

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

IN THE MATTER OF

ORDER EXCLUDING  
INDIVIDUAL FROM INVESTMENT  
ADVISER DEFINITION PURSUANT  
ARK. CODE ANN. § 23-42-102(8)(F)

MARK A. LEE

NO. 99-052-S

**FINDINGS OF FACT**

1. On September 7, 1999, a letter was received by the Arkansas Securities Commissioner requesting that Mark A. Lee ("Lee") be determined to be excluded from the definition of an investment adviser as set forth in Ark. Code Ann. § 23-42-102(8)(F) for the purpose of rendering investment advice for a fee for Talisman Capital, Inc. ("Talisman") and to no more than five clients in a given year.
2. Lee is a resident of the State of Arkansas and Talisman is a corporation organized under the laws of the State of Delaware with its principal place of business located in the State of Arkansas. Talisman was exempted from the definition of an investment adviser by order ("Order No. 97-20-S") of the commissioner on April 14, 1997.
3. Talisman is the general partner of Talisman Capital Fund, LP (the "Fund"), a limited partnership organized under the laws of the State of Delaware, which will receive investment advice for a fee from Lee. Limited partners in the Fund have a minimum net worth, excluding home, furnishings, and automobiles, of \$5,000,000.
4. Lee has agreed that this Order is conditional upon compliance, not only with the findings set forth above, but also with the following:
  - (a) Lee will prominently disclose to the Fund and all other clients that he has been exempted by this Order from the investment adviser registration provisions of the Arkansas Securities Act (the "Act");
  - (b) Lee agrees to allow the Commissioner to inspect his books and records and to provide information requested by the Commissioner for the purpose of investigating customer complaints or other potential violations of the Act or the Rules of the Arkansas Securities Commissioner (the "Rules");
  - (c) Lee acknowledges that his activities will be subject to Ark. Code Ann. § 23-42-507 and to Rule 308.02 of the Rules;
  - (d) Lee acknowledges that he will limit his clients to the Fund and to no more than five additional clients in a given year. Lee has had long term relationships with these additional clients, all of which are accredited investors with a minimum net worth in excess of \$5,000,000.
  - (e) Lee acknowledges that all securities recommended to his clients will be registered, exempted or classified as covered securities.
  - (f) This Order is discretionary and applies only to advice rendered by Lee to the Fund and to no more than five additional sophisticated clients.

**CONCLUSIONS OF LAW**

5. Ark. Code Ann. § 23-42-102(8)(F) provides that the term "Investment Adviser" does not include persons not within the intent of this [subsection] as the commissioner may by rule or order designate.
6. It is not necessary or appropriate in the public interest for the protection of investors to require the registration of Lee as an investment adviser under the Act in view of the limited nature of the advice being given, the limited number of persons receiving the advice, and the nature and sophistication of his clients.

### **OPINION**

In recognition of the representations made by Lee, particularly concerning the limitation of advice being given to only persons having a net worth in excess of \$5,000,000, it does not appear necessary in order to protect such investors that Lee should be required to register as an investment adviser under the Act. Such investor are amply able to adequately look to their own interests and make their own determinations regarding the appropriateness of such advice. Particularly is this the case where disclosure of the Order will be required and Lee has agreed to be bound by the antifraud provisions of the Act and the Rules pertaining to unethical practices by investment advisers.

### **ORDER**

IT IS THEREFORE ORDERED that Mark A. Lee is excluded from the definition of an investment adviser under Ark. Code Ann. § 23-42-102(8)(F) for the purpose of advising Talisman Capital Fund, LP and no more than five additional clients, provided that he complies with the conditions set forth in this Order.

WITNESS MY HAND AND SEAL this 7th day of September, 1999.



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MAC DODSON  
SECURITIES COMMISSIONER