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INVESTOR PROTECTION IN CORPORATE TAKEOVERS

INCREASE IN 'REGULATION A' EXEMPTION

GOVERNMENT

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HEARING

BEFORE THE

SUBCOMMITTEE ON COMMERCE AND FINANCE

OF THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-FIRST CONGRESS

SECOND SESSION

ON

H.R. 4285

A BILL PROVIDING FOR ADEQUATE NOTICE TO THE MANAGEMENT OF THE CORPORATIONS INVOLVED IN THE CASE OF CERTAIN PROPOSED BIDS FOR CORPORATE TAKEOVERS

S. 3431

AN ACT TO AMEND SECTIONS 13(d), 13(e), 14(d), AND 14(e) OF THE SECURITIES EXCHANGE ACT OF 1934 IN ORDER TO PROVIDE ADDITIONAL PROTECTION FOR INVESTORS

S. 336

AN ACT TO AMEND SECTION 3(b) OF THE SECURITIES ACT OF 1933 TO PERMIT THE EXEMPTION OF SECURITY ISSUES, NOT EXCEEDING \$500,000 IN AGGREGATE AMOUNT, FROM THE PROVISIONS OF SUCH ACT

OCTOBER 12, 1970

Serial No. 91-75

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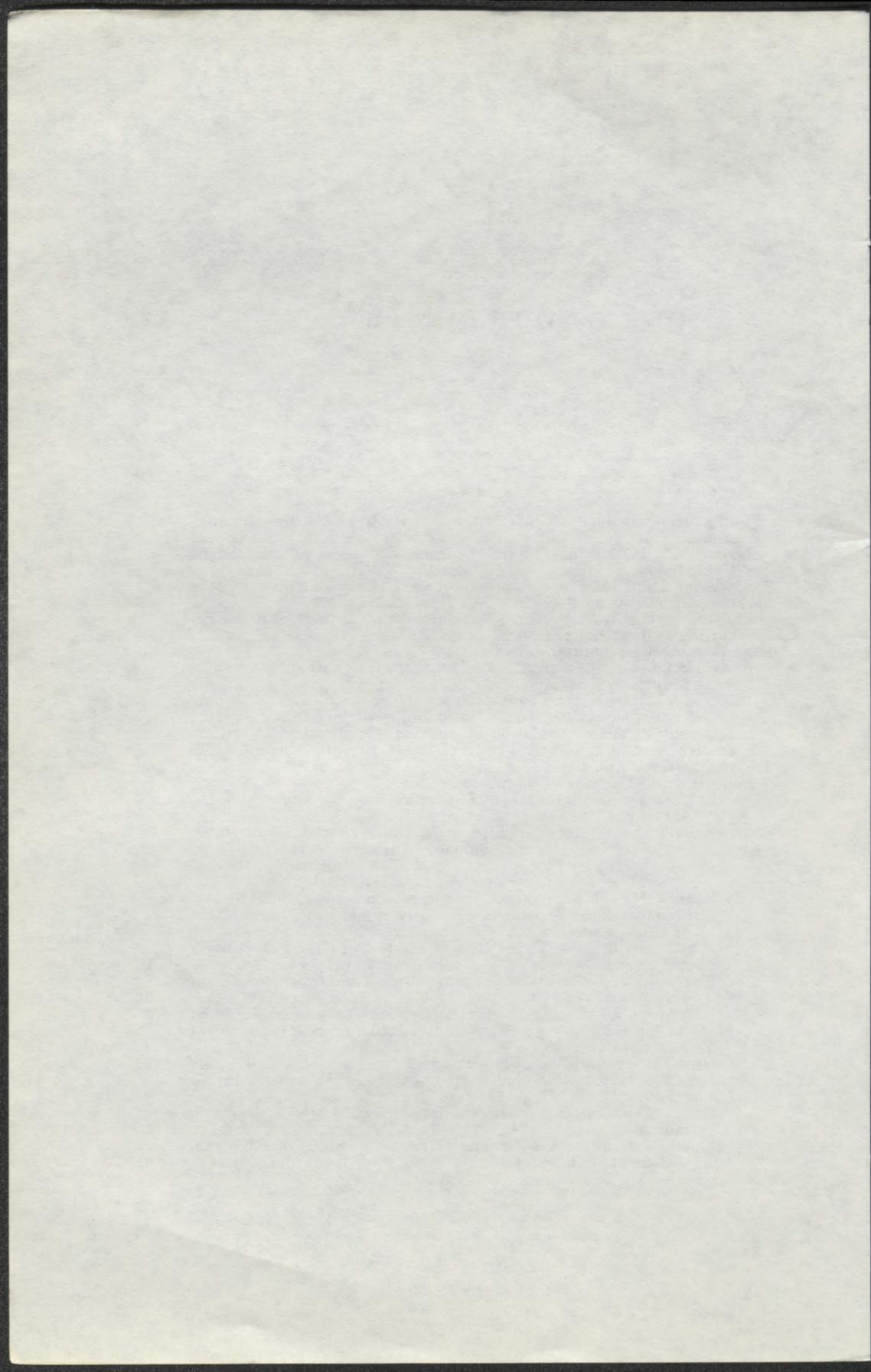
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INVESTOR PROTECTION IN CORPORATE TAKEOVERS

INCREASE IN 'REGULATION A' EXEMPTION

MONDAY, OCTOBER 12, 1970

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE AND FINANCE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2123, Rayburn House Office Building, Hon. John E. Moss (chairman) presiding.

Mr. Moss. The subcommittee will be in order.

This morning we hold hearings on three bills covering two different aspects of our Federal securities laws, S. 336, which was passed by the Senate on August 14, 1970, to amend section 3(b) of the Securities Act of 1933 to increase from \$300,000 to \$500,000 the maximum amount for exemption from registration. As originally enacted this section provided an exemption from the registration requirements of the Securities Act for public offerings of securities under \$100,000. In 1945 this figure was increased to \$300,000 which is the limit which still applies today. If enacted S. 336 would increase that limit.

H.R. 4285, introduced by Mr. Monagan from Connecticut, and S. 3431, which was passed by the Senate on August 18, 1970, are designed to provide additional investor protection in corporate takeover bids. In July 1968 Congress enacted corporate takeover legislation to provide investor protection in the area of corporate acquisitions. That law permits regulation by the Securities and Exchange Commission of purchases by corporations of their own shares and provides for regulations of solicitations to accept or reject tender offers.

The experience with this legislation, in my judgment, has been good. However there are many who suggest that some minor amendment of the law would be advisable to provide additional consumer protection. It is for the purpose of considering these amendments that we hold these hearings today.

At this point in the record we shall include the bills under consideration and the agency reports upon them.

(The text of H.R. 4285, S. 336, and S. 3431, and departmental reports thereon follow:)

[H.R. 4285, 91st Cong., first session, Introduced by Mr. Monagan on Jan. 23, 1969]

A BILL Providing for adequate notice to the management of the corporations involved in the case of certain proposed bids for corporate takeovers

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 14(d) (1) of the Securities Exchange Act of 1934 is amended—

(1) by inserting after “security holders” in the first sentence the following: “, and at least thirty days before consummation thereof,”;

(2) by inserting before the period at the end of the third sentence the following: “and not later than thirty days before consummation of the tender offers involved”; and

(3) by striking out “shall be sent to the issuer” and all that follows in the fourth sentence and inserting in lieu thereof the following: “shall be sent to the issuer by the person making the offer, request, or invitation, at the same time it is furnished to the Commission.”

[S. 336, 91st Cong., second sess., Referred to the Committee on Interstate and Foreign Commerce on Aug. 14, 1970]

AN ACT To amend section 3(b) of the Securities Act of 1933 to permit the exemption of security issues, not exceeding \$500,000 in aggregate amount, from the provisions of such Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3(b) of the Securities Act of 1933 (15 U.S.C. 77c. (b)) is amended by striking out “\$300,000” and inserting in lieu thereof “\$500,000”.

Passed the Senate August 13, 1970.

Attest:

FRANCIS R. VALEO,
Secretary.

[S. 3431, 91st Cong., second sess., Referred to the Committee on Interstate and Foreign Commerce on Sept. 9, 1970]

AN ACT To amend sections 13(d), 13(e), 14(d), and 14(e) of the Securities Exchange Act of 1934 in order to provide additional protection for investors

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the part of paragraph (1) of subsection (d) of section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m(d) (1)) which precedes clause (A) is amended—

(1) by inserting after “section 12 of this title” the following: “, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 12(g) (2) (G) of this title,”; and

(2) by striking out “10 per centum” and inserting in lieu thereof “5 per centum”.

SEC. 2. Paragraph (2) of subsection (e) of section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m(e) (2)) is amended by adding at the end thereof the following: “The Commission shall have power to make rules and regulations implementing this paragraph in the public interest and for the protection of investors, including exemptive rules and regulations covering situations in which the Commission deems it unnecessary or inappropriate that a purchase of the type described in this paragraph shall be deemed to be a purchase by the issuer for purposes of some or all of the provisions of paragraph (1) of this subsection.”

SEC. 3. The first sentence of paragraph (1) of subsection (d) of section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d) (1)) is amended—

(1) by inserting after “section 12 of this title,” the following: “or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 12(g) (2) (G) of this title,”; and

(2) by striking out "10 per centum" and inserting in lieu thereof "5 per centum".

SEC. 4. Paragraph 8 of subsection (d) of section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)(8)) is amended by striking out clause (A) and redesignating clauses (B), (C), and (D) as clauses (A), (B), and (C), respectively.

SEC. 5. Subsection (e) of section 14 of the Securities Exchange Act (15 U.S.C. 78n(e)) is amended by adding the following sentence at the end thereof: "The Commission shall, for the purposes of this subsection, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative."

Passed the Senate August 18, 1970.

Attest:

FRANCIS R. VALEO,
Secretary.

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., September 14, 1970.

Re S. 336, 91st Congress, second session.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request for a prompt report on S. 336, together with such comments as we may desire to make.

On March 25, 1970 I testified on this bill before the Subcommittee on Securities of the Senate Committee on Banking and Currency and submitted a statement for the record which appears on pages 37 and 38 of the printed hearing. At that time the bill was in precisely the form in which it is now pending before your Committee and the Commission's views remain the same as they were at that time. We support the bill and if it is enacted we will act promptly in considering what changes in our rules and regulations are necessary to give effect to the Congressional intent embodied in it.

Briefly our position stems from our understanding of the purpose of Section 3(b) of the Securities Act of 1933, which this bill would amend, as well as our analysis of the 1945 amendment to this same Section. As originally enacted this Section permitted the Commission by appropriate rules and regulations to provide exemption from the registration requirements of the Securities Act for public offerings of securities not exceeding \$100,000. The Congressional purpose which prompted this Section of the Act was to expedite the raising of necessary capital for the commencement or expansion of small business enterprises. By 1945 \$100,000 was, in many cases, an inadequate amount to accomplish this objective due to generally increased costs as compared with 1933. Congress accordingly increased to \$300,000 the amount of the exemption which the Commission was authorized to grant by rules under Section 3(b) of the Act.

In our view an identical situation exists again today. Costs have continued to rise so that the exemption which was placed at \$300,000 in 1945 is no more adequate now than \$100,000, as first established in 1933, was in 1945. The same expansion which led Congress to encourage the commencement and expansion of small business by increasing this exemptive provision from \$100,000 to \$300,000 in 1945 appear to us to warrant a further increase to \$500,000 at this time.

If we can be of any further assistance to your Committee in your consideration of this bill, kindly advise us and we will respond promptly.

Since this letter is in lieu of a formal report on the bill, we are transmitting three additional copies as you requested in your letter.

Due to time limitations and the fact that we have previously cleared a statement of our views on this bill as submitted on the Senate side last March, we have not submitted this letter to the Office of Management and Budget in advance. We are, however, sending copies of it to that office today and will advise you promptly of any comment we receive in the reply.

Sincerely,

HAMER H. BUDGE, *Chairman.*

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., September 28, 1970.

Re S. 3431, 91st Congress.

HON. HARLEY O. STAGGERS,

Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your request of September 11, 1970, I am pleased to enclose 6 copies of a memorandum setting forth the Commission's views and recommendations with respect to S. 3431 as passed by the Senate on August 18, 1970.

Time has not permitted submission of the memorandum to the Office of Management and Budget for advance clearance pursuant to Budget Circular A-19 (Revised). However, the views and recommendations in the enclosed memorandum do not vary substantially from the testimony presented on behalf of the Commission on the same bill on March 25, 1970 before the Senate Committee on Banking and Currency, concerning which the Office of Management and Budget had advised that there would be no objection from the standpoint of the Administration's program. Nevertheless, we are submitting this memorandum to the Office of Management and Budget for any further advice it may wish to have transmitted to your Committee in this respect.

Sincerely,

HAMER H. BUDGE, *Chairman.*

Enclosure.

MEMORANDUM OF THE SECURITIES AND EXCHANGE COMMISSION

S. 510 which was introduced by Senator Williams in the 90th Congress, became law on July 29, 1968 as Public Law 90-439. It consisted of amendments to Sections 13 and 14 of the Securities Exchange Act of 1934 (the "Act"), and provides for disclosures with respect to substantial acquisitions of securities registered under the Act and in connection with tender offers for such securities, together with protections against fraudulent activities in connection therewith. Such amendments permit regulation by the Commission of purchases by corporations of their own shares and provide for disclosure in connection with changes in a majority of the board of directors which take place or are contemplated in conjunction with acquisitions of securities and tender offers. Such amendments also provide for the regulation of solicitations or recommendations to accept or reject a tender offer. Substantive protections for the public investor to whom the tender offer is directed are also provided for, such as prescribing a limited time in which tendered securities may be withdrawn, a limited period during which securities must be taken up on a pro rata basis rather than a first-come first-served basis, and provisions that if the terms of a tender offer are varied by increasing the price, the benefit of such increase must be afforded to persons who have already tendered their securities prior thereto.

Immediately after enactment of such legislation, the Commission adopted regulations pertaining to the form and content of the disclosures to be furnished and related matters. This was to implement the provisions in the legislation which were not self-executing. The pertinent regulations are attached hereto as an exhibit. (See Exhibit I, p. 9, this hearing.)

The Commission's experience with the operation of the provisions of P.L. 90-439 has been most satisfactory. The quality of disclosure available to investors has been substantially improved and important new protections concerning terms of tender offers have been afforded to them. Since the enactment of such legislation through June 1970, filings relating to 103 tender offers and 542 acquisitions of securities have been made with the Commission and were made available to the investing public. The 103 tender offers involved a total of \$2.61 billion. Attached is a table showing the names of the companies involved in the 103 tender offers, the dates and the dollar amounts involved. (See Exhibit II, p. 15, this hearing.)

S. 3431, which was introduced by Senator Williams in the 91st Congress, and which was passed by the Senate on August 18, 1970, would amend Section 13 (d) (1) of the Act in two respects. This section now requires any person who acquires 10 percent or more of any class of equity securities registered under the Act or of any equity security issued by a registered closed-end investment company to file with the Commission certain specified disclosures. Such filing include,

for example, disclosures pertaining to the identity and background of the person who acquired such securities, the source and amount of funds to be used, and the purposes for which the shares were acquired.

The first proposed amendment under the bill to Section 13(d) (1) of the Act would extend its coverage to insurance companies. The present law applies only in the case of securities which are registered under Section 12 of the Act and those issued by registered closed-end investment companies as previously mentioned. Since securities of insurance companies, which are subject to specified state regulation, are not so registered by reason of the exemption contained in Section 12(g) (2) (G) of the Act for insurance company securities, the law at present does not apply in such cases.

The Commission, of course, does not desire to take issue with the Congressional decision reached in 1964 to leave reporting, proxy solicitation and the regulation of insider trading with respect to insurance company securities to appropriate state authorities. However, it may well be that the considerations which resulted in leaving this type of regulation to the states may be inapplicable in the case of tender offers. More frequently than not, tender offers are made on a nationwide basis and are not presently regulated by state insurance commissioners. Indeed, it might be quite difficult for a state commissioner to regulate tender offers made from outside his state. While the Commission does not know precisely the number of insurance companies to which the amendment would extend, we have information showing that for the calendar year 1969, 14 tender offers were made for shares issued by national insurance companies; a list of such companies is attached as Exhibit III (see p. 9, this hearing).

The second change which S. 3431 would make in Section 13(d) (1) of the Act would be to reduce the ten percent figure in that section to five percent. This would mean that the provisions of present law would be triggered at the five percent level instead of the present ten percent level. The principal reason this change would be appropriate is that there is evidence that companies undertaking an acquisition, limit their prior purchases of stock in the open market to around nine percent as a means of avoiding making disclosures to the investing public. Obviously, ten percent of the securities of larger corporations represents very large amounts of money.

S. 3431 would also amend Section 13(e) of the Act. This amendment suggested by the Commission would authorize the Commission to adopt rules and regulations with respect to purchases by certain issuers of their own securities and purchases in their behalf and by their control persons. Subsection 13(e) (2) of the Act provides that a purchase by or for a person in a control relationship with the issuer, or a purchase by a person on behalf of the issuer, is considered to be a purchase by the issuer for the purpose of the subsection. We suggested that the subsection be made subject to the authority of the Commission to adopt such rules and regulations as may be appropriate, and this amendment would do just that. It seems unnecessary to place on persons in a control relationship with the issuer all of the requirements, such as notice to shareholders and other restrictions, which may be appropriate for purchases by the issuer of its security.

Section 14(d) of the Act, which was also added thereto by Public Law 90-439, makes it unlawful to make a cash tender offer for securities subject to these provisions without filing with the Commission a statement containing essentially the same information as is provided for in Section 13(d) and furnishing such part of this information as the Commission may require to security holders who are invited to tender their shares. Section 14(d) also contains provisions governing the terms of a cash tender offer.

The present bill, S. 3431, would eliminate the exemption contained in Section 14(d) of the Act for exchange offers of securities registered under the Securities Act of 1933. In an exchange offer, instead of offering cash for the securities of the target company, securities of the acquiring company are offered.

While registration under the Securities Act of 1933 provides for disclosure and thus is an adequate substitute for the disclosures required by Section 14(d), the substantive provisions of the Act as they relate to the terms of the cash tender offer are not applicable to exchange offers of securities nor does the Act at present provide for regulation of solicitations in opposition to such an exchange offer.

Our information indicates that from the effective date of Public Law 90-439 through December 31, 1969, offerings of securities in exchange for other securities in the approximate aggregate amount of \$18 billion were registered with the

Commission. These offerings which are exempt from most of the provisions of the law, exceeded in number and in dollar amount the cash tender offers which are subject to existing law. We have noticed a tendency to use exchange offers when an attempt is made to take over large corporations which would be extremely difficult to finance by means of a cash tender offer. S. 3431, if enacted, would have the desirable result of extending the substantive and other protections of Public Law 90-439 to the larger group of public security holders to whom such exchange offers are made.

S. 3431 would also amend Section 14(e) of the Act. As it now exists, Section 14(e) prohibits false statements and fraudulent or deceptive practices in connection with tender offers, but it does not specifically grant the Commission any rule-making authority to deal with such practices. Though general authority contained in the Act could probably be relied on for this purpose, Section 4 of S. 3431 would add a sentence granting to the Commission rule-making power specifically to define and prescribe means reasonably designed to prevent fraudulent, deceptive and manipulative practices in this area. The language in the proposed amendment is identical with that contained in existing Section 15(e) (2) of the Act, which grants to the Commission rule-making power with respect to fraudulent, deceptive or manipulative practices by brokers and dealers in transactions in the over-the-counter markets. The rule-making power provided for by Section 4 of this bill would enable the Commission to deal more effectively with the devices sometimes employed on both sides in contested tender offers.

For the foregoing reasons the Commission strongly supports the proposed amendments to Public Law 90-439 which are set forth in S. 3431, and urges its enactment.

Mr. Moss. Our first witness today will be the Honorable John S. Monagan of Connecticut.

Welcome, Mr. Monagan, I understand you have a statement you would like to present to the subcommittee this morning. Proceed as you see fit, sir.

STATEMENT OF HON. JOHN S. MONAGAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. MONAGAN. Mr. Chairman and distinguished members of this committee, I appreciate this opportunity to appear before you this morning to present my views on H.R. 4285, my bill to provide for adequate notice to stockholders and management of a target company in a cash takeover bid.

Under the terms of my bill, the disclosure requirements of the Corporate Takeover Act, Public Law 90-439, would be expanded in the direction of giving shareholders and management some previous notice of a cash tender offer to gain control of more than 10 percent of the outstanding stock of a company registered under the Securities and Exchange Act. I am happy to note that S. 3431, another bill you are considering this morning, would broaden the existing disclosure requirements to cash tender offers of over 5 percent of a company's stock. I think that lowering the trigger mechanism of the disclosure requirements from 10 to 5 percent is a proper recognition of the impact that acquisition of 5 percent of a company's stock can have upon the future control and public market of the securities involved, and shareholders are entitled to be fully informed. I am hopeful that the substance of my bill to provide some prior notice will be worked into the broadened disclosure requirements proposed by S. 3431.

I introduced H.R. 4285 because I was seriously concerned with the defenseless position of shareholders and management of target companies in a cash takeover bid. While I welcomed the new protections provided to shareholders by the Corporate Takeover Act, especially the

disclosure requirements and the 7-day withdrawal right for shareholders, I do not think that the provisions requiring disclosure to shareholders and management at the time disclosure is made to the Securities and Exchange Commission provide enough leadtime to shareholders to make an informed decision, or to management to enable it to present a defense to the cash takeover bid. I appreciate the necessity for the Securities and Exchange Commission to maintain a posture that favors neither the person making the cash tender offer nor the target company management, but I do not believe that that objective can be achieved under the present law. As the situation now stands, the moving party; that is, the person making the cash tender offer, has all of the advantages, and the target company management, which has only a minimal opportunity to avail itself of the information provided in the mandatory disclosure statement, is almost defenseless. At the very least, an attempt must be made to provide the target company management in a cash takeover bid with protections similar to those enjoyed where the tender offer involves an exchange of securities. Also, in the interest of fairness, shareholders should be provided with additional time to scrutinize the information provided to them by the mandatory disclosure requirements to enable them to weigh the merits of retaining or selling their shares.

I think that my bill provides an approach to rectifying the inequities inherent under the present state of the law. My bill would provide a 30-day hold period between the filing of a cash takeover bid with the Securities and Exchange Commission and the actual purchase of the target companies securities. I would not insist that the 30-day period is an absolute necessity, but I do think some provision giving management and shareholders a reasonable period of time for scrutiny of the cash tender offer is in order. Under the present law, the simultaneous notice requirement, coupled with the shareholder's 7-day withdrawal right, is grossly inadequate.

A person making a cash tender offer under the present law can conceivably proceed to consummate a takeover utilizing the element of surprise to the exclusion of having a program enhancing or even maintaining the profitability of a particular enterprise and in the interest of stockholders and general economic stability, the law should be changed if for only that reason.

I recognize that mergers consummated by cash tender offers often result in strengthening the merged corporation, and I did not introduce my bill to shift the advantages from the person making the takeover offer to the target company management or to put shareholders in a position to exploit the market impact of a tender offer. I did introduce the bill as a means to balance the equities between the competing parties to prevent unnecessary economic dislocations of particular industries which are frequently occasioned by the looseness of our present laws governing cash takeover bids.

I will leave it to the wisdom of the committee to determine the particular means by which fairness can be insured, and whether it chooses to accomplish this by legislation like or similar to my own or by broadening the general regulatory mandate to the Securities and Exchange Commission to insure fairness in this regard, I will support its determination.

Mr. Moss. Thank you, Mr. Monagan, for sharing your thoughts on this legislation with us today.

Are there any questions? If not, then thank you again, sir.

Mr. MONAGAN. Thank you, Mr. Chairman, for affording me the time to present my views.

Mr. Moss. Our next witness will be the Hon. Hamer H. Budge, Chairman of the Securities and Exchange Commission and whatever members of his staff he wishes to accompany him.

STATEMENT OF HON. HAMER H. BUDGE, CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION; ACCOMPANIED BY PHILIP A. LOOMIS, JR., GENERAL COUNSEL; AND IRVING M. POLLOCK, DIRECTOR, DIVISION OF TRADING AND MARKETS

Mr. BUDGE. Mr. Chairman, seated with me is Mr. Philip A. Loomis, Jr., General Counsel of the Commission, and Mr. Irving M. Pollock, Director of our Division of Trading and Markets.

Mr. Chairman and members of the subcommittee, it is a pleasure to be here this morning to present the Commission's views on S. 3431, pertaining to certain amendments to Public Law 90-439, and S. 336, a proposal to increase the Regulation A ceiling under the Securities Act of 1933.

I should like to begin today with a discussion of the amendments to Public Law 90-439, which became law on July 29, 1968.

Public Law 90-439 provides for disclosures with respect to substantial acquisitions of securities registered under the Securities Exchange Act and in connection with tender offers for such securities, together with protections against fraudulent activities. It permits Commission regulation of corporations' purchases of their own shares and provides for disclosure in connection with changes of a majority of the board of directors in conjunction with acquisitions of securities and takeover bids. It also provides for the regulation of solicitations or recommendations to accept or reject the tender offer. Substantive protections for the public investor to whom the tender offer is directed are also provided, such as providing a limited time in which tendered securities can be withdrawn, a limited period during which securities must be taken up on a pro rata basis rather than a first come, first served basis, and provisions that if the terms of a tender offer are varied by increasing the price the benefits of that increase must be afforded to persons who have already tendered their securities.

Immediately after enactment of the legislation, the Commission adopted regulations pertaining to the form and content of the disclosures to be furnished and related matters. This was done since certain provisions in the legislation were not self-executing. I have a complete set of the pertinent regulations with me today if the committee would like to have them inserted in the record at this point.

Mr. Moss. I think it would be most appropriate to have them inserted at this point. Without objection they will be received and placed in the record.

Mr. BUDGE. Thank you, Mr. Chairman.

(The regulations referred to follow :)

Exhibit I

REGULATION 13D, ACQUISITION REPORTS AND REGULATION 14D, TENDER OFFERS—
AS IN EFFECT APRIL 1, 1969

REGULATION 13D

Rule 13d-1. Filing of Schedule 13D

Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to section 12 of the Act, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940, is directly or indirectly the beneficial owner of more than 10 per centum of such class shall, within 10 days after such acquisition, send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and file with the Commission, a statement containing the information required by Schedule 13D. Eight copies of the statement shall be filed with the Commission.

(Adopted July 30, 1968, Release 34-8370, eff. July 30, 1968; amended, Aug. 30, 1968, Release 34-8392, eff. amended, Mar. 24, Release 34-8556, eff. Apr. 1, 1969.)

Rule 13d-2. Filing of Amendments

If any material change occurs in the facts set forth in the statement required by Rule 13d-1, the person who filed such statement shall promptly file with the Commission and send to the issuer and the exchange an amendment disclosing such change. Eight copies of each such amendment shall be filed with the Commission.

(Adopted July 30, 1968, Release 34-8370, eff. July 30, 1968; amended, Mar. 24, Release 34-8556, eff. Apr. 1, 1969.)

Rule 13d-3. Determination of Ownership of Specified Percentages of a Class of Equity Securities

In determining, for the purposes of section 13(d) or section 14(d), whether a person is directly or indirectly the beneficial owner of securities of any class, such person shall be deemed to be the beneficial owner of securities of such class which such person has the right to acquire through the exercise of presently exercisable options, warrants or rights or through the conversion of presently convertible securities, or otherwise. The securities subject to such options, warrants, rights or conversion privileges held by a person shall be deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by such person but shall not be deemed to be outstanding for the purpose of computing the percentage of the class owned by any other person.

(Adopted Aug. 30, 1968, Release 34-8392, eff. Aug. 30, 1968.)

Rule 13d-4. Exemption of Acquisitions Pursuant to Pre-emptive Rights

An acquisition of securities of an issuer by a security holder who prior to such acquisition was the beneficial owner of more than 10 percent of the outstanding securities of the same class as those acquired shall be exempt from section 13(d) of the Act if the following conditions are met:

(a) The acquisition is made pursuant to preemptive subscription rights in an offering made to all holders of securities of the class to which the preemptive subscription rights pertain;

(b) The purchaser does not, through the exercise of such preemptive subscription rights, acquire more than his or its pro rata share of the securities offered; and

(c) The acquisition is duly reported pursuant to section 16(a) of the Act and the rule and regulations thereunder.

(Adopted effective Jan. 31, 1969, Release 34-8510.)

SCHEDULE 13D—INFORMATION TO BE INCLUDED IN STATEMENTS FILED
PURSUANT TO RULE 13d-1 OR 14d-1

Notes. A. The item numbers and captions of the items shall be included but the text of the items are to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

B. If the statement is filed by a partnership, limited partnership, syndicate, or other group, the information called for by Items 2 to 6, inclusive, shall be given with respect to (1) each partner or any partnership or limited partnership, (2) each member of such syndicate or group and (3) each person controlling such partner or member. If a person referred to in (1), (2) or (3) is a corporation or the statement is filed by a corporation, the information called for by the above-mentioned items shall be given with respect to each officer and director of such corporation and each person controlling such corporation.

Item 1. Security and Issuer

State the title of the class of equity securities to which this statement relates and the name and address of the issuer of such securities.

Item 2. Identity and Background

State the following with respect to the person filing this statement :

- (a) Name and business address ;
- (b) Residence address ;
- (c) Present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment is carried on ;
- (d) Material occupations, positions, offices or employments during the last 10 years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which each such occupation, position, office or employment was carried on ; and
- (e) Whether or not, during the last 10 years, such person has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give the dates, nature of conviction, name and location of court, and penalty imposed, or other disposition of the case. A negative answer to this sub-item need not be furnished to security holders.

Item 3. Source and Amount of Funds or Other Consideration

State the source and amount of funds or other consideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading the securities, a description of the transaction and the names of the parties thereto.

Item 4. Purpose of Transaction

State the purpose or purposes of the purchase or proposed purchase of securities of the issuer. If the purpose or one of the purposes of the purchase or proposed purchase is to acquire control of the business of the issuer, describe any plans of proposals which the purchasers may have to liquidate the issuer, to sell its assets or to merge it with any other persons, or to make any other major change in its business or corporate structure, including, if the issuer is a registered closed-end investment company, any plans or proposals to make any changes in its investment policy for which a vote would be required by section 13 of the Investment Company Act of 1940.

Item 5. Interest in Securities of the Issuer

State the number of shares of the security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by (i) such persons, and (ii) each associate of such person, giving the name and address of each such associate. Furnish information as to all transactions in the class of securities to which this statement relates which were effected during the past 60 days by the person filing this statement and by its subsidiaries and their officers, directors and affiliated persons.

Item 6. Contracts, Arrangements, or Understandings With Respect to Securities of the Issuer

Furnish information as to any contracts, arrangements, or understandings with any person with respect to any securities of the issuer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into, and giving the details thereof.

Item 7. Persons Retained, Employed or To Be Compensated

Where the Schedule 13D relates to a tender offer, or request or invitation for tenders, identify all persons and classes of persons employed, retained or to be compensated by the person filing this Schedule 13D, or by any person on his behalf, to make solicitations or recommendations to security holders and describe briefly the terms of such employment, retainer or arrangement for compensation.

Item 8. Material To Be Filed as Exhibits

Copies of all requests or invitations for tenders or advertisements making a tender offer or requesting or inviting tenders, additional material soliciting or requesting such tender offers, solicitations or recommendations to the holders of the security to accept or reject a tender offer or request or invitation for tenders shall be filed as an exhibit.

Signature.

I certify that to the best of my knowledge and belief the information set forth in this statement is true, complete and correct.

(Date)

(Signature)

If the statement is signed on behalf of a person by an authorized representative, evidence of the representative's authority to sign on behalf of such person shall be filed with the statement.

(Schedule 13D adopted, eff. July 30, 1968, Release 34-8370. Items 4 and 5 amended Aug. 30, 1968, 34-8392.)

Rule 13e-1. Purchase of Securities by Issuer Thereof

When a person other than the issuer makes a tender offer for, or request or invitation for tenders of, any class of equity securities of an issuer subject to section 13(e) of the Act, and such person has filed a statement with the Commission pursuant to Rule 14d-1 and the issuer has received notice thereof, such issuer shall not thereafter, during the period such tender offer, request or invitation continues, purchase any equity securities of which it is the issuer unless it has complied with both of the following conditions:

(a) The issuer has filed with the Commission eight copies of a statement containing the information specified below with respect to the proposed purchases:

(1) The title and amount of securities to be purchased, the names of the persons or classes of persons from whom, and the market in which, the securities are to be purchased, including the name of any exchange on which the purchase is to be made;

(2) The purpose for which the purchase is to be made and whether the securities are to be retired, held in the treasury of the issuer or otherwise disposed of, indicating such disposition; and

(3) The source and amount of funds or other consideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading the securities, a description of the transaction and the names of the parties thereto; and

(b) The issuer has at any time within the past 6 months sent or given to its equity security holders the substance of the information contained in the statement required by paragraph (a).

Provided, however, That any issuer making such purchases which commenced prior to July 30, 1968, shall, if such purchases continue after such date, comply with the provisions of this rule on or before August 12, 1968.

(Adopted July 30, 1968, Release 34-8370, eff. July 30, 1968; amended introductory para. and para. (a) (3), Aug. 30, Release 34-8392, eff. Aug. 30, 1968; amended, Mar. 24, Release 34-8556, eff. Apr. 1, 1969.)

REGULATION 14D

Rule 14d-1. Filing Schedule 13D and Furnishing of Information to Security Holders

(a) No person, directly or indirectly, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, shall make a tender offer for, or a request or invitation for tenders of, any class of any equity security which is registered pursuant to section 12 of the Act, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940, if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 10 per centum of such class, unless, at the time copies of the offer or request or invitation are first published or sent or given to security holders, such person has filed with the Commission a statement containing the information and exhibits required by Schedule 13D: *Provided, however*, That any person making a tender offer for or a request or invitation for tenders which commenced prior to July 30, 1968, shall, if such offer, request or invitation continues after such date, file the statement required by this rule on or before August 12, 1968.

(b) If any material change occurs in the facts set forth in the statement required by paragraph (a) of this rule, the person who filed such statement shall promptly file with the Commission an amendment disclosing such change.

(c) All tender offers for, or requests or invitations for tenders of, securities published or sent or given to the holders of such securities shall include the following information:

- (1) The name of the person making the tender offer, request or invitation;
- (2) The exact dates prior to which, and after which, security holders who deposit their securities will have the right to withdraw their securities pursuant to section 14(d) (5) of the Act, or otherwise;
- (3) If the tender offer or request or invitation for tenders is for less than all of the outstanding securities of the class and the person making the offer, request or invitation is not obligated to purchase all of the securities tendered, the date of expiration of the period during which the securities will be taken up pro rata pursuant to section 14(d) (6), or otherwise; and
- (4) The information required by Items 2 (a), (c), and (e), 3, 4, 5, and 6 of Schedule 13D, or a fair and adequate summary thereof.

(d) Any additional material soliciting or requesting such tender offers subsequent to the initial solicitation or request shall contain the name of the persons making such solicitation or request and the information required by Items 2 (a), (c), and (e), 3, 4, 5, and 6 of Schedule 13D, or a fair and adequate summary thereof: *Provided, however*, That such material may omit any of such information previously furnished to the persons solicited or requested for tender offers. Copies of such additional material soliciting or requesting such tender offers shall be filed with the Commission not later than the time copies of such material are first published or sent or given to security holders.

(e) Eight copies of the statement required by paragraph (a), every amendment to such statement, and all other material required by this rule, shall be filed with the Commission.

(Adopted, July 30, Release 34-3870, eff. July 30, 1968; amended para. (c), Aug. 30, Release 34-8392, eff. Aug. 30, 1968; amended, Mar. 24, Release 34-8556, eff. Apr. 1, 1969.)

Rule 14d-2. Certain Communications to Which Rules Do Not Apply

The rules contained in this regulation do not apply to the following communications:

(a) Offers to purchase securities made in connection with a distribution of securities permitted by Rule 10b-6, 10b-7 or 10b-8.

(b) The call or redemption of any security in accordance with the terms and conditions of the governing instruments.

(c) Offers to purchase securities evidenced by a script certificate, order form or similar document which represents fractional interest in a share of stock or similar security.

(d) Offers to purchase securities pursuant to a statutory procedure for the purchase of dissenting shareholders' securities.

(e) The furnishing of information and advice regarding a tender offer to customers or clients by attorneys, banks, brokers, fiduciaries or investment advisers,

who are not otherwise participating in the tender offer or solicitation, on the unsolicited request of a person or pursuant to a general contract for advice to the person to whom the information or advice is given.

(f) A communication from an issuer to its security holders which does no more than (1) identify a tender offer or request or invitation for tenders made by another person, (2) state that the management of the issuer is studying the matter and will, on or before a specified date (which shall be not later than 10 days prior to the date specified in the offer, request or invitation, as the last date on which tenders will be accepted, or such shorter period as the Commission may authorize) advise security holders as to the management's recommendation to accept or reject the offer, request or invitation, and (3) request security holders to defer making a determination as to whether or not they should accept or reject the offer, request or invitation until they have received the management's recommendation with respect thereto.

(g) Offers to purchase securities in transactions exempt from registration under the Securities Act of 1933 pursuant to section 3(a)(10) thereof.

(Adopted Aug. 30, 1968. Release 34-8392, eff. Aug. 30, 1968.)

Rule 14d-4. Filing of Schedule 14d

(a) No solicitation or recommendation to the holders of a security to accept or reject a tender offer or request or invitation for tenders subject to section 14(d) of the Act shall be made unless, at the time copies of the solicitation or recommendation are first published or sent or given to holders of the security, the person making such solicitation or recommendation has filed with the Commission a statement containing the information specified by Schedule 14D: *Provided, however,* That this rule shall not apply to (1) a person required by Rule 14d-1 (a) to file a statement, or (2) a person, other than the issuer or the management of the issuer, who makes no written solicitations or recommendations other than solicitations or recommendations copies of which have been filed with the Commission pursuant to this rule of Rule 14d-1: *And, provided further,* That any person making a solicitation or recommendation to the holders of a security to accept or reject a tender offer or request or invitation for tenders which solicitation or recommendation commenced prior to July 30, 1968 shall, if such solicitation or recommendation continues after such date, file the statement required by this rule on or before August 12, 1968.

(b) If any material change occurs in the facts set forth in the statement required by paragraph (a) of this rule, the person who filed such statement shall promptly file with the Commission an amendment disclosing such change.

(c) Any written solicitation or recommendation to the holders of a security to accept or reject a tender offer or request or invitation for tenders subject to section 14(d) of the Act shall include the name of the person making such solicitation or recommendation and the information required by Items 1(b), 2(b) of Schedule 14D or a fair and adequate summary thereof: *Provided, however,* That such written solicitation or recommendation may omit any of such information previously furnished to the persons to whom the solicitation or recommendation is made.

(Adopted July 30, Release 34-8370, eff. July. 30, 1968.)

SCHEDULE 14D

Item 1. Security and Issuer

(a) State the title of the class of equity securities to which this statement relates and the name and address of the issuer of such securities.

(b) Identify the tender offer or request or invitation for tenders to which this statement relates and state the reasons for the solicitation or recommendation to security holders to accept or reject such tender offer, request, or invitation for tenders.

Item 2. Identity and Background

(a) State the name and business address of the person filing this statement.

(b) Describe any arrangement or understanding in regard to the solicitation with (i) the issuer or the management of the issuer or (ii) the maker of the tender offer or request or invitation for tender of securities of the class to which this statement relates.

Item 3. Persons Retained, Employed or To Be Compensated

Identify any person or class or persons employed, retained or to be compensated, by the person filing this Schedule 14D, or by any person on his behalf, to make solicitations or recommendations to security holders and describe briefly the terms of such employment, retainer or arrangement for compensation.

Item 4. Material To Be Filed as Exhibits

Copies of all solicitations or recommendations to accept or to reject a tender offer or request or invitation for tenders of the securities specified in Item 1 shall be filed as an exhibit.

Item 5. Additional Information To Be Furnished

(a) Furnish information as to all transactions in the class of securities to which this statement relates which were effected during the past 60 days by the issuer and its subsidiaries and their officers, directors and affiliated persons.

Signature.

I certify that to the best of my knowledge and belief the information set forth in this statement is true, complete and correct.

(Date)

(Signature)

If the statement is signed on behalf of a person by an authorized representative, evidence of the representative's authority to sign on behalf of such person shall be filed with the statement.

(Adopted July 30, Release 34-8370, eff. July 30, 1968; added Item 5, Aug. 30, Release 34-8392, eff. Aug. 30, 1968.)

Rule 14f-1. Change in Majority of Directors

If, pursuant to any arrangement or understanding with the person or persons acquiring securities in a transaction subject to section 13(d) or 14(d) of the Act, any persons are to be elected or designated as directors of the issuer, otherwise than at a meeting of security holders, and the persons so elected or designated will constitute a majority of the directors of the issuer, then, not less than 10 days prior to the date any such person take office as a director, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause therefor, the issuer shall file with the Commission and transmit to all holders of record of securities of the issuer who would be entitled to vote at a meeting for election of directors, information substantially equivalent to the information which would be required by Items 5 (a), (d), (e), and (f), 6 and 7 of Schedule 14A of Regulation 14A to be transmitted if such person or persons were nominees for election as directors at a meeting of such security holders. Eight copies of such information shall be filed with the Commission.

(Adopted July 30, Release 34-8370, eff. July 30, 1968; amended, Mar. 24, Release 34-8556, eff. Apr. 1, 1969.)

Mr. BUDGE. Our experience with the operation of Public Law 90-439 has been most satisfactory. The quality of disclosure available to the investing public has been substantially improved in addition to providing important new protections concerning the terms of tender offers. Since the enactment of the legislation through June 1970, filings relating to 103 tender offers and 542 acquisitions of securities have been made with the Commission and made available to the public. The 103 tender offers involved a total of \$2.61 billion. If the committee wishes I can submit for the record a table showing the names of the companies involved in the 103 tender invitations, as well as the dates and dollar amounts involved.

Mr. MOSS. I think, if there is no objection, that will be received and placed in the record at this point.

(The information referred to follows:)

EXHIBIT II

TENDER OFFERS FILED UNDER THE WILLIAMS BILL IN ALPHABETICAL ORDER—BY TARGET COMPANIES THROUGH FEBRUARY 1970

File No.	Target, total assets of target (in millions)	Bidder	Date filed	Shares of target outstanding (approximate)	Shares of target held by bidder prior to offer	Percent	Shares of target acquired by bidder within 60 days prior to offer	Percent
1-5052	API Instruments Co (\$5.2)	Technology Inc.	June 2, 1969	536,100	52,638	10	27,400.0	5
0-2991	Aircraft Acceptance Corp. (\$6.4)	Capital Leasing Co.	Dec. 3, 1968	92,100				
0-2991	do.	AVEMCO Corp.	Dec. 10, 1968	92,001				
1-3999	Alan Wood Steel Co. (\$124.4)	Bauer International (Europa) GMBH.	Dec. 22, 1969	753,100	76,800	10	53,400.0	7
1-4502	Alside Inc. (\$26.9)	USS Inc.	Dec. 11, 1968	2,114,000	1,373,795	65		
1-1204	Amerada Petroleum Corp. (\$471.1)	Hess Oil & Chemical Corp.	Mar. 18, 1969	12,823,000	1,243,824	10		
0-2534	American Vitriol Products Co. (\$10.1)	General Waterworks Corp.	Oct. 24, 1968	12,823,000	384,782	81		
0-3288	Applied Dynamics Inc. (\$56.6)	Reliance Electric Co.	July 3, 1969	556,000				
1-4405	Armor & Co. (\$560.5)	Greyhound Food Management Inc.	Jan. 27, 1969	6,095,200				
0-407	Automobile Banking Corp (\$43.3)	Martin J. Whitman & Martin Hoffinger	Aug. 1, 1968	444,000	1,700	4		
0-395	Arrowhead & Puritas Waters Inc. (\$10.2)	Alleghehy Beverage Co.	Oct. 14, 1968	685,200				
1-850	Bastian Blessing Co. (\$26.5)	J. C. Wood	Sept. 5, 1968	819,800	8,616	1		
0-2393	Bavly Manufacturing Co. (\$8.9)	Pioneer Astro Industries Inc.	June 2, 1969	373,200				
1-3436	Bensus Watch Co. Inc. (\$29.4)	White Weld & Co. et al.	Nov. 1, 1968	614,000	237,748	39	200,600.0	33
1-4867	Bowser Inc. (\$65.9)	Novo Industries Corp.	Nov. 18, 1968	332,500	181,119	54		
0-499	Boss Linco Lines Inc. (\$10.2)	Keene Corp.	Aug. 29, 1968	634,150	499,275.5	79	199,375.5	79
1-4519	C. Brewer & Co. Ltd. (\$11.6)	International Utilities Investment Corp.	Jan. 9, 1969	2,260,014	583,918	26	166,172.0	12
0-1657	C. G. Conn, Ltd. (\$21.2)	Kernal Co.	Oct. 8, 1968	665,000	82,500	12	82,500.0	12
1-3374	do.	Crowell, Collier & MacMillan Inc.	Oct. 16, 1968	665,000				
0-157	Canadian Breweries Ltd. (\$292.4)	Philip Morris Inc.	May 20, 1969	21,762,000				
1-3061	Cap Roc Inc. (\$8.4)	Iroquois Industries Inc.	Oct. 4, 1968	486,700	14,100	3	14,000.0	3
0-3089	Chemtron Corp (\$239.2)	Elgin National Insurances	Apr. 25, 1969	3,714,000	100,000	2.7	100,100.0	2.7
0-1469	Chubb Corp (\$264.6)	American Finance Corp.	Oct. 1, 1969	4,694,240	230,944	5	230,944.0	5
0-1469	Churchill Downs (\$5.2)	National Industries, Inc.	Feb. 25, 1969	383,200	600	2	600.0	2
0-1488	do.	Kentucky Derby Protective Group.	Mar. 10, 1969	383,200	6,500	2		
0-202	Commonwealth, Inc. (\$51.6)	General Acceptance Corp.	Oct. 14, 1968	861,000				
1-609	Consolidated Water Co. (\$36.8)	Apache Corp.	Sept. 11, 1968	338,300				
0-567	Coro Inc. (\$14.6)	Richon International Corp.	July 24, 1969	426,200	161,122	38	161,122.0	38
0-729	Crescent Niagara Corp. (\$12.8)	Cooper Industries, Inc.	Aug. 28, 1968	625,300				
1-3994	Denver Union Stockyards (\$5)	Denver Union Associates	Nov. 4, 1968	49,300	12,133	25	12,133.0	25
0-3629	Diners Club, Inc. (\$150.1)	Continental Instrument Co.	Feb. 6, 1970	1,354,000	1,910,090	54		
0-3272	Dudley Sports Co., Inc. (\$1.4)	Athlone Industries	Oct. 1, 1969	376,800				
1-4240	Dynasiences Corp. (\$1.5)	Whittaker Corp.	June 4, 1969	1,655,000	1,304,004	80	1,304,404.0	80
0-776	Electronic Specialty (\$48.6)	International Controls Corp.	Aug. 16, 1968	1,850,000	36,100	2	36,100	2
	EX Lax Inc. (\$15.5)	General Ogar.	Dec. 31, 1968	318,558	316,440	89	1,327.0	2
				41,000	43		2.0	
0-3042	First Executive Corp. (\$3.7)	Wolfe Wilder et al.	Jan. 9, 1969	881,100	177,494	20	148,295.0	17
0-2764	Foamland USA, Inc. (\$1.7)	Daryl Industries, Inc.	Aug. 27, 1968	427,800				
1-5377	Furman-Wolfson Trust (\$112.8)	FWA Realty Corp.	Feb. 24, 1969	4,663,600	728,006	16		
0-2676	G. T. Corp. (\$7.8)	Jack M. Bass Jr.	Mar. 12, 1969	309,100	7,804	3	200.0	

See footnotes at end of table.

EXHIBIT II
TENDER OFFERS FILED UNDER THE WILLIAMS BILL IN ALPHABETICAL ORDER—BY TARGET COMPANIES THROUGH FEBRUARY 1970—Continued

File No.	Target, total assets of target (in millions)	Bidder	Date filed	Shares of target outstanding (approximate)	Shares of target held by bidder prior to offer	Percent	Shares of target acquired by bidder within 60 days prior to offer	Percent
0-2773	General Laboratory Associates, Inc. (\$5.3)	Simmonds Precision Products, Inc.	Sept. 25, 1968	441,600				
0-2010	Harley Davidson Motor Co. (\$26.2)	Bangor Punta Corp.	Nov. 12, 1968	713,554	118,000	17		
1-4149	Hill Coll Corp. (\$20)	Wite Corp.	Nov. 26, 1969	1,396,650	508,058	36	507,958.0	36
0-1893	Honegger & Co., Inc. (\$7.4)	Petroleum Resources Corp.	Nov. 12, 1968	1,312,300				
0-3760	Industrial Air Products Co. (\$16.3)	American Cryogenics Inc.	July 18, 1969	1,224,000				
0-2881	Instep Manufacturing Corp. (\$6.4)	Desa Industries Inc.	Aug. 28, 1969	257,453				
0-2053	International Investment Co., Inc. (\$4.8)	Allan Gittleson & Sidney Harman.	Jan. 15, 1970	248,100	10,050	4		
1-643	International Salt Co. (\$76.8)	KZO	Sept. 9, 1969	1,919,200				
0-2165	Iowa National Investment Co. (\$1)	John J. Marge	Feb. 25, 1970	1,195,900	18,233	2		
0-407	Jones Motor Co. (\$23.8)	Alleghany Corp.	Sept. 5, 1968	616,000				
0-1958	Kliten & Rogers Co. (\$8.4)	Amadac Industries Inc.	Nov. 3, 1969	119,800	56,250	47	56,250.0	47
1-4950	Koss Co. (\$53.7)	Pittsburgh National Bank	Nov. 3, 1969	934,600				
1-5155	Lead Blows Co. (\$15.4)	Nortek Inc.	Aug. 22, 1968	786,800	14,500	2		
0-2718	Leads Shoes Inc. (\$5.2)	Goodbody & Co.	Sept. 18, 1968	1,358,000				
1-5778	Magnetics Inc. (\$15.5)	Hale Brothers Associates, Inc.	Nov. 1, 1968	1,181,544	35,000	3	35,500.0	3
1-2500	Met-Goldwyn-Mayer Inc. (\$328.6)	Tracy Investment Co.	Sept. 10, 1969	5,874,500	1,263,950	22		
1-5027	Miehle Goss Dexter Inc. (\$169)	do	Nov. 19, 1968	5,000,000	251,000	5	115,600.0	2
0-2924	Montana Flour Mills Co. (\$13.3)	North American Rockwell	Dec. 20, 1968	144,000				
0-2924	do	V.W.R. United Corp.	Dec. 23, 1968	144,000	200			
0-2924	do	White Dulaney Co.	Dec. 24, 1968	144,000				
0-715	do	Nebraska Consolidated Mills Co.	Dec. 24, 1968	144,000				
0-715	do	Sirrom Partners	Jan. 8, 1969	765,000	6,094		6,094.0	
0-3473	National Car Rental Systems, Inc. (\$76.3)	Household Finance Corp.	Aug. 18, 1969	744,900	6,672,503	57	3,323,040.0	28
0-968	National Development Corp. (\$7)	EF Middleton	July 14, 1969	834,500	289,589	35		
0-1773	Pacific Vegetable Oil Corp. (\$32)	Sidney Hoffman	Aug. 27, 1968	640,100	28,800	5		
0-4219	Pan American Sulphur Co. (\$79.2)	Susquehanna Corp.	Nov. 25, 1968	4,751,342	200,300			
1-3216	Piper Aircraft Corp. (\$54.2)	Chris Craft Industries, Inc.	Nov. 23, 1969	1,640,000	200,500	12	200,500.0	12
1-4176	Polymer Corp. (\$17.1)	Chris Craft Industries	Mar. 19, 1969	1,640,000	556,206	34	9,190.0	
1-1371	Richman Brothers Inc. (\$47.5)	ACF Industries, Inc.	Nov. 22, 1968	1,525,049				
0-272	Riley Stoker Corp. (\$39.4)	F. W. Woolworth Co.	Jan. 28, 1969	886,100	85,811	22	85,811.0	22
0-1711	Rock of Ages Corp. (\$11.2)	Scam Instrument Corp.	Apr. 28, 1969	394,100				
0-3966	Roosevelt Raceway Inc. (\$36.1)	Nortek Inc.	Dec. 11, 1968	304,200	127,173	10	127,173.0	10
1-2677	Ryan Aeronautical Inc. (\$151.6)	G & W Land & Development Corp.	Sept. 24, 1969	2,571,000				
0-1156	Scholz Homes Inc. (\$9.8)	Teledyne, Inc.	Nov. 19, 1968	3,332,000				
1-5268	Simplex Wire & Cable Co. (\$39)	Inland Steel Co.	Dec. 19, 1969	861,000	4,000		4,000.0	
1-1247	Sinclair Oil Corp. (\$1,851.3)	Harbil Associates	Feb. 7, 1969	12,563,400				
0-1525	South Dakota Corp. (\$6.4)	Atlantic Richfield Co.	Dec. 11, 1968	2,893,000	511,553	18	4,600.0	
0-1525	do	Charles A. Roth, et al.	Jan. 24, 1969	2,893,000	632,345	22	94,000.0	3
0-1525	do	Independent Investors Group	Mar. 23, 1969	2,893,000				

0-1297	Southdown Inc. (\$17.3)	Feb. 24, 1969	1,336,600		
0-2495	Standard Knitting Mills Inc. (\$21.6)	Nov. 17, 1968	4,371		1,325.0
1-5470	Superior Coach Corp. (\$24.1)	Aug. 12, 1968	1,375,500		30
0-2350	Technibilt Corp. (\$1.8)	Oct. 26, 1968	359,200	197,908	
1-2094	Thor Power Tool Co. (\$19)	Aug. 27, 1968	727,603	452,333	62
1-4443	Transwestern Pipeline Co. (\$254.7)	Nov. 4, 1968	6,026,000	5,876,437	98.1
0-182	Tyler Pipe (\$17.8)	Aug. 26, 1968	1,104,580		
1-4202	UMC Industries Inc. (\$83.5)	Feb. 4, 1969	5,128,700	941,300	18
					14,000.0

TENDER OFFERS FILED UNDER THE WILLIAMS BILL IN ALPHABETICAL ORDER—BY TARGET COMPANIES MARCH THROUGH JUNE 1970

0-2014	Acme Visible Records Inc.	Mar. 25, 1970	1,000,300		
0-1626	Advance Mortgage Corp.	June 4, 1970	1,014,000		
0-2982	Air California	June 10, 1970	408,198	120,619	30
0-845	Bulkley Building Corp.	Apr. 30, 1970	\$ 140,000	75,050	53.6
			48,082	4,339	53.7
1-2665	Detroit Steel Corp.	May 28, 1970	3,937,963	99,254	2.5
1-4727	Pacific Intermountain Express Co.	Mar. 27, 1970	21,305,000	76,700	3.6
1-4548	Swingline, Inc.	Apr. 17, 1970	5,700,000		
					22,500
					75,050
					4,339
					26,500
					53.6
					53.7
					1.4

1 On fully converted basis.

2 Class A.

3 Class B.

4 Preferred.

5 Common.

Mr. BUDGE. After this brief sketch, I now would like to turn to the specific amendments pending before you in S. 3431. The first section of the bill would amend in two respects section 13(d)(1) of Public Law 90-439, which section requires any person who acquires 10 percent or more of equity securities registered under the Securities Exchange Act or any equity securities issued by a registered closed end investment company to file with the Commission certain specified disclosures. These would include, for example, disclosures pertaining to the identity and background of the person who acquired such securities, the source and the amount of funds to be used, and the purposes for which the shares were acquired.

The first amendment to section 13(d)(1) would be to extend its coverage to insurance companies. The present law applies only to securities registered pursuant to section 12 of the Securities Exchange Act and to registered closed end investment companies. The securities of insurance companies are not so registered by reason of the exemption contained in section 12g(2)(G) of the Securities Exchange Act for insurance company securities which are subject to specified State regulation.

The Commission, of course, does not wish to disturb the congressional decision reached in 1964 to leave reporting, proxy solicitation and the regulation of insider trading with respect to the securities of insurance companies to appropriate State authorities. As I indicated in my testimony before the Senate Subcommittee on Securities last March, it may well be that the considerations which resulted in leaving this latter type of regulation to the States may be inapplicable to tender offers. More frequent than not, tender offers are made on a nationwide basis and are not presently regulated by State insurance commissioners. Indeed, it might be quite difficult for a State commissioner to regulate a tender offer made from outside his State. While we do not know precisely the number of insurance companies to which the amendment would extend, we have information showing that for the calendar years 1967 to 1969, 15 tender offers were made for shares issued by national insurance companies. I have this list with me today if you would like it to be included in the record.

Mr. Moss. I think it would be of value to the subcommittee. Without objection it will be received for the record.

(The information referred to follows:)

EXHIBIT III

TENDER OFFERS, INSURANCE COMPANIES, 1965-70—INSURANCE COMPANIES WHICH APPARENTLY WOULD HAVE BEEN WITHIN THE SCOPE OF SEC. 14(D) OF PUBLIC LAW 90-439 IF SUCH STATUTE HAD BEEN IN EFFECT AT THE TIME OF THE TENDER OFFER AND IF INSURANCE COMPANIES WERE SUBJECT TO THE LAW AS PROPOSED

[In alphabetical order and by target companies—Amounts in millions]

Name of bidder	Name of target company	Approximated date of offer	Total assets of target	Description of offer
American General Insurance Co.	California Western States Life Insurance Co.	November 1968	\$366.5	American General Insurance Co. offered to purchase 702,563 shares (13 percent) at \$30 per share. The offer was oversubscribed and American General Insurance owned 33 percent of the outstanding shares after the offer.
Security Corp.	Fidelity & Deposit Co. of Maryland	February 1969	122.8	Security Corp. offered to purchase a minimum of 400,000 shares (21.4 percent) and a maximum of 1,000,000 shares (53.5 percent) at \$65 per share.
Continental Insurance Co.	Glens Falls Insurance Co.	June 1968	277.9	Continental Insurance Co. offered to purchase all outstanding shares at \$60. per share. As of June 18, 1968, Continental had acquired 85 percent of the outstanding shares.
United States Fidelity & Guaranty Co.	do.	do.	277.9	The bidder offered to purchase all outstanding shares at \$52.50 per share.
State Mutual Life Assurance Co. of America	Hanover Insurance Co.	do.	187.3	State Mutual offered to purchase 311,700 shares (25.2 percent) at \$33 per share.
2 undisclosed purchasers	Jackson National Life Insurance Co. (Mich.)	March 1967	3.8	The bidders offered to purchase all shares of \$3.75 per share.
Pennsylvania Life Co.	Massachusetts Indemnity & Life Insurance Co.	October 1968	48.1	Pennsylvania Life offered to purchase all shares at \$66 per share. As of January 1969 Pennsylvania Life owned 98 percent of the outstanding shares
Fidelity Corp.	Monumental Life Insurance Co.	November 1968	358.5	Fidelity Corp. made a tender offer at \$47 per share to acquire up to 1,000,000 shares (33 percent).
Pennsylvania Life Insurance Co.	National Central Life Insurance Co.	June 1968	11.4	Pennsylvania Life Insurance Co. offered to purchase all shares of the target at \$30 per share on a first-come, first-accepted basis.
American International Enterprise, Inc.	National Union Fire Insurance of Pittsburgh	January 1968	111.3	American International Enterprises offered to purchase a maximum of 440,000 shares (50 percent) at \$23.50 per share.
Undisclosed group of purchasers	Pacific Insurance Co. of New York	September 1966	37.8	Purchasers offered to purchase a minimum of 65,000 shares (3.2 percent) at \$64 per share.
Undisclosed purchaser	Phoenix Insurance Co.	February 1966	356.1	The bidder offered to purchase 957,000 shares (52 percent) at \$75 per share provided at least 887,000 shares (48 percent) tendered.
Associates Investment Co.	Providence Washington Insurance Co.	September 1968	55.9	Associates Investment Co. offered to purchase all shares of common at \$39 per share and all shares of preferred at \$50.70 per share.
Home Insurance Co.	Seaboard Surety Co.	January 1968	49.2	Home Insurance Co. has offered to purchase all shares at \$75 per share.
Teledyne, Inc.	United Insurance Co. of America	October 1967	303.2	Teledyne, Inc. offered to purchase shares at \$35 per share. As a result of this offer, Teledyne acquired 23 percent of the outstanding shares. In May 1968 Teledyne made a 2d tender offer at \$35 per share and increased its holdings to 51 percent of the outstanding shares.

Mr. BUDGE. The second change in S. 3431 as it relates to section 13(d)(1), would be to reduce the 10 percent figure in that section to 5 percent. This would mean that the provisions of present law would be triggered at the 5-percent level instead of the present 10-percent level. The principal reason this change would be appropriate is that there is evidence that companies undertaking an acquisition, limit their prior purchases of stock in the open market to around 9 percent as a means of avoiding making disclosures to the investing public.

Obviously, 10 percent of the securities of the larger corporations represent very large amounts of money.

S. 3431 would also amend section 13(e) of the Securities Exchange Act of 1934. This section authorizes the Commission to adopt rules and regulations with respect to purchases by certain issuers of their own securities. Subsection (e)(2) provides that a purchase by or for a person in a control relationship with the issuer or a purchase by a person on behalf of the issuer is considered to be a purchase by the issuer for the purpose of the subsection. The present proposal provides the authority of the Commission to adopt such rules and regulations as may be appropriate. It seems unnecessary to place on persons in a control relationship with the issuer all of the requirements, such as notice to shareholders and other restrictions, which may be appropriate for purchases by the issuer of its security.

Section 14(d), which was likewise added by Public Law 90-439, makes it unlawful to make a cash tender offer for securities subject to these provisions without filing with the Commission a statement containing essentially the same information as is provided for in section 13(d) and furnishing such part of this information as the Commission may require to security holders who are invited to tender their shares. Section 14(d) also contains provisions governing the terms of a cash tender offer.

The present bill, S. 3431, would eliminate the exemption contained in section 14(d) for exchange offers of securities registered under the Securities Act of 1933. The exchange offer is a situation where instead of offering cash for the securities of the target company, securities of the acquiring company are offered.

While registration under the Securities Act provides for disclosure and thus is an adequate substitute for the disclosures required by section 14(d), the substantive provisions of the statute as they relate to the terms of the cash tender are not applicable to exchange offers of securities nor does the statute at present provide for regulation of solicitations in opposition to such an exchange offer.

Our information shows that from the effective date of the bill through December 31, 1969, offerings of securities in exchange for other securities in the approximate aggregate amount of \$18 billion were registered with the Commission. I might add, Mr. Chairman, that for the first 7 months of 1970 there have been some \$658 million of securities registered with the Commission for offerings in exchange for securities of other issuers.

These offerings which are exempt from most of the provisions of the law, exceeded in number and in dollar amount the cash tender offers which are subject to existing law. We have noticed a tendency to use exchange offers when an attempt is made to take over large corpora-

tions which would be extremely difficult to finance by means of a cash tender offer. S. 3431, if enacted, would have the desirable result of extending the substantive and other protections of Public Law 90-439 to the larger group of public security holders to whom such offers are made.

The final amendment contained in S. 3431 would be to section 14(e). Existing section 14(e) prohibits false statements and fraudulent or deceptive practices in connection with tender offers, but it does not grant the Commission any rulemaking authority to deal with such practices. Section 5 of S. 3431 would add a sentence granting to the Commission rulemaking power to define and prescribe means reasonably designed to prevent fraudulent, deceptive and manipulative practices. The language in this amendment is identical with that contained in existing section 15(c) (2) of the Exchange Act, which grants the Commission rulemaking power with respect to fraudulent, deceptive or manipulative practices by brokers and dealers in transactions in the over-the-counter markets. The rulemaking power provided for by section 5 of the bill would enable the Commission to deal more effectively with the devices sometimes employed on both sides in contested offers.

For the foregoing reasons the Commission strongly supports the proposal to amend Public Law 90-439.

I understand that today's hearing, insofar as it involves proposed amendments to the takeover bid law, relates not only to S. 3431, to which my testimony has thus far been directed, but also to H.R. 4285. This latter bill was introduced in the House of Representatives by Congressman Monagan and referred to your committee on January 23, 1969, over a year before S. 3431 was introduced in the Senate. I note, however, that it would amend the takeover law in only one respect. It would require that a party attempting to take over should give the Commission and the issuer—the target company—30 days notice. In contrast with this single purpose, S. 3431 provides a comprehensive pattern of changes in the takeover law in five respects, all of which seem to be called for by our experience in administering that law since it was enacted in July of 1968. The Commission accordingly suggests that H.R. 4285 should not be reported out as against S. 3431, the enactment of which the Commission strongly favors.

I might add as an aside, Mr. Chairman, that I recently attended the meeting of the State securities commissioners in your beautiful State of California at San Diego. A number of them expressed to me their interest, that is the State administrators within the various States, in the enactment of this amendment into law.

S. 336—A PROPOSAL TO PERMIT AN EXEMPTION OF SECURITY ISSUES NOT EXCEEDING \$500,000 FROM CERTAIN PROVISIONS

S. 336 would amend section 3(b) of the Securities Act of 1933 so as to increase the maximum aggregate amount of securities of certain issuers offered to the public, which may be exempted from registration under the act pursuant to rules and regulations of the Securities and Exchange Commission, from \$300,000 to \$500,000. The Commission supports this amendment, and if it is enacted the Commission will act promptly to consider what amendments to its rules and regulations are

necessary to give effect to the intent of Congress. A pressing purpose of S. 336 is to aid small businesses in raising capital, and the regulation primarily affected will be the Commission's Regulation A.

At this point, I believe it would be helpful to explain the effect of S. 336 in the context of the general provisions of the Securities Act. The act, as you know, requires that companies proposing to make public offerings of securities file registration statements covering those securities with the Commission, unless the statute provides an exemption. Section 3(b) of the act authorizes the Commission by appropriate rules and regulations to provide such an exemption for offerings not exceeding a specified dollar amount. This dollar amount was set at \$100,000 in 1933 and a 1945 amendment to the Securities Act increased the amount to \$300,000.

The legislative history of the 1945 amendment indicates that the primary reason for the increase then was the desire of Congress to aid small businesses in raising necessary capital for the commencement or expansion of business, and it considered that \$100,000 would, in many cases, be an inadequate amount for the accomplishment of such objectives in view of generally increased costs as compared to those existing when the act was passed in 1933.

An identical situation exists at the present time. Costs have continued to rise throughout the economy with the results that the \$300,000 of 1945 has substantially less purchasing power today. In many cases, it is an inadequate amount to finance properly either a small established business seeking to modernize or expand, or a newly organized venture requiring a substantial amount of seed capital. It would take substantially more dollars now to purchase the same amount of capital goods which could have been bought in 1945 for \$300,000. One purpose of S. 336, then, is simply to update section 3(b) so that the original policy underlying that section will be carried out in present-day economic conditions.

Current economic conditions also present other problems for a company desiring to raise \$300,000 or less through the vehicle of a Regulation A offering. The \$300,000 limitation makes it difficult for issuers to interest investment bankers in such offerings because the larger and more experienced investment banking houses are not interested in underwriting small issues, partly because returns to them would not be commensurate with the effort needed to underwrite such an offering. Where an underwriter can be found, the underwriting commissions for small issues may run as high as 15 percent to 20 percent of the amount sold which, of course, reduces the funds available to the issuer of the securities. The problems facing a small company in obtaining financing may be considerable because such sources as banks and private investors may not be willing or able to provide adequate risk capital. A public offering may therefore be the only viable alternative source of financing, whatever the cost.

This explains, then, why Members of Congress and the financial community have suggested the desirability of a further increase in the \$300,000 limitation. I might mention in passing that this is not the first time such a proposal has been before the Congress. When the Securities Act was amended in 1954, the bill which passed the Senate would have raised the limitation to \$500,000. However, no such provision was

included in the bill which passed the House of Representatives. When the differences in the two versions were submitted to conference, the conference committee declined to accept the Senate version of the bill in this respect, and it was the conference committee's version which was enacted into law.

At the beginning of my comments on this bill, I mentioned that section 3(b) authorizes the Commission to promulgate rules and regulations to give effect to the exemption provided by that section. Several such rules and regulations have been adopted; namely, rules 234, 235, and 236 and regulations A and F. I have copies of these rules and regulations if you wish to include them in the record.

Mr. Moss. I think they would again be of value to the committee in their deliberations. If there is no objection the material will be received and be included in the record at this point. Hearing none, it is so ordered.

(The information referred to follows:)

Rule 234 Exemption of First Lien Notes

(a) Promissory notes directly secured by a first lien on a single parcel of real estate upon which is located a dwelling or other residential or commercial property shall be exempt from registration under the Act if such notes are offered in accordance with the following terms and conditions:

(1) Neither the aggregate unpaid principal amount of the notes secured by the lien on the property nor the aggregate amount at which such notes are offered to the public shall exceed \$100,000;

(2) The aggregate unpaid principal amount of all indebtedness secured by the first lien on the property shall not exceed 75 percent of the appraised value of such property;

(3) The principal amount of each note to be offered under this regulation shall not be less than \$500, and the total number of notes secured by the first lien on the property shall not exceed 125; and

(4) The notes shall be sold for cash or purchasers' obligations to pay cash within 60 days after sale.

(b) Interests or participations in, or promissory notes secured by a lien upon, another note or notes which are in turn secured by a first lien upon real estate shall not be deemed to be directly secured by a first lien on real estate within the meaning of this rule.

(c) No exemption shall be available under this rule for any investment contract or other security the offering of which is involved in the offering of the notes directly secured by a first lien upon real estate.

Rule 235 Exemption of Securities of Cooperative Housing Corporations

(a) Stock or other securities representing membership in any cooperative housing corporation shall be exempt from registration under the Act if the terms and conditions of this

rule are met. The term "cooperative housing corporation" as used herein means a corporation each of whose members is entitled, solely by reason of his membership in such corporation—

(1) To occupy for dwelling purposes a house, or an apartment in a building, owned or leased or to be owned or leased, by such corporation; or

(2) To purchase a dwelling constructed or to be constructed by such corporation.

(b) Such corporation shall not be or intend to be engaged in any business or activity other than the ownership, leasing, management or construction of residential properties for its members, except to the extent that such business or activity is incidental to the ownership, leasing, management, or construction of such residential properties.

(c) The securities shall be issued only in connection with the sale or lease of dwelling units to persons who are or thereupon become members of the corporation and shall be transferable by the purchasers only in connection with the transfer of such dwelling units or leases to other persons who are or thereupon become such members.

(d) The aggregate offering price of all securities of the corporation offered pursuant to this rule during any 12-month period shall not exceed \$300,000, including any unsold securities initially offered prior to the beginning of such period.

(e) The aggregate offering price of securities offered pursuant to this rule shall be computed upon the basis of the price at which the securities are to be sold to members or, if such price is not separately specified, upon the basis of the par or stated value of the securities to be offered.

Rule 236 Exemption of Shares Offered in Connection With Certain Transactions

Shares of stock or similar security offered to provide funds to be distributed to shareholders of the issuer of such securities in lieu of issuing fractional shares, scrip certificates or order forms, in connection with a stock dividend, stock split, reverse stock split, conversion, merger or similar transaction, shall be exempt from registration under the Act if the following conditions are met:

(a) The issuer of such shares is required to file and has filed reports with the Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934;

(b) The aggregate gross proceeds from the sale of all shares offered in connection with the transaction for the purpose of providing such funds does not exceed \$100,000; and

(c) At least 10 days prior to the offering of the shares, the issuer shall furnish to the Commission in writing the following information: (i) that it proposes to offer shares in reliance upon the exemption provided by this rule; (ii) the estimated number of shares to be so offered; (iii) the aggregate market value of such shares as of the latest practicable date; and (iv) a brief description of the transaction in connection with which the shares are to be offered.

REGULATION A

GENERAL EXEMPTION
FROM REGISTRATION UNDER
THE SECURITIES ACT OF 1933

(As in Effect November 1, 1968)



**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

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GENERAL EXEMPTION

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REGULATION A—GENERAL EXEMPTION

Rule 251 Definitions of Terms Used in This Regulation

As used in this regulation, the following terms shall have the meaning indicated:

Affiliate. An "affiliate" of an issuer is a person controlling, controlled by or under common control with such issuer.

Predecessor. A "predecessor" of an issuer is (i) a person the major portion of whose assets have been acquired directly or indirectly by the issuer, or (ii) a person from which the issuer acquired directly or indirectly the major portion of its assets.

Promoter. The term "promoter" includes—

(a) Any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes the initiative in founding and organizing the business or enterprise of an issuer:

(b) Any person who, in connection with the founding or organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10 percent or more of any class of securities of the issuer or 10 percent or more of the proceeds from the sale of any class of securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this paragraph if such person does not otherwise take part in founding and organizing the enterprise.

Province. A "Province" is any Province or Territory of Canada.

Resident. A "resident" of a specified country is an individual resident of such country or a corporation or other organization which is incorporated or organized under the laws of such country or any of its political subdivisions.

State. A "State" is any State, Territory or insular possession of the United States, or the District of Columbia.

Underwriter. The term "underwriter" shall have the meaning given in section 2(11) of the Act.

Rule 252 Securities Exempted

(a) Except as hereinafter provided in this regulation, securities issued by any of the following persons shall be exempt from registration under the Act if offered in accordance with the terms and conditions of this regulation:

(1) Any corporation, unincorporated association or trust (i) which is incorporated or organized under the laws of the United States or Canada or any State or Province thereof and (ii) which has or proposes to have its principal business operations in the United States or Canada; or

(2) Any individual who is a resident of, and has or proposes to have his principal business operations in, any State or Province; or

(3) In the case of an offering to existing security holders on a pro rata basis pursuant to warrants or rights, any direct or indirect majority-owned subsidiary of any issuer specified in (1) above which has securities registered on a national securities exchange pursuant to the provisions of the Securities Exchange Act of 1934.

(b) No exemption under this regulation shall be available for any of the following securities:

(1) Fractional undivided interests in oil or gas rights as defined in Rule 300, or similar interests in other mineral rights;

(2) Securities of any investment company registered or required to be registered under the Investment Company Act of 1940.

(c) No exemption under this regulation shall be available for the securities of any issuer if such issuer, any of its predecessors or any affiliated issuer—

(1) Has filed a registration statement which is the subject of any proceeding or examination under section 8 of the Act, or is the subject of any refusal order or stop order entered thereunder within 5 years prior to the filing of the notification required by Rule 255;

(2) Is subject to pending proceedings under Rule 261 or any similar rule adopted under section 3(b) of the Act, or to an order en-

tered thereunder within 5 years prior to the filing of such notification;

(3) Has been convicted within 5 years prior to the filing of such notification of any crime or offense involving the purchase or sale of securities;

(4) Is subject to any order, judgment or decree of any court of competent jurisdiction, entered within 5 years prior to the filing of such notification, temporarily or permanently restraining or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of securities; or

(5) Is subject to a United States Post Office fraud order.

(d) No exemption under this regulation shall be available for the securities of any issuer, if any of its directors, officers or principal security holders, any of its promoters presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter—

(1) Has been convicted within 10 years prior to the filing of the notification required by Rule 255 of any crime or offense involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer or investment adviser;

(2) Is subject to any order, judgment or decree of any court of competent jurisdiction temporarily or permanently enjoining or restraining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer or investment adviser;

(3) Is subject to an order of the Commission entered pursuant to section 15(b) of the Securities Exchange Act of 1934; has been found by the Commission to be a cause of any such order which is still in effect; or is subject to an order of the Commission entered pursuant to section 203(d) or (e) of the Investment Advisors Act of 1940;

(4) Has been and is suspended or expelled from membership in a national or provincial securities dealers association or a national se-

curities exchange or a Canadian securities exchange for conduct inconsistent with just and equitable principles of trade; or

(5) Is subject to a United States Post Office fraud order.

(e) No exemption under this regulation shall be available for the securities of any issuer if any underwriter of such securities, or any director, officer or partner of any such underwriter was, or was named as, an underwriter of any securities—

(1) Covered by any registration statement which is the subject of any proceeding or examination under section 8 of the Act, or is the subject of any refusal order or stop order entered thereunder within 5 years prior to the filing of the notification required by Rule 255; or

(2) Covered by an filing which is subject to pending proceedings under Rule 261 or any similar rule adopted under section 3(b) of the Act, or to an order entered thereunder within 5 years prior to the filing of such notification.

(f) Paragraph (c), (d) or (e) shall not apply to the securities of any issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied. Any such determination by the Commission shall be without prejudice to any other action by the Commission in any other proceeding or matter with respect to the issuer or any other person.

Rule 253 Special Requirements for Certain Offerings

(a) The following provisions of this rule shall apply to any offering under this regulation of securities of any issuer which—

(1) was incorporated or organized within 1 year prior to the date of filing the notification required by Rule 255 and has not had a net income from operations; or

(2) was incorporated or organized more than 1 year prior to such date and has not had a net income from operations, of the character in which the issuer intends to engage, for at least one of the last 2 fiscal years.

(b) If the issuer conducts or proposes to conduct its principal business operations in

Canada, the securities to be offered hereunder shall be qualified or made eligible for offering in the Province in which such operations are or will be conducted. The securities of any other issuer incorporated or organized under the laws of Canada or any Province thereof shall be qualified or made eligible for offering in the Province in which the issuer has its principal office or principal place of business in Canada. All securities subject to this paragraph shall be offered in the Province in which they are qualified or made eligible for offering, concurrently with the offering in the United States. Issuers engaged in extractive or manufacturing enterprises shall be deemed to have their principal business operations in the Province in which their principal plants or other properties are located.

(c) In computing the amount of securities which may be offered hereunder, there shall be included, in addition to the securities specified in Rule 254—

(1) All securities issued prior to the filing of the notification, or proposed to be issued, for a consideration consisting in whole or in part of assets or services and held by the person to whom issued; and

(2) All securities issued to and held by or proposed to be issued, pursuant to options or otherwise, to any director, officer or promoter of the issuer, or to any underwriter, dealer or security salesman:

Provided, That such securities need not be included to the extent that effective provision is made, by escrow arrangements or otherwise, to assure that none of such securities or any interest therein will be reoffered to the public within 1 year after the commencement of the offering hereunder and that any reoffering of such securities will be made in accordance with the applicable provisions of the Act.

(d) None of the securities to be offered hereunder shall be offered for the account of any person other than the issuer of such securities.

(e) Rule 257 shall not apply to any offering of securities under this regulation by any issuer which is subject to this rule.

Rule 254 Amount of Securities Exempted

(a) The aggregate offering price of all of the following securities of (i) the issuer, (ii) its predecessors and (iii) all of its affiliates which were incorporated or organized, or became affiliates of the issuer, within the past 2 years, shall not exceed \$300,000:

(1) All securities of such persons presently being offered under this regulation, or under any other regulation adopted pursuant to section 3(b) of the Act, or specified in the notification required by Rule 255 as proposed to be so offered;

(2) All securities of such persons previously sold pursuant to an offering under this regulation, or under any other regulation adopted pursuant to section 3(b) of the Act, commenced within 1 year prior to the commencement of the proposed offering; and

(3) All securities of such persons sold in violation of section 5(a) of the Act within 1 year prior to the commencement of the proposed offering.

Notwithstanding the foregoing, the aggregate offering price of all securities of such persons so offered or sold on behalf of any one person other than the issuer or issuers of such securities shall not exceed \$100,000, except that this limitation shall not apply if the securities are to be offered on behalf of the estate of a deceased person within 2 years after the death of such person.

(b) The aggregate offering price of securities which have a determinable market value shall be computed upon the basis of such market value as determined from transactions or quotations on a specified date within 15 days prior to the date of filing the notification, or the offering price to the public, whichever is higher: *Provided*, That the aggregate gross proceeds actually received from the public for the securities offered hereunder shall not exceed the maximum aggregate offering price permitted in the particular case by paragraph (a) above.

(c) Where securities which have no determinable market value are offered in exchange for outstanding securities, claims, property, or services, the aggregate offering price thereof

shall be computed at the public offering price of securities of the same class for cash, or if no cash offering is to be made, then upon the basis of the value of the securities, claims, property or services to be received in exchange, as established by bona fide sales made within a reasonable time, or in the absence of such sales, upon the basis of the fair value of the securities, claims, property or services to be received in exchange, as determined by some accepted standard.

(d) The following securities need not be included in computing the amount of securities which may be offered under this regulation:

(1) Unsold securities the offering of which has been withdrawn with the consent of the Commission by amending the pertinent notification to reduce the amount stated therein as proposed to be offered;

(2) Securities acquired or to be acquired, otherwise than for distribution by a single holder of the majority of the outstanding voting stock of the issuer in connection with a pro rata offering to stockholders;

(3) In the case of an offering by an issuer to existing security holders on a pro rata basis pursuant to warrants or rights, that portion of the offering made outside of the United States and Canada;

(4) In the case of an offering of interests in an unincorporated theatrical production, interests in any affiliated unincorporated theatrical production; or

(5) In the case of an offering of interests in an unincorporated issuer organized to hold title to, lease, operate or improve specific real property, interests in any affiliated issuer organized to hold title to, lease, operate or improve other specific real property.

Rule 255 Filing of Notification on Form 1-A

(a) At least 10 days (Saturdays, Sundays and holidays excluded) prior to the date on which the initial offering of any securities is to be made under this regulation, there shall be filed with the Regional Office of the Commission specified below four copies of a notification on Form 1-A. The Commission may, however, in its discretion, authorize the commencement of the offering prior to the expira-

tion of such 10-day period upon a written request for such authorization.

(b) The notification shall be signed by the issuer and each person, other than the issuer, for whose account any of the securities are to be offered. If the notification is signed by any person on behalf of any other person, evidence of authority to sign on behalf of such other person shall be filed with the notification, except where an officer of the issuer signs on behalf of the issuer.

(c) The notification shall be filed with the Regional Office for the region in which the issuer's principal business operations are conducted or proposed to be conducted in the United States. The notification of an issuer having or proposing to have its principal business operations in Canada shall be filed with the Regional Office nearest the place where the issuer's principal business operations are conducted or proposed to be conducted, unless the offering is to be made through a principal underwriter located in the United States, in which case the notification shall be filed with the Regional Office for the region in which such underwriter has its principal office.

(d) Any amendment to the notification shall be signed in the same manner as the original notification. Four copies of such amendment shall be filed with the same Regional Office as the original notification at least 10 days prior to any offering of the securities subsequent to the filing of such amendment, or such shorter period as the Commission, in its discretion, may authorize upon a written request for such authorization.

(e) A notification or any exhibit or other document filed as a part thereof may be withdrawn upon application unless the notification is subject to an order under Rule 261 at the time the application is filed or becomes subject to such an order within 15 days (Saturdays, Sundays and holidays excluded) thereafter: *Provided*, That a notification may not be withdrawn after any of the securities proposed to be offered thereunder have been sold. Any such application shall be signed in the same manner and filed with the same Regional Office as the notification.

Rule 256 Filing and Use of the Offering Circular

(a) Except as provided in paragraph (c) of this rule and in Rule 257—

(1) No written offer of securities of any issuer shall be made under this regulation unless an offering circular containing the information specified in Schedule I of Form 1-A is concurrently given or has previously been given to the person to whom the offer is made, or has been sent to such person under such circumstances that it would normally have been received by him at or prior to the time of such written offer; and

(2) No securities of such issuer shall be sold under this regulation unless such an offering circular is given to the person to whom the securities were sold, or is sent to such person under such circumstances that it would normally be received by him, with or prior to any confirmation of the sale, or prior to the payment by him of all or any part of the purchase price of the securities, whichever first occurs.

(b) In the case of transactions effected on a securities exchange, delivery of the offering circular shall be deemed to have been made if prior to such transactions a reasonable number of copies of the offering circular have been furnished to the exchange for delivery to any person or persons requesting copies thereof.

(c) Any written advertisement or other written communication, or any radio or television broadcast, which states from whom an offering circular containing the information specified in Schedule I of Form 1-A may be obtained and in addition contains no more than the following information may be published, distributed or broadcast at or after the commencement of the public offering to any person prior to sending or giving such person a copy of such circular:

- (1) The name of the issuer of such security;
- (2) The title of the security, the amount being offered, and the per-unit offering price to the public;
- (3) The identity of the general type of business of the issuer; and
- (4) A brief statement as to the general character and location of its property.

(d) The offering circular may be printed,

mimeographed, lithographed or typewritten, or prepared by any similar process which will result in clearly legible copies. If printed, it shall be set in roman type at least as large as 10-point modern type, except that financial statements and other statistical or tabular matter may be set in roman type at least as large as 8-point modern type. All type shall be leaded at least 2 points.

(e) If the offering is not completed within 9 months from the date of the offering circular, a revised offering circular shall be prepared, filed and used in accordance with these rules as for an original offering circular, except that in the case of offerings under stock purchase, savings, stock option or other similar plans for the benefit of employees, if the offering is not completed within 12 months from the date of the offering circular, a revised offering circular shall be prepared, filed and used in accordance with these rules as for an original offering circular. In no event shall an offering circular be used which is false or misleading in light of the circumstances then existing.

(f) Four copies of the offering circular required by this rule, which is to be used at the commencement of the offering, shall be filed with the notification required by Rule 255 at the time such notification is filed and shall be deemed a part thereof. If the offering circular is thereafter revised or amended, four copies of such revised or amended circular shall be filed as an amendment to the notification with the appropriate Regional Office of the Commission at least 10 days prior to its use, or such shorter period as the Commission may, in its discretion, authorize upon a written request for such authorization.

Rule 257 Offerings Not in Excess of \$50,000

Except as to issues specified in paragraph (a) of Rule 253 and issues of assessable stock, the offering circular specified in Rule 256 need not be filed or used in connection with an offering of securities under this regulation if the aggregate offering price of all securities of the issuer, its predecessors and affiliates offered or sold without the use of such an offering circular does not exceed \$50,000, computed

Rule 257

SECURITIES AND EXCHANGE COMMISSION

in accordance with Rule 254, provided the following conditions are met:

(a) There shall be filed as an exhibit to the notification four copies of a statement setting forth the information (other than financial statements) required by Schedule I of Form 1-A to be set forth in an offering circular.

(b) No advertisement, article or other communication published in any newspaper, magazine or other periodical and no radio or television broadcast in regard to the offering shall contain more than the following information:

- (1) The name of the issuer of such security;
- (2) The title of the security, amount offered, and the per-unit offering price to the public;
- (3) The identity of the general type of business of the issuer;
- (4) A brief statement as to the general character and location of its property; and
- (5) By whom orders will be filled or from whom further information may be obtained.

Rule 258 Sales Material To Be Filed

Four copies of each of the following communications prepared or authorized by the issuer or anyone associated with the issuer, any of its affiliates or any principal underwriter for use in connection with the offering of any securities under this regulation shall be filed, with the office of the Commission with which the notification is filed, at least 5 days (exclusive of Saturdays, Sundays and holidays) prior to any use thereof, or such shorter period as the Commission, in its discretion, may authorize:

- (a) Every advertisement, article or other communication proposed to be published in any newspaper, magazine or other periodical;
- (b) The script of every radio or television broadcast; and
- (c) Every letter, circular or other written communication proposed to be sent, given or otherwise communicated to more than 10 persons, except offering circulars filed pursuant to Rule 256 (f).

Rule 259 Prohibition of Certain Statements

No offering circular or other written or oral communication used in connection with any offering under this regulation shall contain any language stating or implying that the

Commission has in any way passed upon the merits of, or given approval to, the securities offered or the terms of the offering or has determined that the securities are exempt from registration, or has made any finding that the statements in any such offering circular or other communication are accurate or complete.

Rule 260 Reports of Sales Hereunder

Within 30 days after the end of each 6-month period following the date of the original offering circular required by Rule 256, or of the statement required by Rule 257, the issuer or other person for whose account the securities are offered shall file with the Regional Office of the Commission with which the notification was filed four copies of a report on Form 2-A containing the information called for by that form. A final report shall be made upon completion or termination of the offering and may be made prior to the end of the 6-month period in which the last sale is made.

Rule 261 Suspension of Exemption

(a) The Commission may, at any time after the filing of a notification, enter an order temporarily suspending the exemption, if it has reason to believe that—

- (1) No exemption is available under this regulation for the securities purported to be offered hereunder or any of the terms or conditions of this regulation have not been complied with, including failure to file any report as required by Rule 260.
- (2) The notification, the offering circular or any other sales literature contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;
- (3) The offering is being made or would be made in violation of section 17 of the Act;
- (4) Any event has occurred after the filing of the notification which would have rendered the exemption hereunder unavailable if it had occurred prior to such filing;
- (5) Any person specified in paragraph (c)

of Rule 252 has been indicted for any crime or offense of the character specified in subparagraph (3) thereof, or any proceeding has been initiated for the purpose of enjoining any such person from engaging in or continuing any conduct or practice of the character specified in subparagraph (4) of such paragraph;

(6) Any person specified in paragraph (d) of Rule 252 has been indicted for any crime or offense of the character specified in subparagraph (1) thereof, or any proceeding has been initiated for the purpose of enjoining any such person from engaging in or continuing any conduct or practice of the character specified in subparagraph (2) of such paragraph; or

(7) The issuer or any promoter, officer, director or underwriter has failed to cooperate, or has obstructed or refused to permit the making of an investigation by the Commission in connection with any offering made or proposed to be made hereunder.

(b) Upon the entry of an order under paragraph (a) of this rule, the Commission will promptly give notice to the persons on whose behalf the notification was filed (i) that such order has been entered, together with a brief statement of the reasons for the entry of the order, and (ii) that the Commission, upon receipt of a written request within 30 days after the entry of such order, will, within 20 days after the receipt of such request, set the matter down for hearing at a place to be designated by the Commission. If no hearing is requested and none is ordered by the Commission, the order shall become permanent on the 30th day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission. Where a hearing is requested or is ordered by the Commission, the Commission will, after notice of and opportunity for such hearing, either vacate the order or enter an order permanently suspending the exemption.

(c) The Commission may at any time after notice of an opportunity for hearing, enter an order permanently suspending the exemption for any reason upon which it could have entered a temporary suspension order under paragraph (a) of this rule. Any such order

shall remain in effect until vacated by the Commission.

(d) All notices required by this rule shall be given to the person or persons on whose behalf the notification was filed by personal service, registered or certified mail or confirmed telegraphic notice at the addresses of such persons given in the notification.

(Amended, para. (d), eff. Dec. 4, 1964, Release 33-4744.)

Rule 262 Consent to Service of Process

(a) If the issuer, any of its directors or officers, any person for whose account any of the securities are to be offered, or any underwriter of the securities to be offered, is not a resident of the United States, each such non-resident person shall, at the time of filing the notification required by Rule 255, furnish to the Commission in a form prescribed by or acceptable to it, a written irrevocable consent and power of attorney which—

(1) Designates the Securities and Exchange Commission as an agent upon whom may be served any process, pleadings, or other papers in any civil suit or action brought against the person executing the consent and power of attorney or to which he has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of the United States, where the cause of action (i) accrues on or after the effective date of this rule, and (ii) arises out of any offering made or purported to be made under this regulation or any purchase or sale of any security in connection therewith; and

(2) Stipulates and agrees that any such civil suit or action may be commenced by the service of process upon the Commission and the forwarding of a copy thereof as provided in paragraph (b) of this rule, and that the service as aforesaid of any such process, pleadings, or other papers upon the Commission shall be taken and held in all courts to be as valid and binding as if due personal service thereof had been made.

(b) Service of any process, pleadings or other papers on the Commission under this rule shall be made by delivering the requisite

number of copies thereof to the Secretary of the Commission or to such other person as the Commission may authorize to act in its behalf. Whenever any process, pleadings or other papers as aforesaid are served upon the Commission, it shall promptly forward a copy thereof by registered or certified mail to the appropriate defendants at their last address of record filed with the Commission. The Commission shall be furnished a sufficient number of copies for such purpose, and one copy for its files.

(Amended para. (b) eff. Dec. 4, 1964, Release 33-4744).

Rule 263 Notice of Delayed or Suspended Offering and Sale

If within 3 business days after the issuer has received notice that the Commission has

no further comments with respect to the notification a bona fide effort is not made to proceed with the offering and sale of the securities proposed to be offered under this regulation, or if the offering or sale of such securities is suspended by the issuer or any underwriter within 15 days after the issuer has received such notice, a notice of the delay or suspension, stating the reasons therefor, shall be filed by the issuer or underwriter with the Regional Office of the Commission with which the notification was filed, unless such information is set forth in the offering circular. Such notice shall be sent promptly by telegraph or air mail and if sent by telegraph shall be confirmed in writing within a reasonable time by the filing of a signed copy of the notice.

REGULATION A

FORM 1-A—NOTIFICATION UNDER REGULATION A¹**Item 1. The Issuer.**

Furnish the following information as to the issuer of the securities proposed to be offered hereunder:

- (a) Exact name of issuer;
- (b) Date of incorporation or organization and name of State or Province or other jurisdiction under the laws of which it was incorporated or organized;
- (c) Name of State or Province or other jurisdiction in which issuer's principal business operations are conducted or proposed to be conducted;
- (d) If the issuer is subject to Rule 253(b), names of all States and Provinces in which the issuer owns or leases, or proposes to own or lease, any mine, plant or other physical property, indicating all such properties held or to be held in each such State or Province. Furnish similar information as to any such properties held or to be held in any country other than the United States or Canada.

Item 2. Predecessors, Affiliates and Principal Security Holders of Issuer.

List the full name and complete address of each of the following persons:

- (a) Each predecessor of the issuer. If any such predecessor is no longer in existence, so state and give its last address prior to its dissolution.
- (b) Each affiliate of the issuer, indicating the nature of the affiliation.
- (c) Each person who owns of record, or is known to own beneficially, 10 percent or more of the outstanding securities of any class of the issuer, stating the title and amount owned by each such person.

Item 3. Directors, Officers and Promoters.

List the full name and complete residence address of each of the following persons:

- (a) Each director of the issuer;
- (b) Each officer of the issuer, indicating all positions and offices held with the issuer;
- (c) If the issuer was incorporated or organized within the past 3 years, each promoter of the issuer.

Item 4. Counsel for Issuer and Underwriters.

Give the name and address of counsel for the issuer in connection with the proposed offering. Furnish similar information as to any counsel for the underwriters.

Item 5. Actions against the Issuer or its Predecessors or Affiliated Issuers.

State whether the issuer or any of its predecessors or affiliated issuers—

- (a) Has been convicted of any crime or offense specified in paragraph (c) (3) of Rule 252;
- (b) Is subject to any order, judgment or decree specified in paragraph (c) (4) of that rule; or
- (c) Is subject to a U.S. Post Office fraud order.

Instruction. If the answer to any of the foregoing sub-items is in the affirmative, explain fully, giving the pertinent names, dates and other details.

¹ The notification shall contain the item numbers and captions of all items, but the text of the items may be omitted if all of the information required by each item is clearly set forth under the respective item number and caption.

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Item 6. Actions against Directors, Officers and Others.

State whether any person specified in paragraph (d) of Rule 252—

- (a) Has been convicted of any crime or offense specified in subparagraph (1) thereof;
- (b) Is subject to any order, judgment or decree specified in subparagraph (2) thereof;
- (c) Has been and is suspended or expelled from membership in any national or provincial securities dealers association or national securities exchange or Canadian securities exchange;
- (d) Is subject to a U.S. Post Office fraud order.

Instruction. If the answer to any of the foregoing sub-items is in the affirmative, explain fully, giving the pertinent names, dates and other details.

Item 7. Connection of Underwriters with Other Offerings.

State whether or not any underwriter or other person specified in paragraph (e) of Rule 252 was, or was named as, an underwriter of any securities covered by a registration statement or other filing of the character specified in subparagraph (1) or (2) of that paragraph.

Instruction. If the answer to any of the foregoing sub-items is in the affirmative, explain fully, giving the pertinent names, dates and other details.

Item 8. Jurisdictions in which Securities are to be Offered.

(a) If the issuer is subject to Rule 253 (b), state the Province in which the securities covered by this notification have been or will be qualified or made eligible for offering.

(b) List the names of the States, Provinces and other jurisdictions in which the securities covered by this notification are proposed to be offered through underwriters, dealers or salesmen in such jurisdictions.

(c) If the offering is to be made by advertisements, mail, telephone or otherwise in States, Provinces or other jurisdictions other than those listed under (b) above, describe the methods proposed to be employed in making the offering therein and list such States, Provinces or other jurisdictions to the extent that they are known.

(d) If the offering or any part thereof is to be made by use of the facilities of any securities exchange, name the exchange.

Note. No securities shall be offered or sold in any other State, Province or other jurisdiction or by use of the facilities of any other exchange until an amendment to the notification has been filed listing the names of the additional jurisdictions or exchanges.

Item 9. Unregistered Securities Issued or Sold Within One Year.

(a) As to any unregistered securities issued by the issuer or any of its predecessors or affiliated issuers within 1 year prior to the filing of this notification, state (i) the name of such issuer; (ii) the title and amount of securities issued; (iii) the aggregate offering price or other consideration for which they were issued and the basis for computing the amount thereof; and (iv) the names of the persons or the identity of the class of persons to whom the securities were issued.

(b) As to any unregistered securities of the issuer or any of its predecessors or affiliated issuers which were sold within 1 year prior to the filing of this notification by or for the account of any person who at the time was a director, officer, promoter or principal security holder of the issuer of such securities, or was an underwriter of any securities of such issuer, furnish the information specified in (i) through (iv) or paragraph (a).

(c) Indicate the section of the Act or rule or regulation of the Commission under which exemption from registration was claimed with respect to such securities and state briefly the facts relied upon for the exemption.

Item 10. Other Present or Proposed Offerings.

State whether or not the issuer or any of its affiliated issuers is presently offering or presently contemplates the offering of any securities, in the United States or Canada, in addition to those covered by this notification. If so, describe fully the present or proposed offering.

REGULATION A

Item 11. Exhibits.

Four copies of each of the documents specified below shall be filed as exhibits to the notification. List under this item all such documents filed.

(a) Any indenture or other instruments defining the rights of holders of debt securities to be offered hereunder. If equity securities are to be offered, furnish copies of the provisions of the governing instruments defining the rights of holders of such securities.

(b) All underwriting contracts relating to the securities to be offered hereunder.

(c) A written consent and certification, in the form set forth below, signed by each underwriter of the securities proposed to be offered hereunder. All underwriters may, with appropriate modifications, sign the same consent and certification or separate consents and certifications may be signed by any underwriter or group of underwriters. At least one copy of each consent and certification shall be signed manually.

(d) If any of the securities proposed to be offered hereunder are to be offered for the account of any person other than the issuer, a written statement signed by the issuer representing that the proposed offering will not interfere with any needed financing by the issuer under this regulation.

(e) Each consent to service of process required by Rule 262. Each such consent shall be prepared and executed in conformity with the appropriate form prescribed therefor. At least one copy of each such consent shall be signed manually. Any copies not manually signed shall bear typed or printed signatures.

(f) The offering circular required by Rule 256, or if the offering is to be made pursuant to Rule 257, the statement required by paragraph (a) of that rule and any offering circular to be used in connection with such offering.

(g) If any accountant, engineer, geologist, or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the notification required by Rule 255, the offering circular required by Rule 256 or the statement required by Rule 257, or is named as having prepared or certified a report or valuation, whether or not for use in connection with the notification, offering circular or statement, the written consent of such person shall be filed unless the Commission dispenses with such filing as impracticable or as involving undue hardship.

(h) Any escrow or other similar arrangement relied upon to meet the requirements of Rule 253 (c).

SIGNATURE

This notification has been signed in the City of _____ State (or Province) of _____ on _____, 19 _____

(Issuer)

By _____

(Name and Title)

(Selling security holder)

CONSENT AND CERTIFICATION BY UNDERWRITER

1. The undersigned hereby consent to being named as underwriter in a notification and offering circular filed with the Securities and Exchange Commission by (*name of issuer*) pursuant to Regulation A in connection with a proposed offering of (*title of securities*) to the public.
2. The undersigned hereby certifies that it furnished the statements and information set forth

¹ The notification will be signed in accordance with Rule 255. At least one copy shall be signed manually by or on behalf of the issuer and each selling security holder. Any copies not manually signed shall bear typed or printed signatures.

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in such notification and offering circular with respect to the undersigned, its directors and officers or partners, that such statements and information are accurate, complete and fully responsive to the requirements of Form 1-A and Schedule I thereto, and do not omit any information required to be stated therein with respect of any of such persons, or necessary to make the statements and information therein with respect to any of them not misleading.

(Underwriter)

By -----

(Principal Officer)

Date -----

REGULATION A

**SCHEDULE I—INFORMATION TO BE INCLUDED IN THE OFFERING
CIRCULAR REQUIRED BY RULE 256**

The offering circular required by Rule 256, or statement required by Rule 257, shall be dated and shall contain the following information:

1. The following statement shall be set forth on the outside front cover page of the offering circular in capital letters in type as large as that used generally in the body of the circular:

THESE SECURITIES ARE OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION. THE COMMISSION DOES NOT PASS UPON THE MERITS OF ANY SECURITIES NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF ANY OFFERING CIRCULAR OR OTHER SELLING LITERATURE.

2. State the exact name and address of the issuer, the name of the State or other jurisdiction under the laws of which it was incorporated or organized and the date of its incorporation or organization.

3. (a) Give the following information, in the tabular form indicated, on the outside front cover page of the offering circular on a per-share or other unit basis.

Offering price to public	Underwriting discounts or commissions	Proceeds to issuer or other persons
-----------------------------	---	--

(b) If any of the securities are to be offered for the account of any person other than the issuer, give the name and address of each such security holder, the total amount he owns and the amount to be offered hereunder for his account.

4. (a) State the amount of securities to be offered pursuant to this regulation, the aggregate offering price to the public, the aggregate underwriting discounts or commissions, the amount of expenses of the issuer and the amount of expenses of the underwriters to be borne by the issuer, and the aggregate proceeds to the issuer or security holders for whose account the securities are to be offered.

(b) If the securities are not to be offered for cash, state the basis upon which the offering is to be made.

5. Describe briefly the method by which the securities are to be offered and if the offering is to be made by or through underwriters, the name and address of each underwriter and the amount of the participation of each such underwriter, indicating the nature of any material relationship between the issuer and such underwriter.

6. (a) Furnish a reasonably itemized statement of the purposes for which the net cash proceeds to the issuer from the sale of the securities are to be used and the amount to be used for each such purpose, indicating in what order of priority the proceeds will be used for the respective purposes.

(b) Describe any arrangements for the return of funds to subscribers if all of the securities to be offered are not sold; if there are no such arrangements, so state.

7. Give a brief description of the securities to be offered pursuant to this regulation. Include the following information:

(a) In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or noncumulative; a brief indication of the preference, if any; and if convertible, the conversion rate.

(b) In the case of debt securities, the rate of interest; the date of maturity, or if the issue matures serially, a brief indication of the serial maturities, such as "maturing serially from 1965 to 1975"; if the payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and if convertible, the conversion rate.

(c) In the case of any other kind of securities, appropriate information of a comparable character.

8A. Mining business. If the issuer is engaged or proposes to engage in mining or exploratory mining operations, briefly describe the business or proposed business of the issuer in accordance with the following instructions:

(a) Give the location and means of access to the mining properties now held or intended

to be acquired and the nature of the title under which such properties are held or intended to be held. Indicate any known risks to which such title may be subject.

(b) Identify the principal metallic or other constituents of the deposits to be explored or developed and describe the characteristics of such deposits. No claim shall be made as to the existence of a body of ore unless it has been sufficiently tested to be properly classified as "proven" or "probable" ore, as defined below. If the work done has not established the existence of proven or probable ore, a statement shall be made that no body of commercial ore is known to exist on the property.

(c) The term "proven ore" means a body of ore so extensively sampled that the risk of failure in continuity of the ore in such body is reduced to a minimum. The term "probable ore" means ore as to which the risk of failure in continuity is greater than for proven ore, but as to which there is sufficient warrant for assuming continuity of the ore.

(d) If statements are made as to the existence of proven or probable ore, furnish separately for the information of the Commission copies of the pertinent maps and other supporting data, including calculations, with respect to such ore. Geologists' and engineers' reports, if used in an offering circular, shall be written in a clear and concise form.

(e) If the properties are known to have been previously explored, developed or mined by anyone and that fact or the results of such previous work is material, furnish information as to such work insofar as it is known and material.

8B. Oil or gas business. If the issuer is engaged or proposes to engage in the oil or gas business, briefly describe the business or proposed business of the issuer in accordance with the following instructions:

(a) State the area and location of the various properties proposed to be developed or exploited by the issuer and the nature of the issuer's interest therein.

(b) State the development which has occurred to date on or near the properties held. If no such development has occurred, a statement to that effect shall be made.

(c) State (in tabular form), for all productive properties, net production of oil and gas to issuer's interest from each of the properties by years for the past 4 years prior to the latest year, and by months for the latest year, as well as the number of net producing wells owned by the issuer which contributed to the production during each of the time periods involved.

(d) State the estimated future reserves net to issuer's interest in such properties which are proved.

(e) If statements concerning geology or engineering are made, furnish separately for the information of the Commission copies of the pertinent reports and other supporting data. Geologists' and engineers' reports, if used in an offering circular, shall be written in a clear and concise form.

8C. Other business. If the issuer is engaged or proposes to engage in any business other than those specified in Items 8A and 8B, briefly describe the business or proposed business of the issuer in accordance with the following instructions:

(a) State the nature of issuer's present or proposed products or services, the principal market therefor and the length of time issuer has been in commercial production.

(b) State the location and general character of the plants or other physical properties now held or presently intended to be acquired and the nature of the title under which such properties are held or proposed to be held.

(c) If the issuer intends to exploit or develop any new invention or process, state how such invention or process is to be applied commercially and whether or not it is covered by any patent, issued or pending. Identify by serial number and date any applicable patents or patent applications.

(d) Engineers' and other technical reports, if used in the offering circular, shall be written in a clear and concise form.

9. (a) Give the full names and complete residence addresses of all directors and officers of the issuer and of any person or persons controlling the issuer. If the issuer was incorporated or organized within the last 3 years,

furnish similar information as to all promoters of the issuer.

(b) State the aggregate annual remuneration of all directors and officers of the issuer as a group and the annual remuneration of each of the three highest-paid officers of the issuer.

(c) Describe all direct and indirect interests (by security holdings or otherwise) of each person named in answer to (a) above (i) in the issuer or its affiliates and (ii) in any material transactions within the past 2 years or in any material proposed transactions to which the issuer or any of its predecessors or affiliates was or is to be a party. Include the cost to such persons of any property or services for which any payment by or for the account of the issuer has been or is to be made.

(d) If the issuer was incorporated or organized within the last 3 years, state the percentage of outstanding securities of the issuer which will be held by directors, officers and promoters, as a group, and the percentage of such securities which will be held by the public, if all of the securities to be offered under this regulation are sold, and the respective amounts of cash (including cash expended for property transferred to the issuer) paid therefor by such group and by the public.

10. A brief description of all options or warrants presently outstanding or proposed to be granted to purchase securities of the issuer, including the names of the principal holders of such options or warrants, the cost of the options or warrants to them, the terms and conditions upon which they may be exercised and the price at which the securities may be acquired pursuant to such options or warrants.

11. Furnish appropriate financial statements of the issuer, or of the issuer and its predecessors, as required below. Such statements shall be prepared in accordance with generally accepted accounting principles and practices but need not be certified.

(a) If the issuer is a commercial, industrial or extractive company in the promotional, ex-

ploratory or development stage, the following statements shall be furnished:

(1) Separate statements of (i) assets, (ii) liabilities, and (iii) capital shares, as of a date within 90 days prior to the filing of the notification, or such longer period of time, not exceeding 6 months, as the Commission may permit at the written request of the issuer upon a showing of good cause therefor.

(2) A statement of cash receipts and disbursements for each of at least 2 full fiscal years prior to the date of the statements furnished pursuant to paragraph (1) above, and for the period, if any, between the close of the last full fiscal year and the date of such statements, or for the period of the issuer's existence if less than the period specified above.

In such statements, dollar amounts shall be extended only for cash transactions and transactions involving amounts receivable or payable in cash. Amounts due to or from, or paid to or received from, underwriters, promoters, directors, officers, employees and principal stockholders, shall be stated separately for each such class of persons, if significant in amount. The statement of assets shall include as a separate item unrecovered promotional, exploratory and development costs. The statement of cash receipts and disbursements shall be itemized as appropriate to the nature of the enterprise.

(b) If paragraph (a) does not apply to the issuer, there shall be furnished a balance sheet of the issuer as of the date specified in subparagraph (a)(1) and profit and loss statements and analyses of surplus for the periods specified in subparagraph (a)(2). Even though paragraph (a) may apply to the issuer, a balance sheet in conventional form may nevertheless be furnished in lieu of the statements specified in subparagraph (a)(1) if the assets reflected therein which were acquired in exchange for capital stock are not carried at an amount in excess of identifiable cash cost to promoters, predecessor companies or other transferors.

SECURITIES AND EXCHANGE COMMISSION

FORM 2-A—REPORT PURSUANT TO RULE 260 OF REGULATION A

1. Name of issuer
2. Name of underwriter
3. Date of this report
4. (a) Date offering commenced
- (b) Date offering completed, if completed
- (c) If offering has not commenced, state reasons briefly
5. (a) Total number of shares or other units offered hereunder
- (b) Number of such shares or other units sold from commencement of offering to date
- (c) Number of such shares or other units still being offered
6. (a) Total amount received from public from commencement of offering to date \$
- (b) Underwriting discount allowed \$
- (c) Expenses paid to or for the account of the underwriters \$
- (d) Other expenses paid to date by or for the account of the issuer:
- (1) Legal (including organization) \$
- (2) Accounting \$
- (3) Engineers' fees incurred prior to offering \$
- (4) Printing and advertising \$
- (5) Other \$
- (e) Total costs and expenses ((b), (c), and (d)) \$
- (f) Proceeds to issuer after above deductions ((a) minus (e)) \$
7. Use of net proceeds from commencement of offering to date:
- | | Payments to
officers, di-
rectors and
affiliates | Payments
to others |
|--|---|-----------------------|
| (a) Salaries and fees | \$ | \$ |
| (b) Purchase of real estate | \$ | \$ |
| (c) Purchase and installation of machinery and equipment | \$ | \$ |
| (d) Construction of plant building and facilities | \$ | \$ |
| (e) Development expense (product development, research, patent
costs, etc.) | \$ | \$ |
| (f) Purchase of raw materials, inventories, supplies, etc | \$ | \$ |
| (g) Selling, advertising, and other sales promotion | \$ | \$ |
| (h) Other disbursements | \$ | \$ |
| (i) Totals | \$ | \$ |
| (j) Balance of cash proceeds on hand | | \$ |

Instructions. 1. If the issuer is a mining company, substitute for captions (e), (f) and (g) the following captions: "Road building," "Exploration expense (other than drilling)," "Exploratory drilling" and "Mine Development."

2. If the issuer is an oil or gas company, substitute for captions (e), (f) and (g) the following caption: "Exploratory and other drilling."

8. State briefly the nature and extent of each type of the issuer's principal activities to date.

Instruction. Mining companies shall include exploratory activity, showing the aggregate footage of exploratory drilling and number of holes drilled. Oil and gas companies shall include the number of wells drilled and their depth. Other companies shall include information as to plant construction, development, production and sales.

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9. State whether the offering has been discontinued, and if so, state the date and describe briefly the reasons for such discontinuance.
10. List the names and addresses of all brokers and dealers who have, to the knowledge of the issuer or underwriters, participated in the distribution of the securities offered during the period covered by this report.
- Instruction. In reports made subsequent to the initial report, the information need be given only with respect to persons not previously reported.
11. State the number of shares held by each promoter, director, officer or controlling person of the issuer, if different from the amount stated in the offering circular.

Date -----

By -----

(Issuer)*

(Name and Title)*

Date -----

(Selling security holder)*

*At least one copy of the report shall be signed manually by each person whose signature is required. Any copies not manually signed shall bear typed or printed signatures.

SECURITIES AND EXCHANGE COMMISSION

FORM 3-A—IRREVOCABLE APPOINTMENT BY INDIVIDUAL OF AGENT FOR SERVICE OF PROCESS, PLEADINGS AND OTHER PAPERS

(Pursuant to Regulation A under Securities Act of 1933)

1. I, _____ of _____, hereby designate and appoint, without power of revocation, the United States Securities and Exchange Commission as my agent upon whom may be served all process, pleadings and other papers in any civil suit or action brought against me arising out of any offering made or purported to be made under Regulation A, adopted by the United States Securities and Exchange Commission under the Securities Act of 1933, or any purchase or sale of any securities in connection therewith, in any court of competent jurisdiction, Federal, State or Territorial, located in the United States or in its territories.

2. I hereby consent, stipulate and agree, without power of revocation—

(a) That any civil suit or action brought against me arising out of any offering made or purported to be made under Regulation A, adopted by the United States Securities and Exchange Commission under the Securities Act of 1933, or any purchase or sale of any securities in connection therewith, may be commenced against me in any court of competent jurisdiction, Federal, State, or Territorial, located in the United States or in its territories as defined by the Securities Act of 1933, by service of process upon the United States Securities and Exchange Commission;

(b) That service of process, pleadings or other papers upon the United States Securities and Exchange Commission, as aforesaid, shall be taken and held in all courts to be as valid and as binding upon me as if due personal service had been made upon me; and

(c) That service upon the United States Securities and Exchange Commission may be effected by delivering copies of said process, pleadings, or other papers to the Secretary of the said Commission or any other person designated by it for such purpose, and that the certificate of the Secretary of the United States Securities and Exchange Commission or of such other person reciting that said process, pleadings or other papers were received by the United States Securities and Exchange Commission and that a copy of each such process, pleading, or other paper was forwarded to me at the last address supplied by me shall constitute evidence of such service upon me.

IN WITNESS WHEREOF, I have executed this irrevocable power of attorney, consent, stipulation and agreement at _____ this _____ day of _____, A.D. 19____

State (or Province) of _____ }
 County of _____ } ss. _____ (SEAL)

I, _____, _____ (Name) _____ (Official Position)*

in and for said County in the State (or Province) aforesaid, do hereby certify that _____ (Name of Individual Appointing Agent for Service)

_____ personally appeared before me this day and signed and sealed the above instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal this _____ day of _____, A.D. _____

 (Official Position)

My Commission (or office) expires _____

* Notary Public or other official authorized by law to administer oaths.

Note: The person executing this irrevocable power of attorney, consent, stipulation and agreement should appear before a person authorized to administer acknowledgments in the jurisdiction in which it is executed and acknowledged that he executed it as his free and voluntary act. The acknowledgment should be in the form pre-

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scribed by the law of the jurisdiction in which it is executed. The form of acknowledgment suggested should be used only if it is consistent with the requirements of the law of such jurisdiction.

The failure of any acknowledgement to meet applicable requirements shall not affect the validity or effect of the foregoing irrevocable power of attorney, consent, stipulation and agreement.

SECURITIES AND EXCHANGE COMMISSION

FORM 4-A—IRREVOCABLE APPOINTMENT BY CORPORATION* OF
AGENT FOR SERVICE OF PROCESS, PLEADINGS AND OTHER PAPERS

(Pursuant to Regulation A under Securities Act of 1933)

1. The _____, a
(Name of Corporation)
corporation, duly organized and existing by virtue of the laws of _____
(Name of State or Province), hereby designates and appoints, without power of revocation, the
United States Securities and Exchange Commission, as the agent of said corporation upon whom
may be served all process, pleadings, and other papers in any civil suit or action brought against
said corporation arising out of any offering made or purported to be made under Regulation A,
adopted by the United States Securities and Exchange Commission under the Securities Act of
1933, or any purchase or sale of any securities in connection therewith, in any court of competent
jurisdiction, Federal, State, or Territorial, located in the United States or in its territories.

2. Said corporation, _____, hereby consents, stipulates and agrees,
(Name of Corporation)
without power of revocation—

(a) That any civil suit or action brought against it arising out of any offering made or pur-
ported to be made under Regulation A, adopted by the United States Securities and Exchange
Commission under the Securities Act of 1933, or any purchase or sale of any securities in connection
therewith, may be commenced against it in any court of competent jurisdiction, Federal,
State, or Territorial, located in the United States or in its territories as defined by the Securities
Act of 1933, by service of process upon the United States Securities and Exchange Commission;

(b) That service of process, pleadings, and other papers upon the United States Securities
and Exchange Commission, as aforesaid, shall be taken and held in all courts to be as valid and
as binding upon it as if due personal service thereof had been duly made upon it; and

(c) that service upon the United States Securities and Exchange Commission may be effected
by delivering copies of said process, pleadings or other papers to the Secretary of the said Commis-
sion or any other person designated by it for such purpose, and that the certificate of the Secre-
tary of the United States Securities and Exchange Commission or of such other person reciting
that said process, pleadings or other papers were received by the United States Securities and
Exchange Commission and that a copy of each such process, pleading, or other paper was for-
warded to this corporation at the last address supplied by it shall constitute evidence of such
service upon this corporation.

IN WITNESS WHEREOF the President and Secretary of _____,
(Name of Corporation)
by the authority and direction of the Board of Directors of said corporation, have executed this
irrevocable power of attorney and consent, stipulation and agreement, for and on behalf of the
said corporation, at _____, this _____ day of _____, A.D.

Attest _____
(Secretary) By _____
(Corporate Name)

(Corporate Seal) }
State (or Province) of _____ } ss.
County of _____ }

I, _____, a _____, in and
(Official Position)**
for said County in the State (or Province) aforesaid, do hereby certify that _____
and _____ personally
(Name of President) (Name of Secretary)

*In the case of an association or other form of organization, appropriate revisions should be made.

**Notary Public or other official authorized by law to administer oaths.

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appeared before me this day, stated that they are respectively the President and Secretary of the _____, that they are the same persons named in the foregoing instrument as the President and Secretary of said corporation and that they have been duly authorized to execute said instrument for the corporation, and signed and sealed said instrument for and on behalf of said corporation as its free and voluntary act for the uses and purposes therein set forth.

(Name of Corporation)

Given under my hand and seal this _____ day of _____, A.D. 19 _____

My commission (or office) expires: . _____

(Official Position)

Note: The person (or persons) executing this irrevocable power of attorney, consent, stipulation and agreement should appear before a person authorized to administer acknowledgments in the jurisdiction in which it is executed and acknowledge that he (or they) executed it as his (or their) free and voluntary act. The acknowledgment should be in the form prescribed by the law of the jurisdiction in which it is executed. The form of acknowledgment suggested should be used only if it is consistent with the requirements of the law of such jurisdiction.

The failure of any acknowledgment to meet applicable requirements shall not affect the validity or effect of the foregoing irrevocable power of attorney, consent, stipulation and agreement.

SECURITIES AND EXCHANGE COMMISSION

**FORM 5-A—CERTIFICATE OF RESOLUTION AUTHORIZING IRREVOCA-
BLE APPOINTMENT BY CORPORATION* OF AGENT FOR SERVICE
OF PROCESS, PLEADINGS, AND OTHER PAPERS**

(Pursuant to Regulation A under Securities Act of 1933)

At a duly constituted meeting of the Board of Directors of _____
(Name of Corporation)
 _____, a corporation organized and existing by virtue
 of the laws of _____, held at the office of said corporation
(Name of State or Province)
 at _____ on the _____ day of _____,
 A.D. 19____, the following resolution was adopted:

BE IT RESOLVED that the President and Secretary of this corporation, _____
(Name of Corporation)
 _____, be and hereby are authorized and directed to execute in legal form,
 and to deliver to the United States Securities and Exchange Commission, on behalf of this
 corporation, in such wording as may be prescribed by or acceptable to the United States
 Securities and Exchange Commission,

(1) A power of attorney designating and appointing, without power of revocation, the United States Securities and Exchange Commission as the agent of this corporation upon whom may be served all process, pleadings and other papers in any civil suit or action brought against this corporation arising out of any offering made or purported to be made under Regulation A, adopted by the United States Securities and Exchange Commission under the Securities Act of 1933, or any purchase or sale of any securities in connection therewith, in any court of competent jurisdiction, Federal, State, or Territorial, located in the United States or in its territories as defined by the Securities Act of 1933;

(2) A stipulation, consent and agreement, likewise without power of revocation, that any civil suit or action brought against this corporation arising out of any offering made or purported to be made under Regulation A, adopted by the United States Securities and Exchange Commission under the Securities Act of 1933, or any purchase or sale of any securities in connection therewith, may be commenced against this corporation in any court of competent jurisdiction, Federal, State, or Territorial, located in the United States or in its territories as defined by the Securities Act of 1933, by service of process upon the United States Securities and Exchange Commission; and

(3) A stipulation, consent and agreement that service upon the United States Securities and Exchange Commission may be effected by delivering copies of said process, pleadings or other papers to the Secretary of the United States Securities and Exchange Commission or any other person designated by it for such purpose, that the certificate of the Secretary of the United States Securities and Exchange Commission or of such other person reciting that said process, pleadings or other papers were received by the United States Securities and Exchange Commission and that a copy of each such process, pleading or other paper was forwarded to this corporation at the last address supplied by it shall constitute evidence of such service upon this corporation, and that service of process, pleadings and other papers upon the United States Securities and Exchange Commission, as aforesaid, shall be taken and held in all courts to be as valid and binding upon this corporation as if due personal service thereof had been duly made.

State (or Province) of _____ }
 County of _____ } ss:

*In the case of an association or other form of organization, appropriate revisions should be made.

REGULATION A

I, _____, being duly sworn, depose and say that I am Secretary of _____, and that the foregoing is a true and correct copy of a resolution adopted by the Board of Directors of said corporation on the _____ day of _____, A.D. 19____, as the same appears on the records of said corporation now in my custody and control.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said corporation.

(Corporate Seal) _____ (Secretary)
Subscribed and sworn to before me this _____ day of _____ A. D. 19____
(Seal) _____

My Commission (or office) expires _____ (Official Position)**

**Notary Public or other official authorized by law to administer oaths.

Note: This certificate of resolution should be executed and verified before a person authorized to administer oaths in the jurisdiction in which it is executed. The verification should be in the form prescribed by the law of the jurisdiction in which it is executed. The form of acknowledgment suggested should be used only if it is consistent with the requirements of the law of such jurisdiction.

The failure of any verification to meet applicable requirements shall not affect the validity or effect of the foregoing certificate of resolution.

SECURITIES AND EXCHANGE COMMISSION

FORM 6-A—IRREVOCABLE APPOINTMENT BY PARTNERSHIP OF AGENT
FOR SERVICE OF PROCESS, PLEADINGS AND OTHER PAPERS

(Pursuant to Regulation A under Securities Act of 1933)

1. The undersigned, jointly and severally, as follows,

-----	-----
(Name)	(Name)
-----	-----
(Name)	(Name)
-----	-----
(Name)	(Name)

members of a partnership doing business as -----
 having its principal place of business at ----- (Firm Name)

hereby designate and appoint, without power of revocation, the United States Securities and Exchange Commission as the agent of the partnership, and as the agent of each of them individually, upon whom may be served all process, pleadings, and other papers in any civil suit or action brought against said partnership firm, or against said persons, jointly or severally, arising out of any offering made or purported to be made under Regulation A, adopted by the United States Securities and Exchange Commission under the Securities Act of 1933, or any purchase or sale of any securities in connection therewith, in any court of competent jurisdiction, Federal, State, or Territorial, located in the United States or in its territories as defined by the Securities Act of 1933.

2. The undersigned, jointly and severally, and as members of a partnership doing business as ----- (Firm Name), hereby consent, stipulate and agree, without power of revocation—

(a) That any civil suit or action arising out of any offering made or purported to be made under Regulation A, adopted by the United States Securities and Exchange Commission under the Securities Act of 1933, or any purchase or sale of any securities in connection therewith, may be commenced against said partnership firm, or against said persons, jointly or severally, in any court of competent jurisdiction located in the United States or in its Territories as defined by the Securities Act of 1933; by service of process upon the United States Securities and Exchange Commission,

(b) That service of process, pleadings and other papers upon the United States Securities and Exchange Commission, as aforesaid, shall be taken and held in all courts to be as valid and as binding on said partnership firm, and on said persons, jointly and severally, as if due personal service had been duly made, and

(c) That service upon the United States Securities and Exchange Commission may be effected by delivering copies of said process, pleadings, or other papers to the Secretary of the said Commission or any other person designated by it for such purpose, and that the certificate of the Secretary of the United States Securities and Exchange Commission or such other person reciting that said process, pleadings or other papers were received by the United States Securities and Exchange Commission and that a copy of each such process, pleading, or other paper was forwarded to said partnership firm and to each said person at the last address supplied by said partnership firm and by each such person shall constitute evidence of such service upon said partnership firm and each said person.

IN WITNESS WHEREOF, the undersigned, individually and as members of said partnership doing business as ----- (Firm Name) have executed this irrevocable power of attorney and consent, stipulation and agreement for the purposes herein set forth

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at ----- this ___ day of -----, A. D. 19 ----
 ----- (Seal)
 ----- (Seal)
 ----- (Seal)
 ----- (Seal)
 ----- (Seal)

State (or Province) of -----)
 County of -----) ss:

I, -----, in
 and for said County in the State (or Province) aforesaid, do hereby certify that

-----, (Name) -----, (Name)
 -----, (Name) -----, (Name)
 -----, (Name) -----, (Name)

*Notary Public or other official authorized by law to administer oaths.
 personally appeared before me this day and signed and sealed the above instrument as their free
 and voluntary act, and as the free and voluntary act of each of them, for the uses and purposes
 therein set forth.

Given under my hand and seal this ___ day of -----, A. D. 19 ----

 (Official Position)*

My Commission (or office) expires -----

*Notary Public or other official authorized by law to administer oaths.
 Note. The person (or persons) executing this irrevocable power of attorney, consent, stipulation and agree-
 ment should appear before a person authorized to administer acknowledgments in the jurisdiction in which it is
 executed and acknowledge that he (or they) executed it as his (or their) free and voluntary act. The acknowl-
 edgment should be in the form prescribed by the law of the jurisdiction in which it is executed. The form of ac-
 knowledgment suggested should be used only if it is consistent with the requirements of the law of such juris-
 diction.

The failure of any acknowledge to meet applicable requirements shall not affect the validity or effect of
 the foregoing irrevocable power of attorney, consent, stipulation and agreement.

REGULATION F

EXEMPTION FOR ASSESSMENTS ON ASSESSABLE STOCK
AND FOR ASSESSABLE STOCK OFFERED OR SOLD TO
REALIZE AMOUNT OF ASSESSMENT THEREONRule 651. Scope of Exemption.

(a) The following shall be exempt from registration under the Act, subject to the terms and conditions of this regulation:

(1) Assessments on assessable stock of any corporation incorporated under the laws of, and having its principal business operations in, any State or Territory of the United States, or the District of Columbia;

(2) Assessable stock of any such corporation offered or sold at public auction or otherwise for the purpose of realizing the amount of an assessment levied thereon, or reoffered to the public by an underwriter or dealer.

(b) The amount of the following shall not exceed \$300,000 in any period of one year commencing on or after July 1, 1959.

(1) The aggregate amount of all assessments levied on assessable stock of the issuer; }

(2) The aggregate offering price of all securities of the issuer offered under this regulation or any other rule or regulation adopted pursuant to section 3(b) of the Act; and

(3) The aggregate sale price of all securities of the issuer sold in violation of section 5(a) of the Act.

(c) Notwithstanding the foregoing, no exemption under this regulation shall be available to an issuer so long as the issuer is subject to a suspension order issued pursuant to Rule 656, or any similar order issued pursuant to any other rule or regulation under the Act, unless the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied. Any such determination by the Commission shall be without prejudice to any other action by the Commission in any other proceeding or matter with respect to the issuer or any other person.

Rule 652. Filing of Notification.

At least 10 days (Saturdays, Sundays and holidays excluded) prior to the date on which the initial offering of any securities is to be made under this regulation, there shall be filed with the Regional Office of the Commission for the region in which the issuer conducts its principal business operations four copies of a notification on Form 1-F containing the information specified in that form. The Commission may, in its discretion, authorize the commencement of the offering prior to the expiration of such ten-day period upon a written request for such authorization.

Rule 653. Information to be Given Stockholders and Others.

Every notice or advertisement of the assessment or of any delinquent assessment sale which is sent to holders of the issuer's assessable stock or otherwise published shall include or be accompanied by a reasonably detailed statement of the purposes for which the proceeds from the assessment and from any delinquent assessment sales are to be used.

Rule 654. Sales Material to be Filed.

Four copies of each of the following communications prepared or authorized by the issuer or anyone associated with the issuer or any of its affiliates or by any underwriter, for use in connection with the offering of any securities under this regulation shall be filed, with the Office of the

Commission with which the notification is filed, at least ten days (exclusive of Saturdays, Sundays and holidays) prior to any use thereof, or such shorter period as the Commission, in its discretion, may authorize:

- (1) Every notice or advertisement proposed to be published in any newspaper, magazine or other periodical;
- (2) The script of every radio or television broadcast; and
- (3) Every letter, circular or other written communication proposed to be sent, given or otherwise communicated to more than ten persons.

Rule 655. Prohibition of Certain Statements.

No written or oral communication used in connection with any offering under this regulation shall contain any language stating or implying that the Commission has in any way passed upon the merits of, or given approval to, any securities of the issuer, has determined that the assessment or proposed assessment is necessary or desirable or that the offering is exempt from registration, or has made any finding that the statements contained in such communication are accurate or complete.

Rule 656. Suspension of Exemption.

(a) The Commission may, at any time after the filing of a notification, issue an order temporarily suspending the exemption if it has reason to believe that --

(1) No exemption is available under this regulation for the securities proposed or purported to be offered hereunder, or any of the terms or conditions of this regulation have not been complied with;

(2) Any written communication or radio or television broadcast used or proposed to be used in connection with the offering contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(3) The offering is being made or would be made in violation of section 17 of the Act;

(4) The issuer or any promoter, director or officer thereof has failed to cooperate, or has obstructed or refused to permit the making of any investigation by the Commission in connection with any offering made or proposed to be made hereunder.

(b) Upon the issuance of an order under paragraph (a) of this rule, the Commission will promptly give notice to the issuer (i) that such order has been issued, together with a brief statement of the reasons for the issuance of the order, and (ii) that the Commission, upon receipt of a written request within 30 days after the issuance of such order, will within 20 days after the receipt of such request, set the matter down for hearing at a place to be designated by the Commission. If no hearing is requested and none is ordered by the Commission, the order shall become permanent on the thirtieth day after its issuance and shall remain in effect unless or until it is modified or vacated by the Commission. Where a hearing is requested or is ordered by the Commission, the Commission will, after notice of an opportunity for such hearing, either vacate the order or issue an order permanently suspending the exemption.

(c) The Commission may at any time after notice of and opportunity for hearing, issue an order permanently suspending the exemption for any reason upon which it could have issued a temporary suspension order under paragraph (a) of this rule. Any such order shall remain in effect until vacated by the Commission.

(d) All notices required by this rule shall be given to the issuer by personal service, registered or certified mail or confirmed telegraphic notice at the address of the issuer given in the notification.

SECURITIES AND EXCHANGE COMMISSION
Washington 25, D. C.

FORM 1-F

NOTIFICATION UNDER REGULATION F 1/

Item 1. The Issuer.

Furnish the following information as to the issuer of the securities upon which the proposed assessment is to be levied:

- (a) Exact name of issuer;
- (b) Date of incorporation or organization and name of State or other jurisdiction under the laws of which it was incorporated or organized;
- (c) Name of State or other jurisdiction in which issuer's principal business operations are conducted.

Item 2. Principal Security Holders of Issuer.

List the full name and complete residence address of each person who owns of record, or is known to own beneficially, ten percent or more of the outstanding securities of any class of the issuer, stating the title and amount owned by each such person.

Item 3. Directors and Officers.

List the full name and complete residence address of each director and each officer of the issuer, indicating all positions and offices with the issuer held by each such person.

Item 4. Prior Assessments within One Year.

Furnish the following information as to each assessment levied by the issuer on its assessable stock within the last year prior to the filing of this notification:

- (a) Date of assessment and number of assessable shares outstanding on such date;

1/ The notification shall contain the item numbers and captions of all items, but the text of the items may be omitted if all of the information required by each item is clearly set forth under the respective item number and caption.

(b) Amount of assessment per share and total amount of assessment for all shares then outstanding;

(c) Number of shares sold because of failure of shareholders to pay the assessment, and amount realized from such sales;

(d) Total amount realized from the assessment and sales and a reasonably itemized statement as to the purposes for which such amount was used.

Item 5. Unregistered Securities Issued or Sold within One Year.

As to any unregistered securities issued by the issuer within one year prior to the filing of this notification, state --

(a) the title and amount of securities issued;

(b) the aggregate offering price or other consideration for which they were issued and the basis for computing the amount thereof;

(c) the names of the persons or the identity of the class of persons to whom the securities were issued; and

(d) the section of the Act or rule or regulation of the Commission under which exemption from registration was claimed with respect to such securities and a brief statement of the facts relied upon for the exemption.

Item 6. Proposed Assessment.

Furnish the following information as to the proposed assessment with respect to which this notification is filed:

(a) Approximate date notice of the assessment will be given to the shareholders and the period of time thereafter within which the assessment may be made without forfeiture;

(b) Number of assessable shares now outstanding, the amount of the assessment per share and the total amount of the assessment;

(c) Give a reasonably detailed statement of the purposes for which the proceeds from the assessment and from any forfeiture sales are to be used.

SIGNATURE 2/

This notification has been signed in the City of _____
State of _____ on _____, 19__.

(Issuer)

By _____
(Name and title)

2/ At least one copy shall be signed manually by or on behalf of the issuer. Any copies not manually signed shall bear typed or printed signatures.

Mr. BUDGE. They provide exemptions for first-lien notes, securities of cooperative housing corporations and assessments on assessable stock, and exemptions for certain other securities.

For purposes of S. 336, the most relevant exemption is that provided by regulation A. Regulation A presently permits a company to obtain needed capital not in excess of \$300,000, including underwriting commissions, in any one year, from a public offering of its securities without registration, provided specified conditions are met. These include the filing of a notification supplying basic information about the company and the filing and use in the offering of an offering circular. These documents are somewhat simpler to prepare and less expensive to print than the full registration statement required under the Securities Act for nonexempt offerings. It will be necessary for the Commission to amend regulation A to give effect to the wishes of Congress if it enacts S. 336 into law. The Commission will consider such an amendment promptly after enactment of the bill.

I might add, Mr. Chairman, that from a mechanical standpoint this exemption is important throughout the country because regulation A offerings are handled through the Commission's regional offices so that the filings and people making them do not have to come to Washington, D.C.

Gentlemen, this concludes my comments on these two bills. I will be happy to answer any questions you may have.

Mr. Moss. Thank you, Mr. Chairman. I have just a few questions. I note that in the course of the Senate hearings there was a discussion of the possibility of exempting, or providing a means whereby there could be exempted, the specialists and the market makers if we dropped to 5 percent from 10 percent. Probably it is not too likely that a single dealer would acquire 10 percent. It is more possible, although I feel again somewhat remote, that they would acquire as much as 5 percent.

Now on page 5 of the print I have had handed to you showing changes made by the bill, there is language the Senate bill would add to the existing law. In your judgment, is that intended to give the Commission the power by rule or regulation to exempt the market makers or the specialists or to change the type of filing which might be required of them should they acquire as much as 5 percent?

Mr. Budge. I think not, Mr. Chairman. Personally I would have some serious misgiving about permitting specialists to acquire up to 5 percent of stock. I would not think that would be consistent with the purposes of the specialists.

Mr. Moss. Are they not now able to acquire that much?

Mr. BUDGE. If they did they would have to report it and I think the Commission would certainly immediately look into the circumstances.

Mr. Moss. That is really the purpose of bringing this up. I want to create a little bit of legislative history here. While the question was raised in the Senate it was brushed aside and it was never really focused upon and answered. Does the Commission feel the normal reporting requirements should be applicable to the specialists or the market makers if the percent is reduced to 5 percent?

Mr. BUDGE. I think it is very important that it apply to both, Mr. Chairman.

Mr. Moss. Recognizing the rather complex nature of such reporting, should there be authority for the Commission by rule or regulation to

simplify reporting requirements? I know that Senator Bennett had suggested perhaps a letter of notification. Again this matter was not taken up and discussed beyond just the mention by the Senate. I would like to have your views on it.

Mr. BUDGE. I think that authority could very well be very helpful and it may be that it would lighten the burden on some persons in reporting and still accomplish the purposes of the act.

Mr. Moss. That was my thought in raising it. In those two groups I think the reporting requirements might be simplified and still fulfill the objectives of the act. I would suggest that before we go to mark up Mr. Loomis and Mr. Focht, working together, could come up with some language which the committee could consider. It is my understanding, then, that in considering it we would do so with your concurrence?

Mr. BUDGE. I think that is a very excellent suggestion, Mr. Chairman. The Commission would be very happy to cooperate.

Mr. Moss. You have indicated the number of filings made under the present law. Do you have any projections as to the increase in filings which would be made if the amendments recommended were adopted?

Mr. BUDGE. I don't see how we could project any amount it may be. The takeover was a phenomenon which developed very rapidly and gained momentum very rapidly. It has somewhat subsided. The reasons for it are perhaps not as great as they were at the time. It became so prominent but it might very well recur for other reasons. I am afraid we could not predict what might go down the road.

Mr. Moss. Now on the regulation A filings, the bill would increase the exemption to a half million dollars. Is there a possibility we would be dealing with more speculative types of issues?

Mr. BUDGE. The regulation A filings might perhaps lend themselves a little more than our regular filings to speculative issues. I think, however, that with the power in the Commission to control the exemptions and control the nature of the filings themselves that this can be minimized.

Mr. Moss. You see then no significant problem?

Mr. BUDGE. No; I would not. I think the Commission can control speculation in this area just as well as it can in other areas which it administers.

Mr. Moss. Mr. Chairman, are you aware of any opposition to either of these proposals; that is, the regulation A changes or the changes in the takeover legislation?

Mr. BUDGE. I am not personally aware of opposition to either of these amendments. No one has discussed opposition to either with me.

Mr. Moss. No one has contacted the committee. I did note the appearance of one lawyer before the Senate to voice some opposition, although it is rather difficult to discern the precise basis for it. But other than that, I have not been aware of any, either, and this has been under discussion now for some time.

Mr. BUDGE. We have received quite a little correspondence with relation to S. 336 where the smaller companies are just saying that it costs too much money to go through the registration process to raise this amount of money.

Mr. Moss. That would be supportive of the legislation rather than in opposition?

Mr. BUDGE. Yes, sir; it is less expensive to go the regulation A route than registration and, of course, it can be done in the geographical location of the issuer rather than coming to Washington.

Mr. MOSS. Mr. Schmitz?

Mr. SCHMITZ. I have no questions.

Mr. MOSS. Mr. Eckhardt?

Mr. ECKHARDT. Mr. Chairman, in the hearings before the Committee on Banking and Currency in the Senate I note that Mr. Calvin, of the New York Stock Exchange, was suggesting that the 5 percent be limited to companies with assets in excess of \$250 million. Is that position still taken?

Mr. BUDGE. It has not been communicated to me, Mr. Eckhardt, as far as I know, to the Commission.

Mr. ECKHARDT. The reason I asked that question is I would assume there is a relationship between size of assets and the necessity of reporting. In other words, there might be a small percentage involved if the assets are extremely great.

Mr. BUDGE. There would be insofar as the dollar amount is concerned. Of course, 5 percent of General Motors or A.T. & T. would be quite a different thing from 5 percent of some small company. However, I think the principle would remain the same. Our experience has shown in a number of takeover efforts, most of which were successful, that the aggressor—and “aggressor” isn’t my word, it developed out of the consideration of the bill in Congress—would get up to 9 or 9½ percent and then someone else would move in to compete. In lots of cases acquisitions of 9 and 9½ percent are sufficient to take over a company. So, with the basic purpose of permitting the public and the current holders of those securities to know who it is that plans to take over the company and to trigger the mechanism of reporting, I see no distinction between the company with over \$250 million and one with under \$250 million. The only difference is the amount of money which it would require to accomplish the purpose.

Mr. ECKHARDT. Might not a relatively large sum of money taking over a relatively small amount of stock be more likely to control the very large company than the relatively smaller company?

Mr. BUDGE. I would not think that would necessarily follow.

Mr. ECKHARDT. I understand it would not automatically follow but there might be some relationship.

Mr. BUDGE. It would depend of course upon how broad the holding was of the stock, in most instances.

Mr. ECKHARDT. The \$250 million figure, too, as I figure it, well, that would be a pretty large sum. The thing that occurred to me is perhaps you may have to report that, in the case of very large companies perhaps even less than 5 percent should be reported.

Mr. BUDGE. That would be my view of it. A.T. & T. and the amount of money that is involved in 5 percent is a tremendous amount of money.

Mr. ECKHARDT. I was thinking that along this line of reasoning: if you were considering the size of assets you might actually have a scale where the company say with an excess of \$250 million, 5 percent would have to be reported, if it were say 350 million, say 4 percent, 400 million, say 3 percent, 450, 2 percent, and on down. It would seem to me that perhaps if we are going to consider total assets it ought to work on both sides of the 5 percent figure.

Mr. BUDGE. If it is going to work on the lower side I would think that just as logically it would work on the other. I think to have a table of that kind might be quite difficult for people to know whether or not they should be required to report because it might be pretty difficult at a given time to determine the assets.

We think this approach at 10 percent has worked very well except for the fact that experience has taught us that people can evade it by getting right up close to the 10 percent and accomplish their purpose without having the law come in to effect.

Mr. ECKHARDT. Of course, that is one reason I was thinking that the table might be good because it would not be quite so much incentive to be just above or just below a given figure.

For instance, you start out perhaps with 10 percent would require reporting regardless of assets, say assets of over a hundred million, 9 percent, and so on down the scale until you get up to say \$500 million and then the breaking point would not really be very important.

I think one of the difficulties with the single breaking point is you do create an incentive to try artificially to fall on one side or other of the breaking point.

Mr. BUDGE. If this legislation is enacted by the Congress we would again monitor it to see whether we should come back for some further refinement on it.

Mr. ECKHARDT. Thank you, Mr. Chairman.

Mr. MOSS. What would your reaction be if the committee considered the possibility of setting a figure of 5 percent or such lesser amount as provided for by rules and regulations of the Commission, to take care of the kind of situations discussed by Congressman Eckhardt? For instance, the 5-percent acquisition of A.T. & T. might place a person in a position where he could exercise some rather significant control.

Mr. BUDGE. I am sure that the Commission would attempt to intelligently administer by rule and regulation if that would be the desire of the Congress.

Mr. MOSS. You envision no great difficulties at arriving at some sort of a sliding scale reflecting the acquisition patterns?

Mr. BUDGE. Yes; we could certainly study that on the basis that has been suggested and come up with our best judgment as to what should be the subjective tests.

Mr. MOSS. Thank you. Mr. Eckhardt do you have anything further?

Mr. ECKHARDT. I am interested in your suggestion, Mr. Chairman. Perhaps the Commission or a delegation of the Commission should establish such standards but with some limitation on the Commission based on the type of sliding scale I was mentioning. My thought about it being perhaps the setting of any breaking point creates an economic incentive which is not being pictured, that the Commission, perhaps should be free to take into account that fact and also to take into account, as Chairman Budge mentioned, certain conditions involved with concern to distribution of the stock that might cause a relatively small amount of stock but a large amount of money to result in control of the company.

Perhaps there are other tables or factors that should limit the Commission in the statute, whether the Commission should have perhaps a flexible authority within a range from 10 percent downward.

Mr. Moss. It is a matter we can give thought to. I suggest you, Mr. Chairman, and your colleagues also give consideration to it. I am not of the opinion that we will mark this bill up until we return on November 16. I would like very much to have been able to mark it up today but I have some members of the subcommittee who are not available. Mr. Focht, do you have any questions?

Mr. FOCHT. I have no questions.

Mr. Moss. There being no further questions, I want to express my appreciation to you gentlemen for appearing here today and the committee will move for markup as quickly as we can. At this point the committee will adjourn.

(The following statements and letters were received for the record :)

UNITED STATES SENATE,
Washington, D.C., October 29, 1970.

Hon. JOHN E. MOSS,
Chairman, Subcommittee on Commerce and Finance,
Interstate and Foreign Commerce Committee,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Attached is a statement of Senator Sparkman and myself with regard to S. 336 now before your Subcommittee.

We would appreciate it greatly if the statement could be included in your hearing record.

Please accept my best wishes.

Cordially,

ALAN BIBLE, *U.S. Senator.*

Enclosure.

JOINT STATEMENT OF HON. ALAN BIBLE, A U.S. SENATOR FROM THE STATE OF NEVADA AND HON. JOHN SPARKMAN,¹ A U.S. SENATOR FROM THE STATE OF ALABAMA

Mr. Chairman, members of the committee, we appreciate the opportunity of presenting our views to the subcommittee on S. 336, a bill to raise the maximum permissible amount of a Regulation A securities offering to \$500,000.

This legislation would amend section 3(b) of the Securities Act of 1933 (15 U.S.C. 77c(b)) which exempts smaller issues of securities from the total requirements of the Act, and allows simplified filings which are easier to prepare, less expensive to produce, and which may be approved at Regional Offices without the necessity of conducting business with the SEC's Washington headquarters.

INCREASED BUSINESS COSTS SINCE 1945

Commission Chairman, Hamer Budge, has already summarized the history of this provision, which set the level of the exemption at \$100,000 in 1933 and raised it to \$300,000 in 1945.

The essential purpose of S. 336 as Chairman Budge stated: ". . . is simply to update section 3(b) so that the original policy underlying that section will be carried out in present day economic conditions."

In accordance with this conclusion, it was the feeling of the sponsors of this bill that: "The sentiment in the Senate now (we) believe is that in the 23 years since the last amendment, costs have continued to rise throughout the economy. As a result, the \$300,000 permitted under Regulation A has substantially less purchasing power today. The authors of this bill feel that the level should be at least \$500,000. . . ."

At this time, we feel that we might be helpful to the Subcommittee's consideration of this bill by furnishing additional information.

It is illustrative that as of mid-1969, the American Stock Exchange raised its listing requirements in five categories from 20% to 200%. For instance, the requirement of market value of publicly held shares was raised from \$1,250,000 to \$2 million. Of the Board of Governors vote, President Ralph Saul explained:

¹ Senator Bible is Chairman of the Senate Select Committee on Small Business; Senator Sparkman is Chairman of the Committee on Banking and Currency, and author of S. 336.

"The Exchange is reflecting the increase in gross national product since 1962 from \$560 billion to \$750 billion, and a related rise in size and number of companies eligible for listing. . . ."

Since 1945, the GNP has risen 358.3% (see Appendix A). This measure thus suggests an increase in the Regulation A ceiling to \$1,074,900.

Attached also (in Appendix B) are three other indexes of price behavior since the year when section 3(b) was last amended. Each one of these indicators—consumer prices, industrial commodities, and purchasing power of the dollar—shows that the costs of living and doing business have risen over 100% during that time. We feel this is a fair period for appraisal since it contains several periods of recession as well as inflation. Accordingly, the increase proposed by S. 336 would in our judgment be very conservative in terms of keeping pace with the economy. Similar reasoning would, in our opinion, apply with respect to Regulation E which was adopted by the Commission in 1958 pursuant to section 307(a) of the Small Business Investment Act of 1958 (section 3(c) of the 1933 Act, as amended).

NEEDS FILLED BY SMALL ISSUES

It may also be appropriate to review the underlying needs of small firms for recourse to Regulation A financing. We see at least 3 considerations:

1. difficulties stemming from the nature of small issues;
2. the high relative costs to small business of obtaining equity capital; and
3. particular difficulties during periods of tight money.

As Chairman Budge stated on page 10 of his statement: "The problems facing the small company in obtaining financing may be considerable because such sources as banks and private investors may not be willing or able to provide adequate risk capital."

Since what is being sought is "risk capital" it can be readily understood that commercial banks would prefer to place their loans with more established firms where the element of uncertainty is reduced. Certainly the hazards to a conventional lender are increased if the borrower seeks longer-term funds, so that he will not have to bear high repayments of principal and interest during the growing phase of his company when income is needed to cover accounts receivable and new equipment purchases. These requirements of small and growing firms point in the direction of longer-term or equity capital.

When these companies approach the securities market, they often find even regional and local brokerage houses setting minimum limits on the issues they will underwrite which require a full registration (for example, see the letter attached as Appendix C).

In recent years, it has become increasingly expensive to enter the equity market. Legal, accounting, printing, selling, and associated costs of filing a full registration statement may reach \$25,000 to \$35,000. We have learned through an SEC cost study, published in March, 1970,¹ on fully registered issues together with their experience with Regulation A offerings, that the total costs as a percentage of proceeds of an issue may range from about 20% at \$300,000 to 11.8% at \$1 million to 5.7% at \$10 million and 2.3% at \$100 million (see Appendix F). Clearly, there are fixed expenses, which for a smaller firm must be spread over a smaller base. Clearly, also, small issues generally involve higher risk and therefore often additional incentive features negotiated by the underwriter.

Increasing the Regulation A amount will thus cut relative costs by increasing the base. The Regulation A filing already offers substantial dollar cost savings from such items as: (1) absence of the customary SEC filing fee; (2) allowing non-certified financial statements to be used; (3) reducing legal fees as a result of dealing with Regional Offices; and (4) decreased printing costs through use of a brief "Offering Circular" in place of the longer full prospectus.²

It is also timely to note that since S. 336 was introduced business capital has become even more scarce and expensive. The prime bank interest rate rose 5 times in the last 2 years to historic peaks and other money market rates followed suit. As this subcommittee is well aware, liquidity has become a prominent problem, particularly for less-well-rated credit risks.

¹ "Cost of Flotation of Registered Equity Issues, 1963-65", Securities and Exchange Commission, March 1970.

² A compilation of dollar costs for Regulation A offerings had not been completed as of the date of this Statement.

These financial forces drove businesses increasingly to seek equity capital despite a falling stock market. During 1968 and 1969 the volume of equities rose to 126.7% and 343.1% the average for the previous six years for all companies. (See Appendix D.) For Regulation A offerings the increases during the same two years, under the same pressures, were approximately 50% and 250% of the prior three-year average (see Appendix D). This would tend to indicate relatively less success on the part of smaller issues in obtaining equity capital under these adverse circumstances.

Looking ahead, shortages of capital are predicted throughout the 1970's. Smaller growing companies will thus need all the help which public policy can fairly provide in obtaining their share of available equity capital.

IMPACT ON BROKERS AND THE INVESTING PUBLIC

The material furnished by the SEC in Appendix E also indicates that Regulation A offerers are increasingly turning to securities dealers to underwrite their stock issues. The percentage of issues where underwriters were used rose steadily from 16.5% in FY 1966 to 46.2% in FY 1970. The securities firms are quite likely to be regional or local independents, particularly since Regulation A issues can be approved in SEC Regional Offices around the country. This would tend to strengthen the small business segment of the securities industry, which could, in turn, be of greater service to the next generation of companies.

We should also emphasize that Regulation A now, and the amendment proposed by S. 336 would, in the future, continue to protect the investing public. The SEC must now review Regulation A filings, and can suspend an exemption at any time. This would be preserved. The SEC makes clear that exemption from registration under section 3(b) or 3(c) of the Act does not in any way carry exemption from the provisions of the Securities Acts prohibiting fraudulent conduct in the offer or sale of securities, and imposing civil liability or criminal responsibility for such conduct. These sanctions will remain.

It is our hope, by thus strengthening overall capital markets for smaller firms, that the public may have available additional choices of vehicles for their investment funds.

CONCLUSION

Congress wisely provided a small business exemption in the 1933 Act in recognition of these problems. In our opinion, the needs are even more forceful in 1970. We would, therefore, urge the Subcommittee's support of an increase in the Regulation A ceiling at least as large as that proposed by S. 336 so that such a measure may be enacted during the 91st Congress.¹

APPENDIX A

Gross national product of the United States

[In billions]

1945.....	\$211.9
1970 2d quarter.....	971.1
Dollar increase.....	759.2

Note: Percentage increase, 358.3 percent.

APPENDIX B

Consumer price index: All items 1947-49 base

1945.....	62.7
1969.....	127.7

Note: Percentage increase 103.7 percent to end of 1969. This index had risen to 136.6 percent of 1957-59 base by September 1970.

Whole price index: Industrial commodities 1947-49 base

1945.....	56.3
1969.....	112.7

Note: Percentage increase 100.2 percent to end of 1969. This index had risen to 117.4 percent of 1957-59 base by September 1970.

¹ Passed the Senate August 10, 1970.

<i>Purchasing power of the dollar: Wholesale prices 1957-59 base</i>	
1945.....	\$1. 727
September 1970.....	. 849

Note: Percentage decrease, 50.83 percent.

Sources: Statistical Abstract of the United States, tables No. 523 (p. 344); No. 517 (p. 339); and No. 516 (p. 338). Updated by Council of Economic Advisors, October 1970.

APPENDIX C

HUGO MARX & Co.,
Birmingham, Ala., October 14, 1970.

Senator JOHN SPARKMAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR SPARKMAN: It is my understanding that a bill has been introduced by Senator Sparkman whereby corporate securities may be issued by small businesses in the amount of \$500,000 without registration except in a limited way under the regulations of the Securities and Exchange Commission Act. It is my understanding that this regulation for the issuance of securities by small businesses was originally authorized in the amount of \$300,000 and is now to be increased to \$500,000. In my opinion, this is definitely a step in the right direction. My reasons for this are as follows:

A. Small business has a most difficult time obtaining long-term funds to finance their operation and expansion.

B. The cost of registration is most prohibitive for small amounts of money; actually, it does not cost a great deal more to register a security issue of \$10,000,000 than it costs to register one of \$300,000. This, in effect, stops the small businessman from borrowing long-term funds.

C. Borrowing money through the banking system is not good for the small businessman because it is usually for a short term and the first time the poor fellow has a bad year, he could possibly have his loan called and be out of business or bankrupt.

D. We all realize that 99 out of 100 of all small business people are in need of capital funds at sometime or another. If the cost of borrowing is prohibitive, these people will usually end up selling their business or going under, which is bad for our economy. We need the small businessman in this country today more than ever before.

E. There is a great deal of talk about helping the small businessman, and in order to do this, it is essential that some avenue of long-term capital be made available to them. The best avenue is through an issue of stock or equity money financing through a local broker or investment banker and distribution of these securities in the local area. In order to accomplish this, the cost of issuing these securities must be kept down and this means the legal expenses and cost of registration must be kept low. If the small merchants cannot obtain capital funds in the open market, he must try to build up his capital internally, which, under our present tax system, is practically impossible.

If anything, the proposed \$500,000 limitation is too low; there probably should be a waiver of registration on all small business issues of \$1,000,000 or less. This provision of the \$300,000 exemption under Regulation A, according to my memory, was passed and approved in the original act passed in the 1933 or 1934 session of Congress. With the rapid inflation we have, the figure of \$300,000 today does not mean the same thing it did in 1933/34. We need a figure at least double or triple this amount in order to keep up with the inflationary movement of our money. Therefore, to protect the small borrower and to allow him access to long-term funds, the amount he can borrow without full registration with the SEC should be materially increased.

I am Alabama born and reared and I have personally been in the investment banking business since June, 1935, except for approximately four years of service in the Army during World War II. I believe I have the experience and ability to know whereof I speak, and I wholeheartedly recommend that this bill be passed at the earliest possible time. This country needs the small businessman.

Thanking you for your consideration,

Yours very truly,

V. HUGO MARX, Jr.

APPENDIX D
NEW ISSUES: GROSS PROCEEDS

[In millions of dollars]

	Total corporate (A)	Common stock (calendar years) (B)	Regulation A offerings (fiscal years) (C)
1962	8,969	1,314	
1963	10,856	1,011	
1964	10,865	2,679	
1965	13,720	1,547	77.4
1966	15,561	1,939	75.2
1967	21,954	1,959	74.7
1968	17,383	3,946	112.3
1969	18,347	7,714	267.0

Sources: Columns (A) and (B), Federal Reserve Bulletin, September 1970, Table A46; Column (C), Annual Reports of the Securities and Exchange Commission.

APPENDIX E

The following table sets forth various features of the Regulation A offerings during the past 5 fiscal years:

OFFERINGS UNDER REGULATION A

	Fiscal year				
	1970	1969	1968	1967	1966
Size:					
\$100,000 or less	90	90	102.0	101.0	128.0
Over \$100,000 but not over \$200,000	92	114	97.0	92.0	94.0
Over \$200,000 but not over \$300,000	922	839	316.0	190.0	188.0
Total	1,104	1,043	515.0	383.0	410.0
Aggregate amount of issues sought (millions)		267	112.3	74.7	75.2
Underwriters:					
Used	510	458	144	57	58
Not used	594	585	371	326	352
Offerers:					
Issuing companies	1,101	1,021	486	360	386
Stockholders	2	15	22	17	13
Issuers and stockholders jointly	1	7	7	6	11

Source: 32d to 34th annual reports, Securities and Exchange Commission, supplemented by information from Small Issues Branch, Division of Corporate Finance, Securities and Exchange Commission.

APPENDIX F

TABLE 4.—UNDERWRITTEN COST VERSUS BEST EFFORTS DISTRIBUTION COSTS BY SIZE OF ISSUE, 1963-65—PRIMARY COMMON STOCK ISSUES OFFERED THROUGH SECURITY DEALERS

[Dollar amounts in millions]

Size of issue	Number		Total costs as a percent of proceeds		Compensation as a percent of proceeds		Other expenses as a percent of proceeds	
	Best efforts	Underwritten	Best efforts	Underwritten	Best efforts	Underwritten	Best efforts	Underwritten
Under \$0.5	26	24	\$19.3	\$17.3	\$12.2	\$10.0	\$7.0	\$7.4
\$0.5 to \$1.0	15	45	14.7	14.6	10.4	9.4	4.3	5.2
\$1.0 to \$2.0	24	93	10.7	11.8	8.3	8.7	2.4	3.1
\$2.0 to \$5.0	23	119	9.7	9.0	8.0	7.3	1.7	1.7
\$5.0 to \$10.0	12	57	10.0	7.0	9.3	6.0	.7	1.0
\$10.0 to \$20.0	5	19	10.8	5.7	10.3	5.0	.5	.7
\$20.0 to \$50.0	0	11		5.6		4.9		.8
\$50.0 to \$100.0	0	2		3.2		2.9		.3
\$100.0 to \$500.0	0	1		2.3		2.0		.3
\$500.0 and over	0	0						
Total issues	105	371						

Source: Cost of flotation of registered equity issues 1963-65, Securities and Exchange Commission (March 1970).

STATEMENT OF AMERICAN LIFE CONVENTION AND LIFE INSURANCE ASSOCIATION
OF AMERICA

This statement is submitted on behalf of the American Life Convention and the Life Association of America. These two associations have an aggregate membership of 355 United States and Canadian companies, accounting for about 92 percent of the total life insurance in force in the United States. We appreciate this opportunity to comment on H.R. 4285 and S. 3431.

H.R. 4285, introduced by Congressman Monagan on January 23, 1969, would provide that the target company and the Securities and Exchange Commission be given thirty days advance notice of a take-over attempt. S. 3431 would amend the Securities Exchange Act of 1934 to extend the protection of the so-called "Corporate Take-over Act" (Public Law 90-439) to publicly held stock insurance companies. It would also provide that anyone acquiring as much as 5 percent (instead of 10 percent) of company's stock must comply with the disclosure requirements of Public Law 90-439. We support this bill.

Public Law 90-439 now applies only to securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, and to the equity securities of closed-end investment companies registered under the Investment Company Act of 1940. Therefore it does not apply to the securities of most stock insurance companies, which are exempt from registration under the 1934 Act by virtue of Section 12(g) (2) (G) of that Act. This section exempts any security issued by an insurance company if the company is regulated by its domiciliary state in the following respects:

(1) The insurance company must be required to, and must in fact, file an annual statement with the state insurance commissioner. This statement must conform to that prescribed by the National Association of Insurance Commissioners (NAIC).

(2) The insurance company must, in respect of its securities, be subject to proxy regulation which conforms to that prescribed by the NAIC.

(3) After July 1, 1966, purchases and sales of the insurance company's securities by its officers, directors and beneficial holders must be subject to regulation in substantially the same manner as that provided in Section 16 of the 1934 Act.

The exemption provided by Section 12(g) (2) (G) of the Act is based upon the fact that wholly adequate regulation in these areas is administered at the state level. Experience to date has indicated that state regulation has, in fact, been successfully applied.

S. 3431 would not be inconsistent with the Section 12(g) (2) (G) exemption. It would merely extend the protection of the "Corporate Take-over Act" to insurance companies. When Securities and Exchange Commission Chairman Hamer Budge testified before this Subcommittee on October 12, 1970, with respect to amendments to Public Law 90-439, he indicated that the statute should be broadened to cover insurance companies, adding that this should be done in such a way that it would not interfere with the exemption contained in Section 12(g) (2) (G). Thus he said:

"... The securities of insurance companies are not so registered by reason of the exemption contained in Section 12(g) (2) (G) of the Securities Exchange Act for insurance company securities which are subject to specified state regulation.

"The Commission, of course, does not wish to disturb the Congressional decision reached in 1964 to leave reporting, proxy solicitation and the regulation of insider trading with respect to the securities of insurance companies to appropriate state authorities...."

We are in agreement with this position of the Securities and Exchange Commission. Moreover, S. 3431 is consistent with that position. We believe that the bill is in the public interest and will provide important protection against take-overs to stock life insurance companies, their stockholders, and their policyholders. We therefore favor the enactment of S. 3431 in its present form.

INVESTMENT BANKERS ASSOCIATION OF AMERICA,
Washington, D.C., October 13, 1970.

Re H.R. 4285 and S. 3431 to amend the Securities Exchange Act with respect to takeover bids.

Hon. JOHN E. MOSS,

Chairman, Subcommittee on Commerce and Finance, House Committee on Interstate and Foreign Commerce, House Office Building, Washington, D.C.

DEAR CONGRESSMAN MOSS: When hearings were held by this Subcommittee in July, 1968 on S. 510, which was subsequently adopted as Public Law 90-439 to provide for full disclosure of corporate equity ownership of securities under the Securities Exchange Act of 1934, the Investment Bankers Association supported adoption of that legislation.

The Investment Bankers Association supports adoption of S. 3431 but recommends that one of the proposed changes be adopted only if the need for that change is demonstrated and that two other changes be made in the bill.

At hearings before the Securities Subcommittee of the Senate Committee on Banking and Currency on S. 510 in March, 1967, Senator Williams (who introduced the bill) summarized the general purpose of the present law as follows:

"The Securities Acts of 1933 and 1934 with their full disclosure requirements have provided sound protection to millions of American stockholders. These laws have worked well in bringing to purchasers of securities full and accurate information on which to make investment decisions. They have encouraged the growth of our Nation's securities markets so that today all are able to invest with confidence knowing that pertinent facts are available.

At present, however, some areas remain where full disclosure is necessary for investor protection but not required. The legislation before the Subcommittee today will close what I consider to be a significant gap in these last remaining areas. It requires the disclosure of pertinent information to stockholders *where persons seek to obtain control* of a corporation by: (1) a cash tender offer and (2) through open market or privately negotiated purchases of securities." (Emphasis added.)

Similarly, the report of the House Committee on Interstate and Foreign Commerce in July 1968, (House Report 1711) stated:

"The failure to provide adequate disclosure to investors in connection with a cash takeover bid or other acquisitions *which may cause a shift in control* is in sharp contrast to the regulatory requirements applicable where one company offers to exchange its shares for those of another or where a contest for control takes the form of a proxy fight." (Emphasis added.)

The present law was aimed primarily at requiring disclosure with respect to attempts to acquire control of a corporation by a new group of stockholders. Some of our comments below suggest that requirements of the Act apply only in those situations.

(a) Section 1 of S. 3431 would amend paragraph (1) of sub-section 13(d) of the Securities Exchange Act to eliminate an exemption for securities of an insurance company. Section 2 of the bill would make the same change in paragraph (1) of sub-section 14(d) of the Securities Exchange Act. We support these proposals in the belief that shareholders and investors need the same disclosure with respect to acquisition of controlling interests in insurance companies that they need with respect to other companies.

(b) Section 13(d) (1) of the Securities Exchange Act requires any person who is the beneficial owner of 10% or more of an equity security registered pursuant to Section 12 of the Exchange Act to send to the issuer and file with the SEC within 10 days after such acquisition a statement containing specified information. Section 14(d) (1) of the Exchange Act makes it unlawful for any person to make a tender offer for any class of equity security registered pursuant to Section 12 of that Act, if after consummation such person would be the beneficial owner of 10% or more of such class, unless such person has sent or given to securities holders and has filed with the SEC a statement containing specified information. Section 1 of S. 3431 would change 10% to 5% in Section 13(d) (1); and Section 3 of S. 3431 would change 10% to 5% in Section 14(d) (1). We believe that it has not been demonstrated that ownership of less than 10% of the equity securities of any company constitutes "control" of the company in any way, even in the case of large corporations. However, since we fully support the intent of the legislation to provide certain basic disclosure with respect to persons who plan to acquire control of the issuer, we support these proposals to

reduce the standard from 10% to 5% if it is demonstrated that there are situations where ownership of less than 10% of equity securities of a company amounts to control.

(c) Section 4 of S. 3431 would amend paragraph 8 of sub-section 14(d) of the Exchange Act by striking clause (A) which exempts from the requirements of that section any offer for, or request or invitation for tenders of any security "proposals to be made by means of a registration statement under the Securities Act of 1933". We believe that this proposal should be eliminated because it would require a filing under Section 14(d)(1) of the Exchange Act with respect to an offer of securities which was already subject to a registration statement under the Federal Securities Act of 1933. For example, Company A proposes to acquire control of Company B by offering its shares to shareholders of B in exchange for their shares of B. Company A must register under the Securities Act of 1933 its shares to be offered to shareholders of B and a prospectus regarding the offering must be delivered to each shareholder of B to whom the exchange offering is made. We believe that the desired disclosure is made under this registration and that it would be an unnecessary burden to require additionally that A comply with the filing requirements of Section 14(d)(1) of the Exchange Act.

We believe that such separate filings with the SEC for the same offerings serve no useful purpose and impose an unnecessary burden on legitimate transactions.

(d) Finally, we believe that a provision is needed to clarify the applicability of Section 13(d)(1) of the Exchange Act. This requires filing of the specified statement by any person who acquires directly or indirectly the beneficial ownership of more than 10% of any equity securities of a class registered pursuant to Section 12 of the Exchange Act. This clearly was not intended to apply to an underwriter who holds a block of securities solely for distribution or to a trader who holds a block of securities solely in the normal course of buying and selling securities. Accordingly, we urge that a new paragraph (E) be added to Section 13(d)(5) to exempt:

"(E) Any acquisition of a security by a broker-dealer in securities in the ordinary course of buying and selling securities as an underwriter or dealer in such securities."

We appreciate the opportunity to submit these comments and would be pleased to furnish any additional information that might be helpful. We request that this letter be included in the printed record of the hearing on H.R. 4285 and S. 3431.

Very truly yours,

GORDON L. CALVERT,
Executive Director and General Counsel.

(Whereupon, at 10:55 a.m., the subcommittee was adjourned.)

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