



STATE OF CONNECTICUT
DEPARTMENT OF BANKING

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Bulletins*



BRIAN J. WOOLF
COMMISSIONER

SECURITIES AND BUSINESS INVESTMENTS DIVISION
BULLETIN

HOWARD B. BROWN
DEPUTY COMMISSIONER

JUNE, 1984

VOLUME 1 NO. 3

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CALEB L. NICHOLS
DIVISION DIRECTOR
(203) 566-4560

CYNTHIA ANTANAITIS
ASSISTANT COUNSEL
(203) 566-5717

RALPH A. LAMBIASE
DIRECTOR OF
ENFORCEMENT
(203) 566-4560

MARYELLEN MEARA
EXAMINER III
BROKER-DEALERS
INVESTMENT-ADVISERS
(203) 566-4257

MARGOT T. O'GRADY
EXAMINER II, SECURITIES
REGISTRATION
(203) 566-5783

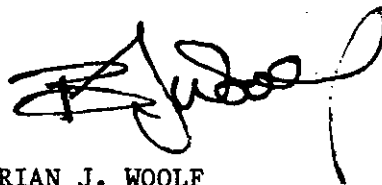
BANKING COMMISSIONER'S COMMENTS

In an effort to facilitate compliance with state securities laws and regulations, the third edition of the Securities Bulletin features statements of departmental policy concerning financial planners, dual registration of agents and the regulatory treatment of independent contractors under the securities laws. These statements of departmental policy address the growing number of inquiries which the Securities and Business Investments Division is presently receiving.

In conjunction with the Banking Regulation Division of the Department of Banking, the Securities and Business Investments Division also reviews offering materials which are filed in connection with the conversion of financial institutions from mutual to stock form of ownership. The staff of the Securities and Business Investments Division uses these guidelines in reviewing the offering materials of converting institutions for adequate and full disclosure.

This issue also features an Investor Alert which reflects the Department's continuing efforts to combat abuses involving investments in precious metals.

I hope that you find the Bulletin to be a continuing source of useful and practical information.



BRIAN J. WOOLF
BANKING COMMISSIONER

POLICY STATEMENT ISSUED ON
INDEPENDENT CONTRACTORS

A question has arisen concerning the treatment under Chapter 662 of the Connecticut General Statutes, the Connecticut Uniform Securities Act (the "Act") of persons engaged in the sale or purchase of securities and designated as "independent contractors." The term "independent contractor" is used neither in the Act nor in the Regulations promulgated thereunder. Consequently, the treatment of such persons under the Act would depend on the activities performed by them and on their relationship to a given broker-dealer.

Specifically, the issue has been whether such persons should be required to register as "broker-dealers" or as "agents" under the Act. Section 36-471(b) of the Act defines the term "agent" to mean

any individual, other than a broker-dealer, who represents a broker-dealer...in effecting or attempting to effect purchases or sales of securities.

Whether an individual "represents" a broker-dealer so as to bring him within the definition of "agent" contained in Section 36-471(b) of the Act is a question of fact. An individual may be said to "represent" a broker-dealer if his or her selling activities are subject to a sufficient measure of control by the broker-dealer, through contract or otherwise. The greater the control by the broker-dealer, the more likely it would be that the "independent contractor" represents the broker-dealer so as to fall within the statutory definition of "agent". Factors bearing on the issue of control include whether the nature of the "independent contractor's" selling activity is distinguishable from that generally performed by the broker-dealer and the degree of oversight and supervision exercised by the broker-dealer. Also relevant is the extent to which the "independent contractor" holds himself out as having a relationship with the broker-dealer.

In analyzing any situation involving an "independent contractor", resort cannot be had to labels. The functional expectations traditionally attaching to such concepts as "employee" and common law agent make reliance on such concepts as the basis for hard and fast rules difficult in the context of securities regulation. The traditional meanings ascribed to such terms do not necessarily apply in the context of securities regulation principally because of the overriding supervisory responsibilities of firms to their agents. Consequently, the actual activities performed by "independent contractors" will be closely scrutinized and measured against the statutory definitions of "agent" and "broker-dealers".

STATEMENT OF DEPARTMENTAL POLICY
CONCERNING DUAL REGISTRATION OF AGENTS

Section 36-500-5(b)(4) of the Regulations of Connecticut State Agencies provides that "[n]o person shall be concurrently registered as an agent of more than one broker-dealer or issuer unless written consent is obtained from the commissioner." Similarly, Section 36-500-5(c)(4) of the Regulations states that "[n]o person shall be concurrently registered as an investment adviser unless written consent is obtained from the commissioner."

The question has arisen under what circumstances the Banking Commissioner would consent to dual registration under the provisions of Section 36-500-5 of the Regulations. Whether dual registration would be permitted involves a case by case determination on the part of the Commissioner. Generally, however, the Commissioner may consent to dual registration 1) where broker-dealers, issuers or investment advisers are affiliated or where management and control of the broker-dealers, investment-advisers or issuers are substantially identical and 2) where all employers enter into a voluntary undertaking containing the following provisions: a) the effective date of the dual employment; b) consent to the dual employment by all employers; c) an agreement by each employer to assume joint and several liability with all other employers for any act or omission of the agent in violation of Connecticut law during the employment period, and d) an agreement that each employer register the agent with the Commissioner.

The foregoing would not affect the provisions of Section 36-500-5(d) of the Regulations which requires written employer consent and full written disclosure to the client where individuals are registered as investment adviser agents and/or broker-dealer agents.

POLICY STATEMENT ISSUED ON
FINANCIAL PLANNERS

The Department of Banking has received several inquiries concerning whether financial planners are subject to broker-dealer or investment adviser registration under Chapter 662 of the Connecticut General Statutes, the Connecticut Uniform Securities Act (the "Act").

Financial planners provide a broad range of services to clients. The primary functions of a financial planner, however, involve evaluating the financial position of a client and recommending a strategy for achieving financial goals over time. Such strategies may include tax and investment planning. The preparation of a financial program for a client is based upon information elicited from the client with respect to the client's financial circumstances and aims. In addition, the financial planner may assist in implementing the recommended program. For example, the financial planner may make specific recommendations with respect to carrying out the general recommendations of the program or may sell securities, investments or insurance products to the client. The compensation arrangements between financial planners and their clients vary. Many financial planners charge their clients an hourly fee. Others are compensated through an overall fee for developing an individual program for the client. Sometimes, the financial planner is compensated through sales commissions upon the sale to the client of investment securities.

The advisory and implementational functions performed by financial planners may warrant that the financial planner register as an investment adviser or a broker-dealer under § 36-474 of the Act. Indeed, to perform the functions of a financial planner, it is highly probable that a person acting in such capacity would have to register as an investment adviser. Section 36-471(f) of the Act defines the term "investment adviser" to mean:

any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities.

Advice, recommendations or reports need not pertain to specific securities for the investment adviser registration provisions of the Act to be triggered as long as the person performing such services does so as part of a regular business and for compensation. Compensation may be found even if the person providing investment advisory and other services does not charge a separate fee for the total services rendered.

If a person performing financial planning functions falls within the definition of "investment adviser" in Section 36-471(f) of the Act, he or she would not only be subject to the registration requirements of the Act, but the antifraud provisions of Section 36-473 of the Act as well. The confidential relationship between

investment advisor and client would require adequate disclosure of any conflicts of interest in the advisor-client relationship. For example, the investment adviser should disclose if its personal securities transactions are inconsistent with advice given to clients and any compensation received from the issuer of a security being recommended. If the investment adviser is also a registered representative of a broker-dealer and provides advisory services outside the scope of its employment with the broker-dealer, it must disclose to clients that its advisory activities are independent of its employment with the broker-dealer. In addition, if the investment adviser recommends that its clients execute securities transactions through a broker-dealer with whom the investment adviser is associated, the investment adviser has in such recommendation, including (a) any compensation the investment-adviser would receive from his employer in connection with the transaction and (b) the client's option to execute recommended transactions through other broker-dealers.

A financial planner who assists a client in implementing the plan by making offers or sales to the client of recommended securities may fall within the definition of "broker-dealer" contained in Section 36-471(c) of the Act and have to register as such pursuant to Section 36-474(a) of the Act. Section 36-471(c) of the Act defines the term "broker-dealer" to mean "any person engaged in the business of effecting transactions in securities for the account of others or for his own account." To fall within the definition of "broker-dealer", a financial planner would have to effect transactions in securities with some degree of regularity so as to meet the requirement that he be "engaged in the business" of effecting securities transactions.

ENFORCEMENT AND EXAMINATION SECTION

INVESTOR ALERT ON PRECIOUS METALS

Recently, the Securities and Business Investments Division of the Department of Banking has taken the initiative in investigating abuses in precious metal dealings. Much of the efforts have been in cooperation with other states, notably Florida and New York.

This stepped-up regulatory activity has made it necessary to distinguish those transactions which are marketed as investment contracts and fall within the jurisdiction of the Department from those transactions that merely involve the offer or sale of a precious metal and may not be subject to securities regulation.

Generally, the Department does not exercise oversight over precious metal dealers or the products they sell. However, the Department is concerned about those marketing arrangements involving precious metals which may result in securities transactions. The most common investment schemes involve gold and silver bullion on deposit.

It is suggested that prospective investors in precious metals should acquire a thorough understanding of the transaction and should obtain answers to the following questions prior to making an investment:

- 1) Whether the dealer is registered with a federal, state or self-regulated organization (such as the National Futures Association).
- 2) Whether the firm provides written materials regarding the risks involved in the transactions.
- 3) Whether the dealers make complete and accurate representations concerning the investment in precious metals.
- 4) Whether there is sufficient disclosure of the financial condition of the firm.

- 5) Whether there is sufficient disclosure regarding the duration of the company's business, operating history, principals and officers.
- 6) Whether there is disclosure of the percentage of investment allocated to fees and commissions and/or other costs associated with the investment.
- 7) Whether there is a statement as to where the investment will be physically held.

In its effort to investigate abuses involving precious metals investments the Department also coordinates its activities with the Better Business Bureau and the North American Securities Administrators Association.

Should one suspect any irregularities involving investments in precious metals, contact the Securities and Business Investments Division of the Department of Banking, State Office Building, 165 Capitol Avenue, Hartford, Connecticut (telephone: 203/566/4560, Ext. 60).

CEASE AND DESIST ORDERS ISSUED

On January 12, 1984, the Securities and Business Investments Division issued a Cease and Desist Order against John A. and Constance Andresen, 35 Ivy Hill Road, Mt. Kisco, New York 10549. It is alleged that John A. and Constance Andresen sold securities of Microbyx Corporation without prior registration of those securities. It is also alleged that John A. and Constance Andresen made untrue statements of material facts and omitted to state material facts in connection with the offer or sale of shares of Microbyx Corporation.

On January 31, 1984, the Securities and Business Investments Division issued a Cease and Desist Order against Abraham Van Rumund, 630 Oakwood Avenue, West Hartford, Connecticut 06110. It is alleged that Mr. Van Rumund sold securities of Jovan Tours Inc. without registration. The Order also alleged that Mr. Van Rumund failed to register as a broker-dealer.

On May 8, 1984, the Securities and Business Investments Division issued a Cease and Desist Order against J.D. Underwood, Inc. d/b/a Lone Star Oil & Gas Co., 2526 West Mockingbird Lane, Dallas, Texas 75234. The Order alleged that J. D. Underwood sold securities without prior registration. It also alleged that the sale of those securities was not effected through a registered broker-dealer.

Criminal Referral

On February 2, 1984, Banking Commissioner Brian J. Woolf announced the referral to Chief State's Attorney Austin J. McGuigan of a case involving Richard L. Eastty, a managing partner in Financial Guidance, Inc. Financial Guidance, Inc. is a Connecticut corporation having its principal business offices in Old Mystic, Connecticut. Commissioner Woolf referred the case with the recommendation that Mr. Eastty be criminally prosecuted for violation of certain provisions of the Connecticut Uniform Securities Act. As a managing partner of the firm, which specialized in financial and tax planning for individuals and corporations, Mr. Eastty was principally involved in the management of several partnerships through which investor funds were to have been invested in the production and sale of television shows, the operation of a restaurant, and in condominiums and rental units.

As a result of an extensive investigation conducted by the Securities and Business Investments Division of the Department of Banking, Mr. Eastty was alleged to have diverted customer funds and to have attempted to cover up the misuse of such funds when investors requested that he account for the funds which had been entrusted to him for investment purposes. It was also alleged that Mr. Eastty violated the state securities laws in failing to register as a broker-dealer and investment adviser.

CONVERSION GUIDELINES ANNOUNCED

The Securities and Business Investments Division of the Department of Banking has formulated guidelines that will be used to review offering materials relating to the conversion of thrift institutions from mutual to stock form of ownership.

The guidelines are based on the disclosure requirements contained in section 36-487(b) of the Connecticut Uniform Securities Act, as well as on guidelines used by the Federal Home Loan Bank in its review of such conversions.

The guidelines provide a solid basis from which the Division can perform a review of offering materials for complete and full disclosure. However, they should not be considered all-inclusive.

REGISTRATION GUIDELINES FOR THE CONVERSION OF BANKS FROM MUTUAL TO STOCK FORM OF OWNERSHIP

(1) FRONT COVER PAGE OF THE OFFERING CIRCULAR

(a) The offering circular should state whether it is for the subscription and community or the public offering.

(b) Name of the issuer.

(c) Title and amount of securities offered and a brief description of such securities.

(d) The following statement should appear in bold-face type:

**THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED
BY THE BANKING COMMISSIONER OF THE STATE OF CONNECTICUT
NOR HAS THE COMMISSIONER PASSED UPON THE ACCURACY OR
ADEQUACY OF THIS (SUBSCRIPTION AND COMMUNITY, PUBLIC)
OFFERING. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.**

(2) SUMMARY INFORMATION

The issuer should include a summary of the information contained in the offering circular where the length or complexity of the offering circular makes such a summary appropriate.

(3) RISK FACTORS

The issuer should set forth on the page immediately following the summary a discussion of the principal factors that make the offering speculative or one of high risk.

(4) INFORMATION WITH RESPECT TO THE ISSUER AND ANY SIGNIFICANT SUBSIDIARY

- (a) Name
- (b) Address
- (c) Form of organization
- (d) State or federal jurisdiction in which organized
- (e) Date of organization
- (f) General characteristics of business
- (g) Description of properties and equipment
- (h) Competitive conditions of industry or business

(5) USE OF PROCEEDS

- (a) Kind and amount of securities to be offered
- (b) Proposed offering price or method by which it is to be computed
- (c) Estimated underwriting commissions
- (d) Underwriter's over-allotment option and associated increase in proceeds and underwriting commissions
- (e) Estimated cash proceeds to be received by the issuer
- (f) Use of proceeds
- (g) Amount to be used for each purpose
- (h) Priority in which proceeds will be used for each purpose

(6) DIVIDENDS

Explanation of the issuer's expectation to pay dividends and any state law which restricts payment of such dividends

(7) MARKET FOR SHARES

- (a) No previous market for shares
- (b) No guarantee that an active market will develop for the shares
- (c) Proposed symbol to be used if listed on an exchange
- (d) Name and address of every underwriter

(8) CAPITALIZATION OF AND LONG TERM DEBT OF THE ISSUER AND ANY SIGNIFICANT SUBSIDIARY

- (a) Current
- (b) Pro-forma
- (c) Description of each security being offered

(9) LEGAL MATTERS

A description of any pending litigation or proceeding to which the issuer is a party which materially affects its business or assets

(10) INFORMATION WITH RESPECT TO EVERY OFFICER AND DIRECTOR OF THE ISSUER

- (a) Name
- (b) Address
- (c) Principal occupation for the past five years
- (d) Remuneration paid during the past 12 months and estimated remuneration to be paid in the next 12 months
- (e) Dollar amount and brief description of personal benefits received in the past 12 months
- (f) Description of any material interest in any material transaction with the issuer or significant subsidiary effected within the past three years or proposed to be effected
- (g) With respect to management or other material contracts made within the past two years or to be made other than in the course of business if such contracts are to be performed in whole or in part

at or after the offering

- i) Dates
- ii) Parties to
- iii) General effect

(h) Amount of securities to which each officer and director intends to subscribe

(11) DESCRIPTION OF CONVERSION

(a) Subscription and Community Offering

- i) Brief description of material terms relating to the subscription offering
- ii) Expiration date
- iii) Method of exercising subscription rights
- iv) Payment for shares
- v) Maximum subscription price
- vi) Possible reduction of subscription price
- vii) Relationship of subscription price to public offering price
- viii) Any requirement that all unsubscribed shares be sold
- ix) Any other material conditions of the subscription offering

(b) PUBLIC OFFERING

- i) Description of the plan of distribution for all unsubscribed shares
- ii) If the shares are to be sold through an underwriter, the following table should appear on the front page of the offering circular:

	<u>Price to Public</u>	<u>Underwriting Discounts; Commissions</u>	<u>Proceeds</u>
Per share	\$ _____	\$ _____	\$ _____
Total	\$ _____	\$ _____	\$ _____

Such table should indicate the price to the public, the aggregate underwriting discounts and commissions, and the net proceeds.

- iii) Names of the underwriters and the respective amount underwritten by each
- iv) Discounts and commissions to be allowed or paid to dealers in connection with the sale of the unsubscribed shares
- v) Name of any underwriter that intends to confirm sales to any accounts over which it exercises discretionary authority and the number of shares intended to be confirmed

(12) DESCRIPTION OF CAPITAL STOCK

- (a) Title and class of stock
- (b) Dividend rights
- (c) Voting rights
- (d) Liquidation rights
- (e) Preemptive rights
- (f) Non-takeover provisions

(13) FINANCIAL STATEMENTS

- (a) A balance sheet of the issuer less than four months old from the effective date
- (b) For each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, a profit and loss statement including an analysis of surplus

ORDER ISSUED EXEMPTING CERTAIN
INVESTMENT ADVISERS FROM AUDITED
FINANCIAL STATEMENT REQUIREMENT

ORDER PURSUANT TO SECTION 36-500-32(a)(6) OF THE REGULATIONS OF
CONNECTICUT STATE AGENCIES PROMULGATED UNDER
CHAPTER 662 OF THE CONNECTICUT GENERAL STATUTES,
THE CONNECTICUT UNIFORM SECURITIES ACT (THE "ACT")

- (1) The Banking Commissioner (the "Commissioner") is charged with the administration of the Act.
- (2) The Commissioner is also charged with the administration of Sections 36-500-1 et seq. of the Regulations of Connecticut State Agencies (the "Regulations") promulgated under the Act.
- (3) Section 36-500-32(a)(6) of the Regulations provides that "the Commissioner may exempt a person, security, or transaction from a specific provision of these Regulations".
- (4) The Commissioner finds that the issuance of this order is necessary and appropriate in the public interest and consistent with the protection of investors.
- (5) Section 36-500-13(b)(2)(A) of the Regulations provides:

Every registered investment adviser shall file with the commissioner a report of its financial condition as of the end of its fiscal or calendar year...Each annual report of financial condition filed pursuant to this section shall be examined in accordance with generally accepted auditing standards and reported upon with an opinion expressed by an independent certified public accountant or independent public accountant.

- (6) Section 36-500-8(a)(1) of the Regulations provides, in part:

Each...investment adviser applicant who files an application for initial registration shall file with and as a part of such application, an original statement of financial condition... Where the...investment adviser applicant has been in business for one year or more, the statement of financial condition shall be examined in accordance with generally accepted auditing standards and reported upon with an opinion expressed by an independent certified public accountant or independent public accountant.

statement of financial condition shall be examined in accordance with generally accepted auditing standards and reported upon with an opinion expressed by an independent certified public accountant or independent public accountant.

7) Pursuant to the authority granted me in Section 36-500-32(a)(6) of the Regulations, I therefore ORDER as follows:

(A) The following two classes of persons shall be exempted from the requirement in Section 36-500-8(a)(1) and Section 36-500-13(b)(2)(A)(ii) of the Regulations that reports of financial condition for investment advisers be examined in accordance with generally accepted auditing standards and reported upon with an opinion expressed by an independent certified public accountant or independent public accountant:

(i) Investment advisers who do not have custody or possession of clients' funds or securities;

(ii) Investment advisers who do not require the prepayment of advisory fees six months or more in advance and in excess of \$500 per client;

(B) Persons meeting the criteria in paragraph 7(A) of this Order shall be in compliance with Section 36-500-8(a)(1) and Section 36-500-13(b)(2)(A)(ii) of the Regulations if the reports of financial condition submitted to the Department of Banking are not audited.

So ordered this 20th day of May 1984.



Brian J. Woolf
Banking Commissioner

SECURITIES REGISTRATION SECTION

Filing Fees

a) Offerings Involving Warrants

Section 36-500-19(b) of the Regulations promulgated under Chapter 662 of the Connecticut General Statutes, the Connecticut Uniform Securities Act provides, in part, that:

A person filing a registration statement under Section 36-486 or 36-487 of the Act shall pay a non-refundable, filing fee for each class and/or series of securities a registration statement covers. The registration statement for a security...may cover one or more classes and/or series of the issuer's securities. In computing the filing fee, a registration statement covering one or more types of securities of the same issuer which are offered for sale as a unit is deemed to cover a single class.

Where common stock and warrants are offered for sale as a unit, one filing fee would be required. If common stock and warrants are not offered as a unit, two separate filing fees would be required. Pursuant to section 36-488(b) of the Act, the fee shall not exceed fifteen hundred dollars nor may it be less than three hundred dollars.

The securities underlying the warrants would have to be registered because, pursuant to section 36-471(k)(6) of the Act, the offering of the warrants would simultaneously involve the continuous offering of the securities underlying the warrants. Warrants or rights and the underlying securities may be registered on a single registration statement. Note, however, that the filing fee will be computed on the basis of the aggregate offering amount in Connecticut of the warrants or rights plus that of the underlying securities. Inasmuch as the offering of the underlying securities is an intrinsic part of the offering of the warrants, a single filing fee of between \$300 and \$1500 would have to be remitted.

The final amount of securities registered by the Department will be based on the information provided to the Department in the final pricing notice. Checks sent to the Department of Banking should be made payable to "Treasurer, State of Connecticut".

b) Offering Made Pursuant to Section 36-490(b)(9) of the Act

The filing fee for offerings made pursuant to section 36-490(b)(9) of the Act and Rules 505 or 506 of federal Regulation D or section 4(2) of the Securities Act of 1933 need be remitted per offering. Checks should be made payable to "Treasurer, State of Connecticut".

Consent to Service of Process

A consent to service of process filed pursuant to section 36-502(g) of the Act on forms CT-4 or U-2 should name the Banking Commissioner of the State of Connecticut as agent for service of process.

INFORMATION

If you require information regarding the dissemination of the Securities Bulletin, please write or call Ms. Louise E. Hanson, Department of Banking, Securities and Business Investments Division, 165 Capitol Avenue, Room 229, Hartford, Connecticut 06106. Telephone (203) 566-4560 extension 33.

STATE OF CONNECTICUT
Office of Banking Commissioner
Room 239, State Office Bldg.
Hartford, CT 06106