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Blue Sky Laws

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BLUE SKY LAWS

UNIFORM SECURITIES ACT¹

This note will trace the general background of the Uniform Securities Act, analyze its main parts, and comment on the reaction it has generated. Although this exposition was not written primarily to spotlight the need for the adoption of the Uniform Act, the conclusion is inescapable that uniformity of state securities regulation statutes would greatly facilitate and encourage the offer, sale, and purchase of securities on a multi-state basis.

The genesis of this particular uniform securities act² can be found in the 1947 American Bar Association report which recommended that either a new uniform sale of securities act or a model law be drafted.³ Subsequently, Professor Louis Loss of Harvard Law School was invited by Robert M. Blair-Smith of the ABA to render his able assistance. Accepting the invitation, Professor Loss organized an advisory committee⁴ with whose aid he drafted the Uniform Securities Act.⁵ In August, 1956, the act was approved by the Conference of Commissioners on Uniform State Laws and at this writing has been adopted in part by ten states⁶ and in its entirety by thirteen

¹ The complete text of the Uniform Securities Act together with official comments and draftsmen's commentary is contained in Loss and Cowett, *Blue Sky Law* 245-420 (1958). On pages 238-43 of the same work is a summary of the act. Contained in the first 238 pages is a general exposition on blue sky laws providing background essential to a full understanding of the Uniform Securities Act. In volumes I and III of Loss, *Securities Regulation* 23-107, 1631-82 (2d ed. 1961) is an updating of the general material on blue sky laws and the Uniform Act discussed in Loss and Cowett, *op. cit. supra*. Another source where the full text of the act can be found is 1 *Blue Sky L. Rep.* ¶¶ 4901-53; however, this reproduction of the act contains only the official code comments and not the draftsmen's commentary which relates the legislative history of each section of the Uniform Act.

² The Uniform Sale of Securities Act was approved by the Conference of Commissioners on Uniform State Laws in 1929, gained scattered acceptance, and was subsequently struck from the Conference's list of approved acts in 1944 because of the new problem of state and federal coordination introduced by the Securities Act of 1933.

¹ Loss, *op. cit. supra* note 1, at 90.

³ 72 A.B.A. Rep. 98 (1947).

⁴ Comprising this committee were representatives of those who administered securities acts (agents of the Securities and Exchange Commission and state securities administrators), those who complied with such acts (securities dealer organizations and lawyers), and other interested parties (the ABA's Committee on State Regulation of Securities and members of the Conference of Commissioners on Uniform State Laws).

⁵ Blair-Smith, *The Project for a Uniform State Securities Act*, 11 *Bus. Law.* 37 (1956); Blair-Smith, *More on the Project for a Uniform State Securities Act*, 11 *Bus. Law.* 111 (1956).

⁶ These ten are Connecticut, Georgia, Iowa, Missouri, New Mexico, New Jersey, New York, North Dakota, Oregon, and Texas. Taking advantage of the severability provisions in the act, these states have enacted one or more of its four parts while omitting the rest.

states.⁷ Although the act has not received acceptance in many major commercial states,⁸ it has recently been adopted in substantially its original form by Indiana.⁹ California has given much consideration in the recent past to enacting the Uniform Act, but strong local interests have prevented its enactment.¹⁰

Fundamentally, the Uniform Securities Act is a comprehensive act attempting to regulate the offer, sale, or purchase of securities¹¹ within a state.¹² The first three parts contain provisions governing fraudulent and certain other practices, registration of securities dealers, agents, and in-

⁷ These states are Alabama, Alaska, Arkansas, Colorado, Hawaii, Indiana, Kansas, Kentucky, Montana, Oklahoma, South Carolina, Virginia, and Washington. Although these states have adopted all four parts of the Uniform Act, they have in some cases deviated substantially from the act as originally drafted, and in others only insignificantly. See Legislation, 3 B.C. Ind. & Com. L. Rev. 318-20 (1962).

⁸ Ellis and McCloskey, *The Future of Corporate Securities Regulation in California—Effect of Proposed Uniform Act*, 12 Hastings L.J. 256, 265 (1961). The authors list as major securities states Illinois, Indiana, Massachusetts, Michigan, New York, Ohio, Pennsylvania, Texas, and Wisconsin. Since they were discussing the merits of California's adopting a modified version of the act, the writers did not include it among their listing, but it seems no compilation of important securities states would be complete without California. As was pointed out in note 6, supra, New York and Texas have enacted parts of the Uniform Securities Act, and this means that seven out of ten major commercial states still have adopted no part of the Uniform Act.

⁹ Ind. Ann. Stat. §§ 25-854 to 876 (Burns 1960). Perhaps the most obvious departure of this statute from the Uniform Act is its omission of the activities of investment advisers from its regulatory scheme. For other changes see notes 10-14, Legislation, 3 B.C. Ind. & Com. L. Rev. 218, 219 (1962).

¹⁰ Although much has been written on the controversy in California as to the acceptance or rejection of the proposed Uniform Act, two articles fairly represent the basic arguments of each side. One author asserts that there are so many things wrong with the present securities law that their piecemeal correction would produce substantially the Uniform Act. Edward, *California Measures the Uniform Securities Act Against Its Corporate Securities Law*, 15 Bus. Law. 814 (1961). On the other hand, co-authors of another article contend that the Uniform Act weakens the power of the commissioner of securities to judge the fairness of an issue on the basis of the "fair, just, and equitable" test of the California securities law, for the Uniform Act imposes other more objective standards on him (see Uniform Securities Act § 306). Ellis and McCloskey, supra note 8.

¹¹ In § 401 (Definitions) "offer" and "sale" are defined, excluding from their scope, *inter alia*, stock dividends and pledges, while including gifts of assessable stocks. Section 401(j). A comprehensive definition of "security" is given which brings within the meaning of this key term, *inter alia*, notes, stocks, and warrants, and expressly leaves outside the scope of the term insurance or endowment policies and annuity contracts. Section 401(1). No elaboration is needed to emphasize the vital importance of these definitions.

¹² It is important to note the very broad range such a regulatory law encompasses since not only are intrastate transactions included but also certain interstate transactions. Section 18 of the Securities Act of 1933 specifically states that "nothing in this title shall affect the jurisdiction of the securities commission (or any agency or office performing like functions) of any State . . . over any security or any person." This means that even though all federal statutes have been properly complied with in offering, selling, or purchasing securities on an interstate basis, the requirements of the securities statute of each state in which such offer, sale, or purchase is made must also be met. Since at present forty-eight states have blue sky laws (Delaware and Nevada having

vestment advisers, and registration of securities.¹³ These three parts represent the different philosophies of securities regulation as manifested in the maze of blue sky laws existent in almost all states.¹⁴ The fourth part¹⁵ includes, among other provisions, sanctions for violations of the first three parts, machinery for administering the act, definitions of terms, and exemptions of certain securities. While the scheme of the act contemplates complete uniformity in most areas of securities regulation, the draftsmen, being practical men, realized that many states which did not have statutes of the anti-fraud, dealer registration, or securities registration types¹⁶ would perhaps balk at adopting an act which embodied all these provisions. Therefore, the act was made severable¹⁷ to enable state legislatures to adopt any one or a combination of the first three parts with the appropriate sections of Part IV. The purpose of incorporating this feature of severability into the act was to allow the states to enact any part that conforms to their philosophy in the field of securities regulation.¹⁸ Following is an examination of each of the four parts of the act.

PART I. FRAUDULENT AND OTHER PROHIBITED PRACTICES

This part of the act is very short, consisting of only two sections. The first section makes it unlawful for any person¹⁹ in connection with an offer,

none), each requiring some sort of registration, the task of dealing in a multi-state securities transaction becomes an onerous one.

Another important point relating to the scope of the act is the prescribing of boundaries around which offers, sales, and purchases originating in the state but directed without, or originating out of the state but directed within, are covered by the Uniform Act. Although many states do not circumscribe these bounds, the Uniform Securities Act explicitly delimits them in §§ 414(a)-(f) (Scope of the Act and Service of Process). Perhaps the most significant portion of this section is that which makes the statute applicable to offers to buy or sell made out of state but accepted within the state. Section 414(d). Other parts of the section describe which offers to buy or sell are considered to be made "within the state."

¹³ Uniform Securities Act, Part I, Fraudulent and Other Prohibited Practices; Part II, Registration of Broker-Dealers, Agents, and Investment Advisers; and Part III, Registration of Securities.

¹⁴ 1 Loss, op. cit. supra note 1, at 30-64.

¹⁵ Uniform Securities Act, Part IV, General Provisions.

¹⁶ About 85% of the states include in their blue sky law some sort of anti-fraud provision. Virtually all states require the registration of broker-dealers and of securities; however, registration requirements vary radically. 1 Loss, op. cit. supra note 1, at 34-35.

¹⁷ Appendices A, B, and C show the exact changes which must be made in the Uniform Act to allow for the deletion of Part III, Registration of Securities (Appendix A) or for the deletion of Parts II, Registration of Broker-Dealers, Agents, and Investment Advisers, and III, Registration of Securities (Appendix B). Appendix C (1-3) offers four alternate variations of how to treat investment advisers. These range from leaving in all provisions relating to investment advisers to excluding all such provisions. The reason for this special treatment is the relatively small number of states which extend coverage of their blue sky laws to investment activities. Obviously not all possible combinations of types of regulation offered in the act have been exhausted, but the draftsmen have limited these appendices only to those combinations currently extant in the states.

¹⁸ 1 Loss, op. cit. supra note 1, at 97.

¹⁹ "Person" is defined in § 401(i) as "an individual, a corporation, a partnership, an

sale, or purchase of any security, to employ any fraudulent device, to make any false or misleading statement, or to engage in any act which would operate as a fraud on any person.²⁰ Almost identical with SEC Rule X-10B-5,²¹ this section covers fraudulent purchases, which are not provided for in the blue sky laws of most states.²² It is significant to note that no security or security dealer is exempted from this provision.²³ Administrative,²⁴ criminal²⁵ and civil²⁶ sanctions are provided for in Part IV. Unlike Parts II and III, Part I requires no affirmative action by those dealing in securities; it merely prohibits certain specified actions. Today no state relies solely on an anti-fraud statute,²⁷ but rather supplements its anti-fraud provisions with certain registration requirements.

The second section deems it unlawful for investment advisers²⁸ to render, for compensation, fraudulent advice as to the value, purchase, or sale of securities.²⁹ Investment advisory contracts are required to be in

association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government."

²⁰ Uniform Securities Act § 101.

²¹ It is significant that Professor Loss at the very outset of the act adopts phraseology used in an SEC rule since a substantial part of the Uniform Act is modeled on federal regulatory acts. Besides the Securities Act of 1933 and the Securities and Exchange Act of 1934, the draftsmen have also used as guides the Investment Advisers Act of 1940 and the Investment Company Act of 1940. There appear to be two possible advantages in modeling portions of the act on such federal laws. First, to whatever extent concurrent jurisdiction attaches to the regulation of securities, compliance with laws of the several jurisdictions is made easier, especially where terms used are given the same meaning and where procedures requiring affirmative action are almost the same. Secondly, some states have objected to the adoption of the Uniform Act on the ground that those who have done business under the currently operative statute have relied on precedent set by courts interpreting that particular law. However, this objection loses force since precedent is available in federal court decisions which construe federal statutes and regulations used as models in drafting the Uniform Act, though concededly these decisions are not binding.

²² Blair-Smith, *More on the Project for a Uniform State Securities Act*, *supra* note 5, at 115.

²³ Uniform Securities Act § 402 (Exemptions) clearly states that the securities and transactions therein listed are exempted only from §§ 301 (Registration of Securities) and 403 (Filing of Sales and Advertising Literature).

²⁴ Uniform Securities Act § 407 (Investigations and Subpoenas).

²⁵ Uniform Securities Act §§ 408 (Injunctions) and 409 (Criminal Penalties).

²⁶ Uniform Securities Act § 410 (Civil Liabilities).

²⁷ New Jersey relied solely upon this type statute until 1960 when it enacted parts of the Uniform Securities Act (excluding Part III, Registration of Securities), although it retained portions of its former anti-fraud law. N.J. Stat. Ann. §§ 49:3-2 to 3-26 (1955).

²⁸ Section 401(f) defines "investment adviser" as "any person who, for compensation, engages in the business of advising others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities. . . ." It excludes from the definition broker-dealers, lawyers, and others who render investment advice only incidentally and not for special compensation. Note, however, that such persons, although placed outside the meaning of "investment adviser," are still subject to § 101 of the act. Broker-dealers may also be regulated by Part II.

²⁹ Uniform Securities Act § 102(a).

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writing with express terms relating to such matters as compensation of the adviser and assignment of the contract.⁸⁰ Modeled largely on the Investment Advisers Act of 1940, this section has been made severable⁸¹ because of the large number of states which do not embrace such advisory activities within the orbit of their securities regulation statutes.⁸² However, an increasing number of states have passed legislation bringing investment advisers within the ambit of their securities laws.⁸³ Observing that most states do not include investment advisers within their laws, Robert M. Blair-Smith has concluded that "state authorities must stand powerless while investment advice is openly rendered on the basis of the configuration of stars and planets."⁸⁴

PART II. REGISTRATION OF BROKER-DEALERS, AGENTS, AND INVESTMENT ADVISERS

Comprising four sections, this part requires all broker-dealers, agents of broker-dealers or issuers, and investment advisers to register under the act,⁸⁵ while also outlining a procedure for registration⁸⁶ and establishing the standards to guide the administrator in making decisions to deny, suspend, or revoke registration.⁸⁷ Substantially all states require broker-dealers and agents to register⁸⁸ while only twenty-two states impose the same requirement on investment advisers.⁸⁹ However, the registration process varies considerably from state to state.⁴⁰ To insure financial responsibility and business

⁸⁰ Uniform Securities Act § 102(b).

⁸¹ Uniform Securities Act, Appendix C.

⁸² 1 Loss, *op. cit. supra* note 1, at 35.

⁸³ *Ibid.*

⁸⁴ Blair-Smith, *More on the Project for a Uniform State Securities Act*, *supra* note 5, at 115.

⁸⁵ Uniform Securities Act § 201. An investment adviser need not register if he is already registered as a broker-dealer or has as his only clients investment or insurance companies. Section 201(c). This subsection is based on the Investment Advisers Act of 1940 pointing up once again the heavy reliance placed on federal law. See note 21 *supra*.

⁸⁶ Uniform Securities Act § 202.

⁸⁷ Uniform Securities Act § 204. This section also provides for the automatic withdrawal of registration upon application unless a suspension or revocation proceeding is pending. Section 204(e). It also allows for cancellation of registration if the registrant is no longer in the securities business, is subject to adjudication of being mentally incompetent, or cannot be located after reasonable search. Section 204(d). Section 203 merely puts within the administrator's rule-making power the authority to require registrants to keep certain records and to file financial reports; it also empowers him to examine the records of registrants.

⁸⁸ All blue sky states but Wyoming have this requirement. 1 Loss, *op. cit. supra* note 1, at 43.

⁸⁹ Appendix C-1 of the Uniform Act indicates the appropriate changes for eliminating any registration requirements for investment advisers, a concession by the draftsmen attempting to make the act acceptable to as many states as possible, but at the expense of uniformity in this area.

⁴⁰ New York has the simplest procedure, requiring a minimum of information to be filed, including no data on financial responsibility, and the administrator has no authority to deny, suspend or revoke registration based on any standards. On the other hand, Pennsylvania has a much more complex scheme calling for the filing of such information as the securities administrator orders together with evidence of "financial

competence the Uniform Act requires the filing of such information as the applicant's proposed method of doing business, his qualifications, and his business and financial history.⁴¹ Along with this registration application, the applicant must also file a consent to service of process appointing the administrator as attorney to receive process.⁴² Thirty days after the application is filed, registration is effective automatically in the absence of a denial order or a proceeding pending against the applicant under section 204.⁴³ Like the law in practically all states,⁴⁴ registration under the Uniform Act is annual.⁴⁵

Although the securities administrator has the power to deny, suspend, or revoke registration, he does not have, for example, the unfettered authority given the Wisconsin administrator, whose only guide for the issuance of licenses is that he find it "appropriate in the public interest."⁴⁶ Under the Uniform Act, the administrator may deny, revoke, or suspend registration if he finds both that his order is in the public interest and that one or more of eleven enumerated breaches has occurred, *e.g.*, that the applicant has filed incomplete or false information.⁴⁷ This attempt on the part of the draftsmen to impose on the administrator more objective standards without unduly restricting his actions is a common strand running throughout the fabric of the act,⁴⁸ and aims at avoiding the adverse consequence of not only those blue sky laws which give administrators arbitrary authority but also those statutes which confine them to unduly narrow standards.

responsibility and good repute." The administrator may revoke registration on grounds of "bad repute," insufficient business responsibility, unfair business practices, violation of the act, or fraud. The vast majority of blue sky states follow this pattern rather than New York's. 1 Loss, *op. cit. supra* note 1, at 43-46. It is interesting to note that the Uniform Act also follows this procedure very closely, which makes acceptance of this phase of the act relatively uncontroversial.

⁴¹ Uniform Securities Act §§ 202(a)(1)-(5).

⁴² Reference should be made to § 414 of the act (Scope of the Act and Service of Process) which requires every applicant for registration and every issuer proposing to offer securities in the state on an agency basis to file an irrevocable consent to service of process appointing the administrator attorney to receive process in any non-criminal action, suit, or proceeding against him. Section 414(g). In the event that such consent is not filed there is a provision that conduct violative of the act is tantamount to such appointment. Section 414(h).

⁴³ Uniform Securities Act § 202(a). *Supra* note 37.

⁴⁴ New Jersey alone deviates, requiring biennial registration. 1 Loss, *op. cit. supra* note 1, at 48.

⁴⁵ Uniform Securities Act § 201(d).

⁴⁶ 1 Loss, *op. cit. supra* note 1, at 46.

⁴⁷ The other ten grounds are that the applicant has violated the act, has a record of securities violations, is under injunction from engaging in the securities business, is subject to an adverse order issued by the administrator, is subject to such an order issued by an administrator of another state, SEC, or other regulatory agency, is engaged in unethical practices in the securities business, is insolvent, does not qualify to carry on the business of securities transactions, has not reasonably supervised his employees or agents, or has not paid the proper filing fee. Section 204(a) (A)-(K).

⁴⁸ The same approach is used in determining standards by which the administrator may be guided in denying, suspending, or revoking registration of securities. See § 306.

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PART III. REGISTRATION OF SECURITIES

The requirement in Part III that all securities offered or sold in a state be registered unless specifically exempted⁴⁹ is by far the most difficult part of the act to persuade the states to adopt, yet it is the most vital to the objective of uniformity.⁵⁰ Attempting to incorporate in the act some of the better, more widely-used methods of securities registration, the draftsmen have devised a tripartite scheme of complementary registration. First, securities may be registered by the "notification" method.⁵¹ However, the only securities that qualify for this simplified procedure are those whose issuer (including the issuer's predecessors) has been in continuous operation for at least five years, has not defaulted on the payment of principal, interest, or dividends for three years, and has maintained specified average net earnings for each of the previous three years.⁵² The same treatment is afforded to securities registered for non-issuer distribution if any security of the same class has ever been registered under the act, or if the security was issued originally pursuant to an exemption.⁵³ Upon the filing of certain minimal information and documents,⁵⁴ registration becomes effective automatically after two full business days, or earlier, if the administrator so determines.⁵⁵ Although a handful of states rely solely on this form of securities registration,⁵⁶ well over half utilize it as a streamlined procedure to supplement a more cumbersome registration process for other securities.

⁴⁹ Uniform Securities Act § 301.

⁵⁰ "It is in this area . . . that the need for uniformity is most acute from the viewpoint of the lawyer working on a multi-state offering," but this is the most controversial part. Blair-Smith, *More on Project for a Uniform State Securities Act*, supra note 5, at 116.

⁵¹ Uniform Securities Act § 302.

⁵² These "average net earnings" are 5% of the amount of outstanding securities which have no fixed maturity, or fixed interest or dividend provision. Section 302(a)(1)(B)(i).

⁵³ Uniform Securities Act § 302(a)(2).

⁵⁴ Generally, the information required includes consent to service of process, certain identifying data as to the issuer or any significant subsidiary, the person on whose behalf any part of the offering is being made, and the securities (including options), copies of sales literature, and a statement of eligibility for registration by the notification method. Additional information may be required if the securities are part of a previously registered class and are being registered for non-issuer distribution or were issued originally under an exemption. However, this additional data need not be filed if the securities meet the other tests for qualifying under the notification procedure. Section 302(b).

⁵⁵ Uniform Securities Act § 302(c).

⁵⁶ All that is needed in New York to register is to submit a statement to the administrator identifying the security, giving the name, address, and state of incorporation of its issuer. There are no revocation or suspension provisions, and offers and sales may begin immediately upon filing. In Maine, New Hampshire, and Pennsylvania, registration of securities is merely incidental to broker-dealer registration, while in Massachusetts and Rhode Island a separate procedure designated "notice of intention" is operative. Basically, the latter type statute makes sales legal upon filing notice containing certain information; such sales may continue until the administrator issues a stop order. 1 Loss, *op. cit.* supra note 1, at 50-54.

Secondly, under the Uniform Act securities may be registered by "coordination."⁵⁷ This form of registration is restricted to securities for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering.⁵⁸ Limiting the information to be filed to that required by the SEC,⁵⁹ the registration statement becomes effective at the same time federal registration is effective if all conditions are met.⁶⁰ Since very few states which have not adopted the Uniform Act have statutory provisions for such federal-state coordination,⁶¹ and since the Securities Act of 1933 expressly did not preempt the field of multi-state securities regulation,⁶² this section of the Uniform Act is of great importance. In fact, Professor Loss asserts that "this is perhaps the most important reform in the entire statute,"⁶³ as it streamlines "the content of the registration statement and the procedure by which it becomes effective,"⁶⁴ thereby effecting uniformity where it is most needed, "but not the substantive standards governing its effectiveness,"⁶⁵ a jealously-guarded privilege of state administrators.

Thirdly, securities may be registered by "qualification."⁶⁶ Of the three types of registration, this is the most burdensome since it requires, *e.g.*, in addition to consent to service of process and other basic information required under section 305(c),⁶⁷ certain detailed data concerning the issuer, any significant subsidiary, every director, officer, and owner of ten per cent or more of the shares, promoters (if the issuer was organized within the past three years), and any person on whose behalf a non-issuer distribution is being made.⁶⁸ Although this is not exhaustive of the kind of information required,

⁵⁷ Uniform Securities Act § 303.

⁵⁸ Uniform Securities Act § 303(a).

⁵⁹ In addition to consent to service of process, a specification of the amount of securities to be offered in the state, the names of states in which a registration statement in connection with the same offering has been or will be filed, and any adverse order, judgment, or decree relating to the same offering (which data is required to be submitted with all registration statements), the administrator may request certain other documents, such as copies of any papers filed under the Securities Act of 1933, Section 303(b).

⁶⁰ These conditions are that there be no stop order in effect or proceeding pending, that the registration statement has been on file for at least ten days, and that a statement of maximum and minimum offering prices and maximum underwriting discounts and commissions has been on file for two full business days. Section 303(c).

⁶¹ Aside from states which have already adopted Part III of the Uniform Act, five states have some type of regulatory procedure aimed at coordination: Illinois, Michigan, North Carolina, Pennsylvania, and Tennessee. While four of these have notification procedures for securities registered with the SEC, Pennsylvania simply exempts any security registered with that federal agency. 1 Loss, *op. cit.* supra note 1, at 91-92.

⁶² *Supra* note 12.

⁶³ 1 Loss, *op. cit.* supra note 1, at 99.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ Uniform Securities Act § 304.

⁶⁷ See note 59 *supra*, wherein the information required under § 305(c) for all registration statements is indicated (exclusive of consent to service of process).

⁶⁸ Uniform Securities Act § 304(h). Other general categories of information re-

it is sufficient to demonstrate the purpose of having more simplified procedures for less speculative securities (notification) and for securities registered with the SEC (coordination). Effectiveness of the registration statement must await the order of the administrator.⁶⁹ Aside from the few states having only notice type registration,⁷⁰ most states provide for some type of full registration such as this.

Of the eleven provisions in section 305 (Provisions Applicable to Registration Generally),⁷¹ perhaps the most significant are those governing non-issuer distributions,⁷² since in most blue sky laws the application of registration provisions to secondary distributions is ambiguous.⁷³ In the Uniform Act all the securities of the same class may be secondarily traded by anyone, regardless of who filed or how many units of the securities were registered, as long as the registration statement is effective.⁷⁴

The most controversial section of the Uniform Securities Act is that which prescribes the standards by which administrators may issue orders denying, revoking, or suspending the registration of securities.⁷⁵ The standards set up by this section of the Uniform Act are similar to those contained in Part II regulating the registration of broker-dealers, agents, and investment advisers. Any administrative order denying, revoking, or suspending registration must be in the public interest, and one or more of the nine other grounds, such as the filing of false, misleading, or incomplete information or the violation of any order or part of the act,⁷⁶ must be found to exist. Standards differ radically among the states, some using narrow ones,⁷⁷ others very broad ones.⁷⁸ California, having very broad standards, refused to ap-

quired include capitalization (§ 304(b)(7)), data concerning securities offered, price, and underwriting (§ 304(b)(8)), use of proceeds (§ 304(b)(9)), options (§ 304(b)(10)), material contracts and litigation (§ 304(b)(11)), sales literature (§ 304(b)(12)), specimen of security, articles of incorporation, by-laws, and trust indentures (§ 304(b)(13)), opinion of counsel (§ 304(b)(14)), consents of experts (§ 304(b)(15)), financial statements (§ 304(b)(16)), and other information (§ 304(b)(17)).

⁶⁹ Uniform Securities Act § 304(c).

⁷⁰ *Supra* note 56.

⁷¹ Of relatively minor importance, these subsections cover such areas as filing fees, (§ 305(b)) the requirement of filing reports with the administrator (§ 305(j)) and amendment of registration statement (§ 305(k)).

⁷² Uniform Securities Act §§ 305(f) and (i).

⁷³ 1 *Loss*, *op. cit.* *supra* note 1, at 62.

⁷⁴ Uniform Securities Act § 305(i). See also Official Comment to §§ 305(i) and (j).

⁷⁵ Uniform Securities Act § 306.

⁷⁶ Uniform Securities Act § 306(a). The other seven grounds are that the securities are subject to a stop order or injunction, that the issuer's enterprise includes illegal activities, that the offering has worked or would tend to work a fraud upon purchasers, that unreasonable underwriters' and sellers' commissions, promoters' profits, or options were given, that the security is not eligible for the notification procedure if it is sought to be registered thereunder, that there has been a failure to comply with certain requirements under the coordination procedure, or that the applicant has failed to pay the proper filing fee. Section 306(a) (C)-(I).

⁷⁷ *Loss* and *Cowett*, *op. cit.* *supra* note 1, at 72-77.

⁷⁸ Referring to such broad standards, the authors aver that "such phrases as 'sound business principles,' 'grossly unfair terms,' and 'fair, just and equitable' leave a good deal to the administrator's imagination." *Loss* and *Cowett*, *op. cit.* *supra* note 1, at 67.

prove the Uniform Securities Act at the National Conference of Commissioners on Uniform State Laws.⁷⁹ Under the California blue sky law the administrator may grant a permit for the issuance of securities only if the proposed issue is "fair, just, and equitable."⁸⁰ The presupposition that the Uniform Act would somewhat limit the power of the administrator has been the chief obstacle to its enactment in California.⁸¹ However, it has also been asserted that the standards imposed by the Uniform Act may not be restrictive at all, and that they are actually very broad.⁸² But this does not seem to be true in light of the fact that the administrator must find not only that his order is in the public interest, but also that one of the nine enumerated grounds exists. The fact that these grounds are rather broadly defined manifests the intent of the draftsmen to allow the administrator a certain degree of flexibility in judging each case on its peculiar facts before issuing an order denying, revoking, or suspending registration.

PART IV. GENERAL PROVISIONS

Although this part consists of nineteen sections it deals chiefly with three areas: definitions⁸³ and exemptions,⁸⁴ administration, and sanctions. Because of their interrelated character, definitions and exemptions may be treated together. While the definitions circumscribe the scope of what the act is intended to cover, the exemptions merely preclude a security or transaction from the requirements of registration of securities and filing of sales literature. Therefore, a "sale," "person," or "security" not included within the definition of these terms is simply not subject to the act, while a security or transaction exempted by the act is subject to all provisions but those mentioned above. Whereas some exemptions are granted on the ground of the security or transaction being already adequately regulated by another agency,⁸⁵ others seem to be given on an incentive basis.⁸⁶ Although the

⁷⁹ Loss, *Current Status of the Uniform Securities Act*, 12 *Bus. Law.* 26, 28 (1956).

⁸⁰ Cal. Corp. Code § 25500.

⁸¹ *Supra* note 10.

⁸² Ellis and McCloskey, conceding the wide area of discretion the California administrator has, contend that the Uniform Act does not reduce the circumference of this sphere. They cite as an example § 306(a)(E) which requires that the administrator find, besides the fact that his adverse order is in the "public interest," that "the offering has worked or tended to work a fraud upon purchasers or would so operate." Since the definition of fraud does not limit it to common law deceit (§ 401(d)), this standard can hardly be said to inject more certainty into the administrator's actions than exists under the present statute. Ellis and McCloskey, *supra* note 8, at 262-63. To the same effect, see Hill, *Some Comments on the Uniform Securities Act*, 55 *Nw. U.L. Rev.* 661, 672-74 (1961).

⁸³ Uniform Securities Act §§ 401(a)-(m).

⁸⁴ Uniform Securities Act §§ 402(a)(1)-(12) (Exempted Securities) and §§ 402(b)(1)-(12) (Exempted Transactions).

⁸⁵ For example, securities listed on major and regional stock exchanges (§ 402(a)(8)), and securities issued by a common carrier, public utility, or holding company subject to ICC jurisdiction (§ 402(a)(7)).

⁸⁶ For example, transactions pursuant to an offer to not more than ten persons in the state where no commission or other compensation is paid for soliciting buyers therein

CURRENT LEGISLATION

Uniform Act permits some variations in this section on exemptions, states which have adopted the act have gone much further and have freely deleted and added exemptions.⁸⁷ Nevertheless, uniformity has not been seriously handicapped thereby.⁸⁸

The sections dealing with the administration of the act do not merit much discussion since they leave many of the details up to the administrative procedures already established in the adopting state. Along with designating that a securities administrator must be selected to administer the act,⁸⁹ they provide for investigations and subpoenas,⁹⁰ judicial review of orders,⁹¹ the making and publishing of rules, forms, and orders, the requirement of having hearings,⁹² and administrative files and opinions.⁹³ Sanctions for violation of the act include administrative,⁹⁴ civil,⁹⁵ and criminal⁹⁶ provisions.

CONCLUSION

Several general conclusions may be drawn from this analysis of the Uniform Securities Act. In the first place, it has been so drafted as to be acceptable in almost any state since it adopts procedures used in most blue sky jurisdictions, making provision for severability of parts and sections that do not represent the statutory law in some states. Secondly, the act has its model aspects, such as the standards for registration set out in Part III. Finally, the flavor of federal law running throughout the Uniform Act looks toward better coordination between state and federal securities regulation laws. On balance, the act represents a well-mixed blend of model and uniform ingredients⁹⁷ which gives the states a chance to improve certain

(§ 402(b)(9)), and offers or sales of preorganization certificates if no compensation is paid for solicitation, the number of shares does not exceed ten, and no payment is made by the subscriber (§ 402(b)(10)).

⁸⁷ Ind. Ann. Stat. §§ 25-854 to 876 (Burns 1960); Mont. Rev. Codes Ann. §§ 15-201 to 225 (1947). These are exemplary only.

⁸⁸ Uniform and convenient procedures for registration are extremely desirable for multistate distributions underwritten on a firm commitment basis; minor variations which do not interfere with timing are not fatal to this objective, but in the matter of registration procedures, fortunately, the draftsmen seem to have done an exceedingly effective job of disarming possible opposition.

Hill, *supra* note 82, at 677.

⁸⁹ Uniform Securities Act § 406.

⁹⁰ Uniform Securities Act § 407.

⁹¹ Uniform Securities Act § 411.

⁹² Uniform Securities Act § 412.

⁹³ Uniform Securities Act § 413.

⁹⁴ Uniform Securities Act § 407 (Investigations and Subpoenas). This is supplementary to § 204 (Denial, Revocation, Suspension, Cancellation and Withdrawal of Registration) and § 306 (Denial, Suspension, and Revocation of Registration).

⁹⁵ Uniform Securities Act § 410 (Civil Liabilities).

⁹⁶ Uniform Securities Act §§ 408 (Injunctions) and 409 (Criminal Penalties).

⁹⁷ Commenting on the shading into each other of model and uniform features of the act, Hill observes that as far as the draftsmen tried to achieve uniformity where it is desirable and practicable they have been successful; where uniformity is not important, the act represents a vast improvement over the typical blue sky law in consequence of the elimination of many uncertainties and pitfalls characteristic in the field of blue sky regulation. Hill, *supra* note 82, at 695.

aspects of their own securities law without having to accept the entire act. Consequently, the Uniform Act raises the standards of existing securities statutes while achieving a certain degree of uniformity which otherwise could not be reached at all.

DANIEL J. JOHNEDIS

CORPORATE LEGISLATION

During 1961, pursuant to a growing trend, fourteen states enacted professional corporation laws.¹ In general, these new statutes have followed two broad patterns as to professional groups covered, some allowing virtually any professional group to incorporate, others limiting the benefit to specifically named groups.² In no enactment, however, has the professional man been allowed to escape his traditional obligations.³ The Alabama act, for example, provides that no state law applicable to the relationship between a person furnishing professional services and a person receiving such services is changed by its terms.⁴ The Alabama act also provides that members of the corporation shall not be individually liable for claims against the corporation unless a member has personally participated in the transaction out of which the claim arises.⁵ Under the Illinois act a professional man's relationship with his client is unchanged but there is no provision governing personal liability arising out of a transaction where a member is not individually involved.⁶

Professional corporation laws are also pending before the legislatures of several states.⁷ That before the Massachusetts Senate entitled "The Professional Service Corporation Act"⁸ defines professional service as

¹ The fourteen states are: Alabama, Laws 1961, No. 865; Arkansas, Laws 1961, No. 179 (medical), Laws 1961, No. 471 (dental); Connecticut, Laws 1961, P.A. 158; Florida, Laws 1961, No. 285; Georgia, Laws 1961, No. 285; Illinois, Laws 1961, S.B. 804; Minnesota, Laws 1961, c. 1 (1st Spec. sess.); Ohio, Laws 1961, S.B. 550; Oklahoma, Laws 1961, c. 29; Pennsylvania, Laws 1961, S.B. 525; South Dakota, Laws 1961, c. 29; Tennessee, Laws 1961, c. 350; Texas, Laws 1961, c. 158; Wisconsin, Laws 1961, c. 350. In addition, the Supreme Court of Colorado has granted attorneys the privilege of incorporation without the aid of an enabling statute, Colo. Sup. Ct. R. 231.

² In Florida virtually any professional group may incorporate; in Arkansas the benefit is limited to medical and dental corporations.

³ A qualification to this statement must be noted. The Colorado Rules of Civil Procedure, *supra* note 1, at § I G. provide:

that all shareholders of the corporation shall be jointly and severally liable for all acts, errors and omissions of the employees of the corporation except during periods of time when the corporation shall maintain in good standing lawyers' professional liability insurance.

The above mentioned liability insurance must meet minimum standards prescribed by the Colorado Supreme Court.

⁴ Ala. Laws 1961, No. 865 § 6.

⁵ *Ibid.*

⁶ Ill. Laws 1961, S.B. 804 § 6.

⁷ These states are: Kentucky, H. 97; Michigan, H. 64; New Jersey, S. 32; New York, A. 2037, A. 3080, S. 1375; Massachusetts, S. 522, H. 276, H. 277. The two proposals before the Massachusetts House are identical and hereinafter will be referred to as one.

⁸ Mass. S. 522 § 2 (1962).