BLUE SKY LAWS

A state law that is designed to protect the public against securities fraud. Kansas was the first state to enact a securities registration law, in 1911. When announcing the legislationÂ's passage, lawmakers said, Â"The State was the hunting ground of promoters of fraudulent enterprises...so barefaced...that it was stated they would sell building lots in the blue sky.Â" Since then, state securities laws have been referred to as blue sky laws.

A popular name for state statutes providing for the regulation and supervision of Securities offerings and sales, to protect citizen-investors from investing in fraudulent companies. Most blue sky laws require the registration of new issues of securities with a state agency that reviews selling documents for accuracy and completeness. Blue sky laws also often regulate securities brokers and salespeople.

Almost all states have adopted blue sky laws, regulating the sale of securities—investments in bonds, mutual funds, limited partnerships, and so forth. These laws acquired their name as early as 1917, when the Supreme Court issued a decision on "speculative schemes which have no more basis than so many feet of 'blue sky'" (*Hall v. Geiger-Jones Co.*, 242 U.S. 539, 37 S. Ct. 217, 61 L. Ed. 480).

Blue sky laws place requirements on corporations and securities dealerships that offer investments for sale to the public in a particular state. These laws are in many cases adopted from the Uniform Securities Act, and are usually enforced primarily by the state's attorney general's office. The federal Securities and Exchange Commission (SEC) enforces federal laws that concern foreign and interstate transactions.

State blue sky laws require corporations to register securities before selling them so that regulators can check their marketing information for accuracy. National on-line computer networks

that became widely available in the mid-1990s posed new problems for states trying to enforce these requirements. Texas, Ohio, and New Jersey were among states that by 1995 had begun prosecuting some of the thousands of dealers who were offering unregistered investment opportunities to small investors on computer bulletin boards.

State laws usually require corporations to file financial information, and can deny corporations the privilege of doing business if their profile or history is risky. State investigators can determine whether a corporation's financial structure allows it to sell certain securities.

The laws also spell out the qualifications of brokers, dealers, salespeople, investment advisers, and others who work in the securities business. They require dealers to identify the type of investments they are planning to sell and where.

Among the activities blue sky laws seek to prevent are hard-sell tactics. Telephone "stock-peddling" techniques that are high-pressure and misleading can result in the suspension of a broker's license. A 1992 survey by Louis Harris and Associates indicated that more than one-third of all U.S. citizens had received a phone call about investing, and five percent had made a purchase. Many states now require that brokerages and corporations selling on the public market also provide a printed prospectus that describes the risks of investing.

What happens when blue sky laws do not work? States often provide an avenue for victims of illegally sold securities to try to recover their money, sometimes in addition to criminal prosecution. Investors can charge Misrepresentation or lack of suitability and can demand restitution from the Broker in ARBITRATION. CLASS ACTION suits can also be filed against a fraudulent brokerage or corporation.

Introduction

While the SEC directly, and through its oversight of the NASD and the various Exchanges, is the main enforcer of the nation's securities laws, each individual state has its own securities laws and rules. These state rules are known as "Blue Sky Laws".

The origin of the term is a bit unclear, but the first use of the term that we are aware of is in an opinion of Justice McKenna of the United States Supreme Court, in 1917. Justice McKenna wrote the Court's opinion in Hall vs. Geiger-Jones Co (1917), which was three cases, all dealing with the constitutionality of state securities regulations.

While these laws vary from state to state, the laws require registration of securities offerings, and registration of brokers and brokerage firms. Each state has a regulatory agency which administers the law, typically known as the state Securities Commissioner. A list of state securities commissioners, and their addresses, is available.

While anti-fraud regulations are most commonly enforced by the SEC and the various SROs, the states also have the power and authority to bring actions against securities violators pursuant to state law. Each state has its own securities act, known colloquially as the "blue sky law", which regulates both the offer and sale of securities as well as the registration and reporting requirements for broker-dealers and individual stock brokers doing business

(both directly and indirectly) in the state, as well as investment advisers seeking to offer their investment advisory services in the state.

Recently, federal legislation was enacted which limited the ability of the states to review, limit or otherwise restrict the sale of most securities. The legislation was designed to eliminate the duplicative nature of the federal and state securities laws. Today, in most instances, the states authority to review registration of securities offerings that are offered on a national basis have been severely restricted. However, there are notice and filing requirements in each state, which must still be complied with. Additionally, the legislation did not affect the ability of the state regulators to conduct investigations and to bring fraud actions.

Registration of Securities Transactions

It is important to keep in mind that before a security is sold in a state, there must be a registration in place to cover the transaction, and, the brokerage firm, and the stock broker, must each be registered in the state, or otherwise exempt from the registration requirements.

With few exceptions, every offer or sale of a security must, before it is offered or sold in a state, be registered or exempt from registration under the securities, or blue sky laws, of the state(s) in which the security is offered and sold. Similarly, every brokerage firm, every issuer selling its own securities and an individual broker or issuer representative (i.e., finder) engaged in selling securities in a state, must also be registered in the state, or otherwise exempt from such registration requirements. Most states

securities laws are modeled after the Uniform Securities Act of 1956 ("USA"). To date, approximately 40 states use the USA as the basis for their state blue sky laws.

However, although most blue sky laws are modeled after the USA, blue sky statutes vary widely and there is very little uniformity among state securities laws. Therefore, it is vital that each state's statutes and regulations be reviewed before embarking upon any securities sales activities in a state to determine what is permitted, or not permitted, in a particular state. To make matters more complicated, while some states may have identical statutory language or regulations covering particular activities or conduct, their interpretation may differ dramatically from state to state. However, state Securities Commission staff are available to assist in answering questions regarding particular statutory provisions or regulations.

Fortunately, many types of securities, and many transactions in securities, are exempt from state securities registration requirements. For example, many states provide for transactional exemptions for Regulation D private offerings, provided there is full compliance with SEC Rules 501-503. However, through certain types of offerings or transactions may not require registration, many states require filings or place additional conditions on exemptions available for many different offerings for which exemptions are available. The best advice, then, is before offering any security for sale in any state, experienced Blue Sky counsel should be retained to review the applicable state blue sky laws and take any action necessary to permit the offering to be made in the particular state.

The National Securities Markets Improvement Act of 1996 ("NSMIA") was enacted in October, 1996 in

response to the states' failure to uniformly regulate certain types of national securities offerings. Among other changes, NSMIA amended Section 18 of the Securities Act of 1933, as amended (the "Act"), thereby creating a class of securities - referred to as "covered securities" - the offer and sale of which (through licensed broker-dealers) are no longer subject to state securities law registration requirements. Covered securities include: securities listed (or approved for listing) on the NYSE, AMEX and the Nasdaq/National Market, and securities of the same issuer which are equal in rank or senior to such listed securities; mutual fund shares; securities sold to certain qualified purchasers (as yet not defined by the SEC); certain securities exempt under Section 3(a) of the Act (including government or municipal securities, bank securities and commercial paper); and securities exempt from registration under the Act if sold in transactions complying with Rule 506 of Regulation D under the Act. Although NSMIA preempts state securities registration requirements, NSMIA preserves the right of the states to investigate and prosecute fraud.

In the area of Broker-Dealer and Agent (stock broker) registration, the Blue Sky laws are equally convoluted, with each state having different requirements. Fortunately, many states have abandoned use of their own particular forms and submissions, and permit the registration filings for broker-dealers and agents to be made through the National Association of Securities Dealer's Central Registory Depository system (CRD), and utilize the examinations conducted by the NASD for testing purposes.

An American law term refers to government controls,through statutes of the sale of securities to the public

State securities laws, commonly known as Blue Sky Laws after the word was used by a Supreme Court justice (McKenna) in 1917, Hall v. Geiger-Jones Co., in which he stated:

"(T)he law is a regulation of business, constrains conduct only to that end, the purpose being to protect the public against the imposition of unsubstantial schemes and the securities based upon them.

"The name that is given to the law indicates the evil at which it is aimed, that is, to use the language of a cited case, 'speculative schemes which have no more basis than so many feet of blue sky; or, as stated by counsel in another case, 'to stop the sale of stock in fly-by-night concerns, visionary oil wells, distant gold mines and other like fraudulent exploitations.'

Blue sky laws are state regulations that govern the sale of securities in an attempt to safe guard investors from fraud. The blue sky laws in each state vary in the specific details, but all states require securities, brokers, and brokerage firms to be registered with the state. Although the SEC is the most common enforcer of regulations against fraudulent practices, the states also have the power to go after violators of its anti-fraud, or blue sky, laws. Recently, the state's authority and power to limit and restrict the sale of securities has declined as not to be duplicative of the federal regulations of the SEC. States are still

able to investigate potential fraud and maintain their notice and filing requirements.

There is much more security for investors these days than in the past. The government goes to great lengths to protect the public from fraudulent investments. It is still important not to solely rely on the state and federal regulations to protect you. Research and awareness is the key to being a smart investor and to not get taken advantage of by deceitful investments.

blue-sky law

noun

INFORMAL **a law regulating the sale of stocks, bonds, etc., for the protection of the public from fraud**

Etymology: said to be so named from the comment made by a proponent of the first such law that certain business groups were trying to "capitalize the blue skies"

blue sky law Finance Definition
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blue sky law Law Definition

The popular name for the statute, found in every state, that regulates within the state the sale of

corporate securities to the public. These laws are the states' counterpart to the federal securities acts.

Securities regulation in the United States is the field of U.S. law that covers various aspects of transactions and other dealings with securities. It includes both Federal and state level regulation by purely governmental regulatory agencies, most notably the Federal level United States Securities and Exchange Commission (SEC). There are also quasi-governmental organizations 'self regulatory organizations' (SRO's) such as the Financial Industry Regulatory Authority (FINRA) (formed by the merger of the enforcement divisions of the National Association of Securities Dealers, Inc. (NASD) and the New York Stock Exchange, Inc. (NYSE)). A significant influence is exerted by the availability of private rights of action under both state and Federal securities laws, as well as more generalized laws covering fraud. Futures and some aspects of derivatives are regulated by the Federal Commodity Futures Trading Commission (CFTC).

There are eight principal United States federal statutes in the area of securities regulation:

1. The Securities Act of 1933
2. The Securities Exchange Act of 1934
3. The Public Utility Holding Company Act of 1935
4. The Trust Indenture Act of 1939
5. The Investment Company Act of 1940
6. The Investment Advisers Act of 1940
7. The Securities Investor Protection Act of 1970
8. The Sarbanes-Oxley Act of 2002

There are also fairly extensive regulations under these laws, largely made by the SEC. One of these regulations, know by its citation 10b-5, is particularly notable because it creates and regulates federal civil liability in between private parties in transactions involving securities which are otherwise exempt from federal securities regulation.

State laws governing issuance and trading of securities are commonly referred to as blue sky laws.

Before the Wall Street Crash of 1929, there was little regulation of securities in the United States at the Federal level. The crash spurred the Congress to hold hearings, known as the Pecora Commission, after Ferdinand Pecora,

After holding hearings on the abuses, Congress passed the Securities Act of 1933. It regulates the interstate sales of securities and made it illegal to sell securities into a state without complying with the state law. It requires companies which want to sell securities publicly to file a registration statement with the U.S. Securities and Exchange Commission. The registration statement provides a lot of information about the company and is a matter of public record. The SEC does not approve or disapprove the issue, but lets the statement "become effective" if sufficient required detail is provided, including risk factors. Afterward, the company can begin selling the stock issue, usually through investment bankers.

The following year, Congress passed the Securities Exchange Act of 1934, which regulates the secondary market (general-public) trading of securities. Initially, the 1934 Act applied only to stock exchanges and their listed companies (as the word "Exchange" in the Act's name implies). In the late 1930s, the Act was amended to provide regulation of the over-the-counter (OTC) market (i.e., trades between individuals with no stock exchange involved). In 1964, the Act was amended to apply to companies traded in the OTC market.

In October 2000, the Securities and Exchange Commission ratified Regulation Fair Disclosure (Reg FD), which required publicly traded companies to disclose material information to all investors at the same time. Reg FD helped level the playing field for all investors by helping to reduce the problem of selective disclosure.

blue sky laws n. laws intended to protect the public from purchasing stock in fraudulent companies that lack

substance, such as those selling swamp land, non-existent gold strikes and dry oil wells, or who have no assets besides a post office box. Blue sky laws require that corporations advertising and selling shares to the public must get approval from the state corporations commissioner and/or the Securities Exchange Commission after providing details on financing and management. The term comes from the intent to prevent the existence of corporations that have nothing behind them but "blue sky.")