STATE OF CONNECTICUT

DEPARTMENT OF BANKING

STATE OFFICE BUILDING • HARTFORD, CT 06106

BRIAN J. WOOLF
COMMISSIONER

HOWARD B. BROWN
DEPUTY COMMISSIONER

SECURITIES AND BUSINESS INVESTMENTS DIVISION
BULLETIN

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BANKING COMMISSIONER'S COMMENTS

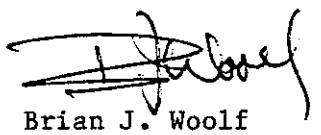
The fourth edition of the Securities Bulletin reflects the continuing effort of the Department of Banking through its Securities and Business Investments Division to combat and deter securities and business opportunity abuses. When warranted, and after appropriate administrative action is taken by this department, civil complaints are referred to the Office of the Attorney General of Connecticut and criminal complaints are referred to the Office of the Chief State's Attorney. When appropriate, cases are referred to the regional offices of the Securities and Exchange Commission and the National Association of Securities Dealers, Inc.

The bulletin also contains an Investor Alert which points out some steps which investors themselves can take to guard against certain risks and pitfalls associated with investments in penny stocks. Based on feedback we have received, the Investor Alert is enhancing our dialogue with the investing public, the securities industry, legal practitioners, and other interested persons.

Included in this edition also is a proposed advisory interpretation on which I have invited comments. The proposed interpretation, among other things, primarily addresses the issue whether certain employees of financial institutions who are engaged in providing securities brokerage services to customers of such institutions, are required to be registered as agents under the Connecticut Uniform Securities Act.

There is also a discussion of the work of the National Conference of Commissioners on Uniform State Laws. I support the objective of the conference to the extent that they may serve as a model for the implementation of coherent, consistent and uniform state securities laws.

We welcome comments on the contents of the bulletin and any other aspect which may prove beneficial to its readers.



Brian J. Woolf
Banking Commissioner

SECURITIES & BUSINESS INVESTMENTS DIVISION
DEPARTMENT OF BANKING
ANNOUNCEMENTS

Advisory Committee to the Banking Commissioner
on the Connecticut Uniform Securities Act

On March 5, 1984, Frank J. Marco, Esq. a partner in the law firm of Shipman & Goodwin, 799 Main Street, Hartford, CT, was appointed to the Advisory Committee. Attorney Marco has had substantial experience representing major investment bankers, privately held corporations (both as in-house and as outside counsel) and publicly traded corporations of various sizes.

On July 12, 1984, Richard Slavin, Esq., associated with the law firm of Cohen and Wolf, P. C., 1115 Broad Street, Bridgeport, CT, was appointed to the Advisory Committee. Attorney Slavin was formerly employed with the Department of Banking as Director of the Securities and Business Investments Division.

North American Securities Administrators Association, Inc.
Committee Assignments

Ralph A. Lambiase, Vice Chairman, Broker Dealer Oversight Committee
Maryellen Meara, Forms Revision Committee
Eric Wilder, Investment Advisers Committee
Sidney Igdalsky, Zone Coordinator, Enforcement Coordination and Information Committee (Northeast Zone)
Caleb Nichols, Chairman, Disclosure Standards Committee
Cynthia Antanaitis, Regulation of Financial Planners Study Committee

Personnel Changes

On July 11, 1984 Eric J. Wilder was promoted from Principal Examiner to Assistant Director of the Securities and Business Investments Division. Mr. Wilder oversees the broker-dealer and investment adviser registration section and the securities and business opportunity registration section.

On July 20, 1984 Margot T. O'Grady was promoted from Examiner II to Banking Examiner III (Securities).

On August 17, 1984 Norma Heckendorf was promoted from Examiner II to Banking Examiner III (Securities).

On September 17, 1984 Virginia C. Hughes resigned from the position of Principal Examiner of the Enforcement/Examination Section of the Securities and Business Investments Division.

On September 28, 1984 June Christensen was promoted from Clerical Trainee to Clerk.

On September 28, 1984 Tia Damato was promoted from Head Clerk to the position of Connecticut Career Trainee.

On October 11, 1984 Paula J. Boivin resigned from the position of Connecticut Career Trainee. Ms. Boivin accepted a position with the Department of Revenue Services of the State of Connecticut.

On October 19, 1984 Jean Foto was promoted from Head Clerk to Clerical Unit Supervisor of the securities and business opportunity registration section of the division.

TEMPORARY AGENT TRANSFER PROGRAM

On July 5, 1984 the Banking Commissioner issued an Order pursuant to Section 36-500(e) of the Connecticut Uniform Securities Act and Section 36-500-32(a)(6) of the Regulations of Connecticut State Agencies would enable Connecticut to join the vast majority of states participating in the NASAA/CRD Temporary Agent Transfer Program. The Temporary Agent Transfer Program would expedite and facilitate the transfer of agents from one broker-dealer to another in this state. In the past, the transfer of broker-dealer agents had been hindered due to the failure of terminating broker-dealers to timely file a notice with the Commissioner on Form U-5. The Temporary Agent Transfer Program would provide for a temporary transfer of registration for agents who terminated employment with a terminating broker-dealer within the previous seven calendar days and without disciplinary reasons.

The Temporary Agent Transfer Program would be implemented through the Central Registration Depository system ("CRD"), which is operated by the National Association of Securities Dealers Automated Quotation System ("NASDAQ"), a wholly owned subsidiary of the National Association of Securities Dealers ("NASD"), under a contract with the North American Securities Administrators Association, Inc. ("NASAA"), on behalf of NASAA's state regulatory jurisdictions. Connecticut is a member of NASAA. To participate in the Temporary Agent Transfer Program, a broker-dealer would have to execute and file with the Commissioner, through the CRD, a broker-dealer undertaking and maintain sufficient funds on deposit with the CRD to pay the required regulatory fees. The Temporary Agent Transfer Program would enable a broker-dealer agent to be temporarily transferred to a participating broker-dealer for a 21-day period. The registration would then be made permanent if a properly executed Form U-4 were filed on behalf of the agent. The temporary transfer of registration for agents would not relieve a terminating broker-dealer from filing a Form U-5 within five days of termination of employment. In addition, the temporary agent transfer would not relieve any employing broker-dealer or its agents of liability imposed under the Connecticut Uniform Securities Act or its regulations or of any liability imposed at law or in equity. The Temporary Agent Transfer Program would be particularly beneficial in Connecticut, which ranks fifth or sixth nationwide in the number of registered agents. The Temporary Agent Transfer Program is expected to ease the transfer of broker-dealer agents, alleviate the hardship to agents from a terminating broker-dealer's delinquency in filing Form U-5, and provide a procedure for agent transfer that is uniform with other states.

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Proposed Advisory Interpretation

Summary

Financial institution involvement in securities-related activities and the desire of traditional securities firms to become involved in banking reflects a drive for diversification of activity in the financial services industry. The need to realize greater profits and expand customer base in an uncertain economy has fostered diversification. Diversification has assumed two basic forms: 1) Geographical expansion and 2) product diversification. Financial institutions, for example, have expanded their activities through separate subsidiaries and affiliates; acquired other related business entities and contracted with concerns which would directly or indirectly allow for greater product diversification. As the line between traditional "banking" and traditional "securities" activities becomes blurred, a functional analysis of banking and securities activity becomes necessary.

The Banking Commissioner of the State of Connecticut is issuing an advisory interpretation pursuant to Section 36-500(e) of Chapter 662 of the Connecticut General Statutes, the Connecticut Uniform Securities Act (the "Act"). The interpretation uses a functional approach in applying the definition of "agent" contained in Section 36-471(b) of the Act to certain employees of financial institutions which have entered into contractual arrangements with broker-dealers to enable those financial institutions to provide securities brokerage services to their customers. The interpretation also provides that a broker-dealer occupying physical space within a financial institution will be deemed to be operating a "branch office" as defined in Section 36-500-13(a)(4) of the Regulations promulgated under the Act. In addition, the interpretation prescribes certain requirements for the advertising of securities services and the segregation of records. The interpretation also bars broker-dealers participating in contractual arrangements with financial institutions from effecting transactions in securities for the fiduciary accounts of those financial institutions.

Date: Comments must be received by October 19, 1984. Comments should be addressed to Caleb L. Nichols, Division Director, Securities and Business Investments Division, Department of Banking, Room 229, 165 Capitol Avenue, Hartford, Connecticut 06106.

Text of Advisory Interpretation

The Banking Commissioner of the State of Connecticut has received several inquiries concerning the applicability of Chapter 662 of the Connecticut General Statutes, the Connecticut Uniform Securities Act (the "Act") to the activities of broker-dealers proposing to enter into contractual arrangements with state bank and trust companies, national banking associations, savings banks, state and federally chartered savings and loan associations or state or federally chartered credit unions located in Connecticut. Pursuant to the terms of the typical contractual agreement, the broker-dealer would be obligated to execute transactions for customers of the financial institution in return for which the institution would be compensated.

Any broker-dealer participating in such an arrangement would be "transact[ing] business in this state as a broker-dealer" within the meaning of Section 36-474(a) of the Act and thus subject to the general supervision of the Banking Commissioner and the registration requirements of the Act and the Regulations promulgated thereunder, including the requirement in Section 36-500-5(b)(1) of the Regulations providing that "[n]o broker-dealer which is a corporation or partnership shall be registered as such without the registration of at least one agent...." No broker-dealer will be excused from the registration requirements of Section 36-474(a) of the Act because such broker-dealer only maintains a telephone or telecommunications network between the participating financial institution and the broker-dealer.

The participating financial institution, however, would be excluded from the definition of "broker-dealer" contained in Section 36-471(c) of the Act. Section 36-471(c)(3) of the Act provides an exclusion from the definition of "broker-dealer" for "a state bank and trust company, a national banking association, a mutual savings bank, a savings and loan association, a federal savings and loan association, a credit union, a federal credit union, or trust company."

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." Section 36-474(a) of the Act states, in part, that "[n]o broker-dealer...shall employ an agent unless such agent is registered under...[the Act]."

Notwithstanding the existence of any formal employment arrangement with the participating financial institution, the broker-dealer or both, individuals will be deemed to be representing a broker-dealer in effecting or attempting to effect purchases or sales of securities within the meaning of Section 36-471(b) of the Act and be subject to the registration requirement contained in Section 36-474(a) of the Act if the individual performs one or more of the following functions:

a) Opens customer accounts and/or makes suitability determinations regarding the purchase or sale of securities. This function, however, will not cover individuals who merely collect or verify information for transmittal to and action by another person registered as an agent or a broker-dealer under the Act.

b) Renders investment advice or makes investment recommendations in connection with the purchase or sale of securities.

c) Solicits or accepts orders to purchase or sell securities.

d) Processes orders to purchase or sell securities.

e) Handles inquiries or engages in the resolution of complaints regarding the purchase or sale of securities.

f) Supervises sales personnel either directly or indirectly or assumes responsibility for the day-to-day operation and supervision of any place of business of a broker-dealer in this state.

The Banking Commissioner, however, will not deem any individual who merely engages in the performance of clerical or ministerial functions an "agent" within the meaning of Section 36-471(b) of the Act. An individual who falls within the scope of the definition of "agent" will be subject to all provisions of the Act and Regulations thereunder, including, but not limited to, examination requirements and on-site supervision by the broker-dealer whom the agent represents.

Section 36-500-13(a)(4) of the Regulations defines the term "branch office" to mean "any office, other than a main office but including a corporate subsidiary of the broker-dealer..., which is located in this state, owned or controlled by the broker-dealer...and engaged in the securities or investment advisory business." If a broker-dealer occupies physical space in an area within a financial institution, whether through a lease arrangement with the financial institution or otherwise, and that physical space is directly accessible to customers of the financial institution, the broker-dealer will be deemed

to be operating a "branch office" within the meaning of Section 36-500-13(a)(4) of the Regulations and will be subject to the record keeping and supervisory requirements contained in Section 36-500-13(a) of the Regulations. To facilitate examinations of such branch office by the Department of Banking, each area occupied by a broker-dealer must be sufficiently separated from the retail area of the participating financial institution such that a referred customer may leave the retail area and then choose whether to conduct securities business with the participating broker-dealer without feeling obligated to do so in the presence of officers and employees of the financial institution. In addition, the area must be conspicuously identified as the place of business of the broker-dealer; readily distinguishable from the operations of the surrounding financial institution and staffed by persons whose affiliation with the broker-dealer is conspicuously identified.

The Commissioner may deem it a dishonest or unethical business practice within the meaning of Section 36-484(a)(2)(H) of the Act, resulting in the possible denial, suspension or revocation of an application for broker-dealer registration, if a broker-dealer entering into a contractual arrangement with a financial institution fails, in any prospectus, pamphlet, circular, form letter, form, sign, advertisement or other sales literature or advertising communication addressed or intended for distribution to prospective investors, to accurately represent the role of the participating financial institution; to indicate that the participating financial institution is not a registered broker-dealer under the Act and to indicate that the participating financial institution's existence and activities are separate from those of the participating broker-dealer. Any such material should be filed with the Banking Commissioner by the broker-dealer and will become a part of the registration application or renewal thereof of the broker-dealer.

The Commissioner may also deem it a dishonest or unethical business practice within the meaning of Section 36-484(a)(2)(H) of the Act if a broker-dealer entering into a contractual arrangement with a financial institution effects transactions in securities for the fiduciary accounts of the participating financial institution, unless full disclosure is made to the fiduciary customer of the relationship between the broker-dealer and the participating financial institution.

In addition, the Commissioner may deem it a dishonest or unethical business practice within the meaning of Section 36-484(a)(2)(H) of the Act if a broker-dealer entering into a contractual arrangement with a financial institution fails to keep its books and records separate from those of the participating financial institution.

Issued: October 5, 1984.

Brian J. Woolf
Banking Commissioner

INVESTOR ALERT ON PENNY STOCKS

The Investor Alert is a quarterly program jointly sponsored by the Council of Better Business Bureaus, ("CBBB") and the North American Securities Administrators Association, Inc., ("NASAA"), to expose investment frauds to the public and provide useful information on how to avoid the often sophisticated and unlawful schemes that prey on investors. In a recent release, the CBBB and NASAA issued to investors some cautionary notes on the investment risks involved in penny stocks.

So-called "penny stocks," which are traded generally at very low prices and promote new untested products such as electronic asparagus cutters or gold mining operations, are a growing problem for investors. The penny stock game has the same allure to speculative investors as casino gambling. But sometimes it is fixed. It is filled with unproven or nonexistent products, novice management and investors who don't seem to know or care that a "gold mining property" is under a lake, as long as they are told that their nickel stock in it will go to three dollars a share.

Penny stock losses have mounted to hundreds of millions of dollars in recent years. State securities regulators have taken scores of actions against dealers for violations of state laws. Similarly, Canada Provinces have been active in enforcing securities laws to curb various kinds of investment abuses. Forty five percent of 78 new penny stock issues recently surveyed by Venture magazine had participants who were convicted felons, securities violators, targets of securities investigations, reputed criminal figures or principals who faced serious charges of insider financial misdealing.

HOW PENNY STOCK FRAUDS OPERATE

In the classic penny stock fraud, promoters assign themselves millions of shares of stock at a fraction of a cent per share, or no cost to them at all. Next a prospectus is prepared disclosing that the product has little or no chance of success and the stock is offered at five or ten cents a share. The market is then artificially inflated through demand created by the controlling broker who uses pushy, high-pressure tactics to lure investors.

A broker may not allow an investor "in" unless there is a promise to buy more shares later in order to keep the price up. After the share prices reach several dollars the "smart money" gets out and the stock plummets. Novices often don't realize what is happening and cannot sell in time. After the stock plunges, the company goes out of business, with promoters lining their pockets with the stock proceeds in the company treasury. In this situation, most of the investors will lose a substantial portion, if not all, of their money.

This classic example is not true in all cases of low priced stocks, but it has been seen numerous times. There are, of course, legitimate companies whose securities are traded at low prices, but discriminating between a legitimate offering and penny stock fraud can sometimes be difficult.

HOW TO PROTECT YOURSELF IN THE PENNY STOCK GAME

The following suggestions may help anyone who decides to play the high-risk penny stock game:

(1) Beware of high pressure, unsolicited telephone calls.

(2) Check the background of the broker-dealer

(3) Beware of claims that the stock will double soon, and demands that you make an on-the-spot decision and pay immediately.

(4) Phone your state securities regulator to learn if the salesperson is registered and whether any legal actions have been filed against him/her.

(5) Suspiciously scrutinize an suggestions that the broker has inside information or that manipulative techniques are being used to raise the stock's price.

THE PROSPECTUS

No matter what a penny stock salesperson tells you, get a prospectus and read it. A prospectus is a document that fully discloses all the important facts about the offering. It must be filed with the state securities administrator. (In a private offering the document is sometimes called an offering circular or offering memorandum and contains much the same information as in a prospectus). Anything a salesperson says that contradicts disclosures in the prospectus should be a red flag warning you about the offering. Following are some sections of the prospectus that disclose the risks involved in a penny stock offering:

Management -- This section tells you about the experience and background of management. Check to make sure, for example, that someone whose sole experience is as a railroad engineer is not at the helm of a biomedical research company.

Company Financial Health -- If they are not already deeply in debt, many penny stock companies have little or no capital to work with. They will be using investors' money simply to keep the doors open. Read the financial statement and accountant's report in the prospectus and, if you don't understand them, find someone who does and can explain it all to you.

Dilution -- Promoters often obtain huge numbers of shares free. When the public's money is invested it is immediately watered down by the absence of cash investment by the promoters. The prospectus will have charts or information showing how investor dollars have been eroded by "cheap stock" in the hands of promoters. For example, 75% dilution or more should be a cause for concern.

Use of Proceeds — This section tells you how much money will be used for the business venture and how much will be used for suspect, unproductive purposes such as loans to officers and directors, back taxes or unmet payroll. This is the key to the legitimacy of the operation.

Product — This part of the prospectus will tell you if the electronic asparagus cutter has been tested and proven. Often this section will contain double-talk indicating that the product is "about to be tested", "may be tested," or that money is being raised that will allow testing. Read this part carefully to learn the stage of development --if any -- of the "new invention."

Transactions with Management/Conflicts of Interest -- Watch out for interest-free loans to principals, and transactions where the officers, directors and promoters sell property to the company at inflated prices. This could indicate that the company is giving its money to the promoters in less than arms-length transactions and that there won't be much left to develop the property or product.

Litigation and Investigations -- The prospectus will tell you about lawsuits filed against the corporation and promoters and, often, government investigations. Investors can get information on civil and criminal securities fraud actions, including the names of defendants and names of defendants and companies, by calling the securities administrator in their jurisdiction.

Finally, find out if the stock is registered with the state securities agency and/or the federal Securities and Exchange Commission. Even if it is, government registration of the offering does not mean that the government approves the soundness of the company or believes the investment is advisable. All that is required to register a security in many jurisdictions is full disclosure of the facts. You alone must use the prospectus and other reliable sources to judge if you should invest in the stock.

The securities administrator in your state is responsible for protecting investors and ensuring that complete information is available. If you have doubts about whether an offering or a sales representative is registered, or if you do not receive adequate information, contact the Securities and Business Investments Division of the Department of Banking.

The CBBB and Better Business Bureaus in the United States and Canada answer inquiries on companies located in the areas they serve. Before putting money in any investment plan, it is a good idea to contact your CBBB for a reliability report on the company you intend to deal with.

CRIMINAL REFERRALS

Prime Time Marketing, Inc.

On October 2, 1984 Commissioner Brian J. Woolf referred to the Chief State's Attorney Austin J. McGuigan the case of Prime Time Marketing, Inc. As a result of an investigation, it was alleged that Prime Time Marketing, Inc. violated the Connecticut Business Opportunity Investment Act in that it:

(1) Engaged in a course of business which operated as a fraud or deceit upon Connecticut purchaser-investors and

(2) Offered and sold unregistered business opportunities to Connecticut purchaser-investors.

Presently, the company is involved in bankruptcy proceedings, filed on February 21, 1984 in the United States Bankruptcy Court, 915 Lafayette Boulevard, Bridgeport, Connecticut. The court-appointed trustee in this matter is Attorney John Ronshagen, 55 Trumbull Street, New Haven, Connecticut. Attorney Ronshagen has advised the staff of the Securities and Business Investments Division of the Department of Banking that it may be difficult to locate some of the assets and financial records of the company, as well as Mr. Harry Ball, president of the firm. Official records of the Office of the Secretary of the State Corporations Division, show Mr. Sherman Goosman to be vice-president and treasurer and Ms. Grace Ball to be secretary of the company. The company incorporated in Connecticut on or about September 20, 1982.

John Koropatkin

On August 10, 1984, the Commissioner made a criminal referral involving John Koropatkin to Ernest J. Diette, Jr., Assistant State's Attorney. As a result of an investigation by the Securities and Business Investments Division of the Department of Banking, it was alleged that Mr. Koropatkin violated certain provisions of the Connecticut Uniform Securities Act in that he: (1) engaged in a course of business which operated as a fraud or deceit; (2) offered and sold unregistered securities; and (3) failed to register as a broker-dealer or agent. Mr. Koropatkin allegedly defrauded as least two and possibly four Connecticut residents of monies entrusted to him for investment purposes.

William E. Browne

On October 24, 1984, Commissioner Brian J. Woolf referred to Chief State's Attorney Austin J. McGuigan the case of William E. Browne. As a result of an investigation conducted by the Securities and Business Investments Division of the Department of Banking, it was alleged that Mr. Browne offered and sold unregistered securities and that he engaged in a course of business which operated as a fraud and deceit upon Connecticut investors. On June 29, 1984 Commissioner Woolf ordered Mr. Browne, an agent for Josephthal and Company, to cease and desist from any offer or sale of securities in or from Connecticut. The Banking Commissioner through the staff of the Securities and Business Investments Division, has consulted Josephthal and Company to ascertain whether or not it will make restitution to Ms. Koontz' of a $40,000 loss which she incurred as a result of the alleged misappropriation by its agent, William E. Browne.

CIVIL REFERRAL

Duncan, Waddell and Ferrante

The Commissioner referred a commodities related complaint to Joseph Lieberman, Attorney General for the State of Connecticut. This complaint involved a Connecticut investor who alleged that Duncan, Waddell and Ferrante, a business concern specializing in precious metals, investments, effected unauthorized trades in an account. The firm allegedly sold 4000 ounces of silver and shorted a similar amount without the permission of the investor.

ADMINISTRATIVE ORDERS

Hamilton Gregg Securities Corporation
Hamilton Gregg & Company

On August 13, 1984 the Commissioner issued two orders cancelling the broker-dealer and investment adviser registration of Hamilton Gregg Securities Corporation and Hamilton Gregg & Company, respectively. As a result of an investigation conducted by the Securities and Business Investments Division of the Department of Banking, it was alleged that both firms were insolvent, inactive and ceased to do business in the State of Connecticut. Both firms were located in Falls Village, Connecticut.

Charles D'Angelo, Jr.

On August 23, 1984 the Commissioner revoked the agent registration of Charles D'Angelo, Jr., of Harwinton, Connecticut. Mr. D'Angelo allegedly misappropriated $757,000 from the customer accounts of Smith Barney, Harris Upham and Co., Inc., where he was employed as a branch office manager in the firm's Waterbury office. The firm agreed to make full restitution to all investors for the loss incurred as a result of Mr. D'Angelo's alleged misappropriation.

Bruce T. Karwic

On August 30, 1984 the Commissioner revoked the agent registration of Bruce T. Karwic of Hartford, Connecticut. Mr. Karwic allegedly misappropriated $23,590 from Denton & Company, Inc., 750 Main Street, Hartford, Connecticut. Mr. Karwic was a registered agent of the firm.

Southeast Securities of Florida, Inc.

On August 30, 1984 the Commissioner cancelled the broker-dealer registration of Southeast Securities of Florida, Inc. On January 30, 1984, the United States District Court of New Jersey issued an Order against the firm which: (1) mandated that the firm cease doing business as a broker-dealer; (2) froze the firm's bank accounts, customer and broker-dealer accounts; and (3) approved the National Association of Securities Dealers, Inc. as a temporary special officer solely for the purpose of taking control of the books and records of the firm and securing its premises. On February 13, 1984, the United States District Court of New Jersey, issued an Order appointing a SIPC trustee to liquidate the firm.

Ceiling Genie

On September 19, 1984, the Commissioner ordered Ceiling Genie, et al at 1168 Farmington Avenue, Berlin, Connecticut, to cease and desist from offering and selling allegedly unregistered business opportunities. The respondents allegedly failed to disclose certain material facts in connection with the offer and sale of those business opportunities. An investigation conducted by the division, charged the respondents with offering and selling cleaning machines and chemicals, instructions and training, advertising, a computerized billing procedure and other sales or marketing aids to prospective purchaser-investors, each of whom was required to pay $9.995.00 for the package. The company is presently having liquidity problems.

EXEMPT TREATMENT OF TENDER OPTION BONDS CONSIDERED

An advisory interpretation was recently requested on the exempt status of tender option bonds under Section 36-490(a)(1) of Chapter 662 of the Connecticut General Statutes, the Connecticut Uniform Securities Act (the "Act"). An underwriter proposed to purchase various issues of state and local governmental obligations from one or more financial institutions and reoffer those obligations to the public with an Option Agreement attached. Pursuant to the Tender Option Agreement between the underwriter and the bondholder, the holder would receive the right to tender the bonds to the underwriter for purchase on a specified tender date and receive payment in the amount of the strike price plus interest on the bonds. The underwriter would cause to be delivered an irrevocable letter of credit issued by a national bank for the benefit of the bondholders. The letter of credit would authorize the bank to draw amounts sufficient to pay each holder the strike price plus accrued interest on the bonds.

After finding the bonds themselves exempt from securities registration under Section 36-490(a)(1) of the Act, the Commissioner determined that the put options clearly would be deemed separate securities under Section 36-471(m) of the Act since they would fall within the language of that section referring to "any interest or instrument commonly known as a 'security'." However, since the letter of credit authorizing the bank to pay each holder the strike price would be tantamount to a "guarantee", the puts, being "guaranteed" by a bank, would be exempt from registration under Section 36-490(a)(3) of the Act.

INTERPRETATION ISSUED ON ORAL GUARANTEES UNDER SECTION 36-504(6)(C) OF CHAPTER 662a OF THE CONNECTICUT GENERAL STATUTES, THE CONNECTICUT BUSINESS OPPORTUNITY INVESTMENT ACT

The Department of Banking recently considered the issue of whether Section 36-504(6)(C) of the Connecticut Business Opportunity Investment Act should be read to encompass oral guarantees of income. Section 36-504(6)(C) of the Act defines the term "business opportunity" to mean:

> The sale of lease, or offer for sale or lease of any products, equipment, supplies or services which are

> sold or offered for sale to the purchaser-investor for the purpose of enabling the purchaser-investor to start a business, and in which the seller represents ... (C) that the seller guarantees, either conditionally or unconditionally, that the purchaser-investor will derive income from the business opportunity ....

Observing that Section 36-504(6)(C) does not distinguish between oral and written guarantees, the Commissioner determined that the words "guarantees" and "income" should be interpreted according to their ordinary, plain meanings and that the ordinary meaning of the word "guarantees" would encompass oral as well as written representations. To find otherwise, the Commissioner noted, would be to provide business opportunity sellers with a means of circumventing the surety bond provisions of Section 36-507 of the Act.

EQUIPMENT TRUST CERTIFICATES

The department has received inquiries concerning the identity of the "issuer" where a corporation offers to exchange outstanding equipment trust certificates secured by equipment being used by that corporation. Section 36-471(h) of the Connecticut Uniform Securities Act, (the "Act"), defines the term "issuer" to mean:

> any person who issues or proposes to issue any security; except that (1) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term 'issuer' means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; and (2) with respect to certificates of interest or participation in oil, gas or mining titles or leases, or in payments out of production under such titles or leases, 'issuer" means the owner of any such title, lease, right or interest, whether whole or fractional, who creates or sells fractional interests therein.

Section 36-471(h) of the Act does not specifically identify the issuer where equipment trust certificates are offered. However, it is the general position of this department that, in an offering of equipment trust certificates, the issuer of the equipment trust certificates is the person by whom the equipment is or will be used. This view is consistent with the positions taken by the majority of other states as well as the Securities and Exchange Commission.

BANKING COMMISSIONER REFINES POLICY ON REQUESTS FOR ADVISORY INTERPRETATIONS

In a prior issue of this Bulletin, the Banking Commissioner indicated that requests for advisory interpretations would not be considered if based on hypothetical facts or unnamed parties. Refining that position, the Commissioner reiterated that requests for advisory interpretations based on hypothetical facts should be discouraged, but added that in some instances an exception would be made if the facts did not present any novel legal issues. The Commissioner also noted that, while failure to disclose the identity of the parties would not automatically prompt dismissal of a request, any advisory interpretations based on unnamed parties would be strictly informal and non-binding.

RULE 504 OFFERINGS IN CONNECTICUT

By Willard F. Pinney, Jr.*

Connecticut has adopted Rules 505 and 506 from among the federal private placement exemption rules of the Securities and Exchange Commission in Regulation D, but not Rule 504. Issuers relying on Rule 504 in connection with an offering to be made wholly or partly in Connecticut must qualify the offering under the Connecticut Uniform Securities Act (the "Connecticut Act"), assuming no other exemption is available under the Connecticut Act. However, qualification in Connecticut may actually prove beneficial to some issuers in view of the opportunity to make small public offerings under Rule 504 in Connecticut and other states which have regulatory patterns consistent with the requirements of the Rule.

Rule 504 is one of a series of six rules in Regulation D under the Securities Act of 1933 (the "Securities Act"). The Rule permits offerings of securities not over $500,000 by issuers which are not investment companies and are not subject to the reporting requirements of Sections 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act"). There is no limit on the number of purchasers and no required disclosure. Effectively, these smaller offerings are left to the states to regulate, and, accordingly, Connecticut requires that a Rule 504 offering be qualified in Connecticut or otherwise exempted. In contrast, the exemptions found in federal Rules 505 and 506 are also exemptions from registration in Connecticut under Section 36-500-22 of the regulations of the Banking Commissioner.

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Although Rule 504 does not contain any limit on the number of purchasers or any disclosure requirements, it does proscribe general solicitations or general advertising and requires limitations on resales. However, even these conditions are waived when offers and sales under the Rule "are made exclusively in one or more states each of which provides for the registration of the securities and requires the delivery of a disclosure document before sale and are made in accordance with those state provisions". Connecticut has such registration and disclosure document delivery requirements so that small offerings under Rule 504 may be made in Connecticut which are effectively public offerings of unrestricted securities.

Registration of securities in this manner in Connecticut requires compliance with the registration by qualification procedures set out in Section 36-487 of the Connecticut Act and regulations thereunder. Section 36-500-18 of the regulations requires the delivery of a prospectus as a condition of registration by qualification.

It is, of course, possible that offerings which for federal purposes fall within Rule 504 may come within one of the several exemptions from registration found in the Connecticut Act. Appropriate reliance on Rule 504 together with some other exemption in Connecticut would minimize compliance efforts and cost, but the ability to issue freely transferable securities under Rule 504 would be lost without actual compliance with the State's registration process. In either case, reliance on Rule 504 requires compliance with a number of definitions, filing requirements and other provisions found in Rules 501 through 503 of Regulation D and the antifraud provisions of the Securities Act.

Issuers contemplating a small public offering under Rule 504 should first consider whether the anticipated benefits of issuing freely transferable securities will be realized and, if so, whether the result may lead to compliance requirements under the Exchange Act. Since Rule 504 is not available to issuers required to file reports under Sections 13 or 15(d) of the Exchange Act, there may be insufficient public information about the issuer to permit a public market in its shares in view of rules applicable to broker-dealers. On the other hand, the development of a public market and any resulting increase in the number of shareholders of an issuer may eventually subject the issuer to the reporting and other provisions of the Exchange Act before it is prepared to accept the costs and responsibilities of a public company.

Finally, it should be noted that where a Rule 504 offering is made in two or more states and the issuer intends to avoid the solicitation and resale restrictions of the Rule, the securities must be qualified and a disclosure document delivered in each state in which the offering is made. In such cases of multiple state registrations, the burden of complying with various state disclosure requirements could prove prohibitive.

The staff of the Banking Commissioner of Connecticut charged with administering the Connecticut Act has received many inquiries concerning the treatment of Rule 504 offerings in Connecticut. Upon learning that compliance with Rule 504 for federal purposes does not exempt an offering in Connecticut, issuers should not only inquire as to the availability of some other exemption, but also consider the potential benefits of qualifying the offering under the Connecticut Act.

STATUS OF REVISED UNIFORM SECURITIES ACT

By Robert B. Titus*

The existing Uniform Securities Act, which has been adopted in whole or in part in virtually every jurisdiction in the United States, was proposed by the National Conference of Commissioners on Uniform State Laws ("NCCUSL") twenty-six years ago. Due to the many changes which have taken place in the securities laws since that time, the NCCUSL determined that it was appropriate to draft and propose a Revised Uniform Securities Act ("RUSA"). The updated Act would reflect various developments which have occurred, both in the marketplace and in federal and state regulatory efforts, since 1958. A first draft was completed and reviewed this past summer at the NCCUSL Annual Conference, with a second and final reading presently scheduled for the summer of 1985.

While the format and style of the RUSA follow that of the existing Uniform Securities Act, there are a number of significant revisions proposed. (Copies of the current working draft can be obtained from NCCUSL's national headquarters in Chicago or from the undersigned who serves as Reporter for the Drafting Committee). The principal objectives of the revision effort are to:

(1) modernize and update the broker-dealer and securities registration provisions to reflect marketplace and regulatory developments;

(2) promote greater uniformity, not only among the various states' regulatory efforts but also between the states and the federal efforts;

(3) exempt from registration or facilitate the registration of securities of seasoned issuers; and

(4) strengthen both the enforcement powers of the state securities administrators and the rights of individuals to recover under private rights of actions.

The NCCUSL Drafting Committee is assisted by advisers from the North American Securities Administrators Association, the American Bar Association, the National Association of Securities Dealers, Inc., the American Bankers Association, the American Stock Exchange and the Investment Company Institute.

*Chairman of the Advisory Committee to the Banking Commissioner on the Connecticut Uniform Securities Act and Reporter for the National Conference of Commissioners on Uniform State Laws Drafting Committee