

November 17, 1949

AIR MAIL SPECIAL DELIVERY

Mr. Earl F. Hastings  
Director, Securities Division  
Arizona Corporation Commission  
Phoenix, Arizona

Dear Mr. Hastings:

We have gone over the preliminary draft of the proposed new Securities Act of Arizona that you sent us for comment on November 10. My general impression is that the authority which would be provided under the proposed law would be ample. You will appreciate, of course, that we do not hold ourselves out as authorities on blue sky laws in any sense and also that we have not had an opportunity to go over the material you submitted in detail or to compare it to any extent with other blue sky laws. The comments set forth below are those that happened to occur to us in going over the proposal rather hastily.

Section II(G) defines the term "salesman" to mean an individual employed by a dealer to sell securities; perhaps this is unduly narrow since Section X(B) provides for registration of salesmen employed by an issuer.

Section VI(C) provides an exemption for sales by an ordinary investor whether made through a dealer or otherwise. Paragraph (G) of the same section exempts sales by dealers of securities heretofore sold and distributed to the public, subject to various provisos which do not appear under paragraph (C). The distinction between the areas intended to be exempted by paragraph (C) on the one hand and paragraph (G) on the other is not entirely clear to me. To the extent that they overlap, of course, the limitations imposed by paragraph (G) but not by paragraph (C) would be ineffective, e.g., the limitation that the securities must be sold at prices reasonably related to the current market price.

Section VIII(A)(2) provides that some of the information required for the registration of a security must be in the form of a "prospectus." This might be thought incongruous, since the proposed law does not require that the prospectus so filed be used in the sale of the securities. While the federal Securities Act requires the use of a prospectus, Section VIII is not limited to securities registered under the federal statute. I appreciate, of course, that in general it is contemplated that a prospectus will be required under the federal law and that the same document will be filed with the state.

On page 13, line 36, I assume that the word "he" should be "it."

We note that the grounds for revocation of registration of securities under Section IX are somewhat broader than the grounds for denial of registration under Section VIII(B) and assume that this was intentional.

Sections X(A)(11) and X(B)(7) provide that an application for registration of a dealer or salesman shall include information regarding convictions of a felony or misdemeanor “of which fraud is an essential element.” A question may be raised as to whether this language would require the applicant to report a conviction for embezzling securities, for example. Possibly it would be advisable to expand the language to include, in addition, any felony or misdemeanor involving the purchase or sale of any security or arising out of the conduct of the business of a dealer. The suggested language appears in Section 15(b) of the Securities Exchange Act of 1934.

The term “registered issuer” in lines 11-12 on page 17 may possibly be ambiguous in the context of the statute.

Section X(D) provides that a registered dealer must report changes in its management personnel. However, there apparently is no requirement for the filing of any other information after the dealer first becomes registered, except financial statements. Perhaps it should be required to file also, for example, information regarding convictions and other disciplinary actions occurring after it first becomes registered.

Sections XVIII and XXIII refer to the “purchaser” of securities but probably should refer also to the seller of securities, since Section XVI, for example, prohibits fraud on the seller as well as on the purchaser.

Apparently a phrase is missing somewhere in the sentence on lines 45-53 of page 26.

Thank you for giving me an opportunity to comment on the proposed law. Please feel free to call upon us whenever we may be able to be of any assistance to you.

Very truly yours,

Milton P. Kroll  
Assistant General Counsel