EVENTS CALENDAR

ABA ANNUAL MEETING

The State Regulation of Securities Committee will meet at 2:00 PM on Saturday, August 10, in conjunction with the 2002 Annual Meeting of the ABA, which will convene August 8 through August 14, 2002, in Washington, D.C. at the Hyatt Regency on Capitol Hill.

NASAA ANNUAL FALL CONFERENCE

The full State Regulation of Securities Committee is scheduled to meet at 10:00 AM on Sunday, September 29, in conjunction with the 2002 Annual NASAA Conference, to be held September 29 through October 2, 2002, in Philadelphia at Loews Philadelphia Hotel.

PLAN FOR THE FUTURE

2003 Annual NASAA Fall Conference
September 14 - 17, 2003
Chicago Marriott Downtown
Chicago, Illinois

2004 Annual NASAA Fall Conference
September 30-October 3, 2004
Fairmont Scottsdale Princess
Phoenix, Arizona

2005 Annual NASAA Fall Conference
September 11-14, 2005
Hilton Minneapolis
Minneapolis, Minnesota

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WORD FROM THE CHAIR

By Alan P. Baden
Vinson & Elkins (New York)

Martin Miller will become the Chair of the Committee at the ABA Annual Meeting this year. I will be stepping down after four years as Chair. I have been a committee member since 1974 and I think our legacy as an ABA committee is excellent. I am very proud of the work we have done over the years to monitor blue sky law, work with NASAA and educate the practicing bar. My best wishes to the Committee as it continues in this new century under new leadership.

The securities markets have gone from overheated to cool, bull to bear, in these last four years. We have had a significant change in the last four years in blue sky law as the states have reacted to NSMIA. In addition, I have had the opportunity to work on behalf of the ABA with the NCCUSL drafting committee, NASAA, the SIA and others.

IN THIS ISSUE

Word From The Chair .................................... 1
Events Schedule.......................................... 1
NY Considers Investment Adviser Legislation ................... 2
Accredited Investor Exemption Crosses Canada ................. 3
Excerpts From State Liaison Reports .................. 5
CA Exempts Certain Investment Advisers ... 7
CA Adopts Electronic Fingerprint Checks and “Do Not Call” List Provision ...... 7
Committee Officers .................................. 8
Directory of Officers and Contributors .......... 9
on the new Uniform Securities Act. It is expected that NCCUSL will approve the new USA in July, 2002.

It has been a pleasure to work with the Committee and in particular the officers who have made very significant contributions to our work. Martin Miller

NOTE: Alan Baden will participate in a panel discussion at the NASAA Fall Conference covering the proposed new Uniform Securities Act. Committee members are urged to attend. The panel presentation is scheduled for Monday, September 30, 2002, at 10:30 AM.

and Ellen Lieberman, our Vice Chairs, Alan Parness, our Secretary, Bruce Johnson and Bob Boresta, our Bugle editors, and Roger Fein, our Liaison subcommittee chair, have all made significant contributions of their time to the cause. Finally, I owe a great debt of gratitude to my legal assistant, Wendy Conrad, who (as most of you know) did all the work in organizing my Chairmanship.

NY CONSIDERS INVESTMENT ADVISER LEGISLATION
By Ellen Lieberman
Debevoise & Plimpton - New York

Legislation is expected to pass the New York Legislature as this edition of the Bugle goes to press that would change investment adviser registration and filing requirements commencing on January 1, 2003. The New York State Bar Association Committee on Securities Regulation opposed earlier versions of the legislation but came out in full support of the revised version as workable and helpful. The Committee commended the Office of the Attorney General and suggested that the improved bill demonstrated the benefits that result from open dialogue and cooperation of the OAG and industry. The Committee anticipates working with the OAG to develop timely and appropriate implementing regulations, including a definition of financial institutions and institutional buyers, and will suggest codification in regulations of the OAG’s existing and long-standing interpretation that counts persons to whom advisory services are sold in a manner consistent with the definition of “client” under the federal Investment Advisers Act (the “Advisers Act”).

Exclusions from Definition
Under current law, New York provides an exclusion from the definition of “investment adviser” for a person who does not sell investment advisory services to more than 40 persons in the state. Under the new legislation, this would be replaced by exclusions that more closely track the Advisers Act. Thus, exclusions would be available instead for a person who sold, during the preceding 12-month period, investment advisory services to fewer than six persons residing in New York, exclusive of financial institutions and institutional buyers as may be defined by rule or regulation of the AG; a federally covered investment adviser; a person who would otherwise be required or permitted to register with the Securities and Exchange Commission as an investment adviser but for exemption under Section 203(b)(3) of the Advisers Act; and such other person as the AG by rule or regulation excludes from the definition of investment adviser or exempts from the filing requirements.

Electronic Filing and Exams
The new legislation would permit the AG to prescribe alternate filing methods that facilitate a central registration depository, so that
investment advisers and federally covered investment advisers could register or submit notice filings electronically through the IARD. Further, the AG would be permitted to require, as a condition to New York registration of an investment adviser, that the adviser and persons who represent the adviser have successfully completed exam requirements or have other designated qualifications or credentials. The exam requirements would not apply to representatives of federally covered advisers.

**ACCREDITED INVESTOR EXEMPTION CROSSES CANADA**

By Michel Gélinas
Stikeman Elliott

The Alberta and British Columbia Securities Commissions have recently adopted new rules that fundamentally change the nature of private placements in Alberta and British Columbia. Multilateral Instrument 45-103, "Capital Raising Exemptions" became effective in Alberta on March 30, 2002 and in British Columbia on April 3, 2002. Ontario was the first province in Canada to introduce an accredited investor exemption when the Ontario Securities Commission adopted Rule 45-501, "Exempt Distributions" which became effective on November 30, 2001.

Other exemptions were introduced by MI 45-103, but would generally be of limited interest to a U.S. issuer. These exemptions are briefly mentioned under "Other Modifications" below.

**The Accredited Investor Exemption**

The new accredited investor exemption is similar to the accredited investor exemption available in Ontario under Ontario Securities Commission Rule 45-501 as well as pursuant to the securities laws of the United States. MI 45-103 permits trades in securities of an issuer to be exempt from both the dealer registration and prospectus requirements if the purchaser purchases as a principal and is an accredited investor. One difference with the Ontario regime is the availability of a dealer registration exemption that "matches" the prospectus filing exemption. In Ontario, the Universal Registration System would generally require any broker-dealer involved in the distribution of securities (or otherwise trading in securities) to be registered in Ontario (U.S. broker-dealers are normally registered in the category of International Dealers) even when such broker-dealer deals exclusively with accredited investors.

Under MI 45-103, no minimum amount must be invested by the investor, provided that such investor is an accredited investor. Accredited investors include institutional investors such as Canadian banks, loan and trust companies, insurance companies, registered advisers, registered dealers, governments and pension funds. The significant change, however, is that the accredited investor definition also encompasses individuals and smaller entities (who, subject to certain exceptions, could previously only rely on the C$97,000 purchase price exemption). The list of those characterized as accredited investors as includes, among others:

- an individual who beneficially owns, alone or together with a spouse, financial assets (cash, securities, contracts of insurance, or deposits) having an aggregate realizable value before taxes, but net of any related liabilities, exceeding C$1,000,000;
an individual whose net income before taxes exceeded C$200,000 in each of the two most recent years, or whose net income before taxes combined with that of a spouse exceeded C$300,000 in each of those years and who, in either case, has a reasonable expectation of exceeding the same net income level in the current year; and

a company or other business entity (other than a mutual fund or non-redeemable investment fund) that has net assets of at least C$5,000,000, as reflected in its most recently prepared financial statements.

Unlike Ontario Securities Commission Rule 45-501, the delivery of an offering memorandum to prospective purchasers in reliance upon the accredited investor exemption under MI 45-103 does not trigger any statutory right of action for the benefit of the purchasers.

MI 45-103 also requires the filing of a post-trade report and the payment of filing fees in connection with certain trades (such as the private placement of newly issued securities) but these requirements are not materially different from the current regime.

**Resales**

The resale rules pertaining to securities acquired pursuant to a private placement have also been modified. MI 45-502, which has been adopted by all the provinces other than Quebec, became effective on November 30, 2001. This instrument provides, among other things, for a prospectus exemption, if certain conditions are met, in connection with the resale of the securities of a non-reporting issuer (essentially, an issuer which has not filed a prospectus in Canada) outside of Canada provided that residents of Canada, at the time the securities were distributed in Canada, (i) did not own more than 10% of the outstanding securities of the class or series of securities being resold; and (ii) did not represent more than 10% of the total number of owners of securities of the class or series of securities being resold. The 10% threshold is inclusive of the securities distributed to the Canadian holders who wish to rely on the resale exemption.

**Other Modifications**

In addition to the accredited investor exemption, MI 45-103 introduced three other harmonized new exemptions from the prospectus and registration requirements in Alberta and British Columbia:

- the private issuer exemption;
- the family, friends and business associates exemption; and
- the offering memorandum exemption.

The Alberta and British Columbia Securities Commissions are each seeking the repeal of certain exemptions contained in their respective securities legislation that overlap with MI 45-103, including the existing private issuer exemption, the existing friends and family exemption, the existing financial institutions exemption and the existing "50 purchasers" exemption. Until such exemptions are repealed (and in any event until October 2, 2002 in British Columbia), issuers will continue to be able to use any of these existing statutory exemptions or any of the exemptions contained in MI 45-103. In addition to repealing the existing exemptions mentioned above, the Alberta Securities Commission is considering seeking the repeal of the C$97,000 exemption, although it will not be repealed in Alberta until the Alberta Securities Commission has had
an opportunity to review its use following the implementation of MI 45-103. The British Columbia Securities Commission has announced that it will be seeking the repeal of the C$97,000 exemption in British Columbia, although a transitional period for this exemption will remain in British Columbia until at least April 3, 2003.

Conclusion

MI 45-103 and MI 45-502 are attempts to harmonize Canadian securities legislation with the U.S. regime. However, significant differences remain. In fact, securities legislation in Canada varies from one province to another as each province has its own securities legislation and securities commission. There have been on-going discussions in Canada regarding the creation of a national securities commission, but certain provinces are concerned that they would have to give up the power to regulate their provincial securities industry. In the meantime, the Canadian securities commissions are attempting to harmonize the various provincial securities laws through the adoption of National Instruments (or Multilateral Instruments when certain provinces opt out). However, until securities legislation is harmonized throughout Canada, it is difficult to imagine that Canadian and U.S. securities legislation could be harmonized in a comprehensive manner.

EXCERPTS FROM REPORTS OF THE STATE LIAISON MEMBERS

The following is a non-exhaustive collection of short summaries of news and information relating to a few states, as provided to the Committee by members serving as State Liaisons. The complete versions of the information for these as well as the other states was included as part of the volume of subcommittee reports distributed to members of the Committee in attendance at the April, 2002, Committee meeting in Boston. The Liaison reports will be updated and presented again to members who are in attendance at the August, 2002, meeting of the Committee in Washington, D.C., and at the September, 2002, meeting in Philadelphia.

ALABAMA

The Securities Commission continues to see instances in which sales commissions are paid to unregistered agents, and reminds issuers and counsel that reliance on the covered security status for Rule 506 offerings does not obviate the requirement for compliance with agent registration requirements.

ARKANSAS

A. cease and desist order was issued against a company selling pay telephones and service agreements without registration under the securities laws. The transaction was deemed the sale of an investment contract as defined in Arkansas Code Ann. Section 23-42-102(15)(a)(xi).

CONNECTICUT

Section 36b-21(16) exempts “any transaction exempt under Rule 701, 17 CFR Section 230.701 promulgated under Section 3(b) of the Securities Act of 1933.”

GEORGIA

The enforcement staff is focusing its efforts on unregistered securities cases, but continues to monitor the activities of registered entities, especially in regard to alleged sales practice violations. The staff invites suggestions from the bar regarding possible changes in filing requirements and procedures to streamline registration and filing functions, particularly changes in notice filing procedures for federally
covered securities in areas not requiring statutory changes.

**Hawaii**
Hawaii has extended its exemption for compensatory benefit plan securities to “any transaction that is exempt or would be exempt under rule 701” under the Securities Act of 1933. See Hawaii Revised Statutes Section 485-6(18).

**Indiana**
The Commissioner believes that compensatory benefit plan securities issued to consultants or advisors would not be exempt under the Indiana exemption for securities issued pursuant to an employee benefit plan.

**New Hampshire**
Officers and directors of an issuer effecting transactions for the issuer may be excluded from the definition of “agent” by application and order of the Bureau of Securities Regulation without having to file a Form U-4. The Bureau now has discretion to increase the number of sales that may be made under the isolated sales transactional exemption beyond five sales in any twelve month period.

**New Jersey**
Filing requirements for investment companies, unit investment trusts and investment advisers, and registration requirements for investment adviser representatives, are effective July 1, 2002.

**South Dakota**
The legislature repealed merit review of registration statements effective July 1, 2002. It also placed a cap of $2000 on registration fees.

**NEW HAMPSHIRECLAIMS STATES RIGHTS FOR RULE 506 OFFERING**
New Hampshire retains the right to demand information from the issuer in an offering of covered securities conducted in compliance with Rule 506, and may require submission of offering documents and other information, according to staff of the New Hampshire Bureau of Securities Regulation. While it is unlikely that the issue will be examined by a court of law, some persons practicing Blue Sky law believe, based on the general intent of Congress when enacting the NSMIA, that Section 18(c)(2)(A) of the Securities Act of 1933 allows the states to require filing only of copies of documents that are filed with the SEC, and only for notice purposes. As offering documents are not filed with the SEC, the right of the states to require submission of such documents, it is argued, appears to be at least questionable.

Further, even assuming the right of the states to require submission of offering documents, there appears to be little purpose in requiring such filing as Section 18(a)(2)(A) removes the right of a state to “prohibit, limit, or impose any conditions” upon the use of offering documents prepared by or on behalf of the issuer in a Rule 506 offering.

The New Hampshire staff maintains that Section 18 of the Securities Act of 1933 not only preserves the right of the states to demand submission of offering documents and other information, but also to require representations of compliance with state laws imposing disqualification (“bad person”) restrictions when an offering is conducted pursuant to Rule 506.
CALIFORNIA ADOPTS IA LICENSING EXEMPTION

Certain investment advisers, including those providing advice to venture capital companies, are exempt from licensing requirements in California, as of March 27, 2002. New Rule 260.204.9 exempts investment advisers that (1) do not hold themselves out to the public as an investment adviser; (2) have fewer than 15 "clients"; (3) are exempt from registration under Section 203(b)(3) of the federal Investment Advisers Act of 1940; and (4) either (i) have "assets under management" of not less than $25 million or (ii) provide investment advice only to "venture capital companies."

For purposes of the new Rule "assets under management" means, in general, the securities with respect to which an investment adviser and its affiliated persons provide continuous and regular supervisory or management services. A “venture capital company” is an entity for which, on at least one occasion during the annual period commencing with the date of its initial capitalization, and on at least one occasion during each annual period thereafter, at least fifty percent (50%) of its assets (other than short-term investments pending long-term commitment or distribution to investors), valued at cost, are venture capital investments or derivative investments.

CA ADOPTS B-D ELECTRONIC FINGERPRINT CHECKS AND “DO NOT CALL” LIST PROVISION

The California Department of Corporations is authorized, as of January 1, 2002, to electronically submit fingerprints of applicants for broker-dealer, or affiliate, licensing, as well as officers and employees of the licensee, to the state Department of Justice with a request for information regarding the applicant’s arrest history. The Department of Justice maintains an automated process for checking the background of individuals using fingerprint submissions. Electronic fingerprinting - known also as Applicant Live Scan - helps to speed this review process. The Department of Justice is to respond with information regarding every conviction rendered against the applicant, as well as every arrest for which the Department of Justice establishes that the applicant was released on bail or on his or her own recognizance pending trial.

Newly enacted Article 8 (commencing with Section 17590) of the California Business and Professions Code requires the state Attorney General to establish, no later than January 1, 2003, a "do not call" list, containing the telephone numbers and ZIP Codes of residential or wireless telephone subscribers who do not wish to receive unsolicited and unwanted telephone calls from telephone solicitors. Subject to certain exceptions, persons who seek to sell or promote any investment, insurance, or financial services will be prohibited from calling any telephone number on the “do not call” list. The law will also prohibit persons who sell, lease, exchange, or rent telephone solicitation lists from including in their lists telephone numbers that appear on the then current "do not call" list.

The new law will provide the Department of Corporations with new means of enforcing regulation of brokers who engage in “cold calling” and “boiler room” tactics. As existing law makes it a crime to violate any of the statutory provisions governing advertising, violation of the “do not call” statute will be deemed a criminal act.
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HYATT REGENCY ON CAPITOL HILL - WASHINGTON, D.C.

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