NEWS

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"RULE 415: ITS INHERENT RISKS AND REWARDS."

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THE WOMEN'S SYNDICATE ASSOCIATION
NEW YORK, NEW YORK

NOVEMBER 12, 1982

I. Introduction

As some of you may know, on February 24 of this year, the SEC adopted Rule 415 on an experimental basis for 9 months. This Rule permits issuers to register their securities with the SEC, and offer these securities in the future on a delayed or continuous basis, rather than sell them immediately to investors.

On September 1 of this year, seven months after Rule 415's temporary adoption, the SEC voted to extend the Rule's experimental period for an additional 12 months until December 10, 1983. As some of you may also know, I dissented from this decision to extend the Rule. And I did so being well aware of how rare it is for the Commission to be divided. But the strength of my views, the importance of this question, the fact that we were dealing with the area of my greatest professional experience as a practicing lawyer, as well as the fact that only three Commissioners were participating in the decision compelled me to make my views known.

As to the merits of this important question, in short, I was convinced that the Rule, without further modification, encourages changes in our capital market system substantially in excess of those necessary to facilitate the financings for which the Rule was fashioned. In so doing, I felt the majority of the Commission risked for little or no reward, injuring our capital market system, which is widely regarded as one of the nation's greatest assets. I would have favored, however, a continuation of the praiseworthy provisions of the Rule that permit major companies rapid access to the market for the sale of their debt securities.

A. Weighing Risks Against Benefits

Specifically, I share the views of many commentators that the Rule in its present form, particularly when applied to equity offerings:

(1) jeopardizes the liquidity and stability of our primary and secondary securities markets by encouraging greater concentration of underwriters, market-makers, and other financial intermediaries, and by discouraging individual investor participation in the capital markets, thereby furthering the trend toward institutionalization of securities holders; and

(2) reduces the quality and timeliness of disclosure available to investors when making their investment decisions.

Incurring these risks is antithetical to the statutory duty of the Commission to protect investors and to maintain the integrity of our capital markets.

Although I do not believe that it is possible at this time to quantify the various elements of these risks, I am convinced that many of them are real. In my judgment, we should not, therefore, have run the risks, which I believe are inherent in a broad application of the Rule, without strong evidence of need -- none of which has been forthcoming. Accordingly, rather than extending the Rule in its present form, I would have made certain mid-course modifications to target the Rule more precisely at the recognized need for speed by major companies in effecting their debt offerings, while minimizing unnecessary risks during the experimental period.

B. Proposal; Need for Monitoring

In order to strike an appropriate balance between the perceived needs of issuers and the potential risks to investors and our capital markets, in extending temporary Rule 415, I would have made these modifications:

(1) I would have limited its principal application to debt offerings and not permitted its general use for primary equity offerings.

(2) I would have endorsed the Rule with respect to debt issuances registered pursuant to Form S-3. But, I would have imposed a "notice period" of two business days with respect to debt issuances that are not registered on Form S-3.

In suggesting these modifications to the Rule, I realize that respectable arguments could be made either to modify or rebut my proposal. Indeed, I understand that my proposal would not avoid all of the risks I fear, nor are all of these risks likely to be substantial. I believe, however, that the mid-course modifications that I suggest would run fewer risks than extending the Rule in its present form, while permitting the experiment to continue where necessary and desirable. Prudence dictates that, when tinkering with a system that on the whole has been quite successful, we would be wise to change only what is necessary to correct specific problems. Experiments for the sake of experimentation are to be avoided.

The extension of the Rule in its present broad form makes it imperative that the Commission and the staff be diligent in the monitoring process during that so-called "experimental" period, so that as problems develop, modifications along the lines I have suggested can be adopted, it is to be hoped, in a timely fashion.

C. Majority's Rationale

The rationale of my colleagues on the Commission in deciding not to make further changes to the Rule is somewhat disturbing. They seem to find comfort in the fact that approximately 50% of the commentators that participated in the SEC's rulemaking proceeding on Rule 415 -- a slim majority at best -- stated that the Rule has been working effectively for issuers and has increased the economy, efficiency and flexibility in the capital-raising process. Yet a vast majority of the Rule 415 offerings filed to date could have been made under my proposal. For example, at the time the Rule was extended on September 1, 56 out of 70, or 80%, of these filings for offerings on a delayed basis under subsection (a)(1)(i) of the Rule involved S-3 issuers of debt. These offerings could have been made under Rule 415, even with all of my suggested modifications. And as of October 6 of this year, an even higher percentage of Rule 415 offerings on a delayed basis involved S-3 issuers, and thus could have been made under my proposal. In addition, the proponents of a general extension of the Rule have cited precious little need for continuation of the broad experiment.

The Commission also has reasoned that, although the concerns expressed by commentators opposed to broad application of the Rule may be important and their recommendations may have some merit, "there has been an insufficient period of experience to evaluate the need for most of the recommended changes." Even if this is correct, it misses the point. After studying the comment letters and attending the Commission's public hearings, I am convinced that the widespread apprehension voiced with respect to the Rule's potential adverse impact on investor protection and the structure of the securities industry and the capital markets raised serious questions that the Commission should have addressed before the temporary Rule was extended without modification. We should not wait for the actual casualties to mount before recognizing and retreating from danger.

The Commission's release also states "were [the Commission] to make some of the [commentator's] significant suggested changes at this time, the value to be gained from the additional period of experimentation under Rule 415 would be greatly diminished because the imposition of such changes during the course of the experiment would produce inconsistent data." According to the Release, "subsequent evaluation of the experiment under the Rule thus would be rendered not only difficult but of questionable value."

In response to his argument, three points come easily to mind: First, it is bad policy to run even insubstantial risks, let alone substantial ones, for the mere consistency or purity of data. Second, the extension period adopted by the Commission gives adequate time to gather data -- more than half again as long as the original experimental period. Third, my proposed modifications would not at all effect data with respect to S-3 debt offerings which account for the preponderance of the data received to date and which are the principle purpose of the experiment.

Finally, I believe that the "trial period" that the Commission endorsed is a misnomer. It is our usual experience that temporary or proposed rules that have been in place over a period of time develop a life of their own. By not acting now to make the modifications it will become progressively more difficult to do so in a timely fashion if and when adverse changes in the selling and investment patterns of the securities markets develop. Therefore, I suggested that we err on the side of caution when dealing with the sensitive mechanism of the market system by making changes step by step rather than attempting later to backtrack when actual injuries to the market become apparent.

D. Developments Prior to Rule 415

It is important to emphasize at the outset that, although I have grave reservations about Rule 415 in the form extended, I recognize that the Rule merely intensifies problems that began with developments initiated over the past few years. Perhaps of greatest significance in this regard was the extension to primary offerings by the Commission in 1978, under the Securities Act of 1933 ("the Act"), of the S-16 short form registration statement, and more recently the adoption of its succcessor, the Form S-3. These forms streamlined the registration process and provided issuers with more rapid access to the increasingly volatile capital markets by permitting certain issuers to incorporate by reference into an abbreviated prospectus information contained in periodic reports already filed with the Commission pursuant to the Securities Exchange Act of 1934 ("Exchange Act"). In addition, the Commission's selective review process, whereby certain registration statements are not reviewed at all, has reduced the time between filing a short form registration statement and its effective date to as little as 48 hours, further expediting the registration and offering process for issuers.

The implications of those changes and their effect on America's capital markets was not, however, the question before the Commission when it decided to extend Rule 415. The only issue before the Commission was Rule 415 and the avoidance of any increased risk to the capital markets and to investors.

II. Risks To The Capital Markets

A. General

I share the judgment expressed by many commentators that, as a result of an issuer's ability under the Rule to gain rapid access to the capital markets and to sell large amounts of securities on short notice, the instantaneous transaction, or the "bought deal" common in the Euromarket today, will soon become the norm in our markets.

Issuers will more frequently demand that investment bankers bid on little if any notice to purchase large blocks of securities off the shelf. Because of the short time frame, investment bankers will not have the opportunity to form traditional underwriting syndicates. As a consequence, only the largest players -- those that have the capital for, and can afford to bear the risks of huge purchases -- will inevitably come to be the exclusive underwriters and selling dealers for major new issues.

In addition, to reduce their market risks, these investment bankers will be compelled immediately to resell their securities. Only a few well-capitalized institutions will be ready or willing to make such large purchases rapidly. At a time when America needs greater breadth and depth in its capital markets, the Rule would have the opposite tendency; and it is this breadth and depth of our markets that has provided the liquidity and stability that has distinguished our capital markets from foreign markets.

B. Impact on Regional Broker-Dealers

One of the most troubling elements of the risks I fear, as many commentators have stated, is that small and regional broker-dealers will likely be all but eliminated from major underwritings, and may, therefore, drop out of the underwriting and market-making business completely.

These developments, as many commentators have pointed out, could seriously threaten the existence of many regional broker-dealers and their ability to provide valuable services to small issuers and individual investors. In the past, the regional firms that have maintained active investment banking divisions have heavily depended upon underwriting commissions generated by participation in the traditional syndication process as an important source of revenues. Regional firms have testified at the Commission's hearings that, without

underwriting revenues from major issues, they will be forced to retrench on valuable services such as providing research on, and underwriting and market-making support for, many small and emerging companies which are a traditional source of growth for the nation's economy. Furthermore, in the aggregate, these developments may also convince small and regional broker-dealers that acquisition by larger firms is the only alternative for survival, thereby hastening the current trend toward concentration in the securities industry.

C. Impact on Capital Formation

The attrition of small and regional broker-dealers from the underwriting process could also have a major adverse impact on our nation's capital-raising system as a whole. The crucial role that regional broker-dealers play in the capital formation of all types of companies is well documented. A recent report indicated that from 1972 to 1980, regional firms managed almost 80% of all initial public offerings (56% of the dollar value), and from 1979 to 1980, managed 85% of all initial public offerings (57% to 61% of the dollar value).

Small and emerging companies in particular have historically relied upon regional broker-dealers to provide them with seed capital by selling their early public offerings to a local network of retail investors and thereafter to continue to make a market in such securities. If, however, underwriting divisions of regional broker-dealers are no longer viable as a result of Rule 415, many small and emerging companies would be deprived of their primary vehicle for raising capital, and there is no reason to believe that large investment bankers will begin to take these smaller companies to market. In this regard, a recent report found that from 1972 to 1980, regional firms managed the initial public offerings for 80% of issuers with less than $10 million in annual revenues.

Because start-up and small companies are vital to our nation's economic growth, I believe it is imperative that we facilitate, rather than frustrate, the capital-raising process for such issuers. It is indeed ironic that Rule 415, which was designed to encourage capital formation, will in fact undermine the ability of the vast majority of small issuers to raise capital.

D. Institutionalization of the Capital Market

One of the hallmarks of our nation's capital markets has been the broad participation of individual investors in the purchase of

newly-issued securities. Yet another risk of the Rule identified by many commentators is that it will continue the current trend towards institutionaliztion of our securities investor group; institutions will become the dominant purchasers of new issues and small investors will be denied equal access to these offerings.

Even when new issues sold under Rule 415 are not completely bought by institutions, the Rule is likely to disadvantage individual investors by facilitating a two-tiered pricing system whereby investment bankers will sell to institutions at lower prices than to individuals because of the leverage resulting from the ability of institutions to make block purchases.

These risks, I believe, underscore a major consequence of the Rule. The Rule seems to be premised in part upon the free market theory that competition among investment bankers will have a salutary effect on the entire distribution system by lowering underwriting spreads and reducing costs. Although increased competition among investment bankers seeking to manage a company's new issue of securities will inevitably narrow underwriting spreads, the cost saving will primarily benefit the issuer, which is in the position to select the lowest of numerous bids, and some institutional investors, who can demand lower prices from underwriters when buying securities in bulk. Quite conspicuously, however, the individual investor is not one of the beneficiaries of this system. On the contrary, these investors will often be excluded totally from new issues, or will pay more for the privilege of purchasing them.

In addition, as many attractive new issues are sold to institutions either at lower prices than those obtained by, or to the entire exclusion of, the retail investor, such individual investors may lose confidence in the fairness of our markets or otherwise lose interest in investing in the stock market generally. In either case, they may ultimately channel their funds into non-securities investments. This would decrease depth in both the primary and secondary markets and undoubtedly would have a detrimental impact on the capital formation process of all issuers. Because the strength and liquidity of our capital markets historically has been a function of the confidence and continued presence of the individual investor in these markets, we must be circumspect in developing a regulatory system that could discourage the participation of these investors and threaten to erode the foundation of our markets.

III. Risks To The Disclosure System

A. General

--- My second category of reservations with respect to Rule 415 is that in further accelerating the registration process for issuers it, inadvertently or intentionally, reduces the quality and timeliness of disclosure available to investors. In this respect it alters the traditional disclosure scheme set forth in the Act and runs counter to the Act's statutory objective of protecting investors.

At its heart, the Act seeks to ensure that investors are adquately informed before purchasing newly-issued securities. Thus, each issuer offering securities to the public is required to provide investors with a disclosure document containing complete and accurate material information about the issuer and the proposed securities transaction. In addition, to ensure that such information is adequately disseminated to investors before they are called upon to make investment decisions, the Act provides for a 20-day waiting period between the time a registration statement is filed and its effectiveness, unless the Commission authorizes acceleration. The Act also imposes upon issuers and underwriters the duty to investigate the accuracy of information contained in their prospectuses to ensure the reliability of such disclosure, and there is liability if the underwriter has not exercised "due diligence" in performing its investigation.

B. Impact on Underwriter's Due Diligence

In marked contrast to the statutory scheme, Rule 415 does not provide time for underwriters to discharge adequately their due diligence responsibilities. Before adoption of the Rule, due diligence was undertaken by the underwriters and their counsel and by the issuer's outside counsel prior to the initial filing, and anything that remained to be done or double-checked was accomplished between the filing and the effective date. Under the Rule, not only is due diligence not practical prior to the filing, because the ultimate underwriters have not then been selected, but because there is little if any time between selection of the underwriters and the sale, no due diligence is practical at any time during the pre-sale process. Until they have actually been selected, prospective underwriters will have little incentive to begin what may turn out to be a useless and costly investigation. The competitive bidding environment will also surely create pressures for underwriters to complete deals rapidly, irrespective of the adequacy of their due diligence investigation. Furthermore, the underwriter's weakened relationship with the issuer and the

perceived need for haste will make it extremely difficult for the underwriter or its counsel to suggest, let along require, any changes in previously filed Exchange Act reports whether by amendment or by inclusion of additional information in the bare-bones prospectus permitted by Form S-3.

Although many of these observations may sound theoretical to some, in my experience as a securities lawyer representing both issuers and underwriters, I viewed first hand the importance of an underwriter's counsel in the disclosure process. The give and take among the underwriters and their counsel, and the issuers and its counsel, increased the likelihood of complete and accurate disclosure, and many times during the process, discoveries were made which kept troubled companies from coming to market, or at least fully informed the public as to the risks inherent in a proposed transaction. This give and take or shared responsibility, which acted as a system of checks and balances, is lost in an instantaneous offering system. The risk to the quality of disclosure is, in my judgment, substantial.

As a result of these developments, the very foundation of the disclosure process that has for many years worked so well to protect investors cannot help but be severely undermined.

C. Impact on Dissemination of Information to Investors

The absence of a notice period under the Rule also fails to insure that potential investors will have an opportunity to receive adequate information about an impending offering prior to being called upon to make an investment decision. In fact, issuers can file registration statements pursuant to the Rule and ultimately sell securities thereunder without distributing any preliminary disclosure materials to investors. As the Rule operates, when issuers are ready to sell their securities off the shelf, they are permitted to "sticker" pricing and other last minute information to the prospectus and sell their securities, without waiting for Commission action or making any preliminary distributions of the prospectus. A final prospectus is simply delivered to the investor with the confirmation. This is permitted irrespective of whether adequate information about the offering is available in the marketplace.

I recognize that prior to Rule 415 many investors never read a prospectus, even when it was provided to them well in advance of an investment decision. Significantly, however, the prospectus was available if investors wanted it and many investors who did not read prospectuses relied upon their

brokers and advisers, who had received and reviewed the disclosure documents and could therefore assist the investor in making informed judgments.

Of course, the lack of time to make reasoned investment decisions and the inability to receive disclosure documents in advance of these decisions will be less threatening to institutional investors which often receive and review Exchange Act information as a matter of course and which may use their purchasing power to demand any required additional information about an issuer before buying securities in large volume. The individual investors, on the other hand, must rely heavily on an issuer's disclosure documents in evaluating an investment opportunity.

I also recognize that this lack of disclosure is more significant with respect to offerings under the Rule by issuers that are not eligible to use Form S-3, rather than those who may do so. Form S-3 issuers are large, widely followed companies, and it is reasonable to assume, under the efficient market theory, that financial analysts will study Exchange Act reports of these issuers and disseminate material information contained in these documents to the marketplace. Thus, if prospectuses do not reach investors before an investment decision must be made, important information about an S-3 issuer at least may be reflected in the current market price of the issuer's security. Other companies, however, are generally not as widely followed by financial analysts, and material information about them is not as likely to be available in the marketplace and reflected in the market price of securities when investors are called upon to make investment decisions.

Notwithstanding the distinction, however, between S-3 companies and other issuers, I remain troubled that Rule 415, by not imposing a notice period upon issuers or a requirement to disclose timely information before selling securities, will too often deprive the individual investor of material information necessary to make an adequate investment judgment. In doing so the Rule eviscerates one of the fundamental protections contemplated by the drafters of the Act.

IV. Summary

A. General

In formulating my dissent, I recognized -- at least as clearly as the members of the participating majority -- that the

Commission was not writing on a clean slate. Rather, its slate was filled not only with the previous experiences under the integrated disclosure system and Rule 415, but also with the nearly 50 years of experience under the Securities Act and the customs and practices that have been developed and regulated by those Acts, of investors, issuers and intermediaries. This cumulative experience has produced the most effective, efficient and honest capital market system the world has ever known. I thought, and still firmly believe, that we would do well to erase from that slate only what is necessary and to do that with extreme care.

As I have noted above, I believe that many of the innovations of Rule 415 and the roots of the Rule in the integrated disclosure system are sound and useful. I also believe, however, that the traditional practices under the Act prior to the Rule are at least as useful to the American capital market system. Accordingly, I dissented to the extension of the Rule in its present overly broad form, and favored making certain mid-course modifications to the Rule. Those modifications, would, in my judgment, mitigate to a great extent many of those risks, while preserving the praiseworthy and useful innovations of the Rule.

B. Distinction Between Debt and Equity Offerings

In analyzing the impact of Rule 415 on investors and the capital markets, I believe that a useful distinction can be made between debt and equity offerings. In my judgment, it is likely that the issuance of debt securities off the shelf creates fewer adverse consequences for investors and the capital-raising process than the issuance of equity securities and that the offering of debt securities by widely-followed companies eligible to use Form S-3 produces even less significant problems under the Rule.

In accordance with this distinction, I would limit the Rule's principal application to debt offerings and not permit its general use for primary equity offerings. I would endorse the Rule in the form as extended today with respect to debt issuances registered pursuant to Form S-3, but I would impose a notice period with respect to all other debt issuances under the Rule.

C. Equity Offerings

I dissented from the extension of the Rule with respect to general primary equity offerings, because I believed that such offerings have the greatest potential to produce the problems I have discussed with respect to investor protection, the structure

of the securities markets and the capital-raising process. At the same time, these offerings have the least need for the instantaneous offering procedure.

It was clearly stated at the Commission's public hearings and in various written comments that equity securities are more frequently sold through broad-based underwriting syndicates to large retail investment networks than are debt securities. Thus, the present breadth and depth of our capital markets are likely to be disproportionately affected by the instantaneous transactions and the absence of traditional selling syndicates that are the hallmarks of Rule 415. The exclusion of general primary equity offerings from the Rule would be likely to encourage small and regional broker-dealers to remain in the underwriting business with the resulting benefits to the liquidity and stability of the capital markets. Small and emerging issuers would be more likely to be served, individual investors would be less likely to be unfairly treated or squeezed out, and the anti-competitive threat of accelerating concentration in the securities industry would be reduced.

That the inclusion of general primary equity offerings within the purview of the Rule is not required to solve existing problems in the marketplace is borne out by the hearings and written comments. Even potential frequent users of the Rule for debt offerings, such as Citicorp and Du Pont, said they saw no need to use it for equity offerings. And, in fact, our experience to date has shown that for every equity offering registered on a delayed basis under the Rule, there have been ten debt offerings so registered.

In addition, because equity securities, unlike debt, are still widely purchased by retail investors, there is a greater need in these offerings to distribute on a timely basis high quality information to individual investors to inform them about issuers and to maintain their confidence and interest in the equity markets. By exclusion of primary equity offerings from Rule 415, investors would be more likely to receive useful information about an offering on a timely basis. Furthermore, because in non-Rule 415 offerings the underwriters are selected before a filing, the underwriters' due diligence can begin early in the process and the resulting give and take among the parties and their counsel should produce a higher quality disclosure document than one prepared unilaterally by the issuer.

D. Offerings of Debt Securities Generally

I concurred with the Commission's decision to the extent that it permitted the continued use of Rule 415 during the temporary

period for all debt offerings. After weighing the risks and benefits, in my judgment, applying Rule 415 to offerings of debt securities appears to be justifiable because debt issuers have been shown to have a more compelling need than equity issuers to meet market "windows" rapidly as a result of the high volatility of interest rates and the sensitivity of these rates to market trends. Indeed, the SEC originally authorized shelf registration in the mid 1970's for debt offerings in response to the needs of financing companies that borrowed frequently in the capital markets. Furthermore, debt securities, particularly those of large, well-known companies, do not appear to be sold through broad-based syndicates nor purchased by retail investors as often as equity securities, and the traditional broad-based syndicate members are not, therefore, as dependent upon such offerings for their continued viability.

The offering of debt securities also presents less troublesome disclosure problems than the offering of equity securities under Rule 415, because fewer unsophisticated individual investors may participate in this market without expert aid, and because investors receive a certain amount of reliable information about the issuers of debt from nationally recognized statistical rating services. In addition, the institutionalization of the securities markets that may be fueled by Rule 415 will be less significant with respect to debt securities because debt issues, unlike equity, traditionally have been sold principally to institutional investors.

E. Debt Offerings by Companies Ineligible to Use Form S-3

Although I believe that debt offerings present fewer problems than equity offerings under Rule 415, I am concerned that even debt issues sold off the shelf, especially by smaller companies not eligible to use Form S-3, might have a detrimental impact upon the capital-raising process disproportionate to their benefit, and would deprive investors of much needed information about an issuer. Therefore, I dissented from the extension of the Rule insofar as it did not provide for a notice period for debt offerings that are not registered on Form S-3. To ameliorate many potential problems, I would have imposed a notice period of two full business days prior to the commencement of sales.

Such a notice period, I believe, would provide underwriters with more time to form traditional underwriting syndicates, and could provide for some retail distribution, with the attendant benefits described elsewhere herein. A notice period would also increase the accuracy of information disseminated to investors

by providing underwriters with more time, after being selected for participation in a debt offering, to discharge their statutory due diligence responsibility to investigate the adequacy of information contained in or incorporated by reference into an issuer's prospectus.

F. Debt Offerings by S-3 Issuers

Finally, because I believe that the offering of debt securities by issuers eligible to use Form S-3 does not risk many of the problems associated with the offerings of smaller debt issuers, I concurred in the extension of Rule 415 on a temporary basis for debt offerings on Form S-3, without imposing a notice period before the commencement of sales. Although not all their arguments are completely convincing, many commentators have urged that no notice period is necessary for S-3 debt offerings, because S-3 companies are widely followed by financial analysts and therefore, under the efficient market theory, it is reasonable to assume that information about these companies is generally available; the debt securities of S-3 companies are frequently highly rated, so that the value of these securities is often determined by prevailing interest rates rather than information in the marketplace; and traditional broad-based underwriting syndicates and sales to retail purchases are less customary in S-3 debt offerings. The perceived need for rapid access to the market for debt offerings of major companies was the original premise of Rule 415. In this limited context the Rule is, in my judgment, a useful and relatively low risk innovation and I would urge the experiment to proceed.

Of course, I will state parenthetically that it is also true that under the efficient market theory, S-3 companies that issue equity securities are widely-followed by financial analysts, and thus, there is information generally available about these issuers in the marketplace and a less compelling need for investors to receive timely disclosure documents of these issuers before making an investment decision. Therefore, one could construct a proposal that Rule 415 should be available only for S-3 companies issuing debt or equity securities because these offerings off the shelf will have a less adverse impact upon investors than the shelf offerings of smaller debt or equity issuers. I recognize that there are many defensible formulas for a shelf registration prototype. I, however, rejected formulating a Rule based solely on the size of an issuer because I believe that S-3 equity issues off the shelf still run significant risks with respect to adversely impacting the capital market system.

V. CONCLUSION

Because the Commission has a long tradition of acting by consensus, I dissented from the decision of my colleagues today with great reluctance. I could not in good conscience, however, concur with the extension of the Rule 415 experiment in those situations in which the risks engendered by the Rule exceeded the benefits that were sought, and that were likely to be realized.

Although I fully endorsed the Rule's laudable and timely objective of facilitating access of large issuers to an increasingly volatile debt market, I opposed the chosen route to accomplishing this goal, because it unnecessarily threatened to change dramatically -- and perhaps damage irreparably -- our capital market system that has worked effectively, efficiently and honestly for many years. Thus, I believe that we should have made significant mid-course modifications to the Rule to aim it more directly at the problems it was designed to solve, and to ensure that the risks we were about to take were commensurate with the rewards we sought.

Because the Commission determined otherwise and extended the Rule without substantial change, I believe the Commission and the staff have a great responsibility in the coming months to monitor closely the Rule, and to scrutinize its impact on the market system and the quality of disclosure provided to investors. We must be diligent to change the Rule, along the lines I have suggested or otherwise, if the risks that I have discussed prove to be real. Now that we have chosen to run those risks, only by remaining vigilant during the experimental period wil we be able to discharge our statutory responsibility to protect investors and to maintain the integrity and stability of our capital markets.