

Steuerman and 4/5
adopted
upset
objection

PROPOSED AMENDATORY LANGUAGE (S. 305)

DISCLOSURE: At page 3, add the following new paragraph between lines 21 and 22:

"(5)(A) No duty or liability under paragraphs (2) through (4) of this section shall be imposed upon any person acting in cooperation with, and at the specific, written directive of, the head of any federal agency or department responsible for matters concerning the national security of the United States; Provided, however, that this subparagraph (A) shall only apply to the extent that the requirements of paragraphs (2) through (4) of this section would result, or be likely to result, in the disclosure of information which has been classified by an appropriate department or agency of the United States for protection in the interests of the national security and only to the extent that such information is specifically related to the person's lawful cooperation. Every directive executed under this paragraph shall set forth therein the specific facts and circumstances concerning which the provisions of this paragraph are to be invoked and, unless renewed in writing, every directive shall expire one year after issuance.

"(B) The head of the agency or department executing any directive pursuant to this paragraph shall maintain a complete file of all such directives and shall, on October 1 of each year, transmit to the President copies of all directives in force at any time during the prior year. The President shall review and certify that such directives involve classified activities or information and are in conformity with applicable statutes and executive orders."

This language recognizes that publicly-held companies may be involved in cooperation with departments or agencies of the United States in activities vital to national defense and security. In such cases, the disclosure of the facts concerning these activities might be detrimental to those national security activities, and, accordingly, appropriate safeguards must be maintained. The rules and procedures of the Securities and Exchange Commission have long recognized the need for narrowly limited exceptions to the important national policy of full disclosure concerning the financial position of public companies in the case of classified data affecting the defense and foreign policy of the United States. See, *e.g.*, 17 CRF 240.0-6.

Absent appropriate qualification, section 102 of S. 305 arguably would make unlawful the failure of a registrant to disclose fully the circumstances of such sensitive national security matters in its books and records or to its accountants. Similarly, entries in the issuer's books, or statements to its accountants, designed to protect such information might be construed as violations of proposed Paragraphs 13(b)(3) and (4) of the Securities Exchange Act (section 102 of S. 305). This provision is not, however, to be construed as creating barriers to appropriate inquiry by the Securities and Exchange Commission in order to prevent this exception from misuse or as a device to obscure illegal activities by issuers.

This amendment would permit the head of any agency or department responsible for national security matters to exempt an issuer involved in an endeavor related to national security from the requirements of Paragraphs 13(b)(2), (3) and (4) (section 102 of S. 305). Such an exemption would only apply to the extent necessary to prevent disclosure of sensitive information and would expire annually unless renewed. Each agency or department head would be required to maintain copies of all directives issued under this provision and to transmit those in effect during the year to the President annually. The President, in turn, would be required to review these directives and ascertain that all national security endeavors involved are in conformity with applicable law.