

How to Use Blue Sky Law Reporter

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The Blue Sky Law Reporter provides timely information for the Blue Sky practitioner entrusted with the task of determining where and how to qualify securities issues. The Blue Sky Law Reporter brings together, for convenient reference, laws and regulations for all 50 states plus the District of Columbia, Guam, Puerto Rico and the U.S. Virgin Islands. The Blue Sky Law Reporter also contains selected policy statements, interpretive opinions, administrative orders and no-action letters that further explain the laws and regulations. Lastly, the Blue Sky Law Reporter contains selected Blue Sky decisions from both state and federal courts from 1936 to the present.

Supplements to the Blue Sky laws and regulations include:

- Securities Administrators list of each state's office address, phone number, contact persons and their phone numbers and email addresses
 - Finding lists and Smart Charts providing state-by-state treatment of pertinent exemptions and other topics
 - Explanatory guides for each state providing summaries of the state's important Blue Sky laws, regulations, policy statements, interpretive opinions and administrative orders
 - Uniform Securities Acts (1956 and 2002 Acts)
- Topical Index to Blue Sky Laws and Regulations
 - Topical Index to Blue Sky Decisions
 - Table of Cases
 - Guide to Blue Sky Decisions
 - Statements of Policy of the North American Securities Administrators Association, Inc. (electronic only)
 - Uniform/federal forms (non-interactive) and a forms list for each state of that state's adopted uniform/federal and state-specific forms
 - Insurance securities laws and regulations—selective—that pertain specifically to insurance companies selling their own securities using a solicitation permit (for those jurisdictions that have these insurance securities laws and regulations)
 - Takeover disclosure laws and regulations (for those jurisdictions that have these takeover disclosure laws and regulations)

Note: The electronic version of the Blue Sky Law Reporter contains within the supplements mentioned above hyperlinks to the full text of the official laws, regulations, policy statements, interpretive opinions, administrative orders and Blue Sky decisions in the Blue Sky Law Reporter.

What Subscription Includes

Current Reporting ...

To keep the six loose-leaf volumes up-to-date, bi-monthly issues of new pages are mailed for insertion in the binders. Current reports consist of a report letter, new and amended laws and regulations, new and revised orders, policy statements, interpretive opinions, and decisions, as well as updates to the abovementioned supplements.

Note: Electronic updates of the Blue Sky Law Reporter will be made available at the same time updated pages are mailed to the print subscribers. Internet subscribers can choose to sign up for convenient email delivery of Blue Sky Report Letters, access them via RSS Feed, or setup automatic Tracker News search alerts.

Loose-Leaf Volumes ...

Subscribers receive six loose-leaf volumes organized by guide cards, one guide card for each of the 54 jurisdictions (the 50 states plus District of Columbia, Guam, Puerto Rico and the U.S. Virgin Islands) for quick reference or study and planning.

The jurisdiction divisions are arranged alphabetically, with Alabama to Arizona in Volume 1, Arkansas to Idaho in Volume 1A, Illinois to Minnesota in Volume 2, Mississippi to North Carolina in Volume 2A, North Dakota to Tennessee in Volume 3, and Texas through Wyoming in Volume 3A.

Each jurisdiction contains in this order: (1) table of contents; (2) forms list; (3) explanatory guide summarizing that

jurisdiction's laws, regulations, policy statements, interpretive opinions and administrative orders; (3) the jurisdiction's Blue Sky statute; (4) the jurisdiction's takeover disclosure laws (if the state has these laws); includes first-generation laws governing takeover disclosures provided for subscriber convenience that deal with acquisitions of equity securities of domestic corporations and target companies with principal offices or substantial assets in the state; (5) the jurisdiction's select insurance securities laws involving an insurance company selling its own securities via solicitation permit (if the jurisdiction has these laws); (6) the jurisdiction's Blue Sky rules and regulations; (7) the jurisdiction's select Blue Sky policy statements, interpretive opinions, memorandums, checklists, administrative orders and no-action letters; (8) the jurisdiction's takeover regulations (if any); and (9) the jurisdiction's select insurance securities regulations involving an insurance company selling its own securities via solicitation permit (if the jurisdiction has these regulations).

The other guide cards in Volume 1 are for: (1) Topical Index to Blue Sky Laws and Regulations; (2) Guide to Blue Sky Decisions containing Topical Index, Table of Cases, About Blue Sky Laws, and Annotations to Decisions organized under appropriate subject; (3) Uniform Forms containing uniform/federal forms; (4) two Uniform Securities Acts (1956 and 2002); and (5) Finding Lists summaries in chart form of state-by-state treatment of pertinent exemptions and other topics. Volume 3A of the Reporter contains the New Matters (Blue Sky Decisions).

The Internet version of the Blue Sky Law Reporter contains the abovementioned

"print subscription" items and the NASAA Statements of Policy from the NASAA Reports, plus Blue Sky Smart Charts-Compare Jurisdictions, an Internet-only product that provides customizable state-by-state treatment in chart form of pertinent exemptions and other topics.

Locating Information

Paragraph and Page Numbers ...

For print subscribers, paragraph (¶) numbers are used exclusively for all reference purposes in the Tables of Contents, Topical Index to Blue Sky Laws and Regulations, Guide to Blue Sky Decisions annotations, uniform securities acts, explanatory guides and finding lists, as well as in the Blue Sky laws, regulations, policy statement and decisions sections; insurance securities law and regulation sections; and takeover disclosure law and regulation sections. The Topical Index to Decisions contains annotation references from the Guide to Blue Sky Decisions. Page numbers establish the sequence of the basic contents and are used in the general contents and also in filing the current Reporter. For electronic subscribers, supplements in the Blue Sky Law Reporter, i.e., finding lists, Smart Charts, explanatory guides, uniform securities acts, topical indices and Guide to Blue Sky Decisions annotations contain hyperlinks to the paragraphs (¶) that house the full, official text of the appropriate Blue Sky law, rule/regulation, policy statement, interpretive opinion, administrative order, no-action letter and decision.

How to Cite ...

To cite to specific documents, combine the name of the Reporter and the paragraph number. For example, the

material at ¶1401 may be cited "Blue Sky Law Reporter ¶1401."

Features In The Reporter

Topical Index ...

TOPICAL INDEX TO BLUE SKY LAWS AND REGULATIONS. The Topical Index to Blue Sky Laws and Regulations provides an entry for all of the laws and regulations contained in the Blue Sky Law Reporter. This includes entries for the laws and regulations in the takeover disclosure law/regulation sections, insurance securities law/regulation sections, and the laws and regulations contained in any related-law sections such as for viatical settlement acts.

The Topical Index to Blue Sky Laws and Regulations provides an entry for many of the Blue Sky policy statements, interpretive opinions, memorandums, checklists and administrative orders contained in the Blue Sky Law Reporter but not for those documents considered outdated and, hence, no longer valid. In addition, the Topical Index does not contain entries for no-action letters if the topic of the no-action letter already contains an entry with links to laws, regulations, policy statements and/or administrative orders. Lastly, the Topical Index does not contain entries for Blue Sky decisions. The Topical Index to Blue Sky Decisions is a separate topical index of the Blue Sky Law Reporter.

Most entries in the Topical Index to Blue Sky Laws and Regulations will be indexed twice, once under the appropriate jurisdiction and once under the topic to which they pertain. There are exceptions, however: The administration or "housekeeping" entries for each jurisdiction, e.g.,

how many officers are in the state securities department, office locations and hours, etc., will be indexed only under the jurisdiction. On the other hand, entries that cross over topics may appear many times, i.e., a few times under the jurisdiction and two or three times under one topic, or once under two or more topics, e.g., a limited offering exemption provision that involves the 25-person-in-12 months exemption, Rule 505 and 506 may appear in the jurisdiction in the following three places, and under the following three separate topics: Exemptions, limited offering; federal Regulation D, Rule 505; and federal covered security, Rule 506.

The following topics have entries. All other topics will contain a "SEE one of the synonym topics below" so that the topic below will contain the needed entries and links to full text documents:

- Advertising And Sales Literature
- Agent (Salesperson)
- Broker-Dealer (Dealer)
- Civil Liabilities
- Consent To Service Of Process
- Criminal Penalties
- Electronic Form D
- Evidentiary Burden
- Exemptions (For Securities And Transactions; Each Common-To-All- States Exemption And Each State- Specific Exemption Is Separated Out By Name)
- Federal Covered Investment Advisers
- Federal Covered Securities (18(B)(1), 18(B)(2) Investment Companies, 18(B)(3), 18(B)(4)(A), 18(B)(4)(B), 18(B)(4)(C), 18(B)(4)(D)

Rule 506)

- Federal Regulation D (Rule 504 And 505)
- Fees
- Forms
- Fraud And Liabilities
- Hearings
- Injunctive Relief
- Insurance Securities
- Interpretive Opinions (And No-Action Letters: General Mention Of How To Request One)
- Investigations and Subpoenas
- Investment Advisers
- Investment Adviser Representatives
- Investment Companies (Mutual Funds/Unit Investment Trusts)
- Issuers
- Issuer Dealers
- Issuer Dealer Agents
- NASAA Statements of Policy and Guidelines
- Remedies Of Purchaser (Rescission)
- Securities (May Include Viatical Settlement Acts)
- Takeover Disclosures
- Uniform Securities Act (1956)
- Uniform Securities Act (2002)

Guide to Blue Sky Decisions...

The Guide to Blue Sky Decisions contains selected state and federal court decisions, state administrative decisions, and state attorney general opinions that have interpreted state Blue Sky legislation since the enactment of the first Blue Sky Act in 1911. The Guide provides a convenient

reference tool for accessing the text of the decisions contained in the Blue Sky Law Reporter.

Internet subscribers may use the annotations in the Guide to Blue Sky Decisions to link directly to the text of all of the decisions from 1936 to the present that have been reported in the Blue Sky Law Reporter. Print subscribers may use the Guide to Blue Sky Decisions to locate current decisions contained in the New Matters division, as well as decisions contained in the transfer binders.

These decisions from all jurisdictions are arranged by subject matter, according to a comprehensive and detailed outline. A Topical Index to Blue Sky Decisions at the beginning of the division affords easy reference to the subject matter. A Table of Cases lists all court and administrative decisions and all attorney general opinions cited in the division.

Uniform Forms ...

Uniform Forms. The print version of the Blue Sky Law Reporter contains uniform/federal forms that the various Blue Sky jurisdictions may have adopted. These forms include Form U-1 (uniform registration of securities), U-2 (uniform consent to service of process), U-2A (uniform corporate resolution), U-7 (small company offering registration), U-SB (uniform surety bond), CER-1 (coordinated equity review), D (federal Regulation D), NF (investment company notice filing), MAIE (NASAA model accredited investor exemption), SOI (solicitation of interest form), U-4 (agent/ investment adviser representative registration), U-5 (agent/investment adviser representative termination/ withdrawal), U-6 (disciplinary reporting

form), U-10 (uniform examination for non-NASD candidates), BD (broker-dealer licensing), BDW (broker-dealer withdrawal), ADV (paper version for investment adviser registration), ADV-E (certificate of accounting of client securities and funds in possession or custody of investment adviser), ADV-H (investment adviser temporary or continuing hardship exemption), ADV-NR (appointment of agent for service of process by non-residential general partner and non-resident managing agent of investment adviser) and ADV-W (investment adviser withdrawal).

NASAA Statements of Policy (electronic only). The NASAA Statements of Policy from the NASAA Reports are available for Internet subscribers to the Blue Sky Law Reporter.

Uniform Securities Acts ...

The text of the 1956 and 2002 Uniform Securities Acts are provided, along with official comments of the National Conference of Commissioners on Uniform State Laws and NASAA amendments and comments.

Note: Paragraph ¶15500 provides a list of the jurisdictions that adopted the 1956 Act. The finding list at ¶16431 provides a list of the jurisdictions that adopted the 2002 Act. Internet subscribers can use the Smart Charts to create customized charts regarding the Uniform Securities Act of 2002.

Finding Lists ...

The Finding Lists division contains tables and charts that break down long paragraphs of full text into “bite size” bits of information showing state-by-state treatment of pertinent

exemptions and other topics. The first finding list is entitled the Securities Administrators list, a table of each jurisdiction’s office location, address, phone number, contact people and their phone numbers and email addresses, and the jurisdiction’s website. The Securities Administrators list provides the office for each of the 50 states, plus the District of Columbia, Guam, Puerto Rico, U.S. Virgin Islands, Mexico and each territory in Canada.

- Other finding lists are displayed in the following order in the print and electronic versions of the Blue Sky Law Reporter. Each finding list contains an introduction to the topic. Note that all finding lists contain, for those jurisdictions that have adopted the topic, the paragraph(s) to the official documents where the text can be read in full. Some of the finding lists, however, do not contain any summarized (“bite sized”) content; these finding lists are set up to be simply “lists,” i.e., lists of paragraph numbers for those jurisdictions that have adopted the topic, that may then be looked up by turning pages (print subscribers) or hyperlinked to the full text document (electronic subscribers).

- NASAA Statement of Policy Adoptions
- Exemptions for Securities
- Exemptions for Transactions
- Exemptions: Limited Offering/ Regulation D
- Shelf Registration
- Standard Manuals Exemptions
- Commodities Regulation
- Multijurisdictional Disclosure System

- Exchange Exemption
- Uniform Securities Act of 2002
- Investment Adviser Registration Depository (IARD)
- Small Company Offering Registration (SCOR)
- Canadian Broker-Dealers
- Qualified Institutional Buyer and Accredited Investor Exemptions
- Internet: Exemption (for Offers) and BD/IA Advertising
- National Securities Markets Improvement Act of 1996 (NSMIA)
- Blue Sky Fees
- Central Registration Depository (CRD)
- Limited Liability Company (LLC) Interests
- Payment of Fees
- Service of Process
- Summaries of Blue Sky Laws, Regulations, Policy Statements/ Orders and Case.

Smart Charts ...

Blue Sky Smart Charts - Compare Jurisdictions. Available for Internet subscribers to the Blue Sky Law Reporter. Smart Charts, launched June 2006, provide an exciting, new way to interact with and display finding list data. Subscribers click on a topic of interest (from the list of topics), then click on any pertinent subtopics (if the particular topic chosen contains subtopics), then select the jurisdiction(s) needed to see results for, and finally see the results on that topic for the jurisdictions selected. The results can be viewed in a chart or matrix format, and results can be printed, saved, exported and emailed to colleagues. A “links” columns of paragraph numbers

will take the subscriber to the full text of the applicable law, regulations, policy statement, interpretive opinion, administrative order and/ or no-action letter. Additional commentary on the results will be provided in a “comments” column. A “chart note” at the top of the results page can be clicked on to provide an introduction to the chart. Amendments to results page content can be made to appear highlighted in yellow, and the highlights can be saved to remain in yellow for 10 days to 1 year or a date can be picked to see changes for that date.

To date, the Smart Chart product contains the following topics:

- Canadian Broker-Dealers
- Internet: Exemption (for Offers) and BD/IA Advertising
- Investment Adviser Registration Depository (IARD)
- National Securities Markets Improvement Act of 1996 (NSMIA)
- Qualified Institutional Buyer and Accredited Investor Exemptions
- Small Company Offering Registration (SCOR)
- Uniform Securities Act of 2002
- Blue Sky Fees
- Decisions on Exempt Securities
- Decisions on Exempt Transactions
- Decisions on Federal Preemption
- Finders
- Hedge Funds
- Payment of Fees
- Rule 506 Offerings
- Rule 701
- Service of Process
- Standard Manuals Exemptions
- Summaries of Blue Sky Laws, Regulations and Policy Statements/ Orders
- Variable Annuities
- Advertising/Sales Literature Filing Requirements
- Bank and Savings and Loan Securities Exemption
- Blue Sky Fees
- Broker-Dealers and Agents
- Compensatory Benefit Plan Exemption and Rule 701
- Decisions Involving Arbitration
- Decisions Involving Corporate Takeover Laws (Tender Offers)
- Decisions Involving Exempt Securities (Including Rule 506)
- Decisions Involving Exempt Transactions
- Decisions Involving Federal Preemption (Including NSMIA)
- Decisions Involving Liability of Officers and Directors
- Decisions Involving Statutes of Limitations
- Existing Securityholder Exemption
- Financial Institution/Institutional Investor Transaction Exemption
- Finders
- Government (Municipal) Securities Exemption and NSMIA Section 18(b)(4)(C)
- Hedge Funds
- Institutional Investor Definition
- Internet
- Investment Advisers and Investment Adviser Representatives
- Investment Companies and Unit Investment Trusts (Notice Filings)
- Isolated Transaction and SEC 4(2) Exemptions
- Issuer Financial Statement Requirements
- Issuer-Agent Exclusions and Exemptions
- Legend Requirements in Private Placement Memorandums
- Limited (Private) Offering Exemption
- Merger Exclusion and Exemption
- National Securities Markets Improvement Act of 1996 (NSMIA)
- Nonprofit Organization Securities Exemption
- Official/Agency Appointed to Receive Service of Process
- Qualified Institutional Buyer and Accredited Investor Exemptions
- Recognized Securities Manuals
- Registration of Securities
- Rule 506 Offerings
- Securities Administrators Contact Information
- Small Company Offering Registration Program and Form U-7
- Summaries of Recent Laws, Rules and Cases
- Takeover Disclosure law and Regulations
- Uniform Securities Act of 2002
- Variable Annuitants: Are they included in the state’s definition of “Security?”

Story Of Blue Sky Legislation

History Of Blue Sky Legislation

State regulation of the sale of securities in the United States dates from

1911 when the Kansas legislature passed the first securities law. North Carolina followed the same year and in 1912 Arizona and Louisiana enacted legislation in the field of securities regulation. The year 1919 found thirty-two states with this type of statute enacted. At present, the federal government and all the states have passed legislation regulating the offering for sale, or sale of, corporate securities, bonds, investment contracts and stocks.

All legislation has as its basis the recognition of the fact that, for the great majority of the people, uneducated to the complexity of corporate organization and to the intricacies of investing, there is a need for protection from dishonest and unscrupulous promoters and their doubtful and often worthless stocks. These promoters, with their fraudulent practices and dishonest schemes, found a ready market with those who saw an opportunity to get rich quick. These statutes are generally and popularly referred to as Blue Sky Laws, because of their purpose of preventing speculative schemes which have no more basis than so many feet of blue sky. *Hall v. Geiger-Jones Co.* 242 U. S. 539 (1917).

Constitutionality Of Blue Sky Laws

Some of the early attempts at Blue Sky legislation by the states were held unconstitutional (Iowa, Michigan, and West Virginia). After the decisions in 1917 in the *Hall* case, *supra*, upholding the Ohio Act, and in the two following cases disposed of the same year by the United States Supreme Court, all doubts of the validity of these acts on constitutional grounds largely vanished. *Caldwell v. Sioux Falls Stock Yards Co.*, 242 U. S. 559, upheld the South Dakota Act, and the Michigan

Act was examined and held a valid exercise of state power in *Merrick v. N. W. Halsey & Co.*, 242 U. S. 568. Under constitutional attack the Blue Sky legislation is supported by the police power of the states for the prevention of fraud and to provide for the general welfare of the people.

The Fraud Type Law

While all the state statutes vary in detail (for the important provisions of any particular state, see the individual State Guide) they nevertheless are classifiable into groups. The statute with the least regulatory detail is the fraud type. At the present time, none of the states regulate the sale of securities by means of a fraud type law. However, for historical purposes, a typical fraud type law provided penalties for the fraudulent sale securities and provided injunctive proceedings to protect the public from anticipated or further fraudulent acts. These laws required neither the licensing of dealers or brokers nor the registration of securities. Some state official, usually the Attorney General, was given general broad powers to investigate any security or security transaction which appeared to be fraudulent. For this purpose, he had the power of subpoena to examine documents and question witnesses and could initiate proceedings to enjoin the sale of securities and prosecute by criminal proceedings if the cause for such measures existed. Part I of the 1956 Uniform Securities Act, at ¶15511 and ¶15512, makes provision for the enactment of a fraud type law (see also Official Code Comment at ¶15501).

Regulation By Controlling The Distributor Or Seller Regulation By Controlling The Distributor Or Seller

A second type of law regulating the sale of securities controls securities dealers or brokers and salesmen or agents only. No jurisdiction currently regulates the sale of securities in this manner, although at one time this type of law was in effect in the District of Columbia. Provision is made for the registration of dealers and salesmen by the licensing agency upon the satisfactory showing that the applicant is of good repute, that the proposed plan of business is not unfair, unjust or inequitable, that the applicant intends to honestly and fairly conduct its business, with disclosure of pertinent facts sufficient to enable intending purchasers to form a judgment of the nature and value of the securities, and that the securities that it proposes to issue or sell are not such that will work a fraud on the purchasers. Usually the dealer must file a bond or furnish satisfactory proof of his financial responsibility.

As a further protection to the investing public the supervising agency may require the dealer at any time to file a list of securities which have been offered for sale or are being offered for sale, together with all advertising circulars and any other pertinent facts concerning the securities, that will enable an investigation to be made of the offering. A dealer's license may be revoked for any violation of the provisions of the Blue Sky Law or for any case of dishonest, deceitful or fraudulent conduct on the part of the dealer in connection with his operation of the business of selling securities. Licenses granted for one year are usually renewable upon paying the prescribed fee without the filing of further statements or additional information unless such is specifically requested.

Effective protection is afforded and

wide scope is added to these laws by including in the definition of dealer any individual, partnership, association, or corporation engaging in selling or offering securities for sale. This definition is of prime importance since through it the legislature may either expand or contract the applicability of the provisions of the securities law. Regulation of foreign dealers is achieved through the filing of a consent to service of process on the state regulatory agent in any actions based upon or arising in connection with the sale of securities in the state. Finally, provisions are made for appeals by aggrieved persons by petition addressed to the courts.

Regulation By Controlling The Issuer

A third type of law provides for the registration of securities that are to be sold in the state but does not provide for the licensing or registration of dealers or brokers. At one time this type of law was in effect in Wyoming. Such a law would provide that it is unlawful for a person, partnership, association or corporation, either as principal or through brokers and agents, to offer securities for sale without the filing of certain information with the regulatory agency of the state.

Generally the information required is a copy of the securities, a statement in substantial detail of the issuer's assets and liabilities, the total amount of the issue, the amount to be offered for sale in the state, copies of any mortgages or instruments creating liens, the amount and interest of securities that are prior in interest or lien, a profit and loss statement, a copy of the prospectus or any other advertising matter to be used

in connection with the promotion, the names and addresses of the selling agents, names and addresses of the principal owners of the issuer, a copy of the charter or articles of partnership, a statement showing in detail the plan of business and any other information that may be required by the licensing agency that is pertinent to determining the value or potential value of the securities to be issued. Foreign corporations are required to file a consent to service of process and may be required to deposit a surety bond, or in lieu thereof cash or security, before a permit to sell the securities set forth in the applicant's statement is issued by the state. In connection with the granting of permits to sell securities, the regulatory agency may conduct hearings upon any investigation or examination deemed necessary. Review by a court of competent jurisdiction is provided if any decisions of the administrative body are alleged to be unjust or unreasonable.

Regulation By Controlling Both Issuer And Dealer

All jurisdictions now have enacted legislation that provides for the licensing of dealers and salespersons and the registration of securities. The majority have adopted, or substantially adopted with modifications, the Uniform Securities Act of 1956 which was approved by the National Conference of Commissioners on Uniform State Laws. More recently, some states have adopted the Uniform Securities Act of 2002 in place of their previous legislation.

North American Securities Administrators Association, Inc.

An examination of the types of Blue

Sky Statutes reveals a good deal of similarity. In most jurisdictions, the administration of the Blue Sky Law is in the hands of a Securities Commission or Securities Commissioner in recognition of the fact that securities regulation is a full time job for experts. These officials have formally associated themselves in an organization known as the North American Securities Administrators Association, Inc. (NASAA) for the mutual exchange of ideas in the field of securities administration.

NASAA is a voluntary association whose membership consists of the sixty-seven state, provincial and territorial securities administrators in the fifty states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico. Although NASAA itself is not a regulatory entity, its members have regulatory authority as securities administrators, directors or commissioners. As a result, NASAA's positions generally prove very influential in the area of Blue Sky law.

How Does The Typical Blue Sky Law Operate?

Included in most of the statutes is a section of definitions. The two of most importance are the definitions of securities and sale or sell. Also important is the definition of dealer.

Exempt securities and transactions are enumerated within the Blue Sky Statutes and rules. Exemptions are provided where the nature of the security and the type of transaction require no regulation under the Blue Sky Law. However, in connection with the issuance and sale of stock of insurance companies, banks, public utilities, railroads and other corporations subject to regulation by state agencies other than Blue Sky Commissions, any special

laws applicable to the issuance and sale of stock by such corporations should be consulted. The following securities or securities issued by the following organizations or institutions are generally exempt from the operation of the Blue Sky Law:

- Banks
- Canadian and Other Foreign Governments and Their Public Taxing Subdivisions
- Commercial Paper: States adopting the Uniform Securities Act of 2002 do not have a commercial paper exemption
- Cooperative Associations
- Corporations Organized Under Acts of Congress
- Credit Unions
- Employee Plans
- Holding Companies Holding Utility Securities
- Insurance Companies
- Mortgages
- Nonprofit Organizations
- Public Utilities and Railroads
- Savings Associations
- Securities Designated on the NASDAQ/ NMS
- Securities Listed in Standard Manuals Securities Listed on Stock Exchanges Registered with the United
- States Securities and Exchange Commission States and Political Subdivisions
- Trust Companies
- United States and Territories

Generally, the following transactions or sales are exempt from the operation of the law:

- Domestic Corporations, Stock Subscriptions
- Isolated Sales by an Owner or for an Owner's Account Issues of Mergers and Reorganizations
- Judicial Sales
- Limited or Private Offers
- Receiver's or Trustee's Sales
- Sales of Preorganization Certificates
- Sales to Banks, Insurance Companies, Trust Companies and Similar Institutions
- Sales to Existing Security Holders
- Stock Dividends Issuance
- Transactions Between Issuers and Underwriters

Registration by Notification

Registration by notification is limited to certain classes of securities. These securities are generally securities issued by a corporation which has been in continuous operation and has had a favorable earning record for a prescribed number of years and specified securities registered for nonissuer distribution that are of a class where no securities have been registered or that were originally issued pursuant to an exemption.

NOTE: States adopting the Uniform Securities Act of 2002 do not register securities by notification.

The procedure for registration by notification usually requires the filing of a statement containing the name and address of the issuer; a brief description of the security, amount of the issue and the amount to be offered in the state; a statement of facts showing that the issue is entitled to registration by notification; the offering

price; and a copy of the circular to be used for the public offering. The filing of this statement accompanied by the proper fee constitutes the registration of the security. Upon such registration, the securities may be sold by a registered dealer unless the regulatory agency orders the suspension of sale.

Registration by Coordination

Securities for which a registration statement has been filed under the federal Securities Act of 1933 in connection with the same offering may be registered by coordination in many states. The registration statement must be accompanied by certain documents, including copies of the prospectus filed with the Securities and Exchange Commission; articles of incorporation and bylaws; agreements with or among underwriters; a copy of instruments governing the issuance of the security, and the security itself.

The administrator may also be given powers to require additional documents or information, such as all future amendments to the prospectus and information as to other states in which the registration is expected to be filed. Registration by coordination is generally effective at the moment the federal registration statement becomes effective, providing the registration statement was on file with the administrator for the specified number of days. The maximum and minimum proposed offering price and the maximum underwriters discounts or commissions also must have been filed with the administrator for the specified number of days.

The Securities and Exchange Commission has established rules to facilitate cross-border offerings by certain Canadian issuers. The

Multijurisdictional Disclosure System permits issuers to make public offerings and tender offers in Canada and the U.S. using disclosure documents prepared in accordance with home country requirements. Further details on the MJDS can be found at Blue Sky Law Reporter ¶6371.

Registration by Announcement or Description

Securities outstanding and in the hands of the public for not less than one year as a result of prior original registration in the state or as a result of an SEC registration by the issuer, or underwriter on his behalf, may be registered by announcement in some states. In addition, certain life insurance stock may be registered by announcement. North Dakota permits this type of registration. Securities may be registered by announcement only by registered dealers, by the filing of a written announcement of the intention to trade in the securities. The announcement must contain the name of the issuer and his location, a description of the security, a statement that the security has been outstanding and in the hands of the public for not less than one year, a balance sheet not more than 12 months old, and a statement of registration in the state or by the SEC. The securities may not be sold directly for the benefit of the issuer or the underwriter. The filing of the announcement and the payment of the fee constitutes registration.

Registration by description is permitted in some states. Eligible are securities of an issuer in continuous operation for not less than three years and meeting specific earnings tests. Arizona and Ohio are examples of jurisdictions permitting this type of registration.

Registration by Qualification

Registration by qualification is required of all other securities not exempt from the law or entitled to registration by notification, coordination, announcement, or description. The procedure for registration by qualification requires the filing of a prescribed form. In addition to the information required for registration by notification, statements, exhibits and documents concerning the issuer's business are required to be filed in much greater detail. A filing fee must accompany the application. Registrations by qualification are usually effective by either an entry in the Register of Securities or the issuance of a permit. Some registrations expire at the end of one year and others when the prescribed number of securities for which applications have been made have been sold.

Small Company Offering Registration

Under an exemption provided by federal Rule 504, a small company offering registered with a state need only provide the Securities and Exchange Commission notice by filing Form D. The aggregate offering price of the securities in a small corporate offering registration (SCOR) may reach 1 million in a 12-month period. SCOR is not open to any issuer that has been the subject of a range of specific law enforcement actions including any securities crime, fraud, state cease and desist order or injunction. To qualify for SCOR participation, a state must have adopted laws, regulations and/or policy statements declaring that the issuers filing Form U-7 comply with the North American Securities Administrators

Association's (NASAA) Instructions to the form. In certain instances, the offering must also comply with state requirements and a merit review by the state securities commission. For a list of states that currently participate in SCOR and for further details on the requirements under SCOR, see Blue Sky Law Reporter ¶6461.

Registration of Dealers, Agents, Investment Advisers and Investment Adviser Representatives

Registration of dealers or brokers, salesmen, agents, investment advisers and investment adviser representatives is effected by the filing of an application for registration and consent to service of process, accompanied by the proper fee. Branch office managers are expected to act in a supervisory capacity over dealers who work for them. Such managers are accountable for compliance with record keeping requirements and the timely submission of financial statements. Most jurisdictions authorize the Central Registration Depository (CRD) to collect broker-dealer fees. Form U-4 is used to register salespersons affiliated with broker-dealer members of the National Association of Securities Dealers, Inc., through the CRD. In addition, all states now participate in Phase II of the CRD and permit amended Forms BD (Broker-Dealer) and BDW (Broker-Dealer Withdrawal) to be made through the CRD. The CRD is also authorized to collect applications, renewals, and other documents and fees for investment adviser representatives. Further information regarding the CRD can be found at Blue Sky Law Reporter ¶6531. The Investment Advisory Registration Depository (IARD) is a web-based

system that electronically receives and stores filings, and collects fees, from investment advisers investment adviser representatives. Further information regarding the IARD can be found at Blue Sky Law Reporter ¶16451.

Advertising

In general, most statutes require that all advertising matter be submitted to the regulatory agency for approval. It is not permissible to make reference in the advertising to the registration of the securities or the issuance of a license.

Investigatory Powers

In regard to supervision, most securities departments have broad investigatory powers and may by summons or subpoena require the attendance and testimony of witnesses and the production of books and papers relating to any matter as to which it has jurisdiction.

Usually annual reports are required of dealers and issuers. Foreign issuers and dealers are usually required to file surety bonds and an irrevocable consent to service of process for actions that may arise as a result of the securities business transacted. The regulatory body is often given the power to require that any securities which have been or are intended to be issued for intangible assets, promotion fees and expenses be deposited in escrow.

Rules and Regulations

Most securities agencies are authorized to make necessary rules and

regulations to carry into effect the full provisions of the law. Also, these bodies issue forms that reflect the provisions of the law and regulations in regard to registrations and applications.

Registration of Investment Advisers

Some states have required the licensing of investment advisers and representatives who, before being granted a license, must furnish satisfactory evidence of their trustworthiness and their competency to engage in the business of dealing in and selling securities. Some states have also required the registration of all investment trusts or comparable investment companies.

Judicial Review and Penalties

Finally, provision is made for judicial review of department actions, injunctions, indictments, prosecutions, remedies for aggrieved purchasers, and penalties for violations of the Blue Sky Law.

Judicial Interpretation Of Blue Sky Laws

For the most part, the courts have upheld the actions of the securities departments functioning under the law. This construction of securities legislation holds especially true when it is remedial in nature, as this construction effects the ultimate purposes of the acts. The Minnesota Supreme Court has held that the Blue Sky Law is a proper and needful exercise of the police power of the state and should not be given a narrow construction. *State v. Gopher Tire & Rubber Co.*, 146 Minn. 52, 177 N. W. 937 (1920).

Other states, in the minority, have looked upon the statutes as primarily penal and as a result have accordingly construed the statutes. The Supreme Court of Alabama has said that while laws of this character should receive a reasonable construction with a view to effect the legislative intent, yet, being penal in nature, its provisions will not be extended by construction to include cases which are clearly outside its scope. And statutory remedies for rights unknown to the common law are to be strictly construed. *Westenhaver v. Dunnavant*, 225 Ala. 400, 143 So. 823 (1932). But whether the statutes be construed liberally or strictly, the inconvenience to the honest and conscientious engaged in the legitimate securities business in complying with the rules, regulations and licensing provisions of the Blue Sky Laws must be weighed with the immeasurable benefits to and the savings of untold amounts of money by the general public, as a result of the suppression of fraudulent practices in the securities field.

Legislative Changes

It should be noted that since the decisions and opinions included extend over a period of seven decades, during which time legislative changes in many states have been extensive, some of this authority construes laws which have been changed, and is consequently not interpretive of the law today. The cases and opinions should be carefully examined in the light of presently effective law reported in the appropriate state divisions.

Training and Other Complimentary Securities-related Resources:

Blue Sky Law Reporter – Stay Current Using Report Letters video: www.brainshark.com/wklb/BlueSky-ReportLetter

IntelliConnect Tutorial video: <http://researchhelp.cch.com/flashfiles/flashhelp.html>

Researching Federal Securities handout: business.cch.com/training/otherresources/ResearchingFederalSecurities.pdf

Attend complimentary, instructor-led training:

- **Register for IntelliConnect webinar training:** <http://inter.viewcentral.com/reg/cchlegal/intelliconnect1hr>
- **Email a training request to:** LegalProTraining@wolterskluwer.com
and one of our Professional Trainers will contact you to arrange a customized, hands-on training session.

Jim Hamilton's World of Securities Regulation blog: jimhamiltonblog.blogspot.com

Securities Update: business.cch.com/updates/securities.

Dodd-Frank News Center: financialreform.wolterskluwerlb.com

Customer Support for IntelliConnect: <http://support.cch.com> (Monday through Friday 8:00am to 8:00pm CST)

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Research & Functionality Support: 1-800-344-3734 option #1 (IntelliConnect) or option #3 (Other Inquiries)

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