
News from Attorney General Robert Abrams

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FOR YOUR IMMEDIATE ATTENTION

P R E S S A D V I S O R Y

DATE: THURSDAY, -APRIL 28, 1983

TIME: 10:00 A.M.

PLACE: Room 24-13
 Two World Trade Center
 New York, New York

Attorney General Robert Abrams today announced that he will conduct a public hearing to look into the nature and extent of "boiler room" abuses and to examine legislation he has proposed to strengthen the capacity of law enforcement agencies in the state to investigate and prosecute illegal boiler room operators.

Boiler room is a term used to describe an investment fraud operation, usually run from an impressive Wall Street address, and characterized by the placing of thousands of unsolicited phone calls to unsuspecting individuals, urging them to sink their money into various glamorous-sounding investments.

The scheduled witnesses include six persons who were victimized by boiler rooms, law enforcement personnel who

(more)

investigate and prosecute boiler room frauds, and two former boiler-room salespeople, who will appear anonymously and masked.

The hearings will focus on (1) the extent and nature of boiler room activity in the State of New York and the impact of such activity upon the victims; (2) specific methods used by boiler room salespersons and operators in the sale of investments in securities and commodities; (3) whether the Attorney General's proposed legislation would lower the cost and time needed to investigate alleged boiler room activities; and (4) whether additional registration and examination requirements should be required of those who sell investments within or from New York State. The bills are described fully in the attached hearing notice.

Attorney General Abrams will be joined in chairing the hearings by the bills' sponsors Senator Joseph L. Bruno (R-C, Troy), Chairman of the Senate Consumer Protection Committee and Assemblyman Ivan C. Lafayette (D-Queens).

NOTICE OF HEARING

Attorney General Robert Abrams will conduct a public hearing to examine the nature and extent of "boiler room" abuses and to examine legislation he has proposed which would strengthen the ability of New York State law enforcement agencies to investigate and prosecute boiler room operators. The public hearing will be held on Thursday, April 28, 1983 in the World Trade Center, Room 24-13 in New York City. Attorney General Abrams will be joined at the hearing by State Senator Joseph L. Bruno (R-C, Troy), Chairman of the Senate Consumer Protection Committee and Senate sponsor of this legislation, and by Assemblyman Ivan C. Lafayette (D-Queens), the legislation's sponsor in the Assembly.

BACKGROUND

Attorney General Robert Abrams has become increasingly concerned with illegal commodities boiler rooms located in New York State which prey upon victims both in this state and across the nation. Often investors are victimized because they do not understand enough about investment and investment fraud to distinguish between boiler rooms and legitimate firms. When people lose their investments, which frequently represent hard earned dollars or the savings of a lifetime, great personal trauma occurs. Physical side effects, particularly among the elderly, are not uncommon. Testimony before the Senate Permanent Committee on Investigations in February 1982, indicated that in this field hundreds of millions of dollars are stolen annually, and tens of millions by boiler rooms located in New York.

Only vigorous criminal prosecution of principals and sales personnel will provide an adequate deterrent, civil relief such as injunctions and cease and desist orders, is in most cases inadequate. Attorney General Robert Abrams has initiated major criminal prosecutions of boiler rooms using innovative undercover operations and other covert techniques. For example, the Department of Law prosecuted and convicted the Mineral Resources Corporation, a New York boiler room operation, and twenty-nine of its sales personnel for fraudulently selling tantalum, a strategic metal, as an investment.

One million four hundred thousand dollars had been invested by the public in a four-month period in 1981. The operation was just getting into high gear when thirty-one arrests were made by the state police, and indictments obtained. Pre-trial hearings and the trial itself lasted over six months.

The experience gained in the Mineral Resources matter and similar cases has resulted in the proposal of these bills, collectively known as the "boiler room package." Enactment of this package will enable the Attorney General, and other state prosecutors, to combat this crime more quickly and economically while establishing greater deterrent capability.

The package consists of seven bills. Some involve new and unique methods of regulation. Others increase existing penalties for fraudulent activities. Still others are additions or amendments to procedural aspects of prosecution. The following is a brief synopsis of the proposed bills.

ISSUES TO BE COVERED

1. "Prohibited sales practices" made a felony
(S. 4188) A. 4064

This bill would specifically prohibit boiler room sales by promoters and would impose stiff felony penalties against those who violate the prohibition.

This bill adds a new § 352-cc to the General Business Law relating to the sale of securities and commodities by what is commonly referred to as boiler room methods. Specifically, the techniques used in a boiler room operation are made "prohibited sales practices," and a boiler room operation is defined as the sale of securities and commodities by the use of unsolicited telephone calls by two or more persons from any location unless such persons are members, or are employed by a person who is a member, of a securities exchange registered with the Securities and Exchange Commission (SEC) or of a commodities exchange designated as a contract market by the Commodity Futures Trading Commission (CFTC) or of the National Association of Securities Dealers (NASD).

The bill makes any person who sells securities, commodities and other investments by a prohibited sales practice guilty of a Class E felony. Additionally, the bill provides that any person who promotes the sale of securities, commodities and other investments by an enterprise engaged in a prohibited sales practice by knowingly managing, supervising, controlling, or owning such enterprise is guilty of a Class D felony.

2. Registration of those engaged in sale of commodities to the public
(S. 4186/A. 4062)

This bill would amend General Business Law § 359-e by (1) requiring the registration with the Department of Law of dealers, brokers, salespersons or investment advisors in the commodities field in the same manner as those engaged in the securities area, unless already registered with the federal regulatory agency; i.e., the CFTC; (2) providing the Attorney General with the power to promulgate and enforce rules regarding the information required on the registration statements, the procedures for filing and the fees required to be paid; and (3) imposing a felony sanction for failing to register as required.

3. Testing of securities salespersons as a condition to registration (S. 4187/A. 4065)

This bill would amend General Business Law § 359-e 3(b) by authorizing the Attorney General to issue rules and regulations requiring as a condition of registration of salespersons that the applicant pass a written examination as evidence of knowledge of the securities business and laws.

This bill is designed to keep persons with little or no expertise in New York's securities laws from selling securities to the public. Although most securities salespersons in New York State are examined by self-regulatory bodies as to their knowledge of securities, they are not required to be examined concerning the relevant New York law. New York is one of only a few states that requires no examination. Those salespersons who are not employed by New York Stock Exchange members or NASD members presently need take no written test at all, and it is those salespersons who are most likely to be engaged in boiler room activity.

4. Joinder of defendants for indictment and trial of crimes arising out of Martin Act violations (S. 4089/A. 4061)

This bill amends the General Business Law by adding a new § 358-a to authorize the joinder of defendants in the same indictment or other accusatory instrument arising out of a Martin Act violation. Joinder would be permitted when all defendants are alleged to have participated in the same act or series of transactions, even if each defendant is not charged in each count.

As fraudulent securities and commodities schemes become more pervasive and sophisticated, as in boiler room situations, they often involve many participants, all engaged in a series of similar acts or transactions. By permitting joinder of defendants in such actions, this bill would economize on judicial and prosecutorial resources. Inconvenience to witnesses and public authorities will be diminished by the prompt, unified trial of those accused in promulgation of Rule 8(b) of the Federal Rules of Criminal Procedure upon which this bill is predicated.

5. Increase scheme-to-defraud in the first degree Class D felony (S. 1978/A. 5712)

This bill amends Penal Law § 190.65 by raising from a Class E felony to a Class D felony the crime of scheme-to-defraud in the first degree. This bill would facilitate the prosecution of organized criminal enterprises, such as boiler room operations, while strengthening the deterrent effect of the law.

6. Increase scheme-to-defraud by two or more persons to Class D felony (S. 1979/A. 5072)

This bill would amend Penal Law, §§ 190.60 and 190.65 by changing the present levels of the offense of scheme-to-defraud from first and second degree to second and third degree respectively and adding a new § 190.70 for scheme-to-defraud in the first degree.

The proposed new § 190.70 defines scheme-to-defraud in the first degree as when two or more persons engage in a systematic ongoing course of conduct with intent to defraud ten

or more persons by false or fraudulent pretenses, representations or promises and they then obtain property from one or more such persons. The proposed section requires that the identity of at least one person from whom the defendants obtained property be proved. This crime would be classified as a Class D felony.

7. Use of wiretaps in scheme-to-defraud and Martin Act fraud cases (S. 1981-A/A. 3457)

This bill amends Criminal Procedure Law § 700.05(8), to include as a "designated offense" for which an eavesdropping warrant may be issued two additional categories of crimes: scheme-to-defraud and fraud in the sale of securities and commodities.

Attorney General Abrams, Senator Bruno and Assemblyman Lafayette will invite interested persons to testify on the specifics of these bills. In particular, the hearing will examine and determine: (1) the extent and nature of boiler room activity within and from the State of New York and the impact of such activity upon the victims; (2) specific methods used by boiler room salespersons and operators in the sale of investments in securities and commodities; (3) whether these bills will significantly eliminate costly and time consuming investigation into these activities; and (4) whether additional registration and examination requirements are required of those who sell investments within or from New York State.

TIME, PLACE, FORMAT & FILING REQUIREMENTS

The hearing will commence at 10 a.m. on Thursday, April 28, in Hearing Room 24-13, Two World Trade Center, New York, New York.

To enable as many speakers as possible to address the issues, and to permit time for questioning by the hearing panel, oral presentations will be limited to ten minutes for each speaker. However, witnesses and other members of the public are encouraged to submit additional written testimony which will be accepted for a period of thirty days following the hearings.

Because of the anticipated number of witnesses, it may not be possible to accommodate all persons wishing to speak, although every effort will be made to do so. Requests to make an oral presentation should be submitted no later than April 19. Those selected to speak will be so advised approximately one week prior to the hearing.

The following information should be included with any written submission:

1. Name of organization, group or individual.
2. Name of proposed speaker.
3. Address and telephone number.
4. Points to be addressed.

Please submit twenty copies of any prepared statement at the hearing registration desk. If possible, please prefile one copy of any prepared statement prior to the hearing date. Requests to speak at the hearing, written submissions and requests for additional information, including requests for copies of the proposed legislation, should be addressed to:

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