

NEWS

**SECURITIES AND
EXCHANGE COMMISSION**

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REMARKS TO
HENNEPIN COUNTY BAR ASSOCIATION
SECURITIES LAW SECTION
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"REGULATORY REFORM TO ASSIST SMALL BUSINESS"

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I.

WILLIAM O. DOUGLAS, WHO BECAME CHAIRMAN OF THE SEC
IN THE YEAR IN WHICH I WAS BORN ONCE WROTE:

THE GREAT CREATIVE WORK OF A FEDERAL AGENCY
MUST BE DONE IN THE FIRST DECADE OF ITS EXISTENCE
IF IT IS TO BE DONE AT ALL. AFTER THAT IT IS LIKELY
TO BECOME A PRISONER OF BUREAUCRACY AND OF THE INERTIA
DEMANDED BY THE ESTABLISHMENT OF ANY RESPECTED
AGENCY. 1/

I HOPE THIS GRIM PROGNOSTICATION WILL BE DISPROVED BY
DOUGLAS'S OWN AGENCY BECAUSE THE COMMISSION IS CHALLENGED
TODAY BY PROBLEMS AS SIGNIFICANT AND PERPLEXING AS THOSE OF
THE 1930s. AND SOLUTIONS TO THESE PROBLEMS WILL
REQUIRE CREATIVE WORK OF THE HIGHEST ORDER.

ONE OF TODAY'S CHALLENGES IS TO SEIZE THE IMPULSE FOR
REGULATORY REFORM WHICH IS NOW POPULAR IN WASHINGTON AND
TO USE IT CONSTRUCTIVELY. UNFORTUNATELY, THE CURRENT
ANTI-REGULATION MOOD DOES NOT ALWAYS DISTINGUISH BETWEEN
GOOD AND BAD REGULATION. SOME PROPONENTS OF GOVERNMENT
DEREGULATION ARE MERELY REACTING NEGATIVELY TO THE CONCEDED
OVER-REGULATION OF MANY ASPECTS OF AMERICAN LIFE.

RECENT PUBLIC OPINION SURVEYS SHOW THAT THE PUBLIC
FEELS ITS FREEDOM IS MORE THREATENED BY BIG GOVERNMENT
THAN BY BIG BUSINESS. 2/ INDEED, THE FEDERAL BUREAUCRACY
HAS GROWN DRAMATICALLY. IN 1924 THERE WERE 18 FEDERAL

1/ DOUGLAS, 60 EAST YOUNG MAN--THE EARLY YEARS 297 (1974).

2/ "HOW PUBLIC REGARDS REGULATION," THE NEW YORK TIMES,
Nov. 30, 1978.

2.

AGENCIES. BY 1976 THIS NUMBER HAD RISEN TO 83. NOT SUPPRIS-
INGLY, THE VOLUME OF FEDERAL REGULATIONS HAS SIMILARLY
INCREASED. THE FEDERAL REGISTER, WHICH PUBLISHES ALL FEDERAL
RULEMAKING, GREW AT A 5% ANNUAL RATE BETWEEN 1955 AND 1970.
BETWEEN 1970 AND 1975 THE GROWTH RATE WAS 25% PER YEAR. 3/

PRESIDENT CARTER HAS RECENTLY REAFFIRMED THE TRADI-
TIONAL LIBERAL NOTION THAT:

MUCH OF FEDERAL REGULATION IS VITALLY IMPORTANT
TO MODERN SOCIETY. GOALS SUCH AS A HEALTHY ENVIRON-
MENT, A SAFE WORKPLACE, AND A COMPETITIVE AND
TRUTHFUL MARKETPLACE CANNOT BE ACHIEVED THROUGH
MARKET FORCES ALONE. 4/

NEVERTHELESS, THE PRESIDENT HAS MADE REGULATORY REFORM A
PRINCIPAL TENET OF HIS ADMINISTRATION, CRITICIZING THE
AMERICAN IMPULSE TO "THROW ANOTHER LAW OR ANOTHER RULE AT
EVERY PROBLEM IN OUR SOCIETY WITHOUT THINKING SERIOUSLY
ABOUT CONSEQUENCES." 5/

I AM A STRONG ADVOCATE OF GOVERNMENT INTERVENTION IN
THE ECONOMY FOR THE PURPOSE OF ACHIEVING BOTH SPECIFIC AND
GENERAL PUBLIC POLICY OBJECTIVES. BUT I AM AN EQUALLY
STRONG ADVOCATE OF REGULATORY REFORM. AND I DO NOT
BELIEVE THIS IS A CONTRADICTION IN TERMS. THE NEW DEAL

3/ MULLINEUX, "ANY HOPE FOR DEREGULATION? ONLY WHEN
INTEREST GROUPS SEE IT BENEFITING THEM," THE MONEY
MANAGER (Nov. 20, 1978).

4/ PROPOSED REGULATORY REFORM-MESSAGE FROM THE PRESIDENT-
PM 46, CONG. REC. S.3327, MARCH 26, 1979.

5/ RATTNER, "CARTER ANNOUNCES LEGISLATIVE PLAN TO REVISE
U.S. REGULATORY PROCESS," NEW YORK TIMES, MAR. 26, 1979,
P. A-1, COL. 1.

3.

RELIANCE UPON ADMINISTRATIVE AGENCIES AS VEHICLES FOR ACHIEVING ECONOMIC AND SOCIAL GOALS BY GOVERNMENT WAS PRAGMATIC RATHER THAN DOGMATIC. AFTER MORE THAN 45 YEARS OF REGULATION BY THE SEC AND OTHER NEW DEAL AGENCIES, WE SHOULD WITH THAT SAME PRAGMATIC SPIRIT RE-EXAMINE THE OBJECTIVES WHICH THESE AGENCIES WERE DESIGNED TO ACHIEVE AND THE MEANS THEY HAVE EMPLOYED TO REACH THEIR GOALS.

GOVERNMENT INTERVENTION IN THE MARKET PLACE IS NECESSARY TO ATTAIN GOALS WHICH OTHERWISE WOULD NOT BE ACHIEVED BY FREE MARKET FORCES. HOWEVER, THE MARKET-PLACE IS OFTEN A BETTER REGULATOR THAN THE GOVERNMENT. CONSEQUENTLY, I BELIEVE THAT REAL REGULATORY REFORM REQUIRES THE REASSESSMENT OF THE OBJECTIVES AND CONTINUING RELEVANCE OF SPECIFIC AREAS OF GOVERNMENT REGULATION, AND A DETERMINATION OF WHETHER PARTICULAR REGULATIONS DO MORE HARM THAN GOOD. THIS IS A PROCESS WHICH MUST BE UNDERTAKEN WITH A RATIONAL, MEASURED APPROACH WHICH RECOGNIZES THAT THERE WAS AND PROBABLY STILL IS, A VALID REASON FOR THE LAW IN QUESTION, AND ITS REGULATORY IMPLEMENTATION. NEVERTHELESS, WE SHOULD REVIEW WHETHER THAT REASON STILL SUPPORTS THE EXPENSE AND EFFORT NECESSARY TO COMPLY WITH THE LAW.

IN 1976, A STUDY CONDUCTED BY CONGRESSMAN MOSS NAMED THE SEC AS THE MOST EFFICIENT OF THE MAJOR FEDERAL REGULATORY BODIES. 6/ A CONTEMPORANEOUS SURVEY OF THOUGHTLEADERS RATED THE SEC ABOVE ALL OTHER INDEPENDENT FEDERAL AGENCIES BOTH FOR PROTECTION OF THE PUBLIC INTEREST AND TREATING INDUSTRY FAIRLY. 7/ I BELIEVE THAT ONE REASON FOR THE SEC'S REPUTATION AS THE PREMIER REGULATORY AGENCY IS THE COMMISSION'S COMMITMENT TO THE PERIODIC RE-EVALUATION OF ITS REGULATORY ACTIVITIES, BOTH INTERNALLY AND WITH THE ASSISTANCE OF PUBLIC COMMENT. THE COMMISSION WAS ENGAGED IN ZERO BASED REGULATION BEFORE ANYONE THOUGHT TO COIN THAT TERM. TWENTY-FIVE YEARS AGO, IN MAKING A REPORT TO CONGRESS ON THE SEC'S STEWARDSHIP OF ONE OF THE STATUTES IT ADMINISTERS, THE COMMISSION STATED:

IT IS FITTING THAT AN AGENCY WHICH JUDGES OTHERS SHOULD ITSELF BE JUDGED. IT IS FITTING THAT CONGRESS SHOULD TAKE AN ACCOUNTING OF OUR STEWARDSHIP; AND THAT, AS WE HAVE UNDERTAKEN TO EXACT FROM OTHERS THE FULLEST DISCLOSURES AND THE HIGHEST FIDUCIARY STANDARDS, WE SHOULD BE MEASURED BY STANDARDS NO LESS EXACTING. 8/

6/ "REPORT CARD ON FEDERAL AGENCIES," U.S. NEWS AND WORLD REPORT (Nov. 15, 1976).

7/ OPINION RESEARCH CORPORATION SURVEY, MAY 1976.

8/ SEC REPORT FOR THE SEC SUBCOMMITTEE OF THE HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE ON THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 AT P. 169 (OCT. 15, 1951).

THE SEC'S CURRENT RECEPTIVENESS TO REGULATORY REFORM IS REFLECTED IN THE CHAIRMAN'S LETTER OF TRANSMITTAL TO THE 1977 ANNUAL REPORT OF THE SEC, WHICH STATES:

... WHILE THE COMMISSION'S PRIMARY RESPONSIBILITY IS TO PROTECT INVESTORS, THE DISCHARGE OF THIS RESPONSIBILITY RESULTS, IN A BROAD SENSE, IN STIMULATION OF INVESTORS' WILLINGNESS TO PROVIDE THE NEW CAPITAL NECESSARY TO FUEL OUR PRIVATE ENTERPRISE SYSTEM. ... THE COMMISSION MUST BE SENSITIVE TO THE EFFECTS OF ITS ACTIVITIES ON THE CAPITAL FORMATION PROCESS AND MUST ENSURE THAT COMMISSION REGULATION UNDER THE FEDERAL SECURITIES LAWS DOES NOT INADVERTENTLY IMPAIR CAPITAL FORMATION. IN THAT VEIN, FOR EXAMPLE, THE COMMISSION RECENTLY ANNOUNCED A BROAD SCALE RE-EXAMINATION OF THE IMPACT OF ITS REGULATIONS ON SMALL BUSINESS WITH AN EYE TOWARD EASING THAT BURDEN WHENEVER POSSIBLE, CONSISTENT WITH THE COMMISSION'S STATUTORY RESPONSIBILITY.

THE IMPLEMENTATION OF CORPORATE DISCLOSURE POLICY BY THE SEC HAS BEEN THE SUBJECT OF TWO SIGNIFICANT STUDIES WITHIN THE LAST TEN YEARS. IN 1969 THE COMMISSION CONDUCTED AN INTERNAL STUDY COMMONLY KNOWN AS THE "WHEAT REPORT." 9/ MORE RECENTLY, IN 1977, THE SEC'S DISCLOSURE SYSTEM WAS STUDIED BY THE ADVISORY COMMITTEE ON CORPORATE DISCLOSURE, A DISTINGUISHED PANEL OF EXPERTS WHICH INCLUDED HAROLD WILLIAMS, NOW CHAIRMAN OF THE COMMISSION. ALTHOUGH THE COMMITTEE FOUND THAT THE DISCLOSURE SYSTEM WAS NOT IN NEED OF RADICAL REFORM IT DID SUGGEST SIGNIFICANT CHANGES IN

9/ "DISCLOSURE TO INVESTORS: A REAPPRAISAL OF ADMINISTRATIVE POLICIES UNDER THE '33 AND '34 ACTS."

THE COMMISSION'S PROCEDURES, RULES, EMPHASES, AND APPROACHES TO DISCLOSURE PROBLEMS. A NUMBER OF THESE RECOMMENDATIONS HAVE BEEN IMPLEMENTED OR ARE UNDER ACTIVE CONSIDERATION.

ONE AREA THE ADVISORY COMMITTEE SINGLED OUT FOR FURTHER RE-EVALUATION WAS THE IMPACT OF SEC DISCLOSURE PROVISIONS ON THE GROWTH AND DEVELOPMENT OF SMALL BUSINESSES. I WILL DISCUSS WITH YOU TODAY THE COMMISSION'S CURRENT AND FUTURE INITIATIVES RESULTING FROM ITS ONGOING RE-EXAMINATION OF THE SMALL BUSINESS PROBLEM.

THE GREAT CONCERN WHICH THE GOVERNMENT HAS TODAY FOR THE WELL-BEING OF SMALL BUSINESS STEMS FROM THE VITAL ROLE IT PLAYS IN THE GENERAL ECONOMY. THE CONTRIBUTION OF SMALL BUSINESSES IN SUPPLYING JOBS, TECHNICAL INNOVATION, AND GENERALLY IN KEEPING OUR SYSTEM COMPETITIVE REQUIRES THAT UNNECESSARY OBSTACLES TO THEIR FORMATION AND GROWTH BE REMOVED.

IN MARCH 1978 THE COMMISSION ANNOUNCED A BROAD SCALE RE-EXAMINATION OF THE IMPACT OF ITS REGULATIONS ON SMALL BUSINESSES WITH AN EYE TOWARD EASING THAT BURDEN WHEREVER POSSIBLE, CONSISTENT WITH THE COMMISSION'S STATUTORY RESPONSIBILITIES.^{10/} IN AN EFFORT TO ENCOURAGE BROAD BASED PUBLIC COMMENT, HEARINGS WERE HELD NOT ONLY IN WASHINGTON,

^{10/} SECURITIES ACT RELEASE No. 5914 (MARCH 6, 1978).

BUT ALSO IN LOS ANGELES, DENVER, ATLANTA, CHICAGO,
AND BOSTON.

THE COMMISSION RECOGNIZES THAT THE SMALL BUSINESS CAPITAL FORMATION PROBLEM IS EXCEEDINGLY COMPLEX. MANY COMMENTATORS AT THE HEARINGS REMINDED US OF THE RELATIVELY SMALL ROLE SECURITIES REGULATION HAS IN CAUSING, OR HOLDING A KEY TO SOLVING, THE LACK OF ACCESS TO THE CAPITAL MARKETS ON THE PART OF SMALL BUSINESS. NEVERTHELESS, THE COMMISSION HAS DETERMINED TO REVIEW OUR RULES TO MAKE WHATEVER ACCOMODATIONS ARE WITHIN OUR STATUTORY AUTHORITY TO ASSIST SMALL BUSINESSES. DURING THE LAST YEAR WE HAVE INITIATED A NUMBER OF RULE AMENDMENTS AND PROPOSALS WHICH ARE RESPONSIVE TO CONCERNS EXPRESSED AT THE SMALL BUSINESS HEARINGS.

COMMENTATORS AT THE HEARINGS CITED A LACK OF INVESTMENT LIQUIDITY AS ONE OF THE PRIMARY FACTORS AFFECTING THE ABILITY OF SMALL BUSINESSES TO RAISE CAPITAL. IT WAS THEIR VIEW THAT SEC RULE 144 UNDULY RESTRICTED THE RESALE OF THE SECURITIES OF NEWER PUBLIC COMPANIES.

IN RESPONSE TO THESE CONCERNS THE COMMISSION SIGNIFICANTLY INCREASED THE AMOUNT OF "RESTRICTED" SECURITIES WHICH COULD BE SOLD INTO THE PUBLIC TRADING MARKETS PURSUANT TO THE RULE. FIRST, THE LIMITS ON THE VOLUME

OF SECURITIES WHICH CAN BE SOLD UNDER THE RULE WERE RELAXED. THE PERIOD FOR MEASURING SALES UNDER THE RULE WAS REDUCED FROM SIX MONTHS TO THREE MONTHS. IN ADDITION, THE STANDARD USED TO DETERMINE THE AMOUNT OF SECURITIES THAT MAY BE SOLD DURING THE MEASURING PERIOD WAS CHANGED TO THE GREATER OF, RATHER THAN THE LESSER OF, ONE PERCENT OF THE OUTSTANDING SECURITIES OF THE CLASS OR THE AVERAGE WEEKLY TRADING VOLUME DURING THE FOUR CALENDAR WEEKS PRECEDING THE SALE. ^{11/} ALSO, THE RULE WAS AMENDED TO ALLOW NON-AFFILIATES TO DISREGARD THE VOLUME RESTRICTIONS AFTER A THREE YEAR HOLDING PERIOD, FOR SECURITIES LISTED ON A NATIONAL SECURITIES EXCHANGE OR QUOTED ON NASDAQ; OR A FOUR YEAR HOLDING PERIOD, FOR SECURITIES NOT LISTED OR QUOTED ON NASDAQ, IF THE ISSUER IS A REPORTING COMPANY UNDER THE SECURITIES EXCHANGE ACT OF 1934 ("EXCHANGE ACT"); ^{12/} OTHER LIBERALIZING AMENDMENTS TO RULE 144 PERMIT SALES DIRECTLY TO MARKET MAKERS AND ELIMINATE THE BROKERAGE OR MARKET MAKER TRANSACTION REQUIREMENT WITH RESPECT TO SALES OF SECURITIES BY ESTATES AND BENEFICIARIES WHO ARE NOT AFFILIATES OF THE ISSUER.

^{11/} SECURITIES ACT RELEASE No. 5979 (SEPT. 19, 1978).

^{12/} SECURITIES ACT RELEASE No. 6032 (MAR. 5, 1979).

THE COMMISSION HAS ALSO ENDEAVORED TO MAKE OFFERINGS UNDER REGULATION A AND RULE 146 MORE VIABLE FOR SMALL BUSINESS. THUS, REGULATION A WAS AMENDED TO INCREASE THE AMOUNT OF SECURITIES WHICH MAY BE SOLD THEREUNDER WITHIN A 12-MONTH PERIOD FROM \$500,000 TO \$1,500,000. ^{13/} IN ADDITION, THE COMMISSION HOPES TO ACT QUICKLY ON A PROPOSED AMENDMENT WHICH WOULD PERMIT THE USE OF PRESELLING DOCUMENTS TO OBTAIN INDICATIONS OF INTEREST IN REGULATION A UNDERWRITTEN OFFERINGS. ^{14/} I UNDERSTAND THAT THE STAFF INTENDS TO RECOMMEND THAT THE USE OF PRESELLING DOCUMENTS BE MADE AVAILABLE TO BEST EFFORTS AS WELL AS FIRM COMMITMENT UNDERWRITINGS. CONSISTENT WITH THE RAISING OF THE REGULATION A CEILING, THE COMMISSION ALSO AMENDED RULE 146 TO PERMIT THE USE OF REGULATION A-TYPE DISCLOSURE TO SATISFY THE RULE'S INFORMATION REQUIREMENT FOR OFFERINGS WHICH DO NOT EXCEED \$1,500,000. ^{15/}

RECENTLY THE COMMISSION TOOK ANOTHER SIGNIFICANT STEP DESIGNED TO REDUCE THE BURDENS ON SMALL BUSINESSES UNDER THE SECURITIES ACT OF 1933 ("SECURITIES ACT") AND THEREBY ASSIST SMALL BUSINESS CAPITAL FORMATION. WE ADOPTED, EARLY THIS MONTH, A NEW EXPERIMENTAL REGISTRATION FORM CALLED FORM S-18. ^{16/} BECAUSE OF THE LIMITATIONS

^{13/} SECURITIES ACT RELEASE No. 5977 (SEPT. 11, 1978).

^{14/} SECURITIES ACT RELEASE No. 5997 (NOV. 16, 1978).

^{15/} SECURITIES ACT RELEASE No. 5975 (SEPT. 8, 1978).

^{16/} SECURITIES ACT RELEASE No. 6049 (APR. 3, 1979).

OF REGULATION A, THERE HAS BEEN A FELT NEED FOR A SIMPLIFIED AND LESS COSTLY FORM FOR THE REGISTERED OFFERING OF SECURITIES BY SMALL BUSINESSES. PRESENTLY, THOSE SMALLER NON REPORTING COMPANIES FOR WHICH REGULATION A IS NOT A MEANINGFUL ALTERNATIVE WHO SEEK TO RAISE CAPITAL THROUGH A PUBLIC OFFERING OF SECURITIES, MUST COMPLY WITH THE REGISTRATION REQUIREMENTS OF FORM S-1, THE COMMISSION'S MOST EXTENSIVE AND MOST COSTLY REGISTRATION FORM. IN ORDER TO BRIDGE THE GAP BETWEEN REGULATION A AND FORM S-1, THE COMMISSION PROPOSED FORM S-18 AND CORRESPONDING AMENDMENTS TO ANNUAL REPORT FORM 10-K. THE SIMPLIFIED REGISTRATION AND REPORTING PROCEDURES PRESENTED BY FORM S-18 WERE STRONGLY ENDORSED BY THE WITNESSES AT THE SMALL BUSINESS HEARINGS.

AS ADOPTED, FORM S-18 IS AVAILABLE TO CERTAIN DOMESTIC AND CANADIAN CORPORATE ISSUERS, WHICH ARE NOT EXCHANGE ACT REPORTING COMPANIES, FOR THE REGISTRATION OF SECURITIES TO BE SOLD TO THE PUBLIC FOR CASH NOT EXCEEDING AN AGGREGATE OFFERING PRICE OF \$5 MILLION. FOR THE PURPOSE OF PROVIDING LIQUIDITY TO VENTURE CAPITALISTS, AND OTHER SEED MONEY INVESTORS, THE FORM CAN ALSO BE USED FOR SECONDARY OFFERINGS NOT IN EXCESS OF \$1.5 MILLION.

THE FORM CALLS FOR NARRATIVE DISCLOSURE SOMEWHAT LESS EXTENSIVE THAN FORM S-1. FOR EXAMPLE, THE FAIRLY COMPLEX

REMUNERATION DISCLOSURE NOW REQUIRED IN FORM S-1 HAS BEEN SIGNIFICANTLY RELAXED. THE DESCRIPTION OF BUSINESS SECTION IN FORM S-18 WILL ALLOW MANAGEMENT MORE FLEXIBILITY IN DESCRIBING ITS CURRENT AND INTENDED OPERATIONS. FORM S-18 ALSO WILL ALLOW ISSUERS TO FILE, AS PART OF THE REGISTRATION STATEMENT, TWO YEAR AUDITED FINANCIAL STATEMENTS PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. THREE YEAR AUDITED FINANCIAL STATEMENTS PREPARED IN ACCORDANCE WITH REGULATION S-X WOULD OTHERWISE BE REQUIRED. WE ANTICIPATE THAT FORM S-18 WILL SIGNIFICANTLY REDUCE LEGAL AND ACCOUNTING COSTS AND MAY ALLOW SMALL ISSUERS TO RETAIN THEIR LOCAL ACCOUNTING FIRMS AND ATTORNEYS WHEN GOING PUBLIC FOR THE FIRST TIME.

IN ORDER TO MAKE MEANINGFUL THE RELIEF FROM NORMAL REQUIREMENTS GRANTED IN FORM S-18, AMENDMENTS WERE SIMULTANEOUSLY ADOPTED TO FORM 10-K. THESE ALLOW A COMPANY UTILIZING FORM S-18 TO INCLUDE IN ITS FIRST ANNUAL REPORT SUBSTANTIALLY THE SAME NARRATIVE AND FINANCIAL INFORMATION AS THAT INCLUDED IN ITS FORM S-18 PROSPECTUS.

IN CONNECTION WITH THE UTILIZATION OF FORM S-18, ISSUERS WILL HAVE THE OPTION OF FILING THEIR REGISTRATION STATEMENT AT THE COMMISSION'S PRINCIPAL OFFICE IN WASHINGTON OR AT ONE OF THE COMMISSION'S REGIONAL OFFICES. REGIONAL

PROCESSING MAY RESULT IN LESS COSTLY AND MORE TIMELY ACCESS TO THE CAPITAL MARKETS FOR SMALL BUSINESSES. COMMENTATORS AT THE HEARINGS FELT THAT THE FAMILIARITY OF REGIONAL OFFICE PERSONNEL WITH A SMALL BUSINESS ISSUER'S OPERATIONS AND LOCAL MARKET CONDITIONS WOULD EXPEDITE THE REVIEW PROCESS. ALSO, THE MORE READY GEOGRAPHICAL ACCESSIBILITY OF THE REGIONAL OFFICES WAS THOUGHT, ESPECIALLY BY WITNESSES IN THE WEST, TO SAVE COSTS ASSOCIATED WITH TRIPS TO WASHINGTON FOR PRE-FILING AND OTHER CONFERENCES.

THE RATIONALE BEHIND FORM S-18 AND THE AMENDMENTS TO FORM 10-K IS THAT AN ISSUER NOT SUBJECT TO THE REPORTING REQUIREMENTS OF THE COMMISSION AT THE TIME ITS REGISTRATION STATEMENT IS FILED UNDER THE SECURITIES ACT MAY, CONSISTENT WITH THE PROTECTION OF INVESTORS, RAISE A LIMITED AMOUNT OF CAPITAL WITHOUT IMMEDIATELY INCURRING THE FULL RANGE OF DISCLOSURE AND REPORTING REQUIREMENTS IMPOSED UPON ISSUERS. THESE PROCEDURES ARE INTENDED TO FACILITATE THE PROCESS BY WHICH A SMALL BUSINESS, OVER A PERIOD OF TIME, MIGHT RAISE A LIMITED AMOUNT OF CAPITAL PUBLICLY AND THEN COME INTO FULL COMPLIANCE WITH THE PERIODIC REPORTING REQUIREMENTS IMPOSED UPON OTHER ISSUERS WITHOUT ABSORBING THE FULL COSTS AND IMMEDIATE BURDENS NOW CONFRONTING MANY SMALL, NON-REPORTING ISSUERS.

AT THIS TIME WE DO NOT KNOW PRECISELY HOW MANY ISSUERS WILL UTILIZE FORM S-18. BASED ON THE RESPONSE RECEIVED AT THE SMALL BUSINESS HEARINGS, WE ARE OPTIMISTIC THAT THE FORM WILL BE USED. IF SO, IT SHOULD EASE THE BURDENS OF REGISTRATION AND ASSIST A COMPANY'S ENTRY INTO THE PERIODIC REPORTING SYSTEM. THE COMMISSION IS ESPECIALLY ENCOURAGED BY THE SUPPORT FOR FORM S-18 EXHIBITED BY REGIONAL UNDERWRITERS AND WE ARE HOPEFUL THAT THE FORM WILL SERVE TO INCREASE THEIR INVOLVEMENT IN THE SMALL BUSINESS CAPITAL FORMATION PROCESS.

THE COMMISSION IS HOPEFUL THAT FORM S-18 AND THE OTHER ACTIONS I HAVE MENTIONED WILL BE OF SUBSTANTIAL ASSISTANCE TO SMALL BUSINESS. WE RECOGNIZE, HOWEVER, THAT THE PROBLEMS OF SMALL BUSINESS UNDER THE SECURITIES LAWS DESERVE FURTHER AND LONG RANGE ATTENTION. BECAUSE OF THE RECURRING AND PERVASIVE NATURE OF MANY OF THESE PROBLEMS, THE COMMISSION WILL ESTABLISH THE OFFICE OF SMALL BUSINESS POLICY WITHIN THE DIVISION OF CORPORATION FINANCE. MARY BEACH, THE STAFF DIRECTOR OF THE ADVISORY COMMITTEE AND CURRENTLY AN ASSOCIATE DIRECTOR IN THE DIVISION OF CORPORATION, WILL HEAD UP THE NEW OFFICE. SHE HAS INFORMED ME THAT THE OFFICE WILL BE ON LINE BY JUNE 1.

THE OFFICE OF SMALL BUSINESS POLICY WILL BE A FOCAL POINT FOR SMALL BUSINESS MATTERS WITHIN THE DIVISION. BESIDES COMMUNICATING WITH THE PUBLIC, IT IS CONTEMPLATED THAT THIS OFFICE WILL HAVE A NUMBER OF OTHER IMPORTANT RESPONSIBILITIES. FIRST, THE OFFICE WILL PROCESS FORM S-18 REGISTRATION STATEMENTS FILED IN WASHINGTON AND WILL MONITOR THE PROCESSING OF OFFERINGS ON FORM S-18 FILED IN THE REGIONAL OFFICES. SECOND, IT WILL ACT AS A LIAISON WITH CONGRESS, OTHER GOVERNMENT AGENCIES, AND THE WHITE HOUSE CONFERENCE ON SMALL BUSINESS. THIRD, AND PERHAPS MOST IMPORTANT, THE OFFICE OF SMALL BUSINESS POLICY WILL HAVE PRIMARY RESPONSIBILITY FOR DEVELOPING AND ASSISTING IN THE DEVELOPMENT OF RULES AND REGULATIONS DESIGNED TO ASSIST AND EASE CAPITAL FORMATION. WITH THIS OBJECTIVE IN MIND, THE OFFICE WILL IMMEDIATELY DIRECT ITS ATTENTION TO SEVERAL SIGNIFICANT PROJECTS RESULTING FROM THE SMALL BUSINESS HEARINGS.

WITNESSES AT THE HEARINGS CONSISTENTLY COMMENTED THAT RULE 146 (THE SAFE HARBOR RULE FOR PRIVATE OFFERINGS UNDER SECTION 4(2) OF THE SECURITIES ACT) DOES NOT WORK WELL FOR SMALL BUSINESSES SINCE COMPLIANCE WITH THE RULE IS UNNECESSARILY COMPLEX, COSTLY, AND SUBJECTIVE. AS ITS FIRST PRIORITY THE OFFICE OF SMALL BUSINESS POLICY WILL CONSIDER THE DEVELOPMENT OF A SPECIAL EXEMPTIVE RULE FOR SMALL BUSINESSES AS AN ALTERNATIVE TO RULE 146. ONE POSSIBLE

ALTERNATIVE IS SUGGESTED BY THE PROPOSED FEDERAL SECURITIES CODE. IT WOULD AVOID THE MORE RESTRICTIVE PROVISIONS OF RULE 146 AND SECTION 4(2) BY PROVIDING A "LIMITED OFFERING EXEMPTION" FOR SALES TO NOT MORE THAN 35 NON-INSTITUTIONAL BUYERS. OFFERS TO AN UNLIMITED NUMBER OF INSTITUTIONAL BUYERS COULD ALSO BE MADE, AS IS NOW THE CASE UNDER RULE 146. HISTORICALLY, THE COMMISSION HAS NOT BEEN WILLING TO ELIMINATE OFFEREE AND PURCHASER QUALIFICATIONS AND INFORMATIONAL REQUIREMENTS EVEN IN PRIVATE OFFERINGS. HOWEVER, BY UTILIZING THE COMMISSION'S BROAD AUTHORITY UNDER SECTION 3(B) OF THE SECURITIES ACT I AM HOPEFUL THAT WE CAN DEVISE AN IMAGINATIVE EXEMPTIVE APPROACH WHICH WILL PROVIDE MORE CERTAINTY FOR ISSUERS ENGAGING IN LIMITED OFFERINGS WITHOUT UNDULY JEOPARDIZING INVESTOR PROTECTION. I WOULD APPRECIATE YOUR COMMENTS AND SUGGESTIONS CONCERNING AN APPROPRIATE EXEMPTION.

ANOTHER PROBLEM WHICH THE OFFICE OF SMALL BUSINESS POLICY INTENDS TO TACKLE IS EXCHANGE ACT REPORTING. THE REPORT OF THE ADVISORY COMMITTEE CITED A NUMBER OF FACTORS WHICH SUGGEST THAT EASIER REPORTING REQUIREMENTS MAY BE WARRANTED FOR SMALL BUSINESSES. THESE FACTORS INCLUDED THE RELATIVELY GREATER BURDEN THE REPORTING REQUIREMENTS PLACE ON SMALLER COMPANIES, THE LACK OF INTEREST SHOWN BY INSTITUTIONAL INVESTORS AND THEIR ADVISERS IN THE SECURITIES OF SMALL COMPANIES, AND THE NEGLIGIBLE IMPACT REDUCED REPORTING WOULD HAVE ON THE ABILITY OF SMALL BUSINESSES TO ATTRACT ANALYST INTEREST.

IN ORDER TO REDUCE DISCLOSURE OBLIGATIONS FOR SMALL BUSINESSES CONSISTENTLY WITH THE PROTECTION OF INVESTORS AND THE PUBLIC INTEREST, THE COMMISSION WOULD NEED TO IDENTIFY A CLASS OF SMALL BUSINESSES ENTITLED TO SUCH RELIEF. BUT THE COMMISSION HAS NEVER UNDERTAKEN THE BROAD CLASSIFICATION OR DIFFERENTIATION OF ISSUERS ON THE BASIS OF THEIR SIZE. ACCORDINGLY, THERE IS LITTLE EMPIRICAL EVIDENCE AVAILABLE FOR US TO ESTIMATE WHAT IMPACT SUCH A STEP MIGHT HAVE OR EVEN WHAT FACTORS TO UTILIZE IN ASSESSING THAT IMPACT. A THRESHOLD INQUIRY WHICH HAD TO BE CONSIDERED AT THE HEARINGS WAS WHETHER TO ESTABLISH A CATEGORY OF "SMALL BUSINESSES" FOR PURPOSES OF SEC DISCLOSURE REQUIREMENTS.

A NUMBER OF WITNESSES PERCEIVED THE CONTINUOUS REPORTING OBLIGATIONS UNDER THE EXCHANGE ACT AS A SIGNIFICANT PROBLEM FOR SMALL BUSINESSES. THEY TESTIFIED THAT THE VIRTUAL LACK OF ANY DIFFERENTIATION BASED ON CORPORATE SIZE PENALIZES SMALL BUSINESSES IN THAT THE VALUE OF THE REQUIRED DISCLOSURE IS DISPROPORTIONATE TO THE BENEFITS DERIVED. OTHER WITNESSES OBSERVED THAT THE ABILITY TO RAISE CAPITAL IS ENHANCED BY GREATER INVESTOR PROTECTION, AND THAT THERE CAN BE NO SUBSTITUTE FOR FULL AND FAIR DISCLOSURE. IN THEIR VIEW, INVESTOR CONFIDENCE MUST BE MAINTAINED IF INVESTORS ARE TO BE ATTRACTED TO THE EQUITY SECURITIES OF SMALL BUSINESSES.

ON BALANCE, MOST WITNESSES FELT THAT RELAXATION OF EXCHANGE ACT REPORTING REQUIREMENTS BY CLASSIFYING ISSUERS COULD BE ACCOMPLISHED CONSISTENTLY WITH THE PROTECTION OF INVESTORS. HOWEVER, SUGGESTIONS FOR APPROPRIATE CRITERIA TO BE USED FOR DEFINING SMALL BUSINESS AND THE APPROPRIATE LEVEL OF RELIEF VARIED WIDELY. THE PROBLEM OF DEFINING A SMALL BUSINESS IS INDEED COMPLEX, AS EVIDENCED BY THE DIFFICULTIES ENCOUNTERED IN THIS REGARD BY THE SMALL BUSINESS ADMINISTRATION. IN ORDER TO ASSIST THE COMMISSION IN SELECTING APPROPRIATE CRITERIA FOR THIS PURPOSE, THE OFFICE OF SMALL BUSINESS POLICY, IN COOPERATION WITH THE COMMISSION'S OFFICE OF ECONOMIC AND POLICY RESEARCH, WILL SEEK TO DEVELOP AN EMPIRICAL DATA BASE FOR ISSUERS BY ASSET SIZE, REVENUES, EARNINGS, TRADING ACTIVITY, MARKET CAPITALIZATION, AND OTHER APPROPRIATE STANDARDS. ALSO, TO AID IN A DETERMINATION OF WHAT RELIEF, IF ANY, SHOULD BE GRANTED TO SMALL BUSINESSES, CONSIDERATION IS BEING GIVEN TO A SURVEY OF THE INFORMATION NEEDS OF INVESTORS IN SMALLER ENTERPRISES. THE STAFF HAS INFORMED ME THAT IT WILL MAKE EVERY EFFORT TO DEVELOP PROPOSALS IN THIS AREA BY THE END OF THIS YEAR, AND I AM PERSONALLY VERY SUPPORTIVE OF THIS EFFORT.

ANOTHER IMPORTANT PROJECT EARMARKED FOR THE OFFICE OF SMALL BUSINESS POLICY IS COORDINATION OF THE COMMISSION'S

REGULATORY REFORM EFFORTS TO ASSIST SMALL BUSINESS WITH THE WORK OF THE STATE SECURITIES ADMINISTRATORS. NUMEROUS COMMENTATORS AT THE SMALL BUSINESS HEARINGS FOCUSED ON THE AFFECT WHICH THE VARIOUS STATE SECURITIES STATUTES -- COMMONLY KNOWN AS BLUE SKY LAWS -- HAVE ON THE COMMISSION'S ABILITY TO PROVIDE RELIEF TO SMALL BUSINESSES SEEKING TO RAISE CAPITAL. THUS, IT WAS OBSERVED THAT MEASURES TAKEN AT THE FEDERAL LEVEL TO REDUCE THE COST OF COMPLIANCE WITH THE COMMISSION'S REQUIREMENTS CAN BE STYMIED AT THE STATE LEVEL BY THE IMPOSITION OF ADDITIONAL REQUIREMENTS. A COMMON EXAMPLE CITED AT THE HEARINGS WAS THE USE OF UNAUDITED FINANCIALS IN A REGULATION A OFFERING. THE COMMISSION DOES NOT REQUIRE CERTIFIED FINANCIAL STATEMENTS TO BE FURNISHED IN CONNECTION WITH AN OFFERING OF SECURITIES BY ISSUERS UNDER REGULATION A. A RECENT SURVEY CONDUCTED BY THE COMMISSION'S REGIONAL OFFICES REVEALS, HOWEVER, THAT NINETEEN STATES REQUIRE CERTIFIED FINANCIAL STATEMENTS TO BE INCLUDED IN REGULATION A FILINGS WITHOUT ANY EXCEPTIONS AND ANOTHER ELEVEN STATES AND PUERTO RICO REQUIRE CERTIFIED FINANCIAL STATEMENTS TO BE INCLUDED IN REGULATION A FILINGS WITH CERTAIN EXCEPTIONS.

IN ORDER TO SEEK GREATER COORDINATION BETWEEN STATE AND FEDERAL SECURITIES LAWS, THE OFFICE OF SMALL BUSINESS POLICY WILL REPRESENT THE COMMISSION ON THE RECENTLY

INITIATED JOINT SEC-NASA STUDY OF SMALL BUSINESS CAPITAL FORMATION. I AM HOPEFUL THAT MANY OF THE FRUSTRATIONS ENCOUNTERED IN COMPLYING WITH INCONSISTENT STATE AND FEDERAL REGULATIONS MAY BE EASED AS A RESULT OF THIS DIALOGUE BETWEEN THE COMMISSION AND THE STATE SECURITIES ADMINISTRATORS.

AS I MENTIONED EARLIER, THERE IS AN IMPORTANT INTER-RELATIONSHIP BETWEEN INVESTOR PROTECTION AND CAPITAL FORMATION. PRESIDENT FRANKLIN D. ROOSEVELT, UPON SIGNING THE LAW CREATING THE SEC, STATED:

... THE MERCHANDISING OF SECURITIES IS REALLY TRAFFIC IN THE ECONOMIC AND SOCIAL WELFARE OF OUR PEOPLE ... IF THE COUNTRY IS TO FLOURISH, CAPITAL MUST BE INVESTED IN ENTERPRISE.

IN TAKING CERTAIN ACTION PURSUANT TO THE SECURITIES LAWS, THE COMMISSION MUST TAKE INTO ACCOUNT THE PUBLIC INTEREST AS WELL AS INVESTOR PROTECTION. INDEED, INVESTOR PROTECTION WAS DEEMED IMPORTANT ENOUGH TO WARRANT SPECIAL FEDERAL PROTECTION ONLY BECAUSE IT IS IN THE GENERAL PUBLIC INTEREST FOR INVESTORS TO PUT CAPITAL TO WORK IN THE ECONOMY THROUGH THE VEHICLE OF SECURITIES PURCHASES. THE PUBLIC INTEREST, HOWEVER, IS NOT STATIC OR IMMUTABLE - REGULATORY ASSUMPTIONS MUST CHANGE AS CONDITIONS CHANGE. THE REGULATORY ASSUMPTIONS OF 1933 AND 1964 MAY NOT BE VALID IN THE 1980s.

IMPLICIT IN THE CONCEPT OF REGULATORY REFORM IS PERIODIC RE-EVALUATION TO DETERMINE WHETHER SPECIFIC AGENCY RULES AND REGULATIONS ARE NECESSARY TO ACCOMPLISH STATUTORY GOALS. THE ONGOING EXAMINATION OF THE EFFECTS OF SEC RULES AND REGULATIONS ON SMALL BUSINESS WHICH I HAVE DISCUSSED TODAY IS REFLECTIVE OF THE COMMISSION'S COMMITMENT TO THIS POLICY. I AM CONFIDENT THAT THE COMMISSION WILL, THROUGH INITIATIVES SUCH AS ITS REVIEW OF THE PROBLEMS OF SMALL BUSINESS, CONTINUE TO BE SENSITIVE TO CHANGING REALITIES.