

NEWS

**SECURITIES AND
EXCHANGE COMMISSION**

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REMARKS TO
THE NATIONAL ASSOCIATION OF
SMALL BUSINESS INVESTMENT COMPANIES
PHOENIX, ARIZONA
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"THE SEC AND SMALL BUSINESS FINANCING"

By
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1.

ONE OF THE RECURRENT THEMES IN THE CAMPAIGN FOR DEREGULATION IS THAT GOVERNMENT REGULATION AND PAPERWORK THREATEN TO STRANGLE BUSINESS, AND IN PARTICULAR, SMALL BUSINESS. 1/ THE IMPORT OF THIS CRITICISM IS THAT GOVERNMENT MAKES TOO MANY EXPENSIVE AND POINTLESS DEMANDS ON BUSINESS IN GENERAL. I HAVE SOME SYMPATHY WITH THE FRUSTRATION WHICH IS REFLECTED IN THIS CRITICISM. ALSO, THE PUBLIC IS BEGINNING TO UNDERSTAND THE EXTENT TO WHICH INFLATION IS FUELED BY GOVERNMENT OVERREGULATION.

AT THE SAME TIME, A NUMBER OF VOICES HAVE CRITICIZED THE COZINESS BETWEEN THE FEDERAL GOVERNMENT AND CERTAIN BUSINESS SECTORS. A RECENT ARTICLE DESCRIBED THE "EUROPEANIZATION" OF AMERICAN BUSINESS, BIG AND SMALL. THE ARTICLE CONCLUDED THAT THE TRADITIONAL AMERICAN DIFFERENCES BETWEEN BUSINESS AND GOVERNMENT MAY FAST BE DISAPPEARING, AND QUESTIONED WHETHER THIS WOULD BE A DESIRABLE DEVELOPMENT. 2/

THE TROUBLESOME FACTOR IN THESE OBSERVATIONS IS THAT THEY ARE RELATED. WHETHER GOVERNMENT AND BUSINESS FACE EACH OTHER AS ENEMIES OR FRIENDS, THE PUBLIC FEELS IGNORED

1/ SEE, E.G., STATEMENT OF SENATOR NELSON, 96TH CONG., 1ST SESS., 125 CONG. REC. S.15177 (OCTOBER 25, 1979).

2/ LINDLEY, ROBIN, "U.S. MOVES TOWARD EUROPEAN-STYLE PRIVATE ENTERPRISE," VOL. II, No. 18, LEGAL TIMES OF WASHINGTON 28 (OCTOBER 15, 1979).

2.

AND HELPLESS. THE PUBLIC DOES NOT BELIEVE IT IS THE BENEFICIARY OF THE EFFORTS OF EITHER BUSINESS OR GOVERNMENT. LEADERS IN BOTH THE PRIVATE AND PUBLIC SECTORS SEEM TO CARE MORE ABOUT POWER THAN SERVICE. IN OUR MASS SOCIETY, IDENTITY IS REFERENCED TO NARROW CONSTITUENCIES, RATHER THAN TO THE GENERAL WELFARE.

I BELIEVE THAT THE RELATIONSHIP BETWEEN GOVERNMENT AND BUSINESS DOES HAVE TO BE CHANGED IN ORDER FOR THE PUBLIC INTEREST TO BE PROPERLY SERVED. BUSINESS PROVIDES THE GOODS, SERVICES AND JOBS WHICH ARE REQUIRED FOR THE ECONOMIC WELL BEING OF THE NATION. GOVERNMENT SHOULD REGULATE BUSINESS IN ORDER TO SUPPORT HONEST ENTERPRISE, PARTICULARLY IN THE CONTEXT OF TODAY'S INTERNATIONALLY COMPETITIVE ECONOMY, AND YET TO PREVENT BUSINESS FROM PURSUING ITS PRIVATE ENDS IN A WAY THAT IS UNDULY DAMAGING TO THE PUBLIC'S HEALTH, SAFETY OR WELFARE.

THE FEDERAL REGULATORY AGENCIES, INCREASINGLY COMPOSED OF YOUNG PROFESSIONALS AND CAREER BUREAUCRATS, CONFRONT THE BUSINESS WORLD WITH GOOD INTENTIONS BUT NOT WITH UNDERSTANDING BASED ON EXPERIENCE WITH THE DYNAMICS OF PROFIT MAKING ENTERPRISE. TECHNOLOGICAL AND ECONOMIC DEVELOPMENTS HAVE MADE MANY REGULATORY SCHEMES IRRELEVANT OR EVEN COUNTER-PRODUCTIVE. ELECTED OFFICIALS TOO FREQUENTLY FAIL TO UPDATE OR SPECIFY THE OBJECTIVES OF REGULATORY PROGRAMS

OR HOW THEY SHOULD BE IMPLEMENTED. OFTEN THIS HAPPENS BECAUSE THERE IS NO NATIONAL CONSENSUS ON HOW TO SOLVE THE COUNTRY'S PROBLEMS. THESE AND OTHER FORCES HAVE RESULTED IN TOO MUCH REGULATION FOR ITS OWN SAKE, TOO MUCH GOVERNMENT HOSTILITY TOWARD BUSINESS AS A MATTER OF PRINCIPLE AND WITHOUT ANY PARTICULAR PURPOSE.

YET, ALTHOUGH I ADVOCATE A GREATER APPRECIATION BY GOVERNMENT FOR THE WORK OF THE PRIVATE SECTOR, AND A MORE COOPERATIVE ATTITUDE BETWEEN BUSINESS AND GOVERNMENT, I AM CONCERNED THAT THE COMBINED POWER OF BUSINESS AND GOVERNMENT WOULD NOT BENEFIT OR BE ACCOUNTABLE TO THE PUBLIC. LOUIS KOHLMEIER HAS MADE A VERY TELLING OBSERVATION IN THIS RESPECT:

IF THOSE TENSIONS AND CONFRONTATIONS BETWEEN GOVERNMENT AND BUSINESS^{3/} WERE REDUCED TO THE POINT OF ELIMINATION, THEN COOPERATION WOULD ENDANGER THE POLITICAL AND ECONOMIC FREEDOMS FOR WHICH THE SYSTEM EXISTS. ^{3/}

IN THIS CONTEXT, I PROPOSE TO SPEAK TO YOU ABOUT THE EFFORTS THE SEC HAS³ BEEN MAKING TO STRIKE A MORE SUPPORTIVE AND COOPERATIVE ATTITUDE TOWARD BUSINESS, IN PARTICULAR TO ADDRESS THE PROBLEMS OF SMALL BUSINESS FINANCING. MANY OF THESE EFFORTS HAVE BEEN REGARDED BY MY AGENCY AS REGULATORY REFORM, AND I THINK THAT IS AN APPROPRIATE RUBRIC FOR

^{3/} KOHLMEIER, "ODD TIMING FOR BUSINESS TO IDENTIFY WITH GOVERNMENT," III FINANCIER 8 (JULY 1979).

ANALYSIS. YOU SHOULD UNDERSTAND, HOWEVER, THAT WHETHER REGULATORY REFORM IS VIEWED AS DEREGULATION OR SIMPLY HOUSEKEEPING, IT CAN REACH FOR ONLY LIMITED OBJECTIVES UNLESS THE BASIC ENABLING STATUTES OF AGENCIES LIKE MINE ARE REVIEWED AND REVISED. 4/ THE SEC'S PRIMARY MANDATE IS INVESTOR PROTECTION, AND IT IS HARD TO CONCLUDE THAT INVESTORS IN SMALL BUSINESS NEED LESS PROTECTION THAN INVESTORS IN BIG BUSINESS.

IN TRYING TO STRIKE A PROPER BALANCE BETWEEN ADVERSARIAL AND COOPERATIVE REGULATION, OR BETWEEN THE NEEDS OF INVESTORS AND THE NEEDS OF SMALL BUSINESS, SEVERAL THRESHOLD QUESTIONS MUST BE ANSWERED. WHAT, IF ANYTHING, DOES A REGULATORY BODY WHOSE FUNCTION IS PRIMARILY DISCLOSURE DO TO THE DETRIMENT OF SMALL BUSINESS? WHAT CAN WE DO TO HELP SMALL BUSINESS?

THE COMMISSION'S OWN ADVISORY COMMITTEE ON CORPORATE DISCLOSURE SUGGESTED ONE ANSWER TO THESE QUESTIONS WHEN IT RECOMMENDED IN 1977 THAT THE COMMISSION UNDERTAKE A REVIEW OF ITS REQUIREMENTS FOR SMALL BUSINESS BECAUSE

COMPLIANCE MAY BE UNDULY EXPENSIVE AND ... A REDUCTION IN 1934 ACT DISCLOSURE OBLIGATIONS MIGHT BE ACHIEVED WITHOUT AN ADVERSE EFFECT ON DISCLOSURE TO INVESTORS. 5/

4/ SEE, E.G., JOHN G. HEIMANN, "REGULATORY OVERKILL -- THE NEED FOR POSITIVE RESPONSE," REMARKS TO NATIONAL BANKERS ASSOCIATION (OCTOBER 5, 1979).

5/ REPORT OF THE ADVISORY COMMITTEE ON CORPORATE DISCLOSURE TO THE SECURITIES AND EXCHANGE COMMISSION, COMMITTEE PRINT 95-26, 95TH CONG., 2D SESS., 512, NOVEMBER 3, 1977.

IN MARCH OF 1978, AFTER THE CHAIRMAN OF THE ADVISORY COMMITTEE HAD BEEN NAMED CHAIRMAN OF THE SEC, THE COMMISSION ANNOUNCED SUCH A REEXAMINATION OF ITS EFFECT ON SMALL BUSINESS. 6/ DURING THE ENSUING HEARINGS, MANY DISTURBING QUESTIONS WERE RAISED. IN GENERAL, IT APPEARS: 1) THAT WE LACK ENOUGH INFORMATION TO KNOW WHAT EFFECT THE COMMISSION HAS ON SMALL BUSINESS; 2) THAT IF WE HAVE AN EFFECT, IT MAY BE IN TERMS OF VOLUMINOUS REGISTRATION AND FILING REQUIREMENTS OR DISCOURAGEMENT OF VENTURE CAPITAL FORMATION.

ACCORDINGLY, THE COMMISSION HAS UNDERTAKEN TO MOVE ON THREE FRONTS: TO GATHER ENOUGH INFORMATION TO MAKE CERTAIN INFORMED DECISIONS; TO REVIEW IN DETAIL OUR REGISTRATION AND REPORTING REQUIREMENTS AS THEY APPLY TO SMALL BUSINESS ISSUERS UNDER THE SECURITIES ACT OF 1933 ("SECURITIES ACT") AND SECURITIES EXCHANGE ACT OF 1934 ("EXCHANGE ACT"); AND TO REVIEW OUR OPTIONS IN RELATION TO CAPITAL FORMATION FOR AND BY SMALL BUSINESSES UNDER THE INVESTMENT COMPANY AND INVESTMENT ADVISER ACTS. OVER THE PAST YEAR, WE HAVE ALSO PROPOSED AND IMPLEMENTED A NUMBER OF RULES, ON AN

6/ SECURITIES ACT RELEASE NO. 5914 (MARCH 6, 1978).

EXPERIMENTAL BASIS, DEALING WITH THE REGISTRATION AND REPORTING REQUIREMENTS FOR SMALL ISSUERS, WHICH HAVE RESULTED FROM THE EFFORTS OF THE NEWLY-ESTABLISHED OFFICE OF SMALL BUSINESS POLICY IN THE DIVISION OF CORPORATION FINANCE.

THE COMMISSION'S FACT-GATHERING HAS TAKEN TWO BASIC FORMS. ONE, THE EXPERIMENTAL TECHNOLOGY INCENTIVES PROGRAM ("ETIP"), IS A JOINT PROJECT WITH THE DEPARTMENT OF COMMERCE TO MONITOR THE IMPACT OF CERTAIN REGULATION ON CAPITAL-RAISING AND ON THE AVAILABILITY OF VENTURE CAPITAL. 7/ PHASE I OF THAT PROJECT WAS COMPLETED IN MID-SEPTEMBER, AND CONSISTED OF EXPLORATORY STUDIES OF THE ECONOMIC EFFECTS OF COMMISSION REGULATION ON CAPITAL FORMATION FOR SMALL BUSINESS. AMONG THE DISCLOSURE PRACTICES REVIEWED IN PHASE I OF ETIP WERE SOME OF THE BASIC AND SOME OF THE NEWLY REVISED SMALL-ISSUE EXEMPTIONS. 8/ THE STUDY WILL CONTINUE TO MONITOR OUR NEW RULES AND FORMS.

PHASE II OF THE STUDY WILL ATTEMPT TO IDENTIFY THE ACTUAL NUMBERS AND TYPES OF SMALL BUSINESSES AND VENTURE CAPITAL ACTIVITIES WHICH ARE SUBJECT TO SEC JURISDICTION. 9/ THE PURPOSE OF THIS RESEARCH IS TO

7/ Id.

8/ FOR EXAMPLE, REGULATION A, RULES 144, 146, 147 AND 240, AND FORMS S-16 AND S-18.

9/ SEC NEWS RELEASE 79-49 (SEPTEMBER 17, 1979).

7.

DESIGN AND TEST ANALYTICAL MODELS OF CRITICAL ECONOMIC SITUATIONS AFFECTED BY SEC REGULATIONS, SUCH AS TENDER OFFERS, ACCOUNTING AND DISCLOSURE RULES. FORMULATING THESE MODELS SHOULD HELP THE COMMISSION EVALUATE ALTERNATIVES FOR ACHIEVING INVESTOR PROTECTION AND ENCOURAGING THE MOST EFFICIENT CAPITAL FORMATION BY SMALL BUSINESSES AND OTHERS.

THE SECOND STUDY IS ALSO A JOINT PROJECT, BUT WITH THE SMALL BUSINESS ADMINISTRATION. THIS STUDY, TO BE PERFORMED BY THE COMMISSION'S DIRECTORATE OF ECONOMIC AND POLICY RESEARCH, IS DESIGNED TO DETERMINE THE ROLE OF REGIONAL BROKER-DEALERS IN CAPITAL FORMATION, THROUGH UNDERWRITING, MAKING SECONDARY MARKETS, AND RESEARCH. 10/ SINCE REGIONAL BROKER-DEALERS GENERALLY ARE SMALL BUSINESSES, AND SINCE THEY ALSO HAVE CLOSE DEALINGS WITH SMALL ISSUERS, WE HOPE THAT THIS STUDY WILL PROVIDE US WITH A BETTER UNDERSTANDING OF WHAT, IF ANY, IMPACT THE SEC HAS ON THE MARKET IN THE SECURITIES OF SMALL BUSINESS.

THE COMMISSION'S STAFF IS ALSO REVIEWING OUR ACTIVITIES UNDER THE INVESTMENT COMPANY AND INVESTMENT ADVISER ACTS TO DETERMINE IF IT CAN LIMIT THE REGULATORY BURDEN ON SMALL BUSINESS WITHOUT SACRIFICING INVESTOR PROTECTION. SMALL

10/ SEC News RELEASE 79-56 (OCTOBER 19, 1979).

BUSINESSES ORDINARILY ARE NOT SUBJECT TO THE INVESTMENT COMPANY ACT. HOWEVER, COMPANIES WHICH INVEST IN SECURITIES ISSUED BY SMALL BUSINESSES, MAY FALL WITHIN THE DEFINITION OF "INVESTMENT COMPANY" AND THUS BE SUBJECT TO THE PROVISIONS OF THAT ACT UNLESS SOME EXEMPTION IS AVAILABLE. FREQUENTLY RELIED UPON IS AN EXCLUSION FROM THE DEFINITION OF "INVESTMENT COMPANY" FOR ISSUERS WHOSE SECURITIES ARE NOT PUBLICLY OFFERED, AND WHICH ARE BENEFICIALLY OWNED BY ONE HUNDRED OR FEWER PERSONS. 11/ (THE COMMISSION HAS RECENTLY PROPOSED RULES EXPANDING EXEMPTIONS FROM THE DEFINITIONS OF AN INVESTMENT COMPANY IN VARIOUS SECTIONS OF THAT ACT. 12/

OUR EXPERIENCE IN ENFORCING THE INVESTMENT COMPANY ACT HAS DEMONSTRATED THAT SPECIAL TREATMENT UNDER ITS PROVISIONS IS SOMETIMES JUSTIFIED FOR COMPANIES SUCH AS SBICs. BUT THE COMMISSION HAS CONSISTENTLY TAKEN THE POSITION THAT THOSE COMPANIES ORDINARILY SHOULD NOT BE TOTALLY EXCLUDED FROM COMPLIANCE WITH THE ACT'S PROVISIONS. I NOTE THOUGH THAT THREE BILLS ARE CURRENTLY PENDING IN CONGRESS WHICH WOULD HAVE THAT EFFECT. 13/ THE SEC'S TRADITIONAL APPROACH HAS BEEN ONE TO FACILITATE THE FLOW OF CAPITAL TO SMALL BUSINESSES BY SBICs WITHOUT SIGNIFICANTLY COMPROMISING INVESTOR

11/ SECTION 3(c)(1). SEE ALSO, INVESTMENT COMPANY ACT RULES 3c-2 AND 3c-3, PROVIDING SPECIAL TREATMENT FOR SBIC ISSUERS.

12/ INVESTMENT COMPANY ACT RELEASE Nos. 10937 (Nov. 13, 1979); 10938 (Nov. 13, 1979); 10943 (Nov. 16, 1979); AND 10944 (Nov. 16, 1979).

13/ S.1533, 96TH CONG., 1ST SESS., 125 CONG. REC. S.9872 (JULY 18, 1979), S.1940, 96TH CONG., 1ST SESS., 125 CONG. REC. S.15177 (OCTOBER 25, 1979), AND H.R. 3991, 96TH CONG., 1ST SESS., 125 CONG. REC. H.2860 (MAY 8, 1979).

PROTECTION. CONSEQUENTLY, NUMEROUS RULES UNDER THE ACT ARE DESIGNED TO EASE THE REGULATORY BURDENS OF THE ACT ON SBICs. 14/ SUCH RULES SHOW THAT THE COMMISSION IS COMMITTED TO INCREASING THE ABILITY OF SMALL BUSINESS TO RAISE CAPITAL WITHIN THE CONFINES OF OUR ENABLING STATUTES. 15/

THE COMMISSION'S STAFF IS ALSO CONSIDERING CERTAIN OTHER ACTIONS WHICH MIGHT HELP SMALL BUSINESS, BY ASSISTING "BUSINESS DEVELOPMENT COMPANIES" WHICH ARE A VARIETY OF VENTURE CAPITAL COMPANIES. THE INVESTMENT ADVISERS ACT PROHIBITS REGISTERED INVESTMENT ADVISERS FROM RECEIVING "PERFORMANCE" FEES BASED ON A SHARE OF THE CAPITAL APPRECIATION OF, OR CAPITAL GAINS UPON, THEIR CLIENTS' FUNDS. 16/ HOWEVER, SOME INVESTMENT ADVISERS WHO SERVE VENTURE CAPITAL COMPANIES HAVE TRADITIONALLY RECEIVED PERFORMANCE-BASED FEES. THEREFORE, THE COMMISSION HAS PROPOSED RULE 205-3 WHICH WOULD PERMIT A PERFORMANCE-BASED FEE UNDER CERTAIN CIRCUMSTANCES. 17/ I RECOGNIZE THAT COMMENT ON THIS RULE PROPOSAL HAS BEEN ADVERSE. BUT PERHAPS THE PROPOSAL WILL BE THE BEGINNING OF A WORKABLE SOLUTION TO THE PROBLEM OF A REGULATORY SCHEME WHICH DOES NOT SEEM TO FIT LEGITIMATE BUSINESS NEEDS.

14/ SEE, E.G., INVESTMENT COMPANY ACT RULES 3c-2, 3c-3, 17d-1, 18c-1, AND 18c-2.

15 ADDITIONALLY, THE COMMISSION RELIES ON INFORMAL LIAISON WITH THE SMALL BUSINESS ADMINISTRATION, AND ON CONTACTS WITH ATTORNEYS AND OFFICERS OF SBICs WHO SEEK THE STAFF'S ADVICE.

16/ SECTION 205(1).

17/ INVESTMENT ADVISERS ACT RELEASE No. 680 (JUNE 19, 1979).

CONSIDERABLE PUBLIC ATTENTION HAS BEEN PAID TO THE EFFORTS OF THE OFFICE OF SMALL BUSINESS POLICY IN THE DIVISION OF CORPORATION FINANCE, AND TO THE CHANGES IN REGISTRATION AND REPORTING REQUIREMENTS WHICH IT HAS INITIATED. SOME OF THESE INITIATIVES HAVE CONCENTRATED ON IMPLEMENTING CONGRESSIONAL ACTS WHICH LIFTED THE MAXIMUM DOLLAR AMOUNT OF EXEMPTED OFFERINGS. OTHER INITIATIVES HAVE ATTEMPTED TO SIMPLIFY THE COMMISSION'S PAPERWORK DEMANDS ON ISSUERS MAKING SMALL OFFERINGS. THE COMMISSION HAS, FOR EXAMPLE, MADE SIGNIFICANT CHANGES IN THE REQUIREMENTS UNDER RULE 144, WHICH FACILITATE THE RESALE OF MANY SECURITIES SOLD BY SMALL ISSUERS IN UNREGISTERED PRIVATE PLACEMENTS. THE AMOUNT OF "RESTRICTED" SECURITIES WHICH CAN BE SOLD IN THE PUBLIC MARKETS, INCLUDING THE SECURITIES OF PROMOTERS AND OFFICERS, HAS BEEN GREATLY INCREASED. 18/ THE RULE HAS ALSO BEEN AMENDED TO ALLOW NON-AFFILIATES TO TRADE FREELY IN ONCE-RESTRICTED SECURITIES AFTER A THREE OR FOUR-YEAR HOLDING PERIOD, IF THE ISSUER IS A REPORTING COMPANY UNDER THE EXCHANGE ACT. 19/

18/ SECURITIES ACT RELEASE No. 5979 (SEPT. 19, 1978).

19/ SECURITIES ACT RELEASE No. 6032 (MAR. 5, 1979).

THE COMMISSION ALSO HAS LIBERALIZED EXISTING RULES WHICH PROVIDE SMALL OFFERING EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THE COMMISSION HAS RAISED THE DOLLAR CEILING ON OFFERINGS PURSUANT TO REGULATION A FROM \$500,000 TO \$1,500,000 IN ANY TWELVE-MONTH PERIOD. 20/ THE COMMISSION ALSO HAS RELAXED THE DISCLOSURE REQUIREMENTS FOR CERTAIN OFFERINGS UNDER RULE 146. 21/ NOW, IN OFFERINGS OF \$1,500,000 OR LESS, THE ISSUER MAY SUBSTITUTE THE INFORMATION REQUIRED BY SCHEDULE I OF REGULATION A FOR THE INFORMATION OTHERWISE TO BE FURNISHED AN OFFEREE OR HIS REPRESENTATIVE UNDER RULE 146. PROPOSED RULE 242 WOULD BE AVAILABLE FOR OFFERINGS OF AS MUCH AS \$2,000,000 IN ANY SIX-MONTH PERIOD. 22/

IN ADDITION, THE COMMISSION HAS ADOPTED AN EXPERIMENTAL REGISTRATION FORM, FORM S-18, 23/ FOR THE REGISTRATION FOR PUBLIC SALE OF SECURITIES OF CERTAIN DOMESTIC AND CANADIAN ISSUERS WHICH ARE NOT SUBJECT TO THE CONTINUOUS REPORTING PROVISIONS OF THE EXCHANGE ACT. FORM S-18 MAY BE USED FOR OFFERINGS TOTALING AS MUCH AS \$5,000,000 IN TWELVE MONTHS, INCLUDING UP TO \$1,500,000 IN SECONDARY SALES.

20/ SECURITIES ACT RELEASE No. 5977 (SEPT. 11, 1978).

21/ SECURITIES ACT RELEASE No. 5975 (SEPT. 8, 1978).

22/ SECURITIES ACT RELEASE No. 6121 (SEPT. 11, 1979).

23/ SECURITIES ACT RELEASE No. 6049 (APR. 3, 1979).

THE MOST RECENT INITIATIVE IN THE REGISTRATION AND FILING OF SMALL ISSUES OF SECURITIES IS THE COMMISSION'S PROPOSED RULE 242. THIS IS A PROPOSED EXEMPTION FROM REGISTRATION FOR LIMITED OFFERINGS UNDER SECTION 3(B) OF THE SECURITIES ACT. SECTION 3(B), UNLIKE THE PRIVATE OFFERING AND RULE 146 EXEMPTIONS UNDER THE SECURITIES ACT, DOES NOT REQUIRE A DETERMINATION AS TO THE SOPHISTICATION OR WEALTH OF PERSONS TO WHOM THE SECURITIES ARE OFFERED.

PROPOSED RULE 242 WOULD ALLOW CERTAIN DOMESTIC AND CANADIAN ISSUERS TO SELL AS MUCH AS \$2,000,000 OF THEIR SECURITIES IN ANY SIX-MONTH PERIOD TO ANY NUMBER OF SO-CALLED ACCREDITED INVESTORS INCLUDING CERTAIN INSTITUTIONS, PRIMARILY BANKS, AND TO 35 OR FEWER OTHER PERSONS. THE ONLY COMMISSION FILING REQUIREMENT WOULD BE OF A NOTICE AFTER THE CLOSE OF THE MONTH IN WHICH THE FIRST SALES ARE MADE UNDER THE RULE WITH UPDATES AT SIX-MONTH INTERVALS. HOWEVER, PROPOSED RULE 242 INSTITUTES CERTAIN CONTROLS OVER DISCLOSURE BY SPECIFYING THE INFORMATION WHICH MUST BE FURNISHED NON-ACCREDITED PURCHASERS. THAT INFORMATION, IN ESSENCE, IS WHAT WOULD BE REQUIRED BY PART I OF THE COMMISSION'S NEW FORM S-18, BUT ONLY IF MATERIAL.

SINCE THE COMMISSION IS STILL RECEIVING COMMENTS ON PROPOSED RULE 242, AND NO DECISION HAS BEEN REACHED CONCERNING ITS ADOPTION, IT WOULD BE INAPPROPRIATE FOR ME TO EXPRESS ANY OPINION OF MY OWN AT THIS TIME. HOWEVER, I WANTED TO

DESCRIBE THE PROVISIONS OF PROPOSED RULE 242 TO POINT OUT TO YOU THE DIRECTION OF THE COMMISSION'S PROGRAM FOR SMALL BUSINESS.

ANOTHER GOOD EXAMPLE TO SHOW WHERE WE ARE MOVING IS THE COMMISSION'S EXPERIMENTAL REGISTRATION FORM, FORM S-18. THIS IS A SIMPLIFIED FORM AVAILABLE FOR PUBLIC OFFERINGS TOTALING \$5,000,000 OR LESS IN VALUE PER YEAR, WITH MORE LIMITED REQUIREMENTS FOR NARRATIVE AND AUDITED FINANCIAL DISCLOSURE THAN FORM S-1.

ON OCTOBER 16, 1979, THE COMMISSION ANNOUNCED A NO-ACTION POSITION REGARDING THE REGISTRATION OF DEBT SECURITIES VALUED AT \$1,500,000 OR LESS ON FORM S-18 WITHOUT QUALIFICATION UNDER THE TRUST INDENTURE ACT OF 1939. 24/

DURING THE FIRST SEVEN MONTHS FOLLOWING THE COMMISSION'S ADOPTION OF FORM S-18, MORE THAN \$74 MILLION IN VALUE IN COMMON STOCK HAS BEEN REGISTERED ON THE FORM. IN ADDITION, ALMOST \$5,000,000 OF CONVERTIBLE AND NONCONVERTIBLE DEBT SECURITIES WERE REGISTERED ON FORM S-18. ALMOST ONE-THIRD OF THOSE REGISTRANTS HAVE HAD NO OPERATING HISTORY.

I HAVE HEARD THE COMPLAINT THAT ALL THE COMMISSION'S ACTIVITIES CONCERNING SMALL BUSINESS FINANCING ARE NOT DEREGULATION SO MUCH AS RE-REGULATION. IT IS TRUE THAT THE COMMISSION'S REVIEW AND REVISION OF ITS REQUIREMENTS WITH REGARD TO SMALL BUSINESS HAS BEEN PREMISED ON A SORT OF HOUSEKEEPING APPROACH WHICH I MENTIONED TO YOU EARLIER TODAY. THIS IS NOT A RADICAL DEPARTURE FROM PRIOR REGULATORY APPROACHES, BUT RATHER A MEASURED RESPONSE TO NEWLY PERCEIVED NEEDS. WHILE WE ARE TRYING TO REVISE OUR REGULATORY SCHEME, TO MAKE IT LESS BURDENSOME, PARTICULARLY FOR SMALL BUSINESS ISSUERS, MORE FUNDAMENTAL CHANGE WOULD REQUIRE CONGRESSIONAL ACTION.

WHILE THE COMMISSION HAS BEEN SENSITIVE TO CERTAIN VERY VALID CRITICISMS RAISED ABOUT ITS DISCLOSURE REQUIREMENTS, THE FACT IS THAT THE SEC HAS ONE BASIC OVERRIDING MANDATE: THE PROTECTION OF INVESTORS THROUGH THE PROVISION OF PROPER AND ADEQUATE CORPORATE DISCLOSURE. BUT INVESTORS RARELY TELL US HOW MUCH DISCLOSURE THEY WANT OR HOW MUCH THEY ARE WILLING TO PAY FOR PROTECTION. UNLESS THE CONGRESS IS READY TO CHANGE THE COMMISSION'S CHARGE, I BELIEVE THAT THE BEST THAT CAN BE EXPECTED FROM OUR OWN HOUSEKEEPING IS SOME FOUNDATION FOR A BETTER RELATIONSHIP BETWEEN BUSINESS AND GOVERNMENT, BASED UPON A BETTER UNDERSTANDING OF EACH OTHER'S PROBLEMS AND MORE COOPERATION IN SOLVING THE VERY REAL ECONOMIC PROBLEMS OF TODAY.

REAL REFORM REQUIRES LEADERSHIP IN BOTH THE PRIVATE AND PUBLIC SECTORS WHICH SURMOUNTS THE DAILY STRUGGLE FOR POWER AND ATTENTION AND REACHES OUT TO MEET THE NEEDS OF A PUBLIC WHICH IS ALIENATED AND SILENT ON MANY IMPORTANT ISSUES. IT IS MUCH EASIER TO WORK UP POLITICAL SYMPATHY FOR SMALL BUSINESS THAN BIG BUSINESS. BUT IF GOVERNMENT REGULATION OF SMALL BUSINESS DEFEATS THE OBJECTIVE OF FACILITATING CAPITAL FORMATION, SO DOES THAT SAME REGULATION OF BIG BUSINESS. I DO NOT BELIEVE THAT THE ECONOMIC OR SOCIAL EXPECTATIONS OF THE PUBLIC CAN BE MET UNLESS THERE IS A MARKED IMPROVEMENT IN THE PRODUCTIVITY OF THE ENTIRE PRIVATE SECTOR AND SUCH IMPROVEMENT REQUIRES FINANCING IN STRONG AND HEALTHY CAPITAL MARKETS. FOR BETTER OR WORSE, THE PROMOTIONAL MANDATES OF THE SEC ARE FEW. I AM NOT CONVINCED THEY SHOULD BE INCREASED. BUT I AM CONVINCED THAT THE CAPITAL MARKETS ARE TOO CRUCIAL TO THE NATIONAL WELFARE TO BE DAMAGED BY POLITICAL BATTLES BETWEEN BUSINESS AND GOVERNMENT IN THE NAME OF A PUBLIC INTEREST WHICH IS ONLY A CONVENIENT BANNER.