

notes cannot be automatically rolled over or renewed.

Opinion of Alabama Securities Commission forwarded to CCH, dated 8-9-76.

[¶ 7553]

Order recognizing Chicago Board Options Exchange, Pacific Stock Exchange and Philadelphia Stock Exchange pursuant to Section 37(g) of the Alabama Securities Act. [Repealed eff. January 1, 1991.]

[¶ 7554]

[Opinion letter—Pooled income trust for charity.] The Alabama Securities Commission has instructed the Commission staff to prepare a “no action letter” relating to the proposed offer of units in a pooled income fund trust by * * * [a medical research-connected] * * * Foundation. Based on the facts and representations contained in the materials submitted by you and others, the staff will not recommend that the Commission take any action if the * * * Foundation establishes and maintains a pooled income fund trust.

Our position is conditioned upon each prospective donor receiving written disclosures which fully and fairly describe the operation of the * * * Foundation's pooled trust. In this connection the staff would like to make it clear that in our view the anti-fraud provisions of the Alabama Securities Act are applicable to sales of units in the proposed pooled income fund trust.

While the staff does not necessarily agree with your legal counsel's interpretation of the exemption provided by Title 53, Section 37(h) *Code of Alabama 1940*, as amended, or his view that no “sale” for “value” occurs, the foregoing staff positions are based on recognition of the fact that the primary purpose of persons who transfer property to the * * * Foundation's pooled income trust is to make a gift to a charity. These considerations make registration under the Alabama Securities Act appear unnecessary in these circumstances.

The Commission also considers as unnecessary the registration and concomitant passage of the testing requirements of Section 29 for the person who is to offer these units to residents of Alabama. However, this position is conditioned upon filing with this office the name, age, residence, employment history, etc. of the person who will offer these units in Alabama. I have enclosed herewith a salesman registration form

which should be completed and returned to this office.

May 17, 1977

THOMAS L. KREBS, Director

[¶ 7555]

Guidelines for eleemosynary financing. The Commission frequently receives inquiries regarding the proper procedure for the offer or sale of securities of religious education, or charitable institutions and organizations. As an effort to guide persons who wish to offer such securities to the public this guideline is prepared.

Section 30 [see Section 8-6-4, Code of Alabama, 1975] of the Alabama Securities Act provides that:

“It is unlawful for any person to offer or sell any security in this state unless (1) it is registered under this chapter or (2) the security is exempt from registration under Section 37 [see Section 8-6-10, Code of Alabama, 1975], or the transaction is exempt under Section 38 [see Section 8-6-11, Code of Alabama, 1975].”

Section 37 [see Section 8-6-10, Code of Alabama, 1975] of the Act provides that the following securities are exempt from Sections 30 through 35 [8-6-4—8-6-9].

“(h) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purposes . . .”

This section means that full registration as required by Sections 30 through 35 [8-6-4—8-6-9] of the Act is not required. This does not mean however that an offeror of securities falling within the exemption provided by Section 37 [see Section 8-6-10, Code of Alabama, 1975] does not have specific responsibilities in terms of compliance with the Alabama Securities Act.

Section 28 [see Section 8-6-17, Code of Alabama, 1975] of the Act provides that:

“It is unlawful for any person in connection with the offer, sale or purchase of any security, directly or indirectly:

(1) to employ any device, scheme or artifice to defraud.

(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

(3) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.”

This section then requires that full disclosure be made to an individual who is a potential purchaser of a security offered pursuant to the exemption provided by Section 37(h) [see Section 8-6-10, Code of Alabama, 1975].

Section 36(b) [see Section 8-6-2(2), Code of Alabama, 1975] of the Act defines the term "Salesman" to mean:

"... any individual other than a dealer who represents a dealer or issuer in effecting or attempting to effect purchases or sales of securities, ..."

Section 29(a) [see Section 8-6-3(a), Code of Alabama, 1975] provides:

"It is unlawful for any person to transact business in this state as a dealer or salesman unless he is registered under this chapter ..."

Organizations contemplating the issuance of securities are encouraged to consult legal counsel about the application of the aforementioned statutory sections to their specific circumstances.

Thus, a strict reading of the Alabama Securities Act requires that any person who wishes to offer or sell securities of an organization whose securities are exempted under Section 37(h) [see Section 8-6-10(8), Code of Alabama, 1975] must either be a registered representative of a licensed securities dealer, or alternately must file for registration as a salesman pursuant to Section 29 [see Section 8-6-3, Code of Alabama, 1975] of the Alabama Securities Act. Any person who sells church or other eleemosynary institutional securities without compliance with those provisions would be liable under both the civil and criminal sections of the Act.

However, a strict reading of the Act may tend to work an undue hardship on those eleemosynary institutions desirous of raising capital. Therefore, pursuant to the rule making power contained in Section 47(e) of the Alabama Securities Act [see Section 8-6-23, Code of Alabama, 1975], the Commission will waive the testing requirements of applicants for a securities salesman license,

provided, however, that the following requirements are fully satisfied:

(1) A filing with the Commission which meets the requirements set out in the "Offering Circular Instructions" and,

(2) the submission of a draft of the Offering Circular proposed to be used in connection with the offering and;

(3) the submission of a registration form for those individuals who are to solicit investor funds on behalf of the eleemosynary institution, and;

(4) such other requirements as the Alabama Securities Commission may from time to time adopt.

In order to assist your organization's compliance with the provisions of this Act, we suggest the following procedure:

(1) Prepare a letter to the Commission stating that your organization wishes to sell securities, and claim the exemption under Section 37(h) [see Section 8-6-10, Code of Alabama, 1975] citing such facts that may be required to prove the existence of the exemption. This letter should address itself to both the nonprofit aspect of the operation of the organization and the basis for its claimed exemption, e.g., establishing that it is a religious or other eleemosynary organization. The letter should be signed by the highest officer of the organization. If your organization wishes to register its salesmen and not use a broker-dealer, it should request a registration form to Section 29 [see Section 8-6-3, Code of Alabama, 1975] for certain specified individuals. Attached to this letter should be the name of each of the individuals, his home address, his business address, his home and business phone numbers. Please indicate as to each of the individuals whether they have been, or are now, registered securities agents in the State of Alabama or whether they have been subject to any previous order by any administrative agency or by the Commission. The letter should state that no direct or indirect compensation will be paid or given to the salesmen for offering or selling such securities. If these conditions are met, the Commission will, after the salesman passes an examination, grant the request for registration of the organization's salesmen.

(2) Enclose with the letter the following documents:

A. The organization's articles of incorporation, and any amendments thereto. If you cannot locate the articles of incorporation, a copy may be obtained from the local county judge of probate.

B. A copy of the latest nonprofit corporation annual report.

C. A draft copy of the security. It is recommended that the securities not be printed until approval has been secured. Please label the security submitted with the words "specimen" or "void."

D. A copy of any proposed agreement or proposed form of agreement or of any agreement with a securities dealer, underwriter, or financing organization. (If there is or will be none, so state in letter of transmittal.)

E. A copy of the preliminary or definitive indenture and/or trust agreement, if any.

F. Copies of all advertising to be used in connection with the offering.

(3) Enclose with the letter two draft copies of the prospectus, prepared in accordance with the following instructions. It is recommended that the prospectus not be reproduced in large numbers until approval is obtained. A sample prospectus is enclosed with these guidelines. A prospectus may be reproduced in any legible fashion. It need not be printed, nor need it be reproduced on glossy paper.

OFFERING CIRCULAR INSTRUCTIONS

The prospectus may be reproduced in any legible fashion. It should generally provide the information listed below. Variations will, of course, be appropriate in some cases. The information listed below, and illustrated in the sample prospectus, is not intended to be all-inclusive. The goal, in each case, must be to make meaningful, fair, and full disclosure of all material information about the issuer and the offering, so that the prospective investor may make an investment decision based on all relevant information. If the issuer seeks to issue stock, it should also obtain a copy of the Commission's Prospectus Instructions to guide its preparation of a prospectus or offering circular.

Cover Page

The cover page should state:

- (1) Name of issuer.
- (2) Principal business address.
- (3) Name of security.
- (4) Description of security (maturity, interest rate, secured status).
- (5) Aggregate amount of offering with a footnote that the amount is proceeds before expenses of offering, and the estimated amount of the expenses.

(6) Date of prospectus.

(7) Name, address and telephone number of trustee.

(8) Name, address and telephone number of paying agent.

(9) Name, address, and telephone number of any underwriters or broker-dealers assisting with the offering and of the local representative of the broker-dealers or underwriters.

(10) The cover page should contain a statement to the following effect:

THESE SECURITIES ARE OFFERED PURSUANT TO A CLAIM OF EXEMPTION FROM REGISTRATION UNDER SECTION 37(h) [see Section 8-6-10, Code of Alabama, 1975] OF THE ALABAMA SECURITIES ACT AND SECTION 3(a)(4) OF THE SECURITIES ACT OF 1933. A REGISTRATION STATEMENT RELATING TO THESE SECURITIES HAS NOT BEEN FILED WITH THE ALABAMA SECURITIES COMMISSION OR WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION. NEITHER THE ALABAMA SECURITIES COMMISSION NOR THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION HAS PASSED UPON THE VALUE OF THESE SECURITIES, MADE ANY RECOMMENDATIONS AS TO THEIR PURCHASE, APPROVED OR DISAPPROVED THE OFFERING, OR PASSED UPON THE ADEQUACY OR ACCURACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

In the REMAINING PAGES of the prospectus, using the following capitalized headings, there should be set out under each heading in narrative or story form all pertinent information pertaining to the issuer under that heading, adding any information not requested here in these instructions and omitting any items called for under the heading in the instructions if that item does not apply.

History and Operations

- (1) Location and date of formation.
- (2) Location of principal business office.
- (3) General development of the history of the church or other organization.
- (4) A brief summary stating the background and experience of the minister, or principal officer of the organization.
- (5) A list of other key officers should be included.

Risk Factors

Include statements describing the risks in purchasing these securities. Statements should be made in light of the financial information concerning the organization of church. (Statements to the effect that little or no risk is involved in buying church bonds will be regarded as material misrepresentation. Further, comparison to other investments solely on the basis of the interest return paid will be considered misleading, unless other comparative aspects of these investments are also described.) The lack of a market in which to resell the securities should be set forth in this section. Any factors which may affect the ability of the organization to complete the offering, acquisition, development, or construction program, or payment of interest on principal, such as the energy crisis, shortages of materials, changing economic patterns of the community, or population change should be set forth.

Impoundment of Proceeds

Set out here any provisions relating to the impoundment of proceeds.

Use of Proceeds

- (1) Itemize statement showing the precise planned use of the proceeds.
- (2) If additional funds may be needed to accomplish the stated purpose, this should be stated, along with an explanation of how such funds will be obtained.

Compensation to Officers, Directors and Other Persons

- (1) Set out all compensation to be received directly or indirectly by any person affiliated with the organization from the proceeds of this offering.
- (2) Set out salaries of all officers, directors and any other compensation direct or indirect.
- (3) Set out any past history of financial transactions between the issuer and the dealer or financing organization and any known or contemplated future transactions.

Complete Financial Statements

Complete financial statements for the past three years should be included consisting of:

- (1) Statement of assets and liabilities (balance sheet).
- (2) Statement of revenues and expenses (income statement).
- (3) Obligation or previous church bond or other security issues.

(4) When appropriate, statement as to any material change in financial condition since the date of the latest balance sheet.

(5) A membership profile for the past three years (include where applicable number of pledging units).

The most recent financial statements should be as of a date no more than sixty days prior to filing. The financial statements must be prepared in accordance with generally accepted accounting principles.

Indicate the policy of the issuer with respect to frequency and scope of reports and certified statements to be given security holders, together with the date of issuer's fiscal year end.

Description of Property

(1) Statement describing present physical property of organization (size of building, real estate, etc.).

(2) Statement describing proposed new construction or purchases.

(3) Statement of mortgaged property valuation.

(4) If property is purchased with proceeds of this offering, state from whom purchase is made, terms of purchase and date of purchase agreement.

Description of Securities

(1) Statement describing type and denominations of securities, and setting forth the interest rate, where applicable.

(2) Statement of security.

(a) If security for the issuer is in part real estate, the cost and appraised value of such property should be stated. Likewise, a statement should be made concerning whether the sale of additional bonds may be authorized with same underlying security.

(b) If guarantees of payment are made by affiliated organizations or otherwise, information describing the ability of that organization to guarantee should be furnished including financials. The word "guarantee" should not be used to describe the obligation of the issuer to pay, and is appropriate only if there is a second obligation by another entity. A guarantee in and of itself involves the offering of a second security which may require registration.

(3) Optional redemption provisions.

Statement describing any option held to redeem securities.

(4) Maturity schedule.

(a) Set forth a complete pay-out and maturity schedule.

(b) A schedule or chart showing the amount of return to be received if interest is reinvested should be omitted unless there are *specific* provisions for reinvesting interest received.

(5) Sinking funds.

Sinking funds should be described. Include a schedule of payments into sinking fund.

(6) Interest payments.

Set forth interest payments dates and paying agent(s).

Any Additional Information That Is Pertinent

The following special guidelines apply when securities are to be sold to persons other than present members of the eleemosynary organization who reside in the same general community as the issuer. The term "present member" will include members of the immediate family of present members who reside in the same household as the present members.

(1) Debt service should not exceed fifty percent of church income.

(2) Financing plan should provide for total redemption at maturity.

(3) The interest rate should be fixed and not variable at the option of the investor.

(4) There must be no provisions for payment of interest only out of designated funds.

(5) Securities other than very small offerings should be secured by a trust indenture pledging moneys or properties to secure the securities. The securities shall constitute a lien on pledged properties.

(6) The trust indenture should provide for a corporation trustee, independent of the issuer of the securities and a corporation paying agent, independent of the issuer of the securities. It should afford the usual contractual agreements concerning the issuance of the securities, insurance coverage, maintenance of the properties, and rights of the security holders.

(7) The trust indenture must provide for regular payments to the paying agent sufficient to service the debt and retire the principal by maturity.

(8) The paying agent must immediately report to the trustee and the Alabama Securities Commission any default in payments into the sinking fund.