


INFORMATION MEMORANDUM

March 12, 1985

TO : The Commission

FROM : The Division of Corporation Finance 

SUBJECT : Cooperative efforts between the North American Securities Administrators Association ("NASAA") and Commission staff toward the further adoption of a Uniform Limited Offering Exemption ("ULOE") by the states.

NOVEL, IMPORTANT OR COMPLEX ISSUES : None

VIEWS OF OTHER OFFICES OR DIVISIONS CONSULTED : Not Applicable

PRIOR COMMISSION ACTION : None

PERSONS TO CONTACT : John J. Huber (272-2800)  
Mary E.T. Beach (272-2585)  
Mary M. Jackley (272-2644)

ULOE <sup>1/</sup> was a major discussion topic at the Second Annual Federal/State Conference in Williamsburg in February. The Commission staff and NASAA agreed to a renewed effort to achieve uniformity between federal and state regulation of limited offering exemptions. (Attachment A).

Because of the number of variations in exemptions that have been adopted by the states, the first step was to determine which states have adopted an acceptable version of ULOE. Since the conference, NASAA members and Division staff have agreed on six elements which must be present in order for a state's exemptive provisions to be within the spirit of ULOE. (Attachment B). The staff is currently in the process of determining which states have adopted ULOE according to these standards. Once this process has been completed, NASAA will attempt to ascertain why certain states have taken no action on ULOE or why exemptive provisions varying significantly from ULOE have been adopted. The staff will then meet with these states at NASAA's Spring meeting on April 4, 1985, to encourage them to adopt ULOE and will be available to testify in favor of ULOE in those states considering its adoption. Of course, if any invitation to testify is received, the Division will request the approval of the Commission.

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<sup>1/</sup> ULOE provides a uniform exemption from state registration for small issuers. A small issuer raising capital in a state which has adopted ULOE may take advantage of both a state registration exemption and a federal exemption under Regulation D. ULOE, however, contains certain options. A state adopting any of the options is considered to be within the spirit of ULOE.

NASAA and the Division staff also will consider means by which further uniformity may be achieved among those states considered to be within the spirit of ULOE. To assist in this effort, the staff is currently considering revisions to Form D which have been approved by NASAA and which, if adopted, should cause the Form to be more widely accepted by the states which have a ULOE. Upon completion, the proposed revisions to Form D will be submitted to the Commission with a recommendation for publication for comment.

The Division will keep the Commission informed of any developments in this on-going effort to have ULOE and Regulation D adopted by all of the states.

Attachments

NASAA and the Commission staff agreed to the following:

- I.     A. Establish critical criteria to determine whether a state has adopted the spirit of ULOE. Apply the criteria to the states' provisions and develop a list\*/ which will be composed of:
  1. States that comply with all of the spirit of ULOE;
  2. States that have taken action but do not comply with the spirit of ULOE; and
  3. States that have not taken any action.
- B. NASAA will contact the states on lists 2 and 3 above to determine why they varied from ULOE or why they have not acted on ULOE.
- C. A and B above will be accomplished by the end of March, 1985.
- D. SEC staff will meet with states which have not adopted ULOE at NASAA's spring meeting to be held in April, 1985.
- II.    The SEC and NASAA will undertake to testify in favor of ULOE in states that are considering its adoption.
- III.   The Small Business Financing Committee of NASAA will develop a list of items to improve uniformity among the states that comply with all of the spirit of ULOE (1.A.1 above) and, with the approval of NASAA, will submit such list to the Division of Corporation Finance.
- IV.    Item III above will be reviewed by the staff of the Division of Corporation Finance and supplemented by the staff's experience with Regulation D.
- V.     By the end of March, 1985, John J. Huber, Director of the Division of Corporation Finance, will comment on revisions to Form D which have been submitted jointly by Commission staff members and NASAA.

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\* States with no need for ULOE, since offerings can be made within them without special exemptive provisions, will not be included on this list.

Elements Agreed Upon by NASAA and Commission Staff

1. The state's ULOE must incorporate by reference Rules 501-503 and Rule 505 and may also include Rule 506 of Regulation D or contain language indential to those rules except as provided below. In particular, the disclosure requirements of the state's ULOE must not vary from the disclosure requirements of Regulation D.
2. A due diligence defense to Rule 1.A. of ULOE, the rule requiring persons receiving commissions, fees or other remuneration to be registered within the state as a broker/dealer, must be available to issuers.
3. The state's "bad boy" provisions must be identical to or less restrictive than the "bad boy" provisions set forth in ULOE.
4. The state's Form D filing requirement must be no more restrictive than that of ULOE Rule 1.C.1, which requires a filing of the Form no later than 10 days prior to the receipt of consideration or the delivery of a subscription agreement, or must provide for the filing of a post sale notice patterned after the notice provisions of Regulation D. The Form of notification may vary from the format and content of Form D.
5. Where a state's ULOE includes suitability standards, there shall be an objective safe harbor to those standards which shall not vary from the safe harbor set forth in Rule 1.D.1 of ULOE.
6. A state's exemptive provisions may not interpret the final paragraph of footnote 1 to ULOE to require delivery of a disclosure document to Rule 501(a)(6), (7) and (8) accredited investors in a Rule 505 offering.