

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 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
- General Guide annotations to Blue Sky cases
- 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
- Interactive Blue Sky Forms; Internet-only add on product at additional cost contains all uniform/federal and state-specific Blue Sky forms for each jurisdiction to fill out, print, save and file, and also contains two-way links from many of the interactive forms to the appropriate law, regulation and policy statement documents in the Blue Sky Law Reporter and conversely from the appropriate laws, regulations and policy statements in the Blue Sky Law Reporter to the Interactive 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 (non-print) version of the Blue Sky Law Reporter

contains within the supplements mentioned above [except in the Securities Administrators List, NASAA Statements of Policy and Uniform/Federal Forms and Forms List] 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 (or more frequent) 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, interpretative opinions, and decisions, as well as updates to the abovementioned supplements.

Note: Electronic updates to the CD-ROM and Internet version of the Blue Sky Law Reporter will be made available to CD-ROM and Internet subscribers at the same time updated pages are mailed to print subscribers.

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 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) General Guide containing the Topical Index to Decisions, Table of Cases, About Blue Sky Laws, and Annotations to Decisions organized under appropriate subject; (3) Statements of Policy and Other Guidelines containing non-interactive 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 CD-ROM and Internet versions of the *Blue Sky Law Reporter* contain the abovementioned "print subscription" items but also include **NASAA Statements of Policy** from the CCH *NASAA Reporter*.

The Internet version of the *Blue Sky Law Reporter* contains the abovementioned "print subscription" items and the **NASAA Statements of Policy** from the CCH *NASAA Reporter*, plus **Smart Charts**, an Internet-only product that provides state-by-state treatment in chart form of pertinent exemptions and other topics; and **Blue Sky Interactive Forms**, an Internet-only add-on product available at an additional cost that contains each state's adopted uniform/federal and state-specific forms that subscribers can interactively fill out, print, save, file, and, with many of the forms, two-way link from the form to the appropriate law, regulation and policy statement text of the *Blue Sky Law Reporter*, and conversely from the *Reporter* text back to the form.

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, General Guide 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 General Guide. 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, interactive forms, explanatory guides, uniform securities acts, topical indices and general guide 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 the Reporter, combine the letters "CCH" with the name of the Reporter and the paragraph number. For example, the material at ¶1401 may be cited "CCH 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 "house keeping" 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
- 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
 - Fraud And Liabilities

- Forms
- Hearings
- Injunctive Relief
- Insurance Securities
- Interpretive Opinions (And No-Action Letters: General Mention Of How To Request One)
- Investigations
- Investment Advisers
- Investment Adviser Representatives
- Investment Companies (Mutual Funds/Unit Investment Trusts)
- Issuers
- Issuer Dealers
- Issuer Dealer Agents
- NASAA Statements Of Policy
- Remedies Of Purchaser (Rescission)
- Securities (May Include Viatical Settlement Acts)
- Takeover Disclosures

General Guide ...

The General Guide division contains a Decisions—Rulings part, reflecting 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 General 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 General Guide 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 General Guide 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. An overall survey of Blue

Sky laws is given in an **About Blue Sky Laws** part. Highlighted are characteristics of the different types of Blue Sky laws, providing a basis for the comparison of statutes of various jurisdictions.

Uniform Forms ...

Uniform Forms. The print version of the *Blue Sky Law Reporter* contains non-interactive 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 CCH NASAA Reporter are available for CD-ROM and Internet subscribers to the *Blue Sky Law Reporter*.

BLUE SKY INTERACTIVE FORMS (electronic-only add-on product). Available on the Internet only as an

add-on product at additional cost is the **Blue Sky Interactive Forms**. This product, launched November 2006, contains the uniform/federal and state-specific forms for each jurisdiction that can be interactively filled in, saved, printed and filed with the state. In addition, many forms contain a two-way link from the form to the full text of the law, regulation, policy statement, interpretive opinion and/or administrative order in the *Blue Sky Law Reporter* to which it pertains, and conversely from the full text of a law, regulation, policy statement, interpretive opinion and/or administrative order to the appropriate form.

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 ¶5500 provides a list of the jurisdictions that adopted the 1956 Act. The finding list at ¶6431 provides a list of the jurisdictions that adopted the 2002 Act.

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, 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 CCH 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 CCH 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 and Policy Statements/Orders

Smart Charts. Available on the Internet only for Internet subscribers to the *Blue Sky Law Reporter* is the **Smart Charts** product. 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 and exported. A "links" column 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 will appear highlighted in yellow, and the highlights can be saved to remain in yellow for 30 to 120 days.

Currently, there are two types of Smart Charts: (1) finding lists and (2) topics. The *finding list* Smart Charts follow the format of "list only" non-interactive finding lists mentioned above. The results answer the topic question with only a "yes, the state has provisions on that topic," but not with any content data or "no, the state does not have provisions on that topic." If the answer is "yes," the links column will contain the paragraph numbers to the text of the applicable document that may be downloaded to read in full. The *topic* Smart Charts go beyond the "finding list" Smart Charts by containing summarized content for any "yes" answers, together with the links to full text.

To date, the *finding list* Smart Charts replicate the following non-interactive finding lists:

- 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

To date, the following *topic* Smart Charts are created:

- 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

Note: There is a place in **Smart Charts** for subscribers to suggest future topics for Smart Charts. Since Smart Charts is an electronic-only product, the number of charts that can potentially be created is not curtailed by page restrictions.

New Matters (Blue Sky Decisions)...

For print subscribers, the Blue Sky decisions reported from January 2003 to the present are contained in the New Matters division. Back references are made to pertinent paragraphs in the General Guide division and the individual state divisions.

CCH Reporters Of Allied Interest

NASAA Reporter ... The CCH NASAA Reporter is published by CCH under agreement with the North American Securities Administrators Association (NASAA). Organized in 1919, NASAA is the oldest in-

ternational organization devoted to investor protection. NASAA's members consist of the 67 securities administrators from all 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, the provinces and territories of Canada, and Mexico.

While 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. The CCH NASAA Reporter is the best source of information on NASAA policies.

The one-volume Reporter provides:

- NASAA Statements of Policy, Model Rules and other securities guidelines
- Proposed changes to Statements of Policy, with public comments
- Postings of the NASAA's public affairs, positions, speeches and testimony
- NASAA Comment Letters
- Legal briefs submitted by NASAA as *amicus curiae*
- Investor Alerts and other developments in investor protection
- Extensive coverage of NASAA's semi-annual conferences
- Full text of model acts, including the Uniform Securities Acts of 1956 and 2002

Federal Securities Law Reporter ...

CCH Federal Securities Law Reporter is a comprehensive resource covering the federal securities laws and rules. The reporter provides the full text of the securities statutes, as well as the regulations and forms issued by the SEC. It also includes CCH explanations that discuss, summarize and coordinate law, rule interpretations and court decisions. In addition, the reporter provides the full text of federal securities court opinions, SEC regulatory releases, selected PCAOB materials and SEC no-action letters.

Federal Securities Law— Regulations— Forms...

Law— Regulations— Forms furnishes a compilation of all current federal statutes covering securities law and all applicable regulations and forms of the Securities and Exchange Commission promulgated under the federal securities laws. Also included in the Reporter are laws related to the federal regulation of the securities industry such as the Securities Investor Protection Act and the Freedom of Information Act and the rules thereunder.

SEC Docket ... The CCH SEC Docket is a weekly compilation of releases and other materials officially issued by the Securities and Exchange Commission under the federal securities laws. Also reproduced are Accounting and Auditing Enforcement Releases, Financial Reporting Releases, Corporate Reorganization Releases, Litigation Releases, and Staff Accounting Bulletins.

SEC Staff Comment Letters... A collection of all Securities and Exchange Commission "staff comment letters" and "issuer responses" made available by the SEC dating from August 1, 2004 to the present. This database reproduces the text of letters describing questions or concerns the staff has about a particular SEC filing. The database also reproduces the text of the issuer's response to those comments. (In some instances, the issuer response is in reply to staff comments made via telephone.) Staff comments may address the full range of issues that arise under the federal securities laws and regulations pertaining to financial reporting as well as the related accounting and auditing standards. The comment letters database is updated several times each week.

Stock Exchange Guides ... Directories, constitutions, rules and related data are published for the respective stock exchanges in the American Stock Exchange Guide, the Boston Stock Exchange Guide, the New York Stock Exchange Guide, the

Philadelphia Stock Exchange Guide, the Chicago Stock Exchange Guide, the Chicago Board Options Exchange Guide and the Pacific Stock Exchange Guide.

Commodity Futures Law Reporter

... CCH Commodity Futures Law Reporter is a comprehensive resource covering federal laws and regulations, and federal court and agency administrative decisions, pertaining to commodity futures trading. The reporter provides the full text of the Commodity Exchange Act and other futures statutes, as well as regulations and forms issued by the CFTC. It also includes CCH Explanations that discuss, summarize, and coordinate law, rule interpretations and court decisions. In addition, the reporter provides the full text of federal commodity futures court decisions, and CFTC administrative actions and reparations proceedings, regulatory and advisory releases, and no-action letters. The reporter also covers news from the CFTC, futures exchanges, and other industry sectors.

Mutual Funds Guide ... The CCH Mutual Funds Guide is a state of the art resource for the securities law attorney, for counsel new to securities compliance issues and for the investment management professional. With its condensed, highly accessible, two-volume format, Mutual Fund Guide provides the history of the primary securities laws, detailed information about the structure and activities of the Securities and Exchange Commission and a large regulatory section.

The publication also provides scholarly descriptions of the architecture and governance of mutual fund entities, as well as federal and state compliance requirements, including the impact of the Sarbanes-Oxley Act on investment companies. Also available online as part of the Investment Management Library, the Mutual Funds Guide includes an expanded, linked access to the 6 major securities laws and their respective regulations, each available in its entirety.

Volume 1 contains:

- A general guide to the history of the primary securities laws, including detailed information about the structure and activities of the Securities and Exchange Commission;
- A section on the architecture of Mutual Fund entities;
- Detailed compliance requirements, including federal and state registration procedures and federal forms;
- Scholarly descriptions of corporate governance activities and the roles, duties, code of ethics and liabilities of investment personnel in an investment company context;
- Discussions of methods of sale of mutual funds, including interpretive releases on the use of electronic media for information delivery; and
- Relevant excerpts of the Investment Company Act, Investment Advisers Act, Exchange Act, Securities Act and Sarbanes-Oxley Act. of 2002.

Volume 2 contains:

- Investment Company Act, Investment Advisers Act, Exchange Act, and Securities Act regulations;
- A New Developments section covering the most recent SEC Releases (including interpretive releases), federal case law and no-action letters; and
- The monthly Mutual Fund Report Letter, with insightful articles covering conference, legislative and administrative hearings, and recent developments in the international investment arena, federal case law and regulatory issues and developments.

Corporate Secretary's Guide ... The CCH Corporate Secretary's Guide, published in consultation with the Society of Corporate Secretaries & Governance Professionals, is a comprehensive resource for corporate secretaries and governance professionals. The three volume guide covers the powers and responsibilities of governance professionals and includes a review

of state and federal laws pertaining to the duties of the corporate secretary. In addition, the Corporate Directions newsletter, published twice monthly, covers a broad range of topics including recent legislation, SEC activities, case law and more. The newsletter is included with subscriptions to the Guide, or can be individually purchased. The more than 5,000 pages of explanations, forms, examples and recommendations are also available online separately or as part of the Corporate Governance Integrated Library. The Library further expands on this topic area with a collection of treatise material specific to duties and issues relevant to the corporate secretary and governance function.

Volume 1 contains:

- An explanation of how to use the guide
- A Topical Index
- Case Table -- Finding Lists
- Glossary of industry terms
- Contact Information regarding the Society of Corporate Secretaries and Governance Professionals
- Corporation Law and Securities Law Explained
- Securities Registration -- Exemptions, Procedures
- Reporting Requirements -- Issuers
- Proxies
- Reporting Requirements -- Insiders, Holders
- Broker-Dealer Regulation
- Market Regulation -- Self-Regulatory Organizations

Volume 2 contains:

- State Business Law Summaries arranged by state and topic
- Multistate Activities
- Security Transfers -- Registrar
- Meetings and Elections
- Individual Liabilities
- Business Combinations -- Mergers, Takeovers

Volume 3 contains:

- Investment Companies -- Investment Advisers

- Trust Indentures
- SEC Practice
- Federal Regulation of Corporations
- Taxation -- Federal, State
- Cumulative Index -- Current Case Table -- Current Topical Index

SEC Accounting Rules ... The CCH SEC Accounting Rules furnish information on the accounting regulations and releases of the Securities and Exchange Commission.

NASD Manual ... The NASD Manual published for the National Association of Securities Dealers, Inc. contains the directory, certificate of incorporation, bylaws, rules of fair practice, and uniform practice code of the Association.

Securities Transfer Guide ... The CCH Securities Transfer Guide offers practical guidance on the registration requirements and tax implications of stock transfers, including matters of state law, federal regulations and taxation in federal, state and foreign jurisdictions. The three-volume Guide provides:

- Monthly updates on laws, regulations, and cases affecting the securities transfer industry
- All federal and state securities transfer requirements
- Estate tax provisions affecting securities transfer
- Checklists and charts to track constantly changing requirements for transferring stock, including small estates, powers of fiduciaries, age of majority, escheat laws, estate and inheritance tax waiver requirements, and more
- Expert analysis and the full text of uniform laws governing securities transfers, including state-specific modifications
- Information on transfer agents, corporations and state tax officials

Federal Banking Law Reporter ... The CCH Federal Banking Law Reporter offer continuing coverage of the Federal Reserve system,

deposit insurance, national bank acts, and related federal banking and loan measures.

Capital Changes Reporter ... The federal income tax consequences to the investor of changes in the capital structure of publicly held corporations, plus other data affecting capital gain or loss, are detailed in the CCH Capital Changes Reporter.

Bankruptcy Law Reporter ... CCH Bankruptcy Law Reporter spans the whole field of bankruptcy and debt relief law embodied in the federal Bankruptcy Act and related federal statutes.

Business Franchise Guide ... The CCH Business Franchise Guide includes state franchise laws as well as securities laws from Alberta and Ontario, Canada. Also covered are federal statutes and specified Federal Trade Commission rules.

RICO Business Disputes Guide ... The CCH RICO Business Disputes Guide provides both explanations and full texts of state and federal racketeering laws, as well as cases arising from RICO claims. Securities-related claims make up almost 40 of the cases reported.

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 of

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 ¶ 5511 and 5512, makes provision for the enactment of a fraud type law (see also Official Code Comment at 5501.01 & 5501.01).

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
- 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 exempted 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.

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 CCH 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 CCH 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 CCH 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. Further information regarding the IARD can be found at CCH Blue Sky Law Reporter ¶6451.

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 sure-

ty 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. Dunnivant*, 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.

On the following pages will be found digests of court decisions and attorney generals' opinions from all jurisdictions interpreting the Blue Sky Laws. See the explanatory statement on page 401.

Court Decisions and Attorneys General's Opinions Interpreting the Blue Sky Law and Related Statutes.

Explanation

Higher state court decisions, as well as federal court decisions, selected administrative decisions, and attorneys general opinions interpreting state Blue Sky legislation since the enactment of the first Blue Sky act in Kansas in 1911 are noted below in digest form. This extensive body of decisions and rulings, from all jurisdictions covered by the CCH Blue Sky Law Reporter is arranged by subject matter according to the outline beginning on page 201. Each topic is followed by informative notes and citations of supporting judicial authority, with decisions and

attorneys general's opinions arranged alphabetically by states. Where there are a number of decisions or rulings in a particular state, they are set forth in chronological order.

Current Decisions and Rulings

Decisions and rulings reported in the CCH Blue Sky Law Reporter after December 2002 appear in the New Matters division in Volume 3A and are keyed to the appropriate paragraphs in this division through the Topical Index beginning on page 221.

Transfer Binders

- Citations to '46-'54 CCH Decisions, '54-'61 CCH Decisions,
- '61-'71 CCH Decisions, '71-'78 CCH Decisions, '78-'81 CCH Decisions, '82-'84
- CCH Decisions, '84-'85 CCH Decisions, '86-'87 CCH Decisions, '87-'88 CCH Decisions,
- '88-'90 CCH Decisions, '91-'93 CCH Decisions, '93-'94 CCH Decisions, '95-'96
- CCH Decisions and '96-'02 CCH Decisions in the annotations on the following pages are
- to the paragraphs in the Blue Sky Law Reporter Transfer Binders, 1946-1954, 1954-1961,
- 1961-1971, 1971-1978, 1978-1981, 1982-1984, 1984-1985, 1986-1987, 1987-1988,
- 1988-1990, 1991-1993, 1993-1994, 1995-1996, and 1996-2002.

For information, contact CCH at 4025 W. Peterson Avenue, Chicago, Illinois 60646, phone number (800) 344-3734.

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.



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