

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of
IOWA BEEF PROCESSORS, INC.
(81-108)

FILED

AUG 27 1971

SECURITIES & EXCHANGE COMMISSION

INITIAL DECISION

Washington, D.C.
August 27, 1971

Warren E. Blair
Chief Hearing Examiner

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IOWA BEEF PROCESSORS, INC.	:	INITIAL DECISION
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APPEARANCES: Stephen E. Gehring and Donald F. Burt, of Cline,
Williams, Wright, Johnson & Oldfather, for Iowa
Beef Processors, Inc.

Richard H. Rowe, David H. Belkin, and Carl R.
Klein, for the Division of Corporation
Finance

BEFORE: Warren E. Blair, Chief Hearing Examiner

Iowa Beef Processors, Inc. ("Iowa Beef"), a corporation which has securities registered pursuant to Section 12 of the Securities Exchange Act of 1934 ("Exchange Act"), filed an application for an order pursuant to Section 12(h) of the Exchange Act exempting Iowa Beef from the requirement to file quarterly reports on Form 10-Q in accordance with the provisions of Rule 13a-13 under the Exchange Act. According to the application, Iowa Beef is engaged in a beef slaughtering and processing business which tends to have relatively unpredictable cycles rather than being stable or seasonal in nature. The application further represents that Iowa Beef does not believe that the quarterly results of its operations provide a basis for accurate historical comparison or valid prognostication for the results of a twelve-month period, and that the reporting and dissemination of quarterly results would have little or no value to sophisticated investors and analysts, might be misleading in the hands of the average investor, and would produce unwarranted and undesirable swings in the price of Iowa Beef's common stock which is listed on the New York Stock Exchange ("NYSE").

After making a preliminary examination of the application, the Division of Corporation Finance ("Division") raised questions about whether the number of public investors and the amount of trading interest in Iowa Beef's securities are sufficiently limited to justify the requested exemption, whether the nature and extent of Iowa Beef's activities are such as would justify the exemption, whether adequate

information is and will be available to investors concerning Iowa Beef's financial affairs, and whether the requested exemption is consistent with the public interest and with the protection of investors.

Pursuant to notice of and order for hearing issued on April 15, 1971, a hearing was held on the application and the issues raised by the Division. As part of the post-hearing procedures, successive filings of proposed findings, conclusions, and supporting briefs were specified. Timely filings thereof were made by the applicant and the Division.

The findings and conclusions herein are based upon the preponderance of the evidence as determined from the record and upon observation of the witnesses.

Iowa Beef Processors, Inc.

Iowa Beef, a Delaware corporation having its principal office in Dakota City, Nebraska, has been engaged in the beef slaughtering and processing business since 1960. Packing and processing plants operated by Iowa Beef in four states, Iowa, Nebraska, Minnesota, and Kansas, have the capacity to slaughter over 65,000 beef cattle per week and to process about 40,000 carcasses weekly. The company considers itself to be the largest beef fabricator in the United States, and in the opinion of one of its officers, the largest in the world. Operations of Iowa Beef differ from those of the well-known major meat packers in that Iowa Beef confines itself to beef products alone while the latter

companies deal also in other meats, pharmaceuticals, soaps, and supporting goods derived from their slaughter activities.

Of the 6,000,000 shares of Iowa Beef's authorized common stock, approximately 2,175,000 shares are outstanding in the hands of about 7,200 shareholders. The majority of these shares are held by people residing in the Midwest section of the United States, with each of about 2,000 of the shareholders owning 50 to 150 shares. Some 20% of the shares are owned by institutions, and 11% are owned by the company's officers and directors. In addition, 6½% convertible debentures, having a face value of more than \$5,300,000, were in the hands of 3,500 investors as of February 24, 1971, and 300,000 of Series 1970 warrants are held in the name of 685 holders of record. Also outstanding are \$2,237,000 face value of 6% Series B debentures with a warrant to purchase 50 shares of the company's common stock attached to each \$1,000 debenture, \$15,000,000 of 9 7/8% Secured Bonds, \$15,875,000 Lease obligations to retire Development Bonds, \$1,023,000 of 6½% Series A Subordinated Sinking Fund Debentures, and \$243,000 of 6% Subordinated Debentures.

Trading in Iowa Beef stock on the NYSE where the stock has been listed since May 15, 1968 averaged about 4,600 shares daily during June, 1971. The price of Iowa Beef stock during the years 1965 through 1970 has ranged from about \$22 per share to a high of \$70, with notable price fluctuations showing up within the several years. Since the beginning of 1971 the price has ranged from a low of \$24 to a high of \$35 per share.

The following table reflects the prices of Iowa Beef common stock on quarterly and six-months bases and the earnings of Iowa Beef for the same periods. Because Iowa Beef has not published quarterly earnings reports, the prices at which its stock traded were reached without public access to quarterly figures.

Common Stock Prices and Earnings Per Share
By Fiscal Quarters and Six Month Periods^{*/}

End of -	<u>Quarterly</u>					<u>Six-Months</u>		
	1965					1965		
	1st	2nd	3rd	4th	Annual	1st	2nd	Annual
Stock Price ^{**/}	\$ 38	53	44	48	48	\$ 53	48	48
Earnings Per Share	\$.42	.29	.26	.63	1.60	\$.71	.89	1.60
	<u>1966</u>					<u>1966</u>		
Stock Price	\$ 63	44	43	49	49	\$ 44	49	49
Earnings Per Share	\$.42	.38	.13	.52	1.45	\$.80	.65	1.45
	<u>1967</u>					<u>1967</u>		
Stock Price	\$ 40	47	53	22	22	\$ 47	22	22
Earnings Per Share	\$.61	.41	.53	.70	2.25	\$1.02	1.23	2.25
	<u>1968</u>					<u>1968</u>		
Stock Price	\$ 56	67	61	49	49	\$ 67	49	49
Earnings Per Share	\$.60	.59	.46	.90	2.55	\$1.19	1.36	2.55
	<u>1969</u>					<u>1969</u>		
Stock Price	\$ 69	56	39	62	62	\$ 56	62	62
Earnings Per Share	\$.42	.59	.21	.31	1.53	\$1.01	.52	1.53
	<u>1970</u>					<u>1970</u>		
Stock Price	\$ 32	31	22	33	33	\$ 31	33	33
Earnings Per Share	\$.30	(.26)	(.19)	.42	.27	\$.04	.23	.27
	<u>1971</u>					<u>1971</u>		
Stock Price	\$ 32	31	-	-	-	\$ 31	-	-
Earnings Per Share	\$.92	(.21)	-	-	-	\$.71	-	-

^{*/} Iowa Beef's fiscal year is November 1 to October 31.

^{**/} To nearest dollar.

Historical and financial information regarding Iowa Beef is carried in recognized financial reference works and publications which also publish current information about the company as it becomes available. Iowa Beef's quarterly earnings are not carried in these publications because of the company's policy against making that information public. Moreover, quarterly financial information is not filed by Iowa Beef with the NYSE, the company having applied for and received from the NYSE a temporary waiver of the Exchange's quarterly reporting requirements shortly before the company's stock was listed in May, 1968. By its terms, the waiver will remain in effect "until such time as other meat packers report quarterly earnings."

Rule 13a-13

Rule 13a-13, as revised October 28, 1970,^{1/} requires in pertinent part that "every issuer which has securities registered pursuant to Section 12 of the [Exchange] Act and which is required to file annual reports pursuant to Section 13 of the Act on Form 10-K, 12-K or U5S shall file a quarterly report on Form 10-Q," Adoption of this revised rule and of Form 10-Q followed publication on September 15, 1969 of the fact that the Commission had a proposed new Form 10-Q for quarterly reports under consideration which would supersede Forms 8-K and 9-K.^{2/} After consideration of the comments received on its proposal,

^{1/} Securities Exchange Act Release No. 9004 (October 28, 1970).

^{2/} Securities Exchange Act Release No. 8683 (September 15, 1969).

the Commission determined not to rescind Form 8-K which requires reporting of important corporate events within 10 days after the close of the month in which such events occur, and to adopt as Form 10-Q only that portion of the proposed form which related to the quarterly reporting of summarized financial information.

In the published notice of its Form 10-Q proposal, the Commission made special mention of the fact that the "proposal was generated by a report to the Commission by a Special Disclosure Policy Study Group drawn from its staff, entitled 'Disclosure to Investors - A Reappraisal of Administrative Policies under the '33 and '34 Acts.'" That report — also referred to as "The Wheat Report" — pointed out that "[o]ne of the principal omissions in the pattern of '34 Act reporting mentioned by those with whom the Study conferred, including members of the accounting profession, was the absence of a quarterly summary of basic financial information prepared in accordance with reasonably specific standards," and went on to recommend "that this gap be filled" ^{3/}

Denial of Exemption

It is clear from the record that the application for exemption from the quarterly reporting requirements should be denied. The burden of establishing that the exemption should be granted falls upon the person seeking that exemption, ^{4/} and Iowa Beef has not here carried that

^{3/} The Wheat Report, 334 (March 27, 1969).

^{4/} S.E.C. v. Ralston Purina Co., 346 U.S. 119, 126 (1953); Schlemmer v. Buffalo, R., & P.R. Co., 205 U.S. 1, 10 (1907).

burden. The record reflects that an active trading interest in the company's stock exists on the NYSE, that the company has over 11,000 holders of its securities entitled to be fully informed regarding the results of operations, and that quarterly reports would furnish those security holders, as well as professional financial analysts and prospective purchasers of Iowa Beef's securities, with useful financial information not otherwise available to them. In the light of these circumstances and the strong policy favoring disclosure which underlies the securities acts, ^{5/} the entirely speculative fears that Iowa Beef's quarterly reports might be misleading and cause undesirable swings in the market price of the company's stock cannot justify the granting of the requested exemption. Further, if Iowa Beef were to report information which, standing alone, it considered misleading, the report would of necessity have to be amplified as required under the general instructions pertaining to Form 10-Q. The general instructions take into consideration the fact that the basic information to be reported in Form 10-Q will not suffice in all instances, and make it incumbent upon a reporting company to:

Furnish any material information necessary to make the information called for not misleading, such as a statement that the results for interim periods are not necessarily indicative of results to be expected for the year, due to seasonal or other specified factors, or an explanation of any unusual increase or decrease in net sales or income. ^{6/}

^{5/} "Disclosure is and has from the outset been a central aspect of national policy in the field of securities regulation." The Wheat Report, supra, 10.

^{6/} Form 10-Q, General Instructions, H(g).

Iowa Beef has not persuasively shown why it could not preclude the possibility of misleading investors by furnishing them with adequate explanatory additions in Form 10-Q.

Moreover, the record contains affirmative evidence that material information for use by investors may be found in the company's quarterly reports. The quarterly figures submitted by Iowa Beef at the hearing reflect that during fiscal years 1965 through 1970 the company's fourth quarter, except in 1969 when a labor strike began, was the most profitable, that the first quarter earnings were second highest, and that in each of fiscal years 1965 through 1968 some correlation existed between annual results of operations and those experienced in either the first or the fourth quarters. Further, as the financial analyst for the Division testified, it is apparent that a discernible upward trend in Iowa Beef's past earnings was identifiable when a running twelve-months basis was used as is permitted in reporting on Form 10-Q,^{7/} and that quarterly reports would enable investors to compare Iowa Beef's performance with other companies in the same industry.^{8/} Additionally, the cumulative information produced through the filing of successive quarterly reports is viewed as of significant value to investors and prospective investors, as well as to professional trading interests and financial analysts, in making projections of Iowa Beef's annual results. Testimony of Iowa Beef's witnesses to the contrary effect and their opinions that investors would be confused

^{7/} Id., H(c).

^{8/} Two competitors, American Beef Packers, Inc., and Neuhoff Bros. Packers, Inc., filed quarterly reports on Form 10-Q.

or seriously misled by the quarterly reports cannot be accepted.

Iowa Beef's argument that its quarterly earnings figures are not meaningful is also unacceptable. While the company's contention that "a loss in one quarter does not portend a loss in the next," may be supported by the record, the quarterly figures may otherwise be informative. They may well be utilized as a yardstick by which Iowa Beef's performance in the quarter may be measured against that of its competitors during that same period. Quarterly reports would also provide public information regarding any pattern that Iowa Beef's quarterly earnings may establish and eventually, a base of data against which succeeding quarters could be compared. Thus, quarterly reports disclosing the periodic fluctuations to which the company's earnings are subject would serve a useful purpose regardless of whether the quarterly figures constitute a reliable barometer for the next quarter or other future results.

The contention that quarterly reporting would cause the price of Iowa Beef stock to fluctuate unreasonably is also unacceptable. To assume, as Iowa Beef urges, that the company's quarterly figures would "only serve to accentuate periodic fluctuations which have little long-term significance," is to accept the view that the quarterly reports would be without value to the investing public, a premise that is not supported by the record. On the other hand, if the information in the reports is utilized by investors, as it undoubtedly will be, the market reaction resulting therefrom can hardly be regarded as unreasonable.

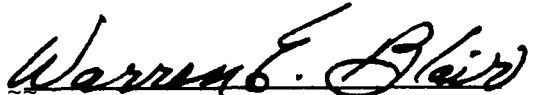
In view of the present and probable continuing market activity in the stock of Iowa Beef, the number of holders of securities of Iowa

Beef, the likely utility of the company's quarterly report, and the interest of financial publications in disseminating pertinent information concerning Iowa Beef to the investing public,^{9/} it is concluded that filing of quarterly reports by Iowa Beef would be in the public interest.^{10/}

Accordingly, IT IS ORDERED that the application of Iowa Beef Processors, Inc., for an exemption from the requirement to file quarterly reports on Form 10-Q pursuant to Rule 13a-13 under the Securities Exchange Act of 1934 be, and it hereby is, denied.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Rules of Practice.

Pursuant to Rule 17(f) of the Rules of Practice, this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen days after service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.


Warren E. Blair
Chief Hearing Examiner

Washington, D.C.
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^{9/} Cf. The National Dollar Stores, Ltd., Securities Exchange Act Release No. 8403, at 6. (September 11, 1968).

^{10/} All proposed findings and conclusions submitted by the parties have been considered, as have their contentions. To the extent such proposals and contentions are consistent with this initial decision, they are accepted.