

STATE OF ARKANSAS
SECURITIES DEPARTMENT

IN THE MATTER OF

ORDER WAIVING

COVERED SECURITIES

REQUIREMENTS PURSUANT

PURSUANT TO SECTION 18(b)

TO ARK. CODE ANN.

AND 18(b)(4)(D) OF THE FEDERAL

§ 23-42-509(f)

SECURITIES ACT OF 1933

ORDER NO. 98-031-S

FINDINGS OF FACT

1. On October 11, 1996, Congress enacted the National Securities Markets Improvement Act of 1996, which amended, among other laws, Section 18 of the Securities Act of 1933 (15 U.S.C. 77r) to include a provision defining "covered securities" and preempting any state law purporting to impose registration or qualification upon securities which came within the definition of "covered securities".
2. Among the securities defined as covered securities were those set forth in Section 18(b)(2) and Section 18(b)(4)(D) of the Securities Act of 1933. Such securities are securities issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940 and securities with respect to a transaction that is exempt from registration under the Securities Act of 1933 pursuant to Securities and Exchange Commission rules or regulations issued under section 4(2) of the Securities Act of 1933.
3. On February 17, 1997, the Arkansas Legislature enacted Arkansas Code Ann. § 23-42-509, which authorized the Arkansas Securities Commissioner, in accordance with the National Securities Markets Improvements Act of 1996, to require a notice filing and fee from those issuers selling securities in this State which are covered under sections 18(b)(2) and 18(b)(4)(D) of the Securities Act of 1933.
4. Arkansas Code Ann. § 23-42-503 lists different types of securities which are exempt from the provisions set forth in Arkansas Code Ann. §§ 23-42-501 and 23-42-502. Arkansas Code Ann. § 23-42-503(d) provides that a proof of exemption must be filed prior to the issuance of any security sought to be exempted pursuant to several of the subsections of Arkansas Code Ann. § 23-42-503, and prescribes the fee for the filing of such proof of exemption.
5. Arkansas Code Ann. § 23-42-504 lists different types of transactions which are exempt from the provisions of Arkansas Code Ann. §§ 23-42-501 and 23-42-502. Arkansas Code Ann. § 23-42-504(b) provides that a proof of exemption must be filed prior to the issuance of any security sought to be exempted pursuant to subsections (9) or (10) of Arkansas Code Ann. § 23-42-504, and prescribes the fee for the filing of such proof of exemption.
6. The exemptions for those securities and transactions listed in Arkansas Code Ann. §§ 23-42-503 and 23-42-504 for which no proof of exemption is required, are self-executing and require no filing fees.

7. It was not the intent of the Arkansas Legislature, by its enactment of Arkansas Code Ann. § 23-42-509, nor that of the Arkansas Securities Commissioner in recommending such enactment, to impose any greater filing or regulatory burden on issuers of those securities which are covered under Section 18(b)(2) and Section 18(b)(4)(D) of the Securities Act of 1933 than existed prior to the enactment.

CONCLUSIONS OF LAW

8. Arkansas Code Ann. § 23-42-509(f) specifically authorizes the commissioner, by rule or order, to waive any or all of the provisions of § 23-42-509, particularly as to the notice filing requirements and the fee provisions of such section.

OPINION

It is not necessary or appropriate in the public interest that those issuers of securities that are covered under Section 18(b)(2) and Section 18(b)(4)(D) of the Securities Act of 1933 be required to make a notice filing and pay a fee pursuant to Arkansas Code Ann. § 23-42-509 if the security or transaction qualifies for an exemption from registration under Arkansas Code Ann. §§ 23-42-503 or 23-42-504, but for the fact that the securities involved are "covered securities".

ORDER

IT IS THEREFORE ORDERED that in those instances in which an exemption would be available to an issuer or seller but for the fact that the securities involved are covered securities under Section 18(b)(2) or Section 18(b)(4)(D) of the Securities Act of 1933, the notice filing and fee provisions of Arkansas Code Ann. § 23-42-509 (specifically subsections (a), (b), and (c) thereof) are hereby waived, provided however, that such waiver is effective only if such issuer or seller complies with the proof of exemption and filing fee requirements, if any, for the particular exemption sought to be utilized under Arkansas Code Ann. §§ 23-42-503 and 23-42-504.

This order does not exempt any securities from the antifraud provisions of the Arkansas Securities Act.

WITNESS MY HAND AND SEAL this ___ day of April, 1998.

MAC DODSON

SECURITIES COMMISSIONER