

STATE OF ARKANSAS
SECURITIES DEPARTMENT

IN THE MATTER OF
BROKER-DEALERS, INVESTMENT
ADVISERS, BROKER-DEALER AGENTS,
AND INVESTMENT ADVISER
REPRESENTATIVES USING THE
INTERNET FOR GENERAL
DISSEMINATION OF INFORMATION ON
PRODUCTS AND SERVICES

INTERPRETATIVE ORDER

ORDER NO. 99-013-S

FINDINGS OF FACT

1. The Internet, the World Wide Web, and similar proprietary or common carrier electronic systems (collectively, the "Internet") have facilitated greatly the ability of broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives to advertise and otherwise disseminate information on products and services to prospective customers and clients;
2. Certain communications made on the Internet are directed generally to anyone having access to the Internet and may be transmitted through postings on Bulletin Boards, displays on "Home Pages" or similar methods (hereinafter "Internet Communications");
3. In certain instances, by distributing information on available products and services through Internet Communications available to persons in this state, broker-dealers, investment advisers, their broker-dealer agents and their investment adviser representatives could be construed as "transacting business" for purposes of Ark. Code Ann. §§ 23-42-301(a) and 23-42-301(c) so as to require registration in this state, since the Internet Communications would be received in this state regardless of the intent of the person originating such communication; and
4. The Arkansas Securities Commissioner is charged with the administration of the Arkansas Securities Act (the "Act"), codified as Ark. Code Ann. § 23-42-101, et seq., and the regulations promulgated under the Act.

CONCLUSIONS OF LAW

5. Ark. Code Ann. § 23-42-204(a) provides, in part, that "[t]he commissioner, from time to time, may make, amend, and rescind any ... orders which are necessary to carry out the provisions of this [act] ..."
6. Ark. Code Ann § 23-42-301(a) provides that "[i]t is unlawful for any person to transact business in this state as a broker-dealer or agent unless he is registered under this [act]."
7. Ark. Code Ann. § 23-42-301(c) provides that "[i]t is unlawful for any person to transact business in this state as an investment adviser or representative without first being registered under this [act]...."

OPINION

This Order is necessary and appropriate in the public interest and is consistent with the purposes fairly intended by the policy and provisions of the Act.

ORDER

NOW THEREFORE, IT IS HEREBY ORDERED as follows:

1. Broker-dealers, investment advisers, broker-dealer agents (hereinafter "BD agents") and investment adviser representatives (hereinafter "IA reps") who use the Internet, the World Wide Web, and similar proprietary or common carrier electronic systems (collectively, hereinafter the "Internet") to distribute information on available products and services through certain communications made on the Internet directed generally to anyone having access to the Internet, and transmitted through postings on Bulletin Boards, displays on "Home Pages" or similar methods (hereinafter, "Internet Communications") shall not be deemed to be "transacting business" in this state for purposes of Ark. Code Ann. §§ 23-42-301(a) and 23-42-301(c) based solely on that fact if the following conditions are observed:
 - A. The Internet Communication contains a legend in which it is clearly stated that
 - (1) the broker-dealer, investment adviser, BD agent or IA rep in question may only transact business in this state if first registered, excluded or exempted from state broker-dealer, investment adviser, BD agent or IA rep registration requirements, as may be; and
 - (2) follow-up, individualized responses to persons in this state by such broker-dealer, investment adviser, BD agent or IA rep that involve either the effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, will not be made absent compliance with state broker-dealer, investment adviser, BD agent or IA rep registration requirements, or an applicable exemption or exclusion;
 - B. The Internet Communication contains a mechanism, including and without limitation, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this state, said broker-dealer, investment adviser, BD agent or IA rep is first registered in this state or qualifies for an exemption or exclusion from such requirement. Nothing in this paragraph shall be construed to relieve a state registered broker-dealer, investment adviser, BD agent or IA rep from any applicable securities registration requirement in this state;
 - (C) The Internet Communication does not involve either effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, in this state over the Internet, but is limited to the dissemination of general information on products and services; and
 - (D) In the case of a BD agent or IA rep:
 - (1) the affiliation with the broker-dealer or investment adviser of the BD agent or IA rep is prominently disclosed within the Internet Communication;
 - (2) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated retains responsibility for reviewing and approving the content of any Internet Communication by a BD agent or IA rep;
 - (3) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated first authorizes the distribution of information on the particular products and services through the Internet Communication; and
 - (4) in disseminating information through the Internet Communication, the

BD agent or IA rep acts within the scope of the authority granted by the broker-dealer or investment adviser.

2. The position expressed in this Interpretive Order extends to state broker-dealer, investment adviser, BD agent and IA rep registration requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions;
3. Nothing in this Order shall be construed to affect the activities of any broker-dealer, investment adviser, BD agent and IA rep engaged in business in this state that is not subject to the jurisdiction of the Commissioner as a result of the National Securities Markets Improvements Act of 1996, as amended.
4. This order shall remain in effect until such time as the Department has adopted a rule, pertaining to the subject matter hereof, or until this order is otherwise modified or vacated, whichever comes first.

WITNESS MY HAND AND SEAL this 21st day of April, 1999.

MAC DODSON
SECURITIES COMMISSIONER