COMMONWEALTH OF KENTUCKY
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SECURITIES

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| IN THE MATTER OF:<br><br>Interpretive Opinion Re: The requirement of full disclosure in limited offerings. | ORDER<br><br>PURSUANT TO KRS 292.320(1), 292.500(1), and 292.500(3) and 292.500(13). |

**WHEREAS,** pursuant to KRS 292.500(1), the administration of the provisions of the Securities Act of Kentucky, the "Act," is under the Department of Financial Institutions, the "Department," and

**WHEREAS,** pursuant to KRS 292.500(3), the Commissioner of the Department, "Commissioner," is expressly permitted to "from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of" the Act, and

**WHEREAS,** pursuant to KRS 292.500(13), the Commissioner of the Department "in his discretion may honor requests from interested persons for interpretative opinions," and

**WHEREAS,** there has been some confusion in the securities bar over whether an offering circular, memorandum or prospectus or other document containing full disclosure of all material facts, risk factors, etc., is required in certain limited offerings to accredited investors, such as offers made pursuant to the United States Securities Commission Federal Regulation D and offers made pursuant to the Commonwealth's exemption in KRS 292.410(1)(i).

**NOW THEREFORE IT IS HEREBY ORDERED** that the following interpretive opinion be published and distributed to all interested parties.

**OPINION**

The Securities Act of Kentucky contains several self-executing securities registration exemptions and more will soon be added (effective July 15, 1998). The creation of a self-executing exemption for private offerings does not obviate the application of anti-fraud rules to such offerings and, more importantly, the continuing obligation of issuers and, where applicable, their legal counsel, to insure that all material terms of a transaction are disclosed. As an example of the kind of disclosure the Commissioner considers appropriate for private placements, issuers and their counsel are strongly encouraged to refer to the federal securities law standards for disclosure in these types of offerings. Standards employed in other states may also be useful. With respect to the notion of what is 'material' information that must be disclosed, the Division adheres to the federal law understanding of materiality, namely, that material information refers to all information which a prudent investor should reasonably expect to obtain before making an informed investment decision.

KRS 292.320, entitled "Fraudulent and Other Prohibited Practices," is the cornerstone for securities law in the Commonwealth of Kentucky. It is modeled after the Federal Securities Laws. It states:

> (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:
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> (a) To employ any device, scheme, or artifice to defraud;
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> (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

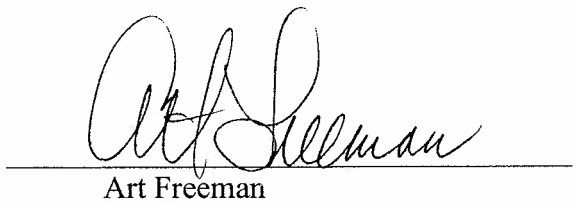
(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

To avoid running afoul of this provision, an issuer must disclose all material facts connected with or related to the offering to any prospective investor in a way such that there is no confusion regarding any particular fact. Note that KRS 292.320(1) does not preclude an offering that has substantial risk. It merely requires that all relevant disclosure be made to potential investors so that they can make a prudent investment decision should they choose to invest. The securities laws in Kentucky do not prohibit an investor from making an imprudent investment decision so long as it is an informed decision.

It is the Commissioner's belief that in most cases, the most legally prudent course of action for issuers and their counsel is to draft an offering circular that assumes no special knowledge on the part of the investor and that can be provided to anyone. This minimizes the possibility of the disclosure being deficient. Typically, a properly drafted written document helps shield the issuer from liability and streamlines proof problems if a disclosure issue ever arises. The issuer who uses a written disclosure document can offer that document in defense, if ever necessary, and the investor then has the burden of refuting the written document. The investor is charged with the knowledge of the facts contained in that written disclosure document regardless of whether he reads it. The failure by an issuer to use a written prospectus or offering circular subjects the issuer and numerous individuals connected with the issuer to almost certain litigation in the future with little or no defense being available.

Accordingly, issuers and those individuals who assist in a securities offering are urged to prepare a written offering circular or other disclosure document and provide

every potential investor with a copy of the document, notwithstanding the existence of a registration exemption in the Act.



Art Freeman
Commissioner
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This Order entered and signed this 13th day of July, 1998.