamped or facsimile signatures will not be accepted unless specifically authorized by rule or in writing by the Commissioner.

(B) **FEES.** Unless a filing is made electronically, all fees must accompany the application, notice filing or supplemental amendment to which they pertain and are payable by check or money order to the Arkansas Securities Department. A filing shall be deemed incomplete until applicable fees are received. Copies of documents filed and recorded in the office of the Securities Commissioner will be provided for a service charge of $.25 per page. Certified copies will be provided for a service charge of $.50 per page.

(C) **FORMS.** The following forms have been adopted for use.

(1) BROKER-DEALER REGISTRATION.

(a) Form BD, Uniform Application for Broker-Dealer Registration.

(b) Uniform Corporate Consent to Service, Form U-2.

(c) Uniform Corporate Resolution, Form U-2A.

(d) Surety Bond Form.

(e) Renewal Registration Application.

(2) INVESTMENT ADVISER REGISTRATION

(a) Form ADV, Uniform Application for Investment Adviser Registration.

(b) Resolution of Partnership Form.

(c) Corporate Resolution Form.

(d) Form U-SB, Uniform Surety Bond.

(e) Form ADV-W, Notice of Withdrawal from Registration as Investment Adviser.

(3) SECURITIES AGENT, AGENT OF AN ISSUER AND INVESTMENT ADVISER REPRESENTATIVE.

(a) Form U-4, Uniform Application for Securities Industry Registration.

(b) Dual Registration Acknowledgment Form.

(c) Agent of an Issuer Renewal Registration Application.

(d) Form U-SB, Uniform Surety Bond.

(e) Form U-5, Uniform Termination Notice for Securities Industry Representative and/or Agent.

(4) SECURITIES REGISTRATION AND EXEMPTION.

(a) Form U-1, Uniform Application to Register Securities.

(b) Form U-2, Uniform Consent to Service of Process.

(c) Form U-2A, Uniform Form of Corporate Resolution.

(d) Application to Register Securities by Qualification.

(e) Application to Register Securities by Notification.

(f) Form U-7, Small Corporate Offering Registration.

(g) Form D, Notice of Sales of Securities pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption.

(5) NOTICE FILINGS.

(a) Form NF, Uniform Investment Company Notice Filing.

(b) Form ADV, Uniform Application for Investment Adviser Registration

RULE 205 INVESTIGATIONS.

The rules of this part apply only to investigations conducted by the Commissioner. They do not apply to adjudicative or rulemaking proceedings.

205.01 INVESTIGATIONS.

(A) GENERAL PROVISIONS. In connection with investigations, the following shall apply:

(1) Information obtained or documents obtained by the Commissioner in the course of any investigation or examination, unless made a matter of public record, shall be deemed non-public.

(2) The provisions of the Department's Rules of Practice and Procedure set forth in Rule 601 of these Rules are hereby made specifically applicable to all investigations.

(3) Any person compelled to appear, or who appears by his own request in person at any investigative proceeding may be accompanied, represented and advised by counsel. All witnesses shall be sequestered unless in the discretion of the officer conducting the investigation the witness is permitted to be present during the examination of any other witness called in such proceeding.

(4) The right to be accompanied, represented and advised by counsel shall mean the right of a person testifying to have an attorney present with him during any investigative proceeding and to have his attorney advise such person before, during and after the conclusion of such examination; question such person briefly at the conclusion of the examination to clarify any of the answers such person has given; and,

make summary notes during such examination solely for the use of such person.

(B) **PUBLIC INVESTIGATIONS.** Public investigations shall be conducted in accordance with the Act and Arkansas law.

(C) **PRIVATE INVESTIGATIONS.** Private investigations may be conducted by informal hearings before the Commissioner or before any officer designated by him. Private investigations become public investigations upon entry of a public order of investigation.

RULE 206 RECORDS OF COMMISSIONER - INTERPRETIVE OPINIONS.

206.01 GUIDELINES. INTERPRETATIVE OPINIONS.

(A) **INTERPRETATIVE OPINIONS.** The following guidelines are set forth as to no-action letter procedure:

(1) Submit an original and one copy of each letter requesting an interpretative opinion. If the inquiry involves more than one subsection of a statute, or subsections of more than one statute, an additional copy of the letter should be submitted for each subsection involved.

(2) The specific subsection of the particular statute to which the letter pertains should be indicated in the lower right-hand corner of the original and each copy of the letter submitted pursuant to paragraph 1 above. Thus, for example, a letter requesting an interpretation of the Section 23-42-504(a)(9) exemption would be captioned "Section 23-42-504(a)(9) Exemption" and a letter requesting an interpretation of Rule 504.01(a)(9) under the Arkansas Securities Act would be captioned "Rule 504.01(a)(9)."

(3) The names of each company or companies and all other persons involved should be stated. Letters relating to unnamed companies or persons, or to hypothetical situations, will not be answered.

(4) Letters should be limited to the particular situation involving the problem at hand and should not attempt to include every possible type of situation which may arise in the future.

(5) While it is essential that letters contain all of the facts necessary to reach a conclusion in the matter, they should be concise and to the point.

(6) The writer should indicate why he thinks a problem exists, his own opinion in the matter and the basis for such opinion.

(7) If a request for confidential treatment is made, this request and the basis therefore should be included in a separate letter and submitted with the interpretative request

(B) INTERPRETATIVE OPINIONS AS PRECEDENT. It should be recognized that interpretative opinions by the Department are subject to reconsideration and should not be regarded as precedents binding on the Department. Furthermore, each interpretative opinion is conditional upon the representations made to the Department and the Department in responding to each request relies upon the accurateness of each representation. Each interpretative opinion of the Department applies only to the party requesting such interpretation. Persons having similar fact situations should submit their own request rather than rely on previous interpretative opinions taken by the Department.

RULE 207 PUBLIC INSPECTION OF RECORDS - EXCEPTIONS.

207.01 PUBLIC AND NON-PUBLIC MATTERS.

(A) PUBLIC FILINGS. Unless required by the Act or Rules, all information filed with the Commissioner shall be available to the public for inspection.

(B) NON-PUBLIC MATTERS.

(1) Certain records are non-public but any reasonable segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are considered non-public under this subsection. Except for such reasonable segregable portions of records, the Commissioner will generally not publish or make available to any person matters that are:

(a) Information contained in reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of or in connection with an examination or inspection of the books and records of any person or any other investigation;

(b) Inter-agency or infra-agency memoranda or letters, including generally records which reflect discussions between or consideration by the Commissioner or members of his staff, or both, of any action taken or proposed to be taken by the Commissioner or by any members of his staff, and specifically, reports, summaries, analyses, conclusions, or any other work product of the Commissioner or of attorneys, accountants, analysts, or other members of the Commissioner's staff, prepared in the course of an inspection of the books or records of any person whose affairs are regulated by the Commissioner, or prepared otherwise in the course of an examination or investigation or

related litigation conducted by or on behalf of the Commissioner, except those which by law would routinely be made to a party other than an agency in litigation with the Commissioner;

(c) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, including those concerning all employees of the Arkansas Securities Department and those concerning persons subject to regulation by the Arkansas Securities Department, such personal information about employees of broker-dealers reported to the Commissioner pursuant to the Department's Rules concerning registration of broker-dealers and agents;

(d) Investigatory records compiled for law enforcement purposes to the extent that production of such records would interfere with enforcement proceedings, deprive a person of a right to a fair trial or an impartial adjudication, or disclose the identity of a confidential source. In a particular case the Commissioner may also withhold investigatory records that would constitute an unwarranted invasion of personal privacy, disclose investigative techniques and procedures or endanger the life or physical safety of law enforcement personnel. Investigatory records include all documents, records, transcripts, correspondence, and related memoranda and work product concerning examinations and other investigations and related litigation as authorized by law, which pertain to or may disclose the possible violations by any person of any provision of any of the statutes, rules, or regulations administered by the Commissioner; and all written communications from or to any person confidentially complaining or otherwise furnishing information respecting such possible violations, as well as all correspondence and memoranda in connection with such confidential complaints or information;

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

(f) Financial records of broker-dealers, investment advisers or agents shall be deemed to be non-public when obtained during or as a result of an examination by the Department; however, when such records are required by the Act to be filed with the Department as part of a registration, annual renewal or otherwise, such records, including financial statements prepared by certified public accountants, shall be public;

(g) Trade secrets and commercial or financial information obtained from a person privileged or confidential;

(h) Any other records which under the Freedom of Information Act of 1967 (Ark. Code Ann. 25-19-101 et seq.) or other laws are required to be closed to the public shall not be deemed open to the public for inspection.

RULE 208 COOPERATION WITH OTHER REGULATORY AGENCIES.

[RESERVED]

RULE 209 INSPECTION, MANDAMUS, OR OTHER ANCILLARY RELIEF.

[RESERVED]

RULE 210 JUDICIAL REVIEW.

[RESERVED]

RULE 211 DISPOSITION OF FEES.

[RESERVED]

RULE 212 REGISTRATION OR AVAILABILITY OF EXEMPTION NOT CONSTRUED AS APPROVAL BY COMMISSIONER - INCONSISTENT REPRESENTATION.

[RESERVED]

RULE 213 INVESTOR EDUCATION PROGRAM

213.01 (A) INVESTOR EDUCATION PROGRAM. The Commissioner may institute an investor education program for the citizens of the State of Arkansas. The purpose of such program will be to inform and educate the public regarding investments in securities in order to help investors and potential investors:

(1) Evaluate their investment decisions;

(2) Protect themselves from unfair, inequitable and fraudulent offerings;

(3) Choose their broker-dealers, agents, and investment advisers more carefully;

(4) Be alert for false or misleading advertising or other harmful practices; and

(5) Know their rights as investors.

(B) **GRANT PROGRAM.** The Commissioner may institute a Grant Program to solicit grant proposals from public schools and non-profit organizations (IRC § 501(c)(3) tax-exempt organizations) for the purpose of providing securities/investment education to teachers and students about the securities industry, the stock markets, and investment decision-making.

(1) Eligible applicants are public schools and non-profit groups that provide investment education to Arkansas students in grades 5 through 12.

(2) The Commissioner will establish the number of grant awards available as well as the amount of monies available for award through the Grant Program.

(3) Grant funds awarded may be used to procure any appropriate educational, resource, software materials and equipment consistent with the purpose of the Grant Program, this Rule and Ark. Code Ann. § 23-42-213.

(4) The Commissioner will establish a grant proposal process by which eligible applicants may submit an application for a grant award.

(5) A grant award by the Commissioner will be based upon the merit of the grant proposal considering:

(a) Educational need for the project;

(b) Learning objectives to be accomplished by the project;

(c) Specific description of the project;

(d) Number of students educated;

(e) Description of measurable project outcomes; and

(f) Other school resources dedicated to the project

CHAPTER 3
BROKER-DEALERS AND INVESTMENT ADVISERS

RULE 301 REGISTRATION REQUIRED.
[RESERVED]

RULE 302 REGISTRATION, NOTICE FILING AND RENEWAL PROCEDURES

302.01 BROKER-DEALER OR AGENT

(A) GENERAL PROVISIONS. The following are general eligibility requirements.

(1) Each non-resident applicant must be registered or qualified to engage in the securities business in the state of his primary residence or in the case of a corporation, its principal place of business.

(2) Each partner or officer of a registered broker-dealer or issuer may act as an agent only if he is registered as an agent as required by the Act.

(3) Except upon approval of the Commissioner, an agent may not be registered for more than one broker-dealer, investment adviser, issuer or any combination thereof at any one time.

(4) Applications which have on file for a period of 180 days and are still deficient will be automatically withdrawn.

(5) At least one officer or partner, who shall have direct supervision over the purchase and sale of securities in Arkansas, shall be registered as (1) an agent, designated a principle of a broker-dealer or (2) an agent of the issuer.

(B) APPLICATION. Each filing for initial and renewal registration shall be complete only if it contains information set forth in Sections 23-42-302 through 23-42-305 of the Act in the manner prescribed by the Commissioner. The requirements listed below are subject to change pursuant to Section 23-42-208 of the Act.

(1) BROKER-DEALER APPLICATION.

(a) Initial applications as a broker-dealer which will be processed through the Central Registration Depository ("CRD") shall submit the following to the Commissioner:

1. Uniform Consent to Service of Process and Acknowledgment, Form U-2 or other such document;

2. Uniform Corporate Resolution, Form U-2A, or other such document authorizing the application to be executed by designated persons;

3. Most recent Audited Financial Statement originally signed;

4. Corporate Surety Bond or copy of combination Blanket Fidelity Bond, whichever is applicable, which covers the firm and each agent in the prescribed amount;

5. The registration fee set forth in Section 23-42-304 of the Act;

6. Information and/or copies of all litigation and administrative proceedings pending as of the date of this application.

(b) Initial applications as a broker-dealer which will not be processed through the CRD system must submit the following in addition to the requirements listed in (1)(a) above:

1. Uniform Application Form BD;

2. Information and/or copies of all litigation and administrative proceedings by regulatory agencies within the past five (5) years or any such actions pending as of the date of this application;

3. Articles of Incorporation or Partnership Agreement, whichever is applicable, and any amendments thereto;

4. Originally signed U-4 Application for registration of person qualified and designated as principal;

5. Net Capital computation prepared in accordance with the Arkansas Securities Act and Rules unless SEC/NASD affiliated.

(2) AGENT APPLICATIONS.

(a) Initial agent applications for a broker-dealer registered or to be registered with the NASD must be submitted directly to the CRD

system on a Uniform Application Form U-4 along with the initial agent registration fee as set forth in Section 23-42-304 of the Act.

(b) Initial agent applications for an agent of an issuer or a broker-dealer not registered or to be registered with the NASD must be submitted directly to the Commissioner on a Uniform Application Form U-4 along with the initial agent registration fee as set forth in Section 23-42-304 of the Act, photocopy of processed FBI fingerprint card, surety bond, and attachments as required by the instructions on Form U-4 and surety bond.

(3) BROKER-DEALER RENEWAL APPLICATIONS.

(a) Renewal registration of a broker-dealer processed through the CRD system shall be accomplished by filing the following with the Commissioner:

1. Copy of the most recent audited financial statement;

2. Any amendments to the documents on file;

3. Proof of continued bonding coverage.

(b) Renewal registration of a broker-dealer not processed through the CRD system shall be accomplished by filing with the Commissioner, prior to expiration of the current authority, the following documents in addition to the two items listed in (2)(a) above.

1. Completed broker-dealer renewal application (supplied by this Department) and any attachments required thereto;

2. Broker-dealer renewal registration fee as set forth in Section 23-42-304 of the Act;

3. Agent renewal application and fee for the person designated as principal;

4. Proof of continued bonding coverage if a surety bond is on file as a part of the initial application for registration.

(4) AGENT RENEWAL APPLICATIONS.

(a) Renewal registration of agents, including the principal, of a NASD registered broker-dealer are handled by way of the CRD

agent renewal process and no documents or fees need to be filed directly with the Commissioner.

(b) Renewal registration of agents of an issuer or agents of a broker-dealer not registered with the NASD shall submit the following to the Commissioner:

1. Completed agent renewal application (supplied by the Department);

2. Agent renewal registration fee as set forth in Section 23-42-304 of the Act;

3. Proof of continued bonding coverage for agents of the issuer who submitted individual surety bonds as a part of their application for registration.

4. Any amendments to the documents on file.

(5) Each applicant for registration as an agent of a broker-dealer or issuer shall as a part of his application be properly fingerprinted.

(a) Any applicant subject to the fingerprinting requirements pursuant to Section 17(0(2) of the Securities Exchange Act of 1934 shall submit to the CRD system a fingerprint card along with a fingerprint record transmittal form (both supplied by the CRD) which will be processed by the Federal Bureau of Investigation by the CRD system. The applicant may be registered after submission of the fingerprint card and completion of all other registration requirements. Notification of the results of the processed card will be made available to this Department via the CRD system.

(b) Any applicant not subject to the provisions of paragraph (a) above shall follow the same procedures outlined above except that they shall send a $17.00 fee and a letter rather than the transmittal form to the CRD system requesting that the fingerprint card be processed for the purposes of registration in this State. Upon submission of the fingerprint card and completion of all other registration requirements, the applicant may be registered.

(6) Additional exhibits or information not specifically required by such application but essential to a full presentation of all material facts relating to the applicant's qualifications shall be furnished and properly identified.

(C) EXAMINATION AND REGISTRATION. Unless specifically exempt as hereinafter provided, examination(s) in the form and content prescribed or approved by the Commissioner must be taken and passed by each applicant in order to test his knowledge of the securities business, the Arkansas Securities Act and the Rules relating thereto before such applicant will be considered eligible for registration.

(1) The Commissioner shall establish or approve the standards for a minimum acceptable passing grade in determining the applicant's qualification for registration under this provision.

(a) General Knowledge Examination. Agents designated as a principal of a broker-dealer must pass appropriate representative (agent) and principal's examination. Agents of broker-dealers must pass the appropriate representatives examination.

(b) Uniform Securities Agent State Law Examination. Agents designated as a principal of a broker-dealer must attain a minimum passing grade of 80%. Agents must attain a minimum passing grade of 70%.

(c) No person shall act as a principal of a broker-dealer or directly supervise Arkansas agents of a broker-dealer, unless he shall have attained a passing grade on the examinations for a principal as set forth above.

(d) All persons designated as an agent of the issuer shall attain a minimum passing grade of 80% on the Uniform Securities Agent State Law Examination and must pass an appropriate knowledge examination.

(2) Applicants successfully completing a Limited Knowledge Examination will be eligible only for registration restricted to effecting transactions in those securities which were covered by the limited examination.

(3) The Commissioner, notwithstanding anything to the contrary herein, may substitute an oral examination in lieu of a written examination(s) or require an oral examination of any applicant in addition to such written examination(s) in order to determine the applicant's qualification for registration.

(4) Exemptions. Certain examination requirement(s) may be waived by proper showing or certification as to an applicant who:

(a) Has passed the appropriate knowledge examinations and a USASLE examination with the required grades and has been

registered to sell securities in that capacity in any jurisdiction within the preceding two (2) years.

(b) Was registered in Arkansas within two (2) years preceding the filing of a completed application in that same capacity.

(c) Solely in those cases where circumstances warrant because of the limited time, amount or the nature of the issue, or transaction involved, the Commissioner may, upon substantiation by the applicant, accept the applicant's affidavit of knowledge of the civil and criminal sections of the Act and other securities knowledge in lieu of the examination requirements.

(D) EFFECTIVE AND POST-EFFECTIVE REGISTRATION REQUIREMENTS. Upon completion of the application, compliance with the examination(s) requirement, payment of the fees and acceptance by the Commissioner, initial registration will become effective.

(1) For purposes of this section, those agents and broker-dealers who are eligible and choose to do so may use the NASAA/NASD Central Registration Depository ("CRD"). Upon filing a completed application as set forth in Rule 302.01B the Commissioner will either accept such application or notify the applicant of the matters still to be resolved.

(2) Notification by either the CRD system or the Commissioner will be given to each broker-dealer evidencing the broker-dealer and each agent's registration. The broker-dealer shall be notified by the Commissioner of effectiveness of the registration of all agents not registering through CRD by such notice as the Commissioner shall determine.

(3) Every registrant shall immediately give notice in writing of any material change in information or circumstances disclosed in his last prior application and a correcting amendment shall be filed at the time of knowledge of such changes. For registrants using CRD, such correcting amendments shall be filed with CRD in such manner as CRD requires; for all others, correcting amendments shall be filed with the Commissioner. Changes which include, but are not limited to, the following shall be filed:

(a) Change in firm name, ownership, management or control of a broker-dealer, or a change in any of its partners, officers or persons in similar positions, or its businesses address, or the creation or termination of a branch office in Arkansas.

(b) Change in type of entity, general plan or character of a broker-dealer's business, method of operation of type of securities in which the registrant is dealing or trading.

(c) Insolvency, dissolution or liquidation, or a material adverse change or impairment of working capital, or noncompliance with the minimum capital or bond requirements hereinabove provided.

(d) The filing of a criminal charge or civil action against a registrant, or a partner or officer, in which an alleged violation of a securities law, threats of violence against any person, dishonestly, wrongful taking of any property or any manner of fraud is involved, and the result of any hearing, proceeding, or action in such matter, as well as any subsequent action taken on appeal by any reviewing agency or court.

(e) The filing of a complaint or the commencement of a proceeding by an administrative agency, regulatory agency, self-regulatory agency, or court, or a written notice of intention to do so, to consider whether to deny, suspend or revoke a registration, impose a fine or other penalty continuing any conduct or practice in the securities business and the upon the registration, or to enjoin the registrant from engaging in or results of such hearing or proceeding any subsequent actions taken by any reviewing agency or court.

(f) The registrant shall be deemed to have complied with immediate notification pursuant to this subsection if such information, exhibits or schedules have been filed in writing as soon as possible but in no event more than ten (10) calendar days after the registrant has knowledge of the circumstances requiring such notification.

(4) Any broker-dealer registered under the Act shall give timely notice to each agent registered with such broker-dealer of the results of any hearing or proceeding referred to in Rule 302.01D(3) to the extent the agent is required to disclose such matters on his application(s).

(E) EXPIRATION AND RENEWAL OF REGISTRATION. All broker-dealer and agent registrations hereunder shall automatically expire on December 31 of each year without notification by the Commissioner, unless registration is withdrawn, terminated or unless properly renewed.

(1) See Rules 302.01B(3) and 302.01B(4) for renewal procedures.

(2) Where registrations are permitted to expire without the filing of a renewal therefor, a subsequent application shall be considered in all respects as an original application unless an extension has been requested and granted in writing by the Commissioner prior to expiration.

(3) Uniform Form U-5 must be used to report termination of an agent. If notification of termination on Uniform Form U-5 has not been received and processed after termination of a connection with a broker-dealer and Uniform Form U-4 application for registration with another broker-dealer has been received and processed the Commissioner shall consider such application in accordance with Section 23-42-301(b) of the Act. This does not relieve the broker-dealer from the requirement to file a Form U-5 within ten (10) days after and agent's termination.

(4) Termination of a broker-dealer's registration for any reason shall automatically constitute a termination of all agents' registrations thereunder.

(5) The registration of a broker-dealer who ceases to have a registered principal shall be involuntarily suspended until such time as the broker-dealer has obtained a new principal. No offers or sales of securities may be made to residents of Arkansas during this period of suspension.

(6) If a broker-dealer fails to obtain a new principal by the end of a period of its current registration, the Commissioner may require procedures prescribed for applicants for initial registration under Sections 23-42-302 through 23-42-305 of the Arkansas Securities Act upon subsequent reapplication for registration.

(F) **FINANCIAL REQUIREMENTS.** Financial statements as required hereunder shall consist of a balance sheet and profit and loss statement (or trial balance), analysis of surplus, statement concerning contingent liabilities, and computation of net capital and aggregate indebtedness (as hereinafter defined) and, unless otherwise permitted, same shall be prepared by an independent certified public accountant in accordance with generally accepted accounting principles and practices applied on a consistent basis accompanied by an opinion acceptable to the Department.

(1) An applicant for original broker-dealer's registration must submit a certified financial statement as of a date within 30 days of filing, or, if such applicant has been engaged in businesses for one year or more preceding, a certified financial statement as of its last fiscal period along with a balance sheet, which may be unaudited, as of a date within 30 days of such filing.

(2) Annual Reports. Every broker-dealer currently registered must file with the Commissioner annual audited financial statements accompanied by an opinion acceptable to the Department. Said audit will be due not later than ninety (90) days after the close of the fiscal year unless permission to file at some other date is granted by the Commissioner in advance of the date for filing the report. If the broker-dealer is registered on a national

stock exchange approved in Arkansas that provides for annual surprise audits by a firm of certified public accountants, said surprise audit may be filed in lieu of a year-end audit, if said audit is filed within ninety (90) days of completion.

(3) All financial statements required by the Act to be filed with the Commissioner as a part of a registration or renewal shall be public, except that if the statement of financial condition is in a format which is bound separately from the balance of the audited financial statements and is identified in such a manner that it will indicate these documents are confidential, the Department shall consider the confidential portion to be non-public.

(4) In the case of a sole proprietorship where it is impractical to perform a full audit, the Commissioner may accept an opinion from an independent certified public accountant that the accountant has applied sufficient procedures to determine that the total net worth of the sole proprietor exceeds the minimum net capital requirements set forth in the Act.

(5) Financial statements filed shall be original, bound, and manually signed by the accountant.

302.02 INVESTMENT ADVISER.

(A) GENERAL PROVISIONS.

(1) Each non-resident applicant must be registered, exempt, excepted from registration, or qualified to engage in business as an investment adviser or representative in the state of his primary residence, or in the case of applicants that are not natural persons, in the state in which such applicant has its principal place of business. Each person not required to register with the Commissioner but required to make a notice filing pursuant to Section 23-42-301(c)(1) of the Act must be registered as an investment adviser with the Securities and Exchange Commission.

(2) Pursuant to Sections 23-42-208 and 23-42-302 of the Act, the Commissioner designates the web-based Investment Adviser Registration Depository ("IARD") operated by the National Association of Securities Dealers Regulation, Inc. ("NASDR") to receive and store filings and collect related fees from investment advisers and their representatives on behalf of the Commissioner.

(3) Except upon approval of the Commissioner, a representative may not concurrently be registered for more than one investment adviser, or for an investment adviser and an issuer, unless each such investment adviser or

issuer is an advisory affiliate or a control affiliate of the other. The provisions of this rule shall not prohibit a person from being concurrently registered with more than one investment adviser that is neither registered nor required to register pursuant to Section 23-42-301(c) of the Act.

(4) Each filing for initial or renewal registration shall be complete only if it contains the information set forth in Sections 23-42-302 through 23-42-305 of the Act in the manner prescribed by the Commissioner. All information submitted in or accompanying an application must be complete and current as of the date of filing. If any of the information becomes inaccurate or incomplete for any reason prior to registration, amended information shall be filed as soon as practicable, but in any event, within 30 days from the date on which the applicant knew or should have known of the inaccuracy or change. Any application that becomes inaccurate or incomplete prior to registration will be deemed to be incomplete until such time as the inaccuracy or change is corrected.

(B) APPLICATION FOR INVESTMENT ADVISER REGISTRATION

(1) INITIAL APPLICATIONS. The application for initial registration as an investment adviser pursuant to Section 23-42-302(a) of the Act shall be made by completing Form ADV (Uniform Application for Investment Adviser Registration)(17 C.F.R. 279.1) in accordance with the form instructions and by filing Part I with the IARD, along with the fee as set forth in Section 23-42-304(a) of the Act, and by submitting directly to the Commissioner the following:

(a) Part II of Form ADV;

(b) Proof of compliance by the investment adviser with the examination requirements of Rule 302.02(G);

(c) Such financial statements as set forth in Rule 302.02(H);

(d) A corporate surety bond of $50,000 covering the applicant and each representative if the applicant holds any customer's funds or has discretionary authority over any customer's account. However, no surety bond is required if an applicant maintains its principal place of business in a State other than Arkansas and is:

(1) Registered or licensed as an investment adviser in such State; and,

(2) Is in compliance with the applicable bonding requirements of such State.

In such event, the applicant shall furnish in lieu of a corporate surety bond, proof of such registration or license and a copy of the bond or other evidence exhibiting compliance with such other State's bonding requirement;

(e) Copies of investment advisory contracts to be used by the investment adviser;

(f) Copies of brochures to be used by the investment adviser as set forth in Rule 302.02(I), if different than Form ADV Part II;

(g) An executed Consent to Service of Process in a form acceptable to the Commissioner;

(h) Any other information the Commissioner may reasonably require.

(2) ANNUAL RENEWAL. The application for annual renewal registration as an investment adviser shall be accomplished by filing a renewal application in a form acceptable to the Commissioner with the IARD, along with the fee as set forth in Section 23-42-304(a) of the Act, and by submitting directly to the Commissioner a list of all of its representatives currently registered that are renewing their registrations.

(3) UPDATES AND AMENDMENTS.

(a) An investment adviser must file with IARD, in accordance with the instructions in the Form ADV, any amendments to Part I of the investment adviser's Form ADV;

(b) An investment adviser must file with the Commissioner, in accordance with the instructions in the Form ADV, any amendments to Part II of the investment adviser's Form ADV;

(c) An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment;

(d) Within ninety (90) days of the end of the investment adviser's fiscal year, an investment adviser must file with IARD an updated Form ADV, Part I;

(e) Within ninety (90) days of the end of the investment adviser's fiscal year, an investment adviser must file with the Commissioner an updated Form ADV, Part II.

(4) COMPLETION OF FILING. An application for initial or renewal registration is not considered filed for purposes of Section 23-42-302 (a) of the Act until the required fee and Part I of Form ADV are received and accepted by the IARD and all other required submissions have been received by the Commissioner.

(C) APPLICATION FOR INVESTMENT ADVISER REPRESENTATIVE REGISTRATION

(1) INITIAL APPLICATIONS. The application for initial registration as an investment adviser representative pursuant to Section 23-42-302(a) of the Act shall be made by completing Form U-4 (Uniform Application for Securities Industry Registration of Transfer) in accordance with the form instructions and by filing the Form U-4 directly with the Commissioner. The application for initial registration shall also include the following:

(a) The fee required by Section 23-42-304 of the Act;

(b) Proof of compliance by the investment adviser representative with the examination requirements of Rule 302.02(G); and

(c) Any additional exhibits or information not specifically required by these rules but essential to a full presentation of all material facts relating to an applicant's qualifications or registration.

(2) ANNUAL RENEWAL. The application for annual renewal of registration for a registered representative shall be filed directly with the Commissioner. The application for annual renewal of registration shall include the fee required by Section 23-42-304 of the Act.

(3) UPDATES AND AMENDMENTS. The investment adviser and representative are under a continuing obligation to update information required by Form U-4 as changes occur. Any amendments to the representative's Form U-4 must be filed promptly with the Commissioner. An amendment will be considered promptly filed if received by the Commissioner within thirty (30) days of the event that requires the filing of the amendment.

(4) COMPLETION OF FILING. An application for initial or renewal registration is not considered filed for purposes of Section 23-42-302(a) until the required fee and all required submissions have been received by the Commissioner

(D) NOTICE FILING REQUIREMENTS FOR SEC REGISTERED INVESTMENT ADVISERS

(1) NOTICE FILING. The notice filing for an SEC registered investment adviser pursuant to Section 23-42-301(c) of the Act shall be filed with IARD on an executed Form ADV (Uniform Application for Investment Adviser Registration (17 C.F.R.279.1)). A notice filing of an SEC registered investment adviser shall be deemed filed when the fee required by Section 23-42-304 of the Act and the Form ADV are filed with and accepted by IARD on behalf of the Commissioner.

(2) PORTIONS OF FORM ADV NOT YET ACCEPTED BY IARD. Until IARD provides for the filing of Part II of Form ADV, the Commissioner will deem filed Part II of Form ADV if an SEC registered investment adviser provides, within 5 days of a request, Part II of Form ADV to the Commissioner. Because the Commissioner deems Part II of the Form ADV to be filed, an SEC registered investment adviser is not required to submit Part II of Form ADV to the Commissioner unless requested.

(3) ANNUAL RENEWAL. The annual renewal of the notice filing for an SEC registered investment adviser pursuant to Section 23-42-301(c) of the Act shall be filed with IARD. The renewal of the notice filing for an SEC registered investment adviser shall be deemed filed when the fee required by Section 23-42-304 of the Act is filed with and accepted by IARD on behalf of the Commissioner.

(4) UPDATES AND AMENDMENTS. An SEC registered investment adviser must file with IARD, in accordance with the instructions in the Form ADV, any amendments to the SEC registered investment adviser's Form ADV.

(E) ACCEPTANCE OF REGISTRATION

(1) Promptly upon the filing of an application for registration the Commissioner will either accept such application or notify the applicant of any information, documents, or other matters necessary to complete the application.

(2) The date of effectiveness of registration shall be governed by Section 23-42-302(f) of the Act.

(3) Notification of the effectiveness of registration or of any matters set forth in paragraph (E)(1) of this subsection shall be given to an applicant by IARD, CRD, first class mail, telephone, or by other electronic media, at the election of the Commissioner.

(F) EXPIRATION AND TERMINATION OF REGISTRATION AND NOTICE FILING. Each registration and notice filing shall automatically expire on December 31, of each year without notification by the Commissioner, unless such

registration or notice filing has been properly renewed, or has been previously withdrawn, terminated, or canceled.

(1) When a registration or notice filing expires as a result of the failure to timely renew, a subsequent application or notice filing may be considered in all respects as an original application or notice filing unless an extension has been requested and granted in writing by the Commissioner prior to expiration.

(2) A representative's registration terminates upon the termination of such representative's employment with the investment adviser with which he is registered. Such termination must be reported by the investment adviser on Form U-5. If a Form U-4 is received from the representative whose employment has terminated and is processed by the Commissioner prior to the receipt of the Form U-5 from the investment adviser with which the representative was employed, such Form U-4 shall be considered not only an application for initial registration with another investment adviser, but also a notification by the representative of termination or withdrawal of his previous registration or application unless, pursuant to Rule 302.02(A)(3), the representative is dually registered.

(3) Termination of an investment adviser's registration or notice filing for any reason shall automatically constitute termination of all of the registrations of the representatives registered with such investment adviser.

(G) EXAMINATION REQUIREMENTS

(1) Examination Requirements. An individual applying to be registered as an investment adviser or investment adviser representative under the Act shall provide the Commissioner with proof of knowledge of the investment advisory business and the Arkansas Securities Act by obtaining a passing score on one of the following:

(a) The Uniform Investment Adviser Law Examination (Series 65 examination); or

(b) The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

(2) Waivers. The examination requirements shall not apply to an individual who holds one of the following professional designations:

(a) Certified Financial Planner (CFP) awarded by the International Board of Standards and Practices for Certified Financial Planners, Inc.;

(b) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;

(c) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

(d) Chartered Financial Analyst (CFA) awarded by the Association for Investment Management and Research;

(e) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or

(f) Such other professional designation as the Commissioner may by rule or order accept.

(3) Any individual who has been registered as an investment adviser or investment adviser representative in any jurisdiction in the United States or Canada within the two (2) years immediately preceding the filing of his application shall not be required to comply with the examination requirements of this Rule.

(H) **FINANCIAL REQUIREMENT.** Financial statements as required hereunder shall consist of a balance sheet, statement of operations (income or loss), statement of cash flows, statement of changes in retained earnings, statement of changes in equity or capital and the related notes to the financial statements. Unless otherwise provided herein, financial statements shall be audited in accordance with generally accepted auditing standards by an independent public accountant or an independent certified public accountant, and accompanied by an opinion acceptable to the Commissioner. For investment advisers that neither maintain customer funds or securities nor require prepayment of more than $500 in fees per client and more than 6 or more months in advance, financial statements as required hereunder shall consist of at least an unaudited statement of financial condition in a form acceptable to the Commissioner dated within 30 days of such filing. Such statement shall be certified as true and accurate by the chief financial officer of the applicant as indicated on the Form ADV, or, if there is no chief financial officer, the person executing Form ADV.

(1) INITIAL REGISTRATION. Each investment adviser applying for initial registration must submit an unaudited statement of financial condition in a form acceptable to the Commissioner dated within 30 days of such filing. Such statement shall be certified as true and accurate by the chief financial officer of the applicant as indicated on the Form ADV, or, if there is no chief financial officer, the person executing Form ADV. If the applicant has been engaged in business for one year or more preceding the filing of the application, the applicant may submit audited financial statements for the last fiscal period along with

an unaudited balance sheet in a form acceptable to the Commissioner dated within 30 days of such filing.

(2) ANNUAL REPORTS. Every currently registered investment adviser must file with the Commissioner annual financial statements as specified above not later than ninety (90) days after the close of the fiscal year unless written permission to file at some other date is granted by the Commissioner in advance of the date for filing the report.

(3) PUBLIC RECORD. All financial statements required by the Act to be filed with the Commissioner as a part of a registration, notice filing, or renewal of either shall be public; except that if the balance sheet is in a format in which it is bound separately, the balance of the audited financial statements will be considered non-public if properly identified in such a manner that will indicate these documents are confidential.

(4) For an investment adviser applicant or registrant that maintains a principal place of business in a State other than Arkansas, the requirements of paragraphs (H)(1) and (2) above may be satisfied by filing with the Commissioner a copy of any financial reports required by and filed with the securities commissioner in such State, provided that the investment adviser is registered or licensed as an investment adviser in such State and is in compliance with such State's financial reporting requirements. Notwithstanding the above, an applicant or registrant shall furnish such further information as requested by the Commissioner when the Commissioner deems it necessary in order to present a full and accurate presentation of the financial circumstances of such applicant or registrant.

(I) **BROCHURE REQUIREMENT.** Unless otherwise provided in this rule, an investment adviser registered or required to be registered pursuant to Section 23-42-301 of the Act shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with a written disclosure statement which may be a copy of Part II of its Form ADV or written documents containing that information required by Part II of Form ADV, or such other information as the Commissioner may require.

(1) DELIVERY.

(a) An investment adviser, except as provided in subdivision (b), shall deliver the statement required by this section to an advisory client or prospective advisory client either:

(i) At a time not less than 48 hours prior to entering into any investment advisory contract with such prospective client, or

(ii) At the time of entering into any such contract so long as the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

(b) Delivery of the statement required by paragraph (a) need not be made in connection with entering into a contract for impersonal advisory services.

(2) OFFER TO DELIVER.

(a) An investment adviser, except as provided in subdivision (b), shall annually and without charge deliver or offer in writing to deliver upon written request the statement required by this section to its advisory clients.

(b) The delivery or offer required by subdivision (a), need not be made to advisory clients receiving advisory services solely pursuant to a contract for impersonal advisory services of less than $200.00

(c) With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services which requires a fee of $200.00 or more, an offer of the type specified in subdivision (a), shall also be made at the time of entering into an advisory contract.

(3) RECEIPT OF REQUEST. Any statement requested in writing by an advisory client or prospective advisory client required by this subsection must be mailed or delivered within seven (7) days of the receipt of the request.

(4) OMISSION OF INAPPLICABLE INFORMATION. If an investment adviser renders substantially different types of investment advisory services to different advisory clients, any information required by Part II of Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if such information is not applicable to the type of investment advisory service or fee which is rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(5) OTHER DISCLOSURES. Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rules and regulations thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this rule.

RULE 303 MINIMUM NET CAPITAL REQUIREMENT

303.01 CAPITAL REQUIREMENTS FOR REGISTERED BROKER-DEALER

(1) A broker-dealer who is not registered with the Securities and Exchange Commission and a member of the NASD shall have and maintain net capital, as hereinafter defined, as set forth in Section 23-42-303 of the Act and shall not permit his aggregate indebtedness, as hereinafter defined, to exceed 1500 percent of the net capital of such broker-dealer.

(2) The term "net capital" shall be deemed to mean the net worth of a broker-dealer (the excess of total assets over total liabilities) adjusted by:

(a) deducting fixed assets and assets which cannot be readily converted into cash (less any indebtedness secured thereby) including, among other things, real estate, furniture and fixtures, exchange memberships, prepaid rent, insurance and expenses, good will, organization expenses, all unsecured advances and loans, customers' unsecured notes and accounts including deficits in customers' accounts, tax refunds or overpayments unless such assets are actually being used in the broker-dealer's operation by having been converted into cash by means of pledging or otherwise, and the case surrender value of a life insurance policy.

(b) deducting the percentages specified below of the market value of all securities, long or short, included in the assets of liabilities of the broker-dealer:

1. in the case of a security issued or unconditionally guaranteed as to principal and interest by the United States or any agency thereof, except as provided in subparagraph (5), two percent (2%) of its market value;

2. in the case of any security issued or unconditionally guaranteed as to principal and interest by the government of Canada or any agency thereof, except as provided in subparagraph (5), two percent (2%) of its market value;

3. in the case of any security issued or unconditionally guaranteed by any state, territory or possession of the United States or any

political subdivision, authority, commission or agency thereof, which are not in default as to principal or interest, except as provided in subparagraph (5), five percent (5%) of its market value;

4. on all other securities, except as provided in subparagraph (5), the deduction shall be thirty percent (30%) of its market value;

5. in the case of securities which are in default as to principal or interest, for which there is no ready market, no method of establishing market value, or which cannot be publicly offered and sold because of statutory, regulatory or contractual agreements or other restrictions, one hundred percent (100%) of its cost.

(c) deducting an additional percentage, in the case of securities of a single class of series of a single issuer held in the broker-dealer's inventory or other accounts in which the aggregate market value of that class or series exceeds twenty-five percent (25%) of the aggregate market value of the broker-dealer's inventory or other accounts, equal to

1. the percentage called for in paragraphs 1., 2. and 3. of subparagraph (b) hereinabove when the securities are of the type described therein and

2. fifty percent of the market value of the securities when the securities are of a type described in paragraph 4. of subparagraph (b) hereinabove.

(d) adding unrealized profits (or deducting unrealized losses) in the accounts of the broker-dealer;

(e) adding indebtedness subordinated to the claims of general creditors pursuant to a satisfactory subordination agreement, as hereinafter defined;

(f) deducting excess subordinated indebtedness as hereinafter defined.

(3) The term "aggregate indebtedness" shall be deemed to mean the total money liabilities of a broker-dealer arising in connection with any transaction whatsoever, including among other things: money borrowed; money payable against securities received which have been sold to customers but not yet delivered to customers; customers' free credit balances; credit balances in customers' accounts having short positions in securities; but excluding:

(a) indebtedness adequately collateralized, as hereinafter defined, by securities owned by the broker-dealer, provided, however, that money payable against securities received which have been sold to customers but not yet delivered to customers shall not be excluded;

(b) amounts payable against securities failed to receive which securities were purchased for the account of, and have not been sold by, the broker-dealer;

(c) liabilities adequately secured by real estate or any other asset which is not included in the computation of "net capital" under this rule. (Maximum amount of the exclusion is the net book value of the asset not included in net capital);

(d) liabilities on when-as-and-if issued securities until issue date;

(e) indebtedness subordinated to the claims of general creditors pursuant to a satisfactory subordination agreement, as hereinafter defined, which is not in excess of the corporate debt-equity total, as hereinafter defined;

(f) indebtedness arising from the purchase of those securities as set forth in Sections 23-42-503(a)(1) and 23-42-503(a)(2) of the Act when the securities are not purchased for the broker-dealer's own inventory account with the following limitations:

1. the full amount of the payable shall be excluded from aggregate indebtedness for ten (10) business days after trade date or until receipt of the securities, whichever shall first occur;

2. if the securities have not been received and ten (10) business days after trade date have elapsed, then fifty percent (50%) of the amount payable shall be excluded from aggregate indebtedness for the next five (5) business days or until receipt of the securities, whichever shall first occur;

3. if the securities have not been received within fifteen (15) business days after trade date, the full amount of the payable shall be included in aggregate indebtedness; unless; if during such time, fifteen (15) business days after trade date, the securities were presented for receipt to the broker-dealer and the securities were not in a form acceptable for receipt and delivery and action necessary to correct the deficiency is being taken by the broker-dealer, then the following amounts shall be excluded from aggregate indebtedness; the full amount of the payable shall be excluded from, the 1st through 10th business days after receipt date; 90% of the amount payable shall be excluded for the 11th through 15th business days after the securities were presented for receipt and were not accepted; 80% shall be excluded for the 16th through 20th business days; 70% shall be excluded for the 21st through 25th business days; 50% shall be excluded for the 26th through 30th business days; 30% shall be excluded for the 31st through 35th business days, and, if after that period of time (35

business days after receipt date), the securities have not been received and accepted, then the full amount of the payable shall be included in aggregate indebtedness.

(g) indebtedness arising from the purchase of those securities as set forth in Sections 23-42-503(a)(1) and 23-42-503(a)(2) of the Act when the securities are purchased for the broker-dealer's own inventory account until such time as the securities are sold by the broker-dealer. At the sale trade date, the provisions of (f) above shall be applicable.

(h) indebtedness arising from the purchase or sale of mortgage backed modified pass-through participation certificates issued or guaranteed by the United State or any agency or corporate or instrumentality thereof when the securities are not purchased from the broker-dealer's own inventory account and providing the broker-dealer mails to the customer or broker-dealer a letter of contract for both purchase and sale within forty-eight (48) hours of the first trade date with the following limitations:

1. the full amount of the payable shall be excluded from aggregate indebtedness for ten (10) business days after the securities can be identified by pool number and factor from which par value can be computed or until receipt of the securities, whichever shall first occur;

2. if the securities have not been received in ten (10) business days after the securities can be identified by pool number and factor from which par value can be computed, then 75% of the amount payable shall be excluded from aggregate indebtedness for the next three (3) business days or until receipt of the securities, whichever shall first occur;

3. if the securities have not been received thirteen (13) business days after the securities can be identified by pool number and factor from which par value can be computed, then 50% of the amount payable shall be excluded from aggregate indebtedness for the next three (3) business days or until receipt of the securities, whichever shall first occur;

4. if the securities have not been received in sixteen (16) business days after the securities can be identified by pool number and factor from which par value can be computed, the full amount of the payable shall be included in aggregate indebtedness; unless, if during such time, sixteen (16) business days after the securities can be identified by pool number and factor from which par value can be computed, the securities were presented for receipt to the

broker-dealer and the securities were not in a form acceptable for receipt and delivery and the broker-dealer:

a. prepares and retains as provided in Rule 306.01B a dated writing contemporaneous with the receipt of information concerning the defect in form for delivery, which writing shall state the nature of the defect and identify the individual by name, business address and telephone number who provided the information concerning the defect; and

b. take action necessary to correct the deficiency; then the following amount shall be excluded from aggregate indebtedness: the full amount of the payable shall be excluded from the 1st through 10th business days after receipt; 90% of the amount payable shall be excluded for the 11th through 15th business days after the securities were presented for receipt and were not accepted; 80% shall be excluded for the 16th through 20th business days; 70% shall be excluded for the 21st through 25th business days; 50% shall be excluded for the 26th through 30th business days; 30% shall be excluded for the 31st through 35th business days, and, if after this period of time (35 business days after receipt date), the securities have not been received and accepted, then the full amount of the payable shall be included in aggregate indebtedness.

5. The maximum number of days between trade date and the date the securities can be identified by pool number and factor shall not be in excess of 31 calendar days.

(i) indebtedness arising from the purchase or sale of mortgage backed modified pass-through participation certificates issued or guaranteed by the United States or an agency or corporation or instrumentality thereof when the security is purchased for the broker-dealer's own inventory account until such time as the security is sold by the broker-dealer. At the sale trade date, the provisions of (h) above shall be applicable.

(4) the term "satisfactory subordination agreement" shall mean a written agreement duly executed by the broker-dealer and the lender, which agreement is biding and enforceable in accordance with its terms upon the lender, his creditors, heirs, executors, administrators, and assigns, and which agreement satisfies all of the following conditions:

(a) it effectively subordinates any right of the lender to demand or receive payment or return of the cash or securities loaned to the claims of all present and future creditors of the broker-dealer;

the cash or securities are loaned for a term of not less than one year unless the broker-dealer is no longer subject to this Act and Rules;

it provides that the agreement shall not be subject to cancellation by either party and that the loan shall not be repaid and the agreement shall not be terminated, rescinded or modified by mutual consent or otherwise if the effect thereof would be to make the agreement inconsistent with the conditions of this rule or to reduce the net capital of the broker-dealer below the amount required by this rule;

it provides that no default in the payment of interest or in the performance of any convenant or condition by the broker-dealer shall have the effect of accelerating the maturity of the indebtedness;

it provides that any notes or other written instruments evidencing the indebtedness shall bear on their face an appropriate legend stating that such notes or instruments are issued subject to the provisions of a subordination agreement which shall be adequately referred to and incorporated by reference;

it provides that any securities or other property loaned to the broker-dealer pursuant to its provisions may be used and dealt with by the broker-dealer as part of his capital and shall be subject to the risks of the business; and,

one copy of such agreement, and of any notes or written instruments evidencing the indebtedness, is filed with the Securities Commissioner, together with a statement of the full name and address of the lender and whether the broker-dealer carried funds or securities for the lender at or about the time the agreement was entered into.

(b) the amount of subordinated indebtedness which may be excluded from aggregate indebtedness or which may be excluded from the liabilities of a broker-dealer in computing net capital shall, in the case of a corporation, be added to paid in capital, capital surplus, retained earnings and other capital accounts of the corporation, and the sum thereof shall be designated as the "corporate debt-equity total"; and in the case of a partnership, such amounts of indebtedness and equities in the accounts of partners, shall be added to the capital accounts of the partnership and the sum thereof shall be designated as the "partnership debt-equity total"; and, in the case of a sole proprietor, such amounts of indebtedness shall be added to the capital or proprietary accounts of the sole proprietor and the sum thereof shall be designated as the "sole proprietorship debt-equity total". If the amounts of such subordinated indebtedness and, in the case of partnership, equities in the accounts of partners exceed 70% of such corporate debt-equity total, or partnership debt-equity total, or sole

proprietorship debt-equity as the case may be, then such excess of subordinated indebtedness and in the case of a partnership, equities in the accounts of partners, shall not be excluded from the aggregate indebtedness of the broker-dealer and shall not be excluded from the liabilities of the broker-dealer in the computation of net capital, and shall not be added to net worth as equities in the accounts of partners.

(5) the term "customer" shall mean every person except the broker-dealer;

(6) indebtedness shall be deemed to be "adequately collateralized" within the meaning of this rule, when the difference between the amount of the indebtedness and the market value of the collateral is sufficient to make the loan acceptable as a fully secured loan to banks regularly making loans to broker-dealers in the community;

(7) securities sold to or purchased from customers subject to being repurchased by the broker-dealer or customer, whether such agreements are written or oral, shall be included in the broker-dealer's inventory and the liability for the repurchase will be shown and shall be subject to the provisions of the net capital and aggregate indebtedness computations.

(8) each broker-dealer shall make a computation of its net capital and ratio of its aggregate indebtedness to its net capital not less than monthly and in no event later than 15 days after the end of each month, and shall maintain such net capital computations as part of its internal records. Each broker-dealer shall file with the Commissioner a report on its net capital and ratio of its aggregate indebtedness to its net capital as of the end of each month in which its net capital is less than $50,000.00 or its aggregate indebtedness exceeds 1200% of its net capital, promptly after it has knowledge of such fact and in no event later than 15 days after the end of each month, unless relieved from this reporting requirement in writing by the Commissioner.

303.02 CAPITAL REQUIREMENTS FOR REGISTERED INVESTMENT ADVISERS

Except as otherwise provided in the Act or in these rules, each registered investment adviser shall at all times have and maintain no less than the minimum net capital required by Section 23-42-303(a) of the Act. Net capital for purposes of this rule shall mean the net worth of an applicant or registrant calculated by computing the excess of total assets over total liabilities. The provisions of this rule shall not apply to an investment adviser whose principal place of business is located in a State other than Arkansas, provided that the investment adviser is registered or licensed as an investment adviser in such State and is in compliance with the net capital requirements of such State.

RULE 304 FILING FEES

[RESERVED]

RULE 305 CORPORATE SURETY BONDS - ALTERNATIVES

[RESERVED]

RULE 306 RECORDS AND REPORTS - EXAMINATIONS

306.01 RECORDS AND REPORTS OF BROKER-DEALERS

(A) CONFIRMATIONS.

(1) At or before each transaction with a customer, the broker-dealer shall give or send to each customer written notification, disclosing:

(a) Whether such broker-dealer is acting as an agent for such customer, as a principal for his own account, as an agent for some other person, or as an agent for both such customer and some other person;

(b) In any case in which such broker-dealer is acting as an agent for such customer or for both customer and some other person, the source and amount of any commission or other remuneration received or to be received by such broker-dealer or agent of the issuer, in connection with the transaction, and either the name of the person from whom the security was purchased or to whom it was sold for such customer or the fact that such information will be furnished upon the request of such customer;

(c) The date and time of the transaction (or the fact that the time of the transaction will be furnished upon request to such customer) and the identity (Including but not limited to, as necessary, such items as the name of issuer, type of security, interest rate, maturity date, callable features, and accrued interest), price yield, and number of shares or units (or principal amount) of such security purchased or sold by such customer and the date the transaction will be settled;

(d) The identity of the registered agent of the broker-dealer handling the transaction;

(e) When the exemption afforded by Section 23-42-504(a)(3) is relied upon by a broker-dealer, said broker-dealer shall include on the

written confirmation of such transaction the following statement of the substantial equivalent thereof:

"This transaction was effected pursuant to an unsolicited order or offer to buy by the customer."

(f) In case of any transaction in a debt security subject to redemption before maturity, a statement to the effect that such debt security may be redeemed in whole or in part before maturity, that such a redemption could affect the yield represented and that additional information is available upon request.

(2) A file of all voided or canceled confirmations or a listing of all voided or canceled confirmations disclosing:

(a) Customer's name;

(b) Name of agent handling the transaction,

(c) Date of the transaction,

(d) Confirmation number,

(e) Reason for cancellation, and

(f) Date voided or canceled.

(3) A copy of all confirmations (both hand written order ticket and typed confirmation) shall be preserved for a period of five years.

(B) **BOOKS AND RECORDS.** Every broker-dealer shall make and keep true, accurate and current books and records, which shall be maintained and preserved for a period of at least five years, the most recent two years in an easily accessible place. The records required to be maintained and preserved may be reproduced in a different manner and be maintained and preserved for the required time in that form. If such substitution for hard copy is made the broker-dealer shall at all times have available facilities for immediate, easily readable projection of the records and for producing easily readable facsimile enlargements, arrange the records and index in such a manner as to permit the immediate location of any particular record, be ready at all times to provide, and immediately provide, any facsimile enlargement, and store separately from the original one other copy of the records for the time required.

(1) Blotters and journals (or other records or books of original entry) containing an itemized daily record of:

(a) Purchase and sales of securities.

(b) Receipts and deliveries of securities.

(c) Receipts and disbursements of cash.

(d) All other debits and credits.

(e) Each transaction, reflecting:

(i) The account or name of customer.

(ii) Name and amount of securities.

(iii) Certificate number, if any.

(iv) Unit and aggregate purchase or sale price.

(v) Trade date and settlement date.

(vi) Name or other designation of person from whom purchased or received, or to whom sold and delivered.

(vii) Identification of salesman who effected the purchase or sale.

(2) Ledgers, reflecting:

(a) Assets and liabilities.

(b) Income and Expenses.

(c) Capital accounts.

(d) Securities in transfer.

(e) Dividends and interest received.

(f) Securities borrowed and loaned.

(g) Moneys borrowed and loaned, and collateral used or substituted therefor.

(h) Securities failed to receive and failed to deliver.

(i) A record of all repurchase agreements, puts, calls, spreads and straddles and other options and agreements in which the broker-dealer has any direct or indirect interest or which it has granted or guaranteed, containing at least, identification of the security and number of units involved.

(3) Ledger accounts, subsidiary journals, or other records, itemizing separately each cash or margin account of every customer and of the broker-dealer, including employees and partners thereof showing:

(a) Name and address of the beneficial owner of such account.

(b) In the case of a margin account, the signature of such owner, or person authorized to transact business for such account.

(c) Purchases and sales.

(d) Receipts and deliveries of securities.

(e) All other debits and credits to such account.

(f) Commissions or other compensation paid to such person.

(g) Whether the account is discretionary.

(4) Securities records or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by such broker-dealer for his account or for the account of his customers or partners showing the location of all securities "long" and the offsetting position to all securities "short" and in all cases the name or designation of the account in which each position is carried.

(5) Memorandum of the following:

(a) Each brokerage order for the purchase or sale of a security showing:

(i) Any instruction given or received whether executed or unexecuted.

(ii) Terms and conditions or instructions and any modification or cancellation thereof.

(iii) Account for which entered.

(iv) Date and time of entry, execution, or cancellation.

(v) Price at which executed.

(vi) Orders entered pursuant to the exercise of discretionary authority.

(b) Each purchase and sale for the account of such broker-dealer, including employees and partners thereof, showing:

(i) Name of purchaser or seller.

(ii) Price.

(iii) Date and time of execution.

(6) Payroll records showing at least the following:

(a) Name and social security number.

(b) Commissions and expenses received including check number, dates and amounts.

(c) Supporting commission sheet for each person showing at least each confirmation number and corresponding commission for which he was paid.

(7) Trial Balance: A record of the proof of balances of all ledger accounts in the form of trial balances including computations of net capital and aggregate indebtedness. Such trial balances shall be prepared currently at least once a month. If upon any computation of aggregate indebtedness or net capital the broker-dealer is in violation of the minimum net capital or maximum aggregate indebtedness ratio, he shall immediately notify the Commissioner, by telephone or telegram, followed by a letter, mailed the same day, disclosing all pertinent facts. Upon notification, the Commissioner may make such requirements in the form of additional notifications, cessation of activities or any other requirements which the Commissioner deems necessary in the public interest for the protection of investors including such actions as are authorized by these rules.

(8) Corporate charter, certificates of incorporation or trust agreements, and bylaws, and minute books of stockholders' and directors' or trustees' meetings; and minute books of directors' or trustees' committee and advisory board or advisory committee meetings.

(9) Correspondence (or copies thereof) sent to or received from customers, broker-dealers, employees, regulatory agencies, or others.

(10) Promotional and/or sales materials (or copies thereof) used in connection with the sales of securities.

(11) Other records, including where appropriate, copies of vouchers, checks, bank statements, invoices, monthly statements, and similar records developed by the use of automatic data processing systems.

(C) **SEGREGATED ACCOUNTS.** A broker-dealer and agent of the issuer shall at all times keep its customers' securities and funds in trust and segregated from its own securities and funds.

(1) All financial transactions between the broker-dealer or issuer and his customers are to be effected through one or more bank accounts, each to be designated "special account for the exclusive benefit of customers of (name of broker-dealer);" each shall be separate from any other bank accounts of the broker-dealer and shall at no time be used directly or indirectly as security for a loan to the broker-dealer by the bank and, shall be subject to no right, lien or claim of any kind in favor of the bank or any persons claiming through the bank; and each shall be separate from any other bank account used by the broker-dealer to pay operating and administrative expenses. Any moneys held in the "special" bank account due and owing to the broker-dealer for commissions or otherwise may only be withdrawn at or after the time the transaction between the broker-dealer and his customer is completed.

Provided, however, that compliance by broker-dealers registered with the Securities and Exchange Commission, with the SEC rules and regulations governing use, commingling and hypothecation of customers' securities and free credit balances and segregated bank accounts shall be deemed in compliance with this provision.

(2) When a broker-dealer is engaged in more than one enterprise or activity it shall maintain separate books of accounts and records relating to its securities business and the assets shall not be commingled with those of such other businesses and there shall be a clearly defined division with respect to income and expenses.

(D) **MARKET MAKERS.** [Also see Section 23-42-508 of the Act] Any broker-dealer which makes a market in a security shall, at a minimum, maintain and preserve for a period of at least five years, the following:

(1) Proof in its files that it is lawful for the broker-dealer to in fact make a market in such securities, i.e., the securities are either registered or exempt from registration under the Act and applicable Federal Law;

(2) Current information which he shall make reasonably available upon request to any person expressing an interest in a proposed transaction in the security with such broker-dealer and which he has no reasonable basis for believing is not true and correct or reasonably current, and which was obtained by him from sources which he has a reasonable basis for believing are reliable:

(a) the exact name of the issuer and its predecessor (if any);

(b) the address of its principal executive offices;

(c) the state of incorporation, if it is a corporation;

(d) the exact title and class of the security;

(e) the par or stated value of the security;

(f) the number of shares or total amount of the securities outstanding as of the end of the issuer's most recent fiscal year;

(g) the name and address of the transfer agent;

(h) the nature of products or services offered;

(i) the nature an extent of the issuer's facilities;

(j) the name of the chief executive officer and members of the board of directors;

(k) the issuer's most recent balance sheet and profit and loss and retained earnings statements;

(l) similar financial information for such part of the two preceding fiscal years as the issuer or its predecessor has been in existence; and,

(m) whether the broker-dealer or any associated persons are affiliated, directly or indirectly, with the issuer.

(3) The term "market maker" shall mean a broker-dealer who, with respect to a particular security, regularly publishes bonafide competitive bid and offer quotations in a recognized interdealer quotation system; or regularly furnishes bonafide competitive bid and offer quotations to other broker-dealers on request; and is ready, willing and able to effect transactions in reasonable quantities at his quoted prices with other broker-dealers on a regular basis.

(4) If the home office of the broker-dealer is not in Arkansas then any branch office located in Arkansas shall maintain a list of all securities in which the broker-dealer makes a market.

(E) DISCRETIONARY SECURITIES ACCOUNTS.

(1) No broker-dealer or agent shall effect with or for any customer's account, in respect to which such broker-dealer or his agent is vested with any discretionary power, any transactions of purchase or sale which are excessive in size or frequency in view of the financial resources and character of such account.

(2) No broker-dealer or agent shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization.

(3) The broker-dealer shall promptly approve in writing each discretionary order entered and shall review all discretionary accounts at frequent intervals in order to detect and prevent transactions which are excessive in size or frequency in view of the financial resources and character of the account.

(4) The broker-dealer will indicate on the customer's account the customer's investment objective.

(5) This section shall not apply to discretion as to the price at which or the time when an order given by the customer for the purchase or sale of a definite amount of a specified security shall be executed.

(F) COMPLAINT FILE. Every broker-dealer shall keep and maintain a complaint file or compliance file which shall contain all complaints made against the firm or its agents by individuals, financial institutions and other investors. The complaint file should disclose any legal action in process, settled, or threatened against the broker-dealer or any of its agents. If the original documents are not maintained in the complaint file, the copy of the document should show the disposition of the original document. If the home office of a broker-dealer is not in Arkansas, then any branch office located in Arkansas shall maintain this complaint file for any complaints involving Arkansas agents or customers.

(G) CUSTOMER. The term "customer" as used in Rule 306.01 shall mean every person except the broker-dealer.

306.02 RECORDS AND REPORTS OF INVESTMENT ADVISORS.

Except as otherwise provided in the Act or in these rules, each registered investment adviser shall make and keep true, accurate and current books and records relating to his investment advisory business. The records required to be maintained shall be maintained

for a minimum of five (5) years from the date on which the transaction or occurrence such record memorializes occurred, and shall include the specific records set forth below. The provisions of this rule shall not apply to an investment adviser whose principal place of business is located in a State other than Arkansas, provided that the investment adviser is registered or licensed as an investment adviser in such State and is in compliance with the applicable books and records requirements of such other State. In all other instances, the books and records required to be maintained shall include:

(A) GENERAL BUSINESS RECORDS.

(1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

(3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt of delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the term and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

(4) All checkbooks, bank statements, canceled checks and cash reconciliations of the investment advisor.

(5) All bills or statements (or copies thereof) paid or unpaid, relating to the business of the investment adviser as such.

(6) All trial balances, financial statements, net capital computations and internal audit working papers relating to the business of such investment advisor.

(7) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to:

(a) Any recommendation made or proposed to be made and any advice given or proposed to be given;

(b) Any receipt, disbursement or delivery of funds or securities; or,

(c) The placing or execution of any order to purchase or sell any security.

(d) Notwithstanding the provisions of this section, an investment adviser shall not be required to keep:

(i) Any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment advisor, and

(ii) A record of the names and addresses of the persons to whom any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 5 persons was sent, unless such notice, circular or advertisement is distributed to persons named on any list, in which case, the investment adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

(8) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

(9) All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment advisor, or copies thereof.

(10) All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such. Such written agreements shall indicate the customer's investment objectives.

(11) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommending the purchase of sale of a specific security, which the investment adviser circulates or distributes, directly or indirectly, to 5 or more persons (other than investment supervisory clients or persons connected with such investment advisor), and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons therefor.

(12) A record of every transaction in a security in which the investment adviser or any advisory representative of such investment adviser has, or by reason

of such transaction acquires, any direct or indirect beneficial ownership, except (a) transactions effected in any account over which neither the investment adviser nor any representative of the investment adviser has any direct or indirect influence or control; and (b) transactions in securities which are direct obligations of the United States. Such records shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale of other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(13) All payroll records, corporate charters, certificates of incorporation, minute books and other records routinely kept in the course of operating a business.

(B) **CUSTOMER FUNDS RECORDS.** If a registered investment adviser has custody or possession of securities or funds of any client, the records required to be made and kept shall include:

(1) A journal or other record showing all purchases, sales receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts.

(2) A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits.

(3) Copies of confirmations of all transactions effected by or for the account of any such client.

(4) A record for each security in which any such client has a position, which record shall show the name of each such client having any interest in such security, the amount of interest of each such client, and the location of each such security.

(C) **SEGREGATED ACCOUNTS.** A registered investment adviser shall at all times keep its customers' securities and funds in trust and segregated from its own securities and funds.

(1) All financial transactions between the investment adviser and his clients are to be effected through one or more bank accounts, each to be

designated "special account for the exclusive benefit of clients of (name of investment advisor);" each shall be separate from any other bank accounts of the investment adviser and shall at no time be used directly or indirectly as security for a loan to the investment adviser by the bank and, shall be subject to no right, lien or claim of any kind in favor of the bank or any persons claiming through the bank; and each shall be separate from any other bank account used by the investment adviser to pay operating and administrative expenses.

(2) Immediately after accepting custody or possession of funds or securities from any client, an investment adviser must notify such client in writing of the place and manner in which such funds and securities will be maintained, and thereafter, if and when there is any change in the place or manner in which such funds or securities are being maintained, must give such client written notice thereof;

(D) **SUPERVISED OR MANAGED ACCOUNTS.** Every registered investment adviser who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment advisor, make and keep true, accurate and current:

(1) Records showing separately for each such client the securities purchased and sold, and the date, amount and price of each such purchase and sale.

(2) For each security in which any such client has a current position, information from which the investment adviser can promptly furnish the name of each such client, and the current amount or interest of such client.

(E) **COMMINGLING OF ACCOUNTS PROHIBITED.** When a registered investment adviser is engaged in more than one enterprise or activity, it shall maintain separate books of accounts and records relating to its securities business and the assets shall not be commingled with those of such other businesses, and there shall be a clearly defined division with respect to income and expenses.

(F) **COMPLAINT FILE.** Every registered investment adviser shall keep and maintain a complaint file or compliance file which shall contain all complaints made against the firm or its representatives by individuals, financial institutions and other investors. The complaint file should disclose any legal action in process, settled, or threatened against the investment adviser. If the original documents are not maintained in the complaint file, the copy of the document should show the disposition of the original document. If the home office of the investment adviser is not in Arkansas, then any branch office located in Arkansas shall maintain this complaint file for any complaints involving Arkansas agents or customers.

(G) **RECORD SYSTEM.** In accordance with Section 23-42-205(d)(2) of the Act, any books or records required by this rule may be maintained by the investment adviser in such manner that the identity of any client to whom such investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

RULE 307 UNLAWFUL ACTS BY INVESTMENT ADVISERS

307.01 PERFORMANCE - BASED COMPENSATION EXEMPTION

(A) It shall be unlawful for a registered investment adviser to enter into, extend or renew an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client unless the following conditions of this rule are met.

(1) NATURE OF THE CLIENT. The client entering into the contract must be:

(a) A natural person or a company who, immediately after entering into the contract has at least $500,000 under the management of the investment adviser; or

(b) A person who the investment adviser and its investment adviser representatives reasonably believe, immediately before entering into the contract, is a natural person or a company whose net worth, at the time the contract is entered into, exceeds $1,000,000. The net worth of a natural person may include assets held jointly with that person's spouse.

(2) COMPENSATION FORMULA. The compensation paid to the investment adviser under this rule with respect to the performance of any securities over a given period shall be based on a formula which:

(a) Includes, in the case of securities for which market quotations are readily available, the realized capital losses and unrealized capital depreciation of the securities over the period;

(b) Includes, in the case of securities for which market quotations are not readily available:

(i) The realized capital losses of the securities over the period; and

(ii) If the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and

(c) Provides that any compensation paid to the adviser under this rule is based on the gains less the losses computed in accordance with subdivisions (2)(a) and (b) in the client's account for a period of not less than one year.

(3) DISCLOSURE. Before entering into the advisory contract and in addition to the requirements of Part II of its Form ADV, the investment adviser must disclose in writing to the client or the client's independent agent all material information concerning the proposed advisory arrangement, including the following:

(a) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

(b) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

(c) The periods which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;

(d) The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate, and

(e) Where the investment adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270. 2a-4(a)(1), how the securities will be valued and the extent to which the valuation will be independently determined.

(4) CONTRACT. The investment adviser (and any investment adviser representative) who enters into the contract must reasonably believe, immediately before entering into the contract that the contract represents an arm's length arrangement between the parties and that the client, alone or together with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a company

may be a partner, director, officer or an employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee.

(B) **INDEPENDENT AGENT.** Nothing in this rule shall relieve a client's independent agent from any obligation to the client under applicable law.

307.02 CUSTODY OF CLIENT FUNDS OR SECURITIES BY INVESTMENT ADVISERS

(A) It shall be unlawful for any registered investment adviser to take or have custody of any securities or funds of any client unless:

(1) The investment adviser notifies the Commissioner in writing that the investment adviser has or may have custody. Such notification may be given on Form ADV;

(2) The securities of each client are segregated, marked to identify the particular client having the beneficial interest therein and held in safekeeping in some place reasonably free from risk of destruction or other loss;

(3) (a) All client funds are deposited in one or more bank accounts containing only clients' funds,

(b) Such account(s) are maintained in the name of the investment adviser as agent or trustee for such client(s), and

(c) The investment adviser maintains a separate record for each such account showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the account, and the exact amount of each client's beneficial interest in the account;

(4) Immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place where and the manner in which the funds and securities will be maintained and subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the investment adviser gives written notice thereof to the client;

(5) At least once every three months, the investment adviser sends each client an itemized statement showing the funds and securities in the investment adviser's custody at the end of such period and all debits, credits and transactions in the client's account during such period; and

(6) At least once every calendar year, an independent certified public accountant or public accountant verifies all client funds and securities by actual examination at a time chosen by the accountant without prior notice to the investment adviser. A report stating that such accountant has made an examination of such funds and securities, and describing the nature and extent of the examination, shall be maintained and made available for examination.

(B) This rule shall not apply to an investment adviser also registered as a broker-dealer in this state who is:

(1) Subject to and in compliance with SEC Rule 15c3-1 (Net Capital Requirements for Brokers or Dealers), 17 C.F.R. 240. 15c3-1 under the Securities Exchange Act of 1934, or

(2) A member of an exchange whose members are exempt from SEC Rule 15c3-1, 17 C.F.R. 240. 15c3-1 under the provisions of paragraph (b)(2) thereof, and the broker-dealer is in compliance with all rules and settled practices of the exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

RULE 308 DENIAL, SUSPENSION, REVOCATION OR WITHDRAWAL OF REGISTRATION

308.01 UNFAIR, MISLEADING, AND UNETHICAL PRACTICES OF BROKER-DEALER OR AGENT

Each broker-dealer and agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. The following conduct shall be considered grounds for denial, suspension or revocation of a broker-dealer or agent registration, in addition to such other unethical practices within the meaning of Sections 23-42-308 and 23-42-507 of the Act.

(A) **FAILURE TO TIMELY COMPLETE THE TRANSACTION.** Engaging in a pattern of unreasonable delays in delivery of securities or remittance of funds necessary to complete the transaction within the time frame customary in the trade.

(B) **MISREPRESENTATIONS.** Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer, or making unjustified or untruthful representations that securities sold will subsequently become listed or traded, or making representations that a market will be established or that the securities will be subject to an increase in value.

(C) **UNDISCLOSED FEES.** Charging undisclosed, unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business, except where such fees are negotiated or have been previously disclosed to the customer.

(D) **RECOMMENDATIONS TO CUSTOMERS.** Recommending to a customer the purchase, sale or exchange of any security when a broker-dealer or agent does not have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs, or encouraging a customer to invest beyond his immediate financial resources.

(E) **EXCESSIVE TRADING.** Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account exclusively for the purpose of accumulating profits.

(F) **BOND PRE-SALES.** Entering into a pre-sale contract with respect to any bond which is required by laws of the State of Arkansas to be sold at public sale, or to obtain any beneficial interest, direct or indirect, in the initial purchase of any bonds with respect to which the broker-dealer has acted as fiscal agent. This section shall not apply to industrial bonds issued under Act 9 or Amendment 49 of 1960, or to any other bonds provided that it is shown to the satisfaction of the Commissioner in the case of such other bonds that such an arrangement is to the benefit of the issuer. For the purposes of this section the following terms shall have the indicated meanings, unless the context requires otherwise.

(1) "Bonds" means bond, notes and other evidence of indebtedness, both in definitive and in temporary form, whether as notes or bonds, issued by or in the name of any county, city, town, school district, improvement district, state educational institution, or other public issuer.

(2) "Pre-Sale Contract" means any contract for the sale and purchase of bonds entered into prior to the date advertised for the public sale of the bonds.

(3) "Fiscal Agent" means any broker-dealer employed for compensation to advise and assist in the sale of an issuer's bonds.

(G) **FISCAL AGENT OR UNDERWRITER.** Encouraging a person to issue bonds in amount exceeding those not reasonable within its ability to repay, falsely and willfully leading a person to believe the broker-dealer will see that all bonds will be sold or failing to reveal to the person with which it is doing business a financial interest in other enterprises, such as construction companies, who may receive proceeds from the sale of the bonds.

(H) **ADJUSTED TRADING.** Utilizing a trading technique whereby a transaction or a series of transactions is executed wherein a party to the transaction or series of transactions attempts to defer the recognition of a decrease in the value of a security by: (1) the sale of a security at a price other than at market value; (2) the purchase of a security at a price other than at market value; or, (3) the use of fees, payments or other consideration in such a manner that the composite design of the related transactions is to defer the recognition of a loss or decrease. Adjusted trading may occur if more than one broker-dealer or more than one customer is involved in the transaction. Adjusted trading may occur whether the security is for future delivery, current delivery or if the security is not yet issued. If any consideration is given, other than normal payment for the security at its market value, by any party to the series of purchases or sales, such consideration shall be considered in determining if the trading technique as a whole constitutes adjusted trading.

(I) **MARKUPS.** Charging excessive markups or entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security. Bids and offers should correspond with the actual market. Markups may vary, for among other reasons, as a result of such factors as quantity, quality, market conditions, risk to the broker-dealer and maturity, but should in all transactions be reasonable and fully competitive.

(J) **MARKET VALUE.** Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by such broker-dealer, or by any person for whom he is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer; or offering to buy from or sell to any person any security at a stated price unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.

(K) **FAVORABLE PRICE.** Effecting a transaction for or with a customer without exercising reasonable diligence to ascertain the best market price for the subject security so that the resultant price to the customer is a favorable as possible under prevailing market conditions.

(L) **INTERPOSITIONING.** Interjecting a third party between the broker-dealer and the best available market or the broker-dealer and the customer except in cases where the broker-dealer can demonstrate that to his knowledge at the time of the transaction the total cost of proceeds of the transaction, was equal to or better than the prevailing inter-dealer market for the security.

(M) **CONTROLLING PERSONS OR AFFILIATES.** Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common

control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of such security, the existence of such control to such customer, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

(N) **FICTITIOUS ACCOUNTS.** Establishing or maintaining an account containing fictitious or disguised information.

(O) **UNAUTHORIZED TRANSACTIONS.** Causing the execution of a transaction which is unauthorized by a customer or the sending of a confirmation in order to cause a customer to accept transactions not actually agreed upon or exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders.

(P) **MISUSE OF CUSTOMERS' FUNDS OR SECURITIES**. Unauthorized use of borrowing of customers' funds or securities.

(Q) **MISLEADING ADVERTISING.** Using any advertising or sales material in such a fashion as to be deceptive or misleading.

(R) **OUTSIDE SALES ACTIVITIES.** Effecting securities or non-securities transactions not recorded on the regular books or records of the broker-dealer unless the activity is authorized in writing by the broker-dealer and such authorization is maintained in the broker-dealer's records.

(S) **SHARING PROFITS.** Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents; or without notice to the customer dividing or otherwise splitting the agent's commission, profits or other compensation from the purchase or sale of securities.

(T) **FURNISHING INFORMATION.** Failing or refusing to furnish a customer, upon reasonable request, information to which he is entitled, or to respond to a formal written demand or complaint.

(U) **MISUSE OF FIRM NAME.** Implying that a broker-dealer is a bank or other kind of financial institution, provided this does not prohibit the use of the term "investment banker."

(V) **OTHER UNFAIR, MISLEADING AND UNETHICAL PRACTICES.** The unfair, misleading or unethical practices set forth above are not exclusive of other activities, such as forgery, embezzlement, non-disclosure or misstatement of material facts, manipulations and various deceptions, which shall be considered

grounds for suspension or revocation and the Commissioner may suspend or revoke a registration when necessary or appropriate in the public interest.

308.02 FRAUDULENT, DECEPTIVE, DISHONEST OR UNETHICAL PRACTICES OF INVESTMENT ADVISERS

An investment adviser has a duty to act primarily for the benefit of its clients. Each investment adviser and representative shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. The following conduct shall constitute fraudulent or deceptive practices and shall be considered grounds for denial, suspension or revocation of an investment adviser or representative registration, or for the issuance of a cease and desist order or other action under Section 23-42-209 of the Act, in addition to other dishonest or unethical practices within the meaning of Sections 23-42-307 and 23-42-308 of the Act. The provisions of this rule shall only apply to an investment adviser that is neither registered nor required to register pursuant to Section 23-42-301(c) of the Act to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

(A) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment adviser after reasonable examination of the client's records as may be provided to the investment adviser.

(B) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(C) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(D) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified securities shall be executed, or both.

(E) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

(F) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds or securities.

(G) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds, a broker-dealer, or the client is an affiliate of the investment adviser.

(H) Misrepresenting to any client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(I) Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. (This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.)

(J) Charging a client an advisory fee that is unreasonable in light of the type of service to be provided, the experience and expertise of the investment adviser or the bargaining power of the client.

(K) Failing to disclose to a client in writing before entering into or renewing an advisory agreement with that client any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including, but not limited to, the following:

(1) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(2) The fact that an advisory fee for rendering advice will be charged to the client when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees.

(L) Guaranteeing a client that a specific result will be achieved (gain or no loss) as a result of the advice which will be rendered.

(M) Publishing, circulating or distributing any advertisement:

(1) Which refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or concerning any advice, analysis, report or other service rendered by such investment adviser, or

(2) Which refers, directly or indirectly, to past specific recommendations of such investment adviser which were or would have been profitable to any

person; provided, however, that this shall not prohibit an advertisement which sets out or offers to furnish a list of all recommendations made by such investment adviser within the immediately proceeding period of not less than one year if such advertisement, and such list if it is furnished separately:

(a) State the name of each such security recommended, the date and nature of each such recommendation (e.g. whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price such security as of the most recent practicable date, and

(b) Contain the following cautionary legend on the first page thereof in print or type used in the body or text thereof: "it should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list", or

(3) Which represents, directly or indirectly, that any graph, chart, formula or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making his own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use; or

(4) Which contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless such report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly; or

(5) Which contains any untrue statement of a material fact, or which is otherwise false or misleading.

(6) For the purposes of this rule the term "advertisement" shall include any notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication or by radio or television, which offers:

(a) Any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell;

(b) Any graph, chart, formula or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or

(c) Any other investment advisory service with regard to securities.

(N) Disclosing the identity, affairs, or investment of any client to any third party unless required by law to do so, or unless consented to by the client.

(0) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds in the absence of compliance with the provisions of Rule 307.02.

(P) Entering into, extending or renewing any investment advisory contract, other than a contract for impersonal advisory services, unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee or the formula for computing the fee, the amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

(**Q)** Limiting, attempting to limit, or representing to a client the existence of any limitation on such client's ability to execute recommended transactions through any broker-dealer he may choose.

(R) Other fraudulent, deceptive, dishonest or unethical practices. The activities set forth above are not all inclusive. Any other activities employing any device, scheme or artifice to defraud or engaging in any act, practice or course of business which operates or would operate as a fraud or deceit shall constitute grounds for denial, suspension or revocation under Section 23-42-308 or the Act, or for the institution of a cease and desist order or other action under Section 23-42-209 of the Act.

308.03 RULES OF PRACTICE AND PROCEDURE REGARDING DENIAL SUSPENSION OR REVOCATION.

The rules of practice and procedure to be followed in preceedings for the denial, suspension or revocation of a broker-dealer, agent, or investment adviser application or registration are set forth in Rule 601 of these Rules.

CHAPTER 4
REGISTRATION OF SECURITIES

RULE 401 REGISTRATION BY NOTIFICATION.

401.01 REQUIREMENTS.

A registration statement under Section 23-42-401 of the Act shall contain the following information to be accompanied by the following documents, in addition to the information specified in Section 23-42401(b), 2342-404(c) and the consent to service of process required by Section 2342-107(a) of the Act:

(A) Statement demonstrating eligibility of the issuer for registration by notification, showing that the issuer has been in continuous operation for at least five (5) years, has not been in default during the current fiscal years in the payment of principal, interest, or dividends on any security of the issuer with a fixed maturity or a fixed interest or dividend provision and satisfies the average net earnings requirements established by Section 23-42-401(a)(1)(B) of the Act (identifying all securities subject to the average net earnings requirements and compute the percentage limitations as necessary.)

(B) One copy of the latest form of prospectus to be used in the offering.

(C) Underwriting Agreement, Agreement among Underwriters and Selected Dealers Agreement.

(D) Indenture or copy of any other instrument covering the security to be registered.

(E) Signed or conformed copy of opinion of counsel as to the legality of the security being registered.

(F) Specimen copy of security.

(G) Consent to service of process accompanied by appropriate corporate resolution.

(H) One copy of any pamphlet, circular, form letter, advertisement, television, radio, or other sales literature intended as of the effective date to be used in connection with the offering.

(I) Method of distribution in Arkansas; i.e., name of Arkansas registered broker-dealer or registered agent of the issuer, as appropriate.

(J) Statement describing any stock options or other security options outstanding, or to be created in connection with this offering, together with the amount of any such options held or to be held by any director or officer of the issuer; and person owning of record, or beneficially if know, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer; or any person receiving underwriting and selling discounts, commissions or finders fees.

(K) An undertaking to forward all amendments to the registration statement and the final prospectus, or any further amendments or supplements thereto.

(L) Any other information the Commissioner may require or permit.

401.02 EFFECTIVENESS.

A registration statement shall not be considered as filed for purposes of automatic effectiveness under Section 23-42-401(c) of the Act until it contains all information, documents, fees and other matters required by the Act and Rule 401.01. In appropriate instances the Commissioner may waive any of the requirements of this Rule, provided such requirements are not specifically set forth in the Act.

RULE 402 REGISTRATION BY COORDINATION.

402.01 REQUIREMENTS.

A registration statement under Section 23-42-402 of the Act, shall contain the following information and be accompanied by the following documents, in addition to the information specified in Section 23-42-404(c) and the consent to service of process required by Section 23-42-107(a) of the Act:

(A) One (1) copy of the latest form of prospectus filed under the Securities Act of 1933;

(B) A copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(C) The maximum underwriting and selling discounts or commissions;

(D) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered;

(E) The name of the broker-dealer or agent registered under the Act who will be effecting transactions in the securities being registered in this state;

(F) Any other information or copies of any documents required to filed under Form U-1;

(G) An undertaking to forward all amendments to the federal registration statement, other than an amendment which merely delays the effective date of the registration statement, not later than the first business day after they are forwarded to or filed with the Securities and Exchange Commission or such longer period as the Commissioner permits; and

(H) Any other information the Commissioner may require or permit.

402.02 EFFECTIVENESS.

The Commissioner will certify the effectiveness of the registration statement by issuing a letter or electronic notification stating effectiveness, but the failure to issue notification shall not delay the effectiveness of a registration statement meeting the requirements of Section 23-42-402(c) of the Act.

RULE 403 REGISTRATION BY QUALIFICATION.

403.01 REQUIREMENTS.

A registration statement under Section 23-42-403 of the Act, shall contain the following information and be accompanied by the following documents, in addition to the information specified in Sections 23-42-403(b), 23-42-404(c) and the consent to service of process required by Section 23-42-107(a) of the Act:

(A) A corporate surety bond posted by the issuer in an amount equaling 10% of the maximum aggregate offering price at which the securities being registered are to be offered in this State. Any investor, or security holder of such issuer, having a right of action under the Act, shall have a right of action under the bond; however, in any event the total liability of the surety to all such persons shall not exceed the said amounts specified in the bond. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless suit is brought within three years after the date of the expiration of the original or renewal registration. Any appropriate deposit of cash or securities issued by the Federal Government, the State of Arkansas, or any political subdivision thereof shall be accepted in lieu of any bond so required. Deposits of cash or securities shall not be withdrawn until three years form the date of termination of the offering;

(B) The name of the broker-dealer or agent registered under the Act who will be effecting transactions in the securities being registered in this State;

(C) The maximum underwriting and selling discounts or commissions; and

(D) Such additional information as the Commissioner may require or permit.

403.02 PROSPECTUS REQUIREMENTS.

(A) As a condition of registration by qualification under Section 23-42-403 of the Act, a prospectus or offering circular meeting the requirements of the Act and this Rule shall be sent or given to each person to whom an offer is made concurrently with the earliest of:

(1) The first written offer made to him, other than by means of public advertisement, by or on behalf of the issuer or any other person offering the securities;

(2) The confirmation of the sale;

(3) The payment pursuant to any such sale; or

(4) The delivery of the security pursuant to any such sale;

The Commissioner may require that a subscription agreement be signed by each purchaser, acknowledging that he has received a copy of the prospectus.

(B) The prospectus shall contain full disclosure of all material facts relating to the issuer and the offering and sale of the securities being registered. The prospectus shall be designated an exhibit to and constitute a part of the registration statement. A prospectus meeting the requirements of Form S-1 under the Securities Act of 1933, Form U-7 for Small Corporate Offering Registration or other uniform forms deemed acceptable to the Commissioner will ordinarily satisfy the requirements of this Rule.

(C) Any information specified in Section 23-42-403(b) of the Act or subsection 403.01 of this Rule may be included in the prospectus, if a cross-reference table is filed showing the location of the information in the prospectus.

(D) In the case of any material change relating to the issuer of the offering subsequent to the filing of the prospectus, an amended or revised prospectus shall be filed immediately which reflects such changes.

RULE 404 REGISTRATION STATEMENTS GENERALLY

404.01 GENERAL REQUIREMENTS.

(A) **GENERAL POLICY.** Each application for registration shall comply with the following unless a request for a deviation is granted by the Commissioner. All requests for deviation from registration policies must be in writing and submitted to the Commissioner, who shall set forth in writing the reason for granting any such request, if such request is granted.

For a registration raising questions not herein covered, policies adopted by NASAA will generally be used as a guideline.

(B) **FINANCIAL STATEMENTS.**

(1) PREPARATION. Financial statements required to be included in a registration statement shall be prepared, audited and certified by independent certified public accountants or public accountants in accordance with generally accepted accounting procedures and practices,

applied on a consistent basis accompanied by an opinion acceptable to the Commissioner.

Audited financial reports may be waived if the financial reports meet the requirements of SCOR or Regulation A Offerings.

(2) ANNUAL FINANCIAL REPORTS. The Commissioner may require as a condition for registration that financial reports be filed to keep reasonably current the financial information contained in any effective registration statement.

Financial reports, when required, shall be submitted annually within ninety (90) days after the close of each fiscal year unless other arrangements are approved in advance by the Commissioner.

(C) **PROMOTIONAL SECURITIES OR CHEAP STOCK.** Promotional Securities or "Cheap Stock" securities which have been issued within three (3) years of the date of filing or are to be issued to underwriters, promoters or insiders for an amount less than the public offering price shall be in compliance with the NASAA guidelines on Promotional Shares and the Guidelines for the Model Promotional Shares Escrow Agreement.

(D) **IMPOUNDMENT OF PROCEEDS.** The Commissioner may require as a condition to registration, that all proceeds from sales of securities be impounded in accordance with the NASAA Statement of Policy Regarding the Impoundment of Proceeds.

(E) **COMMISSIONS AND EXPENSES.** Commissions and expenses allowable to broker-dealers and issuers must in every instance be reasonable and justified and in compliance with the NASAA Statement of Policy Regarding Selling Expenses And Selling Security Holders.

(F) **OPTIONS AND WARRANTS.** Options or warrants to purchase securities must be justified by the applicant and in compliance with the NASAA Statement of Policy Regarding Options and Warrants.

(G) **PROMOTERS EQUITY INVESTMENT.** Where an issuer is in the promotional, exploratory, or development stage, the ratio of investment by promoters or insiders must be determined as reasonable and equitable in the light of the facts and circumstances presented in each particular case, but will be considered objectionable if not in compliance with the guidelines of the NASAA Statement of Policy regarding Promoters' Equity Investment.

(H) **NON-VOTING COMMON STOCK.** Securities of an issuer having more than one class of common stock must be in compliance with the NASAA Statement of Policy Regarding Unequal Voting Rights.

(I) **OFFERING PRICE.** In the case of an issuer which has been actually engaged in business or operation, the amount for which a security is being offered to the public must bear some reasonable relationship to:

(1) The market value, if any, or

(3) The price-earnings ratio, as reflected by its financial statements covering an average of the preceding three years, or such shorter duration of experience of operation as may be applied.

In the absence of an established or determinable market value or price-earnings ratio, the book value or asset value of the issuer may be taken into consideration in justifying or substantiating the reasonableness of the offering price.

(J) **PREFERRED STOCK**. The offering or sale of preferred stock of an issuer may be deemed unfair and inequitable to purchasers if not in compliance with the NASAA Statement of Policy Regarding Preferred Stock.

(K) **DEBT SECURITIES.** The offering or sale of debt securities, including debentures, notes and bonds of an issuer, may be deemed unfair and inequitable to purchasers if not in compliance with the NASAA Statement of Policy Regarding Debt Securities.

(L) **NON-EXEMPT REORGANIZATIONS.** In the case of any reorganization for which an exemption from registration is not available under Sections 23-42-503 and 23-42-504 of the Act, and registration of any securities to be issued as a part of the reorganization is required pursuant to Sections 23-42-401, 23-42-402, or 23-42-403 of the Act, the Commissioner may waive all or any part of the standards of review imposed upon such registration by Rule 404.01, if:

(1) No constituent party to the reorganization or any officer, director or person owning 10% or more of the outstanding shares of any class of equity securities of such constituent party is an affiliate, and

(2) The final prospectus or other comparable document filed with the application for registration of the securities contains a representation that the terms of the reorganization have been negotiated at arms' length by all constituent parties.

(M) **ISSUER COMPLETION REPORT.** For registrants paying less than the maximum filing fee, a final report, which may be in letter form or on a form provided by the Commissioner, specifying the amount of securities sold in this State shall be provided to the Commissioner within 30 days after the earlier of:

(1) The expiration of the effectiveness of a registration statement filed under the Act; or

(2) The termination of the offering with which the securities offered by the registration statement have been fully sold and distributed to the public.

RULE 405 STOP ORDER DENYING, SUSPENDING, OR REVOKING REGISTRATION STATEMENT

405.01 GENERAL PROVISIONS

(A) GENERAL POLICY. Each application for registration shall comply with the requirements of the Act and Rules unless a request for deviation from such rule is requested and granted by the Commissioner. Any unauthorized deviation from the requirements of the Act and Rules shall be grounds for the issuance of a stop order denying, suspending or revoking the registration statement.

(B) OTHER CAUSES FOR DENIAL, SUSPENSION OR REVOCATION. In addition to an action pursuant to subsection 405.01(a), the Commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of any registration statement for any cause stated in Section 23-42-405(a) of the Act, whether similar to or different from the causes enumerated in these Rules, when necessary or appropriate in the public interest or for the protection of purchasers.

(C) RULES OF PRACTICE AND PROCEDURE REGARDING DENIAL, SUSPENSION OR REVOCATION. The rules of practice and procedure to be followed in proceedings for the denial, suspension or revocation of effectiveness of any registration statement are set forth in Rule 601 of these Rules.

CHAPTER 5

REGULATION OF TRANSACTIONS

RULE 501 SALE OF UNREGISTERED NON-EXEMPT SECURITIES.

[RESERVED]

RULE 502 FILING OF PROSPECTUS, SALES LITERATURE, ETC.

502.01 ADVERTISING

(A) GENERAL PROVISIONS. Any advertisement, display, pamphlet, brochure, letter, article of communication published in any newspaper, magazine or periodical, or script or any recording, radio or television announcement, broadcast, commercial or any sort of communication made by electronic means to be used or circulated in connection with the sale and promotion of a public offering of

registered securities or securities exempted under Sections 23-42-503(a)(3), (4), (7) and (c) shall be subject to the following requirements and restrictions.

(B) **FILING REQUIREMENT.** All sales literature or promotional material, other than that exempted by the Act or this Rule, shall be governed by the following:

(1) The applicant shall submit to the Commissioner, at least five (5) days prior to its intended use or dissemination, one copy of such proposed material;

(2) If not disallowed by the Commissioner by written notice or otherwise within three days from the date filed, the use of such material as submitted will be permitted; and

(3) The Commissioner will not issue formal approval of such literature, and it is the responsibility of the user to determine the accuracy and reliability of the statements and material so used and in conformity with this Rule.

(C) **SPECIFIC PROHIBITIONS.** The following devices or sales presentations, and the use thereof, will be deemed deceptive or misleading practices:

(1) Comparison charts or graphs showing a distorted, unfair or unrealistic relationship between the issuer's past performance, progress or success and that of another company, business, industry or investment media;

(2) Lay-out, format, size, kind and color of type used so as to attract attention to favorable or incomplete portions of the advertising matter, or to minimize less favorable, modified or modifying portions necessary to make the entire advertisement a fair and truthful representation;

(3) Statements or representations which by themselves predict future profit, success, appreciation, performance, or otherwise related to the merit or potential of the securities which are positive or imperative in form; such statements or representations should clearly indicate that they represent solely the opinion of the publisher thereof;

(4) Generalizations, generalized conclusions, opinions, representations and general statements based upon a particular set of facts and circumstances unless those facts and circumstances are stated and modified or explained by such additional facts or circumstances as are necessary to make the entire advertisement a full, fair, and truthful representation;

(5) Sales kits or film clips, displays or exposures, which, alone or by sequence and progressive compilation, tend to present an accumulative or composite picture or impression of certain, or exaggerated potential, profit, safety; return or assured or extraordinary investment opportunity or similar benefit to the prospective purchaser;

(6) Distribution of any non-factual or inaccurate data or material by words, pictures, charts, graphs, or otherwise, based on conjectural, unfounded, extravagant, or flamboyant claims, assertions, predictions or excessive optimism;

(7) Any package or bonus deal, prize, gift, gimmick or similar inducement, combined with or dependent upon the sale of some other product, contract or service, unless such unit or combination has been fully disclosed and specifically described and identified in the application as the security being offered.

(D) **EXEMPTION.** Public advertising by any means, including the forms and types set forth in Rule 502.01(E), of securities being offered for sale in transactions exempted by Sections 23-42-504(a)(9) of the Act is prohibited.

(E) **EXCEPTIONS.** The following forms and types of advertising are permitted without the necessity for filing or prior authorization by the Commissioner, unless specifically prohibited.

(1) So-Called "tombstone" advertising, containing no more than the following information:

(a) Name and address of issuer;

(b) Identity of title of security;

(c) Per unit offering price, number of shares and amount of offering;

(d) Brief, general description of business;

(e) Name and address of underwriter, or address where offering circular or prospectus can be obtained;

(f) Date of issuance.

(2) Dividend notices, proxy statements and reports to shareholders, including investment company quarterly and semi-annual reports.

(3) Sales literature, advertising or market letters prepared in conformity with the applicable regulations and in compliance with the filing requirements of the SEC, NASD, or recognized securities exchanges.

(4) Factual or informative letters, bulletins or releases, similar to "news letters", relating to issuer's progress or activities, status of the offering or current financial condition.

(5) Dissemination of any data incorporated in the offering circular or prospectus, so long as the use of such material, out of context, does not tend to detract from, distort, supersede or express a different meaning of the representations or disclosures contained therein.

(F) **VIOLATIONS.** Any person who prepares, distributes or causes to be issued or published any sales literature which is knowingly inaccurate, false, misleading or tending to mislead in any material respect or otherwise in violation of the provisions herein may be held responsible and accountable therefor in any administrative or civil proceeding arising under the Act or these Rules.

RULE 503 EXEMPTED SECURITIES.

THE FOLLOWING ARE RULES CONCERNING SECURITIES EXEMPT FROM SECTIONS 23-42-501 AND 23-42-502. THERE ARE NO EXEMPTIONS FROM THE ANTI-FRAUD PROVISIONS OF THE ACT.

503.01 CLASSES OF EXEMPT SECURITIES

(A) SECURITIES EXEMPTED UNDER SECTION 23-42-503(a).

(1) Government Securities

[RESERVED]

(2) Canadian Government Securities

[RESERVED]

(3) Bank Securities. The proof of exemption required to be filed pursuant to Section 23-42-503(d) shall contain the following unless waived by the Commissioner:

(a) The filing fee as set forth in Section 23-42-503(d)(5) of the Act;

(b) A declaration that the Section 23-42-503(a)(3) exemption will be utilized;

(c) A copy of the Articles of Incorporation and Bylaws of the Issuer;

(d) A description of the method by which full disclosure of material facts will be made to each offeree. A copy of the prospectus, pamphlet, offering circular, or similar literature should be provided, if one is to be used;

(e) Current financial statements of the Issuer;

(f) A copy of the subscription agreement or other similar agreement;

(g) Any additional information or documentation which the Commissioner may require.

(4) Savings and Loan Association Securities. The proof of exemption required to be filed pursuant to Section 23-42-503(d) shall contain the following unless waived by the Commissioner:

(a) The filing fee as set forth in Section 23-42-503(d)(5) of the Act;

(b) A declaration that the Section 23-42-503(a)(4) exemption procedure will be utilized;

(c) A copy of the Articles of Incorporation and Bylaws of the Issuer;

(d) A description of the method by which full disclosure of material facts will be made to each offeree. A copy of the prospectus, pamphlet, offering circular, or similar literature should be provided, if one is to be used;

(e) Current financial statements of the Issuer;

(f) A copy of the subscription agreement or other similar agreement;

(g) Any additional information or documentation which the Commissioner may require.

(5) Public Utility Securities. The proof of exemption required to be filed pursuant to Section 23-42-503(d) shall contain the following unless waived by the Commissioner:

(a) The filing fee as set forth in Section 23-42-503(d)(5) of the Act;

(b) A declaration that the Section 23-42-503(a)(5) exemption procedure will be utilized;

(c) A copy of the Articles of Incorporation and Bylaws of the Issuer;

(d) A description of the method by which full disclosure of material facts will be made to each offeree. A copy of the prospectus, pamphlet, offering circular, or similar literature should be provided, if one is to be used;

(e) Current financial statement of the Issuer;

(f) A copy of the subscription agreement or other similar agreement;

(g) The name of the registered broker-dealer who will be effecting sales in Arkansas.

(h) Any additional information or documentation which the Commissioner may require.

(6) World Class Foreign Issuers. Any security of a world class foreign issuer that meets the qualifications set forth in the NASAA Statement of Policy on World Class Foreign Issuer Exemption.

(7) Non-Profit Organization Securities. Any security issued or sold pursuant to this section shall meet the qualifications as set forth in the appropriate NASAA Statement of Policies on Church Bonds, Health Care Facility Offerings, or Guidelines for General Obligation Financing by Religious Denominations. The proof of exemption required to be filed pursuant to Section 23-42-503(d) shall contain the following unless waived by the Commissioner:

(a) The filing fee as set forth in Section 23-42-503(d)(5) of the Act;

(b) A declaration that the Section 23-42-503(a)(7) exemption procedure will be utilized;

(c) A copy of the Articles of Incorporation and Bylaws of the issuer or the equivalent governing instruments;

(d) A description of the method by which full disclosure of material facts will be made to each offeree. A copy of the prospectus, pamphlet, offering circular, or similar literature should be provided, if one is to be used;

(e) Copies of all advertising or other material to be distributed in connection with the offering;

(f) A copy of the subscription agreement or other similar agreement;

(g) A copy of any proposed agreement or proposed form of agreement with a securities broker-dealer or underwriter;

(h) A copy of the preliminary or definitive Trust Indenture and/or Trust Agreement, if any;

(i) An opinion of counsel attesting to the authority of the Issuer to offer and sell the securities and stating that after the sale the

securities will be valid, binding obligations of the Issuer in accordance with the Issuer's governing documents. A letter from an authorized officer or the governing body of the Issuer may in certain circumstances be accepted in lieu of this opinion;

(j) Any additional information or documentation which the Commissioner may require.

(8) Employee Stock Purchase, Savings, Pension and Profit-Sharing Plans. The notice filed pursuant to Section 23-42-503(a)(8) for those plans not meeting the requirements of qualification under the Internal Revenue Code shall contain the following:

(a) A declaration that Section 23-42-503(a)(8) is applicable;

(b) A description of the method by which full disclosure of material facts will be made to each offeree. A copy of the prospectus, pamphlet, offering circular, or similar literature should be provided, if one is to be used.

(9) Securities Exempted by Rule Pursuant to Section 23-42-503(a)(9). The following securities have been determined by the Commissioner to be exempt from the registration requirements of the Act. In addition, any individual who represents an issuer in effecting transactions in securities exempted under subsections (b) through (h) below shall not be deemed to be an agent if the transaction involves offers or sales to existing security holders of the issuer and no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective purchaser in this state.

(a) Any security which meets all of the following conditions:

(i) If the issuer is not organized under the laws of the United States or a State, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus.

(ii) A class of the issuer's securities is required to be and is registered under Section 12 of the Securities and Exchange Act of 1934, and has been so registered for the three years immediately preceding the offering date.

(iii) Neither the issuer nor a significant subsidiary has had a material default during the last seven years in the payment of:

(1) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money, or

(2) rentals under leases with terms of three years or more.

(iv) The issuer has had consolidated net income (before extraordinary items and the cumulative effect of accounting changes) of at least $1 million in four of its last five years; and if the offering is of interest bearing securities, has had for its last fiscal year, such net income, but before deduction of income taxes and depreciation, of at least one and one-half times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year" means the most recent year for which audition financial statements are available, provided that such statements cover a fiscal period ended not more than 15 months from the commencement of the offering.

(v) If the offering is of stock or shares, other than preferred stock or shares, such securities have voting rights and such rights include:

(1) the right to have at least as many votes per shares, and

(2) the right to vote on at least as many general corporate decisions, as each of the issuer's outstanding classes or stock or shares, except as otherwise required by law.

(vi) If the offering is of stock or shares, other than preferred stock or shares, such securities are owned beneficially or of record, on any date within six months prior to the commencement of the offering, of at least 1,200 persons, and on such date there are at least 750,000 such shares outstanding with an aggregate market value, based on the average bid price for that day, of at least $3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this section upon written information furnished by the record owners.

(b) Any security listed or approved for listing upon its issuance on the following exchanges:

(i) Midwest Stock Exchange.

(ii) Chicago Board of Trade.

(iii) Pacific Stock Exchange.

(iv) Chicago Board Options Exchange.

(v) Any other stock exchange approved by the Commissioner

(c) Securities listed on Tier I of the Philadelphia Stock Exchange.

(d) Options traded on the Philadelphia Stock Exchange which are issued by the Options Clearing Corporation.

(e) Any security of an issuer which is of senior or substantially equal rank to a security of the same issuer listed in subsections (b), (c) or (d) above.

(f) Any security called for by subscription rights or warrants that are exempt under subsections (b), (c), (d), or (e) above.

(g) Any warrant or right to purchase or subscribe to any security that is exempt under subsections (b), (c), (d), (e) or (f) above.

(h) Any warrant or right to purchase or subscribe to any security which is covered pursuant to Section 18(b)(1) of the Securities Act of 1933. Any security called for by a subscription right or warrant which is covered pursuant to Section 18(b)(1) of the Securities Act of 1933.

(B) SECURITIES EXEMPTED UNDER SECTION 23-42-503(b).

Pursuant to Section 23-42-503(b) of the Act the following securities offered for sale or sold in this State in an aggregate amount not exceeding the gross amount as set forth in Section 23-42-503(b) during the period of the offering or any consecutive twelve month period, whichever shall first occur, shall be exempt from Section 23-42-501 and 23-42-502 of the Act.

(1) Small Business Offering.

(a) All of the following requirements must be complied with prior to offering the securities in this state:

(i) A filing fee of $100.00 shall be paid as set forth in Section 23-42-503(d)(5) of the Act.

(ii) A proof of exemption shall be filed which sets forth the means whereby each of the requirements of subsections (iv) through (vi) of this rule are to be satisfied and which declares that an exemption is claimed under this Rule.

(iii) An opinion of counsel or other satisfactory evidence shall be presented to the Commissioner that the securities proposed to be sold pursuant to this exemption:

(A) Shall be offered and sold in compliance with or pursuant to appropriate exemption from all

applicable registration requirements under federal securities laws; and

(B) Will be legally issued, fully paid, and nonassessable, and if a debt security, a binding obligation of the issuer.

(iv) The issuer shall furnish (in a form satisfactory to the Commissioner) each prospective purchaser of the securities proposed to be sold pursuant to this exemption:

(A) A prospectus which contains full disclosure of all material facts relating to the issuer and the offering and sale of the securities. A prospectus meeting the requirements of Form U-7, SCOR, or other uniform forms deemed acceptable to the Commissioner will generally meet the requirements for disclosure.

(B) A balance sheet of the issuer as of a date within four months prior to the filing of the proof of exemption and a profit and loss statement for the two fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for a period of this issuer's and any predecessor's existence if less than two years, all prepared in accordance with generally accepted accounting principles. Financial statements meeting the requirements of SCOR or Regulation A will be deemed acceptable to the Commissioner.

(C) If over 50% of the proceeds from the sale of securities sold pursuant to this exemption are to be applied to the purchase of any business, the issuer shall furnish the same financial statements which would be required if that business were the issuer; and

(v) A copy of any offering circular, pamphlet, form letter, advertisement, television script, radio script, or other sales literature intended as of the effective date to be used in connection with the offering is filed with the Commissioner.

(vi) The issuer shall file the consent to service of process required by Section 23-42-107(a) of the Act, the documents required to be filed by Section 23-42-403(b)(13) and (15) of the Act, the information specified in Section 23-42-404(c)(1), (2) and (3) of the Act and a written acknowledgment executed by each executive officer, director and controlling person of the issuer that such person:

(A) Has made a diligent inquiry of the affairs of the issuer;

(B) Is personally familiar with the financial condition, operations, manner in which the offering is proposed to be effected, and salient risk features of the issuer's securities proposed to be sold pursuant to this exemption;

(C) After review of the documents required pursuant to this Rule, believes to his best knowledge that all such materials are true, accurate and complete; and

(D) Is aware of the criminal and civil liabilities provisions of Sections 23-42-104 through 23-42-106 of the Act, as amended.

(b) In addition to the requirements set forth in subsection 503.01(B)(1)(a), the following shall also be met or apply to offerings under this rule:

(i) The purchase of all such securities shall be evidenced in writing by a form affixed to the purchaser's copy of such materials whereby the purchaser represents and acknowledges receipt and review thereof prior to the consummation of the sale, the resident address of such purchaser and the date of execution thereof, which detached receipt form the issuer shall retain for a period of not less than five years thereafter.

(ii) The requirements of Rule 404 shall apply to offerings of securities pursuant to this exemption unless the Commissioner waives any or all of such requirements.

(iii) The issuer undertakes during the period of the offering to promptly file an amendment to the proof of exemption any

time anything previously filed with the Commissioner in connection with the offering becomes outdated, incorrect, inaccurate, modified or otherwise changes in any material respect.

(iv) This exemption shall become effective only when the Commissioner so indicates by written confirmation signifying effectiveness.

(v) The exemption from Sections 23-42-501 and 23-42-502 of the Act shall only be effective for the period of the offering or twelve months from the date it is declared effective, whichever shall first occur.

(vi) The exemption for any issue of securities may be denied, suspended or revoked for any of the reasons set forth in Section 23-42-405.

(vii) In connection with the sale of the security, no commission or other remuneration shall be paid or given, directly or indirectly, for soliciting any prospective purchaser in this State unless registered as a broker-dealer or agent of the issuer.

(2) Small Real Estate Investment Oriented Securities Offering. A security representing an investment in real estate, offered in compliance with each of the following conditions shall be exempt under Section 23-42-503(b) of the Act.

(a) The total purchase price of the real property including all fees, commissions, and notes or other evidences of indebtedness, but excluding points and prepaid interest, shall not exceed the limitation set forth in Section 23-42-503(b).

(b) There shall be no more than ten (10) persons as investors of the offering. For purposes of computing the number of investing persons:

(i) All persons who invest as organizers shall be included;

(ii) There shall be counted as one person each corporation, partnership, association, joint stock company, trust or unincorporated organization, except that if such entity was organized for the specific purpose of acquiring the securities offered, then this exemption shall not be available to the claimant; and

(c) No investor shall purchase less than one-tenth (1/10) ownership in the offering.

(d) Each investing person shall take title to the real estate in his own name as a tenant in common.

(e) The sponsor or organizer must reasonably believe that each investor is able to bear the economic risk of the investment. It shall be prima facie evidence of compliance of this element if each investing person demonstrates in writing prior to consummation of sale that he is able to bear the economic risk of the investment.

(f) The sponsor or organizer must reasonably believe that each investor is purchasing for investment. It shall be prima facie evidence of compliance of this element if each investment person demonstrates in writing prior to consummation of sale that he is purchasing for investment and not with a view to distribution.

(g) In connection with the sale of the security, no commission or other remuneration shall be paid or given, directly or indirectly, for soliciting any prospective purchaser in this State, except a standard real estate brokerage commission or securities commission or securities commission which is reasonable, customary and competitive in light of the size, type and location of the property shall be permitted provided that:

(i) The real estate commission is paid to a registered Arkansas Real Estate Broker or the broker's agent; and,

(ii) In no event shall such commission exceed 10% of the total purchase price of the property.

(C) SECURITIES EXEMPTED UNDER SECTION 23-42-503(c).

The proof of exemption required to be filed pursuant to Section 23-42-503(d) shall contain the following unless waived by the Commissioner:

(1) The filing fee as set forth in Section 23-42-503(d)(5) of the Act;

(2) A declaration that the Section 23-42-503(c) exemption will be utilized;

(3) A copy of the Articles of Incorporation and Bylaws of the Issuer;

(4) A description of the method by which full disclosure of material facts will be made to each offeree. A copy of the prospectus, pamphlet, offering circular, or similar literature should be provided, if one is to be used;

(5) Current financial statements of the Issuer;

(6) A copy of the subscription agreement or other similar agreement;

(7) A representation that no commissions or other remuneration will be paid in connection with the offer or sale of the securities.

(8) Any additional information or documentation which the Commissioner may require.

503.02 GENERAL PROVISIONS.

(A) The Securities Commissioner will look with disfavor upon any exemption request under Section 23-42-503 of the Act as not being in the public interest and tending to work a fraud on investors, unless the following requirements are met, or good cause is shown for an exception from these policies. Request for deviation from exemption policies must be in writing and if not acceptable, the request will be denied.

(1) RECORDS. All issuers who effect sales or offers of securities pursuant to the exemption specified in Section 23-42-503 when a proof of exemption is filed, shall preserve the following records during the period of five years following the completion of the sales.

(a) A copy of the proof of exemption and all exhibits thereto;

(b) A copy of all literature by which the issuer made disclosure to offerees of the offers for sale;

(c) Original copies of all communications received and copies of all communications sent by the issuer pertaining to the offer, sale, and transfer of the securities, including purchase agreements and confirmations; and,

(d) A list of the names and addresses of all persons to whom the securities were sold, the type and amount of securities sold to each, the consideration paid or promised by each, the method of payment, e.g., cash, check, property, services, note, and the name of each person or persons who represented the issuer in effecting each sale.

(2) AGENT REQUIREMENTS. Unless effected with existing employees, partners, or directors of an issuer wherein no commission or other remuneration is paid, any individual who effects transactions in securities of an issuer exempted by Sections 23-42-503(a)(5) and (7) is an agent.

Any individual who effects transactions in securities exempted by Section 23-42-503(c) where a commission or other remuneration is to be paid is an agent.

(a) All agents are required to be registered.

(b) If the agent is not associated with a broker-dealer registered in Arkansas, the individual must become registered as an agent for the issuer. Section 23-42-301 of the Act sets forth the requirements for the registration of such an agent(s).

(3) CONFIRMATIONS. At or before completion of each transaction with a purchaser, the Agent of the Issuer shall give or send to each purchaser written notification of the following information (if such information is not included in the subscription agreement):

(a) The date the transaction took place and the date or dates payments are made by the purchaser;

(b) The identity of the registered agent handling the transaction;

(c) Any other information required or deemed material to the transaction such that the failure to disclose such information would be misleading to the purchaser or would not accurately represent material facts to the transaction. Such information should include, at a minimum, a full description of the security.

(B) DENIAL OR REVOCATION.

(1) If an applicant has filed for an exemption pursuant to Section 23-42-503(5), (7), (b) or (c) of the Act, and if the Commissioner deems it necessary, he may by order summarily deny or revoke any exemption pending a final determination of any proceeding under this Rule or Section 23-42-505 of the Act. Upon entry of a summary order, the Commissioner shall promptly notify all interested parties by certified or registered US mail that it has been entered and of the reasons therefor, and that within fifteen (15) days of a written request, the matter shall be set down for hearing. No order under this Rule may operate retroactively. If no request for a hearing is made, and none is ordered by the Commissioner, the order will remain in effect until it is modified or vacated by the Commissioner.

(2) No order of denial or revocation may be entered unless such order includes findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting and findings. All interested parties may submit proposed findings of fact which

may be used by the Commissioner. Parties shall be served either personally or by mail with copy of the order.

(3) Nothing contained in Rule 503.02(B) shall prohibit or restrict informal disposition by stipulation, settlement, consent or default.

(C) PERIOD OF EFFECTIVENESS. Except as provided by specific statute, Rule or order unless the exemption is revoked, securities for which a proof of exemption was filed pursuant to Sections 23-42-503(a)(3), (4), (5), (7) or (c) of the Act may be issued as exempt securities during the twelve month period following the effective date, the Commissioner, by order, extends the time to a period not exceeding five years.

RULE 504 EXEMPTED TRANSACTIONS.

THE FOLLOWING ARE RULES CONCERNING TRANSACTIONS EXEMPT FROM SECTION 23-42-501 AND SECTION 23-42-502. THERE ARE NO EXEMPTIONS FROM THE ANTI-FRAUD PROVISIONS OF THE ACT.

RULE 504.01 TRANSACTIONS EXEMPT UNDER SECTION 23-42-504(a).

(A) SPECIFIC TYPES OF EXEMPT TRANSACTIONS.

(1) Isolated Non-Issuer. See definition of non-issuer, issuer and underwriter in the Act and Rules.

(2) Manual Exemption.

(a) The following will be considered recognized manuals:

(1) Standard & Poor's Standard Corporation Records

(2) Moody's Industrial Manual

(3) Moody's Bank and Finance Manual

(4) Moody's Municipal and Government Manual

(5) Moody's Transportation Manual

(6) Moody's Public Utility Manual

(7) Moody's OTC Industrial Manual

(8) Moody's International Manual

(b) Supplements to the above recognized manuals are recognized, provided that the necessary information required by the Act is disclosed and the supplements are subsequently incorporated and published in the respective annual manual.

(c) The distribution of large blocks of securities by controlling persons in firmly underwritten offerings will ordinarily be presumed to be for the direct or indirect benefit of the issuer, and not within the provisions of the manual exemption.

(3) Sale to Underwriter.

(4) Secured Transactions. This exemption applies only when the mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby are offered and sold as a whole unit. Fractional interests or undivided interests in the unit may not be offered or sold in reliance on this exemption.

(5) Fiduciary Transactions.

(6) Pledges.

(7) Cross Border Transactions.

(8) Sales to Institutional Buyers.

(9) Small Private Offerings.

(a) The proof of exemption required to be filed with the Commissioner under Section 23-42-504(b) of the Act, where a seller claims an exemption under Section 23-42-504(a)(9), shall contain the following unless waived by the Commissioner:

(i) The filing fee as set forth in Section 23-42-504(b)(4) of the Act;

(ii) A declaration that Section 23-42-504(a)(9) is applicable;

(iii) A representation that sales will be made to not more than thirty-five (35) unaccredited purchasers other than those designated in Section 23-32-504(a)(8) during any period of twelve(12) consecutive months;

(iv) A representation that no commission or other remuneration will be paid or given directly or indirectly for soliciting any prospective buyer in this State unless the person receiving

any such commission or remuneration is registered as a broker-dealer or agent of the issuer;

(v) A representation that the seller believes that all the buyers in this State are purchasing for investment;

(vi) A representation that each buyer will sign an appropriate "investment intent letter," a copy of which shall be included in the proof of exemption, stating in part that the buyer is not taking with a view to distribution;

(vii) A representation that certificates to be issued will bear an appropriate restrictive legend, a copy of which shall be submitted with the proof of exemption;

(viii) A copy of the Articles of Incorporation, partnership agreement, limited partnership agreement, or other organization document which reflects the security holders rights;

(ix) A description of the method by which full disclosure of material facts will be made to each offeree. A copy of the prospectus, pamphlet, offering circular, or similar literature should be provided, if one is to be used;

(x) A representation that no public advertising or solicitation will be employed in effecting the proposed transaction;

(xi) Current financial statements of the Issuer, if any;

(b) The investment may not exceed twenty percent (20%) of any unaccredited purchaser's net worth (net worth includes home, furnishings and automobiles).

(c) Any additional information or documentation which the Commissioner may require.

(10) Sales to Existing Security Holders.

(a) A proof of exemption filed pursuant to Section 23-42-504(a)(10) shall contain:

(i) The filing fee as set forth in Section 23-42-504(b)(4) of the Act.

(ii) A statement of which registration or exemption section was utilized in placing the original securities with the existing security holders.

(iii) A description of the method by which full disclosure of material facts will be made to each offeree. A copy of the prospectus, pamphlet, offering circular, or similar literature should be provided, if one is to be used;

(iv) A representation that no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this State.

(11) Red Herring Offers.

[RESERVED]

(12) Discretionary Exemptions. THESE SECURITIES ARE NOT EXEMPT FROM THE ANTI-FRAUD PROVISIONS OF THE ACT.

The following transactions have been determined by the Commissioner to be exempt from the registration requirements of the Act, such registration having been found to be not necessary or appropriate in the public interest or for the protection of investors.

(a) BUSINESS ORGANIZATION. Where seven or fewer persons form, incorporate or each otherwise organize a corporation, joint venture, limited liability company, limited liability partnership, or general or limited partnership, provided:

(i) Each person purchases with investment intent;

(ii) Each purchaser is an organizer on the date the issuer is formed, not including the initial limited partner of a limited or general partnership who withdraws and is replaced by the organizing limited partners;

(iii) Each purchaser has access to information concerning the issuer;

(iv) In connection with the organization, no commission or other remuneration is paid or given directly or indirectly to any person for soliciting any prospective buyer in this state.

(v) No public advertising through newspapers, television, radio, handbills or other such solicitation will be employed in effectuating the proposed transaction.

(b) PROFESSIONAL CORPORATION OR PROFESSIONAL LIMITED LIABILITY COMPANY. Any security issued by a professional corporation organized under the Arkansas Medical Corporation Act, the Arkansas Dental Corporation Act and the Arkansas Professional Corporation Act, or a limited liability company formed under the Arkansas Small Business Entity Tax Pass Through Act which performs professional services, provided;

(i) The professional corporation or limited liability company complies with the ownership and retransfer restrictions as set forth in the professional corporation Acts or the Small Business Entity Tax Pass Through Act;

(ii) The securities are sold to a professional person;

(iii) The seller reasonably believes that each buyer is purchasing for investment; and

(iv) Each professional is provided access to information concerning the professional corporation or limited liability company.

(c) LIMITED OFFERING OF OIL AND GAS SECURITIES TO SELECT PERSONS UNDER SELECT CONDITIONS. Any offer or sale of a certificate of interest or participation in an oil, gas, title or lease or in payments out of production under such a title or lease, provided the interest is located in Arkansas and each such sale complies with each of the following:

(i) Offers and sales can only be made to investors that meet the following criteria:

(A) a professional geologist, professional oil, gas or mineral landman, geophysicist, petroleum engineer or mining engineer; or

(B) a sophisticated investor who the issuer and any person acting on its behalf in the offer, offer to sell, offer for sale or sale of the securities shall have reasonable grounds to believe and shall believe:

(1) Immediately prior to making any offer, that the offeree has such knowledge and experience in financial and business matters that he is capable of evaluating both the merits and risks of the prospective oil and gas investment;

(2) Immediately prior to making any sale, after reasonable inquiry, that the offeree has such knowledge and experience in financial and business matters that he is capable of evaluating both the merits and risks of the prospective oil and gas investment;

(3) That each purchaser is able to bear the economic risk of the investment [for purposes of determining the ability to bear the economic risk, investors shall have a minimum net worth of $100,000 exclusive of home, home furnishings and automobiles, and the investment does not exceed 20% of the investor's net worth]; and

(4) That each purchaser has access to information concerning the issuer; or

(C) a person who is regularly engaged in the business of production of or exploration for oil, gas or minerals as a full-time vocation or for his primary source of income.

(iii) This exemption shall not be available to any issuer, if it, any officer, director, promoter, sponsor, operator, organizer or agent of such issuer or other authorized person participating in the process of offering or selling such securities shall have been the subject of:

(A) any administrative order issued under any state or federal securities law or regulation or a postal fraud order;

(B) any outstanding injunction consent or otherwise for a securities violation of any state or federal securities law or regulation; or,

(C) any court decision granting civil relief for a securities violation of any state or federal securities law or regulation; or shall have been convicted of any criminal violation of the federal securities or postal laws or regulations, the securities laws of any state, or criminal fraud or any felony.

(iii) The entire exemption shall not be available upon the occurrence of any one of the following events:

(A) where a single sale is made to a person who is not qualified as an investor under paragraph (a) of this Rule;

(B) where a single offer is made to randomly selected offerees who do not qualify as an offeree under paragraph (a) of this Rule.

(C) where the disclosure information provided to qualified investors is not reasonably adequate in light of the circumstances and conditions then existing between the parties at the date of consummation of sale.

(iv) The offeror must reasonably believe that each purchaser is purchasing for investment and not with a view for resale and each investor must represent in writing that he understands he cannot resell his security without registration or other compliance with the state and federal securities laws; provided, however, solely for purposes of those investors described in (a)(i) and (a)(iii), sales may be made exclusively by and between those persons described in paragraphs (a)(i) and (a) (iii) for purposes and assembling leases or other rights for oil and gas production or exploration.

(d) OIL AND GAS AUCTIONS. The offer and sale of a mineral interest at an auction, provided each offer and sale complies with each of the following:

(i) Mineral Interest. For purposes of this rule only, gas, or mining lease, fee, or title, including real property from which the minerals have not been severed, or contracts relating thereto.

(ii) Auction. For purposes of this rule only, "auction" shall mean the offer and sale of the mineral interest of the seller by public outcry through an auctioneer.

(iii) Auctioneer. The auctioneer or auction company through which the mineral interest is offered or sold must be registered as a broker-dealer under the Arkansas Securities Act.

(iv) Seller.

(A) The seller did not acquire the mineral interest with a view to resale, unless the seller was forced to acquire the mineral interest is offered or sold must be registered as a broker-dealer under the Arkansas Securities Act.

(B) The interests being auctioned are not "fractionalized" or converted into undivided interests in the mineral interests for the purpose of resale at auction. The seller is required to offer its entire ownership of the mineral interests being offered for sale; however, the seller shall not be considered to be fractionalizing its interest in sales where the seller horizontally severs the property by retaining all of its existing rights in certain formations or depths under the whole property.

(C) The auctioneer shall have reasonable grounds to believe and after making reasonable inquiry shall believe that the seller satisfies the requirements set forth in (i) and (ii) of this paragraph. This requirement could be met by obtaining a document signed by the seller to the effect that the seller meets these conditions.

(v) Purchaser.

(A) The purchaser or its representative is engaged in the business of exploring for or producing oil, gas, or other minerals as an ongoing business. By reason of this knowledge and experience, the purchaser or its representative has evaluated the merits and risks of the mineral interest to be purchased at auction and has formed an opinion based solely upon his knowledge and experience and not upon any

statement, representation or printed material provided or made by auctioneer or seller; or,

(B) The purchaser must be an "accredited investor" as defined in Regulation D, promulgated by the US Securities and Exchange Commission under the Securities Act of 1933.

(C) In all sales to purchasers in this state, the seller or any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that the purchaser satisfies the requirements set forth in (A) or (B) of this paragraph. This requirement can be met by obtaining a document signed by the purchaser to the effect that the purchaser meets these conditions.

(D) There must be only one purchaser for each interest offered and sold. A purchase by a husband or wife in the joint names of both husband and wife shall be deemed to be a single purchaser.

(E) If a purchaser representative is used, such purchaser representative shall have no business relationship with the seller, shall represent only the purchaser and not the seller, and shall be compensated only by the purchaser.

(vi) With respect to each mineral interest offered or sold at auction, the seller must make available all material information to the prospective and actual purchasers of said interests.

(vii) The seller or the auctioneer must record, or in the alternative, must deliver to the purchaser the documents or notices necessary for the purchasers themselves to record, evidence of lawful conveyance of said interests to the purchaser.

(viii) All payments for mineral interests sold at auction shall be made by the purchasers to the appropriate parties and will be held until closing.

(ix) The only compensation received by the auctioneer shall be a commission based on the sales of the mineral interests.

(e) INSURED SAVINGS, CERTIFICATE, PASSBOOK AND OTHER SIMILAR INSURED ACCOUNTS. Any savings, passbook, certificate and other similar accounts insured in whole or in part by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(f) ORGANIZATION AND ADDITIONAL CAPITALIZATION OF WHOLLY OWNED SUBSIDIARY. Where the offer and sale of securities is by a wholly owned subsidiary to its parent for purposes of organizing or placing additional capital in such wholly owned subsidiary provided each such sale or additional capitalization complies with the following:

(i) The securities are purchased for investment and not with a view to distribution; and,

(ii) The securities bear an appropriate restrictive legend.

(g) CLASS VOTE. Any transaction incident to a class vote by security holders or members, pursuant to the certificate of incorporation, organizational document or the applicable statute on a merger, consolidation, reclassification of securities, sale of assets in consideration of the issuance of securities of another entity, or reorganization.

(h) INVESTMENT CLUB. The sale by an investment club of beneficial interests for not more than $50,000.00 in any one year in contributions, for the purpose of investing and reinvesting such proceeds in securities, provided there is compliance with each and every one of the following conditions:

(i) The organization is one, incorporated or unincorporated, partnership or association, composed of not more than twenty-five (25) members, each of whom are natural individuals, who for their education and benefit, periodically or initially pay in sums of money to invest in securities which are held in a fund beneficially owned by those individuals in relative proportion as determined by the value of their payments.

(ii) The structure of the organization shall be evidenced by a written instrument, setting forth the rights and obligations of the members, a copy of which shall be furnished to each member.

(iii) Broker-Dealers or registered agents of broker-dealers who may be members of the club shall certify that this is the only investment club to which they belong. Such broker-dealer or registered agent may not be the organizer or promoter of the club. A broker-dealer or registered agent who is a member of the club may not himself receive a fee or commission for sales of securities to the club; however, the broker-dealer may receive a commission.

(iv) Voting shall be based either upon each member's proportionate interest in the entire assets of the club, or upon one vote for each member of the club.

(v) Club decisions will require a majority vote at the meeting authorized by the club's bylaws, determined either by a majority in interest of the total interest of the members present, or by a majority of the members present.

(vi) No member shall own beneficially more than thirty-three percent (33%) of the club's entire assets.

(vii) Adequate books of account of the transactions of the investment club shall be kept and be available and opened to inspection and examination by any member at each meeting.

(viii) Such sales are made in good faith and not for the purpose of avoiding the provisions of the Arkansas Securities Act.

(ix) This exemption shall not be available to any club, if it, any officer, director, promoter, sponsor, operator, organizer or agent of such club or other authorized person participating in the process of offering or selling such securities shall have been the subject of:

(A) any administrative order issued under any state or federal securities law or regulation or a postal fraud order;

(B) any outstanding injunction consent or otherwise for a securities violation of any state or federal securities law or regulation; or,

(C) any court decision granting civil relief for a securities violation of any state or federal securities law or regulation; or shall have been convicted of any violation of the federal securities or postal laws

or regulations, the securities laws of any state, or criminal fraud.

(x) No member of the club may receive a fee, commission, profit, or other remuneration for selling an investment to the club unless the member shall first disclose in writing such to the other members and receive prior written approval from each member.

(i) ADDTITONAL SALES BY AN EXISTING ISSUER. Any sale of an issuer if that issuer has twelve (12) or fewer purchasers provided that such sale complies with each of the following:

(i) No commission or other remuneration is paid or given directly or indirectly to any person for the sale of the security;

(ii) The security

(A) is sold exclusively to existing security holders and the issuer reasonably believes that each purchaser is purchasing with investment intent; or

(B) the security is offered or sold to not more than five (5) additional purchasers provided that in no event shall the total number of security holders of the issuer exceed twelve (12) on consummation of the last sale and the issuer shall reasonably believe that each purchaser is purchasing with investment intent;

(iii) Each purchaser has access to information concerning the issuer prior to consummation of sale;

(iv) For purposes of computing the number of security holders in this transactional exemption, security holders who have been issued securities pursuant to Section 23-42-504(a)(5) and Section 23-42-504(a)(8) shall not be counted; and

(v) This exemption shall not be available to an issuer which has not been organized or its securities have not been previously issued in compliance with Section 23-42-501 of the Act.

(j) DEFERRED COMPENSATION PLANS. Pursuant to Section 23-42-504(a)(15) of the Act, the Commissioner having found that the enforcement of the registration provisions of the Act is not

necessary in the public interest and for the protection of investors, with respect to certain transactions entered into in connection with certain types of deferred compensation plans ("Deferred Compensation Plans") the following transactions shall be exempt from Sections 23-42-501 and 23-42-502 of the Act:

(i) Contributions and Purchases of Securities Regarding §401 of the I.R.C. Plans. Any transaction whereby: (1) an issuer or an affiliate of the issuer ("affiliate") contributes any security of the issuer or affiliate to a §401 Plan or; (2) a §401 Plan purchases any security of the issuer or affiliate with cash or other property which has been contributed to the §401 Plan by the issuer or affiliate.

(ii) Allocation of "Phantom Stock Plan" Units. Any transaction whereby an issuer allocates §401 of the I.R.C. Plan benefits in the form of "units" or otherwise representing a right eventually to receive cash (but not stock) measured by dividends paid on shares of capital stock of the issuer or the market value of shares of capital stock of the issuer or both in so-called "phantom stock plan".

(iii) Governmental Plans. The offer or sale of any interest, participation or investment contract in connection with a Deferred Compensation Plan established or administered by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing.

(iv) Tax Exempt Organization Plans. The offer or sale of any interest, participation of investment contract in connection with a Deferred Compensation Plan established or administered by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purpose, or as a chamber of commerce or trade or professional association.

(v) Unfunded Plans. The offer or sale of any interest, participation, or investment contract in connection with a Deferred Compensation Plan established primarily for a select group of management or highly compensated employees or agents and which does not provide for the contribution of funds to a trust or other legally separate

fund but is rather carried as a general obligation of the establishing entity.

(k) SECURITY HOLDER AGREEMENT. Any offer, sale, purchase or other transaction between a corporation, limited liability company, limited liability partnership, limited partnership, joint venture or partnership and its security holders or among the security holders themselves in connection with a written agreement between such persons concerning the buy-back, sale, exchange or other contractual agreement of the security holders' interest provided:

(i) There are no more than thirty five (35) persons party to the agreement;

(ii) Each person acquiring the security has access to information concerning the issuer at the time of entering into the agreement; and,

(iii) No commission or other remuneration is paid or given directly or indirectly to any person for the sale, disposition or transfer of the security.

(iv) The underlying securities when issued were registered or exempt from registration under the Act.

(l) 100% SALE OF A BUSINESS. Any transaction pursuant to the one hundred percent (100%) sale of securities of a business entity provided:

(i) There are no more than 7 purchasers;

(ii) Each person purchases with investment intent and any certificates issued will bear an appropriate restrictive legend;

(iii) Each person has access to information concerning the issuer;

(iv) In connection with the transaction, no commission or other remuneration is paid or given directly or indirectly to any person, other than a business broker acting as such and meeting the conditions set forth in Rule 102.01(12), for soliciting any prospective purchaser;

(v) All parties have had the opportunity to consult with counsel.

(m) VIATICAL SETTLEMENT CONTRACT. Any offer or sale of a viatical settlement contract if:

(i) The underlying viatical settlement transaction with the viator was in compliance with the Viatical Settlements Act, Ark. Code Ann. §§ 23-81-501, *et seq.* (Supp. 1999);

(ii) The viatical settlement contract contains a provision providing for a right of rescission within fifteen (15) days of the date the last required disclosure document is delivered to the purchaser or the date the purchaser paid the purchase price for the viatical settlement contract, whichever is later; and

(iii) The following disclosure documents published by the Commissioner are delivered as follows:

(A) Viatical Disclosure Document I is delivered to a prospective purchaser initially, within seven (7) days after the first contact by the person selling the viatical settlement contract.

(B) Viatical Disclosure Document II is delivered to a purchaser within fifteen (15) days after the purchaser's check is delivered or the purchaser's funds are otherwise made available to the seller for purchase.

(B) PROOF OF EXEMPTION. Section 23-42-504(b) establishes filing requirements for certain exempt transactions. A filing shall be deemed incomplete until all information is filed as required by the appropriate Rule. Before any transaction is entered into pursuant to Sections 23-42-504(a)(9) or (10), a proof of exemption must be filed with the Commissioner and not disallowed within the following five (5) business days.

504.02 GENERAL PROVISIONS.

(A) The Securities Commissioner will look with disfavor upon any exemption request under Section 23-42-504 of the Act as not being in the public interest and tending to work a fraud on investors, unless the following requirements are met, or good cause is shown for an exception from these policies. Request for deviation from exemption policies must be in writing and if not acceptable, the request will be denied.

(1) RECORDS: All issuers who effect sales or offers of securities pursuant to the exemption specified in Section 23-42-504 when a proof of exemption is filed, shall preserve the following records during the period of five years following the completion of the sales.

(a) A copy of the proof of exemption and all exhibits thereto;

(b) A copy of all literature by which the issuer made disclosure to offerees of the offers for sale;

(c) Original copies of all communications received and copies of all communications sent by the issuer pertaining to the offer, sale, and transfer of the securities, including purchase agreements and confirmations; and,

(d) A list of the names and addresses of all persons to whom the securities were sold, the type and amount of securities sold to each, the consideration paid or promised by each, the method of payment, e.g., cash, check, property, services, note, and the name of each person or persons who represented the issuer in effecting each sale.

(2) AGENT REQUIREMENTS. Unless effected with existing employees, partners or directors of an issuer wherein no commission or other remuneration is paid, any individual who effects transactions in securities exempted by Section 23-42-504(a)(9) where a commission or other remuneration is to be paid is an agent.

(a) All agents are required to be registered.

(b) If the agent is not associated with a broker-dealer registered in Arkansas, the individual must become registered as an agent for the issuer. Section 23-42-301 of the Act sets forth the requirements for the registration of such an agent(s).

(3) CONFIRMATIONS. At or before completion of each transaction with a purchaser, the Agent of the Issuer shall give or send to each purchaser

written notification of the following information (if such information is not included in the subscription agreement):

(a) The date the transaction took place, the date or dates payments are made by the purchaser;

(b) The identity of the registered agent handling the transaction;

(c) Any other information required or deemed material to the transaction so that the failure to disclose such information would be misleading to the purchaser or would not accurately represent material facts to the transaction. Such information should include, at a minimum, a full description of the security.

(B) DENIAL OR REVOCATION.

(1) If applicant has filed for an exemption pursuant to Section 23-42-504 of the Act, and if the Commissioner deems it necessary, he may by order summarily deny or revoke any of the specified exemptions pending a final determination of any proceeding under this Rule or Section 23-42-505 of the Act. Upon entry of a summary order, the Commissioner shall promptly notify all interested parties by certified or registered US mail that it has been entered and of the reasons therefor and that within fifteen (15) days of the written request the matter shall be set down for hearing. No order under this Rule may operate retroactively. If no request for a hearing is made, and none is ordered by the Commissioner, the order will remain in effect until it is modified or vacated by the Commissioner.

(2) No order of denial or revocation may be entered unless such order shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting and findings. All interested parties may submit proposed findings of fact. If so done, the order shall include a ruling upon each proposed finding. Parties shall be served either personally or by mail with copy of the order.

(3) Nothing contained in Rule 504.02(B) shall prohibit or restrict informal disposition by stipulation, settlement, consent or default.

(4) See Rule 601 for Practice and Procedure not covered herein.

(C) PERIOD OF EFFECTIVENESS. Except as provided by specific statute or Rule or unless the exemption is revoked, securities underlying a transactional exemption effected pursuant to Section 23-42-504 of the Act may be issued until such time as the transaction is complete. The maximum time period for completing a transaction is twelve (12) months from the effective date. After the

expiration of the effective period of the exemption, a new filing is required. For exemptions executed pursuant to Sections 23-42-504(a)(9), any offer or sale of additional securities during the twelve month effective period shall be considered amendments to the original statutory limitations.

RULE 505 DENIAL OR REVOCATION OF EXEMPTIONS.

505.01 RULES OF PRACTICE AND PROCEDURE REGARDING DENIAL OR REVOCATION OF EXEMPTION.

The rules of practice and procedure to be followed in preceding for the denial or revocation of an exemption are set forth in Rule 601 of these Rules.

RULE 506 BURDEN OF PROOF OF EXEMPTION.

506.01 BURDEN OF PROOF EXEMPTION.

The Commissioner may not grant an exemption under this section as the claimant has the burden of proving that the security so qualifies. The proof of exemption must be complete before a subscription agreement or other contractual obligation to acquire the security is signed by either party. Indications of interest maybe solicited and obtained prior to the filing of the proof of exemption, but no offers may be accepted nor any contractual obligations entered into prior to the completion of the filing and subsequent notice of nondisallowance thereof by the Commissioner.

RULE 507 FRAUD OR DECEIT IN CONNECTION WITH OFFER, SALE, OR PURCHASE OF SECURITIES.

[RESERVED]

RULE 508 MARKET MANIPULATION

[RESERVED]

RULE 509 COVERED SECURITIES

509.01 NOTICE FILINGS

(A) A notice filing for covered securities under Section 18(b)(2) of the Securities Act of 1933 shall contain the following:

(1) Initial Offerings;

(a) Fees as set forth in Section 23-42-509(a)(1) of the Act.

(b) Form NF. For issuers paying less than the maximum filing fee, a sales report of the amount of securities sold in this State during the filing period shall be provided on Form NF.

(c) Form U-2, Uniform Consent to Service of Process.

(2) Renewed Offerings

(a) Fees as set forth in Section 23-42-509(a)(1) of the Act.

(b) Form NF. For issuers paying less than the maximum filing fee, a sales report of the amount of securities sold in this State during the previous filing period shall be provided on Form NF.

(3) Amended Offerings

(a) Fees as set forth in Section 23-42-509(b) of the Act.

(b) Form NF.

(B) A notice filing for covered securities under Section 18(b)(4)(D) of the Securities Act of 1933 shall meet the following requirements:

(1) Filing fee as set forth in Section 23-42-509(c) of the Act.

(2) A copy of Form D filed no later than fifteen (15) days after the first sale in this state. Any amendments to Form D filed with the Securities and Exchange Commission shall be filed concurrently with the Commissioner.

(C) A notice filing or fee is not required for a covered security under Section 18(b)(3) or (4) of the Securities Act of 1933, except as set forth in Rule 509.01(B).

509.02 AGENT REQUIREMENTS.

(A) Any individual who represents an issuer in effecting transactions in covered securities exempted by Section 18(b)(1) of the Securities Act of 1933 shall be registered as an agent except in the following:

(1) Any offer or sale to existing security holders of the issuer and no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective purchaser in this state; or

(2) Any other transaction which the Commissioner may by order prescribe.

(B) Any individual who represents an issuer in effecting transactions in covered securities exempted by Section 18(b)(4)(D) of the Securities Act of 1933 is not an

agent if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective purchaser in this state.

CHAPTER 6
PRACTICE AND PROCEDURE

RULE 601 RULES AND PRACTICE AND PROCEDURE.

601.01 SCOPE OF RULES OR PRACTICE.

These Rules of Practice are generally applicable to proceedings before the Commissioner under the Act which the Commissioner administers or before the Commissioner's duly designated officer. In connection with any particular matter, reference should also be made to any special requirements of procedure and practice that may be contained in the particular statute involved or the rules and forms adopted by the Commissioner thereunder or any relevant laws of the State of Arkansas, which special requirements are controlling.

601.02 APPEARANCE AND PRACTICE BEFORE THE COMMISSIONER.

(A) **DULY AUTHORIZED INDIVIDUALS.** An individual may appear on his own behalf, a member of a partnership may represent the partnership, a general partner or sponsor may represent a limited partnership, a bona fide officer of a corporation, trust or association may represent the corporation, trust or association, and an officer or employees of a State may represent the State Commission or the department or political subdivision of the State, in any proceeding.

(B) **REPRESENTATION BY ATTORNEY. A** person may be represented by an attorney who is a member in good standing of the bar of the highest court of any State, possession, territory, commonwealth, or the District of Columbia. The Commissioner, at his discretion, may require any attorney who desires to represent a person before the Commissioner to first file with the Commissioner a written declaration that he is currently qualified an is authorized to represent the particular party in whose behalf he acts.

(C) **EXCEPTION ON APPEARANCE.** A person shall not be represented at any hearing before the Commissioner or his duly appointed officer except as stated in 601.02A and B except as otherwise permitted by the Commissioner.

601.03 SUBMISSION OF INFORMATION.

Any information filed or submitted to the Department in connection with an applicant or otherwise given voluntarily to the Department may, where competent and relevant, be used in any criminal prosecutions under the Act or other laws of the State of Arkansas.

601.04 HEARINGS AND ORDERS.

(A) ADMINISTRATIVE PROCEDURE ACT. All formal hearings before the Commissioner or his duly designated officer shall be in accordance with the provisions of the Arkansas Administrative Procedure Act (Ark. Statue. Ann. §§ 12-15-208 et seq.).

(B) TYPES OF HEARINGS. The Department shall engage in two forms of hearings:

(1) Informal hearings - these hearings shall be conducted on an informal basis, provided that where applicable all parties agree thereto, to determine the following:

(a) Clarification as to complaints filed;

(b) Need for formal action by the Department;

(c) Possibility of settlement among the parties; and,

(d) Such other matters as the Commissioner determines to be within the scope of such a hearing. Informal hearings may be called by the Commissioner or Hearing Officer, upon reasonable notice, prior to or subsequent to a scheduled formal hearing, or in circumstances where no complaint was issued and no formal hearing has yet been scheduled.

(2) Formal hearings - these hearings shall be conducted on a formal basis and shall be governed by the practices and procedures set out below:

(a) Parties. Parties to the proceedings before the Commissioner shall be styled applicants, issuers, broker-dealers, agents, petitioners, intervenors, complainants or respondents, etc., according to the nature of the proceedings and relationship of the parties thereto.

(b) Pleadings. Pleadings shall be by application, or complaint, answer, and reply.

(c) Pleadings shall be typewritten.

(d) Liberal Construction. All pleadings shall be liberally construed with a view to effect justice between the parties, and the Commissioner will at every stage of any proceeding disregard errors or difficulties in the pleadings or proceedings which do not affect materially the substantive rights of the parties involved.

(e) Evidence. Insofar as applicable, the rules of evidence as interpreted and applied by the Arkansas Courts in civil cases will be followed, but may be relaxed in the discretion of the Commissioner or Hearing Officer when deviation from technical rules will aid in ascertaining the facts. Irrelevant, immaterial and unduly repetitious evidence shall be excluded. Any other oral or documentary evidence, not privileged, may be received if it is the type commonly relied upon by reasonably prudent men in the conduct of their affairs.

(C) **TRANSCRIPT.** If at any hearing before the Commissioner any party to the proceedings wishes the presence of a court reporter and a transcript of record, such party shall have the burden of procuring such reporter and shall bear the expense of the appearance fee of the reporter as well as the expense of the transcription of the record. A copy of the transcript shall be furnished to the Commissioner free to charge.

(D) **ORDERS.** No order may be entered unless such order shall include findings of fact, conclusions of law and opinion, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. All interested parties may submit proposed findings of fact. If so done, the order shall include a ruling upon each proposed finding. Parties shall be served either personally or by mail with a copy of the order. Nothing shall prohibit or restrict informal disposition by stipulation, settlement, consent, or default; but if administrative proceedings have been instituted or a complaint filed, an order shall be entered. All orders shall be public. Section 23-42-210 of the Act sets for the procedure for a review of any administrative order entered.

(E) **INVESTIGATIVE PROCEEDINGS.** Investigation proceedings held pursuant to Section 23-42-205 of the Act and Rule 205 are not hearings, either formal or informal, as that term is used in this Rule. Investigative proceedings shall be used when the party under investigation is not an applicant, registrant, issuer or other person subject to Rule 601.05, 601.06 or 601.07 hereinafter.

Upon sufficient evidence, the Commissioner shall enter an Order directing an investigation and appointing investigative officers. After the conclusion of the investigation: (1) the investigation may be closed without further action upon recommendation of the investigative officers and concurrence of the Commissioner, (2) a Cease and Desist, Injunctive or other civil action may be instituted pursuant to Section 23-42-209 of the Act, or (3) a criminal referral may be made to the appropriate prosecuting attorney.

601.05 SECURITIES REGISTRATION STATEMENT.

(A) The effectiveness of a registration statement for the registration of securities filed pursuant to Sections 23-42-401, 23-42-402 or 23-42-403 of the Act may be denied, suspended or revoked for the causes set forth in Section 23-42-405(a) of the Act and Rule 405 promulgated pursuant thereto.

(B) A registration statement filed pursuant to Section 23-42-401 of the Act (notification) becomes effective no later than 3:00 p.m. CST two business days after filing with the Commissioner unless a denial, suspension or revocation order or a summary suspension or postponement order is in effect or a proceeding to deny, suspend or revoke the effectiveness is pending. A registration statement filed pursuant to Section 23-42-402 of the Act (coordination) becomes effective concurrent with Federal effectiveness if the registration statement has been on file with the Commissioner for a least ten (10) calendar days and certain pricing information has been on file for two (2) business days or as soon after Federal effectiveness as all the conditions are met unless the Commissioner agrees to accept a waiver of concurrent effectiveness or unless a denial, suspension, or revocation order or a summary suspension or postponement order is in effect or a proceeding to deny, suspend, or revoke the effectiveness is pending. A registration statement filed pursuant to Section 23-42-403 of the Act (qualification) becomes effective when the Commissioner orders it effective.

(C) The Commissioner may issue a Summary Order retroactively denying or suspending effectiveness of a registration statement filed pursuant to Section 23-42-402 of the Act (coordination) if the required notification and pricing amendment is not received. If such an Order is entered, the Commissioner must promptly notify the registrant by telegram or telephone call followed by a letter. If the registrant proves compliance, the Order is void as of the time of its entry.

(D) Once a registration statement becomes effective, the registration statement may not be withdrawn for one year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn before effectiveness or withdrawn after effectiveness but before issuance of any securities of that class. An order suspending or revoking a registration statement after effectiveness affects the issuer's transactions but does not necessarily affect registered security status of any non-issuer transactions [Section 23-42-404(j) of the Act].

(E) When the staff or the Commissioner learns of an applicant's or registrant's possible failure to comply with the Act or Rules or when it is determined that the applicant or registrant might be subject to one of the provisions set forth in Section 23-42-405(a) of the Act:

(1) The applicant may be notified by deficiency letter or telephone, and, after adequate notice, the staff may file a Complaint with the Commissioner

asking that a hearing be held to deny, suspend or revoke the effectiveness of the registration statement, or

(2) The Commissioner may enter a Summary Order suspending or postponing effectiveness of the registration statement pending final determination of a proceeding to deny or revoke the effectiveness. If an applicant's response to a deficiency letter or telephone call is not deemed to show compliance, the applicant may be allowed to withdraw the registration statement prior to its effectiveness. The filing of a Complaint by the staff with the Commissioner shall be deemed to be the institution of a proceeding. Entering of a Summary Order postponing or suspending effectiveness shall be deemed to be the institution of a proceeding. A Stop Order, except as that term is used in Section 23-42-402 of the Act referring to a retroactive summary order (Rule 601.05 C above), shall mean a final order entered in disposition of the institution of a proceeding.

(F) Each Complaint, Summary Order, or Order shall be written and shall state:

(1) The legal authority and jurisdiction under which a hearing is to be or was held;

(2) The name(s) of the applicant or registrant;

(3) A short and plain statement of the matters of fact and law asserted; and

(4) If applicable, the time and place of the hearing.

(G) If a Complaint or Summary Order is entered, the applicant, registrant, issuer and the person on whose behalf the securities are to be or have been entered shall be notified by certified or registered U.S. Mail. The date for a hearing on a Summary Order shall be set no more than fifteen (15) days after receipt of a written request to hold such a hearing; if no hearing is requested, the Order will remain in effect until modified or vacated. The date for a hearing on a Complaint shall be set no sooner than 15 days after filing of the Complaint unless an earlier date is agreed to by the parties.

(H) The Commissioner may, pursuant to Section 23-42-202(b) of the Act, delegate his powers to a Hearing Officer. If a Summary Order is entered, the Commissioner may, in his discretion, be the Hearing Officer if a hearing is requested.

(I) Nothing in this Rule shall prohibit or restrict an informal disposition of a Complaint or Order by stipulation, settlement, consent or default:

(1) In lieu of a formal or informal hearing on the matter, or

(2) In lieu of the sanctions imposed.

In all instances an Order shall be entered in disposition of the institution of a proceeding.

All orders may be vacated or modified if conditions change or it is otherwise in the public interest to do so. Such modifications will be evidenced by an Amended Order.

601.06 SECURITIES EXEMPTED FROM REGISTRATION.

(A) A security issued as an exempted security pursuant to Section 23-42-503(a)(8), (a)(10), (b) or (c) of the Act and any transaction executed as an exempted transaction pursuant to Section 23-42-504(a)(9), (10), (11) or (14) of the Act may be disallowed by Order within five business days after receipt by the Commissioner.

(B) A security or transaction meeting the requirements of Section 23-42-503 or 23-42-504 of the Act and the Rules promulgated thereunder becomes automatically effectively exempted from registration unless:

(1) For those securities or transactions which require a proof of exemption to be filed, the Commissioner or his staff has disallowed the exemption within five business days after receipt or,

(2) A complaint or Summary Order denying the exemption has been filed or entered.

(C) A security or transaction exemption filed in accordance with Section 23-42-503(d) or 23-42-504(b) may be disallowed when:

(1) The exemption under which the filing was made is not available to the issuer or applicant;

(2) The filing is not complete;

(3) The fee is not sufficient;

(4) The filing fails to comply with any provision of the Act or Rules; or

(5) The filing indicates conduct prohibited (unlawful) by the Act, including but not limited to false or misleading statements or omissions of material fact.

In the event any of the above grounds are present with respect to an application, the applicant will be notified by deficiency letter or telephone call on or before the

fifth business day after receipt of the filing. Such deficiency letter or telephone call shall serve as notice in lieu of a formal Order. Upon an applicant's failure to comply with the deficiencies:

(1) The applicant may request that the filing be withdrawn,

(2) A formal Order disallowing the security or transactional exemption will be entered, or

(3) If applicable, a Summary Order or a Complaint to deny the exemption will be entered.

(D) An exempt security or transaction subject to Sections 23-42-503(a)(8), (a)(10) (b), and (c) and 23-42-504(a)(9), (10), (11), or (14) may be denied prior to issuance or execution when it is determined:

(1) The exemption claimed is not available;

(2) The security or transaction fails to comply with any provisions of the Act or Rules;

(3) There has been or is about to be conduct prohibited by the Act; or

(4) A required filing was not made.

A security or transaction exemption subject to Sections 23-42-503(a)(8), (a)(10), (b), (c), or 23-42-504(a) may be revoked after issuance or execution when it is determined that:

(1) The exemption claimed was not available;

(2) The filing, if made, was not complete or contained false and misleading statements of omissions of material fact;

(3) A fact or event becomes known which would have been the cause of a disallowance or denial of the exemption had it been known;

(4) The claimant failed to comply with the Act or Rules; or

(5) A claimant did not comply with representations made or conditions imposed.

The Commissioner may not disallow, deny or revoke an exemption for a security claimed pursuant to Sections 23-42-503(a)(1), (2), (3), (4), (5), (6), (7), (9), or (11), however, the Commissioner may take or recommend an action pursuant to the applicable investigative, injunctive, civil or criminal provisions of the Act.

(E) Under the circumstances set forth in Paragraph D above, the staff may file a complaint to disallow, deny or revoke an exemption or the Commissioner may summarily disallow, deny or revoke an exemption. Each Complaint, Summary Order, or Order shall be written and shall state:

(1) The legal authority and jurisdiction under which a hearing is to be or was held;

(2) The name(s) of the applicant or registrant;

(3) A short and plain statement of the matters of fact and law asserted; and,

(4) If applicable, the time and place of the hearing.

(F) If a complaint or Summary Order is entered, all interested parties shall be notified by certified or registered U.S. Mail. The date for a hearing on a Summary Order shall be set no more than fifteen (15) days after receipt of a written request to hold such a hearing; if no hearing is requested the Order will remain in effect until modified or vacated. The date for a hearing on a Complaint shall be set no sooner than 15 days after filing of the Complaint unless an earlier date is agreed to by the parties.

(G) The Commissioner may, pursuant to Section 23-42-202(b) of the Act, delegate his powers to a Hearing Officer. If a Summary Order is entered, the Commissioner may, in his discretion, be the Hearing Officer if a hearing is requested.

(H) Nothing in this Rule shall prohibit or restrict an informal disposition of a Complaint or Order by stipulation, settlement, consent or default:

(1) In lieu of a formal or informal hearing on the matter, or

(2) In lieu of the sanctions imposed.

In all instances an Order shall be entered in disposition of the institution of a proceeding. All Orders may be vacated or modified if conditions change or it is otherwise in the public interest to do so. Such modifications will be evidenced by an Amended Order.

(I) In any proceeding under Sections 23-42-503 or 23-42-504 the burden of proving an exemption or an exception from a definition is upon the person claiming it.

(J) No person may be considered to have violated Section 23-42-501 of the Act by reason of any offer or sale effected after the entry of an Order issued pursuant to Section 23-42-503 or 23-42-504 if he sustains the burden of proof that he did not

know, and in the exercise of reasonable care could not have known, of the Order.

601.07 BROKER-DEALER, AGENT, INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE.

(A) An application for registration, an application for withdrawal of registration, a registration, or a withdrawal may be denied, suspended or revoked for the causes set forth in Section 23-42-308(a) of the Act and Rule 308 promulgated pursuant thereto. Under the circumstances set forth in Section 23-42-308(d) of the Act, a registration may be canceled.

(B) Registration becomes effective no later than noon on the thirtieth day after a completed application is on file unless a summary denial order is in effect or unless a proceeding is pending to deny the application.

Undertaking an investigation of an applicant pursuant to Section 23-42-032(e) of the Act shall not be deemed to be the institution of a proceeding.

The Commissioner may by Order summarily postpone or suspend registration without the necessity of first instituting a proceeding. The Commissioner or the staff may not, however, institute a suspension or revocation proceeding or summarily postpone or suspend registration on the basis of a fact or transaction known to the Commissioner or the staff at the time an applicant's registration became effective unless such proceeding is instituted or such Order is entered within one hundred and eighty (180) days after registration effectiveness or unless the applicant or registrant waives such time limitation.

(C) Withdrawal from registration becomes effective no later than 30 days after notice to the Commissioner unless a revocation or suspension proceeding is pending when the notice is filed or unless a proceeding is instituted within the thirty days. Even if withdrawal becomes effective, a proceeding based upon Section 23-42-308(a)(2)(B) of the Act may be instituted within one year after the withdrawal effective date.

(D) An applicant or registrant may agree in writing to allow the Commissioner or his staff additional time after registration or withdrawal becomes effective in which to investigate or examine facts or transactions thus extending the time limitation in which a suspension or revocation proceeding can be instituted.

(E) When the staff or the Commissioner learns, through examination or otherwise, of an applicant's or registrant's possible failure to comply with the Act or Rules or when it is determined that the applicant or registrant might be subject to one of the provisions set forth in Section 23-42-308(a) of the Act or a cancellation of registration pursuant to Section 23-42-308(d) of the Act, the staff of the Department may by letter notify such applicant or registrant of the alleged

violation or action and set a period of time in which applicant or registrant must show compliance. If the applicant's or registrant's response to the staffs letter is deemed not to show compliance with the Act or Rules or shows the applicant or registrant to be subject to Section 23-42-308(d) of the Act, a Complaint may be filed by the staff with the Commissioner asking that the matter be set for a hearing. The sending of such a letter shall not be deemed to be the institution of a proceeding. The staff must first send a letter and provide an opportunity for the applicant or registrant to show compliance with the Act or Rules before filing a complaint with the Commissioner.

(F) The filing of a Complaint by the staff with the Commissioner shall be deemed to be the institution of a proceeding to deny an application for registration or withdrawal or revoke or suspend the registration of a broker-dealer, agent, investment adviser, or investment adviser representative. Each complaint and order shall be written and shall state:

(1) The legal authority and jurisdiction under which a hearing is to be or was held;

(2) The name(s) of the applicant or registrant;

(3) A short and plain statement of the matters of fact and law asserted; and

(4) If applicable, the time and place of the hearing.

(G) If the staff of the Department files a complaint with the Commissioner or the Commissioner summarily suspends or postpones registration, the applicant or registrant (as well as the employer or prospective employer is the applicant or registrant is an agent or an investment adviser representative) shall be promptly served with a copy of the Complaint or Order. Notification or service shall be by certified or registered U.S. Mail. An applicant ore registrant may, within 15 days after entry of a Summary Order, request a hearing; if no hearing is requested, the Order will remain in effect until modified or vacated by the Commissioner. If a complaint is filed, a hearing shall be held no sooner than 15 days following service of notice unless an earlier date is requested by the applicant or registrant. A summary order entered prior to a hearing can be used to postpone or suspend registration or withdrawal; revocation can occur only after the filing of a compliant and notice of hearing.

(H) The Commissioner may, pursuant to Section 23-42-202(b) of the Act, delegate his powers to a Hearing Officer. If a Summary Order is entered, the Commissioner may, in his discretion, be the Hearing Officer if a hearing is requested.

(I) Nothing in this Rule shall prohibit or restrict an informal disposition of the Complaint or Order by stipulation, settlement, consent or default:

(1) In lieu of a formal or informal hearing on the matter, or

(2) In lieu of the sanctions imposed.

In all instances an order shall be entered in disposition of the institution of a proceeding.

All orders and complaints may be modified, amended or dismissed. Such action shall be governed by the rules of procedure set forth hereinabove.

(J) If the Commissioner issues an order which imposes a suspension, revocation, or cancellation of the registration of a person or bars that person from further association with any registrant, the registrant shall not allow that person to remain associated with it in any capacity whatever, including clerical or ministerial functions. When an individual is suspended, a registrant in addition to the above, shall not pay or credit any salary, commission, profit, or other remuneration which results directly or indirectly from any security transaction which that individual might have earned during the period of suspension.

601.08 ALL PERSONS.

In addition to the procedures set forth in 601.04(E), 601.05, 601.06 and 601.07 above, the Commissioner may, if it is in the public interest and he deems it necessary, summarily order any person, whether such person is an applicant, registrant, issuer or other person, to cease and desist from an act or practice or apply directly to a court of competent jurisdiction for such relief as he deems appropriate pursuant to Section 23-42-209 of the Act.