

MEMORANDUM

TO: The Commission

FROM: The Division of Corporation Finance

SUBJECT: Proposals to Further Integrate the Corporate Disclosure System Administered by the Commission Under the Securities Act of 1933 and the Securities Exchange Act of 1934

RECOMMENDATION: That the Commission tentatively approve: (1) the plans of the Division of Corporation Finance to develop proposals to amend Forms 8-K, 10-Q and 10-K and the rules relating to tender offers and merger proxies under the Securities Exchange Act, and Forms S-7, S-8, S-14 and S-16 under the Securities Act, as outlined in this memorandum; and (2) the time schedule proposed by the Division to enable completion of this project on or before November 30, 1976.

OTHER DIVISIONS AND OFFICES CONSULTED: With respect to certain projects only, the Office of the Chief Accountant and the Office of Reports and Information Services were consulted.

ACTION REQUESTED BY: Week of April 5, 1976

NOVEL, UNIQUE OR COMPLEX ISSUES: The Division intends to recommend that the Commission propose, among other things, (a) to make Form S-7 available for use in connection with exchange offers and to modify or eliminate the "continuity of management" condition to use of the form; (b) to permit the use of summary merger proxy statements; (c) to permit the use of summary information statements or prospectuses in connection with tender offers; (d) to make Form S-16 available for rights offerings, including rights offerings by certain foreign issuers, which would make such offerings available to U.S. residents; (e) comprehensively to revise Form S-8; and (f) to transfer certain items of information from Form 8-K to Form 10-Q and to require that reports on Form 8-K be filed within 10 days after the event triggering the filing requirement.

DATE: March 30, 1976.

With the Commission's approval, the Division of Corporation Finance intends to establish a Task Force to develop and present to the Commission proposals to amend certain rules and forms adopted under the Securities Act and the Securities Exchange Act. The Division believes that these proposals, if adopted, would serve to further integrate the corporate disclosure system administered by the Commission.

The Task Force will be comprised of professional staff members from various branches and offices of the Division, with two or three staff members assigned primary responsibility for each specific proposal. In addition, an Advisory Group of senior members of the Division's staff will be appointed to provide guidance to the Task Force at each stage of its work.

The proposed projects of the Task Force are outlined below:

1. Amendments to Forms 10-Q and 10-K

The Division intends to recommend that the Commission propose to amend Forms 10-Q and 10-K to provide a space on the cover page of each form which a registrant could use to indicate that it intends to file a registration statement on either Form S-7 or Form S-16 during the registrant's current fiscal year. This advance notice of a registrant's intent to file a registration statement on Form S-7 or S-16 would permit the staff promptly to review the annual, quarterly and current reports filed by the registrant under the Securities Exchange Act, and would enable the staff to limit its review of the registration statement, when filed, primarily to the disclosures concerning the plan of distribution of the securities being registered and any new or adverse developments concerning the issuer. The Division believes that this procedure would reduce substantially the time required for the staff to review S-7 and S-16 filings and to issue its first letter of comments, from the present average of 14 and 15 calendar days, respectively, to 10 calendar days, in those cases where advance notice of the registrant's intent to file the registration statement is received. The Division does not intend, of course, to condition the use of Forms S-7 and S-16 on compliance with the pre-filing notice requirement. We would make clear, however, that compliance with the notice requirement generally would enable the staff to expedite its review of registration statements.

2. Amendments to Form S-7

The Division intends to recommend the adoption of the amendments to Form S-7 and Form S-16 published for comment in Securities Act Release No. 5013 (September 11, 1975)¹,

¹ On or before May 15, 1976, the Division intends to submit its recommendations to the Commission concerning the proposals to amend paragraphs (e)(1)(A)-(B) of Securities Act Rule 144, relating to limitations on the amount of securities which may be sold under that rule, and to amend Forms 10-K, 12-K and 10-Q under the Securities Exchange Act, to require a statement of the outstanding shares and, in the case of Form 12-K, to require a statement as to the compliance with the filing requirements of that Act, which also were published for comment in Securities Act Release No. 5013. In light of the questions raised in the letters of comments submitted on these proposals, the Division expects to recommend that the proposed amendments to Rule 144 be withdrawn, and that the proposed amendments to Forms 10-K, 12-K and 10-Q, be adopted, with certain modifications.

and, at the same time, to recommend that the Commission propose further amendments to the rules covering the use of Form S-7, which would (a) make the form available or use in connection with exchange offers and (b) modify or eliminate the requirement that a majority of the existing board of directors of the registrant have held that office for the last three fiscal years. In recent years, the Division has received and granted numerous requests for waivers of the “continuity of management” condition to use of the form, in cases where, for example, companies recently have increased the size of their boards and thus have been unable to comply with this condition. In light of this experience, the Division believes that the condition is unnecessarily restrictive and should be modified.

The Division also is considering certain other possible amendments to Form S-7, but has no tentative recommendations to make with respect thereto at this time.

3. Amendments to Form S-14 and the rules covering merger proxies

The Division presently plans to recommend that the Commission propose amendments to Form S-14, the merger proxy rules and related rules, which would permit a summary of the merger proxy statement or prospectus to be delivered to the security holders whose proxies are being solicited, provided that the solicitor undertakes promptly to provide, at its own expense, a copy of the full proxy statement to any security holder solicited who requests it. The Division believes that use of summary proxy statements or prospectuses would result in substantial savings to persons soliciting proxies and would serve to provide information to security holders in a simpler, more understandable form.

4. Amendments to the Rules Relating to Tender Offers

The Division also plans to recommend that the Commission propose amendments to the rules relating to tender offers which would permit tender offerors to publish or provide to security holders summaries of the information required to be filed with the Commission, provided that the person making the tender offer undertakes promptly to provide, at its own expense, a statement containing all the information and exhibits required by Schedule 13D to any security holder who requests this information. The Division believes that this proposal, if adopted, would result in substantial savings to persons making tender offers, and would serve to provide information to security holders in a simpler, more understandable form.

5. Amendments to Form S-16

The Division plans to recommend that the Commission propose amendments to Form S-16 which would permit the form to be used for registration of securities to be issued in connection with stand-by arrangements in calls of convertible securities. This would codify the existing Division practice of permitting Form S-16 to be used for this purpose. The Division believes that this proposal, if adopted, would simplify the preparation and processing of filings

on Form S-16, and result in significant savings of time and costs to registrants and the Commission.²

The Division also intends to recommend that the Commission propose to make the form available for rights offerings by the issuers of securities registered with the Commission under the Securities Exchange Act or issuers reporting pursuant to Section 15(d) of that Act, including, to the extent feasible, foreign issuers. This proposal, if adopted, would make rights offerings of certain foreign issuers available to U. S. residents for the first time.

6. Amendments to Form S-8

In Securities Act Release No. 5530 (October 3, 1974), the Commission proposed amendments to the Rule as to the Use of Form S-8. The general thrust of those proposals was to relax the present conditions to the availability of the form, although, in the case of certain types of employee benefit plans, some new conditions to the use of the form were added. To the extent the proposals would relax the present standards, the release states that the relaxed standards may be used immediately by issuers filing registration statements on Form S-8. In addition, the Division intends to recommend a complete revision of Form S-8. Form S-8 has not been amended on a comprehensive basis since 1962 (See, Securities Act Release No. 4533 (August 30, 1962)). As a part of this comprehensive revision, the Division intends to recommend that the Commission propose new disclosure and prospectus requirements for registered secondary offerings (both off and on an exchange) of securities acquired pursuant to a registration statement on Form S-8. Form S-8 itself would no longer be available for registration of secondary offerings of such securities.

The Division also intends to recommend that issuers using Form S-8 for the registration of securities to be offered to employees in connection with employee benefit plans be permitted to file the document furnished to plan beneficiaries and participants describing the plan, in lieu of certain of the disclosures presently required by Form S-8. We also intend to recommend proposals which would, to the extent practicable, make the Commission's disclosure requirements consistent with those prescribed by the Department of Labor and the Internal Revenue Service under the Employee Retirement Income Security Act of 1974. We would expect to consult and cooperate with the Department of Labor and the Internal Revenue Service in the course of our work.

The Division presently plans to incorporate all of the above-outlined proposals into a single proposal. The comments already received on the proposals set forth in Securities Act Release No. 5530 will be used, as necessary or appropriate, to refine the proposal. Finally, we

² The Division presently permits registration statements on Form S-16 of securities to be issued in connection with stand-by arrangements in calls of convertible securities to become effective within 24 hours after formal filing, provided the Division is permitted to review a proof of the registration statement 48 hours in advance of filing. This expedited treatment enables registrants to take advantage of favorable market conditions, a crucial factor in transactions of this type.

intend to make clear that the relaxed standards for the use of the form will continue to be available until further action is taken on the proposed comprehensive revisions to Form S-8.

7. Amendments to Form 8-K

The Division plans to recommend that the Commission propose amendments to Form 8-K which would eliminate all items of information required to be included in the report except Item 1 (Changes in Control of Registrant), Item 2 (Acquisition or Disposition of Assets), Item 10 (Extraordinary Item Charges and Credits, Other Material Charges and Credits to Income of an Unusual Nature, Material Provisions for Loss, and Restatements of Capital Share Account), Item 12 (Changes in Registrant's Certifying Accountant), Item 13 (Other Materially Important Events), and Item 14 (Financial Statements and Exhibits). The Division simultaneously will review the items to be retained in Form 8-K, and recommend that they be updated and revised, where appropriate.

The Division also intends to recommend that all other items of information presently required to be included in reports on Form 8-K be required to be included in reports on Forms 10-Q and 10-K,³ and, in connection with this, will consider recommending proposed revisions to Items 7 and 8 (Increases and Decreases in the Amount of Securities Outstanding) of Form 8-K, and to Part C (Sales of Unregistered Securities -- Debt or Equity) of Form 10-Q, to clarify the disclosure required for registrants continually engaged in the issuance of new classes of securities (e.g., registrants which buy and sell real estate and engage in the issuance of notes secured by mortgages).

Finally, the Division plans to consider whether reports on Form 8-K, if revised as outlined above, should be filed within 10 days after the occurrence of one of the events triggering the filing requirements, instead of 10 days after the close of the month in which the event occurred, as is presently required.⁴ Should the instructions governing the time for filing 8-K reports be so modified, the Division will recommend that the Commission permit any necessary financial statements to be filed by amendment to the 8-K report at a later date, in order to provide sufficient time for the preparation of the financials.

If these proposals are adopted, the Division expects a significant reduction in the number of reports filed on Form 8-K and corresponding a reduction in the staff time required to process

³ This proposal would implement, in part, the recommendations of the so-called Wheat Report that Form 8-K be eliminated and that the 8-K items be included in a quarterly report. See Report and Recommendations to the Securities and Exchange Commission from the Disclosure Policy Study, Disclosure to Investors, A Reappraisal of Administrative Policies under the 1933 and 1934 Acts (March 1969) at pp. 356-364.

⁴ Securities Act Release No. 5581 (April 28, 1975), publishing for comment the Commission's proposals relating to the disclosure of projections of future economic performance, included a proposal to require that a report on Form 8-K be filed within ten days after a change in control of the registrant has occurred. The Division plans to recommend that this proposal be republished for comment together with the revisions to Form 8-K outlined above.

these reports.⁵ Further, the Division believes that the above-outlined changes will result in a reporting system which will be more useful to investors, since reports on Forms 10-K and 10-Q appear to be more widely used by investors than reports on Form 8-K, and reports on revised Form 8-K will be more timely filed.

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The Division has established the following tentative timetable for completion of each phase of this project:

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| June 30, 1976 | - submission to the Commission of Division recommendations that proposals be published for comment |
| July 1, 1976 | - publication of proposals for comment |
| September 1, 1976 | - comment period expires |
| November 15, 1976 | - submission to the Commission of Division recommendations for adoption of proposals in final form |
| November 30, 1976 | - adoption of final rule and form amendments, to be effective as of December 31, 1976 |

Attached is a chart summarizing the nature and intended effect of the above-outlined proposals.

⁵ Jim Foster, Director of the Office of Reports and Information Services, estimates that the elimination from Form 8-K of these items of information will result in a 44% reduction (approximately) in the number of reports on Form 8-K filed with the Commission and reduce, by approximately 3 man years, the staff time required to process these filings in his office.

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Attachment:

Summary Chart

Summary of Proposals to Further Integrate
the Corporate Disclosure System

<u>Rule</u>	<u>Proposed Amendment</u>	<u>Effect of Proposed Amendment</u>
Forms 10-Q and 10-K	To provide box on cover page of Forms for registrant to indicate intent to file registration statement on Form S-7 or Form S-16 during registrant's current fiscal year.	Should enable Commission's staff to review registrant's current, periodic and annual reports before registration statement is filed and reduce time required to issue first letter of comments on Form S-7 and S-16 filings from present average of two weeks to 10 days, in most cases.
Form S-7	To make Form S-7 available for use in connection with exchange offers and modify or eliminate "continuity of management" condition to use form.	To simplify registration requirements in case of exchange offers for registrants otherwise qualified to use Form S-7, and to eliminate unnecessarily restrictive condition to use of Form S-7.
Form S-14 and rules covering merger proxies	To permit summary of merger proxy statement to be delivered to security holders, provided solicitor undertakes to provide full statement to security holders upon request.	Should result in cost savings to persons soliciting proxies and receipt by security holders of information in simpler, more understandable form.
Rules Relating to Tender Offers	To permit summary of information required to be filed with SEC to be published or provided to security holders, with undertaking to provide full information to security holders upon request.	Should result in cost savings to persons making tender offers and receipt by security holders of information in simpler, more understandable form.

Form S-16	<p>(a) To permit Form S-16 to be used in connection with stand-by arrangements in calls of convertible securities.</p> <p>(b) To make Form S-16 available for rights offerings by reporting companies, including certain foreign issuers.</p>	<p>(a) Should simplify preparation and processing of registration statements on Form S-16 and result in significant cost and time savings to SEC and registrants.</p> <p>(b) Would make certain rights offerings by foreign issuers available to U.S. residents.</p>
Form S-8	<p>(a) To update disclosure requirements of Form S-8, and to provide new disclosure requirements for registered secondary offerings of securities acquired pursuant to registration on Form S-8.</p> <p>(b) To permit employee benefit plan documents to be filed in lieu of certain disclosure requirements of Form S-8.</p>	<p>(a) Should simplify <u>and</u> rationalize S-8 disclosure requirements.</p> <p>(b) Should help to alleviate burdens of compliance both with SEC registration requirements and regulations of other agencies applicable to pension plans.</p>
Form 8-K	<p>(a) To transfer certain items of information required to be reported on Form 8-K to Form 10-Q.</p> <p>(b) To update present items of Form 8-K.</p> <p>(c) To require reports on Form 8-K to be filed within 10 days after event reported.</p>	<p>Should substantially reduce number of 8-K reports filed with the SEC and reduce manpower required to process reports. Should result in reporting system which will be more meaningful to investors, <u>e.g.</u>, 8-K reports more timely filed; more comprehensive reports on Form 10-Q.</p>