

NEW YORK STOCK EXCHANGE, INC.

August 27, 1973

SUMMARY MEMORANDUM

Recission of One Year Limitation on Ownership  
of Stock – Rule 317

THE ISSUE

To determine whether the Board of Directors should approve in principle an amendment to the Exchange's rule governing ownership of stock in member corporations.

BACKGROUND

Exchange Rule 317 (Exhibit A) limits to one year the length of time during which member organizations or their principals may own the stock of another member corporation in connection with a merger, acquisition or takeover.

On June 29, 1973, the Board granted an exception to this limitation, permitting Walston & Co., Inc. to own stock issued by DuPont, Glore, Forgan Inc. for more than one year while the two firms explore the feasibility of merging their businesses.

At the same time, the staff was instructed to review the one-year limitation with a view to eliminating the need for the Board to consider similar requests for exceptions in the future.

DISCUSSION

The staff's study of the history of the rule traced the inclusion of the one-year limitation to March 1970, when member corporations were first permitted to issue freely transferable stock to the public. At that time, lack of experience in this area prompted the

Exchange to take a very cautious approach to all aspects of investment in the stock of member corporations by other member organizations or their participants.

Subsequent experience strongly suggests that the one-year limitation provision is not necessary. (A fuller discussion of the history of the rule and relevant recent developments is attached as Exhibit B.)

#### RECOMMENDATION

The staff recommends and the Executive Committee concurs, that the Board approve in principle an amendment to Rule 317 to rescind the one-year limitation on ownership of stock of a member corporation by another member organization or its participants in connection with a merger, acquisition or takeover. (A proposed amendment to accomplish this is attached as Exhibit C.)

If approved, the proposed amendment will be submitted to the SEC pursuant to SEC Rule 17a-8. (A draft letter of transmittal is attached as Exhibit D.) If the SEC concurs, the amendment will be brought back to the Board for final approval at a later date.

Participant in One Member Organization

Rule 317. (a) Except as provided in (c) below, no party shall be a member or allied member in more than one member organization.

(b) Except as provided in (c) or (d) below, no person who is a member or allied member in any member firm, or a director, or allied member in any member corporation, or any individual Exchange member, may beneficially own any stock of any other member corporation, except for such period of time not to exceed one year as the Exchange may permit in connection with a merger into, or acquisition of assets, or other take-over by, or of, such other member corporation, or except as otherwise specifically approved by the Exchange; and no individual member or member organization may own beneficially any stock of any other member corporation, except:

1. for such period of time not to exceed one year as the Exchange may permit in connection with any such merger, acquisition or other take-over;
2. in connection with an underwriting of such stock;
3. in connection with his or its activity as a market maker in such stock, in which event the member or member organization shall be required to be registered with the Exchange as a market maker in such stock; or
4. as provided in (c) or (d) below.

(c) One or more member organizations may, with the approval of the Board of Directors, own all of the voting stock of another member corporation, except for qualifying shares of voting stock held by members, allied members or directors of such controlled member corporation, and members and allied members in such parent member organization(s) may be approved as members and allied members in such controlled member corporation; but no member shall qualify more than one organization for membership.

(d) Any member or member organization or any member, allied member, director or employee of a member organization may own less than 5% of the stock of another member corporation, provided such stock is freely transferable and is publicly held. Under appropriate circumstances the Exchange may treat as a single holding stock which is nominally held by different persons or organizations.

. . . Supplementary Material:

.10 For the purposes of this Rule, the term “market maker” means a member or member organization which, with respect to a particular stock of another member corporation, holds itself out (by entering indications of interest in purchasing and selling in an inter-dealer quotations system or otherwise) as being willing to buy for his or its own account on a continuous basis.

In order to become registered as a market maker for the purposes of this Rule with respect to the stock of any member corporation, a member or member organization must file such application with the Exchange as it may require, must have and maintain minimum net capital as defined in Rule 325 of \$50,000 plus \$5,000 for each such stock in excess of five in respect of which such member or member organization is registered as a market maker under this Rule, and must, except when such activity is unlawful, meet all of the following conditions with respect to such stock:

- (i) such member or member organization publishes bona fide competitive bid and offer quotations in a recognized inter-dealer quotations system;
- (ii) such member or member organization furnishes bona fide competitive bid and offer quotations to other brokers and dealers on request;
- (iii) such member or member organization is ready, willing and able to effect transactions in reasonable amounts and at his or its quoted prices with other brokers or dealers; and
- (iv) such member or member organization has a satisfactory rate of inventory turn-over.

Amendments.

March 26, 1970

July 1, 1971

December 16, 1971

ONE-YEAR LIMITATION ON OWNERSHIP OF STOCK  
OF A MEMBER CORPORATION IN CONNECTION WITH  
A MERGER, ACQUISITION OR TAKEOVER

SUPPLEMENTARY DISCUSSION

Exchange Rule 317 limits the circumstances under which individuals may be members or allied members in more than one member organization and under which member, allied member, directors and member organizations may own the stock of any other member corporation. One of the circumstances under which such stock ownership is permitted is in connection with a merger, acquisition or take-over. In this case, the stock ownership is limited to a period of one year unless otherwise specifically approved by the Exchange. This portion of the Rule was adopted in March, 1970 when member corporations were first permitted to issue their stock in freely transferable form to the public.

On June 29, 1973 the Board of Directors granted an exception to the one-year limitation under Rule 317 to permit Walston & Co., Inc. to own stock issued by duPont, Glore, Forgan Inc. for more than a year while Walston and duPont explore the feasibility of merging their businesses. At the time the exception was granted, the staff was instructed to review the one-year limitation with a view to amending Rule 317 so that future such requests will not need to be considered by the Board individually but will be permissible under the Rule.

In March, 1970 when Rule 317 was amended to substantially its present form, the Exchange had no experience with the issuance of stock in freely transferable form by member corporations to the public. Also, prior to that time the Exchange had never permitted a member organization or its participants to make an investment in another

member organization, whether by stock ownership, partnership interest or a subordinated loan. As a result, the Special Committee on Public Ownership recommended and the Board of Governors approved a very cautious position with respect to ownership by one member organization or its participants of the freely transferable stock issued by another.

Rule 317 as originally adopted continued the principle that Exchange member organizations and their participants must be independent of one another with no cross-ownership permitted. The only exception was that such ownership was permitted for a period of up to one year in connection with a merger, acquisition or other takeover. This exception was made to give member organizations the minimum flexibility that was considered necessary for a merger, acquisition or other takeover of a company whose stock was publicly owned.

As the Exchange and its membership became accustomed to the stock of member organizations being freely transferable and publicly held, exceptions were made to the general rule that a member organization and its participants could not own the stock of another member organization. In July, 1971 Rule 317 was amended to permit member organizations and individuals associated with them to own up to 5% of the freely transferable, publicly held stock of another member corporation. A similar permission to own up to 5% of the freely transferable stock of a nonmember securities corporation had long been a part of Exchange rules. This provision is in Rule 317(d).

Another amendment adopted in December, 1971 permitted one or more member organizations to own a subsidiary member corporation, provided that they owned all of the voting stock except for qualifying shares. At the same time, members and allied

members in the parent organizations were permitted to be members and allied members in the subsidiary member corporation. This provision is in Rule 317(c).

The June, 1973 request by Walston for an exception to the one-year limitation in Rule 317 did not fit within the permissible exceptions under paragraphs (c) or (d) of Rule 317. Under paragraph (c) Walston would have had to own all of the voting stock of duPont and under paragraph (d) they would have been permitted to own only up to 5%. The request was to own 49.9%, which did not fit under either exception. The Board of Directors, upon recommendation of the staff, could find no self-regulatory objection to the Walston request, and it was approved.

It would be possible to have any future requests to exceed the one-year limitation brought before the Board of Directors for individual consideration. However, experience with public ownership of freely transferable stock issued by member corporations since 1970 suggests that the one-year limitation on ownership of stock in connection with a merger, acquisition or other takeover is not necessary. Therefore, the Board of Directors has requested the staff to prepare an amendment to Rule 317 to rescind the one-year limitation.

Participant in One Member Organization

Proposed Amendment – bracketed language to be deleted.

Rule 317.

(b) Except as provided in (c) or (d) below, no person who is a member or allied member in any member firm, or a director, member, or allied member in any member corporation, or any individual Exchange member, may beneficially own any stock of any other member corporation, except ~~[for such period of time not to exceed one year as the Exchange may permit]~~ in connection with a merger into, or acquisition of assets, or other take-over by, or of, such other member corporation, or except as otherwise specifically approved by the Exchange; and no individual member or member organization may own beneficially any stock of any other member corporation, except:

1. ~~[for such period of time not to exceed one year as the Exchange may permit]~~ in connection with any such merger, acquisition or other take-over;
2. in connection with an underwriting of such stock;
3. in connection with his or its activity as a market maker in such stock, in which event the member or member organization shall be required to be registered with the Exchange as a market maker in such stock: or
4. as provided in (c) or (d) below.

THE New York Stock  
Exchange

James E. Buck  
Secretary

Mr. Lee Pickard, Director  
Division of Market Regulation  
Securities and Exchange Commission  
Washington, D. C. 20549

September 6, 1973

Dear Mr. Pickard:

Pursuant to Rule 17a-8 of the Securities Exchange Act of 1934, we are submitting herewith three copies of a proposed amendment to Rule 317 to rescind the one year limitation on ownership of stock in a member corporation in connection with a merger, acquisition or take-over.

In March, 1970 when Rule 317 was first adopted the Exchange had no experience with issuance of stock by member corporations to the public in freely transferable form. Consequently the conditions under which such stock, once issued, could be owned by participants in other member organizations were carefully prescribed. The one-year limitation was one of these conditions. Experience with the Rule since 1970 indicates that the one-year limitation is not necessary, and for this reason the Board of Directors of the Exchange now wishes to rescind it.

Any questions on this matter should be directed to David D. Huntoon at (212) 623-5253 or Donald L. Calvin (212) 623-6900.

Very truly yours,

James E. Buck

RESOLUTION REGARDING RESCISSION OF ONE  
YEAR LIMITATION ON OWNERSHIP OF STOCK  
PROPOSED FOR ADOPTION BY THE BOARD OF  
DIRECTORS ON SEPTEMBER 6, 1973

RESOLVED that Rule 317 be amended to rescind the one-year limitation on ownership of stock of a member corporation in connection with a merger, acquisition or take-over.

FURTHER RESOLVED that the Secretary of the Exchange be, and he hereby is, authorized and directed to file copies of said proposed amendments to Rule 317 with the Securities and Exchange Commission pursuant to SEC Rule 17a-8.