

SECURITIES AND EXCHANGE COMMISSION NEWS DIGEST

A brief summary of financial proposals filed with and actions by the S.E.C.



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FOR RELEASE

Chairman J. Sinclair Armstrong of the Securities and Exchange Commission today announced that the Commission is inviting public comments on a proposed statement of acceleration policy under the Securities Act of 1933. The proposed statement of acceleration policy describes situations in which the Commission, in the exercise of its statutory responsibilities under Section 8(a) of the Securities Act of 1933, may withhold acceleration of the effective date of registration statements filed under the Act proposing a public offering of securities. The Commission's order granting acceleration has the effect of permitting a registration statement to become effective so that sales of the securities can legally be commenced.

The proposed statement of acceleration policy in effect restates the administrative policies in regard to acceleration which the Commission has developed over the years and with which the public is generally familiar. It also states two rather recent policies followed by the Commission. The first of these is the withholding of acceleration where the Commission is conducting an investigation for violations of the securities laws. The second involves the situation in which an underwriter, by reason of the underwriting obligation to be assumed with respect to the securities being registered, would be in violation of Commission "net capital" rules which provide safeguards for investors with respect to the financial responsibility of brokers and dealers.

Views and comments upon the proposal may be submitted not later than October 31, 1956. The acceleration policy finally determined upon by the Commission will be set forth in its rules for the information and guidance of all concerned.

"Under the Securities Act," Chairman Armstrong commented, "the Commission is authorized to order a registration statement effective at any time after the date of its filing, whereupon the public sale of the issuer's securities may be commenced. In considering acceleration requests, the Commission is governed by Section 8(a) of the Securities Act, under which a registration statement is to become effective on the 20th day after filing (or 20 days after the filing of the last amendment), or on such earlier date as the Commission may determine, having due regard to the adequacy of the information respecting the issuer theretofore available to the public, to the facility with which the nature of the securities to be registered, their relationship to the capital structure of the issuer and the rights of holders thereof can be understood, and to the public interest and the protection of investors.' In administering this provision of the law, there have been formulated over the years certain general Commission policies with respect to various types of situations in which acceleration has been refused. The proposed statement of acceleration policy will represent an enunciation of these policies as a part of the Commission's rules. Additional types of situations in which acceleration may be refused but which have not heretofore been publicly announced are also included in the proposed statement of acceleration policy.

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"One basis for past refusals of acceleration has been special arrangements for indemnification by the issuer of its officers, directors or controlling persons against liabilities arising under the Securities Act. The Commission has regarded such indemnification as contrary to the policy of and unenforceable under the Act, and against public policy; and under the statement acceleration may be denied unless appropriate waivers of indemnification are received or an agreement obtained to submit the question as to propriety of such claims for indemnification to a court of competent jurisdiction.

"Acceleration also may be denied if the registration statement covers outstanding securities to be sold by controlling persons who are not paying their equitable share of the expenses of registration and sale.

"Similarly, if there have been prior transactions in registrant's stock by persons connected with the offering which tend artificially to affect the market price of the securities being offered, acceleration may be refused until such time as the effect of these transactions upon the market price of the securities has been dissipated. Acceleration also has been denied where the registration statement relates to an issue of preferred stock which has a par or stated value substantially less than its liquidating preference and no agreement is made to restrict surplus so that capital and surplus would at least equal the liquidating preference on the preferred stock.

"The proposed statement of acceleration policy announces two additional situations in which acceleration may be withheld. The first involves cases in which the issuer, a controlling persons, or one of the underwriters, is the subject of a current investigation by the Commission as to possible securities violations. In the second, acceleration may be refused if one or more of the underwriters, by reason of a firm underwriting commitment or otherwise, does not comply with the Commission's net capital rules, which require at least \$1 of capital for every \$20 of aggregate indebtedness.

"These are situations in which the Commission, in the exercise of its discretionary authority to accelerate the effective date of registration statements, may deny acceleration as not being appropriate in the public interest or for the protection of investors. Since the required disclosures would presumably have been made, the registration statement would, in such cases, become effective in due course by lapse of the twenty-day waiting period, whereupon the securities could be publicly sold. However, refusal of acceleration would permit the full statutory twenty-day waiting period for public dissemination of the registration disclosures."

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