

Release Monday, July 20, 1970

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C. 20549

INVESTMENT COMPANY ACT OF 1940
Release No. 6121

STAFF INTERPRETIVE POSITION RELATING TO
WHETHER IT WOULD BE IMPROPER FOR A BOARD
OF DIRECTORS OF A REGISTERED INVESTMENT
COMPANY TO VALUE CERTAIN SECURITIES AT
MARKET VALUE.

The Securities and Exchange Commission today called attention to an interpretive position its Division of Corporate Regulation has taken relating to the proposed valuation at market price of restricted shares that are acquired by a registered investment company. The Staff interpretive position summarized in this release was taken in response to an inquiry directed to the Staff. While the views expressed by the Staff as set forth in this release are those of persons who are continually working with the provisions of the statute and rule involved and can be relied upon as representing the views of the division in which they originate, the public is cautioned that the opinions expressed in the release are not, and do not purport to be an official expression of, the Commission's views.

A summary of the inquiry together with the response of the Division of Corporate Regulation follows:

A law firm requested the comments of the Staff with respect to the proposed valuation of certain shares proposed to be acquired from an industrial company by one or more registered investment companies. Under the proposal, the issuer would register the offering under the Securities Act of 1933 on Form S-1, and the registration statement would contain an undertaking that, in the event of resale by the offeree registered investment companies, the issuer would provide the required statutory prospectus. To meet this obligation the issuer would agree to maintain an effective registration statement for a stated period of time; and, at the time of a proposed resale, the investment company would give notice to the issuer, which would file a post-effective amendment identifying the seller and the number of shares proposed to be issued. The law firm believed that, as a result of the previous filing, the post-effective amendment would promptly be permitted to become effective; and it expressed the view that these arrangements greatly increased the marketability of the shares and justified the proposed valuation at the market price of fully tradeable shares of the same issuer.

Without reaching the question of whether in this particular situation the Division of Corporation Finance would accept a registration statement of this type for filing under the Securities Act of 1933, the Staff of the Division of Corporate Regulation stated:

"Under Section 2(a)(39) of the Investment Company Act of 1940, and Rule 2a-4 thereunder, a registered investment company is required to determine continuously the net asset value of securities which it acquires. As the Commission stated in Investment Company Act Release No. 5847 (1969), the fair value of securities which cannot be sold to the public without an effective registration statement under the Securities Act of 1933 must be determined in good faith by the company's board of directors.

"Whether or not it would be appropriate for the board of directors of a registered investment company to value the securities of the issuer at the market price of fully tradeable shares of the same class depends upon all of the circumstances affecting the issuer and its shares at the time of the valuation. The maintenance of a 'shelf' registration for the securities in question is a factor which a registered investment company's board of directors could properly take into consideration in valuing these securities. However, it is impossible to predict in advance how long it will take between the filing of a post-effective amendment and its becoming effective. For example, substantial changes in the business and finances of the industrial company may require the same degree of review as a new registration statement. Further, because of new, but incompleated ventures, the industrial company may desire not to make public such ventures for some period of time. Therefore, while the existence of a 'shelf' registration statement is a factor that should be considered in the determination of the value of such securities, automatic valuation at market price on this basis alone, without taking other factors into account, would be improper."

Orval L. DuBois
Secretary

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