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SECURITIES AND EXCHANGE COMMISSION
Washington, D. C. 20549

Securities Act of 1933
Release No. 5231

THE DIVISION OF CORPORATION FINANCE'S PROCEDURES DESIGNED
TO CURTAIL TIME IN REGISTRATION UNDER THE SECURITIES ACT OF
1933

On November 21, 1968, the Commission issued Securities Act Release No. 4934 in which it set forth certain procedures designed to reduce the backlog of registration statements processed by the Division of Corporation Finance which had as of that date reached an unprecedented high. The Division now faces a situation similar to that which existed in the fall of 1968. For the first half of fiscal 1972, 1632 registration statements were filed as compared to 1193 for the like period in fiscal 1971. Of the fiscal 1972 filings, 632 represent first time filings by issuers which have never before been subjected to the registration process and generally require more time consuming review by the staff, as compared to 352 for the first half of fiscal 1971. The Division's workload also has been materially increased by the number of reports and other documents filed under the Securities Exchange Act. For example, annual reports on Form 10-K in fiscal 1971 reached a level of 8,319 as compared to 6,064 in fiscal 1969. Notwithstanding this burdening [sic] workload, the Division's staff has not increased to any significant extent.

In view of the above circumstances, the Division has taken further steps as set forth below designed to curtail the time in registration. The Commission believes it appropriate to once again bring these existing procedures and the new ones to the attention of registrants, attorneys, accountants, underwriters, and others in the securities industry and to urge their cooperation in assuring that registration statements contain full and fair disclosure and are prepared in the public interest to present effective disclosure -- to communicate -- in order that public investors be protected.

Various Review Procedures

The Division employs four different review procedures in examining registration statements. It should be noted that the Division and not the registrant itself will determine which type of examination a registration statement will receive.

1. Deferred Review

The first category of procedures will come into operation when a supervisory staff official decides after initial analysis that the registration statement is so poorly prepared or otherwise presents problems so serious that review will be deferred since no further staff time would be justified in view of other staff responsibilities. Detailed comments will not be prepared or issued for to do so would delay the review of other registration statements which do not appear to contain comparable disclosure problems. Registrants will be duly notified. It will then be the responsibility of the particular registrant to consider whether to go forward, withdraw, or amend. Should the registrant decide to go forward without corrective steps, the staff will then make recommendations to the Commission for appropriate action.

2. Cursory Review

The second type of review involves advice to registrants that the staff has made only a cursory review of the registration statement and that no written or oral comments will be provided. In such cases, particularly with respect to companies which have never before been subject to the registration process, registrants will be requested to furnish as supplemental information letters from the chief executive officer of the issuer, the accountants, and the managing underwriter on behalf of all underwriters. These letters shall include representations that the respective persons are aware that the staff has made only a cursory rather than a detailed review of the registration statement and that such persons are also aware of their statutory responsibilities under the Securities Act. Registrants will be advised that, upon receipt of such assurances, the staff will recommend that the registration statement be declared effective. Generally with respect to a first time filing, the effective date will not be earlier than 20 days after the date of original filing.

3. Summary Review

The third category -- summary review -- involving a variation of the cursory treatment described in the preceding paragraph, will entail notification to the registrant that only a limited review of the registration material has been made and only such comments as may arise from such review will be furnished. Registrants will be requested to provide letters from the same individuals mentioned in the preceding paragraph containing similar representations. Registration statements reviewed in a summary fashion will be declared effective

as described in the preceding paragraph upon receipt of both the above-mentioned assurances and upon satisfactory compliance with the limited comments of the staff.

4. Customary Review

In the final category of review, registration statements will receive a more complete accounting, financial and legal review.

Notwithstanding the type of review applied to a registration statement, the Commission hereby again advises registrants that the statutory burden of disclosure is on the issuer, its affiliates, the underwriter, accountants and other experts; that as a matter of law this burden cannot be shifted to the staff; and that the current workload is such that the staff cannot undertake additional review and comments. Attention is directed to the case of *Escott v. BarChris Construction Corporation, et al.*, 283 F. Supp. 643 (DC, S.D.N.Y., 1968).

The Division recognizes that due to the utilization of gradations of review, certain disclosures may appear in particular prospectuses which do not appear in others. Such differences in disclosure will not, however, preclude the staff from commenting upon the presence or absence of specific disclosures in the review of other filings.

Need for Renewed Cooperation of the Bar, Accounting and Financial Communities

In addition to the measures to be adopted by the staff in its effort to reduce the time in registration, several steps can and should be taken by the issuers, counsels, underwriters, and accountants which will contribute significantly towards meeting that objective in a manner consistent with the protection of investors and the traditions of high standards of disclosure. Specifically, the Commission requests that such persons proceed as follows:

1. Readability

Prepare prospectuses with an emphasis on "readability" and "understandability". The function of a prospectus is to communicate through effective disclosure to the investor. Disclosure contained in a registration statement falls far short of its statutory purpose if organized and expressed in such a way as not to convey the required information to the investor in an understandable fashion. The following are some but by no means an inclusive list of suggestions to achieve this.

- a. Write short and simple sentences rather than complex ones.

- b. Do not clutter up the cover page.
- c. Use visual aids, such as tables and charts (also see Securities Act Release No. 5171 relating to pictorial and graphic representations).
- d. Where appropriate, include an introductory statement in the forepart of the prospectus which would enumerate in a clear, concise manner the specific factors which make the purchase of the securities one of high risk. The different risk factors should be broken out into separate paragraphs with a caption in bold face type which concisely identifies the risk described therein.
- e. In the case of lengthy or complex prospectuses, include a relatively short, readable summary in the forepart of the prospectus.

2. "Getting In Line"

Do not file a registration statement with the Commission which fails to meet the statutory standards in order to "get in line", in the expectation that the staff's comments will provide the requisite compliance with these standards.

3. Transmittal Letters

Submit a letter of transmittal with the registration statement, covering, among other matters, the following:

- a. Particular disclosure and accounting problems;
- b. A realistic desired time schedule for effectiveness of the registration statement. While the staff will endeavor to meet such time schedules, there is no assurance that this will occur; accordingly issuers should initially recognize this in terms of their planning;
- c. A representation by registrants using particular forms such as S-7, S-8, S-9 and S-16, that they have reviewed the various criteria for eligibility for a particular form and that such criteria have been satisfied;
- d. A statement that the registrant has reviewed and responded to all applicable paragraphs in Securities Act Release No. 4936. Reference should be made to the location in the prospectus of those responses. Where responses to certain apparently relevant paragraphs have not been made, a brief statement as to the reasons therefor should be provided. Registrants should be particularly conscious of the possible need to update financial statements and related data in accordance with the guidelines set forth in paragraph 23 of Release No. 4936;

e. A statement, where applicable, that a repeat filing is modeled after a recent effective filing of the same issuer, together with an indication of the prior registration statement number and how the present filing differs from the previous one;

f. A statement, where applicable, that the registrant is awaiting a legal opinion from counsel or a ruling from a federal or local agency at the time of filing, which is relevant to the contents of the registration statement. In this connection, reference should be made to the status of that opinion or ruling and the time of its anticipated receipt; and

g. A statement, if applicable, pursuant to Securities Act Release No. 5196 as to whether all 1934 Act reports required to be filed have been filed and are complete.

4. Covering Letter Accompanying Amendments

Submit a letter with each amendment including among other matters the following:

a. A response to each staff comment. Should a particular comment not be dealt with either in part or whole, the registrant should indicate the reasons therefor;

b. A reproduced copy of the staff's letter of comment with the appropriate indication in the margin of that letter as to the page and paragraph in the registration statement on which the response to the comment is reflected;

c. A description of what steps have been taken to comply with the provisions of Rule 15c2-8 under the Securities Exchange Act and Securities Act Release No. 4968 concerning distribution and redistribution of prospectuses; and

d. A statement as to the status of any review of the underwriting arrangements by the NASD.

5. Redlining Amendments

The redlining of the amendment should be specific so as to highlight only the particular change made, as opposed to running a red mark down the margin of the entire page or lengthy paragraph in which a more narrow revision is contained.

6. Communications With the Staff

Exercise restraint in considering whether to communicate with members of the staff, in person or by telephone. While the communication of a material development which might have an impact on the filing is encouraged, inquiries as to the status of a filing tend to contribute to the delay of the processing of all filings. Persons calling should also identify immediately the registrant involved.

Invitation For Comments

interested persons are invited to write directly to Alan B. Levenson, Director, Division of Corporation Finance with any suggestions or comments designed to improve administration of the review process or to achieve greater uniformity of treatment.