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## ARKANSAS SECURITIES DEPARTMENT

### Policy Statement Regarding Requests for Informal Advice

The Arkansas Securities Commissioner (Commissioner) is issuing this Policy Statement to set forth certain procedures to be utilized in connection with requests for informal advice from the Department Staff (Staff). This Policy Statement will apply to all requests for informal advice regarding the laws that are administered, in whole or in part, by the Arkansas Securities Department (Department). These laws include:

- a. the Arkansas Securities Act, Ark. Code Ann. §§ 23-42-101 through 23-42-509;
- b. the Fair Mortgage Lending Act, Ark. Code Ann. §§ 23-39-501 through 23-39-518;
- c. the Uniform Money Services Act, Ark. Code Ann. §§ 23-55-101 through 23-55-1005;
- d. the Investor Protection Takeover Act, Ark. Code Ann. §§ 23-43-101 through 23-43-117;
- e. Title 23, Chapter 35 of the Arkansas Code, Credit Unions, Ark. Code Ann. §§ 23-35-101 through 23-35-805;
- f. Title 23, Chapter 37 of the Arkansas Code, Savings and Loan Associations, Ark. Code Ann. §§ 23-37-101 through 23-37-812;
- g. Title 23, Chapter 38 of the Arkansas Code, Building and Loan Associations—Miscellaneous Provisions, Ark. Code Ann. §§ 23-38-101 through 23-38-404;
- h. certain provisions of the County and Regional Industrial Development Company Act, §§ 15-4-1201 through 15-4-1228; and
- i. the Cemetery Act for Perpetually Maintained Cemeteries, Ark. Code Ann. §§ 20-17-1001 through 20-17-1029 (pursuant to the Department's obligation to assist the Arkansas Cemetery Board as provided in Ark. Code Ann. § 20-17-1027).

### Necessity for Policy Statement

The Staff receives many requests for informal advice. Frequently, these requests are received through telephone calls or electronic mail. Although a telephone conversation or electronic mail communication might provide the most expeditious response, it is seldom the appropriate vehicle for the Staff to provide informal advice. Statements made by the Staff over the telephone or through electronic mail are intended to be helpful, but are not binding due to their highly informal nature. The circumstances in which it is appropriate for the Staff to provide informal advice through a telephone conversation or a response to electronic mail are very rare. **The Staff may not give advice over the telephone or through electronic mail if the advice involves the application of law to any set of real or hypothetical facts, or if the advice depends upon assumed facts provided informally by the requesting party.**

In most circumstances, persons requesting informal advice from the Staff should submit a request for an interpretive opinion or no-action letter. In an interpretive opinion, the Staff provides its views on the interpretation of a specific statute or rule in the context of an actual and narrow fact situation. A no-action letter is one in which the Staff indicates that it will not recommend enforcement action to the Commissioner if a proposed course of action described in the request occurs just as described in the request. In some instances, the Staff may indicate that it is unable to assure the requesting party that it will not recommend enforcement action and may allow the requesting party to withdraw the request. A no-action letter expresses the Staff's position on enforcement action only and does not represent any legal conclusion on the question presented.

The ability of the Staff to provide informal advice through no-action letters and interpretive opinions is a valuable tool for the Staff to utilize in communicating with the public. The Arkansas Securities Act provides that the Commissioner may honor requests from interested persons for interpretive opinions. Ark. Code Ann. § 23-42-206. Rule 206 of the Rules of the Arkansas Securities Commissioner provides guidelines for persons seeking interpretive opinions or no-action letters. This Policy Statement expands upon Rule 206 to provide needed guidance to parties requesting informal advice and the Staff responding to those requests.

### Procedures to Submit a Request

Persons wishing to submit a request for informal advice such as a no-action letter or interpretive opinion should follow these guidelines:

- a. Submit an original and one copy of each request.
- b. The specific subsection of the particular statute to which the request pertains must be indicated in the request.

- c. The request must contain the names of each person and entity involved in the underlying facts. Requests relating to unnamed persons or entities, or to hypothetical situations, will not be answered.
- d. Requests should be limited to the particular situation involving the problem at hand and must not attempt to include every possible type of situation that may arise in the future. The facts and representations must be specific, not general.
- e. While it is essential that the request contain all of the facts necessary to reach a conclusion in the matter, the request should be concise and to the point.
- f. The requesting party must indicate why he thinks a problem exists, his own opinion in the matter, and the basis for his opinion.
- g. If the requesting party seeks confidential treatment, a separate letter requesting confidential treatment and stating the basis for confidential treatment must be submitted with the request for informal advice.

#### Response by the Staff

In responding to a properly submitted request for informal advice, the Staff will use an endorsement to the incoming request. The Staff will state its position on the last page of the incoming request, or more commonly, on a separate page attached to the end of the incoming request. Both the incoming letter and the Staff's endorsement response will be sent to the requesting party, will be made publicly available, and will be posted to the Department's website.

#### Limitations on Informal Advice

All forms of informal advice, including no-action letters and interpretive opinions, are subject to substantial limitations. These limitations include the following:

- a. All informal advice is subject to reconsideration and is not precedent binding on the Commissioner. Informal advice sets forth the Staff's position only with respect to the particular facts posed by the particular requesting party and does not constitute an official expression of the Commissioner's views.
- b. In responding to any request for informal advice, the advice given will be limited to and conditional upon the specific representations made to the Staff by the requesting party. The Staff's position will be based solely

upon the facts and representations provided by the requesting party. These facts and representations must be specific rather than general. Any different facts, representations, or circumstances might require the Staff to reach a different conclusion.

- c. All informal advice applies only to the requesting party. Persons in similar circumstances should not rely on previous no-action letters or interpretive opinions, but submit their own request for such informal advice.
- d. All informal advice shall be limited to the specific law administered by the Department as stated in the Staff's response, and will not address the applicability of any other federal, state, or local law, rule, or regulation.
- e. The Staff may decline to express any view on the application of law to a particular set of facts. There are several reasons why the Staff may feel it inappropriate in a particular instance to express an opinion. For example, (1) the Staff may be in no position to verify the facts and circumstances which are the basis of the request, (2) the Staff may be concerned that its position may be misconstrued in somewhat different factual circumstances, and (3) in some areas policy concerns dictate that the Staff may not express a view.

EFFECTIVE DATE: April 9, 2008



A. Heath Abshure  
Arkansas Securities Commissioner