

Title 23. Public Utilities and Regulated Industries

Chapter II. State Securities Department, Department of Commerce

Subchapter A. Generally

Part 300. Rules of the Securities Commissioner

Subpart 1. Generally

23 CAR § 300-101. [Reserved].

23 CAR § 300-102. Definitions.

(a) When the terms listed below are used in the Arkansas Securities Act, Arkansas Code § 23-42-101 et seq., this part, the forms, and the instructions and orders of the Securities Commissioner, the following definitions shall apply (unless the context indicates otherwise), together with the definitions which may hereinafter appear, to the extent that they are not inconsistent with the definitions provided in Arkansas Code § 23-42-102 of the Arkansas Securities Act.

(b) As used in this part:

(1)(A) "Access to or furnishing information". Access to or furnishing of information can only exist by reason of the purchaser's position with respect to the issuer or seller.

(B) "Position" means an employment or family relationship or economic bargaining power that enables the purchaser to obtain information from the issuer or seller in order to evaluate the merits and risks of a prospective investment.

(C) In any event, each purchaser or his or her legal, financial, or other representative or representatives, or both, shall have access to or have been furnished during the course of the transaction and prior to the sale, by the issuer or any person acting on its behalf, or the seller or any person acting on its behalf, the same kind of information that is required by a registration under the Arkansas Securities Act, to the extent that the issuer or seller possesses the information or can acquire it without reasonable effort or expense.

(D) This condition shall be deemed to be satisfied if the purchaser or his or her legal, financial, or other representative or representatives is furnished with information, either in the form of documents actually filed with the Securities Commissioner or otherwise.

(E) The issuer or seller shall make available, during the course of the transaction and prior to sale, to each purchaser or his or her legal, financial, or other representative or representatives, or both, the opportunity to ask questions of, and receive answers from, the issuer or seller, or any person acting on the issuer's or seller's behalf, concerning the terms and conditions of the offering and to obtain any additional information, to the extent that the issuer or seller possesses the information or can acquire it without unreasonable effort or expense, necessary to verify the accuracy of the information obtained.

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

(2) "Accredited investor". See definition of "accredited investor" found in United States Securities and Exchange Commission Rule 501 of Regulation D, promulgated under the Securities Act of 1933, 17 C.F.R. § 230.501;

(3) "Act" means the Arkansas Securities Act, as amended, codified at Arkansas Code § 23-42-101 et seq.;

(4) "Advisory affiliate" means a person that directly or indirectly controls or is controlled by a person who either is registered as an investment adviser or has filed an application to become registered as an investment adviser, including any current employee except one performing only clerical, administrative, support, or similar functions;

(5) "Affiliate". The term "affiliate" of or "affiliated" with a person means a person that directly or indirectly through one (1) or more intermediaries' controls, or is controlled by, or is under common control with the person;

(6) "APA" means the Arkansas Administrative Procedure Act (APA), as amended, codified at Arkansas Code § 25-15-201 et seq.;

(7) "Applicant" means a person who submits an application for registration of securities, for an exemption procedure, or for registration as a broker-dealer, broker-dealer agent, agent of the issuer, investment adviser, or investment adviser representative who files an application for an order of the Securities Commissioner;

(8) "Application" means the form prescribed by the Securities Commissioner for filing in connection with the registration of securities, for an exemption procedure, and as a broker-dealer, broker-dealer agent, agent of the issuer, investment adviser, or investment adviser representative, including all amendments, papers, documents, and exhibits incidental thereto;

(9) "Client". For purposes of Arkansas Code § 23-42-102(9)(C)(v)(b) of the Arkansas Securities Act, the following shall be deemed a single client:

(A) A natural person, and:

(i) Any minor child of the natural person;

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

(iii) All accounts of which the natural person and/or the persons referred to in this subdivision (9)(A) are the only primary beneficiaries; and

(iv) All trusts of which the natural person and/or the persons referred to in this subdivision (9)(A) are the only primary beneficiaries; and

(B) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in subdivision (9)(A)(iv) of this section), or other legal organization that receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries, or any two (2) or more legal organizations that have identical owners provided, however, an owner must be counted as a client if the investment adviser provides investment advisory services to the owner separate and apart from the investment advisory services provided to the legal organization, and

a limited partnership shall be deemed a client of any general partner or other person acting as investment adviser to the partnership;

(10) "Commissioner" means the Securities Commissioner;

(11)(A) "Control". Including the terms "controlling", "controlled by", and "under common control with", means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of securities, by contract, or otherwise.

(B) Control of a person is presumed when any individual or firm does the following:

(i) Is a director, partner, or officer exercising executive responsibility or has a similar status or performs similar functions;

(ii) Directly or indirectly has the right to vote twenty-five percent (25%) or more of the voting securities of a person; or

(iii) Is entitled to twenty-five percent (25%) or more of the profits of a person;

(12) "Control affiliate" means any person that directly or indirectly controls, is controlled by, or under common control with an applicant or registrant, including any current employee except one performing only clerical, administrative, support, or similar functions, or who, regardless of title, performs no executive duties or has no senior policy-making authority;

(13) "CRD" means the Central Registration Depository operated by FINRA;

(14)(A)(i) "Custody" means holding, directly or indirectly, client funds or securities, having any authority to obtain possession of them, or having the ability to appropriate them.

(ii) An investment adviser has custody if a related person, as defined in 23 CAR § 300-309(b), holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients.

(B) Custody includes the following:

(i) Possession of client funds or securities unless the investment adviser receives them inadvertently and returns them to the sender promptly but in any case within three (3) business days of receiving them;

(ii) Any arrangement, including a general power of attorney, under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and

(iii) Any capacity, such as general partner of a limited partnership, managing member of a limited liability company, or a comparable position for another type of pooled investment vehicle, or trustee of a trust, that gives the investment adviser or its supervised person legal ownership of or access to client funds or securities.

(C) Receipt of checks drawn by clients and made payable to third parties will not meet the definition of custody if forwarded to the third party within three (3) business days of receipt and the investment adviser maintains a record of the transfer;

(15)(A) "Customer" means the person:

- (i) Being charged a commission or fee;
- (ii) Being rendered a service;
- (iii) Being sold a security;
- (iv) Being solicited to sell a security; or
- (v) Receiving investment advice.

(B) However, the term "customer" shall not include the broker-dealer or investment adviser:

- (i) Charging the commission or fee;
- (ii) Offering the services; or
- (iii) Rendering the investment advice;

(16) "Department" means the State Securities Department;

(17)(A) "Discretion" or "discretionary authority" means the authority that an investment adviser or broker-dealer possesses by virtue of a limited power of attorney or other grant of authority enabling the investment adviser or broker-dealer to

determine what securities shall be purchased or sold by or for an account, or make decisions as to what securities or other property shall be purchased or sold by or for an account even though some other person may have responsibility for the investment decisions.

(B) A firm also has discretionary authority if it has the authority to decide which investment advisers to retain on behalf of the client;

(18) "Engaged in the business of effecting transactions in securities". As used in Arkansas Code § 23-42-102(3) of the Arkansas Securities Act, the term "engaged in the business of effecting transactions in securities" includes any person who holds himself or herself out as being able to effect transactions in securities for the accounts of others or for his or her own account regardless of whether any transactions have actually been effected;

(19)(A) "Exempted" or "exemption". Securities or transactions meeting the requirements of Arkansas Code § 23-42-503 or Arkansas Code § 23-42-504 of the Arkansas Securities Act and the applicable rules are exempt from the registration requirements contained in Arkansas Code §§ 23-42-501 and 23-42-502 of the Arkansas Securities Act.

(B) These securities or transactions are not exempted from any other provisions of the Arkansas Securities Act or applicable rules;

(20) "FINRA" means the Financial Industry Regulatory Authority;

(21) "Forms". See 23 CAR § 300-204(3);

(22) "IARD" means the Investment Adviser Registration Depository operated by FINRA;

(23) "Indications of interest" means communications and/or actions on the part of a customer, or the solicitation thereof, that give rise to the inference that the customer may purchase the yet-to-be issued securities;

(24)(A) "Investment intent". Securities purchased under the Arkansas Securities Act and this part with "investment intent" cannot be purchased with a view to, or for resale in connection with, any sale or hypothecation.

(B) Securities purchased with investment intent cannot be disposed of unless the securities are registered under the Arkansas Securities Act or, in the opinion of counsel for the issuer, an exemption from the registration requirements of the Arkansas Securities Act is available.

(C) As a result, the purchaser of these securities must be prepared to bear the economic risk of the investment for an indefinite period of time and have no need of liquidity of the investment.

(D) Where securities are purchased under the Arkansas Securities Act for investment, investment intent shall be presumed if the purchaser retains the securities for one (1) year from the date of consummation of the sale.

(E) However, any disposition of the securities within one (1) year of the date of purchase, in the absence of an unforeseeable change of circumstances, shall create a presumption that the person did not purchase the securities with investment intent;

(25)(A) "Life settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of any portion of the death benefit or ownership of a life insurance policy or certificate for consideration that is less than the expected death benefit of the life insurance policy or certificate.

(B) Life settlement contract does not include the following:

(i) The assignment, transfer, sale, devise, or bequest of a death benefit, life insurance policy, or certificate of insurance by the insured to the life settlement provider pursuant to the Life Settlements Act, Arkansas Code § 23-81-801 et seq.;

(ii) The assignment, transfer, sale, devise, or bequest of a life insurance policy for any value less than the expected death benefit by the insured to a friend or family member who enters into no more than one (1) such agreement in a calendar year;

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

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

(26) "MSRB" means the Municipal Securities Rulemaking Board;

(27) "NASAA" means the North American Securities Administrators Association, Inc.;

(28) "Notice filing" means a filing made pursuant to Arkansas Code § 23-42-301(c)(1) of the Arkansas Securities Act in the case of investment advisers, and Arkansas Code § 23-42-509 of the Arkansas Securities Act in the case of persons issuing or offering securities;

(29) "Offer" or "offer to sell". For the purposes of Arkansas Code §§ 23-42-501 and 23-42-502 of the Arkansas Securities Act, the term "offer" or "offer to sell", as defined in Arkansas Code § 23-42-102(15)(A)(ii) of the Arkansas Securities Act, shall not include negotiations, agreements, or similar communications with respect to a proposed reorganization provided the negotiations, agreements, or similar communications are incidental to the formulation of a proposal of a reorganization and, except for the merger of a subsidiary entity into its parent, a vote of approval and consent of security holders is required to effectuate the proposed transactions;

(30) "Parent" means an affiliate controlling another person;

(31) "Place of business" means the following:

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

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

(32) "Principal place of business" means the executive office of a registrant from which the officers, partners, or managers of the registrant direct, control, and coordinate the activities of the registrant;

(33)(A) "Promoter" means a person who, acting alone or in conjunction with others, takes the initiative in founding, organizing, or incorporating the business or enterprise.

(B) A promoter does not include a lawyer or accountant acting as an independent contractor;

(34)(A) "Proof of exemption", as used in Arkansas Code §§ 23-42-503(d) and 23-42-504(b) of the Arkansas Securities Act, means the filing made by an applicant, together with any supporting documents and written statements of the applicant as set forth in the appropriate rule, whereby the applicant describes his or her expected conduct during the exemption process and demonstrates his or her disclosure and antifraud responsibilities required in order to qualify for the exemption.

(B) A proof of exemption is not in and of itself an exemption.

(C) It is merely the filing by which an applicant requests the Securities Commissioner not to withdraw the availability of use of the exemption based on the applicant's demonstration of his or her recognition of the technical requirements necessary to qualify;

(35) "Public advertising" means any form of general solicitation, offer, invitation to invest, or other writing that could be easily understood to be designed to attract investors, general advertising, or any other communication directed to persons whose background is unknown to the communicant including, but not limited to, the following:

(A) Any advertisement, article, notice, or other communication published in any newspaper, magazine, or similar medium or broadcast over:

(i) Television;

(ii) Radio; or

(iii) Other electronic media;

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

(C) Any:

(i) Letter;

- (ii) Circular;
 - (iii) Handbill;
 - (iv) Notice; or
 - (v) Other written communication;
- (D) Any solicitation by telephone or other electronic media; or
- (E) A solicitation that is maintained on or disseminated by way of any:
- (i) Webpage;
 - (ii) Site on the internet; or
 - (iii) Other electronic posting;

(36) "Purchaser". For purposes of computing the number of purchasers, offerees, investors, or subscribers, a husband and wife who purchase or contemplate purchasing in the joint names of both spouses shall be deemed to be one (1) offer or sale;

(37) "Registrant" means an applicant for whom a registration has been declared effective;

(38) "Restrictive legend". An appropriate restrictive legend shall conform to the NASAA Uniform Disclosure Guidelines for Cover Legends;

(39) "Reorganization" means any merger, consolidation, reclassification of securities, sale of assets in consideration of the issuance of securities of another person, exchange of outstanding securities for the issuance of securities or assets of another person, or other similar reorganization, pursuant to applicable statutory provisions of the jurisdiction under which the corporation or other person is organized, or pursuant to the provisions of its articles of incorporation or similar controlling instrument, which the approval or consent of the security holders is required to effectuate, or any merger of a subsidiary entity into its parent where a vote, approval, or consent is not required by the applicable statute;

(40) "Rules" means the rules of the Securities Commissioner;

(41) "SEC" means the United States Securities and Exchange Commission;

(42) "Sponsor" means a person or a member of the immediate family of a person who acts as a general partner, manager, or management company of a program

including an affiliate of, or a person associated with, a sponsor, except as otherwise provided;

(43) "Subsidiary" means an affiliate controlled by another person;

(44) "Staff" means the staff of the State Securities Department;

(45)(A) "Transact business". As used in Arkansas Code § 23-42-301(a) and (c) of the Arkansas Securities Act, the term "transact business" includes representing a person or entity as being able to effect transactions in securities for the account of others or for his or her own account regardless of whether any transactions have actually been effected, or being able to serve as an investment adviser regardless of whether any investment advice or service has actually been rendered.

(B) The term shall not include communications, postings, or distributions of information set forth on the internet or other mass media outlet if each of the following conditions are met:

(i) The internet or other mass media outlet communication contains a legend in which the following is clearly stated:

(a) The broker-dealer, investment adviser, broker-dealer agent, agent of the issuer, or investment adviser representative in question may only transact business in this state if first registered, or exempted from registration as a broker-dealer, investment adviser, broker-dealer agent, agent of the issuer, or investment adviser representative, whichever is applicable; and

(b) Follow-up, individualized responses to persons in this state by a broker-dealer, investment adviser, broker-dealer agent, agent of the issuer, or investment adviser representative that involve either the effecting of or the attempt to effect transactions in securities, or the rendering of personalized investment advice for compensation or attempt to render advice, as may be, will not be made absent compliance with state broker-dealer, investment adviser, broker-dealer agent, agent of the issuer, or investment adviser representative requirements, or an applicable exemption;

(ii)(a) The internet or other mass media outlet communication contains a mechanism, including and without limitation technical firewalls or other

implemented policies and procedures designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this state, the broker-dealer, investment adviser, agent of the issuer, broker-dealer agent, or investment adviser representative is first registered in this state or is exempt from registration under the Arkansas Securities Act.

(b) Nothing in this part shall be construed to relieve a broker-dealer, investment adviser, broker-dealer agent, agent of the issuer, or investment adviser representative from any applicable securities registration requirements in this state;

(iii) The internet or other mass media outlet communication does not involve either effecting or attempting to effect transactions in securities, or rendering of or attempting to render personalized investment advice for compensation, as may be, in this state over the internet, but is limited to the dissemination of general information on products and services; and

(iv) In the case of an agent or representative:

(a) The affiliation with the broker-dealer or investment adviser of the agent or representative is prominently disclosed within the communication;

(b) The broker-dealer or investment adviser with which the agent or representative is associated retains responsibility for reviewing and approving the content of any internet or other mass media outlet communication by the agent or representative;

(c) The broker-dealer or investment adviser with which the agent or representative is associated first authorizes the distribution of information on the particular products and services through the internet or other mass media outlet communication; and

(d) In disseminating information through the internet or other mass media outlet communication, the agent or representative acts within the scope of the authority granted by the broker-dealer or investment adviser with which the agent or representative is associated; and

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

Authority. Arkansas Code § 23-42-204.

Codification Notes. The Securities Act of 1933 is codified at 15 U.S.C. § 77a et seq.

23 CAR § 300-103. Applicability. [Reserved].

23 CAR § 300-104. Criminal penalties. [Reserved].

23 CAR § 300-105. Prosecution of criminal offenses. [Reserved].

23 CAR § 300-106. Civil liability. [Reserved].

23 CAR § 300-107. Consent to service of process. [Reserved].

23 CAR § 300-108. Rights and remedies cumulative. [Reserved].

23 CAR § 300-109. Waiver of compliance void. [Reserved].

23 CAR § 300-110. False or misleading statements unlawful. [Reserved].

Subpart 2. Administration

23 CAR § 300-201. Administration by commissioner — Conflicts of interest. [Reserved].

23 CAR § 300-202. Delegation of authority by commissioner. [Reserved].

23 CAR § 300-203. Confidentiality of information or proceedings generally. [Reserved].

23 CAR § 300-204. Rules, forms, and orders of commissioner — General.

The following provisions apply to all applications, petitions, notice filings, amendments, reports, complaints, or other documents required under the Arkansas Securities Act, Arkansas Code § 23-42-101 et seq., this part, or any order of the Securities Commissioner:

(1) Filing.

(A) A document is deemed filed when it is received in the office of the commissioner.

(B) All communications and inquiries shall be addressed or delivered to:

Arkansas Securities Commissioner
1 Commerce Way, Suite 402
Little Rock, Arkansas 72202
Telephone 501.324.9260

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

(D)(i) The original of each form or exhibit is required.

(ii) Additional copies of certain documents may be requested or required by other provisions of the Arkansas Securities Act or this part.

(E) When a document is required to be signed, the signature shall be an original signature of the person signing or if submitted electronically, the signature shall

be verified through a certification authority that shall verify for the State Securities Department that the electronic signature is authentic.

(F) A filing shall be deemed incomplete until all requested information and applicable fees are received;

(2) Fees.

(A) Unless a filing is made electronically or as otherwise set forth specifically in this part, all filing fees must accompany the application or supplemental amendment to which they pertain.

(B) Filing fees for notice filings shall accompany the notice filing when possible or as soon thereafter as is practical.

(C) Copies of documents filed and recorded in the office of the commissioner will be provided at a charge of ten cents (10¢) per page.

(D) Certified copies will be provided at an additional charge of one dollar (\$1.00) per document.

(E) Postage, shipping fees, and additional costs related to providing information to the public may be charged.

(F) Unless paid electronically, fee payments made directly to the department shall be by check or money order made payable to the State Securities Department; and

(3) Forms. The following forms have been adopted for use:

(A) Broker-dealer registration.

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

(ii) Uniform Application for Securities Industry Registration or Transfer (Form U4).

(iii) Uniform Branch Office Registration (Form BR).

(iv) Uniform Termination Notice for Securities Industry Registration (Form U5).

(v) Uniform Request for Broker-Dealer Withdrawal (Form BDW).

(vi) Broker-Dealer Independent Contractor Acknowledgement Form.

(vii) Life Disclosure Settlement Document I and II;

(B) Investment adviser registration.

(i) Uniform Application for Investment Adviser Registration (Form ADV).

(ii) Uniform Surety Bond (Form USB).

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

(iv) Investment Adviser Independent Contractor Acknowledgement Form.

(v) Certificate of Accounting of Client Securities and Funds in the Possession or Custody of an Investment Adviser (Form ADV-E).

(vi) Bond Continuation Certificate;

(C) Securities agent, agent of an issuer, and investment adviser representative.

(i) Uniform Application for Securities Industry Registration (Form U4).

(ii) Uniform Surety Bond (Form USB).

(iii) Uniform Termination Notice (Form U5).

(iv) Uniform Examination Request for Non-FINRA Candidates (Form U10).

(v) Agreement of Joint Supervision for Dual Registration.

(vi) Agent of the Issuer Renewal Registration Application.

(vii) Model Accredited Investor Exemption Uniform Notice of Transaction;

(D) Securities registration and exemption.

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

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

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

(iv) Small Corporate Offering Registration (Form U-7).

(v) Registration Statement under the Securities Act of 1933 (Form S-1).

(vi) Notice of Sales of Securities Pursuant to Regulation D, Section 4(6) of the Securities Act of 1933, and/or Uniform Limited Offering Exemption (Form D).

(vii) Model Accredited Investor Exemption; and

(E) Notice filings.

(i) Uniform Investment Company Notice Filing (Form NF).

(ii) Uniform Application for Investment Adviser Registration (Form ADV).

(iii) Uniform Notice Filing of Regulation A – Tier 2 Offering.

Authority. Arkansas Code § 23-42-204.

Codification Notes. The Securities Act of 1933 is codified at 15 U.S.C. § 77a et seq.

23 CAR § 300-205. Investigations. [Reserved].

23 CAR § 300-206. Records of commissioner generally — Interpretive opinions — Guidelines for interpretive opinions and no-action letters.

(a) General.

(1)(A) In most circumstances, persons requesting informal advice from the staff should submit a request for an interpretive opinion or no-action letter.

(B) In an interpretive opinion, the staff provides its views on the interpretation of a specific statute or rule in the context of an actual and narrow fact situation.

(C) A no-action letter is one in which the staff indicates that it will not recommend enforcement action to the Securities Commissioner if a proposed course of action described in the request occurs just as described in the request.

(D) In some instances, the staff may indicate that it is unable to assure the requesting party that it will not recommend enforcement action and may allow the requesting party to withdraw the request.

(E) A no-action letter expresses the staff's position on enforcement action only and does not represent any legal conclusion on the question presented.

(2) Requests for no-action letters or interpretive opinions should comply with the following:

(A)(i) Each request for no-action letter or an interpretive opinion shall be in writing.

(ii) The requesting party must submit an original and one (1) copy of each request;

(B)(i) The specific subsection of the particular statute to which the request pertains must be indicated in the request.

(ii) Thus, for example, a letter requesting an interpretation of Arkansas Code § 23-42-504(a)(9) of the Arkansas Securities Act exemption would be captioned "Section 23-42-504(a)(9) Exemption" and a letter requesting an interpretation of 23 CAR § 300-504(b)(1)(I) under the Arkansas Securities Act would be captioned "23 CAR § 300-504(b)(1)(I)";

(C)(i) The request must contain the names of each person and entity involved in the underlying facts.

(ii) Requests relating to unnamed persons or entities or to hypothetical situations will not be answered;

(D)(i) The request must be limited to the particular situation involving the problem at hand and should not attempt to include every possible type of situation which may arise in the future.

(ii) The facts and representations must be specific, not general;

(E) While it is essential that the request contain all of the facts necessary to reach a conclusion in the matter, the request should be concise and to the point;

(F)(i) The requesting party must indicate:

(a) Why he or she thinks a problem exists;

(b) His or her own opinion in the matter; and

(c) The basis for that opinion.

(ii) If the requesting party seeks confidential treatment, a separate letter requesting confidential treatment and stating the basis for confidential treatment must be submitted with the interpretive request.

(iii) Confidential treatment will generally not be available unless necessary to protect bona fide trade secrets or unless clearly authorized by some other provision of law; and

(G)(i) In responding to a properly submitted request for interpretive opinion or no-action letter, the staff will use an endorsement to the incoming request.

(ii) The staff will state its position on a separate page attached to the incoming request.

(iii) Both the incoming letter and the staff's endorsement response will be:

(a) Sent to the requesting party;

(b) Made publicly available; and

(c) Posted to the State Security Department's website.

(b) Limitations.

(1) All forms of informal advice, including no-action letters and interpretive opinions, are subject to substantial limitations.

(2) These limitations include the following:

(A)(i) All informal advice is subject to reconsideration and is not precedent binding on the commissioner.

(ii) Informal advice sets forth the staff's position only with respect to the particular facts posed by the particular requesting party and does not constitute an official expression of the commissioner's views;

(B)(i) In responding to any request for informal advice, the advice given will be limited to and conditional upon the specific representations made to the staff by the requesting party.

(ii) The staff's position will be based solely upon the facts and representations provided by the requesting party.

(iii) These facts and representations must be specific rather than general.

(iv) Any different facts, representations, or circumstances might require the staff to reach a different conclusion;

(C)(i) All informal advice applies only to the requesting party.

(ii) Persons in similar circumstances should not rely on previous no-action letters or interpretive opinions, but submit their own request for informal advice;

(D) All informal advice shall be limited to the specific law administered by the department as stated in the staff's response, and will not address the applicability of any other federal, state, or local law, rule, or regulation; and

(E)(i) The staff may decline to express any view on the application of law to a particular set of facts.

(ii) There are several reasons why the staff may feel it inappropriate in a particular instance to express an opinion.

(iii) For example:

(a) The staff may be in no position to verify the facts and circumstances which are the basis of the request;

(b) The staff may be concerned that its position may be misconstrued in somewhat different factual circumstances; and

(c) In some areas, policy concerns dictate that the staff may not express a view.

Authority. Arkansas Code § 23-42-204.

23 CAR § 300-207. Public inspection of records — Exceptions.

[Reserved].

23 CAR § 300-208. Cooperation with other regulatory agencies.

[Reserved].

23 CAR § 300-209. Injunction, mandamus, or other ancillary relief.
[Reserved].

23 CAR § 300-210. Judicial review. [Reserved].

23 CAR § 300-211. Disposition of fees. [Reserved].

23 CAR § 300-212. Registration or availability of exemption not construed as approval by commissioner — Inconsistent representation.
[Reserved].

23 CAR § 300-213. Disposition of fines — Investor Education Fund — Investor education program.

(a) **General.**

(1) Utilizing the Investor Education Fund described in Arkansas Code § 23-42-213 of the Arkansas Securities Act, Arkansas Code § 23-42-101 et seq., the Securities Commissioner may administer an investor education program for the citizens of the State of Arkansas.

(2) The purpose of the program will be to inform and educate the public regarding investments in securities in order to:

(A) Help investors and potential investors evaluate their investment decisions;

(B) Protect themselves from unfair, inequitable, and 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.

(b) **Grant program.**

(1)(A) Utilizing the fund described in Arkansas Code § 23-42-213 of the Arkansas Securities Act, the commissioner may administer a grant program to solicit grant proposals from public schools and nonprofit 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:

- (i) Securities industry;
- (ii) Securities markets; and
- (iii) Investment decisions.

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

(C) The commissioner may establish the number of grant awards available as well as the amount of moneys available for award through the grant program.

(D) 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 subpart, and Arkansas Code § 23-42-213 of the Arkansas Securities Act.

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

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

- (i) Educational need for the project;
- (ii) Learning objectives to be accomplished by the project;
- (iii) Specific description of the project;
- (iv) Number of students educated;
- (v) Description of measurable project outcomes; and
- (vi) Other school resources dedicated to the project.

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

Authority. Arkansas Code § 23-42-204.

Codification Notes. Section 501(c)(3) of the Internal Revenue Code is codified at 26 U.S.C. § 501.

Subpart 3. Broker-dealers and Investment Advisers

23 CAR § 300-301. Registration required — General provisions.

(a) Eligibility requirements.

(1) Each nonresident broker-dealer, agent, investment adviser, or representative must be registered, exempt, excepted from registration, or qualified to engage in business as a broker-dealer, agent, investment adviser, or representative in the state of the registrant's primary residence or, in the case of broker-dealers or investment advisers that are not natural persons, in the state in which the broker-dealer or investment adviser has its principal place of business.

(2) Each partner or officer of a registered broker-dealer or issuer may act as an agent only if registered as an agent as required by the Arkansas Securities Act, Arkansas Code § 23-42-101 et seq.

(3)(A) Except upon approval of the Securities Commissioner, an agent or representative may not be registered with more than one (1) broker-dealer, investment adviser, issuer, or any combination thereof, unless the business entities are affiliated.

(B) An Agreement of Joint Supervision for Dual Registration from all unaffiliated firms shall be submitted to the commissioner for approval.

(4) Each registered broker-dealer shall have at least one (1) registered agent and each registered investment adviser shall have at least one (1) registered representative.

(b) Expiration and renewal of registration.

(1) All broker-dealer, agent, investment adviser, and representative registrations hereunder, and United States Securities and Exchange Commission registered investment adviser notice filings, shall automatically expire on December 31

of each year without notification by the commissioner, unless the registration or notice filing has been properly renewed, or is withdrawn, terminated, or cancelled.

(2) When a registration or notice filing expires without the filing of a renewal, a subsequent application shall be considered in all respects as an original application or notice filing unless an extension has been requested and granted in writing by the commissioner prior to expiration.

(3)(A) The registration of an agent or representative terminates upon the termination of the registrant's employment with the broker-dealer or investment adviser.

(B) A Form U5 must be used to report a termination of an agent or representative.

(C) If a Form U4 is received from the agent or representative whose employment has terminated and is processed by the commissioner prior to the receipt of the Form U5 from the broker-dealer or investment adviser with which the registrant was formerly employed, the Form U4 shall be considered not only an application for initial registration with the new broker-dealer or investment adviser, but also notification of termination or withdrawal of the previous registration or application unless the agent or representative has complied with the dual registration requirements of 23 CAR § 300-301(a)(3).

(4) Termination of a broker-dealer or investment adviser registration for any reason shall automatically constitute a termination of all underlying agent or representative registrations.

(c) Supervision requirements.

(1) Supervisor.

(A) **Broker-dealer.** An agent of a broker-dealer appointed to carry out supervisory responsibilities for a broker-dealer, pursuant to Arkansas Code § 23-42-301 of the Arkansas Securities Act, shall be registered in this state and comply with the examination requirements of 23 CAR § 300-302(c)(4) and (5).

(B) **Investment adviser.** A representative of an investment adviser appointed to carry out supervisory responsibilities for an investment adviser, pursuant

to Arkansas Code § 23-42-301 of the Arkansas Securities Act, shall be registered in this state as a representative.

(2) Written policies and procedures.

(A) As evidence of compliance with the supervisory obligations imposed by Arkansas Code § 23-42-301 of the Arkansas Securities Act, every broker-dealer and investment adviser shall implement written policies and procedures, a copy of which shall be kept in each location at which the broker-dealer or investment adviser conducts business, and shall establish, maintain, and enforce those written policies and procedures designed to achieve compliance with the Arkansas Securities Act and to detect and prevent violations.

(B) With consideration for the size and number of locations of the broker-dealer or investment adviser, the written policies and procedures, at a minimum, shall address the following:

(i)(a) The supervision of every agent or investment adviser representative by a designated supervisor.

(b) This shall include the following:

(1) Names, titles, registration status, and locations of all supervisors;

(2) The names of the agents or investment adviser representatives the supervisor will supervise; and

(3) The responsibilities of each supervisor;

(ii) Methods to be used to determine that all supervisors are qualified by virtue of character, experience, and training to carry out their assigned responsibilities;

(iii) Methods to be used to determine the good character, business repute, qualifications, and experience of any applicant prior to making application for registration of that person with the commissioner and hiring that person;

(iv) The review and written approval by a supervisor of the opening of each new customer account;

(v) The frequent examination of customer accounts to detect and prevent:

(a) Violations;

(b) Irregularities; or

(c) Abuses;

(vi) The prompt review and documentation of the handling of customer complaints;

(vii) The prompt review and written approval by a supervisor of all securities transactions, investment advice, and correspondence pertaining to the securities business of registrants;

(viii) The review and written approval by a supervisor of the delegation by a customer of discretionary authority with respect to the customer's account and frequent examination of discretionary accounts to prevent:

(a) Violations;

(b) Irregularities; or

(c) Abuses;

(ix)(a) The participation of each registrant either individually or collectively, no less than annually, in an interview or meeting conducted by a supervisor at which compliance matters relevant to the activities of the registrant are discussed.

(b) Written records shall be maintained reflecting the interview or meeting;

(x) **Periodic inspections.**

(a)(1) Each place of business shall be periodically inspected to ensure that the written policies and procedures and systems are enforced.

(2)(A) An office of supervisory jurisdiction of a broker-dealer shall be inspected at least annually.

(B) For the purposes of this section, the term "office of supervisory jurisdiction" shall have the same meaning as that term is defined in FINRA Rule 3110(f).

(3) The principal place of business of each investment adviser shall be inspected at least annually.

(4) In establishing an inspection cycle, the broker-dealer and investment adviser shall give consideration to:

- (A) The size of the broker-dealer or investment adviser;
- (B) The number and location of the offices;
- (C) The volume of business and the number of agents or investment adviser representatives assigned to the location;
- (D) The nature and complexity of the securities products and services offered from the location; and
- (E) The disciplinary history of the registered agents and investment adviser representatives working at the location.

(b)(1) The obligation of diligent supervision required by this section may require that one (1) or more locations of a broker-dealer or investment adviser in this state receive more inspections or be on a periodic inspection cycle different than other locations of the broker-dealer or investment adviser, and that inspections be unannounced.

(2) Unannounced visits may be appropriate when there are indicators of misconduct such as receipt of:

- (A) Significant customer complaints;
- (B) Personnel with disciplinary records; or
- (C) Excessive trade corrections; and

(xi)(a) Every broker-dealer and investment adviser shall establish, implement, and maintain written policies and procedures relating to a Business Continuity and Succession Plan.

(b) The plan shall provide for at least the following:

(1) The protection, backup, and recovery of books and records;

(2) Alternate means of communications with customers, key personnel, employees, vendors, service providers, including third-party custodians and

regulators, including but not limited to providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities;

(3) Office relocation in the event of temporary or permanent loss of a principal place of business;

(4) Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel; and

(5)(A) Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.

(B) An investment adviser should periodically test the Business Continuity and Succession Plan to ensure that it is adequate, effective, and current.

(3)(A) All written policies and procedures and evidence of compliance with written policies and procedures shall be maintained for three (3) years, the first two (2) years being in an easily accessible place.

(B) The retention and preservation of records may be on electronic medium if adequate facilities are maintained for examination.

(4) To the extent that this section imposes any recordkeeping requirement on an investment adviser registered under Arkansas Code § 23-42-301 of the Arkansas Securities Act, the recordkeeping requirement does not apply if the investment adviser meets the following conditions:

(A) Has its principal place of business in a state other than this state;

(B) Is licensed as an investment adviser in the state where it has its principal place of business; and

(C) Is in compliance with the recordkeeping requirements of the state in which it has its principal place of business.

(5)(A) Final responsibility for proper supervision shall rest with the broker-dealer or investment adviser.

(B) It is the responsibility of the broker-dealer or investment adviser to ensure through inspections of each business location that the written policies and

procedures are enforced and the supervisory obligations imposed by this section are being honored.

Authority. Arkansas Code § 23-42-204.

23 CAR § 300-302. Registration procedure — Broker-dealer or agent.

(a) **Filings made through CRD.** Pursuant to Arkansas Code §§ 23-42-208 and 23-42-302 of the Arkansas Securities Act, Arkansas Code § 23-42-101 et seq., the Securities Commissioner designates the CRD to receive and store filings and collect related fees from broker-dealers and broker-dealer agents on behalf of the commissioner.

(b) **Application.**

(1)(A) Each filing for initial and renewal registration shall be complete only if it contains the information set forth in Arkansas Code §§ 23-42-302 – 23-42-305 of the Arkansas Securities Act in the manner prescribed by the commissioner.

(B) The requirements listed below are subject to change pursuant to Arkansas Code § 23-42-208 of the Arkansas Securities Act.

(2) **Broker-dealer applications.** An applicant for initial broker-dealer registration shall:

(A) Submit to the CRD a completed Form BD and Form BR designating Arkansas as a state in which the applicant requests to be registered, along with the fees set forth in Arkansas Code § 23-42-304 of the Arkansas Securities Act and any other fee required by FINRA; and

(B) Submit the following to the commissioner:

(i)(a) Audited financial statements for the most recently ended fiscal year if the applicant has been in existence for twelve (12) months or more.

(b) If the applicant has been in existence less than twelve (12) months and no audited financial statement has been prepared within thirty (30) days of filing the application, the most recent unaudited balance sheets certified as correct by the:

- (1) President;
- (2) Chief financial officer; or
- (3) Similar executive officer.

(c) All financial statements, unless otherwise permitted, shall be prepared in accordance with generally accepted accounting principles and practices.

(d) All audited financial statements shall be prepared by an independent certified public accountant in accordance with generally accepted auditing standards and in conformity with generally accepted accounting principles;

(ii) Proof of bonding coverage as prescribed by FINRA;

(iii) Independent Contractor Acknowledgement Form acknowledging responsibility for registered agents, employees, and independent contractors; and

(iv) Any other information deemed necessary by the commissioner to determine whether the applicant should be registered.

(3) Agent applications.

(A) Initial agent applications for a broker-dealer registered or to be registered with FINRA must be submitted directly to the CRD system and shall include the following:

(i) Form U4;

(ii) The initial agent registration fee as set forth in Arkansas Code § 23-42-304 of the Arkansas Securities Act and any other fee required by FINRA;

(iii) Any attachments as required by the instructions on Form U4; and

(iv) Compliance with the examination requirements of subsection (c) of this section.

(B) Initial agent applications for an agent of an issuer must be submitted directly to the commissioner and shall include the following:

(i) Form U4;

(ii) The initial agent registration fee as set forth in Arkansas Code § 23-42-304 of the Arkansas Securities Act;

(iii) Proof of processed Federal Bureau of Investigation fingerprint background check;

(iv) A surety bond in the amount of twenty-five thousand dollars (\$25,000);

(v) Any attachments as required by the instructions on Form U4; and

(vi) Submission of Form U10 in accordance with the form instructions and compliance with the examination requirements of subsection (c) of this section.

(C) An application for registration as an agent of a broker-dealer or an agent of an issuer shall not be complete until the applicant has furnished, in addition to the requirements set forth in subdivision (b)(3) of this section, any other information not specifically required by the Arkansas Securities Act or this part that the commissioner may reasonably require, including, but not limited to, copies of any:

(i) Litigation;

(ii) Regulatory proceedings; and

(iii) Customer complaints.

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

(ii)(a) Any applicant subject to the fingerprinting requirements of the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., shall submit to the CRD system a fingerprint card along with a fingerprint record transmittal form (both supplied by the CRD) which will be processed by the Federal Bureau of Investigation by the CRD system.

(b) The applicant may be registered after submission of the fingerprint card and completion of all other registration requirements.

(c) Notification of the results of the processed card will be made available to the State Securities Department via the CRD system.

(iii)(a) An agent of the issuer applicant shall submit an identification record request with fingerprints directly to the Federal Bureau of Investigation.

(b) Proof of submission of the request with the Federal Bureau of Investigation and a copy of the results of the processed identification request shall be submitted directly to the commissioner.

(4) Broker-dealer renewal applications.

(A) An applicant for the renewal of a registration as a broker-dealer shall, prior to expiration of its current registration, submit to the CRD all appropriate amendments and fees.

(B) No documents are required to be filed directly with the commissioner, however, the commissioner may request other information not specifically required by the Arkansas Securities Act or this part, including, but not limited to, copies of any:

- (i) Litigation;
- (ii) Regulatory proceedings; and
- (iii) Customer complaints.

(5) Agent renewal applications.

(A) Renewal registration of agents of a broker-dealer shall be submitted to the CRD along with the fee set forth in Arkansas Code § 23-42-304 of the Arkansas Securities Act and any other fee required by FINRA prior to expiration of registration.

(B) For agents renewing registration with a broker-dealer, no documents are required to be filed directly with the commissioner, however, the commissioner may request other information not specifically required by the Arkansas Securities Act or this part, including, but not limited to, copies of any:

- (i) Litigation;
- (ii) Regulatory proceedings; and
- (iii) Customer complaints.

(C) Renewal registration of agents of an issuer shall be submitted to the commissioner prior to the expiration of registration and shall include the following:

- (i) A completed Agent of the Issuer Renewal Application;
- (ii) The agent renewal registration fee as set forth in Arkansas Code § 23-42-304 of the Arkansas Securities Act;
- (iii) Proof of continued surety bond coverage;
- (iv) Any amendments to the documents on file; and
- (v) Any other information not specifically required by the Arkansas Securities Act or this part that the commissioner may reasonably require, including, but not limited to, copies of any:

- (a) Litigation;
- (b) Regulatory proceedings; and
- (c) Customer complaints.

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

(c) Examination of agents and supervisors.

(1) The commissioner requires that written examinations on general securities knowledge and state securities law be taken and passing scores achieved within a two-year period immediately preceding the filing date of the application before an applicant will be considered eligible for registration.

(2) Agent.

(A) An applicant to be an agent must achieve passing scores for the appropriate FINRA examinations.

(B) FINRA rules effective October 1, 2018, require agents to pass the Securities Industry Essentials Exam (SIE) and a specialized knowledge exam appropriate to their job function.

(C) Agent applicants must also pass the Series 63 or Series 66 exam that addresses state law.

(D) Prior to October 2018, agents were required to pass a Series 7 or Series 1 exam along with an exam covering state law.

(3) Limited agent.

(A) Applicants successfully completing a limited knowledge examination will only be eligible for registration to effect transactions in those securities that were covered by the limited examination.

(B) Applicants shall satisfy the state law examination requirement by passing the Series 63 or Series 66 examination and the knowledge requirement by passing at least one (1) limited knowledge securities examination.

(4) Supervisor.

(A) An agent designated as a supervisor must achieve passing scores for the appropriate FINRA examinations.

(B) FINRA rules effective October 1, 2018, require agents to pass the SIE and a specialized knowledge exam appropriate to their job function.

(C) Agent applicants must also pass the Series 63 or Series 66 exam that addresses state law.

(D) Prior to October 2018, agents were required to pass the agent exams along with a Series 24 exam or the Series 9 and Series 10 exams combined with the Series 23 exam.

(5) **Limited supervisor.** If the firm is limited in its scope of business and provides verification of the same to the commissioner, then at least one (1) agent designated as a limited supervisor must achieve passing scores for the appropriate FINRA examinations.

(6) Any individual who has been registered as a general securities agent, general securities principal, or investment adviser representative in any state, commonwealth, territory, district, or province in the United States or Canada within the two (2) years immediately preceding the filing of an application and who has at any time in the past met the requirements of subsection (c) of this section shall not be required to repeat the examinations in order to become registered.

(7) Solely in those cases where circumstances warrant because of the limited time, amount, nature of the issue or transaction involved, or the specific circumstances unique to the applicant, the commissioner may, upon petition and good cause shown by the applicant, waive any or all of the examination requirements set forth above.

(d) **Registration.**

(1) Upon completion of the application, compliance with the examination requirement, payment of the fees, and acceptance by the commissioner, initial registration will become effective.

(2) For agents and broker-dealers filing an application as set forth in subsection (b) of this section, the commissioner will either accept the application or notify the applicant of the matters that need to be resolved.

(3) Broker-dealers may access the registration status of the broker-dealer or agents through the CRD.

(e) Post-registration requirements.

(1) Registered broker-dealers and agents shall file amendments to Form BD and Form U4 with the CRD in the manner required by the forms and the CRD.

(2) Changes necessitating a filing shall include, but may not be limited to, the following:

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

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

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

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

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

(F) The registrant shall be deemed to have complied with immediate notification pursuant to this subsection if the information has been filed with CRD as

soon as possible but in no event more than thirty (30) calendar days after the registrant has knowledge of the circumstances requiring the notification.

(3) Any broker-dealer registered under the Arkansas Securities Act shall give timely notice to each agent registered with the broker-dealer of the results of any hearing or proceeding referred to in subdivision (e)(1) of this section to the extent the agent is required to disclose the matters on his or her application.

(f) Registration exemption for merger and acquisition brokers.

(1) Except as provided in subdivisions (f)(2) and (3) of this section, a merger and acquisitions broker shall be exempt from registration pursuant to Arkansas Code § 23-42-301 of the Arkansas Securities Act.

(2) **Excluded activities.** A merger and acquisition broker is not exempt from registration under this section if the merger and acquisition broker:

(A) Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction;

(B) Engages on behalf of an issuer in a public offering of any class of securities that is registered, or is required to be registered, with the United States Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. § 78l or with respect to which the issuer files, or is required to file, periodic information, documents, and reports under 15 U.S.C. § 78o(d); or

(C) Engages on behalf of any party in a transaction involving a public shell company.

(3) **Disqualifications.** A merger and acquisition broker is not exempt from registration under this section if the merger and acquisition broker is subject to:

(A) Suspension or revocation of registration under Section 15(b)(4) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(b)(4);

(B) A statutory disqualification described in Section 3(a)(39) of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(39);

(C) A disqualification under the rules adopted by the United States Securities and Exchange Commission under Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 15 U.S.C. § 77d; or

(D) A final order described in subdivision (4)(H) of Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(b)(4)(H).

(4) **Definitions.** For the purposes of this section:

(A)(i) "Control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise.

(ii) There is a presumption of control for any person who:

(a) Is a director, general partner, managing member, or manager of a limited liability company, or officer exercising executive responsibility (or has similar status or functions);

(b) Has the right to vote twenty percent (20%) or more of a class of voting securities or the power to sell or direct the sale of twenty percent (20%) or more of a class of voting securities; or

(c) In the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, twenty percent (20%) or more of the capital;

(B) "Eligible privately held company" means a company meeting both of the following conditions:

(i) The company does not have any class of securities registered, or required to be registered, with the United States Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. § 78l, or with respect to which the company files, or is required to file, periodic information, documents, and reports under Section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(d); and

(ii) In the fiscal year ending immediately before the fiscal year in which the services of the merger and acquisition broker are initially engaged with respect to the securities transaction, the company meets either or both of the following

conditions (determined in accordance with the historical financial accounting records of the company):

(a) The earnings of the company before interest, taxes, depreciation, and amortization are less than twenty-five million dollars (\$25,000,000); and

(b) The gross revenues of the company are less than two hundred fifty million dollars (\$250,000,000);

(C) "Inflation adjustment".

(i) On the date that is five (5) years after the date of the enactment of this section, and every five (5) years thereafter, each dollar amount in subdivision (f)(4)(B)(ii) of this section shall be adjusted by:

(a) Dividing the annual value of the Employment Cost Index For Wages and Salaries, Private Industry Workers (or any successor index), as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor) for the calendar year ending December 31, 2019; and

(b) Multiplying such dollar amount by the quotient obtained under this subdivision (f)(4)(C)(i).

(ii) **Rounding.** Each dollar amount determined under subdivision (f)(4)(C)(i) of this section shall be rounded to the nearest multiple of one hundred thousand dollars (\$100,000);

(D) "Merger and acquisition broker" means any broker and any person associated with a broker engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether that broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company:

(i) If the broker reasonably believes that upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert, will control and, directly or indirectly, will be active

in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company; and

(ii) If any person is offered securities in exchange for securities or assets of the eligible privately held company, such person will, prior to becoming legally bound to consummate the transaction, receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by its management in the normal course of operations and, if the financial statements of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant, a balance sheet dated not more than one hundred twenty (120) days before the date of the exchange offer, and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and any material loss contingencies of the issuer; and

(E) "Public shell company" means a company that at the time of a transaction with an eligible privately held company:

(i) Has any class of securities registered, or required to be registered with the United States Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. § 78l, or with respect to which the company files, or is required to file, periodic information, documents, and reports under Section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(d);

(ii) Has no or nominal operations; and

(iii) Has:

(a) No or nominal assets;

(b) Assets consisting solely of cash and cash equivalents; or

(c) Assets consisting of any amount of cash and cash equivalents

and nominal other assets.

Authority. Arkansas Code § 23-42-204.

Codification Notes. The Securities Exchange Act of 1934 is codified at 15 U.S.C. § 78a et seq.

The Dodd-Frank Wall Street Reform and Consumer Protection Act is codified primarily at 12 U.S.C. § 5301 et seq.

23 CAR § 300-303. Registration procedure — Investment adviser.

(a) **Filings made through IARD.** Pursuant to Arkansas Code §§ 23-42-208 and 23-43-302 of the Arkansas Securities Act, Arkansas Code § 23-42-101 et seq., the Securities Commissioner designates the IARD to receive and store filings and collect related fees from investment advisers and investment adviser representatives on behalf of the Securities Commissioner.

(b) **Application for investment registration.**

(1) **Initial applications.** The application for initial registration as an investment adviser pursuant to Arkansas Code § 23-42-302 of the Arkansas Securities Act shall be made by doing the following:

(A) Completing and filing Form ADV, in accordance with the form instructions, along with the fee as set forth in Arkansas Code § 23-42-304(a) of the Arkansas Securities Act, with the IARD; and

(B) Submitting directly to the Securities Commissioner the following:

(i)(a) Financial statements.

(b) Each investment adviser applying for initial registration must submit an unaudited balance sheet in a form prepared in accordance with generally accepted accounting principles dated within thirty (30) days of the filing.

(c) The balance sheet shall be certified as true and accurate by the chief financial officer of the applicant as indicated on the Form ADV or, if there is no chief financial officer, the person executing the Form ADV.

(d) If the applicant has been engaged in business for one (1) year or more preceding the filing of the application, the applicant may submit audited financial statements for the last fiscal period along with an unaudited balance sheet in a form acceptable to the Securities Commissioner dated within thirty (30) days of the filing;

(ii)(a) For an investment adviser applicant that maintains a principal place of business in a state other than Arkansas, the requirements of subdivision (b)(1)(B)(i) of this section may be satisfied by filing with the Securities Commissioner a copy of any financial reports required by and filed with the securities commissioner or director in the other state.

(b) When deemed necessary, the applicant shall furnish any further information required by the Securities Commissioner;

(iii)(a) A corporate surety bond of fifty thousand dollars (\$50,000) covering the applicant and each representative if the applicant has custody of any customer funds or securities, unless the applicant has custody solely as a consequence of its authority to make withdrawals from client accounts to pay its advisory fee and complies with the terms described under 23 CAR § 300-309(b)(2)(C)(i) – (iii).

(b) However, no surety bond is required if an applicant maintains its principal place of business in a state other than Arkansas and is the following:

(1) Registered or licensed as an investment adviser in that state; and

(2) Is in compliance with the applicable bonding requirements of that state;

(iv)(a) Copies of investment advisory contracts to be used by the investment adviser.

(b) All investment advisory contracts entered into by the investment adviser with any client shall be fair and reasonable and indicate the customer's risk tolerance, investment objectives, annual income, net worth, and liquid net worth, and shall be signed and dated by all persons having an interest in the account;

(v) Independent Contractor Acknowledgement Form; and

(vi) Any other information not specifically required by the Arkansas Securities Act or this part that the Securities Commissioner may reasonably require including, but not limited to, copies of orders, pleadings, or documents relating to any past or present:

- (a)* Litigation;
- (b)* Regulatory proceedings; and
- (c)* Customer complaints.

(2) **Annual renewal.** The application for annual renewal registration as an investment adviser shall be accomplished by filing for renewal with the IARD in accordance with the form instructions along with the fee as set forth in Arkansas Code § 23-42-304(a) of the Arkansas Securities Act.

(3) **Updates and amendments.**

(A)(i) Each year, an investment adviser must file an annual updating amendment for Form ADV with IARD within ninety (90) days after the end of the registrant's fiscal year.

(ii) In addition to the annual updating amendment, any material information that becomes inaccurate must be filed promptly, within thirty (30) days of the event that requires the filing of the amendment, according to the Form ADV general instructions.

(B) Each year, an investment adviser must file directly with the Securities Commissioner, within ninety (90) days after the close of the fiscal year unless written permission to file at some other date is granted by the Securities Commissioner in advance of the date for filing, the following:

(i) Proof of corporate surety bond coverage for the investment adviser and each representative if the investment adviser has custody of any customer funds or securities, unless the custody is solely as a consequence to the authority to make withdrawals from client accounts to pay advisory fees and the investment adviser complies with the terms described under 23 CAR § 300-309(b)(2)(C)(i) – (iii);

(ii) Any amendments to its investment advisory contracts; and

(iii) Annual financial statements as follows:

(a)(1) An investment adviser that has custody of client funds or securities, or that requires prepayment of client fees of more than five hundred dollars (\$500) per client and more than six (6) months in advance, shall submit audited

financial statements with the Securities Commissioner, if that investment adviser has been in business for twelve (12) months or more.

(2) All audited financial statements shall be prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant in conformity with generally accepted auditing standards;

(b) Notwithstanding subdivision (b)(3)(B)(iii)(a) of this section, an investment adviser that has custody of client funds or securities solely due to its role as the adviser to a private fund or pooled investment vehicle, when all conditions of 23 CAR § 300-309(b)(2)(D) are met, including a proper audit of the fund that is provided to the Securities Commissioner and all investors, shall submit an unaudited balance sheet in a form prepared in accordance with generally accepted accounting principles;

(c) Notwithstanding subdivision (b)(3)(B)(iii)(a) of this section, an investment adviser that has custody of client funds or securities solely as a consequence of its authority to make withdrawals from client accounts to pay its advisory fee and that complies with the terms described under 23 CAR § 300-309(b)(2)(C)(i) – (iii), shall submit an unaudited balance sheet in a form prepared in accordance with generally accepted accounting principles;

(d) An investment adviser that does not have custody of client funds or securities, or that has not been in business for at least twelve (12) months, shall submit an unaudited balance sheet in a form prepared in accordance with generally accepted accounting principles;

(e) An unaudited balance sheet filed with the Securities Commissioner shall be certified as true and accurate by the chief financial officer of the registrant as indicated on Form ADV, or if there is no chief financial officer, by the person executing the Form ADV; and

(f)(1) For an investment adviser registrant that maintains a principal place of business in a state other than Arkansas, the requirements of subdivision (b)(3)(B)(iii) of this section may be satisfied by filing with the Securities

Commissioner a copy of any financial reports required by and filed with the securities commissioner in the other state.

(2) When deemed necessary, the registrant shall furnish any further information as required by the Securities Commissioner.

(4) **Completion of filing.** An application for initial or renewal registration is not considered filed for purposes of Arkansas Code § 23-42-302(a) of the Arkansas Securities Act until the required fee and all required sections of Form ADV are received and accepted by the IARD and all other required submissions have been received and accepted by the Securities Commissioner.

(c) **Application for investment adviser representative registration.**

(1) **Initial applications.**

(A) The application for initial registration as an investment adviser representative pursuant to Arkansas Code § 23-42-302(a) of the Arkansas Securities Act shall be made by completing Form U4 in accordance with the form instructions and filing Form U4 with the IARD.

(B) The application for initial registration shall also include the following:

(i) The fee required by Arkansas Code § 23-42-304 of the Arkansas Securities Act;

(ii) Compliance with the examination requirements of subsection (f) of this section; and

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

(2) **Annual renewal.**

(A) The application for annual renewal of registration for a registered representative shall be made by filing necessary amendments to Form U4 in accordance with the form instructions with the IARD.

(B) The application for annual renewal of registration shall include the fee required by Arkansas Code § 23-42-304 of the Arkansas Securities Act.

(3) **Updates and amendments.**

(A) The registered representative is under a continuing obligation to update information required by Form U4 as changes occur.

(B) Any amendments to the representative's Form U4 must be filed promptly with the IARD.

(C) An amendment will be considered promptly filed if received by the IARD within thirty (30) days of the event that requires the filing of the amendment.

(4) **Completion of filing.** An application for initial or renewal registration is not considered filed for purposes of Arkansas Code § 23-42-302(a) until the required fee and all required submissions have been received and accepted by IARD and all other required submissions have been received and accepted by the Securities Commissioner.

(d) **Acceptance of registration.**

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

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

(3) Notification of the effectiveness of registration shall be available to an applicant through IARD.

(e) **Notice filing requirements for Securities and Exchange Commission registered investment.**

(1) **Notice filing.**

(A) The notice filing for a United States Securities and Exchange Commission registered investment adviser pursuant to Arkansas Code § 23-42-301(c) of the Arkansas Securities Act shall be filed with IARD on an executed Form ADV.

(B) A notice filing of a United States Securities and Exchange Commission registered investment adviser shall be deemed filed when the fee required by Arkansas Code § 23-42-304 of the Arkansas Securities Act and Form ADV are filed with and approved by the United States Securities and Exchange Commission.

(2) **Annual renewal.**

(A) The annual renewal of the notice filing for a United States Securities and Exchange Commission registered investment adviser pursuant to Arkansas Code § 23-42-301(c) of the Arkansas Securities Act shall be filed with IARD.

(B) The renewal of the notice filing for a United States Securities and Exchange Commission registered investment adviser shall be deemed filed when the fee required by Arkansas Code § 23-42-304 of the Arkansas Securities Act is filed with and approved by the United States Securities and Exchange Commission.

(3) **Updates and amendments.** A United States Securities and Exchange Commission registered investment adviser must file with IARD, in accordance with the instructions in Form ADV, any amendments to the United States Securities and Exchange Commission registered investment adviser's Form ADV.

(f) **Examination of investment adviser representative.**

(1) **Examination requirements.** An individual applying to be registered as an investment adviser representative under the Arkansas Securities Act shall provide the Securities Commissioner with proof of knowledge of the investment advisory business and the Arkansas Securities Act by obtaining a passing score within the two-year period immediately preceding the filing date of the application, on either of the following examinations:

(A) Series 65, Uniform Investment Adviser Law; or

(B) Appropriate FINRA examinations for registration as a broker-dealer agent set out in 23 CAR § 300-302(c)(2), combined with the Series 66, Uniform Combined State Law.

(2) **Waivers.** The examination requirements under subdivision (f)(1) of this section shall not apply to an individual who currently holds and maintains in good standing one (1) of the following professional designations:

(A) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards;

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

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

(D) Chartered Financial Analyst (CFA) awarded by the CFA Institute;

(E) Chartered Investment Counselor (CIC) awarded by the Investment Adviser Association; or

(F) Any other professional designation as the Securities Commissioner may by rule or order accept.

(3) Any individual who has been registered as an investment adviser representative or broker-dealer agent in any state, commonwealth, territory, district, or province in the United States or Canada within the two (2) years immediately preceding the filing of an application and who has at any time in the past met the requirements of subdivision (f)(1) of this section shall not be required to repeat the examinations in order to become registered as an investment adviser representative.

(4) Solely in those cases where circumstances warrant because of the limited time, amount, or nature of the issue or transaction involved, or the specific circumstances unique to the applicant, the Securities Commissioner may, upon petition and good cause shown by the applicant, waive any or all of the examination requirements set forth above.

(5) An applicant who is an agent for a broker-dealer/investment adviser and who is not required by the agent's home jurisdiction to make a separate filing on CRD as an investment adviser representative but who has previously met the requirements of subdivision (f)(1) of this section shall not be required to repeat the examinations in order to become registered as an investment adviser representative in this state.

(g) Brochure requirement.

(1) Unless otherwise provided in this section, an investment adviser registered or required to be registered pursuant to Arkansas Code § 23-42-301 of the Arkansas Securities Act shall furnish each advisory client and prospective advisory client with a written disclosure statement that shall be Form ADV Part 2A, the brochure, Part 2B, the brochure supplement, and any other information as the Securities Commissioner may require.

(2) Delivery.

(A) An investment adviser shall deliver the brochure to an advisory client or prospective advisory client either:

(i) At a time not less than forty-eight (48) hours prior to entering into any investment advisory contract with the prospective client; or

(ii) At the time of entering into the contract so long as the advisory client has a right to terminate the contract without penalty within five (5) business days after entering into the contract.

(B) Delivery of the brochure need not be made in connection with entering into a contract for impersonal advisory services.

(3) Offer to deliver.

(A) An investment adviser shall annually, within one hundred twenty (120) days of its fiscal year-end, without charge, deliver or offer in writing to deliver, upon written request, a brochure to its advisory clients.

(B) The delivery or offer required by subdivision (g)(3)(A) of this section need not be made to advisory clients receiving advisory services solely pursuant to a contract for impersonal advisory services of less than five hundred dollars (\$500).

(C) With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services that requires a fee of five hundred dollars (\$500) or more, an offer of the type specified in subdivision (g)(3)(A) of this section shall also be made at the time of entering into an advisory contract.

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

(5) **Omission of inapplicable information.** If an investment adviser renders substantially different types of investment advisory services to different advisory clients, any information required by Form ADV Part 2A, the brochure, and Part 2B, the brochure supplement, may be omitted from the statement furnished to an advisory client or prospective advisory client if the information is not applicable to the

type of investment advisory service or fee that is rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(6) **Other disclosures.** Nothing in this section shall relieve any investment adviser from any obligation pursuant to any provision of the Arkansas Securities Act or this part or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this section.

(h) **Registration exemption for investment advisers to private funds.**

(1) **Definitions.** For purposes of this subsection, the following definitions shall apply:

(A) "3(c)(1) fund" means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under Section 3(c)(1) of the Investment Company Act of 1940, 15 U.S.C. § 80a-3(c)(1);

(B) "Private fund adviser" means an investment adviser who provides advice solely to one (1) or more qualifying private funds;

(C) "Qualifying private fund" means a private fund that meets the definition of a qualifying private fund in Rule 203(m)-1 of the Investment Advisers Act of 1940, 17 C.F.R. § 275.203(m)-1;

(D) "Value of primary residence" means the fair market value of a person's primary residence, subtracted by the amount of debt secured by the property up to its fair market value; and

(E) "Venture capital fund" means a private fund that meets the definition of a venture capital fund in Rule 203(l)-1 of the Investment Advisers Act of 1940, 17 C.F.R. § 275.203(l)-1, and is a private fund ultimately comprised of only investors that are accredited investors as defined in Rule 501 of Regulation D, promulgated under the Securities Act of 1933, 17 C.F.R. § 230.501.

(2) **Exemption for private fund advisers.** Subject to the additional requirements of subdivision (h)(3) of this section, a private fund adviser shall be exempt from the registration requirements of Arkansas Code § 23-42-301 if the private fund adviser satisfies each of the following conditions:

(A) Neither the private fund adviser nor any of its advisory affiliates are subject to an event that would disqualify an issuer under Rule 506(d)(1) of United States Securities and Exchange Commission Regulation D, 17 C.F.R. § 230.506(d)(1);

(B)(i) The private fund adviser files with the state each report and amendment thereto that an exempt reporting adviser is required to file with the United States Securities and Exchange Commission pursuant to United States Securities and Exchange Commission Rule 204-4 of the Investment Advisers Act of 1940, 17 C.F.R. § 275.204-4.

(ii) These filings are to be made electronically through the Investment Adviser Registration Depository (IARD); and

(C) The private fund adviser pays the fees specified in Arkansas Code § 23-42-304(a)(6) of the Arkansas Securities Act.

(3) Additional requirements for private fund advisers to certain 3(c)(1) funds. In order to qualify for the exemption described in subdivision (h)(2) of this section, a private fund adviser that advises at least one 3(c)(1) fund that is not a venture capital fund shall, in addition to satisfying each of the conditions specified in subdivisions (h)(2)(A) — (C) of this section, comply with the following requirements:

(A) The private fund adviser shall advise only those 3(c)(1) funds (other than venture capital funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who, after deducting the value of the primary residence from the person's net worth, would each meet the definition of a qualified client in Rule 205-3 of the Investment Advisers Act of 1940, 17 C.F.R. § 275.205-3, at the time the securities are purchased from the issuer;

(B) At the time of purchase, the private fund adviser shall disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:

(i) All services, if any, to be provided to individual beneficial owners;

(ii) All duties, if any, the investment adviser owes to the beneficial owners; and

(iii) Any other material information affecting the rights or responsibilities of the beneficial owners; and

(C) The private fund adviser shall obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund, and shall deliver a copy of such audited financial statements to each beneficial owner of the fund.

(4) **Federal covered investment advisers.** If a private fund adviser is registered with the United States Securities and Exchange Commission, the adviser shall not be eligible for this exemption and shall comply with the state notice filing requirements applicable to federal covered investment advisers in Arkansas Code § 23-42-301(c)(1) of the Arkansas Securities Act.

(5) **Investment adviser representatives.** A person is exempt from the registration requirements of Arkansas Code § 23-42-301(c) of the Arkansas Securities Act if he or she is employed by or associated with an investment adviser that is exempt from registration in this state pursuant to this section and does not otherwise act as an investment adviser representative.

(6) **Electronic filing.**

(A) The report filings described in subdivision (h)(2)(B) of this section shall be made electronically through the IARD.

(B) A report shall be deemed filed when the report and the fee required by Arkansas Code § 23-42-304(a)(6) of the Arkansas Securities Act are filed and accepted by the IARD on the state's behalf.

(7) **Transition.** An investment adviser that becomes ineligible for the exemption provided by this subsection must comply with all applicable laws and rules requiring registration or notice filing within ninety (90) days from the date the investment adviser's eligibility for this exemption ceases.

(8) **Waiver authority with respect to statutory disqualification.** Subdivision (h)(2)(A) of this section shall not apply upon a showing of good cause and without prejudice to any other action of the Securities Commissioner, if the Securities Commissioner determines that it is not necessary under the circumstances that an exemption be denied.

(9) Grandfathering for investment advisers to 3(c)(1) funds with nonqualified clients. An investment adviser to a 3(c)(1) fund (other than a venture capital fund) that has one (1) or more beneficial owners who are not qualified clients as described in subdivision (c)(1) of this section is eligible for the exemption contained in subdivision (h)(2) of this section if the following conditions are satisfied:

(A) The subject fund existed prior to the effective date of this subsection;

(B) As of the effective date of this subsection, the subject fund ceases to accept beneficial owners who are not qualified clients, as described in subdivision (h)(3)(A) of this section;

(C) The investment adviser discloses in writing the information described in subdivision (h)(3)(B) of this section to all beneficial owners of the fund; and

(D) As of the effective date of this subsection, the investment adviser delivers audited financial statements as required by subdivision (h)(3)(C) of this section.

(10) Requests for records.

(A) Upon a written request from the Securities Commissioner or the Securities Commissioner's authorized representative, an investment adviser relying on an exemption provided by this subsection shall make available to the Securities Commissioner all records subject to the custody or control of the investment adviser related to any private fund to which the investment adviser provides investment advice.

(B) Failure to comply with this subdivision (h)(10) will result in the loss of the exemption provided by this subsection.

(i) Information security and privacy.

(1) Physical security and cybersecurity policies and procedures.

(A)(i) Every investment adviser registered or required to be registered shall establish, implement, update, and enforce written physical security and cybersecurity policies and procedures reasonably designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information.

(ii) The policies and procedures must be tailored to the investment adviser's business model, taking into account the:

(a) Size of the firm;

(b) Type or types of services provided; and

(c) Number of locations of the investment adviser.

(B) The physical security and cybersecurity policies and procedures must:

(i) Protect against reasonably anticipated threats or hazards to the security or integrity of client records and information;

(ii) Ensure that the investment adviser safeguards confidential client records and information; and

(iii) Protect any records and information the release of which could result in harm or inconvenience to any client.

(C) The physical security and cybersecurity policies and procedures must cover at least five (5) functions:

(i) **Identify.** Develop the organizational understanding to manage information security risk to:

(a) Systems;

(b) Assets;

(c) Data; and

(d) Capabilities;

(ii) **Protect.** Develop and implement the appropriate safeguards to ensure delivery of critical infrastructure services;

(iii) **Detect.** Develop and implement the appropriate activities to identify the occurrence of an information security event;

(iv) **Respond.** Develop and implement the appropriate activities to take action regarding a detected information security event; and

(v) **Recover.** Develop and implement the appropriate activities to maintain plans for resilience and to restore any capabilities or services that were impaired due to an information security event.

(D) **Maintenance.** The investment adviser must review, no less frequently than annually, and modify as needed these policies and procedures to ensure the adequacy of the security measures and the effectiveness of their implementation.

(2) **Privacy policy.**

(A) The investment adviser must deliver upon the investment adviser's engagement by a client, and on an annual basis thereafter, a privacy policy to each client that is reasonably designed to aid in the client's understanding of how the investment adviser collects and shares, to the extent permitted by state and federal law, nonpublic personal information.

(B) The investment adviser must promptly update and deliver to each client an amended privacy policy if any of the information in the policy becomes inaccurate.

(j) Proxy voting policies and procedures.

(1) If an investment adviser registered or required to be registered pursuant to Arkansas Code § 23-42-301 of the Arkansas Securities Act has the authority to vote client securities:

(A)(i) The investment adviser must establish, maintain, and enforce written proxy voting policies and procedures that are reasonably designed to ensure that the investment adviser votes client securities in the best interest of clients.

(ii) These procedures must include how the investment adviser addresses material conflicts that may arise between its interests and those of the investment adviser's clients;

(B) Disclose to clients how they may obtain information from the investment adviser about how it voted with respect to their securities; and

(C) Describe to clients the investment adviser's proxy voting policies and procedures and, upon request, furnish a copy of the policies and procedures to the requesting client.

(2) If the investment adviser does not have the authority to vote client securities then this information must be disclosed to clients.

(k) Code of ethics.

(1) An investment adviser registered or required to be registered pursuant to Arkansas Code § 23-42-301 of the Arkansas Securities Act must establish, maintain, and enforce a written code of ethics that, at a minimum, includes:

(A) A standard or standards of business conduct that the investment adviser requires of its supervised persons, which must reflect the investment adviser's fiduciary obligations and those of its supervised persons;

(B) Provisions requiring the investment adviser's supervised persons to comply with applicable state and federal securities laws;

(C) Provisions requiring all of the investment adviser's access persons to report, and the investment adviser to review, their personal securities transactions and holdings periodically as provided below; and

(D) Provisions requiring supervised persons to report any violations of the investment adviser's code of ethics promptly to its chief compliance officer or, provided the investment adviser's chief compliance officer also receives reports of all violations, to other persons designated in the investment adviser's code of ethics.

(2) **Holdings reports.** The code of ethics must require the investment adviser's access persons to submit to its chief compliance officer or other persons designated in the investment adviser's code of ethics a report of the access person's current securities holdings that meets the following requirements:

(A) **Content of holdings reports.** Each holdings report must contain, at a minimum:

(i) The title and type of security, and as applicable the exchange ticker symbol or CUSIP number, number of shares, and principal amount of each reportable security in which the access person has any direct or indirect beneficial ownership;

(ii) The name of any broker, dealer, or bank with which the access person maintains an account in which any securities are held for the access person's direct or indirect benefit; and

(iii) The date the access person submits the report; and

(B) **Timing of holdings reports.** The investment adviser's access person must each submit a holdings report:

(i) No later than ten (10) days after the person becomes an access person, and the information must be current as of a date no more than forty-five (45) days prior to the date the person becomes an access person; and

(ii) At least once each twelve-month period thereafter on a date selected by the investment adviser, and the information must be current as of a date no more than forty-five (45) days prior to the date the report was submitted.

(3) **Preapproval of certain investments.** The investment adviser's code of ethics must require its access persons to obtain the investment adviser's approval before they directly or indirectly acquire beneficial ownership in any security in an initial public offering or in a limited offering.

(4) **Small advisers.** If the investment adviser has only one (1) access person, it is not required to submit reports to itself or to obtain its own approval for investments in any security in an initial public offering or in a limited offering if the investment adviser maintains records of all of its holdings and transactions that this subsection would otherwise require the investment adviser to report.

(5) **Definitions.** For purposes of this subsection concerning a code of ethics, the following definitions apply:

(A) "Access person" means:

(i) Any of the investment adviser's supervised persons:

(a) Who has access to nonpublic information regarding any client's purchase or sale of securities, or nonpublic information regarding the portfolio holdings of any reportable fund; or

(b) Who is involved in making securities recommendations to clients, or who has access to such recommendations that are nonpublic; and

(ii) If providing investment advice is the investment adviser's primary business, all of its directors, officers, and partners are presumed to be access persons;

(B)(i) "Chief compliance officer" means a supervised person with the authority and resources to develop and enforce the investment adviser's policies and procedures.

(ii) The individual designated to serve as chief compliance officer must be registered as an investment adviser representative and must have the background and skills appropriate for fulfilling the responsibilities of the position; and

(C)(i) "Supervised person" means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

(ii) The definition includes investment adviser representatives, employees, independent contractors, or other associated persons and supervised personnel, or other person acting on the behalf of the investment adviser.

(l) **Material nonpublic information.** An investment adviser registered or required to be registered pursuant to Arkansas Code § 23-42-301 of the Arkansas Securities Act must establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by the investment adviser or any person associated with the investment adviser.

(m) **Investment adviser representative continuing education.**

(1) Every investment adviser representative registered under Arkansas Code § 23-42-301 of the Arkansas Securities Act must complete the following investment adviser representative (IAR) continuing education requirements each reporting period:

(A)(i) IAR ethics and professional responsibility requirements.

(ii) An investment adviser representative must complete six (6) credits of IAR regulatory and ethics content offered by an authorized provider, with at least three (3) hours covering the topic of ethics; and

(B)(i) IAR products and practice requirement.

(ii) An investment adviser representative must complete six (6) credits of IAR products and practice content offered by an authorized provider.

(2) **Agent of FINRA-registered broker-dealer compliance.** An investment adviser representative who is also registered as an agent of a FINRA member broker-dealer and who complies with FINRA's continuing education

requirements is considered to be in compliance with subdivision (m)(1)(B) of this section, IAR products and practice requirement, for each applicable reporting period so long as FINRA continuing education content meets all of the following baseline criteria as determined by NASAA:

(A) The continuing education content focuses on compliance, regulatory, ethical, and sales practices standards;

(B) The continuing education content is derived from state and federal investment advisory statutes, rules, and regulations, securities industry rules and regulations, and accepted standards and practices in the financial services industry; and

(C) The continuing education content requires that its participants demonstrate proficiency in the subject matter of the educational materials.

(3) Credentialing organization continuing education compliance.

Credits of continuing education completed by an investment adviser representative who was awarded and currently holds a credential that qualifies for an examination waiver under subdivision (f)(2) of this section comply with subdivisions (m)(1)(A) and (B) of this section provided all of the following are true:

(A) The investment adviser representative completes the credits of continuing education as a condition of maintaining the credential for the relevant reporting period;

(B) The credits of continuing education completed during the relevant reporting period by the investment adviser representative are mandatory to maintain the credential; and

(C) The continuing education content provided by the credentialing organization during the relevant reporting period is approved IAR continuing education content.

(4) IAR continuing education reporting. Every investment adviser representative is responsible for ensuring that the authorized provider reports the investment adviser representative's completion of the applicable IAR continuing education requirements.

(5) **No carry forward.** An investment adviser representative who completes credits of continuing education in excess of the amount required for the reporting period may not carry forward excess credits to a subsequent reporting period.

(6) **Failure to complete or report.**

(A) An investment adviser representative who fails to comply with this subsection by the end of a reporting period will renew as "CE inactive" at the close of the calendar year in this state until the investment adviser representative completes and reports all required IAR continuing education credits for all reporting periods as required by this subsection.

(B) An investment adviser who is CE inactive at the close of the next calendar year is not eligible for investment adviser representative registration or renewal of an investment adviser representative registration.

(7) **Discretionary waiver by the administrator.** The administrator may, in his or her discretion, waive any requirements of this subsection.

(8) **Home state.** An investment adviser representative registered or required to be registered in this state who is registered as an investment adviser representative in the individual's home state is considered to be in compliance with this subsection provided that both of the following are true:

(A) The investment adviser representative's home state has continuing education requirements that are at least as stringent as the NASAA Model Rule on Investment Adviser Representative Education; and

(B) The investment adviser representative is in compliance with the home state's investment adviser representative continuing education requirements.

(9) **Unregistered periods.** An investment adviser representative who was previously registered under the Arkansas Securities Act and became unregistered must complete IAR continuing education for all reporting periods that occurred between the time that the investment adviser representative became unregistered and when the person became registered again under the Arkansas Securities Act unless the investment adviser representative takes and passes the examination or receives an

examination waiver as required by subsection (f) of this section in connection with the subsequent application for registration.

(10) **Definitions.** As used in this subsection:

(A) "Approved IAR continuing education content" means the materials, written, oral, or otherwise, that have been approved by NASAA or its designee and which make up the educational program provided to an investment adviser representative under this subsection;

(B) "Authorized provider" means a person that NASAA or its designee has authorized to provide continuing education content required by this subsection;

(C) "Credit" means a unit that has been designated by NASAA or its designee as at least fifty (50) minutes of educational instruction;

(D) "Home state" means the state in which the investment adviser representative has its principal office and place of business;

(E) "IAR ethics and professional responsibility content" means approved IAR continuing education content that addresses an investment adviser representative's ethical and regulatory obligations;

(F) "IAR products and practice content" means approved IAR continuing education content that addresses an investment adviser representative's continuing skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry; and

(G)(i) "Reporting period" means one (1) twelve-month period as determined by NASAA.

(ii) An investment adviser representative's initial reporting period with this state commences the first day of the first full reporting period after the individual is registered or required to be registered with this state.

Authority. Arkansas Code § 23-42-204.

Codification Notes. The Securities Act of 1933 is codified at 15 U.S.C. § 77a et seq.

The Investment Company Act of 1940 is codified at 15 U.S.C. § 80a-1 et seq.

The Investment Advisers Act of 1940 is codified at 15 U.S.C. § 80b-1 et seq.

23 CAR § 300-304. Minimum net capital requirement.

(a) **Capital requirements for broker-dealer — General requirement.** All broker-dealers registered under the Arkansas Securities Act, Arkansas Code § 23-41-101 et seq., shall at all times have and maintain net capital of no less than the required amount for each broker-dealer as established by United States Securities and Exchange Commission rule 17 C.F.R § 240.15c3-1, promulgated pursuant to the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., which is hereby incorporated by reference.

(b) **Capital requirements for investment advisers.**

(1) Except as otherwise provided in the Arkansas Securities Act or in this part, each registered investment adviser shall at all times have and maintain not less than the minimum net capital required by Arkansas Code § 23-42-303(a) of the Arkansas Securities Act.

(2) Net capital for purposes of this subsection shall mean the net worth of an applicant or registrant calculated in accordance with generally accepted accounting principles.

(3) The provisions of this section shall not apply to an investment adviser whose principal place of business is located in a state other than Arkansas, provided that the investment adviser is registered or licensed as an investment adviser in that state and is in compliance with the net capital requirements of that state.

Authority. Arkansas Code § 23-42-204.

23 CAR § 300-305. Filing fees. [Reserved].

23 CAR § 300-306. Corporate surety bonds — Surety bonds.

A surety bond, as required by Arkansas Code § 23-42-305 of the Arkansas Securities Act, Arkansas Code § 23-42-101 et seq., for a registered broker-dealer, investment adviser, or agent of the issuer shall be maintained and in effect at all times as follows:

(1) A broker-dealer shall satisfy the fidelity bond requirements imposed by FINRA;

(2)(A) An investment adviser that has custody of customer funds or securities shall have a surety bond in the amount of fifty thousand dollars (\$50,000).

(B) An investment adviser that has custody solely due to direct fee deduction and that complies with the terms described under 23 CAR § 300-309(b)(2)(C)(i) – (iii) and related books and records requirements, shall not be required to comply with this bonding requirement; and

(3) An agent of the issuer shall maintain a surety bond in the amount of twenty-five thousand dollars (\$25,000).

Authority. Arkansas Code § 23-42-204.

23 CAR § 300-307. Records and reports — Examinations.

(a) Records and reports of broker-dealers.

(1) Each broker-dealer shall make, maintain, and preserve books and records as required for brokers or dealers under the rules promulgated under the Securities Exchange Act of 1934, as amended.

(2) The Securities Commissioner may, by order, upon written request and for good cause shown, waive any of the requirements of this section.

(b) Records and reports of investment advisers.

(1) General.

(A) All registered investment advisers shall make and keep true, accurate, and current books and records relating to their investment advisory business.

(B) The records required to be maintained shall be maintained for a minimum of five (5) years from the date on which the transaction occurred and shall include the specific records set forth below.

(C) The provisions of this section shall not apply to an investment adviser whose principal place of business is located in a state other than Arkansas, provided that the investment adviser is registered or licensed as an investment adviser in that other state and is in compliance with the applicable books and records requirements of that other state.

(2) **Business records.** The business records required to be maintained shall include:

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

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

(C)(i) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt of delivery of a particular security, and of any modification or cancellation of any such order or instruction.

(ii) Such memoranda shall:

(a) Show the term and conditions of the:

(1) Order;

(2) Instruction;

(3) Modification; or

(4) Cancellation;

(b) Identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and

(c) Show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate.

(iii) Orders entered pursuant to the exercise of discretionary power shall be so designated;

(D) All checkbooks, bank statements, canceled checks, and cash reconciliations of the investment adviser;

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

(F)(i) All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the business of the investment adviser.

(ii) For purposes of this section, "financial statements" means a balance sheet prepared in accordance with generally accepted accounting principles, and income statement, a cash flow statement, and a net worth computation as required by 23 CAR § 300-304(b);

(G)(i) Originals or electronic copies of all written communications received and copies of all written communications sent by such investment adviser relating to the following:

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

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

or

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

(ii) Notwithstanding the provisions of this subsection, an investment adviser shall not be required to keep the following:

(a) Any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser; and

(b) A record of the names and addresses of the persons to whom any notice, circular, or other advertisement offering any report, analysis, publication, or other investment advisory service to more than ten (10) persons was sent, unless the

notice, circular, or other advertisement is distributed to persons named on any list, in which case, the investment adviser shall retain with the copy of the notice, circular, or other advertisement, a memorandum describing the list and the source thereof;

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

(I) All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof;

(J)(i) All investment advisory contracts and other written agreements, or copies thereof, entered into by the investment adviser with any client or otherwise relating to the business of the investment adviser.

(ii) The contracts shall be fair and reasonable and indicate the customer's risk tolerance, investment objectives, annual income, net worth, and liquid net worth, and shall be signed and dated by all persons having an interest in the account;

(K) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication which the investment adviser circulates or distributes, directly or indirectly, to two (2) or more persons, other than persons connected with the investment adviser, and all documentation necessary to show the investment adviser is not in violation of 23 CAR § 300-310(b)(4)(M);

(L)(i) A record of every transaction in a security in which the investment adviser or any advisory representative of the investment adviser has, or by reason of the transaction acquires, any direct or indirect beneficial ownership.

(ii) These records shall state the:

(a) Title and amount of the security involved;

(b) Date and nature of the transaction, including the purchase, sale, acquisition, or disposition;

(c) Price at which it was effected; and

(d) Name of the broker-dealer through which the transaction was effected.

(iii) These records may also contain a statement declaring that the reporting or recording of a transaction shall not be construed as an admission that the investment adviser or representative has any direct or indirect beneficial ownership in the security.

(iv) A transaction shall be recorded not later than ten (10) days after the end of the calendar quarter in which the transaction was effected.

(v) The records required by this subdivision (b)(2)(L) shall not include the following:

(a) Transactions effected in any account over which neither the investment adviser nor any representative of the investment adviser has any direct or indirect influence or control; and

(b) Transactions in securities which are direct obligations of the United States;

(M) A copy of each written statement and each amendment or revision given or sent to any client or prospective client of the investment adviser in accordance with the provisions of the brochure requirement found in 23 CAR § 300-303(g), and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client;

(N) For each client that was obtained by the adviser by means of a referral from a third party to whom a cash fee was paid by the adviser, the following is required:

(i) Evidence of a written agreement, to which the adviser is a party, related to the payment of the fee;

(ii) A signed and dated acknowledgement of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement; and

(iii) A copy of a written disclosure statement from the referring party;

(O) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all management accounts or securities

recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including, but not limited to:

(i) Electronic media that the investment adviser circulates or distributes, directly or indirectly, to two (2) or more persons (other than persons connected with the investment adviser), provided, however, that with respect to the performance of management accounts;

(ii) The retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement; and

(iii) All worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this subdivision (b)(2)(O);

(P) A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser, any investment adviser representative, or employee, and regarding any written customer or client complaint;

(Q) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to the client;

(R) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations;

(S) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency that pertains to the registrant or its investment adviser representatives, which file should contain, but is not limited to, all:

(i) Applications;

(ii) Amendments;

(iii) Renewal filings; and

(iv) Registration-related correspondence;

(T) Where the adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three (3) business days of receiving them, or has forwarded checks drawn by a client and made payable to a third party

within three (3) business days of receiving them, the adviser will be considered as not having custody, but shall keep for all securities or funds inadvertently held, a ledger containing the following information:

- (i) Issuer;
- (ii) Type of security and series;
- (iii) Date of issue;
- (iv) For debt instruments, the:
 - (a) Denomination;
 - (b) Interest rate; and
 - (c) Maturity date;
- (v) Certificate number, including alphabetical prefix or suffix;
- (vi) Name in which registered;
- (vii) Date given to the adviser;
- (viii) Date sent to client or sender;
- (ix) Form of delivery to client or sender, or copy of the form of delivery to client or sender;
- (x) Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return; and
- (xi) Date each check was received and forwarded;

(U) If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that complies with the exception from custody under 23 CAR § 300-309(b)(2)(B), the adviser shall keep the following records:

- (i) A record showing the issuer or current transfer agent's name, address, phone number, and other applicable contract information pertaining to the party responsible for recording client interests in the securities; and
- (ii) A copy of any legend, shareholder agreement, or other agreement showing that those securities that are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer;

(V) For an investment adviser that has custody of a client's funds or securities, all records and evidence of compliance required by 23 CAR § 300-309(b);

(W) If an investment adviser has custody, unless it has custody solely as a consequence of its authority to make withdrawals from client accounts to pay its advisory fee and complies with the terms described under 23 CAR § 300-309(b)(2)(C)(i) – (iii), the records required to be made and kept shall include the following:

(i) A copy of any and all documents executed by the client, including a limited power of attorney, under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian;

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

(iii) A separate ledger account for each client showing:

(a) All purchases, sales, receipts, and deliveries of securities;

(b) The date and price of each purchase and sale; and

(c) All debits and credits;

(iv) Copies of confirmations of all transactions effected by or for the account of any client;

(v) A record for each security in which any client has a position, which record shall show the:

(a) Name of each client having any interest in each security;

(b) Amount of interest of each client; and

(c) Location of each security;

(vi)(a) A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian.

(b) If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of the statements along with the date the statements were sent to the clients;

(vii) If applicable to the adviser's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination;

(viii) A record of any finding by the independent certified public accountant of any material discrepancies found during the examination; and

(ix) If applicable, evidence of the client's designation of an independent representative;

(X) If an investment adviser has custody because it advises a pooled investment vehicle, the adviser shall also keep the following records:

(i) True, accurate, and current account statements; and

(ii) Where the adviser complies with 23 CAR § 300-309(b)(2)(D), the records required to be made and kept shall include the following:

(a) The date or dates of the audit;

(b) A copy of the audited financial statements; and

(c) Evidence of the mailing of the audited financial statements to all limited partners, members, or other beneficial owners within one hundred twenty (120) days of the end of its fiscal year;

(Y) All payroll records, corporate charters, certificates of incorporation, partnership articles, minute books, and other records routinely kept in the course of operating a business;

(Z) Physical security and cybersecurity policies and procedures and privacy policy:

(i) The investment adviser must maintain a current copy of these policies and procedures pursuant to 23 CAR § 300-303(i) either in hard copy in a separate location or stored on electronic storage media that is separate from and not dependent upon access to the investment adviser's computers or a network;

(ii) All records documenting the investment adviser's compliance with 23 CAR § 300-303(i) including, but not limited to, evidence of the annual review of the policies and procedures; and

(iii) A record of any violation of 23 CAR § 300-303(i) and of any action taken as a result of the violation;

(AA)(i) Proxy voting policies and procedures.

(ii) If an investment adviser has authority to vote client securities, the written proxy voting policies and procedures required by 23 CAR § 300-303(j);

(BB)(i) Code of ethics.

(ii) The written code of ethics and holdings reports required by 23 CAR § 300-303(k); and

(CC)(i) Material nonpublic information.

(ii) Written policies and procedures to prevent misuse of material nonpublic information required by 23 CAR § 300-303(l).

(3) **Length of time records kept.** Unless specifically provided otherwise, all books and records shall be maintained and preserved in an easily accessible place for a period of not less than five (5) years from the end of the fiscal year during which the last entry was made on the record.

(4) **Form of records and safety.**

(A) Records required to be maintained and preserved may be maintained and preserved for the required time and immediately produced or reproduced by the investment adviser by:

(i) Paper or hard copy form, as those records are kept in their original form;

(ii) Electronic storage media, including any digital storage medium or system that meets and complies with the other requirements of this section; or

(iii) Other similar medium that meets and complies with the other requirements of this section.

(B) Records must be easily accessible and retrievable in a form that is:

(i) Legible;

(ii) True; and

(iii) Complete.

(C) Records created or maintained on electronic storage media:

(i) Must be maintained and preserved in a manner to reasonably safeguard them from:

- (a) Loss;
- (b) Alteration; or
- (c) Destruction; and

(ii) Must be only accessible to properly authorized personnel and the commissioner or representatives of the commissioner.

(5) **Segregated accounts.** Registered investment advisers shall at all times keep their customers' securities and funds in trust and segregated from their own securities and funds.

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

(A) Records showing separately for each client the:

- (i) Securities purchased and sold; and
- (ii) Date, amount, and price of each purchase and sale; and

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

(7) **Commingling of accounts prohibited.** When a registered investment adviser is engaged in more than one (1) enterprise or activity, it shall maintain separate books of accounts and records relating to its securities business and the assets shall not be commingled with those of other businesses, and there shall be a clearly defined division with respect to income and expenses.

(8) **Complaint file.**

(A) Every registered investment adviser shall keep and maintain for a period of five (5) years a complaint file or compliance file which shall contain all

complaints made against the firm or its representatives by individuals, financial institutions, and other investors.

(B) The complaint file should disclose any legal action in process, settled, or threatened against the investment adviser or its representatives.

(C) If the original documents are not maintained in the complaint file, the copy of the document should show the disposition of the original document.

(D) If the home office of the investment adviser is not in Arkansas, then the branch office located in Arkansas shall maintain this complaint file for any complaints involving Arkansas representatives or customers.

(9) **Record system.** In accordance with Arkansas Code § 23-42-205(d)(2) of the Arkansas Securities Act, any books or records required by this section may be maintained by the investment adviser in a manner that the identity of any client to whom such investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(10) An investment adviser subject to subdivision (b)(1) of this section, before ceasing to conduct or discontinuing business as an investment adviser shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the commissioner in writing of the exact address where the books and records will be maintained during the period.

Authority. Arkansas Code § 23-42-204.

Codification Notes. The Securities Exchange Act of 1934 is codified at 15 U.S.C. § 78a et seq.

23 CAR § 300-308. Financial statements.

(a) Unless otherwise provided herein, audited financial statements shall be prepared by an independent certified public accountant in accordance with generally

accepted auditing standards in conformity with generally accepted accounting principles and accompanied by an opinion acceptable to the Securities Commissioner.

(b) An unaudited balance sheet shall be prepared in accordance with generally accepted accounting principles.

(c) All financial statements filed with the commissioner as part of a registration or annual filing requirement shall be public when filed, except that if the balance sheet for a broker-dealer is in a format which is separate from the remainder of the audited financial statements and is identified as confidential, then it will be so treated.

Authority. Arkansas Code § 23-42-204.

23 CAR § 300-309. Unlawful acts by investment advisers.

(a) Performance-based compensation exemption.

(1) Notwithstanding Arkansas Code § 23-42-307(b)(1) of the Arkansas Securities Act, Arkansas Code § 23-42-101 et seq., an investment adviser may enter into, extend, or renew an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client if the following conditions are met:

(A) The client entering into the contract is a "qualified client", as defined by Rule 205-3 under the Investment Advisers Act of 1940, 17 C.F.R. § 275.205-3; and

(B) To the extent not otherwise disclosed on Form ADV Part 2, the investment adviser must disclose in writing to the client all material information concerning the proposed advisory arrangement, including the following:

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

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

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

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

(v) Where the investment adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, 17 C.F.R. § 270.2a-4(a)(1), how the securities will be valued and the extent to which the valuation will be independently determined.

(2) In the case of a private investment company, as defined in subdivision (a)(4)(B) of this section, an investment company registered under the Investment Company Act of 1940, or a business development company, as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-2(a)(22), each equity owner of any such company (except for the investment adviser entering into the contract and any other equity owners not charged a fee on the basis of a share of capital gains or capital appreciation) will be considered a client for purposes of subdivision (a)(1) of this section.

(3) Transition rules:

(A) If an investment adviser entered into a contract and satisfied the conditions of this section that were in effect when the contract was entered into, the adviser will be considered to satisfy the conditions of this section, provided, however, that if a natural person or company who was not a party to the contract becomes a party (including an equity owner of a private investment company advised by the adviser), the conditions of this section in effect when the person or company becomes a party to the contract will apply with regard to that person or company;

(B) If an investment adviser was not required to register pursuant to Arkansas Code § 23-42-301 of the Arkansas Securities Act and was not registered, Arkansas Code § 23-42-307(b)(1) of the Arkansas Securities Act shall not apply to an

advisory contract entered into when the investment adviser was not required to register and was not registered, provided, however, that the investment adviser was in compliance with all rules and regulations regarding performance-based compensation in any jurisdiction in which the investment adviser was registered or required to be registered at the time of entering into the advisory contract; and

(C) Solely for purposes of subdivisions (a)(3)(A) and (B) of this section, a transfer of an equity ownership interest in a private investment company by gift or bequest, or pursuant to an agreement related to a legal separation or divorce, will not cause the transferee to “become a party” to the contract, and will not cause Arkansas Code § 23-42-307(b)(1) of the Arkansas Securities Act to apply to such transferee.

(4) The following definitions apply for purposes of this section:

(A) “Company” shall have the same meaning as in Section 202(a)(5) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-2(a)(5), but does not include a company that is required to be registered under the Investment Company Act of 1940 but is not registered; and

(B) “Private investment company” means a company that would be defined as an investment company under Section 3(a) of the Investment Company Act of 1940, 15 U.S.C. § 80a-3(a), but for the exception provided from that definition by Section 3(c)(1) of the Investment Company Act of 1940, 15 U.S.C. § 80a-3(c)(1).

(5) **Independent agent.** Nothing in this section shall relieve a client’s independent agent from any obligation to the client under applicable law.

(b) **Custody of client funds or securities by investment advisers.**

(1) **Safekeeping required.** It is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice, or course of business for an investment adviser, registered or required to be registered, to have custody of client funds or securities unless the following occurs:

(A) **Notice to commissioner.**

(i) The investment adviser notifies the Securities Commissioner promptly in writing that the investment adviser has or may have custody.

(ii) This notification is required to be given on Form ADV;

(B) **Qualified custodian.** A qualified custodian maintains those funds and securities:

- (i) In a separate account for each client under that client's name; or
- (ii) In accounts that contain only the investment adviser's clients' funds and securities, under the investment adviser's name as agent or trustee for the clients or, in the case of a pooled investment vehicle that the investment adviser manages, in the name of the pooled investment vehicle;

(C) **Notice to clients.**

(i) If an investment adviser opens an account with a qualified custodian on behalf of a client, under the client's name, under the name of the investment adviser as agent, or under the name of a pooled investment vehicle, the investment adviser must notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information.

(ii) If the investment adviser sends account statements to a client to which the investment adviser is required to provide this notice, the investment adviser must include in the notification provided to that client and in any subsequent account statement the investment adviser sends that client a statement urging the client to compare the account statements from the custodian with those from the investment adviser;

(D) **Account statements.** The investment adviser has a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period;

(E) **Special rule for limited partnerships and limited liability companies.** If the investment adviser or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle), the account

statements required under subdivision (b)(1)(D) of this section must be sent to each limited partner (or member or other beneficial owner);

(F) Independent verification.

(i) The client funds and securities of which the investment adviser has custody are verified by actual examination at least once during each calendar year by an independent certified public accountant pursuant to a written agreement between the investment adviser and the independent certified public accountant, at a time that is chosen by the independent certified public accountant without prior notice or announcement to the investment adviser and that is irregular from year to year.

(ii) The written agreement must provide for the first examination to occur within six (6) months of becoming subject to this subdivision (b)(1)(F) except that, if the investment adviser maintains client funds or securities pursuant to this section as a qualified custodian, the agreement must provide for the first examination to occur no later than six (6) months after obtaining the internal control report.

(iii) The written agreement must require the independent certified public accountant to do the following:

(a) File a certificate on Form ADV-E with the commissioner within one hundred twenty (120) days of the time chosen by the independent certified public accountant in this subdivision (b)(1)(F), stating that it has examined the funds and securities and describing the nature and extent of the examination;

(b) Upon finding any material discrepancies during the course of the examination, notify the commissioner within one (1) business day of the finding by means of a facsimile transmission or electronic mail followed by first-class mail directed to the attention of the commissioner; and

(c) Upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, file within four (4) business days Form ADV-E accompanied by a statement that includes the following:

(1) The date of the resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(2) An explanation of any problems relating to examination scope or procedure that contributed to:

(A) The resignation;

(B) The dismissal;

(C) The removal; or

(D) Other termination;

(G) Investment advisers acting as qualified custodians. If the investment adviser maintains, or if the investment adviser has custody because a related person maintains, client funds or securities pursuant to this section as a qualified custodian in connection with advisory services, the investment adviser provides to clients:

(i) The independent certified public accountant the investment adviser retains to perform the independent verification required by subdivision (b)(1)(F) of this section must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by the Public Company Accounting Oversight Board in accordance with its rules; and

(ii)(a) The investment adviser must obtain, or receive from its related person, within six (6) months of becoming subject to this subdivision (b)(1)(G) and thereafter no less frequently than once each calendar year, a written internal control report prepared by an independent certified public accountant.

(b) The internal control report must include an opinion of an independent certified public accountant as to whether controls have been placed in operation as of a specific date and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and securities held by either the investment adviser or a related person on behalf of the investment adviser's clients during the year.

(c) The independent certified public accountant must verify that the funds and securities are reconciled to a custodian other than the investment adviser or the investment adviser's related person.

(d) The independent certified public accountant must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by the Public Company Accounting Oversight Board in accordance with its rules; and

(H) **Independent representatives.** A client may designate an independent representative to receive on his or her behalf notices and account statements as required under subdivisions (b)(1)(C) and (D) of this section.

(2) Exceptions.

(A) **Shares of mutual funds.** With respect to shares of an open-end company as defined in Section 5(a)(1) of the Investment Company Act of 1940 ("mutual fund"), the investment adviser may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with subdivision (b)(1) of this section.

(B) Certain privately offered securities.

(i) The investment adviser is not required to comply with subdivision (b)(1)(B) of this section with respect to securities that are the following:

(a) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(b) Uncertificated and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client; and

(c) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(ii)(a) Notwithstanding subdivision (b)(2)(B)(i) of this section, the provisions of this subdivision (b)(2)(B) are available with respect to securities held for the account of a limited partnership (or limited liability company or other type of pooled investment vehicle) only if the limited partnership is audited, and the audited financial statements are distributed as described in subdivision (b)(2)(D) of this section and the

investment adviser notifies the commissioner in writing that the investment adviser intends to provide audited financial statements, as described above.

(b) The notification is required to be provided on Form ADV.

(C) **Fee deduction.** Notwithstanding subdivision (b)(1)(F) of this section, an investment adviser is not required to obtain an independent verification of client funds and securities maintained by a qualified custodian if all of the following are met:

(i) The investment adviser has custody of the funds and securities solely as a consequence of its authority to make withdrawals from client accounts to pay its advisory fee;

(ii) The investment adviser has written authorization from the client to deduct advisory fees from the account held with the qualified custodian;

(iii) Each time a fee is directly deducted from a client account, the investment adviser concurrently:

(a) Sends the qualified custodian an invoice or statement of the amount of the fee to be deducted from the client's account; and

(b)(1) Sends the client an invoice or statement itemizing the fee.

(2) Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee; and

(iv)(a) The investment adviser notifies the commissioner in writing that the investment adviser intends to use the safeguards provided above.

(b) The notification is required to be given on Form ADV.

(D) **Limited partnerships subject to annual audit.** An investment adviser is not required to comply with subdivisions (b)(1)(C) and (D) of this section and shall be deemed to have complied with subdivision (b)(1)(F) of this section with respect to the account of a limited partnership (or limited liability company or another type of pooled investment vehicle) if each of the following conditions are met:

(i) At least annually, the fund is subject to an audit and distributes its audited financial statements prepared in accordance with generally accepted accounting

principles to all limited partners (or members or other beneficial owners) and the commissioner within one hundred twenty (120) days of the end of its fiscal year;

(ii) The audit is performed by an independent certified public accountant that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by the Public Company Accounting Oversight Board in accordance with its rules;

(iii)(a) Upon liquidation, the adviser distributes the fund's final audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the commissioner promptly after the completion of the audit.

(b) If liquidation occurs within six (6) months of the previous fiscal year-end, the limited partnership (or like entity) may incorporate the previous year annual audit into the final audit;

(iv) The written agreement with the independent certified public accountant must require the independent certified public accountant to, upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, notify the commissioner within four (4) business days accompanied by a statement that includes the following:

(a) The date of the resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(b) An explanation of any problems relating to audit scope or procedure that contributed to:

(1) The resignation;

(2) The dismissal;

(3) The removal; or

(4) Other termination; and

(v)(a) The investment adviser must also notify the commissioner in writing that the investment adviser intends to employ the use of the statement delivery and audit safeguards described above.

(b) Such notification is required to be given on Form ADV.

(E) **Registered investment companies.** The investment adviser is not required to comply with this section with respect to the account of an investment company registered under the Investment Company Act of 1940.

(3) **Delivery to related persons.** Sending an account statement under subdivision (b)(1)(E) of this section or distributing audited financial statements under subdivision (b)(2)(D) of this section shall not satisfy the requirements of this section if the account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies or another type of pooled investment vehicle) and are related persons of the investment adviser.

(4) **Definitions.** For purposes of this section:

(A) "Qualified custodian" means:

(i) A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. § 1811 et seq.;

(ii) A broker-dealer registered in this jurisdiction and with the United States Securities and Exchange Commission holding the client assets in customer accounts;

(iii) A registered futures commission merchant registered under Section 4f(a) of the Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to clients' funds and security futures or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

(iv) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the

advisory clients' assets in customer accounts segregated from its proprietary assets;
and

(B) "Related person" means:

(i) **Individual control.** The person is controlled or significantly influenced by a member of key management personnel or by a person who controls the entity;

(ii) **Common control.** The person is, directly or indirectly, either under common control with the entity or has significant or joint control over the entity;

(iii) **Associate.** The person is an associate of the entity; or

(iv) **Family member.**

(a) The person is a close family member of a person who is part of key management personnel or who controls the entity.

(b) A close family member is:

(1) An individual's domestic partner and children;

(2) Children of the domestic partner; and

(3) Dependents of the individual or the individual's domestic partner.

(5) This subsection shall not apply to an investment adviser also registered as a broker-dealer in Arkansas who is the following:

(A) Subject to and in compliance with United States Securities and Exchange Commission rule 17 C.F.R. § 240.15c3-1, promulgated under the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq.; or

(B) A member of an exchange whose members are exempt from United States Securities and Exchange Commission rule 17 C.F.R. § 240.15c3-1, under subdivision (b)(2)(B) of this section, and the broker-dealer is in compliance with all rules and settled practices of the exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

Authority. Arkansas Code § 23-42-204.

Codification Notes. The Investment Company Act of 1940 is codified at 15 U.S.C. § 80a-1 et seq.

The Investment Advisers Act of 1940 is codified at 15 U.S.C. § 80b-1 et seq.

The Securities Act of 1933 is codified at 15 U.S.C. § 77a et seq.

The Commodity Exchange Act is codified at 7 U.S.C. § 1 et seq.

23 CAR § 300-310. Denial, suspension, revocation, or withdrawal of registration.

(a) Unfair, misleading, and unethical practices of broker-dealer or agent.

(1) Each broker-dealer and agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

(2) The following conduct shall be considered unethical and grounds for denial, suspension, or revocation of a broker-dealer or agent registration, in addition to other unethical practices within the meaning of Arkansas Code §§ 23-42-308 and 23-42-507 of the Arkansas Securities Act, Arkansas Code § 23-42-101 et seq.:

(A) Failure to timely complete the transaction. Engaging in a pattern of unreasonable delays in delivery of securities or remittance of funds necessary to complete the transaction within the timeframe customary in the trade;

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

(C) Undisclosed fees. Charging undisclosed, unreasonable, and inequitable fees for services performed, including miscellaneous services such as

collection of moneys due for principal, dividends, or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business, except where the fees are negotiated or have been previously disclosed to the customer;

(D) Recommendations to customers.

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

(ii) It may be presumed that investments in nontraded direct participation programs including nontraded real estate investment trusts by unaccredited investors are deemed to be unsuitable if the aggregate investment in these securities exceeds ten percent (10%) of the investor's liquid net worth;

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

(F) Bond presales.

(i)(a) Entering into a presale contract with respect to any bond that is required by laws of the State of Arkansas to be sold at public sale, or to obtain any beneficial interest, direct or indirect, in the initial purchase of any bonds with respect to which the broker-dealer has acted as fiscal agent.

(b) Subdivision (a)(2)(F) of this section shall not apply to industrial bonds issued under the Municipalities and Counties Industrial Development Revenue Bond Law, Arkansas Code §§ 14-164-201 – 14-164-224, to school bonds for school districts if the requirements set forth in subdivision (a)(2)(F)(ii) of this section are met, or to any other bonds provided that it is shown to the satisfaction of the Securities Commissioner in the case of the other bonds that such an arrangement is to the benefit of the issuer.

(c) For the purposes of this subdivision (a)(2)(F), the following terms shall have the indicated meanings, unless the context requires otherwise:

(1) "Bonds" means bond, notes, and other evidence of indebtedness, both in definitive and in temporary form, whether as notes or bonds, issued by or in the name of any:

(A) County;

(B) City;

(C) Town;

(D) School district;

(E) Improvement district;

(F) State educational institution; or

(G) Other public issuer;

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

(3) "Presale contract" means any contract for the sale and purchase of bonds entered into prior to the date advertised for the public sale of the bonds.

(ii) The prohibition set forth in subdivision (a)(2)(F)(i) of this section shall not apply to school bonds for a school district for which a broker-dealer serves as fiscal agent if each of the following conditions are met:

(a) The broker-dealer shall disclose in the preliminary official statement for each bond issue that it has reserved the right to submit a competitive bid;

(b) The broker-dealer shall advise the school district prior to the date bids are to be received whether it will submit a bid;

(c) In the event that the only bid received by the school district is from the broker-dealer, acceptance of the bid by the school district is subject to same day review and approval by the commissioner;

(d) The broker-dealer will receive prior to the date bids are received, written authorization from the issuer in compliance with MSRB Rule G-23; and

(e) All bids shall be submitted by electronic or sealed bid only;

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

(H) **Adjusted trading.**

(i) Utilizing a trading technique whereby a transaction or a series of transactions is executed wherein a party to the transaction or series of transactions attempts to defer the recognition of a decrease in the value of a security by the following:

(a) The sale of a security at a price other than at market value;

(b) The purchase of a security at a price other than at market value; or

(c) The use of fees, payments, or other consideration in such a manner that the composite design of the related transactions is to defer the recognition of a loss or decrease.

(ii)(a) Adjusted trading may occur if more than one (1) broker-dealer or more than one (1) customer is involved in the transaction.

(b) Adjusted trading may occur whether the security is for future delivery, current delivery, or if the security is not yet issued.

(c) If any consideration is given other than normal payment for the security at its market value by any party to the series of purchases or sales, the consideration shall be considered in determining if the trading technique as a whole constitutes adjusted trading;

(I) **Markups.**

(i) Charging excessive markups or entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security.

(ii) Bids and offers should correspond with the actual market.

(iii) Markups may vary, for among other reasons, as a result of such factors as quantity, quality, market conditions, risk to the broker-dealer, and maturity, but should in all transactions be reasonable and fully competitive;

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

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

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

(M) **Controlling persons or affiliates.** Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with, or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of a security, the existence of the control to the customer, and if the disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

(N) **Fictitious accounts.** Establishing or maintaining an account containing fictitious or disguised information;

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

(P) **Misuse of customers' funds or securities.** Borrowing or unauthorized use of customers' funds or securities;

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

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

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

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

(U) **Misuse of firm name.** Implying that a broker-dealer is a bank or other kind of financial institution, provided this does not prohibit the use of the term "investment banker";

(V) **Furnishing documents and testimony.** Unreasonably failing to promptly deliver or provide documents or information in possession of or under control

of the registrant, or appear to provide testimony or documents to the commissioner after receipt of a written request from the commissioner;

(W) Dishonest use of certifications, professional designations, senior-specific certifications, or senior-specific professional designations.

(i) The use of a certification, professional designation, senior-specific certification, or senior-specific professional designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities that indicates or implies that the user has special certification or training in advising or servicing clients in such a way as to mislead any person shall be a dishonest and unethical practice within the meaning of subsection (a) of this section.

(ii) The prohibited use of certifications or professional designations includes, but is not limited to, the following:

(a) Use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use the certification or designation;

(b) Use of a nonexistent or self-conferred certification or professional designation;

(c) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

(d) Use of a certification or professional designation that was obtained from a designating or certifying organization that meets the following:

(1) Is primarily engaged in the business of instruction in sales and/or marketing;

(2) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(3) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(4) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

(iii) There is a rebuttable presumption that a designation or certifying organization is not disqualified solely for purposes of subdivision (a)(2)(W)(ii)(d) of this section when the organization has been accredited by the following:

(a) The American National Standards Institute;

(b) The National Commission for Certifying Agencies; or

(c) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

(iv) In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing clients, factors to be considered shall include the following:

(a) Use of one (1) or more words such as "senior", "retirement", "elder", or like words, combined with one (1) or more words such as "certified", "registered", "chartered", "adviser", "specialist", "consultant", "planner", or like words, in the name of the certification or professional designation; and

(b) The manner in which those words are combined.

(v)(a) For purposes of this subdivision (a)(2)(W), a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title indicates seniority or standing within the organization, or specifies an individual's area of specialization within the organization.

(b) For purposes of this subdivision (a)(2)(W)(v)(a), financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

(vi) Nothing in this section shall limit the commissioner's authority to enforce existing provisions of law;

(X) **Failing to comply with laws or rules.** Failing to comply with any applicable provision of conduct rules, any applicable fair practice or ethical standard, or any other applicable law or rule related to conducting business involving securities promulgated by the United States Securities and Exchange Commission or any self-regulatory organization; and

(Y) **Other unfair, misleading, and unethical practices.** The unfair, misleading, or unethical practices set forth above are not exclusive of other activities such as forgery, embezzlement, nondisclosure or misstatement of material facts, manipulations, and various deceptions, which shall be considered grounds for suspension or revocation, and the commissioner may suspend or revoke a registration when necessary or appropriate in the public interest.

(b) **Fraudulent, deceptive, dishonest, or unethical practices of investment advisers and investment adviser representatives.**

(1) Investment advisers and representatives have a duty to act primarily for the benefit of their clients.

(2) All investment advisers and representatives shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

(3) The provisions of this section shall apply to investment advisers and representatives that are neither registered nor required to register pursuant to Arkansas Code § 23-42-301(c) of the Arkansas Securities Act only to the extent permitted by the National Securities Markets Improvement Act of 1996, Pub. L. No. 104-290.

(4) The following conduct shall constitute fraudulent or deceptive practices and shall be considered grounds for denial, suspension, or revocation of an investment

adviser or representative registration or for the issuance of a cease and desist order or other action under Arkansas Code § 23-42-209 of the Arkansas Securities Act, in addition to other dishonest or unethical practices within the meaning of Arkansas Code §§ 23-42-307 and 23-42-308 of the Arkansas Securities Act:

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

(ii) Investments in nontraded direct participation programs including nontraded real estate investment trusts by unaccredited investors are deemed to be unsuitable if the aggregate investment in these securities exceeds ten percent (10%) of the investor's liquid net worth;

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

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

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

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

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

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

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

(I)(i) Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact.

(ii) This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders a report in the normal course of providing service;

(J) Charging a client an advisory fee that is unreasonable in light of the type of service to be provided, the experience and expertise of the investment adviser, or the bargaining power of the client, or, without notice to the client, dividing or otherwise splitting the advisory fee or other compensation derived from the advisory services;

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

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

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

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

(M)(i) As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts, practices, or courses of business within the meaning of the Arkansas Securities Act, it is unlawful for any investment adviser registered or required to be registered under the Arkansas Securities Act, directly or indirectly, to disseminate any advertisement that violates any of subdivisions (b)(4)(M)(ii) – (v) of this section.

(ii) **General prohibitions.** An advertisement may not:

(a) Include any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading;

(b) Include a material statement of fact that the adviser does not have a reasonable basis for believing it will be able to substantiate upon demand by the commissioner;

(c) Include information that would reasonably be likely to cause an untrue or misleading implication or inference to be drawn concerning a material fact relating to the investment adviser;

(d) Discuss any potential benefits to clients or investors connected with or resulting from the investment adviser's services or methods of operation without providing fair and balanced treatment of any material risks or material limitations associated with the potential benefits;

(e) Include or exclude performance results or present performance time periods in a manner that is not fair and balanced; or

(f) Otherwise be materially misleading.

(iii) **Testimonials and endorsements.**

(a) An advertisement may not include any testimonial or endorsement, and an adviser may not provide compensation, directly or indirectly, for a

testimonial or endorsement unless the investment adviser complies with the conditions in subdivisions (b)(4)(M)(iii)(b) – (d) of this section, subject to the exemptions in subdivision (b)(4)(M)(iii)(e) of this section.

(b) Required disclosures. The investment adviser discloses, or reasonably believes that the person giving the testimonial or endorsement discloses, the following at the time the testimonial or endorsement is disseminated:

(1) Clearly and prominently:

(A) That the testimonial was given by a current client or investor, and the endorsement was given by a person other than a current client or investor, as applicable;

(B) That cash or noncash compensation was provided for the testimonial or endorsement, if applicable; and

(C) A brief statement of any material conflicts of interest on the part of the person giving the testimonial or endorsement resulting from the investment adviser's relationship with such person;

(2) The material terms of any compensation arrangement, including a description of the compensation provided or to be provided, directly or indirectly, to the person for the testimonial or endorsement; and

(3) A description of any material conflicts of interest on the part of the person giving the testimonial or endorsement resulting from the investment adviser's relationship with such person and/or any compensation arrangement.

(c) Adviser oversight and compliance. The investment adviser must have:

(1) A reasonable basis for believing that the testimonial or endorsement complies with the requirements of this subdivision (b)(4)(M); and

(2) A written agreement with any person giving a testimonial or endorsement that describes the scope of the agreed-upon activities and the terms of compensation for those activities.

(d) Disqualification. An investment adviser may not compensate a person, directly or indirectly, for a testimonial or endorsement if the

adviser knows, or in the exercise of reasonable care should know, that the person giving the testimonial or endorsement is an ineligible person at the time the testimonial or endorsement is disseminated.

(e) Exemptions.

(1) A testimonial or endorsement disseminated for no compensation or de minimis compensation is not required to comply with subdivisions (b)(4)(M)(iii)(c)(2) and (b)(4)(M)(iii)(d) of this section.

(2) A testimonial or endorsement by the investment adviser's partners, officers, directors, or employees, or a person that controls, is controlled by, or is under common control with the investment adviser, or is a partner, officer, director, or employee of such a person is not required to comply with subdivisions (b)(4)(M)(iii)(b) and (b)(4)(M)(iii)(c)(2) of this section, provided that the affiliation between the investment adviser and such person is readily apparent to or is disclosed to the client or investor at the time the testimonial or endorsement is disseminated and the investment adviser documents such person's status at the time the testimonial or endorsement is disseminated.

(iv) **Third-party ratings.** An advertisement may not include any third-party rating, unless the investment adviser:

(a) Has a reasonable basis for believing that any questionnaire or survey used in the preparation of the third-party rating is structured to make it equally easy for a participant to provide favorable and unfavorable responses, and is not designed or prepared to produce any predetermined result; and

(b) Clearly and prominently discloses, or the investment adviser reasonably believes that the third-party rating clearly and prominently discloses:

(1) The date on which the rating was given and the period of time upon which the rating was based;

(2) The identity of the third party that created and tabulated the rating; and

(3) If applicable, that compensation has been provided directly or indirectly by the adviser in connection with obtaining or using the third-party rating.

(v) **Performance.** An investment adviser may not include in any advertisement:

(a) Any presentation of gross performance, unless the advertisement also presents net performance:

(1) With at least equal prominence to, and in a format designed to facilitate comparison with, the gross performance; and

(2) Calculated over the same time period and using the same type of return and methodology as the gross performance;

(b) Any performance results of any portfolio or any composite aggregation of related portfolios in each case other than any private fund, unless the advertisement includes performance results of the same portfolio or composite aggregation for one-year, five-year, and ten-year periods, each presented with equal prominence and ending on a date that is no less recent than the most recent calendar year-end, except that if the relevant portfolio did not exist for a particular prescribed period, then the life of the portfolio must be substituted for that period;

(c) Any statement, express or implied, that the calculation or presentation of performance results in the advertisement has been approved or reviewed by the commissioner;

(d) Any related performance, unless it includes all related portfolios, provided that related performance may exclude any related portfolios if:

(1) The advertised performance results are not materially higher than if all related portfolios had been included; and

(2) The exclusion of any related portfolio does not alter the presentation of any applicable time periods prescribed by subdivision (b)(4)(M)(v)(b) of this section;

(e) Any extracted performance, unless the advertisement provides, or offers to provide promptly, the performance results of the total portfolio from which the performance was extracted;

(f) Any hypothetical performance unless the investment adviser:

(1) Adopts and implements policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement;

(2) Provides sufficient information to enable the intended audience to understand the criteria used and assumptions made in calculating such hypothetical performance; and

(3) Provides (or, if the intended audience is an investor in a private fund, provides, or offers to provide promptly) sufficient information to enable the intended audience to understand the risks and limitations of using such hypothetical performance in making investment decisions, provided that the investment adviser need not comply with the other conditions on performance in subdivisions (b)(4)(M)(v)(b), (d), and (e) of this section; and

(g) Any predecessor performance unless:

(1) The person or persons who were primarily responsible for achieving the prior performance results manage accounts at the advertising adviser;

(2) The accounts managed at the predecessor investment adviser are sufficiently similar to the accounts managed at the advertising investment adviser that the performance results would provide relevant information to clients or investors;

(3) All accounts that were managed in a substantially similar manner are advertised unless the exclusion of any such account would not result in materially higher performance and the exclusion of any account does not alter the presentation of any applicable time periods prescribed in subdivision (b)(4)(M)(v)(b) of this section; and

(4) The advertisement clearly and prominently includes all relevant disclosures, including that the performance results were from accounts managed at another entity.

(vi) **Definitions.** For purposes of this subdivision (b)(2)(M):

(a) "Advertisement" means:

(1) Any direct or indirect communication an investment adviser makes to more than one (1) person, or to one (1) or more persons if the communication includes hypothetical performance, that offers the investment adviser's investment advisory services with regard to securities to prospective clients or investors in a private fund advised by the investment adviser or offers new investment advisory services with regard to securities to current clients or investors in a private fund advised by the investment adviser, but does not include:

(A) Extemporaneous, live, oral communications;

(B) Information contained in a statutory or regulatory notice, filing, or other required communication, provided that such information is reasonably designed to satisfy the requirements of such notice, filing, or other required communication; or

(C) A communication that includes hypothetical performance that is provided:

(i) In response to an unsolicited request for such information from a prospective or current client or investor in a private fund advised by the investment adviser; or

(ii) To a prospective or current investor in a private fund advised by the investment adviser in a one-on-one communication; and

(2) Any endorsement or testimonial for which an investment adviser provides compensation, directly or indirectly, but does not include any information contained in a statutory or regulatory notice, filing, or other required communication, provided that such information is reasonably designed to satisfy the requirements of such notice, filing, or other required communication;

(b) "De minimis compensation" means compensation paid to a person for providing a testimonial or endorsement of a total of fifty dollars (\$50.00) or less, or the equivalent value in noncash compensation, during the preceding twelve (12) months;

(c) "Disqualifying action" means an opinion or order by a state or federal securities regulator barring, suspending, or prohibiting the person from acting in any capacity under securities laws;

(d) "Disqualifying event" means any of the following events that occurred within ten (10) years prior to the person disseminating an endorsement or testimonial:

(1) A conviction by a court of competent jurisdiction within the United States of any felony or a misdemeanor involving conduct described in Arkansas Code § 23-42-308(a)(2)(C) of the Arkansas Securities Act;

(2) An injunction by a court of competent jurisdiction within the United States from engaging in or continuing any conduct or practice involving any aspect of the securities business; or

(3) The entry of any final order by the commissioner or a securities administrator of another state, any national securities, commodities, banking, or insurance agency, jurisdiction, exchange, or self-regulatory organization to include all orders listed within Arkansas Code § 23-42-308(a)(2)(F) of the Arkansas Securities Act;

(e) "Endorsement" means any statement by a person other than a current client or investor in a private fund advised by the investment adviser that:

(1) Indicates approval, support, or recommendation of the investment adviser or its supervised persons or describes that person's experience with the investment adviser or its supervised persons;

(2) Directly or indirectly solicits any current or prospective client or investor to be a client of, or an investor in, a private fund advised by the investment adviser; or

(3) Refers any current or prospective client or investor to be a client of, or an investor in, a private fund advised by the investment adviser;

(f) "Extracted performance" means the performance results of a subset of investments extracted from a portfolio;

(g) "Gross performance" means the performance results of a portfolio (or portions of a portfolio that are included in extracted performance, if applicable) before the deduction of all fees and expenses that a client or investor has paid or would have paid in connection with the investment adviser's investment advisory services to the relevant portfolio;

(h)(1) "Hypothetical performance" means performance results that were not actually achieved by any portfolio of the investment adviser.

(2) "Hypothetical performance" includes, but is not limited to:

(A) Performance derived from model portfolios;

(B) Performance that is backtested by the application of a strategy to data from prior time periods when the strategy was not actually used during those time periods; and

(C) Targeted or projected performance returns with respect to any portfolio or to the investment advisory services with regard to securities offered in the advertisement.

(3) "Hypothetical performance" does not include:

(A) An interactive analysis tool where a client or investor, prospective client, or investor uses the tool to produce simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices, provided that the investment adviser:

(i) Provides a description of the criteria and methodology used, including the investment analysis tool's limitations and key assumptions;

(ii) Explains that the results may vary with each use and over time;

(iii) If applicable, describes the universe of investments considered in the analysis, explains how the tool determines which investments to select, discloses if the tool favors certain investments and, if so, explains the reason for the selectivity and states that other investments not considered may have characteristics similar or superior to those being analyzed; and

(iv) Discloses that the tool generates outcomes that are hypothetical in nature; or

(B) Predecessor performance that is displayed in compliance with subdivision (b)(4)(M)(v)(g) of this section;

(i) "Ineligible person" means a person who is subject to a disqualifying action or is subject to any disqualifying event, and the following persons with respect to the ineligible person:

(1) Any employee, officer, or director of the ineligible person and any other individuals with similar status or functions within the scope of association with the ineligible person;

(2) If the ineligible person is a partnership, all general partners; and

(3) If the ineligible person is a limited liability company managed by elected managers, all elected managers;

(j)(1) "Net performance" means the performance results of a portfolio (or portions of a portfolio that are included in extracted performance, if applicable) after the deduction of all fees and expenses that a client or investor has paid or would have paid in connection with the investment adviser's investment advisory services to the relevant portfolio including, if applicable, advisory fees, advisory fees paid to underlying investment vehicles, and payments by the investment adviser for which the client or investor reimburses the investment adviser.

(2) For purposes of this subdivision (b)(4)(M), net performance:

(A) May reflect the exclusion of custodian fees paid to a bank or other third-party organization for safekeeping funds and securities; and/or

(B) If using a model fee, must reflect one (1) of the following:

(i) The deduction of a model fee when doing so would result in performance figures that are no higher than if the actual fee had been deducted; or

(ii) The deduction of a model fee that is equal to the highest fee charged to the intended audience to whom the advertisement is disseminated;

(k)(1) "Portfolio" means a group of investments managed by the investment adviser.

(2) A portfolio may be an account or a private fund and includes, but is not limited to, a portfolio for the account of the investment adviser or its advisory affiliate (as defined in the Form ADV Glossary of Terms);

(l) "Predecessor performance" means investment performance achieved by a group of investments consisting of an account or a private fund that was not advised at all times during the period shown by the investment adviser advertising the performance;

(m) "Private fund" has the same meaning as in 23 CAR § 300-303(h);

(n) "Related performance" means the performance results of one (1) or more related portfolios, either on a portfolio-by-portfolio basis or as a composite aggregation of all portfolios falling within stated criteria;

(o) "Related portfolio" means a portfolio with substantially similar investment policies, objectives, and strategies as those of the services being offered in the advertisement;

(p) "Supervised person" has the same meaning as in 23 CAR § 300-303(k)(5)(C);

(q) "Testimonial" means any statement by a current client or investor in a private fund advised by the investment adviser:

(1) About the client or investor's experience with the investment adviser or its supervised persons;

(2) That directly or indirectly solicits any current or prospective client or investor to be a client of, or an investor in, a private fund advised by the investment adviser; or

(3) That refers any current or prospective client or investor to be a client of, or an investor in, a private fund advised by the investment adviser; and

(r) "Third-party rating" means a rating or ranking of an investment adviser provided by a person who is not a related person (as defined in the Form ADV Glossary of Terms), and such person provides such ratings or rankings in the ordinary course of its business;

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

(O) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of securities or funds in the absence of compliance with the provisions of 23 CAR § 300-309(b);

(P) Entering into, extending, or renewing any investment advisory contract, other than a contract for impersonal advisory services, unless the contract is fair and reasonable, in writing, dated, and discloses, in substance, the following:

(i) The services to be provided;

(ii) The term of the contract;

(iii) The investment objectives, risk tolerance levels, annual income, net worth, and liquid net worth for the client;

(iv) The advisory fee or the formula for computing the fee;

(v) The amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract termination or nonperformance;

(vi) Whether the contract grants discretionary power to the adviser;

and

(vii) That no assignment of the contract shall be made by the investment adviser without the consent of the other party to the contract;

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

(ii) An affiliate of the investment adviser may be recommended as long as the affiliate relationship is fully disclosed to the client in writing, and that the recommended affiliate is in the client's best interest;

(R) Unreasonably failing to deliver or provide documents or information in possession of or under control of the registrant, or appear to provide testimony or documents to the commissioner, after receipt of a written request from the commissioner;

(S) Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940;

(T)(i) Entering into, extending, or renewing any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act of 1940.

(ii) This provision shall apply to all advisers and investment adviser representatives registered or required to be registered under the Arkansas Securities Act, notwithstanding whether the adviser or representative would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940;

(U) Indicating, in an advisory contract, any condition, stipulation, or provision binding any person to waive compliance with any provision of the Arkansas Securities Act or of the Investment Advisers Act of 1940, waive rights to seek remedies under state or federal securities laws, or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940;

(V) Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative and contrary to the provisions of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that the investment

adviser or investment adviser representative is not registered or required to be registered under Section 203 of the Investment Advisers Act of 1940;

(W) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for a person to do directly under the provisions of the Arkansas Securities Act or this part;

(X)(i) Dishonest use of certifications, professional designations, senior-specific certifications, or senior-specific professional designations.

(ii) The use of a certification, professional designation, senior-specific certification, or senior-specific professional designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities that indicates or implies that the user has special certification or training in advising or servicing clients in such a way as to mislead any person shall be a dishonest and unethical practice within the meaning of this subsection.

(iii) The prohibited use of certifications or professional designations includes, but is not limited to, the following:

(a) Use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(b) Use of a nonexistent or self-conferred certification or professional designation;

(c) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

(d) Use of a certification or professional designation that was obtained from a designating or certifying organization that meets the following:

(1) Is primarily engaged in the business of instruction in sales and/or marketing;

(2) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(3) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(4) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

(iv) There is a rebuttable presumption that a designation or certifying organization is not disqualified solely for purposes of subdivision (b)(4)(X)(iii)(d) of this section when the organization has been accredited by the following:

(a) The American National Standards Institute;

(b) The National Commission for Certifying Agencies; or

(c) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

(v) In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing clients, factors to be considered shall include the following:

(a) Use of one (1) or more words such as "senior", "retirement", "elder", or like words combined with one (1) or more words such as "certified", "registered", "chartered", "adviser", "specialist", "consultant", "planner", or like words in the name of the certification or professional designation; and

(b) The manner in which those words are combined.

(vi)(a) For purposes of this subdivision (b)(4)(X), a certification or professional designation does not include a job title within an organization that is

licensed or registered by a state or federal financial services regulatory agency when that job title indicates seniority or standing within the organization or specifies an individual's area of specialization within the organization.

(b) For purposes of this subdivision (b)(4)(X)(vi), financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

(vii) Nothing in this subdivision (b)(4)(X) shall limit the commissioner's authority to enforce existing provisions of law;

(Y) Accessing a client's account by using the client's own unique identifying information, such as username and password;

(Z) Failure to establish, maintain, and enforce a required policy or procedure; or

(AA)(i) Other fraudulent, deceptive, dishonest, or unethical practices.

(ii) The activities set forth above are not all-inclusive.

(iii) Any other activities employing any device, scheme, or artifice to defraud or engaging in any act, practice, or course of business that operates, or 23 CAR § 300-503 would operate, as a fraud or deceit shall constitute grounds for denial, suspension, or revocation under Arkansas Code § 23-42-308 of the Arkansas Securities Act, or for the institution of a cease and desist order or other action under Arkansas Code § 23-42-209 of the Arkansas Securities Act.

(c) **Rules of practice and procedure regarding denial, suspension, or revocation.** The rules of practice and procedure to be followed in proceedings for the denial, suspension, or revocation of a broker-dealer, agent, or investment adviser application or registration are set forth in the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., and 23 CAR § 300-601 et seq.

Authority. Arkansas Code § 23-42-204.

Codification Notes. The Investment Company Act of 1940 is codified at 15 U.S.C. § 80a-1 et seq.

The Investment Advisers Act of 1940 is codified at 15 U.S.C. § 80b-1 et seq.

23 CAR § 300-311. Protections of vulnerable adults from financial exploitation.

The term “individual” used in Arkansas Code § 23-42-309 of the Arkansas Securities Act, Arkansas Code § 23-42-101 et seq., means any agent, investment adviser representative, or person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.

Authority. Arkansas Code § 23-42-204.

Subpart 4. Registration of Securities

23 CAR § 300-401. Registration by notification.

(a) **Requirements.** A registration statement under Arkansas Code § 23-42-401 of the Arkansas Securities Act, Arkansas Code § 23-42-101 et seq., shall contain the following information to be accompanied by the following documents in addition to the information specified in Arkansas Code §§ 23-42-401(b) and 23-42-404(c) and the consent to service of process required by Arkansas Code § 23-42-107(a) of the Arkansas Securities Act:

(1) Statement demonstrating eligibility of the issuer for registration by notification, showing that the issuer has been in continuous operation for at least five (5) years, has not been in default during the current fiscal years in the payment of principal, interest, or dividends on any security of the issuer with a fixed maturity or a fixed interest or dividend provision, and satisfied the average net earnings requirements established by Arkansas Code § 23-42-401(a)(1)(B) of the Arkansas Securities Act

(identifying all securities subject to the average net earnings requirements and compute the percentage limitations as necessary);

(2) One (1) copy of the latest form of prospectus to be used in the offering;

(3) Underwriting agreement, agreement among underwriters, and selected dealers agreement;

(4) Indenture or copy of any other instrument covering the security to be registered;

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

(6) Specimen copy of security;

(7) Consent to service of process accompanied by appropriate corporate resolution;

(8) One (1) copy of any pamphlet, circular, form letter, advertisement, television, radio, or other sales literature intended as of the effective date to be used in connection with the offering;

(9) Method of distribution in Arkansas, including the name of the registered broker-dealer or registered agent of the issuer, as appropriate;

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

(11) An undertaking to forward all amendments to the registration statement and the final prospectus or any further amendments or supplements thereto; and

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

(b) **Effectiveness.**

(1) A registration statement shall not be considered as filed for purposes of automatic effectiveness under Arkansas Code § 23-42-401(c) of the Arkansas Securities

Act until it contains all information, documents, fees, and other matters required by the Arkansas Securities Act and subsection (a) of this section.

(2) In appropriate instances, the commissioner may waive any of the requirements of this section, provided the requirements are not specifically set forth in the Arkansas Securities Act.

Authority. Arkansas Code § 23-42-204.

23 CAR § 300-402. Registration by coordination.

(a) **Requirements.** A registration statement under Arkansas Code § 23-42-402 of the Arkansas Securities Act, Arkansas Code § 23-42-101 et seq., shall contain the following information and be accompanied by the following documents in addition to the information specified in Arkansas Code § 23-42-404(c) of the Arkansas Securities Act and the consent to service of process required by Arkansas Code § 23-42-107(a) of the Arkansas Securities Act:

(1) One (1) copy of the latest form of prospectus filed under the Securities Act of 1933, 15 U.S.C. § 77a et seq.;

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

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

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

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

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

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

(8) Any other information the commissioner may require or permit.

(b) **Effectiveness.** The commissioner will certify the effectiveness of the registration statement by issuing a letter or electronic notification stating effectiveness, but the failure to issue notification shall not delay the effectiveness of a registration statement meeting the requirements of Arkansas Code § 23-42-402(c) of the Arkansas Securities Act.

Authority. Arkansas Code § 23-42-204.

23 CAR § 300-403. Registration by qualification.

(a) **Requirements.** A registration statement under Arkansas Code § 23-42-403 of the Arkansas Securities Act, Arkansas Code § 23-42-101 et seq., shall contain the following information and be accompanied by the following documents in addition to the information specified in Arkansas Code §§ 23-42-403(b) and 23-42-404(c) of the Arkansas Securities Act and the consent to service of process required by Arkansas Code § 23-42-107(a) of the Arkansas Securities Act:

(1)(A) A corporate surety bond posted by the issuer in an amount equaling ten percent (10%) of the maximum aggregate offering price at which the securities being registered are to be offered in this state.

(B) Any investor or security holder of the issuer having a right of action under the Arkansas Securities Act shall have a right of action under the bond, however, in any event, the total liability of the surety to all persons shall not exceed the amounts specified in the bond.

(C) Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless suit is brought within three (3) years after the date of the expiration of the original or renewal registration.

(D) In the event the securities are never issued, and once sufficient proof is provided to the Securities Commissioner, the corporate surety bond may be discontinued or canceled;

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

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

(4) Additional information as the commissioner may require or permit.

(b) Prospectus requirements.

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

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

(B) The confirmation of the sale;

(C) The payment pursuant to the sale; or

(D) The delivery of the security pursuant to the sale.

(2) The commissioner may require that a subscription agreement be signed by each purchaser acknowledging that he or she has received a copy of the prospectus.

(3)(A) The prospectus shall contain full disclosure of all material facts relating to the issuer and the offering and sale of the securities being registered.

(B) The prospectus shall be designated an exhibit to and constitute a part of the registration statement.

(C) A prospectus meeting the requirements of Form S-1, Form U-7, or other uniform forms deemed acceptable to the commissioner, will ordinarily satisfy the requirements of this section.

(4) Any information specified in Arkansas Code § 23-42-403(b) of the Arkansas Securities Act or subsection (a) of this section may be included in the prospectus if a cross-reference table is filed showing the location of the information in the prospectus.

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

Authority. Arkansas Code § 23-42-204.

23 CAR § 300-404. Registration statements generally — General requirements.

(a) General policy.

(1) Each application for registration shall comply with the requirements set forth in this section unless a request for a deviation is granted by the Securities Commissioner.

(2) All requests for deviation from registration policies must be in writing and submitted to the commissioner who shall set forth in writing the reason for granting any request, if a request is granted.

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

(b) Financial statements.

(1) Preparation.

(A) Financial statements required to be included in a registration statement shall be prepared, audited, and certified by independent certified public accountants in accordance with generally accepted accounting procedures and practices, applied on a consistent basis, and accompanied by an opinion acceptable to the commissioner.

(B) Audited financial reports may be waived if the financial reports meet the requirements of Form U-7 or offerings under Regulation A promulgated under the Securities Act of 1933.

(2) **Annual financial reports.**

(A) The commissioner may require as a condition for registration that financial reports be filed to keep reasonably current the financial information contained in any effective registration statement.

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

(c) **Promotional securities or cheap stock.** Promotional securities, or “cheap stock”, securities that have been issued within three (3) years of the date of filing or are to be issued to underwriters, promoters, or insiders for an amount less than the public offering price shall be in compliance with the NASAA Statement of Policy Regarding Promotional Shares and the Guidelines for the Model Promotional Shares Escrow Agreement.

(d) **Impoundment of proceeds.** The commissioner may require as a condition to registration that all proceeds from sales of securities be impounded in accordance with NASAA Statement of Policy Regarding the Impoundment of Proceeds.

(e) **Commissions and expenses.** Commissions and expenses allowable to broker-dealers and issuers must in every instance be reasonable and justified and in compliance with NASAA Statement of Policy Regarding Underwriting Expenses, Underwriter’s Warrants, Selling Expenses, and Selling Security Holders.

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

(g) **Promoter’s equity investment.** Where an issuer is in the promotional, exploratory, or development stage, the ratio of investment by promoters or insiders must be determined as reasonable and equitable in the light of the facts and circumstances presented in each particular case, but will be considered objectionable if

not in compliance with the guidelines of NASAA Statement of Policy Regarding Promoter's Equity Investment.

(h) **Nonvoting common stock.** Securities of an issuer having more than one (1) class of common stock must be in compliance with NASAA Statement of Policy Regarding Unequal Voting Rights.

(i) **Offering price.**

(1) In the case of an issuer that has been actually engaged in business or operation, the amount for which a security is being offered to the public must bear some reasonable relationship to the market value, if any, or the price-earnings ratio as reflected by its financial statements covering an average of the preceding three (3) years, or a shorter duration of business or operation as may be applied.

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

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

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

(l) **Nonexempt reorganizations.** In the case of any reorganization for which an exemption from registration is not available under Arkansas Code §§ 23-42-503 and 23-42-504 of the Arkansas Securities Act, Arkansas Code § 23-42-101 et seq., and registration of any securities to be issued as a part of the reorganization is required pursuant to Arkansas Code § 23-42-401, Arkansas Code § 23-42-402, or Arkansas Code § 23-42-403 of the Arkansas Securities Act, the commissioner may waive all or any part of the standards of review imposed upon registration by this section, if the following are met:

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

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

(m) **Issuer completion report.** For registrants paying less than the maximum filing fee, a final report which may be in letter form or on a form provided by the commissioner specifying the amount of securities sold in this state shall be provided to the commissioner within thirty (30) days after the earlier of the following:

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

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

(n) **Unsound financial condition.** The offer or sale of securities by an issuer may be deemed unfair and inequitable to purchasers if not in compliance with NASAA Statement of Policy on Unsound Financial Condition.

(o) **Specificity in use of proceeds.** The prospectus shall disclose all information required to be in compliance with NASAA Statement of Policy Regarding Specificity in Use of Proceeds.

(p) **Loans and other material affiliated transactions.** Loans and other material affiliated transactions must be disclosed with NASAA Statement of Policy Regarding Loans and other Material Affiliated Transactions.

(q) **Mortgage program guidelines.** Direct participation mortgage programs must follow NASAA Statement of Policy on Mortgage Program Guidelines.

(r) **Registration of asset-backed securities.** Asset-backed securities shall register and comply with NASAA Statement of Policy on Registration of Asset-Backed Securities.

(s) **Real estate investment trusts.** The offering or sale of real estate investment trusts may be deemed unfair and inequitable to purchasers if not in compliance with NASAA Statement of Policy Regarding Real Estate Investment Trusts.

(t) **Real estate programs.** The offering or sale of real estate programs may be deemed unfair and inequitable to purchasers if not in compliance with NASAA Statement of Policy Regarding Real Estate Programs.

(u) **Omnibus guidelines.** The offering or sale of programs involving omnibus by an issuer may be deemed unfair and inequitable to purchasers if not in compliance with NASAA Statement of Policy Omnibus Guidelines.

(v) **Equipment programs.** The offering or sale of equipment programs of an issuer may be deemed unfair and inequitable to purchasers if not in compliance with NASAA Statement of Policy Equipment Programs.

(w) **Registration of commodity pool programs.** The offering or sale of commodity pool programs must be properly registered by an issuer and may be deemed unfair and inequitable to purchasers if not in compliance with NASAA Statement of Policy Regarding Registration of Commodity Pool Programs.

(x) **Use of electronic offering documents and electronic signatures.** An issuer of securities or agent acting on behalf of the issuer may deliver offering documents over the internet or by other electronic means and may provide for the use of electronic signatures if done in compliance with NASAA Statement of Policy Regarding Use of Electronic Offering Documents and Electronic Signatures.

Authority. Arkansas Code § 23-42-204.

Codification Notes. The Securities Act of 1933 is codified at 15 U.S.C. § 77a et seq.

23 CAR § 300-405. Stop order denying, suspending, or revoking registration statement — General provisions.

(a) **General policy.**

(1) Each application for registration shall comply with the requirements of the Arkansas Securities Act, Arkansas Code § 23-42-101 et seq., and this part unless a request for deviation from a rule is requested and granted by the Securities Commissioner.

(2) Any unauthorized deviation from the requirements of the Arkansas Securities Act and this part shall be grounds for the issuance of a stop order denying, suspending, or revoking the registration statement.

(b) **Other causes for denial, suspension, or revocation.** In addition to an action pursuant to subsection (a) of this section, the commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement for any cause stated in Arkansas Code § 23-42-405(a) of the Arkansas Securities Act, whether similar to or different from the causes enumerated in this part when necessary or appropriate in the public interest or for the protection of purchasers.

(c) **Rules of practice and procedure regarding denial, suspension, or revocation.** The rules of practice and procedure to be followed in proceedings for the denial, suspension, or revocation of effectiveness of any registration statement are set forth in 23 CAR § 300-601.

Authority. Arkansas Code § 23-42-204.

Subpart 5. Regulation of Transactions

23 CAR § 300-501. Sale of unregistered nonexempt securities.
[Reserved].

23 CAR § 300-502. Filing of prospectus, sales literature, etc. — Advertising.

(a) **General provisions.** Any public advertising in connection with the sale and promotion of a public offering of registered securities or securities exempted under

Arkansas Code § 23-42-503(a)(7) and (c) of the Arkansas Securities Act, Arkansas Code § 23-42-101 et seq., and 23 CAR § 300-503(b)(2)(A) shall be subject to the following requirements and restrictions:

(1) **Filing requirement.** All sales literature or promotional material, other than that exempted by the Arkansas Securities Act or this section, shall be governed by the following:

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

(B) If not disallowed by the commissioner by written notice or otherwise within three (3) days from the date filed, the use of the material as submitted will be permitted; and

(C) The commissioner will not issue formal approval of the literature and it is the responsibility of the user to determine the accuracy and reliability of the statements and material so used and in conformity with this section; and

(2) **Specific prohibitions.** The following devices or sales presentations, and the use thereof, will be deemed deceptive or misleading practices:

(A) Comparison charts or graphs showing a distorted, unfair, or unrealistic relationship between the issuer's past performance, progress, or success and that of another:

- (i) Company;
- (ii) Business;
- (iii) Industry; or
- (iv) Investment media;

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

(C)(i) Statements or representations that by themselves predict future profit, success, appreciation, performance, or otherwise related to the merit or potential of the securities that are positive or imperative in form.

(ii) The statements or representations should clearly indicate that they represent solely the opinion of the publisher thereof;

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

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

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

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

(b) **Exceptions.** The following forms and types of advertising are permitted without the necessity for filing or prior authorization by the commissioner, unless specifically prohibited:

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

(A) Name and address of issuer;

(B) Identity of title of security;

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

(D) Brief, general description of business;

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

(F) Date of issuance;

(2) Dividend notices, proxy statements, and reports to shareholders, including investment company quarterly and semiannual reports;

(3) Sales literature, advertising, or market letters prepared in conformity with the applicable regulations and in compliance with the filing requirements of the United States Securities and Exchange Commission, FINRA, or recognized securities exchanges;

(4) Factual or informative letters, bulletins, or releases, similar to “newsletters”, relating to issuer’s progress or activities or current financial condition; and

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

(c) **Violations.** Any person who prepares, distributes, or causes to be issued or published any sales literature that is knowingly inaccurate, false, misleading, or tending to mislead in any material respect or otherwise in violation of the provisions herein may be held responsible and accountable therefore in any administrative or civil proceeding arising under the Arkansas Securities Act or this part.

Authority. Arkansas Code § 23-42-204.

23 CAR § 300-503. Exempted securities.

(a) This section does not exempt securities from the remaining provisions of the Arkansas Securities Act, Arkansas Code § 23-42-101 et seq., or this part, including Arkansas Code § 23-42-507 of the Arkansas Securities Act.

(b) **Classes of exempt securities.**

(1) Securities exempted under Arkansas Code § 23-42-503(a) of the Arkansas Securities Act:

(A) **Government securities.** [Reserved];

(B) **Canadian government securities.** [Reserved];

(C) **Bank securities.** [Reserved];

(D) **Savings and Loan Association securities.** [Reserved];

(E) **Public utility securities.** [Reserved];

(F) **World class foreign issuers.** In order to be exempt under Arkansas Code § 23-42-503(a)(6) of the Arkansas Securities Act, a security of a world class foreign issuer must meet the qualifications set forth in NASAA Statement of Policy on World Class Foreign Issuer Exemption;

(G) **Nonprofit organization securities.**

(i) For nonprofit organization securities to be exempt under Arkansas Code § 23-42-503(a)(7) of the Arkansas Securities Act, a proof of exemption shall be filed with the Securities Commissioner at least ten (10) days prior to any sale of such securities.

(ii) The proof of exemption required to be filed pursuant to Arkansas Code § 23-42-503(d) of the Arkansas Securities Act shall contain the following and the applicable additional items set out in subdivision (b)(1)(G)(iii), subdivision (b)(1)(G)(iv), or subdivision (b)(1)(G)(v) of this section unless waived by the commissioner:

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

(b) A declaration that Arkansas Code § 23-42-503(a)(7) of the Arkansas Securities Act is applicable;

(c)(1) A description of the method by which full disclosure of material facts will be made to each offeree.

(2) A copy of the prospectus, pamphlet, offering circular, or similar literature should be provided, if one is to be used;

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

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

(f) Any additional information or documentation that the commissioner may require.

(iii) For nonprofit organization securities that are neither church bonds nor church extension fund securities, the proof of exemption required to be filed pursuant to Arkansas Code § 23-42-503(d) of the Arkansas Securities Act shall contain the items listed in subdivision (b)(1)(G)(ii) of this section and an affirmation that the securities will be sold by a broker-dealer registered in this state.

(iv)(a) Church bonds as defined in the Statement of Policy Regarding Church Bonds adopted by NASAA must meet the qualifications as set forth in the appropriate NASAA Statement of Policy Regarding Church Bonds or any successor policy thereto to be exempt under Arkansas Code § 23-42-503(a)(7) of the Arkansas Securities Act.

(b) In addition to items required for a proof of exemption filing listed in subdivision (b)(1)(G)(ii) of this section, church bonds must also provide a disclosure document prepared in accordance with the Statement of Policy Regarding Church Bonds adopted by NASAA or any successor policy thereto.

(v)(a) Church extension fund securities as defined in the Statement of Policy Regarding Church Extension Fund Securities adopted by NASAA must meet the qualifications as set forth in the appropriate NASAA Statement of Policy Regarding Church Extension Fund Securities or any successor policy thereto to be exempt under Arkansas Code § 23-42-503(a)(7) of the Arkansas Securities Act.

(b) In addition to items required for a proof of exemption filing listed in subdivision (b)(1)(G)(ii) of this section, church extension fund securities must also provide a disclosure document prepared in accordance with the Statement of Policy Regarding Church Extension Fund Securities adopted by NASAA or any successor policy thereto;

(H) **Employee stock purchase, savings, pension, profit-sharing, stock bonus, or similar benefit plans.** The notice filed pursuant to Arkansas Code §

23-42-503(a)(8) of the Arkansas Securities Act for those plans not meeting the requirements of qualification under the Internal Revenue Code shall contain the following:

(i) A declaration that Arkansas Code § 23-42-503(a)(8) of the Arkansas Securities Act is applicable; and

(ii)(a) A description of the method by which full disclosure of material facts will be made to each offeree.

(b) A copy of the prospectus, pamphlet, offering circular, or similar literature should be provided, if one is to be used; and

(I) Securities exempted by rule pursuant to Arkansas Code § 23-42-503(a)(9) of the Arkansas Securities Act.

(i) The following securities have been determined by the commissioner to be exempt from the registration requirements of the Arkansas Securities Act.

(ii) In addition, any individual who represents an issuer in effecting transactions in securities exempted under subdivisions (b)(1)(I)(ii)(a) – (h) of this section shall not be deemed to be an agent if the transaction involves offers or sales to existing security holders of the issuer and no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective purchaser in this state:

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

(1) Chicago Stock Exchange, Inc.;

(2) CME Group, Inc.;

(3) NYSE Group, Inc.;

(4) The Chicago Board Options Exchange, Inc.; and

(5) Any other stock exchange approved by the

commissioner;

(b) Securities listed on Tier I of the NASDAQ OMX PHLX;

(c) Options traded on the NASDAQ OMX PHLX that are issued by the Options Clearing Corporation;

(d) Any security of an issuer which is of senior or substantially equal rank to a security of the same issuer listed in subdivisions (b)(1)(I)(ii)(a) – (c) of this section;

(e) Any security called for by subscription rights or warrants that are exempt under subdivisions (b)(1)(I)(ii)(a) – (d) of this section;

(f) Any warrant or right to purchase or subscribe to any security that is exempt under subdivisions (b)(1)(I)(ii)(a) – (e) of this section;

(g) Any warrant or right to purchase or subscribe to any security that is covered pursuant to Section 18(b)(1) of the Securities Act of 1933;

(h) Any security called for by a subscription right or warrant that is covered pursuant to Section 18(b)(1) of the Securities Act of 1933; and

(i) Any security issued under a written compensatory benefit plan or contract that is exempt from registration under Rule 701 under the Securities Act of 1933.

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

(A) Small business offering.

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

(a) A filing fee shall be paid as set forth in Arkansas Code § 23-42-503(d)(5) of the Arkansas Securities Act;

(b) A proof of exemption shall be filed that sets forth the means whereby each of the requirements of subdivisions (b)(2)(A)(i)(d) – (f) of this section are to be satisfied and that declares that an exemption is claimed under this section;

(c) An opinion of counsel or other satisfactory evidence shall be presented to the commissioner that the securities proposed to be sold pursuant to this exemption will be the following:

(1) Shall be offered and sold in compliance with or pursuant to appropriate exemption from all applicable registration requirements under federal securities laws; and

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

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

(1)(A) A prospectus which contains full disclosure of all material facts relating to the issuer and the offering and sale of the securities.

(B) A prospectus meeting the requirements of Form U-7 or other uniform forms deemed acceptable to the commissioner will generally meet the requirements for disclosure;

(2)(A) A balance sheet of the issuer as of a date within four (4) months prior to the filing of the proof of exemption and a profit and loss statement for the two (2) fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for a period of this issuer's and any predecessor's existence if less than two (2) years, all prepared in accordance with generally accepted accounting principles.

(B) Financial statements meeting the requirements of Form U-7 or Regulation A will be deemed acceptable to the commissioner; and

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

(e) A copy of any offering circular, pamphlet, form letter, advertisement, television script, radio script, public advertising, or other sales literature

intended as of the effective date to be used in connection with the offering shall be filed with the commissioner; and

(f) The issuer shall file the consent to service of process required by Arkansas Code § 23-42-107(a) of the Arkansas Securities Act, the documents required to be filed by Arkansas Code § 23-42-403(b)(13) and (15) of the Arkansas Securities Act, the information specified in Arkansas Code § 23-42-404(c)(1) – (3) of the Arkansas Securities Act, and a written acknowledgment executed by each executive officer, director, and controlling person of the issuer, that the person has done the following:

(1) Made a diligent inquiry of the affairs of the issuer;

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

(3) After review of the documents required pursuant to this section, believes to his or her best knowledge that all materials are true, accurate, and complete; and

(4) Is aware of the criminal and civil liabilities provisions of Arkansas Code §§ 23-42-104 – 23-42-106 of the Arkansas Securities Act, as amended.

(ii) In addition to the requirements set forth in subdivision (b)(2)(A)(i) of this section, the following shall also be met or apply to offerings under this section:

(a)(1) The purchase of all securities shall be evidenced in writing by a form affixed to the purchaser's copy of the materials whereby the purchaser represents and acknowledges receipt and review thereof prior to the consummation of the sale, the resident address of the purchaser, and the date of execution thereof.

(2) The issuer shall retain the detached receipt for a period of not less than five (5) years thereafter;

(b) The requirements of 23 CAR § 300-404 shall apply to offerings of securities pursuant to this exemption unless the commissioner waives any or all of the requirements;

(c) The issuer undertakes during the period of the offering to promptly file an amendment to the proof of exemption any time anything previously filed with the commissioner in connection with the offering becomes:

(1) Outdated;

(2) Incorrect;

(3) Inaccurate;

(4) Modified; or

(5) Otherwise changes in any material respect;

(d) This exemption shall become effective only when the commissioner so indicates by written confirmation signifying effectiveness;

(e) The exemption from Arkansas Code §§ 23-42-501 and 23-42-502 of the Arkansas Securities Act shall only be effective for the period of the offering or twelve (12) months from the date it is declared effective, whichever shall first occur;

(f) The exemption for any issue of securities may be denied, suspended, or revoked for any of the reasons set forth in Arkansas Code § 23-42-405 of the Arkansas Securities Act; and

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

(B) Small real estate investment oriented securities offering.

(i) A security representing an investment in real estate, offered in compliance with each of the following conditions, shall be exempt under Arkansas Code § 23-42-503(b) of the Arkansas Securities Act:

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

(b)(1) There shall be no more than ten (10) persons as investors of the offering.

(2) For purposes of computing the number of investing persons, the following shall be used:

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

(B) Each corporation, partnership, association, joint stock company, trust, or unincorporated organization shall be counted as one (1) person, except that if the entity was organized for the specific purpose of acquiring the securities offered, then this exemption shall not be available to the claimant;

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

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

(e)(1) The sponsor or organizer must reasonably believe that each investor is able to bear the economic risk of the investment.

(2) It shall be prima facie evidence of compliance of this element if each investing person demonstrates in writing prior to consummation of sale that he or she is able to bear the economic risk of the investment;

(f)(1) The sponsor or organizer must reasonably believe that each investor is purchasing for investment.

(2) It shall be prima facie evidence of compliance of this element if each investment person demonstrates in writing prior to consummation of sale that he or she is purchasing for investment and not with a view to distribution; and

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

(1) The real estate commission is paid to a registered Arkansas real estate broker or the broker's agent; and

(2) In no event shall the commission exceed ten percent (10%) of the total purchase price of the property.

(3) **Securities exempted under Arkansas Code § 23-42-503(c).** The proof of exemption required to be filed pursuant to Arkansas Code § 23-42-503(d) of the Arkansas Securities Act, and that may be filed by cooperatives pursuant to Arkansas Code § 23-42-503(c) of the Arkansas Securities Act, shall contain the following unless waived by the commissioner:

(A) The filing fee as set forth in Arkansas Code § 23-42-503(d)(5)(B) of the Arkansas Securities Act;

(B) A declaration that Arkansas Code § 23-42-503(c) of the Arkansas Securities Act exemption will be utilized;

(C) A copy of the articles of incorporation and bylaws of the issuer;

(D)(i) A description of the method by which full disclosure of material facts will be made to each offeree.

(ii) A copy of the prospectus, pamphlet, offering circular, or similar literature should be provided, if one is to be used;

(E) Current financial statements of the issuer;

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

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

(H) Any additional information or documentation that the commissioner may require.

(c) **General provisions.**

(1) **Qualification.**

(A) In order to qualify for an exemption, each applicant must meet each of the requirements of the particular exemption claimed under Arkansas Code § 23-42-503 of the Arkansas Securities Act.

(B) A failure to comply with any one (1) material element will render that exemption unavailable to the claimant.

(C) The burden of proof for an exemption under Arkansas Code § 23-42-503 of the Arkansas Securities Act shall be on the claimant.

(2) Filing.

(A) Certain exemptions set forth in Arkansas Code § 23-42-503 of the Arkansas Securities Act and the corresponding rules first require a filing with the State Securities Department as the initial step in the exemption process.

(B) These exemptions are unavailable unless the required filing is made.

(3) Requirements.

(A) The commissioner will look with disfavor upon any exemption request under Arkansas Code § 23-42-503 of the Arkansas Securities Act as not being in the public interest and tending to work a fraud on investors unless the requirements set forth in the Arkansas Securities Act and this part are met or good cause is shown for an exception from the applicable requirements.

(B) A request for deviation from exemption policies must be in writing and, if not acceptable, the request will be denied.

(4) Records. All issuers who effect sales or offers of securities pursuant to the exemption specified in Arkansas Code § 23-42-503 of the Arkansas Securities Act when a proof of exemption is filed, shall preserve the following records during the period of five (5) years following the completion of the sales:

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

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

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

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

(5) Agent requirements.

(A)(i) Any person who effects transactions in securities of an issuer exempted by Arkansas Code § 23-42-503(a)(5) – (7) of the Arkansas Securities Act is an agent.

(ii) Any person who effects transactions in securities exempted by Arkansas Code § 23-42-503(c) of the Arkansas Securities Act where a commission or other remuneration is to be paid is an agent.

(B) All agents are required to be registered.

(C)(i) If the agent is not associated with a broker-dealer registered in Arkansas, the person must become registered as an agent of the issuer.

(ii) Arkansas Code § 23-42-301 of the Arkansas Securities Act sets forth the requirements for the registration of an agent.

(6) Confirmations. At or before completion of each transaction with a purchaser, the agent of the issuer shall give or send to each purchaser written notification of the following information (if the information is not included in the subscription agreement):

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

(B) The identity of the registered agent handling the transaction; and

(C)(i) Any other information required or deemed material to the transaction such that the failure to disclose the information would be misleading to the purchaser or would not accurately represent material facts to the transaction.

(ii) The information should include, at a minimum, a full description of the security.

(7) Denial or revocation. If an applicant has filed for an exemption pursuant to Arkansas Code § 23-42-503 of the Arkansas Securities Act, and if the commissioner deems it necessary, he or she may by order summarily deny or revoke any exemption pending a final determination of any proceeding under 23 CAR § 300-608 or Arkansas Code § 23-42-505 of the Arkansas Securities Act.

(8) **Period of effectiveness.** Except as provided by specific statute, rule, or order, or unless the exemption is revoked, securities for which a proof of exemption was filed pursuant to Arkansas Code § 23-42-503(a)(7) or Arkansas Code § 23-42-503(c) of the Arkansas Securities Act may be issued as exempt securities during the twelve-month period following the effective date.

Authority. Arkansas Code § 23-42-204.

Codification Notes. The Securities Act of 1933 is codified at 15 U.S.C. § 77a et seq.

23 CAR § 300-504. Exempted transactions.

(a) This section does not exempt transactions from the remaining provisions of the Arkansas Securities Act, Arkansas Code § 23-42-101 et seq., or this part, including Arkansas Code § 23-42-507 of the Arkansas Securities Act.

(b) **Transactions exempt under Arkansas Code § 23-42-504(a) of the Arkansas Securities Act.**

(1) Specific types of exempt transactions:

(A) **Isolated non-issuer.** Any sale of an outstanding security by or on behalf of a person not in control of the issuer, controlled by the issuer, or under common control with the issuer, and the following:

(i) The person does not directly or indirectly effect transactions in securities for the benefit of the issuer;

(ii) The person would not be defined as an issuer or underwriter pursuant to the Arkansas Securities Act and this part; and

(iii) There are no more than three (3) transactions effected in this state during any period of twelve (12) consecutive months;

(B) **Manual exemption.**

(i) Nationally recognized securities manual or its electronic equivalent shall mean Fitch Investor Service, Mergent's Investor Service, and OTC Markets Group, Inc. with respect to securities included in the OTCQX and OTCQB markets.

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

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

(C) **Sale to underwriter.** [Reserved];

(D) **Secured transactions.**

(i) This exemption applies only when the mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby are offered and sold as a whole unit.

(ii) Fractional interests or undivided interests in the unit may not be offered or sold in reliance on this exemption;

(E) **Fiduciary transactions.** [Reserved];

(F) **Pledges.** [Reserved];

(G) **Cross-border transactions.** [Reserved];

(H) **Sales to institutional buyers.** [Reserved];

(I) **Small private offerings.**

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

(a) The filing fee as set forth in Arkansas Code § 23-42-504(b)(4) of the Arkansas Securities Act;

(b) A declaration that Arkansas Code § 23-42-504(a)(9) of the Arkansas Securities Act is applicable;

(c) A representation that sales will be made to not more than thirty-five (35) unaccredited purchasers other than those designated in Arkansas Code

§ 23-42-504(a)(8) of the Arkansas Securities Act during any period of twelve (12) consecutive months;

(d) A representation that no commission or other remuneration will be paid or given directly or indirectly for soliciting any prospective buyer in Arkansas unless the person receiving any commission or remuneration is registered as a broker-dealer or agent of the issuer;

(e) A representation that the seller believes that all the buyers in Arkansas are purchasing for investment;

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

(g) A representation that certificates to be issued will bear an appropriate restrictive legend, and a copy of the restrictive legend;

(h) A copy of:

(1) The articles of incorporation;

(2) The partnership agreement;

(3) The limited partnership agreement;

(4) The certificate of designation; and

(5) All other entity governance documents that reflect the rights of the security holders;

(i)(1) A description of the method by which full disclosure of material facts will be made to each offeree.

(2) A copy of the prospectus, pamphlet, offering circular, or similar literature should be provided, if one is to be used;

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

(k) Current financial statements of the issuer, if any.

(ii) The investment may not exceed ten percent (10%) of any unaccredited purchaser's net worth (net worth excludes home, furnishings, and automobiles).

(iii) Any additional information or documentation which the commissioner may require;

(J) **Sales to existing security holders.** A proof of exemption filed pursuant to Arkansas Code § 23-42-504(a)(10) of the Arkansas Securities Act shall contain the following:

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

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

(iii)(a) A description of the method by which full disclosure of material facts will be made to each offeree.

(b) A copy of the prospectus, pamphlet, offering circular, or similar literature should be provided, if one is to be used; and

(iv) A representation that no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in Arkansas unless waived by the commissioner;

(K) **Red herring offers.** [Reserved];

(L) **Arkansas-only crowdfunding offering.** In addition to complying with provisions found in Arkansas Code § 23-42-504(a)(12) of the Arkansas Securities Act, transactions must also comply with the following:

(i) **Escrow.**

(a) The issuer shall provide the commissioner with a copy of the escrow agreement with a bank or depository institution authorized to do business in Arkansas where all funds received from investors shall be deposited until the aggregate capital raised from all purchasers is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan.

(b) Investors shall receive a return of all their subscription funds if the target offering amount is not raised by the time stated in the disclosure statement.

(c) All the funds received from investors shall be used in accordance with all representations made to investors;

(ii) The issuer shall file the following with the commissioner at least ten (10) days before securities are offered or sold:

(a) A written notice of proof of exemption from registration, declaring that an exemption under this subdivision (b)(1)(L) is applicable;

(b) Any general solicitation, advertising, or other sales literature used in connection with the offering;

(c) A copy of the offering documents to be provided to each prospective purchaser in connection with the offering, containing the following:

(1) The name, legal status, physical address, and website address of the issuer;

(2) The names of the directors, officers, and control person;

(3) A description of the business of the issuer and the anticipated business plan of the issuer;

(4) A description of the stated purpose and intended use of the proceeds of the offering sought by the issuer, including compensation paid to any officer, director, or control person;

(5) The target offering amount and the deadline to reach the target offering amount;

(6) A copy of the escrow agreement required in subdivision (b)(1)(L)(i) of this section;

(7) Financial information about the issuer including:

(A) The income tax returns filed by the issuer for the most recently completed year;

(B) Financial statements of the issuer, which shall be certified by the principal executive officer of the issuer to be true and complete in all material respects; and

(C) Audited financial statements, if the issuer has had them prepared within the last three (3) years;

(8) A description of any litigation, legal proceedings, or pending regulatory action involving the issuer or its officers, directors, or control persons; and

(9) The disclosures regarding resale of securities as required by United States Securities and Exchange Commission Rule 144(e) – (f) under the Securities Act of 1933; and

(d) A copy of the restrictive legend on the certificate or other document evidencing that the securities have not been registered and setting forth the limitations on resale contained in United States Securities and Exchange Commission Rule 147(e) under the Securities Act of 1933;

(iii) No commissions or other remuneration shall be paid or given, directly or indirectly, for any person's participation in the offer or sale of securities for the issuer unless registered as a broker-dealer or agent of the issuer under the Arkansas Securities Act or a funding portal registered with FINRA;

(iv) This exemption is not available if the following conditions apply:

(a) The issuer is, either before or as a result of the offering:

(1) An investment company as defined in Section 3 of the Investment Company Act of 1940, 15 U.S.C. § 80a-3;

(2) Subject to reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m and 78u(d); or

(3) A "blind pool" or a company that has not yet defined its business operations, has no business plan, has no stated investment goal for the funds being raised, or that plans to engage in a merger or acquisition with an unspecified business entity; or

(b) The issuer, the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, promoters, or any other control person of the issuer:

(1) Has filed a registration statement that is subject to a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission within the last five (5) years;

(2) Has been convicted within the last ten (10) years of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;

(3) Is subject to any current state or federal administrative enforcement order or judgment entered within the last five (5) years finding fraud or deceit in connection with the purchase or sale of any security;

(4) Is subject to any current order, judgment, or decree of any court of competent jurisdiction entered within the last five (5) years temporarily, preliminarily, or permanently restraining or enjoining the party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security; or

(5) Is subject to an order of any state securities, banking, credit union, and insurance regulators, federal banking regulators, United States Securities and Exchange Commission, FINRA, Commodity Futures Trading Commission, United States Postal Service, and the National Credit Union Administration that either:

(A) Bar a person from association with an entity regulated by the regulator issuing the order, or from engaging in the business of securities, insurance, or banking, or from savings association or credit union activities; or

(B) Are based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within a five-year period;

(v)(a) The issuer shall inform all purchasers that the securities have not been registered under the Arkansas Securities Act and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under Arkansas Code §§ 23-42-501 – 23-42-504 of the Arkansas Securities Act.

(b) In addition, the issuer shall make the disclosures required by this subdivision (b)(1)(L)(v) or United States Securities and Exchange Commission Rule 147, 17 C.F.R. § 230.147(e);

(vi)(a) This exemption shall not be used in conjunction with any other exemption under the Arkansas Securities Act except the exemption to institutional

investors at Arkansas Code § 23-42-504(a)(8) of the Arkansas Securities Act and for offers and sales to controlling persons of the issuer.

(b) Sales to controlling persons shall not count toward the limitation in Arkansas Code § 23-42-504(a)(12)(C) of the Arkansas Securities Act;

(vii)(a) The issuer shall provide free of charge a quarterly report to the shareholders.

(b) The issuer may satisfy the reporting requirement by making the information available within forty-five (45) days after the end of each fiscal quarter and remains available until the succeeding quarterly report is issued.

(c) The issuer shall file each quarterly report with the commissioner.

(d) The report shall contain, at a minimum, all compensation received by officers, directors, and control persons during the reporting period and an analysis of the business operations and financial condition of the issuer; and

(viii) Nothing in this exemption shall be construed to alleviate any person from the anti-fraud provisions at Arkansas Code § 23-42-507 of the Arkansas Securities Act; and

(M) Discretionary exemptions.

(i) The following transactions have been determined by the commissioner to be exempt from the registration requirements of Arkansas Code § 23-42-501 of the Arkansas Securities Act, the registration having been found to be not necessary or appropriate in the public interest or for the protection of investors.

(ii) These transactions are not exempt from the remaining provisions of the Arkansas Securities Act or this part, including Arkansas Code § 23-42-507 of the Arkansas Securities Act:

(a) **Business organization.** Where seven (7) or fewer persons form, incorporate, or each otherwise organize a corporation, joint venture, limited liability company, limited liability partnership, or general or limited partnership, provided the following occurs:

(1) Each person purchases from the issuer with investment intent and not with a view to distribution;

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

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

(4) In connection with the organization, no commission or other remuneration is paid or given directly or indirectly to any person for soliciting any prospective buyer in Arkansas; and

(5) No public advertising or other solicitation will be employed in effectuating the proposed transaction;

(b) **Additional sales by an existing issuer.** Any sale by an issuer to twelve (12) or fewer purchasers provided that the sale complies with each of the following:

(1) No commission or other remuneration is paid or given directly or indirectly to any person for the sale of the security;

(2) The security is the following:

(A) Sold exclusively to existing security holders and the issuer reasonably believes that each purchaser is purchasing with investment intent; or

(B) Offered or sold to not more than five (5) additional purchasers provided that in no event shall the total number of security holders of the issuer exceed twelve (12) on consummation of the last sale and the issuer shall reasonably believe that each purchaser is purchasing with investment intent;

(3) Each purchaser has access to information concerning the issuer prior to consummation of sale;

(4) For purposes of computing the number of security holders in this transactional exemption, security holders who have been issued securities pursuant to Arkansas Code § 23-42-504(a)(5) and (8) of the Arkansas Securities Act shall not be counted;

(5) This exemption shall not be available to an issuer that has not been organized or when its securities have not been previously issued in compliance with Arkansas Code § 23-42-501 of the Arkansas Securities Act; and

(6) No public advertising or other solicitation will be employed in effectuating the proposed transaction;

(c) Professional corporation or professional limited liability company. Any security issued by a professional corporation organized under the Medical Corporation Act, Arkansas Code § 4-29-301 et seq., the Dental Corporation Act, Arkansas Code § 4-29-401 et seq., and the Arkansas Professional Corporation Act, Arkansas Code § 4-29-201 et seq., or a limited liability company formed under the Small Business Entity Tax Pass Through Act, Arkansas Code § 4-32-101 et seq. [repealed], that performs professional services, provided the following:

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

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

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

(4) Each professional is provided access to information concerning the professional corporation or limited liability company; and

(5) No public advertising or other solicitation will be employed in effectuating the proposed transaction;

(d) Limited offering of oil, gas, and other mineral interests under select conditions. Any offer or sale of an interest in or under an oil, gas, or mining lease, or title, or payments out of production in or under the leases, titles, or contracts relating thereto by the issuer or an agent for the issuer provided the following conditions are met:

(1) The offer or sale is made to persons or companies, each of which the issuer or issuer's agent reasonably believes is the following:

(A) Engaged in the business of exploring for or producing oil, gas, or other minerals as an ongoing business or is engaged in the practice of a profession or discipline that is directly related to the exploration for, production of, refining of, or marketing of oil, gas, or other minerals such as the interest being sold;

(B) A landman, drilling company, well service company, production company, refining company, geologist, geophysicist, petroleum engineer, or earth scientist; or

(C) An executive officer of a company whose primary business involves one of the activities listed in subdivision (b)(1)(M)(ii)(d)(1)(A) or subdivision (b)(1)(M)(ii)(d)(1)(B) of this section immediately preceding this subdivision (b)(1)(M)(ii)(d)(1);

(2) The issuer or issuer's agent reasonably believes that each purchaser is purchasing for investment and not with a view for resale, and each investor must represent in writing that he or she understands that he or she cannot resell his or her security or interest without registration or other compliance with the state and federal securities laws, provided, however, that sales may be made exclusively by and between those persons described in subdivision (b)(1)(M)(ii)(d)(1)(A), subdivision (b)(1)(M)(ii)(d)(1)(B), or subdivision (b)(1)(M)(ii)(d)(1)(C) of this section, for purposes of assembling leases or other rights for oil and gas production or exploration;

(3) No commission or other remuneration shall be paid or given directly or indirectly for soliciting any prospective investor unless the person receiving any commission or other remuneration is registered as a broker-dealer or agent of the issuer; and

(4) Neither the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's officers, directors, general partners, any beneficial owners of ten percent (10%) or more of any class of the issuer's equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any

underwriter of the securities to be offered, nor any partner, director, or officer of the underwriter shall have done the following:

(A) Within the last five (5) years, filed a registration statement that is the subject of a currently effective registration stop order entered by any state or federal securities regulator;

(B) Been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;

(C) Currently be subject to any state or federal administrative enforcement order or judgment entered within the last five (5) years finding fraud or deceit in connection with the offer, sale, or purchase of any security; or

(D) Currently be subject to any order, judgment, or decree of any court of competent jurisdiction entered within the last five (5) years temporarily, preliminarily, or permanently restraining or enjoining the party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the offer, sale, or purchase of any security;

(e) **Insured savings, certificate, passbook, and other similar insured accounts.** Any savings, passbook, certificate, and other similar accounts insured in whole or in part by the Federal Deposit Insurance Corporation or the National Credit Union Administration;

(f) **Organization and additional capitalization of wholly owned subsidiary.** Where the offer and sale of securities is by a wholly owned subsidiary to its parent for purposes of organizing or placing additional capital in the wholly owned subsidiary provided each sale or additional capitalization complies with the following:

(1) The securities are purchased for investment and not with a view to distribution; and

(2) The securities bear an appropriate restrictive legend;

(g) **Class vote.** Any transaction incident to a class vote by security holders or members, pursuant to the certificate of incorporation, organizational document, or the applicable statute on a merger, consolidation, reclassification of

securities, sale of assets in consideration of the issuance of securities of another entity, or reorganization;

(h) **Investment club.** The sale by an investment club of beneficial interests for not more than fifty thousand dollars (\$50,000) in any one (1) year in contributions for the purpose of investing and reinvesting the proceeds in securities, provided there is compliance with each of the following conditions:

(1) The organization is one (1), incorporated or unincorporated, partnership or association, composed of not more than twenty-five (25) members, each of whom are natural individuals, who for their education and benefit periodically or initially pay in sums of money to invest in securities which are held in a fund beneficially owned by those individuals in relative proportion as determined by the value of their payments;

(2) The structure of the organization shall be evidenced by a written instrument setting forth the rights and obligations of the members, a copy of which shall be furnished to each member;

(3)(A) Broker-dealers or registered agents of broker-dealers who may be members of the club shall certify that this is the only investment club to which they belong.

(B) The broker-dealer or registered agent may not be the organizer or promoter of the club.

(C) A broker-dealer or registered agent who is a member of the club may not himself or herself receive a fee or commission for sales of securities to the club, however, the broker-dealer may receive a commission;

(4) Voting shall be based either upon each member's proportionate interest in the entire assets of the club or upon one (1) vote for each member of the club;

(5) Club decisions will require a majority vote at the meeting authorized by the club's bylaws, determined either by a majority in interest of the total interest of the members present or by a majority of the members present;

(6) No member shall own beneficially more than thirty-three percent (33%) of the club's entire assets;

(7) Adequate books of account of the transactions of the investment club shall be kept and be available and opened to inspection and examination by any member at each meeting;

(8) Sales are made in good faith and not for the purpose of avoiding the provisions of the Arkansas Securities Act;

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

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

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

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

(10) No member of the club may receive a fee, commission, profit, or other remuneration for selling an investment to the club unless the member first discloses in writing that information to the other members and receives prior written approval from each member; and

(11) No public advertising or other solicitation will be employed in effectuating the proposed transaction;

(i) Deferred compensation plans.

(1) Transactions entered into in connection with certain types of deferred compensation plans (deferred compensation plans), shall be exempt from Arkansas Code §§ 23-42-501 and 23-42-502 of the Arkansas Securities Act.

(2) Contributions and purchases of securities

regarding Section 401 of the I.R.C. plans. Any transaction whereby:

(A) An issuer or an affiliate of the issuer (affiliate) contributes any security of the issuer or affiliate to a Section 401 Plan; or

(B) A Section 401 Plan purchases any security of the issuer or affiliate with cash or other property which has been contributed to the Section 401 Plan by the issuer or affiliate.

(3) Allocation of phantom stock plan units. Any transaction whereby an issuer allocates Section 401 of the I.R.C. Plan benefits in the form of units or otherwise representing a right eventually to receive cash, but not stock, measured by dividends paid on shares of capital stock of the issuer or the market value of shares of capital stock of the issuer or both in so-called phantom stock plan.

(4) Governmental plans. The offer or sale of any interest, participation, or investment contract in connection with a deferred compensation plan established or administered by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one (1) or more of the foregoing.

(5) Tax-exempt organization plans. The offer or sale of any interest, participation, or investment contract in connection with a deferred compensation plan established or administered by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purpose, or as a chamber of commerce or trade or professional association.

(6) Unfunded plans. The offer or sale of any interest, participation, or investment contract in connection with a deferred compensation plan established primarily for a select group of management or highly compensated employees or agents and which does not provide for the contribution of funds to a trust or other legally separate fund but is rather carried as a general obligation of the establishing entity;

(j) **Security holder agreement.** Any offer, sale, purchase, or other transaction between a corporation, limited liability company, limited liability partnership, limited partnership, joint venture, or partnership and its security holders or among the security holders themselves in connection with a written agreement between the persons concerning the buy-back, sale, exchange, or other contractual agreement of the security holders' interest that has been entered into prior to or at the time of the transaction provided the following:

(1) There are no more than thirty-five (35) persons party to the agreement;

(2) Each person acquiring the security has access to information concerning the issuer at the time of entering into the agreement;

(3) No commission or other remuneration is paid or given directly or indirectly to any person for the sale, disposition, or transfer of the security; and

(4) The underlying securities when issued were registered or exempt from registration under the Arkansas Securities Act;

(k) **One hundred percent (100%) sale of a business.** Any transaction pursuant to the one hundred percent (100%) sale of securities of a business entity provided the following:

(1) There are no more than seven (7) purchasers;

(2) Each person purchases with investment intent and any certificates issued will bear an appropriate restrictive legend;

(3) Each person has access to information concerning the issuer; and

(4) In connection with the transaction, no commission or other remuneration is paid or given directly or indirectly to any person other than a merger and acquisition broker acting as such and meeting the conditions set forth in 23 CAR § 300-302(f) for soliciting any prospective purchaser;

(l) **Affiliate exclusion — Control person.**

(1) Any sale of an outstanding security by or on behalf of a person in control of the issuer, or controlled by the issuer, or under common control with the issuer, that complies with United States Securities and Exchange Commission Rule 144 under the Securities Act of 1933.

(2) Any sale of an outstanding security by or on behalf of a person in control of the issuer, or controlled by the issuer, or under common control with the issuer, provided the sale does not involve a public offering and is effected pursuant to the following:

(A) Resale purchasers must be solicited directly by the holder of the stock, not by the issuer;

(B) Control person sellers are limited to no more than three (3) transactions involving the same security within a twelve-month period;

(C) Resale purchasers must be provided with full disclosure of the type of information found in a registration statement on a form that the issuer would be eligible to use;

(D) The resale must include the typical characteristics of a private placement including compliance with the purchaser qualification requirements of sophistication and ability to bear risk; and

(E)(i) The control person seller must demonstrate that he or she is not making the sale with a view toward distribution of securities and not on behalf of the issuer.

(ii) This is typically done by having the resale purchaser make investment representations similar to those typically required in a private placement of securities;

(m) **Life settlements contract.** Any offer or sale of a life settlements contract if the following:

(1) The underlying life settlement transaction with the insured was in compliance with the Life Settlements Act, Arkansas Code § 23-81-801 et seq.;

(2) The life settlements contract contains a provision providing for a right of rescission within fifteen (15) days of the date the last required disclosure document is delivered to the purchaser or the date the purchaser paid the purchase price for the life settlements contract, whichever is later; and

(3) The following disclosure documents published by the commissioner are delivered as follows:

(A) Life Settlements Disclosure Document I is delivered to a prospective purchaser initially within seven (7) days after the first contact by the person selling the life settlements contract; and

(B) Life Settlements Disclosure Document II is delivered to a purchaser within fifteen (15) days after the purchaser's check is delivered or the purchaser's funds are otherwise made available to the seller for purchase;

(n) **Accredited investors.**

(1) Certain offers and sales of securities sold to accredited investors if in compliance with NASAA Model Accredited Investor Exemption.

(2) The issuer shall file the following with the commissioner within fifteen (15) days of the first sale in this state:

(A) Notice of the transaction;

(B) The consent to service of process required by Arkansas Code § 23-42-107(a) of the Arkansas Securities Act; and

(C) A copy of the general announcement of the proposed offering; and

(o) **Charitable organizations.** The commissioner having found that the enforcement of the registration provisions of the Arkansas Securities Act are not necessary for the protection of investors or in the public's interest with respect to certain transactions entered into with any offer or sale of securities by an issuer who is a charitable organization that maintains certain charitable funds, the following transactions shall be exempt from Arkansas Code §§ 23-42-501 and 23-42-502 of the Arkansas Securities Act provided the following:

(1) The sale involves securities issued by, or any interest or participation in, any charitable fund maintained by a company organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes that is excluded from the definition of an investment company under Section 3(c)(10)(B) of the Investment Company Act, or other offer or sale thereof;

(2) Each charitable fund should provide to each donor to the charitable fund at or before the time of the donation written information containing the information required by Section 7(e) of the Investment Company Act;

(3) Provide a copy of the written information to the commissioner within ten (10) days following a written request; and

(4) For purposes of this exemption:

(A) **Agent requirements.** Any person who represents an issuer in effecting transactions in securities exempted under this subdivision (b)(1)(M)(ii)(o) is not an agent if the person soliciting donations on behalf of the charitable organization to a charitable fund is either a volunteer or is engaged in the overall fundraising activities of the charitable organization and receives no commission, remuneration, or other special compensation, directly or indirectly, based on the number or the value of donations collected for the charitable fund; and

(B) **Investment adviser.** For purposes of this exemption, an investment adviser does not include the following:

(i) Any person that is a charitable organization where no part of the net earnings of the charitable organization or fund inures to the benefit of any private shareholder or individual;

(ii) Any person that is a charitable organization offering a charitable fund whose securities are exempt under this subdivision (b)(1)(M)(ii)(o); and

(iii) Any person that is a trustee, officer, employee, or volunteer of a charitable organization described in this subdivision (b)(1)(M)(ii)(o) acting within the scope of the person's employment or duties with the charitable

organization, whose advice, analysis, or reports are provided to one (1) or more of the following:

(a)(a) Any charitable organization;

(b)(b) A charitable fund whose securities are exempt under this subdivision (b)(1)(M)(ii)(o); and

(c)(c) A trust or other donative instrument whose securities are exempt under this subdivision (b)(1)(M)(ii)(o) or the trustees, administrators, settlors (or potential settlors), or the beneficiaries of any trust or instrument.

(2) Proof of exemption.

(A) Arkansas Code § 23-42-504(b) of the Arkansas Securities Act establishes filing requirements for certain exempt transactions.

(B) A filing shall be deemed incomplete until all information is filed as required by the appropriate rule.

(C) Before any transaction is entered into pursuant to Arkansas Code § 23-42-504(a)(9) or Arkansas Code § 23-42-504(a)(10) of the Arkansas Securities Act, a proof of exemption must be filed with the commissioner and not disallowed within the following ten (10) business days.

(c) General provisions.

(1) Qualification.

(A) In order to qualify for an exemption, each applicant must meet each of the requirements of the particular exemption claimed under Arkansas Code § 23-42-504 of the Arkansas Securities Act.

(B)(i) A failure to comply with any one (1) material element will render that exemption unavailable to the claimant.

(ii) The burden of proof for an exemption under Arkansas Code § 23-42-504 of the Arkansas Securities Act shall be on the claimant.

(2) Filing.

(A) Certain exemptions set forth in Arkansas Code § 23-42-504 of the Arkansas Securities Act and the corresponding rules first require a filing with the State Securities Department as the initial step in the exemption process.

(B) These exemptions are unavailable unless the required filing is made.

(3) Requirements.

(A) The commissioner will look with disfavor upon any exemption request under Arkansas Code § 23-42-504 of the Arkansas Securities Act as not being in the public interest and tending to work a fraud on investors unless the requirements set forth in the Arkansas Securities Act and this part are met or good cause is shown for an exception from the requirements.

(B) Request for deviation from exemption requirements must be in writing and, if not acceptable to the commissioner, the request will be denied.

(4) Records. All issuers that effect sales or offers of securities pursuant to the exemption specified in Arkansas Code § 23-42-504 of the Arkansas Securities Act when a proof of exemption is filed shall preserve the following records during the period of five (5) years following the completion of the sales:

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

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

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

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

(5) Agent requirements.

(A) Any person who effects transactions in securities exempted by Arkansas Code § 23-42-504(a)(9) of the Arkansas Securities Act where a commission or other remuneration is to be paid is an agent.

(B) All agents are required to be registered.

(C)(i) If the agent is not associated with a broker-dealer registered in Arkansas, the person must become registered as an agent of the issuer.

(ii) Arkansas Code § 23-42-301 of the Arkansas Securities Act sets forth the requirements for the registration of an agent.

(6) **Confirmations.** At completion of each transaction with a purchaser, the agent of the issuer shall give or send to each purchaser written notification of the following information (if the information is not included in the subscription agreement):

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

(B) The identity of the registered agent handling the transaction; and

(C)(i) Any other information required or deemed material to the transaction so that the failure to disclose the information would be misleading to the purchaser or would not accurately represent material facts to the transaction.

(ii) The information should include, at a minimum, a full description of the security.

(7) **Number of purchasers.** Unless otherwise noted, the number of persons purchasing, receiving offers, or otherwise involved in an exempt transaction shall be determined as follows:

(A) A general partnership shall not be counted as a single person but as the total number of its partners;

(B) A husband and wife purchasing or acting as joint tenants or tenants by the entirety may be counted as a single person;

(C) A government or political subdivision of a government shall be counted as a single person;

(D) A trust, regardless of the number of beneficial owners, that is evidenced by an appropriate instrument declaring its creation may be counted as a single person; and

(E) A corporation, limited partnership, limited liability company, or other legal entity required to organize, register, or charter through the Secretary of State or some other state or federal agency may be counted as a single person unless, from a totality of circumstances, it appears reasonably likely that the entity was formed with the purpose, in whole or in part, to evade the registration requirements of the Arkansas Securities Act or to invest in the specific offering in question.

(8) **Denial or revocation.** If applicant has filed for an exemption pursuant to Arkansas Code § 23-42-504 of the Arkansas Securities Act, and if the commissioner deems it necessary, he or she may by order summarily deny or revoke any of the specified exemptions pending a final determination of any proceeding under 23 CAR § 300-608 or Arkansas Code § 23-42-505 of the Arkansas Securities Act.

(9) **Period of effectiveness.**

(A) Except as provided by specific statute or rule or unless the exemption is revoked, securities underlying a transactional exemption effected pursuant to Arkansas Code § 23-42-504 of the Arkansas Securities Act may be issued until the time when the transaction is complete.

(B) The maximum time period for completing a transaction is twelve (12) months from the effective date.

(C) After the expiration of the effective period of the exemption, a new filing is required.

(D) For exemptions executed pursuant to Arkansas Code § 23-42-504(a)(9) of the Arkansas Securities Act, any offer or sale of additional securities during the twelve-month effective period shall be considered amendments to the original statutory limitations.

Authority. Arkansas Code § 23-42-204.

Codification Notes. "I.R.C." means Internal Revenue Code.

The Investment Company Act of 1940 is codified at 15 U.S.C. § 80a-1 et seq.

The Securities Act of 1933 is codified at 15 U.S.C. § 77a et seq.

23 CAR § 300-505. Denial or revocation of exemptions — Rules of practice and procedure regarding denial or revocation of exemption.

The rules of practice and procedure to be followed in any proceeding for the denial or revocation of an exemption are set forth in 23 CAR § 300-601 et seq.

Authority. Arkansas Code § 23-42-204.

23 CAR § 300-506. Burden of proof of exemption.

(a) The Securities Commissioner may not grant an exemption under this section as the claimant has the burden of proving that the security so qualifies.

(b) The proof of exemption must be complete before a subscription agreement or other contractual obligation to acquire the security is signed by either party.

(c) Indications of interest may be solicited and obtained prior to the filing of the proof of exemption, but no offers may be accepted nor any contractual obligations entered into prior to the completion of the filing and subsequent action thereon by the commissioner.

Authority. Arkansas Code § 23-42-204.

23 CAR § 300-507. Fraud or deceit in connection with offer, sale, or purchase of securities. [Reserved].

23 CAR § 300-508. Market manipulation. [Reserved].

23 CAR § 300-509. Covered securities.

(a) Notice filings.

(1) A notice filing for covered securities under Section 18(b)(2) of the Securities Act of 1933 shall contain the following:

(A) Initial offerings.

(i) The filing fee prescribed by Arkansas Code § 23-42-509(a)(1) of the Arkansas Securities Act, Arkansas Code § 23-42-101 et seq.

(ii)(a) Form NF.

(b) For issuers paying less than the maximum filing fee, a sales report of the amount of securities sold in this state during the filing period shall be provided on Form NF.

(c) The sales report shall be provided no later than two (2) months after the issuer's fiscal year-end.

(iii) Form U-2;

(B) Renewed offerings.

(i) The filing fee prescribed by Arkansas Code § 23-42-509(a)(1) of the Arkansas Securities Act.

(ii)(a) Form NF.

(b) For issuers paying less than the maximum filing fee, a sales report of the amount of securities sold in this state during the previous filing period shall be provided on Form NF.

(c) The sales report shall be provided no later than two (2) months after the issuer's fiscal year-end; and

(C) Amended offerings.

(i) The filing fee prescribed by Arkansas Code § 23-42-509(b) of the Arkansas Securities Act.

(ii) Form NF.

(2) A notice filing for covered securities under Section 18(b)(4)(F) of the Securities Act of 1933 shall meet the following requirements:

(A) The filing fee prescribed by Arkansas Code § 23-42-509(c) of the Arkansas Securities Act;

(B)(i) A copy of Form D, filed no later than fifteen (15) days after the first sale in Arkansas.

(ii) Any amendments to Form D filed with the United States Securities and Exchange Commission shall be filed concurrently with the Securities Commissioner.

(iii) Any amendments to Form D required to be filed with the United States Securities and Exchange Commission pursuant to Regulation D, but not filed with the United States Securities and Exchange Commission, shall be filed with the commissioner within fifteen (15) days after the event or activity necessitating the amendment;

(C)(i) A sales report shall be filed with the commissioner no later than fifteen (15) days after the first sale in Arkansas.

(ii) The sales report shall include the following:

(a) The date of the first sale in Arkansas;

(b) The number of sales and the amount of sales made to accredited investors;

(c) The number of sales and the amount of sales made to unaccredited investors;

(d) The type of security sold; and

(e) The aggregate offering price of the security sold.

(iii) Issuers paying less than the maximum filing fee shall provide to the commissioner a final sales report reflecting the final amount of sales to investors in Arkansas during the previous filing period;

(D) Electronic filing.

(i) A notice of sales on Form D may be filed by electronic format by means of the Electronic Filing Depository (EFD) maintained by NASAA.

(ii) Every notice of sales on Form D submitted through EFD must be signed by a person duly authorized by the issuer; and

(E) **Renewal.** For each additional twelve-month period in which the same offering is continued, the issuer shall submit to the commissioner the forms and documents required to be filed with the United States Securities and Exchange Commission under the Securities Act of 1933 and pay a fee of one hundred dollars (\$100) as set out in Arkansas Code § 23-42-509(c)(3)(C).

(3) The following provisions apply to offerings made under Tier 2 of federal Regulation A and Section 18(b)(3) of the Securities Act of 1933:

(A) **Initial filing.**

(i) The notice filing period is effective for twelve (12) consecutive months from the date of effectiveness.

(ii) An issuer planning to offer and sell securities in this state in an offering exempt under Tier 2 of federal Regulation A shall submit to the commissioner prior to the initial offer or sale in this state the following:

(a) A completed Regulation A-Tier 2 notice filing form or copies of all documents filed with the United States Securities and Exchange Commission;

(b) A consent to service of process on Form U-2 if not filing on the Regulation A-Tier 2 notice filing form; and

(c) The filing fee as prescribed by Arkansas Code § 23-42-509(e)(2) of the Arkansas Securities Act; and

(B) **Renewal.** For each additional twelve-month period in which the same offering is continued, an issuer conducting a Tier 2 offering under federal Regulation A may renew the unsold portion of its notice filing by submitting to the commissioner on or before the expiration of the notice filing the following:

(i) The Regulation A-Tier 2 notice filing form marked "renewal"; and

(ii) The filing fee as prescribed by Arkansas Code § 23-42-509(e)(2) of the Arkansas Securities Act.

(4) With respect to an issuer of a covered security under Section 18(b)(4)(C) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(4)(C), 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, then the issuer shall

submit to the commissioner concurrently when the issuer files with the United States Securities and Exchange Commission the following:

(A) The information required to be filed with the United States Securities and Exchange Commission under Section 4A(b) of the Securities Act of 1933, 15 U.S.C. § 77d-1(b); and

(B) The filing fee as prescribed by Arkansas Code § 23-42-509(d)(2) of the Arkansas Securities Act.

(5) The commissioner requires separate notice filings and fees for each portfolio or series of an investment company, but there is no separate filing or fee for classes of securities.

(b) Agent requirements.

(1) Any person who represents an issuer in effecting transactions in covered securities exempted by Section 18(b)(1) of the Securities Act of 1933 shall be registered as an agent except in the following:

(A) Any offer or sale to existing security holders of the issuer and no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective purchaser in this state; or

(B) Any other transaction that the commissioner may by order prescribe.

(2) Any person who represents an issuer in effecting transactions in covered securities exempted by Section 18(b)(4)(F) of the Securities Act of 1933 is not an agent if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective purchaser in Arkansas.

Authority. Arkansas Code § 23-42-204.

Codification Notes. The Securities Act of 1933 is codified at 15 U.S.C. § 77a et seq.

Subpart 6. Practice and Procedure

23 CAR § 300-601. General provisions — Scope of rules.

(a)(1) This subpart applies in all investigations, proceedings, and rulemaking conducted by the State Securities Department.

(2) The purpose of this subpart is to provide guidance and direction in the procedures used by the department to formulate orders and conduct investigations and proceedings.

(3) 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 Securities Commissioner thereunder or any relevant laws of the State of Arkansas which special requirements are controlling.

(b) This subpart should be read in conjunction with the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

Authority. Arkansas Code § 23-42-204.

23 CAR § 300-602. Powers of the commissioner.

(a) The Securities Commissioner shall have all the powers necessary to conduct investigations and proceedings in a fair and impartial manner and to avoid unnecessary delay.

(b) The powers of the commissioner include, but are not limited to, the following:

- (1) Administer oaths and affirmations;
- (2) Subpoena witnesses, documents, or records;
- (3) Permit discovery by deposition or otherwise;
- (4) Preside over a hearing or designate a hearing officer to preside over a hearing;
- (5) 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;

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

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

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

(9) Take such action as the circumstances warrant against a person who engages in dilatory or obstructionist conduct during the course of a deposition including exclusion of the offending person from participation in the deposition or contested case; and

(10) Perform all other functions necessary and appropriate to discharge the duties of commissioner.

Authority. Arkansas Code § 23-42-204.

**23 CAR § 300-603. Investigations, proceedings, and hearings —
Investigations.**

(a) Investigations conducted pursuant to Arkansas Code § 23-42-205 of the Arkansas Securities Act, Arkansas Code § 23-42-101 et seq., are not hearings, either formal or informal, as that term is used in this section.

(b) Upon sufficient evidence, the Securities Commissioner shall enter an order directing an investigation and appointing investigative officers from the staff.

(c) Any person compelled to appear, or who appears by his or her own request in person at any investigative proceeding, may be accompanied, represented, and advised by counsel.

(d) The right to be accompanied, represented, and advised by counsel shall mean the right of a person testifying to have an attorney present with him or her during any investigative proceeding and to have his or her attorney:

(1) Advise such person before, during, and after the conclusion of the examination;

(2) Question such person briefly at the conclusion of the examination to clarify any of the answers such person has given; and

(3) Make summary notes during the examination solely for the use of such person.

Authority. Arkansas Code § 23-42-204.

23 CAR § 300-604. Proceedings and hearings.

(a) **Governing law and procedure.** All formal hearings before the Securities Commissioner shall be in accordance with the provisions of the Arkansas Securities Act, Arkansas Code § 23-42-101 et seq., the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., and this subpart.

(b) Commencement of a proceeding.

(1) The filing of a pleading, other than a request for subpoena or a request for an order directing investigation and designating officers pursuant to Arkansas Code § 23-42-205 of the Arkansas Securities Act by the staff with the commissioner shall be deemed to be the institution of a proceeding.

(2) Entering of a summary order postponing or suspending effectiveness of a registration shall be deemed to be the institution of a proceeding.

(c) **Types of hearings.** The State Securities Department shall engage in two (2) forms of hearings:

(1) Informal hearings or conferences.

(A) 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.

(B) 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.

(C) Issues that may be determined at an informal hearing or conference include the following:

- (i) Clarification and simplification of the issues as to pleadings filed;
- (ii) Exchange of witnesses and exhibit lists and copies of exhibits;
- (iii) Stipulations, admissions of fact, and the contents, authenticity, and admissibility into evidence of documents;
- (iv) Matters of which official notice may be taken;
- (v) Issues relating to witnesses and exhibits;
- (vi) Summary disposition of any and all issues;
- (vii) Resolution of document production issues or disputes;
- (viii) Amendments to pleadings;
- (ix) Need for formal action by the department;
- (x) Possibility of settlement among the parties; and
- (xi) Such other matters as the commissioner determines to be within the scope of such an informal hearing or conference; and

(2) Formal hearings.

(A) Parties to the proceedings before the commissioner shall be styled staff, applicants, issuers, broker-dealers, agents, investment advisers, representatives, petitioners, intervenors, complainants, or respondents, etc., according to the nature of the proceedings and relationship of the parties thereto.

(B) All pleadings, applications, complaints, answers, responses, and replies shall be liberally construed with a view to effect justice between the parties, and the commissioner will at every stage of any proceeding disregard errors or difficulties in the pleadings, applications, complaints, answers, responses, and replies or proceedings which do not materially affect the substantive rights of the parties involved.

(C) Prehearing orders.

(i) At or within a reasonable time following the conclusion of a scheduling conference or any prehearing conference, the commissioner may serve on each party an order setting forth any agreements reached and any procedural determinations made.

(ii) If the commissioner has ordered a party to disclose all witnesses or exhibits, no witness may testify and no exhibit may be introduced at the hearing if such witness or exhibit was not disclosed pursuant to such order, unless the commissioner allows a party the sufficient time to prepare in light of the undisclosed witness or exhibit.

(D) **Informal discussions.** Following any discussion among the commissioner and the parties addressing any issues in a contested case that occur during a hearing recess, the commissioner shall place the substance of the communication on the record, including any action taken and any agreements made by the parties as to any matters that were discussed.

Authority. Arkansas Code § 23-42-204.

23 CAR § 300-605. Pleadings and practice.

(a) **Pleadings allowed.** Pleadings shall include all forms of petitions, requests, complaints, answers, responses, replies, proposals, notices, applications, briefs, and filings of any nature that are placed before the Securities Commissioner.

(b) **Form.**

(1) The form to be followed in the filing of pleadings pursuant to this section will vary to the extent necessary to provide for the nature of the legal rights, duties, or privileges involved therein.

(2) Except as otherwise provided by law or the commissioner otherwise determines, the pleadings shall include the following:

(A) A statement setting forth clearly and concisely the authorization or other relief sought, as well as the following:

(i)(a) The exact legal name of each person seeking the authorization or relief and the address or principal place of business of each such person, unless the pleading is filed by the staff.

(b) If any applicant, petitioner, respondent, or movant is a corporation, limited liability company, partnership, trust, association, or other organized

group, it shall also specify the state under the laws of which it was created or organized;

(ii)(a) The name, title, address, and telephone number of the attorney to whom correspondence or communications in regard to the pleading is to be addressed.

(b) Notice, orders, and other papers may be served upon the person so named and such service shall be deemed to be service upon the petitioner, respondent, or applicant;

(iii) A concise and explicit statement of the facts on which the commissioner is expected to rely in granting the authorization or other relief sought; and

(iv) An explanation of any unusual circumstances involved in the pleading to which the commissioner will be expected to direct particular attention, including the existence of emergency conditions or any request for the granting of interlocutory relief by way of an interim order during the pendency of the pleading;

(B) Any exhibits, sworn written testimony, data, models, illustrations, or other materials that the applicant, petitioner, respondent, or movant deems necessary or desirable to support the granting of the pleading or that any statute, rule, or regulation may require for the lawful determination of the pleading;

(C)(i) All documents, whenever practicable, shall be printed, typewritten, or reproduced on one (1) side of the paper only, and double-spaced with a normal margin on all four (4) sides.

(ii) All pleadings shall be on paper eight and one-half by eleven inches (8 1/2" x 11") in size; and

(D) The venue as "Before the Arkansas Securities Commissioner", the title of the proceedings, the case number assigned, and an appropriate designation, e.g., petition, request, motion, brief, pleading.

(c) Motions.

(1)(A) All requests for relief will be by motion.

(B) Motions must be in writing or oral if made on the record during a hearing unless the commissioner directs that such motion be reduced to writing.

(2)(A) A motion must fully state the relief sought and the grounds relied upon.

(B) It may be accompanied by a proposed order.

(C) Written memoranda, briefs, affidavits, or other relevant materials or documents may be filed in support of a motion.

(3)(A) The original written motion shall be filed with the commissioner.

(B) There shall be an original and two (2) copies of each motion and each exhibit.

(4)(A) A response to a motion must be filed by a party within ten (10) days of the date of service of the written motion.

(B) This time may be extended as permitted by the commissioner for good cause shown.

(5) No oral arguments may be held on written motions except as otherwise directed by the commissioner.

(6)(A) The commissioner shall not rule on any oral or written motion before each party has had an opportunity to respond.

(B) The failure of a party to oppose a motion is deemed consent by that party to the entry of an order granting the relief sought.

(7)(A) The commissioner or his or her designee as hearing officer may conduct such proceedings and enter such orders as are deemed necessary to address issues raised by the motion.

(B) However, a hearing officer, other than the commissioner, will not enter a dispositive order unless expressly authorized in writing to do so.

(8) Upon written request from a respondent made no less than ten (10) days prior to a scheduled hearing, the following information shall be provided:

(A) The names and addresses of persons whom the staff intends to call as witnesses at any hearing;

(B) Any written or recorded statements and the substance of any oral statements made by the license holder or a copy of the same;

(C) Any reports or statements of experts made in connection with the particular case, including results of physical or mental examinations, scientific tests, experiments, or comparisons or copies of the same;

(D) Any books, papers, documents, photographs, or tangible objects which the staff intends to use in any hearing or which were obtained from or belong to the license holder or copies of the same; and

(E) Disclosure shall not be required of research or records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the staff or members of the legal staff or other state agents.

(d) Briefs.

(1) Briefs may be filed by a party or interested nonparty either before or during the course of a hearing or within such time as the commissioner designates.

(2) Failure to file a brief shall in no way prejudice the rights of any party.

(3) The order and timing of filing briefs or reply briefs shall be designated by the commissioner.

(4) A party may request an extension of the briefing schedule set by the commissioner prior to the due date.

(5) Late briefs may be considered at the discretion of the commissioner.

(e) Computation of time.

(1) In computing any period of time prescribed or allowed by the Arkansas Securities Act or this subpart, the day of the act, event, or default after which the designated period of time begins to run is not to be included.

(2) The last day of the period so computed is to be included unless it is a Saturday, Sunday, or a legally declared state holiday.

(3) When the period of time prescribed or allowed is less than ten (10) days, intermediate Saturdays, Sundays, and legally declared state holidays shall be excluded in the computation.

(f) Extensions of time.

(1) Except as otherwise provided by law, the commissioner may, for good cause shown, extend any time limit prescribed or allowed by this subpart or by any notice or order issued in a contested case, hearing, or other proceeding.

(2) In determining whether to grant an extension of time, the commissioner may consider the following:

- (A) Prior continuances or extensions of time;
- (B) The interests of all parties;
- (C) The likelihood of informal settlements;
- (D) The existence of an emergency;
- (E) Any objection;
- (F) Any applicable time requirement;
- (G) The existence of a conflict of the schedules of attorneys, parties, or witnesses;
- (H) The time limits of the request; and
- (I) Other relevant factors.

(3)(A) Any party may request an extension of time via a motion.

(B) The commissioner may grant extensions of time once notice and opportunity to respond is afforded to all parties.

(C) The commissioner may grant extensions on his or her own motion.

(4)(A) Requests for extensions of time, other than motions for continuances, must be made as soon as practicable and, except in cases of emergencies, no later than five (5) days prior to the date noticed for the hearing.

(B) The commissioner may require documentation of any grounds for extensions.

(g) Effect of filing.

(1) The filing with the commissioner of any pleadings, requests for no action or interpretive opinions, or any other document shall not relieve any person of the obligation to comply with any statute, rule, or order of the commissioner.

(2) Acceptance of a filing by the commissioner shall not constitute a waiver of any failure to comply with the Arkansas Securities Act or this subpart.

(3) Where appropriate, the commissioner may require the amendment of any filing.

(h) **Filing and service.**

(1) Any pleading filed by the staff or summary order issued by the commissioner for the purpose of commencing a proceeding shall be served on each respondent by personal service, registered or certified mail, or any express delivery service which provides a written confirmation of delivery.

(2) Following the date of commencement of a proceeding, all pleadings may be filed with the commissioner by United States Postal Service or hand delivery.

(3) Pleadings filed with the commissioner shall reflect the parties upon whom the pleading was served.

(4) A copy of every pleading filed with the commissioner by a party shall be served upon the attorney of record for every other party and upon any person appearing pro se.

(5) Written interrogatories, requests for production, and other discovery requests shall not be filed with the commissioner but shall be served by the party making the discovery request upon the attorney of record for every other party and upon any person appearing pro se.

(i) **Submission of information.** Any information filed or submitted to the State Securities Department in connection with an application, subpoena, or otherwise given voluntarily to the department may, where competent and relevant, be used in any criminal prosecutions under the Arkansas Securities Act or other laws of the State of Arkansas or other jurisdiction.

Authority. Arkansas Code § 23-42-204.

23 CAR § 300-606. Hearing procedures.

(a) **Notice of hearings.**

(1)(A) A notice of hearing shall be served upon each party.

(B) This may be by hand delivery or United States Postal Service within a reasonable amount of time prior to the hearing.

(C) For purposes of this section, service of a notice of hearing by the Securities Commissioner upon any registrant may be by United States Postal Service to the business address of the registrant.

(2) The notice of hearing will include the following:

(A) A statement of the time, place, and nature of the hearing;

(B) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(C) The name or names of the respondents; and

(D) A short and plain statement of the matters of fact and law asserted.

(3) The commissioner may in his or her discretion amend the notice of hearing at any stage of a proceeding provided that the parties are given reasonable notice of the amendment and allowed sufficient time to prepare their case in light of the amendment.

(b) Rights of witnesses.

(1) Any person who appears and testifies in a deposition under oath or in a contested case may be accompanied, represented, and advised by an attorney.

(2) The right to be accompanied, represented, and advised by an attorney means the right of a person testifying to have an attorney present at all times while testifying and to have an attorney do the following:

(A) Advise the person before and after conclusion of the testimony;

(B) Question the person briefly at the conclusion of testimony to clarify any of the answers given; and

(C) Make summary notes during the testimony solely for the use of the person.

(c) Notice to interested parties. If it appears that the determination of the rights of parties in a proceeding will necessarily involve a determination of the substantial interests of persons who are not parties, the commissioner may enter an

order requiring that an absent person be notified of the proceeding and be given an opportunity to be joined as a party of record.

(d) **Subpoenas.**

(1)(A) At the request of any party, the commissioner shall issue subpoenas for the attendance of witnesses and production of documents for a hearing.

(B) The requesting party shall specify whether the witness is also requested to bring documents and reasonably identify the documents.

(2)(A) A subpoena may be served in a manner as now provided for by statute or rule for the service of subpoenas in civil cases or by any form of mail addressed to the person to be served with return receipt requested and delivery restricted to the addressee or agent of the addressee.

(B) The party seeking the subpoena shall have the burden of obtaining service of the process and shall be charged with the responsibility of tendering appropriate mileage fees and witness fees pursuant to Rule 45 of the Arkansas Rules of Civil Procedure.

(C) The witness must be served a reasonable time prior to the hearing.

(3) Any motion to quash or limit the subpoena shall be filed with the commissioner and shall state the grounds relied upon.

(e) **Hearing location.** All hearings shall be held at the office of the commissioner unless a different place is designated by direction of the commissioner.

(f) **Consolidation and severance.**

(1) If there are separate matters that involve related questions of law or fact, or identical parties, the commissioner, for good cause, upon the commissioner's own motion or upon motion by a party, may consolidate matters if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings and would not unduly prejudice the rights of a party.

(2)(A) The commissioner may, for good cause, upon the commissioner's own motion or upon motion by a party, sever the proceeding for separate resolution of the matter as to any party or issue.

(B) In determining whether to sever the proceeding, the commissioner shall consider whether any undue prejudice or injustice would result from not severing the proceeding outweighs the interests of judicial economy and expeditiousness in the complete and final resolution of the proceeding.

(g) Conduct of hearing.

(1) The commissioner presides at the hearing and may rule on motions, require briefs, and issue orders as will ensure the orderly conduct of the proceedings, provided, however, any hearing officer other than the commissioner shall not enter a dispositive order or proposed decision unless expressly authorized in writing to do so.

(2) All objections must be made in a timely manner and stated on the record.

(3) Parties have the right to participate or to be represented by an attorney in hearings or prehearing conferences related to their case.

(4) Subject to the terms and conditions prescribed by the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., parties have the right to:

(A) Introduce evidence on issues of material fact;

(B) Cross-examine witnesses as necessary for a full and true disclosure of the facts;

(C) Present evidence in rebuttal;

(D) Engage in oral argument; and

(E) Upon request, may submit briefs.

(5) The commissioner is charged with maintaining the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

(h) Order of proceedings. The commissioner will conduct the hearing in the following manner:

(1) The commissioner will give an opening statement, briefly describing the nature of the proceedings;

(2) The parties are to be given the opportunity to present opening statements;

(3) The parties will be allowed to present their cases in the sequence determined by the commissioner;

(4)(A) Each witness must:

(i) Be sworn or affirmed by the commissioner or the court reporter;

and

(ii) Be subject to examination and cross-examination as well as questioning by the commissioner.

(B) The commissioner may limit questioning in a manner consistent with the law;

(5) When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments; and

(6)(A) The commissioner may, at any time prior to the rendering of a final decision, reopen the hearing upon the motion of the commissioner or any party for good cause shown.

(B) The parties shall be notified of the reopening and the hearing shall be convened not less than ten (10) days after the sending of such notice unless waived by the parties.

(i) Failure to request or appear at a hearing.

(1) When a party fails to request a hearing within the time specified in the cease and desist order or other administrative order, the allegations against the party may be deemed admitted.

(2)(A) If a party fails to appear or participate in an administrative adjudication after proper service of notice, the staff may proceed with the hearing and the commissioner may render a decision in the absence of the party.

(B) The allegations against the party may be deemed admitted.

(C) Without further proceedings or notice to the party, the commissioner shall issue a final order.

(D) The commissioner may, if deemed necessary, receive evidence from the staff as part of the record concerning the appropriateness of the amount of any civil penalty sought in the request.

(j) Appearance, practice, and withdrawal before the commissioner.

(1)(A) Any party appearing in any proceeding has the right, at the party's own expense, to be represented by an attorney.

(B) The attorney must be duly admitted to practice law in the State of Arkansas and in good standing with the Bar of Arkansas.

(C) The commissioner, at his or her discretion, may require any attorney who desires to represent a person before the commissioner to first file with the commissioner a written declaration that he or she is currently qualified and is authorized to represent the particular party in whose behalf he or she acts.

(D) Attorneys in good standing from other jurisdictions may request and, for good cause shown, be allowed to appear in a contested case, provided an attorney admitted to practice in Arkansas is present during the entire proceeding, signs all pleadings and other papers filed in the proceeding, and agrees to take full responsibility for supervising the conduct of the attorney.

(2)(A) The respondent may appear on his or her own behalf in a contested case.

(B) Other duly authorized individuals including a partner, member, or manager of a partnership or limited liability company may appear and represent the partnership or limited liability company, and a duly authorized officer, director, or employee of any agency, institution, corporation, or authority may appear and represent the:

- (i) Agency;
- (ii) Institution;
- (iii) Corporation; or
- (iv) Authority.

(3)(A) Any party acting pro se shall so notify the commissioner in writing.

(B) The notice of appearance shall include accurate contact information.

(4) Service on the attorney of record is the equivalent of service on the party represented.

(5) After a notice of appearance is filed by a party or attorney, copies of all subsequent pleadings, notices, rulings, applications, responses, replies, or decisions

shall be provided to the person named in the notice of appearance and staff designated to represent the State Securities Department.

(k) Recording the proceedings and transcript corrections.

(1)(A) The responsibility to record the testimony heard at a hearing is assumed by the department.

(B) Any party may request a copy of the transcript from the court reporter and the copy shall be made available to any party upon payment of the cost of the transcript.

(2)(A) The commissioner shall have the authority to order the transcript corrected upon a motion to correct, upon stipulation of the parties, or upon the commissioner's own motion following notice to the parties.

(B) The commissioner may call for the submission of proposed corrections and may order the corrections at appropriate times during the course of the proceedings.

(C) Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing.

(D) Transcript corrections may be incorporated into the record at any time during the hearing or after the close of evidence, but not more than thirty (30) days from the date of receipt of the transcript by the commissioner.

(l) Evidence.

(1) The commissioner shall rule on the admissibility of evidence and may, when appropriate, take official notice of facts and generally recognized technical or scientific facts.

(2)(A) Stipulation of facts is encouraged.

(B) Parties may stipulate as to any relevant matters of fact or the authentication of any relevant documents that may be entered as evidence at the commencement of or during the hearing.

(C) The commissioner may make a decision based on stipulated facts.

(3)(A) A party seeking admission of an exhibit must provide four (4) copies of each exhibit at the hearing.

(B) The commissioner must provide the opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility.

(C) All exhibits admitted into evidence must be appropriately marked and be made part of the record.

(4)(A) Formal exceptions to rulings on evidence and procedure are unnecessary.

(B) It is sufficient that a party, at the time an evidentiary ruling is sought, makes known to the commissioner the objections to such action and the grounds for such objection.

(C) The objection, the ruling on the objection, and the reasons for the ruling will be noted in the record.

(D) Failure to object to the admission of evidence or any ruling constitutes a waiver of the objection.

(E) The commissioner may rule on the objection at the time it is made or may reserve the ruling until the written decision.

(5)(A) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record.

(B) The party making the offer of proof for excluded or rejected oral testimony will briefly provide a summarized statement of the testimony.

(C) If the excluded evidence consists of a document, record, or written form, a copy of such evidence shall be marked as part of an offer of proof and inserted in the record.

(6)(A) Irrelevant, immaterial, and unduly repetitive evidence will be excluded.

(B) Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs.

(7)(A) The commissioner may base the finding of facts upon reasonable inferences derived from the evidence received.

(B) The finder of fact shall have the authority to employ the staff's experience, technical competence, and specialized knowledge in evaluating the

evidence presented at the hearing for the purpose of making findings of fact and arriving at a decision in any contested case.

(8) At any stage of the hearing, the commissioner may call for further evidence upon any issue and require that such evidence be produced by the relevant party or may authorize any party to file specific documentary evidence as part of the record, either at the hearing or within a specified time, provided every party shall be afforded a reasonable opportunity to review and rebut or object to such evidence.

(m) **Orders.**

(1) **Generally.**

(A) All decisions and orders of the commissioner concluding a proceeding shall be in writing and served on all parties.

(B)(i) The order will include a recitation of facts found based on testimony, other evidence presented, and reasonable inferences derived from the evidence pertinent to the issues of the case.

(ii) It will also state conclusions of law and directives or other dispositions entered against or in favor of the respondent.

(C)(i) The order will be served personally or by mail on the parties.

(ii) If respondent is represented by an attorney, service of the order on respondent's attorney shall be deemed service on the respondent.

(2) **Summary order.** In addition to the procedures set forth in subsections (a) and (j) of this section, subdivision (m)(1) of this section, and 23 CAR §§ 300-604, 300-607, and 300-608, the commissioner may issue a summary order for the following:

(A) Whether a person is an applicant, registrant, issuer, or other person, to cease and desist from an act or practice or apply directly to a court of competent jurisdiction for such relief as the commissioner deems appropriate pursuant to Arkansas Code § 23-42-209 of the Arkansas Securities Act, Arkansas Code § 23-42-101 et seq., if the following occurs:

(i) It is in the public interest; and

(ii) The commissioner deems it necessary;

(B)(i) To retroactively deny or suspend effectiveness of a registration statement filed pursuant to Arkansas Code § 23-42-402 of the Arkansas Securities Act if the required notification and pricing amendment is not received.

(ii) If a summary order is entered, the commissioner must promptly notify the registrant by electronic mail (email), facsimile, or telephone call followed by a letter.

(iii) If the registrant proves compliance, the summary order is void as of the time of its entry.

(iv) The summary order remains in effect pending final determination of a proceeding to deny or revoke the effectiveness.

(v)(a) The date for a hearing on a summary order shall be set no more than fifteen (15) days after receipt of a written request to hold such a hearing.

(b) If no hearing is requested, the summary order will remain in effect until modified or vacated by the commissioner; and

(C)(i) To suspend or postpone registration of an applicant or registration filed pursuant to Arkansas Code § 23-42-301 of the Arkansas Securities Act if the staff learns of an applicant's or registrant's failure to comply with the Arkansas Securities Act or this part or when it is determined that the applicant or registrant might be subject to one (1) of the provisions set forth in Arkansas Code § 23-42-308(a) of the Arkansas Securities Act or a cancellation of registration pursuant to Arkansas Code § 23-42-308(d) of the Arkansas Securities Act.

(ii) If such a summary order is entered, the commissioner must promptly notify the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent or an investment adviser representative).

(iii)(a) An affected applicant or registrant may request a hearing of the matter by making a written request to the commissioner within thirty (30) days of receipt of a summary order.

(b) A requested hearing shall be held within fifteen (15) days of receipt of a written request, but if no hearing is requested and none is ordered by the commissioner, the order will remain in effect as a final order.

(iv) If a hearing is requested or ordered, the summary order remains in effect pending final determination of a proceeding to deny or revoke the application or registration as a result of the hearing.

(3) **Stop order.** A stop order, as discussed in subdivision (m)(2)(B) of this section, referring to Arkansas Code § 23-42-402 of the Arkansas Securities Act, may mean a final order entered in disposition of the institution of a proceeding except as that term is used in Arkansas Code § 23-42-509 of the Arkansas Securities Act.

(4) **Amended order.** All orders may be vacated or modified if conditions change or it is otherwise in the public interest to do so.

(5)(A) 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.

(B) An order shall be entered if administrative proceedings have been instituted or a pleading filed.

(C) All orders shall be public.

(n) **Right to appeal.** A person who is aggrieved by the final decision of the commissioner may seek judicial review of the decision in accordance with the provisions of Arkansas Code § 23-42-210 of the Arkansas Securities Act.

Authority. Arkansas Code § 23-42-204.

23 CAR § 300-607. Securities registration — Securities registration statement.

(a)(1) When the staff or the Securities Commissioner learns of an applicant's or registrant's possible failure to comply with the Arkansas Securities Act, Arkansas Code § 23-42-101 et seq., or this part or when it is determined that the applicant or registrant

might be subject to one (1) of the provisions set forth in Arkansas Code § 23-42-405(a) of the Arkansas Securities Act, the following may occur:

(A) The applicant may be notified by deficiency letter or by telephone and, after adequate notice, the staff may initiate legal proceedings with the commissioner to deny, suspend, or revoke the effectiveness of the registration statement; or

(B) The commissioner may enter a summary order suspending or postponing effectiveness of the registration statement pending final determination of a proceeding to deny or revoke the effectiveness.

(2) If an applicant's response to a deficiency letter or telephone call is not deemed to show compliance, the applicant may be allowed to withdraw the registration statement prior to its effectiveness.

(b) If a pleading or summary order is entered, the applicant, registrant, issuer, and the person on whose behalf the securities are to be or have been entered shall be notified by certified or registered United States Postal Service.

Authority. Arkansas Code § 23-42-204.

23 CAR § 300-608. Exempt securities — Securities exempted from registration.

(a) A security or transaction exemption filed in accordance with Arkansas Code § 23-42-503(d) or Arkansas Code § 23-42-504(b) of the Arkansas Securities Act, Arkansas Code § 23-42-101 et seq., may be disallowed when the following occurs:

(1) The exemption under which the filing was made is not available to the issuer or applicant;

(2) The filing is not complete;

(3) The fee is not sufficient;

(4) The filing fails to comply with any provision of the Arkansas Securities Act or this part; or

(5) The filing indicates conduct prohibited by the Arkansas Securities Act including, but not limited to, false or misleading statements or omissions of material fact.

(b)(1) In the event any of the above grounds of subsection (a) of this section are present with respect to an application, the applicant will be notified by deficiency letter by United States Postal Service, facsimile, or electronic mail on or before the tenth business day after receipt of the filing.

(2) Such deficiency letter shall serve as notice in lieu of a pleading or order.

(3) Upon an applicant's failure to satisfy the deficiencies, the following may occur:

(A) The applicant may request that the filing be withdrawn;

(B) An order disallowing the security or transactional exemption will be entered; or

(C) If applicable, a summary order or a pleading to deny the exemption will be entered.

(c) A security or transaction exempt pursuant to Arkansas Code § 23-42-503(a)(7), Arkansas Code § 23-42-503(a)(8), Arkansas Code § 23-42-503(b), Arkansas Code § 23-42-503(c), Arkansas Code § 23-42-504(a)(9), or Arkansas Code § 23-42-504(a)(10) of the Arkansas Securities Act may be denied prior to issuance or execution of security or transaction when the following is determined:

(1) The exemption claimed is not available;

(2) The security or transaction fails to comply with any provisions of the Arkansas Securities Act or this part;

(3) There has been or is about to be conduct prohibited by the Arkansas Securities Act; or

(4) A required filing was not made.

(d) A security or transaction exemption subject to Arkansas Code § 23-42-503(a)(7), Arkansas Code § 23-42-503(a)(8), Arkansas Code § 23-42-503(b), Arkansas Code § 23-42-503(c), or Arkansas Code § 23-42-504(a) of the Arkansas Securities Act

may be revoked after issuance or execution of security or transaction when the following is determined:

- (1) The exemption claimed was not available;
 - (2) The filing, if made, was not complete or contained false and misleading statements or omissions of material fact;
 - (3) A fact or event becomes known which would have been the cause of a disallowance or denial of the exemption had it been known;
 - (4) The claimant failed to comply with the Arkansas Securities Act or this part;
- or
- (5) A claimant did not comply with representations made or conditions imposed.

(e) The commissioner may not disallow, deny, or revoke an exemption for a security claimed pursuant to Arkansas Code § 23-42-503(a)(1), Arkansas Code § 23-42-503(a)(2), Arkansas Code § 23-42-503(a)(3), Arkansas Code § 23-42-503(a)(4), Arkansas Code § 23-42-503(a)(5), Arkansas Code § 23-42-503(a)(6), or Arkansas Code § 23-42-503(a)(9) of the Arkansas Securities Act, however, the commissioner may take or recommend an action pursuant to the applicable investigative, injunctive, civil, or criminal provisions of the Arkansas Securities Act.

(f) Under the circumstances set forth in subsection (b) of this section, the staff may file a pleading to disallow, deny, or revoke an exemption or the commissioner may summarily disallow, deny, or revoke an exemption.

(g) If a pleading or order is entered, all interested parties shall be notified by personal service, certified or registered United States Postal Service, or any express delivery service that provides a written confirmation of delivery.

Authority. Arkansas Code § 23-42-204.

23 CAR § 300-609. Registration of individuals — Broker-dealer, agent, investment adviser, or investment adviser representative.

(a) An applicant for registration, a registrant, or an applicant seeking withdrawal from registration may agree in writing to allow the Securities Commissioner or the staff additional time to investigate or examine facts or transactions prior to the registration or the termination becoming effective, thus extending the thirty-day time limitation for the review by the commissioner or the staff.

(b)(1) When the staff or the commissioner learns, through examination or otherwise, of an applicant's or registrant's possible failure to comply with the Arkansas Securities Act, Arkansas Code § 23-41-101 et seq., or this part or when it is determined that the applicant or registrant might be subject to one (1) of the provisions set forth in Arkansas Code § 23-42-308(a) of the Arkansas Securities Act, the staff shall notify such applicant or registrant of the alleged violation or action and set a period of time in which the applicant or registrant must show compliance.

(2) If the applicant's or registrant's response to the staff's letter is deemed not to show compliance with the Arkansas Securities Act or this part, a pleading may be filed by the staff with the commissioner requesting that the matter be set for a hearing.

(3) Notification to the applicant or registrant of the alleged violation or violations shall not be deemed to be the institution of a proceeding.

(c)(1) If the staff files a pleading with the commissioner or the commissioner summarily suspends, postpones, or cancels a registration, the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent or an investment adviser representative) shall be promptly served with a copy of the pleading or order.

(2) An affected applicant or registrant may request a hearing of the matter by making a written request to the commissioner within thirty (30) days of receipt of a summary order.

(3) A requested hearing shall be held within fifteen (15) days of receipt of a written request, but if no hearing is requested and none is ordered by the commissioner, the order will remain in effect as a final order.

(d)(1) If the commissioner issues an order which imposes a suspension, revocation, or cancellation of the registration of a person or bars that person from further

association with any registrant, the registrant shall not allow that person to remain associated with it in any capacity, including clerical or ministerial functions.

(2) When an individual is suspended, a registrant, in addition to the above, shall not pay or credit any salary, commission, profit, or other remuneration that results directly or indirectly from any security transaction that individual might have earned during the period of suspension.

Authority. Arkansas Code § 23-42-204.