EXHIBIT D

Public Finance — Revenue Classification Law

19-6-201. General revenues enumerated.

(52) Until July 1, 2011, moneys in excess of one million dollars ($1,000,000) in the Securities Department Fund from collections of securities agents initial or renewal registration filing fees and securities registration statement filing fees, § 23-42-211(a)(4);

19-6-301. Special revenues enumerated.

(173) That portion of securities agents initial or renewal registration filing fees, § 23-42-304(a)(2) and 23-42-304(a)(4);

(174) That portion of securities registration statement filing fees, § 23-42-404(b)(1);

(211) That portion of fines collected in the Investor Education Fund in excess of one hundred fifty thousand dollars ($150,000) in any one (1) fiscal year, § 23-42-213(c)(2);

(213) The first one hundred fifty thousand dollars ($150,000) of fines collected under §§ 23-42-209, 23-42-308, and 23-42-213(b);

(245) Securities agents branch office registration filing fees, § 23-42-304(a)(5);

19-6-475. Securities Department Fund.

The Securities Department Fund shall consist of those special revenues as specified in § 19-6-301(211), the first four million dollars ($4,000,000) of those special revenues as specified in § 19-6-301(173), (174), and (245), and such other funds as may be provided by law or regulatory action, there to be used for 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, as set out in § 23-42-211.

19-6-498. Investor Education Fund.

The Investor Education Fund shall consist of those special revenues as specified in § 19-6-301(213) and an initial transfer of one hundred thousand dollars ($100,000) from the Securities Department Fund, there to be used to inform and educate the public regarding investments in securities and to pay for costs and expenses associated with conducting a stock market game for educational purposes in the state's public school system, as set out in § 23-42-213.

Arkansas Securities Act, §§ 23-42-101 et seq.

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.

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 four million dollars ($4,000,000) shall be deposited into the fund in any one (1) fiscal year.

(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.

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) 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.

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

(c) It is unlawful for a person to transact business in this state as an investment adviser or investment adviser 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, 2013, 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; and

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

(2) 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, 2013, 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, 2013;

(3) Is a "representative" of an investment adviser registered with the United States 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, 2013, and has no place of business located in this state; or

(4) Is a supervised person of an investment adviser registered with the United States Securities and Exchange Commission, but is not an investment adviser representative as defined by Rule 203A-3 of the rules and regulations of the Investment Advisers Act of 1940, 17 C.F.R. § 275, as they existed on January 1, 2013.

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 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 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 this section 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.

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;

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

(g) The insurance administrator of any state.

(ii) However, the commissioner may not:

(a) 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) 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 the 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) The commissioner may by summary order cancel a registration or application if he or she finds that any registrant or applicant:

(1) Is no longer in existence;

(2) Has ceased to do business as a broker-dealer, agent, investment adviser, or representative; or

(3) Is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after a reasonable search.

(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.

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 this section and § 23-42-304 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.

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) The offering has worked or tended to work a fraud upon purchasers or would so operate, or 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 a 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 subdivision (c)(1) 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.

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 a 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 into 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 subdivision (a)(1) of this section, with respect to the additional securities proposed to be offered.

(c)(1) With respect to a covered security under section 18(b)(4)(E) of the Securities Act of 1933, the commissioner may by rule or order require that no later than fifteen (15) days after the first sale of a covered security, the issuer:

(A) File a notice on United States Securities and Exchange Commission Form D;

(B) Submit a consent to service of process signed by the issuer; and

(C)(i) Pay 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.

(ii) The fee shall be at least one hundred dollars ($100) and no more than five hundred dollars ($500).

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

(3) Unless an issuer conducts a continuous offering and files concurrent amendments as required by subdivision (c)(2) of this section, an offering under subdivision (c)(1) of this section is effective for twelve (12) months from the date of the filing.

(d) With respect to a covered security under section 18(b)(4)(C) of the Securities Act of 1933, if the issuer's principal place of business is located in this state or purchasers of fifty percent (50%) or greater of the aggregate amount of the offering are residents of this state, the commissioner may by rule or order require the issuer to:

(1) File concurrently with the commissioner the information required to be filed with the United States Securities and Exchange Commission under section 4A(b) of the Securities Act of 1933; and

(2)(A) Except as provided in subdivision (d)(2)(B) of this section, pay 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.

(B) The fee shall be at least one hundred dollars ($100) and no more than five hundred dollars ($500).

(e) In addition to a filing required by subsection (c) or subsection (d) of this section, the commissioner may by rule or order require:

(1) The concurrent filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933 concerning a covered security under section 18(b)(3) or section 18(b)(4) of the Securities Act of 1933 as it existed on January 1, 2013; and

(2) A fee of one hundred dollars ($100) for the filing.

(f) 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 or she finds that:

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

(2) A failure to comply with this section exists.

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

Chapter 2 — ADMINISTRATION

RULE 205 INVESTIGATIONS.
[RESERVED]

RULE 209 INJUNCTION, MANDAMUS, OR OTHER ANCILLARY RELIEF.
[RESERVED]

RULE 211 DISPOSITION OF FEES.
[RESERVED]

DISPOSITION OF FINES-INVESTOR EDUCATION FUND.
RULE 213.01 INVESTOR EDUCATION PROGRAM.

(a) GENERAL. Utilizing the Investor Education Fund described in Section 23-42-213 of the Act, the Commissioner may administer an investor education program for the citizens of the State of Arkansas. The purpose of the program will be to inform and educate the public regarding investments in securities in order to help investors and potential investors evaluate their investment decisions; protect themselves from unfair, inequitable and fraudulent offerings; choose their broker-dealers, agents, and investment advisers more carefully; be alert for false or misleading advertising or other harmful practices; and know their rights as investors.

(b) GRANT PROGRAM. Utilizing the Investor Education Fund described in Section 23-42-213 of the Act, the Commissioner may administer a grant program to solicit grant proposals from public schools and non-profit organizations (Internal Revenue Code Section 501(c)(3), tax-exempt organizations) for the purpose of providing securities/investment education to teachers and students about the securities industry, securities markets, and investment decisions.

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

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

(3) Grant funds awarded may be used to procure any appropriate educational, resource, software materials and equipment consistent with the purpose of the grant program, this Rule and Section 23-42-213 of the Act.

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

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

(A) Educational need for the project;
(B) Learning objectives to be accomplished by the project;
(C) Specific description of the project;
(D) Number of students educated;
(E) Description of measurable project outcomes; and
(F) Other school resources dedicated to the project.

(6) Each grant recipient shall file a final grant report detailing the measurable project outcomes and a financial accounting of actual program expenditures.

Chapter 3 — BROKER-DEALERS AND INVESTMENT ADVISERS

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

The rules of practice and procedure to be followed in proceedings for the denial, suspension, or revocation of a broker-dealer, agent, or investment adviser application or registration are set forth in the APA and Chapter 6 of the Rules.

Chapter 6 — PRACTICE AND PROCEDURE

RULE 601.01 SCOPE OF RULES.

(a) Chapter 6 of the Rules applies in all investigations, proceedings, and rule-making conducted by the Department. The purpose of Chapter 6 is to provide guidance and direction in the procedures used by the Department to formulate orders and conduct investigations and proceedings. In connection with any particular matter, reference should also be made to any special requirements of procedure and practice that may be contained in the particular statute involved or the rules and forms adopted by the Commissioner thereunder or any relevant laws of the State of Arkansas, which special requirements are controlling.

(b) The Rules should be read in conjunction with the APA.

RULE 601.02 POWERS OF THE COMMISSIONER.

The Commissioner shall have all the powers necessary to conduct investigations and proceedings in a fair and impartial manner and to avoid unnecessary delay. The powers of the Commissioner include, but are not limited to, the following:

(a) Administer oaths and affirmations;

(b) Subpoena witnesses, documents, or records;

(c) Permit discovery by deposition or otherwise;

(d) Preside over a hearing or designate a hearing officer to preside over a hearing;

(e) Maintain order by regulating the course of the hearing and the conduct of the parties and their attorney, including the power to receive relevant and material evidence, to exclude repetitious evidence, rule upon the admissibility of evidence and offers of proof, and exclude or suspend a party's attorney from the proceedings for dilatory, obstructionist, egregious, contemptuous, or contumacious conduct;

(f) Schedule and hold prehearing conferences and conferences prior to and during the course of a hearing for purposes of settlement or simplification of issues;

(g) Consider and rule upon all procedural and other pleadings and motions appropriate in a proceeding, including petitions to add a party or intervenor;

(h) Recuse for bias or conflict of interest on a motion made by a party and appoint a new hearing officer in his place;

RULE 602.02 PROCEEDINGS AND HEARINGS.

(c) TYPES OF HEARINGS. The Department shall engage in two (2) forms of hearings:

(1) Informal Hearings or Conferences. Informal hearings or conferences conducted on an informal basis, at the direction of the Commissioner or by mutual consent of the parties, may be held in person at a specified time and place or with the Commissioner by telephone. Informal hearings or conferences may be held upon reasonable notice to all parties, prior to or subsequent to a scheduled formal hearing, or in circumstances where no pleading was filed and no formal hearing has yet been scheduled, or during a recess of a formal hearing. Issues that may be determined at an informal hearing or conference include the following:

(A) Clarification and simplification of the issues as to pleadings filed;

(B) Exchange of witnesses and exhibit lists and copies of exhibits;

(C) Stipulations, admissions of fact, and the contents, authenticity, and admissibility into evidence of documents;

(D) Matters of which official notice may be taken;

(E) Issues relating to witnesses and exhibits;

(F) Summary disposition of any and all issues;

(G) Resolution of document production issues or disputes;

(H) Amendments to pleadings;

(I) Need for formal action by the Department;

(J) Possibility of settlement among the parties; and

(K) Such other matters as the Commissioner determines to be within the scope of such an informal hearing or conference.

RULE 604.13 ORDERS.

(e) Nothing shall prohibit or restrict informal disposition of a pleading or order by stipulation, settlement, consent, or default in lieu of a formal or informal hearing on the matter or in lieu of sanctions imposed. An order shall be entered if administrative proceedings have been instituted or a pleading filed. All orders shall be public.

Chapter 42
Arkansas Securities Act

Publisher's Notes. Acts 1959, No. 254, § 29, provided, in part, that all effective registrations under prior law, all administrative orders relating to such registrations, and all conditions imposed upon such registrations remain in effect so long as they would have remained in effect if the act had not been passed and that they would be considered to have been filed, entered, or imposed under the act, but are governed by prior law. The section further provided for the judicial review of all administrative orders for which review proceedings had not been instituted prior to the effective date of the act; and that prior law would govern certain suits, actions, etc., which were pending or initiated on the basis of facts or circumstances occurring before the effective date of the act, and would apply to certain offers or sales made within one year after the effective date after the act.

Effective Dates. Acts 1997, No. 173, § 27: April 11, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the enactment of the National Securities Markets Improvement Act of 1996 on October 11, 1996 effectively preempted portions of the Arkansas Securities Act, and that because of such enactment, portions of the Arkansas Securities Act are in conflict with federal law. That in order to protect the Arkansas citizens who invest in and are affected by the securities markets, it is necessary that regulation under the Arkansas Securities Act be uniform with both federal law and the laws of other states. It is necessary that this protection begin immediately, except for the portions of the Arkansas Securities Act pertaining to investment advisers which should begin on April 11, 1997. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval except for the portions hereof pertaining to investment advisers, which portions shall be in full force and effect from and after April 11, 1997."

Research References

Ark. L. Rev.

Arkansas Securities Act of 1959, 13 Ark. L. Rev. 323.

Investment Securities: Article VIII, 16 Ark. L. Rev. 98.

Securities Regulation of Real Estate Programs, 27 Ark. L. Rev. 651.

U. Ark. Little Rock L.J.

Note: A Definition of "Investment Contracts" and Equitable Defenses to Suit for Rescission for Nonregistration Under the Arkansas Securities Act, 1 U. Ark. Little Rock L.J. 366.

Bell, Real Estate and Unconventional Securities Concepts Under the Arkansas Securities Act, 3 U.

Ark. Little Rock L.J. 75.

Note, Securities Law — Partnerships — Adoption of an Expansive Test for Defining a Security.Casali v. Schultz, 292 Ark. 602, 732 S.W.2d 836 (1987), 11 U. Ark. Little Rock L.J. 369.

Case Notes

Constitutionality.
Purpose.
Bank Commissioner.
Commodity Options.
Compliance with Chapter.
Damages.
Securities.

Constitutionality.

Person not engaged in interstate commerce cannot attack Blue Sky Law on ground that it is a burden on interstate commerce. Standard Home Co. v. Davis, 217 F. 904 (E.D. Ark. 1914)(decision under prior law).

State may inquire into the condition of corporations without violating the provisions of the Fourth and Fifth Amendments of the United States Constitution. Standard Home Co. v. Davis, 217 F. 904 (E.D. Ark. 1914)(decision under prior law).

Purpose.

The Arkansas Securities Act was passed primarily for the purpose of protecting members of the public who might invest in offerings by promoters of securities. McMullan v. Molnaird, 24 Ark. App. 126, 749 S.W.2d 352 (1988).

Bank Commissioner.

A city bank, which objected to state banking board's grant of application for a charter for a new bank in the city, was without standing to complain that the Bank Commissioner acted unlawfully in assuming supervision and enforcement of the Arkansas Securities Act with respect to stock in the proposed bank. Bank of Glenwood v. Arkansas State Banking Bd., 260 Ark. 677, 543 S.W.2d 761 (1976).

Commodity Options.

The Arkansas Securities Act does not govern commodity options since that field has been preempted by the federal government. International Trading, Ltd. v. Bell, 262 Ark. 244, 556 S.W.2d 420 (1977), cert. denied, 436 U.S. 956, 98 S. Ct. 3068, 57 L. Ed. 2d 1120 (1978).

Compliance with Chapter.

This chapter will not be construed to permit an issuer or dealer to solicit sales at will in Arkansas without complying with this chapter so long as an act entirely within his control, such as placing the proceeds in a bank account or issuing stock certificates, was performed at or from another state. Smith v. State, 266 Ark. 861, 587 S.W.2d 50, 1979 Ark. App. LEXIS 378 (Ct. App. 1979), cert. denied, Smith v. Arkansas, 445 U.S. 905, 100 S. Ct. 1082, 63 L. Ed. 2d 321 (1980).

A promoter cannot avoid the requirements of the Securities Act by simply labeling or calling his enterprise a joint venture when in fact such transaction was something different. Smith v. State, 266 Ark. 861, 587 S.W.2d 50, 1979 Ark. App. LEXIS 378 (Ct. App. 1979), cert. denied, Smith v. Arkansas, 445 U.S. 905, 100 S. Ct. 1082, 63 L. Ed. 2d 321 (1980).

Damages.

This chapter tracks federal law and, therefore, if the damages awarded are good under the federal securities acts, they also are good under this chapter. Farley v. Henson, 11 F.3d 827 (8th Cir. 1993).

Securities.

State Securities Commissioner did not have a statutory basis to seek an injunction to prevent defendants from performing certain acts in regard to carrying on their business of tutoring applicants for license as broker-dealers under the rules of the Municipal Securities Rulemaking Board since none of the acts are in connection with the offer, sale or purchase of any security, directly or indirectly. Bell v. Investment Training Inst., Inc., 271 Ark. 663, 609 S.W.2d 919 (1981).

Transactions whereby buyer exercised option to purchase 100% of stock in car paint business involved the sale and purchase of securities under the terms of the Arkansas Securities Act. Cole v. PPG Indus., Inc., 680 F.2d 549 (8th Cir. 1982).

Cited: Vanderboom v. Sexton, 294 F. Supp. 1178 (W.D. Ark. 1969); Vanderboom v. Sexton, 422 F.2d 1233 (8th Cir. Ark. 1970); Long v. Mabry, 250 Ark. 947, 470 S.W.2d 319 (1971); Lane v. Midwest Bancshares Corp., 337 F. Supp. 1200 (E.D. Ark. 1972); Schultz v. Rector-Phillips-Morse, Inc., 261 Ark. 769, 552 S.W.2d 4 (1977); Ballentine v. Ballentine, 275 Ark. 212, 628 S.W.2d 327 (1982); J & C Inv. v. Mid-South Drilling, Inc., 286 Ark. 320, 691 S.W.2d 853 (1985).

Subchapter 1 — General Provisions

Effective Dates. Acts 1959, No. 254, § 30: July 1, 1959.

Acts 1961, No. 248, § 11: July 1, 1961.

Acts 1971, No. 131, § 9: Feb. 22, 1971. Emergency clause provided: "It is hereby found and

determined by the General Assembly that the field of securities has become extremely complex and is in need of stricter regulation to assure that the purchasers of securities receive the protection that they deserve; that it is necessary for the Securities Commissioner to have the authority to immediately issue a stop order denying, suspending or revoking the effectiveness of a registration statement under certain conditions; that the penalty for violation of the Securities Act should be increased to discourage further violations and to curtail the total number of violations; and that only by the immediate passage of this Act can this be achieved. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Act 1973, No. 47, § 20: Feb. 1, 1973. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that the field of securities is in need of stricter regulation to assure the public that they receive the protection they deserve; that the filing fee for filing a registration statement is inadequate; that there is a need for immediate clarification of certain portions of the Securities Act; that the penalty for violation of the Securities Act should be increased to discourage further violations and to deter the total number of violations and that only by the immediate passage of this Act can this be declared; therefore an emergency is declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1975, No. 697, § 4: Apr. 3, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing laws determining the interrelationship between the Arkansas Securities Act and the Arkansas Savings and Loan Act are unclear; and that the Arkansas Securities Commissioner acting as Securities Commissioner and also as Arkansas Savings and Loan Supervisor must have a clarification of his authority in each area; and that therefore an emergency exists and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 844, § 16: Apr. 4, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that the filing fees are inadequate; that exemptions are necessary for certain types of securities; that there is a need for immediate clarification of certain portions of the Securities Act; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1977, No. 493, § 21: Mar. 18, 1977. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that securities transactions always involve a relationship of trust and usually involve fiduciary obligations. This relationship facilitates the cover-up of felonies committed under the securities laws. This act being necessary for the protection of the health, safety and welfare of the citizens of this State, it is effective from and after its passage and approval, and it applies to all schemes or courses of conduct continuing past its effective date; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1977, No. 806, § 25: Mar. 28, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing laws determining the authority of the Arkansas Securities Commissioner provide a duplicity of regulation which creates undue burden upon mortgage loan companies and loan brokes while at the same time not being in the public interest, and it is found that this Act will eliminate much of such duplicity and provide adequate protection of the public; therefore, an emergency exists and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 836, § 29: Mar. 25, 1983. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that the ability of the State of Arkansas to become part of a national Central Registration Depository System will be beneficial to the citizens of the State and applicants for registration and provide substantial cost savings to the securities industry and that Arkansas' entry into the System was scheduled to be soon. This Act being necessary for the additional protection and savings for the citizens of this State which will be afforded by entry into the System, it is effective from and after its passage and approval; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1983, No. 885, § 4: Mar. 28, 1983. Emergency clause provided: "It is found and declared that the exclusion of stock splits, reverse stock splits, or changes in par value from the application of the Arkansas Securities Act is a matter of uncertainty which requires immediate clarification. This Act is immediately necessary in order to facilitate the execution of such reclassifications of securities without registration or exemption under the Arkansas Securities Act. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 776, § 5: Apr. 7, 1987. Emergency clause provided: "It has been found and it is declared by the General Assembly that an urgent need exists to define the term "farm cooperative" in order to clarify which organizations are eligible for an exemption from registration under the Arkansas Securities Act (Act No. 254 of the Acts of Arkansas of 1959), as amended, of certain securities issued by farm cooperatives, and that immediate passage of this Act is necessary to provide such clarification. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1993, No. 1147, § 1705: Jan. 1, 1994.

Research References

Am. Jur. 69 Am. Jur. 2d, Secur. Reg. St., § 1 et seq.

C.J.S. 79 C.J.S. Supp., Secur. Reg., § 188 et seq.

U. Ark. Little Rock L.J.

Survey—Securities, 11 U. Ark. Little Rock L.J. 255.

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.

Research References

Ark. L. Notes.

Goforth, Treatment of LLC Membership Interests Under the Arkansas Securities Act, 1998 Ark. L.

Notes 33.

Case Notes

Cited: Foster v. National Union Fire Ins. Co., 902 F.2d 1316 (8th Cir. 1990); Hamby v. Clearwater Consulting Concepts, LLLP, 428 F. Supp. 2d 915 (E.D. Ark. 2006).

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; or

(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 (a)(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 § 23-42-504;

(c) Effecting transactions in covered securities exempted by:

(1) Section 18(b)(3) of the Securities Act of 1933, concerning sales to qualified purchasers;

(2) Section 18(b)(4)(D) of the Securities Act of 1933, concerning sales of securities exempt under Section 3(a) of the Securities Act of 1933; or

(3) Rule or order of the commissioner;

(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 the 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) The individual is not ineligible to register with this state for any reason;

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

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

(e)(1) The transaction is effected by the individual:

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

(B) 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.

(2) For purposes of subdivision (1)(B)(ii)(*e*)(*1*)(*B*) 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; 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.

(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) "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 (2)(C)(ii)(*b*)-(*h*) of this section.

(b) As used in this subdivision (2)(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;

(3)(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;

(4) "Commissioner" means the Securities Commissioner;

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

(6)(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;

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

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

(9) "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 (9)(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;

(10) "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;

(11) "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;

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

(13) "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;

(14) "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 for compensation:

(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;

(15)(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 (15) 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 an exchange and partly for cash;

(16) "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;

(17)(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 (17)(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; and

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

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; 2013, No. 460, §§ 1, 2, 3.

Publisher's Notes. Acts 1993, No. 1147, § 1809, provided:

"All laws and parts of laws in conflict with this act are hereby repealed."

Amendments. The 2009 amendment added (2) and (11).

The 2011 amendment by No. 338 rewrote (3).

The 2011 amendment by No. 339 inserted (1)(A)(ii); and substituted "life settlement contracts" for "viatical contracts" or variant throughout (10)(E) and in (17)(A)(xiii).

The 2013 amendment substituted "or" for "and" at the end of (1)(A)(i); rewrote (1)(B)(i)(*c*); and added "for compensation" at the end of (14).

U.S. Code. The Securities Act of 1933, referred to in this section, is codified as 15 U.S.C. § 77a et seq. The Securities Exchange Act of 1934 is codified as 15 U.S.C. § 78a et seq. The Public Utility Holding Company Act of 1935 was codified as 15 U.S.C. § 79 et seq. [repealed]. Its replacement is codified at 42 U.S.C. § 16451 et seq. The Investment Company Act of 1940 is codified as 15 U.S.C. § 80a-1 et seq.

The Investment Company Act of 1940, referred to in this section, is codified as 15 U.S.C. § 80a-1 et seq. The Investment Advisers Act of 1940 is codified as 15 U.S.C. § 80b-1 et seq. The Public Utility Holding Company Act of 1935 was codified as 15 U.S.C. § 79 et seq. [repealed]. Its replacement is codified at 42 U.S.C. § 16451 et seq. The Securities Act of 1933 is codified as 15 U.S.C. § 77a et seq. The Securities Exchange Act of 1934 is codified as 15 U.S.C. § 78a et seq.

Research References

ALR.

State Regulation of Viatical Life Insurance Programs, Viatical Settlements, and Viatical Investments. 28 A.L.R.6th 281.

U. Ark. Little Rock L.J.

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Survey of Legislation, 2001 Arkansas General Assembly, Regulated Industries, 24 U. Ark. Little Rock L. Rev. 595.

Case Notes

Agents.
Broker-Dealers.
Issuers.
Offer or Offer to Sell.

Sale.
Securities.

Agents.

In effecting or attempting to effect purchases or sales of securities an individual is an agent, though issuer neither employs nor asks the person to solicit purchasers, where issuer is aware of promotional activities and does not attempt to curtail them. Quick v. Woody, 295 Ark. 168, 747 S.W.2d 108 (1988).

Former employer did not violate § 23-42-106(c) by gathering information and answering questions about an investment opportunity offered by a purchaser of his company; his conduct did not rise to the level of an overt promotion because he did not participate in an investment meeting, and bonus money offered by the former employer was not earmarked for investment purposes. Therefore, he was not acting as an agent of the new company. Bristow v. Mourot, 99 Ark. App. 386, 260 S.W.3d 733 (2007).

Bond counsel who prepared disclosure documents for the bond underwriter was not shown to have materially aided in the sale of the bonds such as to be liable as the seller's agent under § 23-42-106(c) because there was no proof to establish that bond counsel represented the seller in the seller's effecting or attempting to effect purchases or sales of the bonds or that bond counsel supervised individuals who were effecting or attempting to effect purchases or sales of the bonds for the seller. First Ark. Bank & Trust v. Gill Elrod Ragon Owen & Sherman, P.A., 2013 Ark. 159, — S.W.3d — (2013).

Broker-Dealers.

A broker-dealer is one engaged in the business of effecting transactions in securities, according to the definition of this section and an isolated transaction does not constitute one a broker-dealer. Shepherd v. State, 246 Ark. 744, 439 S.W.2d 627 (1969).

Issuers.

Under this section, there is not considered to be any issuer with respect to certificates of interest or participation in oil, gas, or mining titles or leases, or in payments out of production from such titles or leases. Shepherd v. State, 246 Ark. 744, 439 S.W.2d 627 (1969).

Offer or Offer to Sell.

Because an option to purchase a security is an interest in the security, a corporation, by agreeing to grant an individual an option to purchase stock, made the individual an offer and, for the purposes of the then existing version of § 23-42-504(a)(9), all subsequent payments to escrow account and other subsequent transactions between the parties and involving the exercise of the option were "transactions pursuant to an offer" as contemplated by former subdivision (10)(B) of this section. Cole v. PPG Indus., Inc., 680 F.2d 549 (8th Cir. 1982).

Sale.

Sale of a unit in a partnership constituted the sale of a security within the meaning of this section. Casali v. Schultz, 292 Ark. 602, 732 S.W.2d 836 (1987).

Securities.

The agreement between the parties to form a nonprofit corporation, from which they each expected to make a profit, was not a security. Long v. Mabry, 250 Ark. 947, 470 S.W.2d 319 (1971).

Where interests in an apartment complex were sold to investors as a "tax shelter," but where the risk

of loss of money actually invested was placed squarely on the investors, who were thereby mere passive contributors of risk capital, the joint venture interests constituted securities. Schultz v. Rector-Phillips-Morse, Inc., 261 Ark. 769, 552 S.W.2d 4 (1977).

Five elements determine whether a given transaction involves the sale of a "security": (1) the investment of money or money's worth; (2) in a venture; (3) the expectation of some benefit to the investor as a result of the investment; (4) the contribution towards the risk capital of the venture; and (5) the absence of direct control over the investment or policy. Smith v. State, 266 Ark. 861, 587 S.W.2d 50, 1979 Ark. App. LEXIS 378 (Ct. App. 1979), cert. denied, Smith v. Arkansas, 445 U.S. 905, 100 S. Ct. 1082, 63 L. Ed. 2d 321 (1980); First Fin. Fed. Sav. & Loan Ass'n v. E.F. Hutton Mtg. Corp., 652 F. Supp. 471 (W.D. Ark. 1987), aff'd, 834 F.2d 685 (8th Cir. Ark. 1987); Carder v. Burrow, 327 Ark. 545, 940 S.W.2d 429 (1997).

A bank's 100% participation interest in an unsecured note held by another bank was not a security under subdivision (12) of this section. Union Nat'l Bank v. Farmers Bank, 786 F.2d 881 (8th Cir. 1986).

Mortgages purchased by savings and loan association held not to constitute securities. First Financial Federal Sav. & Loan Asso. v. E.F. Hutton Mortg. Corp., 834 F.2d 685 (8th Cir. Ark. 1987).

Regardless of the label on a document, the underlying economic substance of a security is an arrangement where the investor is a mere passive contributor of risk capital to a venture in which he has no direct or managerial control. Casali v. Schultz, 292 Ark. 602, 732 S.W.2d 836 (1987).

Certificates of interest or participation in oil leases are included in the legislative definition of securities required to be registered. McMullan v. Molnaird, 24 Ark. App. 126, 749 S.W.2d 352 (1988).

Loan participations held not securities within the meaning of this section. Grand Prairie Sav. & Loan Ass'n v. Worthen Bank & Trust Co., 298 Ark. 542, 769 S.W.2d 20 (1989).

The sale of a fractional percentage of a "working interest" in an oil lease constitutes the sale of a security. Hogg v. Jerry, 299 Ark. 283, 773 S.W.2d 84 (1989).

Stock involved in the alleged merger of two companies was not a security within the meaning of this section. Cook v. Wills, 305 Ark. 442, 808 S.W.2d 758 (1991).

Cited: Selig v. Novak, 256 Ark. 278, 506 S.W.2d 825 (1974); International Trading, Ltd. v. Bell, 262 Ark. 244, 556 S.W.2d 420 (1977); Wilkins v. M & H Fin., Inc., 476 F. Supp. 212 (E.D. Ark. 1979); Graham v. Kane, 264 Ark. 949, 576 S.W.2d 711 (1979); Hardcastle v. State, 25 Ark. App. 157, 755 S.W.2d 228 (1988).

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 or her 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.

Research References

U. Ark. Little Rock L.J.

Legislation of the 1983 General Assembly, Business Law, 6 U. Ark. Little Rock L.J. 607.

Case Notes

General Partnerships.

General Partnerships.

The mere fact that an investment takes the form of a general partnership does not insulate it from the reach of this chapter. Casali v. Schultz, 292 Ark. 602, 732 S.W.2d 836 (1987).

Cited: Billings v. Investment Trust, 309 F.2d 681 (8th Cir. 1962).

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), subsection (b), subsection (c), or subsection (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.

(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. 493, § 12; 1979, No. 754, § 7; A.S.A. 1947, § 67-1255; Acts 1997, No. 173, § 3.

Meaning of "Arkansas Criminal Code". See note to § 5-1-101.

Research References

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Note, Promissory Demand Notes: Investor Protection or Peril, Arthur Young & Co. v. Reves, 42 Ark. L. Rev. 1075.

Case Notes

Constitutionality.
Included Offenses.

Constitutionality.

Former act that provided for punishment of corporation by fine did not constitute cruel and inhuman punishment. Standard Home Co. v. Davis, 217 F. 904 (E.D. Ark. 1914)(decision under prior law).

Included Offenses.

Conviction of a person charged under subsection (a) of this section with violation of § 23-42-501, who defended on the ground that he had obtained an exemption for the security sold under § 23-42-504(a), was not sustained by evidence that the defendant sold the security to persons who were not on the list of offerees filed with the securities commissioner in compliance with a rule of the commissioner, such sales being violations only of subsection (b) of this section, which was not an included offense within subsection (a) of this section. Gaskin v. State, 244 Ark. 541, 426 S.W.2d 407 (1968).

Cited: Gaskin v. State, 248 Ark. 168, 450 S.W.2d 557 (1970); Lane v. Midwest Bancshares Corp., 337 F. Supp. 1200 (E.D. Ark. 1972); Hardcastle v. State, 25 Ark. App. 157, 755 S.W.2d 228 (1988).

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.

Case Notes

Statute of Limitations.

Statute of Limitations.

The evidence of defendant's actions in offering stock in a company that he founded on a fraudulent premise constituted the "last overt act in the furtherance of a scheme or course of conduct," which culminated in the sale of the stock and tolled the five-year statute of limitations. Hunter v. State, 330 Ark. 198, 952 S.W.2d 145 (1997).

Cited: Gaskin v. State, 248 Ark. 168, 450 S.W.2d 557 (1970); Lane v. Midwest Bancshares Corp., 337 F. Supp. 1200 (E.D. Ark. 1972); Hardcastle v. State, 25 Ark. App. 157, 755 S.W.2d 228 (1988).

23-42-106. Civil liability.

(a)(1) A person is liable to a buyer of a security if the person offers or sells the security:

(A) In violation of § 23-42-301, § 23-42-212(b), § 23-42-501(1) or (2), a rule or order of the Securities Commissioner under § 23-42-502 which requires the affirmative approval of sales literature before it is used, or any condition imposed under § 23-42-403(d), §

23-42-404(g), or § 23-42-404(i); or

(B) By means of an untrue statement of a material fact or a failure to state a material fact necessary in order to make the statement made, in the light of circumstances under which it is made, not misleading, if the buyer does not know of the untruth or omission and meets the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

(2) In a successful action under subdivision (a)(1) of this section, the buyer may recover costs and reasonable attorney's fees plus:

(A) Upon tender of the security, the consideration paid for the security and interest at six percent (6%) per year from the date of payment, less the amount of any income received from owning the security; or

(B)(i) Damages if the buyer no longer owns the security.

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

(b)(1) A 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 an untrue statement of a material fact or a failure 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, is liable to a seller of the security if the seller does not know of the untruth or omission and meets the burden of proof that the seller did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

(2)(A) In a successful action under subdivision (b)(1) of this section, the seller may recover costs and reasonable attorney's fees plus:

(i) Upon tender of the consideration the seller received in a transaction under subdivision (b)(1) of this section:

(a) The security; or

(b) The security plus any income or other distributions in cash or other property received directly or indirectly by the purchaser; or

(ii)(a) Damages together with interest at six percent (6%) per year from the date of purchase.

(b) Damages may include out-of-pocket losses or losses for the benefit of the bargain.

(B) Notice of willingness to pay the amount specified in exchange for the security is a valid tender under subdivision (b)(2)(A)(i) of this section pending acceptance of the tender by the purchaser.

(c)(1) A person that directly or indirectly receives consideration for providing investment advice to another party:

(A) In violation of § 23-42-301 is liable to the other party for the consideration paid for the advice, interest at the rate of six percent (6%) per year from the date of payment, costs, and a reasonable attorney's fee; or

(B) By employing a device, scheme, or artifice to defraud the other party or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit upon the other party is liable to the other party for:

(i) The consideration paid for the advice plus interest at the rate of six percent (6%) per year from the date of payment;

(ii) Damages caused by the fraudulent or deceitful conduct less the amount of any income received as a result of the fraudulent or deceitful conduct;

(iii) Costs; and

(iv) A reasonable attorney's fee.

(2) Subdivision (c)(1) of this section does not apply to a broker-dealer or its agents if:

(A) The investment advice provided is solely incidental to transacting business as a broker-dealer; and

(B) No special compensation is paid for the investment advice.

(d)(1) A secondary offender has joint and several liability with a right of contribution for the actions of a primary offender unless the secondary offender satisfies the burden of proving that the secondary offender did not know, and in the exercise of reasonable care could not have known, of the existence of the actions of a primary offender that give rise to liability under this section.

(2) As used in subdivision (d)(1) of this section:

(A) "Primary offender" means a person that is liable under subsection (a), subsection (b), or subsection (c) of this section; and

(B) "Secondary offender" means:

(i) A person that controls a primary offender;

(ii) A partner, officer, or director of a primary offender and any other person occupying a similar status or performing a similar function with respect to the primary offender;

(iii) An employee of a primary offender who materially aids in the actions of a primary offender that give rise to liability under this section; and

(iv) A broker-dealer, agent, investment adviser, or investment adviser representative that materially aids in the actions of a primary offender that give rise to liability under this section.

(e) A tender required by this section may be made at any time before entry of judgment.

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

(g) A person may not sue under this section unless the action is instituted within three (3) years after the violation occurred.

(h) A person may not sue under this section:

(1) If the buyer received a written offer, before suit and at a time when he or she 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 or she 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 or she did not own the security unless he or she rejected the offer in writing within thirty (30) days of its receipt.

(i) A person who has made or engaged in the performance of a contract in violation of this chapter or any rule or order of the commissioner, or who has acquired any purported right under the contract with knowledge of the facts by reason of which its making or performance was in violation may not sue 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; 2013, No. 460, § 4.

Amendments. The 2013 amendment rewrote the section.

Research References

Ark. L. Rev.

Note, Promissory Demand Notes: Investor Protection or Peril, Arthur Young & Co. v. Reves, 42 Ark. L. Rev. 1075.

U. Ark. Little Rock L.J.

Paulson, Survey of Arkansas Law: Business Law, 2 U. Ark. Little Rock L.J. 161.

Survey of Arkansas Law: Business Organizations, 6 U. Ark. Little Rock L.J. 83.

Survey—Securities, 11 U. Ark. Little Rock L.J. 255.

Annual Survey of Caselaw, Business Law, 25 U. Ark. Little Rock L. Rev. 885.

Case Notes

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Construction.

This section is remedial, not punitive, and is to be liberally construed in favor of investors. Robertson v. White, 635 F. Supp. 851 (W.D. Ark. 1986).

Subsection (c) expressly creates two types of secondary liability for securities fraud: control person liability and aiding and abetting liability. Arthur Young & Co. v. Reves, 937 F.2d 1310 (8th Cir. 1991), cert. denied, Ernst & Young v. Reves, 502 U.S. 1092, 112 S. Ct. 1165 (1992), aff'd, Reves v. Ernst & Young, 507 U.S. 170, 113 S. Ct. 1163 (1993).

Purpose.

It was not the intent of the Arkansas Securities Act to allow the law to be used by sophisticated brokers and dealers for promotional projects, thereby reaping consultant benefits, sales commissions,

and other benefits, without fully complying with the requirements of the law. Graham v. Kane, 264 Ark. 949, 576 S.W.2d 711 (1979).

Agent.

Former employer did not violate subsection (c) of this section by gathering information and answering questions about an investment opportunity offered by a purchaser of his company; his conduct did not rise to the level of an overt promotion because he did not participate in an investment meeting, and bonus money offered by the former employer was not earmarked for investment purposes. Therefore, he was not acting as an agent of the new company. Bristow v. Mourot, 99 Ark. App. 386, 260 S.W.3d 733 (2007).

Bond counsel who prepared disclosure documents for the bond underwriter was not shown to have materially aided in the sale of the bonds such as to be liable as the seller's agent under subsection (c) of this section because there was no proof to establish that bond counsel represented the seller in the seller's effecting or attempting to effect purchases or sales of the bonds or that bond counsel supervised individuals who were effecting or attempting to effect purchases or sales of the bonds for the seller. First Ark. Bank & Trust v. Gill Elrod Ragon Owen & Sherman, P.A., 2013 Ark. 159, — S.W.3d — (2013).

Applicable Law.

Contract for sale of securities made in Arkansas involving the use of the mails to clear check given by buyer to seller in the transaction was governed both by federal rule and by the civil liability created under this section for purposes of action wherein buyer sought recovery against seller under both for alleged fraud in the transaction. Lane v. Midwest Bancshares Corp., 337 F. Supp. 1200 (E.D. Ark. 1972).

A broad-scale, uninsured, unregulated investment program, such as the sale of co-op demand notes, requires a measure of protection for the public such as might be obtained through registration, with civil liability imposed for fraud or misleading statements, the failure to submit oneself to registration, and oversight; therefore, the purchasers of co-op demand notes had a cause of action where they alleged that they were defrauded by being told that the corporation's financial picture was healthier than it was. Robertson v. White, 633 F. Supp. 954 (W.D. Ark. 1986). But see Reves v. Ernst & Young, 494 U.S. 56, 110 S. Ct. 945, 108 L. Ed. 2d 47 (1990), rehearing denied, 494 U.S. 1092, 110 S. Ct. 1840, 108 L. Ed. 2d 968 (1990).

Burden of Proof.

The fact that the co-op sold unregistered securities makes a prima facie case against the directors; the plaintiffs do not have to prove that the directors knowingly and willfully trespassed the law. Robertson v. White, 635 F. Supp. 851 (W.D. Ark. 1986).

Upon the showing of a sale of a security, the burden shifts to the seller to show that the security was either registered or exempt from the Arkansas Securities Act, or that the buyer is estopped from claiming civil damages. McMullan v. Molnaird, 24 Ark. App. 126, 749 S.W.2d 352 (1988).

Contribution.

The district court's error in not submitting accounting firm's contribution claim against its client's Board of Directors to the jury, even though the firm might have had a colorable claim for contribution against the directors, created no miscarriage of justice as it was clear that much of the blame for the fraud in the case was properly placed on the firm. Arthur Young & Co. v. Reves, 937 F.2d 1310 (8th Cir. 1991), cert. denied, Ernst & Young v. Reves, 502 U.S. 1092, 112 S. Ct. 1165 (1992), aff'd, Reves v. Ernst & Young, 507 U.S. 170, 113 S. Ct. 1163 (1993).

Control of Sale.

Bond counsel who prepared disclosure documents for the bond underwriter was not shown to have controlled the sale of the bonds and was not liable to the purchasers under subsection (c) of this section because there was no proof that bond counsel directed the management and policies of the seller. First Ark. Bank & Trust v. Gill Elrod Ragon Owen & Sherman, P.A., 2013 Ark. 159, — S.W.3d — (2013).

Disclosures, Misstatements, Etc., of Material Facts.

Plaintiff's omission to disclose the existence of liabilities which did not appear on the balance sheet amounted to an omission to state a material fact. Lane v. Midwest Bancshares Corp., 337 F. Supp. 1200 (E.D. Ark. 1972).

Notwithstanding the arm's length nature of the transaction, plaintiff was under a duty not to intentionally or negligently make false representations to defendant with respect to material facts and not to intentionally or negligently fail to disclose material facts to defendant. Lane v. Midwest Bancshares Corp., 337 F. Supp. 1200 (E.D. Ark. 1972).

Where bonds given by two defendants had no value and one of the defendants had knowledge of this fact but represented the bonds to be as good as gold and that he wanted to purchase them from the second defendant, who he alleged had furnished them when, in fact, he had furnished them himself, the first defendant was liable under the securities act for the misrepresentation. Mitchell v. Beard, 256 Ark. 926, 513 S.W.2d 905 (1974).

Where buyer was found to have been the moving party when he exercised option to buy 100% of stock, and he did so against the advice of his accountant and even certain of issuer's employees, buyer failed to demonstrate that he purchased the securities "by means of" any material misstatements on issuer's part. Cole v. PPG Indus., Inc., 680 F.2d 549 (8th Cir. 1982).

Misrepresentations or omissions under the Arkansas blue-sky law are actionable if either intentionally or negligently made. F & M Bank v. Hamilton Hotel Partners Ltd. Partnership, 702 F. Supp. 1417 (W.D. Ark. 1988).

Duty to Register Securities.

Since the law of this state imposes an absolute duty on directors to register securities prior to sale, blame for not registering securities cannot be shifted to the securities department investigators and enforcers. Robertson v. White, 635 F. Supp. 851 (W.D. Ark. 1986).

Ignorance of a duty to register securities, or to procure their exemption, can in no way excuse the failure to do so; the only conceivable excuse under the "lack of knowledge" defense would be if the director affirmatively believed that the securities were registered, and even then, this section demands that such mistaken knowledge be not the product of negligence, and the director bears the burden of proving that he was not so negligent. Robertson v. White, 635 F. Supp. 851 (W.D. Ark. 1986).

Investment company and related entities were not entitled to summary judgment on the investor's claim under the Arkansas Securities Act, § 23-42-101 et seq., because an issue remained concerning whether or not the securities at issue actually met the requirements for exemption under federal law. Hamby v. Clearwater Consulting Concepts, LLLP, 428 F. Supp. 2d 915 (E.D. Ark. 2006).

Investor's motion for summary judgment on the issue of defendants' liability for failure to register under the Arkansas Security Act, § 23-42-101 et seq. was denied because there were issues remaining concerning whether or not defendants were exempt from the state registration as a "covered security"

under federal law; the fact that defendants did not file a Federal Form D did not, by itself, preclude defendants from asserting that the securities they sold were exempt. Hamby v. Clearwater Consulting Concepts, LLLP, 428 F. Supp. 2d 915 (E.D. Ark. 2006).

Evidence.

Activities supported finding that defendant materially aided in the sale of securities. Quick v. Woody, 295 Ark. 168, 747 S.W.2d 108 (1988).

Accounting firm materially aided in sale of demand notes, where (1) demand notes were sold by means of untrue statements or omissions of material facts based on the firm's audit; (2) the buyers did not know of the untrue statments or the omissions; (3) the untrue statements or the omissions originated with the firm; (4) the firm knew that the statements were being communicated to the buyers, and that they were material, being of the kind and nature that a reasonable person would foreseeably rely on; and (5) the firm knew the statements were false when it made them. Arthur Young & Co. v. Reves, 937 F.2d 1310 (8th Cir. 1991), cert. denied, Ernst & Young v. Reves, 502 U.S. 1092, 112 S. Ct. 1165 (1992), aff'd, Reves v. Ernst & Young, 507 U.S. 170, 113 S. Ct. 1163 (1993).

Evidence held sufficient to show that a transaction between the plaintiff and a corporation was an ordinary secured commercial loan between the parties, not the sale of a security for the purposes of establishing liability under this section. Carder v. Burrow, 327 Ark. 545, 940 S.W.2d 429 (1997).

Investors claimed that the notes sold by a trader to the investors were securities and a broker-dealer helped the trader by providing an avenue for further investing the funds the trader had procured from the investors; however, there was nothing in the complaint alleging that the broker-dealer aided, assisted, or was in any way involved in the trader's sale of the promissory notes. Because the complaint was devoid of any allegations which might establish the broker-dealer materially aided the trader's sale of the promissory notes, the district court correctly concluded the investors failed to state a claim against the broker-dealer for a violation of this section. Benton v. Merrill Lynch & Co., 524 F.3d 866 (8th Cir. 2008).

Jurisdiction.

In an action against alleged illegal sale of securities based primarily upon allegations of fraud seeking cancellation of other instruments, contracts and restitution, the equity jurisdiction was properly assumed and exercised, even though the lower court might have had concurrent jurisdiction and some of the relief sought as incident to the action might have been of a purely legal nature. Titan Oil & Gas, Inc. v. Shipley, 257 Ark. 278, 517 S.W.2d 210 (1975).

Liability of Partners, Officers, etc.

A defendant was not relieved, by taking over the indemnity from another defendant, from civil liability under the Securities Act for fraud in his own misrepresentation as to the value of worthless bonds. Mitchell v. Beard, 256 Ark. 926, 513 S.W.2d 905 (1974).

A partner who had made misrepresentations concerning the value of corporate bonds given for the purchase of real estate was not released from statutory liability under the Arkansas Securities Act by the release of the second partner from liability to reimburse the sellers of the real estate if the bonds were dishonored. Mitchell v. Beard, 256 Ark. 926, 513 S.W.2d 905 (1974).

The provision of this section that an employee, broker or agent must materially aid in the sale before he becomes liable is not applicable to partners. Mitchell v. Beard, 256 Ark. 926, 513 S.W.2d 905 (1974).

In an action against illegal sale of securities seeking contributions from vice president, the vice president sustained burden of proving that he did not know, and in exercise of reasonable care could not

have known, of the existence of the facts by reason of which their liability was alleged to exist. Titan Oil & Gas, Inc. v. Shipley, 257 Ark. 278, 517 S.W.2d 210 (1975).

One cannot delegate responsibility to his lawyer when a securities violation is alleged; one doing so is liable and is left with an action for contribution against his counsellor. Robertson v. White, 635 F. Supp. 851 (W.D. Ark. 1986).

Agent materially aided in the sale of the securities and liability thus attached. Hogg v. Jerry, 299 Ark. 283, 773 S.W.2d 84 (1989).

Major investor who later became the chief financial officer (CFO) of the company was potentially liable to another investor for violation of the Arkansas Securities Act, § 23-42-101 et seq., and was not entitled to summary judgment as the CFO was an officer of the company at a time that the investor gave a portion of his money for investment in the company; further, even before the CFO became an officer, he was a majority shareholder and exerted significant influence over company decisions. Hamby v. Clearwater Consulting Concepts, LLLP, 428 F. Supp. 2d 915 (E.D. Ark. 2006).

Limitations of Actions.

Any action on the bond or securities posted in lieu thereof must be brought within statutory period from the date of the sale or act upon which the suit is based. Wells v. Hill, 239 Ark. 979, 396 S.W.2d 946 (1965).

Fraudulent concealment of a misrepresentation of the value of the stock sold or traded did not toll the limitations period of subsection (f) of this section. Martin v. Pacific Ins. Co., 245 Ark. 122, 431 S.W.2d 239 (1968).

The limitations period of this section applied to a violation of § 10 of the federal Securities Exchange Act of 1934 (15 U.S.C. § 78j) and the limitation began to run when the fraud, with due diligence on the part of the investors, should have been discovered. Vanderboom v. Sexton, 422 F.2d 1233 (8th Cir. Ark. 1970).

In the absence of any indication that the legislature intended to make the extensions of the statute of limitations by the 1973 amendment retroactive, the longer statute of limitations was applicable only to causes of action arising after the 1973 act became effective; therefore, a civil action for an illegal sale of securities was barred where the sale was made prior to the effective date of the 1973 amendment, but suit was not commenced until after the expiration of the statute of limitations prior to the 1973 amendment. Morton v. Tullgren, 263 Ark. 69, 563 S.W.2d 422 (1978).

The five-year limitation in this section applies to federal securities fraud claims under § 10(b) of the Securities Exchange Act (15 U.S.C. § 77b et seq.). Pinney v. Edward D. Jones & Co., 718 F. Supp. 1419 (W.D. Ark. 1989).

Persons Entitled to Recover.

Buyer of securities was not entitled to relief under this section or under federal rule of section 10 of the Securities Exchange Act of 1934, 15 U.S.C. § 78j, where, as a knowledgeable businessman, he entered into speculative stock purchase transaction and recklessly or negligently failed to ascertain the correct financial information concerning the corporation, the securities of which he was purchasing prior to his tendering back the stock to the seller. Lane v. Midwest Bancshares Corp., 337 F. Supp. 1200 (E.D. Ark. 1972).

Where there was no evidence that the vice president made any representations to any of the purchasers or that he had any knowledge of the facts by reason of which any contract was made in

violation of this section, that did not constitute preponderance of evidence that the vice president was barred from recovery. Titan Oil & Gas, Inc. v. Shipley, 257 Ark. 278, 517 S.W.2d 210 (1975).

Remedies.

Party was not entitled to rescission of the agreement nor to full restitution where the agreement was not held to be a security. Long v. Mabry, 250 Ark. 947, 470 S.W.2d 319 (1971).

Where an action is brought and sustained both under the Securities Act and common law fraud, punitive damages are recoverable. Mitchell v. Beard, 256 Ark. 926, 513 S.W.2d 905 (1974).

Where no motion to transfer the action brought in equity to law was made, when there was adequate remedy at law, such remedy was waived by the failure to move. Titan Oil & Gas, Inc. v. Shipley, 257 Ark. 278, 517 S.W.2d 210 (1975).

Although plaintiff may have been more learned, experienced, and intelligent than the average man, defendant had vast knowledge of and dealt at great length in matters governed by security laws; therefor, where the units defendant sold plaintiff were not registered as required, plaintiff could recover his purchase price, less income received from the units while he held them. Graham v. Kane, 264 Ark. 949, 576 S.W.2d 711 (1979).

Findings of district court provided a strong indication that buyer lacked both the sophistication and the inside information that could operate to bar relief to him as an insider and controlling person, and therefore, equitable defenses against the rescission of the stock sale were not available against him. Cole v. PPG Indus., Inc., 680 F.2d 549 (8th Cir. 1982).

Purchasers were not entitled to damages for corporation's failure to register stock; the purchasers could rescind the sale as they still owned the stock, but the corporation's failure to register the stock as promised was not a basis for fraud that also warranted monetary damages. Peacock v. 21st Century Wireless Group, Inc., 285 F.3d 1079 (8th Cir. 2002).

Seller.

Bond counsel's failure in preparing the disclosure documents for the bond underwriter to directly disclose the superior purchase mortgage encumbering the property pledged as security for the bonds did not constitute a sale by bond counsel of a security by means of an untrue statement of material fact because the bonds were issued by the municipal improvement district and sold through the underwriter; bond counsel was not a seller and, as it was not alleged that bond counsel was a seller, bond counsel could not be liable under subsection (a) of this section. First Ark. Bank & Trust v. Gill Elrod Ragon Owen & Sherman, P.A., 2013 Ark. 159, — S.W.3d — (2013).

Tender.

Tender held sufficient to permit allowance of an attorney's fee under this section. Pacific Ins. Co. v. Martin, 242 Ark. 621, 414 S.W.2d 594 (1967).

Refusal by plaintiff of the tender of a defendant to pay the face amount of the bonds less an amount due from plaintiff did not entitle defendant to a directed verdict where the amount tendered was not sufficient to cover the liability of the defendant for interest and attorney's fees. Mitchell v. Beard, 256 Ark. 926, 513 S.W.2d 905 (1974).

Validity of Purchaser's Notes.

The Arkansas Securities Act does not render notes given by a purchaser, in transaction in which

seller has violated this section, absolutely void as to holders in due course. Lane v. Midwest Bancshares Corp., 337 F. Supp. 1200 (E.D. Ark. 1972).

Cited: Arkansas Real Estate Co. v. Fullerton, 232 Ark. 713, 339 S.W.2d 947 (1960); Central Invs., Inc. v. Polk, 239 Ark. 165, 388 S.W.2d 381 (1965); Long v. Mabry, 250 Ark. 947, 470 S.W.2d 319 (1971); Schultz v. Rector-Phillips-Morse, Inc., 261 Ark. 769, 552 S.W.2d 4 (1977); Ballentine v. Ballentine, 275 Ark. 212, 628 S.W.2d 327 (1982); LeCroy v. Dean Witter Reynolds, Inc., 585 F. Supp. 753 (E.D. Ark. 1984); J & C Inv. v. Mid-South Drilling, Inc., 286 Ark. 320, 691 S.W.2d 853 (1985); Casali v. Schultz, 292 Ark. 602, 732 S.W.2d 836 (1987); Arthur Young & Co. v. Reves, 856 F.2d 52 (8th Cir. Ark. 1988); Dingler v. T.J. Raney & Sons, 708 F. Supp. 1044 (W.D. Ark. 1989); New Equity Sec. Holders Comm. ex rel. Golden Gulf, Ltd. v. Phillips, 97 B.R. 492 (E.D. Ark. 1989); Robertson v. Deloitte, Haskins & Sells, 732 F. Supp. 979 (E.D. Ark. 1990); Smith v. Leonard, 310 Ark. 782, 840 S.W.2d 167 (Ark. 1992); BNL Equity Corp. v. Pearson, 340 Ark. 351, 10 S.W.3d 838 (2000).

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 or she prescribes by rule, an irrevocable consent appointing the commissioner or his or her successor in office to be his or her attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or her or his or her 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 or her, 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 or her 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 or she has not filed a consent to service of process under subsection (a) of this section, and personal jurisdiction over him or her cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his or her appointment of the commissioner or his or her successor in office to be his or her attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or her or his or her 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 or her 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 or her, 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 or her 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 or her, 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.

Research References

U. Ark. Little Rock L.J.

Legislation of the 1983 General Assembly, Business Law, 6 U. Ark. Little Rock L.J. 607.

Case Notes

Restricted Consent.

Restricted Consent.

Defendant corporation's consent to service in Arkansas restricted to suits and actions commenced against it for any cause arising out of a sale or offer of sale by it was not broad enough to cover plaintiffs' cause of action based on fraud by virtue of forgery of stock certificates and the alleged resulting breach of

defendant's fiduciary duty in cancelling or transferring the stock represented by such certificates, which alleged acts occurred after the completed sale, outside Arkansas, and before plaintiffs became residents of Arkansas. Billings v. Investment Trust, 309 F.2d 681 (8th Cir. 1962)(decision under prior law).

Cited: Billings v. Investment Trust, 309 F.2d 681 (8th Cir. 1962).

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.

Research References

U. Ark. Little Rock L.J.

Paulson, Survey of Arkansas Law: Business Law, 2 U. Ark. Little Rock L.J. 161.

Survey of Arkansas Law: Business Organizations, 6 U. Ark. Little Rock L.J. 83.

Case Notes

Cited: Arkansas Real Estate Co. v. Fullerton, 232 Ark. 713, 339 S.W.2d 947 (1960); Central Invs., Inc. v. Polk, 239 Ark. 165, 388 S.W.2d 381 (1965); Long v. Mabry, 250 Ark. 947, 470 S.W.2d 319 (1971); Schultz v. Rector-Phillips-Morse, Inc., 261 Ark. 769, 552 S.W.2d 4 (1977); Ballentine v. Ballentine, 275 Ark. 212, 628 S.W.2d 327 (1982); LeCroy v. Dean Witter Reynolds, Inc., 585 F. Supp. 753 (E.D. Ark. 1984); J & C Inv. v. Mid-South Drilling, Inc., 286 Ark. 320, 691 S.W.2d 853 (1985); Casali v. Schultz, 292 Ark. 602, 732 S.W.2d 836 (1987).

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.

Research References

U. Ark. Little Rock L.J.

Paulson, Survey of Arkansas Law: Business Law, 2 U. Ark. Little Rock L.J. 161.

Survey of Arkansas Law: Business Organizations, 6 U. Ark. Little Rock L.J. 83.

Case Notes

Cited: Arkansas Real Estate Co. v. Fullerton, 232 Ark. 713, 339 S.W.2d 947 (1960); Central Invs., Inc. v. Polk, 239 Ark. 165, 388 S.W.2d 381 (1965); Long v. Mabry, 250 Ark. 947, 470 S.W.2d 319 (1971); Schultz v. Rector-Phillips-Morse, Inc., 261 Ark. 769, 552 S.W.2d 4 (1977); Ballentine v. Ballentine, 275 Ark. 212, 628 S.W.2d 327 (1982); LeCroy v. Dean Witter Reynolds, Inc., 585 F. Supp. 753 (E.D. Ark. 1984); J & C Inv. v. Mid-South Drilling, Inc., 286 Ark. 320, 691 S.W.2d 853 (1985); Casali v. Schultz, 292 Ark. 602, 732 S.W.2d 836 (1987); Tanenbaum v. Agri-Capital, Inc., 885 F.2d 464 (8th Cir. 1989).

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.

Case Notes

License Applications.

License Applications.

On license application for securities agent, failure to disclose correct employment history, previous revocation of license and misdemeanor conviction constitutes violation. Selig v. Novak, 256 Ark. 278, 506 S.W.2d 825 (1974).

Cited: Hardcastle v. State, 25 Ark. App. 157, 755 S.W.2d 228 (1988).

Subchapter 2 — Administration

Commissioner — Inconsistent representation.
23-42-213. Disposition of fines — Investor Education Fund.

Effective Dates. Acts 1959, No. 254, § 30: July 1, 1959.

Acts 1961, No. 248, § 11: July 1, 1961.

Acts 1973, No. 471, § 8: July 1, 1973.

Acts 1975, No. 844, § 16: Apr. 4, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that the filing fees are inadequate; that exemptions are necessary for certain types of securities; that there is a need for immediate clarification of certain portions of the Securities Act; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1977, No. 493, § 21: Mar. 18, 1977. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that securities transactions always involve a relationship of trust and usually involve fiduciary obligations. This relationship facilitates the cover-up of felonies committed under the securities laws. This act being necessary for the protection of the health, safety and welfare of the citizens of this State, it is effective from and after its passage and approval, and it applies to all schemes or courses of conduct continuing past its effective date; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1983, No. 836, § 29: Mar. 25, 1983. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that the ability of the State of Arkansas to become part of a national Central Registration Depository System will be beneficial to the citizens of the State and applicants for registration and provide substantial cost savings to the securities industry and that Arkansas' entry into the system is scheduled to be soon. This Act being necessary for the additional protection and savings for the citizens of this State which will be afforded by entry into the System, it is effective from and after its passage and approval; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1985, No. 939, § 12: Apr. 15, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the occurrence of new types of securities being made available to investors in combination with the proliferation of unregulated security advisors offering their services to the investing public indicate an immediate need for additional regulatory scrutiny of the securities and the practice of offering security advice; that this Act grants the Securities Commissioner the necessary flexibility to deal with these situations and should be given immediate effect in order to adequately protect the citizens of the State of Arkansas. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1993, Nos. 659 and 850, § 9: Mar. 24, 1993. Emergency clauses provided: "It is hereby found and determined by the General Assembly that the provisions of this act are of critical importance to the state's ability to continue the duties, responsibilities, and functions of the State Securities Department. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its

passage and approval."

Acts 2011, No. 294, § 11: July 1, 2011. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2011 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2011 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2011."

Acts 2013, No. 438, § 3: July 1, 2013. Emergency clause provided: "It is hereby found and determined by the General Assembly that the effectiveness of this Act on July 1, 2013 is essential to the operation of programs supported by funds deposited into and contained in the Securities Department Fund, and that in the event of the extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2013 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2013."

Research References

Am. Jur. 69 Am. Jur. 2d, Secur. Reg. St., § 86 et seq.

C.J.S. 79 C.J.S. Supp., Secur. Reg., § 222 et seq.

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.

Publisher's Notes. The provisions of this chapter were originally administered by the Securities Division of the State Bank Department. Acts 1971, No. 38, § 16, transferred both the Banking and Securities Divisions of the State Bank Department to the Department of Commerce. Acts 1973, No. 471, separated the Securities Division from the State Bank Department and established the State Securities Department within the Department of Commerce. The State Securities Department retained all powers assigned by law to the Securities Division including the administration of the laws governing securities, credit unions, savings and loan associations, funeral expense organizations, and the sale of checks. Acts 1983, No. 691, abolished the Department of Commerce and provided, in § 3, that the State Securities Department should function as an independent agency the same as if it had never been placed in the Department of Commerce.

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

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

(b) The commissioner, subject to any restrictions which he or she in his or her 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.

Case Notes

Constitutionality.

Constitutionality.

There is nothing in the Constitution of the United States which prohibits a state from conferring powers on the bank commissioner; and former act did not vest bank commissioner with arbitrary power since provision was made for proceedings in the chancery court. Standard Home Co. v. Davis, 217 F. 904 (E.D. Ark. 1914)(decision under prior law).

Cited: Madden v. United States Assocs., 40 Ark. App. 143, 844 S.W.2d 374 (1992).

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

(a) It is unlawful for the Securities Commissioner or any of his or her 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 or her 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 or her 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 or her 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.

Research References

U. Ark. Little Rock L.J.

Survey of Arkansas Law: Business Organizations, 6 U. Ark. Little Rock L.J. 83.

Case Notes

Cited: Robertson v. White, 635 F. Supp. 851 (W.D. Ark. 1986).

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 or her 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) When 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 the 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 or she had received a copy of the prospectus prior to his or her 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 or her 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.

Research References

U. Ark. Little Rock L.J.

Survey of Arkansas Law: Business Organizations, 6 U. Ark. Little Rock L.J. 83.

Case Notes

Cited: Robertson v. White, 635 F. Supp. 851 (W.D. Ark. 1986).

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.

Amendments. The 2009 amendment, in (c), subdivided the subsection, substituted "Pulaski County Circuit Court" for "Chancery Court of Pulaski County" in (c)(1), and made minor stylistic changes.

Case Notes

Constitutionality.

Constitutionality.

There is nothing in the Constitution of the United States which prohibits a state from conferring powers on the bank commissioner; and former act did not vest bank commissioner with arbitrary power since provision was made for proceedings in the chancery court. Standard Home Co. v. Davis, 217 F. 904 (E.D. Ark. 1914)(decision under prior law).

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.

Amendments. The 2009 amendment substituted "Financial Industry Regulatory Authority" for "National Association of Securities Dealers" in (a)(3)(B) and (c); and made minor stylistic changes.

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.

Amendments. The 2009 amendment substituted "Pulaski County Circuit Court" for "Circuit Court or Chancery Court of Pulaski County" in (b)(6)(C).

Research References

Ark. L. Rev.

Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 741.

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.

Amendments. The 2009 amendment substituted "Financial Industry Regulatory Authority" for "National Association of Securities Dealers" in (a) and (c).

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.

Amendments. The 2009 amendment by No. 462 rewrote (a)(3)(A), which read: "The commissioner may, after issuance of an order as set forth above, apply to the Chancery Court of Pulaski County to temporarily or permanently enjoin the act or practice and to enforce compliance with this chapter or any rule or order under this chapter."

The 2009 amendment by No. 534 rewrote (a)(2)(C), which read: "If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing, may affirm, modify, or vacate the order."

The 2011 amendment subdivided (b); in the present introductory language of (b), substituted "obtain" for "seek and the appropriate court shall," deleted "grant" following "showing," and added "without limitation"; and substituted "a violation of this chapter" for "any violation, or other relief as may be appropriate in the public interest" in (b)(6).

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 or her 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 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.

Case Notes

Cited: Selig v. Novak, 256 Ark. 278, 506 S.W.2d 825 (1974).

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 four million dollars ($4,000,000) shall be deposited into the fund in any one (1) fiscal year.

(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; 2013, No. 438, § 2.

Amendments. The 2009 amendment inserted "and (a)(5)" in (a)(3), and made related changes.

The 2011 amendment, in (a)(4), substituted "two million dollars ($2,000,000)" for "one million dollars ($1,000,000)," substituted "July 1, 2013" for "July 1, 2011,"and deleted "unless extended" at the end.

The 2013 amendment, in (a)(4), substituted "four million dollars ($4,000,000)" for "two million dollars ($2,000,000)," and deleted "until July 1, 2013, at which time this limitation shall expire" at the end.

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.

Case Notes

Cited: Hardcastle v. State, 25 Ark. App. 157, 755 S.W.2d 228 (1988).

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) 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; 2013, No. 460, § 5.

Amendments. The 2013 amendment rewrote (c).

Subchapter 3
— Broker-Dealers, Agents, and Investment Advisers

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1959, No. 254, § 30: July 1, 1959.

Acts 1961, No. 248, § 11: July 1, 1961.

Acts 1973, No. 47, § 20: Feb. 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the field of securities is in need of stricter regulation to assure the public that they receive the protection they deserve; that the filing fee for filing a registration statement is inadequate; that there is a need for immediate clarification of certain portions of the Securities Act; that the penalty for violation of the Securities Act should be increased to discourage further violations and to deter the total number of violations and that only by the immediate passage of this Act can this be achieved; therefore an emergency is declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1975, No. 844, § 16: Apr. 4, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that the filing fees are inadequate; that exemptions are necessary for certain types of securities; that there is a need for immediate clarification of certain portions of the Securities Act; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1977, No. 493, § 21: Mar. 18, 1977. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that securities transactions always involve a relationship of trust and usually involve fiduciary obligations. This relationship facilitates the cover-up of felonies committed under the securities laws. This act being necessary for the protection of the health, safety and welfare of the citizens of this State, it is effective from and after its passage and approval, and it applies to all schemes or courses of conduct continuing past its effective date; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1977, No. 806, § 25: Mar. 28, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing laws determining the authority of the Arkansas

Securities Commissioner provide a duplicity of regulation which creates undue burden upon mortgage loan companies and loan brokers while at the same time not being in the public interest, and it is found that this Act will eliminate much of such duplicity and provide adequate protection of the public; therefore, an emergency exists and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in force and effect from and after its passage and approval."

Acts 1979, No. 6, § 5: Jan. 30, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws governing the bonding of registered broker-dealers in the State of Arkansas creates an undue hardship upon those broker-dealers who operate as sole proprietor, and that the immediate passage of this Act is necessary to clarify and alleviate the existing laws in this respect. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 836, § 29: Mar. 25, 1983. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that the ability of the State of Arkansas to become part of a national Central Registration Depository System will be beneficial to the citizens of the State and applicants for registration and provide substantial cost savings to the securities industry and that Arkansas' entry into the system is scheduled to be soon. This Act being necessary for the additional protection and savings for the citizens of this State which will be afforded by entry into the System, it is effective from and after its passage and approval; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1985, No. 939, § 12: Apr. 15, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the occurrence of new types of securities being made available to investors in combination with the proliferation of unregulated security advisors offering their services to the investing public indicate an immediate need for additional regulatory scrutiny of the securities and the practice of offering security advice; that this Act grants the Securities Commissioner the necessary flexibility to deal with these situations and should be given immediate effect in order to adequately protect the citizens of the State of Arkansas. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 449, § 4: Mar. 30, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the increased demand on the State Securities office has resulted in an immediate need for additional revenues to provide the services demanded from that office; that this act provides some of those needed revenues by means of increasing certain fees; and that this Act should go into effect immediately in order to generate additional revenues as soon as possible. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, Nos. 659 and 850, § 9: Mar. 24, 1993. Emergency clauses provided: "It is hereby found and determined by the General Assembly that the provisions of this act are of critical importance to the state's ability to continue the duties, responsibilities, and functions of the State Securities Department. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1995 (1st Ex. Sess.), No. 14, § 5: Oct. 23, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly that requirements for resident principals established

in Act 845 of 1995 operate as a hardship on certain securities agents in the State who work as independent contractors; that the immediate effectiveness of this act is essential in order to alleviate this undue burden and permit these productive member of our society to continue earning their livelihood while still implementing measures needed to protect the integrity of the securities industry. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Research References

Am. Jur. 69 Am. Jur. 2d, Secur. Reg. St., § 15 et seq.

C.J.S. 79 C.J.S. Supp., Secur. Reg., § 216 et seq.

U. Ark. Little Rock L.J.

Legislation of the 1983 General Assembly, Business Law, 6 U. Ark. Little Rock L.J. 607.

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) [Repealed.]

(c) It is unlawful for a person to transact business in this state as an investment adviser or investment adviser 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, 2013, 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; and

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

(2) 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, 2013, 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, 2013;

(3) Is a "representative" of an investment adviser registered with the United States 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, 2013, and has no place of business located in this state; or

(4) Is a supervised person of an investment adviser registered with the United States Securities and Exchange Commission, but is not an investment adviser representative as defined by Rule 203A-3 of the rules and regulations of the Investment Advisers Act of 1940, 17 C.F.R. § 275, as they existed on January 1, 2013.

(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 is registered in Arkansas and meets the qualifications and performs 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 adviser, who is registered in Arkansas and meets the qualifications and performs the supervisory responsibilities of the investment adviser for activities in this state under rules established by the commissioner.

(h) The commissioner may by rule establish concurrent registration with a broker-dealer, issuer, or investment adviser or any combination of broker-dealers, issuers, and investment advisers.

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; 2013, No. 460, §§ 6, 7, 8, 9, 10.

Amendments. The 2009 amendment by No. 462 inserted "15 U.S.C. § 80b-1 et. seq., as it existed on January 1, 2009" in four places in (c); inserted "or the commissioner's designee" in (c)(1) and (d)(1);

and made minor stylistic changes.

The 2009 by No. 534 amendment added (f).

The 2011 amendment subdivided (b)(2); rewrote (b)(3); subdivided (c)(1); substituted "January 1, 2011" for "January 1, 2009" in (c)(1), (c)(2), and (c)(3); substituted "not an" for "exempted from the definition of" in (c)(3); rewrote (d)(2)(B); deleted (e) and redesignated former (f) as (e); and added present (f) and (g).

The 2013 amendment repealed (b)(4); rewrote (c); substituted "is registered in Arkansas and meets the qualifications and performs" for "shall meet the qualifications and carry out" in (f)(2)(B) and (g)(2)(B); and added (h).

U.S. Code. The Investment Company Act of 1940, referred to in this section, is codified as 15 U.S.C. § 80b-1 et seq.

Case Notes

Dealer.
Statute of Limitations.

Dealer.

An isolated sale of an interest in an oil and gas lease by the owner does not constitute the owner a broker-dealer in violation of this section. Shepherd v. State, 246 Ark. 744, 439 S.W.2d 627 (1969).

Statute of Limitations.

In the absence of any indication that the legislature intended to make the extension of the statute of limitations by the 1973 amendment to § 23-42-106 retroactive, the longer statute of limitations was applicable only to causes of action arising after the 1973 act became effective; therefore, a civil action for an illegal sale of securities was barred where the sale was made prior to the enactment of the 1973 amendment, but suit was not commenced until after the expiration of the statute of limitations in effect prior to the 1973 amendment. Morton v. Tullgren, 263 Ark. 69, 563 S.W.2d 422 (1978).

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. The 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.

Amendments. The 2009 amendment by No. 462 deleted the last sentence in (d), which read: "Any agent, broker-dealer, investment adviser, or representative shall be exempt from examination, except such part as relates to this chapter, if he was engaged in the securities business in Arkansas on July 1, 1959, and was registered with the National Association of Securities Dealers or the federal Securities and Exchange Commission."

The 2009 amendment by No. 534, in (a), inserted (a)(2), redesignated the remaining text accordingly, inserted "or branch office" in (a)(1), and made related and minor stylistic changes.

Case Notes

Applicability.
Fraud not Shown.
Grounds for Denial.

Applicability.

Subsection (e) of this section applies to applicants and registrants as defined within the Securities Act and is inapplicable to persons who only train applicants to take the broker-dealer examination. Bell v. Investment Training Inst., Inc., 271 Ark. 663, 609 S.W.2d 919 (1981).

Fraud not Shown.

Inconsistent recitals did not show that the whole scheme was fraudulent or that the trustee practiced a fraud on the Bank Commissioner (now Securities Commissioner) to secure a permit to do business. Palmer v. Taylor, 168 Ark. 127, 269 S.W. 996 (1925)(decision under prior law).

Grounds for Denial.

The Bank Commissioner (now Securities Commissioner) improperly refused a dealer's license to sell stock in a common-law trust on the ground that the laws of the state did not authorize such an association. Coleman v. McKee, 162 Ark. 90, 257 S.W. 733 (1924)(decision under prior law).

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 or she 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 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 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 this section 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.

Amendments. The 2009 amendment inserted (a)(5) and made related and minor stylistic changes.

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.

Publisher's Notes. Acts 1979, No. 6, § 1, provided it was the intent of the act to exempt those broker-dealers who operate as sole proprietorships which have no agents other than the sole proprietor from the fidelity bond requirements of this section.

Amendments. The 2009 amendment, in (a), rewrote and subdivided the introductory language and redesignated the remaining subdivisions accordingly; deleted (b)(4); and made related and minor stylistic changes.

Research References

Ark. L. Notes.

Copeland, A Brief Survey of Some Important 1990 Insurance Law Decisions, 1991 Ark. L. Notes 75.

Ark. L. Rev.

Note, Fidelity Bonds for Broker-Dealers and the Scope of Liability in Arkansas: Foster v. National Union Fire Insurance Co., 44 Ark. L. Rev. 865.

Case Notes

Indemnitor.
Limitations of Actions.
Standing.

Indemnitor.

Subdivision (a)(4) of this section does not give an investor a right of direct action against an indemnitor without regard to the principal's liability; an indemnitor is entitled to the rights and defenses available to the principal. American Ins. Co. v. Cazort, 316 Ark. 314, 871 S.W.2d 575 (1994).

Limitations of Actions.

Any action on the bond or securities posted in lieu thereof must be brought within statutory period from the date of the sale or act upon which the suit is based. Wells v. Hill, 239 Ark. 979, 396 S.W.2d 946 (1965).

Fraudulent concealment of a misrepresentation of the value of the stock sold or traded did not toll the limitations period of this section. Martin v. Pacific Ins. Co., 245 Ark. 122, 431 S.W.2d 239 (1968).

Standing.

Subsection (b) of this section provides for suit by any person with a cause of action under the Arkansas Securities Act in order to effectuate the protection of the investing public. Foster v. National Union Fire Ins. Co., 902 F.2d 1316 (8th Cir. 1990).

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.

Amendments. The 2009 amendment subdivided (d)(2), substituted "one hundred fifty dollars ($150)" for "one hundred dollars ($100)" in (d)(2)(A), substituted "the office of the commissioner while the examiner is conducting the examination" for "Little Rock Arkansas" in (d)(2)(B), and made related and minor stylistic changes.

The 2011 amendment, in (d)(2)(B), inserted "the commissioner may require" and substituted "to pay" for "shall pay."

U.S. Code. The Securities Exchange Act of 1934, referred to in this section, is codified as 15 U.S.C. § 78a et seq.

Case Notes

Information Required.

Information Required.

Requirement of bank commissioner of a statement of receipts and expenditures of company and a list of officers with their holdings of stocks and bonds of the company was not unreasonable. Standard Home Co. v. Davis, 217 F. 904 (E.D. Ark. 1914)(decision under prior law).

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.

Amendments. The 2009 amendment substituted "investment adviser or representative" for "person who receives, directly or indirectly, any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses, reports, or otherwise" in (a).

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;

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

(g) The insurance administrator of any state.

(ii) However, the commissioner may not:

(a) 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) 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 the 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) The commissioner may by summary order cancel a registration or application if he or she finds that any registrant or applicant:

(1) Is no longer in existence;

(2) Has ceased to do business as a broker-dealer, agent, investment adviser, or representative; or

(3) Is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after a reasonable search.

(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; 2013, No. 460, §§ 11, 12.

A.C.R.C. Notes. The 2013 amendment omitted "for registration" following "or applicant" in the introductory language of (d) without striking through the language to indicate its repeal.

Amendments. The 2009 amendment, in (a), inserted "make conditional or probationary" and "or she," and made a related change; and rewrote (g), which read: "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 fine any broker-dealer, agent, investment adviser, or representative up to a maximum of five thousand dollars ($5,000) for each separate violation of this chapter."

The 2011 amendment substituted "revoking, or making conditional or probationary a registration"for "or revoking registration" in (a)(2)(E); and inserted "or employees" twice in (a)(2)(J).

The 2013 amendment added (a)(2)(F)(i)(*g*); in (d), inserted "may by summary order cancel a registration or application if he or she" and added subdivision designations; and deleted "then the commissioner may by order cancel the registration or application for registration" from the end of (d)(3).

Case Notes

Applicability.

Applicability.

Since § 23-42-302(e) and subdivision (a)(2)(I) and former subdivision (b)(6) of this section apply to applicants and registrants as defined in the Securities Act and are inapplicable to persons who only train applicants to take the broker-dealer examination, Securities Commissioner did not have a statutory basis to seek an injunction to prevent defendants from performing certain acts in regard to carrying on their business of tutoring applicants for license as broker-dealers under the rules of the Municipal Securities Rulemaking Board. Bell v. Investment Training Inst., Inc., 271 Ark. 663, 609 S.W.2d 919 (1981).