

**SECURITIES ACT OF 1933**  
Release No. 5906/February 15, 1978

**SECURITIES EXCHANGE ACT OF 1934**  
Release No. 14471/February 15, 1978

**PRELIMINARY RESPONSE OF THE COMMISSION  
TO THE RECOMMENDATIONS OF THE ADVISORY  
COMMITTEE ON CORPORATE DISCLOSURE**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Publication of Preliminary Response to the  
Recommendations of the Advisory Committee on  
Corporate Disclosure.

**SUMMARY:** On November 3, 1977, The Report of the  
Advisory Committee on Corporate Disclosure pre-

mented to the Commission recommendations intended to improve the Commission's administration of the corporate disclosure system. This release summarizes the Committee's recommendations, reviews the steps already taken by the Commission to implement them and discusses the Commission's plans regarding the recommendations with respect to which it has not yet acted.

**FOR FURTHER INFORMATION CONTACT:** J. Rowland Cook, Chief, Office of Disclosure Policy and Proceedings, Division of Corporation Finance, (202-755-1750) or Edward Cheramy, Office of the Chief Accountant (202-376-8020), Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

**SUPPLEMENTARY INFORMATION:** The Report of the Advisory Committee on Corporate Disclosure (November 3, 1977) forwards recommendations to the Commission in 13 major areas: (1) the Commission's disclosure objectives; (2) the Commission's rule-making and monitoring practices; (3) the development of industry guidelines; (4) soft information; (5) segment reporting; (6) social and environmental information; (7) proxy statement disclosure; (8) further integration of the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)], and the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)]; (9) reporting requirements under the Exchange Act; (10) financial statement disclosure; (11) disclosure problems of small companies; (12) dissemination of company filings; and (13) reorganization of the Commission's filekeeping system.

The Commission believes that the members of the Advisory Committee, those individuals and organizations which assisted the Committee, and the public at large should be informed of and invited to comment on the Commission's response to the Committee's recommendations. The recommendations will be discussed in the order above.

#### (1) The Commission's Disclosure Objectives

The Advisory Committee recommends that the Commission adopt and announce a statement of objectives to guide the Commission in its administration of the investor oriented corporate disclosure system. The Committee believes that "a statement of objectives is essential as a guide to rational, consistent problem-solving and policy-making, and as a standard for evaluating whether the Commission's programs are effective and appropriate

to its jurisdiction."<sup>1</sup> The Committee also believes that an announced statement of objectives may reduce the number of inappropriate demands made of the Commission by those who misunderstand its function.

The Committee recommends the following statement of objectives for the Commission's consideration:

The Commission's function in the corporate disclosure system is to assure the public availability in an efficient and reasonable manner on a timely basis of reliable, firm-oriented information material to informed investment and corporate suffrage decision-making. The Commission should not adopt disclosure requirements which have as their principal objective the regulation of corporate conduct.<sup>2</sup>

The Commission has carefully considered this recommendation. It does not believe, however, that the benefits to be derived from such a statement would, on balance, outweigh the difficulties which it might create. The Commission does not disagree with the general propositions advanced in the first sentence, and recognizes that, as the Committee concluded, such a statement could assist the Commission in responding to demands that the Commission take action which it believes is beyond its proper functions and responsibilities. On the other hand, it is very difficult to capture in a brief, and necessarily general, statement, all of the considerations which, in the light of legislative provisions and history, judicial precedents and administrative policy, enter into a decision to take specific action under particular circumstances. Consequently, the Commission could become involved in unfruitful arguments, and even litigation, as to whether its response to a particular situation was consistent with the statement of objectives. The second sentence of the Committee's proposed statement illustrates this difficulty. Decisions as to required disclosure frequently do affect conduct and Congress was well aware of this consequence and thought that it would often be beneficial.<sup>3</sup> Debate as to what was the Commission's primary, as distinct from secondary, objective in taking particular action is unlikely to be useful.

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<sup>1</sup>Digest of the Report of the Advisory Committee on Corporate Disclosure at D-7 [hereinafter Digest].

<sup>2</sup>Digest at D-33.

<sup>3</sup>The legislative background to the Securities Act and the Exchange Act indicates that disclosure was

*Continued on next page*

The basic objective of the disclosure requirements is to increase investor confidence and to make the securities markets more efficient and as fair and honest as possible. Any endeavor to define these objectives more precisely would not be beneficial since the disclosure requirements necessarily must be dynamic to meet the ever changing environment in which the securities markets operate.

## (2) The Commission's Rulemaking and Monitoring Practices

The Committee's recommendations in this area include the following points:

(a) After identifying a disclosure problem of general significance, the Commission should initiate rulemaking procedures and not rely for unduly prolonged periods on such ad hoc procedures as commenting on filings and enforcement actions:

(b) Prior to proposing a specific rule to deal with a major conceptual issue, the Commission should publish a concept release discussing the problems it perceives, the reasons it proposes to proceed to rulemaking and alternative approaches available, and should request public comments:

(c) The Commission should withdraw promptly proposals not adopted:

(d) As a part of its release announcing adoption of a disclosure rule, the Commission should state that after a specified period it will review the extent to which the

rule has yielded the benefits expected and the manner in which and the standards by which such a determination will be made;

(e) Academic research should be encouraged as an aid in monitoring efforts; and

(f) Results of the monitoring process should be described in the Commission's Annual Report to Congress so that necessary remedial action can be taken if undesirable consequences are revealed.

The Commission intends to give further consideration to these recommendations in connection with its rulemaking activities. Some of the Committee's recommendations have already been reflected in the Commission's rulemaking processes. Thus, the Commission will remain alert to the importance of proceeding to rulemaking promptly after identifying and developing a familiarity with a disclosure issue of general significance. Also, the Commission has experimented with the concept release<sup>4</sup> and will continue to do so. It should be noted, however, that in some instances this approach has led to initial comments that are very general in nature, possibly because some commentators find it difficult to respond to concepts rather than concrete proposals. The Commission hopes to improve the operation of the concept release approach by making the questions

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*Continued from preceding page*

selected as the keystone of federal securities regulation because disclosure was viewed as "a particularly versatile regulatory concept that, with a minimum of governmental interference to honest business, could be used to improve the fiduciary relationship between those in control of publicly held business enterprises and the investing public by indirectly deterring fraud and other more subtle forms of unethical behavior." Report at 565. See generally Report, Chapter XIX, "Corporate Disclosure under the Securities Act of 1933 and the Securities Exchange Act of 1934: A Historical Perspective" 556-617. Justice Brandeis' often cited statement that "Sunlight is said to be the best of disinfectants; electric light the most efficient policeman" (L. Brandeis, *Other People's Money and How the Bankers Use It* 93 (1914)) is almost a truism in securities regulation.

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<sup>4</sup>See, e.g., Securities Act Release Nos. 5824 (April 28, 1977) (42 FR 24069) and 5827 (May 19, 1977) (42 FR 27260) relating to development of industry guides for Class I railroads, and electric and gas utilities; Securities Act Release No. 5792 (December 20, 1976) (41 FR 56331) relating to proposed amendments to Form S-16 to make it available for certain primary offerings; Securities Act Release No. 5882 (November 3, 1977) (42 FR 58414) relating to the possible disclosure of security ratings in filings with the Commission; and Securities Act Release No. 5768 (November 22, 1976) (41 FR 52701) relating to possible amendments to Rule 153 to provide that the requirement of Section 5(b)(2) of the Securities Act that a transaction be "preceded by a prospectus" may be satisfied constructively through actual delivery of a prospectus relating to securities registered on Form S-8 to a national securities association registered under Section 15A of the Exchange Act or to member market makers of such associations in connection with transactions effected on such quotation system.

posed in concept releases as specific as possible rather than by raising issues generally.<sup>5</sup>

The Commission also recognizes that outstanding rule proposals may "overhang the market" and that the establishment of a deadline by which rules proposed for comment will be deemed withdrawn if not adopted or repropounded for comment in modified form would perhaps speed up the rulemaking process. Nonetheless, some of the issues which the Committee identifies as having been in rulemaking too long—for example, going private and beneficial ownership—are among the most difficult issues presented to the Commission in recent years. While the period of time these issues have been unresolved is lengthy, it does not appear desirable to arbitrarily withdraw proposals in important areas because they have not been adopted in accordance with a pre-established timetable. Accordingly, while the Commission will attempt to move as quickly as possible on outstanding proposals and keep interested members of the public reasonably informed as to their status and advised as to any interim procedures to be administered, it does not presently intend to establish deadlines at which rulemaking automatically terminates. The Commission will consider the feasibility of issuing periodic public status reports, perhaps on an annual basis, on all outstanding rule proposals.

The Commission agrees that where feasible the effectiveness of and necessity for disclosure requirements should be monitored and intends to give increased attention to monitoring the effects of the disclosure requirements it administers. Although the Commission undertakes to increase its monitoring activities, budgetary and manpower restraints preclude monitoring every new rule proposal, and further, in some cases the Commission is uncertain as

to how some of its requirements can be effectively monitored.<sup>6</sup> The Commission will keep the public advised as to monitoring activities to be undertaken. As a general matter, however, the Commission will attempt to monitor major new requirements or programs such as "soft" information or segment reporting on a prospective basis. The Commission has also instructed the Division of Corporation Finance to monitor existing requirements selectively. In this connection, the Commission has announced public hearings on the effects of its rules and regulations on small businesses<sup>7</sup> and is considering publishing the present Form 10-K (17 CFR 249.310) for comment, both as an aid in monitoring existing reporting requirements and in formulating recommendations to the Commission concerning the Advisory Committee's recommended revisions to Form 10-K.<sup>8</sup>

Through consultation with the Commission's Directorate of Economic and Policy Research, the Commission and the staff will attempt to remain aware of academic research relevant to its disclosure policy-making and provide encouragement for such activities.

### (3) The Development of Industry Guidelines

The Advisory Committee recommends that the Commission cooperate with preparers and users of information in developing disclosure guides for specific industries, with the goal of tailoring disclosure requirements to differing industry characteristics.

The Commission has already begun implementation of this recommendation. Securities Act Release Nos. 5824 (April 28, 1977) and 5827 (May 19, 1977) request assistance in the development of industry guides for Class I railroads and electric and gas utilities, respectively. The Division of Corporation Finance is presently considering which other industries might appropriately be the subject of industry guides.

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<sup>5</sup>See, e.g., Securities Act Release No. 5882 (November 3, 1977). The Commission notes that the Advisory Committee's recommendation is similar to Recommendation 76-3 "Procedures in Addition to Notice and the Opportunity for Comment in Informal Rule-making" (adopted June 3-4, 1976) of the Administrative Conference. See Administrative Conference of the United States, 1976 Report 43-47 (March 1977). The Administrative Conference recommends among other things, that agencies provide for the possibility of two cycles of notice and comment when the issues raised will be unusually complex or when it is in the public interest to utilize the initial notice of proposed rule makings to give only a general description of the subjects and issues involved in the proceedings and invite public comments upon those subjects and issues.

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<sup>6</sup>The Report appears to recognize this by suggesting that only "substantive new rules or forms" be monitored. Digest at D-12.

<sup>7</sup>See discussion *infra* regarding the Advisory Committee's recommendation on the problems of small companies.

<sup>8</sup>See Digest at D-44—D-48. See also discussion *infra* of the recommendation regarding reporting requirements under the Exchange Act.

#### (4) Soft Information

The Advisory Committee urges the Commission to generally encourage the publication of forward-looking and analytical information in company reports to shareholders and in Commission filings. Among the specific categories of soft information discussed in the Report are management forecasts, management plans and objectives, and future capital structure and dividend policies.<sup>9</sup>

The Advisory Committee also recommends that a safe harbor rule be adopted to provide maximum incentive for disclosure of management earnings forecasts and other types of forward-looking information. The purpose of the safe harbor rule is to place the burden of proof on the person seeking to establish liability for the disclosure of soft information. The Committee proposes that the safe harbor rule be applicable to all registrants and provide protection from liability unless it is proven that the information was prepared without a reasonable basis or was disclosed other than in good faith.

The Commission has authorized the Division of Corporation Finance to prepare for Commission consideration recommendations implementing the Advisory Committee's suggestion that the aforementioned categories of information be encouraged. In this regard, the Commission anticipates that the Division will recommend that the Committee's proposed safe harbor rule be issued for public comment, possibly in conjunction with further or alternate proposals.

#### (5) Segment Reporting

The Advisory Committee makes three recommendations regarding segment reporting: (1) that the

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<sup>9</sup>The Committee also proposes revisions to Guides 22 and 1 (Securities Act Release No. 5520, Securities Exchange Act Release No. 10961, Accounting Series Release No. 159 (August 14, 1974) (39 FR 31894)) of the Guides for the Preparation and Filing of Registration Statements under the Securities Act of 1933 (17 CFR 231) and of the Guides for the Preparation and Filing of Registration Statements under the Securities Exchange Act of 1934 (17 CFR 241)). Guides 22 and 1 require disclosure to clarify and explain the financial information called for by the Summary of Earnings and Statement of Income items of certain forms under the Securities Act and the Exchange Act. The Committee's proposed revisions are discussed *infra* in connection with recommendations relating to reporting requirements under the Exchange Act.

Commission attempt to develop on an industry by industry basis a standardized product line classification for presentation of both dollar and, where appropriate, unit sales of each product line (within a segment) whose total sales comprised a certain percentage of consolidated sales in the previous fiscal year; (2) that the narrative discussions in reports and registration statements filed with the Commission be presented on a segment basis; and (3) that the Commission require unaudited segmented financial disclosure in Form 10-Q (17 CFR 249.308a) quarterly reports.

The Commission will consider the necessity for implementing the first recommendation in this area as industry guides are developed. With regard to the second recommendation, Securities Act Release No. 5893 (December 23, 1977) (42 FR 65554) announced the adoption of a series of regulation, rule, and form amendments which were intended, in part, to integrate the information presented in certain registration statements, annual reports and proxy and information statements under the description of business item with the industry segment data included by registrants in their financial statements pursuant to Statement of Financial Accounting Standards No. 14, "Financial Reporting for Segments of a Business Enterprise" ("SFAS No. 14"). These amendments also require registrants to identify the segment(s) which use the properties identified in the description of properties item, thus integrating the properties items in the various forms with the requirement in SFAS No. 14 that registrants state the amount of each industry segment's identifiable assets. The Commission will remain alert to other disclosure requirements the effectiveness of which could be enhanced by presentation of the information on a segment basis.

Release 5893 also indicates that the Commission believes that it would be inappropriate to propose amendments to require segment information for quarterly periods at this time and rather, that no further action will be taken concerning this recommendation until the Financial Accounting Standards Board's ("FASB") conclusions on interim period financial information have been announced, and an opportunity is presented to analyze the experience of registrants and investors alike with the new segment reporting requirements.

#### (6) Social and Environmental Information

The Committee recommends that the Commission require disclosure of matters of social and environmental significance only if the information in question is material to informed investment or corporate suffrage decision-making or is required by laws other than securities laws. The Committee also

indicates that it sees no broad categories of social and environmental information, not now covered by mandatory requirements, which should be made the subject of new requirements.

The Commission is currently involved in litigation relating to its statutory obligations to require disclosure of information reflecting on corporate social and environmental performance.<sup>10</sup> This recommendation will be evaluated in light of the resolution of this litigation. In the meantime, the Commission will remain sensitive to users' needs in this area so that it may respond promptly if it appears that disclosure of new categories of social and environmental information should be required.<sup>11</sup>

#### (7) Proxy Statement Disclosure

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<sup>10</sup> See *Natural Resources Defense Council, Inc. v. Securities and Exchange Commission*, 432 F. Supp. 1190 (D.D.C. 1977), appeal pending, C.A.D.C. No. 77-1761.

<sup>11</sup>In this regard, Securities Exchange Act Release No. 13901 (August 29, 1977) (42 FR 44860) specifically identified the following questions to be addressed at the Commission's corporate governance hearings:

(1) What types of socially significant matters, if any, are material (within the meaning of Rule 14a-9 (17 CFR 240.14a-9)) to shareholders in making informed voting decisions? In this regard, is there a difference between information necessary to an informed voting decision and information necessary to an informed investment decision?

(2) Whether or not information relating to socially significant matters, including matters relating to the environment and employment practices, is material within the meaning of Rule 14a-9, would it be appropriate for the Commission to exercise its rulemaking authority under Section 14(a) to require disclosure of such information in proxy statements and/or annual reports to shareholders?

(a) If so, should the Commission specify matters which are proper subjects for disclosure? Alternatively, should corporate boards of directors be permitted to specify matters which are proper subjects for disclosure?

(b) What standards should be applied to identify which matters are proper subjects for disclosure?

The Committee recommends that the Commission develop disclosure requirements which, taken as a whole, will strengthen the ability of directors to serve as effective monitors of management and will provide shareholders with information necessary to a meaningful evaluation of their board's performance. The Committee specifically recommends that shareholders be given information about the nominating committee (if any) of the board of directors, and that companies be required to file with the Commission a director's letter of resignation if the director so requests.

The Committee also urges the Commission to review closely proxy materials containing management proposals, particularly those where management may have a conflict of interest, such as option and other similar type plans, anti-takeover proposals, and plans for going private, in order to assure that there is adequate discussion of their disadvantages.

Finally, the Advisory Committee recommends that registrants be required to state in their proxy materials the date by which proposals must be received to be eligible for inclusion in the proxy materials for the next annual meeting.

These recommendations are being evaluated for possible Commission consideration in the context of the Commission's re-examination of rules relating to shareholder communications, shareholder participation in the corporate electoral process, and corporate governance generally.<sup>12</sup> In addition, the recommendation relating to review of management proposals, to the extent not already implemented, will be implemented administratively and will be the subject of specific instructions to the staff of the Division of Corporation Finance.

#### (8) Further Integration of the Securities Act and the Exchange Act

The Advisory Committee's recommendations in this area are intended to maximize the integration of the registration requirements of the Securities Act and the periodic reporting requirements of the Exchange Act. The recommendations are:

(1) That the Commission develop a single coordinated disclosure form—Form CD—which would prescribe the content of registration statements, periodic reports, and material distributed in connection with shareholder meetings; and

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<sup>12</sup>See Exchange Act Release Nos. 13482 (April 28, 1977) (42 FR 23901); 13686 (June 27, 1977) (42 FR 33834); and 13901 (August 29, 1977) (42 FR 44860).

(2) That in adopting Form CD the Commission classify registrants into three levels for Securities Act registration purposes. With respect to offerings for cash, companies which have not been Exchange Act reporting companies for three years (Level 3) would be required to file the information currently prescribed by Form S-1 (17 CFR 239.11); companies meeting certain asset size and earnings requirements (Level 1) would be permitted to use a short form registration statement similar to the current Form S-16 (17 CFR 239.27), incorporating certain Exchange Act reports by reference; all other companies (Level 2) would file the information currently required by Form S-7 (17 CFR 239.26).

For exchange offers or merger proposals, information regarding the transaction would be included in the prospectus. Information furnished to shareholders regarding the parties to the transaction would vary according to each company's status as a Level 1, 2 or 3 company. Information currently required by Form S-1 or Form S-14 (17 CFR 239.23) would be required for any Level 3 party. If any party to the transaction is a Level 1 or 2 company, the registration statement would incorporate by reference that company's most recent proxy or information statement and periodic reports. These documents would be made available on request for a Level 1 company and furnished with the prospectus for a Level 2 company.

In order to encourage registrants to avail themselves of the incorporation by reference option, the Committee recommends that the Commission adopt a definition of a standard of reasonable investigation under the Securities Act, taking into account the fact of incorporation by reference and the nature of the underwriting arrangements.

The Commission views the recommendations regarding further integration of the Securities Act and the Exchange Act as extremely significant and has assigned a high priority to their implementation. The Commission has established as a goal the development of a single disclosure regulation encompassing those disclosure requirements which generally are common to all present non-specialized forms (10-K, 10-Q, 8-K (17 CFR 249.308), S-1, S-7, and S-16). Regulation S-K (17 CFR 229), the adoption of which was announced in Release No. 5893, represents a first step and new requirements will be incorporated into it as soon as appropriate.

With regard to the classification of registrants and reduction of reporting burdens, the Commission views the amendments proposed in Securities Act Release No. 5879 (42 FR 58677), which would revise Form S-16 to expand its usage to primary offerings, rights offerings, and dividend or interest reinvestment plans, as the first step toward implementation of this

recommendation. In this context the Commission will consider the need to adopt a definition of a standard of reasonable investigation. After the comments on these proposals are considered and a final Commission decision is made regarding the proposals, the Commission will then consider whether it is appropriate to expand further the availability of Form S-7.

Also, the Division of Corporation Finance has been authorized to commence a major project to attempt to alleviate the registration burden resulting from exchange offers or transactions subject to Rule 145(a) (17 CFR 230.145(a)). In this connection the Advisory Committee's recommendation in this area will be carefully considered.

The Commission's experience with proposed Form S-14A<sup>13</sup> suggests that certain difficulties may be associated with this undertaking. In particular, a number of those who commented on that form suggested that the potential liabilities resulting from use of a prospectus which does not contain all material information would be unduly burdensome and would discourage registrants from using such a prospectus.<sup>14</sup>

#### (9) Reporting Requirements Under the Exchange Act

The Committee makes two recommendations in this area. The first—that registrants be encouraged to use their annual and quarterly reports to shareholders as filing documents in lieu of preparing a separate Form 10-K and Form 10-Q—was implemented by Guide 4 of the Guides to the Preparation and Filing of Reports and Registration Statements under the Securities Exchange Act of 1934, announced in Exchange Act Release No. 13639 (June 24, 1977) (42 FR 31780).

The Committee's second recommendation is that Form 10-K be revised to improve its content and format. Included within the Committee's suggested revision is a redrafted management discussion and analysis of summary of operations requirement.<sup>15</sup>

Later this year, the Division of Corporation Finance will prepare for the Commission's consideration a draft release requesting comments on both the

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<sup>13</sup> See Securities Act Release Nos. 5744 (September 27, 1976) (41 FR 43876) and 5806 (February 16, 1977) (42 FR 10855).

<sup>14</sup> See letters of comment in File No. S7-655 in response to Release Nos. 5744 and 5806.

<sup>15</sup> See note 9 supra.

existing Form 10-K and the Advisory Committee's revised Form 10-K including the redrafted management's analysis requirement. After these comments are reviewed, and an internal review of compliance with existing requirements is conducted, the Commission will consider what revisions to Form 10-K are appropriate. In evaluating this recommendation the Commission and the staff will bear in mind the strong possibility that Form 10-K will be incorporated by reference into a registration statement on Form S-16 for primary offerings of certain issuers and will consider the extent to which the annual report to the Commission on Form 10-K and the annual report to shareholders may be combined.

#### (10) Financial Statement Disclosure

The Advisory Committee forwards three recommendations to the Commission regarding financial statement disclosures. It suggests that in drafting industry guides for companies with extended operating cycles, the Commission require disclosures which will focus on the uncertainties related to certain financial statement amounts. It recommends that in setting accounting standards, the Commission and the FASB consider, among other things, the adequacy of disclosures regarding uncertainties inherent in the measurement process, amounts and timing of historical cash flows, and the liquidity of the reporting entity. Finally, the Committee recommends that the Commission establish as a continuing goal the elimination of rules of general applicability which cause differences between financial statements prepared in accordance with Regulation S-X (17 CFR 210) and those prepared in accordance with generally accepted accounting principles.

The issue of uncertainties associated with financial statement amounts will be specifically focused on as guides are developed for appropriate industries (e.g., casualty insurance companies).

Consistent with the Commission's policy of looking first to the private sector for the establishment of accounting principles, the staff will forward the Advisory Committee's second recommendation to the FASB for its consideration. The Commission will encourage the FASB to consider this recommendation in the course of its conceptual framework project. As the Commission's staff evaluates and contributes to the development of future accounting and disclosure standards it will remain sensitive to the adequacy of disclosures regarding uncertainties, cash flow, and liquidity.

The Committee's third recommendation recognizes the Commission's continuing responsibility to address emerging accounting problems and provide interim disclosure requirements. The Commission will, of

course, continue to fulfill this responsibility. It will also remain alert to the necessity of advising the public as to the reasons for the actions being taken and to the importance of referring these matters to the appropriate private sector group for consideration.

The staff of the Office of the Chief Accountant will also place on its agenda a project to review current Regulation S-X requirements with the goal of eliminating those requirements which duplicate (or vary unnecessarily from) generally accepted accounting principles.

#### (11) Disclosure Problems of Small Companies

The Committee recommends that the Commission hold public hearings to determine whether it is feasible and desirable for the Commission to reduce the reporting burden on small companies and, if so, how this might be accomplished.

On December 14, 1977 in Securities Act Release No. 5889 (42 FR 64163) the Commission announced that it will hold public hearings concerning the effects of its rules and regulations on the ability of small businesses to raise capital and the impact on small businesses of the disclosure requirements promulgated under the Securities Act and the Exchange Act. The hearings will be held in the spring of 1978.

#### (12) Dissemination of Company Filings

The Advisory Committee recommends that the Commission be responsive to the information needs of holders of debt securities and warrants, particularly that the Commission assure the reports normally made available to equity holders are made available to debt holders. It also recommends that the Commission require public companies to make their filings with the Commission under the 1934 Act available to the public upon request.

In the near future the Commission expects to consider a staff proposal concerning the publication of a release proposing for comment rule amendments which would have the effect of implementing the Committee's recommendation that registrants be required to make available to security holders without charge and to other persons upon payment of a reasonable fee, copies of the most recent annual report on Form 10-K, quarterly and current reports, and proxy and information statements filed after the end of the registrant's most recent fiscal year.

#### (13) Reorganization of the Commission's Filing System

The Committee recommends that the Commission convert the Commission filing system from a statutory



to a company basis and that it maintain a "Current file" for each Exchange Act reporting company containing the company's latest Form 10-K annual report and all subsequent filings under the Securities Act and Exchange Act. These recommendations will be evaluated by the Commission's Office of Reports and Information Services. The Commission does not yet have a preliminary position with respect to these recommendations.

In conclusion, the Commission once again wishes to thank the members of the Advisory Committee and all those individuals and organizations which assisted the Committee for their service to the Commission. As should be evident from the discussion above, the Commission and its staff are giving careful attention to each of the Committee's recommendations. The Commission is confident that the Committee's recommendations will significantly improve the operation of the Commission's disclosure program. The Commission invites the Advisory Committee members and the public at large to continue to offer advice to the Commission now, or later as these recommendations are developed into Commission policies.

By the Commission.

George A. Fitzsimmons  
Secretary

February 15, 1978

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## **SECURITIES EXCHANGE ACT OF 1934**

SECURITIES EXCHANGE ACT OF 1934  
Release No. 14450/February 10, 1978

ACCOUNTING SERIES  
Release No. 241, February 10, 1978

ADMINISTRATIVE PROCEEDING FILE NO. 3-5384

In the Matter of

**HASKINS & SELLS**

**EUGENE COBAUGH**

**TIMOTHY FITZGERALD**

**BILLY R. THOMAS**

148/SEC DOCKET

## **ORDER INSTITUTING PROCEEDINGS AND OPINION AND ORDER PURSUANT TO RULE 2(e) OF THE COMMISSION'S RULES OF PRACTICE**

This opinion and order under Rule 2(e)(1)<sup>1</sup> of the Commission's Rules of Practice [17 CFR 201.2(e)(1)] arises out of the conduct of Haskins & Sells ("H&S") and certain of its partners in connection with audits of financial statements of FISCO, Inc., Falstaff Brewing Corporation, Oceanography Mariculture Industries, Inc., and Ampeco Securities, Inc.

H&S is a partnership engaged in the practice of public accounting and the individual respondents are each partners in that firm. H&S has more than 500 partners located in over 100 offices throughout the United States. In order to dispose of the matters discussed herein, each of the respondents has submitted an offer of settlement waiving institution of formal administrative proceedings under Rule 2(e)(1) and, without admitting or denying any of the statements or conclusions set forth herein, consenting to the entry of this Opinion and Order. After due consideration we have determined that it is appropriate and in the public interest to accept the offers of settlement.

### **SUMMARY**

The matters giving rise to these proceedings result from otherwise unrelated non-public investigations by the staff of the Commission into the affairs of three of the companies involved and, in one case, a broker-dealer examination conducted by the Commission's Fort Worth Regional Office. Each of these cases involves deficiencies in the conduct of audits by H&S. Proper application of quality control procedures could have prevented most of these deficiencies. Each of these cases is described in some detail below, along with the Commission's view of the accounting and auditing deficiencies involved.

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The Commission may deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice of and the opportunity for hearing in the matter . . . (ii) to be lacking in character or integrity or to have engaged in unethical or improper professional conduct, or (iii) to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws [15 U.S.C. 77a to 80b-20], or the rules and regulations thereunder.