

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No.126 -- February 1-29, 1964

1933 Act

1. Section 2(1) -- Security; Commodity Contract; Intrastate Offering.

February 5 and 6, 1964 -- Memorandum re: San Francisco Regional Office

Company proposed intrastate offering of commodity contracts on a percentage basis relying on Section 3(a)(11) exemption and at the same time offering interstate contracts on a flat fee basis claiming no security involved.

Fee arrangement is a factor to be considered to determine if a commodity contract involved an investment contract. However, the fact that a flat fee basis is provided would not by itself take the commodity contract out of the realm of a security. No exemption if the two contracts offered were each a security.

2. Section 3(a)(3) -- Current Transactions; Utility Borrowing.

February 18, 1964 -- Letter re: A. G. Becker & Co., Incorporated

Becker proposes to purchase from large utility companies notes with maturities not in excess of 270 days and resell them as principal. The public utility companies would be using such financing as a supplement to their bank credit. Because of the difficulty in tracing dollars, a formula would limit the amount of notes to not more than the (1) dollar amount of its receivables arising out of the sale of electricity, gas and appliances plus (2) the dollar amount of its fuel supply and appliance inventories.

No action recommended if the plan were effected as proposed without registration in reliance upon Section 3(a) (3) of the Act.

3. Section 3(a)(4) -- Educational Exemption.

February 26, 1964 -- Letter re: Architectural Register of America, Inc.

The company proposes to issue registered subordinated certificates of debt. The purposes of the organization are to unite into one national professional organization all registered architects; to promote the welfare of the profession and members; to assist in interstate

and international architectural alliances, joint ventures, conventions, and to act as an information and referral center for the services and products of the profession.

In order for Section 3(a)(4) to apply, the corporation must be organized and operated exclusively for the purposes stated in that section. Since the purposes of the corporation did not appear to correspond with any of the purposes referred to in Section 3 (a) (4), the exemption did not appear to be available.

4. Section 3(a)(11) -- Intrastate Offering; Keogh Act (H.R. 10).

February 5, 1964 -- Memorandum re: H.R. 10 Commingled Trust Fund of Chase Manhattan Bank

Bank now offers participations in H.R. 10 plan without registration in reliance on Section 3(a)(11). If a professional society offered a plan to its members with an option to purchase insurance and an option to buy participations in the fund, the insurance option would not destroy the exemption. If such a plan constituted a separate security (as in AMA plan), it would probably also be exempt under Section 3(a)(11).

5. Section 5 -- Rights Offering; Foreign Securities.

February 6, 1964 -- Memorandum re: Robert Young

Rights offering made to American stockholders of a foreign corporation cannot be publicly made in the United States without registration. Since the exclusion of American shareholders from foreign corporation's rights offering is prejudicial, no objection is raised to sending subscription rights to them with a statement declaring the shares are not registered and are not being offered in the United States, and that no subscription will be accepted from a U.S. resident. Such rights or warrants can be sold abroad without being an offer or sale in the United States. If a foreign company were to advise its U.S. shareholders that it will accept offers to buy if sent to the issuer outside the U.S. and that it will retain such shares, registration would be required under the circumstances.

6. Rule 154 -- Employees' Stock Option Plan.
Forms S-1; S-8

February 3, 1964 -- Memorandum re: Leonard Calvert

A company intends to establish an employees' savings plan which would invest in company shares. Plan provides that employee will receive cash on retirement, so company must sell stock in his account at that time. Even though offering of participations is registered on Form S-8, sale by company of shares in employee's

account will require registration on Form S-1 at time of sale or at least amendment of the Form S-8 prospectus to meet the requirements of Form S-1.

Company could repurchase stock but resale would require registration. Rule 154 provides no exemption to an issuer's broker or broker of a plan controlled by the issuer.

7. Form S-8 -- Employee Offering; Restricted Stock Option.

February 28, 1964 -- Memorandum re: Litton Industries, Inc.

Company had filed Form S-8 effective October 1962. The revised Form S-8 provides such form may be used to register options that qualify as "restricted stock options" under Section 421(d) of the Internal Revenue Code of 1954, which was not part of the S-8 form when the company originally filed. Plan does not qualify for tax purposes since optionee pays only 25% of the current market value of the stock. Registration was allowed on Form S-8 as exercise price of stock option at amount lower than permitted by Revenue Code is less significant than the requirement that options be issued to employees and not be transferable.

1934 Act

8. Section 14

Schedule 14A, Item 7(f)(4) -- Material Interest; Associate.

Item 7, Instruction 7

February 28, 1964 -- Memorandum re: Hoskins Manufacturing Company

A director of Hoskins was vice president of International Nickel from whom Hoskins purchased nickel, representing 38% of Hoskins' total purchases.

The transaction, constituting about 3/10 of 1% of International's total sales volume and about 7/10 of 1% of the nickel it produced, need not be disclosed in Item 7 as it was not material.

9. Section 14

Rule 14a-7; 14a-8(c)(1) and (5); 14a-9 -- Proxy; Shareholder Proposal.

February 20, 1964 -- Commission Minute re: GM

Commission determined that shareholder proposal that Cadillac division manufacture Corvette rather than Chevrolet division not a proper subject and might be omitted from the proxy but that the company must comply with requirement of Rule 14a-7 that

company mail material for stockholder notwithstanding that the proposal may not be a proper subject.

10. Section 14 -- Proxy; Shareholder Proposal; Dividends; Ordinary Business Operations.
Rule 14a-8(c)(1) and (5).

February 27, 1964 -- Memorandum to Commission re: Crown Cork & Seal Company, Inc.

Shareholder proposal in the form of a resolution recommending that the directors declare a dividend in 1964, was opposed by management as not being a proper subject under state law and as relating to the conduct of its ordinary business operations and, therefore, excludable under Rule 14a-8 c) (1) and (5) respectively.

The Division recommended the Company include the proposal in its proxy soliciting material as not so excludable.

The Commission divided two to two. (See Commission Minute dated February 28, 1964.)

11. Section 14 -- Proxy; Shareholder Proposal.
Rule 14a-8

February 5, 1964 -- Letter re: The One William Street Fund, Inc.

Shareholder proposal, that the investment advisory contract between the Fund and Lehman Brothers be terminated, and pending the selection of another investment adviser, the Fund perform its own investment advisory services, is the converse of management's proposal to renew the contract, and need not be included in the proxy soliciting material.

Other proposals that the Fund not enter into investment advisory contracts except upon shareholder approval of the contracts after submission of bids and proposals; that no investment advisory contract be approved unless it entitles the Fund to recapture any profit by the investment adviser, its partners or directors, in any security owned or researched for on behalf of the Fund, were considered as in opposition to management's proposal to ratify and approve the present advisory contract but would be appropriate for inclusion in the company's proxy material, if rephrased to be applicable only to future contracts.

A proposal which directed the directors to institute suit against Lehman Brothers for losses and damages incurred by the Fund should be included if changed to a request or recommendation.

12. Section 14 -- Proxy; Shareholder Proposal.
Rule 14a-8(c)(5)

February 26, 1964 -- Memorandum re: Rohm & Hass

Stockholder proposal that management adopt "The Mirage System," a method of construction, may be omitted from the proxy statement as a matter relating to conduct of ordinary business operations.

13. Section 14 -- Proxy Contest; Election of Directors; Solicitation.
Rule 14a-9
Schedule 14B

February 25, 1964 -- Memorandum re: Buttes Gas and Oil Company

Two shareholders, who wish to engage in a proxy contest, will approach not more than ten people to make up a slate of directors, all of whom will file Schedule 14B's. Proxy material is to be sent to major stockholders in an effort to call a stockholders' meeting to elect directors and will be filed with the Commission. It was proposed that all solicited will file 14B's and join the committee, which will then comprise from 100 - 200 people.

The propriety of calling this number of persons members of the committee was questioned. See Union Pacific Railroad Company v. Chicago and North Western Railway Company, in the Northern District of Illinois, Eastern Division, February 1964, which criticized a group of unrelated shareholders for representing they were a "committee".

14. Section 16(a) -- Ownership; Ownership Reports.

February 13, 1964 -- Memorandum re: Atlantic Research Corporation

Control person who defaults on payment of loan may be required to file a report under Section 16(a) of the 1934 Act if the record ownership of the pledged shares is transferred to lender's nominee, even though legal title under the loan agreement may remain with borrower.

15. Forms 8 and 20 -- Reverse Split; New Security.

February 20, 1964 -- Telegram re: Atlas Consolidated Mining and Developing Corporation

Atlas in 1956 registered on American Stock Exchange on Form 20 block shares of its capital stock, par value ten Philippine pesos per block share. Holder had option to exchange each block share for one hundred ordinary shares, ten Philippine centavos par

value. As the result of a one for ten reverse stock split reported on Form 20-K, each block share became exchangeable for ten ordinary shares, par value one Philippine peso.

Company proposes a new one for ten reverse stock split and each block share will be redesignated one ordinary share, with new ordinary share certificates issued in exchange for outstanding block certificates, both having same par value of ten Philippine pesos.

Atlas need not file new application on Form 20 as it will be sufficient to file on Form 8 to make current the designating of the class of securities heretofore registered, with a brief description of the reverse stock split.

1939 ACT

16. Section 313(a)(3) -- Loan; Participation; Indebtedness.

February 17, 1964 -- Letter re: Harris Trust and Savings Bank

Harris, trustee under an indenture, purchased a participation in a loan made by another bank to the obligor.

The participation held by trustee should be reported pursuant to Section 313(a)(3). Reporting the entire indebtedness of the bank is optional.

Where the trustee is the principal lender of a loan in which participations are sold, both the loan and participation should be reported pursuant to Section 313(a)(3).

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 125 -- January 1 – 31, 1964

1933 ACT

1. Sections 2(1); 3(a)(2) -- Security; Evidence of Indebtedness; Time Deposits; Demand Deposits.

January 28, 1964 -- Telegram re: The Gibraltar Company

Gibraltar is a private bank not meeting the standards of Section 3(a)(2). The question has arisen as to demand and time deposits received from the public by Gibraltar.

Any document given by the bank evidencing the existence of demand or time deposits would be a "security" requiring registration since the exemption provided by Section 3(a)(2) is not available to the bank.

2. Section 2(3) -- Preliminary Negotiations; Underwriter.

January 15, 1964 -- Memorandum re: Quadri-Science

A Company has acquired a few closely held companies in claimed private offerings and plans to acquire additional companies in the same manner. The question was raised when registration should be required to cover the shares to be issued in future acquisitions by the company, i.e., in connection with the acquisitions or in connection with resales after acquisitions.

Registration would be preferable at the time the shares are to be resold publicly by the principals in each acquisition since it is more important that the public purchasers receive a prospectus. The principals are presumably in a position at the time the shares are issued to demand from the issuer the same information as would be obtained in a registration statement. They could be considered underwriters and the sale to them could be considered preliminary negotiations with an underwriter under Section 2(3), and, therefore, not subject to registration.

3. Section 3(a)(6) -- Carrier; Interstate Commerce Commission.

January 23, 1964 -- Letter re: The Greyhound Corporation

Greyhound has been converted from an operating common carrier into a holding company by transferring its properties, assets and business to a wholly owned subsidiary. Greyhound proposes to offer common stock to shareholders of Home in exchange for stock of the latter.

The Interstate Commerce Commission continues to consider Greyhound as a “motor carrier” and the issuance of its stock will be subject to the provisions of the Interstate Commerce Act. No action was recommended if the shares are issued pursuant to an order of ICC under Section 20a of the Interstate Commerce Act.

4. Sections 3(a)(8); 3(a)(11) -- Intrastate offer; Insurance; Annuity Contracts; Keogh Act (H. R. 10).

January 28, 1964 -- Letter re: Medical Society of Delaware Retirement Program

The Delaware Society established a Group Retirement Plan Trust. The Trust will be administered by a Delaware bank, which will invest all contributions either in a single pooled investment fund or purchase life insurance and annuities, which may be held or distributed periodically. The Trust will not be commingled with any other bank funds.

Members residing in Delaware may participate in the investment fund, and only their employees who are Delaware residents may make voluntary contributions to the investment fund. Contributions by or on behalf of non-resident members or their employees and all voluntary contributions by non-resident employees of resident members, must be used to purchase life insurance and annuities. Participants who cease to be residents of the state can maintain their interest in the fund but further contributions by them or on their behalf can be used to purchase only annuities and insurance.

No action position was taken to the offering of participations in the investment fund in reliance upon the exemption of Section 3(a)(11) and the offering of the insurance and annuity contracts in reliance upon the exemption of Section 3(a)(8), provided the trust continues to meet the requirements of Section 401 of the Internal Revenue Code.

5. Section 3(a)(11) -- Intrastate Offering; Keogh Act (H. R. 10).

December 20, 1963 -- Letter re: Chase Manhattan Bank

January 8, 1964 -- Letter re: Connecticut Bank and Trust Co.

A self-employed retirement plan proposed by the bank will be advertised in New York State, and offered to New York participants. Contributions will be invested in one of three pooled funds in the proportion the participant directs.

Public solicitation and any advertising will be limited to New York State residents. However, the Bank will also administer plans covering non-residents if so requested. Such plans will adopt the same "Master Plan" and "Master Trust." However, each such plan will be administered as a separate and independent account with no part of the contribution to be invested in any of the pooled funds. Also in the event a participant ceases to be a resident of New York, his account will be withdrawn from the plan, and invested on an individual basis without commingling with other accounts.

No action position was taken if the proposed offering is effected as proposed in reliance upon Section 3(a)(11).

6. Rules 254; 263 -- Computation of Ceiling; Foreign Offering.
Regulation A

January 23, 1964 -- Memorandum re: Oklahoma Land Trust; Larine Investors, Inc.

A Regulation A offering for a single block of stock is to be made concurrently in the United States and foreign countries.

Since the offering in the United States and in the foreign countries constituted a single issue, all securities proposed to be offered are computed against the ceiling and sales made in the foreign countries would constitute a "bona fide effort ... to proceed with the offering and sale of securities" as used in Rule 263, even though the offering had not yet commenced in the United States.

1934 ACT

7. Sections 12(a); 19(a)(2) -- Obligor; Suspended Trading; When Issued Trading.
Rule 12a-5

January 13, 1964 -- Commission Minute re: Federation of Rhodesia and Nyasaland

A registration statement for the sale of \$6 million of 5-3/4% bonds of the Federation became effective in 1958 and the bonds were subsequently listed on the NYSE. Current reports have been filed.

The British Government caused a dissolution of the Federation and the obligor of the bonds is no longer in existence. The NYSE temporarily withheld trading until questions regarding the obligations of the constituent countries (Southern Rhodesia, Northern Rhodesia and Nyasaland) and their intention to continue listing of the bonds could be resolved. The NYSE wishes to resume trading at the earliest date and questioned whether Rule 12a-5 would apply.

Agreements have been entered into by the constituent countries which recognized their proportionate liabilities for the obligations of the Federation.

Although Rule 12a-5 never contemplated a situation of this type, the Commission agreed that NYSE should be advised to file notice under the rule when trading was to be resumed which would give the countries an opportunity to register the new obligations and subject them individually to the reporting requirements.

8. Rules 14a-4(b); 14a-8(c)(4); 14a-9 -- Stockholder Proposal.

January 31, 1964 -- Commission Minute re: American Telephone and Telegraph Company

Stockholder submitted a proposal requesting that the directors emend the by-laws to provide for “independent and impartial inspectors of elections at all annual and special meetings” of shareholders.

Commission concurred with Division that proposal should be included if the words “and impartial” are deleted since New York State Law requires inspectors act with “strict impartiality.”

Another proposal that unmarked proxies be voted in accordance with the majority desires of the marked proxies could be omitted as being contrary to New York State Law which permits solicitation of discretionary proxies.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 124 December 1 – 31, 1963

1933 Act

1. Sections 2(1), 3(a)(8) -- Security; Profit-Sharing Agreement; Investment Contract;
Variable Annuity Contract

December 27, 1963 -- Commission Minute re: Personal Investment Life Annuity
Company

PILACO, a Pennsylvania life insurance company, proposes to offer an annuity plan to "older persons," who would deposit securities and/or cash in irrevocable, separate, custodial accounts with an acceptable bank or trust company. The participant would direct the investment of the funds and he would be able to change the investments at any time. However, the participant would never be able to withdraw the assets or any income or capital gains. PILACO intends to establish a list of approved investments and can revise the list periodically. When securities are removed from the list, the custodian would be required to sell them.

The custodian would pay annual premiums from the participant's fund to PILACO each year of the participant's life, and PILACO in each month of the participant's life would make an annuity payment to him. The value of the fund at the beginning of the year would determine the amount paid to PILACO by the fund and the amount of annuity paid the participant. The contract issued by PILACO will specify the percentage of the fund to be paid as a premium and the percentage of the premium paid to the participant each month, which percentages may not be altered by PILACO. Under the contract, the annuity of each participant does not depend upon the investment experience of any other annuitant, and there is no profit sharing amount annuitants, and they do not share in the profits of PILACO. The balance of the account is paid PILACO upon the annuitant's death as a terminal premium.

The Commission agreed with the staff's recommendation that no question be raised with respect to the registration of the contracts as securities under the 1933 Act.

2. Section 2(1) -- Security; Employee Pension Plan; Keogh Act (H.R. 10); Retirement Plans

December 9, 1963 -- Letter re: California Medical Association Member's Retirement Plan and Trust

California Medical Association will offer its members a plan which the member-physician can adopt by writing to the trustee bank to establish a trust account for himself and eligible employees. The trustee will invest contributions in a group annuity or in shares of one or more regulated investment companies previously approved by the Association, in proportion directed by each employer. Employees will not contribute.

While the absence of a separate security represented by the interests in the plan is not free from doubt, no action position taken. Participants in the plan should be furnished prospectuses of the approved investment companies supplemented to include the principal elements of the Association plan, including the investment alternatives. Material concerning the plan distributed to members by the Association or by investment company should be filed with the Commission as sales literature of the investment company approved by the Association.

3. Section 3(a)(10) -- Exchange; Resale

December 13, 1963 -- Letter re: Western Bancorporation

Western, the owner of 71% of the shares of First National Bank of Arizona, proposes to make an exchange offering to the minority shareholders of the Bank in reliance on Section 3(a)(10) after hearing by the California Commissioner of Corporations.

No officer or director of the Bank will, become an officer or director of Western except the chairman of Bank's board, who will become a director.

No action position taken on the exchange offer and on resales of Western shares received through offer by the chairman of the Bank's board if his sales are made within limits of Rule 133(c) and (d).

4. Section 3(a)(10) -- Exchange; Warrants

December 23, 1963 -- Letter re: Westgate Corporation

A California corporation proposed a plan of exchange whereby it would offer a Missouri corporation's stockholders common stock and unsecured subordinated debentures with warrants attached for additional shares of common stock. The warrants are non-detachable and are immediately exercisable over a six-year period at graduated prices in excess of the market value of the underlying shares on the date the warrants are issued. The securities will be issued after the California Commissioner of Corporations holds a hearing on the fairness of the plan. No action was recommended.

5. Section 3(a)(11) -- Intrastate Offer; Rescission Offer; Integration; Ceiling
Regulation A
Rule 254(a)(3)

December 4, 1963 -- Memorandum re: White River Radio Corp.

A Quaker minister has two radio stations which promote his philosophy that the use of alcohol and tobacco are intrinsically evil. The minister has obtained \$100,000 in subscriptions, with some cash payments, for common stock and bonds of White River incorporated in Indiana from residents of Indiana for one radio station.

Cash and subscriptions to purchase \$140,000 of securities of a second corporation to be organized for the purchase of another radio station in Indiana were obtained from persons in Indiana, Illinois, and Missouri. These subscribers will receive an offer of rescission under Regulation A. At the same time, \$160,000 of additional financing will be made.

Provided it can be shown that the second company is a separate entity and that the Regulation A and Section 3(a)(11) exemptions are available, there would be no objection to the proposed filing.

6. Section 4(1) -- Broker Transactions; Distribution; Control Person
Rule 154(b) (2)

December 2, 1963 -- Letter re: MCA, Inc.

Stein, controlling person of MCA donated 17,075 shares of MCA stock to a university in furtherance of a pledge to donate \$1,000,000 to build the "Jules Stein Eye Institute."

While largest weekly trading was 6,800 shares in last four weeks, 17,075 shares represents less than 1/3 of 1 per cent of outstanding MCA stock and these shares can be sold "regular way" over the New York Stock Exchange in six month's period without difficulty.

Since purpose of pledge and donation could not be accomplished without the university's selling the shares, the exemption provided by the first clause of Section 4(1) is probably not available. However, no action position taken if shares sold in reliance on Rule 154.

7. Section 6(a) -- Pledge; Control; Underwriter; Sale

December 12, 1963 -- Memorandum re: Margaret Schimpff

No objection raised to a foreclosure sale of unregistered stock pledged for bank loans by a controlling person so long as the pledgor is not an underwriter and a purchaser for

distribution at such a sale is advised that registration would be required as to any subsequent resale.

8. Sections 6(a); 10(a)(3) -- Prospectus; Post-Effective Amendment; Shelf Registration; Pledge

December 11, 1963 -- Letter re: A. S. Beck Shoe Corporation

A corporate nominee purchased for investment 51% of the outstanding shares of Beck at a foreclosure sale held pursuant to Chapter XI of the Bankruptcy Act. The purchase price was paid in part by a loan from a trust company, repayable in one year, with the Beck stock pledged as collateral security. The loan agreement provided that the corporate nominee would cause Beck to register the shares within six months of the loan agreement, the nonperformance of which would constitute a default and the entire loan would become due and payable. This provision was insisted upon by the Bank so that it would be able to sell the pledged shares publicly if the nominee defaulted on the loan.

Although there is no present intention to distribute the shares registered, no objection would be raised to present registration of the pledged shares provided the registration statement contained an undertaking to file a post-effective amendment meeting Section 10(a)(3) prior to the commencement of such offering, disclosing such current information as would be required in a new registration statement.

9. Rules 133 and 155 -- Merger; Control Persons; Private Offering

December 12, 1963 -- Memorandum re: Rules 133 and 155

The terms of a merger, meeting the requirements of Rule 133, provide for the surviving company to issue convertible securities to the stockholders of the disappearing company. Company was advised that control stockholders of the disappearing company could sell the convertible securities under the limitations of Rule 133, notwithstanding the limitations of Rule 155. However, registration would be required if the control stockholders dispose of the convertible security or the underlying stock outside of the limits imposed by Rule 133, and applying the principles of Rule 155, this obligation may continue for a long period of time. The same conclusion would apply if in a merger there were issued nondividend paying common stock exchangeable for dividend paying common stock.

10. Form S-8 -- Employee Stock Option Plans

December 6, 1963 -- Memorandum re: Metromedia, Inc.

The company filed on Form S-8 covering an offering of participations in a profit sharing plan which empowers the trustee to invest funds in shares of the company. The company will make contributions based on profit, and employees need not make contributions. However, an employee may not withdraw his own contributions until he has terminated his employment or retired.

Form S-8 is not available, as the plan does not meet the requirement of General Instruction A(a)(4) to the Form that the employee be permitted at all times to withdraw his own contribution.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 123 November 1 - 30, 1963

1933 ACT

1. Section 2(1); Security; Investment Contract; Profit-Sharing Agreement; Certificate of Interest; Partnership

November 14, 1963 -- Memorandum re: Imperial 400" National, Inc. (Imperial)

Imperial builds and operates motels. Prior to building an individual motel, it advertises for an "active co-partner," "manager" or a "full partner" with a required minimum investment of \$30,000 for "co-ownership" interest. Imperial selects, with approval of co-partner, and acquires the site, arranges financing, constructs and equips the motel and trains the co-owner, normally a husband and a wife, who will be the resident manager and manage and operate the motel. A "co-owner operator agreement" is signed. Upon completion of the motel, Imperial transfers to the co-owner its interest in the motel, a 35-year leasehold interest in the site, and the right to use trademarks in return for a 50% partnership interest. The co-owner receives 10% of the gross receipts as a management fee and 50% of the net profits thereafter.

The resident co-ownership interests are more in the nature of general business partnership interests rather than securities in the nature of an investment contract.

Some of the agreements provide for non-resident co-owners who are passive investors as they do not have a voice in the operations and the management of the business. The non-resident co-ownership agreements appear to be securities in the nature of investment contracts or certificates of interest in a profit sharing agreement.

2. Sections 2(4); 3(a)(11) -- Issuer; Intra-State offer; Keogh Act (H.R. 10)

November 29, 1963 -- Letter re: Michigan National Bank

With respect to H.R. 10 plans, banks may rely on the Section 3(a)(11) exemption as long as the common trust fund is offered and sold exclusively to residents of the same state. No objection to use of an existing pooled fund which has been used exclusively for residents under profit-sharing plans of corporations.

The sponsoring association may sign the registration statement covering participation in a plan for its members as well as units of participation in the funds on the theory that it is the depositor or manager referred to in Section 2(4). This may indicate that the bank is not the issuer. However, the bank may file a registration statement as the issuer of units in a fund where they are used by several associations for their respective plans. If a registration statement should be filed by the bank for units in its fund, the plan participations would not be ordinarily registered, but disclosure of the provisions of the association's plan would be required as a rider to the bank's prospectus when units in the fund are used as the investment medium.

3. Sections 2(11); 6(a) -- Underwriter; Prospectus; Shelf Registration
Rule 133

November 14, 1963 -- Memorandum re: Registration of Stock in Exchange Offers

A registration statement provided for the exchange of stock of Georgia Pacific for St. Croix. The acquired company has no concentration of ownership and there was no need to designate anybody accepting the offer as a potential underwriter if he resold. However, where the acquired company had substantial owners of stock, they need not 'be designated as underwriters in the prospectus but would be so regarded, and they would be expected to use a prospectus upon resale.

If control persons in a Rule 133 transaction are unwilling to sign investment letters, shelf registration is permitted even if there were no firm intention to sell.

4. Section 3(a)(3) -- Current Transactions; Notes

November 13, 1963 -- Letter re: Goldman, Sachs & Co.

Electric utility companies, to supplement their bank borrowing, want to sell to a brokerage house, for resale, their notes with maturities up to six months. These companies engage in current transactions by generating and selling electricity, purchasing and stockpiling coal and fuel oil, inventorying supplies and paying taxes, wages and dividends. Because of the difficulty of tracing dollars in these situations, a formula would limit the principal amount of notes to not more than the (1) dollar amount of its receivables arising out of the sale of electricity and appliances plus (2) the dollar amount of its fuel supply. Resales of commercial paper are restricted by Goldman, Sachs to substantial investors.

No action recommended if the plan were effected as proposed without registration in reliance upon Section 3(a)(3) of the 1933 Act.

5. Section 3(a)(11) -- Intra-state Offering; Keogh Act (H.R. 10)

November 19, 1963 -- Letter re: Connecticut Bank and Trust Company

The Bank proposes to offer a master retirement pooled fund plan to eligible self-employed individuals, and will act as trustee for the trust to be established.

The plan will be advertised solely in Connecticut and a participant must represent in writing he is a resident of that state. However, the common-law employees covered by the plan cannot contribute and therefore, need not be residents. In the event a participant ceases to be a resident of the state his participation in the trust will be withdrawn and invested in a separate trust or transferred to a successor trustee. A no action position was taken if the offering is effected as proposed relying on the exemption of Section 3(a)(11) provided the trust will meet the requirements of Section 401 of the Internal Revenue Code and is not required to register under the 1940 Act. However, the Division cannot conclude that merely transferring the interest of a participant who ceases to be a resident to a separate trust fund maintained by the bank and continuing to receive contributions under the plan would be consistent with the claim of exemption under Section 3(a)(11).

6. Sections 4(1) -- Private Offering; Trust Funds; Keogh Act (H.R. 10)

November 1, 1963 -- Letter re: Michigan National Bank

The exemption provided by Section 4(1)(2) was previously considered to be available for common trust funds so long as used as an adjunct of the ordinary trust business of a bank and not offered as an investment medium. Under new banking regulations, these banking activities no longer restrict the use of the funds to true fiduciary purposes, and banks are encouraged to compete with investment companies.

Widespread solicitation would usually be necessary for a bank to have a profitable H.R. 10 plan and therefore the Section 4(1) exemption would not be available. A public offering would take place through a general circulation of the plan by the banks of its depositors and various associations groups. The Section 5 problem is not avoided if the association rather than the bank passes the information to its members. Banks should be permitted to negotiate with associations to formulate plans which will be offered to its members under effective registration statements.

7. Rule 133 -- Merger; Foreign Corporation

November 6, 1963 -- Letter re: Shin Mitsubishi Jukogho Kabushiki Kaisha

A merger proposal will be submitted for approval to the shareholders of two Japanese companies into Shin Mitsubishi. Approval under the Japanese Code requires a favorable vote of 2/3 of the shareholders present; to be duly constituted, at least 50% of the shares

must be represented at the meeting. The approval would bind all of the shareholders and dissenting shareholders can demand payment for their shares at fair value.

No action will be recommended if the merger is effected as proposed without registration in reliance upon Rule 133.

8. Rule 133 -- Exchange for non-voting stock

November 1, 1963 -- Memorandum re: Litton Industries

A subsidiary proposed to acquire the assets of Clifton Precision Products in exchange for stock or stock and notes of the parent, at Clifton shareholders' option. When assets are acquired by a subsidiary and securities of the parent are to be issued in exchange therefor, Rule 133 requires issuance of only "voting stock" of the parent. The conclusion that Rule 133 would not be available would be no different if the notes were issued by the subsidiary and guaranteed by the parent since the guarantee would be a non-voting security.

9. Regulation A
Rule 254(b) -- Ceiling Computation

November 12, 1963 -- Memorandum re: Flour Mills of America, Inc.

The parent of Flour entered into an agreement with the controlling stockholders of a company to exchange their stock for that of Flour. The price is 25¢ cash, plus Flour stock. The same deal will be offered to the other stockholders of the company. Before the offer is made, the parent will assign to Flour the agreement with the controlling stockholders. The exchange offer will be made under Regulation A.

The ceiling under Regulation A would be computed on the value of the stock. The cash received need not be considered for ceiling purposes. The shares to the controlling stockholders should be included under the filing and the offering circular kept up to date for at least 2 years since the controlling persons may be deemed underwriters.

No ceiling problem appears to exist because of any possible increase in value in the lot of Flour's stock which will be withheld for two years as security for the settlement of outstanding claims against the purchased company.

10. Regulation A
Rule 261(b) -- Withdrawal of Hearing Request

November 19, 1963 -- Memorandum re: Datamation Inc.

The company's Regulation A offering was temporarily suspended and the issuer and underwriter made requests for hearings. The underwriter then made a request for the withdrawal of his request for hearing. A similar request on behalf of the issuer was made by the receiver of the bankrupt issuer and was accepted.

11. Form 10 -- Effective Date; Distribution

November 13, 1963 -- Memorandum re: Weyerhaeuser Company

Weyerhaeuser requested that the Form 10 registration date be accelerated so as to be effective on the same date as its registration statement under the 1933 Act. The request was made because trusts and institutional investors would not be able to purchase shares offered by underwriters unless there was an effective registration on the NYSE. The exchanges had no objection to such request and agreed that trading on the exchange would not commence until they were reliably informed that the underwritten distribution had been completed.

The matter was brought to the Commission's attention (1) in view of the general policy not to accelerate the effective date of an application until the staff was assured that the distribution of an underwritten public offering had been completed, and (2) since the securities would be effectively registered on a national securities exchange they could then be sold pursuant to the credit (margin) provisions promulgated by the Federal Reserve Board.

The Commission approved the request.

12. Form S-1 -- Independence of Accountant
Item 24 -- Disclosure

October 30, 1963 -- Memorandum re: M. Evertt Parkinson (Arthur Andersen & Co.)

A registration statement for a merger will contain financial statements for each of the two companies certified by a different accountant. The accountant for the company to be merged has an interest in the securities of the registrant.

The interest need not be disclosed pursuant to Item 24 of Form S-1 if the interest is not an influencing one.

(See letter, dated November 8, 1963, from Andrew Barr to Samuel H. Horn. concerning an offer by Consolidated Foods Corporation to stockholders of Booth Fisheries Corporation. Arthur Andersen & Co. are the certifying accountants for Booth but not for Consolidated. A partner of Andersen owned 25 shares of Consolidated which he recently sold. Item 31(a) of Accounting Series Release No. 81 (December 11, 1938) is applicable.

The relationship need not be disclosed in Item 24 of Form S-1, and the independence of Andersen in certifying the financial statements of Booth has not been impaired).

1934 ACT

13. Section 14 -- Proxy Solicitation Form 10

November 6, 1963 -- Memorandum re: Altamil Corporation

A company intends to file a Form 10 one month prior to the annual shareholder's meeting, and intends to mail proxy soliciting material one week after filing the Form 10. If the Form 10 becomes effective prior to the date of the annual meeting, proxy material would be subject to the proxy rules.

Proxies that are solicited without compliance must be resolicited if the Form 10 becomes effective prior to the date of the annual meeting.

14. Rule 14a-2(b) -- Proxy Solicitation; Participant; Proxy Contest

November 4, 1963 -- Memorandum re: Chicago and Northwestern Railway Co.; Chicago Rock Island and Pacific Railroad Co. and Union Pacific Railroad Co.

Moody's Investor's Service would be considered as participating in a proxy contest if it sends out unsolicited communications in which it makes recommendations to clients who hold shares in one of the companies involved in the contest, and not excepted by Rule 14a-2(b). However, advice given a client who solicited it, would not violate the proxy rules.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 122 October 1 – 31, 1963

1933 ACT

1. Section 2(1) -- Security; Guarantee; Insurance
Section 2(a)(35) -- Investment Company Act; Mutual Funds

October 30, 1963 -- Letter re: de Roodenbeke

Investors in systematic accumulation plans of mutual funds will be offered a partial guarantee of the amounts invested. The guarantee is to be offered as a separate service, to selected investment companies offering the plans. A "reserve" guarantees that after five years, the investor may redeem all or part of his accumulated shares and receive the net asset value thereof plus an amount determined within the limits of the availability of the guarantee reserve. The plan contemplates a formal "guarantee" backed by an insurance organization to supplement possible occasional deficiencies of the "reserve."

The "guarantee" backed by the "reserve" or insurance company may constitute a "security."

2. Sections 2(1); 2(2); 2(4); 3(a)(2); 3(a)(11) -- Person; Banks; Intrastate Offering; Issuer; Retirement Plans; Keogh Act (H.R. 10)

October 11, 1963 -- Memorandum re: Pennsylvania Medical Society

Society is contemplating an H.R. 10 plan through which participants can buy either annuities from an insurance company or an interest in securities, the latter consisting of a fund administered by a trustee bank. Presently, the bank has funds for personal trusts and retirement trusts which it may use, or create new funds.

If Section 3(a)(11) were relied on, the participants would be required to terminate their contributions upon leaving the State, and the bank would be required to create a new fund since the existing funds have non-resident participants.

Registration would be required as the trust interests are securities notwithstanding the use of individual trust contracts; the trust is a "person"; and the exemption under Section

3(a)(2) is not available for these interests since the exemption applies only to the bank's own securities.

3. Section 2(3) -- Merger; No Sale; Tenders
Rule 133

September 30, 1963 -- Memorandum re: Chas. Pfizer & Co., Inc. (Del.)

Coty will be merged into Pfizer by issuing Pfizer shares to Coty's stockholders. A cash solicitation of tenders of Coty stock by Pfizer during the period of merger would not prevent the applicability of Rule 133. If Pfizer obtained at least 90% of Coty stock, a merger under Delaware law could be accomplished without stockholder vote. Counsel inquired if the merger would then come within Rule 133. There would be a "no sale" transaction under Section 2(3) of the Act rather than Rule 133, since Rule 133 refers to a stockholder vote.

4. Section 2(3) -- Liquidating Dividend; Exchange; Dividend; Stock Dividend

October 2, 1963 -- Memorandum re: Life Underwriters Insurance Co., Kennesaw Life and Accident Insurance Co.

Life proposes to dissolve, at which time it will distribute shares of Kennesaw, which it holds, to its shareholders, and offer to buy back the stock for cash. No objection made to the alternative stock or cash offer without registration based upon Securities Act Release No. 929.

5. Sections 2(3); 5 -- Employee Stock Option Plan; Pledge
Form S-8

October 2, 1963 -- Letter re: Storer Broadcasting Company

The company contemplates registering on Form S-8 to cover shares to be issued to officers and employees pursuant to a "Restricted Stock Option" plan. In order to raise money to exercise options, some optionees will sell publicly or pledge stock acquired years earlier from the issuer or in the market. Registration of this stock will be required if the effect is the pledge or public sale of shares acquired under the plan notwithstanding that old certificates are used. A pledgee who offers pledged stock would be required to deliver a current prospectus.

6. Section 3(a)(9) -- Exchange; Indenture; Amendment
Forms T-1 and T-3

October 28, 1963 -- Memorandum re: Sunset International Petroleum

The Company sold under its registration statement \$2,020,000 of subordinated debentures, the indenture of which permits the issuance of up to \$5,000,000 of debentures.

An offer to holders of preferred stock in exchange for subordinated debentures, under Section 3(a)(9) of the Act, would not require the filing of Forms T-1 and T-3 if the amount of debentures offered is within the permitted limits of the indenture and no amendment of the indenture is contemplated. However, if the amount is more than the indenture permits, necessitating an amendment to the indenture, the indenture as amended would have to be qualified under the 1939 Act, and Forms T-1 and T-3 required to be filed.

7. Section 3(a)(11) -- Intrastate Offering; "Doing Business Within"

October 23, 1963 -- Letter re: Pilots, Inc.

Pilot was incorporated under the laws of Oklahoma where its principal executive offices are located, and where its present officers, directors and stockholders reside. Pilot desires to make an intrastate offering of common stock.

Pilot proposes to sell through the mails annual memberships, which include a life insurance policy, to private pilots and aircraft owners throughout the country, which will be the company's primary source of income. The company is to provide services such as recommending hotels, motels, service firms, assisting in forming flying clubs and aircraft title searches. Proceeds of the stock offer are to be used for the mail campaign, office expenses, traveling expenses and other corporate purposes.

No action will be recommended if the offering of stock is effected as proposed without registration in reliance upon the Section 3(a)(11) exemption. No question was raised as to the registration of the membership.

8. Sections 5, 10 -- Option; Prospectus

October 28, 1963 -- Memorandum re: Austral Oil and Gas Exploration Corporation

The Company's exploration agreement provides that participants who have dropped out of an existing plan may have an option to participate in additional interests in addition to those in the drilling block in which they are participating. The offer involves a new investment decision and the non-participants must be supplied with a current prospectus meeting the requirements of Section 10.

9. Section 6(a) -- Registration Statement; Prospectus; Post-Effective Amendment
Rules 424(b), (c); 427

October 31, 1963 -- Memorandum re: Duro-Test Corporation

Corporation's registration statement, for subordinated debentures and warrants to purchase common stock which will be offered as units, did not contain an undertaking to file post-effective amendments. Registrant claimed such amendment was not required, and the 1933 Act would be satisfied on the expiration of the financial statements, by filing, pursuant to Rule 424(c), 25 copies of the revised prospectus.

The Division advised that Section 6(a) of the Act deems a registration statement effective only as to securities specified therein to be offered subject to such offering being completed within a reasonable time. Since the warrants represent a continuing offering, the company was advised to consider filing either a post-effective amendment or a new registration statement.

1934 ACT

10. Regulation 14 -- Proxy Solicitation; Tender Offer
Rule 14a-1

October 14, 1963 -- Letter re: Curtis-Wright Corporation

Curtis-Wright's (Curtis) original tender offer of \$50 per share to Garrett shareholders expired. Garrett's by-laws were amended to move up the date of the annual meeting and the record date, which was prior to the expiration of the tender offer, which left Curtis with shares it could not vote.

Curtis revised tender offer for \$57 was subject to the condition that Garrett shareholders execute proxies authorizing Curtis to vote such shares at Garrett's annual meeting operative only if the tenders were accepted.

The Division would not recommend that action be taken if the proposed revised solicitation of tenders were made without compliance with the proxy rules. See Mills vs. Sariem 133 F Supp. 753 (D.C.N.J., 1955).

11. Section 16(b) -- Insider Transaction; Distribution; Underwriter
Rule 16b-2(a)(3)

October 11, 1963 -- Memorandum re: Rule 16b-2

Paragraph (a)(3) of Rule 16b-2 permits the receipt of a bona fide payment from any source, including the issuer, for the performance of functions of a manager of a

distributing group. (The rule was amended in 1952 to eliminate the restriction that payment come from the distributing group only.)

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 121 September 1 - 30, 1963

1933 ACT

1. Sections 2(1); 3(a)(8) -- Security; Profit-Sharing; Investment Contract; Variable Annuity Contract.

September 9, 1963 -- Memorandum re: Personal Investment Life Annuity Company

The proposed annuity plan would begin with the annuitant establishing an irrevocable custodian account in a bank with a lump-sum deposit. The custodian makes investments as directed by the annuitant and also pays annual premiums to the insurance company. The balance of the account is paid to the insurance company upon the annuitant's death.

Where an annuitant effectively surrenders beneficial interest in his account in an annuity plan, even though he retains a right of management and the plan provides that assets in the account "remain the property of the annuitant," such plan is a security namely, a profit-sharing agreement and possibly an investment contract. Even though the agreement with an insurance company provides for fixed annuities each year, the plan encompasses a variable annuity and transcends any component part exempt under Section 3(a)(8) of the Act.

2. Sections 2(1); 5 -- Security; Investment Contract.

September 11, 1963 -- Letter re: John Hand

A life insurance agent who is also a broker-dealer, proposes to sell high cash value life insurance, with an 80% immediate cash surrender value upon which the company would loan 95%. The customer would pay interest annually and upon a receipt of a premium due notice, borrow on the cash surrender value to pay a portion of the premium. The proposal also involves a concurrent annual purchase of mutual fund shares in an amount equal to the sum of the loan on the policy. A solicitation to purchase mutual funds is to accompany the premium due notice, with payment made to a single common agent of the broker-dealer and insurance company. However, the plan would allow the customer to purchase insurance without purchasing mutual funds.

The plan would constitute an offering of a security within Section 2(1) of the Act, and would require registration if publicly offered.

3. Section 2(1) -- Security, Investment Contract, Profit-Sharing Agreement, Evidence of Indebtedness.

August 30, 1963 -- Legal Memorandum -- Whether a “referral sale agreement” is a security within the meaning of Section 2(1) of the Securities Act of 1933

In selling a vacuum system at retail, which is a permanent fixture in a residence, the company uses an installment sales contract which it assigns to a finance company, and advises the buyer of the referral sales plan. An “advertising commission agreement” provides that the purchaser is to submit the names of thirty prospective purchasers of the product, and the purchaser will receive \$100 for each person who thereafter purchases the product.

In the contract, no reference to “profit” appears, as the obligation to pay the commission does not depend on the company’s ability to make a profit. Nor is there an “investment contract” or evidence of indebtedness within the meaning of Section 2(1) of the Act. The purchaser by contract does not depend for his commission exclusively on the company’s staff, as the amount he realizes depends upon the skill with which he chooses the thirty names he submits. The purchaser is purchasing an appliance with a business arrangement as an incident of the transaction, rather than an investment in the company’s future, and the 1933 Act is inapplicable.

4. Sections 2(3); 5(a)(1); 5(b)(1) -- Offer to sell; Dealers; Underwriters; Preliminary Negotiations.

September 5 and 6, 1963 -- Memorandum re: Redmon Industries, Inc.

Where a company and its underwriter wished to proceed to organize a bona fide underwriting group, the solicitation should be limited as much as possible in order to avoid any inference that the proposed material is circulated for the purpose of forming a selling group. It was suggested that the covering letter indicate that the negotiations are between the issuer and the underwriter. It was agreed that the memorandum is to be distributed only to the buying departments of the firms solicited and not used as a selling document.

5. Section 3(a)(3) -- Current Transaction; Notes.

September 5, 1963 -- Letter re: Schenectady Discount Corp.

Schenectady primarily finances mobile homes for dealers who purchase the homes as inventory for resale, and for consumers who purchase for, housing. The dealers finance

their inventory by use of trust receipt demand obligations, secured by title instruments, stating a repayment schedule up to six months, with a two month average life.

The company may issue commercial paper without registration in reliance upon Section 3(a)(3) of the Act in aggregate amounts not more than the amount of money used: (a) for six month obligations to finance dealer inventories and (b) to finance home consumer receivables due within six months.

6. Section 3(a)(9) -- Exchange; Arrearages.

September 27, 1963 -- Letter re: Preferred Utilities Manufacturing Corp.

The company has outstanding 7% cumulative second preferred stock and 5 -1/2% cumulative convertible first preferred stock. Dividends have not been declared on either preferred issue for several years. To settle the arrearages, the company proposes to offer cash plus one-half share of common stock to the 5 -1/2% preferred holders. The holders of the 7% preferred will receive common stock for the preferred and arrearages.

No action was recommended if the transactions were effected without registration in reliance upon the exemption under Section 3(a)(9). (See Memorandum, dated October 6, 1963, re: The Nature of Dividend Arrearages.)

7. Section 3(a)(11) -- Intrastate offering; Co-op apartments.

September 27, 1963 -- Memorandum re: Alcoa Plaza

In connection with leases in cooperative apartment project, shares of stock are to be offered to residents of New York in reliance on Section 3(a)(11). Twenty per cent of the issue may be offered to persons connected with U. N., who are temporary residents of New York but domiciled in foreign countries. A "no action" position was taken.

8. Section 3(b) -- Limited Partnership Interests; Integration.
Regulation A -- Ceiling Computation.
Rule 253

September 9, 1963 -- Memorandum re: "Les Folies Company"

After \$200,000 in limited partnership interests have been sold publicly under Regulation A, the associate producer, who had previously put up \$48,000 to acquire the rights to the play, will put up an additional \$52,000 in limited partnership interests. In addition to receiving limited partnership interests for his cash contributions, the associate producer will receive a percentage of the general partner's profits.

The offering to the associate producer would not be integrated with the general public offering.

9. Rule 154 -- Casual Trading; Sale of Parent Stock by Subsidiary.

September 27, 1963 -- Memorandum re: Scurry Rainbow Oil Limited

Scurry's wholly-owned subsidiary is required by Canadian law to divest itself of the Scurry common stock it owns. A wholly-owned subsidiary may not dispose of its holdings of parent stock under the provisions of Rule 154.

10. Rule 254(c) -- Ceiling Computation; Exchange; Reasonable Time.
Regulation A

September 26, 1963 -- Memorandum re: Chester Litho

The company originally was to offer its common shares for either cash or shares of another company's common stock. It was proposed to amend the offer to make it solely an exchange for the company's stock. The value of the stock as established by bona fide sales made within two days of the filing of the final amendment would be "within a reasonable time" as set forth in Rule 254(c).

1940 ACT

11. Section 3(c)(6)(g) -- Investment Company; Mortgages.

September 17, 1963 -- Memorandum to Commission re: Mortgage Trust Corporation Mortgage Trust Systematic Plans to Acquire Shares to Mortgage Trust Corporation

Mortgage Trust Corporation proposed to invest predominantly in government insured or guaranteed mortgages. The question was raised whether such assets would be readily marketable and subject to accurate valuation as required by Section 22 of the 1940 Act. The Commission approved the Division of Corporate Regulation's recommendation, to allow the Corporation to register as an open-end company, if the investment policy of the Mortgage Trust Corporation is limited to mortgage investments which are government insured or guaranteed mortgages on owner-occupied one to four family residences. These can be sold in a relatively brief period of time and accurate price quotations on such mortgages are readily available.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 120 August 1 – 31, 1963

1933 ACT

1. Section 2(1) -- Security; Membership Certificates.

August 27, 1963 -- Memorandum re: Denver Regional Office

Membership certificates with limited privileges, under which the holders do not receive interest nor participate in the profits and cannot transfer their membership, are not securities under Section 2(1). Non-transferability is a factor, but not dispositive of question.

2. Section 2(1) -- Security; Profit-Sharing Agreement; Investment Contract.

August 1, 1963 -- Letter re: Nation-Wide Home Plan, Inc. and Nation-Wide Saving Plan

A plan is provided for the purchase of a home from an “affiliated builder” franchised by Nation Wide, whereby the participant accumulates the down payment by periodic savings deposited in trust. The trust agreement between the trustee and Nation-Wide provides for a separate trust estate for each participant-beneficiary, but all funds will be deposited in the trustee’s name in one account.

All interest paid on the funds goes to Nation Wide. The participant may withdraw the deposit without interest one year from the date of deposit. After five years, the participant may sign over to an “affiliated builder” all funds on deposit to be credited toward the purchase of a home. Nation Wide is obligated at the time to pay to the builder 8-1/3% interest per annum on the deposited funds. If a participant moves to an area where he cannot purchase a home from an “affiliated builder” he can receive back his money on deposit plus, upon demand, all interest paid by the bank to Nation Wide.

The agreement to pay the interest coupled with the right to withdraw from the fund and receive a refund of principal and interest appears to be a profit-sharing agreement or an investment contract and without an available exemption would be subject to registration.

3. Sections 2(1); 2(4); 6 -- Security; Retirement Plans; Keogh Act (HR. 10); Issuer.
Forms S-1; 4; 5

August 21, 1963 -- Memorandum re: National Council of Salesmen's Organizations, Inc.

The Association proposes an HR 10 plan for between 3,000 to 4,000 members who are self employed without employees, with a single trust fund to be administered by a Bank to provide all investment services.

Registration under the 1933 Act will be required with Form S-1i technically applicable. However, Forms S-4 and S-5 might be used as guides. The tentative opinion of the Division was that the Council would be the issuer as depositor or manager.

4. Sections 2(3); 5(b)(2) -- Fractional Interests; Stock Dividends; Prospectus.
Rule 152A

August 6, 1963 -- Letter re: Monsanto Chemical

The Company is considering methods of handling stock dividends, namely, a "market price" procedure and a "fixed price" procedure.

The "market price" method does not provide a fixed price in advance, but does provide shareholders with order forms by mail prior to distribution. At the end of the order form period fractional interests would be paid at a uniform price based upon the then market. The shareholder on the distribution date would receive one certificate with an invoice for the cost of any fractional interest purchased or a check if the interest was sold. The Division stated the order form procedure of the "market price" method is within the scope of Rule 152 of the 1933 Act and does not require registration.

The "fixed price" method would use order forms indicating a fixed price per 100th of a share, which enables the company to receive instructions from shareholders prior to the distribution date. If by a set date such instructions to round out a fraction to a whole interest were not received, the interest would be sold. In any event, on the dividend date shareholders would receive whole shares pursuant to the stock dividend and whole shares pursuant to such purchase orders or a remittance for fractional interests sold. It is not clear that the "fixed price" method is within the scope of Rule 152A since the Rule contemplates that stock sales are to be made on behalf of or as agent for the shareholder. The Division's view was that registration would be required of the total number of shares involved in the matching process and of the total issued to cover excess buy orders. Each shareholder buying fractional shares should receive a prospectus.

5. Sections 2(3); 2(11); 5 -- Control Stock; Underwriter; Brokerage Transaction.

July 10, 12, 18 and August 8, 1963 -- Letters re: C. Brewer & Co., Ltd.

The firm of Butcher and Sherrerd, broker-dealers, is in a control position with respect to C. Brewer & Co., Ltd. and makes a market in the stock. Counsel was of the opinion that Section 2(11) of the Act was not intended to apply to trading by a brokerage firm in stock acquired through normal channels.

It was proposed that Butcher and Sherrerd as principal will not sell to other brokers unless it is assured that such purchase is only to fill a customer's order and not for distribution. This proposal is not sufficient insurance that such sale would not be a part of the distribution. The firm must bear the ultimate responsibility to insure that no sale by it of Brewer stock is a part of a distribution by or through an underwriter. No objection was made to brokerage transactions by Butcher and Sherrerd nor sales to fill its own customer orders.

6. Section 2(11) -- Sale or Exchange; Merger; Underwriter.
Rule 133

August 30, 1963 -- Memorandum re: Equity Corp., Friden Corp., Singer Sewing Machine Co.

Equity which owns 13% of Friden stock proposes to vote against the merger of Friden into Singer. If the merger is approved, Equity proposes to offer to exchange with its shareholders its stock of Friden for the Equity stock held by them.

Equity appeared to be an affiliate of Friden, and the Division advised that registration would be required of the Friden stock in the exchange offering. Also, the Singer stock should be registered since it is being offered to Friden shareholders under the merger agreement and Equity would be deemed an underwriter of the Singer stock under Rule 133.

7. Regulation A -- Underwriter; Use of Offering Circular.
Sections 2(11); 4(1)

August 6, 1963 -- Memorandum re: B. C. Morton United Corporation

The company proposes to issue its non-voting common stock under a stock bonus plan to 300 salesmen engaged in selling securities of its affiliated mutual fund. The stock is not required to be held for investment.

The position was taken that the salesmen-purchasers under the bonus plan should be disclosed as underwriters in the offering circular and that an offering circular should be delivered on their resale.

8. Section 7 -- Registration; Disclosure Re: Trading Activities.

Proxy Rules 1934 Act
Rule 14a-9
Section 17(d) of 1940 Act

August 21, 1963 -- Letter re: S.E.C. v. Midwest Technical Development Corp.

A person, who is affiliated with the company as a director, violated Section 17(d) of the 1940 Act for which the Court finds that such person traded in securities of companies in which the investment company is also investing. Any company with which he may be affiliated as a director would be required to disclose in its registration statement or proxy statement all activities found to have taken place by the Court, whether or not an injunction were entered.

9. Regulation A -- Earnings Requirements; Escrow; Fiscal Year.
Rule 253(a)(2)

August 2, 1963 -- Memorandum re: Phoenix Capital, Inc.

Issuer's financial statements filed with its offering circular extend over its fiscal year from July 12, 1962, the date of its organization, to June 30, 1963. Because it has not had a net income for a full 12-month fiscal year, it comes within the escrow provisions of Rule 253. The term "fiscal year" appearing in Rule 253(a)(2) means a 12-month fiscal year.

10. Regulation A -- Revision of Rule 257 Statements.
Rules 256(e); 257

August 27, 1963 -- Memorandum re: Application of Rule 256(e) to Statement filed pursuant to Rule 257

An issuer need not bring a statement filed under Rule 257 up to date periodically unless Section 17 would be violated.

1934 ACT

11. Rules 13a-11; 13a-10 -- Delisting; Liquidation; Reports.
Form 10-K

August 21, 1963 -- Letter re: Price Waterhouse & Co.

An interim report is not required for the period from the start of the current year to the date of liquidation of a company because Rule 13a-1 relates to reports filed "for each

fiscal year” and “after the close of the fiscal year,” and Rule 13a-10 relates to interim periods caused by changes in the registrant’s “fiscal closing date.”

The close of the fiscal year is the date when registrant’s obligation to file 10-K reports for the fiscal year inures rather than the close of the 120-day filing period. Where the registrant is delisted during the 120-day period, the preceding year report will not be required if there is no adverse effect resulting to investors and a final 8-K report contains appropriate information. When registrant is liquidated rather than delisted, a similar practice is followed since a 10-K report presumably could not be obtained from a responsible party after liquidation.

12. Rule 14a-8 -- Proxy Statement; Shareholder Proposal.

August 23, 1963 -- Memorandum re: E. J. Korvette, Inc.

A proposal that the company not hire officers over age 72, a proper subject, may not be omitted because it was submitted by a person who is mentally disturbed.

13. Section 16(a) -- Insider’s Profit; Gift.

August 22, 1963 -- Memorandum re: Revlon, Inc.

Director purchased stock in his account in his name, but advised his sister the stock was for her and sold it on her instruction, turning the profits over to her.

The Division advised the director he should report the purchase and sale of the stock pursuant to Section 16(a) since the transaction should be regarded as a cash gift to his sister.

14. Section 16(a) -- Pledge; Ownership Report.

August 29, 1963 -- Memorandum re: National Linen Supply

Precedent of the Commission indicates that a pledge of stock by an officer or director does not involve such a change of beneficial ownership as to require a report under Section 16(a). An amendment to the rules under Section 16(a) is under consideration which would require such report be filed in view of Guild Films.

15. Rule 16b-9 -- Exchange; Similar Securities.

August 22, 1963 -- Memorandum re: Russ Togs, Inc.

The company has A and B stock as described in Rule 16b-9, with some management stock convertible into common each August for five years. It proposes to file a registration statement in October with an expected effective date in November to sell the stock converted in August. The stock was converted so as to receive the dividend. The delay in the sale is because of the date of the financial statements.

The program would appear to fit the requirements of paragraph (a)(2) of the rule that “the transaction was effected in contemplation of the public sale of the shares acquired in the exchange.”

1940 ACT

16. Section 7 -- Prospectus; Gifts; Current Offering Price.

Section 22(d) of the 1940 Act

Rule 22d-1

August 2, 1963 -- Letter re: James M. Landis

There has arisen the practice of tendering to potential investors in mutual funds, contractual plans and face amount certificates, a gift such as a pen, wallet or a miniature bank. This practice is prohibited by Section 22(d) of the 1940 Act since it would result in the sale of shares at a price other than “a current public offering price described in the prospectus...” unless the prospectus describes specifically the cost and retail value of the gift, and if made uniformly to all purchasers or prospective purchasers.

The fact that a salesman bears the cost of the gift would not remove the practice from Section 22(d), particularly where the issuer, underwriter or dealer directly or indirectly participates, as the economic effect upon the purchaser is the same regardless of who bears the cost of the gift.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 119 July 1 – 31, 1963

1933 ACT

1. Section 2(3) -- Sale; Offer; Dividends; Stockholder Vote

July 26, 1963 -- Letter re: First Security National Bank of Beaumont; First Beaumont Corp.

Thirty-four major shareholders of the First National Bank of Beaumont, (now First Security National Bank of Beaumont) purchased all of the stock of First Beaumont Corporation. First Beaumont Corporation then purchased 37% of the stock of Gateway National Bank. A plan was proposed whereby all the Bank shareholders could have some participation in the Gateway Bank through the First Beaumont Corporation.

The proposal, which requires shareholder approval, is that \$100,000 of the undivided profits of the First Security National Bank be placed in a trust which together with a similar amount borrowed from First Security will be used to acquire all of the First Beaumont Corporation stock. The Comptroller of Currency considers this a dividend and will permit it even if slightly less than 100% of the shareholders ratify. Any shareholder who does not consent will be entitled, as a matter of law, to receive his pro rata share of such dividend free and clear of any limitations or restrictions. Opinion was expressed that the submission of the plan to stockholders does not constitute an offer or sale of stock.

No action was recommended if the transactions were consummated without registration.

2. Sections 2(1); 2(3) -- Security; Investment Contract

July 25, 1963 -- Memorandum re: Hubinger Stock-A-Month Plan.

Hubinger, a registered broker-dealer, proposed a periodic investment program for the purchase of stock in certain specified "blue chip" NYSE companies, He will receive a \$15 initial service charge, \$.80 service charge, 1/10 of 1% custodian fee, and a pro rata share of the actual brokerage commission.

The plan involves the issuance of a security in the nature of an investment contract due to the substantial initial service charge or "front-end load". This plan involves more than the ordinary broker's transaction in a New York Stock Exchange MIP program.

3. Sections 2(1); 2(3) and 4(1) -- Security; Public Offering; Pension Trusts; Commingled Fund

July 16, 1963 -- Letter re: American Industries Retirement System

American proposed to enter into a trust agreement with Thomas A. Rand Associates, a pension consulting and actuarial firm which would be open to employers having qualified employee pension or profit sharing plans. The funds of the trust would be invested in one of three media, namely, a fixed dollar pool, an equity pool, or a special asset pool. None of the funds will be invested in equity securities of any signatory employer. An advertising program to identify the trust and the parties, explain its advantages, and inviting inquiries from interested employers is intended.

The proposed offering to employers would be considered a public offering and L registration under the 1933 Act is necessary. However, if the plan is a "qualified trust" (within Section 401 of the Internal Revenue Code) it will be exempt from registration under the 1940 Act by Section 3(c)(13).

4. Sections 4(1); 5 -- American Depository Receipts; Rights Offering; Foreign Securities

July 11, 1963 -- Memorandum re: Mitsui & Co., Ltd.

A registration statement covering a rights offering to stockholders of record on July 20 was filed on July 9. July 20 will be the ex-rights date in Tokyo. The statement will not become effective until August 20. Japanese rights issued to Japanese nationals are non-transferable per se. These shares sell ex-rights when rights expire.

It was counsel's position that there should be trading ex-rights before the effectiveness of the registration statement because dealers would not in fact be selling rights, and since there would be no market for the rights and no rights would be issued, stockholders could not subscribe.

The Commission directed that the ADRs be traded "cum due-bill" rather than ex-rights. The "cum due-bill" method was favored since a sale ex-rights would deprive the vendor of 27% of his property for more than a month, and when he sold his rights the future price might be adverse to him. Further, sales might be precipitated by dealing ex-rights.

5. Sections 4(1); 4(2); 5 -- American Depository Receipts

July 25, 1963 -- Memorandum re: Tokyo Marine

Marine has filed a registration statement covering ADRs and the underlying common stock. Stock is available in Japan which has been validated for deposit of ADRs. A broker-dealer received an unsolicited order from a customer, proposes to purchase the stock in Japan and deposit it for ADRs after the effective date of the registration statement. If the shares were not purchased from a control or broker-dealer source, and were free shares traded in the open market, the broker and customer could rely on Section 4(2) and the first clause of 4(1) of the 1933 Act, respectively.

6. Sections 4(1); 5 -- Exchange or Swap Funds; Registration; Restricted Securities

July 15, 1963 -- Commission Minute re: Bay State Exchange Fund, Inc.

The Fund, a closed-end investment company, filed a registration statement under which it proposed to offer shares in exchange for outstanding shares of other issuers. However, the Fund would accept only restricted securities, that is, shares not fully marketable because of conditions imposed by the 1933 Act. The Charter provided that three years after the date of issuance, the Fund automatically becomes open-end with its shares redeemable at the shareholders option. The Division took the position that restricted securities would not automatically become unrestricted and fully marketable without registration after a three-year holding.

The Commission determined that after three years the Fund should submit a proposal to become an open-end company to a shareholder vote, at which time the Commission would consider whether the Fund was sufficiently liquid. A statement of the problems of becoming open-end should be disclosed in the registration statement. The prospectus should disclose that the three year period is only a period of a time after which the Fund will consider becoming open-end. The prospectus should also contain capsule information with respect to each restricted security. Furthermore, prior to the sale of portfolio securities, the staff should be consulted to discuss registration problems.

7. Section 10(a) -- Exchange or Swap Funds; Prospectus; Post-Effective Amendment; Restricted Securities

July 18, 1963 -- Memorandum re: The Exchange Fund of Boston, Inc.

Boston is an open-end investment company that offers its shares for securities of other issuers. The shares to be acquired were originally described as not subject to any restrictions and not acquired with the intention of a public offering by the Fund. A post-effective amendment will be filed which will enable the Fund to accept restricted securities up to 15% of the Fund's portfolio.

The Commission approved the Division's recommendation to allow such a procedure subject to the following: That the prospectus disclose that restricted stock cannot be sold unless there is an effective registration statement or an opinion of counsel that

registration is not required; and that it contain information for companies whose restricted securities are accepted. The amendment must indicate the Fund's prior position concerning restricted securities. The Commission directed those who received the original prospectus be sent a copy of the amendment and a letter of explanation before they are bound.

8. Regulation A

Rule 253(a)(1) -- Earnings Requirements; Escrow

July 26, 1963 -- Memorandum re: Rule 253(a)(1) of Regulation A

Inquiry was made whether a company organized less than one year and having a net income from operations was subject to Rule 253.

Rule 253(a)(1) requires a net profit for either a full calendar or fiscal year to avoid compliance with the escrow requirements.

9. Regulation A

Rule 256(e) -- Offing Circulars; Subscriptions

July 22, 1963 -- Commission Minute re: Geror Oil. Ltd.

The offering circular of Geror provided that 12 months after its date all funds received would be returned unless \$150,000 had been received. The Company received \$129,000 and now proposes to resolicit those who subscribed for a waiver of that requirement. An alternative would be presented to the original subscribers by letter in which would be enclosed a revised offering circular, to either cancel and receive a refund or waive this right for 90 days, at which time the funds received would be returned if the \$150,000 were not received. If the waiver blank included in the letter was not returned by a stated date the money would be refunded.

The Commission approved the Division's recommendation to accept the proposal.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 117 May 1 - 31, 1963

1933 ACT

1. Section 2(1) -- Security; Discretionary Accounts; Insurance.

May 14, 1963 -- Letter re: Danforth Associates

The company, a registered investment adviser utilizing discretionary accounts, proposes to offer its clients, without additional charge, a term life insurance feature in the amount of 2% of each client's investment account. Coverage adjustments upward and downward would be made to reflect deposits and withdrawals, but no adjustments would be made for variation in the market value of securities held in the account.

The Division was of the opinion that the insurance feature did not create a security and advised that no action would be recommended if the insurance feature were offered to clients without registration.

2. Section 2(1) -- Security; Investment Contract; Profit-Sharing Agreement; Interests in Real Estate.

May 3, 1963 -- Memorandum re: John T. Jursich

Two individuals and a corporation own a parcel of real estate which is presently being leased for an annual net rental of \$36,460.08. The owners propose to offer this property to the public in 520 units at \$1,000 per unit. It will be suggested that, for practical purposes, a corporate nominee be appointed to hold title to the land and collect rents, although the individual purchaser may hold title if he wishes. The trustee will receive a one-shot fee which will be deducted from the sales. Since lessee will pay all taxes, repairs, maintenance, insurance, etc. no management is required and neither the former owners nor the broker who will sell the units will have any connection with the property.

Since investors will pool their money to acquire the property and will receive a pro rata share of the rental, a security in the nature of an investment contract or profit-sharing agreement is involved and registration would be required.

3. Sections 2(1); 2(3) -- Security; Oil & Gas Leases, Profit-Sharing Agreement; Offer.

May 2, 1963 -- Memorandum re: Chicago Regional Office

The Wall Street Journal inquired concerning an advertisement which an individual proposed to insert in the Western Edition offering leases upon which there may be oil and possibly gas. Upon contacting the individual, it was learned that he proposed to sell 7/8ths interests in leases, retaining an overriding 1/8 interest and taking back an assignment of an additional 1/8 of profits, if any, from the leases.

It was agreed that a "security" was involved and that the advertisement was the first step in the offer of an unregistered security for which no exemption appeared to be available.

4. Sections 2(1); 3(a)(8) -- Security; Memberships; Insurance.

May 3, 1963 -- Memorandum re: Community Health Association, Inc.

The company has a registration statement covering shares of common stock on file which has not yet become effective. The opinion was expressed that, with respect to the "Special Charter Certificates of Membership" (participations in the company's health insurance program sold to an allegedly limited number of original subscribers) currently being advertised and sold, any payment of dividends thereon would be a return of or a reduction in premium. Accordingly, the memberships would not constitute a security subject to registration under the Securities Act.

Although it was not entirely clear that such contracts involve insurance within the meaning of Section 3(a)(8), there was some discussion of the regulation afforded by the state insurance commissioner.

5. Section 2(1) -- Security; Employee Stock Purchase Plan, Participations.
Forms S-8; 10-K; 11-K

May 15, 1963 -- Letter re: American Can Company

Under the company's stock purchase plan, employee and employer contributions are invested monthly in company stock by a trustee. The employee's interest vests immediately, may be withdrawn at any time, and the trustee is required to distribute shares annually. In prior years, participations in the plan had been registered separately on the assumption that the instructions to Form S-8 then in effect required such registration. Inquiry was made whether, under the recently revised Form S-8, participations would be considered "securities" requiring separate registration.

The opinion was expressed that participations in the plan do not involve the offering of a separate security. Accordingly, the plan need not file reports on Form 11-K nor should the company furnish information called for by that form in its annual report on Form 10-

K. Furthermore, no objection was raised to the omission of the financial statements with respect to the plan called for by Item 11 of revised Form S-8 in post-effective amendments to current registration statements on that form.

6. Section 2(3) -- Sale; Reorganization; Limited Partnership.

May 17, 1963 -- Letter re: Sands Associates

Title to all of the properties of the issuer, a limited partnership, will be transferred to a corporation to be formed by the general partners in exchange for stock which will be distributed to the general and subordinated limited partners (insiders) and to the public limited partners in exchange for their respective partnership interests. The reorganization will take place pursuant to a provision permitting the general partners to “change or reorganize the partnership into any other legal form providing all such changes or reorganization does not adversely affect the rights of the limited partners in a substantial manner.” The limited partners will not exercise any volition in the matter.

The plan does not appear to involve a “sale” within the meaning of Section 2(3) of the Securities Act. Accordingly, registration under that Act would not be required.

7. Sections 2(3); 5 -- Computation of Ceiling.
Regulation A
Rule 254

May 28, 1963 -- Memorandum re: Flour Mills of America

Flour Mills proposes to acquire, through soliciting tender offers, all of the stock of X corporation for an aggregate of \$500,000, of which half would be cash and half would be stock of Flour Mills. Each X shareholder would receive \$50 cash plus 1 share of Flour Mills for each share of X corporation owned by him. No objection was made as to the availability of Regulation A for the \$250,000 of Flour Mills stock to be issued in the exchange.

8. Sections 2(3); 5 -- Post-Effective Dissemination of Information.

April 30, 1963 -- Memorandum re: American Hospital Supply Corporation

The company’s registration statement covering a secondary offering became effective on December 10. An amendment was mailed on April 26, 1963, to update the prospectus so that shareholders still wishing to sell could do so.

Together with about 50 other companies, American Hospital Supply will attend an analysts’ convention in Chicago where it proposes to rent a hotel room and be available

for questions. It would normally engage in such activity irrespective of the registration statement, and no formal meetings with analysts are contemplated.

No objection was raised to this procedure.

9. Sections 2(11); 4(1); 5 -- Public Offering; Auction of Control Stock; Underwriter.

May 20, 1963 -- Memorandum re: J. A. Dougherty & Sons, Inc.

The Pennsylvania Orphans Court is prepared to order the sale, at public auction, of all the stock of the company presently held by an inter vivos trust created by the late Mr. Dougherty. A minimum bid of \$1,600,000 on the purchase of the stock as a whole will be set. The auction will be advertised in the Wall Street Journal and Distillery Trade Journals.

Although no action would be taken with respect to the advertisements and the auction sale, any reoffering by the purchaser at the auction may require registration and the Court should be so advised since it would be a public sale by a control person through an underwriter.

10. Section 3(a)(3) -- Notes; Current Transactions.

May 3, 1963 -- Letter re: Lumberman's Investment Corporation

Lumberman's originates mortgage loans for sale to institutional-type permanent investors. Lumberman's also services the mortgages sold. Ninety-eight percent of the mortgages are held by Lumberman's for less than 120 days and, it was argued, are analogous to inventory held for sale in the ordinary course of business. Lumberman's proposed to sell notes maturing between one and nine months from date of issuance, in principal amounts of \$100,000 or more, and collateralized by FHA or VA insured mortgages. The notes would be sold in the traditional short-term money market composed of corporate and institutional lenders. Since the notes have, at issuance, a maturity of from one to nine months and the proceeds are to be used for transactions consisting of financing a highly liquid inventory, it was contended that the transactions "current," and the exemption contained in Section 3(a)(3) of the Securities Act would be available.

The Division has recently received an opinion from the Board of Governors of the Federal Reserve System (see letter of April 24, 1963) that notes of the type described above would not be eligible for discounting by Federal Reserve Banks. Accordingly, since the legislative history of Section 3(a)(3) clearly indicates that the exemption applies only to prime quality negotiable commercial paper of a type eligible for discounting by a Federal Reserve Bank, the exemption would not be available for the notes proposed to be offered.

11. Section 3(a)(3) -- Current Transactions; Federal Reserve; Notes.

April 24, 1963 -- Letter re: Policy of Federal Reserve System with Respect to Discounting Notes

The Colwell Company inquired whether short-term notes which it proposes to issue would be exempt under Section 3(a)(3) of the Securities Act. Such notes will have a maturity of nine months or less. Colwell is in the business of originating mortgage loans for sale to institutional type investors. Its inventory of mortgage loans turns over in some two to five months. Proceeds from the sale of the short-term notes will be used to finance the carrying of the company's mortgage inventory pending a sale to institutional investors.

Colwell's inquiry was forwarded to the Board of Governors of the Federal Reserve System for an opinion whether the notes would be eligible for discount by a Federal Reserve bank. The Board replied that such notes would not be eligible for discount for the following reasons: (a) Under the terms of the Federal Reserve Act applicable here, notes admitted to discount must have maturity at times of discount of not more than 90 days, exclusive of grace. Accordingly, notes issued by Colwell having a maturity of more than 90 days at time of issuance would not be eligible for discount at that time, (b) Regulation A of the Federal Reserve Board provides that proceeds from notes must be devoted to certain specific purposes to be eligible for discount. Of these purposes, the one most pertinent to this discussion encompasses "producing, purchasing, carrying or marketing goods in one or more of the steps of the process of production, manufacture, or distribution." It is questionable whether mortgage loans constitute "goods" within the meaning of the Regulation. (c) Notes, the proceeds of which are to be used for permanent investments such as land or building are denied discount eligibility. (d) Even if the proceeds of Colwell's notes are not deemed to be invested in "permanent or fixed" investments, eligibility for discount is also denied notes, the proceeds of which are to be invested in "stocks, bonds or other investment securities." Accordingly, the notes to be sold by Colwell would not be eligible for discount even if such notes met the 90-day maturity requirement.

12. Sections 4(1); 5 -- Rights Offering; Foreign Securities; Dealer Transactions.

May 8, 1963 -- Memorandum re: Nikko-Kasai Securities Company

Inquiry was made concerning various methods proposed by a Japanese securities firm to U. S. shareholders of Japanese companies with respect to any rights which may accrue to them as stockholders. In particular, the following three alternatives were discussed: (a) sale of shares cum-rights and the use of the proceeds to purchase for the customer's account, shares ex-rights in the next highest round lot, debiting the customer's account for any necessary funds, (b) disposition of rights by the purchase of rights by the broker

as principal and the use of the proceeds to purchase the largest possible number of shares ex-rights, debiting the customer's account for any necessary additional funds; (c) sale of rights to the broker as principal and the use of proceeds to purchase for the customer's account the number of old shares, ex-rights, that the rights would have entitled the customer to purchase, debiting the customer's account for any necessary funds. There is no market for rights in Japan. Opinion was expressed that the three alternatives were a device to facilitate the unregistered distribution of Japanese securities in the U. S. in violation of Section 5 of the Securities Act.

Although these procedures do facilitate the distribution of unregistered securities in the U. S., no violation of Section 5 may be involved by virtue of the exemption contained in the third clause of Section 4(1). The availability of this exemption is closely related to a long-standing interpretation which permits identification of "old" and "new" shares for the purpose of determining whether a trade has occurred during the 40-day period. In this connection, the rights offering by Phillips Lamp Works was discussed whereby due to the limited supply of Phillips stock in the U. S. and the substantial amount of the offering in relation to the shares outstanding, a disparity existed in the prices in the United States and abroad. This disparity was attributable to the necessity of U. S. shareholders selling their warrants abroad, thus depressing the market, and reinvesting the proceeds in the limited American market, thus causing prices to rise. In view of these trading restrictions, effective arbitrage transactions were impossible.

Accordingly, dealers were advised that customer's rights might be sold abroad and the proceeds invested in "old" Phillips shares for distribution in the United States upon the dealer's responsibility that he was not participating in a distribution. In the Phillips case, however, "old" and "new" shares were readily identifiable.

Since that time, it is understood that the same procedure has been followed by New York broker-dealer firms, despite the fact that, unlike the Phillips case "old" and "new" securities are not readily identifiable.

13. Section 7 and 17 -- Prospectus; Misleading Names

May 27, 1963 – Commission Minute re: Preferred Equity Insurance Corporation

In connection with its pending registration statement, the company was informed that the words "Preferred Equity" in its name would mislead investors into thinking that its capital stock was a preferred, rather than a common stock. In response to the staff's suggestion that the company's name be changed, the company replied that to do so would involve hardship and expense. As an alternative, the company offered to disclose on the cover page and elsewhere in the prospectus that its name did not have reference to its capital structure or mean that its stock was a preferred stock. The staff rejected the proposed solution and remained of the opinion that the company should change its name,

The Commission determined no firm position should be taken since a demand for a name change could not be enforced. If the staff were unable to persuade the company to change its name, an explanatory legend should be accepted.

14. Rule 478 -- Post-Effective Amendment; Undertaking to Deregister; Agent for Service.

May 15, 1963 -- Memorandum re: Grosset & Dunlap

Sales of stock pursuant to the company's registration statement have ceased and the financial statements are stale. No further sales are contemplated and inquiry was made whether the unsold shares may be deregistered by the agent for service pursuant to Rule 478(a) (4).

Since the company did not include an undertaking to deregister unsold shares in its registration statement, such shares could not be deregistered by the agent for service. Accordingly, a post-effective amendment signed by the issuer, necessary officers, and a majority of the board of directors should be filed to deregister the shares.

1934 ACT

15. Regulation 14 -- Form of Proxy; Ballot Boxes.
Rule 14a-4(b)

May 16, 1963 -- Commission Minute re: Elgin National Watch Company

Proxy material submitted by the company contained a proposal to change the state of incorporation, eliminate preemptive rights and eliminate cumulative voting. Question was raised whether separate ballot boxes should be provided for each of the matters involved in the proposal, even though the proposal had been submitted as a single package.

The Commission determined that no question need be raised in the matter.

16. Section 15(d) -- Reporting Requirements; Computation Under 15(d).

May 8, 1963 -- Letter re: Midwestern Indemnity Co.

Of 25,495 shares registered, 13,368 were offered to existing shareholders at \$19.50 and the remaining 12,127 were offered to the public at \$20.50. There were 76,468 shares outstanding on the effective date.

Whether the value of the outstanding shares is computed on the basis of the \$20.50 offering price or on the basis of a weighted average between the \$19.50 and \$20.50

offering prices (\$19.97) the aggregate value of the registered and outstanding shares exceeds \$2,000,000 and the undertaking is operative. In this connection, it was pointed out that although the offering price of \$20.50 was unknown on the effective date, disclosure of such price was contemplated by Rule 426(c) as well as the company's undertaking to supplement the prospectus.

Under no circumstances would it be proper to compute the value of the outstanding shares on the basis of the \$19.50 offering price.

17. Section 16(a) -- Reporting Requirements; Equity Security; Single Class.

May 17, 1963 -- Letter re: Gateway Sporting Goods Company

The company proposes to list its common stock on the AMEX and not its Class B stock. It inquires whether its common and Class B stock, which is convertible into common, equal in all respects except for dividend rights, should be considered a single class of equity security for the purpose of the reports required by Section 16(a). In this connection, it was pointed out that the Division had expressed the opinion that both classes should be considered to be outstanding securities of the same class for the purpose of Item 9 of Form 8-K. The company's common stock is listed and its Class B is not.

These constitute two separate classes of securities for the purposes of Section 16(a). Moreover, any individual required to file reports with respect to the common stock would also have to report transactions and holdings of the class B even though such stock is not listed and registered.

18. Section 16(a) -- Ownership Reports.
Rules 16a-4; 16a-8

May 6, 1963 -- Letter re: J. J. Newberry Co.

Inquiry was made concerning the applicability of Rules 16a-4 and 16a-8 to situations where an officer or director may be an executor or administrator of the estate of, or trustee under the will of, a deceased member of his immediate family and have a beneficial interest in the income or corpus of the estate or testamentary trust.

The exemption contained in Rule 16a-4 is applicable to securities held by a person as an administrator or executor of an estate even though he may be the sole beneficiary of the estate. The exemption does not apply to any securities which he holds as testamentary trustee.

Securities held as testamentary trustee are governed by Rule 16a-8 and if the trustee or members of his immediate family have a vested interest in the income or corpus, the

trustee officer or director should report such ownership as “indirect” ownership on Form 4.

19. Regulation S-X -- Financial Statements; Significant Subsidiary.
Article 4

May 21, 1963 -- Memorandum re: Standard Shares, Inc.

Inquiry was made whether the company would be required to furnish, in its semi-annual and annual reports, financial statements of a 43.3% owned significant subsidiary in view of Securities Exchange Act Release No. 7078.

The release was only intended to cover Atlantic Research Corporation situations where consolidated financials or group statements of subsidiaries not consolidated should be furnished in order to make the statement not misleading as required by Article 4 of Regulation S-X and sound accounting principles. There was no intent to go beyond the foregoing or to require financial statements for “40 Act companies” which were not previously required in reports under Section 30(d) of the Investment Company Act. Accordingly, financial statements of the company’s subsidiary need not be included in either annual or semi-annual reports.

20. Section 16(b) -- Insider Transaction; Distribution; Underwriters.
Rule 16b-2

May 1, 1963 -- Memorandum re: Norman N. Segal

A director of a listed company is a partner in an underwriting firm which will have a participation in excess of 50% in an underwritten secondary distribution of the company’s securities. Since the aggregate participation of persons not subject to the provisions of Section 16(b) must be at least equal to the aggregate participation of those subject to Section 16(b), the exemptive provisions of Rule 16b-2 would not be available to the underwriter by virtue of paragraph (a)(3) thereof. Inquiry was made whether the holding of Blau v. Lehman to the effect that in determining the amount of recovery under 16(b), the interest of the individual partner in the firm, rather than the interest of the firm as a whole was determinative, would affect our interpretation of paragraph (a)(3) of Rule 16b-2.

The opinion was expressed that since Rule 16b-2 had been in existence long before the Blau case and since Commission interpretation prior to the Blau case counted the interest of the partnership as a whole in computing recoverable profit, the Blau decision would not alter the opinion that the underwriting firm would not be exempt from Section 16(b).

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 116 April 1 – 30, 1963

1933 ACT

1. Section 2(1) -- Security; Condominium.

April 17, 1963 -- Letter re: Keith Romney

An office building is to be built wherein individual offices will be sold under the condominium form of ownership, i.e., ownership in fee of individual units in multiple unit buildings which make possible individual financing, buying and selling, and insuring and taxing of each unit. The individual condominium owner receives a warranty deed conveying fee title for the particular office, plus a percentage interest in all common areas and facilities. The condominium owner obligates himself to adhere to certain covenants, conditions and restrictions which spell out the rights and responsibilities of each owner to the other owners. This includes the method of managing and maintaining the building, common areas and facilities, and the formula for pro-rating each owner's share of the common expense. The operation of the property is apparently on a nonprofit basis.

No action was recommended if the units were sold without registration in reliance upon counsel that a security is not being offered.

2. Section 2(1) -- Security; Land Offering.

April 26, 1963 -- Memorandum re: Ste. Sophie Development Corp. and Alliance Development Corp.

Ste. Sophie offers to sell land of about one acre in the Province of Quebec. Although the sales literature makes reference to eight building lots, and the usual representations about anticipated improvements, i.e., roads, swimming pools, etc., the promoter guarantees to repurchase the property at "Three Times The Amount Of Your Original Investment." The sales literature is pitched almost entirely in terms of investment, e.g., "the moment you invest you receive an iron-clad commitment that immediately triples your investment."

The position was taken that a security is being offered.

3. Section 3(a)(2) -- Secondary Distribution; Bank Stock.

April 15, 1963 Memorandum re: Richard Wiley

The question was whether a secondary disposition of bank stock would be exempt from the registration provisions of the 1933 Act. Section 3(a)(2) is a securities exemption attaching to the securities, and so any offering whether primary or secondary would be exempt from registration.

4. Section 3(a)(2) -- Government Securities; Bonds.

April 17, 1963 Letter re: B X P Construction Corporation and Bronx Park East Housing Company, Inc.

Bronx Park East is a limited profit housing company subject to state supervision pursuant to the New York public housing law, which states that bonds, mortgages, notes, income debentures and obligations of such limited profit companies will be considered public instrumentalities and exempt from taxation. Bronx Park East sold to B X P, with the approval and authorization of the New York Commissioner of Housing, \$500,000 principal amount of 6% cumulative income debentures. B X P now proposes to offer such debentures to the public.

No action was recommended if counsel relies upon Section 3(a)(2) for exemption from the registration requirements of the Act.

5. Section 3(a)(2) -- Government Corporation; Bonds.

April 25, 1963 -- Letter re: Pinal County Board of Supervisors

Pinal County proposes to form a corporation to stimulate industrial development within the county. The incorporators and other corporation officials will consist solely of members of the Board of Supervisors or other county officials. The articles of incorporation provide that no part of the net earnings can inure to the benefit of any person. Any debt security to be issued by the corporation must provide that the title to any real or personal property securing such obligation must vest in the county when the indebtedness is retired. The corporation will issue 20 year, 5-7/8% interest bearing bonds secured by real estate owned by the corporation.

The articles of incorporation and by-laws, the debt securities, and the underlying trust indenture shall be subject to the approval of the County Attorney and the Board of Supervisors. Pinal County has been informed by Internal Revenue that the interest paid on the bonds is not taxable income.

No action was recommended if counsel relies upon Section 3(a)(2) for exemption from the registration provisions of the Act.

6. Section 3(a)(4) -- Charitable Exemption; Hospitals; Bonds; Promoters.

April 19, 1963 -- Letter re: Tri-City Osteopathic Hospital Inc.

Tri-City was organized as a not-for-profit corporation under a state corporation statute. It proposed to offer and sell \$2,400,000 of 8% first mortgage bonds, principally to local residents, but also on an interstate basis. Two licensed securities salesmen would sell the bonds on a salary plus bonus arrangement. The promoters will receive only salaries for services rendered. Tri-City will purchase land upon which to erect the hospital from one of the promoters at fair market value. A promoter also owns adjoining land upon which he will erect "Doctors' Buildings. In addition, the promoter is engaged in the drug business, and will lease space in the hospital for the sale of pharmaceuticals.

The Section 3(a)(4) exemption will not be available to the hospital because the bonds are commercial in nature due to the interstate distribution and the high 8% yield. In addition, it appears that the promoter who is selling the land and leasing part of the hospital for the sale of drugs is participating in the promotion of the hospital for substantial non-charitable purposes.

7. Section 4(1)

Regulation A

Rule 254(a) -- Acquisition; Underwriter; Integration.

April 1, 1963 -- Memorandum re: Diversify Corporation

Diversify will acquire a California corporation having only two shareholders, issuing stock therefor. One stockholder, who will receive 52,000 shares of Diversify, wants to make a public offering of 26,000 shares under Regulation A, and retain the other 26,000 shares for investment. The Regulation A exemption would be unavailable if all 52,000 shares were counted as part of the offering, for this would exceed the \$300,000 ceiling.

Regulation A is available for the 26,000 shares of stock to be received by the shareholder and such stockholder should be named as an underwriter in the offering circular.

The selling stockholder may claim a Section 4(1) exemption for the 26,000 shares to be held for investment without their being counted in the Regulation A ceiling.

8. Section 4(2)

Rule 154(b)(2) -- Securities Exchange; Brokers Transactions; OTC Trading.

April 26, 1963 -- Letter re: Richmond Stock Exchange

The Richmond Exchange is an exempt exchange under the 1934 Act, and because of its small size its function is primarily reporting sales of securities rather than the operation of an exchange market. It is argued that in these circumstances, the provisions of Rule 154(b)(2) as applied to securities on the Richmond Exchange would appear to restrict sales made pursuant thereto because of the low volume of trading. The Exchange sought a ruling which would exclude securities listed only on an exempt exchange from Rule 154(b)(2).

Since the formula set forth in Rule 154(b)(2), which applies to all exchanges, is intended to provide a guide in routine cases involving trading as distinguished from distribution, some cases which may not fall within the scope of such formula may nevertheless, under the circumstances of the particular case, be exempt under Section 4(2). Where the principal market for a listed security is over-the-counter, and the volume of trading in the security over-the-counter is sufficient to make possible the effecting of agency transactions without soliciting buy orders, it may be appropriate to apply the general limitations of Rule 154(b). The extent of trading permissible in any given case would depend on the facts.

9. Section 5 -- Public Offering; Employee Stock Plan.

April 3, 1963 -- Memorandum re: P. R. Mallory Lynch Pierce Fenner & Smith, Inc.

Mallory proposed a monthly investment plan for its employees whereby its only participation would be to announce the fact that the plan is available, make periodic payroll deductions to be forwarded to Merrill Lynch, and pay the initial brokers commission. The proceeds would be used by Merrill Lynch to purchase shares of Mallory stock in round lots on the New York Stock Exchange.

Since the company contemplated paying the brokerage and other expenses of the plan, it would be considered a company sponsored plan involving a public offering to employees within the purview of Section 5, and subject to 1933 Act registration.

10. Section 5(a)(2)

Rule 133 -- When Issued Trading.

April 17, 1963 -- Memorandum re: American Sugar Company and Lee Higginson Corporation

American Sugar and its subsidiary proposed a Rule 133 merger pursuant to which, among other securities, debentures were to be issued. The trust indenture covering the debenture was qualified under the Trust Indenture Act, prior to the vote of stockholders. Query whether when issued trading in debentures permissible.

Upon the requisite vote of stockholders on the Rule 133 transaction, when issued trading in the debentures could be commenced.

11. Regulation A

Rules 254(a) and 254(d)(2) -- Pro Rate Offering; Offering to Key Employees

April 11, 1963 -- Memorandum re: Insurance City Life Co. and United Equity Company

Insurance City, 97% owned by United Equity, proposes, pursuant to Regulation A, a pro rate offering of subscription rights to all its stockholders. Insurance City, in addition, will merge with an affiliated company, also controlled by United Equity, and stock will be issued to the security holders of such acquired company. United Equity also sought to transfer a small portion of the subscription rights which it will receive from Insurance City to certain key employees, who would take for investment only.

The merger would not affect Insurance City's offering under Regulation A since the exclusion available under Rule 254(d)(2) would be operable, and thus the offering would not exceed the \$300,000 limitation imposed by Rule 254(a). However, the transfer of some of the subscription rights by United Equity to its key personnel would defeat the Rule 254(d)(2) exclusion. On the other hand, if at a subsequent date, United Equity transferred some of its stock to the key employees in an exempt transaction, no problem would arise under Rule 254(d)(2).

12. Regulation A

Rule 256 -- Tombstone Advertisement.

April 29, 1963 Memorandum re: Du Val Associates

Rule 256(c) permits the inclusion in a tombstone advertisement of a coupon upon which a prospective investor may write his name and address requesting an offering circular.

13. Regulation A

Rules 256 and 258 -- Acceleration; Sales Material

April 29, 1963 -- Memorandum re: Du Val Associates

Requests for acceleration of properly signed material pursuant to Rules 255(a) or (d) and 256(f) may be made by either the issuer or issuer's counsel. In regard to material filed pursuant to Rule 258, such acceleration request may be made by the person on whose behalf the material is filed or such person's counsel. If the material is not filed by the issuer, and it does not appear that the issuer has received a copy of such material, a letter of acknowledgement, clearly identifying the material filed, should request the filing

person to transmit a copy to the issuer, and disclose on its face that a carbon copy is being sent to the issuer.

1934 ACT

14. Sections 12(d); 13(a)(2);
Rule 13a-1;
Form 10-K -- Periodic Reports; Fiscal Year

April 4, 1963 -- Commission Minute re: United States Diversified Industries Corporation
(See also Memorandum to Commission, April 3, 1963)

Diversified's securities were listed on the Pittsburgh Stock Exchange when trading in that stock was suspended by the Exchange on July 7, 1961. Diversified's fiscal year ended December 31, 1961, and the stock was delisted February 16, 1962, before the time during which the 10-K report could finally be filed, i.e., within 120 days after December 31, 1961, or April 30, 1962.

The annual report on Form 10-K for the 1961 fiscal year has not been filed, and Diversified sought a further extension of time in which to file the report. Query was whether the annual report was due at the end of the fiscal year or at the end of 120 days thereafter.

The Commission approved the Division's position that the duty to file an annual report arises at the end of the fiscal year pursuant to Section 12(d) and 13(a)(2), and Rule 13a-1, and since the securities were not delisted until after the end of the fiscal year, the obligation to file the 1961 annual report is enforceable although there is no duty to file further reports.

15. Rule 14a-3(b) -- Proxy Solicitation; Annual Reports

April 3, 1963 Memorandum re: Monsanto Chemical Company

Rule 14a-3(b) requires, among other things, that a copy of the annual report be sent to each security holder when management solicits proxies. A Monsanto stockholder, who held stock in six representative capacities, received six (6) annual reports, and complained that this was a waste of company funds.

No action would be taken if Monsanto would obtain consent from its stockholders to accept one stockholder report annually for all stock held by any stockholder in various capacities.

16. Section 16(a);

Rule 16a-6 -- Option Holder; Periodic Report

April 1, 1963 -- Memorandum re: Rule 16a-6. See also memoranda of February 12, 1963 and January 11, 1963

The question was whether the purchaser of an option covering more than 10% of a class of a listed and registered equity security is required by Rule 16a-6 to file reports pursuant to Section 16(a) of the 1934 Act. The only relationship which the purchaser has with the company is ownership of a 10% option, which was purchased from a 20% stockholder.

The acquisition or disposition of such option is deemed to effect a change in the beneficial ownership of the equity security to which it refers, i.e., the firm commitment by the 20% stockholder to divest himself of more than 10% of the company stock. Thus, the purchaser of the 10% option, as well, as the seller, is obligated to file a Section 16(a) report.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 115 March 1 – 31, 1963

1933 Act

1. Section 2(3)

Rule 133 -- Sale; Exchange; Acquisition; Court Approval.

March 11, 1963 -- Letter re: Liberty Real Estate Trust; Science Industry Real Estate Investment Trust

Liberty proposes to acquire all the assets of Science in exchange for shares of Liberty. Science's trustees will petition the District Court in Minnesota for approval of the sale of its assets. Though dissident shareholders will be given a chance to be heard, all shareholders will be bound whether they approve or not. There is no prearranged agreement among Science shareholders for the sale of the Liberty shares.

No action would be recommended if the acquisition is completed without registration.

2. Sections 2(10); 5

Rule 153 -- Sales Literature; Prospectus; Confirmation; Sale

March 14, 1963 -- Memorandum re: Studebaker Corporation

Studebaker acquired the assets of Franklin in a Rule 133 transaction and the controlling person of Franklin proposes to offer the stock through Lehman Brothers pursuant to a registration statement. Copies of the offering prospectus will be filed with the New York Stock Exchange on which the offering will be made in accordance with Rule 153.

In this connection, it was noted that if sales literature were used with a sale on the Exchange, Rule 153 would not avoid the necessity of delivering a prospectus to each purchaser. However, a buying customer's confirmation would not be "sales literature".

3. Sections 2(11); 4(1) -- Underwriter; Control; Director.

March 19, 1963 -- Memorandum re: Massachusetts Indemnity Life Insurance Company and Paine, Webber, Jackson & Curtis

A registered representative (but not partner) of Paine, Webber, who with his wife and two sons owns 2% of the stock of Massachusetts Life, will become a director of Massachusetts Life.

Whether this relationship would affect Paine, Webber's making a market for Massachusetts Life stock without registration under 1933 Act would depend on whether Paine, Webber is in a control position regarding Massachusetts Life. While a definite conclusion could not be reached on the available facts, the mere fact that a person is a director does not make such person conclusively a controlling person of that company.

4. Sections 3(a)(9)
Section 307 of 1939 Act -- When Issued Trading.

March 6, 1963 -- Memorandum re: International Harvester Company

International, in reliance on Section 3(a)(9), proposed to offer debentures covered by an indenture qualified under the Trust Indenture Act in exchange for up to 50% of its preferred stock on a pro-rata basis. Stockholder approval is to be sought to decrease the capital stock and capital by the retirement of 50% of the preferred stock.

The impending vote by stockholders would not be a bar to "when issued" trading in the debentures.

5. Section 6(a)
Rule 133; Form S-1 -- Acquisition; Control; Underwriters; Shelf Registration; Trading Volume.

March 22, 1963 -- Letter re: Van Camp Sea Food Company; Ralston Purina Company

Ralston will purchase the assets of Van Camp in exchange for Ralston common stock in a Rule 133 transaction. Ralston will also register on Form S-1 (Form S-14 being unavailable because Ralston will not solicit proxies) shares to be received by controlling persons of Van Camp, The registration statement will be amended by post-effective amendments to keep the prospectus up-to-date for at Least two years and such longer period as may be necessary under the 1933 Act until such shareholders distribute their stock.

No objection will be raised if certain controlling Van Camp persons sell their Ralston shares pursuant to paragraph (d) of Rule 133 within that paragraph's limitation provided such sales are casual sales and not a plan of continued distribution in successive six months periods, until such time as the registration statement is filed. In this connection, it is assumed there are no shares in the hands of persons who may be deemed to be underwriters if they should sell their Van Camp shares at this time,

Sales pursuant to Rule 133(d) may be based upon an increased volume of trading during the period exclusive of the shares sold by such controlling persons during the week used for computation. If the volume should decrease during the period, the volume of permitted future sales may thereby be reduced.

6. Sections 6; 8; 10

Rule 429 -- Indeterminate Number of Shares Registered; Employee Stock Plan; Prospectus; Post-effective Amendment.

March 12, 1963 -- Letter re: United States Steel Corporation

USS, in connection with its Savings Fund Plan for Salaried Employees (Plan), filed a registration statement covering Plan interests, and common stock based on projected employee participation at \$70 per share price. Because of the price drop in USS common stock to as low as \$38 per share, more shares were purchased pursuant to the Plan than anticipated so that the number of registered shares may be exhausted earlier than anticipated.

No objection was raised, because of the nature of the offering and the fact that an estimated rather than a specific number of shares was registered, if USS should issue pursuant to the Plan, shares aggregating the full dollar amount of participations even if this requires utilization of shares in excess of the estimated number reflected in the registration statement.

The Division suggested that the next amendment to the registration statement specify that it covers registration of a specific dollar amount of Plan participations and an indeterminate number of shares (the estimated number being reflected only in a footnote to the fee table.) This procedure would then be followed in future registration statements under this or similar plans.

A prospectus meeting the requirements of Rule 429 need not be filed as a post-effective amendment to the earlier registration statement.

1934 Act

7. Regulation 14

Rules 14a-1; 14a-11 -- Proxy Fight; Solicitation; Contest

March 13, 1963 -- Memorandum re: Ropes & Gray

A stockholder of a company subject to the Commission's proxy rules mailed a letter to stockholders requesting that proxies not be given to the company pursuant to proxy material mailed by the company in connection with the annual meeting.

The letter would be a solicitation subject to the proxy rules, and result in a contest within the meaning of Rule 14a-11.

8. Rule 14a-3(b) -- Mailing of Annual Report; Administrative Remedies

March 22, 1963 -- Minute re: Chicago South Shore & South Bend Railroad Company

Management mailed the proxy statement to stockholders by first class mail, and the annual report by third class mail, This violated Rule 14a-3(b) which requires that the proxy statement accompany or precede annual report.

Because of narrow issue presented, no action was taken.

9. Regulation 14

Rule 14a-8(a) -- Stockholder Proposals.

March 28, 1963 -- Commission Minute re: United States Smelting, Refining & Mining Company

A stockholder submitted five proposals for inclusion in the management proxy soliciting material. Management objected to the following proposals: 1) reduction in the size of the board of directors; 2) elimination of the staggered terms of directors; 3) revised method of filling vacancies on the board. The stockholder refused to revise the proposals to permit directors previously elected or appointed to serve out their terms, stating that he was prepared to litigate the matter in the courts if management refused to include the proposals, or if the proposals were approved, management refused to relinquish their offices.

The Commission instructed management to include the proposals.

10. Section 15(d) -- Class of Securities; Reports; Partnership Interests

March 7, 1963 -- Letter re: Stratbridge Apartments Associates

Stratbridge registered \$1,910,000 priority limited partnership interests. At the time of registration, there were outstanding \$300,000 of ten year subordinate limited partnership interests, The two interests are different only in that the subordinate interests would be subordinate to the priority interests in rights to receive certain distributions and proceeds from the partnership for 10 years; thereafter the two interests would be on a complete parity. In addition, when the registration statement became effective, the two Interests were on a parity as to certain partnership income and as to any benefits from mortgage refinancing.

Notwithstanding the differences with respect to the priorities of the Interests, the Interests should be considered the same “class” for purposes of Section 15(d) since they “are of substantially similar character” and the holders “enjoy substantially similar rights and privileges”. The reporting requirements of Section 15(d) are, therefore, operative.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 114 February 1 – 28, 1963

1933 ACT

1. Sections 2(11); 4(1) -- Control Person; Underwriters

February 6, 1963 -- Memorandum re: Mary Carter Paint Company

Mary Carter seeks to have its two classes of common stock (Class A and common with the common convertible into Class A, and alike in all other respects except voting rights) listed and registered on the American Stock Exchange. To meet the Exchange's requirement that 200,000 shares of each stock be publicly held (only 175,000 shares of common are publicly held), Mary Carter asked several mutual funds holding Class A stock to exchange their holdings for common stock held by controlling persons. The funds acquired the Class A in a registered public offering.

Since the common stock to be offered in exchange would come from control persons, it was not free from registration requirements. The funds would not be free to sell publicly such stock under the circumstances.

2. Section 4(1) -- Foreign Offering; Registration

February 20, 1963 -- Letter re: Industrial Incomes Incorporated of North America (I.I.I.)

I.I.I., a New York corporation and registered broker-dealer, intends to offer its stock exclusively to residents of Venezuela, such offering to take place within territorial limits of Venezuela. All such purchasers will execute investment letters. United States mails may be used for receipt of subscriptions, remittances, and transmission of stock certificates.

Since the offering will be made exclusively in Venezuela, registration is not required.

1934 ACT

3. Section 14(a) -- Consents; Modification of Indenture; Mahaffie Act; Section 20(b) of Interstate Commerce Act

February 1, 1963 -- Letter re: Florida East Coast Railway Co.

The Company proposed to solicit bondholders for consent to modification of mortgage indentures registered and listed on the New York Stock Exchange. Modification of the indentures would be pursuant to Section 20(b)(9) of the Interstate Commerce Act. Since bondholder solicitation by a railroad is specifically exempt thereunder from Section 14(a) of the 1934 Act, no action would be recommended if solicitation is made without compliance with proxy rules.

4. Regulation 14:

Rule 14(a) 1 -- Proxy Soliciting Material; Combining of Special and Annual Meetings; Defer Mailing

February 19, 1963 -- Commission minute re: Brown Company

Brown's management, in connection with a forthcoming proxy fight, sought to have the notice of the opposition's special meeting declared to be proxy soliciting material within the meaning of the proxy rules, and as such did not comply with the rules. Management further urged that the two meetings be consolidated since the date of the special meeting was so near the regularly scheduled annual meeting, and that the Commission refuse to review the special notice and prevent the mailing of all proxy soliciting material pending management action.

There appeared to be no legal basis for the Staff not to review non-management material or to defer mailing of such proxy material. The mailing of the special meeting notice would not be in violation of the proxy rules. Combining the special and annual meetings is a matter to be determined by the parties under state law and not within the Commission's jurisdiction.

5. Regulation 14:

Rule 14a-4(d) -- Death of Nominee

February 14, 1963 -- Memorandum re: The Aro Corporation

A management nominee to the board of directors died one week prior to the mailing date for the proxy soliciting material. Management wanted to have discretionary authority to vote the proxies for such person as it would later select on or before the annual meeting.

Rule 14a-4(d) would prohibit such discretionary authority. Management must either select a bona fide nominee prior to mailing date, or indicate in the proxy statement that any person present at the annual meeting may nominate a candidate at that time and the proxies may not be voted thereon. If the nominee had died after the proxy material had been mailed, discretionary authority conferred by the proxy could be used.

6. Regulation 14:

Rule 14a-8(c)(1) -- Stockholder Proposals; Resolutions; Sale of Assets; Dissolution

February 26, 1963 -- Memorandum re: Reserve Oil and Gas Company

A stockholder proposed to introduce at the annual meeting a resolution calling for the sale of assets and subsequent dissolution of the company. Management's position is that the proposal is improper because it provides for a sale and then later dissolution contrary to California law.

The California Code provides that a majority of the stockholders may voluntarily elect to dissolve a corporation subject to adequate notice. The Code also allows a sale of assets pursuant to a vote by the directors subject to stockholder approval before or after the board vote or consummation of the sale.

The stockholder was advised by the staff that if he amended the proposal to provide for a vote first to "wind up the company's affairs and thereafter voluntarily dissolve", the proposal would be a proper subject as provided by California Code. There was no objection by management to the revised proposal.

7. Regulation 14

Rule 14 a-8(c)(1), (2), and (5) -- Stockholder Proposals; Pension Plan

February 13, 1963 -- Letter re: American Telephone and Telegraph Company and Conference of Professional Technical Personnel

The Conference submitted for inclusion in AT&T's proxy statement a proposal that certain employee pension adjustments by reason of the Social Security Act be discontinued, thereby increasing employee benefits. AT&T has made 90 amendments on 19 different occasions to its employee pension plans without stockholder action.

No action objection was made if such proposal were omitted since (1) it relates to the conduct of ordinary business operations. (Rule 14a-8(c)(5)); (2) it is not a proper subject for stockholder action pursuant to the laws of New York (Rule 14a8(c)(1)); and (3) it appears to be for the purpose of enforcing a personal claim of the Conference, the holder of a single share of stock, and composed of scientists and engineers employed by a subsidiary who have for several years been seeking to increase pensions. (Rule 14a-8(c)(2)).

8. Regulation 14:

Item 7(a) -- Remuneration; Officer; Director

February 28, 1963 -- Memorandum re: Roger Nelson

A corporate officer, nominee for director, received during the last fiscal year more than \$30,000 remuneration, but was not one of the three highest paid officers. Re has never served as director.

Disclosure of such officer's remuneration is not required under Item 7(a)(1) but it must be included in the aggregate remuneration of all directors and officers as a group under Item 7(a)(2).

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 113 January 1 – 28, 1963

1933 ACT

1. Section 2(1) -- Security; Investment Contract

January 3, 1963 -- Letter re: Western Oil and Gas Company

Western Oil purchases state oil and gas leases at auction, and proposes to resell such 7/8ths leases by mail solicitations, either for cash or by monthly payments. The purchaser cannot pick the leasehold he wishes but must accept what is chosen for him by the company. The proposed sales letter and brochure discussed alleged expanding drilling activities of major oil companies in the area, and the potential profit involved. Western Oil does not contract to furnish further services, nor does it contract that it or related persons will drill a test well. It will keep the purchaser informed as to developments in the industry with periodical news letters, offer free recommendations from its professional staff, and will assist the purchaser in obtaining every possible return on his investment and in disposing of the lease.

An investment contract is involved. The economic inducement is the potential profitability involved in investing in leases in areas where they may increase in value due to the alleged drilling activities of major oil companies. None of the purchasers is expected to see the leases before purchase, nor attempt to develop the property through his own efforts.

2. Sections 2; 5 -- Security; Registration; Keogh Act (H.R. 10); Employer Pension Plans

January 8, 1963 -- Letter re: James Landis

In regard to employer pension plans under the so-called Keogh Act (H.R. 10), it would not appear that a separate security would come into existence where registered securities of registered investment companies are used for such plans under custodian arrangements for individual accounts.

3. Section 3(a)(9) -- Change of Obligor; New Security; Exchange With Different Issuer.

January 9, 1963 -- Commission minute re: Dixon Chemical Industries, Inc., Essex Chemical Corporation and Olin Mathieson Chemical Corporation

Dixon entered into an agreement whereby Olin Mathieson would purchase substantially all of Dixon's assets, conditioned on Dixon's acquisition of at least \$6,000,000 of its \$7,938,000 outstanding debentures in exchange for Dixon stock and cash and amendment of the indenture. The indenture provides that any company which purchases Dixon's assets would become the obligor upon the indenture securities. The proposed amendment would provide that Olin would not become so obligated. Essex Chemical Corporation (36% owner of Dixon), to enable Dixon to acquire the necessary debentures, would also offer its common and preferred shares in exchange for Dixon debentures. The soliciting material proposed to be transmitted to the debenture holders requesting their approval of the amendment would be accompanied by a "red herring" prospectus contained in registration statements for the exchange offers and these holders would later receive the final prospectus.

Although the availability of a Section 3(a)(9) exemption for the amendment of the indenture was not clear because of Essex's offer to exchange its stock for Dixon debentures, in view of the proposed method of solicitation and the necessity for getting advance approval to this amendment, the Commission determined not to assert the position that the exemption was not available in this area.

4. Section 3(a)(11)

Rule 133

Regulation A -- Merger; Warrants; Continuing Offer

January 24, and 30, 1963 -- Memorandum re: Glass Marine Industries and Garden Centers, Inc.

Garden Centers, a Tennessee corporation, has issued to Tennessee residents common stock and warrants to purchase common stock (immediately exercisable) pursuant to an asserted Section 3(a)(11) exemption. Garden Centers now proposes to issue stock in connection with a merger with a Delaware corporation, pursuant to Rule 133.

The merger would jeopardize the intrastate exemption because there is a sale of stock between the two companies and the outstanding warrants constitute a continuing offer of the underlying stock.

However, Regulation A could be available for an offering by Garden Centers covering its common stock underlying the outstanding warrants, as well as the common stock to be used in the merger. Sufficient ceiling would remain to include any contingent liability arising out of the earlier offering in reliance on the intrastate exemption.

5. Section 3(a)(11) -- "Doing Business Within"

January 4, 1963 -- Letter re: Picture Stories Studio, Inc.

The corporation is a publisher chartered in New York, where it maintains its only office. It publishes a magazine, the photographs and literary matters of which are purchased in Europe, but the translation, rewriting, art work, policy and all editorial matters are handled in New York. The actual printing and binding is done by non-affiliated companies outside the state. Sales are nationwide under a contract with an out of state distributing company. The corporation proposes to engage in an intrastate offering of its securities. The proceeds will be used primarily to pay printing costs and the remainder for promotional expenses.

The corporation appears to be “doing business within” the state, i.e. performing substantial operation activities in that state, within the meaning of the Section 3(a)(11) intrastate offering exemption.

6. Section 3(a)(11) -- Intrastate Character

January 3, 1963 -- Letters re: First Equity Corporation, The National Investors Life Insurance Company of Georgia (Georgia); The National Investors Life Insurance Company of Arkansas (Arkansas)

First Equity, which had under a Section 3(a)(11) exemption sold its shares to Oklahoma residents, will organize, and own 51% of, Georgia. Georgia proposes to offer its securities to residents of the State of Georgia relying on a Section 3(a)(11) exemption. Arkansas had sold its securities to residents of the State of Arkansas pursuant to a Section 3(a)(11) exemption which was later found unavailable. The principal officers of First Equity were until recently the principal officers in Arkansas, and the relationship of First Equity and Arkansas is still quite close. Arkansas has contracted to handle the operations of Georgia, whose promoters and principal officer are also officers and directors of First Equity. Under the service contract, Arkansas will receive 12 1/2% of the gross first year premiums.

Section 3(a)(11) exemption for Georgia is unavailable because it is one of a series of corporations organized in different states where there is in fact and purpose a single interstate business enterprise and the bulk of the initial operations of Georgia will be conducted in the State of Arkansas, since Georgia can do no business in the State of Georgia until after the offering. The offering may also be considered financing for Arkansas, since it will receive under the service contract immediate income from the sale of each Georgia policy.

7. Section 4(1)3; 4(2) -- Selling Literature; Secondary Offering; Sales by Broker

January 24, 1963 -- Letter re: Brown, Wood, Fuller, Caldwell, & Ivey

A broker is using market letters, selling literature, and similar written material concerning an issuer which has registered its stock for sale by controlling persons from time to time on the market. The broker is not effecting sales for any of the selling stockholders.

Prospectus requirements are applicable only to shares currently offered pursuant to a registration statement. The exemption contained in the third clause of Section 4(1) would appear to be available to a dealer 40 days after the first offering is made under the registration statement, even though registered shares are still being offered and sold, provided the shares involved do not constitute an unsold allotment held by the dealer. Ordinarily, after 40 days the dealer would not be participating in a distribution merely by disseminating selling literature, but each case must be determined on its facts.

Although Section 4(2) provides an exemption from prospectus requirements within the 40 day period if certain conditions are met, buy orders received from persons who received such selling literature from the broker would not be considered unsolicited, and the exemption would be unavailable.

8. Sections 5; 10(a)(3) -- Face-amount Certificates; Periodic Payment Plans; Annual Prospectus; Sale; Continuing Offer

December 14, and 31, 1962 and January 15, 1963 -- Memoranda

The receipt of installment payments by face-amount certificate companies should be deemed a continuing offer and sale of a security within the meaning of the Securities Act of 1933. Prospectuses which meet the requirements of Section 10(a)(3) of the Act must therefore be given to holders of face-amount certificates as installment payments are made.

Although a similar position might be taken with respect to the prospectus for a periodic payment plan, the practice will be followed of not requiring such prospectus where a current prospectus is delivered for the underlying security.

9. Rule 133 -- Choice; Election

January 21, 1963 -- Memorandum re: Loral Electronics Corporation and A & M Instrument Company

Loral proposes to purchase the assets of A & M for 127,000 Loral shares plus additional shares computed at the end of five-year period based on A & M earnings and the price earnings ratio of Loral. A & M stockholders for each A & M share will be given the choice of taking .29 share of Loral with a right to participate in additional shares at the end of five years or .38 shares of Loral with no right to participate.

No objection was raised to application of Rule 133 even though there is a choice or election on the part of stockholders as to the security to be received.

10. Rule 254

Regulation A -- Computation; Computation of Ceiling; Placement Charges

January 25, 1963 -- Letter re: First Theater Investing Service, Inc., and The Shop Around Company

The underwriter will charge purchasers a commission for "placing" their money which when added to price of security will exceed \$300,000 in the aggregate. The commission paid by customers must be included in computing the offering price.

11. Regulation A -- All or None Offering; Waiver

January 21, 1963 -- Memorandum re: Butternut Basin Inc.

The Company's filing contained a proviso that unless \$100,000 of the \$250,000 offering is sold within one year, the purchase price would be refunded to buyers, less underwriting expenses. In addition, individual investors could waive their rights under the undertaking.

Where all or any part of the offering is represented to be on an "all or none" basis, no provision for an escape or waiver clause should be made.

12. Section 15(d) -- Class of Securities; Convertible Securities; Reporting Requirements

January 21, 1963 -- Memorandum re: International Cablevision Corporation

Cablevision's Class A Common Stock, having certain dividend and liquidation preferences, has equal voting rights with Class B Common. The Class B Common is convertible into Class A Common, share for share, "only after \$1.00 per share net after taxes for a full fiscal year is earned on both classes."

The fact that the convertibility is delayed and not immediately available does not change the determination that the two stocks should be considered substantially of the same class for the purposes of Section 15(d). Since the holder of Class B common is unable to determine whether he is entitled to convert into Class A common unless he has available the necessary financial information, there is a corresponding need for the operation of Section 15(d).

13. Rule 14a-3(b) -- Mailing Of Annual Report

January 15, 1963 -- Memorandum re: proxy solicitations

The simultaneous mailing of proxy material, by first class mail, and the annual report, by fourth-class mail, does not comply with Rule 14a-3(b) requiring that the proxy material shall accompany or precede the annual report if the solicitation is made on behalf of management and relates to an annual meeting at which directors are to be elected.

The annual report and proxy material must be mailed the same day by the same class mail, or the annual report, if mailed by other than first class mail, must be mailed early enough so that it would be received prior to the receipt of the proxy material.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 112 December 1 – 31, 1962

1933 ACT

1. Section 2(1) -- Employee Thrift Plan; Investment Contract

December 18, 1962 -- Letter re: Paul Hardeman, Inc.

The company proposes to establish an employee thrift fund whereby the company and eligible employees would contribute to a trust administered by the Bank of America. The Bank as trustee would form a corporation, 100% of the stock of which will be owned as trustee, to purchase equipment, which in turn would be leased to Paul Hardeman, Inc., and other contractors.

The plan contemplates the offer and sale of interests in a “profit sharing agreement” and an “investment contract”.

2. Sections 2(1); 4(1) -- Advertisement; Keogh Bill (H.R. 10) Self-Employment Plans
Section 3(c)(13) of the 1940 Act -- Public Offer

December 12, 1962 -- Memorandum re: Chase Manhattan Bank

The Bank’s anticipated self-employed pension plans pursuant to H.R. 10, which were advertised in New York newspapers, will probably provide money purchase benefits based upon market value, for which new pooled trusts would be established. Half of the trusts would invest in common stock, and the others in fixed income securities. The bank through its many branches would expect to seek to promote participation in the trusts, and as many as 20,000 trust accounts might be created.

It was pointed out that the only exemption that appeared to be available to such trusts was Section 4(1) of the 1933 Act, and that if this exemption were relied upon, there could be no advertising either by the bank or through professional or trade associations. Although there had been no objection raised by the Division in one case where an institutional advertisement referred to the fact that the bank acted as custodian or trustee for H.R. 10 plans, in this instance where 20,000 such trust accounts might be opened through active promotion of the plans by the bank’s branches, it is difficult to reconcile such procedure with the private offering exemption and, therefore, the bank should consider registration of the pooled trusts.

The Division of Corporate Regulation expressed a preliminary view that the Section 3(c)(13) exemption of the 1940 Act would apply though reservations were expressed if the fund is created and operated by some association.

3. Sections 2(1); 3(a)(8) -- Employee Pension Plan; Keogh Bill (H.R. 10) Self Employment Plans

December 18, 1962 -- Memorandum re: American Institute of Accountants

The Institute proposed a Keogh Bill (H.R. 10) plan for self-employed members, which would also be available to their regular employees. The employees would make voluntary contributions, which would be used to purchase an annuity policy. The employer contributions, on behalf of such regular employees would go one-half to purchase a group annuity and one-half to a managed trust for investment securities.

The usual "no action" position was taken with respect to registration in connection with the employee contributions in view of the limited volition available to them as to the investment medium.

The employers' managed fund would apparently require registration.

The group annuity contracts were to constitute money purchase arrangements whereby variable benefits, based on the performance of the insurance company, would be available. It was unclear whether a separate fund would be established or whether the performance would be measured against all of the insurance company's investments or operations. A minimum annuity would be provided based on the total amount paid in plus same interest factor. However, in view of the variable benefits a serious question exists whether an exemption would be available under Section 3(a)(8) of the 1933 Act.

4. Section 2(1) -- Employee Stock Purchase Plan; Interests in Plan Form S-8

December 18, 1962 -- Memorandum re: General Tire & Rubber Company

Under the company's employee stock purchase plan, employees authorize payroll deductions with which the company buys stock on the open market. Brokerage is paid by employees. Books for the plan are kept by the company. The company announces the reopening of the plan periodically. The stock is credited to individual accounts, to 1/10,000 of a share, and dividends are paid to employees, The stock is carried in the name of a nominee, and employees must drop out of the plan in order to get their certificates.

In a registration statement for the stock of the company for the purposes of the plan, there is no need to register plan participations as separate securities. Accordingly Section 15(d) reports of the plan will not be required.

5. Sections 2(3); 2(10); 10; 17(a); 17(b)
Section 14 of the 1934 Act

December 14, 1962 -- Letter re: Newsweek, Inc.

The company contemplates organization of a closed circuit television network whereby individual sets would be leased to organizations with security analysts, such as banks, mutual funds, brokers, etc. Viewers would be limited to security analysts and other employees of the lessee. The programs would be presented, in two parts, by companies pursuant to contracts with Newsweek. The first part would be a factual, informational report concerning the company; the second would be a question and answer session directed at the company officers by security analysts.

The Division commented as follows:

(1) If the proposed programs were presented in the context of a contemplated or pending public offering, they would involve an offer. Although the corporations may contractually commit themselves to avoid such an occurrence, this is no assurance that an illegal offering may not be made.

(2) Pursuant to Section 17(a), the telecaster may, by aiding and abetting any violation, be subject to liabilities for permitting dissemination of untrue or misleading information, or other fraudulent activities.

(3) If the companies should use filed recordings of the programs for showing to their employees, continuous offering problems would be raised in regard to those companies which have employee stock purchase plans. It appears that such companies would have to deliver a final prospectus to their employee-viewers before the showing of such programs.

(4) An analogous problem would exist for those companies subject to Section 14 of the 1934 Act and the Commission's proxy rules.

6. Section 2(11) -- Change of Circumstances; Underwriter
Rule 133

December 4 and 14, 1962 -- Letter and Commission Minute re: Giannini Scientific Corporation; Telemet Corporation; L. I. Chromatel, Inc.

Chromatel, pursuant to a reorganization plan and agreement, sold and transferred substantially all its assets, subject to its liabilities, to Telemet, a wholly-owned subsidiary of Giannini, in exchange for 187,125 shares of Giannini common stock in reliance on Rule 133. The agreement was to be concluded, and the Giannini stock distributed to Chromatel's stockholders, as soon as practicable after January 3, 1962. Chromatel had arranged for sufficient funds to cover liquidation and distribution expenses. However, a controversy developed between Giannini and Chromatel concerning alleged breaches of warranties and representations of Chromatel in the plan, with claims at one point exceeding \$400,000. To analyze these claims and prepare defenses, complex settlement agreements, lengthy documents and memoranda, Chromatel exhausted the funds it had set aside for liquidation expenses. In addition, stockholders had filed objections with the New York Attorney General concerning the long delay in the distribution of the Giannini stock. No final dissolution is possible until Chromatel's lawful corporate obligations are met. To meet these various obligations (totaling \$165,000), Chromatel proposes to sell publicly part of the Giannini stock.

No action position taken, because of the change of circumstances and the lack of a control relationship, as to the sale of a sufficient number of the Giannini shares to enable Chromatel to meet its obligations.

7. Section 3(a)(11) -- Guarantee by Non-Resident

December 14, 1962 -- Letter re: Neighborhood Finance Co., Inc.

The company, a New York corporation which operates exclusively within that state, proposes to offer and sell to New York residents debentures guaranteed by the company's majority capital stock owner, a Pennsylvania corporation.

The offering involves a package consisting of two securities, i.e., the debentures and the guarantee thereof. The guarantee by the Pennsylvania corporation would make unavailable the exemption under Section 3(a)(11).

8. Rules 141; 256(e) -- Amendment; Underwriter; Notification; Finder
Regulation A

December 3, 1962 -- Memorandum re: Hyde Finance Company

The issuer had sold 5,322 shares of a 57,000 share offering at \$5 per share without an underwriter. The offering circular is now being amended to add an underwriter, who will re-allow from his underwriting commission of 50 cents, 45 cents a share to dealers. A finder will also be employed who will receive \$5,000 or one-half of the net profits realized by the underwriter, whichever is greater.

No additional sales should be made without the use of the amended offering circular, which should name the finder as an underwriter. The dealers, however, would not be considered underwriters under the circumstances, considering the amount of the offering price in relation to their discount.

9. Rule 256(b)
Schedule I; (Item 11(a))
Regulation A -- Offering Over Exchange; Profit and Loss Statement

December 11, 1962 -- Memorandum re: Emery Air Freight Corporation

The profit and loss statement of the company's Regulation A offering circular was for nine months only, rather than a two year statement as required by Form 1-A. The company sought to use the nine month statement since two-year profit and loss statements are available in 10-K reports filed with the New York Stock Exchange and the offering was to be made over the Exchange to which the offering circular would be delivered.

The two-year profit and loss statement was required since an offering circular with only a nine months profit and loss statement would be deficient if and when delivered to a buyer.

1934 ACT

10. Rule 15d-21; Form 8-K -- Reports; Employee Thrift Plan

December 7, 1962 -- Letter re: Transcontinental Gas Pipe Line Corporation

The company registered its employee thrift plan and assumed that under Rule 15d-21, Form 8-K reports would not have to be filed in respect to such plan. The company was advised that pursuant to Rule 15d-21, Form 8-K reports on behalf of the plan need not be filed if the company files annual reports relating to and on behalf of the plan. The company, however, is not relieved of its obligation to file any Form 8-K reports required on its own behalf.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 111 November 1 – 30, 1962

1933 ACT

1. Section 2(1) -- Interests; Employee Stock Option Plan; Separate Security
Form S-8

November 27, 1962 -- Memorandum re: Chock Full O’Nuts

The company’s employee stock purchase plan provides for the quarterly sale of its common stock to eligible participating employees. Deductions are made from employees’ salaries, and are held in a non-investment, non-interest-accruing, special checking account with a bank. The company contributes quarterly to the plan. The company, which assumes all expenses for the plan, and the employees can at either’s discretion unilaterally withdraw, and all deductions will be returned to the employee. The plan is administered by a 3-man committee.

The employee participations or interests are not securities and need not be separately registered under Form S-8 in addition to the company’s common stock.

2. Sections 2(2); 3(a)(2); 4(1) -- Security; Keogh Act; Retirement Plans; Trust; Person;
Public Offering.

November 2, 1962 -- Memorandum re: First National City Bank

The bank proposed to create a separate common trust fund pursuant to the Keogh Act (H.R. 10) which would be irrevocable, unassignable, and created solely to provide retirement protection for self employed persons. The bank contended such trust was a true trust within the last sentence of Section 2(2) and, therefore, not a “person” for the purposes of the 1933 Act. The bank also contended that participations in the trust would be exempt pursuant to Section 3(a)(2). The bank would not promote the sale of the participations, but would make the trust available to customers who inquired as to the availability of such a plan. The trust contains sufficient elements of a business enterprise to regard participations in the trust as securities, and is similar to participations in investment trusts. The exemption of Section 3(a)(2) refers to the bank’s own securities, and would not be available to securities of the trust. Making available to inquiring customers information about this plan would not be objectionable, but concern was

expressed if the bank would circularize such information to its depositors, or offer its facilities to professional associations, which would circularize the information to its members.

3. Sections 2(3); 4(1) -- Pledge; Preliminary Negotiations with Underwriter; Auction.

October 31, 1962 -- Letter re: Commerce Insurance Company

A partnership (the lender) received 80,000 shares of common stock of Commerce as collateral to secure a loan. The borrower defaulted, and under a power of sale contained in the promissory notes, the stock was put up for sale. Less than 5 persons were invited to bid for the stock. The lender bid, and purchased the stock pursuant to an investment letter.

In view of the pledge arrangements under which the partnership originally acquired the stock, and the transfer of the stock on default, the Division was not prepared to state at this stage that an exemption under Section 4(1) of the Act would be available. However, attention was directed to the possible application of the provisions of Section 2(3) with respect to preliminary negotiations or agreements with underwriters.

4. Section 3(a)(3) -- Current Transactions

November 9, 1962 -- Letter re: The City of Montreal

The City of Montreal, in order to meet current operational requirements, has established a Working Capital Fund which is empowered to issue and sell treasury bills, notes, or other instruments in face amounts not exceeding \$3,000,000 in weekly denominations of \$100,000 with a maturity date of not more than 184 days. The City's Executive Committee administers the Fund, and is authorized to make loans to other city departments for all purposes for which the city is authorized to borrow on a long term basis.

The exemption pursuant to Section 3(a)(3) is designed to cover short term commercial paper available for discount at a Federal Reserve Bank. The Fund's treasury bills would not be so discountable and are not commercial paper. In addition, certain of the Fund's anticipated uses are not within the exemption's requirements of "current transactions."

5. Section 4(1) -- Foreign Offering Exclusively Abroad; Foreign Offering in the United States.

November 27, 1962 -- Letter re: Bache & Co. and Bowling Centres

The stock of Bowling Centres, a foreign corporation, was offered in Australia. Bache & Co. bought part of the unsold allotment from one of the Australian underwriters and sold such shares to about 30 of its customers in the United States. It relied on Section 4(1) for an exemption.

The Section 4(1) exemption for offerings made exclusively abroad is not available. The offering is both domestic and foreign, and the smaller offering in the United States is but one segment of the entire offering and cannot be separated from the larger foreign offering. While only that part of the offering that is made by a foreign corporation in the United States must be registered, this does not alter the basic tenet that Bache was participating in the public distribution of securities.

6. Sections 6, 7, 8 -- “Red Herrings” Prospectus; Commission

November 27, 1962 -- Minute re: Columbia Realty Trust

The company, after distributing two seriously deficient “red herring” prospectuses, had now adequately amended such prospectus. The Commission approved the company’s proposal that instead of sending another red herring, the registration statement be declared effective and the effective prospectus be sent to all persons who had received earlier red herrings. The final prospectus would be accompanied by a covering letter pointing out the major revisions, and stating that no orders would be accepted for five days from the date of the mailing.

7. Rule 133

Section 306 of Trust Indenture Act of 1939

Rule 12d 1-1 of 1934 Act -- Same Class; Qualification under 1939 Act Before Stockholder’s Vote.

November 19, 1962 -- Memorandum re: Litton Industries and Emitron Corporation

Emitron, a majority owned subsidiary of Emerson Radio and Television Company, proposes to sell its assets to Litton in exchange for stock and some \$3,000,000 of convertible debentures of Litton.

Rule 133 would be available for the distribution of Litton stock and debentures to Emitron stockholders. However, even though Emitron would hold the debentures and not distribute them until some future date to its stockholders, the indenture should be qualified under the Trust Indenture Act before the stockholders’ vote on the sale of assets since Rule 133 is not applicable to the Trust Indenture Act.

Litton has now outstanding and listed on the New York Stock Exchange about \$50,000,000 of convertible debentures which are similar in all respects to the proposed new debenture issue although a second indenture will be necessary since the first is not

open-end. Since the two issues of debentures are of the same class and pari passu, Rule 12d 1-1 under the 1934 Act would be applicable and the 1% provision of Rule 133 would be applicable to the two issues as one class.

8. Regulation A -- Rescission Offer; Cash Refund

November 14, 16 and 19, 1962 -- Memoranda and Commission Minutes, November 19, and December 3 re: Szabo Foods and A. G. Becker and Company, Inc.

A broker-dealer sold shares in violation of Section 5 amounting to \$187,500 at \$14-16 per share. The current market price is around \$6. Negotiations between the issuer and broker-dealer that the issuer pay 50% of the broker-dealer's uninsured portion of its computed liability failed. The issuer now threatens not to complete a Regulation A filing to cover an offer of rescission by the broker-dealer. Accordingly, the broker-dealer proposes sending letters to purchasers offering to make such purchasers whole by a direct cash refund. The cash refund would be the difference between the price the purchasers paid for the stock and its present market value and/or the price at which such purchasers may have resold it, plus 6% interest. The Regulation A filing will be withdrawn. The Commission approved the no action position. 3

9. Forms S-1; S-8

Regulation A -- Sale by Trustee

November 29, 1962 -- Letter re: American Motors Corporation

The company's employee Progress Sharing Plan receives company common stock, which the Plan's trustee credits to the individual accounts of participating employees. Under certain conditions, the employees may withdraw stock, or alternatively request a cash payment.

The Division earlier informed the company that its issuance of stock to the plan did not have to be registered but that registration may be required when the trustee sells stock to the public to make required cash payments.

The Division concluded that such public sales should be registered on Form S-1, and not Form S-8 (adopted for offering to employees). No objection raised if the Company registered sufficient shares to cover the approximated two-year need of the trustee. Alternatively, the Regulation A exemption may be available.

1934 ACT

10. Section 14

Regulation 14 -- Share Owner; Management Visits

November 13, 1962 -- Letter re: American Telephone and Telegraph Co.

AT&T has in the past conducted some 300,000 "share owner-management visits" where company interviewers solicit the views of the company's share owners. Heretofore, such interviews have been suspended for the three months prior to the holding of the company's annual meeting. The company proposes to continue the interviews until immediately prior to the mailing of the proxy material (approximately 5 weeks before the annual meeting) except in instances where management has made public announcements in advance of the mailing relative to any special matter to be submitted to the stockholders. Interviewers have no knowledge of the proxy material and are expressly instructed in the interview procedure to be followed so as not to violate the Commission's proxy rules.

If the interviewers continue to observe such instructions, the Division has no objection to the company's program, but the company was requested to advise the Division of any new matters concerning such interviews which may justify reconsideration of this position.

11. Section 15(d)(1-3) -- Classes of Securities; Aggregate Price; Registered Securities.

November 20, 1962 -- Letter re: K-S Funds, Inc.

The company registered several "quarterly programs," not exceeding an aggregate of \$4,000,000, which will be deregistered at the close of each quarterly period. Counsel contended that each quarterly program was a separate class of securities which will never have more than \$1,000,000 outstanding and, therefore, the reporting suspension of Section 15(d)(3) would be applicable.

The Division and the General Counsel concluded the securities were of the same class since the participations in each quarterly program were substantially similar and offered substantially similar rights and privileges (even though different leases were involved and separate accounts were kept). Moreover, even if they were considered separate classes, the undertaking became operative since the aggregate offering price of all securities covered by this registration statement exceeded \$2,000,000.

12. Section 15(d) -- Reporting Requirements; Computation of Amount Outstanding; Shares to be Issued at Different Prices.

October 3, 1962 Commission Minute re: Equitable Credit Discount Company

A registration statement was filed for a proposed offering of \$1,000,000 of convertible debentures, 333,333 shares to cover conversions, and 50,000 shares of common stock to be offered in units, each consisting of \$500 principal amount of debentures and 25 shares

of common. There are also outstanding 400,000 common shares. The offering price was \$550 per unit. Debentures are initially convertible into common immediately at \$3 per share and thereafter at prices up to \$7.50 per share. Counsel argued that a \$2 value assigned the common in the debenture offering should be used in calculating the value of the common stock, and, therefore, the reporting undertaking was not applicable. Counsel was advised the \$2 price is questionable for any part of the offering since it cannot be assumed that the debentures would sell at par without the stock. Accordingly, utilizing the initial conversion price of \$3 the undertaking becomes operative.

The Commission agreed that the undertaking was operative but expressed disagreement with the staff's suggestions that alternatively, the value of the common stock outstanding and to be offered might be based upon the maximum conversion price of \$7.50 per share.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 110 October 1 – 31, 1962

1933 ACT

1. Section 2(1) -- Security; Solicitation of Voluntary Contributions by Stockholders' Protective Committee; Attempt to Locate Assets; Reactivate the Company; Investment Contract

October 9, 1962 -- Legal Memorandum re: Allied Colorado Enterprise Company, Inc.

A stockholders' protective committee is seeking voluntary pro-rata stockholder contributions to finance an attempt to locate assets, hire legal counsel and accountants to inspect corporate books, and possibly reactivate the company. Contributions amounting to 1% of shareholders' investment are requested.

The determination of whether the solicitation constitutes an offering of a security requiring registration turns on the committee's purposes. If the purpose is solely to exercise the shareholder's individual rights to examine the company's books on a joint basis then probably no security is involved; but if the purpose is to reactivate the company, or to resume corporate activities to salvage or enhance the shareholder's original investment, then it would appear that an offering of a security may be involved.

2. Sections 2(3); 12(1); 13 -- Liabilities under Section 12(1); Installment Sale; Statute of Limitations; Continuing Offer.

October 9, 1962 -- Letter re: Palmetto Pulp & Paper Corporation

The company continued to seek collection of installment payments due on stock subscriptions sold through an offering which violated Section 5. Registration of such stock was effected after such installment contracts had been entered into. Question was raised whether a form letter used by the company to solicit installment payments properly stated that the statute of limitations had run.

The question of when the statute of limitations begins to run for installment sales of securities has not been judicially resolved. It depends on whether the definition of "sale" in Section 2(3) refers to the original subscription agreement (viewing the completed transaction as one "sale") or to each installment payment (viewing them as separate "sales" and, therefore, separate violations). Two U. S. District Courts in criminal actions

have held that continued collection of installment payments on subscriptions already sold would constitute further violations of the statute, and a continuing offer to sell securities. Under either interpretation, however, a party seeking affirmative relief under Section 12 would have to show payments made within the last year.

There is the possibility that subscribers may defensively assert the Section 5 violation in an action instituted by the company to recover the subscription price. Federal courts have not so decided, although there is some state authority under Blue Sky statutes.

Because the validity of the defense of illegality under Federal laws has not yet been pronounced by the courts, the company's omission of any discussion of such potential defense in its letter to subscribers is not objectionable. (See also Memorandum of General Counsel, October 3, 1962, which discusses Sections 5, 12 and 17 liabilities.)

3. Sections 2(11); 4(1) -- Underwriter; Sales by a Trust; Resignation of Controlling Person as Co-Trustee; Control

October 18, 1962 -- Letter re: Block Drug Company, Inc.

Sutro Brothers proposed to purchase company stock from a trust, created by a Block sister, which owned one-third of the company's stock. The other two-thirds was held by two Block brothers, one of whom was co-trustee of the trust. The co-trustee was seeking to purchase the stock himself, and refused to resign as trustee or permit the sale to Sutro, except on certain conditions, which he dictated. Sutro asserted that if the co-trustee were to resign, it could resell the shares to the public without registration.

A "no action" letter covering the proposed public sale was refused. Even though the co-trustee could resign to enable the trust to sell the stock without registration, he would be dictating the time, method and price of the disposition to the same extent as if he had remained a trustee.

4. Section 3(a)(10) -- Merger; Cash Transaction.

October 24, 1962 -- Memorandum re: Union Bank Ins. Co., Jefferson Life and Casualty Co., and General Ins. Investment Co.

Union sought to acquire Jefferson, a privately held insurance company, but did not have sufficient cash to make the purchase. General, which controls Union, therefore purchased for cash Jefferson's stock. It then would exchange such stock with Union for Union's preferred. This transaction was approved by two state insurance commissions, and General relied on the Section 3(a)(10) exemption. A stockholder of Union filed suit attacking the transaction because General allegedly deprived Union of a corporate opportunity. Because of the pending suit, General proposed a different plan whereby it would offer Union's preferred on a pro-rata basis to Union's stockholders for cash.

General continued to rely on a Section 3(a)(10) exemption considering the revision as an amendment to the original plan since it intended to get the approval of the two state commissions after hearings, etc.

The amended proposal was in reality an issuer's transaction for cash, and not within the exemption.

5. Sections 3(a)(3); 5 -- Employee Plans; Exemption from Registration; Purchase of Employers' Exempt Short-Term Obligations.

October 12, 1962 -- Memorandum re: American Investment Co. of Illinois

Employees of both the company and its subsidiaries voluntarily participate in a retirement plan administered by a trustee. The plan invested in six month company notes, the proceeds of which were loaned to subsidiaries in return for demand notes. The subsidiaries used the parent's loans in the operation of their consumer finance business. Registration of the parent's securities was not required by reason of Section 3(a)(3). Registration of a plan for the purchase of exempt securities would also not be required. This conclusion was distinguished from the Beneficial Finance Co. case where employee thrift accounts constituted demand indebtedness of the employer which were not exempt under Section 3(a)(3).

6. Section 3(a)(3) -- Exemption for Short Term Notes; Application of Current Transactions Test.

October 15, 1962 -- Letter re: Allied Concord Financial Corporation

The company is engaged in a wide variety of financing operations, which result in its accepting in some cases commercial paper having maturities of as long as two years in length. To finance its operations the company proposes to issue short term notes with maturities of up to nine months. It will be impossible to segregate the proceeds so as to identify the specific transactions in which they will be used.

No action was recommended if the securities were issued without registration where the amount of notes outstanding at any one time does not exceed the aggregate amount of financing which meets the "current transactions" standard of Section 3(a)(3) as discussed in Securities Act Release 4412.

7. Section 3(a)(4) -- Exemption for Religious Organization; Public Participation in Profits; Use of Funds to Make Loans.

October 31, 1962 -- Memorandum re: Foundation of Our Lady of Mercy

The foundation started in Argentina by the Roman Catholic Church proposes to sell bonds in this country and invest the proceeds in preferred stock of Argentine companies. The Argentine companies would use the funds to modernize and strengthen the country's economy by building new plants with the money which could be borrowed at lower cost from the foundation. Any dividends received in excess of amortization and interest expense would be shared by the bondholders and the foundation.

No exemption from registration would appear to be available under Section 3(a)(4) since one of the primary purposes of the trust is money lending, an activity not complying with the requirement that operation and organization be exclusively for religious purposes. Further, the sharing of excess income with the bondholder would also destroy the exemption.

8. Section 5; 8(a) -- Gun Jumping; Denial of Acceleration; Speeches before Society of Securities Analysts.

October 12, 1962 -- Letters re: American Hospital Supply Corporation

A registration statement will be filed in the near future covering a secondary distribution of the company's stock. After it was known that a registration statement would be filed, an officer of the company arranged early in September to speak before the Boston and Houston Securities Analysts in January and February. The contents of the proposed speeches will be similar to those of past speeches made to analysts by company officers.

The scheduled appearance of the officer before the analysts would present serious Section 5 problems and may jeopardize the timing of the effectiveness of the registration statement to be filed. It was suggested that the appearances be put off until the secondary distribution has been completed.

9. Section 5 -- Employees Thrift Plan; Exempt Securities

October 4, 1962 -- Memorandum re: Tasty Bread Company

The company proposed an employee thrift plan whereby employee contributions would be invested in U. S. Bonds, while the company contributions would be used to purchase its stock in the open market.

If no part of the employees' contributions is used to purchase company stock, registration is not required, but if employees had the option to purchase company securities or U. S. Bonds, registration would be necessary.

10. Section 304(a) of the 1939 Act
Rule 133 -- Warrants

October 10, 1962 -- Memorandum re: Maryland Credit Finance Company and Oxford Finance Company

Maryland and Oxford, both of which have recently filed registration statements, propose to merge, with Oxford the surviving company. Maryland has outstanding preferred stock which is convertible into debentures. The merger terms provide for an exchange of stock plus perpetual warrants to purchase Oxford's common.

The issuance of warrants and the stock may be made under Rule 133, but prior to the time the warrants are exercised, a registration statement must be effective for the issuance of the common stock. The 1939 Act applies to issuance of debentures since Rule 133 does not afford an exception therefrom, unless the indenture limits the amount issuable to not in excess of one million dollars.

11. Rule 12a-5 - 1934 Act
Rule 236 - 1933 Act -- Fractional Shares; Merger.

October 25, 1962 -- Memorandum re: Heileman Brewing Company

Heileman, an unlisted company, owns 93% of a listed subsidiary, with which it will merge. The merged company will assume Heileman's name.

Since there will be a temporary trading exemption for the new securities pursuant to Rule 12a-5, there was no objection under the particular facts, to the merged company's use of Rule 236 for the sale of fractional shares resulting from the merger, even though one of the rule's requirements is that the company be a reporting company.

12. Rule 426(b) -- Effective Date; Stabilization Purchases

October 24, 1962 -- Memorandum re: California Financial Corporation

The company questioned whether the term "date" in Rule 426(b) concerning the disclosures required in the prospectus as to its stabilization purchases meant day or hour of the effective date.

Material stabilization transactions made prior to the hour of the effective date should be disclosed in the prospectus.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 109 September 1 – 31, 1962

1933 ACT

1. Sections 2(1); 2(3) -- Offer to Sell; Options for Future Purchase of Securities

September 4, 1962 -- Commission Minute re: Model Countrysides, Inc.

The company wishes to circulate recordings which it will use to interest persons in participating in its development plans to be carried out in 1964. A letter agreement has been circulated, in connection with the recording, which provides that a signer will have an opportunity to participate in the financing of the company which is to take place in 1964. Signers pay \$10 which will be held in escrow as a firm indication of interest. The recording describes the proposed operations and possible rewards in the most glowing terms without any discussion of the disadvantages of the enterprise.

The agreement is a security within the meaning of Section 2(1) requiring registration, and the use of the recording at this time to generate indications of interest is a step in the offering of a security.

2. Section 2(3) -- Sale; Dividend Distribution of Shares of Recently Purchased Company
Rule 133

September 7, 1962 -- Telegram re: Kennesaw Life Insurance Company

The company purchased another company in an exchange of stock using stock of a wholly-owned subsidiary in payment therefor. The former parent company now proposes to distribute the shares as a dividend to its own shareholders.

No registration under the Securities Act of 1933 will be necessary since no sale within the meaning of Section 2(3) is involved, if the shareholders of the parent company vote on the transaction as members of the corporation, rather than as individuals and, if the vote is binding on all shareholders.

3. Sections 2(11); 4(1) -- Control Stock
Rule 154
Rule 15c3-1 of the 1934 Act

September 11, 1962 -- Memorandum re: Liberty Securities Corporation

The company, a brokerage firm, acquired in February, 1962 14,136 shares of stock of Liberty Real Estate Trust from a person in a control relationship to the trust, which is under common control with the company. In addition, the president and chairman of the board of Mid-American Corporation propose to lend the company 10,000 shares of Mid-American's stock in return for notes. Such shares were acquired in September, 1959.

Neither of the blocks of stock can be included in the calculation of net capital since they are not readily marketable within the terms of Rule 15c3-1. Neither the shares of the trust nor of Mid-American could be publicly offered without registration. Rule 154 would be unavailable to the company.

While normally the rule would be available to the president because of the length of time the shares have been held, the Company borrowing the shares may not rely upon Rule 154.

Even if Rule 154 were available, a question arises as to whether sales within such limitations would constitute a readily marketable security.

4. Section 3(a)(3) -- Exemption for Short Term Notes; Requirement of Federal Reserve Discountability

September 26, 1962 -- Letter re: City of Montreal

The City proposes to issue and sell treasury notes and other short term obligations, having no more than \$30,000,000 outstanding at one time. The sale of notes will be supervised by an executive committee of the City, which will make loans not exceeding one year in duration, to other units of city government.

The legislative history of the Securities Act indicates Section 3(a)(3) is intended to exempt from registration the issuance of short terms notes of the type discountable at Federal Reserve banks. Since the Federal Reserve indicates that these notes are not so discountable, they do not qualify for the registration exemption.

5. Section 3(a)(4) -- Fraternal Exemption; Women's Club;
Rule 234

September 7, 1962 -- Letter re: Women's City Club of Boston

The club proposes to mortgage its property, issuing \$20,000 in notes. The property consists of two physically joined houses, which are treated as separate properties for tax purposes. Certain of the club activities are social in nature.

Because of its social activities, the club would not appear to meet the test of Section 3(a)(4) that it be a person “organized and operated exclusively” for an enumerated purpose. No objection will be raised for Rule 234 purposes if the two pieces of property are treated as a single parcel of land.

6. Section 3(a)(4) -- Charitable Exemption; Hospitals offering 8% Interest Bonds; Substantial Non-Charitable Purpose.

September 20, 1962 -- Legal Memorandum re: Children’s Hospital

The hospital was organized by a group of promoters who took large sums off the top of the offering as underwriting fees. The bonds were offered throughout the country, with high interest yield and were not registered in reliance on Section 3(a)(4).

Where the organization is organized and operated for a substantial noncharitable purpose, the Section 3(a)(4) exemption from registration is probably unavailable. Where facts indicate that a substantial non-complying purpose is present in the organization and operation of the institution, the issuer has the burden of showing that it is entitled to the exemption.

7. Sections 5; 8(a) -- Gun-Jumping; Denial of Acceleration; Use of Public Relations Experts; Brokerage House Literature.

September 17, 1962 -- Commission Minute re: Maremont Corporation

The company filed a registration statement on September 10 covering a proposed offering of 120,000 shares. The proceeds are to be used to retire loans incurred in making purchases of stock of Gabriel Company, from whose shareholders the company has solicited tenders.

Strauss, Blosser and Kuhn, Loeb agreed on September 7, to be joint firm commitment underwriters of the issue.

The company hired a public relations expert in May who arranged for the August release of news on the company’s financial and business condition with projections of earnings. Straus, Blosser also released a favorable report on the company on August 27, but denies being called in on the underwriting until August 31 at which time discussions were had with a firm partner who was also a company director. This is alleged to be the first date on which there was a hoard level discussion.

Maremont was informed that its request for summary treatment and early acceleration of the registration statement would not be favorably received.

8. Rule 133 -- Majority Shares held by a Controlling Shareholder; Binding Vote by Majority holder.

September 21, 1962 -- Telegram re: Goldfield Consolidated Mines

The company holds 86% of the stock of American Chrome Corp. and 250 shareholders hold the remaining shares. A majority vote is required for approval of the proposed merger of the companies.

The fact that a single shareholder may hold sufficient shares of American Chrome to authorize the merger, does not eliminate for Rule 133 purposes, the element of corporate action which binds non-assenting stockholders and therefore Rule 133 is applicable.

9. Rules 133; 408 -- Exchanges of Voting Trust Certificates; No sale for Underlying Forms C-3, F-1 -- Shares only.

September 4, 1962 Commission Minute re: Pancostal Petroleum Co.

Outstanding shares of the company are held in New Jersey voting trust. Prior to the expiration of its voting trust, the company proposed to reorganize by moving its situs of incorporation from Venezuela to Bermuda and by issuing new shares under a newly created voting trust. The company is one of the Buckley group which has followed this pattern of operations for a number of years, and which has thus avoided many of the disclosure requirements of the 1933 and 1934 Acts.

The company and the voting trust do not have to comply with the proxy rules by virtue of Rule 3a 12-3 and the disclosures made in the trust proxy were minimal.

There is serious question whether Rule 133 is available in a situation where there are four issuers involved, namely the old company, the old voting trust, the new company, and the new voting trust. Accordingly it was determined that the voting trust certificates must be registered on Form F-1 and will be subject to the requirements of Rule 408 calling for disclosure of all relevant information, which in this situation requires the inclusion of pertinent information concerning the underlying company's operations. Form C-3 is not the appropriate form since American Depository Receipts are not involved.

10. Regulation A -- Escrowed Securities; Reseles.
Rule 253

September 13, 1962 Memorandum re: Electro-Temp Systems, Inc.

Two underwriters made an offering of the company's stock in which only \$250 of the company's securities were sold. The underwriters received 1,500 shares of stock for \$150

and no new underwriters will undertake the offering because of the existence of the stock. The company president and principal stockholder wishes to repurchase the underwriter's stock for \$500, and will leave the shares in escrow until the escrow expires.

The sale of stock subject to escrow can be completed without affecting the escrow agreement filed pursuant to Rule 253.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 108 August 1 – 31, 1962

1933 ACT

1. Sections 2(1); 2(4); 6(a) -- Security; General Partner's Guarantees; Required Signatures to Pre-Formation Limited Partnership Offerings.

August 9, 1962 -- Commission Minute re: The I-M Company

The company filed a registration statement covering \$320,000 of pre-formation limited partnership interests. The partnership is to be formed when all the interests have been sold, but if all the interests are not sold, the money will be refunded. However, the money could be used prior to formation of the partnership, and if not formed, the general partners-to-be would be personally liable for the refund.

The persons offering the pre-formation interests should sign the registration statement as individuals since they are issuers of the pre-formation interests. The liability of the general partners to return the subscription is an offering of another security and in the future, registration of such an interest should be required. Although individual financial statements were not required in this case, they may be required in future offerings where appropriate.

2. Sections 2(1); 3(a)(8) -- Evidence of Indebtedness; Guarantee; Investment Contract; Insurance.

August 27, 1962 -- Memorandum re: Insurance Plans for Mutual Funds

An insurance company has been organized to offer purchasers of mutual funds shares the opportunity to buy policies providing that upon any redemption of shares occurring ten years from purchase date, the insurance company would pay the shareholder any deficiency between the redemption price and the shareholder's cost for a consideration of 5% of the purchase price of the shares.

The staff took the position that the proposed "insurance" may constitute a "security" since a "guarantee of a security" is itself a security subject to registration. Further, since the insurance company is a Bermuda company not regulated by a state commission, it would not be exempt under Section 3(a)(8). Finally, the insurance company may be an investment company required to register under the Investment Company Act.

3. Section 2(1) -- Security; Contract for Rental Trailer Operations; Investment Contract.

August 2, 1962 -- Memorandum re: Sun Sales Corporation

The company intends to offer trailer owners lease agreements under which the company will receive 30% of the trailer rental fees as a management fee, 35% of the rental will be given to the independent agency which rents the equipment, and 35% will go to the owner. A fee of 15% will be added to rental costs for repairs, insurance and other costs.

The equipment owner's management contract would be an "investment contract" within the meaning of Section 2(1) since the trailer owner is surrendering value in the form of the use of his trailer in return for the right to share in the revenues produced from such a business venture.

4. Section 2(1) -- Investment Contract; Security; Offerings of Full 7/8's Gas Oil Leases.

August 8, 1962 -- Memorandum re: National Petroleum Lease Corporation

The company purchases large blocks of state oil and gas 1-eases in New Mexico at auction and then offers these leases for resale in minimum of 40 acre lots, at \$10 an acre less a discount. The sales literature is pitched to recent oil discoveries in the State, with predictions that oil fields will extend to the area for sale and suggests that all the purchaser has to do is to wait until the major oil companies take over their leases and develop their property for them. The company represents it intends to hold a number of leases itself and has been asked to conduct a "magnetometer" survey by an oil company. It makes no service contracts, but represents it will aid purchasers contacted by an oil company.

An investment contract is involved under the standards of the Joiner and Howey cases~ The Court in Roe v. U. S., 287 F2d, 435, followed similar reasoning in a case factually similar to this one and held that a security was involved.

5. Section 2(1) -- Security; Sale of Land; Inclusion of Maintenance Contract.

August 14, 1962 -- Letter re: British Honduran Orange Groves

The issuer proposes to sell orange groves to small investors and to offer at the same time a maintenance contract.

If land alone is being offered registration under the Securities Act is not necessary. However, if a maintenance contract or other feature is included the offering will

constitute the offer of a security, either an investment contract or a profit sharing agreement, requiring registration.

6. Section 2(1) -- Security; Contracts for Advisory Services Performed in Purchases of Oil Leases.

August 7, 1962 -- Memorandum re: Bryan Bell

Bell operates a service through which his subscribers participate in monthly government auctions of oil and gas leases. For an advisory fee of \$10 per application for participation in the auction, Bell selects sites for purchase, prepares applications, gives advice on legal and technical matters, and assists in making disposition of leases acquired in the sale by successful bidders. Bell acquires no interests in the leases. Each subscriber must participate in all selected tracts each month.

The offering involves an "investment contract" which is subject to the registration requirement of the Securities Act.

7. Sections 2(11); 5 -- Underwriter; Registration Requirements; Charity Recipient of Gift from Control Person; Gift.

August 8, 1962 -- Letter to: Commerce Clearing House, Inc.

The question raised was under what circumstances would a donee who makes a public distribution of stock received from a controlling donor be considered an underwriter for such donor. The answer may be given only after consideration of all the relevant facts including the intents and purposes of the donor, any understandings or agreements between the donor and donee, and the needs and policies of the donee. For example, in one case the gift of control stock to a university with the understanding that the stock would be sold publicly and the proceeds used to finance the construction of a building bearing the donor's name, was regarded as sufficient to constitute the donee an underwriter when it distributed the stock. So too, the donee may be deemed an underwriter when it accepts securities as a gift with the intention of distributing them to provide funds for current operating expenses. As a general rule, registration may be required when a gift of securities is made by a control person under circumstances in which a redistribution to the public by the donee may reasonably be anticipated. The form of the gift as a single transaction or installment arrangement, while part of the factual situation, would not be conclusive.

8. Sections 3(a)(9); 3(a)(11) -- Intrastate Exemption; Availability for Convertible Securities.

August 14, 1962 -- Teletype re: Detroit Branch Office

An offering of debentures immediately convertible into common shares without restricting conversions to residents is not exempt under Section 3(a)(11). That exemption would be available if the conversion were to take place at a date sufficiently remote so that the issuance of the stock could not be considered part of the offering of the debentures.

9. Sections 4(1); 8(c) -- Integration with Registered Offering; Post-Effective Amendment; Change in Control.

August 8, 1962 -- Memorandum re: Perfect Photo, Inc.

A control person is now offering 150,000 shares under an effective registration statement. In addition, he owns 300,000 shares which are unregistered and which a small group of sophisticated persons, including officers and directors, wish to purchase. If the transaction is effectuated, there will be a change in control.

No registration will be necessary for the private offering since the two offerings need not be integrated. When the negotiations develop so that a sale appears likely, the current offering should cease until a sticker to the prospectus covering the facts of the proposed change in control is filed and reviewed.

10. Section 5 -- Required Registration; Effect of Regulation A Suspension Order on Trading.
Regulation A
Rule 261

August 21, 1962 -- Letters re: Measurements Spectrum, Inc.

Two brokers who wrote puts and straddles on stock of the company assert that they have no obligation to make deliveries since prior to the completion of the contract, the Commission suspended the Regulation A exemption of the company.

A suspension does not affect the rights of individuals to trade in outstanding shares even though there is a suspended Regulation A filing. Shares subject to the registration requirements of the Securities Act of 1933 may not, of course, be delivered thereunder.

11. Sections 5; 6 -- Effective Registration; Repurchased and Reissued Shares.

August 13, 1962 -- Memorandum re: First Mortgage Investors

The company has a registration statement in effect which covers shares to be utilized in the company's dividend reinvestment plan. The company seeks to use shares purchased on the open market to meet the plan obligations since the shares are selling at a discount.

Although such reacquired shares could be used under the present registration statement, the total number of shares registered could not be increased. Details of the repurchase plan should be included on prospectus sticker.

12. Section 6 -- Required Signatures; Sale of Limited Partnership Interests; Sale and Leaseback Arrangements.

August 30, 1962 Commission Minute re: Stratbridge Apartments Associates

Stratbridge filed a registration statement covering limited partnership interests. The Tenney Corporation has sold certain of its properties to Stratbridge and another limited partnership and has leased back the properties. The leases provide for participation by Tenney in the excess proceeds of any mortgage refinancing. The success of the limited partnership will depend to a large degree on the managerial abilities, prior experience and fiscal responsibility of Tenney, the lessee. Because of the relationship of Tenney to the proposed offering of partnership interests and since it appears that Stratbridge is also offering participations in the management abilities of Tenney in the nature of investment contracts, Tenney should sign the registration statement of the limited partnerships as co-registrant.

13. Section 14 -- Legal Effect of Waivers; Proxy Contains Liability Waiver.

August 21, 1962 -- Conference Memorandum re: Southern Land, Timber & Pulp Corporation

A form of proxy soliciting shareholders' assents to a merger provided that individual shareholders shall waive their Section 12(1) and (2) rights in connection with a prior offering in consideration for waivers of the other shareholders.

Section 14 of the Securities Act is not applicable to the waiver since it applies to anticipatory waivers only and not to waivers of matured rights.

14. Rule 133 -- Merger; Effect of Purchase of Options an Exemption.

August 8, 1962 -- Telegram re: Perpetual Security Life Insurance Company

The company is proposing to effect a merger with another company which has outstanding options for the purchase of its common stock. A statutory hearing of fairness will be held to consider the merger, after which the company's stock will be issued in

exchange for the stock of the other company. Final treatment of the options has not been settled.

The merger will be exempt from the registration requirements except for any shares of the company's stock underlying exchange options which will be sold for cash on exercise.

15. Rule 133 -- Merger; Commencement Only After Shareholder Vote; When-Issued Trading.
Section 5

August 2, 1962 -- Memorandum re: American Metal Climax Corp.

Two companies are being merged into the company and the shareholders have received proxy material to vote on the Rule 133 merger, under which new preferred stock will be issued. A registration statement is being filed on Form S-14 for the controlling shareholders.

When-issued trading in the new preferred may not begin until the stockholders have approved the merger. The only stock that can be traded until effectiveness of the registration statement is that of non-affiliates, since trading in the shares of affiliates before effectiveness would constitute gun-jumping.

16. Rules 154; 155 -- Recapitalizations; Calculations.

August 15, 1962 -- Memorandum re: Duro Pen Corporation

The company is recapitalizing its common stock into Class A and B shares. The B shares will receive smaller dividends than the A shares into which they will ultimately be convertible.

Controlling stockholders who have long held the common will not be prejudiced by the recapitalization, since the percentage provisions of Rule 154 will be available to them upon conversion into Class A shares. Rule 155 was not designed to cover transactions of this nature.

17. Rule 236 -- Registration of Sales of Fractional Shares; Dividend Distributions of Controlled Corporations Securities.

August 30, 1962 -- Memorandum re: Electronics Capital Corporation

The company, a registered SBIC, intends to distribute to its shareholders as a dividend securities of one of its portfolio companies. Fractional shares, however, are to be sold and the proceeds to be paid to shareholders.

Although the Rule 236 exemption from registration expressly applies to fractional securities of the issuer sold to raise cash for dividend purposes, the sale of portfolio securities here proposed comes within both the spirit and intent of the rule and no action will be recommended, if the sales are made in compliance with the rule.

1934 ACT

18. Section 16(a) -- Ownership Reports; Indirect Beneficial Ownership; Control.

August 10, 1962 -- Letter re: Philip Hill Investment Trust Limited

The company reported ownership of 5 million of the 32 million shares of Webb and Knapp and filed Form 4 ownership reports covering its more than 10% interest. In April 1962 the company sold half of its holdings to another corporation, in which it holds 16% of the stock and is the second largest shareholder. In addition, the company chairman is a director of both corporations holding Webb and Knapp stock, as is another of the purchaser's directors.

The company is obligated to continue to file Form 4 reports since it must be considered an "indirect beneficial owner" within the terms of Section 16(a) of the stock held by the purchaser, because of control resulting from its interlocking directorates and shareholdings in the purchaser. (See legal memo of 1/10/62 re: Philip Hill Trust).

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 107 July 1 – 31, 1962

1933 ACT

1. Section 2(1); 2(3); 5(b); 10(a)(3) -- Registration of Additional Shares to Be Received in Future Depending on Earnings; Transferable Right a Security; Use of Current Prospectus on Future Delivery.

July 12, 1962 -- Letter re: Genesco, Inc.

Under the terms of a proposed exchange agreement in which the company will acquire Flagg-Utica Corporation, 35 shares of common stock will be delivered for each 100 shares of Flagg. In 1965, the exchange agreement, additional shares may be delivered to Flagg shareholders depending upon the three-year average of Flagg earnings. The company argues that additional shares which may be issued need not be registered as no sale would be involved.

The maximum number of shares which may be delivered under the contract should be registered. Furthermore, if there is to be issued to Flagg shareholders a transferable right to receive deferred delivery of shares, such right may comprise a separate security within Section 2(1) which should be registered in the same registration statement. The prospectus should be kept current since Section 5(b) requires that a prospectus containing current information accompany the delivery of any shares.

2. Section 2(1) -- Security; Sales of Interest in Orange Groves in Foreign Country.

July 2, 1962 -- Letter re: Free Port Mercantile & Development Ltd.

The company is selling in the United States orange groves of 5 to 20-acre tracts located in British Honduras. In conjunction with these sales, the public has been offered the opportunity to join a cooperative growers association, which the company recommends to the public as an independent firm and the best qualified company to perform the management services for the groves. Literature concerning the cooperative along with literature concerning the orange groves were distributed.

Since the sale of land is coupled with a management contract and the arrangement is designed to appeal only as an investment, the offering of a security within the meaning of Section 2(1) is being made which is subject to the registration requirements of the Act.

3. Section 2(1) -- Security; Memberships in a Non-Profit Club.

July 25, 1962 -- Letter re: Wranglers Club of America

Memberships will be offered to the general public for \$40 plus a service charge of \$10 in a non-profit corporation proposing to advance education through the promotion of travel and social activities. Membership proceeds will be escrowed until a sufficient sum is available for the building of a clubhouse and recreational facilities.

Registration will not be necessary since no security within the meaning of Section 2(1) is involved, provided the memberships will be non-transferable, and the offerees of the memberships will in no way be led to believe that they as individuals will receive any income.

4. Sections 2(1); 2(3) -- Tie-in Sales of U. S. Bonds.

July 18, 1962 -- Letter re: Shares in American Industry, Inc.

No objection was raised to the sale of U. S. Government Bonds and mutual fund shares, to be paid for by a single check, without registration of a separate security.

5. Section 2(11) -- Underwriters; Consent Requirements.
Form 1-A. Exhibit (c)

June 27, 1962 -- Letter re: General Sales Corp.

The issuer having failed in an attempt to sell its shares in a Regulation A distribution through its officers and directors, now seeks to sell them through stock exchange houses which refuse to file underwriters' consents. No offering can be made under Regulation A unless the underwriters file the required consent.

6. Section 3(a)(11) -- Issue.

July 19, 1962 -- Letter re: The City Loan and Savings Company

The company issued certificates of deposit and passbooks for deposits without registration under the 1933 Act. The company has redeemed most such accounts from persons who were non-residents of Ohio, the state where it was doing business and has advised its management not to accept any deposits from non-residents of Ohio. As a result of this action, it was the company's position that the Section 3(a)(1) exemption was available for the continued offering of its certificates of deposit and passbooks in Ohio.

Since some of the securities were sold to non-residents, the exemption was lost for the entire issue. Accordingly, all receipts of deposits should be terminated unless a different issue of securities can be created for issuance solely to residents of Ohio.

7. Section 3(a)(11) -- Integration; Offerings by Subsidiary Corporations.

July 25, 1962 -- Letter re: First Equity Corporation

The company and another affiliated corporation, incorporated in and doing business principally in Oklahoma, have issued securities in Oklahoma relying on 3(a)(11). The corporate parents of the Oklahoma company are in another state. The Oklahoma corporations propose to form, develop and manage life insurance companies in various states, and the promoters have already formed related insurance companies in other states. It was argued that the financing in Oklahoma cannot be treated as non-integrated local financing by local industry.

Held that transactions to date by Oklahoma companies may be deemed nonintegrated local financing and Section 3(a)(11) exemption remains available. In this connection, it was pointed out that because a company does business in other states does not prevent it from using the 3(a)(11) exemption in the state where it is incorporated and has its principal operations. Whether or not the exemption will be available for sales in other states by other companies which First Equity organizes will depend on inter-company relationships.

NOTE: This situation distinguished from that of Certified Credit Corporation. (Letter of January 30, 1962.)

8. Section 5 -- Prospectus Requirements; Fund Shares Offered to Life Insurance Company
Rule 10b-6 of 1934 Act -- Policyholders.

July 17, 1962 --Letter re: American Diversified, Inc.

The company proposes to give policyholders of its subsidiary life insurance company, the Roosevelt National Life Insurance Company, an opportunity to purchase its mutual fund shares with policy dividends. Policyholders will execute an assignment agreement authorizing use of policy dividends for purchase of shares.

Any securities to be offered in this manner should be registered and a current prospectus delivered to the policyholder when he purchases the insurance, executes the assignment agreement, and each time a dividend on the policy is payable.

If the securities to be used will be acquired in the open market, then additional problems may arise under Rule 10b-6 under the 1934 Act.

9. Sections 5; 4(1) -- Private Foreign Offerings.

July 16, 1962 -- Letter re: Export-Import Bank

A group of underwriters have agreed to sell to European institutional investors on a best efforts basis participations in obligations which the Bank has acquired under the terms of loans which it has made to foreign borrowers. The collection and payment of the obligation will be handled by the Bank, although the participations will be sold without recourse and will not be guaranteed. Minimum participations will be \$250,000 and resales will not be allowed to citizens or residents of the United States.

Registration will not be necessary under the circumstances, particularly because the offering is being made abroad and subject to the restrictions on resales in the United States.

10. Section 8 -- Omission of Material Fact; Failure to Amend Prospectuses to Reflect Section 15(c)(2) of 1934 Act -- Changes in Underwriting Agreements; Changes from All or None to Best Efforts.

July 18, 1962 -- Commission Minute

The Commission discussed registration statement language indicating that the proceeds would be held in escrow and that if a certain amount of stock was not sold within a given time period, the money would be refunded, the so-called "all or none" offering. Some underwriters have been asserting that although the given amount of stock had been "sold", because of cancellations of purchase or otherwise, all the proposed proceeds of the offering could not be paid to the issuer. The underwriters have asserted that the "all or none" terms have been complied with and have refused to refund the offering price to purchasers.

The Commission expressed the view that prospective investors were misled by the prospectus as to the amount of proceeds to be received by the issuing company, and it presented disclosure problems under the Securities Act of 1933. The Commission also suggested resolution of the problem by an amendment of Rule 15c2-4 or, by a new anti-fraud rule under Section 15(c)(2) of the Securities Exchange Act of 1934. (See Release 6885, August 16, 1962.)

11. Rule 133 -- Merger; Subsequent Public Offering.

July 19, 1962 -- Letter re: Beau Electronics

The company proposes to sell its assets to UMC Electronics Co. under an agreement which provides for public financing following the consummation of the merger. Stock held by affiliates and controlling persons will not be resold without registration. A stock dividend is to be paid after issuance of the new shares.

Proposed public financing or payment of the stock dividend following the merger will not affect availability of Rule 133.

12. Regulation A -- Omission of Material Fact; Underwriting Terms Changed from "All or None" to "Best Efforts"; Procedures for Disclosure.

July 16, 1962 -- Letter re: Rex Craft Associates, Inc.

The underwriting of the company's stock was described in the offering circular as on an "all or none" basis. Because of market conditions, the underwriter is having difficulty completing the sale of the entire issue and wishes to change the agreement to a best efforts in the following manner: retention in escrow of payments received; amendment of the offering circular to show changes in the terms of the underwriting and the possible reduction in proceeds received by the issuer and the effect thereof; circulation among purchasers of revised offering circulars with an order blank describing their right to reconfirm or request refunds; and a resumption of sales during a 40-day period following the resolicitation until at least 70,000 shares have been sold for the issuer's account.

The issuer was advised that the proposals were unsatisfactory and that if the terms of the present offering circular were not fully satisfied, purchasers' funds must be returned. After repayment, if the issuer desires to make an offering on a best efforts basis, appropriate amendment should be made to the notification and offering circular disclosing the underwriting terms and application of the proceeds. (See also Commission Minute dated July 12, 1962.)

1934 ACT

13. Section 14 -- Proxy; Solicitation by a Stockholder; Protective Committee.
Chapter XI of the Bankruptcy Act

July 26, 1962 -- Letter re: Wagner Baking Corporation

The company has filed a petition for an arrangement under Chapter XI and a group of shareholders propose to solicit consents or powers of attorney to represent shareholders as a Stockholders' Protective Committee.

Such a solicitation is not excluded from the operation of the proxy rules under Rule 14a-2.

14. Section 15(d) -- Calculation of Sum Outstanding under Employee Stock Purchase Plan.

July 3, 1962 -- Letter to: Quaker State Oil Refining Corporation

The obligation to file 15(d) reports for employee stock purchase plans depends upon the amount of employee contributions and not on the registration of the company's common stock. Section 15(d) will become operative when a registration statement covering sufficient participations in the plan, plus past employee contributions raises the total of those participations to \$2,000,000,

15. Section 15(d)(3) -- Automatic Exemptions; Calculation of Value of Shares.

July 12, 1962 -- Letter to: Western Land Corporation

The company filed a registration statement in 1960 covering an offering of more than \$2,000,000, thereby obligating it to file periodic reports pursuant to 15(d). In 1961, a second registration statement was filed, which was followed by a post-effective amendment to the first registration statement deregistering over a million shares, leaving outstanding securities valued at more than a \$1,000,000 but less than \$2,000,000 computed on the basis of the latest offering price.

Section 15(d) remains applicable until the company comes within the enumerated exceptions to Section 15(d). The relevant exception in this case is 15(d)(3), and the exception is available only so long as the value of the securities outstanding is less than \$1,000,000. Since Western Land Corporation had more than \$1,000,000 of securities outstanding, the reporting obligation is still operative. (See also Memorandum of July 9, 1962.)

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 106 June 1 - 30, 1962

1933 ACT

1. Section 2(1) -- Investment Contract; Sale and Leaseback of Homes.

June 1, 1962 -- Letter re: Lefcourt Realty Corporation

The company, which is engaged primarily in buying land, planning its development and making improvements thereon, has a number of homes completed but vacant apparently because real estate has been moving slowly in the area.

The company has placed advertisements in certain Florida newspapers offering to sell the houses on a purchase-leaseback plan. The company would in turn utilize the houses as part of the tourist facilities. The advertisement uses investment contract terms and phrases such as "put your money to work" and "return" on investment. The company also offers to relieve the purchaser of such duties ordinarily associated with ownership as payment of taxes, insurance and upkeep.

Based on the manner in which the arrangement is offered as veil as the various factors of the plan which tend to indicate the presence of an "investment contract", the company was advised that the sale and leaseback arrangement constitutes the offer of a security. (See also General Counsel's Memorandum of May 24, 1962.)

2. Section 2(1) -- Security; Country Club Membership Certificates.

June 25, 1962 -- Letter re: Dellwood Country Club

Ten persons are forming a non-profit private membership corporation to take a long-term lease on a country club. The 250 members will receive non-transferable "certificates of membership" and will pay an initiation fee, assessments and annual dues. Refunds will be made only in the case of death or resignation and only when membership is complete.

No registration was required in reliance on counsel's opinion that no "security" is involved within the meaning of Section 2(1) of the Securities Act of 1933.

3. Sections 2(3); 5 -- Institutional Advertising.

June 4, 1962 -- Letter re: Petroleum Exploration Associates, Inc.

The company proposes to mail brochures and covering letters to investment houses and individuals who might be interested in joining in oil, ventures on lands which the company will acquire in the future. Any person responding will be offered participating units in compliance with, or under an exemption from, the Securities Act.

The proposed offering cannot be classified as “institutional advertising” falling within the so-called “Wiesenberger theory” since the purpose of the company is to obtain purchasers for a specific security to be issued by it.

4. Section 2(11) -- Underwriter: Agency Transaction.

June 22, 1962 -- Memorandum re: Microdot

White, Weld & Co. will underwrite an issue of convertible debentures for the company. Fifteen days after the effective date of the statement, the underwriter intends to offer 16,500 shares of registered common stock for four persons on an agency basis. An undertaking to deregister after four months was given.

White, Weld argued that as to the distribution by the selling shareholders, it should not be deemed to be an underwriter since the firm was not a participant in a distribution and was only receiving the normal dealer's discount. The Division took the position that the brokers were underwriters since they were participating in a distribution of common stock.

5. Section 7 -- Registration Statement Disclosures; Criminal. Activity of Officers

June 12, 1962 -- Commission Minute re: Israel Hotels International Inc.

The president of the registrant was convicted of a violation of the Pennsylvania insurance laws in signing false financial statements in 1951. Disclosure of the conviction would not be required in the registration statement since the president would have nothing to do with financial matters and would resign at the next annual meeting of the company in October, 1962.

6. Rule 133 -- Merger; Open Market Purchases of Securities to Cover Purchase Price. Section 10(b) of 1934 Act

June 27, 1962 -- Memorandum re: Perkin-Elmer Corporation

The company is proposing to buy the assets of Penn Optical Inc. in a Rule 133 transaction for \$725,000 of its stock on the basis of the average July prices of its shares.

The company wishes to purchase the shares of its stock necessary to effectuate the merger on the New York Stock Exchange during the month of July, although the vote will be taken after July.

Purchase of the shares during July would tend to drive the price of the stock up, making the merger appear more attractive than it might otherwise be, thus resulting in the selling shareholders receiving fewer shares than they would otherwise receive. The company was cautioned against the proposed market purchase because of Rule 10b-6 problems and because of additional Rule 10b-5 and 7 problems involved, including disclosure to the shareholders of the facts concerning the open market purchases. Even if Rule 133 is applicable, there would be a distribution of securities to the stockholders of Penn so far as Rule 10b-6 is concerned.

7. Section 14 -- Hedge Clauses; Negating Liability for Changes in Company Affairs.

June 7, 1962 -- Legal Memorandum re: Prospectus Statements

A prospectus stated as follows: "Neither the delivery of this prospectus nor any sales made hereunder shall under any circumstances create any implication that there has been no change in the affairs of the company since the date hereof."

Such statement is not void under Section 14 and does not effectively limit any liability the issuer and underwriters otherwise might have under Section 17. Such hedge clauses are of no legal force and effect,

8. Rule 253 -- Escrow Accounts; Underwriter Shares.

June 19, 1962 -- Letter re: Fifco, Inc.

The company is issuing 3,383 shares to underwriters. No determination has been made whether the underwriter will sell the shares or hold them for investment.

If the shares are to be issued to the public, the policies enunciated in Securities Act Release 3210 regarding underwriter's shares and options apply to Regulation A as well as to registered securities. Thus, where shares are offered to the underwriter and the public, the offerings are to be treated as integrated offerings. Disclosure would be required on the cover page of the terms of the sales to the underwriters and the information in the circular kept up to date until the offering is completed.

If the shares are not to be resold, they need not be included in the computation of the ceiling although they should be placed in an escrow account in a single certificate.

9. Rule 253(c)(2) -- Escrowing Shares; Simultaneous Canadian and American Offerings; Ceiling

June 19, 1962 -- Memorandum to: Seattle Regional Office

A Canadian issuer proposes to offer 200,000 shares of its \$1.00 par stock in the United States and simultaneously to sell 500,000 shares in Canada, both offerings to be made at 50 cents a share.

Any shares to be offered in Canada would have to be included in the computation of the available ceiling. The escrow accounts should comply with S.E.C. regulations, and it would be advisable for the escrow agent to be an American bank to which the escrow shares should be delivered upon expiration of escrow with Canadian authorities.

Disclosure should be made in the offering circular concerning the Canadian offerings and the effect of issuing shares at a price less than par, and an opinion of counsel on the legality of the latter point should be made part of the notification.

There is no requirement that the offering circular be used in Canada, but the Canadian prospectus should be filed supplementally with the notification.

10. Regulation A -- Ceiling Computation; Escrowed Shares Pledged for Loans.
Rule 253

June 12, 1962 -- Memorandum re: Montronics, Inc.

Shares deposited in escrow by officers and directors which are to be pledged as collateral for a bank loan should be included in computing the Rule 253 ceiling, even though the shares remain subject to the escrow agreement in case of default before termination of the escrow period.

11. Regulation A -- Offering for the Account of the Issuer; Sales for Private Parties.
Rule 253(d)

June 8, 1962 -- Memorandum re: Wilpot Productions, Inc.

The issuer, which is subject to Rule 253, wishes to include in its Regulation A offering 1,500 shares of stock which are being sold to the attorney who prepared the filing and 1,000 shares to be sold to two other persons.

The shares may be included in the offering if the selling persons are designated as underwriters, since under the circumstances the offering can be treated for Rule 253(d) purposes, as being made on behalf of the company.

1934 ACT

12. Section 15(d) -- Underwriter Registered Stock; Computation.

June 26, 1962 -- Commission Minute re: National Capital Corporation

The company registered Class A and Class B stock which cannot be considered a single class. The offering price of the Class A was \$5, and the total aggregate value of the registered and outstanding stock of this class is \$1,838,925. The Class B stock which was registered was in the hands of underwriters and no offering price was stated, although a filing fee was paid on an estimated offering price of \$15 per share. In the event that this stock was to be publicly offered, the offering price was to be supplied in a post-effective amendment. No such amendment has been filed.

The Commission approved the position that since the Class B shares were covered by the registration statement, their value must be computed in determining whether the undertaking is operative, and the offering price of such shares must be taken at \$15, as this is the figure the issuer selected upon which to pay the filing fee. Thus, the total aggregate value of both classes of stock is well over the required \$2,000,000 and, therefore, the undertaking is operative. (See Office of the General Counsel Memorandum dated June 22, 1962.)

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 105 May 1 - 31, 1962

1933 ACT

1. Section 2(1) -- Security; Sales of Homesites.

May 3 and 9, 1962 -- Memorandum re: Gulf American Land Corporation

The company was selling lots in its Florida development through a brochure which emphasized the possibility of an increase in the value of the lots.

The Division and the Office of the General Counsel concurred in the view that the offering did not involve a security even though the brochure spoke of increases in value, since the company would not perform duties other than those normal for a land development company and since the lots were bought for use as homesites and not as investments to be managed by the company,

2. Section 2(1) -- Security; Trading Stamps; Redemption in U.S. Bonds,
Regulation A
Section 3(a)(5) of 1934 Act
Section 3(a) of 1940 Act

May 9, 1962 -- Memorandum re: State-Wide Restaurants, Inc.

A subsidiary of the company sells trading stamps to merchants who distribute them to their customers. A complete book of stamps is redeemable for a United States Savings Bond.

Since the trading stamps are redeemable in securities, they must be treated as securities under Section 2(1) as "temporary or interim certificates for, or warrants or rights to subscribe or purchase" a security. The fact that the underlying security is exempt, does not change the result.

The subsidiary and the merchants would be dealers as defined in Section 3(a)(5) of the 1934 Act, and subject to the rules thereunder including the net capital rule.

The subsidiary may also be an investment company within the meaning of the 1940 Act.

3. Section 2(1); 5 -- Security; Investment Contract; Common Trust Fund Participation
Section 3(c)(3) of 1940 Act

May 4, 1962 -- Memorandum re: American Bar Association

The ABA intends to create a common trust fund to be advertised to its members, which will be operated by a bank trustee. Payments are to be made on an annual subscription basis and withdrawals allowed from the "irrevocable trust" fund under certain circumstances on the approval of members of the operating committee of the plan.

Such an offering would not be exempt from the registration requirements of the 1933 and 1940 Acts since such trusts have been advertised in much the same manner as investment company shares and since the interests are a security to which no exemption appears to be applicable. The wide availability of the plan removes it from the private offering exemption since private trusts are exempt only where incidental to the bank's normal fiduciary duties.

4. Section 2(10) -- Prospectus; Television Programs; Permissible Advertising.

May 25, 1962 -- Commission Minute re: Westinghouse Electric Corporation

The company is sponsoring a television series on the subject of investment companies, Reference was to be made during the discussions to the Keystone Custodian Fund which would be described as one of the largest funds.

The Commission directed that the name of the fund and references to its size be omitted and that similar omission should be made regarding the SEC Rules Committee.

5. Sections 2(11); 4(1) -- Underwriter; Registration of Reofferings.

May 3, 1962 -- Memorandum re: Daniel J. McCauley

A best efforts underwriting is being made which is covered by an effective registration statement, Two-thirds of the issue has been sold, and 10% is now proposed to be sold to the accountant and the lawyer who will not take for investment.

The attorney and lawyer as underwriters would need to use a prospectus for any resales; however, as only 60 days had passed since effectiveness, it would not be necessary to update the prospectus by reason of the 90-day undertaking rules.

6. Sections 2(11); 4(1) -- Underwriter; Open Market Purchases and Subsequent Resales.

May 21, 1962 -- Memorandum re: Litton Industries

Minority shareholders of a Litton subsidiary agreed to sell out at the company's option for either cash or stock of the parent. The parent company proposes to purchase its shares through Lehman Bros. as agent on the open market where prices are advantageous and to deposit those shares with Brown Brothers Harriman & Co. which would then resell them publicly on behalf of the minority security holders.

Since the shares will be bought on the open market for the purpose of sale to the minority shareholders who intend to effect a public distribution through underwriters, registration was required.

7. Section 3(a)(11) -- Intrastate Exemption; Offerings to Non-Residents.

May 25, 1962 -- Letter re: Miami Television Corporation

A pre-incorporation agreement provided that subscribers would make installment purchases of the stock of the company which is seeking an F.C.C. television license. Other persons, who will become residents of the state and employees if the license is granted, as will one of the promoters, will be offered the right to buy shares if they accept employment. The shares will not be delivered until after residence in the state.

The intrastate offering would not be available since an offer to a non-resident destroys the exemption even though no actual sales are made to non-residents and they become residents before they purchase stock. Additionally, where stock is sold on an installment basis in a 3(a)(11) offering and subscribers later become nonresidents, continued receipt of payments from them will destroy the exemption.

8. Sections 4(1); 5 -- Revocable Acceptances.

May 24, 1962 -- Commission Minute re: Stekoll Petroleum Corporation

In connection with a voluntary reorganization plan, certain trade creditors have agreed irrevocably to accept securities of the company in exchange for the company's debts. A registration statement has been filed covering the securities.

Doubt was expressed that all 83 creditors would be informed as to the affairs of the company so that Section 4(1), as argued by issuer's counsel, would be available. Accordingly, any acceptance must be revocable pending effectiveness of the statement.

9. Sections 4(1)3; 10(a) -- Dealer's Allotments; Prospectus Requirements for "Sticky Issues"; Unsold Allotments.

May 4, 1962 -- Memorandum re: Sticky Underwritings

Underwriters having inventories of unsold new offerings have placed them in investment accounts for future reofferings.

Prospectuses need not be used after the expiration of the 40-day period of Section 4(1) until the shares are offered again to the public. At that time, however, a prospectus complying with Section 10(a)(3) must be used which may require the preparation of a new prospectus or a supplement to the existing one.

10. Section 6(a) -- Registration for Future Offering; Reporting of Delayed Offerings.
Rule 462

May 4, 1962 -- Memorandum re: Cubic Corporation

A registration statement covering shares to be distributed from time to time over the exchange was effective and contained a 90-day undertaking usual in "shelf" registrations. The fact that the offering has not been started was implicit in the registration statement and, therefore, reports under Rule 462 would not be required.

11. Rule 133 -- Merger; Availability Where Non-Voting Stock Issued; Conversion.

April 10 and May 2, 1962 -- Letters re: Independent Telephone Corporation

Independent owns 60% of North Carolina Telephone Company which it intends to merge into another wholly-owned subsidiary in an exchange for a new issue of the latter's preferred stock convertible into the common stock of Independent.

Rule 133 will be available even though non-voting securities are issued in the exchange, but Rule 133 will not exempt from registration the securities of Independent that will be issued upon conversion.

12. Regulation A -- Principal Place of Business.
Rule 252(a)(1)

May 10, 1962 -- Memorandum re: Victoria Trade and Real Estate Development Company

A Colorado Corporation planning to use monies raised to engage in real estate development in Hong Kong and in an appliance export business based on demand generated by the real estate business could not use Regulation A as the principal place of business operations would be in Hong Kong.

13. Regulation A -- Computation of Ceiling; Repurchase Agreement; Guarantee; Security; Proper Regional Office for Filing.
Rules 254(a); 255(c)

May 4, 1962 -- Memorandum re: Des Moines Bowl-O-Mat

A corporation which owns an Iowa bowling alley will sell the property to a New Jersey partnership which will then lease the alley and have as its sole business the receipt of leasehold income. The corporation has agreed to repurchase any partnership interests sold to the public at the original cost to the purchasers. The partnership interests are to be sold in New York and New Jersey where the offices will be located and the rent received.

The repurchase agreement is analogous to redemption features, and, therefore, need not be included in the ceiling computation.

Whether the repurchase agreement created another security in the nature of a guarantee was a close question, and although the Regulation A filing would not be required to be signed by the corporation, financial data concerning the corporation should be included in the offering circular.

Rule 255(c) requires that the filing be made in the region where the "issuer's principal business operations are conducted" and since the principal business is receipt of rent, the New York regional office is appropriate.

14. Regulation A -- Computation of Ceiling; Amendment Adding Additional Shares.
Rule 254(b)

May 8, 1962 -- Memorandum re: Starling Corporation

The company made a filing in February. The price range of its securities had previously fluctuated widely in value over the past year and within the 15-day period prior to filing was between \$6.50 and \$7.00 per share. The present market is very thin at \$2.00 - \$3.00. The California Corporation Commissioner has refused to allow the company to sell its shares to the public for more than \$2.00 a share.

The company need not withdraw and refile to take advantage of a lower filing price in order to sell more shares, but may file an amendment with the calculation of the amount of the offering based on the market price within 15 days of the amendment date.

1934 ACT

15. Section 14 -- Merger Proxy; Election of New Board of Directors as a Result of a Merger.

Schedule 14A Items 6 and 7

May 2, 1962 -- Memorandum re: Electrical Products Corporation

As the result of a proposed merger with an unlisted company, the company which is listed will disappear. A new board of directors will be elected consisting for the most part of members of the surviving company's board. Since voting for the merger is in effect voting for the new board, information concerning the new directors should be included in the proxy as required by Items 6 and 7.

1939 ACT

16. Section 310(b) -- Trustee Affiliation with Underwriters.
Form T-1 - Instruction 6

May 14, 1962 -- Memorandum re: Telephone Conference with Roger Nelson

Since Instruction 6 of Form T-1 defines "underwriter" of securities proposed to be offered as "principal underwriter", question raised whether persons who acquired convertible securities in private placement, which are to be registered in accordance with purchase agreement, would be deemed to be "principal underwriters" so as to require the trustee to check for his affiliation with each of them.

Section 310(b) of the Trust Indenture Act and the various items of Form T-1 do not afford any basis for allowing the trustee to fail to disclose his relationship, if any, to such persons.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 104 April 1 - 30, 1962

1933 ACT

1. Sections 2(1); 3(a)(8) -- Security; Dividend on Insurance Policy; Insurance Contracts.

April 11, 1962 -- Letter re: Life Assurance Company of the West

Company issues policy which provides for annual dividends and for guaranteed coupons maturing upon payment in full of the premium for the policy for year stated in the coupon. Any amount received from these coupons could be applied under certain options, one of which permitted the deposit of such funds with the company to accumulate with interest.

While question whether a security is involved is not free from doubt, this Division has not required the registration of such contracts provided, of course, that the right of the insured to leave the funds on deposit is limited to a cash transaction and there is no provision for investment of funds otherwise.

2. Sections 2(1); 4(1) -- Security; Investment Contract; Sales of Participations in Mortgage Loans Held by Federally Insured Savings and Loan Associations, Private Sale.

April 3, 1962 -- Letter re: Harrison-Wilson Co.

A savings and loan institution offers participations in individual mortgage loans to other institutions. The purchaser takes a percentage of the mortgage loan and the seller retains title, administration and servicing of the mortgage. The size of the individual mortgage loans averages around \$11,500 and the participation is usually taken by only one other institution. Where large groups of mortgages are sold in this manner participations are in the individual mortgages and not in the group.

The offering is in the nature of the sale of a security since it entitles the purchaser to participate in, what is in effect, an investment contract. In view of the limited offering, no registration or qualification under the Trust Indenture Act required at this time, although Section 17 of the 1933 Act and Section 10(b) under the 1934 Act are applicable.

3. Sections 2(3); 4(1); 5 -- Registration of Underwriter Shares.

April 18, 1962 -- Commission Minute re: Precision Instrument Company

Shares were being issued to the underwriter for investment pursuant to agreement that shares would not be disposed of for three years except in reliance on opinion of counsel (satisfactory to the issuer) or "no action" letter from Commission that exemption is available.

The Commission refused underwriter's request that the shares not be included in a registration statement currently being filed and continued the policy enunciated in Securities Act Release 3210 (1947), requiring registration of such shares.

4. Section 2(10) -- Prospectus; Indications of Interest; Confirmation Accompanied or Preceded by a Section 10 Prospectus.
Rule 134(d)

April 19, 1962 -- Memorandum re: Roger Nelson

Red herring prospectuses were sent to the issuer's employees soliciting indications of interest pursuant to Rule 134(d). Upon effectiveness, the issuer wished to send a telegram inquiring whether the employee still wished to take the number of shares indicated.

The telegram would constitute a prospectus unless preceded or accompanied by final prospectus and, accordingly, if sent would constitute a violation of Section 5. The company was advised to mail the final prospectus and a letter to the employees soliciting firm orders and then reconfirm by telegram.

5. Section 4(1)1 -- Pledged Stock; Sales by Order of Bankruptcy Court.

April 26, 1962 -- Letter re: Industro Transistor Corporation

An SBIC sought the bankruptcy court's permission to sell unregistered shares of a third company which the bankrupt had pledged as collateral. The SBIC was advised that the Securities Act makes no exception for shares that are pledged nor because the pledgor is in bankruptcy, nor does the bankruptcy court have power to authorize any sale which would be illegal under applicable Federal law. (Securities Act).

6. Section 7 -- State Registration of Accountants; Independent Certified Accountants.
Rule 17a-5 of 1934 Act

April 20, 1962 -- Memorandum re: J. H. Ayers & Co., Inc.

Colorado classifies accountants as (1) independent and certified and (2) entitled to practice before government agencies where permitted. The primary purpose of classification (2) is to permit unregistered accountants to sign tax returns as one who has assisted in their preparation and similar work, where such work is acceptable to a government agency.

The Commission will not accept accounting statements from such uncertified accountants under Rule 17a-5, which requires that accountants may practice before the Commission only if they are independent and in good standing in their own state.

7. Rule 133 -- Choice of Class of Stock to be Received in Merger.

April 4, 1962 -- Letter re: Electronics Specialty Company

Under the terms of the merger of Iron Fireman Corporation into Electronics Specialty Company, shareholders of Iron Fireman are entitled to receive at their election either common stock or convertible preferred.

Since the amendment to Rule 133 which declared controlling persons of constituent company to be underwriters under certain conditions, no question raised as to availability of rule to such a situation.

8. Rule 133 -- Conversion Offer for Debt Securities.
Section 2(3)

April 3, 1962 -- Memorandum re: Allied Chemical

Allied proposes to merge into itself Fuelane Corporation, which has outstanding convertible notes and debentures as well as common stock. Allied would assume debt liability but to eliminate showing such debt on its balance sheet, holders of debt securities would be requested to deposit their securities in escrow until after merger meeting and if merger is affirmatively voted upon, deposited securities would be converted into stock of Allied. Such request could be considered an offering of Allied common stock, requiring registration since the transactions are not within Rule 133.

No objection if Fuelane requests its note and debenture holders to deposit notes or debentures for conversion in view of pending merger.

9. Rule 155 -- Purchase and Reoffering; Underlying Securities.

April 2, 1962 -- Teletype to: Seattle Regional Office

A broker-dealer intends to make offers to purchase convertible securities issued sometime ago in a Regulation A offering and to convert and resell the underlying securities.

No registration will be necessary (unless seller is an “underwriter” as defined in Section 2(11) for the issuer or a controlling person of issuer) since Rule 155 has no application where the initial offering of a convertible security is public, whether or not the security is immediately convertible. (See Securities Act Release No. 4248).

10. Form S-8

April 5, 1962 -- Letter re: Computer Control Company

Company sought to use Form S-8 to register a stock option plan, although it is not subject to reporting requirements under Section 13 or 15(d) of the Securities Exchange Act.

Form S-8 may not be used for original filing and the company should file on Form S-1. However, after reports have been filed pursuant to the Section 15(d) undertaking, Form S-8 may then be used for post-effective amendments, provided the form is otherwise applicable.

11. Regulation A -- Offering of Escrowed Shares. Rule 253(c)

April 12, 1962 -- Teletype re: Varigraphics, Inc.

In February 1962, a Regulation A offering of \$175,000 was completed. In connection with the filing, a block of securities was placed in escrow, pursuant to Rule 253(c), including 20,000 shares issued to the underwriter. The underwriter now wishes to withdraw his shares from escrow and sell them to bolster his net capital position.

There would be no objection if the shares are removed from escrow and the company files another Regulation A to cover sale of the underwriter’s shares since the two offerings would be within the ceiling of Regulation A.

12. Regulation A -- Computation of Ceiling; Interest Payments. Rule 254

April 12, 1962 -- Teletype re: Selective Life Insurance Company

The offering price of debt securities under Regulation A is the face amount of \$300,000. Provision is made for installment purchases of 35% down and the balance in 10 monthly

installments with interest at 6%. Interest payments need not be included in computing the ceiling.

13. Regulation A -- Conditional Clearance.
Rule 255(a)

April 19, 1962 -- Memorandum re: Rule 255(a)

A company's request for a conditional clearance of its offering circular prior to the filing as an exhibit of the necessary underwriter's consent should be refused.

14. Regulation A -- Concurrent Registration Statement.
Rules 257, 258

April 13, 1962 -- Letter re: Majestic Utilities Corporation

Company employees were to receive a total of 2,200 shares as a bonus, which the company wished to qualify under Regulation A. A registration statement is currently effective covering common stock to be issued upon the exercise of warrants. The company plans to use its current prospectus as sales literature under Rule 258.

The effective registration statement would not be treated as a bar to the use of Regulation A or the application of Rule 257, provided otherwise available.

1934 ACT

15. Section 15(d)(3)

April 5, 1962 -- Memorandum of General Counsel's Office re: Treasury Stock

Because of the legislative history of Section 15(d)(3), especially in relation to the generally accepted interpretation of the term "outstanding", and because of the underlying nature of treasury shares, the Commission does not have authority to require that treasury shares be cancelled in order to avoid being considered outstanding for the purposes of Section 15(d)(3).

1939 ACT

16. Section 304(a)(6) -- Government Instrumentality.
Rule 406 of 1933 Act Bond.

April 20, 1962 -- Memorandum re: European Coal and Steel Community

Registered security designated a “bond” although unsecured. No objection raised to this designation in view of the quasi-governmental character of the issuer, European Coal and Steel Community. Exemption from qualification of indenture permitted for the same reason under Section 304(a)(6) of the 1939 Act.

17. Section 310(b)(4) -- Conflict of Interest; Interlocking Directors and Officer.

April 2, 1962 -- Letter re: Detroit Edison Company

The inclusion on its board of directors of two members of the board of directors and a vice president of the National Bank of Detroit which serves as the indenture trustee on the company’s bond Issues constitutes a conflict of interest within the meaning of Section 310(b) (4). Subdivision (c) of the section does not provide an exception or limitation on the applicability of subparagraphs (A) and (B). Subdivision (C) merely permits the trustee to be designated to act in certain ministerial capacities by an obligor or underwriter and provided there is no conflict within Section 310(b)(1), to act as trustee under another indenture or otherwise such as, for example, testamentary or inter vivos trustee.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 403 March 1 – 31, 1962

1933 ACT

1. Section 2(1) -- Security; Cash Redemption; Broker-Dealer Registration
Section 15(a) of 1934 Act
Section 3(a) of 1940 Act

March 19, 1962 -- Letter re: Frank H. Fler Corporation

The company proposes to inaugurate a plan whereby jobbers and wholesalers, purchasing its products, can receive purchase discounts in the form of cash redemption coupons. These coupons can be used under the plan for cash, merchandise or the purchase of investment company shares through King Merritt & Company, a brokerage house, to whom the company will remit the cash coupons, if the owner requests. The brokerage house will contact the wholesalers and jobbers once the company has notified them of the plan, and will explain the means of utilizing the plan, and send them the prospectus of the fund consistent with their investment objectives. The entire plan is voluntary with the merchandisers, the company merely serving as a vehicle for the plan, and advising its merchants of the plan's existence. The coupons are not directly redeemable or exchangeable for investment company shares.

No separate registration for the plan under the 1933 Act will be required if the company proceeds as described. The company will not be considered a broker-dealer needing to register under the 1934 Act, nor will the plan be considered an investment company requiring registration.

2. Section 2(3) -- Completion Costs; Oil and Gas

March 12, 1962 -- Memorandum re: Whiffen Estates, Inc.

The promoters of an oil and gas venture had sold participation units for a fixed sum with an additional obligation of the purchaser to share in the completion costs. The question posed was whether the act of collecting the completion costs, as provided in the contract, was part of the "sale" of a security as the term is defined in Section 2(3) of the Securities Act.

The collection of the completion costs in connection with such a contract constitutes a part of the sale of the leasehold interest and therefore part of the sale of a security as defined in Section 2(3). For the purpose of determining when a sale is completed within the meaning of Section 5 of the Securities Act, a security is still being sold until payment is made in full.

3. Sections 2(10); 5(b) -- Confirmation as Prospectus; Payroll Deduction Slip; Stock Purchase Plan; Continuing Offer.
Form S-8

March 26, 1962 -- Letter re: General Tire and Rubber Company

Company has an effective registration statement on Form S-8 in connection with an employees' stock purchase plan under which only in alternate years may new participants join or participants modify the amount of their contributions. The participant may withdraw from the plan at any time.

Company's request to file post-effective amendments to the registration statement only in alternate years denied. In view of participant's continuous right to withdraw, the plan and the company is making a continuous offer which is accepted as to a certain number of parts by each payment, The receipt for payment such as a payroll slip showing deductions or the report of the participant's account would appear to confirm a sale and therefore be a prospectus within the meaning of Section 2(10). In order to avoid a violation of Section 5(b)(1), the receipt or report should be accompanied or preceded by a prospectus meeting the requirements of Section 10 at that time. Further, the delivery of the report sent to stockholders may constitute constructive delivery of the securities purchased for a participant's account requiring delivery of a current prospectus under Section 5(b)(2).

4. Sections 2(10); 10(a)(3)
Rule 134

March 29, 1962 -- Memorandum re: James A. Denie's Sons Co.

Shares issued to the promoters of a company were required to be included in a registration statement in connection with a public offering. The promoters were the broker-dealer underwriter and a finder, Counsel asked whether the company could engage in any advertising operations in view of Rule 134 and whether the prospectus must be kept up to date indefinitely.

The company could send out its usual reports to stockholders and engage in ordinary product advertising while the statement was pending. The prospectus need not be kept up to date during any period when shares are not being offered or sold under the registration statement, A question was raised by the staff as to the propriety of a controlling broker-dealer firm making a market in the company's securities.

5. Section 2(11) -- Underwriter; Purchase; Sale

March 5, 1962 -- Conference re: International Holding Corporation

Compagnie D'Outremer, a Belgian Corporation, formally merged under Belgian law with Belgo-Canadienne Corporation, another Belgian Corporation, controlled by the president and the largest stockholder of International Holding Corporation. The principal asset of Belgo-Canadienne Corporation was a block of 70,000 shares of International Holding Corporation. Compagnie D'Outremer now wishes to sell those shares received in the merger over the American Exchange without registration. Counsel argued that under Belgian law the transaction by which Compagnie D'Outremer took control of Belgo-Canadienne was not a "purchase" and therefore Compagnie D'Outremer would not be an underwriter.

The transaction involving the transfer of control stock, through the merger of the two Belgian Corporations, was a sale under the 1933 Act. If this stock were sold publicly through American broker-dealers, Compagnie D'Outremer would be an "underwriter" under Section 2(11). (Note: Reply to letter February 28, 1962 from Strasser, Spiegelberg, Fried & Frank by telephone as noted on incoming letter in 132-3 file.)

6. Section 3(a)(3) -- Use of Proceeds; Construction Loans

March 27, 1962 -- Memorandum re: First Mortgage Investors

The company proposed to issue short-term paper, the proceeds of which will be used for short-term construction loans. Since the paper is discountable at Federal Reserve Banks according to Regulation A of the Federal Reserve Board, the issuance of such short-term paper would be entitled to the exemption under Section 3(a)(3).

7. Section 3(a)(11) -- Doing Business.

March 8, 1962 -- Letter re: New Jersey Television Broadcasting Corporation

The company proposed to make an intrastate offering of its securities. Its business would be conducted in the State of New Jersey except that its television broadcasting signals could be received in New York and Pennsylvania, and the broadcasting antenna would be located outside New Jersey. The offering could be made in reliance upon the intrastate exemption if otherwise available.

8. Section 3(a)(11) -- Rebates to Out-of-State Residents

March 8, 1962 -- Letter re: Associated Grocers of Florida

All of the shares of the cooperative association are held by a number of independent grocers doing business in and residents of Florida. Nine customers who are not stockholders are located outside Florida, and these customers are given rebates on their purchases since otherwise the company would lose its tax exempt status under the Internal Revenue Code.

The fact that foreign customers of a cooperative were receiving a rebate on sales, does not destroy the intrastate exemption.

9. Sections 4(1)3; 5(b)

March 6, 1962 -- Memorandum re: Crosby Roper

A company was offering common stock to the public in a registered underwriting. The company has debentures outstanding which are being traded. Counsel inquired whether broker-dealers trading the debentures were required to deliver a prospectus with the debentures.

Prospectus requirements cover only the securities subject to the registration statement.

10. Section 6(a) -- Shelf Registration.

March 26, 1962 -- Commission Minute re: Atlantic Research Corporation

The company sold 115,000 shares of its stock at \$35 per share to Television Electronics Fund, agreeing that it would register the shares so that the purchaser if it desired could make sales without delay. The company sought to fulfill its commitment but was told by the staff that the shares could not be registered unless there was a present intention to make an offering. The purchaser tried to avoid the contract, stating that the failure to register was a breach of contract. The company resisted and sought registration again, offering by undertakings to keep the filing current every six months.

The Commission stated that the shares could be registered subject to such “undertakings” by the parties as the staff deemed appropriate.

11. Rule 133 -- Merger; Tender to Purchase for Cash.

March 22, 1962 -- Letter re: Premier Industrial Corporation

Akron Brass Corporation will be merged into Premier. A two-thirds vote of stockholders of Akron is required and a majority of Premier. Proxy soliciting materials to Akron stockholders will invite tenders to Premier of up to 100,000 Akron shares at \$20 per share. The tenders are to be accepted if the merger is ratified.

Neither the invitation for tenders to Akron stockholders nor the tender and sale of Akron shares to Premier will affect the applicability of Rule 133.

12. Rule 133

March 7, 1962 -- Letter re: Technical Operations, Inc.

The company plans to purchase the assets of Beckman and Whitley, Inc. for 148,500 shares of its common stock. The agreement of sale does not provide for an investment letter, but indicates that the sellers may only trade or pledge the stock in compliance with Rule 133. The selling group includes 10 major shareholders holding 63% of Beckman and Whitley.

The ten persons would be limited as a group to the amount permitted by paragraph (d)(3) of Rule 133. It is the position of the Division that if the facts show that there is a concerted effort by individuals acting as a group to sell securities or if members of the group have a close family, business or other relationship, then the offering of the group as a whole, rather than each individual member thereof, should be included in a single computation under paragraph (d)(3) of Rule 133.

13. Rule 155 -- Private Offering; Underwriter
Section 3(a)(9)

March 16, 1962 -- Memorandum re: Diamond Alkali Corporation

Diamond proposes to make an exchange offer with the 14 shareholders of a small company, who would receive 150,000 shares of preferred stock convertible after 15 months from the date of issuance into 200,000 shares of common. The 14 shareholders will not give investment letters and intend to sell some shares to the public upon receipt.

A registration statement covering the immediate sales would have to be filed. Moreover, since the offering to 14 stockholders may be deemed "private" for purposes of Rule 155, such stockholders may be deemed underwriters with respect to shares of preferred still held or shares of common stock obtained on conversion of the preferred. Registration might have to be kept current for at least two years after the last conversion depending upon the status of the seller as an underwriter.

14. Rule 235 -- Cooperative Housing; Incidental Business.

March 8, 1962 -- Letter re: Fifth Avenue and 60th Street Corporation

A cooperative apartment building proposes to issue 68,300 shares of \$1 par value common stock at par. The purchasers of the stock are also required to make cash payments of \$5,048,344 toward the purchase price of the apartments and pay annually expenses totaling \$696,660. A bank will rent space for which it will pay an annual rent of \$66,000. While the question whether under Rule 235(b) the bank's operation is incidental to the ownership, leasing, management and construction of the residential properties is not free from doubt, no action position taken.

15. Regulation A
Rule 253(a)(1) and (2) -- Earnings Requirement.

March 1, 1962 -- Memorandum re: Milli-Switch Corporation

The company was originally incorporated in California. In the middle 1950's, it was reincorporated in Pennsylvania. New management was installed about 11 months ago, and the state of incorporation was changed to Delaware, but it continued the same business operations. The predecessor Pennsylvania company showed some net earnings for the previous year. The present company has had no earnings.

The present company is not subject to the escrow requirements of Rule 253, since it could show net earnings by a predecessor engaged in the same business during one of the two preceding years. Furthermore, paragraph 1 of Rule 253(a) referring to newly organized companies, does not apply in this situation where there is a predecessor company with earnings.

16. Regulation A -- Assessable Stock
Regulation A-M

March 5, 1962 -- Memorandum re: Assessable Stock

An offering of \$100,000 of assessable stock is being made to raise funds for a mining venture. Adoption of Regulation F rescinded Regulation A-M. Regulation A may now be used for assessable stock.

17. Regulation 14, Item 2

March 21, 1962 -- Letter re: American Chrome Company

The company, a Nevada corporation, is to be merged into its parent, a Wyoming corporation. Question was raised whether the proxy material of the parent, which is

subject to the Commission's proxy rules, should contain a discussion of the specific rights inuring to stockholders of the merged company who may be residents of California and who have a right to request a hearing before the California State Commissioner of California as to the fairness of the merger.

Item 2 of the proxy rules, Dissenters' Rights of Appraisal, would not require disclosure of the right of California shareholders to appeal to the California Corporation Commission for a hearing on the fairness of proposed issuance of securities since this right is not in the nature of a dissenter's right accruing to all stockholders but an additional right that accrues specifically to residents of California only.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 102 February 1 - 28, 1962

1933 ACT

1. Section 2(1) -- Evidence of Indebtedness, Guarantee; Investment Contract.

February 16, 1962 -- Letter re: Employees Mutual Fund, Inc.

An open-end investment company proposed to give purchasers of its shares the opportunity to subscribe to a separate agreement providing that upon any redemption of shares occurring ten years after their purchase, the fund would pay the shareholder any deficiency between the redemption price and the shareholder's cost less capital gains distributed for a consideration of 5% of the purchase price of the shares to be applied to the purchase of an "insurance contract" to cover the obligation.

The separate agreement was held to be an "evidence of indebtedness", an "investment contract" and a "guarantee" of the fund shares and therefore a security as defined by Section 2(1) of the 1933 Act and Section 2(a)(35) of the 1940 Act.

2. Section 2(1) -- Investment Contract; Profit-Sharing Agreement.

February 16, 1962 -- Letter re: Florida Medical Association

The Medical Association entered into an agreement with the Florida National Bank of Jacksonville as trustee, whereby the members of the association could contribute to the Florida Medical Association Investment Trust (trust). The trust is to be divided into two plans: a retirement trust and an investment plan. However, the monies of the two funds are to be commingled, and the participants have no claim on particular assets of the fund but only the right to demand a proportionate undivided interest in the whole. The trust is administered by a committee designated by the governors of the Florida Medical Association, whose duty is to "determine and advise the trustee of investment policy." No formal writing was given to the participants.

The issuer is the trust and not the Florida National Bank. The trust is an investment company, as defined in that Act, and is in the business of investing or holding securities for the benefit of participants. The interests of the members are securities as defined in Section 2(1) of the Securities Act even though no formal writing is issued, since the

“beneficial interests” therein constitute a “certificate of interest or participation in any profit-sharing agreement” and an “investment contract” within the definition of security.

3. Section 2(1) -- Investment Contract; Sale of Land.

January 16, 1962 -- Letter re: Tropical River Groves

The company was selling to the public interests in orange groves, combined with an agreement designating the maintenance of the land to a specific company. Tropical River Groves maintained the right, by contract, to select the type of trees grown on the land it sells to the public.

Under the circumstances and in the light of the Howey case, there was considered to be involved an investment contract notwithstanding that the company providing maintenance was not affiliated with the company selling the land.

4. Section 2(1) -- Investment Contract; Sale and Lease Back.

February 7, 1962 -- Letter re: World Land Corporation

Company will sell term life insurance contract vending machines to be located throughout the country and to be leased back by-the seller for 50 years. The company has modified its earlier plan for these sales (see Summary No. 96, August, 1961). In addition to providing that the purchaser (lessor) would be compensated according to the number of policies sold by his own machines, the previous plan is modified in that (1) lessor, or his agent, would find locations for the machines and place them; (2) lessor, or his agent, would secure and send to World Land Corporation (lessee) a signed “Location Agreement” between World Land Corporation and the person in control of the establishment, and (3) lessor would keep the machines in good working condition.

In a memorandum from the General Counsel’s office holding that a security is involved, it is noted that only the third duty does not authorize the lessor to perform his duties through an agent and continues that “in view of the specific agency authorizations with respect to the other two duties, as well as the lack of any general prohibition in the absence of specific authorization, this difference seems insignificant.” Accordingly, the staff advised that a security is involved.

5. Sections 2(3); 5(a)(1) -- Installment Payments; Sale.

February 26, 1962 -- Memorandum re: Palmetto Pulp and Paper Corporation

The company relying upon Section 3(a)(11) exemption sold shares on installment plan. As a result of sales interstate, the company lost its exemption. The question was whether

the company can continue to collect the installments due for the stock when no registration statement is in effect. The General Counsel took the position that for the purposes of determining when a sale is completed within the meaning of Section 5 of the Securities Act, a security is still being sold until payment is made in full. The primary concern of a promoter and of the investor is when funds are actually paid over, not when and if either part is bound in the classical contractual sense. (See S.E.C. V. Prudential Oil Corp., Lit. 1308, File No. B-528).

6. Section 2(11) -- Underwriter; Indirect Underwriting.

February 26, 1962 -- Memorandum re: Sheraton Corporation of America

Debentures in units of \$50,000 are being offered by Sheraton through a subsidiary, an underwriter, under a registration statement. A registered broker-dealer has an opportunity to acquire a unit and wants to break it up and sell to the public. It was the conclusion that the broker-dealer would be an underwriter.

7. Section 3(a)(10) -- Fairness; Negotiating Permit; Offer.

February 23, 1962 -- Letter re: Continental Telephone Company

Section 3(a)(10) exemption is not available until the terms and conditions of issuance and exchange are approved by the proper agency of the state, after a hearing on the fairness of those terms. Offerings made before the hearing and approval by the state commission on the basis of a negotiating permit do not meet the requirements of the exemption.

8. Section 4(2) -- Solicitation; Distribution.
Rule 154

February 28, 1962 -- Memorandum re: Shields & Co.

Shields had previously contacted a group of institutional investors while attempting to sell a block of Reynolds Tobacco shares for an investment company by a private placement. Shields subsequently contacted members of the controlling Reynolds family and proposed to sell a block of about 80,000 shares for them. This block was the equivalent of the previous week's trading. Shields asserted that no effort would be made to match buy orders which Shields had generated against sell orders, but it was expected that the institutions earlier contacted would purchase the shares.

Shields was told that Rule 154 was not available at this time for such a secondary distribution as agent over the Exchange.

9. Section 5 -- Foreign Rights Offerings.

February 28, 1962 -- Memorandum re: Wertheim & Co.

Advice sought as to handling of rights for purchase of foreign securities owned by customers, Wertheim could not itself exercise such rights on behalf of clients or facilitate their exercise without running the risk of violation of Section 5. This apparently would preclude the firm from acting with respect to shares held as nominee or in discretionary accounts except to forward the rights to customers upon request. No objection would be raised to advising customers (1) that a rights offering had been proposed or is in progress, (2) that the firm cannot participate in unregistered offering of securities in the United States, and (3) that the firm is prepared to effect a disposition of the rights abroad. Any such notice should not include the terms of the offer.

10. Section 8(a) -- Acceleration; Distribution of Preliminary Prospectuses.
Rule 460

February 12 and 26, 1962 -- Commission Minutes re: Oceanic Instruments

The registrant, an unseasoned company and affected by certain adverse factors, was directed to make a distribution of amended preliminary prospectuses to all persons who received prior preliminary prospectuses and to those who had given indications of interest. Counsel stated that amended preliminary prospectuses could not be given to all persons since much of the issue was to be placed by brokers and dealers in discretionary accounts of customers. Counsel proposed that the final prospectus be mailed to such persons two days before any confirmation of sale was forwarded to them.

Action on the request for acceleration was deferred until the registrant made amended preliminary prospectuses available to all persons to whom the sale of securities were to be confirmed.

11. Rule 153 -- Use of Prospectus in Distribution over Exchange.

February 8, 1962 -- Letter re: Idaho-Maryland Industries, Inc.

A small number of selling shareholders were selling common stock in a registered distribution on the Pacific Coast Exchange. Selling brokers were required to inquire of buying brokers whether they were willing to accept delivery of registered shares. The Exchange wished to modify its requirements to relieve the selling broker of this obligation since the distribution was proving ineffective because of brokers' confusion regarding their obligations to deliver a prospectus.

There would be no necessity of such inquiry if the obligation to distribute the prospectus was shifted to the buying broker in all cases involving solicited purchases of the security.

12. Regulation A -- Sales of Securities by Promoters; Computation of Net Income.
Rule 253(d)

February 7, 1962 -- Memorandum re: Treasure State Life Insurance Company

Controlling stockholders of a life insurance company wished to utilize Regulation A to sell their stock. In order to show the requisite net earnings called for by Rule 253, it was not proper to rely upon financial statements prepared for use by management, which showed a net income resulting from gains based on actuarial appraisal values of insurance in force, rather than those filed with the State Insurance Commission which showed a net loss.

Management statements cannot be used in determining the availability of Regulation A under Rule 253. Article VIII of Regulation S-X providing adjustments for fire and casualty insurance company figures is not applicable to life insurance companies.

1934 ACT

13. Section 12(a) -- Registration on an Exchange; New Security; Shares of a Class
Rule 12d1-1

February 28, 1962 -- Memorandum re: W. R. Grace & Co.

The company proposes to split its common stock and to increase the per share voting power of both the common and preferred stocks in the same ratio.

The company was advised that the changes did not create a new class of securities and accordingly a new registration statement on Form 10 would not be required. The issuer was cautioned to comply with state laws and the listing requirements of the Exchange.

14. Section 14(a) -- Solicitation; Merger; Election of Directors.
Rule 14a-1; 14a-7; 14a-11
Schedule 14B

February 19, 1962 -- Letter re: Consolidated Paper Co.

The shareholder originally submitted proposals concerning a merger or consolidation to be included in the management proxy statement under Rule 14a-8. He later decided to present these matters in accordance with the provisions of Rule 14a-7 although mergers or consolidations were not subjects being presented to the meeting.

A shareholder seeking to use Rule 14a-7 requiring management to distribute materials or supply certain shareholder lists, must comply with the rule, i.e. the subject matter of stockholder's proxy material must concern the subject matter of management's material or relate to the coming meeting. Although mergers or consolidations were not a subject matter of the meeting, the election of directors was at issue. The proposals were so couched and timed as to be a solicitation in opposition to management's nominees. Therefore, the shareholder must comply with the procedures for solicitations for election of directors including Schedules 14A and 14B.

15. Regulation X-14 -- Proxy Fight.

Rule 14a-11

February 20, 1962 -- Commission Minute re: Arnold Altex Aluminum Company

Counsel for one side in a proxy fight requested that the Commission not allow proxy solicitation by either side, pending a court decision regarding the validity of a so-called rump meeting held immediately following a recess in the annual meeting.

The Commission approved staff's position that it had no power to forbid the solicitation of proxies, but only to require compliance with the proxy rules.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 103 January 1 - 31, 1962

1933 ACT

1. Section 2(1) -- Security; Investment Contract.

January 23, 1962 -- National Security Life Insurance Company of New Mexico

The company sells insurance contracts containing three options, one for a cash refund, one to apply certain cash funds to the next premium, and one to leave the funds with the company at 3% interest. A fourth option was orally offered of investing such fund in the stock of other insurance companies. A 40% load was placed upon the premium to create such fund, and no monies were available for deposit the first year under the terms of the contract.

The company was advised that the basis on which the policy was sold, including the four options, may constitute an offer and sale of an investment contract.

2. Section 3(a)(4) -- Charitable Institution.

January 29, 1962 -- Letter re: Congregation of the Sons of the Immaculate Heart of Mary

A religious order contemplates acquiring 411 acres of land in California, 121 of which would be developed and used as a seminary for the Order, the purchase and development of which would be financed through the subdivision and resale of the remaining 350 acres. A corporation would be formed to act as trustee to acquire the land, transfer the 121 acres to the Order, and arrange for the subdivision and resale of the remainder. The corporation would issue \$875,000 face amount of trust certificates bearing 10% interest, maturing in three years, of which 8% would be paid annually, and the cumulative balance at maturity. The proceeds would be deposited with an Arizona thrift company at 8% to be used for credit or borrowing to secure the payment of the purchase price of the land. Any deficiencies between the sums so generated and those required to be paid would be advanced by the Order, subject to reimbursement from the proceeds from marketing the subdivision.

Proceeds from the sale of parcels would be applied to payment of expenses, repayment of advances, retirement of certificates and the cumulative 2% interest, and any ultimate profit would rest in the Order. Second Investment Corporation of Arizona would organize

the proposed corporation for the purpose of forming this trust as well as similar trusts in other religious organizations. It would provide the personnel for the corporation; would charge a 10% realty brokerage fee on the purchase of the land and a 10% financing fee on the money raised; and would receive an underwriting fee up to 10% in connection with the sale of the trust certificates. The trust certificates would be offered and sold to the public in amounts of \$100 or more through registered brokers and dealers.

In view of the major participation of Second Investment Corporation of Arizona in the organization and operation of the proposed corporation and the pecuniary profits which will inure to the benefit of Second Investment Corporation, the Division was not prepared to conclude that an exemption under Section 3(a)(4) was available.

3. Section 3(a)(9) -- Commission or Other Remuneration; Proxy Solicitation.
Rule 133

January 29, 1962 Letter re: National Biscuit Company

National Biscuit Company ("NBC") has presently outstanding 248,045 shares of 7% cumulative Preferred Stock which NBC wishes to retire. The terms of this issue do not provide for retirement at the option of the company. Retirement may be effected by an amendment of NBC's certificate of incorporation with the consent of 66-2/3% of the holders of NBC's outstanding common and 66-2/3% of the holders of the outstanding preferred, each voting separately as a class. NBC intends to submit a resolution to amend the certificate eliminating the preferred stock to its shareholders at their annual meeting on April 11, 1962, for which it will use proxy solicitation material.

In order to afford NBC preferred shareholders an opportunity to continue their investment in NBC and to preserve NBC's cash, it is proposed to offer such shareholders the alternative of taking new NBC debentures in lieu of cash. However, no authorization or approval by NBC stockholders of the creation or issuance of the debentures is necessary and they will not be asked to vote on any aspect of the transaction except, the amendment of the certificate of incorporation required to retire the preferred stock.

NBC deems it necessary to employ a proxy soliciting firm in connection with its annual meeting. Despite the assertion that the paid solicitation will be limited to the matters to come before the stockholders' meeting, namely, the election of directors and the retirement of the preferred stock; the solicitors will, not be authorized to solicit acceptances of the debentures or to obtain any indications of intentions of preferred stockholders regarding the offer of debentures; and the "formal offer" of debentures will be made by mail later in the day on which the amendment to the certificate is filed, the Division was unable to conclude that a Section 3(a)(9) exemption was available for the exchange since the exchange is a necessary subject for consideration by stockholders.

4. Section 3(a)(11) -- Installment Purchases; Continuous Offering.

December 29, 1961 -- Memorandum re: The Greater Iowa Corporation

The corporation made an intrastate offering of 5,000,000 shares at \$2 per share, which was purported to have been completed on October 31, 1961. Although the contracts of purchase appear to be firm, the policy of the company is to permit cancellations and withdrawal of the sale of shares paid for.

This permissive policy would appear to constitute a continuing offering of shares. Accordingly, if installment purchasers should move from the state in which the offering is being made, the Section 3(a)(11) exemption would be lost.

5. Section 4(1) -- Underwriter; Foreign Securities rights; Investment Adviser.

January 30, 1962 -- Letter to: Simpson Thacher & Bartlett

Lehman Brothers, as investment adviser, has recommended to its clients the purchase of outstanding shares of capital stock of certain European corporations. From time to time, additional shares of capital stock may be offered for subscription by holders of bearer shares at prices considerably below the current market price, which will be made in compliance only with the local laws and not the Securities Act.

Lehman Brothers believes that its relationship to its investment advisory clients requires that it notify these clients promptly of the existence of the valuable subscription privilege. Lehman Brothers proposes to notify its clients of the terms and duration of the proposed offering, indicating that the offering has not been registered under the Securities Act and that accordingly the shares cannot legally be offered in the United States but that Lehman Brothers will, if requested, or, where securities are in its custody, if no instructions are received, either forward the appropriate coupon to a bank or broker in Europe for resale in Europe or, should the rights be trading at a sizable discount, will forward the appropriate coupon to Europe to be exercised and the shares acquired thereby immediately resold in Europe, in each case for the account of the client.

If the entire transaction is completed in Europe, this Division would not recommend any action to the Commission if the registration requirements of the Securities Act are not complied with provided that repurchase of such shares abroad is not effected as a part of the program.

6. Section 4(1) -- Change of Circumstance; Underwriter.

January 19, 1962 -- Memorandum re: American Diversified Securities, Inc.

The company, a registered broker-dealer, is in bankruptcy and the trustee wishes to sell unregistered stock which the company acquired in connection with a Regulation A offering.

Where stock is acquired in connection with an offering to the public it would be regarded as part of the total offering even though held in escrow. In the hands of the underwriter, it would be considered part of an unsold allotment and the fact that the firm goes into bankruptcy does not constitute a "change of circumstance" warranting a "no action" position.

7. Section 8(a) -- Acceleration; Compensation of Underwriter.

January 16, 1962 -- Commission Minute re: N.A.S.D.

The N.A.S.D. asked whether the Commission would deny acceleration in cases in which the underwriter had declined to make such adjustment in its compensation as may be suggested by the N.A.S.D. Committee.

The Commission expressed itself in the negative. Whether the Commission should require some disclosure in such a situation was not resolved.

8. Regulation A -- 10-day Period; Sales in Violation; Indication of Interest.
Rules 255(a); 255(d)

January 24, 1962 -- Memorandum re: Discount Stores, Inc.

No offers or sales may be made under Regulation A prior to the expiration of the 10-day period following the filing pursuant to Rule 255(a) and that for such purposes, it need not be established that the mails or the facilities of interstate commerce were employed. (Whether there was a violation of Section 5 of the Securities Act of 1933 would, of course, be conditioned upon use of such jurisdictional means.) An amendment starts the running of a new 10-day period, It is appropriate to caution against commencement of the offer before clearance.

9. Regulation A -- Stock Options; Ceiling.
Rule 254(a)

January 15, 1962 -- Memorandum re: Wakefield Corporation

The company wishes to file under Regulation A to cover stock underlying stock options granted and to be granted to management employees under the company's stock option incentive plans.

No objection will be raised to the company filing a notification covering the shares now subject to exercise pursuant to options granted under the plan, and an estimated additional number of shares which will become subject to exercise within one year pursuant to options to be granted under the plan. The issuer should include in the notification an undertaking to reduce the offering immediately after the expiration of the one-year period by the number of covered shares which have not been sold on exercise of options. This procedure may be followed from year to year so long as the ceiling will not be exceeded.

1934 ACT

10. Section 16(a) -- Reports. Rule 16a-9

January 8, 1962 -- Letter re: Shell Oil Company

In the Shell Stock Fund a participating employee may direct all or part of the employer's contribution for his account to be invested in the stock of Shell. At the end of each accounting period the shares so purchased are allocated to the account of each participant. Each participant may at any time direct that all shares in his account be sold. The allocation of shares to his account and the sale at his direction of shares standing to his credit would be reportable transactions under Section 16(a) of the 1934 Act. Because of the limitations of data processing equipment, the allocation of shares to accounts for a given month are not available until the end of the following month, thus making it impossible to report the transactions for the accounts of officers within the period.

The following method for reporting was therefore proposed: (1) the trustees would file one monthly report of all transactions in and holdings of company stock for the accounts of officers with respect to each calendar month. (2) such monthly reports would state as to each officer: (a) the number of shares to his credit which at his direction had been sold during the calendar month; (b) the number of additional shares allocated to his account "as of" the end of the calendar month; (c) the number of shares to his credit "as of" the end of the calendar month. (3) the monthly report would be filed prior to the end of the succeeding calendar month. (4) officers would report all transactions within 10 days after the close of the calendar month in which such transactions take place notwithstanding Rule 16a-9.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 100 December 1 - 31, 1961

1933 Act

1. Section 2(1) -- Security; Evidence of Indebtedness.
Section 2(3) -- Offer to Sell

December 15, 1961 -- Letter re: Hamilton Oil & Gas Corp.

A letter to be sent to the stockholders of Hamilton would solicit a sum equal to \$.05 per share for each share of Hamilton common stock outstanding to pay the debts of the company, including delinquent corporate fees to the State of Colorado. There is no obligation on the part of the Hamilton stockholders to lend money to the company. The monies solicited would be represented by notes payable by Hamilton in 18 months, bearing 6% simple interest. The solicited funds would be returned to the lender-shareholders in the event sufficient money is not received to pay the corporate debts.

The plan to solicit funds from present Hamilton stockholders evidenced by notes payable by the company constitute an offer and sale of a security within the Securities Act and would require prior registration.

2. Sections 2(11); 4(1)1; 4(2); 5 -- Sales by Control Persons; Underwriters.

December 22, 1961 -- Memorandum re: Morgan, Lewis & Bockius

A broker-dealer firm owns 30 of a company's stock and after a proposed public offering will own 12%. Assuming the firm is still a controlling person, the question was raised whether it could make a market in the stock.

Such action on the part of the broker-dealer would involve the risk of a violation of Section 5 of the 1933 Act. However, there would be no objection to the issuer filling unsolicited orders as agent by going to other houses in the sheets.

3. Section 3(a)(2) -- Governmental Instrumentality.
Section 25(a) -- Federal Reserve Act

December 29, 1961 Letter re: Don L. Woodland

Generally speaking, the securities of companies organized under the Edge Act, which are authorized to act as fiscal agents of the U.S. abroad and are operated under supervision of the Federal Reserve Board, are regarded by the Division as exempt from registration under Section 3(a)(2) of the 1933 Act. However, the availability of the exemption to a particular company necessarily would depend upon its powers, activities and supervision.

4. Section 3(a)(9) -- Acquisition of Assets; Warrants.
Rule 133

December 13, 1961 -- Letter re: Giannini Scientific Corporation

On January 29, 1960, Giannini acquired substantially all the assets of Flight Research, Inc. in consideration of the assumption of certain liabilities of Flight Research, \$302,300 in cash, 10,000 shares of common stock and warrants to acquire 30,000 shares of common stock without additional consideration. The acquisition was voted upon in accordance with applicable state statutory procedures, and upon issuance of the above described securities, Flight Research was liquidated and its assets, including the Giannini stock and warrants, were distributed to its 50 shareholders.

A “no action” position was taken by the Division in respect to the later sale by the Flight Research stockholders of the common stock or warrants, or exercise of the warrants and sale of the underlying common stock without prior registration under the 1933 Act, subject to the limitations in paragraphs (d) and (e) of Rule 133.

5. Section 4(1) -- Employee Plan.

December 19, 1961 -- Letter re: United Engineering & Foundry Co.

The payroll deductions of employees of the company are invested through a monthly investment plan of the New York Stock Exchange. The investment activities are handled by Butler Wick & Co., an investment broker.

Based upon the assumption that United Engineering does not advise or recommend to its employees the purchase of its stock by participating in the plan and that such stock of United Engineering as is purchased for such employees is bought on the market, the Division took a “no action” position.

6. Sections 6; 11 -- Foreign Corporation; Authorized Representative.

December 19, 1961; December 15, 1961 -- Letter; Commission Minute re: Kateri Mining Co., Ltd.

The legislative history of the Act indicates Congressional concern with the great losses suffered by American investors in Foreign securities, both governmental and private issuers, and sets out its desire to have a responsible person in this country act as the authorized representative of the foreign issuer.

Since the authorized representative of a foreign issuer who signs the registration statement subjects himself to the liabilities of Section 11 of the Act, a company organized for the sole purpose of acting as the authorized representative of Kateri Mining Co. and having only nominal assets would not meet the Congressional intent. (See Memorandum to the Commission of December 11, 1961 and Memorandum to General Counsel of December 10, 1961.)

7. Section 6(a) -- Sale and Repurchases.

December 12, 1961 -- Memorandum re: Interphoto Corporation

The registration statement of the above company includes underwriting arrangements for all the common stock Class A shares to be issued in an exchange transaction. It is represented in connection therewith that up to 10% of these shares may be sold to certain designated persons including one or more of the selling stockholders. Accordingly, the following comment was contained in the letter of comment.

“If and to the extent that the Class A common shares offered under this registration statement are repurchased by any of the selling stockholders, they will not thereby receive ‘free’ shares if registration for sale by such persons would be required absent the subject offering, and such shares will not be deemed to be registered for the purpose of any further offering by them, since such offering is not described in the prospectus.”

8. Rule 254(a) -- Computation of Ceiling; Affiliates.

December 4, 1961 -- Memorandum re: Humphries, Inc.

Hoffman Radio owns about 25,000 shares of the company's stock. The company has an option to buy back at \$6.00 any of said shares. The company wishes to file a Regulation A at an offering price of \$7.50 per share, the proceeds to be used to repurchase the 25,000 shares of Hoffman. The question was raised whether since this involves an indirect offering by Hoffman of the shares to the public, its offering should be limited to \$100,000.

The \$100,000 limitation in Rule 254(a) is limited to affiliates of the company, and since Hoffman Radio was not in any control relationship with the company, it would not be limited by the \$100,000 ceiling.

9. Rule 263 -- Notice, Filing of

December 15, 1961 -- Telegram to: San Francisco Regional Office

Notice of the delay or suspension of an offering has to be filed by the issuer or underwriter. A letter from the Counsel is not sufficient notice. Notices are to be filed as official dockets.

10. Rule 434A -- Summary Prospectus; Available Information.

December 27, 1961 -- Memorandum re: Franklin Manufacturing Company

Company filed a registration statement offering 349,590 shares for the account of a selling stockholder. The stock of the company has always been closely held and financial information has been readily available to stockholders. No annual reports containing certified financial statements have been distributed to the stockholders or the public generally.

A request was made that the company be permitted to use the Summary Prospectus in view of its claimed compliance with requirements of Clauses (i), (ii), and (iii) of Rule 434A(a)(2).

The Division recommended against the waiver of compliance with Clause (iv) and against permitting use of the Summary Prospectus. The company withdrew its request.

11. Regulation A -- Gun Jumping; Indication of Interest.

December 18, 1961 -- Memorandum re: Pennhurst Pharmacal Co.

The company proposes to obtain indications of interest from some 600 customers to whom it intends to offer some of the stock to be covered by its notification.

There is no provision under Regulation A for obtaining indications of interest as may be done under a registration statement prior to the effective date, and it was suggested that the issuer avoid any type of offering until such time as the notification has been cleared.

12. Regulation A -- Registered Offering Made Within Six Months.
Rule 154; 257(a)

December 13, 1961 -- Memorandum re: American & Foreign Power Corporation

Electric Bond & Share had sold 220,000 shares of American & Foreign Power under a registration statement which became effective on October 31, 1961. It now appears that Band & Share may have \$150,000 more profit which it would like to offset through losses on the sale of additional 3,000 shares of American & Foreign Power stock for \$27,000, carrying a loss of about \$50 a share.

In view of the registered offering made within six months of the proposed transaction, Rule 154 would not be available. It was suggested that Regulation A be used. The prospectus for the prior offering could be filed under Regulation A to furnish the information called for by Rule 257(a), no offering circular being needed.

13. Form S-1 -- Prospectus; Selling Shareholder, Names of.
Item 19

December 4, 1961 -- Letter re: Layne & Bawler Pump Company

A request was made by the company to allow it to omit from the prospectus the names and addresses of 50 English investors who will be selling stockholders.

If the holdings of any or all of the 50 investors are of such an amount as to place the investor in the class of principal stockholders, then their names and addresses should be included in the prospectus in conformity with Item 19. However, if the holdings of any or all of the investors are of an insignificant amount, and the names and addresses of such investors are not essential in the prospectus to insure proper disclosure as to the nature of the distribution, their names may be omitted provided: (1) an exhibit is filed with the registration statement which specifically sets out the names, the addresses, the amount of stock held and relationship to the company, if any, of the 50 investors who intend to sell under the proposed registration statement; (2) the prospectus indicates the amount of shares which are offered on behalf of the group and the number of persons included in the group; (3) the prospectus states that the names and addresses of such selling stockholders are filed as an exhibit to the registration statement.

1934 ACT

14. Rule 10b-5 -- Manipulation.
Rule 15c1-2

December 29, 1961 -- Memorandum re: Macoid Industries

Charles Plohn & Co. and Edwards & Manly will underwrite an offering of 300,000 shares at \$5, less 60 cents, and as a result will receive options to purchase 45,000 shares at \$5, if purchased within 12 months, \$5.35 if purchased within an additional 12 months, or \$5.70 if purchased within an additional 12 months. No option, however, may be exercised until 11 months after issuance. Plohn is committed for 60,000 and Edwards & Manly for 40,000 of the shares being offered. A fairly sizable group is being formed to

underwrite the remaining 200,000 shares. An additional compensation, Plohn & Manly will transfer to other underwriters one option for each 10 shares sold, provided that such shares are not resold by the purchaser within 60 days.

It was concluded that the latter practice is deemed to be a manipulative device and in violation of Rules 10b-5 and 15c1-2.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 99 November 1 - 30, 1961.

1933 ACT

1. Sections 2(3); 5 -- Employees Purchase Plan.

November 22, 1961 -- Letter re: Hanover Insurance Company

Pursuant to employees' requests, the company made arrangements whereby the Chase Manhattan Bank as agent for the employees would purchase stock for the employees in accordance with the following procedures: (1) an employee desiring to participate in the plan will notify the bank of the number of shares he wishes to be purchased in the over-the-counter market and at the same time will make application for a personal loan to cover the cost; (2) the employee will request the company to deduct from each pay check and pay over to the bank an amount sufficient to amortize his loan over a two-year period; (3) the employee will pay the bank for its services as agent; (4) the employee retains the right to pay at any time the balance of his loan in full or to have the bank sell his stock and have returned to him proceeds from such sale; (5) all loans will be on a personal basis with the employee, and the company will not be responsible to the bank for any loss; (6) the company will distribute to its employees a letter describing the plan but will not do anything to influence the employee in his judgment.

On these facts, a "no action" letter was given since there was not sufficient sponsorship of the plan by the company to constitute a solicitation of an offer to buy the stock.

2. Section 3(a)(3) -- Commercial Paper; Equipment Receivables.

November 8, 1961 -- Letter re: National Equipment Rental, Ltd.

Unsecured 90 and 180 day promissory notes bearing interest at rates currently quoted in the market for "commercial paper sold to dealers" are issued by the company on a discount basis to or through a dealer who for an agreed commission either takes the paper as principal or places it with customers, generally corporations, pension or welfare funds or similar organizations seeking for their temporary investments higher rates of return than are currently available on government bonds, savings bank deposits or the like.

The company's counsel expressed the opinion that since the company's principal assets comprises "Equipment Receivables", the short-term paper issued or to be issued by the

company to finance its "Equipment Receivables" and to carry its "Inventories" of net leases "arises out of a current transaction", thus having available to it the exemption provided by Section 3(a)(3) of the Act for such paper.

On the assumption that the company's short-term paper is discounted at Federal Reserve Banks, no action position taken.

3. Section 3(a)(11) -- Integration; Intrastate Offer.
Rule 133

October 11 and 26, 1961 -- Letters re: James Boyle, Jr.

A California corporation proposes to acquire all the assets of an Alaskan corporation pursuant to a Rule 133 transaction. The California corporation also proposes to issue at the same time 100,000 additional shares to persons residents in California, under a claim of exemption from registration under 3(a)(11).

Under Rule 133, such a transaction involves a sale of securities of the acquiring corporation to the corporation whose assets are acquired. Accordingly, no exemption would appear to be available under Section 3(a)(11) of the Act for the proposed public offering by the California corporation, for there has been a sale to a non-resident, i.e. the Alaskan corporation.

4. Section 4(1) -- Restrictive Stock; Subsequent Distribution.
Rule 133

November 17, 1961 -- Memorandum re: Lionel Corporation; Hathaway Instruments, Inc.

In connection with a merger of the above two named companies pursuant to Rule 133, Lionel, the surviving company, is to issue convertible preferred stock. Certain stockholders of Hathaway hold common stock with a restrictive legend, having purchased such stock under investment representations.

The Division took the position that in a Rule 133 transaction, restrictive stock issued prior to a merger is not made free by reason of the Rule 133 transaction and will be under the same resale restrictions after the Rule 133 transactions as before.

5. Rule 133 -- Availability to Partnership.

November 28, 1961 -- Memorandum re: Glickman Corporation

The Corporation proposes to acquire a sublease, presently held by a limited partnership by exchanging its securities, pursuant to a Rule 133 transaction, for the interest held by the over 100 partners.

Rule 133 is not applicable to a partnership and should not be relied on for such an exchange transaction.

6. Rule 235 -- Cooperative Housing; Computation of Amount of Offering; Reduction of Mortgage.

November 21, 1961 -- Letter re: River Park Mutual Homes, Inc.

To enable prospective members to secure the advantage of lowering the monthly charges, which they would otherwise pay under their occupancy agreements, the company proposes to accept payments tendered by members and to use the funds at the closing to reduce the blanket mortgage on the entire project.

The applicability of the exemption afforded by Rule 235 is determined by the aggregate offering price of the membership (the security) offered and is not affected by the additional cash payment upon the house toward reduction of the mortgage.

7. Regulation A -- Escrow; Transfer of Shares.
Rule 253(c)

November 17, 1961 -- Letter re: International Ultra-Sonics Corporation

The company filed a notification under Regulation A covering 60,000 shares of common stock. In connection with this offering, Aero Supply Manufacturing Corp. and Robert G. Wilhelms, an officer of the issuer, entered into an escrow agreement for 13 months from March 1, 1961, covering their shares of Ultra-Sonics stock.

A serious conflict arose between Thomas Scarpa, the president and principal stockholder of Ultra-Sonics, and Aero concerning the conduct of the affairs of Ultra-Sonics. Carl H. Pforzheimer & Co. proposes to purchase on behalf of a limited group of persons the shares presently held by Aero and by Wilhelms for the purpose of acquiring control.

Because of the particular circumstance of the transfer of control and settlement of disagreement in the company, the Division raised no objection to the transfer, provided Pforzheimer & Co. and each purchaser execute an escrow agreement covering the shares purchased effective for 13 months from March 1, 1961.

8. Regulation A --Omission of Issuer's Name from Suspension Order.
Rule 261

November 2, 1961 -- Commission Minute re: Aerosonic Corp.

The Regulation A offering was suspended as a result of the activities of certain selling stockholders, including Courts & Co. and Clement K. Evans & Company, Inc. Question was raised whether the name of the issuer might be omitted from the suspension order and the exemption be suspended only as to those selling stockholders whose actions constituted the violation.

The Office of General Counsel expressed the view that, under the existing rules, the name of the issuer would have to be included in the title of the order. The Commission concurred with the view expressed.

1934 Act

9. Section 12(d) --Exempted Exchange, Delisting on Rule 12a-5

November 20, 1961 -- Letter re: Oahu Railway and Land Company

Since Rule 12a-5 provides a temporary exemption for 120 days (which may be extended on request), the filing of Form 10 application may be deferred until the merger is effective and the items therein may be answered in the past tense.

Notwithstanding the inclusion of Section 12(d) in paragraph (a) of Condition (4) of the exemption order for the Honolulu Stock Exchange, the Commission's delisting rules under Section 12(d) do not apply to securities listed on an exempted exchange under Condition (3) or under Condition (4). Accordingly, the Exchange can terminate the listing of any security without regard to the Commission's delisting rules. Since the delisting rules are inapplicable to the exempted exchange, they are also inapplicable to the issuers securities of which are Listed on that exchange. Therefore, an issuer could withdraw its Form 10 application even though the 30 day waiting period after receipt of the exchange's certificate had elapsed.

10. Section 15(d) -- Merger, Reports, Undertaking. Rule 15d-13(c)

November 17, 1961 -- Letter re: Great Plains Life Insurance Company

Great Plains Life was formerly a wholly-owned subsidiary of The Wyoming Corporation, which was subject to the reporting requirements of Section 15(d). In May 1961, The Wyoming Corporation was merged into the Great Plains Life Insurance Company.

Since the company is apparently continuing in the same business as its parent was engaged in directly or indirectly prior to the merger, the Division was of the opinion that the surviving corporation, Crest Plains Life Insurance Co. is required to file reports pursuant to the undertaking of The Wyoming Corporation. However, pursuant to Rule 15d-13(c), Great Plains Life Insurance Company is not required to file semi-annual reports on Form 9-K. (see Memorandum of General Counsel's Office, dated July 13, 1961.)

11. Rule 20a-2(9) -- Proxies; Balance Sheet; Investment Adviser.

November 14, 1961 -- Memorandum re: Haydock Fund, Inc. et al

Scudder, Stevens & Clark is the investment adviser to the above funds. The adviser's annual compensation is one half of 1% of the net asset value of the funds.

Since the adviser was primarily engaged in a business other than underwriter, distributor or adviser for registered investment companies and less than 13% of its gross income in 1961 was derived from advising the investment funds, permission was granted to omit its balance sheet from the proxy material of the funds in 1962.

TRUST INDENTURE ACT

12. Sections 306(a); 306(c) -- Solicitation of Proxies; Sale; Offer.

November 6, 1961 -- Memorandum to: James R. Kearney Corporation

When the company filed application for qualification of its indenture under the 1939 Act, it had already mailed to security holders the material soliciting consents to amend the company's certificate of incorporation so as to permit redemption of the preferred stock with the debentures proposed to be issued under the indenture to be qualified. Exemption from the Securities Act was claimed under Rule 133. Section 306(c) permits the solicitation to be begun as and when an application is filed.

The proxy under consideration is binding after it is voted but before then, a security holder has a right to attend the meeting, revoke the proxy, and vote in person.

The Division took the position that the instant solicitation would appear to be comparable to the solicitation of revocable consents to an exchange in which case Section 306(c) would be applicable. However, the solicitation should not have been begun prior to the filing of the application.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 97 September 1 - 30, 1961

1933 ACT

1. Section 2(1) -- Guarantee, Incorporation of

September 12, 1961 -- Commission Minute re: South European Pipe Line Company

Debentures were proposed for the financing of a pipe line to be constructed from France to Germany to carry the products of 16 oil companies. The commitments of the oil companies were contained in two agreements which were so designed that regardless of events, the pipe line company would be provided with sufficient funds to maintain its debt service. A third agreement between the pipe line company, representatives of the future debenture holders, and Lazard Freres & Co., as trustee, assigned all sums which might be payable to the pipe line company by the oil companies under the above agreements to the trustee, with notice to the debtor oil companies. Until default by the pipe line company, the oil companies would make payment to the pipe line company; on notice of default by the pipe line company, the oil companies would make payment directly to the trustee.

The Commission concurred with the Division's position that "incorporated" guarantee, as expressed in the House Conference Report [H.R. Rep. No. 1838, 73d Cong., 2nd Session] dealing with Section 2(1), did not require an express mention of the guarantee on the debt instrument itself. It is not necessary that the obligation run to the holders of the securities, but it is sufficient that the debt instrument entitled the bondholder to an action in his own right, for example, as third party beneficiary, to constitute a guarantee within the meaning of Section 2(1). (See memorandum dated September 8, 1961.)

2. Section 2(1) -- Security; Mutual Funds; Insurance Against Loss.
Section 2(a)(35) -- Investment Company Act

September 15, 1961 Letter re: George Greer III

It is proposed to form a new mutual fund and arrange with an insurance company to insure future investors against the value per share falling below its issue price.

If the proposed "insurance" were possible, the contracts of insurance or guarantee might constitute a security, separate and apart from the mutual share within Section 2(1) of the

Securities Act and 2(a)(35) of the Investment Company Act. If such insurance did constitute a security, it should be separately registered under the 1933 Act. The “insurance” or “guaranty” company itself may be deemed an investment company required to register under the Investment Company Act.

3. Section 2(3) -- No Sale; Sale of Assets; Vote of Stockholders.
Rule 133

September 21, 1961 -- Memorandum re: Harold F. Reindel

A Canadian company proposed to sell its assets to an American company, after which the Canadian company would be dissolved and the stock of the American company would be distributed to the stockholders of the Canadian company. The law of the Province under which the Canadian company was organized and to which it is subject does not provide for any vote by security holders for a sale of assets, although a vote is required in connection with the dissolution of a company. The Canadian company proposed to submit a plan of dissolution to the vote of its security holders which would also provide for the sale of its assets to the American company, and a vote of the necessary majority on dissolution would bind the minority security holders.

The Division would not recommend any action to the Commission if the plan were effected and the transaction consummated on the basis of the foregoing facts without registration under the Securities Act.

4. Sections 2(11); 5; 8; 10 -- Gun Jumping; Newsletter; Prospectus; Participation in Distribution.

September 26, 1961 -- Memorandum re: Hayden, Stone & Co.; Holiday Inns of America Inc.

Hayden Stone publishes a monthly investment bulletin and proposed to include an article concerning Holiday Inns and a recommendation for its purchase. Holiday Inns has a pending registration statement which has not yet become effective. The offering involves an exchange with franchise holders. Hayden Stone is not a member of the underwriting or dealer group.

The article and recommendation should not be used for its inclusion could be construed as an offer and the publication as a prospectus not meeting Section 10 of the Act.

5. Section 2(11); 4(1); 5 -- “Exchange Funds” or “Swap Funds”; Restricted Securities in Portfolios; Indirect Offering
Rule 140

September 7, 1961 -- Commission Minute re: “Exchange Funds” or “Swap Funds”

When the so-called Exchange Fund or Swap Fund type of investment company takes (or contemplates taking) into its portfolio “restricted” securities (i.e., control stock or stock from an issuer or underwriter) the offering of the Fund’s shares constitutes the offering of “restricted” securities to all persons to whom the Fund’s shares are offered and therefore registration of the “restricted” securities under the Securities Act of 1933 would be necessary before any offering of the Fund’s shares.

6. Section 2(11) -- Underwriter; Substantial Participation.
Sections 2(a)(38); 10(f); 17 -- Investment Company Act
Rule 141

September 27, 1961 -- Letter re: Woodward Research Corporation

Shares in American Industry, a regulated investment company, proposed to purchase 5,000 shares out of a total of 40,000 shares offered to the public by Woodward. The offering is to be accomplished through a best effort underwriting by First Investment Planning Co. By the terms of the agreement, First Investment will receive, in addition to a 15% commission, warrants to purchase 12,000 shares of Woodward at 1 cent per warrant exercisable at \$4.00 per share. By verbal agreement, Jones, Kreeger & Co. will undertake to sell 16,000 shares of the offering in exchange for a 10% commission and 3,333 warrants for Woodward shares from First Investment. Columbian Financial Corp., investment adviser and manager of Shares in American Industry, will undertake to distribute 10,000 shares of the offering in exchange for a 6% commission and an option to acquire 5,000 shares of Woodward. Shares in American Industry will purchase 5,000 shares of the public offering and will receive warrants for 2,000 additional shares. Columbian Financial has assigned its interest in options to acquire Woodward shares to Shares in American Industry.

It seems clear from the facts that the interest of the investment adviser and the investment company are not limited to the usual or customary distributor’s or seller’s commission but extend to participation in the arrangement and distribution of a substantial part of the proposed offering. (See Rule 141 under the Securities Act of 1933.) Therefore, the staff is unable to conclude that Shares in American Industry and Columbian Financial Corp. come within the exception from the definition of the term “underwriter” in Section 2(11) of the 1933 Act and of Section 2(a)(38) of the 1940 Act. Sections 10(f) and 17 of the 1940 Act would prohibit the intended participation by Shares in American Industry.

7. Section 13(a)(5); 17 -- Savings and Loan Association; Advertising.
Section 202(a)(11) -- Investment Advisers Act

September 29, 1961 -- Letter re: David A. Bridewell (Home Loan Associates)

Home Loan Associates, a non-profit trade association having as its purpose the promotion of the business of savings and loan associations, with its income derived from annual dues of its members, proposed a direct mail, advertising program recommending the purchase of savings and loan shares and disseminating statistical and financial information with respect to those savings and loan associations which are its members. The investor will directly contact the association he selects from the list of associations supplied by Home Loan Associates, and the "savings account" passbook will be issued in the name of the investor and mailed to him by the association to which he has written. No brokerage fee will be charged by Home Loan to the associations in which investments will be made by such investors.

No question would be raised as to Home Loan Associates conducting the advertising program referred to without registration as an investment adviser under the Investment Advisers Act. However, it would appear that Section 17 of the Securities Act would require disclosure of the fact that Home Loan Associates represents the savings and loan associations being recommended and that each of the associations supports the company by the payment of dues. If the securities of the savings and loan associations come within scope of Section 3(a)(5) of the Securities Act, there would be exemption from Section 5.

8. Section 2(11) -- Underwriter; Subscription Agreement.
Rule 142

September 12, 1961 -- Letter re: American Diversified, Inc.

In order to operate as an insurance company, the corporation was required to have capital equal to the amount of \$200,000. It had received subscription pledges for this amount, but \$40,000 of these subscriptions has not been paid. A stockholder proposed to purchase from the company outstanding subscription agreements covering about \$40,000 of stock. The assumption of the subscription agreements by the purchasing stockholder would take place at such time as the amount remaining outstanding under the agreements would, when added to the amounts already deposited in escrow, equal \$200,000. The escrowee will then purchase shares in an insurance company being founded by the company. The company will issue shares to the purchasing shareholder to enable him to honor the subscription agreements. Subscribers would make payments to the purchasing stockholder and, in the event of a default on the agreements, he would retain in his own name the shares remaining unsold under the agreements. The stockholder would purchase the shares under the agreement at the same price at which he will honor subscriptions. The sole purpose of the proposal is to enable the insurance company to apply for a license at the earliest possible date.

Upon these facts, the stockholder would be deemed to be an underwriter as defined in Section 2(11) of the 1933 Act. This position is supported by inference in the Commission's Rule 142. While this rule excludes from the definition of "underwriter" a person who undertakes to take down the unsold portion of a security offering, it

specifically is predicated, inter alia, on the condition that such person “is not in privity of contract with the issuer . . .”

9. Section 3(a)(11) -- Underwriter; Selling to Invest in Partnership.
Rule 140

September 26 and 28, 1961 -- Teletype and letter re: Strand Land and Development Corp.

The company is an Arizona corporation organized for the purpose of engaging in real estate ventures and operations in Arizona. It is currently offering its stock to the residents of the State of Arizona pursuant to the section 3(a)(11) exemption from registration. The company proposes to cause the formation of a limited partnership in which it will be the general partner and the members of the public who purchase certificates of limited partnership interest will be the limited partners. The proposed partnership would engage in one specific real estate venture. The prospectus being used in the 3(a)(11) offering states that part of the proceeds of such offering will be used to finance the company’s investment in a partnership.

The Division advised that Rule 140 applies to the proposed plan. Thus, the corporation, selling its own securities to get funds to invest in the partnership would be deemed to be offering the securities of the partnership. Hence, if any of the partnership interests were offered to non-residents of Arizona, the intrastate exemption under 3(a)(11) of the Act would be destroyed in connection with the stock offering.

10. Section 5 -- Pre-Effective Period; Contracts for Sale.
Rule 415(d)

September 27, 1961 -- Memorandum re: Carolina Power & Light

The above company proposed to file a registration statement to cover both stocks and bonds with separate cover pages to the prospectus for each. Merrill Lynch will enter into a contract before the effective date for the sale of the stock, and the company would like to be able to enter into a contract with the successful bidder at competitive bidding for the bonds at that time.

Under Section 5, contracts for sale may not be entered into prior to the effective date of a registration statement covering such securities. Rule 415(d) prevents the possibility of postponing the inclusion of information as to the stock offering until the time of the post-effective amendment with respect to the bonds so that contracts on both issues could be executed after the effective date.

The company might enter into contracts with the successful bidder before the effective date only if the successful bidder would be an underwriter. If the successful bidder were other than an underwriter, the company would find itself in a position of being unable to

award the contract until after the effective date. The filing of two separate registration statements was suggested to avoid this problem.

11. Section 5(b)(2) -- Broker-Dealer; Prospectus; Secondary Offering.
Rule 153
Regulation A -- Rule 256(b)

September 5, 1961 -- Letter re: Rule 153

Rule 153 as presently in effect provides that if copies of the statutory prospectus are delivered to the exchange for redelivery to members upon request, the requirements of Section 5(b)(2) would be satisfied for exchange transactions. Rule 153 is silent whether the statutory prospectus would be delivered to the ultimate purchaser although the view was expressed that the rule was so intended. Identical procedures are applicable under Rule 256(b) of Regulation A with respect to delivery of an offering circular to members of the Exchange.

In the case of a broker selling on the exchange on behalf of selling stockholders, the broker would be deemed to be an underwriter whether or not the sell order is solicited and would be required to deliver a prospectus to his purchasers. Such delivery may be effected by complying with 153.

12. Sections 8; 17 -- Misrepresentation; Net Asset Value.

July 31, 1961 and September 7 and 12, 1961 -- Commission Minutes re: First National Real Estate Trust

The trust proposed a continuous offering of its shares at net asset value plus sales load through Aberdeen Investor Programs, Inc., a distributor of mutual funds. The net asset value was to be fixed by the trustees from time to time but not less often than every three months. The shares were not redeemable but the distributor would grant priority in its purchase and sale of shares to those a shareholder wished to sell at net asset value.

The Division contended that any representation as to the value of its real estate assets in excess of cost thereof and any representation of the net asset value of its shares based thereon, might be considered misleading, and therefore, the proposed method of operation appeared likely to contravene the provisions of the 1933 and 1934 Acts. Registrant's application for a ruling exempting it from the provisions of Rule 10b-6 was denied by the Commission. (See Memo July 31, 1961.)

13. Regulation A -- Unproven Charges; Reasonable Investigation.
Rule 252(c)(1)

Rule 252(f)
Section 11(b)(3)

September 14, 1961 -- Commission Minute re: Netherlands Securities Company, Inc.

A stop order proceeding pursuant to Section 8(d) of the 1933 Act was pending against the registration statement filed by Faradyne Electronics Corporation in which Netherlands was named as an underwriter. Accordingly, Rule 252(c)(1) operated to make the Regulation A exemption from registration unavailable for offerings to be underwritten by Netherlands. The firm applied for Rule 252(f) relief from the operation of Rule 252(c)(1). The Division urged that Netherlands' application be denied by reason of its failure to include any showing in its application that it made a reasonable investigation of the facts in the Faradyne case. It was noted that the New York Regional Office, based upon a recent broker-dealer inspection of Netherlands, had placed the firm on the "boiler room surveillance list".

The Commission approved the Division's recommendations for denial of Netherlands' application for relief pursuant to Rule 252(f) based upon its failure to show that it was innocent of any wrong-doing in the Faradyne case and indicated that a denial of relief should not be based upon unproven charges.

14. Regulation A -- Underwriter; Pending Suit.
Rule 252(e)(2)

September 5, 1961 -- Memo re: Intercontinental Motels, Ltd.

If the pending proceeding against the company is dismissed, there will be no "pending proceeding" and if the order instituting the proceeding is vacated, there will be no "order" on which to base the Rule 252(e)(2) disability to the use of Regulation A.

15. Rule 134 -- Tombstone Ad.

September 8, 1961 -- Letter re: William S. Serat

Tombstone advertisement may appear in a foreign language. The issuer is held responsible for the accuracy of the translation.

16. Regulation S-X -- Independent Accountant; Confirmation of Securities in Safekeeping.

September 21, 1961 -- Letter to: Shigeji Takeda

An accountant who was employed to be the certifying accountant for Nichibei Securities Corp. of Los Angeles, a broker-dealer in Japanese securities, had purchased 1,000 shares of stock through his broker-dealer client. On August 3, 1961, the stock was paid for by check. Nichibei forwards all transactions in Japanese securities to Daiwa Securities Co. in Tokyo, and securities kept by this firm in safekeeping. It was inquired whether a letter from Daiwa listing such securities would be sufficient confirmation or whether a certificate of an independent accountant in Japan after verification by actual examination is necessary. A letter from Daiwa would be sufficient. (See paragraphs (5)(d) and (f) of Form X-17A-5 and the paragraph "Accounts with other Brokerage Concerns" on page 29 of the pamphlet "Audits of Brokers or Dealers in Securities by Independent Certified Public Accountants").

Since it appears from the fact the transaction between the accountant and this broker-dealer client was a cash transaction, the Division will raise no question regarding the independency of the accountant. However, while such cash transactions have not been prohibited, it was suggested to avoid the possibility of jeopardy of his status as an independent accountant that future transactions be carried out with a broker-dealer who was not a client. (See Case 54 of Accounting Series Release No. 81.)

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 95 July 1 - 31, 1961

1933 ACT

1. Section 2(11) -- Underwriter; Gift of Control Stock.
Rule 154

July 6, 1961 -- Wellington Management Company

W. L. Morgan is the trustee of a trust which holds all the Class B Common Stock of Wellington Management Company. He is also the beneficial owner of all of the voting stock of Wellington Research and Development Company and is the president and chief executive officer of the Lovett Foundation. Research and Development donated 4,000 shares of Management to the Foundation. The Foundation in turn donated 500 of those shares to Princeton University. Research and Development may donate an additional 5,000 shares to the Foundation, or other charitable, educational or religious organizations, or sell any portion not donated and reinvest the proceeds in other securities for diversification purposes.

No action would be recommended if the Foundation either donates the shares and the donees resell such shares (including the 500 shares previously given to Princeton), or sells the 8,500 shares and reinvests the proceeds provided all sales are made in compliance with Rule 154, and the aggregate of all shares sold by the donor, donees, and affiliated persons come within the limitations of Rule 154.

2. Section 2(11); 4(1); 4(2) -- Underwriters; Control; Distribution; Trading.
Rule 154

July 21, 1961 -- Letter re: Georesearch, Inc.; Metropolitan Dallas Corporation

In 1959 and 1960 several large blocks of stock of Georesearch were acquired by Metropolitan for investment and placed in its investment account. The president of Metropolitan is also president of Georesearch, and Metropolitan has continued to effect over-the-counter transactions in Georesearch stock, acting sometimes as broker and sometimes as principal. It is contended that the transactions would be exempt as dealer's transactions under Section 4(1) of the Act since Metropolitan has not made a distribution of Georesearch stock, and that the amount of shares sold by Metropolitan was well within the trading permitted by a controlling stockholder under Rule 154.

Metropolitan is an “issuer” for the purpose of determining who is an “underwriter” within the meaning of Section 2(11). Where, as in the instant case, Metropolitan is continually selling the security, by virtue of its market therein, it is the Division’s conclusion that a distribution is involved and that any persons who take the securities from Metropolitan with the view to resale becomes an underwriter. It is believed immaterial that Metropolitan also purchased securities or may be regarded as “trading” in securities, as referred to in the Ira Haupt case, when such trading is part of the process of distribution for a controlling person.

Rule 154 was in no way intended to, nor does it by interpretation provide an exemption for controlling persons. Rule 154 sets down standards whereby it can be determined what might be characterized as casual sales by a broker acting as a broker in an established market. A pattern of continued selling would not fall within such a characterization.

3. Sections 2(11); 4(2); 5 -- Broker; Underwriter; Broker’s Transaction.

July 24, 1961 -- Letter re: Idaho Maryland Industries, Inc.

The question raised is the position of the broker as an “underwriter” as defined in Section 2(11) of the Act with respect to solicited and unsolicited offers to buy securities by such broker who is not acting as selling broker for selling stockholders.

Where a broker is otherwise not connected with the offering, it would appear that he may receive registered shares for unsolicited orders to buy and rely upon the exemption contained in Section 4(2) of the Act. With respect to solicited orders, this exemption does not apply. Whether such brokers will be deemed underwriters will depend upon the particular facts of the case, with particular reference to whether they had in fact made the solicitation in furtherance of the registered offering. If such a solicitation had been made, there would arise the further problem of the delivery of a prospectus at the time of solicitation. Where a broker publishes its usual financial letters to its customers without regard to the prospective securities offering, it would seem unlikely that it could be charged with solicitation made in furtherance of the registered offering based upon this fact alone.

4. Sections 2(11); 5; 10(a)(3) -- Underwriter; Distribution; Undertaking to File Post-Effective Amendments.

June 30, 1961 -- Letter re: Western Empire Life Insurance Company

The necessity of continuing to file post-effective amendments pursuant to the undertaking contained in the subject registration statement depends upon whether it may be necessary to deliver a prospectus in connection with the offer or sale of the registered securities. The original distribution of such securities is deemed to continue until all securities

comprising such issue here come to rest in the hands of the ultimate investor; the temporary suspension of the distribution would not affect the character of the distribution or necessarily convert persons who are underwriters into ultimate investors, leaving them free to continue the resale at a later date without complying with prospectus requirements of Section 5(b) of the Act.

As long as neither the issuer nor any underwriter, nor any person acting upon their behalf, proposes to offer or sell such securities, it would not be necessary to keep the prospectus up to date; provided such revised prospectuses are timely filed by post-effective amendments prior to any required use thereof.

5. Section 3(a)(5) -- Savings and Loan Associations.

July 20, 1961 -- Letter re: Equitable Savings and Loan Association

Equitable is engaged in the savings and loan business through 13 offices and is supervised by the state regulatory authorities. Its primary activities are the taking of savings deposits and the making of loans to members secured by mortgages on real property. It proposes to offer shares of its reserved fund stock to the public through underwriters. Such securities constitute the only class of stock authorized and outstanding under the company's charter.

No action was taken under a claim of a 3(a)(5) exemption.

6. Section 3(a)(9) -- Exchange; Preferred Stock; Dividend Arrears.

July 27, 1961 -- Memorandum re: Atlas General Corporation

The company proposes to exchange new preferred stock, common stock, and cash for old preferred and dividend arrears. Concurrently with the exchange, holders of outstanding debentures will release restrictive covenants in order to permit dividends to be paid in the future. The larger holders of the 470 preferred stockholders have indicated that they would be agreeable to the exchange.

No objection was raised to the reliance upon the 3(a)(9) exemption notwithstanding the fact that there was to be an exchange for dividend arrears.

7. Sections 5(b); 10(b) -- Pre-Effective Dissemination of Information; Summary Prospectus.
Rule 434

July 31, 1961 Letter re: New Issue Service, Inc.

The company, a registered investment adviser, inquired whether it may mail out sheets to brokerage houses and underwriters for distribution to their customers where such sheets contain (a) information taken from preliminary prospectuses which have not become effective; (b) information taken from prospectuses within 40 days after such prospectuses have become effective.

Rule 434 provides that summarizations of preliminary prospectuses filed as a part of a registration statement would meet the requirements of Section 10(b) for the purposes of Section 5(b)(1) if the issuer of the securities files reports pursuant to Section 13 or 15(d) of the 1934 Act, the summary is prepared by an independent statistical organization, contains the information specified in Rule 433(a), and the conditions set forth in Rule 434 are met.

Rule 434 does not apply after the effective date of the registration statement, and any such bulletin must be accompanied or preceded by a final prospectus when used by brokers or dealers after the effective date. In addition, the firm must be in the business of publishing and disseminating statistical and financial information and not in the business of selling securities to subscribers or others.

8. Section 5(b)(2) -- Secondary Distribution; Dissemination of Prospectus; Offering on the Exchange.

Rule 153

Rule 10b-6 of the 1934 Act

June 11, 1961 -- Commission Minute re: "Hazel Bishop Type" Offerings

To meet the distribution and prospectus problems raised in the Hazel Bishop case, the staff proposed alternative "semi boiler plate" type deficiency letters. One would be applicable to the Hazel Bishop type case, involving numerous selling stockholders related in one way or another, and would be couched in terms expressed in the final prospectus. (See page 2 of prospectus dated June 26, 1961.) The other type letter would be used in cases where the selling stockholders were not so related and would merely call attention to the problems which might arise in the distribution and the applicability of Rule 10b-6 and other provisions. (Hazel Bishop Inc., Securities Act Release No. 4371 and File No. 2-16761.)

9. Sections 7; 8(a) -- Disclosure; Acceleration.

Rule 460 (Note (c))

July 5, 1961 -- Commission Minute re: Acceleration of Effective Date of 1933 Act Registration Statements in Investigated Cases

Consideration was given to the problem of denying requests for acceleration pursuant to paragraph (c) of the Note to Rule 460 where the issuer, a controlling person of the issuer,

or an underwriter of the securities being offered is under investigation by the Commission.

Acceleration should not be denied if the investigation did not relate to the registrant, an affiliate of the registrant, or an underwriter's relationship to the proposed offering. Furthermore, an underwriter who was a respondent in administrative proceedings under the 1934 Act should disclose such fact to the issuer. If the issuer despite that fact requested acceleration in writing, the pendency of the proceeding would not be a bar to acceleration unless the investigation related to the proposed offering. Disclosure would be required in the prospectus only if the underwriter were affiliated with the issuer. Ordinarily, disclosure would not be required merely because a partner or officer of the underwriter happened to be a director of the issuer.

10. Rule 133 -- Merger; Distribution.
Rules 10b-5 and 10b-6 of the 1934 Act

June 16, 1961 -- Memorandum re: Applicability of Rule 10b-6 to Merger Situations

The staff's attention is directed to a memorandum from the Division of Trading and Exchanges on the above topic.

11. Regulation A -- Amendments to Regulation A; Use of Offering Circular.
Rules 161; 256; 260

July 19, 1961 -- Letter re: Wakefield Corporation

In 1952 the company filed a notification under Regulation A covering 30,000 shares of common stock underlying options. In 1954, after a merger with a company which also had an option plan covered by a notification, the surviving company extended its plan to cover both companies. Options have been exercised in the aggregate amount of \$40,000, and unexercised options covering 20,017 shares are outstanding. New options are currently being granted and outstanding options are currently being exercised.

Since the notification covering the stock option plan was filed prior to the comprehensive 1953 amendments to Regulation A, the company feels that use of an offering circular in connection with future exercise or issuance of options is not required.

Rule 161 requires any offerings under the previously existing Regulation A or D to comply with the revised Regulation A if the offering is continued after January 1, 1959. Consequently, the issuer would have to comply with the current Regulation A.

1934 ACT

12. Section 14 -- Proxy; Stockholder Proposals.
Rule 14a-8(a)

July 3, 1961 -- Memorandum to the Commission re: United Industrial Corporation

On June 24, 1961, a stockholder mailed four proposals to management for inclusion in management's proxy material. The proposals were received by management and this Division on June 29. Management had received final comments on its proxy material on June 23, had completed setting type and correcting proofs by June 26, and had mailed its material on June 28.

The four proposed resolutions may be summarized as follows: Any person shall be disqualified from office for one year from the forthcoming annual meeting, who was a director (1) when the company failed to hold an annual meeting at the date fixed in the by-laws; (2) when the company's stock was suspended from trading; (3) when the company failed to send an annual report within 90 days from the close of the fiscal year. The fourth (4) provided that a director must qualify for office by filing a statement that he will use his best efforts to recoup from any director who may be liable to the company, funds of the corporation expended for the purpose of perpetuating directors in office including the prosecution or defense of litigation.

The Commission approved the Division's recommendation that management be permitted to omit all four proposals as not timely submitted under Rule 14a-8(a) and because they referred to election to office. In the latter connection, the proposals appeared to be designed to assist a participant in a proxy contest in his efforts to oust management. (See Commission Minute of July 5, 1961; Letters from stockholder and management dated June 24, 1961 and June 28, 1961.)

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 94 June 1 - 30, 1961

1933 ACT

1. Section 2(3); 5 -- Gun-Jumping; Pre-Filing Dissemination of Information.
Rule 10b-6 of the 1934 Act

June 20, 1961 -- Letter re: Reynolds Metals Company; Reynolds & Co.

Reynolds & Co. publishes quarterly a brochure which lists various stocks as "growth", "income", "yield", etc., and gives certain information about each stock so categorized. Reynolds Metals Company is always listed in each brochure under "Growth". The brochure is distributed to customers, and its availability is widely advertised. Reynolds & Co. has traditionally been the managing underwriter for the financing of Reynolds Metals Co., and although the firm does not trade in the company's stock for its own account, it does deal in the stock as broker for the account of its customers.

The brokerage firm has recently been informed that the company contemplates a common stock financing in the fall, and inquires about the steps it should take in connection with the publication of its brochure. As a practical matter, the firm could not drop the company from the brochure without explanation; but on the other hand, any statement to the effect that the firm may be an underwriter in a public offering by the company might be considered "gun-jumping".

Consequently, the firm proposed to retain the reference to Reynolds Metals in the Summer Edition of the brochure, but omit it from the Fall Edition, giving the proposed offering as the reason for the omission. There would be no further distribution of the Spring and Summer Editions until the firm's participation in the distribution had ended or the financing had been abandoned. In addition, the firm would effect no transaction in Reynold's stock during the distribution period except for unsolicited brokerage transactions and lawful stabilizing activity.

On the basis of these facts no action would be recommended under Section 5 or Rule 10b-6 if Reynolds & Co. continued to list Reynolds Metals in its 1961 Spring and Summer brochure.

2. Section 2(11) -- Control; Underwriter; Gift; Distribution.
Rule 154

June 22, 1961 -- Letter re: Rixon Electronics, Inc.

A controlling person of the above company proposes to donate 300 shares of stock to the Council of Churches. The staff had previously informed the controlling person that the donee might resell if such sales were made in compliance with Rule 154. The controlling person has sold 10,000 shares under a registration statement effective in March, 1961. The company presently has outstanding 484,558 shares of common stock.

The 1% limitation of Rule 154 includes all dispositions of securities by control persons including shares registered under the Securities Act. Consequently, the 10,000 share registered offering exhausted the Rule 154 limitation, and the Council may not resell without registration.

3. Section 3(a)(4) -- Charitable Organization.

June 14, 1961 -- Letter re: Broadmoor, Inc.

Broadmoor was incorporated as a non-profit organization under Florida law to provide a rest home in Palm Beach for elderly Christian Scientists. Broadmoor's articles of incorporation state that the home will be non-profit and that its assets or any proceeds from the sale of its assets whether upon dissolution or otherwise will go to The First Church of Christ Scientist, in Boston. The corporation proposes to sell \$400,000 of bonds which may be refunded in the future by the sale of annuity bonds.

No action was recommended if the bonds were sold without registration under the Securities Act in reliance upon the exemption contained in Section 3(a)(4).

4. Sections 5(b)(2); 10 -- Registered Securities; Current Prospectus.

June 21, 1961 -- Letter re: Gas Hills Uranium Company

The company is preparing to file an up-to-date prospectus as a post-effective amendment to its registration statement. In connection with certain sales made prior to April 15, 1961, the company delivered a then current prospectus dated July 15, 1960. The company inquired whether any objection would be made to the transfer and delivery of such securities after sale, and was informed that there would be no objection as long as a Section 10 prospectus had been delivered prior to or at the time of sale.

The registration statement covered shares to be issued for property as well as shares underlying convertible promissory notes, some of which notes had been paid before conversion and some of which have been extended in return for a more favorable conversion rate. No objection was raised if registered shares no longer required for paid notes are used to satisfy the need for additional shares to underlie the extended

promissory notes. In addition, no objection was raised if the unused registered shares which were to be issued for property were used to satisfy sales by selling shareholders. It was assumed in both cases that no additional shares would be registered and full disclosure would be made.

5. Section 6(a) -- Shelf Registration.

June 8, 1961 -- Commission Minute re: Idaho Maryland Industries

The Commission considered the problem of registration of stock which was not to be offered in the immediate foreseeable future, and approved the Division's recommendation that registration should be permitted in the following situations:

(a) The "American Marietta" type of case where a reasonable number of shares were being registered for a continuing program of acquisitions of other companies; (b) private placements under circumstances suggesting the necessity for registration; (c) where there existed the likelihood of a distribution in the reasonable future upon conversion of privately placed debentures, or where options and stock were issued to underwriters; (d) sales by "controlling" persons of acquired companies following Rule 133 transactions; (e) where shares were proposed to be distributed within a reasonable time after the effective date of the registration statement. However, for proposed cash sales, there must be a bona fide intent to sell within some reasonable period rather than at some indefinite future time or eventuality.

6. Rule 133 -- Merger; Election to Take Stock or Cash.

June 13 and 14, 1961 -- Commission Minutes re: Diamond Alkali Company; CIT Financial Corporation

The Commission considered two cases under Rule 133 where certain shareholders of the acquired corporations were to be given an election to take cash or stock.

In the first, Diamond Alkali made a cash offer to shareholders of Chemical Process Co., a company it proposed to acquire in a Rule 133 transaction just prior to the consummation of the proposed 133 transaction. This cash offer was made in order to match a similar offer made by Commercial Solvents Co., an 8% shareholder in chemical.

In the second, CIT Financial Corporation proposed to offer shareholders of Thorp Finance Company who owned less than 400 shares an opportunity to sell to CIT at \$9 per share.

In both cases, the Commission approved the Division's position that the existence of the alternative to take cash should not make Rule 133 unavailable where it did not appear to be a device to avoid registration.

7. Regulation A -- Computation of Ceiling under Regulation A; Affiliate
Rules 251; 254(a); 405

June 6, 1961 -- Memorandum re: Buccaneer Stamp Co; Sure-Save, Inc.

Buccaneer will file a notification under Regulation A in the amount of \$40,000, and Sure-Save will file at a later date for \$300,000. There are indications that the two companies are under common control.

The first filing should be cleared, and if the companies prove to be under common control, the amount offered under the second filing should be reduced by the amount offered under the first. As between affiliated issuers, the exemption is available on a first-come, first-served basis.

8. Regulation A -- Computation of Ceiling under Regulation A.
Rule 254(a)

June 7, 1961 -- Memorandum re: Jarrell-Ash

The company's notification under Regulation A covering the possible reoffering of stock taken down pursuant to options was cleared on June 13, 1960. A second notification was filed on May 23, 1961, covering additional shares of option stock as well as voting trust certificates to be offered at the market. The underlying shares have a market value of approximately \$31 per share. The trustees of the voting trust are also controlling persons of the company. The two filings combined resulted in a total offering of \$330,000.

The issuer proposed to obtain commitments from some of the optionees that they will not exercise their options or resell their shares until the company had a full registration statement in effect, thereby reducing the offering under the earlier filing sufficiently to permit the full offering to be made under the later filing. When the company's registration statement becomes effective, the unsold portion of the securities under the two Regulation A notifications will be withdrawn.

The Division raised no objection to this procedure under Rule 254.

9. Regulation A -- Computation of Ceiling under Regulation A.
Rule 254(a)

June 7, 1961 -- Memorandum re: Haverhill Gas Company

The company filed a notification under Regulation A covering 9,409 shares of common stock to be offered pursuant to warrants. Warrants would be given to shareholders on the

basis of one warrant for each 15 shares. The warrants would be transferable, and the exercise price was \$27 per share while the market price for the underlying common was \$30-1/4 per share. If consideration were given to the market value of the warrants, the \$300,000 ceiling would be exceeded.

Since the warrants are not being offered by the company, they need not be considered in computing the offering price unless a controlling person intends to sell his warrants.

10. Regulation A -- Computation of Ceiling for Use of Offering Circular.
Rule 257

June 30, 1961 -- Memorandum re: Nashua Country Club

The club proposes to file a notification under Regulation A covering an offering of less than \$50,000 worth of stock. The club also has \$80,000 of bonds which have not yet been sold. Counsel for the club inquired whether in view of the fact that different classes of securities are involved, the offering of the stock might be made without the use of an offering circular as provided by Rule 257.

Under the terms of Rule 257, the issuer's total offering would exceed the \$50,000 limitation.

11. Regulation A -- Financial Statements.
Schedule I, Item 11(a)(1)

June 6, 1961 -- Memorandum re: Union Finance Corporation

The issuer and its 34 or 35 wholly owned subsidiaries have their financial statements prepared on a calendar year basis. The company proposes to file a notification under Regulation A, and since the cost of preparing interim consolidated financials would be prohibitive, it requests permission to use consolidated financials dated 12-31-60.

It was determined to require financial statements as of a date within 90 days of the filing of the notification and consequently, financials dated 12-31-60 would not be acceptable.

12. Form S-11 -- Supplemental Information.

June 13, 1961 -- Letter to: Mr. Stephen G. Thompson

If an appraisal of the type referred to in paragraph (a) under Supplemental Information in Form S-11 has been prepared within the past 12 months, a copy should be furnished to the Commission as required by the paragraph. However, the paragraph does not require that such an appraisal be prepared for the purpose of furnishing it to the Commission.

Since information furnished pursuant to paragraph (a) is for the Commission's use only, it will not be available for public inspection and will be returned upon request.

1934 ACT

13. Section 14 -- Solicitation of Proxy. Rules 14a-1 and 2

June 14, 1961 -- Memorandum re: Inquiry from Mr. Paul R. Rowen

A company whose shares are listed on a national securities exchange proposes to hold an annual meeting to elect directors. Although management does not intend to solicit proxies, it proposes to include the following language in the notice of meeting:

“Management is not soliciting proxies for the meeting. However, this does not preclude any shareholder being represented by a proxy of his choice at the meeting.” No form of proxy will be mailed to shareholders, and inquiry was made whether the second sentence above would constitute a solicitation of proxies by management.

No objection would be raised if the second sentence were revised to include the phrase “other than management” after the word “choice”, and no attempt were made by management either to vote any proxies which might be received from shareholders, or to draft literature to be sent to shareholders in such a way that it could be construed as a solicitation of proxies.

1939 ACT

14. Sections 304(a)(8); 306(a) -- Trust Indenture Act; Qualification of Indenture. Regulation A

June 28, 1961 -- Letter to: Alan R. Lorber

A corporation plans to issue \$250,000 of debentures under Regulation A without qualifying an indenture as provided in Section 304(a)(8) of the 1939 Act. However, since an offering circular will be used, inquiry was made whether Section 306(a) (1) would require qualification of the indenture despite the Section 304(a)(8) exemption.

Section 306 has been construed to mean that an indenture must be qualified for securities not required to be registered under the Securities Act, unless such registration is not required by virtue of one of the exemptions specifically enumerated in Section 304(a)(4).

Therefore, if a company comes under the exemption under Section 304(a)(8), it may offer the debentures together with an offering circular under Regulation A, without qualifying an indenture.

15. Section 310(b)(1) -- Conflict of Interest; Trust Indentures.

June 8, 1961 -- Letter re: American Recreational Centers, Inc.

A trustee under an indenture registered in 1960 covering \$600,000 of sinking fund debentures inquires whether he may serve as trustee under an indenture covering more than \$1,000,000 of convertible subordinated debentures which will be registered in the near future. The proposed convertible debentures will be subordinate to the outstanding sinking fund debentures.

The trustee under the indenture covering the outstanding debentures would have a conflict of interest within the meaning of Section 310(b)(1) of the 1939 Act and would be disqualified from acting as trustee under the proposed indenture.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 93 May 1 - 31, 1961

1933 ACT

1. Section 2(1); 2(3) -- Security; Investment Contract; Investment Company; Employee Offering; Stock Purchase Plans.
Section 3(a)(1) and (3) of the 1940 Act

May 15, 1961 -- Letter re: Fitchburg Paper Company Employees' Stock Purchase Plan

Participants in the Plan will authorize the company to make payroll deductions and pay the amounts withheld to a Custodian who will charge each participant fifty cents for its various services in administering the Plan. The Custodian will purchase stock of the company through a registered dealer for the account of the owner who will be named by the participant. The owner may sell up to 90% of the full shares allocated to his account, and will be entitled to receive a certificate for the full shares so allocated and cash for fractional interests upon termination or withdrawal. In addition, a revolving fund will be established by the company and supplemented, when necessary, to facilitate the investment of funds which are insufficient to purchase full shares for the participants. The company could terminate or amend the Plan at any time, and the Plan would terminate as to a participant upon the participant's severance from the company.

The Plan may involve the issuance of a security of which the Plan itself would be the issuer. In addition, the company's sponsorship of the Plan might constitute a solicitation of an offer to buy its securities. The Plan would also be an investment company as defined in Section 3(a)(1) and (3) of the 1940 Act since its business would involve the use of the participants' money for investment in securities to be held in the name of the Custodian's nominee.

2. Sections 2(1); 2(3); 5(c) -- Employee Offering; Stock Purchase Plan.
Regulation A

May 17, 1961 -- Memorandum to the Commission re: Quaker State Oil Refining Corporation Thrift and Stock Purchase Plan for Employees

The company has a stock purchase plan whereby employees contribute a certain percentage of their salary through payroll deductions, and the company contributes an additional amount which is not less than 50% of the employees' contributions. The

company's contributions are used to buy company stock, and the employees' contributions may be invested, at the election of the employee, in Government bonds, a savings fund, or company stock. The company pays all the expenses of the plan except for brokerage fees and taxes on the purchase and sale of securities. The funds are turned over to a trustee who makes purchases of common stock in the open market.

It has consistently been the Commission's view that where employee contributions in a plan of this type are invested in company stock, registration is required both of the participations in the plan, and the company stock. The fact that the company's stock is purchased on the open market is immaterial since company sponsorship of the plan amounts to a solicitation of an offer to buy its securities which is included within the term "offer to sell" as defined in Section 2(3) of the Act.

The Division's recommendation that participations in the plan as well as the company stock be registered was approved. Regulation A may be used if employee contributions amount to less than \$300,000 in any one-year period. (See Commission Minute May 19, 1961.)

3. Section 2(11) -- Underwriter; Gift; Integration.
Rule 154

May 3, 1961 -- Memorandum re: Kromex Corporation

A controlling person in Kromex, a small closely held company, has sold stock to the limit of Rule 154, and now wishes to use a part of his stock to pay a pledge to a welfare organization. No objection to this procedure if the welfare organization takes for investment and not for distribution.

4. Section 4(1) -- Private Offer; Integration; Computation of Ceiling Under Rule 254.
Rule 254

May 3, 1961 -- Memorandum re: Reed A. Thursday & Co.

The company's current offering of \$300,000 of common stock which was commenced on February 10, 1961, under Regulation A is about 50% sold. The owner of a construction company which develops real estate for the issuer died recently, and the issuer is conducting the business for the estate. The issuer inquires whether it may acquire the assets of the estate in exchange for \$25,000 or \$30,000 of common stock which the estate will take for investment.

The offering to the estate will not be integrated with the Regulation A offering, and no action taken if the issuer relies on the second clause of Section 4(1) for the transaction with the estate.

5. Section 5 -- Withdrawals; Post-Effective Amendment; Ceiling.
Regulation A

May 9, 1961 -- Memorandum re: Bangor & Aroostook Corporation

The company filed a registration statement to cover a voluntary exchange of its stock with stockholders of another company which it was acquiring. Pursuant to an undertaking, the company subsequently filed a post-effective amendment deregistering 34,058 shares which were unissued. The amendment was declared effective on April 19, 1961. However, remaining holders of the acquired corporation's stock have recently indicated their desire to exchange their shares. Consequently, inquiry was made whether the company could withdraw its post-effective amendment and thus reopen the exchange offer. It was felt that if the offer were to be opened as to some, it would have to be opened as to all, thus increasing the value of the shares to be offered beyond the \$300,000 ceiling of Regulation A.

Once the post-effective amendment withdrawing the shares from registration is effective, such action is final, and the statement is no longer effective as to the withdrawn shares. However, a Regulation A notification may be filed to cover the exchange up to \$300,000, and if necessary, additional stock could be offered a year later under Regulation A, if available.

6. Rule 235 -- Cooperative Housing.

May 24, 1961 -- Letter re: 8 East 83rd Corporation

The corporation, organized to purchase land and erect a cooperative apartment, will offer 44,450 shares of common stock at \$1.00 per share to the public on an interstate basis. A purchase agreement will be executed by the purchasers covering the stock allocable to the apartment selected, and including an agreement to pay a pro rata share of the costs of purchasing the land and erecting the building. A proprietary lease will be executed entitling the lessee to occupy the apartment covered by the shares, and obligating him to pay a pro rata share of the maintenance expenses. Incidental to the ownership of the land and the building, the company will rent a basement garage at an annual rental of \$12,000.

No action recommended if the shares are offered without registration in reliance upon Rule 235.

7. Regulation A -- Principal Place of Business.
Rule 252(a)(1)

May 16, 1961 -- Memorandum to the Commission re: Dynamic Vending Corporation

The company, a New York corporation engaged in the export business, makes use of a German subsidiary to facilitate the delivery of appliances to its European customers. Orders are relayed to the parent company in New York which accepts them and exports the appliances. Proceeds of the German subsidiary's sales are funneled back to the United States as they are received. 50% of the net sales of the issuer for 1960 were attributable to the German subsidiary, and \$250,000 of the \$295,000 total assets of the issuer are also attributable to the German subsidiary. Of this \$250,000 of assets, approximately \$175,000 represents inventory on hand in Germany to ensure rapid delivery to German customers.

The controlling persons of the parent company are residents of New York and three of the issuer's four subsidiaries are incorporated and conduct their business in New York. The parent company claims that it buys merchandise for export and establishes the policies of all of its subsidiaries in New York and that the German subsidiary is used merely as a conduit in trading by the parent company. Consequently, the principal place of business is in New York.

The Commission approved the recommendation of the Division of Corporation Finance that no objection be raised to the use of Regulation A provided the issuer agreed to furnish certified financial statements in the offering circular. (See Commission Minute of May 18, 1961.)

8. Regulation A -- Computation of Net Income Under Rule 253.
Rule 253

May 29, 1961 -- Letter to: Gallop Climenko & Gould

A corporation has net income from its own operations for each of the last two fiscal years on an unconsolidated basis, and has a net loss for the same two years when the results of its operations and those of its two wholly owned subsidiaries are consolidated.

The corporation has no net income for the purpose of Rule 253, and the amount of securities that may be offered under the Regulation would be limited as provided in that Rule.

9. Regulation A -- Computation of Ceiling Under Regulation A.
Rule 254(a)

May 4, 1961 -- Memorandum re: Naturizer

The company's offering under Regulation A of \$250,000 of convertible debentures and common stock begun on June 1, 1959, was completed on April 8, 1960, except for \$48,240 of common subject to the preemptive rights of officers of the company. As of May 4, 1961, they had taken down all but \$19,000. This stock is still being offered, and

the officers have another year in which to purchase the stock. The company proposes to make another Regulation A offering, and inquires how much of the prior offering would be a charge against the ceiling under Rule 254(a).

Only the unsold portion of the issue still being offered, amounting to \$19,000, would be charged against the ceiling. Since the offering commenced more than a year ago, there would be no charge with respect to purchases by individuals within the last year under the earlier filing.

10. Regulation A -- Computation of Ceiling Under Regulation A.
Rule 254

May 4, 1961 -- Memorandum re: C. R. Winn Drilling Contractor

The company proposes to sell 16 units in an exploratory oil and gas venture at \$12,000 each. If oil is found, purchasers will be required to put up additional funds to defray the cost of drilling development wells and completing exploratory wells.

Under the circumstances of this case, the ceiling should be measured by the original offering price of the units. Any additional solicitation of funds for completion should find its own exemption.

11. Regulation A -- Principal Place of Business.
Rule 255(c)

May 11, 1961 -- Memorandum re: Jet-Vac Coolers, Inc.

The company is in the business of quick-freezing vegetables and operates mobile freezing units in Florida, New York, and New Jersey. Future expansion is planned as funds and units become available. Although the company is incorporated in New Jersey, its office is located in Philadelphia, its clerical work is done there, and its officers, executives and clerical workers live in Philadelphia.

Since the company's only permanent address is in Philadelphia, its notification could be filed in the Washington Regional Office.

12. Regulation A -- Offering Circular; Amendment.
Rule 256(e)

May 3, 1961 -- Memorandum re: Bostic Concrete

The company's original offering circular was dated September 29, 1959, and a nine-month circular was due on June 29, 1960. The company suspended its offering for a

period, and on September 15, 1960, filed an amended circular containing financial statements dated June 30, 1960, which was cleared by the Regional Office on November 15, 1960.

The nine-month period for a new offering circular should run from the date of the amended circular, November 15, 1960.

1934 ACT

13. Section 14 -- Stockholder Proposal; Ballot Boxes. Rules 14a-4(b) and 14a-4(c)

May 10, 1961 -- Commission Minute re: Evans Products Company

The company's annual meeting was scheduled for May 17, 1961, and management had commenced its solicitation on April 24. An opposition group had filed proxy material on May 5 with respect to its proposals to amend the by-laws of the company to eliminate the provision for a staggered board, and to adjourn the meeting until July. Although the opposition's material had been cleared by the staff, no mailing had yet taken place. The question had arisen whether management should include the two proposals in its follow-up material with ballot boxes for a yes or no vote as urged by the opposition group. In conformance with Rule 14a-4(c), management on the other hand intended to state that it opposed the proposals and would use its discretionary authority to vote against them.

The Commission determined that the proposals might be omitted since they were submitted at such an advanced stage in management's solicitation of proxies.

14. Section 14 -- Stockholder Proposal. Rule 14a-8(c)(1) and (5)

May 4, 1961 -- Commission Minute re: Allied Stores Corporation

A stockholder submitted a proposal requesting that non-recurring profits be excluded from the base upon which bonuses or profit-sharing compensation is calculated.

It was the position of the Division of Corporation Finance that the proposal was ambiguous in that it could not be determined whether it related to existing bonus plans or present and/or future employment contracts, and that at least a portion of it related to matters dealt with by existing contractual provisions. Accordingly, the Division recommended that management be permitted to omit the proposal under Rule 14a-8(c)(1) and (5) as relating to matters within the ordinary business operations of the company.

The Commission, after raising the question of the impact of general corporation law on compensation plans of this type, approved the Division's position. (See Commission Minute of May 5, 1961.)

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 92 April 1 - 30, 1961

1933 ACT

1. Sections 2(3); 3(a)(10) -- Exchange; Preliminary Negotiations.

April 4, 1961 -- Memorandum re: New Amsterdam Casualty Company

Security Insurance plans to exchange its shares for the outstanding shares of New Amsterdam after a hearing on the fairness of the exchange before the Connecticut Corporations' Commissioner. Two underwriters will form a dealer group to solicit the exchange before the order approving the plan is issued. Managing dealers will receive lump sum payments on a sliding scale as commission, and soliciting dealers will receive 50 cents per share exchanged.

The Section 3(a)(10) exemption will not be available until the order approving the plan is issued. The dealers would be deemed to be underwriters, and the formation of the group would constitute preliminary negotiations with underwriters under Section 2(3).

2. Sections 2(10)(b); 5; 10; 12(2), 17 -- Tombstone Ads.
Rule 134

April 3, 1961 -- Memorandum re: Beaux Arts Apartments, Inc.

The company's so-called "tombstone ad" with respect to limited partnership interests in a real estate syndication contained a statement that these interests would yield an 11% return. The limited partners have a priority claim against income computed before allowance for depreciation up to 11%.

The company was advised that any reference to yield would be inappropriate.

3. Sections 2(11); 5 -- Control.

April 26, 1961 -- Commission Minute re: General Precision Equipment Company; The Martin Company

General Precision has a pending registration statement covering 150,000 shares of common stock which is about to become effective. Simultaneously with this registered offering, The Martin Company will offer 234,011 shares which it had previously purchased on the market and which represents its entire 15% interest in General Precision. The offering by Martin will not be registered although the prospectus relating to the General Precision offering will be furnished to purchasers. It was the opinion of the Division of Corporation Finance that Martin had failed to establish that it was not in a control relationship to General Precision despite the fact that the divestment of Martin's interest in the registrant was to take place pursuant to a proposed settlement of an anti-trust suit filed by the registrant against Martin. The anti-trust suit was filed under Section 7 of the Clayton Act to enjoin Martin from voting its stock or increasing its holdings and to order it to divest itself of its present holdings. Martin on two occasions had requested representation on the board but had been turned down. Its stock interest was by far the largest single holding.

The Commission, however, was of the opinion that the facts involved, particularly the anti-trust suit and its proposed settlement, did not establish a control relationship necessitating the registration of the shares to be sold by Martin. (See attached memo to the Commission of April 25, 1961.)

4. Sections 2(11); 5 -- Pledge; Sale; Underwriter.
Regulation A
Rule 252(d)(2); 252(f)

April 27, 1961 -- Memorandum re: Magna Bond, Inc.

Prior to Magna Bond's Regulation A offering, certain persons associated with American Diversified Securities, the underwriter of the offering, loaned \$20,000 to the company in return for the right to purchase 15,000 shares of Magna Bond at 1-1/2 cents per share. The shares were escrowed because of the Regulation A offering, and after their release from escrow, 10,000 shares were pledged by the underwriter to secure a loan of \$50,000. Repayment of the loan was guaranteed by two principals of the underwriting firm. The SEC has recently obtained a receiver for American Diversified, and the loan is in default.

Under the Guild Films decision, registration would be required if the shares were to be sold to satisfy the loan. With respect to the availability of Regulation A, if American Diversified were deemed to be an underwriter, then the bar of Rule 252(d)(2) would apply. However, it was indicated that application under Rule 252(f), limited to the proposed offering of these 10,000 pledged shares, might be appropriate.

5. Section 5 -- Rights Offering; Due Bills; When-Issued Trading.

April 7, 1961 -- Memorandum re: Criterion, Inc.

The company is being organized by GEICO and its stock will be issued to GEICO shareholders as a rights offering. For the purpose of trading GEICO's stock before the record date, a due bill will be issued by the seller to the purchaser of stock insuring that the purchaser will receive his Criterion right in the event that the transfer of the GEICO shares should not be effected before the record date.

Since this is an accepted procedure in the case of a rights offering, and since the purpose of the due bill is only to see that the purchaser of the GEICO stock receives all that he is entitled to, no question under Section 5 of the Securities Act would be raised unless GEICO shareholders undertook to sell such due bills apart from their stock.

6. Section 6(a) -- Merger; Shelf Registration; Signature.
Form S-14

April 7, 1961 -- Memorandum re: Montrose Chemical Company; Baldwin Rubber Company; Centlivre Brewing Corporation

The above three companies will merge, Centlivre to survive. In addition, Centlivre will exchange its stock for the outstanding stock of General Artists Corporation, and prior to such exchange, will resister such stock. All companies will solicit proxies in accordance with the proxy rules, and it is proposed to use Centlivre's proxy statement for the purpose of a Form S-14 registration statement covering convertible preferred to be issued to stockholders of Baldwin Rubber and Montrose Chemical, and common stock to be sold by controlling persona of Centlivre as well as common stock to be issued by Centlivre to stockholders of General Artists. After the merger 7 of 12 directors will be new to Centlivre.

The registration statement may be signed by the majority of the present Centlivre board, but the new directors should be named, and their consents to being named should be filed. Since stock will be registered on behalf of persons not ordinarily encompassed by Form S-14, the form should be expanded to include any missing Form S-1 requirements. The convertible preferred to be issued to control shareholders of Montrose Chemical and Baldwin Rubber may be registered, but if any of these control persons should be control persons of the surviving company, only those shares proposed to be offered from time to time within the next year or 18 months should be registered.

7. Sections 10(a)(3); 8(c); 17(a) -- Current Prospectus; Financial Statements; Effective Date.
Rule 427

April 11, 1961 -- Letter to: Frank T. Weston

Inquiry was made concerning the requirements of Section 10 of the Securities Act and Rule 427 thereunder.

The position has been taken that in the case of Section 10(b)(1) which was superseded by Section 10(a)(3), the time period specified therein should be calculated from the date of the certified financial statements. Old Rule 427 was amended in 1953 to relieve registrants from the necessity of preparing audited financial statements more than once a year in situations where a continuing offer was to be made through the use of a prospectus subsequent to the expiration of the 13-month period after the effective date of the registration statement. By the enactment of Section 10(a)(3), Congress intended no change in the character of the information to be furnished in the prospectus and intended the 16-month period to run from the date of the audited financial statements. At any rate, irrespective of Section 10(a)(3) and Rule 427, a prospectus must be brought up to date at any time necessary so as not to be misleading or fraudulent within the meaning of Section 17.

A post-effective amendment to a registration statement (with a “bring-up” prospectus) does not introduce a new effective date for the registration statement for the purpose of calculating the 16-month period with respect to audited financial statements.

8. Rule 154(b)(2)(B) -- Broker's Transactions.

April 24, 1961 -- Memorandum re: Medusa Portland Cement Company

A trustee for several related trusts holding stock in the above company posed the following situation concerning the limitation of Rule 154. A total of 4,500 shares of MPC stock were traded on the NYSE for the week ending April 8, 1961, but the trustee made no sales. 14,800 shares were traded for the week ending April 15, 1961, and the trustee sold 4,500. How many shares may the trustee sell for the week ending April 22, 1961?

In computing the amount of trading done in the stock during the prior week (April 15), the trustee's sales of 4,500 must be excluded, leaving 10,300 other shares traded. The trustee may then sell an amount which together with all previous sales by him does not exceed 10,300 shares. Since the trustee's previous sales total 4,500 shares, he may sell 5,800 additional shares for the week of April 22, 1961.

9. [illegible] -- Financial Statements; Independent Accountant.

April 20, 1961 -- Letter to: Grossman, Brozman & Agrin

Although financial statements in Regulation A filings are not required to be certified, if certified financials are used, the certifying accountant must in fact be independent.

An accountant will not be considered independent with respect to any person or any of its parents or subsidiaries in whom he has, or had during the period of the report, any direct financial interest or any material indirect financial interest, or with whom he is, or was

during such period, connected as a promoter, underwriter, voting trustee, director, officer, or employee.

1934 ACT

10. Section 14 -- Proxy statement; Form 8-K.

April 21, 1961 -- Commission Minute re: United Industrial Corporation

An opposition group proposed to mail to shareholders a reproduction of the company's Form 8-K report which refers to certain lawsuits filed against the company and the charges made therein.

It has uniformly been the Commission's position that a participant who had instituted legal proceedings against a party on the other side might not, in his proxy soliciting material, make reference to the lawsuit and repeat the charges made unless such charges had been substantiated. The staff was of the opinion that the same position should be taken where the litigation is instituted by another party. Accordingly, a reproduction of the report could not be used.

However, since Form 8-K reports are designed for investor protection and are public information, no objection if the opposition mails a statement to the effect that a Form 8-K report had been filed, and setting forth the information contained therein, and statements that the suits have not come to trial yet and it was not known what the court's decision would be.

11. Section 14 -- Proxy; Stockholder Proposal. Rule 14a-8(c)

March 15, 1961 -- Memorandum to the Commission re: Atlas Powder Company

The first of two proposals received by management from a stockholder for inclusion in its proxy material requested that management amend the company's pension plan to provide pensions for employees who were laid off due to the closing of certain plants. The second requested that the entire present pension plan be submitted to stockholders for reconsideration.

The Commission approved the Division's position that management be permitted to omit both proposals under Rule 14a-8(c)(5) as relating to matters involving the ordinary business operations of the company. With respect to the second proposal, it was pointed out that there was a distinct difference between submitting a pension plan for initial stockholder approval and a resubmission which might cause grave dislocations to the company's employee relations and consequent serious damage to the business which management can best evaluate. (See attached Commission Minute of March 17, 1961.)

12. Section 14 -- Proxy; Bankruptcy; Interstate Commerce Commission.
Section 77 of the Bankruptcy Act

April 20, 1961 -- Letter re: Reorganization Proceedings of the Boston & Providence Railroad Corporation

While the company is undergoing reorganization under Section 77 of the Bankruptcy Act, a meeting will be held to elect directors, and proxies will be solicited. Inquiry was made whether the solicitation would be exempt from Section 14 of the 1934 Act by virtue of Section 77 of the Bankruptcy Act which places proxy solicitations undertaken when a railroad is in reorganization under the jurisdiction of the I.C.C.

Section 77(p) of the Bankruptcy Act relates to solicitation of proxies to represent a creditor or shareholder during the pendency of Section 77 proceedings, and in connection with matters relating to such proceedings. Since the election of directors does not relate specifically to such proceedings, the exemption from the provisions of Section 14 of the 1934 Act provided by Section 77(f) of the Bankruptcy Act would not apply. Even if the I.C.C. requires that the proxy solicitation be authorized by it, the proxy rules of the 1934 Act would still apply.

13. Schedule 14A, Item 7(a)

March 2, 1961 -- Memorandum re: Rheem Manufacturing Company

Inquiry was made whether Item 7(a) of Schedule 14. A required disclosure in a proxy statement of salaries paid to officers of a division.

Although it is this Division's present opinion that such divisional officers are officers within the meaning of Item 7(a), since the matter is under study and consideration no disclosure was required in this case.

1939 ACT

14. Sections 310(b)(9); 313(a) -- Trustee; Reporting Requirements.

April 13, 1961 -- Letter to: Edward F. Mitchell

In the case of trustee reports pursuant to Section 313(a) of the 1939 Act, the Commission's usual practice has been to require that such reports be dated as of the time the indenture is dated, and be transmitted within sixty days thereafter.

If the indenture is dated a short time before or after May 15, the Division usually suggests that reports be dated as of May 15 or shortly thereafter, thus reflecting up-to-date holdings of the trustee for the purpose of determining whether a conflict exists pursuant to Section 310(b)(9). Such a report would appear to be needed despite the fact that the trustee must eliminate any conflict.

15. Form T-1 -- Trustee

April 12, 1961 -- Letter to: James A. F. Homans

State Street Bank, the proposed trustee for the securities of Massachusetts Electric Company, will merge with the Rockland-Atlas National Bank of Boston. Inquiry was made as to the proper procedure to be followed in filing reports of condition as exhibits to Form T-1 which will be used in connection with the pending registration of Massachusetts Electric, in the light of the proposed merger which will take effect prior to the filing of the registration statement.

The State Street Bank and Rockland-Atlas reports should be filed separately, with a note added to the statement of State Trust showing the results of the merger.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 91 March 1 - 31, 1961

1933 ACT

1. Section 2(1) -- Security; Investment Contract

March 28, 1961 -- Memorandum re: Pan American Land and Development Company of Brazil

The company was offering separate parcels of timberland in conjunction with an undertaking by the seller to arrange, subject to the owner's approval, for the sale of standing timber. The price per acre would be reduced if the purchaser agreed to share with the company 50% of the first \$100 received for the timber.

The offering appeared to involve a security in the form of an investment contract or a profit-sharing agreement. However, the present offering should not be integrated with earlier sales so as to find that earlier sales of land only involved securities despite the fact that the new offers were being made solely to such original purchasers. If representations similar to those made in the new offer were made at the time of the original, sale, or if it were intimated that the land would be developed as now proposed, or if contracts were being offered to develop land previously sold, an investment contract may exist.

2. Section 2(1) -- Security; Investment Contract.

March 28, 1961 -- Memorandum re: Wellington Company and Wellington Equity Fund, Inc.

Where any single investment by any participant in a voluntary investment plan is less than \$50, a specified charge will be made for ten or less participants plus an additional charge for each participant above 10, and will be collected from the individual by the agent for the program and paid in cash to the Corporation Trust Company.

The proposal may involve the offering of an investment contract. (See Memorandum of February 1, 1961, re sale of Wellington Fund shares by Smith, Kline & French.)

However, a security would not appear to be involved if the trustee, without such charge, retained payments for investment until \$50 per participant is collected as long as large

sums were not accumulated, and there were no restrictions on the right to withdraw such funds.

3. Section 2(3) -- Preliminary Negotiations; Sale.
Regulation A

March 9, 1961 -- Memorandum re: Florida Lake Properties, Inc.

The company planned to file a notification under Regulation A, and prior thereto proposed to mail, an offering circular to some 50 investment bankers and brokers in order to contact someone who might be interested in acting as underwriter for the issue.

This procedure would not come within the term “preliminary negotiations between issuer and underwriter” as used in Section 2(3) of the 1933 Act. Similarly, the fact that officers of the company could not comply with the requirements of the State of Connecticut concerning the qualification of securities salesmen would not permit a broad distribution of an offering circular to brokers in that state.

4. Sections 2(3); 2(11); 3(a)(10); 4(1) — Exchange; California Commission; Integration.

March 27, 1961 -- Memorandum re: Lear, Inc.

The company proposes to offer its stock in exchange for the stock of another company, after a hearing by the California Commission on the fairness of the plan, in reliance on Section 3(a)(10). Prior to the hearing, the company would like to negotiate a contract with three or four of the largest stockholders who would agree to take for investment.

No objection was raised to such an arrangement prior to the hearing in light of our position in other areas such as where the negotiated contract would be followed by a registered offering to public holders.

5. Sections 2(3); 5 — Foreign Securities; Custodian; Exchange.

March 29, 1961 -- Letter to: Irving Trust Company

Irving Trust held Canadian shares, registered in the name of a New York broker, in custody for nonresident aliens and nonresident corporations. Irving Trust inquired to what extent it could assist its nonresident customers to exercise exchange rights. The bank customarily shipped rights against receipt to a Canadian bank selected by the customer for the customer's account. The customer made all arrangements for subscription directly with the Canadian bank.

Irving Trust should go no further where exchange offers are involved. Communications should be forwarded directly to the customer for his consideration and decision, indicating that a Canadian bank of his choice may be used where appropriate.

6. Section 2(10)(b) -- Tombstone Ads; Pictures.
Rule 134

March 16, 1961 -- Commission Minute re: General Development Investors Plans, Inc.

The corporation is offering plans which include the purchase of homes with a service arrangement calling for rental, maintenance, and so forth. The company inquired whether it may include in its Rule 134 advertisement, illustrations of a home of the type being sold together with photographs of the golf course, and drawings of the golf course layout.

Rule 134 does not provide for photographs, and the Commission's position against their use in advertisements of mutual funds should be followed here because of the administrative difficulties involved in review of such material, notwithstanding the fact that the subject offering involves not only an investment plan, but the sale of a house.

(See Memorandum to the Commission of March 15, 1961.)

7. Sections 2(10); 5; 10 -- Statement of Policy.
Rule 134

March 6, 1961 -- Letter re: The Reader's Digest

The Digest proposed to publish an advertising insert containing general information on mutual funds, sponsored by 12 or 15 mutual funds whose names and addresses would be listed in the booklet.

No objection was raised if the booklet complied with the Commission's Statement of Policy and contained only the names and addresses of sponsors, and a statement telling how prospectuses of such companies may be obtained. Any investment company using a reprint of the article would have the responsibility of seeing that it is accompanied or preceded by a prospectus.

8. Section 3(a)(10) -- Merger; Hearing.
Rule 133

March 15 - 17, 1961 -- Memorandum re: Riddle Airlines, Inc.; Aerovais Sud Americana

In connection with the proposed merger of Sud into Riddle Airlines, a procedure was contemplated whereby brokers would be hired to persuade stockholders of Sud to deposit

their securities with an independent agent prior to any solicitation with respect to ratification of the merger agreement. Whether Rule 133 would be available in this situation would depend on whether the deposit were binding on the shareholders prior to the meeting.

Since the merger would be passed upon, after a hearing on the fairness of its terms, by the CAB, inquiry was made whether Section 3(a)(10) might be available. It was first stated that the hearing would take place after the agreement was voted upon by the stockholders at a meeting pursuant to state law, and consequently, Section 3(a)(10) might not be relied upon. However, it was then learned that since the merger agreement allowed the shareholders of Sud to deposit securities in blank with the escrow agent with an election to take either cash deposited by Riddle, or stock, at a fixed rate within a 30-day period after approval by the CAB, the Section 3(a)(10) exemption appeared to be available.

9. Section 3(a)(10) — Reorganization; Integration.
Section 264 of the Bankruptcy Act
Regulation A

March 10, 1961 -- Letter re: Intercontinental Motels, Limited

The company proposed to issue a new class of preferred stock to creditors and stockholders of Fleetwood Motel Corporation, as a part of a plan of reorganization under Chapter 2 of the Bankruptcy Act. Fleetwood would also sell, common stock pursuant to Regulation A, and pay off certain debts and expenses with the proceeds.

If the reorganization plan is approved by the Court, and the stock is issued in accordance with the plan, no action will be recommended if the stock is issued in reliance on the exemption provided by Section 3(a)(10) of the 1933 Act, and Section 264 of the Bankruptcy Act.

10. Section 3(a)(11) -- Merger; Contingent Liability.
Rule 133

March 16, 1961 -- Letter re: Inertia-Matic Inc.

Inertia-Matic Inc. (Massachusetts) was to merge into Inertia-Matic Inc. (Delaware) formed for the purpose of moving the state of incorporation of the Massachusetts company to Delaware. Although all of the Massachusetts company's outstanding stock had been issued from September, 1959 to March, 1961 in reliance on the Section 3(a)(11) intrastate exemption, it appeared that several stockholders resided outside Massachusetts. The merger was submitted to the stockholders of each company in accordance with their respective state statutes, and the agreement was approved by over two-thirds of the shareholders of the Massachusetts company as well as the sole shareholder of the

Delaware company. Under both state laws, these votes were sufficient to authorize the merger and bind all shareholders except for dissenters' rights.

Any possible violation of Section 3(a)(11) would not make Rule 133 unavailable. The Delaware company would assume any contingent liability arising from such violation.

11. Section 3(a)(11) -- Intrastate Offer; Bank; Puerto Rican Investment Company.
Sections 3(a)(4); 3(a)(5); 3(a)(6) of the 1934 Act
Section 6(a)(1) of the 1940 Act

March 3, 1961 -- Letter to: Abner Kalisch, Jr.

A bank, organized under the laws of Puerto Rico, is supervised by the Secretary of the Treasury of the Commonwealth, as well as the FDIC. The bank proposes to issue certificates of participation in a pool of FHA mortgages on property located in Puerto Rico exclusively to residents of the Commonwealth. No attempt will be made to sell the participations outside of the territorial limits of the Commonwealth.

No action would be recommended if securities are sold without registration under the Securities Act in reliance on Section 3(a)(11). In this connection, Section 6(a)(1) of the 1940 Act exempts a company organized under the laws of, and having its principal place of business in Puerto Rico as long as none of its securities are offered or sold to nonresidents. In addition, a bank as defined in Section 3(a)(6) of the 1934 Act is excluded from the definition of broker-dealer in Section 3(a)(4) and (5).

12. Section 4(1) -- Underwriter; Broker's Transactions; Transactions by Other Than Issuer, Underwriter or Dealer.
Rule 154

March 28, 1961 -- Letter and Memorandum to: Boston Regional Office

Three hypothetical fact situations were analyzed, and the following conclusions reached concerning Rule 154.

- 1) It is available only to the broker.
- 2) However, the broker runs a risk, when he distributes in accordance with the Rule, that his client does not also have an exemption.
- 3) The broker's client, the controlling person, would have an exemption under the first clause of Section 4(1), unless the circumstances indicate that he is an underwriter as defined in Section 2(11).

4) Rule 154 is applicable only in control situations and may not apply if the controlling person is deemed an underwriter. In this connection, it was pointed out that only in special cases would a controlling person be an underwriter when he purchases registered stock.

13. Section 6(a) -- Signature; Registration Statement.

March 13, 1961 -- Memorandum to: Apache Corporation; Apache Realty Program

A registration statement will be filed covering the issuance of limited partnership interests. Inquiry was made as to the manner in which the registration statement should be signed where the only general partner is a corporation.

The statement should be signed by the general partner as though it were being filed by a corporate issuer through its principal executive officer as well as the other officers and directors in accordance with the provisions of Section 6(a) relating to corporate issuers. (See memorandum dated November 9, 1953.)

14. Section 10 -- Disclosure.
Forms S-1; S-9

March 17, 1963 -- Memorandum re: Alabama Power Company

Since the company could have used Form S-9 instead of Form S-1 for its issue of first mortgage bonds, the prospectus should set forth information concerning the coverage of fixed charges similar to that which would have been contained in the prospectus if the registration statement had been filed on Form S-9.

15. Sections 10; 17(a) -- Disclosure; Finder.

March 8, 1961 -- Letter re: Standard Brands Paint Co., Inc.

Brown, Sterling & Company, Inc. has acted as a finder, and perhaps a promoter, for a transaction in which the above company will be formed to buy the stock of Standard Brands Paint Company from the four or five family owners, and operate it as a subsidiary. Mr. Sterling, one of the partners of the finding firm, will receive his fee in cash, while the remaining two partners will be paid in stock. The company is presently preparing a registration statement and inquires whether, in setting forth Mr. Sterling's position as finder or promoter, disclosure must be made of the disciplinary action taken against Sterling Securities Company and Marc Sterling both by the Commission and the NASD, in light of the fact that Mr. Sterling will be paid in cash, has had no previous connection with the company other than as finder, and will have no continuing interest in the company.

Although primary responsibility for determination of the question rests with the issuer and underwriter, assuming that Mr. Sterling is not an underwriter, and all the facts concerning his connection with the company are as stated above, no action will be recommended if the above-mentioned proceedings are not disclosed in the registration statement.

16. Rule 154 -- Class.

March 17, 1961 -- Letter re: Rollins Broadcasting, Inc.

The company has outstanding 110,000 shares of common stock and 815,000 shares of Class B convertible common stock 600,000 of which are owned by a single shareholder who wishes to convert a portion of his Class B shares into common stock which he will then sell on the American Stock Exchange in brokers' transactions under Rule 154. The Class B and the common are identical except that dividends may be paid on the common without such dividends being paid on the Class B. Class B stock may be converted into common stock at any time.

A question arose whether the 1% limitation of the Rule could be measured on the combined common and Class B aggregating 925,000 shares. Although the shareholder could convert all of his Class B and thereby meet the technical requirements of the Rule, to do so would force the company to spread cash dividends over a greater number of shares to the detriment of the public holders of the common.

The 1% formula was devised to measure what are essentially brokers transactions which the rule was designed to exempt. Under the particular facts of this case, no action would be recommended if the 1% limitation of this rule is computed on the entire number of Class B and common shares outstanding.

17. Rule 234 -- Notes Secured by Real Estate.

March 23, 1961 -- Letter to: Robert H. Slatko

A hypothetical situation was proposed whereby less than 125 notes secured by a single lien, none of which has a principal amount less than \$500, and the total of which does not exceed \$100,000, will be placed in a trust and certificates issued to 125 or less persons. Since the trust certificates are not "notes directly secured by a first lien", the exemption provided by Rule 234 would not appear to be available.

18. Regulation A -- Escrow; Computation of Ceiling Under Regulation A.
Rule 252(c)(2)

March 3, 1961 -- Memorandum re: Starfire Boat Company

The company's public offering under Regulation A, aggregating 297,500, was about one-third sold. A principal stockholder of the company, whose holdings constituted 99% of the outstanding stock prior to the public offering, had placed all of his stock in escrow. A purchaser of 10,000 shares at \$4.25 per share under the Regulation A offering contracted with the principal stockholder to purchase, at 31 cents per share, 7,500 out of the 29,000 shares which were escrowed. The agreement provided that the stock would be taken for investment and left in escrow, and that the purchaser would become Chairman of the Board of Directors of Starfire.

Since both the principal stockholder and the purchaser would be in a control relationship to Starfire, there would be no objection to the sale of escrowed stock as long as it remained in escrow, and the purchaser deposited all of the stock which he owned in escrow subject to the same terms as the original agreement, including the 10,000 shares purchased under the Regulation A offering.

19. Regulation A -- Affiliated Person; Computation of Ceiling Under Regulation A. Rule 254(a)

March 8, 1961 -- Memorandum re: L. H. Rothschild

X is president and director of Y. Both X and his wife desire to sell \$100,000 worth of Y stock under Regulation A. Inquiry was made whether the husband and wife would each be entitled to the \$100,000 exemption.

The total offer by these two under Regulation A should be limited to \$100,000.

20. Regulation A -- Computation of Ceiling Under Regulation A; Affiliated Issuers; Affiliated Motion Picture Productions. Rule 254(d)(4)

March 6 1961 -- Letter re: Louis Allen and Allen-Hodgdon, Inc.

Three persons offered, under Regulation A, limited partnership interests amounting to \$177,400 in a motion picture company. Two of these three persons now propose to offer limited partnership interests, in the amount of \$250,000, for the purpose of financing the production of another motion picture.

No action would be recommended if the offering of interests in the second, company were made in reliance on Rule 254(d)(4) which excludes interests in affiliated unincorporated theatrical productions from the computation of the amount of securities that may be offered under Regulation A

21. Form S-8 -- Employee Offerings; Pension Plan.

March 17, 1961 -- Letter re: Corn Products Company

The company's pension plan had a feature whereby the employee's contributions could be invested, at the direction of the employee, in common stock of the company. Inquiry was made whether Form S-8 could be used where the plan provided that an employee could withdraw his contribution only when, in the opinion of the Administrative Committee, an emergency existed.

The provision did not appear to meet the requirements of subdivision A, I(d) of the Instructions to Form S-8 which provides that prior to the time the employee becomes entitled to withdraw all funds or securities allocable to his account, he may withdraw at least that portion of the cash and securities in his account representing his contributions. Hence, Form S-8 would not be available.

22. Form S-8 -- Undertaking to Transmit Reports to Employee Participants.

March 10, 1961 -- Letter to: Marvin J. Bloch

Inquiry was made whether a company must mail to participants in employee plans who are not stockholders of the company, all reports, proxy statements and other communications distributed to stockholders generally. The fear was expressed that transmittal of the notice of meeting and form of proxy may mislead employees who are not stockholders into believing that they are entitled to attend the meeting or vote by proxy.

Form S-8 requires that all participants receive all information transmitted to security holders. The company could indicate in the material that the recipients are not expected to vote or attend the meeting. However, transmittal of the form of proxy itself does not seem to be within the purview of the undertaking in Form S-8.

1934 ACT

23. Section 14 -- Proxy; Proxy Statement; Mailing Opposition Material.
Rule 14a-7

March 31, 1961 -- Commission Minute re: Irving Air Chute Co., Inc.

An opposition group submitted proxy material to management for mailing pursuant to Rule 14a-7. The company, exercising its option under Rule 14a-7, instructed the bank not to mail the material, but to provide the opposition group with a list of stockholders.

However, the bank informed counsel for the opposition that preparation of such a list would take four days, thus exceeding the by-law deadline for mailing.

The Commission approved the staff's recommendation that if in fact the bank could not prepare such a list in time, even if the opposition was willing to bear the cost of overtime charges, instruction should be given the bank at least to address the proxy forms, which could be done in an hour's time.

24. Section 14 -- Proxy; Stockholder Proposal.
Rule 14a-8

March 8, 1961 -- Memorandum to the Commission re: Weiman Co., Inc.

A stockholder submitted two proposals to management for inclusion in its proxy material. The first proposed that officers' salaries be reduced by 10%. The second proposed that independent auditors be hired to survey the "mystery of the vanishing profits" of Ferguson Company and Weiman Company, and report to the stockholders. The stockholder had not specifically stated that he intended to present the proposals at the annual meeting, and his supporting statement was in excess of 300 words.

The staff recommended that the first proposal should be excluded on the ground that fixing of salaries is solely within the purview of the directors, but that the second, if revised to eliminate the words "mystery" and "vanishing profits" could be included if the stockholder gave notice of his intention to submit it at the meeting, and shortened his statement to the required length.

The Commission, however, determined that both proposals could be omitted. (See Commission Minute of March 8, 1961.)

23. Section 14 -- Proxy; Stockholder Proposal.
Rule 14a-8

March 2, 1961 -- Memorandum re: Northern Pacific Railway Company

Management, which solicited proxies to vote on a proposed merger, received for inclusion in its material, a stockholder proposal which provides that the oil, timber and other land interests of the company be spun off to stockholders before the merger is consummated.

The Commission approved the Division's position that the proposal be omitted since it is, in effect, a statement of opposition to management's proposal of merger, and is not a proposal contemplated by Rule 14a-8. (See Commission Minute of March 3, 1961.)

[text missing]

26. Section 14 -- Proxy; Stockholder Proposal.
Rule 14a-8

March 2, 1961 -- Letter to: Standard Oil Company (N.J.)

A proposal that the by-laws of the corporation be amended to prevent the company from making gifts to charities except in furtherance of its business interests was submitted by a stockholder to management for inclusion in its proxy material together with a supporting statement which asserted, in part, that “nearly ten millions have been given since 1955 to educational institutions many of which teach socialism and ridicule businessmen, savers and investors . . .”

The Division was of the opinion that the proposal was a proper one for inclusion, but that the portion of the supporting statement quoted above might be omitted.

27. Section 14 -- Proxy; Stockholder Proposal.
Rule 14a-8(c)

March 2, 1961 -- Memorandum to the Commission re: Cities Service Company

A stockholder submitted a proposal for inclusion in management’s proxy material which provided that no officer or director of Cities Service should serve as a director or officer of Chrysler Corporation until all stockholder suits against Chrysler are disposed of. It further provided that anyone serving as a Chrysler director must resign within one month of passage of the resolution, or be removed officer or director of Cities Service.

The Commission approved the Division’s recommendation that the proposal be omitted since it is not a proper subject for stockholder action under either Delaware law or the charter and by-laws of the company (in fact the law does not prohibit such interlocking officers and directors and the by-laws expressly permit [remainder of sentence missing])

28. Section 14 – Proxy; Stockholder Proposal
Rule 14a-8(c)

March 2, 1961 -- Memorandum to the Commission re: Union Electric Company

Two proposals were submitted by two separate stockholders for inclusion in management’s proxy material. One proposal resolved that the by-laws be amended to prevent the issuance of incentive options to officers and directors to buy stock of the company, its subsidiaries, or stock owned by the company in any other corporation, and to prevent the company from buying stock in any other corporation, without a vote of

two-thirds of the stockholders. The second proposal requested the company to take steps to recover treble damages from any supplier convicted of anti-trust violations.

Proposal one may be included if the portion dealing with options to purchase stock in subsidiaries and other corporations, as well as the prohibition against purchasing stock in other companies is deleted, since this portion of the proposal conflicts with the company's articles of incorporation, as well as state statute. Proposal two may be omitted under Rule 14a-8(c)(1) and (5) since it relates to matters exclusively within the province of the board of directors. (See Commission Minute of March 3, 1961.)

29. Section 14 -- Proxy; Stockholder Proposal.
Rules 14a-8(c); 14a-8(c)(5)

March 3, 1961 -- Memorandum to the Commission re: Publicker Industries, Inc.

The following six proposals were submitted by a stockholder for inclusion in management's proxy material:

- 1) That management take action to dismiss its present accounting firm because of the firm's failure to provide stockholders with certain information in the annual report.
- 2) Change the date of the annual meeting so that the stockholders may have an opportunity to examine the company's 10-K report.
- 3) Provide for annual election of all directors.
- 4) Provide stockholders with a post-meeting report.
- 5) Take steps necessary to make mandatory the retirement of directors and officers over 65 years of age.
- 6) Take necessary steps to place company purchasing on a competitive bid system.

The Commission approved the Division's recommendation that proposal 1 be omitted because the stockholders have an opportunity to vote against a management proposal to re-elect the same accounting firm. Proposals 2, 3 and 4 should be included. Proposal 5 is proper and should be included. It is not primarily designed to advance a "cause" under Rule 14a-8(c)(2) nor the conduct of ordinary business operations under Rule 14a-8(c)(5). Proposal 6 may be omitted under Rule 14e-8(c)(5) as relating to the ordinary business operations of the company. (See Commission Minute of March 7, 1961.)

30. Section 14 -- Proxy Contest; Participant.
Rule 14a-11(b)(5)

March 21, 1961 -- Commission Minute to: Allegheny Corporation

In connection with the impending proxy contest between the Murchisons and Kirby for control of Allegheny Corporation, a question arose whether a contract between the Murchisons and seven individuals in Indianapolis constituted such individuals participants in the contest within the meaning of Rule 14a-11(b)(5). The individuals had acquired 75,000 shares of Allegheny stock in September, 1960, and contracted with the Murchisons for the right to put their shares to the Murchisons at specified price on two specified dates. Each individual received an option to purchase shares of Investors Diversified Services from the Murchisons, which option expired if the individual exercised his put. If the stock were sold otherwise than pursuant to the put, the Murchisons had a right of first refusal. There was no voting agreement, although the arrangement was designed to keep the stock in friendly hands.

The Commission approved the Division's position that this was essentially an arrangement whereby the individuals were furnishing funds to the Murchisons to finance the purchase of Allegheny stock and hence came within the meaning of Rule 14a-11(b)(5).

31. [information missing]

March 9, 1961 -- Memorandum re: Small Business Administration

The SBA inquired whether it must file statements of beneficial ownership pursuant to Section 30(f) of the 1940 Act where it is beneficial owner of more than 10 percent of a class of outstanding securities (other than short term paper) of a small business investment company registered under the Act.

“Person” is defined in Section 2(a)(27) of the 1940 Act to mean either natural person or company, and the term “company” as defined in Section 2(a)(8) does not appear to include a governmental agency. Accordingly, the SBA need not file reports pursuant to Section 30(f) of the Act.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 90 February 1 - 28, 1961

1933 ACT

1. Section 2(3) -- Sale; Gift.

February 8, 1961 -- Memorandum re: Harnischfeger Corp.

The corporation wishes to give dealers in mining and excavating equipment one share of stock apiece, for a total of 80 shares, in return for past services. The stock will be purchased on the market through a broker, and there will be no contest or other holding out of these shares as an inducement for future acts or services.

Under these circumstances, no Securities Act problem was raised.

2. Sections 2(3); 2(10) -- Prospectus; Offer; Distribution; Specialist; Trading.
Section 11(b) of the 1934 Act
Rule 10b-6

February 14, 1961 -- Letter re: Apache Corporation

The company wishes to distribute its brochure through dealers one of which is a specialist in the company's stock on the Midwest Stock Exchange. The brochure may not be used unless accompanied by a prospectus meeting the requirements of Section 10 of the Securities Act.

Section 11(b) of the 1934 Act restricts specialist transactions to those necessary to maintain a fair and orderly market, and Rule 10b-6 makes it unlawful for any person participating in a distribution to bid for or purchase for any account in which he has a beneficial interest, or induce anyone to purchase any security subject to the distribution, until, he has completed his participation or has available one of the enumerated exemptions. Accordingly, a specialist is generally prohibited from conducting or participating in the distribution of a security in which he is acting as a specialist. Distribution of the proposed brochure by the specialist could be inconsistent with, and perhaps a violation of these provisions, as well as certain regulations of the Midwest Stock Exchange.

3. Sections 2(11); 4(1) -- Control; Underwriter; Merger; Person; Change of Circumstances.
Rule 133

February 17, 1961 -- Letter re: The Mead Company

The estate of Samuel Katz proposes to sell 16,000 shares of Mead Corporation, out of a total of 32,193 acquired in March, 1959, pursuant to Rule 133. Members of decedent's family were officers and directors of the acquired corporation, but after the merger, their influence in Mead, contrary to the original agreement, was curtailed and they all resigned. Due to these changed circumstances, sale is deemed advisable, and the proceeds will be used to obtain a more diversified portfolio.

If the sale were made over the New York Stock Exchange without registration under the Securities Act, the estate might be deemed to be an underwriter except as provided in Rule 133(d). Since the estate and other members of the decedent's family may constitute a control group, and thus be considered "one person", any sales by the decedent's family within the past six months would be a limitation on sales by the estate under Rule 133(d). However, no objection was raised if the shares are sold without registration under the Securities Act to an institutional investor who would take for investment and not for resale.

4. Sections 2(11); 4(1) -- Control; Underwriter; Gift.
Rule 154

February 8, 1961 -- Memorandum re: Texas Instruments, Inc.

A gift of 30,000 shares of stock in the above company, in yearly installments of 10,000 shares, had been made by Cecil H. Green to MIT. The final installment of 10,000 shares due in January, 1961, has not yet been delivered. The 30,000 shares are valued at 5-1/2 million dollars, and MIT proposes to sell a portion of them to construct a building worth about 2 million dollars. In addition, the donor, who may be a controlling person, intends to make other charitable contributions according to a procedure whereby a charitable foundation, set up by the donor, will sell stock contributed by the donor, and pay the proceeds to selected charities. There are 3,923,700 shares of the company outstanding, and the trading has amounted to about 39,000 shares per week since October, 1960.

There would be no problem if the donor sold the stock in compliance with Rule 154, and gave the cash to the donees. Similarly, no action would be recommended if the donee sells in compliance with the Rule, and if the aggregate of all shares sold by the donor, the Foundation, and the donees conforms to the procedure of Rule 154. The opinion was also expressed that while MIT was free to make a private placement of the stock, such a sale would be a charge against the Rule 154 limitation.

5. Sections 2(11); 10 -- Underwriter; Prospectus.

February 14, 1961 -- Letter re: National Pool Equipment Company; Chartered Investment Company

Chartered investment took \$25,000 worth of 6% convertible subordinated notes of National out of a total of \$1,000,000 registered together with the underlying stock under the Securities Act. There was an agreement among the note holders requiring the use of a current prospectus in the event of a public re-offering of either the notes or the underlying stock, and obligating National upon request of holders of at least \$50,000 worth of notes, to supplement the prospectus or file post-effective amendments to the extent required by law. Since Chartered Investment owns less than \$50,000 of notes, it will not be able to compel the company to file either a supplemental prospectus or a post-effective amendment. Furthermore, the small amount of notes held does not justify the expense of preparing such amendments or supplements.

Since only a brief time has elapsed since Chartered Investment acquired the notes and since they were registered for the purpose of sale, a current prospectus would be required in the event Chartered Investment publicly offers either the notes or the underlying shares. How long it would retain its status of underwriter would depend on the circumstances existing at the time of proposed sale

6. Section 3(a)(3) -- Current Transactions

February 24, 1961 -- Memorandum to Regional Office re: North American Acceptance Corporation

The company is engaged in the sale of 6% six-month thrift notes. Inquiry was made whether the sale of such notes arises out of a current transaction, or whether the proceeds of such notes will be used for current transactions, in view of the company's advertising which informs prospective investors that the company is a diversified finance company making installment sales loans on mobile homes and real estate as well as operating an insurance agency and an automobile dealership. In fact, it appears that 65% of their notes receivable are secured by first mortgages on borrowers' homes.

Since the proceeds of the notes are probably being used for other than current transactions, the exemption contained in Section 3(a)(3) would appear to be unavailable.

7. Section 3(a)(3) -- Banks; Investment Company.
Sections 3(a)(1); 3(a)(3); 3(c)(4); 3(c)(7) of the 1940 Act

February 28, 1961 -- Memorandum re: Central Wisconsin Bankshares, Inc.

Section 1843(a)(2) of the Bank Holding Company Act of 1956, which provides that no bank holding company shall perform any services other than banking, managing or controlling banks, or furnishing or performing services for any bank of which it owns or controls 25% or more of its voting shares, encompasses powers and functions beyond the exemption provided by Section 3(a)(2) of the 1933 Act. Furthermore, the Section 3(a)(2) exemption is not available solely by reason of a Wisconsin statute providing that bank holding companies shall be deemed to be engaged in the banking business and subject to supervision by the state banking department.

In addition, Central Wisconsin may fall within the definition of an investment company and be subject to the provisions of the Investment Company Act unless its operations qualify it for one of the exemptions contained in Section 3(c)(4) or 3(c)(7).

8. Section 5 -- Registration of Stock Option; Amendment to Change Form.
Forms S-1; S-8

February 7, 1961 -- Memorandum re: Home Insurance Company

The company, which has four million shares outstanding, has granted stock options to 60 officers calling for the issuance of one million shares. The company now proposes to grant options, exercisable on an installment basis, to 100 additional persons who will take for investment and not for resale.

Since the company does not file reports, Form S-1 would be the appropriate form for registration rather than Form S-8. However, if the company becomes a reporting company, it may revert at that time, to Form S-8 or some other appropriate form. The registration statement should include both newly optioned shares and shares outstanding under the old options at time of filing.

9. Sections 5; 10 -- Advertising.

February 9, 1961 -- Letter re: The Journal of Commerce

The paper proposes to print a special economic review on Japan which will, among other subjects, discuss ADR's and contain product advertisements of Japanese companies which may have outstanding securities the subject of ADR's. Once a week, for the past ten years, the Journal has run special pages about general business developments in Japan, and containing product advertising sponsored by leading Japanese companies.

The Commission is concerned with preventing the use of advertising as a means of selling a security without complying with the Securities Act. It has no desire to exert any jurisdiction over the activities of the Journal. The Act does not prevent an issuer from conducting normal business advertising, and in view of the limited nature of both the report and the advertising, no question will be raised.

10. Rule 234 -- Notes; Computation of Ceiling under Rule 234.

February 21, 1961 -- Memorandum re: Chamber of Commerce of Joplin, Missouri; Fairchild Aviation Corporation

In order to acquire Land to furnish to the corporation, the Chamber of Commerce desires to sell \$100,000 worth of first mortgage notes to Joplin residents, and \$200,000 worth of similar notes to an insurance company. Inquiry was made whether the public issue of \$100,000 worth of notes would fall within Rule 234.

Since it was the intent of Rule 234 to restrict the entire issue of first mortgage notes to a maximum amount of \$100,000, the proposed issue of a total amount of \$300,000 would not fall within the Rule.

11. Regulation A -- Computation of Ceiling under Rule 254 of Regulation A; Control. Rule 254(a)

February 7, 1961 -- Memorandum re: Tri-Metal Works Inc.

The company proposes to file a notification under Regulation A to cover 10,000 option shares to be offered to the accountant by the company, and 64,000 option shares which were issued in connection with a prior Regulation A offering by the company, by a controlling person to two named underwriters under the Regulation and subsequently allocated among selling dealers. The exercise price is 22-1/2 cents per share, and the market price of the stock is \$3 per share.

Since the proceeds of the exercise of the options are to be paid to the controlling person, the offering will be made on his behalf rather than on behalf of the issuer. Therefore, those who take from him will be considered underwriters, and the last paragraph of Rule 254(a) would limit the offering to an amount not to exceed \$100,000. The facts that the company underwent a recapitalization in connection with the earlier Regulation A filing whereby 100 shares outstanding became 80,000 and the controlling person immediately granted options on such shares on receipt from the company would not affect this result. (See memorandum dated February 2, 1961, re the same company.)

1934 ACT

2. Section 14 -- Solicitation of Proxy; Listing.
Regulation 14
Rule 14a-2

February 20, 1961 -- Memorandum re: Transwestern Pipeline Company

The company anticipates that a registration statement filed to register and list its stock on the New York Stock Exchange will become effective about the middle of April, prior to which date the company will have made its only mailing of proxy solicitation material.

Since the original mailing constitutes a continuing solicitation, it would be necessary to file and mail no later than the effective date of the listing registration a proxy statement conforming to the proxy rules if proxies received after the effective date of the listing registration statement were to be voted. Under the circumstances, it might be simpler to qualify the material in the first instance.

13. Section 14 -- Proxy; Stockholder Proposal.
Rule 14a-8(a)

February 24, 1961 -- Commission Minute re: S. S. White Dental Manufacturing Co.

A stockholder proposal that the board of directors take such action as may be necessary to preclude persons over 72 years of age from serving as a director was opposed by management on the grounds that effectuation of such a proposal would necessitate an amendment of the by-laws, and under Pennsylvania law, the by-laws could only be amended by the stockholders.

The staff advised the stockholder that the proposal would be a proper one for inclusion if amended so as to be in the form of a by-law. Management objected on the grounds that an amendment at this late date would not be timely. The Commission determined that an amendment, substantially the same as the original proposal, submitted a reasonable time before the proposed mailing date of management's proxy material, was timely, and should be included if submitted forthwith.

14. Section 14 -- Proxy; Stockholder Proposals.
Rules 14a-8(a); 14a-8(c)(1); 14a-9

February 24, 1961 -- Commission Minute re: Union Electric Company

A stockholder in the above company requested management to include five resolutions in its current proxy material. The resolutions proposed:

- 1) an accounting by certain management officials for "short-swing profits" in the purchase of stock subscription rights,
- 2) restriction on purchases of company stock at less than market by officers and employees without stockholder approval,

3) recovery from the stockholder of the cost to the company of defending suits brought by him,

4) amendment to the by-laws to prohibit false and deceptive “advertising” and/or communication to stockholders, and

5) censure of certain officers for “profiteering”.

The Commission approved the Division’s position that management might omit the first four proposals under Rules 14a-8(a) and 14a-8(c)(1), and the fifth under Rules 14a-8(a) and 14a-9.

15. Section 14 -- Proxy, Stockholder Proposal.
Rule 14a-8(c)(2)

February 16, 1961 -- Memorandum to the Commission re: Columbia Broadcasting System, Inc.

Two stockholder proposals were submitted to management for inclusion in its proxy material.

One proposal requested that the company take action to recover sums paid to a certain officer and director of CBS, and any of his associates or affiliates.

The second requested the formation of an independent committee of CBS stockholders to investigate the alleged conflicting and adverse interests of CBS Board members and directors. Similar proposals had been submitted by the same two stockholders in the past, and the Commission had permitted management to exclude them from its proxy material in each instance.

Since there is some direct connection between the subject matter of the proposals, and pending litigation against the company brought by the two proponents of the resolutions, the Commission approved the Division’s position that the proposals be omitted under Rule 14a-8(c)(2). (See Commission Minute dated February 17, 1961.)

16. Section 14 -- Proxy; Disclosure.
Schedule 14A

February 13, 1961 -- Commission Minute re: Disclosure in Proxy Material Filed by Electrical Companies Convicted for Anti-Trust Violations

With reference to recent convictions of certain electrical manufacturing companies for anti-trust violations, the Commission concurred in the Division’s view that disclosure

should be made in proxy material of any director or nominee who has been convicted and has received a fine or a prison sentence.

However, in a situation where the company, but none of the directors, has been convicted, the Commission concluded that this situation was a “business development” which should be disclosed in the annual or other reports sent to stockholders, but need not be disclosed in the proxy material; nor was it necessary that the proxy material contain a reference to the disclosure in the annual report.

17. Regulation 14 -- Proxy; Ballot Boxes.

Rule 14a-4(a)

February 9, 1961 -- Letter to: Georgeson & Co.

Inquiry was made whether it would be permissible, under Rule 14a-4(a), to place the “against” box prior to the “for” box on the form of proxy.

Although every situation must be considered in the light of its particular facts, there would generally be no objection to rearranging the order of ballot boxes if done on a uniform basis. However, no arrows or other visual devices should be used, and the placing of boxes should not be used as a means either of trapping the unwary, or seeking advantage whether it be for management or others.

18. Section 16 (b) and (c) -- Underwriters Allotment; Stabilizing; Participation in an Underwriting; Rights Offering; Underwriters as Shareholders.

Rules 16b-2; 16c-2

February 7 and 14, 1961 -- Letters re: National Equipment Rental Ltd.

Pursuant to a registration statement, the company will issue transferable rights to its shareholders, pro rata. Two members of the underwriting syndicate are also shareholders of the company, and both plan to exercise all, or a portion of the rights or sell any unexercised rights which they may receive as shareholders. These are the only two members of the underwriting group falling within the purview of Section 16(b) and (c), and their commitment under the underwriting agreement will not exceed 50% of the total shares committed for by all underwriters. As underwriters they will buy and sell rights and common stock for the purpose of stabilizing or creating or covering an overallotment both before and after the subscription period.

As long as the two underwriters are not committed for more than 50% of the rights and shares under the underwriting agreement, and assuming all other conditions are met, Rules 16b-2 and 16c-2 would not be unavailable with respect to securities acquired as participants in the underwriting syndicate by reason of their activities as shareholders.

The Rules would have no application with respect to any securities acquired as shareholders of the company.

1940 ACT

19. Sections 2(a)(19); 15(a) -- Investment Adviser.

February 16 and 17, 1961 -- Commission Minutes re: Diversification Fund, Inc.

Vance, Senders & Company, Inc., the Funds investment adviser, has entered into a contract with Boston Management & Research whereby Boston Management will furnish statistical and other factual information on request. Although four of the general partners of Boston Management are officers and stockholders of Vance Sanders, the two companies maintain separate offices, records, and clerical staffs. The Division of Corporate Regulation took the position that due to the identity of personnel, a separation of functions of Vance Sanders and Boston Management could not be made, whereas counsel for the Fund argued that a company which furnished only statistical information was not an adviser under the Investment Company Act.

The Commission determined that the Fund should disclose in its registration statement the fact that Boston Management may be deemed an investment adviser, and Boston Management's contract with Vance Sanders should be submitted to shareholders of the Fund at the first annual meeting.

20. Sections 2(a)(29); 17(b); 22(d) -- Investment Company; Promoter.

February 13, 1961 -- Commission Minute re: Westminster Fund, Inc.

The fund was organized to provide investors with opportunity to obtain diversification by exchanging their holdings of other issuers for shares of the fund. The minimum aggregate value which may be deposited by an investor must be at least \$25,000. In addition, the exchange will not be consummated unless securities having a value of \$20,000,000 are deposited and accepted by the fund. Discussion was had whether the depositors would be deemed "promoters" and thereby subject the exchanges to Section 11(b), or whether there would be variations of offering price prohibited by Section 22(d).

Since no further public offering of the fund's shares was being contemplated, no exemption from the Investment Company Act appeared necessary. However, the fund should be aware of the difficulties that would arise if control stock were acquired in the exchange. In addition, the NASD should be requested to prepare for Commission review a release to be issued to dealers stressing the problems involved in making a market for such exchange funds.

21. Sections 3(a)(1); 3(a)(3); 16(a); 18(i) -- Investment Company; Banks.

February 2, 1961 -- Letter to: Miss Mary E. Brosnan

Inquiry was made whether a bank can operate a fund similar to Centennial Fund, Inc. through the bank's trust department.

Operation of a business similar to Centennial's through the bank's trust department, and use of such department for collective investment of funds not contributed by the bank as a fiduciary, would constitute the bank an investment company as defined in Section 3(a)(1) and 3(a)(3) of the 1940 Act. In addition, use of the bank's trust department for collective investment purposes could not comply with certain provisions of the Act, such as Sections 16(a) and 18(i) requiring management of the assets by a board of "directors" elected by the persons who have a financial interest in such assets.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 89 January 1 – 31, 1961

1933 ACT

1. Sections 2(1); 3(a)(4) -- Security; Investment Contract; Educational Organization; Investment Company; Face Amount Certificate.
Sections 2(a)(15); 3(a); 3(c)(12) of the 1940 Act

January 17, 1961 -- Memorandum to the Commission re: College Scholarship Plan, Inc.; National Scholarship Program

The present Plan provides for payment of a \$100 membership fee as well as the deposit of a stipulated sum by periodic payments in a savings and loan association. Principal could not be withdrawn prior to a specified date without terminating the Plan, and all earnings on share accounts are to be paid to the Plan. On the enrollment of the designated beneficiary in college, the principal sum paid will be returned to the member. The member's passbook will be held in escrow, whereby earnings and profits will be paid to the Plan at the specified date. Both plans now propose to eliminate the escrow arrangement.

Since the amount to be repaid to members is a debt of the savings and loan association and not of the Plan, the membership did not appear to constitute a face amount certificate of the installment type. However, since the assets of these plans consist of interests in savings and loan association accounts, which are securities, the plans fall within the definition of "investment company" contained in Section 3(a) of the 1940 Act. The memberships are securities in the nature of investment contracts as defined in the 1933 and 1940 Acts. In addition, it was felt that the Section 3(a)(4) exemption contained in the 1933 Act and Section 3(c)(12) of the 1940 Act would not be available. Elimination of the escrow feature was not sufficient to change the result.

The Commission approved the staff's recommendation that the Plan be held to be an investment company. (See Commission Minute January 19, 1961.)

2. Sections 2(3); 5 -- Sale; Employee Offering; Deferred Compensation Plan.

January 23, 1961 -- Memorandum re: Columbia Broadcasting System, Inc.

The company's deferred compensation plan, payable in cash, has been amended to be payable in stock of the company. There are approximately 50 key employees who would be selected at the end of each year by a committee which would also determine the amount of stock to be paid to each. If any potentially eligible employee requests, prior to selection, to take compensation in cash rather than stock, his request will be honored by the company.

No registration problem would be raised if in fact the selection of the key employees were not made until the end of each year by an independent committee, and the amount of stock to be awarded to each was not determined until that time.

3. Sections 2(11); 4(1) -- Statutory Underwriter; Integration; Fungibility.
Regulation A

January 6, 1961 -- Memorandum re: J & R Motor Supply Corporation

The company proposed to file under Regulation A covering the sale of stock acquired last August pursuant to the exercise of restricted stock options by two officers of the company. One of the offering shareholders proposed to make a simultaneous offer of previously acquired shares directly to purchasers who would take for investment. Inquiry was made whether such a sale would be exempt as a transaction not involving an issuer, underwriter or dealer.

The offerings by the two stockholders should be covered either in the Regulation A notification or in a registration statement.

4. Sections 2(11); 4(1) -- Fractional Shares; Underwriter.

January 6, 1961 -- Letter to: William A. Hamilton

The company will declare a 5% stock dividend on 240,000 outstanding shares. Fractional shares will be combined into whole shares, and sold to the public through the company's transfer agent, and the proceeds paid to shareholders pro rata.

This procedure would constitute the transfer agent an underwriter for the issuer. However, no action would be recommended if full shares were transferred to the transfer agent who then acts as agent for the shareholder in matching buy and sell orders. The shares remaining may be sold to the public and the proceeds paid to shareholders only after allowing a reasonable period for matching buy and sell orders.

5. Section 2(11); 4(1) -- Control; Underwriter; Purchase; Gift; Distribution.

December 13, 1960 -- Commission Minute re: Smith, Kline and French

A gift of stock of the above company was made to Yale University which proposes to sell most of the stock publicly in order to raise funds for the construction of a science center to bear the name of the donor. Due to his connection with the company and the amount of his direct and beneficial holdings, the donor appeared to be a controlling person within the meaning of Section 2(11) of the 1933 Act. Since the gift was made with the intention that a science center be constructed, and Yale intended to convert the stock into cash for this purpose, Kline had set in motion a series of steps anticipated to culminate in the sale of control stock to the public without registration under the Securities Act. The interposition of Yale between the control person and the underwriters should not obviate the necessity for registration. The Commission approved the Division's position and authorized the General Counsel to send a letter denying the requested no action position. (See Memorandum to the Commission November 29, 1960; Commission Minute December 16, 1960, and January 12, 1961; Letter from General Counsel January 12, 1961.)

6. Section 3(a)(4) -- Educational Institution

January 6, 1961 -- Letter re: New York World's Fair 1964-1965 Corporation

The corporation was organized as a non-profit corporation exclusively for educational purposes. The corporation will sponsor the World's Fair and will arrange for educational exhibits to be shown. In addition, a ruling has been received from the Tax Rulings Division of the Treasury Department exempting the corporation from the income tax provisions of the Internal Revenue Code, as an organization organized and operated exclusively for educational purposes. The corporation now wishes to sell \$67,500,000 worth of promissory notes, and inquires about the availability of the Section 3(a)(4) exemption.

The Commission approved the recommendation of the Division that a no action position be taken if sales of the notes are made without registration in reliance on Section 3(a)(4). (See Memorandum to the Commission January 4, 1961, and Commission Minute January 6, 1961.)

7. Section 3(a)(10) -- Exchange; Control; California Corporation Commission; Resales.

January 6, 1961 -- Letter re: Transamerica Corporation

Transamerica proposes to make an exchange offer with its two subsidiaries, American Surety Company and Phoenix Title and Trust Company. None of the latter two companies' stockholders is a controlling person of either Phoenix, Surety, or Transamerica. The minority shareholders of Surety will receive Transamerica shares amounting to four-tenths of one per cent of the total shares outstanding, and in the case of Phoenix, seven-tenths of one per cent of the outstanding total. The amount of

Transamerica to be received by the largest shareholders of Surety and Phoenix is insignificant in relation to the 36,500 shares of Transamerica traded on the exchanges in one week. The exchange will be submitted to the California Corporation Commissioner for approval after a hearing on the fairness of the terms and conditions, at which all offeree shareholders will have a right to appear.

No action recommended if the exchange is made without registration under the Securities Act in reliance on Section 3(a)(10). In addition, no action will be recommended with respect to incidental sales by the recipients of Transamerica shares.

8. Section 4(1) -- Employee Offerings; Savings Plan; Sales at Direction of Employees.

January 11, 1961 -- Letter to: Alex J. Keller

Inquiry was made with reference to sales of company stock which is registered under the Act, and which was received by participants in a thrift plan. Sales will be made pursuant to a provision entitling such participants to direct the trustees of the plan to sell or redeem stock in his account including stock purchased with employer contributions and reinvest the proceeds, or reinvest any uninvested cash in his long-term account.

No action would be recommended if such sales are made in reliance on the exemption provided in the first clause of Section 4(1) for transactions not involving an issuer, underwriter or dealer,

9. Sections 5; 10 -- Undertaking to file a Post-Effective Amendment; Rights Offering; Stock Dividend.

January 24, 1961 -- Letter re: Mayfair Markets

Thirty-five thousand shares of the above company were purchased for investment by a securities firm on February 27, 1959. Later a stock dividend was declared and on November 13, 1959, a registration statement filed covering a proposed rights offering, including the 35,000 shares to be sold by the firm. The firm acquired 8,750 shares pursuant to the rights offering on February 29, 1960.

If any of the 35,000 shares are sold by the firm, the company must comply with its undertaking to file a post-effective amendment to the above-mentioned registration statement disclosing the terms of the re-offering. However, no question will be raised with respect to the sale of shares acquired in either the stock dividend or the rights offering without registration.

10. Section 7 -- Instrumentality of Government; Foreign Government; Political Subdivision.

Schedule B
Section 304(a)(6) of the 1939 Act

January 13, 1961 Letter re: Eurofima

The company was organized by sixteen European countries; its shareholders are the national railway administrations of these countries, which are either public administrations, or corporations controlled by the respective national governments. The company supplies standard railway equipment to these administrations on long-term hire-purchase contracts which are guaranteed by their respective governments. The company now proposes to sell its debentures, which will not be guaranteed either directly or indirectly by the national governments involved, publicly in the United States.

No action would be recommended if an indenture is not qualified in reliance on Section 304(a)(6) of the 1939 Act, exempting debentures issued by an agency or instrumentality of a foreign government. However, registration of the debentures on Form S-1 is required since the debentures do not constitute a security issued by a foreign government or political subdivision thereof within the meaning of Section 7 of the 1933 Act so as to come under Schedule B.

11. Rule 133 -- Exchange; Merger; Control; Person; Distribution.

January 24, 1961 -- Letter re: Cerro Corporation; United Pacific Aluminum Corp.

Cerro will acquire all or substantially all the assets of United in return for Cerro common stock which will be distributed to United shareholders upon liquidation. The merger agreement will be approved, pursuant to California law, by holders of two-thirds of United's common stock at a special meeting of the stockholders. The principal stockholders will take for investment and not for resale except as provided by paragraphs (d) and (e) of Rule 133.

No action would be recommended if the transaction is carried out without registration in reliance on Rule 133. While the families of the control persons may also be controlling persons, paragraph (d) and (e) of Rule 133 appeared to be sufficiently flexible to permit liquidation of their holdings after a reasonable time, at six-month intervals. Officers and directors and members of family groups may be deemed a single person for the purpose of paragraph (c) of the Rule. Any restriction on sales of stock applicable to United shareholders before the transaction would remain in effect with respect to the Cerro shares so received.

12. Rules 133; 154 -- Merger; Voluntary Exchange; Distribution; Control Stock.

January 31, 1961 -- Commission Minute re: Rules 133 and 154

Certain members of the Bar have been urging that the definition of “distribution” contained in Rules 133 and 154 should apply to all sales of stock within the 1% limitation even in situations not arising under either of the Rules. It was also suggested that the Rule 133 tests be applied to all transactions economically the same as Rule 133 transactions. It has been, and still is, the position of the staff that the Rules should be limited to situations falling within their scope.

In addition, two situations arising under the Rules were considered. In the first, Corporation A proposes to make a voluntary exchange with 14 shareholders of Corporation B, four of whom are control persons. Inquiry was made as to whether the non-control shareholders could sell freely, and whether the control shareholders could sell within the limitation of 133(d). Absent an available exemption, the 14 shareholders of B would have to register the stock received prior to any public reoffering. The second situation involved the receipt of control stock by an investment company in exchange for its own stock. It was argued that the investment company stood in the shoes of the control person, and should be subject to the “no distribution” clause of Rule 154. The Commission was advised that this problem was currently being considered by the Division.

13. Rule 434A -- Summary Prospectus.

January 12, 1961 -- Memorandum to the Commission re: Maryland Cup Corporation

The company satisfies all the requirements of clauses (i), (ii), and (iii) of subdivision (a)(2) of Rule 434A. Prior to 1960, however, the company's operations were carried on through a number of various business enterprises, all of which were owned by the members of one family. Consequently, financial statements were not prepared covering all facets of the business, nor were they made available to the public generally.

Since the company's growth record and financial condition is excellent, and since certified profit and loss statements will be included in the summary prospectus, the Commission determined that good cause had been shown, and the use of a summary prospectus would not be inappropriate. (See Commission Minute January 13, 1961.)

14. Form S-8 -- Employee Offerings; Stock Purchase Plan; Employer's Contribution.

January 17, 1961 -- Letter re: The Peoples Gas Light and Coke Company

Voluntary payroll deductions will be accumulated, and company stock purchased semiannually at a price 10% below market. Accumulated deductions may be withdrawn at any time up to the date of purchase.

Although the company meets all the other conditions set out in the Instruction Form S-8, it will not make direct contributions in the form of cash or equity securities to the Plan,

but will contribute only in the sense that it will bear the expenses of the Plan, and sell stock to the Plan at a price lower than market.

However, no objection was raised to the use of Form S-8 for registration.

1934 ACT

15. Section 14 -- Solicitation of Proxy.

Rule 14a-1

January 25, 1961 -- Memorandum re: Rio Tinto Mining Co.

The company and its subsidiaries have securities registered and listed on the American Stock Exchange. Although proxies have not been solicited in the past for stockholder meetings, the subsidiaries, as a gesture to stockholder relations, would like to include in their notices of stockholder meetings, a statement that any stockholder unable to attend the meeting may request management to send him a proxy.

The opinion was expressed that the statement would constitute a proxy solicitation, and subject the material to the proxy rules.

16. Section 14 -- Stockholder Proposals.

Rules 14a-4(b); 14a-8(c); 14a-9

January 30, 1961 -- Memorandum to the Commission re: American Telephone & Telegraph Company; Stockholder Proposals of Wilma Soss

A stockholder's proposals to provide for (1) secret voting; (2) pro rata voting by AT&T shareholders of stock owned by AT&T in Western Electric; and (3) augmenting the board of directors to 19 and electing a woman director were all opposed by management. Proposals 1 and 2 were opposed on the grounds that they were not proper subjects for stockholder action under New York law, violated Rule 14a-4(b), and contained statements which were improper under Rule 14a-9. In addition, proposal 2 was felt to refer to the conduct of the ordinary business operations of the company and should be omitted under Rule 14a-8(c)(5). Management felt that proposal 3 could be omitted because it was submitted to "advance a special cause" within the meaning of Rule 14a-8(c)(2). This proposal was thereafter amended to eliminate the provision that a woman be placed on the board.

The Commission determined that proposal 1, after further revision of language, should be included; proposal 2 might be omitted; that the revision of proposal 3 to delete the reference to placing a woman on the board constituted it a different, although proper, proposal from the one submitted earlier, and management should not be required to include it at this late date. (See memorandum re: History of Rule 14a-8(c)(2) and

Commission Minute January 31 and February 1, 1961, filed with above memo in Commission Minute file.)

17. Section 14 -- Form of Proxy; Stockholder Proposal; Neutral Position of Company. Rules 14a-4(e); 14a-8(b)

January 12, 1961 -- Memorandum re: ACF Industries, Inc.

Inquiry was made whether a statement that the form of proxy would be voted on a stockholder proposal only if marked would be consistent with a neutral position on the part of management.

The Division had previously taken the position that unless unmarked proxies were voted "for" the proposal, the proposal would be regarded as opposed. If the 100 word statement were included and proper disclosure were made, there would be no objection to a provision that a proxy would not be voted unless marked notwithstanding that Rule 14a-4(e) on its face requires that proxies be voted and disclosure made of how they would be voted.

1934 ACT

18. Section 14 -- Solicitation of Proxy; Proxy Control Rule 14a-11

January 31, 1961 -- Commission Minute re: Trans World Airlines, Inc.

Proxies will be solicited by voting trustees with respect to all matters to be considered at a special meeting, with the exception of a proposal to remove a certain number of directors. Seventy-eight per cent of the company's stock is held by the voting trustees but they nevertheless intend to solicit minority holders. However, question was raised whether the proxy contest rules apply. The New York Stock Exchange took the position that it would not require management to solicit proxies, and that no proxy contest existed as yet. However, Howard Hughes who had elected the present board and later put his stock in the voting trust indicated dissatisfaction with the present situation, and he may eventually oppose the trustees' solicitation. The trustees will proceed with the solicitation without filing pursuant to Schedule 14B, but will prepare appropriate information in the event that Hughes takes steps to create a proxy contest.

The Commission approved the staff's opinion that filing of Schedule 14B's should not now be required since management was not soliciting proxies as yet, and no proxy contest existed.

19. Section 14 -- Waiver of Contract Rights; Solicitation of Proxy; Estoppel Disclosure.

Schedule 14A, Item 21
Section 47(a) of the 1940 Act

January 31, 1961 Commission Minute re: -- Chemical Fund, Inc.

The management included in its proxy material soliciting stockholder approval of present management and distribution agreements, a statement that approval of shareholders may be used by management as a defense in a derivative action brought against the Fund's directors and others alleging excessive manager's fees.

No objection was made to the inclusion thereof in the proxy statement if the following language were also in the material: "but not insofar as any such use would be contrary to, or inconsistent with, the Investment Company Act of 1940 or any rule, regulation or order thereunder, or void under Section 41(a) of such Act, or contrary to or inconsistent with other applicable law."

20. Section 16(a) -- Ownership Reports; Voting Trustees.
Rule 16a-8(c)

January 11, 1961 -- Memorandum re: Trans World Airlines, Inc.

Howard Hughes will put 18% of the company's stock in a voting trust whereby the trustees' interest will be restricted solely to voting the stock in accordance with the agreement. He will file a report pursuant to Section 16(a) of the 1934 Act and inquiry was made whether the trustees must also file a report.

The trustees' report is literally required by Rule 16a-8(c), but since the shareholder will file a report, no objection will be raised if the trustees do not file.

1940 ACT

21. Rule 20a-2 -- Balance Sheet; Investment Adviser; Investment Company; Proxy Statement.

January 13, 1961 -- Memorandum to the Commission re: Omission of Investment Adviser's Balance Sheet from Proxy Statement of Investment Company

Where management of an investment company or an investment adviser solicits proxies for the election of directors, the investment adviser's balance sheet may be omitted by the company from the proxy statement if the adviser is primarily engaged in Borne business other than underwriting or performing advisory services. The Commission authorized the staff to grant the requests for omission of such balance sheets where absent other factors such as interlocking directors the adviser's revenue from advisory services does not exceed 20% of its total revenue. (See Commission Minute January 17, 1961.)

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 88 December 1 - 31, 1960

1933 ACT

1. Sections 2(1); 3(a)(4) -- Security; Investment Contract; Investment Company; Face Amount Certificate
Sections 2(a)(15); 3(a)(1); 3(a)(3) of 1940 Act

November 22, 1960 -- Memorandum re: National Scholarship Program, Inc.

National is a non-profit organization which proposes to establish a plan whereby members may provide future scholarships to designated persons. Members will pay an initial membership fee of \$100, \$80 of which will be paid as sales commissions. In addition, members agree to make periodic deposits in a savings and loan account. Although National will have no control over the principal deposits, interest earned thereon will be paid into National's account to provide funds for scholarships, at the end of the payment period, the principal amount will be returned and be available for use for the designated person's first year of college. Upon successful completion of such first year, National will provide a scholarship for the remaining three years. If the person designated did not succeed in obtaining such benefits, National would use the funds so received to defray its obligations under other such contracts.

The memberships constitute investment contracts, and since the Section 3(a)(4) exemption would be unavailable, registration under the 1933 Act would be required. In addition, since it intends to invest in savings and loan accounts, National would appear to be an investment company within the meaning of Sections 3(a)(1) and 3(a)(3) of the 1940 Act. Also, the investment contract appears to be a face amount certificate as defined in Section 2(a)(15) of the 1940 Act.

2. Section 2(3); 6(a) -- Warrants; Undertaking to File Registration Statement; Underlying Securities; Computation of Ceiling Under Regulation A
Regulation A

December 21, 1960 -- Memorandum re: Cambridge Growth Fund, Inc., Cambridge Financial Corporation

Cambridge Financial Corporation is the investment adviser of Cambridge Growth Fund, Inc. (Investment Company) which has filed a registration statement under the 1933 and

1940 Acts. The investment company's prospectus states that the public purchasers and dealers will receive warrants, exercisable in 1963, to purchase shares of the adviser company. Question was raised whether the warrants should be included in the 1933 registration statement or could be qualified under Regulation A.

The warrants of the adviser company and the shares of the investment company are part of a package in the nature of an investment contract and should be registered. The offering of the warrants constitutes a present offering of the underlying security notwithstanding the fact that they are not exercisable until 1963, a situation to which the last sentence of Section 2(3) is not applicable.

Although no objection will be raised if the shares underlying the warrants are not registered at this time, the offering price of the underlying shares should be considered in computing the ceiling for purposes of qualifying under Regulation A which provides a more effective basis for concluding that the warrants should be registered.

3. Sections 2(11); 4(1); 6(a) -- Contingent Liability; Control; Shelf Registration; Underwriter

December 1, 1960 -- Memorandum re: Institutional Securities Corporation

The company was organized by New York savings banks to invest in FHA insured mortgages on property outside New York. The company sold its debentures to the banks in reliance on Sections 3(a)(11) and 4(1) exemptions. Although the savings banks plan to drop the debenture procedure now that they can invest in out-of-state mortgages, the company wishes to register some or all of the \$43 million outstanding debentures so that they may be more readily sold or pledged as collateral.

If the banks intend to sell, or pledge the debentures, then registration may be effected, and no question would be raised as to the amount to be registered. The banks control the issuer, and as to more recent acquisitions of debentures, they may be underwriters. It was pointed out that contingent liability is important with respect to the possibility that the bonds, which already are obligations of the corporation, might become current obligations.

4. Section 4(1) — Private Offering; Stock Option Plan

December 27, 1960 -- Commission Minute re: Johnson & Johnson

The company seeks a Section 4(1) exemption for its restricted stock option plan which will be offered to 140 key employees, all of whom are full-time employees earning in excess of \$20,000 per year, and who are, according to the company, in a position to know, or have access to, substantially all the information which would be contained in a registration statement.

In view of the general position of the Commission in similar situations restricting the Section 4(1) exemption to cases where the prospective optionees did not exceed 100 persons and the fact that many of the optionees would not seem to meet the test of the Ralston Purina case, the Commission approved the position of the Division that a no action letter should not be given. (The company was advised that a Form S-8 registration statement might be filed.) (See Memorandum to the Commission of December 22, 1960.)

5. Section 5(c) -- Pre-Filing Dissemination of Information; Rights Offering
Rule 135

December 19, 1960 -- Commission Minute re: American Telephone & Telegraph Company

The company intends to file a registration statement on January 27, 1961, covering a rights offering to be made on February 23, 1961. The company requested permission to make a public announcement and also to include in an announcement of the regular quarterly dividend to be mailed to shareholders after a directors' meeting on December 21, 1960, a notification that a rights offering would be made, and that a dividend increase had been authorized.

The Commission approved a recommendation of the Division of Corporation Finance that no objection to the company's proposal, which was consistent with the policies of the New York Stock Exchange, be made even though the notices would not strictly conform to Rule 135.

6. Section 10 -- Disclosure; Post-Effective Amendment; Prospectus; Overallotment

December 7, 1960 -- Memorandum re: Paddington Corporation

The underwriters under the subject company's registration statement overallotted to its dealers, and proposed to make up the deficit by using shares of one of the underwriters. These shares had been registered under a prior registration statement, and there was an undertaking to provide a current prospectus before any of such shares were offered.

The subject prospectus should be stickered to disclose the transaction and to reveal that the proceeds from sale of the covering shares would go to the broker firm supplying the shares. In addition, the prospectus should be filed as a post-effective amendment to the subject company's registration statement, as well as to the prior registration statement under which the covering shares are registered.

7. Rule 235 -- Cooperative Housing

December 29, 1960 -- Letter to: Edward C. McLaughlin

A cooperative apartment house corporation proposes to issue 100,000 shares of stock, \$1 par value, for an aggregate offering of \$100,000. Pursuant to purchase agreement, the purchasers of such stock will be required to pay in installments an additional \$10,000 to \$30,000 to finance the acquisition of the land and construction of the building, in a total sum of \$5,000,000. Incidental to the business of owning, leasing, and managing the apartment, the corporation will rent space for stores, offices, etc., the income from which will inure to the corporation. The stock will be issued in connection with the execution by the purchaser of the usual proprietary lease, and may be transferred only in connection with the lease.

No action recommended if the stock is sold without registration under the 1933 Act based on the exemption contained in Rule 235, effective January 9, 1961. (See Securities Act Release No. 4305.)

8. Regulation A -- Principal Place of Business
Rule 252(a)(1)

December 5, 1960 -- Letter re: Colorado Bowling Alleys of Israel, Inc.

Inquiry was made whether Regulation A would be available for an offering of a company organized under Colorado law, to purchase land and erect and operate a bowling alley in the State of Israel.

Since the principal business operations of the company will be conducted outside the United States and Canada, the requirements of Rule 252(a)(1) have not been met, and Regulation A is unavailable.

9. Note to Rule 460 -- Acceleration; Indemnification of Directors

December 16, 1960 -- Letter re: 795 Fifth Avenue Corporation

A selling stockholder of the registrant corporation has agreed to indemnify the registrant's directors.

While the Note to Rule 460 takes the position that indemnification of officers or directors by the registrant is contrary to public policy and is relevant in considering requests for acceleration, indemnification of officers and directors by a selling shareholder is not considered against public policy and has no bearing on the question of acceleration.

1934 ACT

10. Rules 14a-9; 20a-1; 20a-2; 20a-3 -- Disclosure; Proxy Statement; Material Facts Schedule 14A

December 5, 1960 -- Commission Minute re: Dividend Shares, Inc.

Both the company and its investment adviser are involved in litigation based, in part, on claims of excessive advisory fees. In light of this, inquiry was made whether the comparative performance of the investment adviser and its charges should be disclosed in the company's proxy statement.

It was determined not to require disclosure with respect to solicitation of approval of management contracts, of information about the comparative performance of the particular fund and funds having a similar investment policy since the Commission, in amending the proxy rules, had not required disclosure of such comparative performance data.

1939 ACT

11. Section 307 -- New Security; Amendments to Indenture Form T-3
Section 3(a)(9) of 1933 Act

December 5, 1960 -- Memorandum re: Chicago Railway Equipment Company

The company proposes to amend its qualified indenture to make interest payable as a fixed obligation, and to eliminate the requirement that a purchaser of the company's assets be required to assume liability on the debentures. These changes require a vote of 51% of all outstanding debentures as well as execution of a 1st Supplemental Indenture.

The second change is material enough to constitute creation of a new security. An exemption from the requirements of the 1933 Act is available by reason of Section 3(a)(9); the indenture, as proposed to be supplemented, should be qualified by filing Form T-3.

1940 Act

12. Sections 15; 47 -- Investment Advisory Contract; Waiver of Contract Rights; Solicitation of Proxy
Schedule 14a; Item 21 of the 1934 Act

December 23, 1960 -- Commission Minute re: Television-Electronics Fund, Inc.

The directors of the fund were defendants in a state action charging gross abuse of trust in their dealings with the investment advisor. In a proxy statement soliciting shareholder

approval of the advisory contract for next year, it was stated that ratification of the renewal of the advisory contract might be used by the directors as a defense in the state action.

The Commission indicated that the proxy should state that to the extent that ratification might be invoked as a waiver of shareholder rights under prior advisory contracts, such waiver would be void under Section 47 of the 1940 Act.

13. Section 35(d) – Investment Companies; Misleading Names
Paragraph C of Statement of Policy

December 20, 1960 – Letter re: Associations Investment Fund, Inc.

The Fund is considering changing its name to “Retirement Investment Fund, Inc.” or to “Estate Planning Fund, Inc.” and requests a determination that such names are not deceptive or misleading within the meaning of the 1940 Act since they properly describe the primary purpose of the Fund.

The legislative history of Section 35 of the 1940 Act clearly indicates that the use of a name such as “Old Age” in an investment fund would be an abuse of the type Section 35 was designed to prevent. The similarity between “Retirement” and the name used as an example in the Congressional hearings would prompt a recommendation that the proposed name was misleading.

The word “estate” commonly has reference to a fund for retirement or for providing for beneficiaries on death, and its use is misleading under the Commission’s Statement of Policy (par. (c)), unless the risks involved are pointed out. Disclaimers in a prospectus cannot justify the use of a name which is otherwise misleading. Consequently, use of either name would be a violation of Section 35(d) of the Act.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 87 November 1 - 30, 1960

1933 ACT

1. Section 2(1) -- Security

November 17, 1960 -- Letter to: Mr. T. O. Sargent

A plan was proposed to sell certificates which are genuine deeds to square yard units of gold claims.

The certificates appear to be an investment contract, and hence, a security within the meaning of Section 2(1) of the 1933 Act. Therefore, registration would be required absent an available exemption. The seller of such securities might also be a broker-dealer and subject to registration under Section 15 of the 1934 Act.

2. Sections 2(1); 3(a)(2) -- Security; Investment Contract; Deposit Certificates

September 2, 1960 -- Memorandum re: B. C. Morton and Company

Commercial depositors purchase certificates of deposit issued by banks which they sell at a discount to the above company. The company in turn resells at a lesser discount to its customers.

Since the company merely factors the paper and undertakes no responsibilities and makes no promises from which a purchaser might expect to make a profit, it appears that there is no investment contract or security other than the deposit certificate, which is an exempt security under Section 3(a)(2).

3. Sections 2(3); 4(1); 5; 10(a)(3) -- Undertaking to File Up-to-Date Prospectus; Warrants; Continuing Offering

November 23, 1960 -- Letter re: E. J. Korvette, Inc.

Prior to his death on December 2, 1956, testator, as a partner in the investment banking firm of Carl M. Loeb, Rhoades & Co., received 1,000 warrants of the above company which were part of warrants purchased by the firm for cash. In its registration statement,

which covered the warrant shares, the company undertook that none of the shares underlying the warrants would be sold to the public absent an up-to-date prospectus. Based on opinion of counsel that a change in circumstances has made the warrants no longer subject to the undertaking, the testamentary trustee seeks to sell the warrants free from any restriction.

No action would be recommended if the warrants are sold without registration under the Securities Act; however, since an offer of the warrants constitutes an offer of the underlying securities, use of an up-to-date prospectus would be necessary in compliance with the undertaking. If the warrants were privately placed, the undertaking would be operative as to any public resale by any purchaser.

4. Section 2(10) -- Advertising; Tombstone Ads

November 22, 1960 -- Letter re: Boston Herald-Traveler

The newspaper proposed to publish a section about mutual funds in general, and certain funds in particular. Advertising would be solicited from dealers to appear as tombstone ads; or in the alternative, a list of dealers who paid for the articles would appear on the last page of the section.

The purchase of advertising by a dealer distributing a fund to make possible the printing of articles about specific funds, even including a credit page, would constitute such articles prospectuses under the 1933 Act, despite the fact that such articles were prepared by independent newspaper staff members. This proposal was distinguished from the situation where a broker purchases advertising of a type permitted under Section 2(10) of the Act, and an article about mutual funds in general appears at the same time.

5. Section 2(11) – Underwriter; Finder's Fee

November 4, 1960 -- Letter re: Dreyfus & Co.

A partner of Dreyfus introduced the president of a new Delaware corporation to an underwriter. The underwriter will purchase a number of shares, receive warrants to purchase others, and eventually proposes to offer 150,000 shares to the public pursuant to a registration statement. Dreyfus inquires whether it will be more than a finder if it receives either shares or warrants from the underwriter and whether the shares Dreyfus is to receive should be included in the registration statement, Dreyfus states it has no present intention of distributing the securities it receives, and any distribution will be made pursuant to a registration statement.

If Dreyfus receives shares for its services, it would appear to be an underwriter within the meaning of Section 2(11) and should be named as such in the registration statement (See M.A.P. 51). The registration statement should include any securities to be acquired by

Dreyfus. (See S. A. Release No. 3210), as well as an undertaking to file a post-effective amendment showing the terms of any distribution by Dreyfus not described in the prospectus.

6. Section 3(a)(3) -- Computation of Ceiling Under the Trust Indenture Act; Debentures; Matured Investment Certificates
Sections 304(a)(4); 304(a)(9) of the 1939 Act

October 10, 1960 -- Memo re: Franklin Discount Company

The company filed a registration statement covering \$300,000 Subordinated Debentures and \$300,000 Capital Notes. An exemption from qualifying the indenture was claimed under Section 304(a)(9) of the Trust Indenture Act. The company also completed sales of \$500,000 worth of 9 month maturity 6% investment Certificates on June 25, 1960. By September 30, 1960, \$311,097 of these had matured but had not been paid, and on which interest was being paid currently.

The Division took the position that Section 3(a)(3) of the Securities Act was not available for the matured certificates which were, in effect, demand paper. In view of the company's receipt of a letter stating that the Section 3(a)(3) and Section 304(a)(9) exemptions would be available for the certificates, the uncertain status of the unmatured certificates, and the company's agreement to refund the matured notes as soon as possible, it was not required to qualify its indenture. However, the company was advised to pay off its presently outstanding unmatured certificates as soon as they become due.

7. Section 3(a)(5) -- Building and Loan Association; Similar Institutions

November 1, 1960 -- Letter re: Pennsylvania Grocers Development Fund, Inc.

The Fund was organized for the purpose of extending loans to its Class A shareholders who are retail grocers and members of the Pennsylvania Grocers Association, a non-profit corporation. As required by the Fund's by-laws, all the Class B stock has been issued to the Pennsylvania Grocers Association, and all the shares of Class A common have been issued only to residents of Pennsylvania. The Fund now proposes to issue Class A stock to non-residents of Pennsylvania. It inquires whether the words "similar institution" in Section 3(a)(5) of the Securities Act of 1933 would include an institution such as the Fund since its investments are limited to loans to or for the benefit of its Class A stockholders, U. S. obligations, and shares or accounts in Federal savings and loan associations.

The words "similar institution" in Section 3(a)(5) of the 1933 Act were meant to be descriptive of the usual building and loan association. Congress did not intend that the terms should broaden the scope of the exemption. Therefore, the Section 3(a)(5) exemption would not be applicable to the Fund.

8. Section 3 (a)(9) -- Election; Exchange
Rule 133

November 17, 1960 -- Memo re: Proposed Merger of Delaware Realty and Investment Company into Christiana Securities Company

Delaware will be merged into Christiana. Christiana preferred shareholders may elect to receive common stock or retain their preferred shares. Inquiry was made whether in view of the election, Rule 133 would be available with respect of the merger, and if not, whether Section 3(a)(9) would be available for the exchange.

Although it has been the view of the Division that Rule 133 is not available when the stockholder is given a right of election, this view has recently been under review. It was determined under the circumstances of this case to take a no action position with respect to the proposed transaction.

9. Section 3(a)(9) -- Convertible Securities; Integration; Computation of Ceiling under Regulation A
Rule 254

November 22, 1960 -- Letter re: Doughboy Industries, Inc.

The company has outstanding 60,000 shares of \$1.00 par value Class A stock redeemable at \$12.50 per share plus accrued dividends, and convertible share for share into common stock. The company now proposes to call the Class A stock, and if none of the shareholders convert, the total amount to be paid will be \$750,000. The company previously entered into a loan agreement pursuant to which it must maintain a certain amount of working capital and therefore must replace the amount used for the call either by earnings or by a public sale of its common stock. The amount of money to be raised cannot be determined until after the Class A shareholders have either converted or their stock has been redeemed. No commission or other remuneration will be paid for soliciting the exchange. No objection was raised to reliance upon Section 3(a)(9) for the conversion or the use of Regulation A for a later offering of common to the public provided the aggregate public offering price will not be in excess of \$300,000.

10. Section 3(a)(11) -- Underwriter; Sale of Cooperative Interests in an Apartment

November 4, 1960 -- Memo re: 795 Fifth Avenue Corporation

The corporation operates a cooperative apartment in New York. In reliance on Section 3(a)(11), units were sold only in New York except for certain units which were sold to a single non-resident for resale solely to New York residents. Since he has been unable to

sell any substantial part of the apartments, the non-resident inquires whether he may either hold the apartments for investment, or, if the company agrees to file a registration statement, sell under such statement on an interstate basis.

Either alternative would probably destroy the 3(a)(11) exemption. Since it appears clear that the non-resident made a good faith attempt to dispose of the property under the limitations of Section 3(a)(11), no action will be recommended whichever course is followed. If a registration statement is filed, there may be a contingent liability due to the probable destruction of the Section 3(a)(11) exemption.

11. Section 5(c) -- Pre-Effective Period; Pre-Effective Sales; Consideration; Evidence of Interest
Rule 134(d)

November 10, 1960 -- Memo re: Arthur Hauserman

An investment company will be formed whereby securities are deposited and exchanged for stock of the investment company. Question was raised whether deposits could be received by an agent during the pre-effective period, if the depositor was required to reaffirm his offer after the effective date. If the proposed plan is allowed, the registration statement could be amended prior to the effective date to increase the number of shares needed to meet the demand.

The Division advised that this procedure goes beyond the 1954 amendments to the Securities Act notwithstanding the requirement that the depositor reaffirm after the effective date. The fact that the depository was designated the depositor's agent did not affect this result.

12. Section 10 -- Foreign Language Prospectus

November 15, 1960 -- Memo re: Use of Foreign Language Prospectus

Inquiry was made whether there was any requirement that a foreign language prospectus be used when making sales to groups in the United States who have a limited knowledge of English.

Although there is no requirement that such a prospectus be used, its use is permissible if filed with the Commission together with a statement that it is a complete and accurate translation of the English prospectus. This procedure is desirable in order to avoid misleading foreign language speaking purchasers. Such a prospectus, when filed as part of the registration statement, becomes a Section 10 prospectus and it need not be accompanied by an English translation when used. In order to avoid any question of complying with Section 10 of the Act, the prospectus should be filed as a post-effective

amendment to the registration statement. (See letter to Mr. George M. Solomon dated November 21, 1960.)

13. Section 10(a)(3) -- Prospectus; Certified Financial Statements
Rule 427

November 3, 1960 -- Letter re: Polorad Electronics Corporation

The company filed a prospectus dated June 17, 1960, containing unaudited financial statements as of March 31, 1960, and audited financial statements as of June 30, 1958. Counsel for the company argued that Section 10(a)(3) does not require that the 16 month period be calculated from the date of the certified financial statements.

Section 10(b)(1), which preceded Section 10(a)(3), required that information in a prospectus used more than 13 months after the effective date, be of a date not more than 12 months prior to the use of the prospectus. Realizing that this would, in some cases, require the preparation of certified financial statements more than once a year, Congress amended Section 10 in 1954 to alter the method of calculating the period. (H.R. Report No. 1542, 83d Cong. 2d Session, p. 25). On the other hand, the fact that a certified financial statement has become available, but has not been included in the prospectus does not mean that the prospectus has expired, as long as the certified financial statement actually included is of a date not more than sixteen months prior to its use. However, irrespective of such periods, the prospectus may have to be brought up to date in order to avoid either including an untrue statement of a material fact, or omitting a fact which would tend to make the prospectus misleading under the standards of Section 17(a) of the Act.

14. Rule 252(a)(2) -- Doing Business Within the United States
Regulation A

November 17, 1960 -- Memorandum re: Old Man Satan Company

Issuer proposes to offer stock, the proceeds of which will be used to produce a play in London. If the play is successful in London, it will be produced on Broadway.

Since the issuer does not meet the test of doing business in the United States, Regulation A is unavailable for the proposed offering.

15. Rule 252(f) -- Form of Order Under Rule 252(f)

November 22, 1960 -- Memorandum to the Commission re: L. A. Huey Company

The firm was principal underwriter for two corporations whose Regulation A exemptions were suspended. The firm filed an application pursuant to Rule 252(f) for relief from the

bar imposed by Rule 252(e)(2) which the Commission was prepared to approve. Question was raised whether the proposed order should fully set forth the facts upon which the decision was based so as to avoid the appearance of being arbitrary.

The Division pointed out that the granting of relief under Rule 252(f) is discretionary. No formal record is usually made, and the decision is based on all the circumstances ascertainable both from the application as well as information available from the Commission's files.

It was felt that the exercise of the Commission's discretion as well as the flexibility of its action would be hindered by setting forth in the order a statement of the reasons for its decision, especially where the application may be denied.

The Commission agreed with the Division's position and directed that a letter rather than a formal order be used to advise applicants of the Commission's decision. (See Commission Minutes of November 16, 23 and 28, 1960 re the above company.)

16. Rule 254(d) -- Computation of Ceiling Under Regulation A; Convertible Securities

November 15, 1960 -- Memorandum re: Heartland Development Corp.

The corporation proposed to offer convertible preferred stock at \$12 per share for an aggregate offering of \$273,840. The preferred was convertible into common on a basis of 8 shares of common for each share of preferred. There were bids in the over-the-counter market at 1-3/4 for the common stock.

Since sufficient activity had taken place to constitute a market for the common stock, Rule 254(b) required that the computation of the ceiling be governed by the conversion ratio of the preferred stock and the current value of the common stock (\$1.75 x 8) or \$14 per each preferred share for an aggregate of \$319,480. Since the ceiling would be exceeded, Regulation A would not be available for the offering unless the amount of the shares were reduced.

1934 ACT

17. Schedule 14B -- Solicitation of Proxy

Rule 14a-1

Rule 14a-11(c)

November 8, 1960 -- Commission Minute re: Reece Folding Machine Co.

Members of a group in opposition to the management obtained options on about 1,000 shares of the company's stock. While the option did not mention proxies, proxies had been obtained.

The Division took the position that the purpose of the option arrangements was to obtain proxies; that such arrangements were required to be disclosed in proxy material and in a Schedule 14B statement, to persons whose proxies were sought, and that proxies so obtained without the required disclosures were in violation of the proxy rules. The Commission approved this position.

18. Rules 14a-3(a); 14a-6(f); 14a-8 -- Proxy Statement; Solicitation of Proxy, Follow-Up Material

November 3, 1960 -- Letter re: ACF - Wrigley Stores, Inc.

A second mailing of proxies was made without again including a proxy statement, or identifying the stockholders presenting the proposal and setting forth their reasons for it. A covering letter was sent requesting the stockholder to “sign” rather than “mark” the proxy.

Assuming that the proxy material specified in Schedule A had previously been sent to each stockholder, Rule 14a-3(a) does not require inclusion of a full proxy statement with each follow-up communication. Failure to request that the proxy be marked would not render the covering communication defective in light of the language of Rule 14a-6(f) which states that requests that proxy forms be signed and returned need not be filed with the Commission

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 86 October 1 - 31, 1960

1933 ACT

1. Sections 2(1); 5(b) -- Trading Stamps; Security; Investment Contract; Summary Prospectus; Broker-Dealer Rule 434A

October 4, 1960 -- Memorandum re: Mutual Fund Stamp Plan, Inc.

Retail merchants would issue trading stamps redeemable in either cash or, if a stamp book were filled, in mutual shares. The sponsor company will print a summary prospectus in each stamp book purportedly in compliance with Rule 434A. The summary prospectus will be advertised in the newspapers, and a full prospectus will be available at the retail stores. In addition to filing a registration statement covering the mutual fund's prospectus and the stamps, the company will register as a broker-dealer.

Since the form for registration of a mutual fund does not provide for the use of a summary prospectus (as required by Rule 434A), such a prospectus could not be used. In addition, the adequacy of the provisions for dissemination of the full prospectus was questioned. An alternative procedure for delivery of a prospectus was submitted whereby the customer would receive stamps and a card on his first purchase, and upon receipt of the card from the customer, the company would send him a prospectus and a stamp book, which is necessary to obtain the mutual fund shares. Apart from the need for a prospectus at the time of the initial purchase of stamps, some doubt was expressed as to the reliability of the procedure for distribution.

Since the retail merchants buy stamps (considered securities) and sell them to customers, they would be broker-dealers under the 1934 Act. The capital and reporting requirements of Rules 15c3-1 and 17a-5 respectively may well make such an operation impractical. In addition, not only would it be difficult to compute the offering price pursuant to Section 22(d) of the 1940 Act, but the disclosure thereof would raise problems under the 1933 Act. If single shares are issued, disproportionate issuance expenses may be imposed on the investment company. Also, depending on how its assets were invested, the company itself might be an investment company.

2. Section 2(1) -- Security; Investment Contract; Investment Company

October 12, 1960 -- Letter re: Professional Securities Corporation

The corporation has revised its method of operation and presently is engaged in the purchase at discount and with recourse of promissory notes given to funeral directors to cover costs of funerals and for payments on insurance policies to cover future funeral costs. In the case of the insurance policies, there is no contract for a future funeral and the beneficiary may use the proceeds for any purpose.

The above business activities are not such as to require registration under either the Securities Act of 1933 or the Investment Company Act of 1940.

3. Section 2(1) -- Security; Investment Contract; Sale of Cooperative Interests in an Office Building

October 3, 1960 -- Letter re: 1415 Corporation

The company plans to sell an undivided interest in land together with exclusive rights to use and occupancy of assigned spaces in an office building it proposes to erect on the land. The purchaser can also rent to people of his own choosing and can resell without limitation.

The Division advised that the interests involved may constitute securities, but if sold only to potential users without promise of profit through management or otherwise, it was not disposed to recommend that the Commission take action if the offer were made without registration.

4. Section 2(1) -- Security; Investment Contract; Broker-Dealer

October 31, 1960 -- Letter to: Richard A. Billups, Jr.

Billups intends to use the mails and facilities of interstate commerce to distribute a prospectus offering his services to investors desiring to obtain Canadian real estate, and fixing the fee he is to receive. The client will give Billups a check for the amount of his investment which will be deposited in the client's name in a bank. The only investments contemplated involve the purchase of improved real estate with an already negotiated lease to a large Canadian company. The client may withdraw the funds at any time up to the conclusion of the investment upon payment of a commission of 1% in full settlement for Billups' services to date. After purchase of the real estate by the client Billups' services will terminate completely.

If the advice relates only to investments in real estate and not directly or indirectly to securities, registration would probably not be required. Billups was advised to change the nature of his advertising to make it clear that his advice relates only to real estate and not to securities.

5. Sections 2(1); 3(a)(2); 17 -- FHA Insured Mortgages; Fractional Interests; Investment Contract
Sections 3(a)(5); 10(b) of the 1934 Act
Section 304(a)(5) of the 1939 Act

November 3, 1960 -- Letter to: Federal Housing Administration

Recent amendments to the FHA regulations authorize financial institutions servicing mortgages (“sponsors”) to sell or assign whole FHA insured mortgages to individuals and others having no servicing facilities, provided the sponsor retains possession of the mortgage documents and sole responsibility for servicing them. The services to be provided do not include any implied or expressed guarantee against loss or promise of a specified yield or return, and the sponsor need not provide a market for the underlying mortgages, etc. Furthermore, should fractional interests in individual FHA mortgages be offered, the resulting securities will not be basically different from that represented by the underlying mortgage and the responsibility and functions assumed by the sponsors would be no different. The question arose whether an investment contract was involved.

As long as the sponsor does not undertake to do more than the minimum required by FHA regulation, and in view of the policy expressed by Congress in Section 304(a)(5) of the 1939 Act, the Commission would not take action if such mortgages or fractional interests in a single mortgage were sold without registration under the 1933 Act or qualification under the 1939 Act.

Since the mortgage notes are securities, persons engaged in buying and selling such notes would ordinarily be “dealers” within the meaning of Section 3(a)(5) of the 1934 Act. Absent an exemption, registration would be required. (See Memorandum to the Commission of October 26, 1960 and Commission Minute of October 28, 1960.)

6. Section 2(11) -- Underwriter; Dealer; Usual and Customary Seller’s Commission

October 17, 1960 -- Memorandum re: Seven Mountain Corporation

The company proposed to make a registered public offering of common stock through an underwriter who will receive a commission of \$0.15 per share of which he may reallow up to \$0.14 per share to securities dealers accomplishing sales of any said shares.

The Division advised that the small amount retained by the underwriter resembles payments to a managing underwriter in an underwriting syndicate. Therefore, it was felt that the amount of the reallowance should be disclosed in the prospectus along with the statement that such securities dealers may be deemed underwriters within the Act.

7. Section 2(11) -- Underwriter; Principal Underwriter; Amendment; Prospectus
Section 2(a)(28) of the 1940 Act

October 5, 1960 -- Letter re: Northeast Investors Trust

The trustee of the subject trust proposed a sales arrangement whereby a seller of the Trust's shares would receive a salary of \$1,500 per year in return for his undertaking to place shares of the fund in an amount estimated at \$50,000 per year. This amount was allegedly to be paid out of the trustee's fees as a salary or fee for talking about the fund, and not for the actual sales made.

If the seller purchases shares and receives compensation directly from the issuer, he would appear to be a principal underwriter within the meaning of Section 2(11) of the 1933 Act and Section 2(a)(28) of the 1940 Act. Therefore, this arrangement must be entered into in accordance with the requirements of Section 15(b) and (c) of the 1940 Act. If the seller takes the shares from the distributor and receives the entire direct compensation for the sale, he would still be an underwriter. Such an arrangement must be disclosed in the prospectus.

8. Sections 4(1); 6(a) -- Control; Pledge; Sale; Underwriter; Shelf Registration

September 28, 1960 -- Memorandum re: Borne Chemical Company

In view of the Guild Films' case concerning the sale of pledged stock by a pledgee, question was raised whether it would be permissible to include in a registration statement shares held by a control person which are proposed to be pledged to secure a loan.

Although some problem appeared to exist under Section 6(a) of the 1933 Act, it was felt that a procedure might be worked out whereby the registration statement could cover the pledged shares. It was suggested that the statement include certain "post-effective" undertakings such as: (1) a Section 10(a)(3) undertaking so that an up-to-date prospectus would be available in the event of resale, (2) deregistration of the pledged shares if the loan is paid off without sale of the shares; (3) inclusion of the terms of a reoffering by the bank or any other underwriter.

9. Rule 254 -- Computation of Ceiling; Underwriters; Shares; Escrow
Regulation A

October 4, 1960 -- Memorandum re: Propulsion Development Laboratories, Inc.

The issuer proposes a public offering of 100,000 shares of stock at \$3.00 per share for an aggregate offering of \$300,000. In addition, the underwriter has purchased for investment 10,000 shares for \$100 from the eleven existing shareholders and has escrowed such shares. In computing the ceiling Rule 254 requires inclusion of the

offering price of the shares being offered. Since the underwriter's shares were tied up in escrow, no offering of such shares was being made for the purposes of Regulation A.

However, in a situation where no escrow agreement is entered into with respect to the shares purchased by the underwriter, such securities are treated as presently being offered in accordance with the rule, and should be included in the computation of ceiling under Regulation A.

10. Rule 261 -- Suspension; Stipulation; Hearing
Regulation A

October 28, 1960 -- Memorandum to the Commission re: Hermetic Seal Corporation

The corporation filed a notification under Regulation A which was cleared for offering, but subsequently suspended by the Commission on the grounds that part of the public offering was being sold by the managing underwriters at prices in excess of the public offering price, and that the offering circular was false and misleading. The issuer requested a hearing. A stipulation containing several self-serving statements was prepared with the idea that, if agreed to by the Commission, the corporation's request for a hearing would be withdrawn. There was attached to the stipulation a statement signed by the issuer alone explaining his position, Paragraph 3 of the stipulation stated that the Commission was in no way bound by this statement.

The Commission agreed that by its terms the stipulation may mislead people into thinking that the Commission has agreed to the allegations contained in the attached statement. Since the effect of the statement upon the record of the case was not clear, the Division should not enter into the stipulation, but the hearing should proceed as scheduled. The Commission approved the Division's position in this matter. (See Commission Minute of October 31, 1960.)

11. Regulation S-X -- Accepted Accounting Principles; Fair Value; Capitalization of Stock Dividends; Capitalization of Earned Surplus

October 24, 1960 -- Letter to: O'Melveny & Myers

There is an accepted accounting principle for capitalization of earned surplus in an amount equal to the fair value of the shares issued in a stock dividend. This is expressed in Chapter 7B of the Accounting Research Bulletin No. 43 of the AIA (1953).

The New York Stock Exchange also recommends capitalization of earned surplus in an amount approximately equal to the current share market price adjusted to reflect the issuance of the additional shares.

It is the opinion of the Commission as stated in Accounting Series Release No. 4, issued on April 25, 1938, that this is sound financial reporting practice. Footnote disclosures will not be accepted in lieu of capitalizing earned surplus in amount equal to the fair value of the stock dividend.

1934 ACT

12. Rule 14a-8 -- Proxy; Stockholder Proposal; Supporting Statement; Opposition Statement

October 5, 1960 -- Memorandum re: H. W. Rickel & Co.

Question was raised whether the Commission would require management to obtain a supporting statement of a stockholder's proposal for inclusion in its proxy statement where management is presenting a statement in opposition to the stockholder's proposal.

The Division advised that Rule 14a-8(b) did not require this since such statement must be furnished to management in accordance with the conditions of the rule, even though a statement in opposition would appear in the proxy material.

1939 ACT

13. Section 304(a)(2) -- Mortgages; Trusts

October 17, 1960 -- Letter to: Arthur S. Clark, Jr.

A corporation is to be formed to purchase at discount second mortgages and trust deeds to be held in trust. Participations will be sold to the public with an undertaking to repurchase or substitute equivalent paper in the event of default. Inquiry was made as to the availability of the exemption contained in Section 304(a)(2) of the 1939 Act.

Registration may be required under the 1933 and 1940 Acts. No objection will be made if a trust indenture is not filed in reliance on Section 304(a)(2) of the 1939 Act.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 85 September 1 - 30, 1960

1933 ACT

1. Section 2(1) -- Security; Investment Contracts

September 23, 1960 -- Letter re: Paracanusa Coffee Plantations Limited

The company is engaged in the business of acquiring coffee plantations in South America, subdividing them into 2-1/2 acre units and selling such units to the general public under an arrangement whereby a purchaser receives a deed of sale and enters into a management contract under which the company agrees to manage the property for the purchaser.

The Division advised that a security in the form of an investment contract would be involved in any of several alternative plans proposed by the company if a management contract were made available to the purchaser.

2. Section 2(1) -- Security; Investment Contracts; Power of Attorney; Brokerage Accounts

September 19, 1960 -- Letter re: Robert L. Bobrick

Bobrick proposes a plan whereby his clients will give him power of attorney to trade for them in the purchase and sale of stocks through a brokerage house which is a member of various stock exchanges. He is to receive a percentage of the profits and contribute an equal percentage of the losses. The brokerage accounts would be in the names of the clients and no money would be handled by Bobrick.

He was advised that the proposed plan may involve an offering of an investment contract. Consideration should also be given to whether he would be an investment adviser and a broker-dealer and to whether an investment company would be involved.

3. Section 2(3) -- Sale; Stock Bonus; Incentive Compensation Plan

September 21, 1960 -- Letter re: Philco Corporation Incentive Compensation Plan

The company proposes to make payments under its employee incentive plan partly in its stock and partly in cash. The proportion of cash and stock will vary according to the tax consequences of such payment to each individual. No officer or employee has any right by reason of his employment to participate under the plan. Eligible employees have no control over the proportion of stock and cash they receive, and make no monetary contributions under the plan. The awards are made by the board of directors each year.

No action would be recommended if the plan were to be put into effect as proposed without registration.

4. Section 2(3); 5 -- Public Offering; Voting Trust

September 23, 1960 -- Letter re: Indian Trail Ranch, Inc.

The company has created a voting trust whereby any holder of shares of common stock of the company may become a party to the agreement by delivering the certificates for his shares to the voting trustee, who will note on the certificate that it is being held subject to the terms of the voting trust agreement. There is no provision for the issuance of voting trust certificates.

Where by operation of law or by the terms of the voting trust agreement, stockholders generally have the right to become parties to such agreement, the creation of the agreement is deemed to constitute an offering subject to the registration requirements of the 1933 Act absent an available exemption Corporation Trust Co. v. Logan, 52 F. Supp, 999 (1943). The fact that issuance of separate voting trust certificates is not contemplated is immaterial.

5. Sections 2(3); 2(4); 5 -- Gift; Sale; Warrants

September 21, 1960 -- Memorandum re: Aircraft Armaments Inc. and United Industrial Corporation

Question was raised as to the necessity for the registration of warrants which would be given (without consideration) by the parent company to its stockholders entitling them to subscribe to the stock it holds in its subsidiary.

The Division advised that the issuance of warrants would not involve a sale within the meaning of the 1933 Act and registration would not be necessary. However, if warrants were distributed publicly by any of the control persons of the issuer, the warrants should be registered and the parent should sign the registration statement as the issuer. If the warrants were sold by the controlling persons to the underwriters of the underlying stock who exercise them and distribute the underlying stock, the warrants need not be registered.

6. Section 2(10) -- Tombstone Ads; Investment Company Advertisement
Rule 134

September 21, 1960 -- Letter re: Keystone Custodian Funds, Inc.

The following statements in advertisements of mutual funds do not fall within the area permitted by Rule 134 under the 1933 Act: "For Parents -- Mutual Funds can help your child's college plans." "For Women About to Invest."

7. Section 2(11) -- Underwriter; Control; Merger
Rule 133

September 22, 1960 -- Letter re: Molded Fiber Glass Body Co.

The company proposes to acquire the stock of another company in exchange for a portion of its stock pursuant to a merger plan which will be approved by the board of directors and stockholders of the constituent companies in accordance with the applicable state law. After such approval, all shareholders of both companies will be bound except for dissenter's rights. Further, investment letters will be procured from two of the shareholders, who together, own 60% of the shares of the company to be acquired.

No action would be recommended with respect to the issuance of shares to the shareholders of the acquired company in consummation of the merger without registration. No opinion was expressed whether the persons from whom investment representations were obtained constituted all control persons of the acquired company for the purposes of paragraph (b) and (c) of Rule 133. However, since it appears that one of the shareholders of the company to be acquired is also in a control relationship with the issuer, he would be subject to the registration requirements of the Securities Act of 1933 with respect to any distribution of shares acquired by him pursuant to the merger.

8. Section 3(a)(2) -- Municipal Bonds; Industrial Revenue Bonds
Section 304(a)(4) of 1939 Act

September 9, 1960 -- Letter re: Beaumont Public Buildings Corporation

The city of Beaumont, Texas, has caused to be organized a corporation to provide public parking facilities. Funds therefore are proposed to be acquired by the issuance of 1st and 2nd mortgage bonds. The management of the corporation will be vested in a board of trustees appointed by the Beaumont City Council. Title to the facilities will remain in the corporation as long as any bonds or interest or premium due on them remains unpaid, and thereafter, title will vest in the city. No dividends will be paid and no profit will inure to the benefit of any individual.

No action would be recommended if the bonds were issued as proposed without registration under the 1933 Act or qualification of the indenture under the 1939 Act.

9. Section 3(a)(4) -- Charitable Institution

September 1, 1960 -- Memorandum re: Memorial Foundation

The foundation, which owns one radio station, proposes to sell debentures to the public in order to finance the purchase of another radio station. All profits from the radio station will inure to the benefit of the foundation, which in turn makes the funds available to its church and to the dissemination of Christian doctrines. The foundation is organized exclusively for religious purposes.

No objection would be raised if the Section 3(a)(4) exemption were relied upon for the offering of debentures.

10. Sections 3(a)(10); 4(1) -- Exchange; Private Offering; Integration

September 13, 1960 -- Memorandum re: California Mutual Water and Telephone Company

The company proposes to acquire the stock of a small telephone company having 75 shareholders. A hearing will be held pursuant to the California Code relating to utility companies which meets the requirements of Section 3(a)(10) of the 1933 Act. The acquiring company is apprehensive that other bidders will come into the field, and, therefore, wishes to acquire 51% of the shares held by two shareholders of the telephone company in advance of hearing.

If the two shareholders agree to acquire the exchanged shares for investment, due to the special control relationships of these two persons, no objection would be raised if the proposed plan were followed.

11. Sections 5; 8(a) -- Gun Jumping; Pre-effective Dissemination of Information; Advertising; Acceleration

September 1, 1960 -- Commission Minute re: Rochester Telephone Company

The company presently has a pending registration statement under the 1933 Act. Forthcoming issue of the Saturday Evening Post will contain an institutional type advertisement which is one of a series being sponsored by the United States Independent Telephone Association, of which the company is a member. This advertisement had been prepared about a year ago and would appear at about the proposed effective date. There have been no recent contacts between the Association and the company's public relations

department. Company's counsel learned of the proposed advertisement only a day or so ago.

The Commission concurred in the position of the staff that it would not recommend against acceleration of the registration statement.

12. Sections 5; 8(a) -- Gun Jumping; Pre-filing Dissemination of Information

September 9, 1960 -- Letter re: Gardner, Carton, Douglas, Roemer & Chilgren

A brokerage firm proposed to distribute two types of literature in connection with its business. The first was a monthly list of securities which contained various statistical information concerning common stocks of 54 companies. The second type consisted of an analysis of the current operations and future prospects of particular companies. Both types of literature would be distributed to customers, correspondents and branch offices.

The circulation of the first type of literature should be discontinued when the company is first invited to participate in the underwriting of a security appearing on such list unless the information in the list were restricted to the price data. No objection would be raised, however, to the circulation of the list of common stocks without alteration if the security to be underwritten were non-convertible preferred stock or non-convertible debentures.

The use of the second type of list should be discontinued as soon as it is determined that a registration statement has been filed or the filing is definitely being contemplated by a company appearing therein for an offering in which Becker (the underwriter) would expect to participate.

13. Sections 7; 11 -- Accountants' Certificate; Accountants' Civil Liability

September 20, 1960 -- Letter re: Arthur Andersen & Co.

Question was raised whether the accountants' civil liability under Section 11 would be increased by either of the two following statements concerning opinions by accountants as experts:

(1) The accountants' opinion is included in the prospectus in reliance upon the authority of said firm as experts in accounting and auditing or in reliance upon the opinion of said firm as experts, and

(2) The financial statements as well as the opinion, are included in the prospectus in reliance upon f the accountants as experts.

To the assertion that an accountant's opinion is the only thing that can be included in reliance upon his authority as an expert, it was the Division's view that such opinion is

meaningful only when the underlying financial statements are considered therewith. The accountant's responsibility relates not only the propriety of what is set forth but also to the inclusion of such information necessary to prevent the statements from being misleading. This duty is not inconsistent with the view that management has the primary responsibility for the accuracy of filed material.

The accountants' function and responsibility of examining the financial statements and of giving an opinion thereon appears to be the same regardless of which language is used in the "experts" paragraph,

14. Form 8-K, Item 3 -- Affiliate; Reporting Requirements

September 9, 1960 -- Letter re: Gamble-Skogmo, Inc.

A derivative suit has been instituted on behalf of the shareholders of Shapleigh Hardware Company against Gamble-Skogmo, Inc. with respect to a loan of \$5,000,000 to another company. The complaint alleges that Gamble-Skogmo, Inc., B. C. Gamble and others have dominated and directed the actions of the directors of Shapleigh Hardware Company.

The Division advised that it would appear to be appropriate for Gamble-Skogmo, Inc. to report such litigation pursuant to Item 3 of Form 8-K inasmuch as Item 3 extends the reporting requirements to any proceedings to which any affiliate of the registrant, among others, is a party adverse to the registrant.

1934 ACT

15. Section 16(a) -- Trustee; Charitable Trust; Reporting Requirements
Rule 16a-8

September 7, 1960 -- Letter re: Ambassador Oil Corporation

A person, not an officer or director of a company whose securities are listed and registered on the American Stock Exchange, owns of record and beneficially less than 10% of the outstanding stock. He is a trustee of an irrevocable charitable trust which also owns stock of the company.

For purposes of Section 16(a) of the 1934 Act, ownership of securities as trustee of an irrevocable charitable trust does not fall within the definition of beneficial ownership of securities held in trust as set forth in Rule 16a-8.

16. Section 16(a) -- Trustees; Officers and Directors, Reporting Requirements
Rules 16a-8(g)(3); 16a-8(d)

September 8, 1960 -- Letter re: Ambassador Oil Corporation

Three of the company's officers and directors are also trustees and beneficiaries of the company's profit-sharing retirement plan. Question was raised whether such persons were required to report under Section 16(a) of the 1934 Act the trust's transactions in the holdings of the company a stock in view of the language of paragraph (g)(3) of Rule 16a-8.

The Division advised that paragraph (g)(3) was intended to provide an exemption from the reporting requirements for officers and directors whose only interest in the trust was as beneficiary under the trust and not as trustee of the trust. Accordingly, they would be required to file reports under Section 16(a), although it was suggested that if Form 4 reports were filed on behalf of the trust itself under the conditions of Rule 16a-8(d) the three officers-directors-trustees would be relieved of reporting the trust's transactions and holdings in their individual reports.

17. Regulation 14 -- Proxy Solicitation; Failure to Dissent
Rule 14a-1

September 16, 1960 -- Commission Minute re: Wilson Brothers

Pursuant to an agreement with the underwriters in connection with a prior public offering of preferred stock, the company agreed not to issue any shares of the same class except upon 30 days prior notice to the holders of such shares. If, after notice, one-third of the holders objected, the preferred stock would remain unissued.

The company recently sent a notice to such shareholders notifying them that it intended to sell 20,000 shares of its authorized but unissued preferred stock provided that the holders of one-third of such outstanding stock did not object.

The Commission concurred in the opinion of the Division that such a notice to the stockholders be considered a proxy solicitation subject to Regulation 14 under the 1934 Act.

18. Regulation 14 -- Stockholder Proposal; Proper Subject
Rule 14a-8

September 30, 1960 -- Commission Minute re: H. W. Rickel and Company

Question was raised whether a stockholder's proposal for the listing of H. W. Rickel and Company's stock on the American Stock Exchange should be included in the company's proxy soliciting material.

The Commission approved the position of the Division that such proposal was proper under Rule 14a-8 of Regulation 14.

19. Regulation 14 -- Proxy Soliciting Material
Rule 14a-1

September 16, 1960 -- Commission Minute re: Allegheny Corporation

A proposed press release by the "Better Management Committee for Allegheny Corporation Members" (representing the Murchison interests) stated that the Committee was dissatisfied with the present management of the company and proposed to call a special meeting of the shareholders and to elect a new management. A further proposed statement, on behalf of the same interests, to be read at the Investors Diversified Services, Inc. (IDS) meeting, intended to refute charges and allegations made in an attempt to oust the Murchisons from the board of directors of IDS. This statement also would be released to the press.

The staff took the position that both statements constituted proxy soliciting material in connection with the impending proxy contest involving the subject company. The Commission concurred in the position. (See also Commission Minutes of September 19 and 22, 1960.)

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 84 August 1 - 31, 1960

1933 ACT

1. Sections 2(1); 2(11); 4(1) -- Security; Underwriter Participating Interests; Investment Club
Rule 140

July 8, 1960 -- Letter re: Employers' Group Associates

The employees of Employers' Group of Insurance Companies wish to organize an investment club which would invest all of its funds in the stock of Employers' Group Associates (EGA) which is an insurance holding company. The stock of EGA will be purchased by the club through brokers in the over-the-counter market or from private stockholders and will be held in the club's name. Members will contribute to the club through a payroll deduction plan and will receive certificates representing an undivided interest in the securities held by the club. There will be nearly 4,000 employees eligible to participate in the plan.

It appears the interests in such club are securities within the meaning of Section 2(1) of the 1933 Act and subject to the registration requirements of such Act. Further, the shares of EGA purchased by the club would be required to be registered in view of Rule 140 under the 1933 Act.

Also, the proposed organization would be an investment company subject to registration under the 1940 Act absent an exemption under Section 6(b).

2. Section 2(1) -- Commodity Accounts; Security; Investment contract; Profit sharing Agreement

July 27, 1960 -- Letter to: Paul Windels

In soliciting persons to permit her to manage their commodity accounts, Mrs. Block offers an arrangement whereby she will retain the monthly fees paid to her if her customers' accounts show a semi-annual net profit. If there is a net loss, the loss will be offset by a return of the management fees up to the full amount of such fees. Mrs. Block will receive a certain percent of the net profits. However, the balance of the net profits must exceed the net losses before such percentage of the profits may be retained.

It appears Mrs. Block is offering a security in the form of an investment contract or a participation in a profit sharing agreement which is subject to the registration requirements of the 1933 Act.

A revised arrangement would provide for each subscriber to open an account with a commodity broker of his own selection, and the monthly fees would be held in escrow until the semi-annual balance in each account could be determined. If there were a profit equal to or greater than the escrowed fees, such fees would be retained but if the profit were less than such fees, the difference between the profit and the fees charged would be returned. If there were a loss equal to or greater than the fees, the full amount of the fees would be returned. In addition, Mrs. Block would no longer receive a percentage of the net profit other than her monthly fees.

The Division maintained its earlier position that a participation in a profit sharing agreement and an investment contract were involved. (See letter to Windels of August 16, 1960.)

3. Section 2(1) -- Security; Investment Contract
Section 3(a) of 1940 Act

August 16, 1960 -- Letter re: College Scholarship Foundation

The foundation, a nonprofit organization, was organized to provide specific future scholarship benefits to persons designated by the members. Membership in the foundation is obtained by payment of a \$100 fee, and an agreement to make stipulated installment deposits in a savings account in a savings and loan association. Further, the passbooks for the savings accounts are placed in escrow in the name of the escrowee and all amounts earned on such deposits are given to the foundation. No withdrawals of principal or dividends may be made until a specific date, at which time the member is entitled to retain the principal only. All of the members' donations to and income of the foundation except the \$100 membership fee are to be used exclusively for scholarships.

The Division advised that the memberships are investment contracts subject to the registration requirements of the 1933 Act and that the investment activities constitute the foundation an investment company subject to the 1940 Act requirements. Consideration should also be given to whether the persons selling memberships will be brokers or dealers required to register under the 1934 Act.

4. Sections 2(3); 2(11); 4(1) -- Advertising Campaign; Underwriter; Broker-Dealer
Section 3(a)(5) of 1934 Act

July 21, 1960 -- Letter to: O. H. Allred

The company proposes to adopt an advertising campaign whereby it will offer shares of stock in an uranium company to purchasers and potential purchasers of new and used cars. In addition, at the end of the campaign a certificate number will be drawn, the holder of which will win an additional number of such shares.

The Division advised that a merchant or manufacturer who buys shares to offer as bonuses to purchasers of merchandise as a regular part of his business would be a dealer within the meaning of section 3(a)(5) of the 1934 Act, and therefore, subject to broker-dealer registration under the Act. Further, if the company were to purchase such shares from an issuer, control person, or an underwriter, he may also be an underwriter under Section 2(11) of the 1933 Act.

5. Section 2 (10) – Tombstone Advertisements; Photographs; Trademarks; Mutual Funds
Rule 134

August 29, 1960 – Commission Minute re: Tombstone Advertisements

Question was raised whether it is permissible under Rule 134 for mutual funds to include photographs in their tombstone advertisements.

The Division advised that the primary purpose of the expanded tombstone Rule 134 was to permit limited announcements which do no more than indicate the existence of a public offering and the availability of a prospectus. The staff has not objected to the use of descriptive trademarks or symbols which identify the type of companies in their portfolio or the trademark of the investment company. However, the staff has objected to the use of photographs which imply the attainment of an objective. Moreover, since it would be administratively too difficult a task to make a determination whether each photograph presented may or may not be misleading, it is felt that our position should be that any use of photographs in tombstone advertisements exceeds the limitations of Rule 134.

The Commission concurred in the opinion of the Division.

6. Sections 2(11); 4(1); 4(2) – Broker's Transaction; Control Group; Underwriter;
Control Person
Rule 154

August 23, 1960 – Letter to: O. H. Allred

Rule 154 was in no way intended to, nor does it by interpretation provide for, an exemption to control persons. A control person must find his own exemption from Section 5 if he is to sell his securities without registration.

The effect of the first clause of Section 4(1) is to impose the registration requirement of Section 5 upon transactions by an issuer, underwriter or dealer. The effect of the last sentence of Section 2(11) is to classify a person who takes securities from an issuer with a view to distribution etc., or from a control person with such view, as an underwriter for purposes of the first clause of Section 4(1).

Section 4(2) exempts only brokers' transactions as therein specified. (See Securities Act Release 131). Rule 154 sets down standards whereby it can be determined what is a distribution, as distinguished from a broker's transaction. The Rule exempts the broker-dealer, notwithstanding that he may be a statutory underwriter pursuant to Section 2(100), by specifically proclaiming these transaction (which may be characterized a casual sales by a broker acting as a broker in an established market) to be within the purview of broker's transactions, i.e. transactions exempted by Section 4(2).

If a controlling person is barred by the Act from selling his stock without registration for any reason other than merely being a controlling person (as in the case where he would be a statutory underwriter by reason of his receiving shares pursuant to a purported private offering but not holding the shares for investment) then Rule 154 will not permit the sale of his shares without prior registration or qualification under Regulation A. In such an instance, the controlling person would be considered a statutory underwriter and the broker may have a participation in such violation notwithstanding Rule 154 or Section 4(2).

It should be noted that under certain circumstances sales by different members of a control group may be considered in the aggregate to determine whether there is a distribution outside of the terms of Rule 154(b). If the facts and circumstances show a concerted effort by individuals acting as a group to sell securities or if the group is otherwise homogeneous, then the offering of the group as a whole, rather than each individual member thereof, must be included in a single computation under Rule 154(b) for the purpose of determining the amount of the brokers' exemption. Also, while each control person may claim exemption under the first clause of Section 4(1), they may be deemed to have participated in the brokers' violation.

7. Sections 3(a)(10); 5 – Reorganization; Exchange; Participation by Stockholders Having No Equity; Rights to Subscriber
Section 264 of the Bankruptcy Act

August 25, 1960 – Memorandum re: American Chemical Company

The company has recently had a plan of reorganization approved by the United States District Court for the Southern District of Florida in which the Court adjudged "that the old stockholders of American Chemical Company have no equity whatsoever on account of the shares previously issued to them, and that all such previously issued certificates are void and valueless." However, the old stockholders were given the right to participate in

the reorganization to the extent they could acquire an amount of the new shares equal to the number of old shares they held on payment of \$1.00 per share.

The Division advised that notwithstanding the determination by the Court that the old stockholders had no equity and the old shares were worthless, no objection would be raised if the new shares were issued, without registration, to the old stockholders since the Court granted them a participation in the reorganization. (Overrules letter of July 16, 1957 re: New Have Clock and Watch; affirms letter of December 18, 1958 re: Re-Mark Chemical Co.)

8. Section 3(a)(10) – Exchange; Hearing on the Fairness by California Commissioner

August 30, 1960 – Letter re: Kimberly Clark Corporation

The company proposes to exchange its stock for the outstanding stock of Smith Lumber Company. The offer of exchange will be made after obtaining a permit under Section 25, 510 of the California Corporate Securities Law under the terms of which all interested parties will have the right to appear at a public hearing upon the terms and conditions of the exchange. No negotiating permit will be obtained for the purpose of making an offering prior to obtaining approval by the State Commissioner of Corporations. The exchange will require a specified percentage of acceptances and other conditions.

No action will be recommended if the exchange offer is made as proposed in reliance upon the Section 3(a)(10) exemption.

9. Section 8(a) – Acceleration; Indemnification; Officers; Directors

August 16, 1960 – Memorandum re: Resiflex Laboratory, Inc.

When it appears the registrant is paying for insurance to indemnify the selling stockholders and the registrant's officers and directors, who are also selling stockholders, for liabilities including those arising under the 1933 Act, the Commission considers that the statutory standards of Section 8(a) of the 1933 Act may not be met and may refuse to accelerate the effective date of such registration statement.

10. Rule 140 -- Investment Company
Regulation A, Rule 252(b)(4)

August 25, 1960 -- Memorandum re: Plan Management Company and Family Plan Corporation

Two companies propose to borrow \$50,000 each from a bank which they will invest in securities of an investment company, thereby raising the initial \$100,000 capital

necessary under Section 14 of the 1940 Act. Thereafter, each of the companies proposes to make an offering under Regulation A and each will use \$50,000 of the proceeds from such offering to repay the loan from the bank.

The companies may not make a Regulation A offering to raise the capital to invest in the investment company because an offering of the investment company securities. would also be involved within the meaning of Rule 140. The proposed method of capitalization is an attempt to accomplish indirectly what could not be done directly under Rule 252(b)(4).

11. Rule 154 -- Control; Private Sales

August 11, 1960 -- Letter to: Albert Thomson

If the maximum is sold under the formula in Rule 154 and trading subsequently increases, the figure determined under Rule 154(b)(2)(B) would increase (up to the limit of 1% of the outstanding stock) and additional sales would be permissible.

The amount of such shares sold in private sales during the preceding six months should be considered in determining the permissible limits of a “brokers’ transaction.”

The effect of sales by other controlling persons depends on the relationships of the persons to each other and to the company.

1934 ACT

12. Section 16(a) -- Beneficial Owner; Reporting Requirements; Custodians Rule 16a-8

August 29, 1960 -- Letter re: Triangle Conduit & Cable Co, Inc.

Question was raised whether officers of the company (also director nominees) who are custodians under the Model Gifts of Securities to Minors Act are required to file reports under Section 16(a) of the 1934 Act.

Since the powers and duties of a custodian under such statutes are similar to those of a trustee, such custodians would come within the scope of Rule 16a-8 and for the purposes of Section 16(a) and would be considered to be indirect beneficial owners of the stock held by them for their minor children.

13. Section 16(b) – Reporting Requirements; Stock Options Rule 16b-3

August 30, 1960 -- Letter re: Dresser Industries Inc.

The Division advised that the acquisition of restricted stock options pursuant to a plan available to officers and key employees is exempt from Section 16(b) of the 1934 Act if the provisions of Rule 16b-3 are met. Further, the exemption applies only to the acquisition of such options as equity securities; the acquisition of stock through the exercise of the option is not so exempted.

1939 ACT

14. Section 313(c) -- Reporting Requirements; Debenture Holders

August 29, 1960 -- Letter re: Blossman Hydratane Gas, Inc.

The indenture trustee points out that there are no security holders as described in the indenture to whom a report of matters specified in the indenture could be sent. Question was raised whether it would be necessary to file the report with the Commission in view of the language of the indenture requiring the filing "at the time of such transmission to debenture holders."

The report in question, which is required by Section 313(c) of the 1939 Act, is for the information of the Commission as well as for the use of the debenture holders who have not received the report. Accordingly, such report should be [text missing]

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 83 July 1 – 31, 1960

1933 ACT

1. Sections 2(1); 5; 6 -- Merger; New Issuer; New Security; Subsidiary

July 18, 1960 -- Memorandum re: Armour & Company

The company, which presently has two effective registration statements, proposes to merge with three of its 100% subsidiaries, and change its state of incorporation.

The Division advised that it would be necessary to file a new registration statement to cover these issues since there will be a new issuer. However, the surviving subsidiary could file such registration statement in advance of the effective date of the merger provided it is signed by such subsidiary, its officers and directors.

2. Sections 2(1); 5 -- Solicitation of an Offer; Savings & Loan Associations; Investment Contract

July 15, 1960 -- Memorandum re: C. N. Davidson & Co.

The company proposes to solicit the deposit of funds with certain federal savings and loan associations, and promises the payment of a 4-1/2% annual payment from the association and a bonus of 1/2% per annum.

It appears that such an arrangement constitutes the offering of an investment contract for which no exemption from the registration requirements of the 1933 Act appears to be available.

3. Sections 2(3); 3(a)(9) -- Exchange; Liquidating Dividend
Rule 133

July 29, 1960 -- Letter re: Liberty Loan Corporation

The company proposes to exchange a portion of its stock for all of the assets of National Finance Company, which in turn proposes to distribute all of the stock acquired in the

exchange to its shareholders in complete liquidation. The exchange requires a favorable vote of at least two-thirds of each class of National's outstanding capital stock.

No action would be recommended if the exchange were effected as proposed without registration in reliance upon Rule 133. Further, although Section 3(a)(9) would not be available for the distribution by National to its shareholders since it is not the issuer of the stock, such distribution would appear to be a liquidating dividend which is not deemed a distribution pursuant to Rule 133.

4. Sections 2(3); 4(1); 5; 8(a) -- Offer; Stock Purchase Plan; Payroll Deductions; Integrated Offerings; Gun-Jumping; Reports to Stockholders
Regulation A

July 11, 1960 -- Memorandum re: Dorset Electronics Laboratories

The company proposes to file a registration statement covering a public offering of 50,000 shares of common stock. In addition, it plans to include in such registration statement or to cover by Regulation A a maximum of \$60,000 of such stock to be made available to 150 employees pursuant to a stock purchase plan. However, the company would like to proceed with this plan by making stock available to 25 individuals prior to the filing.

Since such an offer to the 25 individuals would appear to be part of a larger integrated offering for which registration (or compliance with Regulation A) is required, the Division advised that the company should not proceed with the plan as proposed. No objection would be raised, however, if withholdings from payroll pursuant to the plan commenced immediately if the right to subscribe was not available until the effective date of the registration statement. Also, the price of such offering should not be fixed until such statement becomes effective so as to avoid any question of an offering prior to the time permitted by Section 5.

A procedure whereby a company makes interim reports to shareholders when such reports are favorable would raise questions under Section 5 on the eve of a proposed registered offering.

5. Section 2(3) -- Sale; Stock Bonus

July 26, 1960 -- Memorandum re: Zero Manufacturing Company

Generally with respect to employee stock bonus plans, if the granting of the bonus is not held out as an inducement to employment, and the recipients have no legal rights to the bonus until they receive the stock, no sale within the meaning of the Act is deemed to be involved.

6. Sections 2(11); 4(1); 5 -- Indemnity Agreement; Trust; Escrow; "Person" for Purposes of Rule
Rule 133

July 8, 1960 -- Letter re: Fairchild Camera & Instrument Corporation

The company proposes to acquire the assets of Du Mont under an agreement whereby it will issue 178,800 shares of its common stock, and Paramount, a 26.9% common stockholder of Du Mont, will agree to assume certain of Du Mont's liabilities under the provisions of an indemnity agreement under which 13,379 of such shares will be deposited under an escrow agreement to secure Paramount with respect to such indemnity agreement. The sale of assets will be made in accordance with the laws of the state of incorporation, and will bind all stockholders to the transaction. Paramount will be entitled to receive approximately 42,294 of the shares which they will acquire for investment purposes. Question was raised whether the escrowed shares may be sold to reimburse Paramount for liabilities assumed by it.

In view of the terms and conditions under which the securities are being issued, it appears that any person selling such shares deposited under the escrow agreement would be an underwriter for the company and registration would be required, absent an exemption under paragraphs (d) and (e) of Rule 133. If paragraphs (d) and (e) of Rule 133 were used for this purpose, such action may reduce the amount which may be sold thereunder within six months by other persons covered under the Rule.

7. Sections 2(11); 4(1) -- Underwriter; Fungible Stock; Exchange for Free Stock Rule
154

July 15, 1960 -- Letter re: Loral Electronics Corporation

Pursuant to an agreement dated March 31, 1960, Sydney Rydell (employee of a broker-dealer) and several other persons acquired 52,500 shares of the company's stock from two controlling persons. Rydell is now in need of at least a part of the funds he has invested in such stock, and he has a friend who has purchased sufficient shares on the market and is willing to exchange 5,000 of such shares for an equal number held by Rydell. The friend will acquire the exchanged shares with an intent to hold them for investment purposes. Rydell intends to make sales of the shares he acquires through his broker in accordance with the provisions of Rule 154.

In view of the fungible character of securities, the status of the substitute shares would be the same as the shares now held by Rydell. Accordingly, he would be an underwriter with respect to such shares and Rule 154 would not be applicable to his broker for the sale thereof.

8. Section 3(a)(2) -- Bank; Bank Holding Company; Merger; Trust Certificates
Rule 133

July 13, 1960 -- Letter re: First National Bank of Louisville and Lincoln Bank and Trust Company of Louisville

The stockholders of First National (and two other companies) have placed their stock in a trust which is considered to be a bank holding company under the Bank Holding Company Act. It is proposed to merge Lincoln into First National and to issue trust certificates to Lincoln's shareholders. The agreement of merger requires the vote of shareholders of both banks as provided by state law, and the merger will be subject to the supervision of the Comptroller of the Currency pursuant to provisions of the Bank Merger Act.

The Division advised that the trust certificates were not exempt under Section 3(a)(2). However, no objection would be raised if the certificates were issued in reliance upon Rule 133, assuming a vote of the stockholders as prescribed by state law will bind all stockholders to take such certificates.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 82 June 1 - 30, 1960

1933 ACT

1. Section 2(1) -- Security; Investment Contract; Gold Warehouse Receipts

June 14, 1960 -- Memorandum re: Toronto Gold Market Company and International Gold Corporation Ltd.

The companies are engaged in a plan of producing and selling gold bullion under which each purchaser is issued a gold warehouse receipt representing a specific quantity of gold in Canada or London respectively deposited in the purchaser's name. The receipts are negotiable and the seller-warehouseman agrees to deliver the gold to the bearer on demand. Further, it appears that the companies will provide the following services for the benefit of the purchaser:

- (1) arrangements for the purchase of the gold;
- (2) safe storage of the gold and insurance to be paid for five years at the time of the purchase;
- (3) a convenient method for owning, transferring ownership, or pledging the interests in the gold through the means of issuing certificates of ownership;
- (4) delivery of the gold to the bearer of the receipt;
- (5) repurchase of the certificates (in International case); and
- (6) arrangements for the resale of the certificates.

In view of the servicing arrangements and the apparent necessity for the companies to operate as a common enterprise in order to be economically feasible, it appeared that the sales of the gold warehouse receipts involved the sale of investment contracts. (See also letters of June 6, 1960, re: International Gold Corp., Ltd. and April 1, 1960, re: Toronto Gold Market Company.)

2. Sections 2(1); 4(1); 5; 13 -- Oil and Gas; Solicitation; Post-Effective Amendments; Undertaking

June 9, 1960 -- Letter re: Leonard - Wier Corporation

The company proposes to solicit the deposit of funds for exploration, leasing and development of oil properties, and in this connection the company has already approached 17 people from whom it expects to obtain deposits of \$100,000 or more a year from each participant. Each individual would take for investment and not with a view to assignment or resale. Only a portion of the subscriptions would be paid in cash and calls for further payments would be paid if authorizations for further expenditures were given by the individual subscribers. The company wishes to register, presumably because the offering may not be kept within the confines of "transactions by an issuer not involving any public offering".

Registration should be effected on Form S-1 with an undertaking to file post-effective amendments whenever further authorizations for the expenditure of funds under the plan are sought. It should be made clear in any such undertaking that each request for a new authorization will constitute a new offering for the purposes of Section 13 of the Act. The undertaking may provide that a post-effective amendment will not be required for such purpose if the subsequent offering is itself exempt from Section 5.

3. Section 2(1) -- Security

June 8, 1960 -- Memorandum to: San Francisco Regional Office

An Arizona corporation desires to adopt a plan for the sale of club memberships to the general public which will entitle the purchaser to a vacation of six days and five nights in Las Vegas, Nevada. In addition to the \$50 membership fee, there will be a \$5 service charge. The proceeds from the sale will be used to construct the hotel facilities.

Assuming the certificates of membership will not be transferable so as to avoid speculative trading, no objection would be raised if the offering were made without registration.

4. Sections 2(3); 2(10); 5; 8(a) -- Gun Jumping; Advertising; Prospectus; Pre-Filing Dissemination of Information

June 21, 1960 -- Memorandum of Conference re: Tamarack County Club, Inc.

The company, a country club, which proposes to file a registration statement in the near future, desires to proceed with its drive for new members. A brochure has been prepared which describes the club facilities, and indicates the names of persons connected with the club, including certain prospective members. In order to reduce income taxes of this club, it may offer 30-year non-interest paying debentures in exchange for membership fees.

Members may or may not consider it advantageous to accept the debentures, due to their own tax situation.

No objection was raised to the use of the brochure, as proposed, inasmuch as membership in the club does not require the purchase of the debentures and the brochure makes no offering of the debentures,

5. Section 2(11); 4(1) -- Underwriter; Control; Issuer; Gifts to Charitable Organization

June 16, 1960 -- Letter re: Giant Food Properties, Inc.

Three directors of the company received \$136,000 of face amount debentures, which constituted 3% of the outstanding debentures, and 277,995 shares of common stock of the company representing 17.4% of the outstanding shares in exchange for real property which they owned. In December, 1959, the directors and their wives gave \$60,000 of the face amount debentures to a charitable foundation for which they act as trustees, and donated \$6,000 of such debentures to the United Jewish Appeal.

It appears that the three directors, with their wives, are controlling persons and consequently, they would be issuers for the purpose of determining whether persons selling for them are underwriters. Securities received by individuals or charities from these controlling shareholders may require registration if received with an understanding that they would be sold. In any event, sales by the charitable organization over which such donors exercise control would require registration.

6. Section 2(11); 4(1) -- Control; Anti-Trust Suit

June 10, 1960 -- Commission Minutes re: Owens Corning Fiberglas Corporation

Pursuant to a consent decree in an anti-trust Suit Corning and Owens Glass companies were enjoined and restrained from electing directors of Fiberglas with their 63% stock ownership who would be affiliated with the respective parent companies. However, under the decree, both Corning and Owens retained voting rights with respect to the elections and removal of directors and could vote to approve necessary business acts under supervision of the Court in certain instances. Corning wished to sell its Fiberglas stock without registration.

Notwithstanding the argument that for the purposes of the anti-trust decree Corning and Owens are no longer controlling persons with respect to the company, the Division recommended that Corning be advised that the decree did not sufficiently strip it of control of Fiberglas so that a distribution of the securities held by Corning could be made without registration under the Securities Act of 1933. The Commission concurred in the opinion of the Division. (See letter, June 10, 1960)

7. Section 3(a)(2) -- Government Securities; Bonds of Municipal Corporations
Section 304(a) of the 1939 Act

June 3, 1960 -- Letter re: Texarkana Suburban Municipal Water Supply Corp.

The City of Texarkana caused the subject company to be formed pursuant to Texas law to supply sewer and water facilities to a specified area in and around such city. The city will operate and maintain the facilities of the corporation although title to the property used in the supply system will remain in the company so long as any bonds, interest, or premiums due thereon remain unpaid and thereafter will be transferred to the city. No dividends may be paid on the corporation's stock. The directors of the company will be members of the Water Board of the City.

No objection would be raised if the company were to rely upon the Section 3(a)(2) exemption from the registration requirements of the 1933 Act and the Section 304(a)(4) exemption from the requirements of the 1939 Act for the proposed issuance of bonds.

8. Section 3(a)(11) -- Intrastate Offer; Reincorporation

June 6, 1960 -- Memorandum re: Xitrium Laboratories, Inc.

The company, a Delaware Corporation, presently has an effective Regulation A filing under which 17,010 shares were sold only to Illinois residents. It is now proposed to reincorporate the company in the State of Illinois, withdraw the unsold shares under Regulation A and offer them to residents of Illinois pursuant to the Section 3(a)(11) exemption.

The Division advised that since it appears the securities to be offered subsequent to the reincorporation are part of the same plan of financing as those subject to the Regulation A filing and the Section 3(a)(11) exemption was not available when such securities were originally offered, and partly sold, the intrastate exemption would not be available for the proposed offering.

9. Section 3(a)(11) -- Intrastate Offer; Waiver of Pre-emptive Rights

June 7, 1960 -- Letter re: The Concord Telephone Co.

The company, a North Carolina Corporation doing business in that state proposes to issue its Class B common stock and preferred stock to residents of North Carolina. However, the common stockholders have pre-emptive rights and seven of such holders of the presently outstanding common stock may be considered to be non-residents of North Carolina. The company has obtained releases of such rights from these holders in order to restrict the offerings solely to residents of North Carolina.

No action will be recommended if the offerings are effected as proposed without registration in reliance upon the Section 3(a)(11) exemption.

10. Section 3(a)(11) -- Intrastate Offer; Life Insurance Company Selling Variable Annuities

Sections 2(a)(8); 3(a)(1); 7; 24(d) of the Investment Company Act of 1940

June 14, 1960 -- Letter re: Valiant Annuity Life Insurance Company

While the company's primary business is to sell life insurance contracts, it also proposes to sell variable annuity contracts, to be offered in Kentucky presumably in reliance upon the exemption provided by Section 3(a)(11).

It appears that the company or the fund to be created for the purpose of selling variable annuities will be an investment company within the meaning of Section 3(a)(1) of the 1940 Act, and an offering of unregistered securities by such investment company would be a violation of Section 7 of such Act. Further, since Section 24(d) of the 1940 Act provides that the Section 3(a)(11) exemption is not available to a registered investment company, registration also should be effected under the 1933 Act, either by the insurance company or by a separate fund meeting the requirements of the definition of "company" in Section 2(a)(8) of the 1940 Act.

11. Section 4(1) -- Exchange; Corporate Action; Unanimous Consent
Rule 133

June 8, 1960 -- Memorandum to Commission re: Universal Match Company

Universal Match Company proposes to exchange 29,240 shares of its common stock for substantially all of the assets of Sleight Hellmuth, Inc. The plan and agreement required the unanimous consent of the five stockholders of Sleight. The plan and agreement had been signed by the five stockholders as parties. One of the conditions of the plan was receipt of a letter from the SEC to the effect that two of the five shareholders, holding 60% of Sleight's stock, could dispose of the stock acquired in the exchange pursuant to Rule 133(d).

The Commission concurred in the opinion of the Division that a sale appeared to be involved inasmuch as the corporate action appeared to be only incidental to the plan. Since the contract was signed by the five stockholders and called for unanimous consent of the stockholders, the "element of individual consent" ordinarily found in a "sale" was present. Consequently Rule 133 would not be available for the purposed exchange or subsequent sales. (See Commission Minutes of June 10, 13, 1960 and Letter of June 14, 1960.)

12. Section 5; 8(a) -- Advertising; Gun-Jumping; Pre-filing Dissemination of Information

June 1, 1960 -- Letter re: Pako Corp.

In celebration of its 50th anniversary and the occupancy of a new factory and office building during the month of August, the company proposes to hold certain celebrations, to which stockholders, business associates and numerous other persons will be invited. It is expected that covering articles will appear in various business publications. The company will prepare a booklet for distribution and place publicity in some public windows. Mention of its proposed stock offering and any predictions of future sales will be avoided. The public offering is expected to commence in August or shortly thereafter.

The Division was unable to conclude that the publicity attendant upon such celebrations would not result in an offer to sell the stock of the company.

13. Section 6(a) -- Shelf Registration; Convertible Security; Undertaking to Deregister

June 23, 1960 -- Memorandum of Conference re: El Paso Natural Gas

The Company, which presently has a rights offering registration statement pending, proposes to include in such registration statement by amendment 189,000 shares of convertible preferred stock and the underlying common stock which had been privately placed by the company in 1958 with 26 institutional investors. Pursuant to the private placement agreement, the company is obligated to register such stock if 5% of the holders so requests. Although requests for registration have been received, none of the holders appears to have any present intention of selling such securities. The company inquires whether it may nevertheless register such shares if it inserts an undertaking to deregister that portion of the preferred and underlying common stock which is not sold within nine months from the effective date of the registration statement.

The Commission concurred in the recommendation of the Division that the preferred and underlying common might be registered under this arrangement. (Commission Minutes, June 28, 1960)

14. Rule 136(c) -- Assessable Stock; Subscription Agreement; Calls
Regulation F

June 14, 1960 -- Letter re: Modern Community Developers, Inc.

The company sold common stock pursuant to a subscription agreement whereby the subscribers were to pay 257, of the subscription price at the time of the subscription and the balance within 45 days of the receipt of a notice of call from the company.

The Division advised that Rule 136(c) was inapplicable to a call on the unpaid portion of a subscription agreement. However, if the company proceeded with a sale of the stock pursuant to a New Jersey statute in the event calls are not met, registration would be required if the company could not make use of Regulation F.

15. Rule 253(c) -- Escrowed Stock; Levy By a Judgment Creditor
Regulation A

June 1, 1960 -- Memorandum re: Nationwide Auto Leasing System, Inc.

Shares of stock placed in escrow by the underwriter pursuant to Rule 253(c) have been levied against in the hands of the escrow agent in order to satisfy a judgment creditor of the underwriter.

The Division advised that it would not give a "no action" letter to permit the release of such stock and suggested that even after the escrow has terminated consideration must be given to the registration requirements of the 1933 Act, since the judgment creditor should be in no better position to sell than the debtor.

16. Rule 254(a) -- Secondary Offering; Officer
Regulation A

June 8, 1960 -- Memorandum of Conference with: Thomas B. Hart

The president and vice president of the issuer each intends to seek a Regulation A exemption pursuant to Rule 254 for the sale of \$100,000 of securities. The proceeds will be used to exercise options to purchase additional stock of the issuer. One officer holds options to purchase a larger number of shares than the other. However, upon exercise of the options, he will transfer a specified number of shares so each man will hold 18,000 shares in addition to his present holdings.

No objection would be raised if each officer were to sell \$100,000 of his security holdings pursuant to the Regulation A exemption notwithstanding that the proceeds were to be used to exercise options.

17. Regulation A -- Oral Offer; Amendment; Ten-Day Period

June 24, 1960 -- Memorandum of Conference re: Defense Electronics

After the initial ten-day period has elapsed following a filing under Regulation A, oral offers may be made provided the facilities of interstate commerce are not used. However, if an interstate telephone were used, the offer could be made only if the terms and

conditions of Regulation A had thus been met. If subsequently there was a material amendment of the filing, it would appear questionable whether there would be compliance with Sections 5 and 17 of the 1933 Act.

18. Form S-14 -- Undertaking; Prospectus

July 5, 1960 -- Memorandum of Telephone Conversation re: Mandel Brothers Inc.

Inasmuch as the five controlling shareholders of the company may wish to sell the shares they receive in connection with the sale of the company's assets pursuant to Rule 133, it is proposed to file a registration statement on Form S-14 for this purpose.

Provided such registration statement covers only those shares proposed to be offered on a one-shot offering, the balance being retained for investment, there would appear to be no need to undertake to keep the prospectus up to date for two years as provided by Form S-14.

1934 ACT

19. Item 6(a) of Schedule 14A -- Restricted Stock Options; Equity Security; Beneficial Interest

June 30, 1960 -- Letter to: Morton Bialstock

The Division advised that Item 6(a)(4) of Schedule 14A appears to require a statement with respect to restricted stock options held by nominees in view of the purpose of such Item and since the definition of "equity security" includes a warrant or right to purchase stock. However, even if restricted stock options are not considered equity securities, it would appear to be misleading under Rule 14a-9 to fail to provide information with respect to such options.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 81 May 1 31, 1960

1933 ACT

1. Section 2(1) -- Security; Investment Contract; Commodity Futures.

May 6, 1960 -- Letter re: Titan Futures Management, Inc.

The company, in soliciting persons to open commodity trading accounts with them, promises to manage the account, make all decisions, give the buy and sell orders, etc.

It appears to be offering a security in the form of an investment contract.

2. Sections 2(3); 4(1) -- Fractional Shares; Stock Dividends; Rounding Out.

May 17, 1960 -- Letter re: The Dominick Fund, Inc.

The company declared dividend payable in stock or cash, and stockholders were permitted to round out fractional shares by purchasing through the company's transfer agent, who purchased sufficient shares on the open market to execute the total amount requested.

The position has generally been taken that, depending upon the extent of the issuer's participation, registration may be required, notwithstanding that the security may be purchased by some intermediary on the open market. However, the provision for rounding out could involve a minimum of issuer participation, and the transfer agent may therefore be acting solely as agent for stockholders in executing their orders. Assuming that the issuer would not itself directly or indirectly sell its unregistered stock for the purpose of paying its dividend or providing stock for the rounding out process, no action would be recommended if the program outlined were pursued without registration.

3. Section 2(3) -- Sale; Liquidating Dividend; Exchange.

May 5, 1960 -- Memorandum re: Tel-A-Sign Corporation

The company, whose stock is registered and listed on the American Stock Exchange proposes to issue a portion of its stock to another company for all the outstanding stock of

a Canadian subsidiary of the other company. Upon receipt of the stock of the Canadian corporation, the company proposes to distribute such stock as a dividend to its approximately 1200 shareholders.

The distribution of the Canadian stock was not subject to registration since no sale appeared to be involved.

4. Sections 2(11); 4(1) -- Control Person.
Rule 154

May 5, 1960 -- Memorandum re: Perfect Circle Corporation

A controlling person of the company is also executor of an estate which holds stock in the company. The estate desires to sell sufficient stock to pay estate taxes.

Since the executor of the estate is a controlling person, the stock held by the estate would be considered as part of a controlling interest, and the proposed sale would be subject to registration. However, notwithstanding the fact that the controlling person had used the 1% limitation of Rule 154 within the past six months and provided that the controlling person was not a direct or indirect beneficiary of the estate, the estate also could sell up to 1%, inasmuch as it would be considered a separate person under Rule 154.

5. Sections 2(11); 4(1); 6(a) -- Shares Proposed to be Offered; Underwriter.

May 6, 1960 -- Letter to: Pillsbury, Madison & Sutro

The company proposed to issue shares in exchange for shares of another company in reliance upon an exemption from registration under the second clause of Section 4(1). The company suggested that such shares might be included in a registration statement although at the time of registration the issuer may not know whether any of the recipients of the stock would wish to dispose of the shares so acquired.

By virtue of the last sentence of Section 6(a) of the Act, it would appear that securities may not be effectively registered until an offering is proposed to be made. Also, it would be necessary for the seller to comply with the prospectus requirement so long as any of the persons selling the registered shares would be “underwriters”, irrespective of any undertaking by the issuer in the registration to file prospectuses prepared to meet the requirements of Section 10(a)(3) as post-effective amendments or an undertaking in the form prescribed by Form S-14.

6. Sections 2(11); 4(1) -- Security; Premium Coupons; Broker-Dealer

May 12, 1960 -- Letter to: Harvey S. Traub

The company contemplates the adoption of a plan under which premium coupons will be issued to purchasers of merchandise and the holders of such coupons could turn them in to a broker for stock of the company. The broker would purchase the stock on the open market, and the company would then pay the broker cash for the coupons.

Such a plan in which the issuer cooperates would appear to require registration of the stock so sold as a transaction by or on behalf of an "issuer" notwithstanding that the securities would be acquired in the open market. In such cases the broker and perhaps the merchants would be deemed to be underwriters for the offering.

If the company should make such an arrangement with respect to the securities of any other issuer, or if any merchant or person other than the issuer or a registered broker-dealer should participate in such type of offering, then there would also be broker-dealer problems involved under the Securities Exchange Act of 1934.

7. Section 3(a)(11) -- Intrastate Offering; Residence of a Corporation

May 6, 1960 -- Memorandum re: Willis Holmes

For purposes of Section 3(a)(11) the same test of residence is applied to a purchasing corporation as the statute prescribes for the selling corporation, and if the purchasing corporation is not incorporated under the laws of the state of the offering even though doing business within that state any offer or sale to it would exceed the limitations of the exemption.

8. Section 3(a)(11) -- Preorganization Subscription Agreements; Integration.

May 17, 1960 -- Letter re: Helex 1960 Investment, Inc.

It is proposed to offer preorganization subscriptions for stock of a company on an intrastate basis. When the company is formed, it is proposed to offer on an interstate basis approximately 2 million dollars of no par stock through cash sales, installment sales, exercise of warrants, etc. under a registration statement.

The section 3(a)(11) exemption would not appear to be available to the sale of the preorganization subscriptions inasmuch as the subscription agreements are binding upon all the subscribers, and the corporation, if it is to accept them at all, must do so as part of its overall financing program, which contemplates the sale of stock on the same terms to nonresidents. The fact that the company would immediately prepare and file a registration statement would not alter the situation, since the subscribers are already bound to take the stock. Therefore, it would appear that the registration of the preorganization subscriptions will be necessary.

9. Section 3(a)(11) -- Intrastate Offering; Integration; Thrift Notes.

May 18, 1960 -- Letter re: First Thrift of Los Angeles

Question was raised whether the Section 3(a)(11) exemption would be jeopardized if a thrift and investment certificate holder who has become a non-resident retains his certificate without being permitted to make any additional payments or deposits but continues to make withdrawals and receive credit for interest in accordance with the terms of the certificate issued by an industrial loan company.

It would appear that such action would not affect the availability of the exemption.

10. Sections 4(1); 5(b); 11(a)(5); 13 -- Withdrawal; Control; Liability.

May 23, 1960 -- Memorandum re: American Broadcasting Paramount Theatres, Inc.

It was proposed to distribute stock of the subject company held by the Noble Foundation, which shares had been registered as an accommodation to Mr. Noble about three years ago. Question was raised whether the Commission would permit withdrawal of such shares covered by the effective registration for the purpose of selling them without registration. Withdrawal of the registered shares would not be permitted unless registration of the subsequent offering of such shares would not be required. The staff is unwilling to render such an opinion in view of the fact that Noble Foundation appears to be in a control relationship to the issuer. There is the technical threat of liability under Section 11 against the underwriter for the old registration statement even if a prospectus were deemed unnecessary. However, Section 11(a)(5) may provide a defense.

11. Section 5 -- Advertising; Acceleration; Gun-Jumping; Pre-effective Dissemination of Information.

May 4, 1960 -- Letter re: Montgomery Ward Finance Co.

The company proposes to file a registration statement in the near future, and recently has been advised by a magazine that it wishes to publish an article about the company's activities.

The Division advised that should the company officials facilitate such publication by supplying information, and should the article appear before the proposed offering is completed, serious question would arise under Section 5 which might affect a requested acceleration with respect to such registration statement.

12. Sections 4; 6(a) -- "Shelf" Registration; Exchange Acquisitions

Rule 133

May 24, 1960 -- Memorandum re: Buckeye Corporation

The company undertook to register a substantial block of stock to be issued in a program of acquiring other companies by exchanges of its stock. The registration statement also covered stock to be issued for cash for use in connection with such acquisitions and the undertaking to file post effective amendments did not apply to distributions for cash on the American Stock Exchange. This was an extension of the registration procedures used by American Marietta Corporation and Independent Telephone Corporation.

The registrant was advised that the amount of shares being registered should be reduced to a number which might foreseeably be issued in the proximate future and that shares so issued should be limited to those to be issued for property or shares of other companies.

13. Rule 133(d) -- Compensation or Remuneration; Exchange.

May 23, 1960 -- Letter re: Citizens Credit Corporation; New Haven Clock & Watch Company

The company exchanged its assets for stock of New Haven pursuant to Rule 133 and proposed to satisfy its obligation to a law firm by transferring shares of such stock to the law firm. The law firm would not accept the stock as a fee unless it might sell it on the open market.

It does not appear that an exemption from the registration requirements of the Securities Act of 1933 is available for the proposed transaction. However, no action would be recommended if the company sold the shares in compliance with Rule 133(d) to pay its obligations to the law firm out of the proceeds.

14. Rules 253(c); 254(a) -- Escrow; Computation of Ceiling under Regulation A.
Regulation A

May 20, 1960 -- Memorandum of Conversation with P. E. Kendrick

An issuer subject to Rule 253 proposes to make an offering of \$300,000 under Regulation A. The underwriter has an option to purchase 10,000 shares at 10¢ per share. The underwriter agreed to place the shares received by him in escrow for twelve months.

In computing the ceiling under Regulation A where the issuer is subject to Rule 253, the shares issued to the underwriter must be computed at the public offering price unless they are placed in escrow in accordance with Rule 253(c), in which case they will be computed at the price actually paid by the underwriter, i.e., \$1,000. Consequently, since the offering to the public and the underwriter is all one plan of financing and there is no

exemption from Rule 254 for the shares to be issued to the underwriter under the option, such an offering would exceed the \$300,000 limits of Regulation A.

15. Regulation A -- Salary Disclosure; Offering Circular; Item 9(b)

May 27, 1960 -- Memorandum re: District Wholesale Drugs

The company proposed to file under Regulation A without disclosing the individual salaries of the three highest officers, but proposed to disclose the aggregate of such salaries and state whether any one received more than 50% of the aggregate.

There is no basis under the Regulation to waive the requirement that the individual salaries of the three highest officers be disclosed.

16. Regulation B -- Advertising; Bulletin; Oil & Gas; Offering Sheet
Rule 320

May 9, 1960 -- Letter re: Landowners Royalties Company

The company, which has filed under Regulation B, proposes to send copies of a bulletin to its clients which generally describes the present status of leases and royalties previously sold and covers oil and gas interests in the entire state of Montana. The bulletin appears to constitute general sales literature.

Regulation B does not authorize or contemplate the use of sales literature other than the offering sheet. Accordingly, this and any similar bulletin should not be used in connection with an offering under Regulation B.

1934 ACT

17. Section 16(a) -- Reporting Requirements; Trust Fund Assets.
Rule 16a-8

May 23, 1960 -- Letter re: Tractor Supply Company

Question is raised whether trustees of the company's stock bonus trust, who are also officers and directors of the company and participants under the trust, are required to report under Section 16(a) of the 1934 Act transactions in and holdings of the company's stock by the trust under paragraph (g)(3) of Rule 16a-8.

If the trust were administered by an independent corporate trustee, it might be a plan contemplated by Rule 16a-8(g)(3). However, in light of the definition of beneficial ownership of securities held in trust set forth in paragraph (a)(1) of Rule 16a-8, the

Division advised that no exemption from the reporting requirements appeared available. It was suggested that if Section 16(a) reports were filed on behalf of the trust itself under the conditions specified in paragraph (d) of Rule 16a-8, the officer-director trustees would be relieved of the necessity to include the trust's transactions and holdings in their individual reports.

1939 ACT

18. Section 304(a)(9) -- Trust Indenture; Trustee

May 25, 1960 -- Memorandum re: Trust Indenture Act of 1939

Questions frequently arise with respect to exemption from qualification of an indenture under Section 304(a)(9) relating in general to offerings not exceeding \$1,000,000, particularly whether the instrument in question is an indenture which satisfies the intents and purposes of the exemption.

In general the Division seeks to obtain the conventional document containing the usual covenants, events of default and particularly provisions by which the collective rights of the security holders may be enforced. As a practical matter such collective rights are best enforced by a trustee who is accorded specific powers for this purpose. While it may be possible to include such an agreement as a part of the bond or debenture, it would appear that there is little to be gained by this procedure in terms of economy or simplification of the registration statement. It seems clear that a simple debenture which simply adds the limitations prescribed by Section 304(a)(9) would not constitute an indenture.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 80 April 1 - 30, 1960

1933 ACT

1. Sections 2(3); 3(a)(9) -- Exchange; Convertible Securities.

April 6, 1960 -- Letter to: John E. Massengale

Question was raised as to the availability of Section 3(a)(9) to exempt an exchange of securities for other securities of the same issuer with future rights of conversion into a security of a different issuer.

Under Section 3(a)(9) the fact that the security to be issued is convertible into the security of a different issuer at a future date would not ordinarily affect this exemption. In view of the language of Section 2(3) of the Act, the inclusion of such conversion right in an exchange offer will not be deemed to be an offer or sale of such other security at the time of exchange. When such conversion right does become operative, registration or compliance with an appropriate exemption is necessary.

2. Section 2(11) -- Solicitation; Underwriter; Broker-Dealer

April 19, 1960 -- Letter re: Central Charge Service, Inc.

The principal business of the company is to purchase accounts receivable, and bill the obligors for payment. It proposes to make its billing services available to Atomic Development Mutual Fund, a registered open-end investment company, to solicit payment for Atomic's shares by including in its monthly bill the sum specified by Atomic for collection under a periodic purchase program.

If the company will not engage in any soliciting or promotional activities looking toward the sale of such shares, will not engage in any follow-up procedures to stimulate sales in the event that a customer fails to pay monthly installment, and will take no action to influence the purchase of shares other than to send out its bills in a routine manner, so that its functions will be limited to the mechanical one of collecting the amount to be invested and forwarding it to Atomic, then it would not appear that the company would be a broker or dealer under the 1934 Act or an underwriter under the 1933 Act.

3. Sections 2(11), 4(1) -- Control; Underwriter; Broker-Dealer

April 13, 1960 -- Memorandum re: United Cuban Oil Company

Ted Jones owned or controlled approximately 48.6% of the common stock of the company. A group of five people headed by James J. McBride bought 1,200,000 shares of said stock receiving 400,000, and 800,000 were placed in escrow for three years. McBride sold 200,000 shares of the stock to a Mr. Stovall with an option to repurchase. Stovall understood the transaction to be in reality a loan. After failure of McBride to repurchase, Stovall sold 87,000 shares through two brokers on the American Stock Exchange, but because the transfer agent resigned the transfer could not be effected. Meanwhile, the secretary of the company wired the holder of the stock that the stock was not registered, thereby further blocking the transfer and delivery.

Stovall was advised that any delivery of stock without registration would be regarded as a violation of the 1933 Act, and suggestion was made that he get the stock back, hold it, and let the brokers cover their short positions on the market.

4. Section 2(11) -- Underwriter; Control; Broker-Sponsor

April 19, 1960 -- Letter re: Futures, Inc.

The president and director of the company which offered 57,200 shares of stock to the public under a Regulation A exemption from registration, is also the owner of the sole proprietorship which acted as sponsor-underwriter in connection with such offering. The unsold shares of the company were withdrawn from the offering, and the sponsor-underwriter desires to make an over-the-counter market in the shares of such company.

The Division advised the sponsor-underwriter that it would appear to be a person in control of the company and any sales made by him through broker-dealers would constitute them underwriters within the meaning of Section 2(11).

5. Section 3(a)(4) -- Charitable Organizations

April 18, 1960 -- Letter re: Israel Investment Company

The company proposes to sell promissory notes to the public, the proceeds of which will be employed to purchase an office building to maintain permanent offices and meeting rooms. The rental income from the office building in excess of expenses will be loaned to the State of Israel without interest. No part of the earnings of the company will be used to benefit any person or individual. The company as yet has no by-law provision, and the interest rate and aggregate amount of promissory notes has not been determined.

In order for Section 3(a)(4) to apply, the corporation must be organized and operated exclusively for the purposes therein stated and not in addition for pecuniary profit. Since the purposes of the corporation did not appear to correspond with any of the purposes referred to in Section 3(a)(4) the exemption did not appear to be available.

6. Sections 3(a)(9); 5 -- Exchange; Rights Offering.

April 21, 1960 -- Letter re: Puritan Finance Co.

The company proposes to exchange a ten-year 7% debenture plus a right to purchase two shares of common stock for outstanding one and five-year debentures totaling \$725,260. The rights would not be exercisable until three years from the date of the exchange.

No action would be recommended if the exchange were made in reliance upon the Section 3(a)(9) exemption from registration. However, since the rights to be offered constitute a continuing offer of the underlying stock, registration of such stock is necessary prior to the date the rights become exercisable. The prospectus must be kept up to date for the life of the rights so that an up-to-date prospectus can be delivered upon exercise of the right..

7. Section 3(a)(10) -- Exchange; Control.
Rule 133(c)(4)

April 6, 1960 -- Letter re: MJM & M Oil Co.

The company proposed to offer its stock in exchange for the outstanding stock of the Fortune Petroleum Corporation after notice and opportunity for hearing by the commissioner of Corporations of California pursuant to Section 25510 of the Corporation Code of California. Exemption from registration was claimed under Section 3(a)(10) of the 1933 Act.

No action would be recommended if the exchange offer were made as proposed, assuming that the offering would not be made under negotiating permit or otherwise until the terms and conditions of the plan were approved after a hearing at which all persons to whom the offering would be made have the right to appear.

Further, no action would be recommended if the Fortune shareholders who receive the company's stock sell their stock, providing that such stockholders who may be in a control relationship to Fortune limit their sales as provided in paragraphs (c) and (d) of Rule 133. However, it is not contemplated by the rule that several control persons related by family or business affiliation would each claim the right to sell under the rule the 1% limit or would undertake what is in effect a long-term distribution of his shares.

It is also assumed that none of the Fortune stockholders will be a controlling person of the surviving company.

8. Section 3(a)(11) -- Intrastate Offering; Pledge; Integration

April 13, 1960 -- Letter re: Kavanagh-Smith & Company

In October 1959, Kavanagh-Smith, a North Carolina corporation, doing business in North Carolina, owned 50% of the outstanding stock of Fidelity Construction Company. Kavanagh-Smith acquired from C. C. Spangler and W. S. Griswold, Jr. the remaining 50% of the Fidelity stock in exchange for common stock of Kavanagh-Smith. Both Spangler and Griswold were residents of North Carolina. Certain other exchanges were made with other corporations (some nonresidents) at or about this time, but such transactions were not dependent upon one another. At the time of the exchange, the Fidelity shares owned by Spangler had been pledged with the District Director of Internal Revenue to secure payment of an income tax deficiency, and such shares were replaced with the Kavanagh-Smith common stock so received. Spangler is now in default on some of the installments due on his tax obligations and wishes to dispose of his stock and apply the proceeds to his tax liability.

No action would be recommended if Spangler offered and sold his Kavanagh-Smith stock to bona fide residents of North Carolina not taking with a view to resale to nonresidents in reliance upon the Section 3(a)(11) exemption.

9. Sections 3(b); 5 -- Computation of Ceiling Under Regulation A; Interests in Affiliated Unincorporated Theatrical Productions.
Rules 254(a)(3) and 254 (d)(4)

May 2, 1960 -- Memorandum re: T.P.O. Company (Three-Penny Opera Touring Co.)

Question was raised whether the securities of an affiliated unincorporated theatrical production which had been sold in violation of Section 5 of the Securities Act within one year prior to the proposed Regulation A offering by the company must be included in determining the ceiling available to the company under Rule 254(a)(3).

Under Rule 254(d)(4), interests in any affiliated unincorporated theatrical production need not be included in computing the amount of the securities offered under Regulation A, even those sold in violation of the Act.

10. Section 4(1) -- Offering Circular, Forty-Day Period.
Regulation A

April 11, 1960 -- Memorandum of Conference with Alfred King

The requirement for the use of an offering circular during the forty-day period is not applicable to security offerings which are exempt under Section 3 of the 1933 Act and, therefore, is not applicable to an offering made under Regulation A.

11. Rule 254 -- Amendment of Filing.
Regulation A

April 5, 1960 -- Memorandum re: Kings Grant Inn

The company filed a Regulation A offering covering 30,000 shares of its \$1.00 par value common stock at \$10 per share. Approximately 1,000 shares were sold at this price but in order to speed up sales, the company proposes to reduce the price to \$2 a share and increase the number of shares offered to 150,000. Those who had purchased at \$10 per share will be given 4 additional shares.

No objection was raised to the company amending its Regulation A filing to reflect the proposed changes.

1934 ACT

12. Section 16(a) -- Beneficial Ownership; Reporting Requirements.

April 11, 1960 -- Letter re: B.T.L. Corporation

The company is the direct owner of less than 10% of the common stock of H. L. Green Company. However, it controls United Stores Corporation through ownership of more than 41% of its outstanding voting securities, and United Stores Corporation, in turn, holds 39% of the common stock of McCrory-McLellan Stores Corporation, which holds 23,975 shares of the common stock of H. L. Green Company.

Under Section 16(a) a stockholder of a company who is in a position, either alone or as a member of a group, to exercise a substantial influence over the affairs of the company is considered an indirect beneficial owner of the securities of other issuers directly or indirectly owned by such company.

It is not necessary that a company classified as an indirect beneficial owner be a personal holding company, or that its sole or principal business be confined to investing or trading in securities. It appears, therefore, that the company should take into account its interest in the shares of Green stock held by McCrory-McLellan in determining the percentage of its beneficial ownership of Green stock.

13. Section 16(b) -- Proxy Statement; Disclosure; Put.

April 21, 1960 -- Memorandum of Conference with George Monk of Hogan & Hartson

A corporate officer exercised an option to purchase stock and then purchased a put to sell such stock exercisable within six months and ten days.

The purchase of the put constitutes a sale for the purposes of Section 16(b) provided the put is exercised. The sale would date back to the date of the purchase of the put. Also, it would be necessary to disclose in a proxy statement the existence of the put and the profit to be realized in the event it were exercised.

14. Regulation 14 -- Proxy Solicitation; Stockholders Action Committee

April 27, 1960 -- Memorandum re: Goldfield Consolidated Mines Company

It is the Division's position that a solicitation of persons to become members of a stockholders action Committee is subject to Regulation 14 under the Securities Exchange Act. Accordingly, each of the 34 persons who agreed to join the committee should be resolicited with material complying with the proxy rules and none of such persons should be named as members of the "committee" until they consent to being so named after proper solicitation.

15. Schedule 14(a) -- Proxy; Disclosure; Reporting Requirements.
Item 7(f)(4)

April 26, 1960 -- Teletype to Edward H. Rakow

Item 7(f)(4) of Schedule 14(a) requires the disclosure of fees paid during the entire period from beginning of issuer's last fiscal year to latest practicable date subsequent to the end of such fiscal year.

1940 ACT

16. Section 30(d) of the Investment Company Act of 1940 -- Semi-Annual Reports.
Rule 30d-1(a)(b)

April 11, 1960 -- Letter re: Axe-Houghton Fund B., Inc.

Question was raised whether the company may issue a five-month unaudited report to shareholders in lieu of the usual six-month report previously submitted to shareholders.

The word "semi-annually" in Section 30(d) of the Investment Company Act of 1940 means half-yearly, ordinarily at the expiration of each half year from a given date or

specified event. Rule 30d-1(a) of the Act specifies that the first report under the rule should be as of a date not later than the close of the fiscal year or half-year first occurring after December 31, 1940. Paragraph (b) of the rule requires that the reports made as at the close of the fiscal year shall cover the whole fiscal year. Accordingly, pursuant to the language of Section 30d and Rule 30d thereunder, reports must be made at the end of the fiscal year and at the end of each half-year.

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 79 March 1 -31, 1960

1933 ACT

1. Section 2(1) -- Security; Evidence of Indebtedness; Thrift Plan; Employees Savings Plan.

March 7, 1960 -- Conference Memo re: Aetna Finance Company

The company has adopted an Employees Thrift Plan in which the funds may be deposited directly or through payroll deductions. A stated amount of interest is to be paid by the company and a nontransferable and nonassignable savings book is issued to each depositor.

It appears the savings books are evidences of indebtedness and, therefore, securities within the meaning of Section 2(1) of the Securities Act of 1933.

2. Section 2(1) -- Security; Mortgage; Notes; Investment Contract.

March 21, 1960 -- Letter to: Arthur E. Pennekamp

The company, a real estate subdivider, proposes to offer to the public by means of interstate advertisements, notes secured by deeds of trust. The principal amounts of the notes will be secured by properties which are valued by the FHA for at least the amounts of such notes. No guarantee will be made by the subdivider but on request by the purchaser, arrangements to service the account will be made with a local lending institution. The notes relating to the individual deeds of trust are securities.

In view of the nature of the offering, it appears that a prospective investor must rely upon the subdivider to select the mortgage, take the necessary steps to perfect the title, check the financial responsibility of the borrower, and arrange for the servicing of the account, and, therefore, there is also involved the offering of a security in the nature of an investment contract.

3. Section 2(3); 5 -- Stock Dividend; Fractional shares.

March 4, 1960 -- Letter re: Dominick Fund, Inc.

The company declared a dividend payable in stock or cash at the option of the shareholders. Shareholders could request the transfer agent to purchase on the New York Stock Exchange sufficient shares to round out the fractional share interests distributed.

The outlined procedure constitutes an offer by the company of the shares SO issued. However, if the company should follow the procedure of granting the shareholders the right to purchase or sell to round out fractional shares and the agent, after matching such orders, buys or sells on the exchange the necessary shares to execute the orders, no action would be recommended to the Commission.

4. Section 2(3) -- No Sale; Default by Broker-Sponsor.

March 8, 1960 -- Memorandum re: Standard Sign & Signal Company

Due to the failure of a dealer, who was making a market in the securities of the company, to deliver certificates to the purchasers, the company proposed to issue to such purchasers its treasury stock as a substitute.

The Division advised that no action would be recommended if the treasury shares were issued, without compensation to the issuer, as proposed, provided that there was no contractual relationship between the issuer and the dealer and the shares the dealer sold did not represent an unsold portion of the issuer's offering, or an offering by controlling person of the issuer.

5. Sections 2(3); 5 -- Stock Option Plan; Payroll Deduction

March 31, 1960 -- Telegram to: Edward M. Rakow

The company proposed to grant options pursuant to an employees stock option plan which will not be exercisable for one year. However, the company would begin making payroll deductions as soon as the options are granted. The employees may withdraw all deposits at any time.

Notwithstanding the payroll deductions commencing at the time the options are granted, the Division advised that there would be no objection if registration of the optioned shares were deferred until just prior to the date the options became exercisable.

6. Sections 2(10); 5(b)(2); 10 -- Prospectus; Confirmation; Restrictive Legend.

March 16, 1960 -- Letter re: J. C. Wheat & Co.

Question was raised whether an appropriate legend could be added to the face of a confirmation so that definitive prospectuses could be forwarded to customers subsequent to confirmation and prior to settlement in situations where prospectuses have not been received from underwriters in connection with a new offering of securities.

The Division advised that there is no legend which could be added to a confirmation to satisfy the statutory requirements since a confirmation is a prospectus by Section 2(10) and does not meet the requirements of Section 10.

7. Section 2(11) -- Underwriter; Control.
Rule 154

March 1, 1960 -- Memorandum re: American Motors

The president of the company obtained 7500 shares under options in October 1958 and 3150 shares under options in July, 1959. It was necessary for him to borrow money to finance such purchases as well as to finance the construction of a house. Such heavy indebtedness as contrary to his religious beliefs. He therefore sold 10,000 of such shares in January, 1960.

The officer was advised that there appears to have been no exemption from registration available for such shares and that he was an underwriter for the shares which he sold.

8. Sections 3(a)(6), 3(a)(11), 4(1) -- Interstate Commerce Commission; Exchange; Intrastate Exemption; Private Offering

March 18, 1960 -- Letter re: Jones Motor Co., Inc.

The company, a trucking company subject to the jurisdiction of the Interstate Commerce Commission, proposes to acquire all of the capital assets of another company by exchanging 4,315 of its 21,500 treasury shares for the outstanding shares of the other company and selling the balance of the 21,500 shares to raise funds to meet the cash obligations of the purchase contract. The 21,500 shares involved, prior to being reacquired by the company, were originally issued in a corporate recapitalization, the issuance of which did not require Interstate Commerce Commission approval. An exemption under the Interstate Commerce Act was then available which is not presently available under the revised statute.

To qualify for the Section 3(a)(6) exemption, the securities involved must be issued pursuant to actual approval of the I.C.C. and securities issued pursuant to an exemption from I.C.C. approval do not satisfy this requirement. Furthermore, neither a Section 3(a)(11) nor Section 4(1) exemption would be available for the proposed offer of the 4,315 shares to the seven shareholders who are residents of Michigan and will take for

investment and the offer of the remaining shares to Pennsylvania residents who will also take for investment, since the two offerings are an integrated offering.

9. Section 3(a)(9) -- Exchange; Foreign Issuer

March 21, 1960 -- Letter re: Federal Peoples Representative of Yugoslavia

The Government of the Federal Peoples Republic of Yugoslavia proposes to resume partial payment on outstanding dollar bonds. Where the bondholder accepts the offer the bond will be stamped with a legend stating the holder assents to the terms of the new bond. A New York Bank will be appointed paying agent to which letters of acceptance and transmittal of bonds will be sent. It will be paid the usual fees for acting as a paying agent in the transaction. No commission or other remuneration will be paid or given to any one for soliciting the exchange.

The Division will not recommend any action if the transaction is effected as proposed in reliance upon the Section 3(a)(9) exemption from registration under the 1933 Act.

10. Section 3(a)(11) -- Intrastate Offering; Computation of Ceiling; Merger.
Regulation A

March 29, 1960 -- Memorandum re: North American Acceptance Corp.

The issuer commenced an interstate offering under Regulation A on October 15, 1959 and now desires to exchange its stock for the stock of an affiliate pursuant to a proposed merger plan. The issuer is controlled by a company which is 100% owned by two persons who also own controlling interest in the affiliate with which the issuer proposes to merge. The affiliate, in the past year, sold \$82,450 of stock and an unknown amount of debentures in Georgia in reliance upon the Section 3(a)(11) exemption.

Since there will be a vote of stockholders and the minority interests will be bound thereby, the stock to be issued in the merger would come within the provisions of Rule 133(a). Such stock should not be included in computing the Regulation A ceiling. Also, the stock sold by the affiliate would not be included in computing the ceiling unless the organization of the affiliate in Georgia and use of the Section 3(a)(11) exemption was merely a device for avoiding registration and the companies became affiliated within the past two years.

11. Section 15(d) -- Reporting Requirements; Merger.

March 11, 1960 -- Memorandum to the Staff

An issuer subject to the reporting requirements of 15(d) of the 1934 Act ceases to be so subject to such reporting requirements following a merger or similar transaction in which the reporting company disappears. The general position of the Division is that neither the successor nor disappearing company is required to comply with reporting obligations of the disappearing company. However, if it appears the merger is simply a device to avoid the reporting requirements, the opposite conclusion may be reached.

12. Rule 133 -- Exchange; Cooperative; Plan of Dissolution.

March 14 and 18, 1960 -- Conference Memorandum and letter re: Briny Breezes Inc.

The company, a non-profit corporation, raised funds to purchase a trailer park which it operates on a cooperative basis by offering memberships and leases to the users of such trailer park. Having completed the acquisition, the company proposes to change from a non-profit to a cooperative organization and exchange stock of the new corporation and similar leases for the memberships and leases of the old non-profit corporation. The exchange is to be made to the 511 members on a voluntary basis.

It appears from the charter of the old corporation that a specified percentage of the voting power would bind all stockholders only in the event of a liquidation. No exemption from registration appears to be available for the voluntary exchange as proposed. However, if there were a vote upon a plan of dissolution valid under Florida law which also would provide for a sale of assets to the new corporation and the distribution of the stock and leases to the members of the old corporation, and this vote were binding on all members, no action would be recommended if the company relied upon Rule 133.

13. Rules 133, 154 -- Merger or Consolidation; Control.

March 30, 1960 -- Letter to: Matthews, Nowlin, Macfarlane & Bartlett

The stockholder, who was under a bar to sales of his stock of the constituent corporation before a Rule 133 transaction without registration under the Securities Act, will not find the bar removed by Rule 133. Thus, a stockholder of the constituent corporation who was barred from selling his stock in the constituent corporation without registration under the Securities Act because he bought under the limitations of Section 4(1) could not sell his stock in the surviving corporation after the Rule 133 transaction even though he does not fall within Sections (b) and (c) of Rule 133 and is not in a control position with the surviving corporation. Conversely, a stockholder of a constituent corporation who was free to sell his stock in that corporation would be free to sell the stock he receives in Rule 133 transaction provided he does not fall within Sections (b) and (c) of Rule 133 and is not in a control position with the surviving corporation.

Rule 133 has no effect on distributions of the stock received in the Rule 133 transaction by controlling persons of the surviving corporation and in no way limits the application

of Section 4(2) of the Act and Rule 154. A person who was and remains in a control relationship to the surviving corporation may not sell under paragraphs (d) and (e) of Rule 133. (See definition of constituent corporation in paragraph [f]). However, his broker may sell in reliance upon Rule 154 as applicable to the surviving corporation.

14. Rule 255(e) -- Withdrawal
Regulation A

March 18, 1960 -- Memorandum re: Shumway Broken Arrow Uranium Co., Inc.

The company, on November 7, 1955, filed a notification and offering circular relating to a proposed offering of 300,000 shares at \$1 per share. A letter of comment was sent to the issuer concerning the filing on December 13, 1955, but the filing was never amended and on November 14, 1957 the issuer requested withdrawal of its offering. Between November 7, 1955 and November 14, 1957, the company made unsolicited isolated sales to 19 people covering 31,500 shares, for which the Section 4(1) exemption is claimed. The Regional Office recommended suspension of this filing on the grounds, among others, that the sales were made prior to the 10-day waiting period as required by Regulation A.

It was determined that no exemption existed for the isolated sales and that the securities had been sold pursuant to the Regulation A filing, and, therefore, withdrawal could not be made under Rule 255(e). The exemption was suspended.

March 18, 1960 -- Memorandum re: 20-20 Sales Company

The company, on November 12, 1959, filed a notification and offering circular relative to \$300,000 of preorganization certificates. The issuer thereafter requested withdrawal of the filing since the issue had been sold intrastate. An investigation showed no evidence of fraud or offers to non-residents. The withdrawal request was accepted.

1934 ACT

15. Section 16(b) -- Officers; Reporting Requirements; Stock Acquired through a Merger.
Rule 3b-2

March 16, 1960 -- Letters re: Adams-Millis Corporation and MAC Panel Company

Pursuant to a proposed merger plan, the president and two vice presidents of the disappearing company will continue to perform the same functions for the surviving company as president and vice presidents of a division, although the president who also will become a director may be called "executive vice president". Each of such officers now holds less than 10% of the outstanding stock of the disappearing company.

It appears that any person bearing a title specifically included in Rule 3b-2 is to be regarded as an officer even if such title is not specifically created by charter and by-laws. However, the ultimate determinations of what constitutes an "officer" must be made by the courts. Also, assuming the stock to be acquired by the officers is sold within six months of the merger, such stock appears to be subject to Section 16(b) of the Act since at least one case (*Blau v. Hodgkinson*, 100 F Supp. 361 [SDNY]) held that the receipt of stock in a merger is within the statutory definition of a purchase.

16. Rule 12a-5 -- Stock Issuable Upon Conversion; Security Admitted To Trading.

February 18, 1960 -- Memorandum re: Drove & Bigelow; Standard Packaging Corporation

Pursuant to a plan in which Brown & Bigelow merged into Standard Packaging Corporation, the stockholders of the former will receive a new series of the latter's convertible preferred stock which is similar in almost every respect to its presently outstanding convertible preferred stock which is listed on the New York Stock Exchange. The past market prices of the preferred and common have been such that conversions have taken place. The Midwest Stock Exchange, on which Brown & Bigelow's common stock is listed and registered, inquired whether it would be appropriate to admit both the new preferred and the common to trading under Rule 12a-5 since, in fact, conversion could take place during the temporary trading period for the preferred.

The language of Rule 12a-5 does not exclude the right to convert even though such a right may not have been intended when the Rule was last revised. A security admitted to trading does include a security admitted to trading under Rule 12a-5. Therefore, since Brown & Bigelow "new" preferred can be admitted to trading under Rule 12a-5, and since such preferred is immediately convertible into common, the staff will raise no objection if the Form 26 to be filed by the exchange includes both the "new" preferred and common stocks of Standard Packaging Corporation.

17. Rule 14a-4(e) -- Proxy Material; Conditional Vote.

March 17, 1960 -- Memorandum re: General Pacific Corporation

The company signed a preliminary agreement for the sale of its assets and since it must obtain a vote of approval from its stockholders, it will be necessary to solicit proxies. Once such a vote is obtained the state law requires the company to dissolve whether or not the contract for sale is consummated. Therefore representation will be included in such proxy material stating that the proxies will be voted as directed, or if there is no specification they will be voted to approve, the plan unless the sales contract is not consummated, in which case the unspecified proxies will be voted to disapprove the plan.

The conditional vote for disapproval is the equivalent of not voting the proxy and hence such action, under the circumstances, falls within the exception for “reasonable specified conditions” of Rule 14a-4(e).

18. Rule 14a-8 -- Stockholder Proposal; Proxy Soliciting Material; Secret Ballot.

March 1, 3, and 4, 1960 -- Commission Minutes re: United States Steel Corp.

The Commission concurred in the recommendation of the Division that the following proposal should be included in the company’s proxy soliciting material for use in connection with the forthcoming annual meeting of the stockholders of the company:

RESOLVED: Shareowners assembled in person and by proxy request our Board of Directors to take such steps as may be necessary to provide a secret ballot for stockholders for the election of directors and for resolutions appearing in our proxy statement except in specific instances and under specific circumstances where this may be contrary to existing New Jersey law.

19. Rule 16a-8(b) -- Reporting Requirements; Officer & Director; Employee Thrift Plan.

March 31, 1960 -- Letter re: Indianapolis Power & Light Co.

Pursuant to the provisions of an employee thrift plan, the trustee acquires securities for a participant’s account or disposes of such securities only with the participant’s prior approval in the form of written instructions.

The Division advised that no exemption from the reporting requirements appears to be available under Rule 16a-8(b) for officers and directors acquiring stock under the plan.

1940 ACT

20. Rule 20a-2(a)(9) of the 1940 Act -- Proxy Material; Balance Sheet; Investment Adviser.

March 16, 1960 -- Commission Minute re: Sovereign Investors

The company, a registered investment company, has requested that it be permitted to omit from its proxy material the balance sheet of its investment adviser, which is required by Rule 20a-2(a)(9) under the Investment Company Act of 1940.

The investment adviser is the underwriter for the subject company and does not serve as an investment adviser for any other investment company. During 1959, the underwriting and advisory fees received by the adviser amounted to 43% of its total income.

The Commission concurred in the opinion of the Division that the investment~ adviser was not primarily engaged in a business other than underwriting or the performance of advising services. Therefore, the company was required to include the balance sheet in its proxy material.. (See Memorandum to the Commission., March 15, 1960.)

SUMMARY OF INTERPRETATIONS
DIVISION OF CORPORATION FINANCE

FOR STAFF USE ONLY

No. 78 February 1 - 29, 1960

1933 ACT

1. Sections 2(3), 2(11), 4(1) -- Gift; Charitable Organization; Controlling Shareholders.

February 18, 1960 -- Memorandum re: Data Control Systems, Inc.

Certain unregistered shares of the subject company held by Wertheim & Co., its partners and their families, are to be donated to several charities and foundations. There is no agreement between the donor and the donees with respect to any subsequent sales which may be made, and no benefit will be derived by the donor from such sales.

To the extent that any such charities or foundations may be in a control relationship to the donors, it would appear to present a registration problem since Wertheim & Company appears to be a controlling person of the issuer.

2. Sections 2(3), 4(1), 5 -- Solicitation of Offer to Buy; Sign Display

February 25, 1960 -- Letter re: Star Market Co.

The company proposes to display a sign at the entrance of each of its eleven stores which would announce the fact that its common stock is now being traded "over-the-counter", and suggests that interested persons contact their investment broker. There is no unsold stock that is the subject of an effective registration statement.

A display of the proposed sign would be a direct or indirect participation in a solicitation of an offer to buy its common stock, and would require registration and the use of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933.

3. Section 2(3) -- Broker's Transaction; Controlling Shareholder; Gift.
Rule 154

February 8, 1960 -- Letter re: Northwestern University

Northwestern University proposes to sell 5,000 shares of common stock which were given to it by a controlling stockholder and his wife subject to a life income trust

agreement which provided that a sum equivalent to the value of the donated stock will be invested in municipal bonds from which the donors will receive the income for life.

The Division advised that no action will be recommended if the sale is effected without registration under the 1933 Act provided there is compliance with the terms of Rule 154.

4. Sections 2(11), 4(1) -- Underwriter; Broker-Dealer; Trading Market; Control.

February 23, 1960 -- Letter re: Eversweet Corp.

The company is controlled by a holding company which is controlled by a brokerage firm. The brokerage firm wishes to maintain a trading inventory in the stock of the company and to trade in stock with dealers on a principal basis. All confirmations will disclose the relationship of the brokerage firm to the company.

Since the brokerage firm is in a control relationship with the company, dealers purchasing stock from the brokerage firm with a view to redistribution would be statutory underwriters within the meaning of Section 2(11) of the 1933 Act. Consequently, registration of the stock will be necessary in order to maintain a trading market as proposed.

5. Section 3(a)(2) -- Non-Profit Organization; Cooperative Apartment.

February 9, 1960 -- Letter re: Alcan Pacific Co.

A cooperative apartment project is proposed for persons age 60 years or more which will issue securities entitling the purchaser to a long term proprietary lease for the occupancy of a particular unit in the project. The project will be operated on a cost basis, and any accumulation of cash by the corporation will be reinvested, the income from which will be used to reduce the monthly maintenance cost to the occupants. The entire operation will be supervised by the California State Department of Social Welfare.

Although the issuer will be a non-profit organization, it does not appear the Section 3(a)(4) exemption from registration is available since the project was not organized for any of the purposes designated in such section.

6. Section 3(a)(2) -- Preorganization Subscriptions; Bank.

February 16, 1960 -- Letter to Mr. Chuck Mau

It is proposed to form a National Bank, and in order to obtain the necessary capital preorganization subscriptions are to be issued. The charter can not be issued until the

capital is fully paid in and therefore there is no state supervision as required by Section 3(a)(2).

However, no objection will be raised if the preorganization subscriptions are offered without registration in reliance upon the Section 3(a)(2) exemption of the 1933 Act provided:

- (1) amounts paid on all subscriptions are placed in escrow
- (2) subscribers are given the right to withdraw at any time until the fund is deposited with the Federal Reserve Bank upon issuance of charter and
- (3) in the event the minimum amount necessary is not raised, the amounts subscribed will be returned to the individual investors without deduction.

7. Section 3(a)(10) -- Bankruptcy; Reorganization; Exchange.
Section 264a of the National Bankruptcy Act

February 10, 1960 -- Memorandum re: Parker Petroleum Company

Pursuant to a plan or reorganization in a pending Chapter 10 proceeding, it is proposed to offer the common stockholders of the debtor, in exchange for each old share, one share of new common stock together with a non-transferable warrant to purchase one share of new common stock at \$1.00 per share exercisable within 14 days of the issuance of such warrant. Further, upon the exercise of such warrant each shareholder will receive another non-transferable warrant exercisable within two years at \$1.00 per share.

The new common stock and the stock issued upon exercise of the 14-day warrants would be exempt from registration by reason of Section 3(a)(10) of the 1933 Act and Section 264a of the National Bankruptcy Act. However, it appears the two-year warrants will not be issued in exchange for securities of or claims against the debtor, and are not exempt from registration.

8. Section 3(a)(10) -- Reorganization; Exchange.

February 3, 1960 -- Letter re: Unette Corporation

Pursuant to a plan of reorganization to be presented to a court of chancery, in order to eliminate its indebtedness it is proposed to offer new shares of common stock in exchange for existing debt and equity securities. The parties involved in the exchange will be notified of the right to appear at a hearing upon the fairness of the plan.

No action will be recommended if the exchange is made as proposed without registration in reliance upon Section 3(a)(10) of the Securities Act of 1933.

9. Section 3 (a)(11) -- Interstate Offering; Guarantee;. Incorporation Thereof.

February 26, 1960 -- Teletype to: Donald J. Stocking

The company proposes to make an intrastate offering of debentures and have an out-of-state corporation guarantee such debentures. The guarantee will not be mentioned in the debentures, but prospective purchasers will be informed of the guarantee arrangement.

The Division advised, even though no mention of the guarantee is to be made in the debenture, the guarantee will be considered to be incorporated in such debenture. The debenture will therefore constitute a package consisting of two securities and thus destroy the availability of the Section 3(a)(11) exemption.

10. Section 3(a)(11) -- Intrastate Offer; Exchange.

February 4, 1960 -- Letter re: Interstate Finance Corp.

The company presently has 4 1/2% capital notes outstanding which were issued in Indiana pursuant to the intrastate exemption, and now proposes to exchange new 5% notes for the old 4 1/2% notes. The company desires to rely upon the Section 3(a)(11) exemption although eleven of the 4 1/2% noteholders have moved out of Indiana. It is proposed to have Indiana residents or the company buy the notes held by the eleven non-residents and then make the exchange. Also a second series of 5% capital notes having a different maturity date will be issued to bona fide residents of Indiana.

The Division advised that if the plan were carried out as proposed no objection would be raised if the company did not register the securities in reliance upon the Section 3(a)(11) exemption and did not qualify the indenture by reason of Section 304(a) (4) of the Trust Indenture Act of 1939.

11. Section 3(a)(11) -- Intrastate Offering; Doing Business; Out of State Realty.

February 12, 1960 -- Letter to: James J. Hagerty

The company proposes to issue mortgages or deeds of trust to residents of New York, the state of incorporation, and any services or arrangements offered to such purchaser. would be solely offered by the New York Corporation. However, all of the real estate forming the security for the mortgages and deeds of trust will be located outside of New York.

The Division advised that the Section 3(a)(11) exemption will not be available for such an offering since the company does not meet the "doing business" requirement of such exemption.

12. Rule 154(b) -- Broker's Transaction; Private Placement.

February 8, 1960 -- Letter re: Minnesota Mining and Manufacturing Company

The language of Rule 154(b) "together with all other sales of securities of the same class by or on behalf of the same person" is interpreted to include transactions in registered, unregistered or exempt shares. Therefore, securities sold pursuant to the private placement exemption are required to be included in the computation of permitted transactions.

1934 ACT

13. Section 16(a) -- Beneficial Ownership; Ownership Reports; Trustee.
Rule 16a-8

February 24, 1960 -- Letter to: Nutter McClennen & Fish

One of the trustees of a trust, owning slightly less than 10% of the stock of the company, is an officer and director of the company and his son is a beneficiary.

By reason of the definition of beneficial ownership contained in Rule 16a-8 under the Securities Exchange Act of 1934, it appears necessary for the officer and director who is also trustee to include in his reports on Form 4 all changes in ownership by the trust.

14. Rule 14A-2 -- Solicitation of Proxy; Beneficial Owners

February 8, 1960 -- Memorandum of Conference re: Crescent Petroleum Corporation

The Secretary of the company proposes to send notice, in connection with forthcoming proxy solicitation by management, to banks., trust companies and other large record holders of its stock, asking them to advise the company whether they are willing to transmit proxy material to the beneficial owners, to advise as to the number of copies of such material needed for this purpose, and stating the company will offer to reimburse them for actual expenses incurred in transmitting such material.

If the communication stated no more than the aforementioned, no question would be raised by this Division if copies of such communication are not filed under the proxy rules as soliciting material.

15. Rule 14a-8 -- Stockholder Proposal in Proxy Solicitation.

February 26, 1960 -- Commission Minute re: Union Electric Company

The Commission approved the recommendation of the Division that the following resolution be included in the management's proxy material: "Resolved, that the By-Laws be amended so as to provide that marked proxies only may be taken into consideration when the tabulation is made 'For' or 'Against' a proposal listed on the proxy ballot, and so as to provide that unless the stockholder executing the proxy checks the 'For' or 'Against' box which is placed immediately before each proposal listed on the proxy ballot, or indicates affirmatively thereon that he desires the proxy agent to vote discretionarily, no vote cast for the stockholder by the proxy agent on that listed proposal may be counted. In other words, the voting by proxy agents on the basis of unchecked 'ghost-vote' proxy ballots that do not show the stockholder's affirmative authorization that such agents may vote discretionarily shall be outlawed by this proposed By-Law"