

THE BLUE SKY BUGLE

A Newsletter for Blue Sky Lawyers

Published by the ABA Committee on State Regulation of Securities

Volume 2006, Number 1, April, 2006

EVENTS CALENDAR

The State Regulation of Securities Committee will meet in conjunction with the 2006 Spring Meeting of ABA Business Law Section to be held
April 8, 2006 (10:30 AM to 12:00 PM)
at the Tampa Marriott Waterside Hotel

The State Regulation of Securities Committee will meet in conjunction with the 2006 Annual Meeting of ABA Business Law Section to be held
August 6, 2006 (10:00 AM to 11:00 AM)
at the Waikiki Beach Resort & Spa

PLAN FOR THE FUTURE

2006 Annual NASAA Fall Conference
September 17 through September 20, 2006
Westin Horton Plaza, San Diego, California

2007 Annual NASAA Fall Conference
September 30 through October 3, 2007
Seattle, Washington

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BLUE SKY BITS AND PIECES

By Ellen Lieberman

Debevoise & Plimpton LLP (New York)

Bruce E. Johnson has announced his retirement on May 15, 2006 from the practice of blue sky / NASD law at the San Francisco office of Morrison & Foerster LLP. Bruce has served for many years as our Committee's California liaison and as a wonderful source of knowledge and assistance to his blue sky colleagues on issues and developments under California law. Bruce is also serving as co-chair of our Subcommittee on Employee Plan Securities. While his counsel and companionship will indeed be missed, we are delighted for him and wish him a happy and gratifying retirement.

Leah Schumann, Senior Examiner, Securities Registration for the State of Maryland, has retired after decades as a state regulator effective December 31, 2005.

Robert A. Boresta, who had joined Goodwin Procter LLP in 2004 as counsel concentrating his practice in broker-dealer and investment adviser regulation, as of February 1, 2006 has joined Winston & Strawn's New York Office as a partner, where he will be focusing his practice on federal, SRO and state broker-dealer, investment adviser and blue sky compliance and regulation. Wishing you well, Bob!

John Bodnar, registration examiner for the State of West Virginia, retired on January 1, 2006. The new contact persons for registration and other Blue Sky issues and Regulation D filings are **Daniel Reed** and **Mary Beth Swor**.

The esteemed Editor of the Blue Sky Bugle and a Renaissance man at that, **Martin A. Hewitt**, performed at Carnegie Hall on February 13, 2006, with the Park Avenue Chamber Symphony in Mozart's Jupiter Symphony. Bravo!

NASD personnel changes include the election of **Mary L. Schapiro** as NASD's next Chairman and Chief Executive Officer, effective December 2006, succeeding **Robert R. Glauber**, who will remain Chairman and CEO until December 2006. Ms. Schapiro is currently the company's Vice Chairman and President of NASD's Regulatory Policy and Oversight Division. Before joining NASD, Schapiro was the Chairman of the Commodity Futures Trading Commission and prior to that a Commissioner of the Securities and Exchange Commission. In addition, **Barry Goldsmith**, the NASD's enforcement chief, is leaving the regulator to be a partner in the Washington office of Gibson, Dunn & Crutcher. **James Shorris**, now deputy head of enforcement, has been named acting enforcement chief.

Personnel changes are also being made at the SEC. **Alan L. Beller**, Director of the Division of Corporate Finance, has left in February 2006 for private practice. **Larry E. Bergmann**, Senior Associate of the Division of Market Regulation, is leaving in February and joining the Washington, D.C. office of Willkie Farr & Gallagher LLP. **Brian G. Cartwright**, formerly a partner in Latham & Watkins, joined the SEC in January as its General Counsel, succeeding **Giovanni Prezioso**. **John W. White** of Cravath, Swaine & Moore LLP was named as successor to Alan Beller.

Don Rett, Chair of our "Liaison with Securities Administrators and NASD" subcommittee, was recently appointed by the Chair of The Florida Bar's Business Law Section to a newly-constituted "Special Committee on the Florida Securities Act." The Committee is charged with examining the current securities law and, if appropriate, recommending any changes to the Section's Executive Council. Don is one of only ten "voting members" on such Committee. Should any of our members experience any "anomalies" with the Florida securities act, feel free to contact Don at (850) 298-4454, or drett52687@aol.com.

Anne G. (Polly) Plimpton of McDermott Will & Emery LLP, who served as our Committee's liaison to Massachusetts, has passed the baton to **Patricia A. Whalen** of Wilmer Hale. We appreciate all of Polly's contributions, although her work in recent years has focused more on federal than on state securities law. Polly is currently chair of the Employee Benefits, Executive Compensation and Section 16 Subcommittee of the ABA Committee on Federal Regulation of Securities. The Committee is fortunate to have Patty as the new Massachusetts liaison and we know she will keep us well informed. Patty joined Hale and Dorr (a

predecessor of her firm) in 1987 and before that was chief counsel for the Massachusetts Securities Division and a member of the Real Estate Committee of the North American Securities Administrators Association.

E. Marlee Mitchell, a partner and member of the Board of Directors at Waller Lansden Dortch & Davis LLP, in Nashville, Tennessee where she is co-manager of the firm's Corporate and Commercial Transactions Practice Group, has agreed to serve as our Committee's liaison to NASAA's Corporate Finance Section chaired by **Denise Voigt Crawford**, Texas Securities Commissioner. Marlee is a former regulator at the Tennessee Securities Division and a former adjunct professor teaching securities regulation at the University of Tennessee College of Law. She was named to the Nashville Business Journal's Best of the Bar in 2003, 2004 and 2005. We are delighted that Marlee will be monitoring the work of the Corporate Finance Group – both representing and reporting back to the Committee.

In February 2006, NASAA named **Russ Iuculano** as its new Executive Director. Russ was Senior Vice President of the Financial Services Forum, which is comprised of the CEOs of 20 of the nation's largest financial institutions. Previously, he was Vice President, Government Relations, for Met Life Inc., and before that worked in various positions at the American Council of Life Insurers. Russ has a J.D. from the University of Baltimore and a Masters degree in Legislative Affairs from George Washington University.

Richard Slavin of Cohen and Wolf, P.C. and Vice Chair of our Enforcement Subcommittee will participate in a NASAA enforcement training seminar for state securities officials to be held on December 2, 2006 in Orlando, Florida. Rick will help present a more balanced view on ethical concerns in state investigations and civil and administrative enforcement proceedings, as part of a panel chaired by Peter O. Jamison, III, Delaware Deputy Attorney General, and including T. Webster Brenner, Assistant Attorney General and Chief of the Enforcement Unit at the Maryland Division of Securities, and Alfred E.T. Rusch, Securities Financial Examiner at the District of Columbia's Department of Insurance, Securities and Banking Regulation.

Michele Kulerman of Hogan & Hartson L.L.P., our Committee's liaison to the District of Columbia and co-chair of our Subcommittee on Employee Plan Securities, has been asked to continue to serve as a member of the Securities Advisory Committee of the Department of

Insurance, Securities and Banking of the District of Columbia.

Susan DeRoche, Securities Specialist for 24 ½ years at Hale and Dorr, now WilmerHall, is leaving to join HarborFund in Boston as a Compliance Manager as of May 1, 2006. Sue is known to many in blue sky circles for her participation in the Paralegal Roundtable Program at each year's annual NASAA meeting. We will miss her at this year's NASAA conference but anticipate her reappearance in time for NASAA's Seattle meeting in 2007. We wish her well in her new venture.

FROM THE CHAIR

By Ellen Lieberman

Debevoise & Plimpton LLP (New York)

A bit of ancient history! I remember in 1996 when the National Securities Markets Improvement Act ("NSMIA") was enacted and the demise of Blue Sky law was heralded throughout the land. It turned out to be a bit premature. Let me offer just a few examples.

On the enforcement front, state regulators are energetically promoting securities investigations running in tandem with similar proceedings by other state regulators, or by federal regulators (when they are not beating federal regulators to the punch). For example, an agreement was announced on December 22, 2005 by New York Attorney General Eliot Spitzer and the Securities and Exchange Commission with two related Texas hedge funds—Veras Capital Master Fund and VEY Partners Master Funds, based in Sugar Land, Texas—and their managers to resolve an investigation of improper trading of mutual funds, and the Commodities Futures Trading Commission announced its settlement of a related action on the same day. In September of 2005 officers of the Bayou Group, which, prior to its collapse, was touted as a \$400 million, Stamford, Conn.-based hedge fund firm, pled guilty to federal felony fraud charges following an investigation begun by state regulatory officials.

On the compliance front, state regulators are continuing to try to push the preemption envelop—some say they are gearing up, notwithstanding NSMIA preemption, to perform heightened "merit review" of Rule 506 Regulation D offerings, some are asking for sales information for states in addition to their own state for such offerings, and some are asking for representations on the use of registered agents or brokers even where the Form D shows no commissions are being paid. In September of 2005 NASAA proposed various best

practices for investment advisers to improve their compliance practices and procedures, developed after a nationwide sweep of investment advisers by state and provincial examiners in 33 NASAA jurisdictions in the United States and Canada.

In this active environment, the Committee on State Securities Regulation is itself actively involved in identifying issues and providing current information to its members. I recently attended my first ABA Section of Business Law Leadership Meeting at the Wigwam Spa and Resort in Litchfield, Arizona, and clearly a focus was on providing service to members – give them what they need and want in a convenient package. Our subcommittees are actively involved in projects that will provide just that—timely information—so stay tuned. Subcommittee chairs have been invited to provide a submission for this edition of the Bugle, and will be reporting through the Committee's meeting books and in person (or by proxy) at our Committee meetings. Our meeting books and issues of our newsletter, the Blue Sky Bugle, are posted on the Committee's website and available to all members. The Committee's listserv is also used to keep members informed, to post late-breaking information of interest to members and as a discussion forum among members. The ABA Business Law Section will have a more state-of-the-art setup later this year that will facilitate real time exchanges of information by Committee members. And the entire ABA website will soon have Google-type search capability to make your research easier.

Meetings and Events.

Mike Underwood of Squire, Sanders & Dempsey L.L.P. is Program Chair for an interesting and exciting CLE program the Committee is sponsoring at the Tampa, Florida, Spring Meeting of the ABA Business Law Section. Sparks should fly! The date and time are **Friday, April 7, 2006, 8:30-10:30 a.m.**, at the Tampa Marriott Waterside Hotel (meeting Room 11, Level 3). The topic is **Managing Parallel Proceedings in Securities Investigations**. Panelists will include Joseph P. Borg, Director of the Alabama Securities Commission and Chair-Elect of NASAA, Zachary W. Carter, Partner and Co-Chair of the White Collar Crime and Civil Fraud practice group at Dorsey & Whitney LLP in New York and former U.S. Attorney for the Eastern District of New York, David Nelson, Regional Director of the SEC in Miami, and Katherine A. Malfa, Vice President Enforcement at the NASD; the moderator will be Michael E. Clark, Chair of the Criminal Laws Committee, partner at Hamel Bowers & Clark LLP in

Houston, Texas, and former Assistant U.S. Attorney, Chief of the Criminal Division in the U.S. Attorney's Office for the Southern District of Texas. Although it's an early morning program we urge you to ATTEND—it should be fascinating and I'm sure Joe Borg would love to have an audience!

The **Committee** will meet in Tampa on **Saturday, April 8, 2006, 10:30 a.m.-12:00 p.m.**, at the Marriott Waterside Hotel (Salon II, Level 2), and Don B. Saxon, Florida Commissioner of the Office of Financial Regulation, or Richard A. White, Florida's Director of Securities and Finance Regulation, attend, as will Joe Borg.

This summer, the **Committee** will meet on **Sunday, August 6, 2006, 10:00-11:00 a.m.**, in conjunction with the ABA Annual Meeting at the Waikiki Beach Resort & Spa, Honolulu, Hawaii, August 3-9, 2006. We will invite Hawaii regulators to join us.

In the fall, the **Committee and its subcommittees** will meet at the Westin Horton Plaza Hotel in San Diego, California, in conjunction with Annual Meeting of the NASAA September 17-20, 2006.

The Blue Sky Bugle. We are delighted that the Bugle is now up and running at the rate of three meaty issues a year and thank our Editor, Martin A. Hewitt of Cadwalader, Wickersham & Taft LLP, and all of the contributors for their efforts. Please consider writing a piece for the Bugle—you will get lots of mileage from it. The Bugle is circulated to our Committee members by listserv, posted on our website, and has been sent on to about a dozen chairs of other Business Law Section committees who have been invited to post it on their own member listservs. A summary of Alan Parness' article from the last Bugle edition was included in eSource, the electronic newsletter for the entire Business Law Section, with links to the entire article (with byline and name of law firm attached), and we expect to submit an article to eSource from each future edition of the Bugle as well. We are also working with NASAA and hope that a link to the Bugle will be published on NASAA's website. Sharing your thoughts and insights via the Bugle is a service to our members, and you may be serving yourself as well! The deadline for articles for the next issue of the Bugle is Independence Day, July 4th hope to see your byline!

Comment Letters. Alan Parness of Cadwalader, Wickersham & Taft LLP, Vice Chair of the Committee, has agreed to oversee a new Committee venture, submitting appropriate comment letters to regulatory

authorities. We have received approval from ABA sources to submit comments to state regulators and to the SEC, and we are working with staff and leadership of the Section to try to extend that to nongovernmental entities including NASAA and the NASD. Alan is interested in input from you as to what we should be commenting on, your assistance in putting ad hoc drafting committees together, and volunteers to serve on such committees for specific letters. This is your chance to submit comments with the added clout of the ABA, and to influence the statutes, regulations and interpretations that you will have to live with once in place.

Outreach from NASAA. Last year Denise Voigt Crawford, Texas Securities Commissioner and head of NASAA's Corporate Finance Section, suggested that group might have interim meetings or programs with our Committee perhaps via conference call or some electronic format. E. Marlee Mitchell of Waller Lansden Dortch & Davis LLP, has agreed to be our Committee's liaison to the Section, representing our interests and reporting back to us on their agenda. An initial conference call with the Section was held on March 1, and a future session open to all of our members by conference call is anticipated on April 19, 2006 with specific information to be announced via listserv posting.

I also reached out to Patricia D. Struck, Administrator of the Wisconsin Division of Securities and President of NASAA, in a similar vein, and to Fred J. Joseph, Colorado Securities Commissioner, and Wayne Strumpfer, Acting California Corporations Commissioner, who are running this year's NASAA Annual Meeting to try to get the ABA Committee more visibility and more on stage participation at the panels, and to schedule stand alone meetings for our various subcommittees. Again, any suggestions or ideas would be welcome.

Private Placement Broker-Dealer Task Force. On January 9, 2006, I accompanied Faith Colish of Carter Ledyard & Milburn LLP and co-chair of the task force that produced the private placement broker-dealer report, to the NASD to discuss this project. The task force includes members of the Committee on State Regulation of Securities and has had the support and interest of this Committee from its inception. It was created to search for a solution to the "finder" issue, individuals who act in the capital formation or mergers and acquisitions context, are compensated in some manner for performing certain functions (perhaps providing a list of

potential investors, perhaps making introductions, and perhaps doing more—negotiating, providing information, acting as a conduit, even at times soliciting), without federal or state broker-dealer registration, generally, in their eyes, in reliance on the sometimes phantom “finder’s exemption.” These individuals, many of whom technically should be registered as broker-dealers, fly below the radar screen of federal and state regulators and create potential difficulties not only for themselves but for issuers who might face such issues as civil liability, voidability, rescission rights, and whether such finders have engaged in general solicitation. The task force solution is a limited form of broker-dealer registration—broker-dealer lite—that would be less onerous and more appropriate considering the limited nature of their business, coupled with “bad boy” disqualification provisions, limitations for accredited investors only, and a sort of “don’t ask don’t tell” policy as to previous technical registration violations.

Faith had previously had a very positive meeting with staff of the SEC. The NASD meeting, with Elisse Walter, Gary Goldscholle, Jeff Holik, Marc Menchel, Grant Ward, and Patricia Glinecki, was exploratory and helpful. Faith and her colleagues have now gone back to the drawing board to draft rules for discussion purposes. Faith and her co-chair Greg Yadley of Shumaker, Loop & Kendrick, LLP have also informally spoken to some state regulators and they, with members of our Committee, expect to participate in additional talks in the continuing effort to make this proposal a reality.

Volunteer—Get Involved in Committee Leadership. The Committee is looking for volunteers who would be willing to serve as liaisons to technical or substantive committees within the Business Law Section—Diversity, Technology, Meetings, Pro Bono, Federal Regulation of Securities, Small Business, Cyberspace, Employee Benefits, or others with whom you think we share complementary or mutual interests. A liaison would represent our interests and report back to us on what the other group is doing. We would all benefit from this kind of cross pollination, and you would be assuming a more visible leadership role within the ABA. Just let me know if you might be interested.

Thanks for all your support. Let me know if I can assist in any way or if you have any ideas or suggestions that you would like to pass along.

Best regards, and see you in Tampa, Honolulu and/or San Diego! – Ellen Lieberman, Chair of the Committee on State Regulation of Securities.

CONSOLIDATION AND HARMONIZATION OF PRIVATE PLACEMENT RULES ACROSS CANADA

By Michael Gélinas
Stikeman Elliott LLP

Overview

Canada’s provincial securities regulators recently adopted National Instrument 45-106 (the “Rule”) which, to a significant extent, consolidates and harmonizes many of the more common prospectus and dealer registration exemptions that had existed in their respective provinces or territories. Unlike the U.S., Canada does not have a federal securities and exchange commission and each province or territory has its own securities laws and regulator. As a result, private placement rules differed (sometimes significantly) across Canada prior to the implementation of the Rule.

Notwithstanding this harmonization effort, some local exemptions still exist and the Rule itself provides for exceptions for certain provinces who decided to narrow or modify the scope of certain exemptions (or in certain cases opt out). The Rule represents not only a harmonization effort among the Canadian provinces and territories but also, to some extent, with U.S. securities laws by introducing concepts such as “Accredited Investor” and “Friends & Family” exemptions across Canada.

International Dealer Requirement

It must be remembered that the Rule does not provide for an exemption from the dealer registration requirement in the provinces of Ontario, Newfoundland and Labrador. Virtually all of the large U.S. broker-dealers hold an international dealer license in Ontario, so a U.S. issuer can often distribute its securities to permitted institutions in Ontario through a U.S. dealer. It should be noted that an international dealer license is a restricted license which, among other things, does not allow its holder to trade with an individual, even when the individual qualifies as an accredited investor.

Non-Resident Advisers

The Rule does not modify the regime that applies when the U.S. issuer is an investment fund. For example, the Ontario Securities Commission considers a person or company to be acting as an adviser in Ontario if it, directly or through a third party, acts as an adviser for a non-redeemable investment fund that distributes its securities in Ontario, notwithstanding that the advice to

the fund may be given to, and received by, the fund outside of Ontario. This could mean that the non-resident adviser may have to register under Ontario's Rule 35-502 on Non-Resident Advisers, unless an exemption is available.

Resale Restrictions

Securities issued or traded pursuant to prospectus and dealer registration exemptions may be subject to restrictions upon their resale. The rules applicable to restricted securities have also benefited from a harmonization effort and are largely set out in Multilateral Instrument 45-102.

Principal Exemptions

The more common exemptions that are available under the Rule with respect to capital raising are set out below:

Accredited Investors

Securities, of any value, can be issued and traded on an exempt basis to accredited investors, including Canadian financial institutions, Canadian governments at all levels, individuals with annual incomes or net worth in excess of prescribed limits and entities with net assets over a specified amount. The definition of accredited investor is not totally uniform across Canada.

Private Issuer

Securities, of any value, of private issuers can be issued and traded on an exempt basis to a long list of specified investors (including directors, executives and their relatives; existing security holders; and, persons who are not members of the public). A "private issuer" is one (a) whose constating documents (or security holder agreements) contain restrictions on the transfer of its securities (other than non-convertible debt securities); (b) whose securities are beneficially owned, directly or indirectly by not more than 50 persons (not including employees); and (c) that has distributed its securities only to investors specified in the Rule (the list is fairly lengthy). Although the securities regulators likely intended to make things easier for private companies with this "private issuer" exemption, the requirement to restrict transfer of all securities, not just shares, and to track beneficial and not just registered ownership add complexity that will require diligent record keeping and thorough documentation in order for issuers to ensure that this exemption is available.

Founders, Family, Friends and Business Associates

Securities, of any value, can be issued and traded on an exempt basis to (a) directors, executive officers and control persons of the issuer or an affiliate of the issuer; (b) founders of the issuer who are currently actively involved in the business; and (c) certain family members, close personal friends and close business associates of the persons listed in (a) and (b). In the case of Ontario, the exemption is narrower.

Affiliates

An issuer will be permitted to issue and trade securities of its own issue, on an exempt basis, to an affiliate of the issuer who is purchasing as principal. This exemption will continue to permit most internal corporate reorganizations; however, the fact that it is only available to issuers for trades in their own securities means that it is narrower than it appears on its face and cannot be used for all transfers within a family of companies.

Offering Memorandum

Except in Ontario, a trade by an issuer of its own issue will be exempt if, among other things, the purchaser purchases the security as principal, the issuer delivers an offering memorandum in prescribed form to the purchaser and obtains a risk acknowledgement statement from the purchaser. A U.S. offering memorandum would typically not meet the applicable requirements. It should be noted the exemption does not operate uniformly across all jurisdictions and the form requirements are quite onerous.

C\$150,000 Minimum Purchase

Securities can be issued and traded on an exempt basis to any purchaser if the securities have an acquisition cost of at least C\$150,000 paid in cash on closing. If an issuer wants to rely on this exemption for additional investments, they must also have an acquisition cost of at least C\$150,000.

Employees, Executive Officer, Directors and Consultants

An issuer will be permitted to issue, or a control person may sell, securities to employees, executive officers, directors, or consultants of the issuer and the related entities if the individual's participation in the trade is voluntary. These individuals may also trade among themselves on an exempt basis. This exemption will

facilitate, for example, participation by Canadian employees in foreign stock purchase and stock option plans.

Conclusion

While the Rule is certainly a step in the right direction in harmonizing private placement rules in Canada, there are still many exceptions to the general regime (many of which are contained in the Rule itself) and it will often be difficult for Canadian counsel to provide accurate advice without making reference to the many distinctions that are still applicable among the various Canadian jurisdictions.

CALIFORNIA CLARIFIES DEFENSE AGAINST CHARGE OF WILLFUL SALE OF UNREGISTERED SECURITIES

By Bruce E. Johnson
Morrison & Foerster LLP

A very recent California Supreme Court decision (*People v. Salas*, filed February 6, 2006) clarified the elements of prosecution for the sale of unregistered securities. Corporations Code section 25110 prohibits the sale of unregistered securities. Violation of this prohibition is a crime, punishable by incarceration for up to three years and a fine up to \$1 million. But not all securities must be registered. There are many grounds of exemption from the registration requirement, and sale of an unregistered but exempt security is not a crime.

Defendants Salas and Patrick were charged with selling unregistered securities, but claimed they believed in good faith that the securities they sold were exempt from registration. The trial court instructed the jury that this good faith belief was irrelevant to their criminal culpability, and defendants were convicted. The Court of Appeal, however, held that guilty knowledge—meaning either knowledge of the security’s nonexempt status or criminal negligence in failing to determine its status—is an element of the crime of selling an unregistered security. It concluded that the trial court erred in failing to so instruct the jury, and that the error was harmless as to defendant Salas but prejudicial as to defendant Patrick.

Like the Court of Appeal, the California Supreme Court held that a seller who believes reasonably and in good faith that a security is exempt is not guilty of the crime of unlawful sale of an unregistered security. As in other similar cases, the severity of the penalties attached to this crime persuaded the Court that the Legislature did

not mean to impose criminal liability on defendants who lacked guilty knowledge of facts essential to make the conduct criminal.

Unlike the Court of Appeal, however, California Supreme Court held that in this context guilty knowledge is not an element of the crime. Rather, a defendant’s reasonable good faith belief that a security is exempt from registration is an affirmative defense on which the defense bears the initial burden of proof.

MARKET TIMING OF MUTUAL FUNDS IN NEW JERSEY

By Jordan Weinreich
Hartman, Doherty & Rosa, LLC

It is hard not to notice the headlines lately regarding SROs, attorneys general, state regulatory agencies, and the so-called market timing of mutual funds, with brokerage houses paying millions in fines; I think the subject is worth a brief overview.

Market timing refers to the short term trading of mutual funds in order to exploit inefficiencies in mutual fund pricing. Unlike stocks whose prices float freely throughout the trading day, mutual funds calculate their share price, referred to as the net asset value (“NAV”), only once per day, usually at the close of the U.S. markets at 4:00 p.m. The NAV per share for a class of mutual fund shares is determined by dividing the value of the fund’s net assets attributable to that share class by the number of shares of that class outstanding on that day. To determine NAV, the fund assets are valued primarily on the basis of current market quotations; however, if market quotations are not readily available for a particular security, or do not accurately reflect fair value, that security may be valued by another method.

Funds with extensive foreign securities holdings are prime targets for market timers because the value of the foreign assets within the fund may be priced based on stale information due to the difference in opening and closing times of foreign markets; this trading strategy is referred to as “Arbitrage Market Timing.” Arbitrage Market Timing occurs when a trader takes advantage of the delay between the change in the value of a mutual fund’s portfolio holdings and the reflection of the change in the fund’s NAV per share. Thus, broker-dealer agents and investment adviser representatives (collectively referred to as “brokers”), or others, such as hedge funds, with access to knowledge about the fund’s foreign assets and the prices of those assets may be able to determine the direction of the fund price. These arbitrage market

timers can then purchase or sell shares of the underlying funds based on events occurring after foreign market closing prices are established, but before calculation of the underlying fund's NAV. To aid their brokers in market timing, some financial firms had set up market timing trading desks to provide these brokers with foreign pricing and other information.

The problem with market timing is that a small number of investors profit at the expense of the majority of shareholders. Ordinary investors do not have access to brokers who will market time for them. Market timing allows privileged investors to trade shares in funds more frequently than allowed under the fund's rules (discussed below). Mutual funds are designed as long-term investments and short-term trading disrupts them. Frequent purchases, redemptions and exchanges of mutual fund shares can interfere with the fund manager's ability to manage the fund's investments efficiently, increase the fund's transaction and administrative costs and affect the fund's performance, depending on various factors, such as the size of the fund, the nature of its investments, the amount of fund assets the portfolio manager maintains in cash, the aggregate dollar amount, and the number and frequency of trades. If large dollar amounts are involved in exchange or redemption transactions, the fund manager may be required to sell assets of the fund at unfavorable times to meet the cash now required by redemption or exchange requests. This increases the fund's brokerage and administrative expenses by generating unnecessary trades; the market timers do not share in losses and expenses and instead profit to the detriment of ordinary investors.

To combat this problem, many mutual fund companies enacted policies to prohibit the short term trading of their funds and penalties to enforce the policies. These penalties include the following:

1. Redemption Fees – Redemption fees are assessed when shares are sold within a set number of calendar days following their purchase. The redemption fee is equal to a small percentage (i.e., 2%) of the amount redeemed and deducted from the proceeds of the sale. The purpose of these fees is to cancel-out any profit made from market timing the fund and to offset any costs to the fund associated with the short-term trading. To be fair, the shares held the longest are treated as being redeemed first and shares held the shortest are treated as being redeemed last;

2. Revocation of market timed trades – If the fund believes that a trade was placed in violation of its policy

against market timing, it has the option of rejecting the trade; and,

3. Warning letters and complete rejection of trades – If a fund believes that a specific investor or broker has engaged in market timing, the fund can send a “stop” letter asking the investor to stop timing their fund and warning that the account will be prohibited completely from trading the fund if this practice continues.

Despite these policies and penalties, brokers continued to market time mutual funds. The large commissions that were generated by the brokers for placing numerous market timing trades for their clients were a motivating factor for the brokerage houses to facilitate market timing trades; these clients were most often hedge funds. In addition to these commissions, in return for placing market-timing trades, some hedge funds would invest in “sticky assets” with the financial firm. Sticky assets refer to fee-generating long-term investments. But eventually, under pressure from the mutual fund companies, brokerage firms began to discourage the practice of market timing by their brokers and dismantled their market timing desks. Unfortunately for ordinary investors and mutual fund companies, the lure of huge commissions was too much for some brokers at these firms.

Market timing of mutual funds is not *per se* illegal. It is the manner in which brokers began market timing following the admonition by their respective firms and the mutual fund companies that was fraudulent and thus illegal. The brokers, unwilling to give up the huge commissions they were making, began a fraudulent scheme which sought to circumvent the penalties and restrictions imposed by the mutual fund companies through their market timing policies.

Most mutual fund companies receive their trade instructions through the National Securities Clearing Corporation (“NSCC”). The NSCC provides centralized clearance, settlement, and information services for virtually all mutual fund transactions in the U.S. The NSCC permits brokers to transmit their instructions within different numerical formats; each format provides different levels of detail about the customer. The format chosen by brokers provided the NSCC, and thus the mutual fund companies, only information on the brokerage firm and its particular branch but not the broker's name, the customer's name or tax ID. If a mutual fund concluded that a particular account was being used to market time its funds, the fund would send the brokerage firm a “stop” letter. The “stop” letter would generally ask the brokerage firm to take steps to

preclude the broker trading under that particular account from engaging in any additional exchanges in the fund including legitimate trades.

To circumvent these restrictions, the brokers opened numerous accounts, sometimes numbering in the double-digits, for single clients, usually hedge funds. The trading system operated by NSCC provided the brokers with such a degree of anonymity that the funds were not able to adequately track such brokers' activities. These brokers misused the number system provided by the NSCC to deceive mutual fund companies into accepting market timing trades that they would have rejected had they come from only one account number. These brokers played a cat and mouse game with the mutual fund companies; when the mutual fund succeeded in blocking accounts from further trading, the brokers simply used other numbered accounts that had not yet been blocked in order to evade the fund's restrictions and continued market timing the funds. These brokers used multiple breach wire code prefixes, multiple broker identification numbers and multiple customer accounts. In addition, the brokers engaged in "under the radar" trading; this refers to splitting one trade into numerous smaller trades to avoid detection by the mutual fund companies. These efforts defrauded both the mutual fund companies and legitimate mutual fund investors.

In New Jersey these actions constitute fraud under N.J.S.A. § 49:3-52(a), (c)—"It shall be unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly (a) To employ any device, scheme, or artifice to defraud; . . . (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person." While this statute can prevent these brokers from ever trading again, it does not provide the State with the multi-million dollar settlements that make headlines. N.J.S.A. § 49:3-58(a)(2)(ix)—Failure to Supervise—is the tool used to punish the brokerage firms that allowed their brokers to break the law. In pertinent part, this statute provides that:

The bureau chief [of the New Jersey Bureau of Securities (the "Bureau")] may by order deny, suspend, or revoke any registration if he finds: that the application or registrant or, in the case of a broker or investment adviser, any partner, officer or director . . . or any person directly or

indirectly controlling the broker or investment adviser: has failed reasonably to supervise: his agents if he is a broker or issuer; the agents of a broker dealer or issuer for whom he has supervisory responsibility; or his employees who give investment advice if he is an investment adviser.

This section allows the Bureau chief to summarily revoke the registration of the brokerage firm and adds real teeth to New Jersey's securities law. Revoking the registration of a few brokers has limited effect on a large brokerage firm, but revoking the firm's registration and preventing it from conducting its business in New Jersey would be devastating.

New Jersey has entered into Consent Orders with brokerage firms to settle claims of failing to supervise. In January 2006, New Jersey entered into a Consent Order with UBS Financial Services Inc. to settle claims of failing to supervise the market timing activities of its employees. UBS admitted that it failed to supervise its brokers by:

1. opening new market timing accounts for clients despite formally terminating support for market timing by closing UBS' market timing desk in Weehawken, NJ;
2. not monitoring trade activity in existing accounts that received "stop" letters requesting UBS Brokers stop trading in those funds;
3. allowing certain brokers to use multiple branch codes and permitting the trading of market timing accounts for the same clients at multiple branches; and
4. not ensuring that trading complied with the market timing policies of fund prospectuses and entering into sticky asset agreements in return for providing market timing ability to clients of suspect brokers.

UBS also agreed to aid the Bureau in further investigation to prevent market timing from happening in the future. Furthermore, UBS consented to pay \$49.5 million, half to New Jersey and the other half to the New York Stock Exchange; needless to say, UBS's registration in New Jersey was not revoked.

PRIVATE PLACEMENT BROKER DEALER TASK FORCE REPORT

By Faith Colish

Carter Ledyard & Milburn LLP

Presentation to SEC Advisory Committee on Smaller Public Companies

On September 19, 2005, Gerald Niesar reported to the SEC Advisory Committee's Forum on Small Business Capital Formation Issues at its hearings in San Francisco. His statement and a copy of the Task Force Report are available on the SEC's web site, www.sec.gov/rules/other/265-23.shtml#091905. The statement was drafted with the participation of Lawrence Goldman, Greg Yadley, and other members of the Small Business Committee, Dixie Johnson and Stan Keller of the Committee on Federal Regulation of Securities, and others. This report was very well received by the Advisory Committee.

On February 28, 2006, the Advisory Committee released an exposure draft of its recommendations.¹ This document cites the PPBD Task Force Report² and supports the concept of developing a more appropriate system for registration and regulation of "finders."³

Meeting with SEC Staff

On November 18, 2005, I met in Washington, DC, with Robert Colby, Deputy Director of the Division of Market Regulation; Catherine McGuire Chief Counsel of the Division; and three members of her staff. They complimented the Task Force on the compilation of authorities (including no-action letters) that have shaped the definition of "broker" in the area of finders. They indicated that nothing important had been left out and nothing had been cited out of context. We discussed the SEC's plans to issue a new interpretive release, pulling together these authorities, possibly addressing some "gaps" in the existing analyses, and potentially modifying some of the positions taken over 20 years ago. This project has been underway for some time and the staff did not give me any clear indication of a deadline for its completion.

The staff was also receptive to the concept of streamlining the application process and the regulatory

requirements for Private Placement Broker Dealers ("PPBDs"). We discussed the proposals in the Task Force Report, including possible exemption from the net capital rule. Ms. McGuire suggested that the Task Force draft proposed SEC rule amendments and/or new rules that it would like to staff to consider in line with the goals of the Report.

We also discussed the importance of working with the NASD, as well as the states, to achieve a coordinated and useful result.

Meeting with NASD Senior Officials

On January 9, 2006, I met with several senior staff members of the NASD in Washington, DC. Fortunately, Ellen Lieberman, Chair of the State Regulation of Securities Committee was able to accompany me and to participate in the discussion. The NASD staff members included Elisse Walter, Mark Menchel, Jeff Holik, Gary Goldsholle, Grant Ward and Patty Glinietki.

The NASD staff focused on some of the burdens that they perceived would be imposed on their organization by any change in the rules or procedures. Among the challenges discussed were the following:

- The NASD is funded by member's dues. Larger members "subsidize" smaller members whose dues are not sufficient to cover the costs of supervising them. Any significant increase in very small members, who would pay very little dues, could adversely affect this balance. This position was countered by the fact that business now conducted by unregistered brokers would become part of the dues base of the NASD. Also, relatively light-handed regulation, based on limited business activities, could be less expensive than the oversight to which other NASD members are subject.
- It is difficult for the NASD to create a "special class" for PPBDs. If this were done, other members with a niche business might ask for similar special treatment. This was discussed in the context of the fact that both the membership application process and the current regulatory oversight are already somewhat "modular," being adapted to the business mix of different kinds of members this led to a discussion of the delays that all applicants experience with membership applications.⁴

¹ <http://www.sec.gov/news/press/2006-32.htm>. The Exposure Draft itself is at <http://www.sec.gov/rules/other/33-8666>.

² Exposure Draft, Footnote 151.

³ Exposure Draft, Recommendation IV.P.6, pp. 77-78.

⁴ Currently the average time from receipt of an application to issuance of a Decision Letter and proposed Membership Agreement

- The NASD has no jurisdiction over unregistered brokers. The SEC should play a more active role in clarifying the activities that require registration, and should be prepared to back up its position with a more palpable risk of enforcement actions.⁵
- The industry, the regulators and the Bar should increase efforts to educate finders and issuers as to the need for broker registration and the potential consequences of non-registration.
- The NASD staff raised and rejected the concept of a simple notice filing by PPBDs. The concern was that, sooner or later, a notice filer would get into trouble and the press, the SEC, and others would point a finger at the NASD who “should have known” what was going on.

Blue Sky Contacts

In July 2005, thanks to the good offices of Hugh Makens, I was invited to speak at a NASAA Corporation Finance Training Seminar in Fort Lauderdale, FL. My co-panelist was Tanya Solov, the Illinois Securities Commissioner and chair of the NASAA Broker-Dealer Committee. The Seminar was attended by approximately 50 representatives of numerous state securities commissions and several Canadian provincial blue sky regulators. The Task Force Report was included in the course materials. The general reception was good. Questions from the floor included request for assurance that the approach recommended by the Task Force would result in greater visibility of finders to the state regulators; they were assured that this was a key part of the concept. Some attendees seemed engaged enough to suggest some alternative approaches, such as formation of an SRO for business brokers or other private placement brokers when the subject of “amnesty” came up, there was no immediate reaction, which is not conclusive, but at least leads one to hope that we can get some traction in that area.

I have been informed by Kenneth MacRitchie in New Jersey that he is working on a draft of PPBD rules for his state.

The Task Force will work closely with Ellen Lieberman to map out a plan of action to approach the blue sky regulators.

is about 170 days, which the NASD considers to be too long. The maximum permitted by rule is 180 days.

⁵ I am personally not aware of any SEC enforcement actions based solely on the fact that a broker was not registered.

Industry Contact

Thanks to Greg Giammittorio I have been invited to address a meeting of the Association for Corporate Growth in Orlando on April 28. I have been informed that the ACG has over 1000 members located in chapters around the country. Their membership includes issuers, lawyers, and “intermediaries” both registered and unregistered.

Miscellaneous

In my own practice I have had dozens of occasions to send the Task Force Report to brokers, potential finders, and other counsel. All of them have expressed keen interest in its contents. The reactions can be grouped into: “Oh, so that’s what you have been talking about.” to “I have been telling this to people for years and now I have something to hand them to back up what I have been saying.”

An article published in the *Investment Lawyer* issue of September 2005 supports the position taken by the Task Force on the definition of “broker.”⁶

Linda Lerner at Debevoise in New York, and others, have expressed an interest in joining the Task Force, with particular emphasis on participation in drafting rule changes.

SUBCOMMITTEE REPORT ON THE UNIFORM SECURITIES ACT OF 2002

By Philip A. Feigin
Rothgerber Johnson & Lyons LLP

The members of the Subcommittee continue to monitor legislation across the country dealing with introduction of the Uniform Securities Act of 2002 (the “USA”). Both Lynn Naefach and Phil Feigin participate on at least monthly conference calls sponsored by the National Conference of Commissioners on Uniform State Laws (“NCCUSL”), along with representatives of the NCCUSL USA Drafting Committee, NCCUSL staff, NASAA, the SIA, the ICI and others during which developments both local and national are discussed.

As of January 30, 2006, legislation was pending in Alabama, Alaska, Hawaii and Washington, was expected in Washington, D.C., Michigan and Minnesota, with

⁶ *The Distribution of Private Fund Securities: Regulatory Considerations and Potential Liabilities When Using Unlicensed Finders*, pp. 3-10.

studies under way in a number of other states and at different stages, including Georgia and Wisconsin. Given that this report must be submitted by mid-February, and it deals with legislative matters, things may have changed significantly by the time the report is actually circulated to the Committee membership.

As was fairly easy to predict, the two subjects generating the most friction in the USA are its provisions regarding treatment of banks as broker-dealers and variable annuities as securities. Under the Gramm-Leach-Bliley Act, among numerous activities that a bank may engage in without the necessity of registration with the Securities and Exchange Commission as a broker or dealer are two exemptions NCCUSL found troubling. First, a bank may act as the underwriter of private placement offerings by unaffiliated issuers without being registered with the SEC as a broker or dealer. Second, a bank may effect 500 securities transactions in a year without such registration (the “*de minimus*” exemption). NCCUSL opted to exclude one of these provisions and alter the other in the USA. Banks must be registered as broker-dealers to underwrite the private offerings of unaffiliated issuers and are limited to effecting unsolicited transactions under the *de minimus* exemption.

Of lesser concern but still important, problems are being encountered in various states on issues of caps on penalties that can be imposed against violators and statutes of limitation.

States that have already adopted the USA (in one form or another) as of mid-February 2006 are:

Idaho
Iowa
Kansas
Maine
Missouri
Oklahoma
South Carolina
South Dakota
U.S. Virgin Islands
Vermont

To date, NASAA has not promulgated model rules for state adoption under the USA. Enactment of the USA will usually entail the necessity of repeal and reenactment of rules. The USA was designed to accommodate existing rules without significant revision if such was the desire. States appear to be revising as needed as they adopt new rules on their own.

SUMMARY OF RECENT MEETING WITH NASAA CORPORATE FINANCE SECTION

By E. Marlee Mitchell

Waller Lansden Dortch & Davis, LLP

Several months ago Denny Crawford, the Texas Securities Commissioner and Chair of NASAA’s Corporate Finance Section, suggested that her NASAA Committee work more closely with the ABA Committee on State Regulation of Securities to discuss concerns of both groups. To that end, the NASAA Corporate Finance Section opened a portion of its meeting to representatives of our ABA Committee in February.

The NASAA Committee was represented at this meeting by: Denny Crawford of Texas (Chair); Randy Schumann of Wisconsin; Mike Stevenson of Washington; and Corinna Wong of Hawaii. Also on the NASAA Committee are its Vice Chair, Jack Herstein of Nebraska, who serves as NASAA’s Liaison to the ABA’s Small Business Advisory Committee, and Susan Pell of New Brunswick. Participating by telephone conference, our ABA Committee was represented by its Chair, Ellen Lieberman, and the author of this article in her role as the newly designated Committee Liaison to the NASAA Corporate Finance Section.

The following, in the order discussed, are the topics that were covered at this initial meeting:

1. The evolving nature of the national securities exchanges and associations – mergers, new tiers, new listing standards – NASAA is prepared to comment on any changes in proposed listing standards. In the meantime, NASDAQ recently announced a reshuffling of its tiers—in addition to the new NASDAQ Global Select Market that will launch on July 1 of this year, the NASDAQ National Market has been renamed the “NASDAQ Global Market” and the NASDAQ Capital Market (formerly the NASDAQ Small Cap Market) will retain its current name.

The ABA Small Business Advisory Committee has recommended that all NASDAQ Capital Market and OTCBB stocks be designated “covered securities”; it was noted that NASAA would not support the OTCBB recommendation (and NASDAQ’s Rulemaking Petition, submitted to the SEC the same day as our meeting, recommends only that NASDAQ Capital Market Securities be designated as “covered securities”) but has determined not to oppose designation of NASDAQ Capital Market securities as “covered securities.” If the SEC agrees

to NASDAQ's proposed rule change and amends Rule 146(b) under the Securities Act of 1933, it is estimated to expand by roughly 400-500 the number of companies that will not have to register their securities with the states, but the NASAA Section believes the loss of fee revenue will be *de minimis*.

2. Finders and other financial intermediaries – It was reported that Craig Goettsch of Iowa is chairing a NASAA committee looking at related issues, although the NASAA Corporate Finance Section will continue to carry this issue on its agenda as well. Ms. Crawford reported that Texas would be proposing new rules on finders in the near future.

Since our meeting, Texas has submitted for publication in the March 31 *Texas Register* a proposed rule that defines the term “finder” and provides for a restricted registration category that will require the filing of a Form BR, a background check, an application fee, minimal record keeping, and that the business be open for inspection, but contains no requirements for testing, minimum net capital or maintenance of a supervisory system. This limited registration category as proposed only applies to introductions between issues and accredited investors. Comments will be due within 30 days of the publication date. There is still plenty of work ahead to coordinate the efforts of the ABA's Private Placement Broker Dealer Task Force currently headed by Faith Colish with the SEC, the NASD, NASAA and individual state regulators in the “broker-dealer lite” arena.

3. “Eligible investor” notion and private offering exemption proposals – these were also part of the ABA Small Business Advisory Committee proposals. No specifics were discussed and we will continue to monitor the direction this takes. Our Chair noted that the proposal contemplates that natural persons meet significantly higher net worth and annual income targets.

4. NASAA Guidelines and Statements of Policy – It was reported that Tim Cox of Maryland is chairing a NASAA committee tasked with reviewing ALL NASAA guidelines and statements of policy in order to suggest updates, and it was hoped some of these will be circulated for comment in the near future.

5. Tenants-in-Common – This is an area of concern to the NASAA Corporate Finance Section, a result in part from a recent Utah legislative change causing tenants in common not to be deemed securities, effectively moving jurisdiction of the offer and sale of TIC interests from

securities to real estate regulators, notwithstanding that under various iterations of the *Howey* or *Hawaii Market* tests adopted by many state courts and agencies that such interests may (or may not) have the characteristics of securities.

6. The impact of NASDAQ converting to a national securities exchange and the impact on state exemptions for options and warrants – We are to let Ms. Crawford know of examples at the state level where this conversion could cause state exemptions no longer to cover options and warrants for NASDAQ quoted/listed securities.

The current game plan is to have ABA representatives meet with the NASAA Corporate Finance Section when the NASAA Section meets, which will generally be four times annually. Our Chair offered to use the ABA Committee's listserv, meetings, and this newsletter to enable the NASAA Section to share what is on its members' minds and to continue this experiment in dialogue with members of the blue sky bar. Your new Liaison welcomes any comments or suggestions on how to make this dialogue as useful as possible.

PA SECURITIES COMMISSION NOTES ABUSE OF ACCREDITED INVESTOR EXEMPTION

By G. Philip Rutledge, Esq.
Shumaker Williams, P.C.

In Release 05-CF-1 issued August 2, 2005 (“Release”), the Corporation Finance Division of the Pennsylvania Securities Commission (“PSC”) expressed concern over the dramatic rise in the number of issuers claiming an exemption from registration under Section 203(t) of the Pennsylvania Securities Act of 1972 (“1972 Act”) for the sale of securities to Accredited Investors and subsequent resale of those securities by the Accredited Investors to the general public purportedly in reliance on the secondary trading exemptions in Sections 203(a) and (b) of the 1972 Act (full text of the Release can be found at www.psc.state.pa.us/corpfinance/releases/05cf1.html).

In 1999, Pennsylvania joined most other states in adopting (by statute) an exemption from securities registration where issuers engage in an offering in which all sales of securities would be made only to Accredited Investors as defined in Rule 501 of U.S. Securities & Exchange Commission (“SEC”) Regulation D (“Accredited Investor Exemption”). To claim the Accredited Investor Exemption, an issuer must file pre-sale notice on PSC Form E and pay a filing fee. Like the Court of Appeal, the California Supreme Court held that

a seller who believes reasonably and in good faith that a security is exempt is not guilty of the crime of unlawful sale of an unregistered security. As in other similar cases, the severity of the penalties attached to this crime persuaded the Court that the Legislature did not mean to impose criminal liability on defendants who lacked guilty knowledge of facts essential to make the conduct criminal.

Apparently, PSC staff has received sufficient evidence that certain issuers, promoters and investors, either singularly or in concert, were using the Accredited Investor Exemption and other exemption provisions of the 1972 Act in an attempt to evade the securities registration provisions of the 1972 Act and engage in a public distribution of securities. This led PSC staff to issue the Release.

In the Release, PSC staff advise that an Accredited Investor who purchases securities under Section 203(t) of the 1972 Act with a view to reselling them within 12 months from the date of purchase is participating in a distribution of securities and will be deemed to be an underwriter under Section 102(v) of the 1972 Act. Therefore, any distribution of those securities in Pennsylvania by such Accredited Investor must comply with the registration provisions of the 1972 Act (“Resales”).

The Release further cautions that, in its view, PSC staff does not think the non-issuer exemption in Section 203(a) of the 1972 Act is available for Resales because PSC Regulation 203.011 states that such exemption is not available for a transactions which are part of a single plan of distribution by an issuer of securities to the public. Further, PSC staff advises that, in its view, the

non-issuer exemption in Section 203(b) is likewise unavailable for Resales where the participants in the transaction are relying, for federal law purposes, on securities registration exemptions set forth in Sections 3(a)(11) and 3(b) of the Securities Act of 1933 and regulations adopted thereunder, including Rules 504 and 505 of SEC Regulation D.

EDITORIAL

By Martin A. Hewitt
Cadwalader, Wickersham & Taft LLP

As always, I would like to thank our many contributors for helping to make the current issue of the Blue Sky Bugle a success. Over the past several issues the number of articles has increased substantially from one issue to the next. I would like to think it is because of something that I am doing, but I know that is not the case. There are a number of factors that are at play in this group effort. First and foremost is the leadership of our Chair Ellen Lieberman. Ellen has provided much of the inspiration, ideas for articles and general nudging of both the editor as well as the contributors to the Bugle. Thanks Ellen!

I have adjusted the schedule of due dates for future articles. It seems that many people were unaware of when Bastille Day is; therefore, I have pushed up the midyear deadline by ten days to July 4th. More patriotic perhaps, but in any event much easier to remember. Also, as I am sure many of you have noticed, there is a significant lag time between deadline and publication. This is due to many factors, not the least of which are competing demands at the office, at home (with my eldest about to leave for college!) and my involvement in various civic and music activities (all of this much to my wife’s consternation). In any event, I look forward to the July 4th deadline for our next issue of the Blue Sky Bugle. There are myriad challenges ahead for practitioners of what we fondly call “so-called Blue Sky Laws.”

As has become my habit I would like to end this editorial with the following quote from Tom Lehrer “life is like a sewer system; what you get out of it depends entirely upon what you put into it.”

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