ARKANSAS SECURITIES ACT

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Arkansas Securities Act
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Subchapter 1 – General Provisions

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23-42-101. Title.

This chapter may be cited as the "Arkansas Securities Act".

HISTORY: Acts 1959, No. 254, § 27; A.S.A. 1947, § 67-1261.

23-42-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) (A) "Agent" means an individual, other than a broker-dealer, who:

(i) Represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities; and

(ii) Supervises individuals who effect or attempt to effect purchases or sales of securities for a broker-dealer.

(B) "Agent" does not include an individual who represents:

(i) An issuer in:

(a) Effecting transactions in a security exempted by § 23-42-503(a)(1)-(4) or (8) and any other transactions in a security exempted by other subdivisions or subsections of § 23-42-503 which the Securities Commissioner may by rule or order prescribe;

(b) Effecting transactions exempted by § 23-42-504 unless otherwise required by § 23-42-04;

(c) Effecting transactions in covered securities exempted by sections 18(b)(3) or 18(b)(4)(C) of the Securities Act of 1933, and any other transactions in a covered security which the commissioner may by rule or order prescribe;

(d) Effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or

(e) Effecting transactions involving a reorganization or any other individual assisting the issuer or any other constituent party in the process of the reorganization, so long as such individual is not employed for the primary purpose of obtaining or soliciting proxies, consents, or other required means of approval from the security holders of the issuer or any other constituent party to the reorganization and receives no compensation other than his or her regular salary and reimbursement for actual expenses, if any, incurred in good faith in the course of such duties or activities; or

(ii) A broker-dealer in effecting a transaction for a customer in this state if:

(a) Such a transaction is effected on behalf of a customer that, for thirty (30) days prior to the day of the transaction, maintained an account with the broker-dealer;

(b) Such individual is not ineligible to register with this state for any reason;

(c) Such individual is registered with a registered securities association and at least one (1) state;

(d) The broker-dealer with which such individual is associated is registered with this state;

(e) The transaction is effected by the individual:

(1) To which the customer was assigned for fourteen (14) days prior to the day of the transaction; and

(2) Who is registered with a state in which the customer was a resident or was present for at least thirty (30) consecutive days during the one-year period prior to the transaction; except that, if the customer is present in this state for thirty (30) or more consecutive days or has permanently changed his or her residence to this state, this subdivision (1)(B)(ii) shall not be applicable unless the individual files with the commissioner an application for registration within ten (10) calendar days of the later of the date of the transaction or the date of the discovery of the presence of the

customer in this state for thirty (30) or more consecutive days or the change in the customer's residence; and

(f) The transaction is effected within the period beginning on the date on which the individual files with the commissioner an application for registration and ending on the earlier of:

(1) Sixty (60) days after the date the application is filed; or

(2) The time at which the commissioner notifies the individual that he or she has denied the application for registration or has stayed the pendency of the application for cause.

(g) For purposes of subdivision (1)(B)(ii)(*e*)(*2*) of this section, each of up to three (3) individuals who are designated to effect transactions during the absence or unavailability of the assigned individual for a customer may be treated as such an assigned individual.

(C) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he or she otherwise comes within this definition;

(2) (A) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for his or her own account.

(B) "Broker-dealer" does not include:

(i) An agent;

(ii) An issuer;

(iii) A bank, savings institution, savings and loan association, or trust company;

(iv) A person that has no place of business in this state if:

(a) The person effects transactions in this state exclusively with or through:

(1) The issuers of the securities involved in the transactions;

(2) Other broker-dealers; or

(3) Banks, savings institutions, savings and loan associations, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(b) The person:

(1) Is registered under the securities law of the state in which it has a principal place of business;

(2) Is registered or not required to be registered as a broker-dealer under the Securities Exchange Act of 1934; and

(3) Does not effect transactions with more than three (3) persons in this state during any period of twelve (12) consecutive months other than transactions with:

(A) The issuer of a security involved in the transaction;

(B) Another broker-dealer; or

(C) A bank, a savings institution, a savings and loan association, a trust company, an insurance company, an investment company as defined in the Investment Company Act of 1940, a pension or profit-sharing trust, or another financial institution or institutional buyer, whether acting for itself or as a trustee; and

(v) A person that is a resident of Canada and has no office or other physical presence in this state, if the person:

(a) Only effects or attempts to effect transactions in securities:

(1) With or through the issuers of the securities involved in the transactions, broker-dealers, banks, savings institutions, trust companies, insurance companies, qualified purchasers as defined by the Securities and Exchange Commission, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

(2) With or for a person from Canada that is temporarily present in this state if the person and the person from Canada had a bona fide business-client relationship before the person from Canada entered this state; or

(3) With or for a person from Canada that is present in this state and has transactions that are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor;

(b) Files a notice in the form of the person's current application required by the jurisdiction in which the person's main office is located and a consent to service of process;

(c) Is a member of a self-regulatory organization or stock exchange in Canada;

(d) Maintains the person's provincial or territorial registration and the person's membership in good standing in a self-regulatory organization or stock exchange;

(e) Discloses to the person's clients in this state that the person is not subject to the full regulatory requirements of this chapter; and

(f) Is not in violation of § 23-42-507;

(3) "Commissioner" means the Securities Commissioner;

(4) "Covered security" means any security described as a covered security in section 18(b) of the Securities Act of 1933;

(5) (A) "Farm cooperative" means any cooperative formed for the purpose of:

(i) Purchasing, producing, processing, marketing, distributing, or selling crops or livestock for, or on behalf of, its members; or

(ii) Purchasing, marketing, or distributing meat, dairy, bakery, produce, or other food or grocery products for, or on behalf of, its members.

(B) "Farm cooperative" shall not include any association formed for the purpose of purchasing food or grocery products for, or on behalf of, consumers;

(6) "Fraud", "deceit", and "defraud" are not limited to common-law deceit;

(7) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends;

(8) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

(A) A bank, savings and loan association, credit union, or trust company;

(B) A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession;

(C) A broker-dealer whose performance of these services is solely incidental to the conduct of his or her business as a broker-dealer and who receives no special compensation for them;

(D) A publisher of any bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service of general, regular, and paid circulation, whether communicated in hard copy form, by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(E) A person who has no place of business in this state if:

(i) His or her only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(ii) During the preceding twelve-month period he or she has had fewer than six (6) clients who are residents of this state, other than those persons specified in subdivision (8)(E)(i) of this section; or

(F) Such other persons not within the intent of this subsection as the commissioner may by rule or order designate;

(9) "Issuer" means every person who issues or proposes to issue any security, except that:

(A) With respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term "issuer" means the persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the securities are issued;

(B) In the case of an unincorporated association which provides by its articles for limited liability of any or all of its members, or in the case of a trust, committee, or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust, committee, or other legal entity;

(C) With respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is used or is to be used;

(D) With respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of the right or of any whole or fractional interest in the right who creates fractional interests therein for the purpose of the offering; and

(E) For life settlement contracts, "issuer" means:

(i) For a fractional or pooled interest in a life settlement contract, the person that creates for the purpose of sale the fractional or pooled interest; and

(ii) For a life settlement contract that is not fractionalized or pooled, the person effecting the transaction with the investor in the contract, but does not include a broker-dealer or agent of a broker-dealer;

(10) "Nonissuer" means not directly or indirectly for the benefit of the issuer;

(11) "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

(12) "Representative" means any partner, officer, director of an investment adviser, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:

(A) Makes any recommendation or otherwise renders advice regarding securities;

(B) Manages accounts or portfolios of clients;

(C) Determines which recommendation or advice regarding securities should be given; or

(D) Supervises employees who perform any of the foregoing;

(13) (A) (i) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(ii) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

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

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

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

(B) The terms defined in this subdivision (13) do not include:

(i) Any bona fide pledge or loan;

(ii) Any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock;

(iii) Any stock split, reverse stock split, or change in par value which involves the substitution of a security of an issuer for another security of the same issuer; or

(iv) Any act incident to a judicially approved reorganization in which a security is issued in exchange for one (1) or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash;

(14) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisers Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names, as amended;

(15) (A) "Security" means any:

(i) Note;

(ii) Stock;

(iii) Treasury stock;

(iv) Bond;

(v) Debenture;

(vi) Evidence of indebtedness;

(vii) Certificate of interest or participation in any profit-sharing agreement;

(viii) Collateral-trust certificate;

(ix) Preorganization certificate or subscription;

(x) Transferable share;

(xi) Investment contract;

(xii) Variable annuity contract;

(xiii) Life settlement contract or fractionalized or pooled interest in a life settlement contract;

(xiv) Voting-trust certificate;

(xv) Certificate of deposit for a security;

(xvi) Certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or

(xvii) In general, any interest or instrument commonly known as a "security" or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(B) Except as set forth in subdivision (15)(A)(xiii) of this section, "security" does not include any insurance or endowment policy or annuity contract or variable annuity contract issued by any insurance company;

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

(17) (A) "Branch office" means any location other than the main office of a broker-dealer or investment adviser where an agent or representative regularly conducts business on behalf of the broker-dealer or investment adviser.

(B) "Branch office" includes a location that is held out as an office where an agent or representative regularly conducts business on behalf of a broker-dealer or investment advisor.

(C) "Branch office" does not include:

(i) A location that is established solely for customer service or back-office-type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(ii) A location that is the primary residence of the agent or representative if:

(a) Only agents or representatives who reside at the location and are members of the same immediate family conduct business at the location;

(b) The location is not held out to the public as an office and the agent or representative does not meet with customers at the location;

(c) Neither customer funds nor securities are handled at the location;

(d) The agent or representative is assigned to a designated branch office and the designated branch office is reflected on all business cards, stationery, advertisements, and other communications to the public by the agent or representative;

(e) The correspondence of the agent or representative and communications with the public are subject to the supervision of the broker-dealer or investment adviser with which the agent or representative is associated;

(f) Electronic communications, including email, are made through the electronic system of the broker-dealer or investment adviser;

(g) All orders for securities are entered through the designated branch office or an electronic system established by a broker-dealer that is reviewable at the branch office;

(h) Written supervisory procedures pertaining to supervision of activities conducted at the residence are maintained by the broker-dealer or investment adviser; and

(i) A list of the residence locations is maintained by the broker-dealer or investment adviser;

(iii) (a) A location other than a primary residence that:

(1) Is used for a securities or investment advisory business for less than thirty (30) business days in any one (1) calendar year; and

(2) Satisfies the requirements of subdivisions (17)(C)(ii)(b)-(h) of this section.

(b) As used in this subdivision (17)(C)(iii), "business day" does not include a day in which the agent or representative spends at least four (4) hours at the designated branch office of the agent or representative during the hours that the designated branch office is normally open for business;

(iv) An office of convenience that is not held out to the public as an office where associated persons occasionally and exclusively by appointment meet with customers;

(v) A location that is used primarily to engage in nonsecurities activities and from which the agent or representative effects no more than twenty-five (25) securities transactions in any one (1) calendar year, if any advertisement or sales literature identifying the location also provides the address and telephone number of another location from which the agent or representative conducting business at the location is directly supervised;

(vi) The floor of a registered national securities exchange where a broker-dealer conducts a direct access business with public customers; or

(vii) A temporary location established in response to the implementation of a business continuity plan; and

(18) "Main office" means the principal place of business of a broker-dealer or an investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

HISTORY: Acts 1959, No. 254, § 13; 1961, No. 248, § 6; 1963, No. 479, § 2; 1973, No. 47, §§ 10, 11; 1975, No. 697, § 2; 1975, No. 844, § 6; 1977, No. 493, §§ 4, 5; 1977, No. 806, § 24A; 1983, No. 836, §§ 13, 26; 1983, No. 885, § 1; A.S.A. 1947, § 67-1247; Acts 1987, No. 776, § 1; 1993, No. 1147, § 1802; 1995, No. 845, § 1; 1997, No. 173, § 1; 2001, No. 468, §§ 1, 2; 2009, No. 534, § 1; 2011, No. 338, § 1; 2011, No. 339, §§ 1-3.

23-42-103. Applicability.

(a) (1) Sections 23-42-106, 23-42-108, 23-42-109, 23-42-212, 23-42-301(a), 23-42-501, and 23-42-507 apply to persons who sell or offer to sell when:

(A) An offer to sell is made in this state; or

(B) An offer to buy is made and accepted in this state.

(2) Sections 23-42-212, 23-42-301(a), and 23-42-507 apply to persons who buy or offer to buy when:

(A) An offer to buy is made in this state; or

(B) An offer to sell is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer:

(A) Originates from this state; or

(B) Is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer.

(4) (A) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance:

(i) Is communicated to the offeror in this state; and

(ii) Has not previously been communicated to the offeror, orally or in writing, outside this state.

(B) Acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed or at any post office in this state in the case of a mailed acceptance.

(5) An offer to sell or to buy is not made in this state when:

(A) The publisher circulates, or there is circulated on his behalf, in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds (2/3) of its circulation outside this state during the past twelve (12) months; or

(B) A radio or television program originating outside this state is received in this state.

(b) Sections 23-42-307, 23-42-301(c), as well as § 23-42-212, so far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

HISTORY: Acts 1959, No. 254, § 26; 1983, No. 836, § 21; A.S.A. 1947, § 67-1260; Acts 1999, No. 363, § 1.

23-42-104. Criminal penalties.

(a) Any person who knowingly violates § 23-42-507 shall be guilty of the offense of "securities fraud". Securities fraud is a Class B felony.

(b) Any person who knowingly violates § 23-42-501 shall be guilty of the offense of "felony offer or sale of unregistered and nonexempt securities". Felony offer or sale of unregistered and nonexempt securities is a Class D felony.

(c) Any person who negligently violates § 23-42-501 shall be guilty of the offense of "offer or sale of unregistered and nonexempt securities". Offer or sale of unregistered and nonexempt securities is a Class A misdemeanor.

(d) Any person who knowingly violates any rule or order of the Securities Commissioner shall be guilty of a Class B misdemeanor. No person may be imprisoned for a violation of any rule or order of which that person did not have actual knowledge.

(e) Any person who knowingly engages in any unlawful conduct prohibited by this chapter, except as provided in subsection (a), (b), (c), or (d) of this section, shall be guilty of a Class D felony.

(f) "Purposely", "knowingly", "recklessly", "negligently", and the classes of felonies and misdemeanors set forth in this section shall be as defined and have such penalties as set forth in the Arkansas Criminal Code, § 5-1-101 et seq.

(g) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or common law.

(h) The provisions of subsection (e) of this section shall not apply to any violation of § 23-42-509.

HISTORY: Acts 1959, No. 254, § 21; 1961, No. 248, § 8; 1971, No. 131, § 5; 1973, No. 47, § 16; 1977, No. 173, § 3.

23-42-105. Prosecution of criminal offenses.

(a) (1) Prosecutions for offenses described in § 23-42-104 must be commenced within the following periods of limitation:

(A) Felonies - five (5) years from the date of the occurrence; and

(B) Misdemeanors - one (1) year from the date of the occurrence.

(2) The five-year felony and one-year misdemeanor period of limitation does not begin to run until after the commission of the last overt act in the furtherance of a scheme or course of conduct.

(b) For the purposes of venue for any civil or criminal action under this chapter, any violation of this chapter or of any rule, regulation, or order promulgated hereunder shall be considered to have been committed in:

(1) Any county in which any act was performed in furtherance of the transaction which violated this chapter;

(2) Any county in which the principal or an aider or abettor initiated or acted in furtherance of a course of conduct;

(3) Any county from which any violator gained control or possession of any proceeds of the violation or of any books, records, documents, or other material or objects which were used in furtherance of the violation; or

(4) Any county from which or into which the violator directed any postal, telephonic, electronic, or other communication in furtherance of the violation.

(c) The Securities Commissioner may refer such evidence as is available concerning violations of this chapter or any rule or order hereunder to any appropriate prosecuting authority.

HISTORY: Acts 1959, No. 245, § 21; 1961, No. 248, § 8; 1977, No. 493, § 13; 1979, No. 754, § 7; A.S.A. 1947, § 67-1255. 493, § 12; 1979, No. 754, § 7; A.S.A. 1947, § 67-1255; Acts 1997, No. 173, § 3.

23-42-106. Civil liability.

(a) (1) Any person who commits the following acts is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six percent (6%) per year from the date of payment, costs, and reasonable attorney's fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security:

(A) Offers or sells a security in violation of § 23-42-301, § 23-42-212(b), § 23-42-501(1) or (2), or any rule or order under § 23-42-502 which requires the affirmative approval of sales literature before it is used, or in violation of any condition imposed under § 23-42-403(d), § 23-42-404(g), or § 23-42-404(i); or

(B) Offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

(2) Damages are the amount that would be recoverable upon a tender less the value of the security when the buyer disposed of it and interest at six percent (6%) per year from the date of disposition.

(b) (1) Any person who purchases a security in violation of §§ 23-42-301, 23-42-307, 23-42-507, and 23-42-508, or otherwise by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, the seller not knowing of the untruth or omission, and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, shall be liable to the person selling the security to him, who may sue either at law or in equity to recover either the security or the security plus any income or other distributions in cash or other property received directly or indirectly by the purchaser, upon tender of the consideration the seller received or for damages together with interest at six percent (6%) from the date of purchase plus costs and reasonable attorney's fees.

(2) Damages may be for out-of-pocket losses or for the benefit of the bargain.

(3) Notice of willingness to pay the amount specified in exchange for the security shall constitute valid tender pending acceptance thereof by the purchaser.

(c) Every person who controls a seller liable under subsection (a) of this section or a purchaser liable under subsection (b) of this section; every partner, officer, or director of such a seller or purchaser; every person occupying a similar status or performing a similar function; every employee of such a seller or purchaser who materially aids in the sale; and every broker-dealer or agent who materially aids in the sale are also liable jointly and severally with, and to the same extent as, the seller or purchaser, unless the nonseller or nonpurchaser who is so liable sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(d) Any tender specified in this section may be made at any time before entry of judgment.

(e) Every cause of action under this section survives the death of any person who might have been a plaintiff or defendant.

(f) No person may sue under this section after three (3) years from the effective date of the contract of sale. No person may sue under this section:

(1) If the buyer received a written offer, before suit and at a time when he owned the security, to refund the consideration paid together with interest at six percent (6%) per year from the date of payment less the amount of any income received on the security, and he failed to accept the offer within thirty (30) days of its receipt; or

(2) If the buyer received such an offer before suit and at a time when he did not own the security unless he rejected the offer in writing within thirty (30) days of its receipt.

(g) No person who has made or engaged in the performance of any contract in violation of any provision of this chapter or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

HISTORY: Acts 1959, No. 254, § 22; 1971, No. 131, § 6; 1973, No. 47, § 17; 1977, No. 493, §§ 14, 16; A.S.A. 1947, § 67-1256; Acts 1995, No. 845, § 2; 1997, No. 173, § 2; 1999, No. 1225, § 1.

23-42-107. Consent to service of process.

(a) (1) (A) Every applicant for registration under this chapter, every person making a notice filing, and every issuer for whom a registration, exemption from registration, or notice filing is required under this chapter, shall file with the Securities Commissioner, in the form which he prescribes by rule, an irrevocable consent appointing the commissioner or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor, executor, or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent.

(B) However, this shall not apply to applicants, persons making notice filings, and issuers who have a place of business in Arkansas, have qualified to do business in Arkansas with the Secretary of State, and have either an agent for service of process or have executed a consent appointing the Secretary of State agent for service of process, or who may otherwise be subject to service of process.

(2) A person who has filed a consent appointing the commissioner in connection with a previous registration or notice filing need not file another when renewing a registration or notice filing.

(3) Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless:

(A) The plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him, immediately sends notice of the service and a copy of the process by mail with proof of service to the defendant or respondent at his last address on file with the commissioner; and

(B) The plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(b) (1) When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder and he has not filed a consent to service of process under subsection (a) of this section, and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his appointment of the commissioner or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor executor or administrator which grows out of that conduct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on him personally.

(2) Service may be made by leaving a copy of the process in the office of the commissioner, and it is not effective unless:

(A) The plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by mail with proof of service to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice; and

(B) The plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(c) When process is served under this section, the court, or the commissioner in a proceeding before him, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

HISTORY: Acts 1959, No. 254, § 26; 1963, No. 479, § 5; 1983, No. 836, §§ 18, 19; A.S.A. 1947, § 67-1260; Acts 1997, No. 173, § 4.

23-42-108. Rights and remedies cumulative.

The rights and remedies provided by this chapter are in addition to any other rights that may exist at law or in equity.

HISTORY: Acts 1959, No. 254, § 22; 1977, No. 493, § 15; A.S.A. 1947, § 67-1256.

23-42-109. Waiver of compliance void.

Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this chapter or any rule or order under this chapter is void.

HISTORY: Acts 1959, No. 254, § 22; A.S.A. 1947, § 67-1256

23-42-110. False or misleading statements unlawful.

It is unlawful for any person to make or cause to be made, in any document filed with the Securities Commissioner or the commissioner's designee or in any proceeding under this chapter, any statement which is, at the time in light of the circumstances under which it is made, false or misleading in any material respect.

HISTORY: Acts 1959, No. 254, § 16; 1983, No. 836, § 16; A.S.A. 1947, § 67-1250.

Subchapter 2 – Administration

23-42-201. Administration by Securities Commissioner - Conflicts of interest.
23-42-202. Delegation of authority by Securities Commissioner.
23-42-203. Confidentiality of information or proceedings generally.
23-42-204. Rules, forms, and orders of Securities Commissioner.
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23-42-208. Cooperation with other regulatory agencies.
23-42-209. Injunction, mandamus, or other ancillary relief.
23-42-210. Judicial review.
23-42-211. Disposition of fees.
23-42-212. Registration or availability of exemption not construed as approval by Securities Commissioner - Inconsistent representation.
23-42-213. Disposition of fines - Investor Education Fund.

23-42-201. Administration by Securities Commissioner - Conflicts of interest.

(a) This chapter shall be administered by the Securities Commissioner, who shall be appointed by the Governor and who shall serve at the pleasure of the Governor.

(b) No person shall serve in the State Securities Department in any capacity who engages in any activities regulated under the provisions of this chapter.

HISTORY: Acts 1959, No. 254, §§ 18, 30; 1961, No. 248, § 10; 1973, No. 471, § 2; A.S.A. 1947, §§ 67-1252, 67-1262.

23-42-202. Delegation of authority by Securities Commissioner.

(a) The Securities Commissioner may delegate to any person under any conditions which he deems appropriate any responsibilities of the commissioner as set forth in this chapter, the Savings and Loan Act, § 23-37-101 et seq., the Credit Union Act, § 23-35-101 et seq., or any other act for which the commissioner is responsible.

(b) The commissioner, subject to any restrictions which he in his discretion deems appropriate, may delegate to any person the exercise or discharge in the commissioner's name of any power, duty, or function, whether ministerial, discretionary, or of whatever character, vested by this chapter in the commissioner.

HISTORY: Acts 1959, No. 254, § 19; 1977, No. 493, § 11; 1979, No. 754, § 4; A.S.A. 1947, § 67-1253; Acts 1995, No. 845, § 3; 1997, No. 173, § 5.

23-42-203. Confidentiality of information or proceedings generally.

(a) It is unlawful for the Securities Commissioner or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public.

(b) Neither the commissioner nor any of his officers or employees shall disclose the information except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter or in any judicial proceedings when the information is not privileged.

(c) No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any of his officers or employees.

(d) Nothing herein shall prevent the commissioner or any officers or employees of the State Securities Department from sharing with state or federal law enforcement authorities, other state or federal regulatory authorities, or self-regulatory organizations authorized by law any information which they may have or obtain in aid of the enforcement of this chapter or any other securities act or the criminal provisions of any laws.

(e) The commissioner, in his discretion, shall determine when an administrative proceeding shall be public.

HISTORY: Acts 1959, No. 254, §§ 18, 24; 1963, No. 479, § 4; 1985, No. 939, § 9; A.S.A. 1947, §§ 67-1252, 67-1258; Acts 1995, No. 845, § 4.

23-42-204. Rules, forms, and orders of Securities Commissioner.

(a) The Securities Commissioner, from time to time, may make, amend, and rescind any rules, forms, and orders which are necessary to carry out the provisions of this chapter. This includes rules and forms governing registration statements, applications, notice filings, and reports and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter. For the purpose of rules and forms, the commissioner may classify securities, persons, and matters within his jurisdiction and prescribe different requirements for different classes.

(b) No rule, form, or order may be made, amended, or rescinded unless the commissioner finds that the action is necessary or appropriate in the public interest, or for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of this chapter.

(c) (1) In prescribing rules and forms, the commissioner may cooperate with the securities administrators of the other states, individually and as a group represented by the North American Securities Administrators Association, with the Securities and Exchange Commission, and with self-regulatory organizations with a view to effectuating the policy

of this chapter to achieve maximum uniformity in the form and content of registration statements, applications, rules, and reports wherever practicable.

(2) Where the commissioner incorporates by reference in the rules and forms of the commissioner a form, rule, or portion thereof in accordance with this subsection, any change in that form, rule, or portion thereof shall become part of the rules and forms of the commissioner, unless the commissioner shall by order decline to accept such change within thirty (30) days of its adoption or promulgation.

(d) (1) The commissioner may by rule or order prescribe:

(A) The form and content of financial statements required under this chapter;

(B) The circumstances under which consolidated financial statements shall be filed; and

(C) Whether any required financial statements shall be certified by independent or certified public accountants.

(2) All financial statements shall be prepared in accordance with generally accepted accounting practices.

(e) All rules and forms of the commissioner shall be published.

(f) No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the commissioner, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(g) (1) The commissioner may by order require an issuer, broker-dealer, or agent to obtain from the purchaser, in any initial sale of a security effected by means of a prospectus, a written statement signed by the purchaser that he had received a copy of the prospectus prior to his purchase of the security.

(2) The order may require the issuer, broker-dealer, or agent to keep a copy of the written statement at the principal office of the issuer, broker-dealer, or agent, subject to inspection by the commissioner or his agent for a period not to exceed two (2) years.

(3) This subsection shall not be applicable to the subsequent sale of the same securities to the same purchaser.

HISTORY: Acts 1959, No. 254, § 24; 1963, No. 479, § 4; A.S.A. 1947, § 67-1258; Acts 1995, No. 845, § 5; 1997, No. 173, § 6.

23-42-205. Investigations.

(a) The Securities Commissioner, in his or her discretion, may:

(1) Make any public or private investigations within or outside of this state which he or she deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order under this chapter, or to aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter;

(2) Require or permit any person to file a statement in writing, under oath, or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter to be investigated; and

(3) Publish information concerning any violation of this chapter or any rule or order hereunder.

(b) For the purpose of any investigation or proceeding under this chapter, the commissioner or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(c) (1) In case of contumacy by or refusal to obey a subpoena issued to any person, the Pulaski County Circuit Court, upon application by the commissioner, may order the person to appear before the commissioner or the officer designated by the commissioner to produce evidence or testify concerning the matter under investigation or in question.

(2) Failure to obey the order may be punished as contempt of court.

(d) (1) No person is excused from attending and testifying, or from producing any document or record, before the commissioner, or in obedience to the subpoena of the commissioner or any officer designated by him or her, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence, documentary or otherwise, required of him or her may tend to incriminate him or her or subject him or her to a penalty or forfeiture. However, no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she is compelled, after claiming his or her privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(2) However, no provision of this chapter shall be construed to require, or to authorize the commissioner to require, any investment adviser engaged in rendering investment advisory services to disclose the identity, investments, or affairs of any client of the investment adviser, except insofar as the disclosure may be necessary or appropriate in a

particular proceeding or investigation having as its objective the enforcement of a provision of this chapter.

HISTORY: Acts 1959, No. 254, § 19; A.S.A. 1947, § 67-1253; Acts 2009, No. 462, § 1.

23-42-206. Records of Securities Commissioner generally - Interpretive opinions.

(a) (1) A document is filed when it is received by the Securities Commissioner or when the commissioner receives notice from his or her designee that a document was received by the designee.

(2) The disposition of any document received by the commissioner shall be in accordance with the Arkansas State Records Management and Archives Act of 1995, § 13-4-101 et seq. [repealed].

(3) A document received by the commissioner's designee may be:

(A) Destroyed after the reproduction of the document by photograph, microphotograph, or electronic means of a permanent nature;

(B) Transferred to a permanent storage location maintained by the Central Registration Depository with the Financial Industry Regulatory Authority, the Securities Registration Depository with the North American Securities Administrators Association, or such other central depository system as may be determined by the commissioner; or

(C) Transferred to the commissioner to be disposed of in the manner of a document received by the commissioner.

(b) The commissioner shall keep a register of all notice filings, applications for registration, and registration statements which are, or have ever been, effective under this chapter and all denial, suspension, or revocation orders which have ever been entered under this chapter. The register shall be open for public inspection.

(c) The commissioner may rely upon and coordinate with the Securities and Exchange Commission, the Financial Industry Regulatory Authority, the Municipal Securities Rulemaking Board, the North American Securities Administrators Association, and any other securities regulatory agencies for the proper maintenance of certain common registrations, records, and other documents maintained by the other regulatory agencies.

(d) Upon request, and at reasonable charges which he or she prescribes, the commissioner shall furnish to any person photostatic or other copies, certified under his or her seal of office if requested, of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

(e) The commissioner in his or her discretion may honor requests from interested persons for interpretative opinions.

HISTORY: Acts 1959, No. 254, § 25; 1975, No. 844, § 13; 1977, No. 493, §§ 17, 18; 1983, No. 836, § 17; A.S.A. 1947, § 67-1259; Acts 1995, No. 845, §§ 6, 7; 1997, No. 173, § 7; 2009, No. 462, §§ 2, 3.

23-42-207. Public inspection of records - Exceptions.

(a) (1) Unless otherwise specified below, all information filed with the Securities Commissioner shall be available for public inspection.

(2) The information contained in or filed with any registration statement, notice filing, application, or report may be made available to the public under any rules which the commissioner prescribes.

(b) Except for reasonable segregable portions which are public information, the commissioner shall not publish or make available the following information:

(1) 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;

(2) Interagency or intraagency memoranda or letters, including generally records which reflect discussions between or consideration by the commissioner or members of his or her staff, or both, of any action taken or proposed to be taken by the commissioner or by any members of his or her 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;

(3) 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 State Securities Department and those concerning persons subject to regulation by employees of broker-dealers reported to the commissioner pursuant to the department's rules concerning registration of broker-dealers and agents;

(4) (A) Investigatory records compiled for law enforcement purposes to the extent that production of the 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.

(B) 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.

(C) 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 the possible violations, as well as all correspondence and memoranda in connection with the confidential complaints or information;

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

(6) (A) Financial records of broker-dealers, investment advisers, agents, or representatives obtained during or as a result of an examination by the department.

(B) However, when those records are required by this chapter to be filed with the department as part of a notice filing, registration, annual renewal, or otherwise, the records, including financial statements prepared by certified public accountants, shall be public unless sections of the information are bound separately and marked privileged and confidential by the broker-dealer, investment adviser, agent, or representative upon its submission, in which case it shall be deemed nonpublic until ten (10) days after the commissioner has given the broker-dealer, investment adviser, agent, or representative notice that an order will be entered deeming the material public.

(C) If the broker-dealer, investment adviser, agent, or representative believes the commissioner's order is incorrect, the broker-dealer, investment adviser, agent, or representative may seek an injunction from the Pulaski County Circuit Court ordering the department to hold the information as nonpublic pending a final order of a court of competent jurisdiction if the order of the commissioner is appealed pursuant to applicable law;

(7) Trade secrets obtained from any person; and

(8) Any other records which under the Freedom of Information Act of 1967, § 25-19-101 et seq., or other laws are required to be closed to the public and are not deemed open to the public inspection.

HISTORY: Acts 1959, No. 254, § 25; 1985, No. 939, § 10; A.S.A. 1947, § 67-1259; Acts 1995, No. 845, § 8; 1997, No. 173, § 8; 2009, No. 462, § 4.

23-42-208. Cooperation with other regulatory agencies.

(a) The Securities Commissioner may enter into an arrangement, agreement, or other working relationship with federal, other state, and self-regulatory authorities whereby documents may be filed and maintained in the Central Registration Depository with the Financial Industry Regulatory Authority, the Securities Registration Depository with the North American Securities Administrators Association, such other central depository system as determined by the commissioner, or the other agencies or authorities.

(b) It is the intent of this section that the commissioner be provided the authority to reduce duplication of filings, reduce administrative costs, and establish uniform procedures, forms, and administration with the states and federal authorities.

(c) The commissioner may permit initial and renewal registration filings required under this chapter to be filed with the Securities and Exchange Commission, the Financial Industry Regulatory Authority, the North American Securities Administrators Association, or other similar authorities.

(d) The commissioner may accept uniform securities examinations or other procedures designed to implement a uniform national securities regulatory system or facilitate common practices and procedures among the states.

History. Acts 1959, No. 254, § 4; 1979, No. 754, § 5; 1983, No. 836, § 8; A.S.A. § 67-1238; Acts 1995, No. 845, § 9; 2009, No. 462, §§ 5, 6.

23-42-209. Injunction, mandamus, or other ancillary relief.

(a) (1) (A) Whenever it appears to the Securities Commissioner, upon sufficient grounds or evidence satisfactory to the commissioner, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter, except the provisions of § 23-42-509, or any rule or order under this chapter, including any order issued under § 23-42-509, he or she may summarily order the person to cease and desist from the act or practice.

(B) Upon the entry of the order, the commissioner shall promptly notify the person that the order has been entered, of the reasons therefor, and of his or her right to a hearing on the order.

(2) (A) A hearing shall be held on the written request of the person aggrieved by the order if the request is received by the commissioner within thirty (30) days of the date of the entry of the order, or if ordered by the commissioner.

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

(C) After notice and an opportunity for a hearing, the commissioner may:

(i) Affirm, modify, or vacate the cease and desist order under subdivision (a)(1)(A) of this section; and

(ii) For a violation of this chapter other than a violation of § 23-42-509, by order, levy a fine not to exceed:

(a) Ten thousand dollars ($10,000) for each violation or an amount equal to the total amount of money received in connection with each violation; or

(b) If a victim of a violation is sixty-five (65) years of age or older:

(1) Twenty thousand dollars ($20,000) for each violation; or

(2) Two (2) times the amount of money received in connection with each violation.

(3) The commissioner may apply to the Pulaski County Circuit Court to temporarily or permanently enjoin an act or practice that violates this chapter and to enforce compliance with this chapter or any rule or order under this chapter:

(A) After an order is issued under subdivision (a)(1) or subdivision (a)(2) of this section; or

(B) Without issuing an order under subdivision (a)(1) or subdivision (a)(2) of this section.

(4) Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted.

(5) The court may not require the commissioner to post a bond.

(b) The commissioner may also obtain upon proper showing any other ancillary relief in the public interest, including without limitation:

(1) The appointment of a receiver, temporary receiver, or conservator;

(2) A declaratory judgment;

(3) An accounting;

(4) Disgorgement of profits;

(5) Restitution; or

(6) The assessment of a fine in an amount of not more than the total amount of money received in connection with a violation of this chapter.

(c) Nothing herein shall prohibit or restrict the informal disposition of a proceeding or allegations which might give rise to a proceeding by stipulation, settlement, consent, or default, in lieu of a formal or informal hearing on the allegations or in lieu of the sanctions authorized by this section.

History. Acts 1959, No. 254, § 20; 1963, No. 479, § 3; 1979, No. 754, § 6; A.S.A. 1947, § 67-1254; Acts 1995, No. 845, § 10; 1997, No. 173, § 9; 2009, No. 462, § 7; 2009, No. 534, § 2; 2011, No. 339, § 4.

23-42-210. Judicial review.

(a) (1) Any person aggrieved by a final order of the Securities Commissioner may obtain a review of the order in any state court of competent jurisdiction by filing in court, within sixty (60) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part.

(2) A copy of the petition shall be forthwith served upon the commissioner, and thereupon the commissioner shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these copies have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part.

(b) (1) The findings of the commissioner as to the facts, if supported by competent, material, and substantial evidence, are conclusive.

(2) If either party applies to the court for leave to adduce additional material evidence and shows to the satisfaction of the court that there were reasonable grounds for failure to adduce the evidence in the hearing before the commissioner, the court may order the additional evidence to be taken before the commissioner and to be adduced upon the hearing, in any manner and upon any conditions which the court considers proper. The commissioner may modify his findings and order by reason of the additional evidence and shall file in the court the additional evidence together with any modified or new findings or order.

(c) The judgment of the court is final, subject to review by the Arkansas Supreme Court.

(d) The commencement of proceedings under subsection (a) of this section does not, unless specifically ordered by the court, operate as a stay of the commissioner's order.

History. Acts 1959, No. 254, § 23; 1961, No. 248, § 9; A.S.A. 1947, § 67-1257.

23-42-211. Disposition of fees.

(a) (1) There is created on the books of the Chief Fiscal Officer of the State, the Auditor of State, and the Treasurer of State a fund to be known as the "Securities Department Fund".

(2) The fund shall be used for the maintenance, operation, support, and improvement of the State Securities Department in carrying out its functions, powers, and duties as set out by law and by rule and regulation not inconsistent with law.

(3) The fund shall consist of those portions of fees designated for deposit into the fund pursuant to §§ 23-42-304(a)(2), (a)(4), and (a)(5) and 23-42-404(b)(1) and such other funds as may be provided by law or regulatory action.

(4) Notwithstanding subdivision (a)(3) of this section, no more than two million dollars ($2,000,000) shall be deposited into the fund in any one (1) fiscal year until July 1, 2013, at which time this limitation shall expire.

(b) The department is authorized to promulgate such rules and regulations necessary to administer the fees, rates, tolls, or charges for services established by this section and is directed to prescribe and collect such fees, rates, tolls, or charges for the services by the department in such manner as may be necessary to support the programs of the department as directed by the Governor and the General Assembly.

History. Acts 1959, No. 254, § 30; 1961, No. 248, § 10; 1973, No. 471, § 3; A.S.A. 1947, § 67-1262; Acts 1993, No. 659, §§ 1, 5; 1993, No. 850, §§ 1, 5; 2003, No. 759, § 1; 2009, No. 534, § 3; 2011, No. 294, § 8.

23-42-212. Registration or availability of exemption not construed as approval by Securities Commissioner - Inconsistent representation.

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

(2) Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction.

(b) It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with subsection (a) of this section.

History. Acts 1959, No. 254, § 17; A.S.A. 1947, § 67-1251; Acts 1997, No. 173, § 10.

23-42-213. Disposition of fines - Investor Education Fund.

(a) There is created on the books of the Chief Fiscal Officer of the State, the Auditor of State, and the Treasurer of State a fund to be known as the "Investor Education Fund".

(b) Except as provided by subsection (c) of this section, all fines imposed and collected or moneys collected in lieu of a fine under §§ 23-42-209 and 23-42-308 shall be deposited as special revenues into the State Treasury and credited to the Investor Education Fund, to be administered by the Securities Commissioner for the following purposes:

(1) To inform and educate the public regarding investments in securities in order to help investors and potential investors:

(A) Evaluate their investment decisions;

(B) Protect themselves from unfair, inequitable, or fraudulent offerings;

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

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

(E) Know their rights as investors; and

(2) To pay for:

(A) Costs, expenses, and charges incurred by the State Securities Department in connection with the presentation and dissemination of information to the public as described in this section, including costs of printing copies of the Arkansas Securities Act, § 23-42-101 et seq., Rules of the Arkansas Securities Commissioner, and other materials designed to inform the public as set forth in this section;

(B) Costs of advertising and promotional materials designed to accomplish the purposes of this subdivision (b)(2);

(C) Costs of equipment necessary or useful for such presentations; and

(D) Costs and expenses associated with conducting a stock market game for educational purposes in selected schools in the state's public school system.

(c) (1) The Investor Education Fund shall be funded initially by the transfer of one hundred thousand dollars ($100,000) from the Securities Department Fund.

(2) All funds in excess of one hundred fifty thousand dollars ($150,000) collected in any one (1) fiscal year shall be designated as special revenues and deposited into the Securities Department Fund.

History. Acts 2003, No. 759, § 2.

Subchapter 3
Broker-Dealers, Agents, and Investment Advisers

23-42-301. Registration required - Unlawful acts - Supervision requirements.
23-42-302. Registration procedure.
23-42-303. Minimum net capital requirement.
23-42-304. Filing fees - Rules and regulations.
23-42-305. Corporate surety bonds - Alternatives.
23-42-306. Records and reports - Examinations.
23-42-307. Unlawful acts by investment advisers.
23-42-308. Denial, suspension, revocation, or withdrawal of registration, and other penalties.

23-42-301. Registration required - Unlawful acts - Supervision requirements.

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

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

(2) The registration of an agent is not effective during a period when he or she is not associated with a particular:

(A) Broker-dealer registered under this chapter; or

(B) Issuer.

(3) (A) A broker-dealer or issuer shall notify promptly the Securities Commissioner or the commissioner's designee if an agent begins or terminates:

(i) An association with a broker-dealer or issuer; or

(ii) The activities that make him or her an agent of the broker-dealer or issuer.

(B) If an agent terminates or withdraws his or her registration with a broker-dealer or issuer, a subsequent application by the agent for registration is treated as:

(i) An initial registration; and

(ii) A notification by the agent of termination or withdrawal of the previous registration or application.

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

(c) It is unlawful for a person to transact business in this state as an investment adviser or representative without first being registered under this chapter unless the person:

(1) Is registered as an investment adviser with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-1 et seq., as it existed on January 1, 2011, and has filed with the commissioner or the commissioner's designee a notice filing consisting of:

(A) A copy of documents on file with the Securities and Exchange Commission that the commissioner may by rule or order prescribe;

(B) The fee set forth in § 23-42-304(a)(3); and

(C) A consent to service of process;

(2) Is a "representative" of an investment adviser registered with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-1 et seq., as it existed on January 1, 2011, and has no place of business located in this state; or

(3) Is not registered as an investment adviser with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-1 et seq., as it existed on January 1, 2011, because the person is not an investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-1 et seq., as it existed on January 1, 2011.

(d) (1) A notice filing required by subdivision (c)(1) of this section becomes effective upon receipt by the commissioner or the commissioner's designee of the notice filing, consent to service of process, and the appropriate fee.

(2) (A) The registration and notice filing required by subdivision (c)(1) of this section expires December 31 of each year unless renewed.

(B) Effective upon the commissioner's receipt of notification, an investment adviser may terminate the investment adviser's notice filing under subdivision (c)(1) of this section by providing the commissioner notification of the termination.

(e) A broker-dealer or investment adviser shall not conduct business from a branch office within this state unless the branch office is registered under this chapter.

(f) (1) A broker-dealer shall establish, maintain, and enforce a system to supervise the activities of its agents and employees that is reasonably designed to achieve compliance with this chapter, the rules and orders of the commissioner, all other applicable state and federal securities laws, and the rules of self-regulatory organizations.

(2) A broker-dealer's supervisory system shall include without limitation the:

(A) Establishment and maintenance of written procedures designed to achieve compliance with subdivision (f)(1) of this section; and

(B) Appointment of at least one (1) agent of the broker-dealer who shall meet the qualifications and carry out the supervisory responsibilities of the broker-dealer for activities in this state under rules established by the commissioner.

(g) (1) An investment adviser shall establish, maintain, and enforce a system to supervise the activities of its representatives and employees that is reasonably designed to achieve compliance with this chapter, the rules and orders of the commissioner, all other applicable state and federal securities laws, and the rules of self-regulatory organizations.

(2) An investment adviser's supervisory system shall include without limitation the:

(A) Establishment and maintenance of written procedures designed to achieve compliance with subdivision (g)(1) of this section; and

(B) Appointment of at least one (1) representative of the investment advisor who shall meet the qualifications and carry out the supervisory responsibilities of the investment advisor for activities in this state under rules established by the commissioner.

History. Acts 1959, No. 254, § 3; 1961, No. 248, § 1; 1973, No. 47, §§ 1, 2; 1975, No. 844, §§ 1, 5; 1977, No. 493, § 1; 1977, No. 806, § 24A; 1983, No. 836, §§ 1-4; 1985, No. 939, § 1; A.S.A. 1947, § 67-1237; Acts 1995, No. 845, § 11; 1995 (1st Ex. Sess.), No. 14, § 1; 1997, No. 173, § 11; 2009, No. 462, § 8; 2009, No. 534, § 4; 2011, No. 338, § 2.

23-42-302. Registration procedure.

(a) (1) A broker-dealer, agent, investment adviser, representative, or branch office may obtain an initial or renewal registration by filing with the Securities Commissioner or the commissioner's designee an application and fee, together with a consent to service of process under § 23-42-107(a).

(2) The commissioner may by order approve a limited registration with such limitations, qualifications, or conditions as the commissioner deems appropriate.

(b) The commissioner may by rule set forth the form and content of the application and establish a procedure for renewal registration or initial registration whereby registration may become effective prior to the filing of a completed application or fee.

(c) The application shall contain whatever information the commissioner by rule requires concerning such matters as:

(1) The applicant's form and place of organization;

(2) The applicant's proposed method of doing business;

(3) The qualifications, disciplinary history, and business history of the applicant, including, in the case of a broker-dealer or investment adviser, the qualifications and history of any partner, officer, director, person occupying a similar status or performing similar functions, or any persons directly or indirectly controlling the broker-dealer or investment adviser;

(4) Any investigation, proceeding, order, injunction, arrest, or conviction of any felony or misdemeanor; and

(5) The applicant's financial condition and history.

(d) The commissioner may provide for a written examination to be taken by each class of applicants to be used as one (1) of the bases in determining an applicant's qualifications to be registered.

(e) The commissioner is authorized to conduct an investigation in order that he or she may determine the fitness of any applicant. Each applicant shall pay to the commissioner an investigation fee, and the amount of each fee shall be determined on the same basis as is the examination fee required of broker-dealers under § 23-42-306(d).

(f) If no denial order is in effect or no proceeding is pending under § 23-42-308, registration becomes effective on the thirtieth day after the application is completed. The commissioner may determine an earlier effective date upon review of the application.

(g) Applications which have not been completed within a period of one hundred eighty (180) days after filing with the commissioner may be deemed abandoned and considered withdrawn by the applicant, provided the applicant has been notified of the deficiencies to the application and afforded a reasonable opportunity to correct such deficiencies.

(h) A registered broker-dealer, investment adviser, or person required to make a notice filing pursuant to § 23-42-301(c)(1) may file an application for registration or notice filing of a successor, whether or not the successor is then in existence. Such application or notice filing shall comply with the requirements for an initial application or notice filing.

History. Acts 1959, No. 254, § 4; 1961, No. 248, § 2; 1973, No. 47, § 8; 1975, No. 844, § 5; 1983, No. 836, §§ 5, 6; A.S.A. 1947, § 67-1238; Acts 1995, No. 845, § 12; 1997, No. 173, § 12; 2009, No. 462, § 9; 2009, No. 534, § 5.

23-42-303. Minimum net capital requirement.

(a) The Securities Commissioner shall require a minimum net capital for registered broker-dealers in such amount as he may by rule prescribe and for registered investment advisers in the amount of twelve thousand five hundred dollars ($12,500).

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

(1) Is registered or licensed as such in the state in which it maintains its principal place of business; and

(2) Is in compliance with the applicable net capital requirements of the state in which it maintains its principal place of business.

History. Acts 1959, No. 254, § 4; 1961, No. 248, § 2; 1973, No. 47, § 3; 1975, No. 844, § 3; A.S.A. 1947, § 67-1238; Acts 1995, No. 845, § 13; 1997, No. 173, § 13.

23-42-304. Filing fees - Rules and regulations.

(a) Every applicant for initial or renewal registration and every person making a notice filing as required by § 23-42-301(c) shall pay a filing fee of:

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

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

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

(4) Seventy-five dollars ($75.00) in the case of a representative, of which twenty-five dollars ($25.00) shall be designated as special revenues and shall be deposited into the Securities Department Fund; and

(5) Fifty dollars ($50.00) in the case of a branch office, of which the entire amount shall be designated as special revenues and deposited into the Securities Department Fund.

(b) After an application for registration has been processed, in whole or in part, any filing fee shall be nonrefundable.

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

History. Acts 1959, No. 254, § 4; 1961, No. 248, § 2; 1975, No. 844, § 2; 1985, No. 939, § 2; A.S.A. 1947, § 67-1238; Acts 1987, No. 449, § 1; 1993, No. 659, §§ 2, 5; 1993, No. 850, § 2, 5; 1995, No. 845, § 14; 1997, No. 173, § 14; 2009, No. 534, § 6.

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

(a) (1) The Securities Commissioner shall require registered broker-dealers, investment advisers, and an agent for the issuer to maintain a bond in such form and amount as he or she may by rule prescribe.

(2) However, this subsection does not apply to any registered investment adviser that maintains its principal place of business in a state other than Arkansas that:

(A) Is registered or licensed as such in the state in which it maintains its principal place of business; and

(B) Is in compliance with the applicable bonding requirements of the state in which it maintains its principal place of business.

(b) The following apply to those bonds required to be posted with the commissioner under subsection (a) of this section:

(1) The total liability of the surety to all persons, cumulative or otherwise, shall not exceed the amounts specified in the bond;

(2) Every bond shall provide that a suit shall not be maintained to enforce any liability on the bond unless brought within five (5) years after the sale or other act upon which it is based; and

(3) Every bond shall provide for suit on the bond by any person who has a cause of action under this chapter.

History. Acts 1959, No. 254, § 4; 1961, No. 248, § 2; 1973, No. 47, § 4; 1977, No. 493, § 2; 1979, No. 6, §§ 2, 3; 1983, No. 836, § 7; A.S.A. 1947, §§ 67-1238, 67-1238.1; Acts 1991, No. 298, § 1; 1995, No. 845, §§ 15, 16; 1997, No. 173, § 15; 2009, No. 534, § 7.

23-42-306. Records and reports - Examinations.

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

(1) Is registered or licensed as such in the state in which it maintains its principal place of business; and

(2) Is in compliance with the applicable books and record-keeping requirements of the state in which it maintains its principal place of business.

(b) Every registered broker-dealer, issuer, or investment adviser shall file any financial reports which the commissioner by rule prescribes.

(c) If the information contained in any document filed with the commissioner or the commissioner's designee is or becomes inaccurate or incomplete in any material respect, then the registrant shall promptly file a correcting amendment.

(d) (1) All the records referred to in subsection (a) of this section are subject, at any time or from time to time, to such reasonable periodic, special, or other examinations by representatives of the commissioner, within or without this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors.

(2) (A) The applicant, issuer, broker-dealer, or investment adviser shall pay a fee for each examination, not to exceed one hundred fifty dollars ($150) per examiner for each day or for each part of a day, during which examiners are absent from the office of the commissioner for the purpose of conducting the examination.

(B) In addition to the fee, the commissioner may require the applicant, issuer, broker-dealer, or investment adviser to pay the actual hotel and traveling expenses of each authorized examiner traveling to and from the office of the commissioner while the examiner is conducting the examination.

(3) For the purpose of avoiding unnecessary duplication of examination, the commissioner, insofar as he or she deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or any other jurisdiction, agency, or organization charged by law or statute with regulating or prosecuting any aspect of the securities business, and in so cooperating may share any information he or she or his or her representatives may obtain as a result of any investigation or examination. "Examination" shall include the right to reproduce copies of the records referred to in subsection (a) of this section.

History. Acts 1959, No. 254, § 5; 1961, No. 248, § 3; 1963, No. 479, § 1; 1973, No. 47, §§ 5-7; 1975, No. 844, § 4; 1983, No. 836, § 9; 1985, No. 939, § 3; A.S.A. 1947, § 67-1239; Acts 1995, No. 845, § 17; 1997, No. 173, § 16; 1999, No. 363, § 2; 2009, No. 534, § 8; 2011, No. 339, § 5.

23-42-307. Unlawful acts by investment advisers.

(a) It is unlawful for any investment adviser or representative:

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

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

(3) To make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading.

(b) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing that:

(1) Except as may be permitted by rule or order of the Securities Commissioner, the investment adviser shall not be compensated on the basis of a share of capital gains upon, or capital appreciation of, the funds or any portion of the funds of the client. This subdivision (b)(1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates, or taken as of a definite date;

(2) (A) No assignment of the contract may be made by the investment adviser without the consent of the other party to the contract.

(B) "Assignment", as used in this subdivision (b)(2), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor, or of a controlling block of the assignor's outstanding voting securities, by a security holder of the assignor.

(C) However, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one (1) or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business; and

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

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

(1) The commissioner by rule prohibits custody; or

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

History. Acts 1959, No. 254, § 2; A.S.A. 1947, § 67-1236; Acts 1993, No. 566, § 1; 1995, No. 845, § 18; 2009, No. 462, § 10.

23-42-308. Denial, suspension, revocation, or withdrawal of registration, and other penalties.

(a) The Securities Commissioner may by order deny, suspend, make conditional or probationary, or revoke any registration if he or she finds that:

(1) The order is in the public interest; and

(2) The applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director; any person occupying a similar status or performing similar functions; or any person directly or indirectly controlling the broker-dealer or investment adviser:

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

(B) Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act;

(C) Has been convicted, within the past ten (10) years, of any misdemeanor involving a security or any aspect of the securities business, or of any felony, or has pending against him or her a charge of unlawful conduct involving securities or any aspect of the securities business;

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

(E) Is the subject of an order of the commissioner denying, suspending, revoking, or making conditional or probationary a registration as a broker-dealer, agent, investment adviser, or representative;

(F) (i) Is the subject of an order entered within the past five (5) years by:

(a) The securities administrator of any other state;

(b) Any national securities, commodities, or banking agency or jurisdiction;

(c) Any national securities or commodities exchange;

(d) Any securities or commodities self-regulatory organization;

(e) Any registered securities association or clearing agency denying, revoking, suspending, or expelling him or her from registration as a broker-dealer, agent, investment adviser, or representative, or the substantial equivalent of those terms; or

(f) Is the subject of a United States postal fraud order.

(ii) (a) However, the commissioner may not institute a revocation or suspension proceeding under this subdivision (a)(2)(F) more than five (5) years from the date of the order relied on; and

(b) He or she may not enter an order under this subdivision (a)(2)(F) on the basis of an order under another state act, unless that order was based on facts which would currently constitute a ground for an order under this section;

(G) Has engaged in dishonest or unethical practices in the securities business;

(H) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subdivision (a)(2)(H) without a finding of insolvency as to the broker-dealer or investment adviser;

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

(i) The commissioner may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than the broker-dealer himself or herself, if he or she is an individual, or an agent of the broker-dealer;

(ii) The commissioner may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than the investment adviser himself or herself, if he or she is an individual, or any other person who represents the investment adviser in doing any of the acts which make him or her an investment adviser;

(iii) The commissioner may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge, or both;

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

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

(J) Has failed reasonably to supervise the agents or employees of the broker-dealer or the representatives or employees of the investment adviser; or

(K) Has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subdivision (a)(2)(K), and he or she shall vacate the order when the deficiency has been corrected.

(b) The commissioner may not institute a suspension or revocation proceeding solely on the basis of a final judicial or administrative order known to him or her when registration became effective, unless the proceeding is instituted within one hundred eighty (180) days after registration or unless the applicant or registrant waives such time limitation. For the purpose of this provision, a final judicial or administrative order shall not include an order that is stayed or subject to further review or appeal. This provision shall not apply to renewal registration.

(c) (1) The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(2) Upon the entry of the order, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer, if the applicant or registrant is an agent or representative, that the order has been entered, and of the reasons therefor, and that within fifteen (15) days after the receipt of a written request the matter will be set down for hearing.

(3) If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

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

(e) (1) Withdrawal from registration as a broker-dealer, agent, investment adviser, or representative becomes effective thirty (30) days after receipt of an application to withdraw, or within such shorter period of time as the commissioner may determine,

unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty (30) days after the application is filed.

(2) If a proceeding is pending or instituted, then withdrawal becomes effective at such time and upon such conditions as the commissioner by order determines.

(3) If no proceeding is pending or instituted and withdrawal automatically becomes effective, the commissioner may nevertheless institute a revocation or suspension proceeding under subdivision (a)(2)(B) of this section within one (1) year after withdrawal became effective and may enter a revocation or suspension order as of the last date on which registration was effective.

(f) No order may be entered under any part of this section, except under subdivision (c)(1) of this section, without:

(1) Appropriate prior notice to the applicant or registrant and to the employer or prospective employer if the applicant or registrant is an agent or representative;

(2) Opportunity for hearing; and

(3) Written findings of fact and conclusions of law.

(g) In addition to the authority granted in subsections (a)-(e) of this section, upon notice and opportunity for hearing as provided in subsection (f) of this section, the commissioner may for each violation of this chapter fine any broker-dealer, agent, investment adviser, or representative not to exceed:

(1) Ten thousand dollars ($10,000) or an amount equal to the total amount of money received in connection with each separate violation; or

(2) If a victim of a violation is sixty-five (65) years of age or older:

(A) Twenty thousand dollars ($20,000) for each violation; or

(B) Two (2) times the amount of money received in connection with each violation.

(h) Nothing in this section shall prohibit or restrict the informal disposition of a proceeding or allegations which might give rise to a proceeding by stipulation, settlement, consent, or default, in lieu of a formal or informal hearing on the allegations or in lieu of the sanctions authorized by this section.

History. Acts 1959, No. 254, § 6; 1961, No. 248, § 4; 1983, No. 836, §§ 10-12; A.S.A. 1947, § 67-1240; Acts 1995, No. 845, § 19; 2009, No. 534, §§ 9, 10; 2011, No. 339, §§ 6, 7.

Subchapter 4
Registration of Securities

23-42-401. Registration by notification.
23-42-402. Registration by coordination.
23-42-403. Registration by qualification.
23-42-404. Registration statements generally.
23-42-405. Stop order denying, suspending, or revoking registration statement.

23-42-401. Registration by notification.

(a) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under § 23-42-402:

(1) Any security whose issuer and any predecessors have been in continuous operation for at least five (5) years if:

(A) There has been no default during the current fiscal year or within the three (3) preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer, or any predecessor, with a fixed maturity or a fixed interest or dividend provision; and

(B) The issuer and any predecessors during the past three (3) fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, which:

(i) Are applicable to all securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed and are equal to at least three percent (3%) of the amount of the outstanding securities as measured by the maximum offering price or the market price on a day, selected by the registrant, within thirty (30) days before the date of filing the registration statement, whichever is higher, or book value on a day, selected by the registrant, within ninety (90) days of the date of filing the registration statement, to the extent that there is neither a readily determinable market price nor a cash offering price; or

(ii) If the issuer and any predecessors have not had any security of the type specified in subdivision (a)(1)(B)(i) of this section outstanding for three (3) full fiscal years equal to at least five percent (5%) of the amount as measured in subdivision (a)(1)(B)(i) of this section of all securities which will be outstanding if all the securities being offered or proposed to be offered, whether or not they are proposed to be registered or offered in this state, are issued; and

(2) Any security, other than a certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, registered for nonissuer distribution if:

(A) Any security of the same class has ever been registered under this chapter or a predecessor act; or

(B) The security being registered was originally issued pursuant to an exemption under this chapter or a predecessor act.

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

(1) A statement demonstrating eligibility for registration by notification;

(2) With respect to the issuer and any significant subsidiary:

(A) Its name, address, and form of organization;

(B) The state or foreign jurisdiction and the date of its organization; and

(C) The general character and location of its business;

(3) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution:

(A) His or her name and address;

(B) The amount of securities of the issuer held by him or her as of the date of the filing of the registration statement;

(4) A description of the security being registered;

(5) The information and documents specified in § 23-42-403(b)(8), (b)(10), and (b)(12); and

(6) In the case of any registration under subdivision (a)(2) of this section which does not also satisfy the conditions of subdivision (a)(1) of this section, a balance sheet of the issuer for the calendar year immediately prior to the filing of the registration statement and a summary of earnings for each of the two (2) 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 the period of the issuer's and any predecessors' existence if less than two (2) years.

(c) If no stop order is in effect and no proceeding is pending under § 23-42-405, a registration statement under this section automatically becomes effective at three o'clock (3:00) Central Standard Time in the afternoon of the second full business day after the filing of the registration statement or the last amendment, or at such earlier time as the Securities Commissioner determines.

History. Acts 1959, No. 254, § 8; A.S.A. 1947, § 67-1242; Acts 1995, No. 845, § 20; 2011, No. 339, § 8.

23-42-402. Registration by coordination.

(a) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

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

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

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

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

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

(c) (1) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied:

(A) No stop order is in effect and no proceeding is pending under § 23-42-405;

(B) The registration statement has been on file with the commissioner for at least twenty (20) days; and

(C) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two (2)

full business days or such shorter period as the commissioner permits by rule or otherwise, and the offering is made within those limitations.

(2) (A) (i) The registrant shall promptly notify the commissioner by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment.

(ii) "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(B) Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until there is compliance with this subsection, if the commissioner promptly notifies the registrant by telephone or telegram and promptly confirms by letter or telegram when the commissioner notifies by telephone of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment, the stop order is void as of the time of its entry.

(3) The commissioner may by rule or otherwise waive either or both of the conditions specified in subdivisions (c)(1)(B) and (C) of this section.

(4) If the federal registration statement becomes effective before all the conditions in this subsection are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement is expected to become effective, the commissioner shall promptly advise the registrant by telephone, telegram, or by electronic means at the registrant's expense whether all the conditions are satisfied and whether the commissioner then contemplates the institution of a proceeding under § 23-42-405, but this advice by the commissioner does not preclude the institution of such a proceeding at any time.

History. Acts 1959, No. 254, § 9; A.S.A. 1947, § 67-1243; Acts 1995, No. 845, § 21; 2005, No. 420, § 1; 2009, No. 462, § 11; 2011, No. 339, § 9.

23-42-403. Registration by qualification.

(a) Any security may be registered by qualification.

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

(1) With respect to the issuer and any significant subsidiary:

(A) Its name, address, and form of organization;

(B) The state or foreign jurisdiction and date of its organization;

(C) The general character and location of its business;

(D) A description of its physical properties and equipment; and

(E) A statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(2) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions:

(A) His or her name, address, and principal occupation for the past five (5) years;

(B) The amount of securities of the issuer held by him or her as of a specified date within thirty (30) days of the filing of the registration statement;

(C) The amount of the securities covered by the registration statement to which he or she has indicated his or her intention to subscribe; and

(D) A description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three (3) years or proposed to be effected;

(3) With respect to persons covered by subdivision (b)(2) of this section, the remuneration paid during the past twelve (12) months and estimated to be paid during the next twelve (12) months, directly or indirectly, by the issuer, together with all predecessors, parents, subsidiaries, and affiliates, to all those persons in the aggregate;

(4) With respect to any person owning of record, or beneficially, if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer, the information specified in subdivision (b)(2) of this section, other than his or her occupation;

(5) With respect to every promoter if the issuer was organized within the past three (3) years:

(A) The information specified in subdivision (b)(2) of this section;

(B) Any amount paid to him or her within that period or intended to be paid to him or her; and

(C) The consideration for the payment;

(6) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution:

(A) His or her name and address;

(B) The amount of securities of the issuer held by him or her as of the date of the filing of the registration statement;

(C) A description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three (3) years or proposed to be effected;

(7) The capitalization and long-term debt, on both a current and a pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else, for which the issuer or any subsidiary has issued any of its securities within the past two (2) years or is obligated to issue any of its securities;

(8) (A) The kind and amount of securities to be offered;

(B) The proposed offering price or the method by which it is to be computed;

(C) Any variation therefrom at which any portion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of the person or class;

(D) The basis upon which the offering is to be made if otherwise than for cash;

(E) The estimated aggregate underwriting and selling discounts or commissions and finders' fees, including, separately, cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts;

(F) The estimated amounts of other selling expenses, including legal, engineering, and accounting charges;

(G) The name and address of every underwriter and every recipient of a finder's fee;

(H) A copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and

(I) A description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(9) (A) The estimated cash proceeds to be received by the issuer from the offering;

(B) The purposes for which the proceeds are to be used by the issuer;

(C) The amount to be used for each purpose;

(D) The order or priority in which the proceeds will be used for the purposes stated;

(E) The amounts of any funds to be raised from other sources to achieve the purposes stated;

(F) The sources of any such funds; and

(G) If any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, the amounts of those commissions, and any other expense in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

(10) A description of any stock options or other security options outstanding or to be created in connection with the offering, together with the amount of those options held or to be held by every person required to be named in subdivision (b)(2), (b)(4)-(b)(6), or (b)(8) of this section and by any person who holds or will hold ten percent (10%) or more in the aggregate of those options;

(11) The dates of, parties to, and general effect, concisely stated, of every management or other material contract made or to be made otherwise than in the ordinary course of business, if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two (2) years, together with a copy of every such contract and with a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets, including any such litigation or proceeding known to be contemplated by governmental authorities;

(12) A copy of any prospectus, 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;

(13) (A) A specimen or copy of the security being registered;

(B) A copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect; and

(C) A copy of any indenture or other instrument covering the security to be registered;

(14) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered, with an English translation if it is in a foreign language, which shall state whether the security, when sold, will be legally issued, fully paid, and nonassessable, and, if a debt security, a binding obligation of the issuer;

(15) The written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him or her, if any such person is named as having prepared or certified a report or valuation, other than a public and official document or statement, which is used in connection with the registration statement;

(16) (A) A balance sheet of the issuer as of a date within four (4) months prior to the filing of the registration statement;

(B) A profit and loss statement and analysis of surplus for each of the three (3) 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 the period of the issuer's and any predecessors' existence if less than three (3) years; and

(C) If any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant; and

(17) Such additional information as the Securities Commissioner requires by rule or order.

(c) A registration statement under this section becomes effective when the commissioner so orders.

(d) The commissioner may by rule or order require, as a condition of registration under this section, that a prospectus containing any designated part of the information specified in subsection (b) of this section be sent or given to each person to whom an offer is made concurrently with:

(1) The first written offer made to him or her, otherwise than by means of a public advertisement, by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him or her as a participant in the distribution;

(2) The confirmation of any sale made by or for the account of any such person;

(3) Payment pursuant to any such sale; or

(4) Delivery of the security pursuant to any such sale, whichever first occurs.

History. Acts 1959, No. 254, § 10; A.S.A. 1947, § 67-1244; Acts 1995, No. 845, § 22; 2011, No. 339, § 10.

23-42-404. Registration statements generally.

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

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

(2) Sales of securities in excess of the amount of securities to have been offered in this state shall require the person filing the registration statement to pay a filing fee, calculated in the manner specified in subdivision (b)(1) of this section, for all securities sold. In addition, if the sales are in excess of one hundred five percent (105%) of the amount to have been offered, the person filing the registration statement shall pay a penalty fee of two hundred dollars ($200).

(c) Every registration statement shall specify:

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

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

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

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

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

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

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

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

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

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

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

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

(j) Every registration statement is effective for one (1) year from its effective date and, upon renewal, for any longer period during which the security is being offered or distributed in a nonexempted transaction, except during the time a stop order is in effect.

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

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

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

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

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

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

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

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

(p) The commissioner may consider a registration statement abandoned and withdrawn by the applicant if the:

(1) Registration statement has not been completed within one hundred eighty (180) days after filing with the commissioner; and

(2) Applicant has been notified of the deficiencies in the application and provided a reasonable opportunity to correct the deficiencies.

History. Acts 1959, No. 254, § 11; 1961, No. 248, § 5; 1971, No. 131, § 1; 1973, No. 47, § 9; 1977, No. 493, § 3; 1979, No. 754, § 1; 1983, No. 836, §§ 22-24; A.S.A. 1947, § 67-1245; Acts 1987, No. 449, § 2; 1993, No. 659, §§ 3, 5; 1993, No. 850, § 3, 5; 1995, No. 845, § 23; 1997, No. 173, § 17; 2011, No. 339, § 11.

23-42-405. Stop order denying, suspending, or revoking registration statement.

(a) The Securities Commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he or she finds that:

(1) The order is in the public interest; and

(2) (A) The registration statement is incomplete in any material respect or contains any statement that was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact as of the effective date of:

(i) The registration statement or an earlier date from an order denying the effective date of the registration statement;

(ii) An amendment under § 23-42-404(n); or

(iii) A report under § 23-42-404(m);

(B) Any provision of this chapter or any rule, order, or condition lawfully imposed under this chapter has been willfully violated, in connection with the offering, by:

(i) The person filing the registration statement;

(ii) The issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or

(iii) Any underwriter;

(C) The security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction

of a court of competent jurisdiction entered under any other federal or state act applicable to the offering, but:

(i) The commissioner shall not institute a proceeding against an effective registration statement under this subdivision (a)(2)(C) more than one (1) year from the date of the order or injunction relied on; and

(ii) The commissioner shall not enter an order under this subdivision (a)(2)(C) on the basis of an order or injunction entered under another state act unless that order or injunction was based on facts that would currently constitute grounds for a stop order under this section;

(D) The issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(E) (i) The offering has worked or tended to work a fraud upon purchasers or would so operate; or

(ii) Any aspect of the offering is substantially unfair, unjust, inequitable, or oppressive;

(F) The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, unreasonable amounts of promoters' profits or participation, or unreasonable amounts or kinds of options;

(G) When a security is sought to be registered by notification, it is not eligible for such registration;

(H) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by § 23-42-402(b)(4); or

(I) The applicant or registrant has failed to pay the proper filing fee. The commissioner may enter only a denial order under this subdivision (a)(2)(I), and he or she shall vacate any such order when the deficiency has been corrected.

(b) The commissioner may not institute a stop order proceeding against an effective registration statement on the basis of a fact or transaction known to him or her when the registration statement became effective unless the proceeding is instituted within the next thirty (30) days.

(c) (1) The commissioner may, by order, summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section.

(2) Upon the entry of the order, the commissioner shall promptly notify each person specified in subsection (d) of this section that it has been entered and the reasons therefor

and that within fifteen (15) days after the receipt of a written request the matter will be set down for hearing.

(3) If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing to each person specified in subsection (d) of this section, may modify or vacate the order or extend it until final determination.

(4) In the case of a registration by coordination pursuant to § 23-42-402, the commissioner may accept a waiver of concurrent effectiveness submitted by the issuer, without the necessity of the entry of an order to summarily postpone effectiveness.

(d) No stop order may be entered under any part of this section except the first sentence of subsection (c) of this section without:

(1) Appropriate prior notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;

(2) Opportunity for hearing; and

(3) Written findings of fact and conclusions of law.

(e) The commissioner may vacate or modify a stop order if he or she finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

History. Acts 1959, No. 254, § 12; 1971, No. 131, §§ 2, 3; 1985, No. 939, § 4; A.S.A. 1947, § 67-1246; Acts 1995, No. 845, § 24; 2011, No. 339, §§ 12, 13.

Subchapter 5
Regulation of Transactions

23-42-501. Sale of unregistered nonexempt securities.
23-42-502. Filing of prospectus, sales literature, etc.
23-42-503. Exempted securities.
23-42-504. Exempted transactions.
23-42-505. Denial or revocation of exemption.
23-42-506. Burden of proof of exemption.
23-42-507. Fraud or deceit in connection with offer, sale, or purchase of securities.
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23-42-509. Covered securities.

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

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

(1) It is registered under this chapter;

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

(3) It is a covered security.

History. Acts 1959, No. 254, § 7; A.S.A. 1947, § 67-1241; Acts 1997, No. 173, § 18.

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

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

History. Acts 1959, No. 254, § 15; 1979, No. 754, § 3; A.S.A. 1947, § 67-1249; Acts 1997, No. 173, § 19.

23-42-503. Exempted securities.

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

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

(B) Any securities that are offered and sold pursuant to section 4(5) of the Securities Act of 1933 or that are "mortgage related securities" as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 are not covered securities in the same manner as obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof. These instruments, commonly referred to as private mortgage-backed securities, may be exempt from the registration requirements of this chapter provided that the transaction or the securities are otherwise exempt under this section. This provision specifically overrides the preemption of state law contained in section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984, Pub. L. No. 98-440, of the United States;

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any Canadian province, any agency or corporate or other instrumentality of one (1) or more of the foregoing, or by any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

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

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

(5) Any security issued or guaranteed by any public utility or holding company which is:

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

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

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

(6) Any security of a world-class foreign issuer that meets the qualifications as set forth by rule of the Securities Commissioner;

(7) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association. Section 6(c) of the Philanthropy Protection Act of 1995, Pub. L. No. 104-62, of the United States shall not preempt any provision of this chapter;

(8) Any investment contract or other security issued in connection with an employees' stock purchase, savings, pension, profit sharing, stock bonus, stock option, or similar benefit plan. Plans which do not meet the requirements for qualification under the Internal Revenue Code must file with the commissioner prior to any offer or sale a notice specifying the terms of the plan. The commissioner may by order disallow the exemption within ten (10) days; and

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

(b) The commissioner may, from time to time, by his or her rules, and subject to any terms, conditions, and fees which may be prescribed therein, add any class of securities to the securities exempted as provided in this section if the commissioner finds that the enforcement of this chapter with respect to the securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering, but no issue of securities shall be exempted under this section where the aggregate amount at which the issue is offered to the public exceeds one million dollars ($1,000,000).

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

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

remuneration is to be paid in connection with the offer and sale of such securities; or

(2) Any interest or agreement which qualifies its holder to be a member or other patron of a farm cooperative or which represents the terms or conditions by which members or other patrons purchase or sell agricultural products or commodities from, to, or through a farm cooperative, or which represents a capital retain, or patronage distribution issued by a farm cooperative solely to its members or other patrons shall not be considered to be a security under this chapter and shall not be subject to the provisions of this chapter, provided:

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

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

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

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

(d) (1) Before any security may be issued as an exempted security under subdivision (a)(7) of this section, a proof of exemption must first be filed with the commissioner, and the commissioner by order shall not have disallowed the exemption within the next ten (10) full business days.

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

(3) Proofs of exemption which have not been completed within a period of one hundred eighty (180) days after filing with the commissioner may be deemed abandoned and

considered withdrawn by the applicant, provided the applicant has been notified of the deficiencies to the proof and afforded a reasonable opportunity to correct the deficiencies.

(4) Each offering shall be effective only for twelve (12) consecutive months.

(5) For every proof of exemption filed with the commissioner, there shall be paid to the commissioner a filing fee equal to one-tenth percent (0.1%) of the maximum aggregate offering price at which the securities are to be offered in this state. The fee shall in no case be less than one hundred dollars ($100) nor more than five hundred dollars ($500). The commissioner shall have authority under this subsection to amend or rescind the filing fees by rule or order if the commissioner determines that the fee is excessive under the circumstances.

History. Acts 1959, No. 254, § 14; 1961, No. 248, § 7; 1973, No. 47, §§ 12, 14; 1975, No. 697, § 1; 1975, No. 844, §§ 7, 8, 11; 1977, No. 493, §§ 6, 7, 10; 1979, No. 754, §§ 2, 8; 1983, No. 836, §§ 14, 15; 1985, No. 939, §§ 5-8; A.S.A. 1947, §§ 67-1247, 67-1248; Acts 1987, No. 776, § 2; 1989, No. 348, § 1; 1993, No. 1147, § 1807; 1995, No. 845, §§ 25, 26; 1997, No. 173, § 20; 2005, No. 420, § 2.

23-42-504. Exempted transactions.

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

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

(2) Any nonissuer transaction by a registered agent of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety (90) days provided, at the time of the transaction:

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

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

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

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

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

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

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

(iv) An audited income statement for each of the issuer's immediately preceding two (2) fiscal years, or for the period of existence of the issuer, if in existence for less than two (2) years, or, in the case of a reorganization or merger where the parties to the reorganization or merger had such audited income statements, a pro forma income statement; and

(E) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as it existed on January 1, 2011, unless:

(i) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., as it existed on January 1, 2011;

(ii) The issuer and predecessors of the issuer of the security have been engaged in continuous business for at least three (3) years; or

(iii) The issuer of the security has total assets of at least two million dollars ($2,000,000) based on:

(a) An audited balance sheet dated within the past eighteen (18) months; or

(b) In the case of a reorganization or merger of parties with audited balance sheets dated within the past eighteen (18) months showing total assets of at least two million dollars ($2,000,000), a pro forma balance sheet;

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

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

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

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

(7) Any transactions by a person exempted from registration under § 23-42-102(2)(E), provided that the transaction would be lawful in the place of residence of the offeree or purchaser had it occurred there instead of in this state;

(8) Any offer or sale:

(A) By an issuer to a person in a state other than this state if that offer or sale would be lawful if made in the other state; or

(B) To a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity. The Securities Commissioner may by order, upon petition by any person, determine if the petitioner may be deemed, upon the basis of knowledge, experience, volume, and number of transactions, and other securities background, an "institutional buyer" for purposes of this subdivision (a)(8);

(9) (A) Any transaction pursuant to an offer and sale to not more than thirty-five (35) purchasers other than those designated in subdivision (a)(8) of this section during any period of twelve (12) consecutive months, if:

(i) The seller reasonably believes that all the buyers are purchasing for investment; and

(ii) No commission or other remuneration shall 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 pursuant to § 23-42-301.

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

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

(11) Any offer, but not a sale, of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act;

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

(b) (1) Before any transaction shall be executed as an exempted transaction under subdivision (a)(9) or subdivision (a)(10) of this section, except, in the case of dividend reinvestment and stock purchase programs pursuant to subdivision (a)(10) of this section, a proof of exemption must first be filed with the commissioner and the commissioner by order shall not have disallowed the exemption within the next ten (10) full business days. Before any dividend reinvestment and stock purchase program shall be executed as an exempt transaction under subdivision (a)(10) of this section, an initial proof of exemption shall be filed; thereafter in every fifth year a proof of exemption must be filed with the commissioner and the commissioner by order must not have disallowed the exemption within the next ten (10) full business days.

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

(3) Proofs of exemption which have not been completed within a period of one hundred eighty (180) days after filing with the commissioner may be deemed abandoned and considered withdrawn by the applicant, provided the applicant has been notified of the deficiencies to the proof and afforded a reasonable opportunity to correct such deficiencies.

(4) (A) For every proof of exemption filed with the commissioner under subdivision (a)(9) of this section, there shall be paid to the commissioner a filing fee of one-tenth percent (0.1%) of the maximum aggregate offering price at which the

securities are to be offered in this state, but the fee shall in no case be less than twenty-five dollars ($25.00) or more than five hundred dollars ($500).

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

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

History. Acts 1959, No. 254, § 14; 1961, No. 248, § 7; 1963, No. 512, § 1; 1971, No. 131, § 4; 1973, No. 47, §§ 13, 15; 1975, No. 844, §§ 9, 10, 12; 1977, No. 493, § 8; 1983, No. 836, §§ 20, 25; 1985, No. 610, § 1; 1985, No. 939, § 8; A.S.A. 1947, § 67-1248; Acts 1995, No. 845, § 27; 1997, No. 173, § 21; 1999, No. 363, § 3; 2005, No. 420, § 3; 2009, No. 462, § 12; 2011, No. 339, § 14.

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

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

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

(2) Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within fifteen (15) days of the receipt of a written request the matter will be set down for hearing.

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

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

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

(e) No person may be considered to have violated § 23-42-501 or § 23-42-502 by reason of any offer or sale effected after the entry of an order under this section 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.

History. Acts 1959, No. 254, § 14; 1961, No. 248, § 7; 1977, No. 493, § 9; A.S.A. 1947, § 67-1248; Acts 1997, No. 173, § 22.

23-42-506. Burden of proof of exemption.

In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

History. Acts 1959, No. 254, § 14; 1961, No. 248, § 7; A.S.A. 1947, § 67-1248.

23-42-507. Fraud or deceit in connection with offer, sale, or purchase of securities.

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

(1) To employ any device, scheme, or artifice to defraud;

(2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

History. Acts 1959, No. 254, § 1; A.S.A. 1947, § 67-1235.

23-42-508. Market manipulation.

It is unlawful for any person, directly or indirectly, in this state:

(1) To effect any transaction in a security which involves no change in the beneficial ownership thereof, or to enter any orders for the purchase or sale of any security with the knowledge that orders of substantially the same size, at substantially the same time, and at substantially the same price, for the sale or purchase of the security, have been or will be entered by or for the same or affiliated persons, for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security;

(2) To effect, alone or with one (1) or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others; or

(3) To induce the purchase or sale of any security by the circulation or dissemination of information to the effect that the price of the security will, or is likely to, rise or fall because of market operations of any one (1) or more persons conducted for the purpose

of raising or depressing the price of the security, if he is selling or offering to sell or purchasing or offering to purchase the security or is receiving a consideration, directly or indirectly, from that person.

History. Acts 1971, No. 131, § 7; A.S.A. 1947, § 67-1263.

23-42-509. Covered securities.

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

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

(B) Sales of the covered securities in excess of the amount of covered securities to have been offered in this state shall require the person making the notice filing to pay a fee, calculated in the manner specified in subdivision (a)(1)(A) of this section, for all securities sold. In addition, if the sales are in excess of one hundred five percent (105%) of the amount to have been offered, the person making the notice filing shall pay a penalty fee of two hundred dollars ($200).

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

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

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

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

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

(c) (1) With respect to any security that is a covered security under Section 18(b)(4)(D) of the Securities Act of 1933, the commissioner, by rule or order, may require the issuer to file a notice on SEC Form D and a consent to service of process signed by the issuer no later than fifteen (15) days after the first sale of such covered security in this state, together with a fee in the amount of one-tenth percent (0.1%) of the maximum aggregate offering price at which the securities are to be offered in this state, but the fee shall in no case be less than one hundred dollars ($100) or more than five hundred dollars ($500).

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

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

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

(1) The order is in the public interest; and

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

(f) The commissioner, by rule or order, may waive any or all of the provisions of this section.