

F I N A L   R E P O R T

SECURITIES REGULATION STUDY COMMITTEE

January, 1984

The Securities Regulation Study Committee was established by the Legislative Council to hold a public hearing and study the "merit review" process and the funding and staffing of the Securities Division of the Insurance Department.

Members serving on the Study Committee were:

Senator Norman D. Rodgers, Co-chairperson  
Representative Elaine Baxter, Co-chairperson  
Senator C. Joseph Coleman  
Senator Merlin D. Hulse  
Senator Emil J. Husak  
Senator John W. Jensen  
Representative John H. Connors  
Representative Jack Holveck  
Representative Janis I. Torrence  
Representative Mike Van Camp

The Study Committee was initially granted two meeting days. However, the Study Committee petitioned the Legislative Council and received permission to hold a third meeting, if necessary. The Study Committee conducted a public hearing on October 3, 1983. The second meeting was held on November 21, 1983, and the final meeting was held on January 12, 1984.

At the public hearing on October 3, 1983 the Study Committee heard a number of presentations regarding the desirability of reducing the extent of merit review of new securities offerings as was mandated in House File 514. Many speakers called for the reinstatement of the merit review requirements that House File 514 eliminated. There were also mainly speakers who felt that the General Assembly had acted wisely in eliminating the requirements. In addition, some testimony was given regarding the staffing and funding needs of the Securities Division of the Department of Insurance if the merit review revisions adopted in House File 514 are retained. The speakers represented a wide range of perspectives. Copies of the speakers' testimony and other materials presented by them are on file with the Legislative Service Bureau. A summary of the testimony is also in the minutes for the October 3, 1983 meeting. Individuals making presentations were:

Mr. Craig Goettsch, Superintendent of Securities, Iowa Department of Insurance  
Mr. Jamie Wade, Attorney with Davis, Hockenberg, Wine, Brown and Koehn in Des Moines; co-teaches securities regulation law at Drake University College of Law; former Superintendent of

Securities

- Mr. Bill Raisch, Assistant Attorney General of Iowa
- Mr. Phil Boesel, President of R. G. Dickinson; securities underwriter in Des Moines
- Mr. Bruce Burditt, Executive Secretary of the North American Securities Administrators Association, Topeka, Kansas
- Ms. Bonnie Mefford, Corporate Secretary of Positech Corporation, Laurens, Iowa
- Mr. Royce Griffin, Commissioner of Securities in Colorado
- Mr. Timothy H. Vujnich, Attorney with Laskly, Caruthers, Baer and Hamel in St. Louis, Mo.; former Commissioner of Securities in Missouri
- Mr. Richard Malmgren, Commissioner of Securities in Wisconsin
- Mr. Jack Bailey, Director of the Iowa Development Commission
- Mr. Paul Neuhauser, Law Professor at University of Iowa; teaches securities regulation and corporation law at the College of Law
- Mr. Steven Dickinson, Attorney with Belin, Harris, Helmick, and Hearnay in Des Moines
- Mr. Edgar Hansell, Chairperson of the Iowa State Bar Association Committee on Corporation and Business Law
- Mr. Pat Deviny, Attorney in Des Moines, former employee of the securities division
- Mr. Donald Brown, Attorney with Davis, Hockenbergh, Wine, Brown and Koehn in Des Moines; co-teaches securities regulation at Drake University College of Law
- Dr. David Bayne, Law Professor at the University of Iowa College of Law, teaches corporation law

The Study Committee voted to request the Iowa State Bar Association Committee on Corporation and Business Law to attempt to reach a consensus at its November 17, 1983 meeting. The Study Committee agreed to wait until after the Bar Committee's meeting before meeting again.

At the November 21, 1983 meeting, the Study Committee had invited Paul Neuhauser, Craig Goettsch, Jamie Wade and Ed Hansell to be present to be experts and answer the Study Committee's substantive questions. Mr. Hansell reported that the Bar Committee was able to reach a consensus. The Bar Committee's proposal was to develop a bi-furcated system where a registration of a new issue of securities would be exempt from some of the current merit standards if the new issue meets all elements of a ten-pronged test. The Study Committee voted 8-1 to adopt the Bar Committee's proposal and directed the Legislative Service Bureau to work with the Bar Committee.

At the final meeting on January 12, 1984, the Committee approved the bill draft. An amendment was adopted that the bi-furcated system would not apply to registrations of new issues by a person whose principal place of business is outside of Iowa until two years after the effective date of the bill. A copy of the bill is attached to this report.

PROPOSED HOUSE/SENATE FILE \_\_\_\_\_

BY (PROPOSED SECURITIES REGULATION  
STUDY COMMITTEE BILL)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

## A BILL FOR

1 An Act to amend the merit review standards for new issues  
2 of securities under the Iowa blue sky law.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 502.102, subsection 11, Code Supple-  
2 ment 1983, is amended to read as follows:

3 11. "Securities Act of 1933", "Securities Exchange Act  
4 of 1934", "Public Utility Holding Company Act of 1935", "In-  
5 vestment Company Act of 1940", "Internal Revenue Code of 1954"  
6 and "Agricultural Marketing Act" mean the federal statutes  
7 of those names, as amended before January 1, ~~1976~~ 1984.

8 Sec. 2. Section 502.209, Code Supplement 1983, is amended  
9 by adding the following new subsection 2 and renumbering  
10 the remaining subsections:

11 NEW SUBSECTION. 2. a. This subsection does not apply  
12 to the registration of an issue offered by a person whose  
13 principal place of business is outside of this state until  
14 two years from the effective date of this Act. Paragraphs  
15 "f" and "h" of subsection 1 do not apply to the registration  
16 of an issue offered by a person whose principal place of  
17 business is in this state. Paragraphs "f" and "h" of  
18 subsection 1 are void and do not apply to any registrations  
19 after two years from the effective date of this Act.

20 b. Unless paragraph "c" is applicable, the administrator  
21 may issue a stop order denying effectiveness to, or suspending  
22 or revoking the effectiveness of, a registration statement  
23 if the administrator finds that the order is in the public  
24 interest and that any of the following conditions are present:

25 (1) The issuance or sale of the securities is or would  
26 be unfair or inequitable to purchasers.

27 (2) The offering has been or would be made with unreason-  
28 able amounts of underwriters' and sellers' discounts, commis-  
29 sions, or other compensation, or promoters' profits or par-  
30 ticipation, or unreasonable amounts or kinds of options.

31 (3) The financial condition of the issuer affects or would  
32 affect the soundness of the securities.

33 c. The administrator shall not issue a stop order pur-  
34 suant to paragraph "b" if the issuance or sale of a security  
35 meets all of the following requirements at the time the

1 registration statement for the security becomes effective:

2 (1) In the case of an equity security, the price to the  
3 purchaser per share or per each equity interest is five dol-  
4 lars or more.

5 (2) The security is part of an offering which has been  
6 registered with the securities and exchange commission pur-  
7 suant to the Securities Act of 1933 (or any successor statute),  
8 or which has been filed with a regional office of the securi-  
9 ties and exchange commission pursuant to regulation A (rules  
10 251 et. seq.) adopted under the Act and has become effective  
11 pursuant to that regulation.

12 (3) The underwriters have contracted to purchase the  
13 offering on a firm commitment basis.

14 (4) Each of the underwriters of the offering, and each  
15 broker-dealer who will offer the securities in this state,  
16 is a member of a national securities association registered  
17 under the Securities Exchange Act of 1934.

18 (5) The securities are part of a class of securities of  
19 the issuer which is listed with the national association  
20 of securities dealers automated quotations system, or, if  
21 the class is not so listed, the securities are eligible to  
22 be authorized for listing with the system, or the securities  
23 are issued by an issuer whose equity securities are listed  
24 or are eligible to be authorized for listing with the sys-  
25 tem.

26 (6) Immediately upon the completion of the offering, the  
27 issuer shall have all of the following:

28 (a) Total assets of not less than two million dollars.

29 (b) At least three hundred security holders of the  
30 securities being registered.

31 (c) If the security being issued is an equity security,  
32 at least one hundred thousand units of the securities held  
33 by the public, excluding securities held directly or indi-  
34 rectly by officers or directors of the issuer, by the under-  
35 writers, or by persons who beneficially own ten percent or

1 more of the class of securities.

2 (d) Total capital and surplus of at least one million  
3 dollars.

4 (7) An underwriter, or group of underwriters, of twenty-  
5 five percent or more of the offering shall not be, or at the  
6 conclusion of the offering shall not become, an affiliate  
7 of the issuer.

8 (8) The offering is being underwritten by not less than  
9 five underwriters, each of whom has contracted to purchase  
10 for resale at least one hundred thousand dollars of the  
11 securities.

12 (9) The offering is one which qualifies for the exemption  
13 granted by regulation A (rule 251 et. seq.), adopted pursuant  
14 to the Securities Act of 1933, and in respect to the issuer,  
15 managing underwriters, affiliates of the issuer, or an officer,  
16 director or controlling person of a managing underwriter,  
17 would not be excluded by virtue of rule 252(c), (d) or (e)  
18 (or any successor rule).

19 (10) A managing underwriter or officer, director or  
20 controlling person of a managing underwriter is not currently  
21 subject to a state enforcement order or judgment, entered  
22 by the state's securities administrator within five years  
23 prior to the date of effectiveness of the registration  
24 statement, in which fraud or deceit was found, including but  
25 not limited to making untrue statements of material facts  
26 or omitting to state material facts.

27 d. The administrator shall not issue a stop order pursuant  
28 to paragraph "b" if the security is issued by an issuer which  
29 is an investment company registered under the Investment  
30 Company Act of 1940.

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#### EXPLANATION

32 This bill amends the "merit review" provisions of the Iowa  
33 blue sky law.

34 This bill does not apply to the registration of an issue  
35 offered by a person whose principal place of business is

1 outside of Iowa until two years after the effective date of  
2 the bill.

3 The bill establishes a two level test for new issues.  
4 All new issues of securities would be subject to review under  
5 seven merit and substantive criteria. These criteria are  
6 currently in effect. However, if an issuance met each part  
7 of a new ten-pronged test, the issuance would be exempt from  
8 review of three additional merit standards. If the issuance  
9 did not meet each part of the test, it would be subject to  
10 the full array of merit standards. One of the three additional  
11 merit standards that would be applied is currently in the  
12 law and being applied on all new issues. The other two merit  
13 standards were modified or eliminated for some on July 1,  
14 1983.

15 This bill becomes effective July 1 following its enactment.

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