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# sec news digest

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June 27, 1975

## COMMISSIONER SPEAKS

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### THE LIMITS OF DISCLOSURE

On June 24, 1975 in a speech entitled "The Limits of Disclosure", Commissioner A. A. Sommer, Jr. reflected on some of the policy implications of recent disclosures relating to overseas conduct on the part of American corporations. Commissioner Sommer stressed that he was not in a position to give definitive answers to the problems raised and indicated that the approaches discussed in his speech were tentative.

After first tracing the disclosures which have brought the discussion of the conduct of American corporations overseas into question, Commissioner Sommer offered these thoughts: "Obviously disclosure of illegal or improper overseas payments will discourage them, with all the consequences that may follow from that. Discouragement of improper conduct may be a desirable side-effect of disclosure when that conduct is overreaching by insiders, violations of election laws, and the like. But with respect to overseas payments, should the outcome of the game be determined by the disclosure requirements of the securities laws? Are there not concerns and values and national interests involved here that cannot be dealt with simply through the mechanisms of disclosure under the federal securities laws."

"The argument is made that if the continued existence of a significant business overseas depends upon illicit or improper payments, then those payments should be disclosed since that business is peculiarly unstable, less predictable, more hazardous than a business that depends upon superior technology or salesmanship or executive skill. Management is thus placed in a harsh dilemma: materiality stems from a likelihood that the payments - and their secrecy - are a prerequisite to the continued prosperity of the enterprise abroad; termination of the payments - or their disclosure - will likely impact adversely the operations; thus conduct dictated by the determination of materiality-disclosure - causes the very event upon which materiality depends - truly a "Catch 22" worthy of Joseph Heller and his characters."

"What then should be done? I think frankly this is a problem that cannot be adequately dealt with within traditional disclosure doctrine; it involves too many facets and circumstances that lie outside our traditional disclosure experience. Disclosure is not an absolute; in many situations it can be such simply because it is impossible to identify any conflicting or competing values."

"These considerations drive me to the conclusion that only Congress can resolve these issues, at least as to the future. The Congress preeminently in our constitutional government has the chose of conciliating conflicting values in our society. It falls to them to determine what sort of conduct we want our corporations to engage in abroad. In some instances, what we call bribery is not even illegal overseas; if, nonetheless that is conduct Congress thinks American enterprises should not engage in, then it should so decree. If American corporations are not to seek business with heavy payments clearly intended for further distribution Congress should decide that after considering all the consequences of that policy, and let then transgressions become the material of disclosure."

"I would suggest another course which may not, given the practicalities of our time, be feasible or even realistic. Perhaps we can tailor disclosure pattern that will prevent the adverse consequences I have discussed while at the same time protecting the interest of investors. Such a pattern would require the disclosure by corporations of the extent to which their business overseas depended upon or had been secured as the result of payments disclosure of which would jeopardize that business; the names of the recipients and the countries in which the related business was done would not be demanded and the payments would not have to be characterized otherwise than by indicating that, to the extent true, their detailed disclosure or their discontinuance would adversely impact the business to which they related. The disclosure would indicate the approximate total volume of business, and the profitability of it, related to such payments, without detailed narration. In the past we have usually required

that an issuer in disclosing "let it all hang out." I would suggest in these matters we should somewhat more discerningly decide what an investor really wants to know and not require disclosure of details of only peripheral importance to his investment decisions."

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## RULES AND RELATED MATTERS

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### NOTICE OF EXTENSION OF COMMENT PERIOD ON PROPOSALS RELATING TO PROJECTIONS OF FUTURE ECONOMIC PERFORMANCE AND A MORE TIMELY FILING OF THE CHANGE OF CONTROL ITEM OF FORM 8-K

The SEC today extended the comment period on its proposals relating to projections of future economic performance and a more timely filing of Form 8-K to report a change in control (Release No. 33-5581, April 28, 1975). The Commission believes that an extension from June 30 until July 31, 1975 is appropriate in view of the extension requests it has received and the great interest these proposals have generated.

Accordingly, all interested persons are invited to submit their views and comments on the proposals contained in Release No. 33-5581 to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549 on or before July 31, 1975. Such communications should refer to File No. S7-561. All such communications will be available for public inspection. (Rel. 33-5594)

### ADOPTION OF AMENDMENTS TO RULE 15c3-1 AND ADOPTION OF AN ALTERNATIVE NET CAPITAL REQUIREMENT FOR CERTAIN BROKERS AND DEALERS

The SEC today announced the adoption of the uniform net capital rule (Rule 15c3-1, 17 CFR 240.15c3-1 under the Securities Exchange Act of 1934). The rule establishes minimum financial responsibility requirements for all brokers or dealers on September 1, 1975 as required by the Securities Acts Amendments of 1975. Thus, the new minimum net capital requirements and the new maximum ratio of aggregate indebtedness to net capital of 15 to 1 will be required to be maintained by all brokers and dealers on September 1, 1975. In order to insure that the broker-dealer community and all those who will be required to work with the new rule will be able to become thoroughly familiar with its provisions, the requirement to compute net capital under the new rule will be delayed until January 1, 1976. In addition, all Examining Authorities must no later than July 31, 1975 submit to the Commission a plan assuring the orderly transition of their members to the uniform rule by January 1, 1976.

The rule discontinues the exemption heretofore embodied in the Commission's net capital rule for members of designated national securities exchanges (other than certain specialists) who were required to comply with net capital rules of such exchanges. In addition, non-bank municipal brokers or dealers will become subject to the Rule on December 1, 1975 and the Commission is seeking comments from such broker-dealers with respect to any special problems they may have in complying with the rule.

The rule, as adopted, continues the basic net capital concept under which the securities industry has operated for many years and, in addition, introduces an alternative concept to measure the capital adequacy of broker-dealers.

#### The Uniform Net Capital Rule

The rule, as adopted, reduces from 20:1 to 15:1 the maximum ratio of aggregate indebtedness to net capital which a broker or dealer may maintain. With respect to minimum net capital requirements, it establishes certain new classifications of brokers and dealers and modifies the minimum requirements currently applicable to existing classifications of brokers and dealers. The \$5,000 minimum net capital requirement has been extended to brokers and dealers who engage in the sale of mutual funds on a direct wire order basis. The rule, as adopted, requires minimum net capital equal to \$25,000 for a broker or dealer engaged in a general securities business and establishes new minimum capital requirements for market makers. A \$50,000 minimum net capital requirement has been established for writers and endorsers of options not listed on a registered national securities exchange.

While most of the provisions of the rule, as adopted, remain unchanged from the November 1974 release, several modifications have been made in the rule which are described in the release.

The rule, as adopted, establishes, among other things, debt-equity requirements, undue concentration haircuts, uniform treatment of option transactions for net capital purposes, uniform subordinated debt retention requirements and flow-through capital provisions.

### Alternative Net Capital Requirement

Rule 15c3-1(f), as adopted, establishes a minimum net capital or liquidity standard which is designed to measure the general financial integrity and liquidity of a broker or dealer and establishes the minimum net capital deemed necessary to meet the broker's or dealer's continuing commitments to its customers. While the alternative eliminates the traditional standard of limiting obligations of brokers and dealers (i.e., the ratio of aggregate indebtedness to net capital) it substitutes the aggregate dollar amount of firm assets, which have as their source transactions with customers as the standard for determining the maximum permissible level of the broker's or dealer's customer related activity. Rule 15c3-1(f), thus, requires a broker or dealer to maintain minimum net capital equal to the greater of \$100,000 or 4% of aggregate debit balances includable in the Reserve Formula and significantly strengthens the requirements of Rule 15c3-3 for broker-dealers electing the alternative.

Generally, the alternative will be applicable only to brokers or dealers who have not elected to operate pursuant to an exemption from Rule 15c3-3. (Rel. 34-11497)

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## COMMISSION ANNOUNCEMENTS

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### REPORT COORDINATING GROUP SUBMITS FIRST ANNUAL REPORT RECOMMENDATIONS FOR THE ADOPTION OF A FOCUS REPORT

The First Annual Report, including recommendations for the adoption of a FOCUS Report, was submitted to the Commission on June 16, 1975 by the SEC Report Coordinating Group (The Group) and contained specific recommendations.

The recommended FOCUS Report would be composed of a Part I short form summary filed monthly by certain clearing or carrying firms; Part II surveillance report filed quarterly by financially and operationally sound clearing or carrying firms; Part IIA "short form" in lieu of Part II filed quarterly by small broker-dealers, firms not clearing and not carrying customer accounts and firms doing a limited type of business; and an "annual audit report" in which the extent and timing of the application of the audit procedures would be determined, as in other industries, by the independent public accountant according to his professional judgment after considering the circumstances in a particular case.

The Group recommended, among other things, that each regulatory organization study the possibility of eliminating assessment forms based on net commission revenue and consider collecting assessments based on data captured at the source in computer form through the clearing mechanism of each respective exchange. An Assessments Forms Task Force has been created and will hold its first meeting on June 30, 1975. The Group's recommendation that the Form U-3, the uniform broker-dealer registration form, and the Form U-4, the uniform agent registration form, be adopted has been largely implemented. The Group has ascertained that there are one hundred four existing trading forms which could be reduced to twenty nine such forms. A Trading Forms Task Force has been created and will hold its first meeting on July 1, 1975.

The Commission solicits from interested members of the public comments concerning the First Annual Report and the recommendations for the adoption of a FOCUS Report which will be available for review in the Public Reference Room at each of the Commission's Regional Offices on or about July 1, 1975. Comments should be filed on or before July 15, 1975 and should be addressed to: Daniel J. Piliero II, Esq., Assistant Director, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549. All comments will be available for public inspection. (Rel. 34-11499)

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## ORDERS FOR PUBLIC PROCEEDINGS

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### ORDER CITES KROEZE, MCLARTY & DUDDLESTON

Public administrative proceedings have been ordered under the Securities Exchange Act of 1934 against Kroeze, McLarty & Duddleston, a Jackson, Mississippi broker-dealer, and John O. Kroeze, Jack M. McLarty and Leland S. Duddleston, Jr., its three partners.

The proceedings are based upon staff allegations that respondents violated Regulation T of the Federal Reserve Board, the antifraud, special reserve bank account, book-keeping, supplemental reporting and broker-dealer annual reporting provisions of the securities laws. A hearing will be scheduled by further order to take evidence of the allegations against the respondents. (Rel. 34-11504)

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## INVESTMENT COMPANY ACT RELEASES

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### UNITED FUNDS

An order has been issued on an application by United Funds, Inc., United Vanguard Fund, Inc., United Continental Growth Fund, Inc., United Continental Income Fund, Inc., and Continental Fiduciary Shares Inc. (Funds), all mutual funds, and Waddell & Reed, Inc., the Funds' underwriter, permitting the Funds to offer to exchange their shares for shares of United Daily Dividend Fund, Inc., (UDD), a fund to be underwritten by Waddell & Reed, with sales charges equal to the difference between the sales charges on the shares of the offering Funds and the sales charges on the UDD shares. (Rel. IC-8835 - June 25)

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## HOLDING COMPANY ACT RELEASES

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### SOUTHERN SERVICES

A supplemental order has been issued regarding Southern Services, Inc., subsidiary of The Southern Company, authorizing an extension of the period for the subsidiary to issue up to \$18,275,000 of long-term notes to the parent until June 30, 1978. (Rel. 35-19063 - June 26)

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## TRADING SUSPENSIONS

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### ADDITIONAL ACTION ON TWO TRADING SUSPENSIONS

The SEC has announced the suspension of (a) exchange and over-the-counter trading in the securities of Canadian Javelin Ltd. for the further ten-day period June 28 - July 7, inclusive; and (b) over-the-counter trading in the securities of Continental Vending Machine Corp. for the further ten-day period June 29 - July 8, inclusive.

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## SECURITIES ACT REGISTRATIONS

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### (S-7) THE DETROIT EDISON COMPANY

2000 Second Ave., Detroit, Mich. 48226 - 1,600,000 shares of series preferred stock (\$1 par), to be offered for sale through underwriters headed by Morgan Stanley & Co. Incorporated, 1251 Avenue of the Americas, New York, N.Y. 10020, Blyth Eastman Dillon & Co. Incorporated, One Chase Manhattan Plaza, New York, N.Y. 10005 and Lehman Brothers Incorporated, One William St., New York, N.Y. 10004. The company is a public electric utility. (File 2-54023 - June 25)

### NOTICE

Many requests for copies of documents referred to in the SEC News Digest have erroneously been directed to the Government Printing Office. Copies of such documents and of registration statements may be ordered from the Public Reference Section, Securities and Exchange Commission, Washington, D.C. 20549. The reproduction cost is 15¢ per page plus postage (\$2 minimum) and 30¢ per page plus postage for expedited handling (\$5 minimum). Cost estimates are given on request. All other referenced material is available in the SEC Docket.

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