

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

HOUSE BILL 1436

5 By: Representative Maddox
6 By: Senator J. Dismang
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS SECURITIES ACT; TO
10 MODIFY CERTAIN ACTIONS AGAINST A REGISTRATION UNDER
11 THE ARKANSAS SECURITIES ACT; AND FOR OTHER PURPOSES.
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Subtitle

15 TO AMEND THE ARKANSAS SECURITIES ACT; AND
16 TO MODIFY CERTAIN ACTIONS AGAINST A
17 REGISTRATION UNDER THE ARKANSAS
18 SECURITIES ACT.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. Arkansas Code § 23-42-308(a), concerning the action against
24 a registration under the Arkansas Securities Act, is amended to read as
25 follows:

26 (a) The Securities Commissioner may by order deny, suspend, make
27 conditional or probationary, or revoke any registration if he or she finds
28 that:

29 (1) The order is in the public interest; and

30 (2) The applicant or registrant or, in the case of a broker-
31 dealer or investment adviser, any partner, officer, or director; any person
32 occupying a similar status or performing similar functions; or any person
33 directly or indirectly controlling the broker-dealer or investment adviser:

34 (A) Has filed an application for registration, which as of
35 its effective date, or as of any date after filing in the case of an order
36 denying effectiveness, was incomplete in any material respect or contained



1 any statement which was, in light of the circumstances under which it was
 2 made, false or misleading with respect to any material fact;

3 (B) Has willfully violated or willfully failed to comply
 4 with any provision of this chapter or a predecessor act or any rule or order
 5 under this chapter or a predecessor act;

6 (C) Has:

7 (i) Been convicted of or pled guilty or nolo
 8 contendere in a domestic, foreign, or military court of:

9 (a) A felony; or

10 (b) Within the previous ten (10) years, a
 11 misdemeanor involving:

12 (1) a A security, a commodity future or
 13 option contract, or any aspect of a business involving securities,
 14 commodities, investments, franchises, insurance, banking, or finance; or

15 (2) Fraud, false statements or
 16 omissions, wrongful taking of property, bribery, perjury, forgery,
 17 counterfeiting, extortion, or a conspiracy to commit any of the offenses
 18 under this subdivision (a)(2)(C)(i)(b)(2); or

19 (ii) Pending against him or her a charge of unlawful
 20 conduct involving securities or any aspect of the securities business;

21 (D) Is permanently or temporarily enjoined by any court of
 22 competent jurisdiction from engaging in or continuing any conduct or practice
 23 involving any aspect of the securities business;

24 (E) Is the subject of an order of the commissioner,
 25 including without limitation an order denying, suspending, revoking, or
 26 making conditional or probationary a registration as a broker-dealer, agent,
 27 investment adviser, or representative;

28 (F)(i) Is the subject of any of the following orders
 29 entered within the past five (5) years:

30 (a) An order entered by:

31 (1) The securities administrator of any
 32 other state;

33 (2) Any national securities,
 34 commodities, or banking agency or jurisdiction;

35 (3) Any national securities or
 36 commodities exchange;

1 (4) Any securities or commodities self-
 2 regulatory organization;

3 (5) Any registered securities
 4 association or clearing agency denying, revoking, suspending, or expelling
 5 him or her from registration as a broker-dealer, agent, investment adviser,
 6 or representative, or the substantial equivalent of those terms; or

7 (6) The insurance administrator of any
 8 state; or

9 (b) A United States postal fraud order.

10 (ii) However, the commissioner shall not:

11 (a) Institute a revocation or suspension
 12 proceeding under this subdivision (a)(2)(F) more than five (5) years from the
 13 date of the order relied on; or

14 (b) Enter an order under this subdivision
 15 (a)(2)(F) on the basis of an order under another state act, unless that order
 16 was based on facts that would currently constitute a ground for an order
 17 under this section;

18 (G) Has engaged in dishonest or unethical practices in the
 19 securities business;

20 (H) Is insolvent, either in the sense that his or her
 21 liabilities exceed his or her assets or in the sense that he or she cannot
 22 meet his or her obligations as they mature, but the commissioner may not
 23 enter an order against a broker-dealer or investment adviser under this
 24 subdivision (a)(2)(H) without a finding of insolvency as to the broker-dealer
 25 or investment adviser;

26 (I) Is not qualified on the basis of such factors as
 27 training, experience, and knowledge of the securities business, except that:

28 (i) The commissioner shall not enter an order
 29 against a broker-dealer on the basis of the lack of qualification of any
 30 person other than the broker-dealer himself or herself, if he or she is an
 31 individual, or an agent of the broker-dealer;

32 (ii) The commissioner shall not enter an order
 33 against an investment adviser on the basis of the lack of qualification of
 34 any person other than the investment adviser himself or herself, if he or she
 35 is an individual, or any other person who represents the investment adviser
 36 in doing any of the acts which make him or her an investment adviser;

1 (iii) The commissioner shall not enter an order
2 solely on the basis of lack of experience if the applicant or registrant is
3 qualified by training or knowledge, or both;

4 (iv) The commissioner shall consider that an agent
5 who will work under the supervision of a registered broker-dealer need not
6 have the same qualifications as a broker-dealer; and

7 (v) The commissioner shall consider that an
8 investment adviser or representative is not necessarily qualified solely on
9 the basis of experience as a broker-dealer or agent;

10 (J) Has failed reasonably to supervise the agents or
11 employees of the broker-dealer or the representatives or employees of the
12 investment adviser; or

13 (K) Has failed to pay the proper filing fee, but the
14 commissioner may enter only a denial order under this subdivision (a)(2)(K),
15 and he or she shall vacate the order when the deficiency has been corrected.

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18 **APPROVED: 3/21/23**
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