

May 5, 1998

Carla K. Williams

VAN MATRE and HARRISON, P.C.

1103 East Broadway, Suite 101

P.O. Box 1017

Columbia, Missouri 65201

Re: Ark. Code Ann. § 23-42-503(b) and Rule 503.01(B) regarding Small Business Offerings

Interpretative Opinion No. 98-006

Dear Ms. Williams:

In your letter of April 8, 1998, you ask what is the time period your client must wait before it can make a Regulation D Offering after it has made a filing in Arkansas pursuant to Ark. Code Ann. § 23-42-503(b), and, retain the availability of both exemptions. In pertinent part, Rule 503.01(B), supplementing and implementing § 23-42-503(b), provides:

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

You correctly point out that Ark. Code Ann. § 23-42-503(b), as supplemented by Rule 503.01(B), provides for integration during the period of the offering or any consecutive twelve (12) month period, whichever occurs first. Meaning, securities offered pursuant to an exemption under Section 23-42-503(b) cannot exceed one million dollars (\$1,000,000), and, all offerings of the securities, within a consecutive twelve (12) month period of the offering, will be integrated into the Section 23-42-503(b), until its period of offering closes, to determine the \$1,000,000 limitation amount.

You also correctly point out that once a Section 23-42-503(b) exempt offering period has expired, an issuer can proceed with a second Section 23-42-503(b) offering of those securities which will not impact the first Section 23-42-503(b) offering amount. However, the aggregate amount of the second Section 23-42-503(b) offering will be integrated by the amount offered in the first Section 23-42-503(b) offering for determining the \$1,000,000 limitation, if the second is done within twelve (12) months of the first offering. Until a Section 23-42-503(b) offering is closed, any other offering of those securities occurring within twelve (12) consecutive months will be integrated into the aggregate offering amount of that Section 23-42-503(b) offering.

Finally, I do not believe your statement "that once the Section 23-42-503(b) offering is closed, I can proceed with a Regulation D Offering without fear of losing the availability of both exemptions because there is no integration period following a Section 23-42-503(b) offering" to be correct. It is my understanding that Regulation D offerings have an integration period of six (6) months both preceding and following effectiveness of the Regulation D offering. Thus, the closing of an initial Section 23-42-503(b) offering would not foreclose its integration into a Regulation D offering committed within six (6) months of closure of the Section 23-42-503(b) offering.

If you have any further questions in this regard, please feel free to contact the undersigned.

Sincerely,

BRUCE H. BOKONY
Chief Counsel