

ADVISING YOUR CLIENT ON SECURITIES PROBLEMS

ADDRESS OF

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Messrs. Chairmen, members of the Taxation and the Corporation, Banking and Business Law Sections of the Oklahoma Bar Association, and guests, it is indeed a pleasure for me to enter my appearance here at your fifty-second annual meeting in this the fiftieth anniversary year of Oklahoma's admission to Statehood. Although this is the first occasion I have had to visit in Oklahoma since becoming General Counsel of the Securities and Exchange Commission, I have flown over your great state a number of times, and in so doing, have often wished for an opportunity such as this to stop and meet and exchange ideas with Oklahoma lawyers. You can therefore appreciate how pleased I was to receive the invitation of your Sections through your colleague, Graham Loving, Jr., to come and talk with you about some practical problems facing private practitioners in advising clients on securities problems. 1/

Too many people, both lay and professional, erroneously assume that the business of advising a client on securities law problems requires that the private practitioner have a special competence in the field of securities regulation. Similarly, many lawyers inexperienced in this area are convinced that it is not in their client's best interests for them to approach the administrative body unless their expertise matches that of the members of the Commission or its staff. In my opinion, you have nothing to fear on either score. As the senior partner of my former firm in New Haven advised me on my first day, the shortest route to the answer to a legal problem in most cases is to look at the governing statute and the rules or regulations thereunder. Such counsel is particularly appropriate in rendering advice on a securities law problem.

My talk will cover briefly a few of the situations in which the average general practitioner may have occasion to consider the federal securities laws. I could not, in a short talk, possibly cover all the six statutes and part of a seventh which are administered by the SEC; 2/

1/ The Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private publication by any of its employees. The views expressed herein are those of the author, and do not necessarily reflect the views of the Commission or of the author's colleagues upon the staff of the Commission.

2/ Securities Act of 1933; Securities Exchange Act of 1934; Public Utility Holding Company Act of 1935; Trust Indenture Act of 1939; Investment Company Act of 1940; Investment Advisers Act of 1940; and Chapter X of the Bankruptcy Act.

nor would this serve any real purpose here, since many of the provisions of these statutes are of importance only to lawyers who represent clients engaged in some aspect of the securities industry; and they, I am sure, are fully conversant with the statutes. Those of you, therefore, who are experts in the field will, I hope, bear with me if I seem to dwell on matters which, to you, are elementary, but a discussion of which might be of assistance to the lawyer who has only an occasional contact with these topics.

At the outset, I would like to correct a widely-held misapprehension as to the function of our agency. Many lawyers who have never dealt with the SEC labor under the impression that we are merely some sort of special police force solely intent on detecting and punishing violators of the securities laws, believing that anyone issuing or trading in securities is ipso facto suspect. While we are ever alert to protect the investing public from securities frauds, our functions are not so restricted. We, at the SEC, recognize that the American capitalistic system is largely dependent upon the participation by millions of our citizens in the industrial progress of the nation. We conceive it as our function to encourage the spread of industrial ownership to large and wide-spread segments of the population. And we believe that the federal securities laws were intended to facilitate the honest distribution of this ownership with a minimum of interference with the legitimate expansion of our capital markets.

The private practitioner, therefore, who has occasion to consult with us should not look upon the SEC as merely another potential adversary, as one whose opinions on particular matters will be given grudgingly or antagonistically, but as a responsible administrative body ready and willing to assist him in the resolution of his client's problem. If your impression has been otherwise, then you will indeed be surprised when you consult us to receive both a cordial reception and an earnest desire to be of service to you. It is my sincere belief that you can better represent your client by proceeding on this assumption. So come and talk his problems over with us.

The statutes and rules administered by the Commission deal with relatively complex matters; and although the Commission has recently exerted every effort to simplify its own rules insofar as it is practicable to do so, a clear grasp of the statutes and rules may, at times, be a little difficult for the lawyer not versed in securities regulation. Indeed, there are times when even the specialists and the SEC lawyers themselves struggle with interpretative problems presented in novel cases. It may astonish you to learn that even after twenty-two years of administering the Securities Act of 1933, we are still occasionally confronted with an unique question as to what is or is not a "security".

Not long ago we obtained a consent decree in connection with the sale of certain types of mortgage notes. 3/ Recently a group of food dealers associations submitted a brief to the Commission contending that merchandise trading stamps should be held to be securities. And there is presently pending before the Court of Appeals for the District of Columbia Circuit a case raising the question, inter alia, whether the so-called variable annuity contract (an instrument pursuant to the terms of which the investor is paid over an indefinite period of time an amount based upon the investment experience of a common stock fund) is an investment contract, and thus a security within the statutory definition of the term. 4/

Since Oklahoma contains some of the nation's largest deposits of oil and gas, you -- as Oklahoma lawyers -- should be particularly interested in the effect of federal securities regulation on the development of this great natural resource. Although a panel discussion of the problems involved in buying and selling oil properties is scheduled immediately following this joint meeting, before leaving the topic of what is a "security", perhaps I should touch on the statutory definition as it relates to oil and gas properties.

Established oil and gas companies ordinarily issue the conventional types of securities. But as many of you know, the typical exploratory company begins its operations by leasing oil and gas rights in an area it considers favorable for the discovery of these minerals. In general, the lessee company promises to pay the lessor a stated rental per acre for every year in which a well is not drilled and a stated percentage (usually one-eighth) of the oil and gas produced and sold. This landowner's "royalty interest" commonly finds its way into the hands of the public in lots of fractional undivided portions after having been transferred to banks as collateral for loans or after having been sold to oil royalty dealers. The lessee usually divides its "working interest" into fractional undivided interests which it sells to raise working capital. And occasionally it may give an interest in its leases to a drilling contractor who in turn may sell all or a part thereof to finance the drilling.

I am sure that you are well aware that the precise nature of these royalty and working interests has been, and most likely still is, the subject of considerable controversy both in and out of the courts. Insofar as the federal securities laws are concerned, however, it is irrelevant whether within a particular jurisdiction or set of circumstances, these interests are considered realty or personality, or whether they must be conveyed by deed or contract, because the Securities Act definition of

3/ SEC v. Mortgage Clubs, Inc. (D.C.D. Mass., Civil Action No. 57-385-W).

4/ SEC and NASD, Inc. v. Variable Annuity Life Insurance Company of America and Equity Annuity Life Insurance Company (C.A.D.C., Not Yet Docketed).

"security" includes any "fractional undivided interest in oil, gas, or other mineral rights." 5/

Since a "fractional undivided interest" cannot exist in the absence of the fractional undivided element, where the whole royalty interest or the whole working interest is sold, ordinarily no security is involved. However, there are circumstances in which the sale of the entire royalty or the entire working interest may involve a security within the scope of another part of the statutory definition. The leading case on this point is SEC v. Joiner Leasing Corporation. 6/

Joiner, an oil prospector, organized a corporation which acquired oil and gas leases in a Texas tract. To finance the drilling of a well, instruments purporting to be assignments of leaseholds in specific portions of the tract were offered to the public. No disclosure was made of the location of the tract, and the purchasers generally had no choice as to the location of the land covered by their leases. The sales literature represented that a test well was being drilled and was clearly designed to create the impression that the purchasers would earn a profit through the efforts of Joiner in bringing in oil. In holding that a security was involved, the Supreme Court said: 7/

It is clear that an economic interest in this well-drilling undertaking was what brought into being the instruments that defendants were selling and gave to the instruments most of their value and all of their lure. The trading in these documents had all the evils inherent in the securities transactions which it was the aim of the Securities Act to end.

It is urged that because the definition mentions "fractional undivided interest in oil, gas or other mineral rights," it excludes sales of leasehold subdivisions by

5/ Section 2(1) of the Securities Act of 1933 defines "security" as "any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a 'security', or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing."

6/ 320 U.S. 344 (1943).

7/ 320 U.S. 349, 352-353.

parcels. Oil and gas rights posed a difficult problem to the legislative draftsman. Such rights were notorious subjects of speculation and fraud, but leases and assignments were also indispensable instruments of legitimate oil exploration and production. To include leases and assignments by name might easily burden the oil industry by controls that were designed only for the traffic in securities. This was avoided by including specifically only that form of splitting up of mineral interests which had been most utilized for speculative purposes. We do not think the draftsmen thereby immunized other forms of contracts and offerings which are proved as matter of fact to answer to such descriptive terms as "investment contracts" and "securities."

Nor can we agree with the court below that defendants' offerings were beyond the scope of the Act because they offered leases and assignments which under Texas law conveyed interests in real estate. In applying acts of this general purpose, the courts have not been guided by the nature of the assets back of a particular document or offering. The test rather is what character the instrument is given in commerce by the terms of the offer, the plan of distribution, and the economic inducements held out to the prospect. ***

When you are confronted with the question of whether a particular oil or gas interest or other instrument is or is not a security, the Commission's staff is available to assist you in its solution, as it is ready and willing to help you resolve all of your securities problems--not because of any legal requirement to do so, but as a matter of sound administrative policy. The Commission believes that persons affected by the statutes and rules it administers should be assisted in understanding them and their application in particular cases. It is also motivated, in part, by the fact that such assistance is an important factor in obtaining compliance with the law.

There is no fixed requirement as to the method of seeking interpretative or other service. Inquiry may be made by letter, telephone, or personal visit. Many, if not most, inquiries can be handled by the nearest SEC regional or branch office. 8/ Matters which these offices do not handle will be referred by them to the headquarters office in Washington.

8/ Regional offices are maintained in Atlanta, Boston, Chicago, Denver, the District of Columbia, Fort Worth, New York City, San Francisco and Seattle. Branch offices are located in Cleveland, Detroit, Los Angeles, St. Paul and Salt Lake City. Oklahoma is located in the Fort Worth Region. Inquiries should be addressed to O.H. Allred, Regional Administrator, Securities and Exchange Commission, 301 United States Courthouse, 10th & Lamar Sts., Fort Worth 2, Texas.

Direct inquiry, of course, may be made of the headquarters office. 9/ There, each division of the Commission has lawyers whose duty it is to render assistance to private practitioners on the statutes and rules for whose administration their particular division is responsible. Novel and unusually difficult questions of interpretation are referred by them to the Office of the General Counsel.

To encourage affected persons and their lawyers to discuss their problems freely, the Commission's policy is to treat their inquiries and the staff's responses thereto as non-public. Consequently, no correspondence or memoranda dealing with interpretative matters are placed in the Commission's public files. 10/

Both Commission and staff interpretations concerning questions of general importance are sometimes published for the information of the industry and the bar generally. On these occasions, however, names and other identifying data are omitted if there is objection to their publication. Such administrative interpretations, however, should not be confused with the decisions rendered by the Commission in administrative proceedings of a quasi-judicial nature. The Commission's findings and opinions in these proceedings are, of course, matters of public record and are always published.

Although interpretations rendered by staff lawyers are just that-- and nothing more--they do represent the considered judgment of responsible officials familiar with the particular statute or rule involved. The answers to most inquiries are found in either the language of the statute or rule or in court decisions. In such instances, the task of the staff lawyer is relatively simple, i.e., simply explaining the particular statute or rule and calling attention to the court decisions construing the same. There are, of course, many instances where the applicability of a statute or rule in particular circumstances has not been settled and may be the subject of a reasonable amount of dispute. The staff's opinion, or for that matter the Commission's, is not binding as a matter of law. 11/ Hence private practitioners who receive what they regard as favorable interpretations from the Commission or its staff must realize that such interpretations may not be binding in any private litigation which might arise out of the particular transactions:

9/ 425 Second Street, Washington 25, D.C.

10/ Moreover, the Commission has been successful in resisting subpoenas seeking the production of this non-public material. For example, in Pergaments v. Frazer (Unreported, S.D.N.Y., Civil Action No. M8-85, May 5, 1950), Judge Medina quashed a subpoena duces tecum demanding copies of interpretative letters on certain stabilization questions.

11/ Although an administrative agency's consistent interpretations of the statutes it administers are entitled to great weight in the courts (See United States v. American Trucking Assn's., Inc., 310 U.S. 534, 549 (1940)), and with regard to its own rules, are entitled to even greater weight (See Bowles v. Seminole Rock & Sand Co., 325 U.S. 410, 414 (1941)), their ultimate construction is, of course, for the courts.

The Hoover Commission has described this interpretative assistance rendered by SEC lawyers as "an excellent practice***most effectively used." 12/

Another common misapprehension among general practitioners needs correction. There is a widespread belief that the sale or distribution of securities is not subject to federal jurisdiction unless it is of national importance involving large sums of money. Nothing could be farther from the truth. If at any point in the offer or sale of a security, there is any use of the mails or of the facilities of interstate commerce (and it is almost inconceivable in this modern day that such use can be avoided), the Securities Act of 1933 comes into play. A single fraudulent sale of a single share of stock violates the Act, 13/ And even in the absence of fraud, any offering to the public, in any amount, is subject to the registration requirements of the Act, 14/ unless one of the statutory exemptions is available. 15/

Moreover, when we speak of a public offering, we do not mean that it necessarily must be made to the entire world. The Ninth Circuit Court of Appeals has aptly pointed out that "an offering of securities to all red-headed men, to all residents of Chicago or San Francisco, to all existing stockholders of the General Motors Corporation * * * is no less 'public' in every realistic sense of the word, than an unrestricted offering to the world at large." 16/ The Supreme Court has laid down an even stricter test. It recently held that whether the number of offerees is few or many, if they are persons who do not have access to the information which registration would give them, the offering is a public one. Consequently, even an offering restricted to key employees of the issuer may be a public offering. 17/

12/ United States Commission on Organization of the Executive Branch of the Government, Report on Legal Services and Procedures (March, 1955) 67.

13/ See Section 17.

14/ Section 5.

15/ See Sections 3(a), 3(b) and the Commission's regulations thereunder, and Section 4.

16/ SEC v. Sunbeam Gold Mines, 95 F. 2d 699 (1938).

17/ SEC v. Ralston Purina Company, 346 U.S. 119 (1953).

There have been many attempts to evade the registration requirements of the Act, but the Commission has insisted that if the net result of a particular transaction is a public distribution, no technical device can change the basic nature of the offering. Very recently the Commission rendered a decision in which it made clear that one may not separate the parts of a series of related transactions and attempt to establish that one part is a private transaction if the whole involves a public offering. In that case, a company issued debentures immediately convertible into stock. The debentures were sold as a private placement, but the purchaser converted them into stock and sold the stock widely. 18/

Let us assume, now, that a client, who has a small but growing business, consults you on the possibility of raising new capital by offering securities to the public. You will no doubt consider the applicability of the securities laws of Oklahoma. I shall not discuss these requirements except to point out that in no way do the federal securities laws supplant or obviate compliance with them or any other state laws. But you should recognize at once that the federal laws must also be considered.

There are, of course, a number of exceptions from the registration requirements of the Securities Act of 1933, most of which would not be applicable to the ordinary situation. But there are a couple I should mention. One is the so-called intra-state exemption. 19/ This provision exempts from the registration requirements any security which is part of an issue sold only to persons resident in the state wherein the issuer is incorporated and does a substantial part of its business. I think I should make it clear to you, however, that there are certain risks involved in relying on this exemption. First of all, the issuer must be certain that all of the purchasers intend to take the securities without a view to re-sell them to non-residents. If, within a short period of time, one or more of the purchasers should re-sell so that the entire offering does not come to rest in the hands of residents, the exemption would be destroyed. The exemption is available only if all of the issue is sold to residents. If a single share is sold to a non-resident, the entire exemption is lost and all of the sales, including those made to residents, become unlawful. The sale to the non-resident might even be inadvertent, and thus probably not warrant criminal action; but if the value of the stock should decline, all

18/ Crowell-Collier Publishing Co., Securities Act Release No. 3825.

19/ See Section 3(a)(11).

who participated in the offering would be subject to civil liability at the suit of all the investors. 20/

Recently the Commission was presented with an interesting interpretative question involving the proposed sale of oil and gas interests in reliance on the intrastate exemption. The issuer was incorporated in Ohio where it had its principal office, but was engaged in the business of acquiring oil leases in other states and selling fractional undivided interests in these leases to Ohio residents. The Commission was of the view that the intrastate exemption was not available to the corporation because it was not offering interests in an Ohio business but in out-of-state ventures. The purchasers were acquiring no interest in the Ohio corporation but in leaseholds the underlying property of which were located without the state. This opinion of the Commission merely reflects its traditional conception that the intrastate exemption is available only for issues which in reality represent local financing by local industries.

If the amount of capital needed by your client is less than \$300,000, he might be well advised to take advantage of a special exemption promulgated by the Commission pursuant to Congressional authority 21/ primarily as an aid to small business. 22/ This promulgation, known as Regulation A, provides an exemption from registration for offerings not exceeding \$300,000 in any one year. I hasten to add that this exemption is not an automatic one. It becomes operative only after certain information, including a notification and an offering circular, is filed with the appropriate regional office of the Commission and upon the performance of certain conditions imposed by the Regulation. I think you will find that the information needed is not unreasonable nor the requirements onerous. Your client should have no difficulty supplying you with the data for preparing the filing.

If the capital needed is in excess of \$300,000, then a full registration statement must be filed. In general, the registration forms call for disclosure of information such as (1) a description of the registrant's properties and business, (2) a description of the significant provisions of the security to be offered for sale and its

20/ Section 12(1).

21/ Section 3(b).

22/ Regulation A of the Commission's Rules and Regulations under the Securities Act of 1933.

relationship to the registrant's other capital securities, (3) information as to the management of the registrant, and (4) certified financial statements. To facilitate the registration of securities by different types of issuing companies, the Commission has prepared special registration forms which vary in their disclosure requirements so as to provide maximum disclosure of the essential facts pertinent in a given type of case while at the same time minimizing the burden and expense of compliance with the law. For example, the Commission has a special Form §-10 for issuers of oil or gas rights. Obviously the information required for such a filing is far different from that for a manufacturing company.

If the securities your client proposes to offer are oil, gas or other mineral rights, and the aggregate amount of the proposed offering is not in excess of \$100,000, then you will wish to consider the Commission's Regulation B. 23/ In substance, this Regulation provides a conditional exemption from registration for small issues of land-owner's royalty interests, overriding royalty interests, working interests, and oil and gas payments. Certain conditions must be met in order to obtain the exemption. Among these are that: (1) four copies of an offering sheet prepared according to an appropriate schedule described in the Regulation must be filed with the Commission prior to the proposed offering; (2) a copy of this offering sheet must be delivered to each purchaser at the time of the initial offer to sell any interest for which the exemption is sought; and (3) each sale must be reported to the Commission not later than fifteen days after the making of each contract therefor.

In addition, the Regulation provides that the purchaser is entitled to demand and receive satisfactory evidence of title to the interest purchased, and it is obligatory upon the person making the sale to deliver to the purchaser such satisfactory evidence of title prior to the making of any contract of sale with and prior to the payment of any part of the consideration by the purchaser.

One of the most difficult problems in regulating oil and gas royalty transactions has arisen in connection with the use of estimations of recoverable oil which, in too many instances, have grossly exaggerated the amount of oil underlying the tract. In attempting to solve this particular problem, the Commission has provided (in Regulation B) that an estimation of recoverable oil or gas may or may not be included in the offering sheet at the option of the offeror. But if such an estimation of the amount of oil or gas recoverable from a specific tract, or from any other tract for comparative purposes, is used, it must be made a part of the offering sheet. Otherwise, the exemption is not available.

23/ Regulation B of the Commission's Rules and Regulations under the Securities Act of 1933. This Regulation was promulgated pursuant to the authority conferred upon the Commission in Section 3(b) of the Act.

The use of misleading estimations of recoverable oil is a practice which can not be condoned. Realizing this, the Commission's staff has accumulated a considerable amount of data on various oil properties for the purpose of aiding it in determining whether a particular estimation is complete, accurate and not misleading. If it is found to be deficient in any material respect, the proper action -- suspension of the effectiveness of the filing -- is immediately taken. If your client wishes or is required to use an estimation of oil or gas reserves, considerable time might be saved and possible embarrassment avoided at a crucial stage of the proposed financing by submitting his reserve estimates and supporting data to the Commission's oil and gas engineer prior to the formal filing. The Commission's engineer welcomes such pre-filing conferences.

You might be consulted by a client regarding the other side of the coin. He may have been sold a security, feels that he has been "taken" and asks you what his remedies are. Depending upon the facts, the Act provides certain civil remedies. First of all, if you find that there has been any misrepresentation or omission to state a material fact, or any type of fraud or overreaching, you have a civil remedy against everyone who participated in the fraud whether or not the securities were registered or whether or not they were exempt from registration. I want to emphasize again that there are no exemptions whatever from the anti-fraud provisions of the Act. 24/

Moreover, even if you are unable to find evidence of fraud, there is still available to you a civil remedy for any loss if there has been any violation of the registration requirements. I should mention, however, that in such situation it is necessary that you take action very promptly since the statute of limitations prescribed by the Act is a very short one, under some circumstances, only one year from the offering. 25/

In any event, if you are consulted on any such matter, I urge you to bring it to our attention immediately. We have additional remedies including the criminal provisions of the statute. Any action we might take, of course, might not result directly in your client's recovery of damages, although under some circumstances, restitution has been effected as a result. Occasionally, also, private law suits may present for determination interpretative issues important to the Commission in its administration of the statute or statutes involved. In appropriate cases, the Commission files briefs or memoranda of law and participates in oral arguments on such questions. Although the effect of the Commission's participation in such cases may be to aid the party whose position accords with that of the Commission, the purpose of its participation is solely to assist the court to arrive at a correct construction of the statute.

Since the participation of the Commission as amicus curiae might be of great value to the party with whom it agrees on an interpretative

24/ Section 12(2).

25/ Section 13.

question, private practitioners frequently request the Commission to participate. Commission participation, however, is not dependent on the request of counsel for one of the parties. Whenever the Commission is apprised of a case involving the construction of one or more of the statutes it administers and which it feels warrants its participation, it will seek in the public interest to participate as amicus curiae, regardless of whether any of the parties request or desire it to do so. In many instances the Commission's only knowledge of the pendency of particular litigation comes from one of the private practitioners involved therein. Accordingly, the Commission is always glad to be apprised of the pendency of litigation under its statutes, irrespective of any desire on the part of counsel for its participation and regardless of whether it may ultimately decide to participate.

As a matter of policy the Commission, as amicus curiae, avoids involvement in any disputes of fact, and makes no factual assertions of its own. Nor does the Commission become involved in legal questions which do not pertain to the construction of the statutes it administers or which do not affect it in its administration of the federal securities laws. 26/

A client whose activities are being investigated by the Commission might seek your advice. If you are satisfied of his innocence, frank disclosure to the staff of all the facts will be to his advantage, because the Commission is not interested in continuing an investigation of an innocent person. Although it is not my intention to devise methods by which a guilty client may evade any of the sanctions imposed upon violators of the securities laws, full disclosure may also be to his interest even in the case of a technical violation if the facts indicate the absence of intentional wrongdoing.

I shall mention briefly one or two other situations which you should be alert to recognize when a client consults you on corporate matters. If he should wish to solicit proxies, your first inquiry should be whether the company is listed on an exchange or whether it is an investment company or a public utility holding company or subsidiary subject to our jurisdiction. If so, he may not solicit proxies without prior compliance with the Commission's proxy rules. 27/ Also you should be familiar with the fact that if your client is an officer, director, or ten percent stockholder of any such company, he must report promptly every sale or purchase by him of the company's stock; and if he should effect both a sale and purchase within a six month's period, any profit is subject to recovery by the company at the instance of any stockholder. 28/

26/ Pursuant to the special request of a court, the Commission has on occasion briefed questions wholly peculiar to the private civil recovery provisions of the statutes it administers.

27/ Regulation X-14 of the Commission's Rules and Regulations under the Securities Exchange Act of 1934.

28/ Section 16 of the Securities Exchange Act of 1934.

In such case, he may lose not only his profit but the income tax he has paid on it. 29/

In this connection, a recent decision may be of interest to you as an illustration of our participation in private lawsuits. Congress had authorized the Commission to exempt from the six months short-swing profits provision 30/ any transactions not comprehended within the purpose of the Securities Exchange Act of 1934. The Commission accordingly exempted, among others, stock acquired as a result of certain types of option and retirement plans. 31/ In a recent case, suit was brought for the recovery of profits realized in the sale of stock so acquired. The Commission did not participate although it indicated to the parties that it would do so if requested by the court. The lower court, pursuant to the exemption granted by the rule, gave judgment for the defendant. On appeal, the Court of Appeals for the Second Circuit by a divided court expressed doubts as to the validity of the rule but affirmed 32/ on the basis of another provision of the statute 33/ which precludes liability if action is taken in reliance on a rule even if the rule is subsequently held invalid. In view of the uncertainty created by this decision, the Commission asked leave to file a brief, amicus curiae, on rehearing. This was granted and we filed our brief. Unfortunately, we were not successful in convincing the majority of the validity of the rule so it will now be incumbent on the Commission to reexamine the rule in the light of the Court's opinion.

You can readily understand that in the short time I have had today, I could not possibly allude to all of the practical problems which might confront the private practitioner encountering a securities law question for the first time. And, of necessity, my talk has been general. But if you leave this session with but one concept, I hope it will be the impression that the Securities and Exchange Commission and its staff are always anxious and willing to render whatever assistance is necessary to help you achieve for your client compliance with the statutes we administer. We at the Commission are convinced that one of the most important functions of an agency administering powers delegated to it by Congress is to assist those subject to regulation in order that they might fully comply with the law.

29/ See American Investors Co. v. Commissioner of Internal Revenue, 211 F. 2d 522, 523 (C.A. 2, 1954); Park & Tilford v. United States, 107 F. Supp. 941, 944 (Ct. Cl. 1952).

30/ Section 16 of the Securities Exchange Act of 1934.

31/ Rule X-16B-3 of the Commission's Rules and Regulations under the Securities Exchange Act of 1934.

32/ Greene v. Dietz, No. 121.

33/ Section 23.