

STATE OF ARKANSAS
SECURITIES DEPARTMENT

IN THE MATTER OF

ORDER EXEMPTING CERTAIN

OFFERS AND SALES OF

SECURITIES SOLELY TO

ACCREDITED INVESTORS

PURSUANT TO ARK. CODE ANN.

THE ARKANSAS MODEL

§ 23-42-504(a)(12)

ACCREDITED INVESTORS

EXEMPTION

ORDER NO. 98-057-S

FINDINGS OF FACT

On September 22, 1998, the Commissioner received a request seeking an Order exempting certain offers and sales of securities solely to accredited investors from the registration provisions of the Arkansas Securities Act, Arkansas Code Annotated § 23-42-101, *et seq.* (the "Act").

CONCLUSIONS OF LAW

Arkansas Code Ann. § 23-42-504(a)(12) provides that the commissioner, by rule or order, may exempt from the provisions of Arkansas Code Annotated §§ 23-42-501 and 23-42-502 (the securities registration requirement and the sales literature filing requirement) any transaction for which he determines that the provisions of such sections are not necessary or appropriate in the public interest for the protection of investors.

OPINION

It is not necessary or appropriate in the public interest for the protection of investors that those transactions described below be required to comply with the provisions of Arkansas Code Ann. §§ 23-42-501 or 23-42-502.

ORDER

IT IS THEREFORE ORDERED THAT:

1. Pursuant to Arkansas Code Annotated § 23-42-504(a)(12), offers and sales of securities by an issuer in a transaction that meets the requirements of this Order shall be exempt from Arkansas Code Annotated §§ 23-42-501 and 23-42-502 if the following conditions are met:
 - (A) Sales of such securities shall be made only to persons who are, or the issuer reasonably believes are, accredited investors within the meaning

of Rule 501(a) of Regulation D, 17 C.F.R. § 230.501(a), promulgated under the Securities Act of 1933.

- (B) The exemption hereunder shall not be available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.
- (C) The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within twelve (12) months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under Arkansas Code Annotated §§ 23-42-401, 23-42-402, or 23-42-403, or to an accredited investor pursuant to an exemption available under Arkansas Code Annotated §§ 23-42-503 or 23-42-504.
- (D) (1) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent (10%) or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:
 - (a) within the last five (5) years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;
 - (b) within the last five (5) years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;
 - (c) is currently 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 purchase or sale of any security; or
 - (d) is currently 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 such 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.
- (2) Subparagraph (D)(1) shall not apply if:
 - (a) the party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party;
 - (b) before the first offer under this exemption, the state securities

- (b) before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or
- (c) the issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph.
- (E) (1) A general announcement of the proposed offering may be made by any means.
- (2) The general announcement shall include only the following information, unless additional information is specifically permitted by the Commissioner:
- (a) the name, address and telephone number of the issuer of the securities;
- (b) the name, a brief description and price (if known) of any security to be issued;
- (c) a brief description of the business of the issuer in twenty-five (25) words or less;
- (d) the type, number and aggregate amount of securities being offered;
- (e) the name, address and telephone number of the person to contact for additional information; and
- (f) a statement that:
- (i) sales will only be made to accredited investors;
- (ii) no money or other consideration is being solicited or will be accepted by way of this general announcement; and
- (iii) the securities have not been registered with or approved by any state securities agency or the U. S. Securities and Exchange Commission and are being offered and sold pursuant to an exemption from registration.
- (F) The issuer, in connection with an offer, may provide information in addition to the general announcement under paragraph (E), if such information:
- (1) is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or
- (2) is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.
- (G) No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.
- (H)

Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this rule.

- (l) The issuer shall file with the Commissioner a notice of the transaction in a form acceptable to the Commissioner, a consent to service of process and a copy of the general announcement within fifteen days after the first sale in this state.
2. Nothing in this Order shall be construed to limit the Commissioner's authority to enforce the antifraud provisions of the Act set forth in Arkansas Code Annotated § 23-42-507.
3. This Order shall remain in effect until modified, superceded or vacated by the Commissioner or other lawful authority.

WITNESS MY HAND AND SEAL this ____ day of November 1998.

MAC DODSON

SECURITIES COMMISSIONER