EVENTS CALENDAR

ABA BUSINESS LAW SECTION
The State Regulation of Securities Committee will meet in conjunction with the spring meeting of the Business Law Section of the ABA, to convene at the Century Plaza Hotel in Los Angeles, April 3 through April 6, 2003.

ABA ANNUAL MEETING
The State Regulation of Securities Committee will meet in conjunction with the 2003 Annual Meeting of the ABA, which will convene August 7 through August 13, 2003, in San Francisco, at the Fairmont and Stanford Court Hotels on Nob Hill.

NASAA ANNUAL FALL CONFERENCE
The State Regulation of Securities Committee will meet in conjunction with the 2003 Annual NASAA Fall Conference to be held September 14 through September 17, 2003, at the Chicago Marriott Downtown in Chicago, Illinois

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

IN THIS ISSUE
Uniform Securities Act of 2002 Proposed... 1
Events Calendar................................. 1
When Are Notes Seen as “Securities”
Under State Law? ......................... 7
Word From The Chair .................... 21
Correction - Indiana Exemption ........... 21
NY Investment Adviser Regulations
Proposed ...................................... 21
Blue Sky Bits and Pieces................. 23
CA Follows the Sarbanes-Oxley Trend . 23
Committee Officers ....................... 25
State Liaison List.............................. 26
Directory of Officers and Contributors ... 33

UNIFORM SECURITIES ACT OF 2002 PROPOSED TO THE STATES
By Joel Seligman*
Washington University School of Law

INTRODUCTION


When NCCUSL adopted the Uniform Securities Act (2002) there were two earlier versions of the Uniform Securities Act in force. The Uniform Securities Act of 1956 (“1956 Act”) had been adopted at one time or another, in whole or in part, by 37 jurisdictions. The Revised Uniform Securities Act of 1985 (“RUSA”) had been adopted in only a few States. Both Acts have been preempted in part by the National Securities Markets Improvement Act of 1996 (NSMIA) and the Securities Litigation Uniform Standards Act of 1998.

The need to modernize the Uniform Securities Act is a consequence of a combination of the new federal preemptive legislation, significant recent changes in the technology of securities trading and regulation, and the increasingly interstate and international aspects of securities transactions.

In drafting the new Act, the Reporter and the Drafting Committee recognized two fundamental challenges. First, there was a general recognition among all involved of the desirability of drafting an Act that would receive broad support. The success of RUSA had been limited because of fundamental differences among relevant constituencies on several issues. After the National Securities Markets Improvement Act of 1996 preempted specified aspects

* Joel Seligman was the NCCUSL Reporter on the Uniform Securities Act (2002) and is Dean and Ethan A.H. Shepley University Professor at Washington University School of Law in St. Louis.
of state securities law with respect to federal covered securities, the opportunity to draft an Act in a less contentious atmosphere was available. Given the number of industry, investor, and regulatory interests affected by the Act and the complexity of the Act itself, building consensus was the Act’s most significant drafting challenge. To date this effort appears to have succeeded. NCCUSL adopted the Act by a vote of 47-1.

Second, there was the technical challenge of drafting a new Act that could achieve the basic goal of uniformity among states and with applicable federal law against the backdrop of 46 years of experience with the 1956 Act. Over time both Uniform and non-Uniform Act states have, to varying degrees, evolved local solutions to a number of securities law issues. In an increasingly global securities market, the need for uniformity has become more important. Drafting language to achieve the greatest practicable uniformity, given differences in state practice, was a key aspiration of this Act. In a few instances, such as dollar amounts for fees, the Act defers to local practice. On a few other issues, bracketed language or the Official Comments articulate an alternative some states may choose to adopt rather than the language of the Act itself.

There are three overarching themes of the New Uniform Securities Act.

First, Section 608 articulates in greater detail than the 1956 Act’s Section 415 the objectives of uniformity, cooperation among relevant state and federal governments and self-regulatory organizations, investor protection and, to the extent practicable, capital formation. Section 608 is the reciprocal of the instruction on these subjects given by Congress in 1996 to the Securities and Exchange Commission in Section 19(c) of the Securities Act of 1933.

A second overarching theme of the Act is achieving consistency with NSMIA.

A third theme of the Act involves facilitating electronic records, signatures, and filing. New definitions were added to address filing (Section 102(8)), record (Section 102(25), and sign (Section 102(30). Section 105 expressly permits the filing of electronic signatures and records. Collectively these provisions are intended to permit electronic filing in central information depositories such as the Web-CRD (Central Registration Depository), Investment Adviser Registration Depository (IARD), the Securities and Exchange Commission’s Electronic Data Gathering, Analysis and Retrieval System (EDGAR) or successor institutions. Electronic communication also has led to an amplification of the jurisdiction Section 610.

The Act itself contains six substantive articles:

1. Definitions and Other General Provisions
2. Exemptions from Registration of Securities
3. Registration of Securities and Notice Filing of Federal Covered Securities
5. Fraud and Liabilities
6. Administration and Judicial Review

I. DEFINITIONS AND OTHER GENERAL PROVISIONS

Definitions in securities laws often perform a pivotal role as scope provisions. In this Act the definitions of “security,” “federal covered security,” “broker-dealer,” “agent,” “investment adviser,” “federal covered investment adviser,” “investment adviser representative,” “institutional investor,” “bank” and “depository institution” in particular performed this role. Let me highlight the definition of security.

In the parlance of the Drafting Committee there was an “above the line” and “below the line” dimension to the definition of security in Section 102(28). “Above the line” the definition was identical to the current Section 2(a)(1) of the Securities Act of 1933.

“Below the line” five enumerated paragraphs were the products of a long consensus building process. The term security:

(A) includes both a certificated and an uncertificated security;

(B) does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed [or variable] sum of money either in a lump sum or periodically for life or other specified period;

(C) does not include an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974;

(D) includes as an “investment contract” an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a
“common enterprise” means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors; and

(E) includes as an “investment contract,” among other contracts, an interest in a limited partnership or limited liability company and an investment in a viatical settlement or similar agreement.

The new sentence added in Section 102(28)(A) referring to certificated or uncertificated securities to indicate that the term is intended to apply whether or not a security is evidenced by a writing.

The Drafting Committee recognized that the decision whether to exclude variable annuities from the definition of security will be made on a state-by-state basis.

Insurance or endowment policies or endowment or annuity contracts, other than those on which an insurance company promises to make variable payments, may be excluded from this term. Variable insurance products are excluded in many states and are exempted from securities registration in others under provisions such as Section 201(4). When variable products are included in the definition of security and exempted from registration state securities administrators can bring enforcement actions concerning variable insurance sales practices.

Section 102(28)(C) includes the exception from RUSA to the 1956 definition for “an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974.”

The first clause in Section 102(28)(D) is derived from the leading case of SEC v. W.J. Howey Co., 328 U.S. 293 (1946), which has been widely followed by federal and state courts. The second clause in Section 102(28)(D) is based, in part, on the leading case of SEC v. Glenn W. Turner Enter., Inc., 474 F.2d 476, 482 n.7 (9th Cir. 1973), cert. denied, 414 U.S. 821 (1973).

Section 102(28)(E) is consistent with state and federal securities laws which have recognized interests in limited liability companies and limited partnerships in some circumstances as “securities,” when consistent with the court decisions interpreting the investment contract concept. This Act also refers to an investment in a viatical settlement or a similar agreement to make unequivocally clear that viatical settlement and similar agreements, which otherwise satisfy the definition of an investment contract, are securities.

II. EXEMPTIONS FROM REGISTRATION OF SECURITIES

Section 201 includes exempt securities and Section 202 includes exempt transactions. Both exempt securities and exempt transactions are exempt from the securities registration, notice filing requirement of Section 302, and the filing of sales literature Section 504 of this Act. Neither Section 201 nor Section 202 provides an exemption from the Act’s antifraud provisions in Article 5, nor the broker-dealer, agent, investment adviser, or investment adviser registration requirements in Article 4.

Neither the exempt security nor the transaction exemptions are meant to be mutually exclusive. A security or transaction may qualify for two or more exemptions.

With specified exceptions, securities exemptions are either retained or broadened in Article 2. The emphasis in the securities registration exemptive area is on flexibility. Securities administrators are given broad powers both to exempt other securities, transactions, or offers in Section 203 and to deny, suspend, condition or limit specified exemptions in Section 204.

III. REGISTRATION OF SECURITIES AND NOTICE FILING OF FEDERAL COVERED SECURITIES

Relatively modest changes were made to Article 3, which concerns registration of securities. A new notice filing provision was added in Section 302 for federal covered securities. A generic waiver and modification provision was added in Section 307. New procedural provisions for stop orders were added in Section 306(d)-(f).

Merit regulation was among the most divisive issues that confronted the RUSA Drafting Committee. After the National Securities Market Improvement Act of 1996 preempted states from applying merit regulation provisions to federal covered securities, this became a less controversial issue. The approach in this Act retains two widely adopted merit regulation provisions in Section 306(a)(7)(A)-(B):

- the offering will work or tend to work a fraud upon purchasers or would so operate; or
- the offering has been or would be made with unreasonable amounts of underwriters’ and sellers’ discounts, commissions, or other compensation, or promoters’ profits or participations or unreasonable amounts or kinds of options.
In addition, bracketed Section 306(a)(7)(C) includes the less widely adopted formulation, “the offering is being made on terms that are unfair, unjust, or inequitable.” A new Section 306(b) provides: “To the extent practicable the administrator, by rule adopted or order issued under this [Act] shall publish standards that provide notice of conduct that violates subsection (a)(7).” Notice will address one criticism of merit regulation. Statements of Policy of the North American Securities Administrators Association that have been adopted by a state would provide notice in compliance with Section 306(b). Similarly other state rules or orders could be adopted in the future to address new types of securities as they occur.

IV. BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS

Article 4, which concerns broker-dealers, agents, investment advisers, investment adviser representatives, and federal covered investment advisers was substantially revised to take into account NSMIA and significant changes in administrative practice such as those occasioned by the electronic WEB-CRD and the IARD. New developments similarly had an impact on the definitions of “agent” (Section 102(2)), “broker-dealer” (Section 102(4)), “investment adviser” (Section 102(15)), and “investment adviser representative” (Section 102(16)). NSMIA led also to the new federal covered investment adviser notice filing procedure in Section 405.

Section 408 is a particularly consequential provision concerning termination and transfer of employment or association of agents and investment adviser representatives. To expedite transfer to a new broker-dealer or investment adviser, Section 408(b) provides a procedure by which agents or investment adviser representative registration will be effective immediately as of the date of new employment when there is no new or added disciplinary disclosure in the relevant Central Research Depository or Investment Adviser Registration Depository records. Both electronic systems are currently administered by the National Association of Securities Dealers. Section 408(d) is intended to ensure that the administrator has the authority to prevent immediate effectiveness in appropriate cases.

In effect, Section 408 represents a Faustian bargain. Section 408(b) provides for immediate temporary effectiveness of an agent’s or investment adviser representative’s registration when a transfer occurs. This automatic process was eagerly sought by the securities industry. In agreeing to this provision, the securities regulators bargained for Section 408(d) which provides: “The administrator may prevent the effectiveness of a transfer of an agent or investment adviser representative under subsection (b)(1) or (2) based on the public interest and the protection of investors.”

Sections 411(a)-(c) and (e)-(f) implicitly refer to “capital, custody, margin, financial responsibility, making and keeping records, bonding, or financial or operational reporting requirements.” Under the National Securities Markets Improvement Act of 1996, States may not impose such requirements on covered broker-dealers and investment advisers greater than those specified in Section 15(h) of the Securities Exchange Act of 1934 and Section 222 of the Investment Advisors Act of 1940.

The administrator’s power to copy and examine records in Section 411(d) is subject to all applicable privileges. The power in Section 411(d) to conduct audits or inspections is distinguishable from the administrator’s enforcement powers under Section 602. No subpoena is necessary under Section 411(d). Failure to submit to a reasonable audit or inspection is a violation of this Act which may result in an action by the administrator under Section 412(d)(8), a criminal prosecution under Section 508, or an injunction under Section 603. An unreasonable audit, inspection or demand for information or documents would be subject to challenge in an appropriate court.

Section 412 is a generic disciplinary provision which amplifies Section 204 of the 1956 Act and Sections 207 and 212-213 of RUSA, but has been modified to reflect subsequent developments that have broadened the scope and remedies of counterpart federal and state statutes. Section 412 authorizes the administrator to seek a sanction based on the seriousness of the misconduct. Under Section 412 the administrator must prove that the denial, revocation, suspension, cancellation, withdrawal, restriction, condition, or limitation both is (1) in the public interest and (2) involves one of the enumerated grounds in Section 412(d).

V. FRAUD AND LIABILITIES

Much of Article 5 on fraud and liabilities and the definition of fraud in Section 102(9) is substantively little changed. This includes the general fraud provision in Section 501, the filing of sales and advertising literature in Section 504, misleading filings in Section 505, and misrepresentations concerning registration or exemption in Section 506. Technical changes were made to the evidentiary burden Section 503 and the criminal penalties Section 508.
Section 502(a), fraud in providing investment advice, is unchanged. New rulemaking authority was added in Sections 502(b) and (c) to succeed earlier statutory provisions in Section 102 of the 1956 Act. This will give the administrator broad flexibility and recognizes that most state provisions regulating investment advisers in recent years have been adopted through rules.

There is no private cause of action, express or implied, under Section 502. Section 509(m) expressly provides that only Section 509 provides for a private cause of action for prohibited conduct in providing investment advice that could violate Section 502.

Section 507 is a new qualified immunity provision to protect a broker-dealer or investment adviser from defamation claims based on information filed with the SEC, a state administrator, or self-regulatory organization “unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement’s truth or falsity.” This Section, which is consistent with most litigated cases to date and is a response to concerns that defamation lawsuits have deterred broker-dealers and investment advisers from full and complete disclosure of problems with departing employees. The Drafting Committee was also sensitive to the concern that such immunity could allow broker-dealers and investment advisers to unfairly characterize employees to protect their “book” of clients. Because of this concern the Drafting Committee rejected proposals for an absolute immunity.

More thought was devoted to the civil liability Section 509 than any other provision. As ultimately drafted much in this Section is little changed from the 1956 Act. New subsections were added to recognize the preemptive Securities Litigation Act of 1998 (Section 509(a)) and civil liability for investment advice (Sections 509(e) and (f)).

The derivative liability provision in Section 509(g) is not intended to change the predicates for liability for one who “materially aids” violative conduct.

Significant changes were made in the statute of limitations Section 509(j). Current state law provides a wide range of statutes of limitations. The statute of limitations in Section 509(j) is a hybrid of the 1956 Act and federal securities law approaches. The 1956 Act Section 410(p) provided that: “No person may sue under this section more than two years after the contract of sale.” Under this provision, the state courts generally decline to extend a statute of limitations period on grounds of fraudulent concealment or equitable tolling.

Section 509(j)(1), as with the 1956 Act, is a unitary statute of repose, requiring an action to be commenced within one year after a violation occurred. It is not intended that equitable tolling be permitted.

Section 509(j)(2), in contrast, is consistent with the federal securities law model. Following the Sarbanes-Oxley Act of 2002, an action must be brought within the earlier of two years after discovery or five years after the violation. As with federal courts construing the statute of limitations under Rule 10b-5, it is intended that the plaintiff’s right to proceed is limited to two years after actual discovery “or after such discovery should have been made by the exercise of reasonable diligence” (inquiry notice), or five years after the violation.

The rationale for replicating the basic federal statute of limitations in this Act is to discourage forum shopping. If the statute of limitations applicable to Rule 10b-5 were to be changed in the future, identical changes should be made in Section 509(j)(2).

Section 510 is a new rescission offer provision that should be read with the definition of offer to purchase in Section 102(19) and the exemption for rescission offers in Section 202(19). Section 510 is consistent with administrative practice in many states today, although some states also have a filing requirement.

VI. ADMINISTRATION AND JUDICIAL REVIEW

Several changes are made in Article 6, which concerns Administration and Judicial Review. Most are technical in nature. A new authorization for the administrator to develop and implement investor education initiatives has been added in Sections 601(d) and (e).

Considerable attention was devoted to enforcement of the Act. Section 602 addresses investigations and subpoenas. Section 602 (a)-(b) concerning the administrator’s power to investigate follow the 1956 Act, which was modeled generally on Sections 21(a)-(d) of the Securities Exchange Act of 1934 as it then read. Standards for issuance of subpoenas have been generally established in federal and state securities law. The scope of subpoena enforcement in each state is a general matter for judicial determination. Under Section 602, an individual subpoenaed to testify by the administrator is not compelled to testify within the meaning of these sections simply by service of a subpoena. Under
CONCLUSION

More than one representative of the state securities regulators and the securities industry articulated the view that the Act, "while not perfect, was fair." The effort to achieve consensus appeared to have been appreciated because of a balancing of the benefits potentially available to the securities regulators and implicitly investors on the one hand and to representatives of the variegated securities industry on the other.

DID YOU KNOW?

THE BLUE SKY BUGLE can be accessed online at http://www.abanet.org/buslaw/statesec/bsb.html and is generally available online about 30 days prior to delivery of the paper version. Watch for it.

Committee’s listserv is available to committee members for posting comments, arguments, updates, news relating to Blue Sky Law, the people who practice Blue Sky Law, and the people who administer Blue Sky Law
bl-staterregs@mail.abanet.org

LIAISON LIST LACKS LAWYERS AND eCOMMERCE NEEDS CHAIR

Committee members are needed to serve as liaisons with securities administrators in Iowa and Minnesota. Liaisons for the various jurisdictions track and report developments in blue sky laws and regulations to members of the Committee three times a year, for publication in the Committee’s Report. This requires contact and conversation with state administrators on a regular basis. In addition, most liaisons are available for short consultations with Committee members on issues or questions arising under the securities laws of the liaison’s respective state. If you are interested in contributing information and news relating to either or both of these states please volunteer your services to Roger Fein, Chair of the Subcommittee on State Liaisons, at (312) 201 2536 or by e-mail at fein@wildmanharrold.com.

The Chair position for the Subcommittee on eCommerce is open and any Committee member interested in serving is invited to contact Committee Chair Marty Miller at (212) 728-8690, or by e-mail at mmiller@willkie.com.
WHEN ARE NOTES SEEN AS “SECURITIES” UNDER STATE LAW?

By Kenneth L. MacRitchie
New Jersey Bureau of Securities

This article updates and summarizes an article by Mr. MacRitchie originally published in the South Dakota Law Review, Volume 46, Issue 2, pages 369-409 (2001).

SUMMARY

In 1990, in Reves v. Ernst & Young, the United States Supreme Court established the family resemblance test for determining which notes are “securities” under Federal law. However, the states were left to devise their own tests regarding which notes are “securities” under state law. State court decisions regarding notes as “securities” have fallen into three categories: cases using the family resemblance test, cases using the Howey test, and cases using other tests.

The family resemblance test holds that a note is presumed to be a “security” unless it bears “a strong family resemblance” to one of seven enumerated categories of non-securities. The family resemblance test has been adopted by several state courts after Reves, especially for use in civil and administrative cases.

The familiar Howey definition of “investment contract” has been adopted by several state courts for determining whether a note constitutes a “security”: (A) the commercial/investment test, (B) the risk capital test, (C) the Howey test, and (D) the family resemblance test.

A. The Commercial/Investment Test

The commercial/investment test was adopted by the First, Fifth, Seventh, and Tenth Circuits. This test was summarized in McClure v. First National Bank of Lubbock, Texas. In reviewing prior cases involving notes, the court recognized that notes constituting “securities” share three characteristics: first, there is “some class of investors,” second, “the notes are acquired...for speculation or investment,” and third, the proceeds are used to “obtain assets, directly or indirectly.”

II. TESTS USED IN THE FEDERAL COURTS

Among the Federal circuits, four tests came into use in the 1970s and 1980s to determine whether a note constitutes a “security”: (A) the commercial/investment test, (B) the risk capital test, (C) the Howey test, and (D) the family resemblance test.

A. The Commercial/Investment Test

The commercial/investment test was adopted by the First, Fifth, Seventh, and Tenth Circuits. This test was summarized in McClure v. First National Bank of Lubbock, Texas. In reviewing prior cases involving notes, the court recognized that notes constituting “securities” share three characteristics: first, there is “some class of investors,” second, “the notes are acquired...for speculation or investment,” and third, the proceeds are used to “obtain assets, directly or indirectly.”

3 The Howey test defines an "investment contract" as an "investment of money in a common enterprise with profits to come solely from the efforts of others." Securities and Exchange Commission v. W.J. Howey Co., 328 U.S. 293, 301 (1946).

5 Id.
6 15 U.S.C. secs. 77(c), 77(l), 77(q) (1933).
7 15 U.S.C. sec. 78(c) (1934).
8 Futura Development Corp. v. Centex Corp., 761 F.2d 33 (1st Cir. 1985); McClure v. First National Bank of Lubbock, Texas, 497 F.2d 490 (5th Cir. 1974); Hunssinger v. Rockford Business Credits, Inc., 745 F.2d 484 (7th Cir. 1984); Holloway v. Peat, Marwick, Mitchell & Co., 879 F.2d 772 (10th Cir. 1989).
9 McClure v. First National Bank of Lubbock, Texas, 497 F.2d 490 (5th Cir. 1974).
10 Id. at 493-494.
B. The Risk Capital Test

The risk capital test was adopted by the Ninth Circuit in Great Western Bank & Trust v. Kotz.\footnote{Great Western Bank & Trust v. Kotz, 532 F.2d 1252 (9th Cir. 1976).} The court stated that the nature and degree of risk to the lender must be analyzed in determining whether the transaction should be regarded as an investment. The key inquiries, the court said, were whether risk capital had been invested by the lender and whether, if risk capital, it was subject to the “entrepreneurial and managerial efforts of [others].” The court enumerated a list of factors to consider in a risk capital inquiry.\footnote{Id. at 1256-1258.}

C. The Howey Test

The familiar Howey test does not define “security,” but merely defines “investment contract,” which is listed along with “notes” among the many instruments which constitute “securities.”\footnote{Securities and Exchange Commission v. W.J. Howey Co., 328 U.S. 293, 301 (1946). The limitation of Howey to the definition of “investment contract” was pointed out by the United States Supreme Court in Reves v. Ernst & Young, 494 U.S. 56, 64 (1990).}

In 1981, the District of Columbia Circuit used the Howey test as an omnibus definition of “security” and found a note to be a “security.”\footnote{Baurer v. Planning Group, Inc., 669 F.2d 770 (D.C. Cir. 1981).} In 1988, the Eighth Circuit likewise used the Howey test in the case which ultimately went to the United States Supreme Court as Reves v. Ernst & Young.\footnote{Arthur Young & Co. v. Reves, 856 F.2d 52 (8th Cir. 1988).} The Eighth Circuit, in applying the Howey test, found that the notes in question were not “securities.”\footnote{Id. at 54-55.}

D. The Family Resemblance Test

The family resemblance test was established by the Second Circuit in Exchange National Bank of Chicago v. Touche Ross & Co.\footnote{Exchange National Bank of Chicago v. Touche Ross & Co., 544 F.2d 1126 (2d Cir. 1976).} This test is based on the principle that an instrument within the literal definition of “security” should be regarded as a “security,” except when the context otherwise requires. This principle is based on the “context” clauses of the Federal securities laws. Thus, the family resemblance test begins with the presumption that an instrument called a “note” is a “security.” That presumption, however, may be rebutted by a showing that the note bears “a strong family resemblance” to any of the following seven categories of non-securities:

1. Notes delivered in consumer financing.
2. Notes secured by a mortgage on a home.
3. Short-term notes secured by a lien on a small business or some of its assets.
4. Notes evidencing a “character” loan to a bank customer.
5. Short-term notes secured by an assignment of accounts receivable.
6. Notes which simply formalize an open-account debt incurred in the ordinary course of business (particularly if collateralized).
7. Notes evidencing loans by commercial banks for current operations.\footnote{Id. at 1137-1138.}

However, the Second Circuit did not provide any standards of what would constitute a strong family resemblance; that was later resolved by the United States Supreme Court.

III. REVES AND THE ESTABLISHMENT OF THE FAMILY RESEMBLANCE TEST UNDER FEDERAL LAW

The foregoing intercircuit conflict was resolved by the United States Supreme Court in Reves v. Ernst & Young.\footnote{Reves v. Ernst & Young, 494 U.S. 56 (1990).} Reves involved the Farmers Cooperative of Arkansas and Oklahoma, an otherwise conventional farmers’ cooperative, which offered and sold notes to both members and nonmembers for various purposes including the financing of a gasohol plant.\footnote{Id. at 58-59.} These notes were demand notes, i.e. repayable at the demand of the holder.\footnote{Id. at 58.} The cooperative’s newsletter offered these notes and referred to them as “investments.”\footnote{Id. at 59.} Arthur Young & Co., subsequently Ernst & Young, performed audits of the cooperative’s financial statements.\footnote{Id. at 59.} After the cooperative filed for bankruptcy in 1984, litigation was commenced in Federal District Court where the plaintiffs alleged (among other things) that Arthur Young & Co. had allowed the cooperative to overstate the value of the gasohol plant.\footnote{Id. at 59.} The plaintiffs won in the trial court and were awarded a $6.1 million judgment.\footnote{Id. at 59.} The defendants appealed to the United States Court of Appeals for the Eighth Circuit, and argued that the notes were not “securities” under either the 1934 Act or under state law; the Eighth Circuit used the Howey test...
and found that the notes in question were not “securities.”

The plaintiffs appealed to the United States Supreme Court, which decided the case on February 21, 1990. The majority opinion was written by Justice Marshall. All nine Justices agreed that the family resemblance test should be used to determine which notes are “securities,” and found the notes in question to be “securities.” Justice Marshall, joined by Justices Brennan, Blackmun, Stevens, and Kennedy, found that the notes in question fell outside the 1934 Act’s exclusion for short-term obligations. Justice Stevens’s concurrence opined that although the notes in question were demand notes with potentially abbreviated maturities, the exclusion for short-term obligations was intended by Congress to apply only to high-quality commercial paper, not to the shaky investments involved in this case. Chief Justice Rehnquist wrote a partial dissent in which he was joined by Justices White, O’Connor, and Scalia. They concluded that the demand feature rendered the notes short-term notes; thus, the notes fell within the exclusion for short-term obligations. They made no distinctions regarding the quality of the notes.

In the unanimous portion of the Supreme Court’s decision, the Court observed that in order to make a meaningful inquiry into whether an instrument bears a “family resemblance” to one of the seven enumerated categories of non-securities, additional guidance was needed. Thus, the Court cited four factors to be used in determining whether a note bears a resemblance to the seven enumerated categories, and to be used as standards for determining whether additional categories should be added to the list:

1. Motivation for the transaction. The motivations that would prompt a reasonable seller and buyer to enter into the transaction should be assessed.

2. Plan of distribution of the instrument. It should be determined whether there is common trading for speculation or investment in the instrument.

3. Reasonable expectations of the investing public. Instruments should be considered “securities” if the public expects that to be the case, even if economic analysis of the circumstances of the particular transactions might suggest that the instruments are not “securities” as used in that transaction.

4. Existence of risk-reducing factor. An examination should be made to determine whether the existence of another regulatory scheme significantly reduces the risk of the instrument, thereby rendering application of the Securities Acts unnecessary.

IV. DEFINITIONS OF “SECURITY” IN STATE SECURITIES STATUTES

“Security” is defined in both the Uniform Securities Act (1956) and the Revised Uniform Securities Act (1985). Notes are included in a list of instruments deemed “securities,” but the Acts do not specify which notes are “securities”; a “context” clause is provided. Short-term obligations (not exceeding nine months) are exempted from the registration provisions but not from the antifraud provisions. Thirty-nine states have enacted the 1956 Act, the 1985 Act, or some combination of them; eleven states have non-uniform securities acts. (Although Arkansas and Nebraska have enacted the 1956 Act, they do not have an exemption for short-term obligations.)

V. TESTS USED IN STATE COURTS

State court cases can be categorized as follows in their tests to determine whether a note is a “security”: (A) cases which have used the family resemblance test, (B) cases which have followed Howey, and (C) cases which have used other tests.

A. Cases Which Have Used the Family Resemblance Test

Fifteen states have partially or exclusively used the family resemblance test.

ALASKA

Alaska addressed the issue of notes as “securities” in In the Matter of Caucus Distributors, Inc., a proceeding of the Alaska Division of Banking and

---

26 Arthur Young & Co. v. Reves, 856 F.2d 52, 54-55 (8th Cir. 1988).
28 Id. at 60-70.
29 Id. at 70-73.
30 Id. at 73-76.
31 Id. at 76-82.
32 Id. at 65.
33 Id. at 66-67.
35 Id.
37 Information about which states have adopted the 1956 and 1985 Acts is contained in 7C Uniform Laws Annotated.
The case was based on the registration and antifraud provisions of the Alaska Securities Act and involved notes issued by the LaRouche political extremist organization. In 1986, the Hearing Officer proposed, and the Administrator agreed, that the notes in question were “securities.” Three tests were used: the family resemblance test (which was referred to as the literal test), the commercial/investment test, and the risk capital test; however, the case was primarily decided on the basis of the family resemblance test. The decision explicitly stated that the Howey test was inappropriate.

The case then went to the Alaska Superior Court, which decided on January 13, 1989 that the Hearing Officer had not abused his discretion. The Alaska Superior Court favored the family resemblance test.

The case finally went to the Alaska Supreme Court, which issued its decision on June 15, 1990, about four months after the decision of the United States Supreme Court in Reves. The Alaska Supreme Court used the family resemblance test exclusively, and affirmed the decisions of the lower tribunals.

ARIZONA
On March 5, 1996, the Arizona Court of Appeals decided MacCollum v. Perkinson, a civil case arising out of notes issued by a real estate partnership and litigated under the antifraud provisions of the Arizona Securities Act. The Court of Appeals stated, “[W]e believe that Reves should be applied to determine the meaning of ‘security’ under section 44-1991 [fraudulent securities transactions].”

,IDAHO
On December 16, 1991, the Director of the Idaho Department of Finance issued an order denying the renewal of the securities agent license of Lawrence Rincover; this was followed in 1992 by a proceeding for judicial review of the order. The case against Lawrence Rincover contained several charges; one pertained to notes. The family resemblance test was used, as follows: “reasoning that the notes were not ‘securities’ under the analysis established in Reves v. Ernst & Young, 494 U.S. 56 (1990).”

FINANCIAL
financial adviser and offered his client/victims investment opportunities with high rates of return. This case was decided under both the registration and the antifraud provisions of the Florida Securities and Investor Protection Act. At trial, the defendant moved for acquittal and lost. The District Court of Appeal affirmed the conviction on May 1, 1998, and used the Reves test in its opinion.

(IDAHO
On December 16, 1991, the Director of the Idaho Department of Finance issued an order denying the renewal of the securities agent license of Lawrence Rincover; this was followed in 1992 by a proceeding for judicial review of the order. The case against Lawrence Rincover contained several charges; one pertained to notes. The family resemblance test was used, as follows: “reasoning that the notes were not ‘securities’ under the analysis established in Reves v. Ernst & Young, 494 U.S. 56 (1990).”

ARIZONA
On March 5, 1996, the Arizona Court of Appeals decided MacCollum v. Perkinson, a civil case arising out of notes issued by a real estate partnership and litigated under the antifraud provisions of the Arizona Securities Act. The Court of Appeals stated, “[W]e believe that Reves should be applied to determine the meaning of ‘security’ under section 44-1991 [fraudulent securities transactions].”

ARIZONA
On March 5, 1996, the Arizona Court of Appeals decided MacCollum v. Perkinson, a civil case arising out of notes issued by a real estate partnership and litigated under the antifraud provisions of the Arizona Securities Act. The Court of Appeals stated, “[W]e believe that Reves should be applied to determine the meaning of ‘security’ under section 44-1991 [fraudulent securities transactions].”

ARIZONA
On March 5, 1996, the Arizona Court of Appeals decided MacCollum v. Perkinson, a civil case arising out of notes issued by a real estate partnership and litigated under the antifraud provisions of the Arizona Securities Act. The Court of Appeals stated, “[W]e believe that Reves should be applied to determine the meaning of ‘security’ under section 44-1991 [fraudulent securities transactions].”

ARIZONA
On March 5, 1996, the Arizona Court of Appeals decided MacCollum v. Perkinson, a civil case arising out of notes issued by a real estate partnership and litigated under the antifraud provisions of the Arizona Securities Act. The Court of Appeals stated, “[W]e believe that Reves should be applied to determine the meaning of ‘security’ under section 44-1991 [fraudulent securities transactions].”

(See below for Arizona’s use of a very literal test in a criminal case.)

INDIANA
Indiana used the family resemblance test in Manns v. Skolnik. This case involved a $20,000 note investment in an Indonesian platinum mining venture. The Indiana Securities Commissioner, Bradley W. Skolnik, issued an administrative order against the promoter, Dollie Stafford Manns, based on the registration and antifraud provisions of the Indiana securities statute. The trial court affirmed the administrative order, and the case was appealed to the Indiana Court of Appeals. On May 30, 1996, the Indiana Court of Appeals affirmed the decisions of the lower tribunals; it proceeded through the family resemblance test and concluded that the notes in question were “securities.”

(See below for Florida’s use of the Howey test in a pre-Reves criminal case.)

FINANCIAL
financial adviser and offered his client/victims investment opportunities with high rates of return. This case was decided under both the registration and the antifraud provisions of the Florida Securities and Investor Protection Act. At trial, the defendant moved for acquittal and lost. The District Court of Appeal affirmed the conviction on May 1, 1998, and used the Reves test in its opinion.
LOUISIANA

Louisiana used the family resemblance test in Godair v. Place Vendome Corporation of America; this was a civil case, brought under the registration provisions of the Louisiana Securities Law. The case involved promissory notes issued by a shopping center developer; the shopping center deal went sour, and the issuer defaulted on the notes. The trial court ruled in favor of the plaintiff, and the defendant appealed. The Louisiana Court of Appeal went through the Reves test and concluded that the notes in question were “securities.”

MARYLAND

Maryland addressed the issue of which notes are “securities” in In the Matter of Caucus Distributors, Inc., which was based on the registration and antifraud provisions of the Maryland Securities Act, and which involved notes issued by the LaRouche organization. On March 11, 1986, the Maryland Division of Securities issued a Cease and Desist Order and a Summary Revocation of Exemption Order against Caucus Distributors, Inc. and certain others, which resulted in a hearing by Hearing Officer Mark A. Sargent on June 6 and 9, 1986. The Hearing Officer’s decision adopted the family resemblance test (which it referred to as the literal test), but also used the commercial/investment, risk capital, and Howey tests. Oral arguments regarding exceptions to the decision were held on December 6, 1986, after which the Hearing Officer’s decision was affirmed by a Deputy Attorney General, who had been substituted for the Securities Commissioner to avoid a certain conflict of interest.

On June 16, 1989, the Circuit Court of Maryland affirmed the decision of the Maryland Division of Securities. The Circuit Court agreed with the Hearing Officer’s decision to adopt the family resemblance test and to use the commercial/investment, risk capital, and Howey tests. On August 9, 1990, about five and one-half months after the Reves decision, the Maryland Court of Appeals affirmed the decisions of the lower tribunals. However, the Court of Appeals used the family resemblance test exclusively.

NEBRASKA

Wrede v. Exchange Bank of Gibbon, decided in 1995, involved a certificate of deposit issued by a bank. The Nebraska Supreme Court reviewed the Marine Bank test for determining whether an instrument is exempt as a “certificate of deposit” and the Reves test for determining whether a note is a “security.” The court then declared, “[t]he situation here is more like that presented in Marine Bank than that presented in Reves.” Because this case did not actually involve notes, the court’s comments regarding notes were dictum.

(See below for Nebraska’s use of the Howey test in two criminal cases.)

NEVADA

On February 15, 2002, the Nevada Supreme Court decided State v. Friend, a criminal case involving one-year notes issued by the defendant. The case was based on both the registration and the antifraud provisions of the Nevada Uniform Securities Act. The court established Nevada’s use of the family resemblance test, and held that the notes in question were “securities.”

OKLAHOMA

In 1994, the Oklahoma Supreme Court decided a civil case involving an assignment of a lease-purchase agreement. Because this case did not actually involve notes, the court’s language regarding the matter of notes as “securities” was dictum. However, the court seemed to indicate that Reves set the standard for determining whether a note is a “security.”

---

61 Id. at 441.
62 Id. at 442-443.
63 Id. at 444-445.
65 Id. at para. 72,479, pages 72,250-72,251.
66 Id. at para. 72,249, pages 72,254-72,260.
67 Id. at para. 72,249, page 72,268.
69 Id. at para. 73,006, pages 73,982-73,989.
71 Id. at 788-791.
73 Id. at 527-529.
74 State v. Friend, 40 P.3d 436, 437 (Nev. 2002).
75 Id. at 438.
76 Id. at 439-441.
78 Id. at 382.
(See below for Oklahoma’s use of a six-part test in a criminal case.)

TENNESSEE

Tennessee addressed the issue of notes as “securities” in two related cases in 1991 involving notes and “international certificates of deposit” issued by the Pacific Exchangers Bank of Vanuatu (an island nation in the South Pacific).79 One of these cases was a civil case involving the registration and antifraud provisions of the Tennessee Securities Act,80 and the other was an administrative proceeding involving the registration provisions only.81 In both of these cases, the notes were held to be “securities” on the basis of the family resemblance test.82

TEXAS

The Texas Court of Appeals has decided two cases involving notes as “securities.” The first was Campbell v. C.D. Payne and Geldermann Securities, Inc., decided in 1995,83 and the second was Grotjohn Precise Connexiones International, S.A. v. JEM Financial, Inc., decided in 2000.84 Both were civil cases, and both involved the antifraud provisions of the Texas Securities Act; the Texas Court of Appeals used the family resemblance test in deciding both cases.85 In the former case, the notes were held not to be “securities,”86 in the latter case, the notes were held to be “securities.”87 Interestingly, in the latter case the court concluded that the notes could be both “securities” under securities law and “loans” under usury law.88

VIRGINIA

Virginia used the family resemblance test in 1991 in Ascher v. Commonwealth, a criminal case against Rochelle Joyce Ascher, a prominent figure in the LaRouche organization, who had been selling notes issued by that organization.89 She was convicted of securities fraud in Loudon County Circuit Court and appealed her conviction.90 The Virginia Court of Appeals proceeded through the family resemblance test, concluded that the notes were “securities,” and affirmed her conviction.91

WASHINGTON

Douglass v. Stanger was a Washington civil case involving a promissory note issued in connection with a shopping center deal.92 The shopping center deal went sour and the issuer defaulted on the note; the holder of the note sued under the antifraud provisions of the Washington Securities Act.93 The trial court held that the note in question was not a “security.”94 The plaintiff appealed to the Washington Court of Appeals; on June 22, 2000, the Court of Appeals used the Reves test to conclude that the note was a “security,” but dismissed the case on statute of limitations grounds.95

(See below for Washington’s use of the Howey test in three criminal cases.)

WISCONSIN

Fore Way Express, Inc. v. Bast was a declaratory judgment action, in which a corporation sought to exclude its profit-sharing plan from the registration provisions of the Wisconsin Uniform Securities Law.96 The trial court found the plan to be a “security,” but the

Wisconsin Court of Appeals reversed the trial court decision.\(^\text{97}\) In its decision regarding the profit-sharing plan, the Wisconsin Court of Appeals stated in dictum that Reves is the proper test for determining whether a note is a “security.”\(^\text{98}\)

(See below for Wisconsin’s use of a very literal test in a criminal case.)

**B. Cases Which Have Followed Howey**

Twelve states have partially or exclusively used the Howey test.

**ALABAMA**

Bayhi v. State involved an offer of two-year notes at 100% interest.\(^\text{99}\) This was a criminal case based on the registration and antifraud provisions of the Alabama Securities Act.\(^\text{100}\) The trial court convicted the defendant, and the Alabama Court of Criminal Appeals affirmed the conviction using the Howey test.\(^\text{101}\)

**CALIFORNIA**

People v. Burcell was a criminal case involving a note issued in financing a real estate transaction.\(^\text{102}\) After defaulting on the note, Ms. Burcell was convicted of securities fraud and related offenses; she appealed to the California Court of Appeal.\(^\text{103}\) On October 30, 2001, the California Court of Appeal affirmed her conviction on the basis of the Howey test.\(^\text{104}\) By mutual consent of the parties, the risk capital test was not used: “The defendant argues, and the Attorney General concedes, that the ‘risk capital’ test does not apply here, and thus we shall not consider it further.”\(^\text{105}\)

(See below for California’s use of the risk capital test in both civil and criminal cases.)

**COLORADO**

People v. Milne involved the unregistered sale of “investment notes” by a consumer finance company.\(^\text{106}\) A trial court convicted William Milne, President of the company, of selling securities without a license, and he appealed.\(^\text{107}\) On November 5, 1984, the Colorado Supreme Court used the Howey test to conclude that the notes were “securities,” and affirmed his conviction.\(^\text{108}\)

**FLORIDA**

In a criminal case prior to Reves, State v. Fried, the Florida District Court of Appeal used the Howey test imposing a requirement of horizontal commonality.\(^\text{109}\) Because Fried had engaged in only one transaction, there was no horizontal commonality, and the court decided in favor of the defendant.\(^\text{110}\)

(See above for Florida’s use of the family resemblance test in a post-Reves criminal case.)

**GEORGIA**

On September 14, 1998, the Georgia Supreme Court followed the Howey test in Womack v. State, a case brought by the Georgia Securities Commissioner for an injunction and a receiver under the registration provisions of the Georgia Securities Act, in a matter involving a scheme known as “Worlds of Opportunity.”\(^\text{111}\) The Georgia Supreme Court used the Howey test and concluded that the notes in question were “securities.”\(^\text{112}\) The court then concluded that the notes did not fall within the “commercial paper exemption.”\(^\text{113}\)

Georgia continued its use of the Howey test in Mosley v. State.\(^\text{114}\) Mosley was a securities agent; he issued promissory notes in his own name, and subsequently defaulted.\(^\text{115}\) He was convicted in a trial court of violating the state’s Racketeer Influenced Corrupt Organization statute; the predicate conduct was selling unregistered securities.\(^\text{116}\) Mosley appealed his conviction to the Georgia Court of Appeals; on February 13, 2002, the Georgia Court of Appeals affirmed his conviction, using the Howey test to conclude that the notes in question were “securities.”\(^\text{117}\)

---

\(^\text{97}\) Id. at 410.  
\(^\text{98}\) Id. at 413.  
\(^\text{100}\) Id. at 784-785.  
\(^\text{101}\) Id. at 782, 787 n. 3.  
\(^\text{103}\) Id. at para. 74,240, pages 78,101-78,102.  
\(^\text{104}\) Id. at para. 74,240, pages 78,103-78,105.  
\(^\text{105}\) Id. at para. 74,240, pages 78,103.  
\(^\text{107}\) Id. at 833.  
\(^\text{108}\) Id. at 833-834.  
\(^\text{110}\) Id. at 213.  
\(^\text{112}\) Id. at 427.  
\(^\text{113}\) Id. at 427.  
\(^\text{115}\) Id. at para. 74,254, page 78,167.  
\(^\text{116}\) Id. at para. 74,254, page 78,167.  
\(^\text{117}\) Id. at para. 74,254, pages 78,167-78,168.
ILLINOIS

On September 5, 1990, about six months after the decision of the United States Supreme Court in Reves, the Appellate Court of Illinois decided Boatmen’s Bank of Benton v. Durham.118 This was a civil case based on the registration provisions of the Illinois Securities Law, involving a promissory note executed to the bank by James Durham in connection with an aircraft financing transaction.119 The trial court decided in favor of the bank, and Mr. Durham appealed.120 The Appellate Court used the Howey test, concluded that the note was not a “security,” and affirmed the decision of the trial court.121

IOWA

State v. Tyler, a criminal case, was decided by the Iowa Supreme Court on February 23, 1994.122 It involved an appeal from a conviction of securities fraud, based on a complicated set of facts involving a $20,000 note.123 The Iowa Supreme Court’s opinion made a passing reference to Reves, but decided the case under Howey.124

KANSAS

Kansas has no reported cases regarding notes as “securities.” However, a Kansas Securities Commission no-action letter dated August 4, 1992 indicated the Commission’s support for the Reves test, and added that a recent unpublished Kansas Court of Appeals decision, State v. Logan, applied the Reves test.125

Examination of State v. Logan, however, reveals the contrary. The Kansas Court of Appeals discussed the Reves test; however, it then backed away from the Reves test with the obscure comment, “Given the difficulty of identifying the note or notes allegedly offered, sold, or purchased in March 1986, we decline to engage in such an analysis under Reves.”126 The court then went on to decide the case under the Howey test.127

NEBRASKA

The Nebraska Supreme Court has used the Howey test in two criminal cases to determine that notes are “securities” under the Nebraska Securities Act. The first of these cases was State v. Jones, decided in 1990,128 the second was State v. Irons, decided in 1998.129 (In the former case, the matter of notes as “securities” was the court’s holding; in the latter case, it was dictum.) Although the Nebraska Supreme Court used the Howey test in both of these cases, it said, “See, also, Reves v. Ernst & Young.”130

(See above for Nebraska’s use of the family resemblance test in a civil case.)

PENNSYLVANIA

The only identifiable Pennsylvania decision regarding notes as “securities” is Martin v. ITM/International Trading & Marketing Ltd., which was decided by the Pennsylvania Supreme Court about five years prior to the United States Supreme Court decision in Reves.131 The Pennsylvania Supreme Court used the Howey test, and concluded that the notes in question were “securities.”132

SOUTH CAROLINA

South Carolina addressed the issue of notes as “securities” in a civil case, Crim v. E.F. Hutton, Inc. and Jeffrey Moses, based on the antifraud provisions of the South Carolina Uniform Securities Act.133 This case involved Jeffrey Moses, a registered representative at E.F. Hutton, Inc., who issued a $25,000 personal note in August 1986; when he defaulted, the plaintiff sued.134 After the trial judge granted summary judgment to E.F. Hutton, Inc., the plaintiff appealed.135 On July 10, 1989, the South Carolina Supreme Court affirmed the trial court decision; the court pointed out that the note was issued outside of Mr. Moses’s employment with E.F. Hutton, Inc., and that the note was not a “security.”136 The decision of the court was not a model of clarity, but seemed to follow the Howey test.137
WASHINGTON

Three criminal cases in Washington State used the Howey test in the matter of notes as “securities.” All three cases were based on the antifraud provisions of the Washington Securities Act. The first of these cases was State v. Philips, in which the Washington Court of Appeals used the Howey test in 1986 to affirm the defendant’s conviction, and the Washington Supreme Court used the Howey test in 1987 to affirm the defendant’s conviction. The second of these cases was State v. Saas, in which the Washington Court of Appeals used the Reves test in 1991 to reverse the defendant’s conviction, but the Washington Supreme Court used the Howey test in 1992 to affirm the defendant’s conviction. The third of these cases was State v. Argo, in which the Washington Court of Appeals used the Howey test in 1996 to affirm the defendant’s conviction, with the Reves test offered as an alternative ground to uphold the conviction.

(See above for Washington’s use of the family resemblance test in a civil case.)

C. Cases Which Have Used Other Tests

Eleven states have used various other tests partially or exclusively.

ARIZONA

Arizona addressed the matter of notes as “securities” in 1992 in State v. Tober, a criminal case based on the registration provisions of the Arizona Securities Act. The trial court used the risk capital test, and the defendant was convicted. The Arizona Court of Appeals overturned the conviction in 1991, holding that the risk capital test was unconstitutionally vague. The Arizona Supreme Court reinstated the conviction on November 1, 1992; it explicitly rejected the risk capital test and the family resemblance test, and insisted upon observance of the literal statutory language. The Arizona Supreme Court took this very literal view despite the existence of a “context” clause governing all definitional provisions of the Arizona Securities Act.

(See above for Arizona’s use of the family resemblance test in a civil case.)

ARKANSAS

In Carder v. Burrow, decided on March 17, 1997, the Arkansas Supreme Court used the state’s own test to determine whether a note is a “security.” Carder was a civil case in which the notes pertained to the floor plan financing of an office furniture store; after the maker of the notes defaulted, the plaintiff sued under the registration provisions of the Arkansas Securities Act. The trial court held for the defendants on the ground that the notes in question were not “securities.” The Arkansas Supreme Court used a five-part test, proposed in a 1971 Oklahoma Law Review article, and used in a prior Arkansas case, Smith v. State, to determine whether the notes in question were “securities.” The test in question can be characterized as a mixture of the Howey test and the risk capital test. Based on this test, the Arkansas Supreme Court concluded that the notes in question were not “securities.”

CALIFORNIA

California is noted for using the risk capital test to determine whether any instrument, note or otherwise, is a “security.” The Supreme Court of California established the risk capital test for the specific purpose of determining whether a note is a “security” in People v. Figueroa, a criminal case based on the qualification and antifraud provisions of the California Corporate Securities Law, which was decided on April 7, 1986. The California Court of Appeal followed suit in People v. Miller, a criminal case based on the qualification and antifraud provisions of the California Corporate Securities Law, which was decided on June 7, 1987.

On April 30, 1990, about two months after Reves, the California Court of Appeal decided a commodities case, People ex rel. Bender v. Wind River Mining Project. The case was decided under the risk capital test; the court issued dictum which suggested that such

142 Id. at 206.
146 Carder v. Burrow, 940 S.W.2d 429 (Ark. 1997).
147 Id. at 430.
148 Id. at 430.
152 Id. at 431-432.
test was still appropriate to decide cases involving notes as “securities.”\textsuperscript{157}  

(See above for California’s use of the Howey test in a criminal case.)

**MICHIGAN**

Michigan has no reported cases on the matter of notes as “securities” subsequent to Reves. However, two Michigan cases, from 1978 and 1988, have used the commercial/investment test.\textsuperscript{158} The former was a criminal case based on the antifraud provisions of the Michigan Uniform Securities Act,\textsuperscript{159} and the latter was a civil case based on the registration provisions of that Act.\textsuperscript{160} In both cases, the Michigan Court of Appeals held that the notes in questions represented commercial loans and thus were not “securities.”\textsuperscript{161}

**MINNESOTA**

The Minnesota Commissioner of Commerce issued an order against Caucus Distributors, Inc. for selling unregistered notes of the LaRouche organization; the respondents appealed to the Minnesota Court of Appeals.\textsuperscript{162} On April 5, 1988, in Caucus Distributors, Inc. v. Commissioner of Commerce, the Court of Appeals agreed that the notes were “securities.”\textsuperscript{163} Although the Court of Appeals briefly mentioned the Howey test, the decision was based on a pastiche of the risk capital test and the commercial/investment test.\textsuperscript{164}

**NEW MEXICO**

In 1980, the New Mexico Court of Appeals decided State v. Sheets, an appeal from a criminal conviction regarding the sale of unregistered notes.\textsuperscript{165} The Court of Appeals affirmed the conviction, observing that the definitional section of the New Mexico Securities Act of 1978 did not contain a “context” clause.\textsuperscript{166}

The Sheets decision prompted the writing of an article in the New Mexico Law Review entitled The Paper Trail To Jail, which pointed out the difficulties resulting from the lack of a “context” clause.\textsuperscript{167} The New Mexico legislature responded accordingly. In the New Mexico Securities Act of 1986, the definition of “security” is prefaced by a “context” clause.\textsuperscript{168} Since the enactment of the “context” clause, the matter of notes as “securities” has not been the subject of any reported New Mexico court decision.

**NEW YORK**

New York’s securities law is included in the Martin Act.\textsuperscript{169} This is an antifraud statute without any general requirement for securities to be registered; instead, the sellers of securities must be registered.\textsuperscript{170} The New York Court of Appeals decided in 1987 that the Martin Act does not create a private cause of action; since that time, the Martin Act has been enforced exclusively by the Attorney General.\textsuperscript{171}

The Martin Act does not define “security,” much less does it define “note.” New York has no reported cases involving the circumstances in which a note is a “security.” However, it does have a reported case, J. Henry Schroder Bank v. Metropolitan Savings Bank, in which a private transaction involving a loan participation interest, i.e. a fractional interest in a note, was deemed not to be a “security.”\textsuperscript{172} The Court held that because there was no “fraudulent exploitation of the public in connection with the sale of securities and commodities,” the transaction fell outside the scope of the Martin Act.\textsuperscript{173}

**NORTH DAKOTA**

North Dakota has four pre-Reves criminal cases in which the North Dakota Supreme Court, like the Arizona Supreme Court, used a very literal test.\textsuperscript{174} As  

\textsuperscript{157} Id. at 111-116.  
\textsuperscript{162} Caucus Distributors, Inc. v. Commissioner of Commerce, 422 N.W.2d 264, 266 (Minn. Ct. App. 1988).  
\textsuperscript{163} Id. at 270-272.  
\textsuperscript{164} Id. at 270-272.  
\textsuperscript{166} Id. at 763-769.  
\textsuperscript{172} J. Henry Schröder Bank v. Metropolitan Savings Bank, 497 N.Y.S.2d 931 (1986).  
\textsuperscript{173} Id. at 933.  
\textsuperscript{174} State v. Davis, 131 N.W.2d 730 (N.D. 1964); State v. Weisser, 161 N.W.2d 360 (N.D. 1968); State v. Weigel, 16
in Arizona, the North Dakota Securities Act’s “context” clause has not been mentioned in any of the North Dakota judicial decisions.175

OHIO

The Ohio Securities Act defines “security” to include promissory notes; however, the definitional section does not have a “context” clause.176 The following registration exemption is provided: “Commercial paper and promissory notes are exempt when they are not offered directly or indirectly for sale to the public.”177

In two post-Reves decisions, the Ohio Court of Appeals has taken a very literal view of these statutory provisions. The first of these cases was State v. Taubman, a 1992 criminal case based on the registration provisions of the Ohio Securities Act.178 Ms. Taubman was convicted in the trial court, and appealed.179 The Court of Appeals upheld Ms. Taubman’s conviction, and declared, “[t]here is nothing unclear about the terms ‘security’ and ‘sale’ as found in R.C. 1707.01(B) and (C)(1).”180 The court’s opinion quoted a passage from Justice Marshall’s majority opinion in Reves regarding the expansive scope of securities law definitions; however, the Ohio Court of Appeals did not cite Reves as controlling, much less did it apply the Reves test.181 The second of these cases was Williams v. Waves, Cuts, Colour & Tanning, Inc., a 1994 civil case based on the registration provisions of the Ohio Securities Act.182 The trial court ruled in favor of the plaintiff, and the defendant appealed.183 The Court of Appeals affirmed the trial court decision, holding that a note had been offered to a member of the public without registration.184

OKLAHOMA

The Oklahoma Court of Criminal Appeals in 1978 decided State v. Hoephner, which involved a note sold to a 74-year-old retired woman by a person who had previously been ordered by the Oklahoma Securities Commission to refrain from selling securities in that state.185 The court used a six-part test proposed in a 1973 Nebraska Law Review article; this six-part test is a blend of the Howey test, the risk capital test, and the commercial/investment test.186 The Oklahoma Court of Criminal Appeals found that the note in question was a “security,” based on the six-part test.187

(See above for Oklahoma’s use of the family resemblance test in a civil case.)

WISCONSIN

In 1996, the Wisconsin Court of Appeals decided State v. Mueller, an appeal from a criminal conviction of “pattern racketeering” under the Wisconsin Organized Crime Control Act; the predicate conduct was securities fraud.188 The Court of Appeals explicitly rejected the prosecution’s recommendation to use the Reves test.189 Instead, the Court of Appeals took a very literal approach, and concluded that the jurors could find that the notes were “securities” under the judge’s instructions, which tracked the definitional section of the Wisconsin Uniform Securities Law.190

(See above for Wisconsin’s use of the family resemblance test in a civil case.)

D. States Which Have Not Addressed the Issue

Nineteen states have no identifiable decisions regarding which notes are “securities.” These states are Connecticut, Delaware, Hawaii, Kentucky, Maine, Massachusetts, Mississippi, Missouri, Montana, New Hampshire, New Jersey, North Carolina, Oregon, Rhode Island, South Dakota, Utah, Vermont, West Virginia, and Wyoming.

VI. ANALYSIS OF DECISIONS

This article has discussed the fifty-one identifiable state court decisions which have addressed the issue of which notes are “securities.” After winnowing out the decisions involving dictum, forty-five decisions remain. Of these forty-five decisions,

165 N.W.2d 695 (N.D. 1969); State v. Goetz, 312 N.W.2d 1 (N.D. 1981).
175 N.D. Cent. Code sec. 10-04-02 (1951).
176 Ohio Rev. Code Ann. sec. 1707.01(B) (1953).
177 Ohio Rev. Code Ann. sec. 1707.02(G) (1953).
179 Id. at 963.
180 Id. at 968.
181 Id. at 968.
183 Id. at 693-694.
184 Id. at 695.
189 Id. at 466.
190 Id. at 466.
fourteen used the family resemblance test, fifteen used the Howey test, and sixteen used other tests.

**A. Effect of Reves Decision**

The following table divides the forty-five decisions between pre-Reves and post-Reves decisions, to illustrate the effect of the Reves decision in state courts.

<table>
<thead>
<tr>
<th>TEST</th>
<th>NO. OF CASES</th>
<th>NO. OF CASES</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family Resemblance</td>
<td>0</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>Howey</td>
<td>5</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>Other</td>
<td>11</td>
<td>5</td>
<td>16</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>16</strong></td>
<td><strong>29</strong></td>
<td><strong>45</strong></td>
</tr>
</tbody>
</table>

From the foregoing data, it is obvious that Reves prompted a number of states to adopt the family resemblance test: no decisions were based on the family resemblance test prior to Reves, and fourteen decisions were based on that test after Reves.

Two other conclusions can be drawn from the data. First, the Howey test still retains its vitality: subsequent to Reves, fourteen cases used the family resemblance test, while ten cases used the Howey test. Thus, the family resemblance test has become the majority view, while the Howey test has become a strong minority view. Second, the data demonstrate that other tests (such as the risk capital test) have become used less frequently since the United States Supreme Court decision in Reves: eleven decisions used other tests before Reves, but only five decisions used other tests after Reves.

**B. Classification as Civil/Administrative or Criminal**

The following table divides the forty-five decisions between civil and administrative cases and criminal cases.

<table>
<thead>
<tr>
<th>TEST</th>
<th>NO. OF CIVIL AND ADMIN. CASES</th>
<th>NO. OF CRIMINAL CASES</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family Resemblance</td>
<td>11</td>
<td>3</td>
<td>14</td>
</tr>
<tr>
<td>Howey</td>
<td>4</td>
<td>11</td>
<td>15</td>
</tr>
<tr>
<td>Other</td>
<td>4</td>
<td>12</td>
<td>16</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>19</strong></td>
<td><strong>26</strong></td>
<td><strong>45</strong></td>
</tr>
</tbody>
</table>

The foregoing data demonstrate a sharp distinction in the types of cases where the various tests are used. In particular, the family resemblance test has been used in slightly more than half the civil and administrative cases, but in only three of the criminal cases. Almost all of the criminal cases have used the Howey test or other tests.

This distinction between civil and administrative cases and criminal cases is further emphasized by five states which have exhibited intra-state splits: Arizona, Nebraska, Oklahoma, Washington, and Wisconsin.\(^{191}\) These five states have used the family resemblance test for civil and administrative cases and the Howey test or other tests for criminal cases.\(^{192}\)

The tendency of civil and administrative cases to be decided by the family resemblance test, and the tendency of criminal cases to be decided by the Howey test, has two possible explanations. First, the Howey test is a very familiar test, because it is used in determining whether a variety of instruments are “securities.” Furthermore, in states where securities prosecutions are conducted by prosecutors without specialized expertise in securities law, the family resemblance test may be unfamiliar to the prosecutors. Second, the family resemblance test appears to place the burden of proof on a criminal defendant, to prove that a note is not a “security.” The apparent shift in the

---

\(^{191}\) As noted above, Arizona used the family resemblance test in a civil case and a very literal test in a criminal case, Nebraska used the family resemblance test in a civil case and the Howey test in two criminal cases, Oklahoma used the family resemblance test in a civil case and a six-part test in a criminal case, Washington used the family resemblance test in a civil case and the Howey test in three criminal cases, and Wisconsin used the family resemblance test in a civil case and a very literal test in a criminal case.

\(^{192}\) Not mentioned among these five states are California, which used the risk capital test in civil and criminal cases and used the Howey test in a recent criminal case, and Florida, which used the Howey test in a criminal case prior to Reves and the family resemblance test in a criminal case subsequent to Reves.
burden of proof, in a criminal case regarding whether notes are “securities,” has been held consistent with due process of law.193 However, such an apparent shift in the burden of proof may seem awkward to prosecutors.

C. Classification Regarding LaRouche Organization

Four reported state court cases regarding the matter of notes as “securities” involved notes issued by the LaRouche organization. This was a political extremist organization founded and operated by Lyndon LaRouche.194 These four cases were litigated in Alaska, Maryland, Minnesota, and Virginia. The family resemblance test was used in three of these cases: in Alaska, Maryland, and Virginia.195 A pastiche of the risk capital and commercial/investment tests was used in Minnesota.196

The absence of the Howey test from the four cases involving the LaRouche organization is not surprising, because the Howey test would become strained in the circumstances of the LaRouche cases. First, the LaRouche organization would be difficult to characterize as an “enterprise.” Second, the LaRouche organization was a nonprofit organization; any “profits” would need to be reinterpreted as investors’ expected returns. Thus, the “enterprise” and “profits” components of the Howey test would become problematical in the LaRouche cases. By contrast, the family resemblance, risk capital, and commercial/investment tests were applied easily to the LaRouche cases.

D. Passing References to Reves in State Court Criminal Cases

Some state court criminal decisions subsequent to Reves have made passing reference to Reves, but have decided whether notes are “securities” under some other test. Examples of this are found in Iowa, Kansas, Nebraska, and Ohio.197 These courts apparently saw a need to pay their respects to the United States Supreme Court’s Reves decision, but found that Reves was less than suitable for criminal cases.

E. Factors Not Influencing Decisions

Three factors seem to have no impact on the test used by state courts in determining whether a note is a “security.” First, there is no distinction based on geographic regions of the United States: cases using the family resemblance test, the Howey test, and other tests are scattered all across the country. (However, it is worth noting that none of the cases originated in any of the six New England states.) Second, there is no distinction based on state population: cases using the family resemblance test, the Howey test, and other tests are found in both densely populated states and sparsely populated states. Third, there is no distinction between cases based on registration provisions and cases based on antifraud provisions: all of the tests are well represented in both registration cases and antifraud cases.

VII. INVOLVEMENT OF BROKERAGE FIRM COMMUNITY

Only two identifiable state court cases regarding notes as “securities” have involved brokerage firms as defendants: the South Carolina case Crim v. E.F. Hutton, Inc. and Jeffrey Moses,198 and the Texas case Campbell v. C.D. Payne and Geldermann Securities, Inc.199 Both of these cases involved securities agents who “sold away” when they conducted their note transactions; the firms successfully claimed that the note transactions were outside the scope of the agents’ employment.200 Thus, in both cases, the securities agents were held liable, but the brokerage firms were not.201 (In the Georgia criminal case Mosley v. State, and in the Idaho administrative case Rincove v. State of Idaho, the brokerage firms were never made

---

defendants, and thus did not have to extricate themselves from the proceedings.\textsuperscript{202}

In Shearson/American Express, Inc. v. McMahon and subsequent decisions, the United States Supreme Court upheld the validity of predispute brokerage arbitration clauses.\textsuperscript{203} Of the two foregoing cases, Crim was based on pre-McMahon operative facts, while Campbell was based on post-McMahon operative facts.\textsuperscript{204} However, regardless of McMahon, the brokerage firms in both Crim and Campbell did not seek to compel arbitration, but did seek to distance themselves from the note transactions; in both cases, the brokerage firms’ strategy was successful.\textsuperscript{205}

VIII. CONCLUSIONS

A. Expansion of Family Resemblance Test Into State Courts

It is easy to see why the family resemblance test has been adopted widely by state courts in civil and administrative cases. First, the family resemblance test mirrors the statutory language that a note is a “security,” “unless the context otherwise requires.” Second, the family resemblance test provides an easy-to-use checklist for conventional forms of notes. Third, the family resemblance test provides standards for determining whether an unconventional or novel note should be regarded as a “security.” Fourth, the family resemblance test provides adequate protection to investors without impeding the flow of commercial transactions. Fifth, the family resemblance test is also the test used uniformly under Federal law. With no other test appearing on the horizon, the family resemblance test can be expected to continue as the primary test in state civil and administrative cases, to determine whether a note is a “security.”


B. Continued Use of Howey Test

The Howey test is a very familiar test, and does not create any apparent reordering of the normal burden of proof. (The fact that the Howey test is a specific definition of “investment contract,” and not an omnibus definition of “security,” has frequently been overlooked by state courts.) Thus, the Howey test can be expected to maintain itself in state court criminal cases as the primary test to determine whether a note is a “security.”

C. Limited Use of Other Tests

Since the Reves decision, state courts have infrequently used tests other than the family resemblance test or the Howey test to determine whether a note is a “security.” Such other tests can be expected to continue being used in states with specific traditions of using such other tests.

WORD FROM THE CHAIR

By Martin R. Miller
Willkie, Farr & Gallagher (New York)

I am honored to take over as Chair of the Committee on State Regulation of Securities. I have practiced in the blue sky area for close to twenty years and am happy to have known many Committee members for almost as long.

The practice of law in any specialty can be an isolating experience. This is perhaps more so in the blue sky field in that there is often only one blue sky lawyer at most firms. Over the years, it has been important to me in my practice to have a network of colleagues at other firms and contacts among the state regulators to turn to with questions, ideas and concerns. I have always found the Committee and the various Subcommittees to be good sources for contacts and information. I hope the Committee’s new Listserv, bl-statereg@mail.abanet.org, will provide another forum for discussion and the exchange of information.

The Committee can also be proud of the Blue Sky Bugle and the timely information and analysis of issues it provides.

The enactment of the National Securities Markets Improvement Act of 1996 accelerated the trend for many of us to take on other matters in addition to blue sky work and, therefore, it becomes more important for us to look to the Committee and our colleagues to help us keep current with state securities law. The states continue to enact changes to their rules and regulations, and the recent flurry of federal and SRO regulation has also had its impact on blue sky
practice. Therefore, I encourage everyone to make use of the Listserv and the Bugle, and submit articles, comments or questions. We have some new Subcommittee heads and a new Subcommittee on Employee Plan Securities. I encourage all of our Committee members to review the list of Subcommittees and contact Subcommittee chairs to sign up for membership in Subcommittees that are of interest. I also encourage all of the Committee members who are members of the various Federal Regulation of Securities Committees to remember to report any new developments effecting blue sky practice discussed in those meetings, as well as other groups or bar associations to our Committee.

I look forward to being Chair and hearing from you.

CORRECTION - INDIANA EXEMPTION

The July, 2002, edition of The Blue Sky Bugle reported that the Indiana exemption for employee’s compensatory benefit plan securities would not extend to securities issued to consultants or advisors. However, we have been informed that the Indiana Securities Division does, in fact, interpret the exemption for employee benefit plans to include securities issued to non-employee consultants and advisors, but only if they provide bona fide services to the issuer other than effecting capital raising transactions. This has been the policy of the Division for several years.

NEW YORK INVESTMENT ADVISER REGULATIONS PROPOSED

By Ellen Lieberman
Debevoise & Plimpton - New York

Previously, this commentator reported that the New York Legislature was considering legislation to change investment adviser registration and filing requirements commencing on January 1, 2003. See The Blue Sky Bugle, July 2002. That legislation has become law, Chapter 541 of the Laws of 2002, and the New York Department of Law recently proposed regulations, among other things, to: (i) provide for implementation of electronic registration and notice filings through the IARD system administered by the NASD; (ii) provide examination requirements and waivers; and (iii) administer the de minimis exclusion from registration and notice filing requirements for a person who sold, during the preceding 12-month period, investment advisory services to fewer than 6 persons residing in New York, exclusive of financial institutions and institutional buyers as now defined by regulation of the Attorney General.

Set forth below is a summary of the proposed regulations, which may change prior to actual adoption. The proposed regulations were published in the State Register on October 30, 2002 and may be obtained through the Attorney General’s web page at http://www.oag.state.ny.us/investors/investors.html. Written comments may be submitted to Diane Ridley Gatewood, Assistant Attorney General, Chief of Registration, 120 Broadway, 23rd Floor, New York, NY 10271. Public hearings are to be held in different locations throughout New York in early December 2002.

Electronic Filing Through the IARD. The regulations would require all investment adviser and federal covered adviser filings and fees that will be accepted by IARD to be filed electronically with IARD upon 30 days notice by the Department of Law or its designee. Documents and fees that will not be accepted by IARD (for example, Part 2 of Form ADV) must be filed in paper form directly with the Department of Law. Limited temporary hardship exemptions from the requirement to file electronically may be sought by submitting Form ADV-H to the Department of Law no later than one business day after the filing was due (permitting the IARD electronic filing to be delayed up to seven business days). A continuing hardship exemption may be granted in limited prohibitively burdensome circumstances.

Initial filing of an investment adviser application should be made no less than ten days prior to engaging in investment advisory activities in New York and should be renewed annually, updated within 90 days after the end of the investment’s adviser’s fiscal year and amended promptly as required by instructions to Form ADV (an amendment filed within 30 days of the triggering event will be considered to be filed promptly).

Examination Requirement. A New York State-registered investment adviser who is an individual, and an individual who represents a state-registered adviser in doing any of the acts which make it an investment adviser or who solicits business for a state-registered adviser, must take and receive a passing grade within two years on the Series 65 examination, or the Series 7 and 66 examinations. Waivers from the examination requirement may be sought by submission of Form NY-IAQ (Investment Adviser Qualification) (i) by a state-registered adviser who has been registered in New York for five years without any regulatory action or arbitrations, (ii) by an individual who represents or solicits for a state-registered adviser and has been
continuously registered in any jurisdiction for two years without any regulatory action or arbitrations, and (iii) by an individual who holds a professional designation in good standing (CFP, ChFC, PFS, CFA, CIC or others designations recognized by the Attorney General by rule or order).

Definitions of “Client” and “Institutional Buyer” for De Minimis Exclusion. A statutory de minimis exclusion from registration and notice filing requirements is available for a person who sold, during the preceding 12-month period, investment advisory services to fewer than 6 persons residing in New York, exclusive of financial institutions and institutional buyers as may be defined by rule or regulation of the Attorney General. The regulations intend to define “client” to mirror federal Rule 203(b)(3)-1. It is anticipated that the New York State Bar Association Securities Regulation Committee will comment on the regulations, among other things, to suggest some changes to more closely mirror the federal Rule by clarifying that the enumerated persons should be deemed a single client and that the safe harbor provided by the regulations is not intended to be the exclusive method for determining who may be deemed a single client (enumerated persons include a natural person and his or her minor child, certain relatives having the same principal residence, and certain related accounts, trusts, and legal organizations that receive investment advice based on their own investment objectives rather than the individual investment objectives of their owners).

The regulations also define “financial institution” and “institutional buyer” for purposes of the de minimis exclusion generally to mirror the definitions in the new Uniform Securities Act, which has been approved by the Commissioners on Uniform State Laws but not yet by NASAA, the ABA or any state. The terms would include, inter alia, depository institutions, insurance companies and their separate accounts, investment companies as defined in the Investment Company Act, federally registered broker-dealers, state or private employee benefit plans with more than $10 million of assets or with decisions made by plan fiduciaries, various legal organizations with more than $10 million of assets, federal covered investment advisers acting for their own account, QIBs, and “major United States institutional investors” as defined in Rule 15a-6(b)(4)(i) under the Securities Exchange Act (having assets or assets under management of more than $100 million, aggregating assets of a family of investment companies).

Additional Regulations. The regulations, with respect to state-registered advisers, include new record keeping and financial statement filing requirements. The regulations also retain requirements for state-registered advisers (i) to transmit to the Department of Law, on the date of first general distribution to the investing public, copies of investment advisory literature that are sold to clients or prospective clients and (ii) to file with the Department, promptly and not later than five days after publication or general distribution, copies of advertising communications for soliciting advisory clients. The regulations would change the definition of “general distribution” to mean a distribution to more than five persons in New York at any one time.


BLUE SKY BITS AND PIECES
By Ellen Lieberman
Debevoise & Plimpton (New York)

Richard Alvarez, formerly of Orrick, Herrington & Sutcliffe L.L.P., opened The Law Offices of Richard I. Alvarez in Melville, New York, practicing in the areas of blue sky compliance, broker-dealer and investment adviser registration and compliance and corporate finance. Rich and his wife Patti have embarked on other new and exciting ventures as well-- they recently adopted a little boy and girl from Russia, Ryan and Katie, each (now) 17 months old (born 6 days apart) and keeping them very busy.

Martha Sjogreen, formerly at Gibson Dunn & Crutcher LLP, opened a law office under the name Compliance Law PLLC in Petersburgh, New York, where she will practice blue sky law.

Carole S. Davie has retired from her practice of blue sky law at Paul, Weiss, Rifkind, Wharton & Garrison.

In December 2001, Michael Johnson was appointed as the Arkansas Securities Commissioner to replace Mac Dodson, who will head the Arkansas Development Finance Authority.

Steve Parker, formerly Chief Enforcement Attorney of the Georgia Securities Division, was named Director on July 1, 2002. He succeeds Robert
D. Terry who stepped down in September of 2001 to return to private practice. Bob is at Sutherland Asbill & Brennan LLP.

Roger G. Fein of Wildman, Harrold, Allen & Dixon, was named a member of the new Illinois Securities Advisory Council to advise Illinois Secretary of State Jesse White.

Cyril Moscow of Honigman Miller Schwartz and Cohn LLP, advises that the Michigan Securities Bureau was reorganized as part of the Department of Consumer & Industry Services and that there were many personnel reassignments.

F. Daniel Bell, III, formerly of Wyrick Robbins Yates & Ponton LLP, became a partner of Kennedy Covington Lobdell & Hickman, L.L.P. and head of its Securities Compliance and Defense Practice Group effective January 1, 2002. Dan is located in Raleigh, NC and Kennedy Covington (a business law firm whose practice includes banking, securities, real estate development, technology venture capital and corporate transactions) also has offices in Charlotte, NC and Rock Hill SC. Dan was formerly North Carolina Deputy Securities Administrator in charge of the Securities Division, a NASAA President and Director. David Jonson, formerly South Carolina Deputy Attorney General in charge of the Securities Division and a NASAA Director, has also joined Kennedy Covington’s Securities Compliance and Defense Practice Group.

Margaret W. (Megan) Chambers became associated with Boston Private Financial Holdings, Inc. in January 2002. BPFH, a public company traded on NASDAQ, is a bank holding company with two banks and several investment managers located in New England and in California. Megan is General Counsel and Senior Vice President in the Boston office.

Steve Hornberger, Director of Enforcement of the Office of the Kansas Securities Commissioner, is retiring.

James O. Nelson II will oversee the Mississippi Securities Division as Assistant Secretary of State for Business Regulation and Enforcement, replacing Bill Chapman.

Amy Kopelton became the Chief Regulatory Officer of the New Jersey Bureau of Securities in April 2002.

Michael Gunst has become the Director of Inspections and Compliance of the Texas State Securities Board.

**CALIFORNIA SUBSCRIBES TO THE SARBANES-OXLEY TREND**

By Bruce Elwood Johnson
Morrison & Foerster LLP (San Francisco)

Anxious to respond to growing concerns for adequate corporate disclosure, the State of California recently adopted the “California Corporate Disclosure Act” and imposed significant new disclosure requirements on all publicly traded corporations doing business in California. The newly required disclosures are not identical in form or substance to federal disclosure requirements, and as a result a new layer of required filings is added for most publicly traded corporations.

Effective January 1, 2003, additional disclosure information must be included in the annual statement filed by publicly traded corporations with the California Secretary of State. These new requirements apply to publicly traded corporations organized under California law and to publicly traded foreign corporations registered to do business in California. In general, all foreign corporations that enter into repeated and successive transactions in California, other than in interstate and foreign commerce, are currently required to register with the Secretary of State. However, it should be noted that a foreign corporation is not deemed to be transacting intrastate business merely because its subsidiary transacts intrastate business in California.

Under current law, public and private corporations must file, every two years, either a “Statement of Domestic Stock Corporation” or a “Statement by Foreign Corporation” for the purpose of providing the identities and addresses of officers and directors. As of January 1, 2003, the Act requires annual filing for all corporations (but with no additional disclosure for private corporations) and specific additional disclosure for publicly traded corporations. Generally, the new law requires that each publicly traded domestic or foreign corporation disclose in its annual statement, in addition to currently required information:

- The name of the corporation’s independent auditor.
- The services provided by the independent auditor or its affiliates during the two years prior to filing.
- Any loans to directors at a preferential rate within the two years prior to filing.
• Annual compensation of each director and of the top five executives.

• Any bankruptcy filed by the corporation, its directors, or its executive officers within the 10 years prior to filing.

• Any fraud convictions of the corporation's directors and executive officers within the 10 years prior to filing.

• Any violations by the corporation of federal securities laws or of California banking or securities laws resulting in a judgment over $10,000 within the 10 years prior to filing.

• In addition, the corporation will be required to attach a copy of the most recent report prepared by its independent auditor.

For purposes of the new law, “publicly traded” means a corporation “with securities that are either listed or admitted to trading on a national or foreign exchange, or is the subject of two-way quotations, such as both bid and asked prices, that is regularly published by one or more broker-dealers in the National Daily Quotation Service or a similar service.” There is no definition of “foreign exchange,” with the result that an offshore corporation publicly traded on any exchange in its home jurisdiction or elsewhere, and doing business in California, appears to be subject to the augmented disclosure requirements. Corporations with securities traded in the Over The Counter market or the “pink sheets” apparently are within the definition.

Pursuant to the new Act, a $5 fee is imposed to supplement the current $20 filing fee, with half of the additional revenue dedicated to building an online system for public viewing of the information and the other half to be deposited into a newly created Victims of Corporate Fraud Compensation Fund.

The Secretary of State is required to adopt a form to facilitate the submission of the newly required disclosures and may issue rules implementing the provisions. At this time it is unclear whether the Secretary of State will accept copies of Federal filings in satisfaction of the new State disclosure requirements.
OFFICERS
ABA COMMITTEE ON STATE REGULATION OF SECURITIES

Chair: Martin R. Miller
Willkie, Farr & Gallagher, 787 Seventh Avenue, New York NY 10019-6099

Vice Chair: Ellen Lieberman
Debevoise & Plimpton, 919 Third Avenue, New York, NY 10022

Secretary: Alan Parness
Cadwalader, Wickersham & Taft, 100 Maiden Lane, New York, NY 10038

Subcommittee Chairs:

Broker-Dealers and Investment Advisors
Robert A. Boresta
Paul, Hastings, Janofsky & Walker LLP, 399 Park Avenue New York, NY 10022

CLE & Publications
Bruce Elwood Johnson
Morrison & Foerster LLP, 425 Market Street, San Francisco, CA 94105

Direct Participation, Commodities & Other Hybrid Securities
Alan M. Parness
Cadwalader, Wickersham & Taft, 100 Maiden Lane, New York, NY 10038

eCommerce
(Open Position)

Employee Plans
Michele A. Kulerman
Hogan & Hartson L.L.P., 555 13th Street N.W., Washington, D.C., 20004

Enforcement
Dan R. Waller
Secore & Waller, L.L.P., 13355 Noel Road, L.B. 75 - Suite 2290, Dallas, TX 75240

Exempt Securities
Mark T. Lab
Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, NY 10017

International Securities
Ellen M. Creede
Cleary, Gottlieb, Steen & Hamilton, One Liberty Plaza, New York, New York 10006

Investment Companies
Patricia (Patty) Louie
Equitable Life Assurance Society, 1290 Ave. of the Americas, 12th Floor, New York, NY 10104

Liaison with Securities Administrators and NASD
Roger G. Fein
Wildman, Harrold, Allen & Dixon, 225 West Wacker Drive, Chicago, IL 60606

Limited Offerings
Mike Liles, Jr.
Karr Tuttle & Campbell, 1201 Third Avenue, Suite 2900, Seattle, WA 98101
STATE LIAISONS
ABA STATE REGULATION OF SECURITIES COMMITTEE

SUBCOMMITTEE ON LIAISON WITH SECURITIES ADMINISTRATORS
AND THE NASD
As Of September 24, 2002
Roger G. Fein, Chair

AL  Ms. Carolyn L. Duncan  (205)251-1288  (Work)
Ritchie Duncan & Goodwin, LLC  (___) ___-____ (Home)
312 North 23rd Street  (205)324-7832 (Fax)
Birmingham, Alabama  35203-3878
E-Mail – cduncan@rdg-law.com

AK  Mr. Julius J. Brecht  (907)276-6401  (Work)
Wohlforth, Argetsinger, Johnson & Brecht,  (___) ___-____ (Home)
a Professional Corporation  (907)276-5093 (Fax)
900 West 5th Avenue, Suite 600 or 276-5098
Anchorage, Alaska  99501-2048
Firm E-Mail – wajb@alaska.net
Direct E-Mail – jbrecht@gci.com

AZ  Mr. Dee Riddell Harris  (602)508-6088  (Work)
Carmichael & Company LLC  (602)840-4078  (Home)
2415 E. Camelback Rd. – Ste. 700  (602)508-6099 (Fax)
Phoenix, Arizona  85016
E-Mail – deeharris@carmichaelandco.com

AR  Mr. John S. Selig  (501)688-8804  (Work)
Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.  (501)821-1540 (Home)
425 West Capitol Avenue, Suite 1800  (501)688-8807 (Fax)
Little Rock, Arkansas  72201-3525
E-Mail – jselig@mwsgw.com

CA  Mr. Bruce Elwood Johnson  (415)268-6628  (Work)
Morrison & Foerster LLP  (415)882-9560 (Home)
425 Market Street  (415)268-7522 (Fax)
San Francisco, CA  94101
E-Mail – bjohnson@mofo.com

CO/MONT/WY  Mr. Robert J. Ahrenholz  (303)297-7740  (Work)
Kutak Rock LLP  (___) ___-____ (Home)
717 Seventeenth Street - Suite 2900  (303)292-7799 (Fax)
Denver, Colorado  80202-3329
E-Mail – robert.ahrenholz@kutakrock.com
CT
Ms. Susan E. Bryant
Six Forest Park Drive (06032)
P.O. Box 444
Farmington, CT  06034-0444
E-Mail -- sebry@aol.com
(860)674-0111 (Work)
(860)676-8080 (Home)
(860)674-0011 (Fax)

DE
Mr. Andrew M. Johnston
Morris, Nichols, Arisht & Tunnell
1201 North Market Street
P. O. Box 1347
Wilmington, Delaware  19899-1347
(302)658-9200 (Work)
(____)____-____ (Home)
(302)658-3989 (Fax)

DC
Ms. Michele A. Kulerman
Hogan & Hartson L.L.P.
Columbia Square
55 Thirteenth St., N.W.
Washington, D.C.  20004-1109
E-Mail -- makulerman@hhlaw.com
(202)637-5743 (Work)
(301)279-6772 (Home)
(202)637-5910 (Fax)

FL
Mr. Donald A. Rett
Collins & Truett
2804 Remington Green Circle - Ste. 4
Tallahassee, Florida 32317
E-Mail -- drett@collinsfirm.com
(850)386-6060 (Work)
(904)894-0700 (Home)
(850)385-8220 (Fax)

GA
Robert D. Terry
Sutherland Asbill & Brennan LLP
999 Peachtree Street, NE
Atlanta, GA 30309-3996
E-Mail – Rderry@sablaw.com
(404)853-8000 (Work)
(404)687-0395 (Home)
(404)853-8806 (Fax)

HA
Mr. David J. Reber
Goodsill Anderson Quinn & Stifel
1099 Alaakea Street – Ste. 1800
Honolulu, Hawai 96813
E-Mail – dreber@goodsill.com
(808)547-5611 (Work)
(808)395-7994 (Home)
(808)547-5880 (Fax)

ID
Mr. Jeffrey W. Pusch
Marshall Batt & Fisher, LLP
101 South Capitol Boulevard - 5th Flr.
P.O.Box 1308
Boise, Idaho  83701
E-Mail – iwpusch@marshallbatt.com
(208)331-1000 (Work)
(____)____-____ (Home)
(208)331-2400 (Fax)

IL
Mr. Roger G. Fein
Wildman, Harrold, Allen & Dixon
Chair
225 West Wacker Drive
Chicago, Illinois  60606-1229
E-Mail – fein@wildmanharrold.com
(312)201-2536 (Work)
(847)272-6933 (Home)
(312)201-2555 (Fax)
IN
Mr. Stephen W. Sutherlin
Stewart & Irwin
251 East Ohio Street
Suite 1100
Indianapolis, Indiana  46204
E-Mail – SSutherlin@Stewart-Irwin.com
(317)639-5454 (Work)
(317)733-8084 (Home)
(317)632-1319 (Fax)

IA
(Position Vacant)

KS/MO
Mr. William M. Schutte
Polsinelli/Shalton/Welte
6201 College Blvd. – Ste. 500
Overland, KS  66211
E-Mail – wschutte@pswlaw.com
(913)234-7414 (Work)
(913)451-6205 (Fax)
(913) 345-0054 (Home)

KY
Mr. Manning G. Warren III
University of Louisville
Louis D. Brandeis School of Law
2301 South Third Street
Louisville, Kentucky  40292
E-Mail – mgw111@louisville.edu
(502)852-7383 (Work)
(502)852-0862 (Fax)

LA
Mr. Carl C. Hanemann
Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P.
Place St. Charles
201 St. Charles Avenue
New Orleans, Louisiana  70170-5100
E-Mail -- chanemann@jwlaw.com
(504)582-8156 (Work)
(504)582-8012 (Fax)

ME
Mr. Wayne E. Tumlin
Bernstein, Shur, Sawyer & Nelson PA
100 Middle Street - W. Tower
P.O. Box 9729
Portland, ME 04104-5029
E-Mail -- wtumlin@mainelaw.com
wtumlin@bernsteinshur.com
(207)774-1200 (Work)
(207)829-4848 (Home)
(207)774-1127 (Fax)

MD
Mr. Wm. David Chalk
Piper Marbury Rudnick & Wolfe LLP
6225 Smith Avenue
Baltimore, MD  21209-3600
E-Mail – david.chalk@piperrudnick.com
(410)580-4120 (Work)
(410)580-3001 (Fax)
MA  Ms. Anne (Polly) G. Plimpton  
Testa, Hurwitz & Thibeault, LLP  
125 High Street  
Boston, Massachusetts  02110  
E-Mail --  plimpton@tht.com  
(617)248-7514     (Work)  
(617)731-6180     (Home)  
(617)248-7100     (Fax)  

MI  Mr. Cyril Moscow  
Honigman Miller Schwartz and Cohn  
2290 First National Building  
660 Woodward Avenue  
Detroit, Michigan  48226-3583  
E-Mail – czm@honigman.com  
(313)465-7486     (Work)  
(313)642-0582     (Home)  
(313)465-7487     (Fax)  

MN  (Position Vacant)  

MS  Mr. Daniel G. Hise  
Butler, Snow, O’Mara, Stevens & Cannada  
P.O. Box 22567  
Jackson, MS 39225-2567  
E-Mail – dan.hise@butlersnow.com  
(601)985-5711     (Work)  
(601)355-1742     (Home)  
(601)985-4500     (Fax)  

MO  (SEE KANSAS)  

MT  (SEE COLORADO)  

NE  Mr. David R. Tarvin, Jr.  
Kutak Rock LLP  
1650 Farnam Street  
Omaha, Nebraska  68102-2186  
E-Mail – david.tarvin@kutakrock.com  
(402)346-6000     (Work)  
(____)___-____     (Home)  
(402)346-1148     (Fax)  

NV  Mr. Ken Creighton  
9295 Prototype Drive  
Reno, NV  89511  
E-Mail – ken.creighton@igt.com  
(775)448-0119     (Work)  
(775)825-1844     (Home)  
(775)448-0120     (Fax)  

NH  Richard A. Samuels  
McLane, Graf, Raulerson & Middleton P.A.  
P.O.Box 326  
Manchester, NH  03105-0326  
E-Mail – rsamuels@mclane.com  
(603)628-1470     (Work)  
(603)228-8636     (Home)  
(603)625-5650     (Fax)  

NJ  Mr. Peter D. Hutcheon  
Norris, McLaughlin & Marcus, P.A.  
721 Route 202-206  
P.O. Box 1018  
Somerville, New Jersey  08876-1018  
E-Mail – pdhutcheon@nmmlaw.com  
(908)722-0700     (Work)  
(908)356-4766     (Home)  
(908)722-0755     (Fax)
NM  Mr. Robert G. Heyman  (505)986-5493  (Work)
    Sutin Thayer & Browne  (505)982-5297  (Fax)
    100 North Guadalupe – Ste. 202
    Santa Fe, NM 87501
    Mailing Address: P.O. Box 2187
    Santa Fe, NM 87504
    E-Mail – rgh@sutinfirm.com

NY  Mr. F. Lee Liebolt, Jr.  (212)839-5357  (Work)
    Sidley, Austin,Brown & Wood LLP  (212)369-8067  (Home)
    787 Seventh Avenue  (212)839-5599  (Fax)
    New York, New York 10019
    E-Mail – liebolt@sidley.com

NC  Ms. Heather K. Mallard  (919)755-2176  (Work)
    Womble Carlyle Sandridge & Rice, a PLLC  (919)766-0806  (Home)
    P.O. Box 831  (919)755-6077  (Fax)
    Raleigh, North Carolina 27602
    E-Mail – hmallard@wcsr.com

ND  Mr. Craig A. Boeckel  (701)258-2400  (Work)
    Tschider & Boeckel  (__)____-______  (Home)
    Provident Life Building  (701)258-9269  (Fax)
    316 N. 5th Street
    P. O. Box 668
    Bismarck, North Dakota 58502-0668

OH  Mr. Richard S. Slavin  (203)337-4103  (Work)
    Cohen and Wolf, P.C.  (__)____-______  (Home)
    1115 Broad Street  (203)576-8504  (Fax)
    Bridgeport, CT 06604
    E-Mail – rslavin@cohenandwolf.com

OK  Mr. C. Raymond Patton, Jr.  (918)586-8523  (Work)
    Conner & Winters  (918)299-5838  (Home)
    A Professional Corporation  (918)586-8548  (Fax)
    3700 First Plaza Tower
    15 East Fifth Street
    Tulsa, OK 74103
    E-Mail – patton@cwlaw.com

OR  Mr. Richard M. Layne  (503)295-1882  (Work)
    Layne & Lewis  (503)246-1441  (Home)
    1 SW Columbia Street - Ste. 1800  (503)295-2057  (Fax)
    Portland, OR 97258-2040
    E-Mail -- mlayne@layne-lewis.com
PA  
Mr. Michael Pollack  
Reed, Smith, Shaw & McClay LLP  
One Liberty Place - Ste. 2500  
1650 Market Street  
Philadelphia, PA 19103-7301  
E-Mail—mpollack@reedsmith.com  
(215)851-8182 (Work)  
(215)628-9904 (Home)  
(215)851-1420 (Fax)

RI  
Mr. John F. Corrigan  
Adler Pollock & Sheehan PC  
2300 Financial Plaza  
Providence, Rhode Island 02903-2443  
E-Mail -- jcorrigan@APSLAW.com  
(401)274-7200 (Work)  
(401)885-1025 (Home)  
(401)751-0604 (Fax) or 351-4607

SC  
Mr. F. Daniel Bell III  
Kennedy Covington  
434 Fayetteville Street Mall – 19th Flr.  
Raleigh, NC 27602-1070  
E-Mail – dbell@kennedycovington.com  
(919)743-7358 (Fax)

SD  
Mr. Charles D. Gullickson  
Davenport, Evans, Hurwitz & Smith, L.L.P.  
513 South Main Avenue  
P.O. Box 1030  
Sioux Falls, South Dakota  57101-1030  
E-Mail – cgullickson@dehs.com  
(605)357-1270 (Work)  
(605)331-3880 (Home)  
(605)335-3639 (Fax)

TN  
Ms. E. Marlee Mitchell  
Waller Lansden Dortch & Davis, PLLC  
Nashville City Center  
Suite 2100, 511 Union Street  
Nashville, Tennessee 37219-1760  
E-Mail – mmitchell@wallerlaw.com  
(615)244-6380 (Work)  
(615)298-2514 (Home)  
(615)244-6804 (Fax)

TX  
Mr. Daniel R. Waller  
Secore & Waller LLP  
13355 Noel Rd., LB 75, Ste. 2290  
Dallas, TX 75240-6657  
E-Mail – dan@secorewaller.com  
(972)776-0200 (Work)  
(972)392-2452 (Home)  
(972)776-0240 (Fax)

UT  
Mr. Arthur B. Ralph  
Van Cott, Bagley, Cornwall & McCarthy, P.C.  
50 South Main Street, Suite 1600  
Salt Lake City, Utah 84144-0450  
E-Mail – aralph@vancott.com  
(801)532-3333 (Work)  
(801)272-5027 (Home)  
(801)534-0058 (Fax)
<table>
<thead>
<tr>
<th>State</th>
<th>Name</th>
<th>Address</th>
<th>Phone Numbers</th>
<th>E-Mail</th>
</tr>
</thead>
<tbody>
<tr>
<td>VT</td>
<td>Mr. Charles H. B. Braisted</td>
<td>167 Orchard Run, Cornwall, VT 05753</td>
<td>(802)462-3923 (Work)</td>
<td><a href="mailto:braisted@together.net">braisted@together.net</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(802)462-3922 (Fax)</td>
<td></td>
</tr>
<tr>
<td>VA</td>
<td>SEE WEST VIRGINIA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>WA</td>
<td>Mr. John L. Mericle</td>
<td>Harris, Mericle &amp; Wakayama, 999 Third Avenue, Suite 3210, Seattle, WA 98104</td>
<td>(425)742-3985 (Work)</td>
<td><a href="mailto:jmericle@worldnet.att.net">jmericle@worldnet.att.net</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(425)742-4676 (Fax)</td>
<td></td>
</tr>
<tr>
<td>WV</td>
<td>Mr. Edward D. McDevitt</td>
<td>Bowles Rice McDavid Graff &amp; Love, PLLC, 600 Quarrier Street, Charleston, WV 25314</td>
<td>(304)347-1711 (Work)</td>
<td><a href="mailto:jhildebrandt@foleylaw.com">jhildebrandt@foleylaw.com</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(304)343-3058 (Fax)</td>
<td></td>
</tr>
<tr>
<td>WI</td>
<td>Mr. Joseph P. Hildebrandt</td>
<td>Foley &amp; Lardner, 150 East Gilman, Madison, WI 53701</td>
<td>(608) 258-4232 (Work)</td>
<td><a href="mailto:jhildebrandt@foleylaw.com">jhildebrandt@foleylaw.com</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(608) 836-8855 (Home)</td>
<td></td>
</tr>
<tr>
<td>WY</td>
<td>SEE COLORADO</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CAN</td>
<td>Mr. Paul G. Findlay</td>
<td>Borden Ladner Gervais LLP, Scotia Plaza, Suite 4400, 40 King Street West, Toronto, ON M5H 3Y4</td>
<td>(416)367-6191 (Work)</td>
<td><a href="mailto:pfindlay@blgcanada.com">pfindlay@blgcanada.com</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(416)361-7083 (Fax)</td>
<td></td>
</tr>
<tr>
<td>NASD</td>
<td>Mr. Mark T. Lab</td>
<td>Simpson, Thacher &amp; Bartlett, 425 Lexington Avenue, New York, NY 10017-3954</td>
<td>(212)455-3429 (Work)</td>
<td><a href="mailto:m_lab@stblaw.com">m_lab@stblaw.com</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(212)455-2502 (Fax)</td>
<td></td>
</tr>
</tbody>
</table>
DIRECTORY OF OFFICERS AND CONTRIBUTORS

Baden, Alan P.  Vinson & Elkins L.L.P., 1325 Avenue of the Americas, 17th Floor, New York, NY 10019, (917) 206-8001, fax (917) 849-5337  abaden@velaw.com

Fein, Roger G.  Wildman, Harrold, Allen & Dixon, 225 West Wacker Drive, Chicago, IL 60601, (312) 201-2536, fax (312) 201-2555  fein@wildmanharrold.com

Hewitt, Martin A.  Simpson, Thacher & Bartlett, 425 Lexington Avenue, New York, NY 10017 (212) 455-2416, fax (212) 455-2502  mhewitt@stblaw.com

Johnson, Bruce Elwood  Morrison & Foerster LLP, 425 Market Street, San Francisco, CA 94105, (415) 268-6628, fax (415) 268-7522  bjohnson@mofo.com

Lieberman, Ellen  Debevoise & Plimpton, 919 Third Avenue, New York, NY 10022, (212) 909-6096, fax (212) 909-6836  elieberm@debevoise.com

MacRitchie, Kenneth L.  New Jersey Bureau of Securities, 153 Halsey St. 6th Fl., Newark, NJ 07102, (973) 504-3660, fax (973) 504-3601  macritchiekssmtp.lps.state.nj.us

Miller, Martin R.  Willkie, Farr & Gallagher, 787 Seventh Avenue, New York NY 10019-6099, (212) 728-8690, fax (212) 728-8111  mmiller@willkie.com

Parness, Alan M.  Cadwalader, Wickersham & Taft, 100 Maiden Lane, New York, NY 10038, (212) 504-6342, fax (212) 504-6666  aparness@cwt.com

Seligman, Joel  Washington University School of Law, Anheuser-Busch Hall, One Brookings Drive, St. Louis, Missouri, 63130, (314) 935-6400

Published by the American Bar Association Section of Business Law Committee on State Regulation of Securities Chair: Martin R. Miller

THE BLUE SKY BUGLE

Editor: Bruce Elwood Johnson    Assistant Editor: Martin A. Hewitt

To submit materials for future editions contact:
Bruce Elwood Johnson, Morrison & Foerster LLP, 425 Market Street, San Francisco, CA 94105-2482 (415) 268-6628, fax (415) 268-7522  bjohnson@mofo.com
or
Martin A. Hewitt, Simpson, Thacher & Bartlett, 425 Lexington Avenue, New York, NY 10017-3954 (212) 455-2416, fax (212) 455-2502  mhwewitt@stblaw.com

The views expressed in this Newsletter are not necessarily those of the American Bar Association, the Section of Business Law, or the Committee on State Regulation of Securities
ABA State Regulation of Securities Committee meets in conjunction with

BUSINESS LAW SECTION SPRING MEETING
APRIL 3-6, 2003
CENTURY PLAZA HOTEL - LOS ANGELES

ANNUAL MEETING OF THE ABA
AUGUST 7-14, 2003
FAIRMONT & STANFORD COURT HOTELS - SAN FRANCISCO

NASAA 2003 FALL CONFERENCE
SEPTEMBER 14-17, 2003
CHICAGO MARRIOTT DOWNTOWN - CHICAGO

NASAA 2004 FALL CONFERENCE
SEPTEMBER 30-OCTOBER 3, 2004
FAIRMONT SCOTTSDALE PRINCESS - PHOENIX

NASAA 2005 FALL CONFERENCE
SEPTEMBER 11-14, 2005
HILTON MINNEAPOLIS - MINNEAPOLIS