Uniform Law Commission
The National Conference of Commissioners on Uniform State Laws

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Securities Act Summary

Background

The Uniform Law Commissioners have turned to the subject of securities regulation four times in their history. The first act was the Uniform Sales of Securities Act of 1930, which predates the first major federal effort in 1933. The dating of this first act seems appropriate in light of the events of 1929. Recognizing the need for state uniformity, the Uniform Law Commissioners had begun their work eight years earlier, in 1922. There were not many enactments, however.

A second Uniform Securities Act was promulgated by the Uniform Law Commissioners in 1956 to replace the 1930 Act. It was enacted in 37 jurisdictions. The first revision of this mainstay of state securities regulation occurred in 1985; amendments were added to the 1985 Act in 1988, but the revision was enacted in only six states. The Uniform Law Commissioners have now promulgated a fourth Act which replaces both the 1956 and 1985 Acts. It is a carefully balanced result of four years of intensive consideration and drafting, and reflects consensus support from most representatives of the broad array of government and private sector interests that participated in the process. This summary describes the 2002 Uniform Securities Act.

Federal and State Law

Initially it is necessary to recognize that there are two concurrent securities regulatory regimes: one at the federal level and the other at the state level. Federal regulation of securities began effectively with Congress' enactment of the Securities Act of 1933 and the Securities Exchange Act of 1934, which created the Securities and Exchange Commission (SEC). These two Acts, plus the Investment Company and the Investment Adviser Acts enacted in 1940, all of them much amended over the years since their original enactment, are still the core federal law on securities regulation. But there are more federal statutes relevant to securities regulation: Section 103 of the 2002 Act lists a total of 13. From 1956 through 2002, drafters of the successive versions of the Uniform Securities Act have had to deal with the relationship with federal law. Coordinating federal and state regulation has been a substantial objective of the drafters of the new 2002 Uniform Act.

The failure of the 1985 Act to gain many enactments was rooted in the duplication of regulation problem, the role of merit regulation at the state level, and many states' reluctance to address the subject when there was such controversy about its provisions. In 1996, Congress partially resolved this problem in the National Securities Markets Improvements Act of 1996 (NSMIA) and the Securities Litigation Uniform Standards Act of 1998. In NSMIA Congress preempted significant parts of state power to duplicate federal regulation. For example, it prohibits a state from subjecting an offering of "federal covered securities" to merit review and other registration requirements. A principal effort of the 2002 Uniform Act is to reconcile, and to achieve better coordination of, federal and state securities regulation.

State Role in Securities Regulation

The states have an important role in securities regulation. There is fraudulent activity at a level that eludes federal law protection, even when federal law applies. And by no means is every security sold a "federal covered security." Many schemes to defraud investors involve locally generated pyramid schemes, misrepresentation, and scam sales. Without state regulation accompanied by civil and criminal enforcement of the law in state courts, there would be little hope of redress for many victimized investors. State enforcement is also available when there are fraudulent schemes involving federal covered securities. In effect, Congress and the SEC have acknowledged that the federal level is unable to cope with all the enforcement that needs to be done.

The 2002 Uniform Act is an effort to give states regulatory and enforcement authority that minimizes duplication of regulatory resources and that blends with federal regulation and enforcement in a more efficient system for investor protection. Uniformity of law among the states is essential for this to happen, but it needs to be a uniform law that coordinates with federal law.

Elements of Securities Regulation

Securities regulation exists to prevent fraudulent sales of securities to investors. The purpose is achieved by three methods. First, initial public offerings of securities by issuers and control persons must be registered. Second, broker-dealers and their agents, and investment advisers and their representatives, must be registered. Third, fraud in securities transactions must be prohibited and enforcement powers given to an appropriate regulatory agency. These powers include the ability to make rules and regulations, issue stop-orders, bring criminal prosecutions and pursue civil actions in court. The 2002 Uniform Act brings all of this up-to-date with expansion of enforcement authority at the state level.

Registration and Filing for Securities Offerings

There are three methods for dealing with public offerings of securities under the new Act: notice filing, registration by coordination, and registration by qualification.

Notice filing is for certain “federal covered securities”. These are securities which by reason of federal preemption are no longer registered at the state level. They include securities that are, or on completion of the offering will be, listed on the New York or American Stock Exchanges, on NASDAQ, or on other exchanges that the SEC approves; or are securities issued by SEC registered investment companies (most of which are the mutual funds); or are securities issued under specified exemptions in the Securities Act of 1933. Public offerings of listed securities and mutual funds, of course, will be registered with the SEC. The notice filing under the 2002 Uniform Act is for federal covered securities other than listed securities, and includes a consent to service of process, payment of a filing fee, and, depending on the state securities administrator’s requirements, can include copies of material filed with the SEC as part of registration there. The intent of both NSMIA and the 2002 Uniform Act is to remain essentially revenue neutral as to the states. The Act provides a platform for eventually effectuating one-stop filing whereby documents filed with the SEC can be electronically filed with states within which offerings are to be made.

Offerings of securities that are not federal covered securities must be registered at the state level unless exempt, by means of either coordination or qualification. The provision in the 1956 Act for registration by notification has been eliminated in the 2002 Act, both because it has rarely been used in recent years and because most securities to which it was applicable are now preempted federal covered securities.

Coordination registration at the state level is available for securities that, even though not federal covered securities, are registered with the SEC. These would include securities that do not meet the listing standards of exchanges, which have been going through a process of upgrading. The new Act’s registration by coordination provision is little changed from the 1956 Act, which originated it. The objective of the coordination is the simultaneous registration of the offering at the SEC and in the states where the offering is to be made. In order to facilitate the coordination registration process, the state securities administrators association has implemented a system for coordinated review of such an offering by the states in which the offering is to be made. The new Act provides support for that effort. The new Act continues to permit “merit” regulation, which for the limited number of SEC registered issues to which it would apply remains, to that extent, inconsistent with the disclosure basis for SEC registration. A provision of the new Act does require that to the extent practicable any merit standards should be published so as to provide notice. It is hoped that such standards would be uniform among those states imposing such regulation. A number of states do not apply merit regulation.

Qualification registration at the state level applies to all other offerings being made within a state, for which an exemption is not available. These can include intra-state offerings and offerings that are within exemptions from SEC registration because of their relatively small size. This provision in the new Act, including the required information content of the state registration (which is applicable also to issues being registered by coordination), is little changed from the 1956 Act, except for modernizing language.

The 2002 Act, like the 1956 Act, contains a number of exemptions from the general requirement that all securities offerings must be registered. Some exemptions are for securities, such as government (both U.S. and foreign) and municipal securities, and some are for transactions in securities, such as unsolicited brokerage and limited offering transactions.

Relevant to transaction exemptions is the definition of "institutional investor" in the new Act. It seeks both to make uniform the varied definitions in current state laws and to be consistent under federal law. With respect to securities exemptions, authority is given to the state securities administrator to limit the availability of the exemption for nonprofit organizations securities if debt obligations are being publicly offered. A number of states have been confronted with problems, sometimes of fraud and sometimes simply of inadequate disclosure, in the sale of church bonds.

It is important to recognize that all of these exemptions are only from the registration of securities. They do not free broker-dealers, investment advisers, agents, or investment adviser representatives from the separate registration requirements applicable to them under the Act. In addition, the antifraud provisions of the Act continue to apply to anyone engaging in an exempted transaction or in a transaction involving an exempted security.

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