

August 31, 1999

Monica M. Murphy
Vice President, Assistant General Counsel
Financial Network Investment Corporation
2780 Skypark Drive, Suite 300
Torrance, CA 90505

**Re: Request for Clarification of Arkansas' Position Regarding Percentage Lease
Networking Arrangements Between Financial Institutions and Third Party Broker
Dealers**
No-Action No. 99-008

Dear Ms. Murphy:

The staff of the Arkansas Securities Department has reviewed your letter of July 7, 1999, wherein you request the Arkansas Securities Commissioner's position regarding a broker-dealer leasing space from a financial institution (such as a bank, credit union or a related service corporation) pursuant to a "percentage lease" arrangement, whereby the market value of the rented space is estimated to equal a specified percentage of the amount of commissions that are generated by the broker-dealer at the leased premises. Particularly, you ask whether an Arkansas financial institution and its employees participating in such an arrangement with Financial Network Investment Corporation ("Financial Network") would be required to separately register as a broker-dealer and its agents under the Arkansas Securities Act, Ark. Code Ann. § 23-42-101 et. seq.

You point out that Financial Network is a broker-dealer member of the FINRA and registered in Arkansas. It is your position that the manner in which Financial Network proposes to establish offices in Arkansas financial institutions, as more fully described in your letter, will not require the financial institutions to separately register with the Commissioner. In particular, you indicate that the offices will be "run" by registered agents of Financial Network. Customers of the financial institution who inquire about brokerage services to an institution employee will be directed to the office area designated for Financial Network. If Financial Network personnel are not available, the customer will be informed of Financial Network's operating hours and phone number. The financial institution's employees who are not licensed agents of Financial Network would have no other role in interacting with Financial Network's clients. Clients of Financial Network will be advised, both orally and through conspicuous and easy to comprehend written disclosures provided at or prior to a transaction, that the financial institution is not executing such transaction and that the investment products are not insured by the National Credit Union Share Insurance Fund or the Federal Deposit Reserve Corporation, are not deposit or other obligations of the financial institution and are subject to investment risks, including the possible loss of principal. In addition, all account information regarding securities transactions will clearly indicate that the securities services are provided by Financial Network. Similarly, all advertising materials referring to Financial Network's services will make clear that the securities are provided by Financial Network and not by the financial institution.

In support of your position you cite the Chubb No-Action Letter issued by the SEC which provides that, under similar networking arrangements, financial institutions are not required to separately register. You further cite the Interagency Statement on Retail Sales of Nondeposit Investment Products, commonly referred to as the "Interagency Statement" and the National Credit Union Administration Letter to Credit Unions Letter 150 which also provide that, under similar networking arrangements, financial institutions are not required to separately register.

Based upon your representations and opinions, the staff will recommend that the Commissioner take no action to enforce the broker-dealer registration requirements of the Arkansas Securities Act, particularly Ark. Code Ann. § 23-42-301 *et seq.*, with respect to the Arkansas financial institutions which enter into the networking arrangements with Financial Network as described in your letter. Please note, however, that the position of the staff is based solely upon the representations made in your letter and applies only to the transactions identified therein. Different facts or circumstances might, and often would, require a different response. The position expressed deals only with anticipated enforcement action by the staff and does not purport to be a legal opinion.

Should you have any questions regarding this matter, please contact the undersigned at the direct line indicated above.

Sincerely,

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