STATE OF CONNECTICUT

DEPARTMENT OF BANKING
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HOWARD B. BROWN
COMMISSIONER

PAUL J. McDONOUGH
DEPUTY BANKING COMMISSIONER

SECURITIES AND BUSINESS INVESTMENTS DIVISION BULLETIN

SPECIAL 1988 ANNUAL ISSUE

Vol. III No. 2 January 1989

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BANKING COMMISSIONER'S COMMENTS

1988 has been a year in transition, both for the national economy and for state securities regulation. It was a year of uncertainty generated in large part by the stock market crash of late 1987 and a spiraling federal deficit, a year when market abuses emphasized the need for effective oversight of the securities industry at both the state and federal levels.

This issue of the Securities Bulletin highlights enforcement measures taken by the Connecticut Securities and Business Investments Division during 1988. Those measures have ranged from administrative proceedings involving unregistered securities, broker-dealers and business opportunities to a joint action with the Commodity Futures Trading Commission seeking injunctive relief to halt widespread illegal activity. Also of interest is a declaratory ruling issued by the department exploring the scope of its investigatory authority under Section 36-495 of the Connecticut Uniform Securities Act (reprinted in full in the CCH Blue Sky Law Reporter at ¶14,545).

Now, more than ever before, investor education assumes critical importance. Space constraints preclude a complete exposition of all matters of concern to investors. However, this edition of the Bulletin continues our past practice of presenting an Investor Alert on a germane topic. This issue's Investor Alert features tips on investing in business opportunities, a regulatory area deserving of review. Also in keeping with our goal of investor protection, we are presently exploring the possibility of sponsoring a department symposium sometime in the future which would feature topics of interest to the financial services industry and the securities bar.

The proposal of Regulation S by the Securities and Exchange Commission exploring the extraterritorial reach of the Securities Act of 1933 provides a timely opportunity to address some common questions concerning the jurisdictional scope of Connecticut's securities laws. This issue of the Bulletin presents various jurisdictional hypotheticals and explains how they would most likely be treated under the Connecticut Uniform Securities Act.

This edition of the Bulletin also includes a concise overview of securities and business opportunity legislation which became effective on October 1, 1988. In closing, I would like to acknowledge the contribution of Cynthia Antanaitis, who was promoted from Senior Administrative Attorney to Assistant Director of the Securities and Business Investments Division effective December 30, 1988, in the preparation of this Bulletin.

It is my hope that the Bulletin will continue to provide a valuable service to its readers.

Howard B. Brown
Banking Commissioner

ENFORCEMENT HIGHLIGHTS

ADMINISTRATIVE SANCTIONS

Cease and Desist Orders

- Charles Hayden Howard, III

  On January 29, 1988, the department entered a Cease and Desist Order against Charles Hayden Howard, III. The Order alleged that from approximately January 1986 to December, 1986, while Howard was employed at the Bedford/Manchester, New Hampshire office of Thomson McKinnon Securities, Inc., Howard represented Thomson McKinnon in effecting or attempting to effect securities transactions for numerous persons in Connecticut without being registered as an agent under the Connecticut Uniform Securities Act. Since the respondent did not request a hearing within the prescribed time period, the Order became permanent on March 8, 1988.

- Franchise Development Corporation
  Theron V. Kearney a/k/a Terry Kearney

  On March 28, 1988, the department issued a Cease and Desist Order against Franchise Development Corporation of 191-4 Middlesex Avenue, Chester, Connecticut and 2138 Silas Deane Highway, Rocky Hill, Connecticut; and Theron V. Kearney a/k/a Terry Kearney. The Order alleged that Franchise Development Corporation, through Kearney, entered into exclusive regional director arrangements within Connecticut for the purpose of providing representation for its franchise development business. The Order further alleged that, in so doing, Franchise Development Corporation, through Kearney, sold or offered business opportunities which were not registered under the Connecticut Business Opportunity Investment Act. Since the respondents did not request a hearing within the prescribed time period, the Order became final on April 13, 1988.

- Prescott Forbes Group, Ltd.
  Robert M. Cohn
  Jay Hassan

  On May 31, 1988, the department issued a Cease and Desist Order against Prescott Forbes Group, Inc. of 260 South Broad Street,

Philadelphia, Pennsylvania; Robert M. Cohn and Jay Hassan. The department alleged that during 1987 and 1988, Prescott Forbes, through Cohn and Hassan, offered or sold unregistered business opportunities to Connecticut residents for the purpose of enabling those residents to start a real estate investment business. On October 25, 1988, a hearing was held on the allegations. A decision by the hearing officer is pending.

. All American Lighter Company, Inc.

On May 31, 1988, the department issued a Cease and Desist Order against All American Lighter Company, Inc. of 800 East Cypress Creek Boulevard, Fort Lauderdale, Florida. The Order alleged that since 1987, the company had offered or sold unregistered business opportunities to Connecticut residents for the purpose of enabling those residents to start a cigarette lighter vending machine business. Since the respondent did not request a hearing within the prescribed time period, the Order became permanent on June 17, 1988.

. MTS Properties, Inc.
Mortgage Trust Services
Joseph O'Donnell
Thomas Anthony

On August 15, 1988, the department issued a Cease and Desist Order against MTS Properties, Inc., Mortgage Trust Services (a/k/a Mortgage Trust Services, Inc.), Joseph O'Donnell and Thomas Anthony. The Order alleged that MTS Properties, Inc. and its division, Mortgage Trust Services, both of 1745 Phoenix Boulevard, Atlanta, Georgia, through O'Donnell and Anthony, offered to sell unregistered business opportunities in Connecticut during 1988. The business opportunities would enable offerees to start a mortgage brokerage business. Since the respondents did not request a hearing within the prescribed time period, the Order became permanent on September 8, 1988.

. Cybertronix, Inc.
Allan Schulman
Lou Singer
Lance Moon
Larry Aronson

On August 19, 1988, a Cease and Desist Order was issued against Cybertronix, Inc., an Illinois corporation located at 1171 Tower

Road, Schaumburg, Illinois; Allan Schulman, Lou Singer, Lance Moon and Larry Aronson. The Order alleged that Cybertronix sold unregistered business opportunities for the operation of a telemarketing service business to one or more Connecticut residents in 1987 in violation of the Connecticut Business Opportunity Investment Act. An administrative hearing on the allegations was commenced on November 29, 1988 but continued indefinitely due to the company's pending bankruptcy proceeding.

- Vision Master Industries, Inc.
  Bill Hahn

  On September 13, 1988, the department issued a Cease and Desist Order against Vision Master Industries, Inc., an Oklahoma corporation, alleging that, in 1987, Vision Master and Hahn sold unregistered business opportunities to one or more Connecticut residents for the purpose of enabling Connecticut residents to start a neon sign merchandising and delivery business. Since the respondents did not request a hearing within the prescribed time period, the Order became permanent on October 31, 1988.

- Industrial Distributors, Inc.
  Paul Flores

  On September 13, 1988, a Cease and Desist Order was issued against Industrial Distributors, Inc. and Paul Flores based on allegations that during 1987, Industrial Distributors and Flores sold unregistered business opportunities to one or more Connecticut residents for the purpose of enabling Connecticut residents to start businesses as distributors of custodial products and supplies. Since the respondents did not request a hearing within the prescribed time period, the Order became permanent on November 1, 1988.

- Pinegrove, Inc.
  Sheldon Liner

  On September 13, 1988, the department issued a Cease and Desist Order against Pinegrove, Inc. and Sheldon Liner. The Order alleged that in or about 1986 and 1987, Pinegrove, through Liner, offered and sold unregistered securities in the form of notes to one or more persons in Connecticut. Since neither respondent requested a hearing within the prescribed time period, the Order became permanent on October 3, 1988.

. P.O.P. America Corporation

On October 11, 1988, the department issued a Cease and Desist Order against P.O.P. America Corporation, a California entity which allegedly sold unregistered business opportunities to one or more Connecticut residents from late 1986 through early 1987. Since the respondent did not request a hearing within the prescribed time period, the Cease and Desist Order became permanent on December 12, 1988.

Consent Orders

. Michelin & Co., Inc.

In 1988, the department entered thirteen Consent Orders with respect to former representatives of Michelin & Co. who transacted business as agents of the firm at various times between 1985 and 1987 without being registered as agents in Connecticut. Depending on the agent's registration status, almost every Consent Order was preceded by notice of the Commissioner's intent to deny or revoke the registration. Each Consent Order required that the agent in question pay a $100 fine. The following agents agreed to Consent Orders in 1988: Carl Otto Spath (2/28/88); John Thomas Oehl (3/28/88); Richard Dayton Collner (3/28/88); Cary Lee Fields (4/7/88); William John Braun (1/4/88); Robert James Carlin (1/4/88); Howard Feinmel (1/4/88); David Marc Keiter (1/4/88); Andrew Joseph Palumbo (1/4/88); John George Pearce (1/4/88); Paul Allen Vacho (1/4/88); Craig Reed Wilson (1/4/88); and Jeffrey Ken Zwitter (1/4/88).

. Alpine Securities Corporation
Virgil Mark Peterson
Nancy Wickham

On March 1, 1988, the department entered a Consent Order with respect to Alpine Securities Corporation, Virgil Mark Peterson and Nancy Wickham. The Consent Order followed an August 14, 1987 Cease and Desist Order which alleged that Alpine had transacted business as a broker-dealer without registration and that Peterson and Wickham had transacted business as agents of Alpine while unregistered. The Consent Order required that Alpine, Peterson and Wickham pay a fine of $2,060; that Alpine refrain from pursuing broker-dealer registration in Connecticut for 3 years; and that Peterson and Wickham each refrain from pursuing broker-dealer or agent registration in the state for a period of one year following entry of the Consent Order.

9/7/87
C/D pcw

. Nathan Weissberg

On September 15, 1988, the department entered a Consent Order with respect to Nathan Weissberg, previously the subject of a November 13, 1987 Order to Cease and Desist. The Consent Order barred Weissberg from associating in any capacity with any broker-dealer, investment adviser or seller of business opportunities and from offering or selling securities or business opportunities, rendering investment advice, acting as an investment adviser agent or soliciting clients for any investment adviser or any seller of business opportunities for a period of 3 years. The Consent Order also barred Weissberg, following the expiration of the 3 year period, from acting in a proprietary or supervisory capacity with respect to any broker-dealer, investment adviser or business opportunity seller for a period of twelve months. In addition, following the expiration of the 3 year period, Weissberg could only become associated with a registered broker-dealer, registered investment adviser or seller of business opportunities under terms which required that the firm exercise direct, on-site supervision of his activities. Following the 3 year period, Weissberg was also prohibited, absent prior written consent of the Commissioner, from offering or selling financial products which were not registered under the Connecticut Uniform Securities Act or the Connecticut Business Opportunity Investment Act. The Consent Order did not preclude Weissberg from associating with an insurance company or registered broker-dealer exclusively for the purpose of offering or selling insurance products which did not constitute securities, subject to certain conditions.

. North American Investment Corp.

On November 21, 1988, the department entered a Consent Order with respect to North American Investment Corp. of 333 East River Drive, East Hartford, Connecticut. The Consent Order had been preceded by a Notice of Intent to Revoke Registration as a Broker-dealer which was issued on October 24, 1988 and predicated on the firm's failure to meet capital and recordkeeping requirements. Under the Consent Order, the firm's broker-dealer registration was deemed withdrawn.

. First Wilshire Securities Management, Inc

On December 9, 1988, the department entered a Consent Order with respect to First Wilshire Securities Management, Inc. of 612 South Flower Street, Los Angeles, California. First Wilshire had been the subject of a February 2, 1987 Cease and Desist Order based on the firm's failure to register as a broker-dealer. On September 13, 1988, the department issued a Notice of Intent to Deny Registration

as a Broker-dealer and Investment Adviser against the firm. The Notice was predicated on the February 2, 1987 Cease and Desist Order as well as on administrative actions by the states of Missouri and Florida. Under the terms of the Consent Order, First Wilshire agreed to refrain from applying for registration as a broker-dealer and investment adviser in Connecticut for 3 years, and its applications were deemed withdrawn.

Stipulation Agreements

- Frederick H. Race

On February 18, 1988, the Department of Banking entered into a Stipulation Agreement with Frederick H. Race, an agent of Coburn & Meredith, Inc. An investigation by the Securities and Business Investments Division had disclosed that, in July, 1986, Race had 1) executed a transaction for a customer without proper authorization and 2) purchased and sold securities in an account under his control without making proper payment (free riding). Without admitting or denying any allegations, Race agreed to accept a letter of censure, administrative probation for two years and a 60 day suspension from transacting business as an agent of a broker-dealer in Connecticut.

- Coordinated Capital Management, Ltd.

On February 26, 1988, the department entered into a Stipulation Agreement with Coordinated Capital Management, Ltd., an entity headed by Timothy J. Flanagan. A Division investigation had disclosed that Coordinated Capital Management, Ltd. had transacted business as an investment adviser from October 20, 1986 through September 24, 1987 without being registered as such. Without admitting or denying any allegations, Coordinated Capital Management, Ltd. agreed to accept a letter of censure, modify its supervisory procedures to detect and prevent violations of the Connecticut Uniform Securities Act and the regulations thereunder and pay a fine of $2,500.

- Douglas Bremen & Co., Inc.

On May 2, 1988, the department entered into a Stipulation Agreement with Douglas Bremen & Co., Inc. The Stipulation Agreement was prompted by Division claims that, from February through December, 1987, several Douglas Bremen agents had offered and sold securities of Precious Metals Extractions to Connecticut residents. Pursuant to the Stipulation Agreement, Douglas Bremen agreed to accept a letter of censure, modify its supervisory procedures to detect and prevent state securities law violations and pay a fine of $10,000.

- Philip J. Abrams

On May 4, 1988, the department entered into a Stipulation Agreement with Phillip J. Abrams, formerly an agent of Michelin & Company, Inc. Abrams had been the subject of a Notice of Intent to Revoke Registration which was issued by Commissioner Brown on August 12, 1987. The Notice of Intent to Revoke had alleged that from October, 1985 through May, 1986, Abrams had transacted business as an agent of Michelin & Company, Inc. without being registered as such in Connecticut. Under the Stipulation Agreement, Abrams agreed to pay a fine of $100.

- A.F. Green & Co., Inc.

On June 9, 1988, the department entered into a Stipulation Agreement with A.F. Green & Co., Inc., headed by Allen Green and Robert Brand. A Division investigation had revealed that from September 15, 1985 through June 19, 1987, A.F. Green had transacted business as a broker-dealer in Connecticut without being properly registered, and that certain of its agents had likewise failed to register under Connecticut law. Without admitting or denying the Division's allegations, A.F. Green agreed to accept a letter of censure, modify its supervisory procedures to detect and prevent violations of the Connecticut Uniform Securities Act and the regulations thereunder, and pay a fine of $2,500.

- William A. Slone

William A. Slone, formerly an agent of Advest, Inc., executed a Stipulation Agreement with the department on July 11, 1988. A Division investigation had disclosed that, in October, 1987 and while employed by Advest, Slone had deposited his personal funds into a customer's account without obtaining prior written authorization from the firm. While admitting the truth of the Division's factual allegations, but neither admitting nor denying that those allegations constituted regulatory violations, Slone agreed 1) to refrain from participating in profits or losses in customers' accounts without prior written authorization from the customer and the broker-dealer carrying the account, 2) to review and abide by the policies and procedures of any broker-dealer with whom he became registered in Connecticut, 3) to provide the Division, through his employer's compliance officer, with copies of all complaints for a period of two years following execution of the Stipulation Agreement, and 4) to pay the department $2,000 to cover the costs of its investigation.

- Bishop, Rosen & Co., Inc.

On July 14, 1988, the department entered into a Stipulation Agreement with Bishop, Rosen & Co., Inc. of 111 Broadway, New York, New York. Bishop, Rosen & Co., Inc. is headed by Isaac Schlesinger. The Stipulation Agreement was the result of a Division investigation which discovered that, from July 7, 1983 through March 31, 1988, Bishop, Rosen & Co., Inc. transacted business as a broker-dealer in Connecticut absent registration. Pursuant to the Stipulation Agreement, Bishop, Rosen & Co., Inc. agreed to receive a letter of censure, modify its supervisory procedures to detect and prevent violations of the Connecticut Uniform Securities Act and the regulations thereunder and pay a fine of $5,000.

- Consolidated Asset Management

On July 19, 1988, the department entered into a Stipulation Agreement with Consolidated Asset Management of Valley Forge, Pennsylvania. The president of Consolidated Asset Management was Daniel R. Butler. The Stipulation Agreement followed a Division investigation which uncovered transactions in unregistered securities from May, 1983 through February 29, 1988. Under the Agreement, Consolidated Asset Management agreed to review and modify its compliance procedures, abide by regulatory requirements and pay a fine of $2,500 representing unpaid registration fees for the previous five years.

- Herbert Israel

On August 15, 1988, the department entered into a Stipulation Agreement with Herbert Israel of 243 Old Town Farm Road, Woodbury, Connecticut. A Division investigation had uncovered evidence that, on June 3, 1986 and July 24, 1986, Israel sold units in Bedford Limited Partnership to two Connecticut residents, that Israel held himself out as an agent of Forum First Securities, Inc. while employed as an agent of Lowry Financial Planning, Inc., and that Israel was not registered as an agent of Forum First Securities, Inc. at the time of the sales. Under the Stipulation Agreement, Israel consented to refrain for 2 years from associating in any capacity with a broker-dealer and from offering or selling securities and, following that 2 year period, to engage in securities activity only in a non-supervisory capacity.

. Whale Securities

On August 15, 1988, the department executed a Stipulation Agreement with Whale Securities Co., L.P. of 650 Fifth Avenue, New York, New York. The managing director of Whale Securities was Elliot Smith. The Stipulation Agreement was prompted by a Division investigation which revealed that from March, 1988 through June, 1988, Whale Securities employed one Kimberly Porter as an agent while Ms. Porter was not registered as an agent of Whale Securities in Connecticut. Under the Stipulation Agreement, Whale Securities agreed to rescind all Connecticut transactions entered into by Ms. Porter on its behalf, modify its supervisory procedures to ensure compliance with state regulatory requirements, engage an outside expert to prescribe adequate supervisory procedures governing the conduct of its agents and pay the department $1,000 to cover examination costs.

. Kimberly Ann Porter

On August 18, 1988, the department entered into a Stipulation Agreement with Kimberly Ann Porter of New York. From March, 1988 through June, 1988, Porter had allegedly sold securities to Connecticut residents as an agent of Whale Securities without being properly registered. The Stipulation Agreement required that Porter's agent registration be suspended for 21 days commencing on its effective date and that Porter pay a fine of $8,500.

. Graystone Nash, Inc.

On September 28, 1988, the department entered into a Stipulation Agreement with Graystone Nash, Inc. of 329 Belleville Avenue, Bloomfield, New Jersey. The president of Graystone Nash, Inc. was Thomas Vincent Ackerly. The Stipulation Agreement was based on Division allegations that between January 1, 1985 and February, 1987, Graystone Nash, Inc. transacted business as a broker-dealer in Connecticut absent registration and employed unregistered agents. Under the Agreement, Graystone Nash, Inc. agreed to offer rescission to those Connecticut residents to whom it had sold securities during the time it was not registered and to accept a letter of censure, modify its supervisory procedures and pay a $10,000 fine.

. Investors Center, Inc.

On November 2, 1988, the department entered into a Stipulation Agreement with Investors Center, Inc. of 555 Broadhollow Road, Melville, New York. The Stipulation Agreement resulted from a

Division investigation which revealed that between April, 1986 and November 1986, Investors Center, Inc. offered or sold unregistered securities in Connecticut. As part of the Agreement, Investors Center, Inc. agreed to offer rescission to all investors to whom unregistered securities had been sold; modify its supervisory procedures to detect and prevent securities law violations; pay a fine of $5,000; engage an outside securities consultant, within 120 days following its execution of the Agreement, to review the adequacy of its supervisory procedures; and pay the cost of a Division examination of its books and records.

- Drexel Series Trust, Inc.
  DBL Tax-Free Fund, Inc.

On November 2, 1988, the department entered into a Stipulation Agreement with Drexel Series Trust, Inc. and DBL Tax-Free Fund, Inc., both of 60 Broad Street, New York, New York. The Stipulation Agreement was prompted by Division claims of unregistered securities activity. The Stipulation Agreement required compliance with the post-sale registration provisions in the Connecticut Uniform Securities Act and the payment of a $15,000 fine.

- Jane Nize

On December 1, 1988, the department executed a Stipulation Agreement with Jane Nize, president of Investment Bankers and Brokers, Inc. of 630 Oakwood Avenue, West Hartford, Connecticut. Pursuant to the Stipulation Agreement, Nize agreed 1) to refrain from becoming employed in a managerial or supervisory capacity with any broker-dealer or investment adviser for 3 years; and 2) upon becoming registered as a broker-dealer agent, to subject her securities activities to supervision by an on-site registered principal.

- Legg Mason Wood Walker, Inc.

On December 1, 1988, the department entered into a Stipulation Agreement with Legg Mason Wood Walker, Inc. of 111 South Calvert Street, Baltimore, Maryland. The Stipulation Agreement followed a Division investigation which disclosed that Legg Mason had employed an unregistered agent. Pursuant to the Stipulation Agreement, Legg Mason agreed to offer rescission to those Connecticut residents who had purchased securities through the unregistered agent; pay the department $2,500 to cover the cost of its investigation and modify its supervisory procedures to detect and prevent violations of Connecticut's securities laws.

- Bernard Joseph Doherty

On December 6, 1988, the department executed a Stipulation Agreement with Bernard Joseph Doherty of 38 Glen Road, Winchester, Massachusetts. The Stipulation Agreement was predicated on allegations that Doherty had effected a number of securities transactions for Connecticut-based accounts without being properly registered. The Stipulation Agreement required Doherty to pay a fine of $5,000.

CIVIL LITIGATION

- Shearson Lehman Brothers, Inc. v. Brown

On December 16, 1987, Shearson Lehman Brothers, Inc. filed a Petition for Declaratory Judgment in Superior Court for the Judicial District of Hartford/New Britain (Docket No. CV-880339706). The Petition challenged a declaratory ruling issued by the Commissioner on November 25, 1987 concerning the Commissioner's authority to issue investigatory subpoenas pursuant to Section 36-495 of the Connecticut General Statutes (see, Blue Sky L. Rep. (CCH) ¶14,545). In the declaratory ruling, the Commissioner stated that Section 36-495 of the Connecticut General Statutes authorized him, in connection with an investigation, to issue a subpoena requiring production of a list of all margin accounts under the supervision of Edward Robert McGlynn, a Connecticut-registered agent of Shearson working solely out of Shearson's branch office in New York, where compliance with the subpoena could result in the production of records containing information on non-Connecticut customers of Shearson. Shearson is and was registered as a broker-dealer in Connecticut.

Following the filing of the Petition, on January 29, 1988, the Commissioner issued to Edward Robert McGlynn a Notice of Intent to Revoke or Suspend Registration as an Agent. The Notice of Intent to Revoke or Suspend Registration alleged that McGlynn had improperly failed to obtain a signed margin agreement from a Connecticut customer of Shearson to whom McGlynn had sold securities. An administrative hearing on the allegations set forth in the Notice was commenced while the declaratory judgment action was pending. The Superior Court did not reach the merits in the declaratory judgment action since the Petition was withdrawn by Shearson pursuant to a settlement with the Commissioner in January, 1989. Among other things, the settlement provided for an offer of restitution to the Connecticut customer of McGlynn and a withdrawal of the Notice of Intent to Suspend or Revoke Registration issued in connection with the administrative proceeding.

CRIMINAL REFERRALS

- H. Alan Burkett
  AHE Corporation

  On April 19, 1988, Banking Commissioner Howard B. Brown announced that he had referred to the Chief State's Attorney for criminal prosecution a Securities and Business Investments Division case involving an Old Saybrook, Connecticut investment manager who had allegedly engaged in numerous violations of the Connecticut Uniform Securities Act.

  The Commissioner alleged that H. Alan Burkett, chairman of AHE Corporation of Old Saybrook, offered and sold an estimated one million dollars in unregistered limited partnership interests and promissory notes to Connecticut investors. The Commissioner further alleged that since 1981, Burkett had solicited some $3 million from approximately 200 Connecticut residents for the purpose of creating three investment pools which would purportedly trade commodity futures, option contracts or both. Investments in the pools were not registered under Connecticut securities laws and Burkett allegedly failed to make proper disclosures to investors.

  Burkett and AHE Corporation had previously been the subject of an administrative cease and desist order issued by the department on August 18, 1987. The cease and desist order prohibited Burkett and his associates from engaging in further illegal securities activities within or from Connecticut.

  In a companion civil case, the Commissioner joined with the Commodity Futures Trading Commission in seeking a temporary restraining order, preliminary and permanent injunctions and other equitable relief against Burkett and AHE Corporation. The complaint, which was filed in the United States District Court for the District of Connecticut on August 18, 1987 (Docket No. 87-CV-87-370), also sought an accounting, the appointment of a receiver and disgorgement. Disposition of the matter is currently pending.

- Homerica, Inc.
  Energy Enhancement Center, Inc.
  Health Dynamics Center, Inc.

  On May 5, 1988, the Commissioner referred for criminal prosecution a case involving an East Haven, Connecticut couple, the Mascias, and

their corporations. The Commissioner alleged that Rosemary and James Mascia, officers of Energy Enhancement Center, Inc. and Health Dynamics Center, Inc. ("HDC") offered and sold unregistered Homerica, Inc. business opportunities from their East Haven clinic, HDC. The Mascias solicited an estimated $400,000 in unregistered business opportunities from Connecticut residents alone and some $4 million in unregistered business opportunities nationwide during 1985 and 1986. Purchaser-investors each paid $4,000 to purchase the homeopathic remedy business opportunities, with the expectation that they would earn $10,000 in twenty weeks and gross a profit of $6,000 for being shipper-distributors. Eventually, some remedies were found unfit for human consumption and purchaser-investors were left with a supply of tainted homeopathic remedies. The Mascias, Homerica, HDC and Energy Enhancement Center, Inc. had previously been the subject of a November 25, 1986 cease and desist order issued by the department.

BUSINESS OPPORTUNITY - FOR WHOM?*

Both Sides of the Coin

Today, more than 10 million North Americans and Canadians earn income from legitimate franchises and small-business opportunities. The United States Department of Commerce estimates that independent salespeople contribute almost $9 billion annually to the U.S. economy and that franchises alone account for about one-third of all retail sales.

Under the circumstances, the abundance of business opportunities forms a bright montage for would-be entrepreneurs who want the freedom to work on their own and to have more control over their lives than if they were employed by someone else. They can select their field of endeavor from an astonishing array of businesses, ranging from the conventional to the exotic, in places as remote as the wilderness forests of the Northwest to the urban crunch of the largest cities and the comfortable milieu of a small-town Main Street. They can also elect to do business in the privacy of their own home, converting once useless space into a beehive of productive activity.

When these dreams evaporate, as too many do, the failure can often be traced back to a primary cause: the size and nature of the initial investment. Consider the case of Carol and Jerry Holt, who were convinced that they had discovered the formula that would forever solve their financial problems. It all sounded like a clever idea, selling high-quality imitation jewelry under a franchise known as Fabulous Fakes. For $18,000, they were promised, they would receive the necessary display and store fixtures, professional counseling for starting and operating the business, and a substantial inventory of jewelry, which featured a type of imitation diamond called "cubic zirconia."

The Holts were assured that they could not possibly lose any money on the venture because they would get a full return on their investment just through discounts on future purchases to supplement their inventory as the merchandise was sold. Naively accepting these promises at face value, the Holts committed their total savings of $8,000 and convinced Jerry's parents to lend them $10,000 on a "can't-miss" basis.

Their investment purchased franchise rights in Towson, Maryland, convenient to their home. Sure enough, they quickly had a going business and began to sell their stocks of jewelry. Everything went smoothly for three months - until suddenly the requested shipments from the franchiser stopped. This was strange, since the Holts had been sending payments, including, in many cases, deposits from customers who wanted to order items that were out of stock.

Annoyed but not really worried, Jerry phoned Martin Baum, the Fabulous Fakes executive from whom they had purchased the franchise and who had made the promises. Unfortunately, he was "on vacation." A follow-up phone call a week later elicited nothing but the news that Baum was now "out of the country." His assistant or some other accountable person? They were always away too, or ill, or in perpetual conference.

*Excerpted from Investor Alert! How to Protect Your Money From Schemes, Scams, and Frauds (1988). Reprinted by permission of the North American Securities Administrators Association, Inc.

"We never got an answer from anybody," said Carol Holt, describing the frustrations that finally led them to consult with an attorney. They were advised to close the shop before they got into trouble with customers, but by this time there was little business to terminate.

Ten months after he had promised the Holts the moon, Martin Baum was under investigation. He was later found guilty on four counts of fraud and four counts of selling unregistered franchises. Unfortunately for the Holts, they never received one cent of restitution.

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Ten Tips for Prospective Franchisees

The romance, real or imagined, of going into business for oneself has captured the imagination of millions of Americans who are fed up with commuting, bored with nine-to-five office routines, or simply feel that the business has something new and fresh to offer. Unfortunately, the trend has also sparked the ingenuity and inventiveness of con artists who thrive wherever money is involved. The preposterous fact of the matter is that most of these swindlers are simply using variations on schemes that are as old as the Union itself.

To avoid falling victim to the ploys of these con artists, it is critical, above all, that you know your rights. Several states [including Connecticut] have laws that require franchisers to provide prospective purchasers with detailed information. In addition, a Federal Trade Commission rule requires that franchise opportunity promoters provide certain information to help you in your decision. Under the FTC rule, "A franchise or business opportunity seller must give you a detailed disclosure document at least 10 business days before you pay any money or legally commit yourself to a purchase." This document must provide 20 specific items of information about the business, including: the names and addresses of other purchasers, a fully audited financial statement, the credentials of the firm's key executives, the cost required to start and maintain the business, and the responsibilities you and the seller will have to each other once you go into the business.

The following ten tips from the New York State Attorney General's office are intended to help prospective franchise purchasers know what to look for and ask about before making any investment.

1. Make sure the seller of the franchise supplies you with a copy of the prospectus and that you read it carefully.

2. Consult with an attorney, an accountant, or another associate of proven knowledge and experience before paying any money or signing anything. Remember, you will be asked to pay a substantial sum of money, initially and during the course of the franchise relationship, and you will be committing yourself to a potentially long-term business relationship.

3. The experience of others is one of the most effective guides you can use to determine how you would do if you purchased a franchise. The prospectus should disclose the names and addresses of individuals currently operating franchises in the system. Contact them and ask them how their franchises are doing. Visit the franchised premises and observe the volume and type of business being done. Pay attention to the number of franchises terminated during the past three years - an unusually large number may be a sign of danger. If there are no franchises, or very few, you will have no way of discovering from the experiences of others what you will be getting for your money.

4. Examine the financial statements in the prospectus with great care. An accountant or lawyer can analyze them and tell you of the franchiser's financial strengths and weaknesses. If the franchiser is financially weak, consider very carefully before you buy; he may be selling franchises as a way of raising cash just to stay in business.

5. Find out the number of hours and days per week you will be required to remain open and other rules the franchiser may have regarding the operation of the franchise. You may be unwilling or unable to work as many hours or days per week or per year as are required. Find out whether the franchiser has rules concerning closing for illness, death, or vacation; the number of employees you will be required to hire, if any; or anything else. You may find some of these rules too restrictive and burdensome. Some of these rules will be found in the prospectus, while others of a more detailed nature can be determined by questioning the franchise salesperson or broker with whom you are dealing.

6. Study carefully the estimate of initial expenses contained in the prospectus. If the estimate is too low, you may find yourself with insufficient cash to carry on until the business produces a cash flow.

7. In franchising, widespread customer recognition of a trade name is the equivalent of goodwill. An unknown name means that you and each member of the franchise system will have to develop goodwill and recognition. As such, you will not be buying goodwill, which is a leading feature of franchise operations. If the name is unfamiliar to you and your friends, you should ask yourself whether you are getting your money's worth in buying the franchise.

8. Examine the site selection process outlined in the prospectus, as the location of a franchise is very important. A poorly selected site will doom a franchise no matter how attractive its features. Determine what the franchiser will do to assist you in selecting an appropriate site and whether you will be able to change the site if it proves to be unsatisfactory. If the franchiser's participation in the site selection process appears to be perfunctory or if the franchiser offers no assistance, think twice about buying.

9. Training is one of the distinct advantages of franchising. It enables a franchise operator to acquire within a short time the skills an independent operator might take months or years to acquire. If the training described in the prospectus is not sufficiently detailed, ask about it. Also ask existing franchise operators about the training they received.

10. Know the franchise seller. A franchise agreement is only as good as the people behind it, regardless of how good it looks on paper. The prospectus gives certain information concerning the employment background of the principals of the franchiser and their litigation history. Check their employment background to see if they have been employed in franchising or a business related to the franchise being sold. Examine their litigation history. An excessive number of claims against them may mean that they have not been performing their agreements.

Five Warning Signs

Here are five danger signs to look for when you are considering making an investment in a franchise or other small-business venture. They were true in years past and will be just as valid in years to come.

1. High-pressure sales tactics. Be wary of sales pitches, whether from individuals or in ads, that urge you to get in on the ground floor or to act at once. Shady promoters do not want you to take the time to read the small print, talk to others in the business, or visit facilities in person.

2. Promises of exorbitant profits. No honest business is built on quick, astronomical profits. A legitimate promoter will qualify his success stories and make it clear that profits depend on the diligence and capabilities of the individual, not on some surefire sales plan or a product so superior to all others that it cannot miss.

3. Claims of no risk, or minimal risk. Nothing in the world is riskier than going into business for yourself. No franchiser would ever assume the responsibility of underwriting franchisees who failed - unless he needed a huge tax loss. Assurances that "you can't go wrong in this business" are a sure tip that you are being conned.

4. Unjustified start-up fees. If the job involves personal selling, there is no reason you should pay anything but a very modest fee to cover literature, enrollment, and basic training. If products are involved, check out their value and make sure you are not paying outlandish prices, perhaps for inferior goods.

5. Evasive answers and lack of communication. A promoter's failure to provide details and a disclosure statement or to respond directly to inquiries should diminish your enthusiasm for any franchise or business venture. He may be hiding facts that he does not want you to know. Even if he is honest, this kind of weak communication can quickly erode any business in which communication and cooperation are vital.

COMMISSIONER ADDRESSES COMMON JURISDICTIONAL QUESTIONS

Text of Advisory Interpretation

This is in response to your letter of November 30, 1987 wherein you raise several hypothetical questions concerning the scope of Section 36-502 of the Act. Each of those questions will be addressed below. Inasmuch as the answers to jurisdictional questions depend on specific facts and circumstances, please note that my responses are informal only and do not consider specific variables not mentioned in your correspondence.

Your first question sets forth the following facts. An issuer with a place of business in Connecticut offers and sells securities exclusively to residents of another state. Offering materials are prepared in Connecticut, and negotiations concerning the offering occur in Connecticut. Persons in Connecticut communicate with prospective investors who are located outside the state. The question raised is whether registration of the securities involved would be required. (Note that in Connecticut it is the securities concerned rather than the prospectus which is registered under Section 36-485 of the Act).

Section 36-502(a) of the Act provides that "[Section] ... 36-485 ... [applies] to persons who sell or offer to sell when an offer to sell is made in this state...." Section 36-502(c) of the Act explains that "[f]or the purpose of this section, an offer to sell ... is made in this state, whether or not either party is then present in this state, when the offer originates from this state...." (emphasis added) The fact that the offering materials are printed or drafted in Connecticut would not, standing alone, suffice to trigger the registration requirements of Section 36-485 of the Act. Section 36-485 of the Act provides that "[n]o person shall offer or sell any security within this state unless (1) it is registered under this chapter or (2) the security or transaction is exempted under Section 36-490." An offer is necessary to trigger Section 36-485 of the Act. Section 36-471(k)(2) of the Act states that the term "offer" "includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value." (emphasis added) Consequently, the fact that negotiations occur in Connecticut would suffice to trigger the registration requirements of Section 36-485 of the Act. Finally, if persons in Connecticut communicate from this state to investors located in another state and such communication falls within the definition of "offer" contained in Section 36-471(k)(2) of the Act, jurisdiction would attach under Section 36-502(a) of the Act.

Your second hypothetical is similar to the first, with the exception that no communications with prospective investors would be made by persons within Connecticut. In that instance, the fact that negotiations would still be conducted by the issuer in Connecticut would suffice to trigger the registration requirements of Section 36-485 of the Act.

Your third hypothetical sets forth the following facts. An issuer with a place of business in Connecticut receives payments in Connecticut for securities sold exclusively to residents of another state. No preparation of offering materials occurs in Connecticut, and no communications with prospective investors are made by persons within Connecticut. Of course, if securities are sold exclusively to residents of another state from Connecticut, jurisdiction would attach under Section 36-502(a) of the Act. If securities are not sold exclusively to residents of another state from Connecticut, then your question turns exclusively on the weight to be given to the fact that the issuer will receive payments in Connecticut. The mere fact that the issuer receives payments in Connecticut would not appear to trigger the registration requirements of Section 36-485 if there is no other jurisdictional nexus with Connecticut. The tendering of payment by an out-of-state investor could be construed as an offer to buy for purposes of Section 36-502(b) or as an acceptance of the seller's offer to sell under that section. Section 36-502(b) provides that "[s]ections 36-472, 36-474 and 36-493 apply to persons who buy or offer to buy when an offer to buy is made in the state, or when an offer to sell is made and accepted in this state." Section 36-502(c) provides that "[f]or the purpose of this section, an offer to ... buy is made in this state, whether or not either party is then present in this state, when the offer ... is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer." Section 36-502(d) states that "[f]or the purpose of this section, an offer to ... sell is accepted in this state when acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed or any post office in this state in the case of a mailed acceptance." Section 36-502(b), however, does not apply the registration requirements of Section 36-485 to persons who buy or offer to buy. Therefore, if the tender of payment is construed as either an offer to buy or an acceptance of an offer to sell, it alone would not trigger securities registration under Section 36-485 of the Act.

Your fourth hypothetical sets forth the following facts. An issuer with a place of business in Connecticut offers and sells securities exclusively to residents of another state. No preparation of offering materials is done in Connecticut and no negotiations occur in this state. In addition, no communications with prospective investors are made by persons in Connecticut. Assuming that the offer and sale of securities to out-of-state residents is not accomplished from Connecticut, the facts presented in the fourth hypothetical would not appear to trigger the registration requirements of Section 36-485.

Your fifth hypothetical contains the same facts as those in the fourth hypothetical except that the issuer is merely incorporated in Connecticut and has no place of business in this state. The fact that an entity is merely incorporated in this state would not be sufficient, in and of itself, to trigger the registration requirements of Section 36-485.

In your sixth hypothetical you present the following facts. An issuer from another state makes a public offering of securities in that state and a private offering of securities in Connecticut. The private offering is exempt under Connecticut law. You inquire whether registration of the materials used for the public offering would be required under any circumstances. At the outset, please note that under Connecticut law, offering materials themselves are not registered. Second, for purposes of making the requisite filing of a private placement exemption, the public offering materials would not have to be submitted. Of course, if a integration question is involved, this department would most likely require that the public offering materials be submitted.

You also inquire whether the answers to the foregoing would differ if offers and sales were made solely to residents of another country and, if so, the rationale underlying our position. Please note that, once again, the critical question for purposes of securities registration is whether the offer originates from Connecticut. If so, there is nothing in the Act to preclude its application where all offerees are located in a foreign country. The Connecticut Uniform Securities Act was patterned after the Uniform Securities Act of 1956 which was drafted by the National Conference of Commissioners on Uniform State Laws. Section 414 of the Uniform Securities Act parallels Section 36-502 of the Connecticut Act. The Official Comment to Section 414 of the Uniform Securities Act states that "[s]ection 414 defines and delimits the application of the Act in interstate or international transactions with only some of their elements in the state." (emphasis added) Loss, Commentary on the Uniform Securities Act (1976), at p. 158. The rationale for extending Connecticut law to transactions involving foreign offerees is to enable the state to police activities occurring at least partially within its borders and to prevent the state from becoming a haven for wrongdoers. Although I have not researched this issue extensively, there is some precedent for following this position. See, e.g., Int. Op. No. 76/13C, 8 Cal. Corp. Comm. Official Ops. (June 15, 1976) [sale of limited partnership interests to persons in Iran]; "The Conflict of Laws Provisions of the Uniform Securities Act, or When Does a Transaction 'Take Place in this State?' Part I", 31 Okla. L. Rev. 781, 830 (1976), at n. 183.

With respect to your final question, please note that this department does not maintain enforcement statistics based on the location of offerees. Generally, however, the number of cases involving offerees located exclusively in other countries is significantly less than those involving Connecticut offerees and offerees located in other states where Connecticut has a nexus to the transactions.

Howard B. Brown
Banking Commissioner
December 23, 1987

ANNUAL STATISTICAL SUMMARY*

*Compiled as of 12/31/88

SECURITIES REGISTRATION

Registrations by Coordination	2,131
Registrations by Qualification	25
Regulation D Filings	1,974
Mutual Fund Amendments	1,923
Other Exemption Notices	238

BUSINESS OPPORTUNITY REGISTRATION

Business Opportunity Registrations	53

BROKER-DEALERS AND INVESTMENT ADVISERS

Broker-dealer Initial Registrations Processed	292
Investment Adviser Initial Registrations Processed	104
Broker-dealer Agent Initial Registrations Processed	14,654
Broker-dealers Registered as of 12/31/88	1,549
Investment Advisers Registered as of 12/31/88	538
Broker-dealer Agents Registered as of 12/31/88	49,337

ENFORCEMENT

Securities Investigations Opened	245
Securities Investigations Closed	197
Business Opportunity Investigations Opened	21
Business Opportunity Investigations Closed	16
Cease and Desist Orders Issued	
.Securities	2
.Business Opportunities	8
Denial, Suspension and Revocation Notices	5
Consent Orders Executed	17
Stipulations Executed	18
Subpoenas Issued	
.Securities	94
.Business Opportunities	2
Criminal Referrals	3
Referrals to Attorney General	2

RECAP OF 1988 LEGISLATION

The 1988 legislative session was earmarked by several public acts of interest to the securities industry and the investing public. Each public act carried an October 1, 1988 effective date.

a. P.A. 88-208, An Act Concerning the Connecticut Uniform Securities Act. Among the features of this public act were the following:

1. An amendment to the definition of "investment adviser agent" contained in Section 36-471(g) which clarified that an investment adviser agent was an individual and added a compensation element to the definition.

2. An amendment to the definition of "security" in Section 36-471(g) including within the definition interests of limited partners in a limited partnership.

3. An amendment to Section 36-484(a) enabling the Commissioner to deny, suspend or revoke registration based upon a federal bar from association or a self-regulatory organization suspension, expulsion or other sanction.

4. An amendment to Section 36-490(a)(8) removing initial public offerings from the scope of the exchange exemption.

5. An amendment to Section 36-495 permitting the Commissioner to issue subpoenas in Connecticut at the request of another state securities administrator if the activities concerning which the information was sought would constitute a basis for an investigation or proceeding under the Connecticut Uniform Securities Act had the activities occurred in Connecticut.

b. P.A. 88-150, An Act Concerning Fees for Investigating and Processing Applications Filed With the Commissioner of Banking. This public act raised the fee for state filings made pursuant to Regulation D from $25 to $100. In addition, the bill increased the renewal fee for business opportunity registrations from $50 to $100.

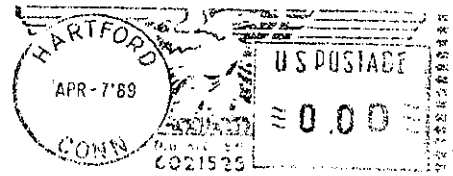
c. P.A. 88-339, An Act Concerning the Connecticut Business Opportunity Investment Act. Features of this public act included the following:

1. Enhanced disclosure with respect to the disclosure document furnished to purchaser-investors, including the nature and types of business in which the seller was engaged over the previous five years. In addition, this public act required that disclosure be made of the total funds, which had to be a sum certain, that the purchaser-investor was required to pay to any specifically named person or any other person known to the seller.

2. A requirement that the registration application include a copy of the table of contents and any operations manual to be provided to purchaser-investors. In addition, Section 36-508 was amended to require that the application contain a sworn statement as to its truthfulness.

3. A requirement that renewals of registration be accompanied by a new application form rather than merely the amendments as prior law had required.

Department of Banking
Securities and Business Investments Division
44 Capitol Avenue
Hartford, CT 06106



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