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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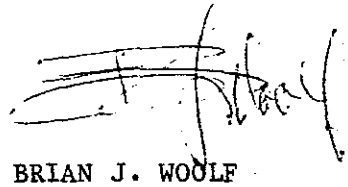
BANKING COMMISSIONER'S COMMENTS

In implementing the state securities, business opportunity and tender offer laws, the staff of the Securities and Business Investments Division of the Department of Banking seeks to insure that investors are provided with full disclosure of relevant information upon which to make an informed investment decision. It is also our desire to keep Connecticut registrants and other interested persons apprised of significant regulatory developments. I am firmly committed to the belief that government should educate as well as regulate where appropriate.

Significantly, the mandate of the Division has grown measurably in recent years and particularly during the 1984 calendar year. Statements of policy have been implemented concerning the regulatory treatment of financial planners, the dual registration of agents, independent contractors, and the Temporary Agent Transfer Program. Registration guidelines for the conversion of banks from a mutual to a stock form of ownership were also announced. Investor Alerts and other pertinent investor information are disseminated periodically. These statements reflect an effort to implement public policy in a balanced, coherent, and orderly manner.

Volume II, No. 1 of the Securities Bulletin features some significant procedural and substantive developments. Enclosed is an advisory interpretation that specifies which financial institution employees who provide securities brokerage services to customers are required to register as agents under the Connecticut Uniform Securities Act. In addition, the Division is giving increased attention to the supervisory responsibility of a broker-dealer for the acts or omissions of its agents. For compliance purposes, a statement of supervisory procedures under the state securities regulations are contained in this edition. Further, I am pleased to include in this edition a series of articles prepared by members who serve on the Banking Commissioner's Ad Hoc Advisory Committee on the Connecticut Uniform Securities Act. These articles concern the registration of real estate syndicate securities, the status of venture capital firms as investment advisers, and the Connecticut "de minimis offering" exemption.

I continue to welcome your comments on the matters contained in this and other editions of the Bulletin.



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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.

On October 5, 1984, the Banking Commissioner issued a proposed advisory interpretation which focused on whether employees of certain financial institutions which offered brokerage services through a separate broker-dealer would be considered "agents" of that broker-dealer under Section 36-471(b) of Chapter 662 of the Connecticut General Statutes, the Connecticut Uniform Securities Act. Comments were invited and received on the proposed interpretation. The Banking Commissioner considered all comments and made appropriate modifications to the interpretation.

The Banking Commissioner 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

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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 Issued: February 7, 1985

Effective Date: Ninety (90) days following date of issuance for those persons presently involved in arrangements of the type described in the advisory interpretation. For all other persons, the advisory interpretation is effective when issued.

Text of Advisory Interpretation

The Banking Commissioner of the State of Connecticut (the "Commissioner") 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 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 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. The referral of complaints and/or the mere transmittal of order forms or like information to another person registered as an agent or a broker-dealer under the Act for action by that person will be deemed a clerical or ministerial function for purposes of the preceding sentence. 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, 1) to accurately represent its role with respect to its dealings with the participating financial institution; 2) to indicate, from information available to it, that the participating financial institution is not a registered broker-dealer under the Act, and 3) to indicate that its existence and activities are separate from those of the participating financial institution. Any such material should be filed with the 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.

This advisory interpretation shall take effect ninety (90) days following its issuance for those persons presently involved in arrangements of the type described herein. With respect to all other persons, this advisory interpretation shall take effect when issued.

Issued February 7, 1985

Brian J. Woolf
Banking Commissioner

REGISTRATION OF REAL ESTATE SYNDICATE SECURITIES WITH THE REAL ESTATE COMMISSION IN CONNECTICUT

By Joseph A. Vitale and Dane R. Kostin*

An article by Willard Pinney in the November 1984 issue of the Securities and Business Investments Division Bulletin explained the need for registration by qualification under the Connecticut Uniform Securities Act ("Connecticut Securities Act") of an offering that is exempt under Rule 504 of Regulation D promulgated under the Federal Securities Act of 1933. In certain instances, offerings exempt under Rule 504 and Rule 505 of Regulation D must also apply for a permit with the Connecticut Real Estate Commission. Registration for qualification with the Real Estate Commission can be overlooked by an issuer, as the Connecticut Securities Act appears to be fairly comprehensive in its regulation of such securities. Also, only a minor reference is made to such registration in the CCH Blue Sky Reporter.

Chapter 826 of the Connecticut General Statutes ("Real Estate Act") governs the sale of "a real estate syndicate security" defined in Section 47-91 as "...any interest in any general or limited partnership, joint venture, unincorporated association, or similar association not a corporation, owned beneficially for not less than 18 persons and formed for the sole purpose of, and engaged solely in, investment in or gain from an interest in real property...." An interest held by a husband and wife is considered held by one person for the purpose of determining beneficial ownership for not less than 18 persons. The Real Estate Act is unusually broad in scope, in that it extends to interests in entities such as general partnerships and joint ventures, which may not be considered securities in other regulatory contexts.

Regulations have not been promulgated under the Real Estate Act, nor is there any case law interpreting the definition of a real estate syndicate security. There is no real guidance, for example, on the meaning of "...formed for the sole purpose of, and engaged solely in, investment in or gain from an interest in real property..." Informal inquiries with the Real Estate Commission indicate that if an issuer issues a security in an entity that owns real estate but is also engaged in a significant amount of other business, the security issued by such an issuer need not be qualified under the Real Estate Act. For example, if an issuer owns a piece of real estate but also operates a nursery, the security issued by such an issuer may not need to be qualified under the Real Estate Act. However, it is unclear how extensive the nursery business must be relative to the real estate holdings in order for the security in this example to fall outside of the scope of the Real Estate Act.

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* Mr. Kostin is a partner and Mr. Vitale is an associate in the Farmington, Connecticut law firm of Tarlow, Levy, Mandell & Kostin, P.C.

Exemptions found in Section 47-101 of the Real Estate Act include any offer or sale of a real estate syndicate security in a transaction not involving a public offering within the meaning of Section 4(2) of the Securities Act of 1933. Such an exemption would include offerings of real estate syndicate securities that are exempt under Rule 506, since it is promulgated under Section 4(2), and it would also include offerings of real estate syndicate securities that could be deemed to be private placements under the case law which has developed under Section 4(2). Other exemptions from the provisions of the Real Estate Act include any real estate syndicate securities or participation in an oil, gas, or mining title or lease, any shares, memberships or certificates of interest or participation in a mutual water company, or in a real estate investment trust subject to regulation by the Real Estate Commission under Sections 20-329o to 20-329bb, any real estate syndicate security for which a registration has been filed under the Securities Act of 1933, and any interest in connection with any forms of development referred to in the Condominium Act of 1976. The Real Estate Commission has the ability to exempt other offerings by regulation but has not issued any regulations, even though the Real Estate Act was passed in 1973.

It should be noted that offerings of interests in real estate limited partnerships may require qualification with the Real Estate Commission even if they are exempt from registration with the Securities and Exchange Commission under Rule 504 or Rule 505, unless such interests do not meet the definition of real estate syndicate security due to the number of beneficial owners of such interests, or unless such interests are otherwise exempt. This is because Rule 504 and Rule 505 were promulgated under Section 3(b) of the Securities Act of 1933, relating to small issues, rather than Section 4(2) relating to transactions by an issuer not involving a public offering. Qualification with the Real Estate Commission is required in addition to registration under (in the case of a rule 504 offering) or exemption from (in the case of a Rule 505 offering and certain Rule 504 offerings) the Connecticut Securities Act. However, if an offering in a real estate limited partnership or real estate syndication is qualified with the Real Estate Commission, and if its issuer is organized, located and operating within or from Connecticut, then such an offering is exempt from registration with the Banking Commissioner under Section 36-490(a)(17) of the Connecticut Securities Act. The terms "real estate limited partnership" and "real estate syndication" are unclear in that they are not defined under either the Connecticut Securities Act or the Real Estate Act, although the term "real estate syndicate" is defined under the Real Estate Act.

An issuer may not offer or sell a real estate syndicate security in Connecticut unless such security has been qualified or unless the security or transaction is otherwise exempt. Qualification of a real estate syndicate security with the Real Estate Commission requires the submission of a detailed application, accompanied by a copy of a prospectus, a consent to service of process appointing the Chairman of the Real Estate Commission as agent for service of process, and a fee of $100 plus one tenth of one percent of the aggregate value of the certificates of interest sought to be issued up to a maximum aggregate fee of $1,500. Qualification of a real estate syndicate security becomes effective upon the issuance of a permit by the Real Estate Commission.

The Real Estate Commission has the power to refuse a permit if it finds that the proposed plan of business of the issuer, the securities proposed to be issued, or the method used in issuing them would tend to work a fraud upon the purchaser. The Real Estate Commission imposes informal review requirements on an offering of a real estate syndicate security to insure that the terms and conditions of an offering have been fullly disclosed and to insure that such disclosures present a fair reflection of the financial benefits to be derived from a particular piece of real estate by potential investors. Informal inquires with the Real Estate Commission indicate that it refers to the guidelines promulgated by the North American Securities Administrators Association ("NASAA") in reviewing a real estate syndicate security. Among the NASAA guidelines are guidelines regarding the qualifications of sponsors of offerings, the suitability of investors, the amount of compensation to the sponsors of offerings, the manner in which an offering may be sold, and conflicts of interest involving sponsors. In addition, informal inquiries with the Real Estate Commission indicate it will require a suitable escrow depository for the proceeds of the offering, an appropriate appraisal of the real property by a qualified appraiser, assurance of adequate insurance coverage on such property, and an historical and projected cash flow analysis of the operations of the real property.

The Real Estate Commission's review of the substantive merits of an offering differs from the Banking Commissioner's review of an offering in that the Banking Commissioner reviews an offering to insure that adequate disclosures have been made to investors in the offering documents but not to insure such disclosures present a fair reflection of the financial benefits to be derived from a particular piece of real estate by potential investors. Registration with the Real Estate Commission, therefore, is potentially more costly to an issuer in terms of legal fees incurred in compliance and potentially more time-consuming than registration with the Banking Commissioner in that it could require restructuring of an offering which, though its terms are adequately disclosed, is deemed not to fairly reflect benefits to be derived by a potential investor.

There are certain benefits to registering of a real estate syndicate security with the Real Estate Commission. There is no prohibition on advertisement of an offering of real estate syndicate securities. For example, an intrastate offering that has been qualified with the Real Estate Commission may be advertised if such advertisement is filed with the Real Estate Commission prior to its use.

In addition, the sale of a real estate syndicate security does not require licensure of a seller as a real estate salesman or real estate broker. A sale of a real estate syndicate security may require licensure of a seller who is not an issuer as a broker-dealer or a broker-dealer agent by the Banking Commissioner. However, a real estate syndicate security may be sold by a non-issuer who holds a real estate broker's license with a real property securities dealer endorsement on it, without such person having to additionally register with the Banking Commissioner as a broker-dealer or broker-dealer agent, provided that such person does not sell real estate syndicate securities of more than one issuer.

Due to the comprehensive nature of securities regulation by the Banking Commissioner pursuant to the Connecticut Securities Act, the need for qualification of real estate syndicate securities with the Real Estate Commission can be overlooked. Among other things, issuers of securities involving an investment in real estate exempt from registration with the Securities and Exchange Commission under Rules 504 and 505 and either registered or exempt from registration under the Connecticut Securities Act should be aware of the potential need for qualification with the Real Estate Commission.

THE CONNECTICUT "DE MINIMIS OFFERING" EXEMPTION

By Barry Waxman and Richard Slavin*

In 1982 Connecticut adopted, by statute and regulation, a series of new transactional exemptions from the registration provisions of the Uniform Securities Act. The exemptions were designed to coordinate with Rule 505 and Rule 506 of the federal Regulation D series. In addition, a "de minimis" exemption, Section 36-490 (b)(14) of the Connecticut General Statutes, was added. This exemption reflected the drafters' determination that there was a class of securities offerings, not exempt from registration under then-existing law, which should require no pre-sale registration by the Banking Commissioner.

The "de minimis" exemption was drafted as a result of discussions between the staff of the Department of Banking and the Banking Commissioner's Advisory Committee on the Connecticut Uniform Securities Act. The staff expressed a desire to receive notice of offerings made pursuant to the then-existing exemption from registration for Connecticut private offerings. Members of the Advisory Committee noted that there was a class of restricted securities offerings, usually involving relatives, friends and associates of the issuer's principals, that raise such small amounts of money and that are so limited in scope that the benefits of registration would not be worth the burden. The discussions resulted in a consensus that registration and even filing an exemptive notification or application were not necessary for this class of securities offerings. The result was a new exemption that would not be unavailable due to the failure to file a formal notice.

What Are the Conditions for the Exemption?

All of the elements of the exemption must be met before the exemption is available. The first two requirements are:

(1) that the offer and sale is effectuated by the issuer of the security;

(2) that the total number of purchasers of all securities of the issuer not exceed ten.

Similar to the Regulation D format, the exemption is based on the number of purchasers, not on the number of offerees. However, the number of purchasers is limited to ten, including already existing purchasers. Moreover, the fact that some of the purchasers, existing or new, are located outside Connecticut does not mean they are not counted in the ten purchaser limit. Further, all classes of an issuer's securities are included in the count, so that holders of an existing class of stock will be aggregated with purchasers of another class.

Mr. Waxman is a principal and Mr. Slavin an associate in the firm of Cohen and Wolf, P.C., Bridgeport, Connecticut.

Additional language in this subdivision allows an issuer to offer securities subsequent to a §36-490(b)(14) transaction without running afoul (through "integration") of the ten purchaser limitation with respect to the earlier transaction; however, any subsequent offering must be registered or exempt under some other provision of the Connecticut Uniform Securities Act. The subdivision also contains rules for determining what constitutes a single purchase.

A third requirement is that no advertisement, article, notice or other communication published in any newspaper, magazine article or similar medium, or broadcast over television or radio, or any other general solicitation be used in connection with the sale.

This condition is similar to one in Regulation D and most other state private offering exemptions. It reflects the expected limited nature of the usual offering of securities to relatives, friends and associates.

A fourth requirement is that no commission, discount or other remuneration is paid or given directly or indirectly in connection with the offer and sale, and the total expenses, excluding legal and accounting fees, in connection with the offer and sale not exceed one percent of the total sales price of the securities.

The "no commission" provision is directed at insuring that the sales effort will be made only by issuers and their principals. This reflects the expected limited nature of the offering. Although there are no regulations or published opinions interpreting "commissions, discounts, or other remuneration", this language could be read broadly enough to prohibit virtually any kind of payments made, directly or indirectly, to someone offering the securities for the issuer.

The statute does provide certain guidance in construing the provision regarding commissions, discounts and remuneration: "For purposes of this subdivision, a difference in the purchase price among the purchasers, shall not, in and of itself, be deemed to constitute indirect remuneration". This provision appears to allow the sale of insiders' stock, or "cheap stock", without negating the availability of the exemption. It also appears to reflect the fact that the worth of an enterprise may increase over time and thus subsequent purchasers included in the ten purchaser limit may "buy in" at a different price than was paid by earlier investors.

By allowing expenses of up to one percent of the total sales price of the securities, the statute enables an issuer to bear certain unspecified expenses of the offering, perhaps, for example, those involved in making an information disclosure with respect to the offering. The exclusion of legal and accounting fees from the one percent cap makes feasible the use of professional assistance for the preparation of corporate documents, financial statements and some type of offering document or other disclosure information. It is not, however, a condition

to the availability of the exemption that an offering document, or any specific information, be made available to proposed investors. (Nevertheless, the existence of the antifraud provisions of the securities laws may make it advisable to provide such information, and in a form that constitutes a record of what has been provided).

Is it a One-Time Exemption?

There is no time limit by which the securities must be sold to claim the exemption nor is there a restriction on the dollar amount of securities that may be sold in a given period. The only restriction is the amount of purchasers who may be involved. If there are fewer than ten total purchasers (including existing security holders) the exemption may be used indefinitely and more than one offering can be employed; however, once there are more than ten purchasers of all of the securities of the issuer, another exemption or registration must be used.

Is the Exemption a Rule 504 Analog for Connecticut?

Connecticut's Section 36-490(b)(14) exemption is significantly different than the federal Rule 504 exemption and thus cannot fairly be seen as a Connecticut analog to Rule 504. For example, while Rule 504 is limited to offerings that do not exceed $500,000 and there is no limit on the number of purchasers, the Section 36-490(b)(14) exemption, which has no dollar limit, is not available to issuers once they have (or will have, through the offering) more than ten security holders. Section 36-490(b)(14), by virtue of this limitation and the limitations on the offering process, in practical effect limits its availability to very restricted offerings. Rule 504 calls for the absence of general solicitation and advertising and mandates that securities acquired in Rule 504 offerings are restricted (as if they had been acquired in a private offering under Section 4(2) of the Securities Act of 1933); such securities cannot easily be resold. Section 36-490(b)(14) does not impose this restricted resale status. However, Section 36-490(b)(14) does not have available the optional provisions of Rule 504 that allow for general solicitation, and dropping the restricted status provision with respect to offers and sales under Rule 504 that are made exclusively in states that provide for the registration of such securities and require the delivery of a disclosure document prior to the time of such sales. For these provisions to be dropped, the securities must be registered in the various states in accordance with the applicable registration provisions.

Subject to the $500,000 limitation, Rule 504 in effect allows for federally exempt mini-public offerings but with a relatively undemanding federal filing (Form D) and a more demanding state registration. The flexibility available under Rule 504, at the cost of the extra work, is not available under Section 36-490(b)(14), which allows only for very restricted offerings.

The significant benefit of Section 36-490(b)(14) is the absence of any filing or registration requirement; it may facilitate regulatory compliance for offerings of securities with respect to which the issuer's principals were giving no prior attention to securities laws requirements.

Relationships to Laws of Other States and Federal Law

Qualification of an offering of securities under the Connecticut "de minimis" exemption does not exempt such offering from the securities laws of other states, if there are sales outside of Connecticut. Most states have limited or private offering exemptions that would be applicable to an offering whose characteristics make it exempt in Connecticut under Section 36-490(b)(14); however, one should be sure that a notice filing or other additional requirements such as offeree or purchaser sophistication are not imposed in the other states where the securities are being offered.

The "de minimis" offering exemption is not unique to Connecticut. It appears in some other states with varying restrictions. A number of states that have had a "de minimis" offering exemption have repealed it or restricted it to in-state offerings, with the advent of the Uniform Limited Offering Exemption based on Regulation D.

If an offering exempt under section 36-490(b)(14) is interstate in nature, the intrastate offering exemption from the registration requirements of the Securities Act of 1933 will not be available, and there will be a need to qualify for another federal exemption. Generally, that would be the Section 4(2) private offering exemption. However, the availability of that exemption will depend on other factors that are not elements of the section 36-490 (b)(14) statutory exemption, such as the sophistication of the proposed investors (offerees as well as eventual purchasers) and the adequacy of the information about the issuer available or made available to them.

STATUS OF VENTURE CAPITAL FIRMS AS "INVESTMENT ADVISERS"

By Frank J. Marco*

The Banking Commissioner has recently issued an order dealing with the status of certain types of venture capital firms as investment advisers, as defined in section 36-471(f) of the Connecticut Uniform Securities Act (the "Act").

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." This subsection further provides that certain persons are not included within the definition of investment adviser, including (A) a person whose only clients in Connecticut are insurance companies, pension funds and certain other types of institutional investors ("Institutional Investors"), or (B) a person who has had no more than five clients in this state (other than Institutional Investors) and who does not present himself or herself to the public in this state as an investment adviser. Further excluded from the definition of "investment adviser" are such other persons "not within the intent of this subsection as the commissioner may by regulation or order designate."

The investment adviser provisions of the Act, like the Investment Advisers Act of 1940 (the "Federal Advisers Act") have a number of provisions that could adversely affect the operations of private venture capital firms. One of the most troublesome of these is the prohibition against compensation based on investment performance, a method of compensation that is typical in the venture capital industry. Under the Federal Advisers Act, the managers of venture funds have maintained, as a threshold position, that they are not "advisers" since no advisory relationship exists between them and the fund or the holders of interests in the fund. As an alternative, it can be argued that even if the fund is a "client", it only constitutes one client since the venture capital managers do not render investment advice to the interest holders. Thus, at the most, they render internal advice, not advice to the holders of interests.

In June of 1983, the Banking Commissioner promulgated Section 36-500-2(f) under the Act (the "Regulation") which provides in part that "[f] or purposes of section 36-471(f) of the Act, each of the following is deemed to be a single client... a corporation, a partnership, an association or other unincorporated entity... but only if the corporation, partnership, association, unincorporated entity... was not formed for the purpose of purchasing securities or seeking investment advice." Certain grandfather-type provisions are also included in the Regulation.

*Mr. Marco is a partner in the law firm of Shipman & Goodwin in Hartford, CT

Since the Regulation is open to the interpretation that an entity formed for the purpose of purchasing securities is not a single client, a manager of a fund that has more than five clients (other than Institutional Investors) could be subject to the investment adviser provisions of the Act, including the prohibition against performance-based fees.

The Connecticut Venture Group, an organization that includes as members numerous venture capital funds, submitted an application to the Banking Commissioner regarding the Regulation to ensure that the Connecticut-based funds would not be subjected to the investment adviser provisions of the Act.

By order dated July 23, 1984 (the "Order"), the Banking Commissioner has stipulated that venture capital funds having certain types of characteristics are not within the intent of the definition of an investment adviser contained in Section 36-471(f) of the Act and therefore are not required to register under the Act. The Order is based on a number of findings, including the following: (i) the funds will invest a substantial part of their business in the securities of privately held companies; (ii) the sale of interests in the fund must be exempt under the prescribed section of the Regulations; (iii) the manager must not render advisory services to more than five funds having a Connecticut investor (other than Institutional Investors); and (iv) prescribed disclosure requirements, to the extent applicable, must be met.

Managers of funds, regardless of where they are based, should carefully examine the Regulation and the Order if any holders of interests in the fund are other than "Institutional Investors", in determining whether the investment adviser provisions of the Act are applicable to them.

It should be emphasized that the Regulation did not address the threshold issue of whether venture capital managers were "investment advisers"; thus, regardless of whether any fund meets the requirements of the Order, it could maintain that it is not an investment adviser and that it is not necessary to consider counting clients, i.e., looking through to the holders of interests in the fund).

INVESTOR ALERT

The Investor Alert is a quarterly program jointly sponsored by the Council of Better Business Bureau, ("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 Zero Coupon Bonds.

State securities regulators and Better Business Bureaus have observed a disturbing new trend in house, car and furniture sales campaigns using zero coupon bonds which frequently fail to inform customers of the current value of the bonds, tax consequences, possible liquidity problems, and the extreme susceptibility to interest rate fluctuations when "zeros" are redeemed prior to maturity.

Investors have purchased zero coupon bonds with a total face value of more than $100 billion since the fall of 1982, when "zeros" first appeared. Brokers often promote the bonds -- which cost a small fraction of their face value -- as buy-and-hold securities for retirement plans and education trusts. But state securities regulators and Better Business Bureaus are concerned about the substantial number of zero coupon bonds now in use as "free" or "bonus" traffic builders to hype sales by retail merchants and home developers.

HOW "ZEROS" WORK

Zero coupon bonds are so named because there are no (zero) semianmual interest coupon payments, as there are with par bonds. "Zero" coupon bonds are automatically locked-in at a specified rate to achieve the stated yield. The claimed advantage is that investors holding zero coupon bonds to maturity know exactly what they will earn. But there is no such assurance for the short-term "zero" holder.

Zero coupon bonds have attracted investor attention for a simple reason: the deeply-discounted bonds can be purchased for a fraction of their face value at maturity -- sometimes just a few pennies on the dollar. For instance, an investor might be able to place $5,000 in government-backed zero coupon bonds at 11.7 percent interest and receive $100,000 in 25 yeaars.

The rule of thumb for "zeros" is this: the farther out the maturity date, the lower the current selling price of the bonds. For example, a $1,000 zero coupon bond with a 11 percent yield might be purchased for $322 at 10-year maturity and as little as $40 for 30-year maturity.

Zero coupon bonds are also available as municipal, corporate and certificate of deposit (CD) offerings. These offerings vary in size, length of maturity, degree of risk, tax liability and rate of yield. Broker-dealers promote "zeros" under several names, including stripped Treasuries, Treasury Receipts (TRs), Certificates of Accrual on Treasury Securities (CATS), and Treasury Investment Growth Receipts (TIGRS).

"ZEROS" AS SALES GIMMICKS

A zero coupon bond is an investment -- one that may be around for 20 years or more. Unlike the "free gifts" used in other sales promotion schemes, zero coupon bonds are complicated financial instruments that are regulated under federal and state securities laws.

AVOIDING THE PITFALLS OF "ZEROS"

The information provided here should prove useful in making decisions about zero coupon bonds, whether offered as sales incentives in sales pitches or as investments by broker-dealers.

TAXES

Zero coupon bonds backed by the U.S. Treasury are subject to yearly federal income taxes -- even though no semiannual interest payments are actually received by the bond holder.

Keep these tax provisos in mind: (1) Treasury "zeros" placed in retirement and other tax-deferred trusts are not subject to annual federal income taxes until maturity. (2) All zero coupon bonds sold prior to maturity are subject to federal income tax, even municipals. (3) Municipals are exempt from most state and city income taxes in the state of issuance, but take the time to learn about the tax laws where you live, since they vary from state to state.

INTEREST RATES

Zero coupon bonds are extremely susceptible to shifts in interest rates, when sold prior to maturity. Conventional bonds pay interest twice a year, giving the bondholder a chance to spend or reinvest the proceeds. But "zeros" - in order to guarantee the yield to maturity - are locked in at a specified rate. (For long-term "zero" holders the shifts in interest rates amount to nothing more than paper losses or gains. If held to maturity, the bonds will yield the stated face value.)

LIQUIDITY

Several state securities regulators have expressed concerns about the liquidity of the marketplace for zero coupon bonds. "Zeros" are a relatively new investment vehicle and brokerage houses have indicated they will maintain an active resale market. But only a handful of newspapers carry listings reflecting a market in "zeros," unlike other securities. As a result, few investors have access to details needed to make informed decisions about buying and selling the bonds. And despite the rapid development of "zeros," the market remains relatively small as of today.

MARKUP

The markup on a zero coupon bond is difficult for the average investor to calculate. While stocks carry explicit, stated commissions for every purchase or sale, bonds don't. Usually, the retail buyer of "zeros" is not told how much the broker could buy the bonds for on the wholesale dealer market. The National Association of Securities Dealers (NASD) has launched an inquiry to investigate reports that some securities brokers are charging customers as much as 15 percent more than the best-available dealer price for the same "zero." The NASD has a maximum markup guideline of 5 percent for stocks, but no written rule for bonds, though the general rule of thumb is that it should be less than the stock markup.

"ZERO" checklist

"Zeros" are just like any other investment: You need all the facts in front of you before you can make a decision to buy or sell. These steps should be followed before you make such a move:

Determine the current price of "zeros" offered as sales promotions. Do not be swayed by the long-term face value of the bond. Remember that the merchant paid just a fraction of the maturity amount.

Find out about the tax consequences of the "zero" offered. Can you afford to pay more in taxes each year?

Don't be misled by the words "government-guaranteed" or similar phrases in advertisements. While there is minimal credit risk associated with the purchase of Treasury "zeros," there still is a substantial risk of price drop if the bonds are sold prior to maturity.

Remember there is no such thing as a free lunch. Be cautious of retailers who offer zero coupon bonds as "free gifts" or "bonuses." For example, if you're buying a car, you might ask yourself: "Could I get a better deal somewhere else and avoid the hidden cost of the bond?"

Ask about the markup, if you're buying the "zero" from a broker. The broker may not come right out and quote the markup, but he should tell you, if you ask. If you feel that the amount is excessive, take the time to shop around for another zero coupon deal.

Get access to information about the resale market for the bonds, if you are planning to sell prior to maturity. Check your local newspaper for listings or consult a broker.

If the "zero" is offered in a sales promotion, take the time to contact your state securities regulator. Find out what the rules are where you live. Is the retailer giving you all the required facts?

Contact a tax adviser, if you're getting a "zero" with a new house. IRS regulations on zero coupon bonds involved in home sales are likely to be firmed up in coming months. Seek professional tax advice about the latest developments.

Remember that all bonds carry the risk that the bond issuer may not be able to pay the face 10 or 20 years down the road. Especially with corporate or municipal "zeros," satisfy yourself as to the creditworthiness of the issuer.

DIRECT PARTICIPATION PROGRAMS/TAX SHELTER GUIDELINES

The Securities and Business Investments Division of the Department of Banking has formulated guidelines that it will use in its review of both public and private direct participation programs.

The purpose of these guidelines is to insure that all risks related to a tax sheltered investment are disclosed in the offering materials. They will also aid the division in its review for potentially abusive tax shelters.

1. Front Cover Page of Prospectus/Private Placement Memorandum

   A. Name of the issuer.

   B. Title and amount of securities offered and a brief description of such securities.

   C. The following statement should appear in bold-face type: INVESTMENT IN THE SECURITIES DESCRIBED HEREIN INVOLVES A HIGH DEGREE OF RISK, AND ONLY THOSE PERSONS WHO ARE ABLE TO BEAR THE FINANCIAL RISKS SHOULD CONSIDER PURCHASING SECURITIES.

   D. If the offering is being done via prospectus, the following should appear in bold-face type: THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED ON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

   E. If the offering is being done via private placement memorandum, the following statement should appear in bold-face type: THE SECURITIES DESCRIBED HEREIN HAVE NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED, NOR UNDER THE SECURITIES ACT OF ANY STATE. THE SECURITIES DESCRIBED HEREIN ARE BEING OFFERED PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933, AS AMENDED, AND THE SECURITIES ACT OF CERTAIN STATES. THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION. NEITHER HAS THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY AND ADEQUACY OF THE INFORMATION CONTAINED HEREIN. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

   F. A statement recommending that a tax expert be consulted.

2. Who Should Invest

This section should state that the investment involves a high degree of risk and is suitable only for persons having substantial financial resources.

It should also state that units will be sold only to a person to whom the general partner has reasonable grounds to believe, after making reasonable inquiry, either (1) that such person has the knowledge and experience in financial matters that he or she is capable of evaluating the merits and risks of his or her investment or (2) that such person and his or her "purchaser representative" (as that term is defined in Regulation D) together have such knowledge and experience in financial matters that they are capable of evaluating the merits and risks of the investment and, in either case, that such a person is able to bear the economic risks of the investment.

3. Summary Information

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

4. Risk Factors

The issuer shall 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.

Offerees should be advised in a carefully organized series of short, concise paragraphs, under subcaptions where appropriate, of the risks to be considered before making an investment. These paragraphs should include a cross-reference to further information in the prospectus/memorandum.

5. Proposed Activities

The issuer shall describe the investment objectives and policies of the program (indicating whether they may be changed by the general partner without a vote of the limited partners) and, if and to the extent that the general partner is able to do so, the approximate percentage of assets which the program may invest in any one type of investment.

6. Use of Proceeds

The issuer shall state the purpose for which the net proceeds are intended to be used and the approximate amount and percentages intended to be used for each such purpose. The minimum aggregate amount necessary to initiate the program and the disposition of the funds raised if they are not sufficient for that purpose should be disclosed.

If deferred payments are called for or allowed, the schedule or payment shall be fully disclosed.

If a provision for assessments is provided, the method of assessment and the penalty for default shall be prominently set forth.

7. Participation in Costs and Revenues

The issuer shall disclose in tabular form the sharing and allocation (in percentages) of all partnership costs and revenues between the general and limited partners.

8. Management and Operation of the Partnership

A disclosure should be made to the extent that the general partner will have exclusive and complete control over the business and management of the partnership.

The business experience of the general partner(s), principal officers of a corporate general partner, and others responsible for the program, shall be prominently disclosed in the prospectus/memorandum, such disclosure indicating their business experience for the past five years. The lack of experience or limited experience of the general partner(s), or other person supplying services to the program, shall be prominently disclosed in the prospectus/memorandum.

9. Compensation

All indirect and direct compensation that may be paid by the program to the general partner or any affiliate of every type and from every source shall be summarized in tabular form and in narrative where appropriate to fully disclose material information. The issuer should also include estimates of all actual and necessary direct expenses paid or incurred or to be paid or incurred by the general partner.

10. Conflicts of Interest

The prospectus/memorandum should fully disclose any transactions and the dollar amount thereof that may be entered into between the program and the general partner or any affiliate. The issuer should include a full description of the material terms of any agreement and the dollar amount thereof between the program and the general partner or any affiliate. Where the general partner originates or promotes other programs, the equitable principles that will apply in resolving any conflict between the programs should be disclosed. In the case where the program has been in existence, all transactions and contracts of the program with the general partner or any affiliate during the the period of existence should be disclosed. All conflicts of interest shall be set forth in one section and shall be denominated with the title of this subsection.

11. Federal Tax Consequences

The issuer should include a summary of an opinion of tax counsel and/or a ruling from the IRS covering federal tax questions relative to the program, which may be based on reasonable assumptions described in the opinion letter. To the extent the opinion of counsel or IRS ruling is based on the maintenance of or compliance with certain requirements or conditions by the general partner(s), the prospectus/memorandum shall to the extent practicable contain representations that such requirements or conditions have been met and that the general partner(s) shall use their best efforts to continue to meet such requirements of conditions.

In addition, the following should be included:

a) A statement that the tax shelter will not provide for the permanent avoidance of tax, but only will serve a deferral function.

b) A statement that the deductibility of each expenditure made by the venture is critical and will affect the overall tax results to the investor each year.

c) A statement that any or all of the anticipated tax benefits will not be realized if: 1) tax deductions or credits do not conform to the tax laws or 2) the tax laws are amended.

d) If the issuer is a limited partnership, a statement that it qualifies for partnership status under the Internal Revenue Code of 1954, as amended.

12. Litigation

The issuer shall disclose any legal proceedings to which the program or the general partner(s) is a party that are material to the program and any material legal proceedings between the general partner(s) and participants in any prior programs.

DISCUSSION ON SUPERVISORY PROCEDURES

Every registered broker-dealer shall make and keep such accounts, correspondence, memoranda, papers, books and other records as the Commissioner by regulation prescribes. All these records are subject at any time to periodic or special examination by this department.

Section 36-500-15 of The Connecticut Uniform Securities Act Regulations states that denial, suspension and revocation of registration could be the result of a firm's failure to establish written supervisory procedures and a system for applying such procedures that may reasonably be expected to prevent and/or detect any violations of the Act and its regulations.

Article III, Section 27 of the Rules of Fair Practice of The National Association of Securities Dealers, Inc. also requires that each member establish, maintain and enforce written procedures that will enable it to properly supervise the activities of each registered representative to assure compliance with the securities laws, regulations, rules and statements of policy.

The examining staff has noticed that the establishment of written supervisory procedures seems to pose a perplexing problem for a number of new broker-dealer applicants. Once supervisory procedures or compliance manuals are adopted by firms, they should be updated and maintained in all offices.

The following is a list of topics that should be discussed in broker-dealer supervisory procedures. This list is not all-inclusive and must be tailored to the type of business activities to be conducted by the broker-dealer.

1. Registration requirements for every person selling securities in this state.

2. Registration requirements for all persons transacting business in this state.

3. The requirement that the broker-dealer may only employ agents that are registered to do business for the broker-dealer.

4. The requirement that agents cannot represent more than one broker-dealer or issuer unless they are affiliated by direct or indirect common control.

5. Preparation and current maintenance of the following books and records.

   (a) Daily Blotter

   (b) Ledgers reflecting all assets, liabilities, income, expense and capital accounts.

(c) Ledgers itemizing separately each cash and margin account of every customer.

(d) Ledgers reflecting securities in transfer; dividends/interest received; securities borrowed/loaned; moneys borrowed/loaned and securities the firm failed to receive/deliver.

(e) Securities records reflecting for each security all "long" or "short" positions.

(f) A memorandum of each order ticket and any other instruction given or received for the purchase or sale of securities, whether executed or unexecuted.

(g) A memorandum of each purchase and sale of securities for the account of the broker-dealer.

(h) Copies of confirmations of all purchases and sales of securities.

(i) Copies of all communications/correspondence.

(j) A complaint file.

(k) A customer information form for each customer.

(l) The name/address of each cash and margin account and copies of all guarantee of accounts and all margin, lending and option agreements.

(m) Copies of all powers of attorney or other evidence granting discretionary authority.

(n) Trial balances.

(o) Articles of Incorporation, by-laws, etc.

(p) Copies of all advertising.

(q) An offeree/sales register for private placements.

6. Records retention for the broker-dealer.

7. Branch office requirements and records retention.

8. Reporting of the following information to the Department of Banking:

(a) Filing a copy of the annual financial statements.

(b) Notice of transfer of control or change of name.

(c) Renewal of registration.

(c) Reporting all material changes to Form BD by amendment.

(d) Immediate notice when net capital becomes less than required.

(e) Copies of any subordination agreement.

(f) Written notification of opening/closing of branch offices.

9. Rules of conduct regarding:

(a) Written confirmation.

(b) Description of securities.

(c) Unsolicited trades.

(d) The broker-dealer agent/principal trading for its own account.

(e) The broker-dealer agent/principal customer accounts.

(f) Maintaining a written set of supervisory procedures.

(g) The name of the designated supervisor at the main office.

(h) The requirement that the broker-dealer will have at least one licensed principal employed full time at each branch office.

10. Prohibited business activities for:

A. Broker-dealers.

(1) Unreasonable delay in delivery or payment to customers.

(2) Excessive trading in a customer's account.

(3) Unsuitability of a transaction.

(4) Executing a transaction without authority.

(5) Executing a transaction upon the instruction of a third party without authorization.

(6) Exercising discretionary power without written authorization from a customer.

(7) Extending/arranging credit to customers.

(8) Executing margin transactions without written margins.

(9) Failing to segregate customer securities.

(10 Hypothecating customer securities without a lien or written consent.

(11) Charging unreasonable commission as the agent for a customer.

(12) Unreasonable mark-up/mark-down.

(13) Selling securities that are unregistered and not exempt.

(14) Failing to furnish a prospectus.

(15) Recommending that the customer engage the services of an unlicensed investment adviser.

B. Agents:

(1) Lending/borrowing customer money/securities.

(2) Effecting a transaction with a customer not on the books of the broker-dealer.

(3) Effecting transactions under fictitious name.

(4) Sharing profits/losses in a customer account.

(5) Dividing/splitting commissions with an unlicensed person or broker-dealer.

(6) Using advertising that does not clearly identify the employing broker-dealer.

(7) Conducting business prior to registration.

11. Firms conducting direct participation programs must:

a) Set standards for determining that a customer is in a financial position to benefit from a particular tax shelter.

b) Set suitability standards and net worth criteria for each private placement offering.

c) Set requirements for investigating the merits and/or viability of of particular securities that were to be offered or sold.

12. Registration or filing requirements for each security that is to be offered and sold for a particular jurisdiction.

ENFORCEMENT STATISTICS

	SECURITIES		BUSINESS OPPORTUNITIES	
	1983	1984	1983	1984
Investigations Opened	188	169	11	17
Investigations Closed	117	154	13	11
Investigations Pending	N/A	71	N/A	9
Complaints Processed				
Cease and Desist Orders Issued	7	11	5	1
Show Cause Orders Issued	17	15	1	1
Revocation/Cancellation Orders Issued	0	8	N/A	N/A
Referrals for Criminal Action	1	4	0	1
Referrals for Civil Proceedings	1	3	0	0
Investment Adviser Exams Completed	4	26	N/A	N/A
Broker-Dealer Exams Completed	22	19	N/A	N/A

INTERPRETATIVE OPINIONS

Connecticut Uniform Securities Act	265
Connecticut Business Opportunity Investment Act	29
Connecticut Tender Offer Act	2

BROKER/DEALER AND INVESTMENT ADVISER

REGISTRATIONS

Broker/Dealer - Firms

YEAR	ISSUED	WITHDRAWN	CANCELLED BY REQUEST
1983	197	1	26
1984 (as of 12/14/84)	273	15	18

TOTAL number of B/D's as of 12/14/84: 1154

BROKER/DEALER AGENTS

YEAR	ISSUED
1983	10,869
1984 (as of 12/14/84)	13,477

TOTAL number of B/D AGENTS as of 12/14/84: 29,210

YEAR	ISSUED	WITHDRAWN
1983	63	0
1984(as of 12/14/84)	60	6

TOTAL number of IA's as of 12/14/84: 310

INVESTMENT ADVISER - AGENTS

YEAR	ISSUED
1983	338
1984 (as of 12/14/84)	556

TOTAL number of IA - AGENTS as of 12/14/84: 1,548

LEGISLATIVE SUMMARY

Connecticut

On October 1, 1984, Public Act 84-67, An Act to Amend the Connecticut Business Opportunity Investment Act, became effective. The Act increased the disclosures included in the disclosure document provided to purchaser-investors. Specifically, the Act required business opportunity sellers to disclose to purchaser-investors the actual services the purchaser-investors undertake to perform, including, but not limited to, compliance with procedures established by the seller regarding the operation of the business. In addition, the Act required that the disclosure document 1) disclose recurring funds purchaser-investors must pay, not only to the seller, but to any person; 2) set forth a 10-year employment or occupational history of persons representing the seller, and 3) include the "risk factors" involved in the business opportunity offering. The Act also provided an exemption from business opportunity registration where the business opportunity is sold in Connecticut exclusively to purchaser-investors each of whom has a net worth of not less than $1,000,000, exclusive of principal residence, home furnishings and personal automobiles. The Act also mandated that a business opportunity seller amend its financial statements not less than quarterly, and it required that every business opportunity contract include the approximate delivery date of occupational guidelines the business opportunity seller will deliver to purchaser-investors. The Act also expanded the Banking Commissioner's power to issue a stop order by providing that a stop order may be issued if the business opportunity registraton is incomplete in any material respect following its effective date.

COMMISSIONER ISSUES SHOW CAUSE ORDER BASED ON DOCTRINE OF INTEGRATION

On December 4, 1984, the Banking Commissioner issued a "Notice of Hearing to Show Cause why an Order of Denial of an Exemption Should Not be Issued" against two Georgia limited partnerships. Based upon an investigation by the Securities and Business Investments Division of the Department of Banking, it was determined that the two offerings should be integrated for registration purposes, based on the following:

(1) The offerings were part of a single plan of financing. Both limited partners contributed the capital raised from their respective offerings to another Georgia limited partnership that intended to acquire an apartment project in Georgia.

(2) The offerings involved the issuance of the same class of security, specifically, limited partnership interests.

(3) The offerings were made on or about the middle of October 1984.

(4) The same type of consideration was received by both limited partners. Each partnership required an investor to pay a certain amount upon subscription with the deferred portion represented by a promissory note.

(5) The offerings were made for the same general purpose. Both limited partnerships had the same general purpose, the acquisition of and holding for investment of a general partnership interest in a Georgia limited partnership that would acquire and operate an apartment project.

As a result of the Order, the Securities and Business Investments Division continued to investigate the matter. Based on representations given by counsel to the partnerships the Banking Commissioner concluded that:

(1) The limited partnership had been considered integrated for securities law purposes.

(2) Both offerings closed on December 4, 1984.

(3) Aggregate subscriptions for both partnerships did exceed 35 non-accredited investors.

As a result of the investigation, and based on the aforementioned, the Banking Commissioner withdrew the Show Cause Order on December 19, 1984.

Recently, the Division has received several inquires concerning dual registration for persons registered as investment advisers and investment adviser agents. Because of the confusion and misunderstanding, the Division is reprinting in this Bulletin the Statement of Policy concerning Dual Registration of Agents:

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 does 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.