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The Wyoming Uniform Securities Act

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LEGISLATIVE COMMENTS

The 38th Wyoming Legislature enacted several statutes which are expected to be of substantial consequence in Wyoming practice. An analysis of three of these statutes appears below. Upon receiving sufficient requests, the staff of the Review will analyze recent Wyoming legislation. Analysis of legislation will appear in the issues of the Review following the biennial meetings of the Legislature, or whenever discussion of a particular statute is appropriate.

Space limitations prohibit review of all important Wyoming legislation. Therefore, three statutes passed by the 38th Wyoming Legislature have been chosen for discussion. These are the Wyoming Uniform Securities Act (Wyo. Stat. §§17-117.1 through 17-117.29 (Comp. 1965)); The Parental Tort Liability statute (14-5.1 through 14-5.3 (Supp. 1965)), and the Judicial Separation statute (20-47.1 through 20-47.4 (Supp. 1965)).

The discussions in this section compare the new Wyoming legislation with the former Wyoming law, and with similar enactments in other states. Any questions raised by the statutes which could be foreseen by the authors are discussed and, if possible, resolved.

It is hoped that this feature of the LAND AND WATER LAW REVIEW will prove helpful to Wyoming attorneys who may be encountering this body of new and often complex legislation for the first time. Comments concerning the scope or content of the analyses here presented, and suggestions as to legislation which should be discussed in future issues are invited.

THE WYOMING UNIFORM SECURITIES ACT*

INTRODUCTION

Prior to the drafting of the Uniform Securities Act no two states had identical blue sky laws.¹ Nevertheless, the various statutes could be divided into the following categories or combinations thereof: (1) antifraud statutes merely making it unlawful to fraudulently sell securities; (2) statutes

* The Uniform Securities Act, WYO. STAT. § 17-117.1 to -.29 (Comp. 1965).

1. LOSS & COWETT, BLUE SKY LAW 18 (1958) [hereinafter cited as LOSS & COWETT].

requiring the registration, licensing and supervision of broker-dealers engaged in the securities business; and, (3) statutes requiring registration of securities being distributed.² The Uniform Securities Act adopts all three approaches as well as some of the provisions of the Securities Act of 1933 which regulates interstate distribution of securities. During the 1965 legislative session the Wyoming legislature adopted the Uniform Securities Act with very few changes.

PRIMARY DISTRIBUTIONS OF SECURITIES

Because the Wyoming Act prohibits the offer or sale of a security unless a registration statement is in effect, or an exemption is available,³ the most important problem facing the practitioner in securities regulation is to determine when an offer and sale of securities must be registered. The registration requirement is important, first of all, in primary distributions. A primary distribution of securities is the sale of securities by an issuer. In the context of a primary distribution, an issuer is any person (corporation) who issues or proposes to issue a security.⁴ Though the definition of a "security" under the Act is very broad, the sale of corporate stock is the most common type of security offering.⁵

A. Exemptions from Registration. Once the practitioner determines that his client seeks to sell a security he should determine whether a registration statement need be filed inasmuch as it need not be if the security itself, or the transaction in which the sales is to be made, comes within one or more of the exemptions set forth in the statute.

If the security is one issued by the United States or Canada, or any political subdivision thereof, no registration statement need be filed.⁶ The same is true of any security issued by a state bank, national bank or trust company which is authorized to do business in Wyoming;⁷ the same is also true of any security issued by any federal savings and loan

2. LOSS & COWETT 19.

3. WYO. STAT. § 17-117.7 (Comp. 1965).

4. WYO. STAT. § 17-117.13(f) (Comp. 1965).

5. WYO. STAT. § 17-117.13(k) (Comp. 1965). The definition of "security" is identical to the Securities Act of 1933 § 2(1), 15 U.S.C. § 77b(1), except that the Uniform Act adds *full* oil, gas and mineral interests while the Federal Act includes only fractional undivided interests in oil and gas rights.

6. WYO. STAT. § 17-117.14(a) (1), (2) (Comp. 1965).

7. WYO. STAT. § 17-117.14(a) (3) (Comp. 1965).

association or any building and loan or similar association organized under the laws of any state and authorized to do business in Wyoming if the security represents an interest in or debt of such institution or is guaranteed by such institution.⁸ Another important exemption under the Wyoming Act is with respect to securities listed on the New York Stock Exchange, the American Stock Exchange or the midwest stock exchange.⁹ The reason for the exemption with respect to securities listed on the above exchanges is that these securities are already subject to substantial regulation under the Securities Exchange Act of 1934 as well as the rules of each individual stock exchange.

Also significant are the exemptions for certain types of transactions. With regard to these exemptions and the exemptions for commercial paper and certain investment contracts covering pension and profit sharing agreements, it is important to note at the outset that the Secretary of State may, by order, revoke any of these with respect to a *specific security or transaction*.¹⁰ The Act may be deficient, however, because of its failure to specify the grounds upon which such exemptions may be denied or revoked.

The first important transaction exemption is that for transactions between the issuer and underwriters or among underwriters.¹¹ Even when this exemption is not specifically set forth, it has usually been read into state blue sky laws as a matter of necessity in order to enable the issuer to set up preliminary arrangements for the distribution of his securities.¹²

The second important exemption from registration is the exemption for sales to certain institutional buyers and broker-dealers.¹³ The rationale of this exemption is that these persons are sophisticated investors who do not need the protection in terms of disclosure which is provided by a registration statement.¹⁴ While the Act has no identical counter-

8. WYO. STAT. § 17-117.14(a)(4) (Comp. 1965).

9. WYO. STAT. § 17-117.14(a)(7) (Comp. 1965).

10. WYO. STAT. § 17-117.14(c) (Comp. 1965).

11. WYO. STAT. § 17-117.14(b)(4) (Comp. 1965).

12. LOSS & COWETT 364-65.

13. WYO. STAT. § 17-117.14(b)(8) (Comp. 1965).

14. LOSS & COWETT 367-68.

part to the private offering exemption under the Federal Securities Act, the result accomplished by this exemption under the Wyoming Act is similar to the interpretation given the private offering exemption under the Securities Act of 1933 by the United States Supreme Court.¹⁵ When such persons resell, they would have to seek their own exemption and in the typical underwriting made by a broker-dealer the offering of such shares would be a distribution by an issuer rather than a non-issuer since it is being made indirectly for the benefit of the issuer,¹⁶ and a registration statement would have to be in effect covering the distribution.

An important exemption available for the financing of companies in the formative stage under the Wyoming Act is the so-called "limited offer" exemption. If the issuer makes an offer within any twelve month period to no more than fifteen persons within the state, all of whom buy for investment, and if no commission is paid for solicitation of these offers, it need not file a registration statement.¹⁷ The original Uniform Securities Act set the number of offerees at ten, and the drafters stated in their comments that this number was merely a prima facie figure which could be increased or decreased by the state securities administrator in specific cases.¹⁸ However, the Wyoming Legislature did not adopt the draftsmen's suggested approach; therefore, it would appear that the number of fifteen is definitive. Since under the Securities Act of 1933 there is no specific number of offerees which determines the availability of the private offering exemption,¹⁹ there is an inherent uncertainty under the Federal Act which is eliminated by the approach taken by the Wyoming Legislature.

Under the Wyoming Act offers and sales of preorganization subscriptions are exempt from registration.²⁰ The attorney who is organizing a corporation should give careful

15. SEC v. Ralston Purina Co., 346 U.S. 119 (1953).

16. WYO. STAT. § 17-117.13(g) (Comp. 1965).

17. WYO. STAT. § 17-117.14(b)(9) (Comp. 1965).

18. LOSS & COWERT 368-69. For example, the draftsmen assert that the Secretary of State *may* increase the number for a close corporation which wants to solicit a greater number of offers from among friends and relatives of the shareholders.

19. Securities Act of 1933 § 4(2), 15 U.S.C. § 77 d(2) (1964).

20. WYO. STAT. § 17-117.14(b)(10) (Comp. 1965).

consideration to this exemption. In order for this exemption to be available, there can be no more than fifteen subscribers, no payment can be made by any subscriber and no commissions can be paid for their offers.²¹ Once the capital stock is issued after incorporation, normal registration provisions will again come into play unless another exemption is available.

It is also important to note that the Wyoming Act provides an exemption from registration for any securities sold to shareholders pursuant to pre-emptive rights.²² This exemption enables the corporation to secure rapid financing and also facilitates a rights-offering being made by a corporation to its stockholders in several states. Again, no commission can be paid for solicitation. If the Secretary of State wishes to disallow this exemption, he must do so within the next five business days after the issuer has filed a notice of the offer.²³

B. Registration of Securities. If the attorney concludes that his client has no exemption available to him, he must determine the appropriate method of registering the offering as no offer or sale of a security can be made unless a registration statement is in effect or an exemption is available. There are three registration procedures under the Act: (1) Registration by Coordination; (2) Registration by Qualification; and (3) Registration by Notification.

Registration by Coordination. Registration by coordination is limited to offers and sales which are registered under the Securities Act of 1933 or which are being offered pursuant to a conditional exemption from registration under Section 3 (b) or Section 3(c) of that act.²⁴

A registration statement filed under the Securities Act of 1933 includes a prospectus setting forth detailed information relating to the issuer as well as other information pre-

21. LOSS & COWETT 375. The limiting number applies to subscribers rather than to offerees. The reason for there being any limitation at all is to avoid putting a premium on making an offering before incorporation. Under this exemption no money may change hands until after incorporation.

22. WYO. STAT. § 17-117.14(b)(11) (Comp. 1965). If the rights offering is made by transferable warrants, the rights must be exercised within ninety days.

23. WYO. STAT. § 17-117.14(b)(11) (Comp. 1965).

24. WYO. STAT. § 17-117.9(a) (Comp. 1965).

scribed by the appropriate registration form.²⁵ The Wyoming Act requires that under registration by coordination the issuer file two copies of the federal prospectus with the Secretary of State and any other information filed with the SEC and requested by the Secretary of State plus an undertaking to forward all amendments to the federal registration statement to the Secretary of State.²⁶

Once this is done, the Wyoming Act provides for exemptions for offers between the date of filing and the effective date.²⁷ To date, the Secretary of State has not set forth any rules as to how these offers are to be made. Under the Securities Act of 1933, the SEC has adopted rules permitting offers to be made by the use of a tombstone advertisement, a preliminary prospectus, a rule 134 statement or a summary preliminary prospectus, and has set forth in its rules when each of these types of written offers can be used. The "tombstone ad" need not be accompanied by the summary or preliminary prospectus but it must be accompanied by a statement that no sale can be made before the effective date. In no case can the issuer accept an offer or make a valid contract to sell the security until the effective date.²⁸

The Wyoming registration statement becomes effective automatically at the time the federal registration statement becomes effective if: (1) there is no stop order or other proceeding in effect at that time with respect to the securities or the issuer's activities under the Act and; (2) the registration statement has been on file in the office of the Secretary of State for at least ten days; and, (3) a statement of the maximum and minimum proposed offering prices has been

25. For the details of these forms see generally SEC Securities Act Release No. 4351, April 11, 1961, 1 CCH FED. SEC. L. REP. ¶ 76759; SEC Securities Act Release No. 4427, Nov. 14, 1961, 1 CCH FED. SEC. L. REP. ¶ 76804; and SEC Accounting Release No. 81, 1958, 1 CCH FED. SEC. L. REP. ¶ 72103.

26. Pursuant to authority given by WYO. STAT. § 17-117.9(b)(2)-(3) (Comp. 1965), the Secretary of State requires a copy of the articles of incorporation, by-laws, any agreement with or among underwriters and any indenture or other instrument governing the issuance of the security. A specimen copy of the security is required only when the filing under the Securities Act of 1933 was made pursuant to § 3(b) or 3(c) of that Act. Registration statements originally filed under the Securities Act of 1933 and sought to be registered in Wyoming by coordination need contain only the documents specifically called for in section 17-117.9 of the Wyoming Uniform Securities Act. 3 BLUE SKY L. REP. ¶ 53606.

27. WYO. STAT. § 17-117.14(b)(12) (Comp. 1965).

28. SEC Securities Act Release No. 4666, Feb. 7, 1964, 1 CCH FED. SEC. L. REP. ¶ 3855.

on file in the office of the Secretary of State for at least two days.²⁹ At this point a note of caution must be stated. If the Wyoming registration statement is filed after the effective date of the federal registration statement, a question may be raised as to whether the offering covered by the Wyoming registration statement is the same offering as that covered by the federal registration statement.³⁰

The Wyoming Act departs from the Uniform Act in providing that registration by coordination is also available if the issuer is making any offering pursuant to a section 3(b) exemption under the Securities Act of 1933.³¹ The important exemption here is the so-called "Regulation A" exemption. Under this exemption, the aggregate offering price of the securities of the issuer, its predecessors, and all affiliates who have become such within the past two years cannot exceed 300,000 dollars.³² This exemption, among other things, is conditioned upon the filing of both a "Notification" and an "Offering Circular" with the SEC regional office for the region in which the issuer has its principle place of business.³³ The Act fails to prescribe precisely the information to be filed with the Secretary of State, but presumably the prospectus to be filed is the "Offering Circular" filed previously with the SEC. The same effective date rules would apply as apply with respect to an offering registered under the Securities

29. *Loss & COWETT* 294-95. Requiring that the final federal price amendment be actually filed before the state registration becomes effective would make simultaneous effectiveness impossible because of the short interval between the filing of the federal price amendments and the date of federal registration effectiveness.

30. *Loss & COWETT* 290-92.

31. 15 U.S.C. § 77c(b) (1964).

32. Rule 251 defines an affiliate of an issuer as any person (including a corporation) which controls, is controlled by or is under common control with an issuer. This rule defines a predecessor of an issuer as a person from whom the issuer has acquired the major portion of his assets or a person who has acquired the major portion of his assets from the issuer. 1 CCH FED. SEC. L. REP. ¶ 2359. The rule includes, in determining the aggregate amount of all securities, those presently being offered by the issuer, his affiliates and predecessors, and all securities which these persons have sold under the Regulation B conditional exemption for fractional undivided interests in oil and gas rights or under Regulation A during the past year, and all securities sold in violation of the Act during the past year. Regulation A does not include the amounts of securities sold under a valid registration statement. Controlling persons have an exemption hereunder of 100,000 dollars which is figured into the 300,000 dollar total. 1 CCH FED. SEC. L. REP. ¶ 2362.

33. For the details of "notification" and "offering circular" see generally 1 *Loss, SECURITIES REGULATION* 610, 620-25, 633 (2d ed. 1961).

Act of 1933; however, there is no technical effective date as to Regulation A offerings under the Securities Act and, presumably, the counterpart of such effective date is the date upon which all of the conditions of Regulation A have been complied with.

Registration by Notification. Registration by notification is available for securities if the issuer (and its predecessors) have been in operation for five consecutive years, have made no default on any senior security during the previous three years and have average net earnings which meet the statutory specifications.³⁴ As is evident by the requirements this type of registration is generally available only to certain high grade securities.³⁵ Generally, registration by notification does not require the filing of extensive information or financial statements, but the statutory provisions should be consulted as considerably more information is required than the mere filing of a notice of an intention to make an offering. Under registration by notification, the registration statement becomes effective automatically at one o'clock standard time on the second full business day after the filing of the registration statement or the last amendment thereof. It may, however, become effective earlier if the Secretary of State so determines.³⁶

Registration by Qualification. Registration by qualification is available to any security and must be used when no exemption is available and neither of the other types of registration is appropriate or available.³⁷ As a practical matter, this type of registration will be used presumably only in the residual cases in which there are no exemptions under the act, the issuer is not eligible to register by notification and the securities are not registered under the Securities Act of 1933 or have not qualified for a Regulation A exemption. For the most part, such state registration will involve securities being offered by an issuer pursuant to the section 3(a)-(11) exemption under the Securities Act of 1933 for intrastate offerings.³⁸ This section of the Wyoming Act was made

34. WYO. STAT. § 17-117.8 (Comp. 1965).

35. LOSS & COWETT 284-87.

36. WYO. STAT. § 17-117.8(c) (Comp. 1965).

37. WYO. STAT. § 17-117.10 (Comp. 1965).

38. 15 U.S.C. 77c(a)(11) (1964).

very specific in order to facilitate the adoption of a uniform registration form and to keep the rule-making power of the Secretary of State to a minimum;³⁹ however, the Secretary does have the authority to reduce the content of the registration statement and to adopt different forms for different types of issuers.⁴⁰

The basic form of the registration statement is modeled after form S-1 used in registration statements under the Securities Act of 1933⁴¹ except that financial statements do not have to be certified and fewer exhibits are required.⁴² Thus the same general information is required in a registration statement under registration by qualification pursuant to the Wyoming Act as is required in a registration statement used under the Securities Act of 1933. The registration statement becomes effective when the Secretary of State so orders.⁴³

It is important for an issuer registering by qualification to note that, pursuant to his rule making power, the Secretary of State has adopted a rule which requires a prospectus containing the information required by Wyo. Stat. section 17-117.10(b)(1) through Wyo. Stat. section 17-117.10(b)(11) (Comp. 1965) to be sent to each person to whom an offer is made before or concurrently with the following: (a) the first *written* offer made to him other than a public advertisement for the account of the issuer or any other person on whose behalf the offer is being made, or by an underwriter or broker-dealer offering an unsold allotment taken as a participant in the distribution; (b) the confirmation of any sale made by or for the account of any such person; (c) payment pursuant to any such sale, or (d) delivery of the security pursuant to any such sale, *whichever occurs first*.⁴⁴

Powers of the Secretary with Respect to Registration. The Secretary of State has three extremely important powers with respect to registration of which the practitioners should be aware. These are his powers to require that certain securi-

39. LOSS & COWETT 304.

40. WYO. STAT. § 17-117.24(a) (Comp. 1965).

41. 15 U.S.C. § 77aa (1964).

42. WYO. STAT. § 17-117.10(b) (Comp. 1965).

43. WYO. STAT. § 17-117.10(c) (Comp. 1965).

44. 3 BLUE SKY L. REP. ¶ 53607.

ties be escrowed, the power to impound proceeds, and to issue stop-orders against registration statements.

The Secretary of State has the power to require that any security, issued within the past three years or to be issued to a promoter for consideration different from the public offering price or to be issued to any person for any consideration other than cash, be deposited in escrow. He also has the power to require that the proceeds from the sale of a registered security be impounded until the issuer receives a specified amount from the sale of the security in the state or elsewhere.⁴⁵

The Secretary has the power to issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds that such an order is in the public interest and that the registration statement is incomplete in any material respect or contains any statement which is false or misleading with respect to any material fact.⁴⁶

He may also issue a stop order to deny the effectiveness, revoke or suspend the effectiveness, of the registration statement for the other grounds specified by the act.⁴⁷ However, before such a stop order can be entered, the Secretary must give notice, an opportunity for hearing, and subsequently findings of fact and conclusions of law, to the applicant or registrant, the issuer and the person on whose behalf the securities are to be or have been offered.⁴⁸

SECONDARY DISTRIBUTIONS

It is important to note that secondary distributions do not deal with the situation in which the issuer, *e.g.*, a corporation, is offering its own securities. Secondary distributions involve sales of securities not allotted to the original issuance of securities by an issuer.⁴⁹

The important definition in the area of secondary distributions is "non-issuer."⁵⁰ A "non-issuer" is any person who sells securities neither directly nor indirectly for the

45. WYO. STAT. § 17-117.11(g) (Comp. 1965).

46. WYO. STAT. § 17-117.12(a)(1), (2)(A) (Comp. 1965).

47. WYO. STAT. § 17-117.12(a)(2)(B)-(I).

48. WYO. STAT. § 17-117.12(c) (Comp. 1965).

49. WYO. STAT. § 17-117.13(g) (Comp. 1965).

50. *Ibid.*

benefit of the issuer. Thus, the non-issuer is not acting as an underwriter in connection with an offering by an issuer.

The Wyoming Act, following the scheme of the Uniform Act, prohibits the offer or sales of any securities by any person unless: (1) a registration statement covering those securities is in effect, or (2) an exemption from registration covering the securities themselves or the transaction(s) in which they are sold is available.⁵¹ Thus John Doe cannot sell even one share of the securities of XYZ corporation unless there is an exemption available or a registration statement in effect. However, registration for non-issuer transactions is simplified.

A. Exemptions. There are a number of important exemptions available to the non-issuer who wishes to trade in securities when no registration statement is in effect. Of these, the most important is the one dealing with isolated non-issuer transactions.⁵² These are sales between a non-issuer and others not acting for the issuer. The sale may be effected through a broker-dealer who has purchased for his own account rather than acting as agent for the seller.⁵³ This exemption will not cover distributions of a substantial block of stock over a protracted length of time.

Another important exemption available to the non-issuer is the exemption for a sale effected through a registered broker-dealer without solicitation of the other side of the transaction.⁵⁴ This exemption is similar to the broker's exemption under section 4(4) of the Securities Act of 1933.⁵⁵ However, the Wyoming exemption covers the entire transaction, *i.e.*, the sale by the non-issuer and the resale by the broker, while the exemption under the federal act only covers the broker's part of the transaction. Also, under the Wyoming Act the broker-dealer may act either as agent or principal in connection with the transaction whereas under the Securities Act of 1933 the broker-dealer must act as the seller's agent.⁵⁶

51. WYO. STAT. § 17-117.7 (Comp. 1965).

52. WYO. STAT. § 17-117.14(b)(1) (Comp. 1965).

53. *Ibid.*

54. WYO. STAT. § 17-117.14(b)(3) (Comp. 1965).

55. 15 U.S.C. § 77d(4) (1964).

56. *Ibid.*; WYO. STAT. § 17-117.14(b)(3) (Comp. 1965).

Also available to the non-issuer is the exemption for sales to not over fifteen persons in the state during any twelve month period where the seller (the non-issuer) reasonably believes that all the buyers are buying for investment (not resale) and no commission is paid for solicitation of any of the offers.⁵⁷ For example, this exemption allows the non-issuer to make sales to a few of his friends or a sale to a few persons when he needs to convert stock to cash to pay some bills or taxes without the need of any registration statement being in effect.

Several other exemptions are also available to the non-issuer. If the non-issuer is trading in securities meeting a specified disclosure or quality test,⁵⁸ or securities listed on a specified stock exchange,⁵⁹ or other securities qualifying for exemption under the Act,⁶⁰ no registration statement need be in effect covering those securities.

B. Registration of Secondary Distributions. If no exemption is available either for the securities or for the transaction in which they are sold, a registration statement must be in effect covering sales of such securities. If a registration statement has been filed by the issuer or by another non-issuer, the non-issuer may sell securities of the same class covered by the statement for his own account during the time the registration statement remains in effect.⁶¹ A registration statement remains in effect after becoming effective for one year or for any longer period during which the outstanding securities of the same class are being distributed in a non-exempt transaction.⁶² During this period of effec-

57. WYO. STAT. § 17-117.14(b) (9) (Comp. 1965). A person who buys for investment purposes may later decide to sell, but the shorter the period between purchase and sale, the harder it will be to show an investment intent. Also, the section does not require a written statement from each buyer representing that he is taking for investment purposes only, but such action on the part of the seller would be prudent. LOSS & COWETT 368-69.

58. WYO. STAT. § 17-117.14(b) (2) (Comp. 1965). The security meets the disclosure test if a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer dated within the last eighteen months and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operation. The quality test is met if the security has fixed maturity, interest, or dividend provisions and there has been no default during the current or the three preceding fiscal years, or during the existence of the issuer.

59. WYO. STAT. § 17-117.14(a) (7) (Comp. 1965).

60. WYO. STAT. § 17-117.14 (Comp. 1965).

61. WYO. STAT. § 17-117.11(i) (Comp. 1965).

62. *Ibid.*

tiveness, the non-issuer can trade in these securities for his own account without filing a registration statement covering his sales and without an exemption from registration being available.⁶³

Assuming that no exemption exists and there is no registration statement in effect, the non-issuer, if he desires to sell the security, will have to file a registration statement. The non-issuer may file a registration statement since the Wyoming Act provides that a statement may be "the issuer . . . or any other person on whose behalf the offering is made"⁶⁴ The effective period and coverage of this registration statement is the same as any other.

The non-issuer has an election as to which type of registration procedure he will use. He may use registration by qualification or registration by notification if the security will meet notification requirements. Since a registration statement under the Securities Act of 1933 must be filed by an issuer, the non-issuer could utilize the registration by coordination procedure only if a registration statement filed by the issuer has become effective under the Securities Act of 1933.

A special provision with respect to non-issuer registration should be noted.

A non-issuer may register a security by notification even though the security does not meet the statutory requirements for notification⁶⁵ if the security has ever been registered under the Wyoming Uniform Securities Act or its predecessor act, or if the security was originally *exempt* from registration under the Wyoming Uniform Securities Act or its predecessor, if he files a balance sheet of the issuer dated within four months prior to filing of the registration statement and a summary of earnings for each of the two fiscal years preceding the date of the balance sheet, or for the period of the issuer's existence if less than two years, in addition to his registration statement.⁶⁶ Also, a non-issuer is not required to disclose

63. *Ibid.*

64. WYO. STAT. § 17-117.11(a) (Comp. 1965). See also WYO. STAT. § 17-117.7 (Comp. 1965).

65. WYO. STAT. § 17-117.8(a)(1) (Comp. 1965).

66. WYO. STAT. § 17-117.8(a)(2), (b)(6) (Comp. 1965). For other requirements of non-issuer registration by notification see generally WYO. STAT. § 17-117.8(b) (Comp. 1965).

information unknown to him if it cannot be discovered without unreasonable effort or expense.⁶⁷

REGISTRATION OF BROKER-DEALERS AND AGENTS

Of less importance in terms of the number of times the practitioner will face the problem is the registration of broker-dealers. However, the provisions regarding their registration encompass a major part of the approach of the Act in regulating persons who deal in securities as a business.

The Wyoming Act defines a broker-dealer as any person engaged in the business of effecting transactions in securities for the account of others or for his own account.⁶⁸ The Act does not require that the purchase or sale of securities be his principal business; however, the phrase does connote a regularity of participation which distinguishes between the person who is classified as a broker-dealer and the person who infrequently buys and sells securities for his own investment.⁶⁹

The most important exception to the definition of broker-dealer is that an issuer selling his own securities is not a broker-dealer and therefore, does not have to file a registration statement as a broker-dealer.⁷⁰

Registration of a broker-dealer is accomplished by filing a form supplied by the Secretary of State accompanied by the prescribed filing fees.⁷¹ Since the registration statement remains in effect for only one year, annual renewal is required.⁷²

A registered broker-dealer cannot employ anyone to act as his agent unless the agent has also registered or is an officer, partner or director of the registered broker-dealer.⁷³

67. WYO. STAT. § 17-117.11(f) (Comp. 1965).

68. WYO. STAT. § 17-117.13(c) (Comp. 1965).

69. 2 LOSS, SECURITIES REGULATION 1295 (2d ed. 1961).

70. WYO. STAT. § 17-117.13(c)(2) (Comp. 1965). An issuer does not have to register as a broker-dealer. However, if an issuer sells its securities through an agent, the agent must register unless exempted from WYO. STAT. § 17-117.13(b) (Comp. 1965). For a discussion of this problem see generally LOSS & COWETT 336.

71. 3 BLUE SKY L. REP. ¶ 53603; WYO. STAT. § 17-117.4(b) (Comp. 1965).

72. WYO. STAT. § 17-117.3(c) (Comp. 1965).

73. WYO. STAT. § 17-117.3(b) (Comp. 1965); § 17-117.4(a) (Comp. 1965). The reason for this being that the application for broker-dealer registration requires disclosure of the qualifications and business history of its officers, partners and directors and there is no need to have the same information filed twice. LOSS & COWETT 261-62.

Whenever an agent shifts employment from one broker-dealer or issuer to another, the former employer, the agent and the new employer must all notify the Secretary of State.⁷⁴ A registered broker-dealer is required to post a surety bond in amounts up to 10,000 dollars unless the Secretary of State agrees to accept an appropriate deposit of cash in lieu thereof.⁷⁵

Every registered broker-dealer must keep such records as the Secretary of State may require, and such records must be kept for three years except with respect to those records for which the Secretary of State provides otherwise.⁷⁶

The Secretary of State has broad powers to deny, revoke or suspend the registration of a broker-dealer.⁷⁷ The most important grounds are: when it is in the public interest⁷⁸ and when the broker-dealer is not qualified on the basis of experience, training, and knowledge of the securities business.⁷⁹ The Secretary of State may proceed against a broker-dealer firm if one of its officers, partners, directors or controlling persons does not meet the requisite qualifications.⁸⁰ Also, the Secretary of State may, by rule, provide for the examination of broker-dealer personnel.⁸¹

ADMINISTRATION OF THE ACT

The Secretary of State is authorized to make public and private investigations,⁸² subpoena witnesses,⁸³ and compel them to testify.⁸⁴ A broad rule making power is also given to the Secretary of State as well as the power to define terms, provide forms and require financial statements.⁸⁵ The Secretary of State and his employees are prohibited from using any of the non-public information filed or obtained under this Act for their own benefit, but this provision does not

74. LOSS & COWETT 257.

75. WYO. STAT. § 17-117.4(e) (Comp. 1965).

76. WYO. STAT. § 17-117.5(a) (Comp. 1965).

77. WYO. STAT. § 17-117.6 (Comp. 1965).

78. WYO. STAT. § 17-117.6(a) (1) (Comp. 1965).

79. WYO. STAT. § 17-117.6(a) (2) (I) (Comp. 1965).

80. LOSS & COWETT 272-74.

81. WYO. STAT. § 17-117.6(b) (4) (Comp. 1965).

82. WYO. STAT. § 17-117.19(a) (Comp. 1965). Such investigations may be made in anticipations of violations of the act or administrative rules under it.

83. WYO. STAT. § 17-117.19(b) (Comp. 1965).

84. WYO. STAT. § 17-117.19(d) (Comp. 1965).

85. WYO. STAT. § 17-117.24(a), (c) (Comp. 1965).

prohibit disclosure between the Secretary of State and his employees nor, when necessary or appropriate, in administrative proceedings and investigations.⁸⁶ It is unlawful to make misleading filings and neither the fact that an application has been filed nor that a person or security is effectively registered constitutes a finding by the Secretary of State that the registration statement is complete and not misleading.⁸⁷

The Secretary of State is also given authority to refer evidence to the Attorney General to be used in a criminal prosecution⁸⁸ or the Secretary of State may bring suit himself for an injunction.⁸⁹ The Act also provides for civil liabilities against a seller or an aider and abettor who violates certain registration or fraud provisions of the Act.⁹⁰

CONCLUSION

The Wyoming Act adopts the three distinct types of regulatory devices for the regulation of securities, (anti-fraud, registration of broker-dealers and registration of the security itself). The act places the greatest emphasis on registration of securities and registration of broker-dealers, but because of the small number of broker-dealers in Wyoming, registration of the security issue itself is of greatest significance to the Wyoming practitioner. As set forth above, registration of securities is accomplished by three methods: (1) coordination, (2) qualification and (3) notification. The Act simplifies registration of a security in the procedure for registration by notification and for registration by a non-issuer without sacrificing its basic premise of achieving adequate disclosure and control. The procedure for registration by coordination greatly simplifies the task of the practitioner in preparing registration for an issue that will be made under both the Wyoming Act and the Securities Act of 1933.

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86. WYO. STAT. § 17-117.18(b) (Comp. 1965).

87. WYO. STAT. § 17-117.17 (Comp. 1965).

88. WYO. STAT. § 17-117.21(b) (Comp. 1965).

89. WYO. STAT. § 17-117.20 (Comp. 1965).

90. WYO. STAT. § 17-117.22(a), (b) (Comp. 1965).