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BLUE SKY LEGISLATION

At its 1955 session the Florida Legislature amended six different sections of the Florida Securities Act. Each one of these amendments had been given prior approval by the Florida Securities Commission and the Florida Security Dealers Association.

Perhaps the most important of these amendments concerns the issuance of additional securities to existing shareholders of a corporation.[1] Prior to this amendment a corporation desiring to issue additional securities to its shareholders was exempt from the Act's registration provisions only if the additional issuance consisted of *capital stock*. By deleting the words "capital stock" and substituting the word "securities," the amendment has paved the way for the issuance of bonds and debentures to existing shareholders, thereby making possible a tax saving under the Internal Revenue Code.

Another amendment[2] removed the maximum fee provision for filing for registration of securities by notification. The fee remains one-twentieth of one per cent of the aggregate sales price of the securities to be sold in Florida, only the ceiling having been removed; the minimum fee is $20. A companion amendment raised the maximum filing fee for registration by qualification from $500 to $1000.[3]

Every person offering securities for public sale in Florida must first register with the Florida Securities Commission as a dealer and obtain both a security dealer's bond and a dealer's permit. Under the former statutory language, these bonds ran 12 months from the date of issuance, while dealer's permits expired December 31st of each year. An amendment[4] now provides for concurrent datings of bonds and permits; this change will serve to avoid confusion and should be of considerable help to bonding companies, security dealers and the Commission itself.

The section listing exempt securities was amended to conform with the recent change of name of the New York Curb Exchange to American Stock Exchange.[5]

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1. FLA. STAT. § 517.06(4) (1955).
2. FLA. STAT. § 517.08(2)(g) (1955).
3. FLA. STAT. § 517.09(6) (1955).
4. FLA. STAT. § 517.13 (1955).
5. FLA. STAT. § 517.05(6) (1955).

The final amendment was long overdue. Before its enactment, the insolvency of a security dealer was not a ground for revocation of his license; it is now expressly made so.[6]

Public Offerings Under Regulation A

During the past year the number of public offerings by Florida corporations on a national scale has increased markedly. Of major importance to Florida attorneys whose clients offer securities for sale across state lines is the proposed drastic change in Regulation A of the Federal Securities Act of 1933.[7] Regulation A in its present form permits maximum interstate offerings of $300,000, accompanied by a letter of notification and an offering circular, three copies of which are filed with the appropriate regional office of the S.E.C. Known as the "short form" of registration, Regulation A's main objective was to facilitate public offerings of securities by small business. All went well until recently, when numerous complaints began pouring into S. E. C. with regard to the sale of penny uranium and oil shares. Agitation became so pronounced that at one time Regulation A was in danger of being completely abolished. The proposed new Regulation A is apparently an attempt at compromise.

One aspect of this proposed new regulation has aroused a storm of protest among businessmen and attorneys. Provision would have to be made, by escrow or otherwise, to assure the return to subscribers of the money paid in unless at least 85 per cent of the total offering is sold and paid for within six months after the commencement of the offering. This provision could well serve to defeat the very purpose which Regulation A was meant to accomplish.

Consider the plight of a small business attempting to raise funds through a $300,000 offering: until securities in the amount of $255,000 are sold, not a penny of the funds can be touched. Yet the very reason for the offering is normally that the company needs the funds and *needs them immediately!* Of course, the idea behind the proposed change is investor protection in wildcat oil and uranium offerings, where if, for example, only $50,000 out of $300,000 is raised and no oil or uranium discovered, the venture may well collapse, meaning that those subscribers who put in the $50,000 lose their funds to promoters, engineers, attorneys and others. The fallacy of this reasoning, however, is obvious. First of all, the underlying philosophy of the Federal Securities Act has always been one of *disclosure.* In short, as long as the whole truth is told, no matter how much that truth may hurt, the public is then free to buy or not to buy. The Federal Securities Act merely sees that the dice are not loaded;

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6. Fla. Stat. § 517.16(9) (1955).
7. 48 Stat. 74 (1933), 15 U.S.C. 15 §§ 77a, 77aa(1950).

it does not attempt to save a fool from his folly. Furthermore, not even the strong Florida Securities Act,[8] which actually examines the *merits* of the securities proposed to be sold, has a provision of this nature. Finally, the proposed change ostensibly seeks to afford stronger investor protection to oil and uranium security buyers. Actually, however, it applies to all "promotional companies." A close examination of the definition of that term under the proposed regulation reveals that it encompasses many small business ventures entirely foreign to oil or uranium. At this writing the proposed change has not yet been adopted. Adoption will force one of two alternatives on many small Florida businesses seeking capital: (1) cutting down the size of the public offering from the $300,000 figure; (2) by-passing S. E. C. regulations altogether by confining the offering to Florida residents.

The remaining provisions of the proposed new Regulation A have met with favorable comment. Securities offered for sale thereunder would first have to be qualified for sale in the state in which the issuing company has its principal business operations. Finally, in computing the amount of securities which could be offered under the new regulation, there would have to be included the amount of all securities issued or proposed to be issued, for assets or services or to directors, officers, promoters, underwriters, dealers or security salesmen, and held by them, except to the extent that such securities are escrowed or otherwise effectively held off the market for a period of one year after the commencement of the offering.

8. FLA. STAT. §§ 517.01-517.30(1953).