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Media General

Alan S. Donnahoe
Vice Chairman and
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8 October 1982

Mr. John J. Huber
Deputy Director
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, NW
Washington, D. C. 20549

Dear Mr. Huber:

My apologies for the delay in thanking you for your response to my letter to Chairman Shad on the exemption of long-standing stock options from the restrictions of 16(b). A copy of this correspondence is attached.

This delay came about because I wanted our lawyers to carefully review your letter and the entire subject matter, to see if they could develop any constructive ideas. The result of their effort is outlined in the memo attached.

The basic inequity involved here is the coupling of an important executive incentive with a market risk over which he has no control, and which has nothing to do with his company or his performance for the company. This converts what is designed to be a performance-incentive into a very dangerous gambling game for the individual executive.

I have been a chief executive officer for a quarter of a century and have known many executives, in and out of my own organization. Virtually all of these have worked hard all of their lives to reach their level of responsibility, and it is very rare indeed to find one who has been able to accumulate any real wealth.

In the vast majority of cases, stock options are the only mechanism by which these executives can hope to participate, even in a minor way, in the success of the company they have helped to develop and prosper.

We have used stock options extensively in this company, and I know from many years of experience that they are most helpful in motivating executives, and in creating a strong identification with stockholder interests.

Thus it becomes a rather sad irony for these executives to realize that their identification with stockholders comes to an abrupt end when section 16(b) takes over.

Unlike stockholders in general, who can buy or sell whenever they please, these executives are put in a very different category. Typically they must borrow to pay the option price, and then borrow to pay ordinary income tax on the gain (whether initially or after six months), with no idea as to what the stock may be worth when they must sell it to repay these loans.

To make this even worse, there is no guarantee that restrictions on sale will be lifted after six months, because at that time other things may be happening in the company - new product development, acquisition talks, and so on - which would preclude any sale by an insider.

It is obvious that this is a very risky procedure. An executive may well be required to put his life savings on the line in this rather weird gambling game. He is expected to be prudent in all of his corporate actions, in the handling of corporate risk, but is now required - in the name of performance incentive - to be altogether imprudent in handling his own affairs.

The basic unfairness here is really quite self-evident, and it raises the essential question of who benefits from all this. And the answer to that question, so far as I can see, is that no one benefits from it - certainly not the company, nor its stockholders, nor the nation as a whole.

The only rationale I can see is that this procedure is somehow presumed to prevent some insider crook from taking advantage of the public by selling stock when he has undisclosed inside information to indicate that the company is about to go on the rocks and the stock will take a nosedive accordingly. But there are other laws to prevent and punish any infraction of this kind, quite apart from 16(b).

And this also raises a key philosophical point. In my experience, the vast majority of executives are honest, and the dishonest component is a very small percentage indeed. And it is really quite tragic to penalize all of the honest people in order to place some extra (and unnecessary) deterrent on the dishonest few.

Nevertheless, I recognize and fully support the duty of the SEC and other regulatory agencies to be diligent in their fight against crime and dishonesty, and their understandable concern about opening even the slightest opportunity for the crook to maneuver.

But it seems to me that there should be a way to reconcile all this; to continue to make life very difficult for the few dishonest executives without penalizing the 99.9 percent who are completely honest and trustworthy.

And I think the solution may be found in the suggestion by our lawyers that the exercise of stock options be exempted from 16(b) restrictions, provided:

1. The options have been outstanding for a long time - say five years or more; and,

2. The option holder along with the chief executive officer and chief financial officer of the company certify that they are not aware of any material non-public information concerning the issuer, and that the issuer is current in all of its required filings.

This, it seems to me, would accomplish precisely what is needed: a lifting of the unfair restrictions on all honest executives while simultaneously slamming the door on any fradulent behavior by the dishonest few.

I apologize for the length of this letter, but the subject is an important one. This nation needs improved productivity for its overall economic welfare, and for that, we need highly-motivated executives with proper incentives. And this one rule change - which would cost nothing and create no problem of any kind - would be a significant contribution in accomplishing this national objective.

If I can provide any further information, or be of help in any way, please don't hesitate to let me know.

With thanks for your consideration.

Sincerely,

Alan S. Boyd

ASD/k

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