

**STATE OF ARKANSAS**  
**SECURITIES DEPARTMENT**

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IN THE MATTER OF

ORDER EXEMPTING PERSONS

WHO EFFECT CERTAIN

TRANSACTIONS IN COVERED

SECURITIES FROM THE

DEFINITION OF AGENT

PURSUANT TO ARK. CODE ANN.

PERSONS EFFECTING CERTAIN

§ 23-42-02(2)(B)(i)(c)

TRANSACTIONS IN COVERED

SECURITIES

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ORDER NO. 98-032-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 may be sold by persons who are not registered as agents because they are excluded from the definition of agent set forth in Arkansas Code Ann. § 23-42-102(2)(B)(i)(a).
5. Arkansas Code Ann. § 23-42-504 lists different types of transactions which may be effected by persons who are not registered as agents because they are excluded from the definition of agent set forth in Arkansas Code Ann. § 23-42-102(2)(B)(i)(b).
6. The definition of agent does not exclude persons effecting transaction in securities covered under Section 18(b)(2) and Section 18(b)(4)(D) of the Securities Act of 1933, even though

such persons would be excluded from the definition of agent but for the fact that the transactions involve covered securities.

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. § 23-42-102(2)(B)(i)(c) specifically authorizes the commissioner, by rule or order, to exclude from the definition of agent those individuals who represent issuers in effecting transactions in covered securities.

### **OPINION**

9. It is not necessary or appropriate in the public interest that those individuals representing 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 become licensed as agents pursuant to Arkansas Code Ann. § 23-42-301 if the security or transaction otherwise 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", and such individuals would not be required to register as agents under such sections.

### **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, and such issuer is in compliance 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, those individuals who represent such issuer are excluded from the definition of agent unless the particular exemption under which the issuer is proceeding requires such individuals to register as agents.

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

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MAC DODSON

SECURITIES COMMISSIONER