Company disposes of all of its interests in Ivy Hill.

2. The Board will review at least annually the investment management business of the Company and Ivy Hill (including a review of transactions between the Company and any company controlled by the Company, on the one hand, and Ivy Hill and any company controlled by Ivy Hill, on the other hand) in order to determine whether the benefits derived by the Company warrant the continuation of the ownership by the Company of Ivy Hill and, if appropriate, will approve (by at least a majority of the Independent Directors) at least annually, such continuation.

3. Except to the extent permitted pursuant to exemptive relief from the Commission, neither Ivy Hill (including members of its investment committee with respect to Covered Information (as defined below) received in their capacities as such) nor any persons controlled by Ivy Hill (''Information Providers'') will directly or indirectly provide Covered Information to ACM or any person affiliated with ACM (other than the Company and persons controlled by the Company and as necessary to be provided to ACM and the Administrator to provide advisory and administrative services to the Company and Ivy Hill).

Covered Information means all information except information that:

(i) Is generally available to the public;

(ii) Is of the nature that Information Providers share with unaffiliated market participants at no cost and is not proprietary to the Information Providers;

(iii) Information Providers have obtained from unaffiliated third parties, including but not limited to general market opinions and analyses, analyst reports and diligence reports, and that such third parties generally make available to others, including market participants in the ordinary course, at no cost; or

(iv) Information Providers have obtained from, or are providing on behalf of, borrowers or potential borrowers or their advisors, and that such borrowers or advisors generally make available to unaffiliated market participants at no cost upon request.

4. None of the Company, Ivy Hill or any entity controlled by Ivy Hill, will enter into any Covered Transaction, as defined below, unless a majority of the Independent Directors who have no financial interest in such Covered Transaction has approved it. A ''Covered Transaction'' is any transaction involving the Company, Ivy Hill or any entity controlled by Ivy Hill other than the Funds, on the one hand, and any Fund in which ACM, any person affiliated with ACM (other than the Company or any entity controlled by the Company), any of their clients, or the Administrator, is invested, on the other hand, where such transaction would violate section 57(a) of the Act but for rule 57b–1 under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6190 Filed 3–13–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66541; File No. 81–937]

Order Granting an Application of BF Enterprises, Inc. Under the Securities Exchange Act of 1934

March 8, 2012.

I

BF Enterprises, Inc. (''BF Enterprises'' or the ''company'') has filed an application under Section 12(h) of the Securities Exchange Act of 1934 (the ''Exchange Act'') [1] for a Commission order exempting the company from the requirement to register its common stock under Section 12(g) of the Exchange Act.[2] Section 12(h) grants the Commission the authority to exempt by order, upon application of an interested person and after notice and opportunity for a hearing, any issuer from Section 12(g) ''if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors.''

In its application, BF Enterprises states that it ''was a reporting company under the Exchange Act until 2005 and terminated its Exchange Act registration pursuant to a Form 15 filed with the Commission on August 30, 2005 in connection with a reverse/forward stock split transaction,'' which the company's shareholders ''approved * * * on July 21, 2005 based upon a Schedule 13E–3 filed with the Commission on March 31, 2005 and as subsequently amended by the Company.'' According to the application, a shareholder commenced litigation against the company in the Delaware Chancery Court in 2010 that ultimately resulted in that shareholder transferring its shares of the company's common stock to 500 identical trusts before December 31, 2010, the last day of the company's fiscal year.

Under Section 12(g) of the Exchange Act and the Commission's rules thereunder, an issuer is required to register a class of its equity securities if, at the end of the issuer's fiscal year, the securities are ''held of record'' [3] by 500 or more persons and the issuer has total assets exceeding $10 million.[4] According to the application, BF Enterprises had total assets of $13.3 million as of December 31, 2010. In addition, each of the 500 trust entities was identified as an owner of common stock on the records of security holders maintained by or on behalf of BF Enterprises. However, BF Enterprises contends that it should not be required to register its common stock under Section 12(g) and is seeking an exemptive order to that effect. Specifically, BF Enterprises asserts that exemptive relief would be consistent with the standards articulated in Section 12(h) because: (1) BF Enterprises has fewer than 85 total beneficial owners of its common stock, one of which has expressly stated that its shares are held indirectly through 500 trust entities formed solely for the purpose of attempting to cause the company to register its common stock under Section 12(g) (the ''BFE Trusts''); (2) as of December 31, 2010, BF Enterprises had total assets of approximately $13.3 million and 2010 annual net income of approximately $103,000; (3) BF Enterprises has a total of seven employees and its primary business comprises two parcels of real estate; and (4) there is no trading activity in, and an absence of any regular market for, BF Enterprises' common stock.

On May 12, 2011, the Commission issued a notice of the filing of the application to give any interested person an opportunity to ''submit to the Commission in writing its views on any substantial facts bearing on the

[1] 15 U.S.C. 78*l*(h).

[2] 15 U.S.C. 78*l*(g).

[3] 17 CFR 240.12g5–1. Exchange Act Rule 12g–5 states that: ''For purposes of determining whether an issuer is subject to the provisions of sections 12(g) and 15(d) of the Act, securities shall be deemed to be 'held of record' by each person who is identified as the owner of such securities on records of security holders maintained by or on behalf of the issuer,'' which is subject to certain conditions set forth in Rule 12g–5.

[4] 15 U.S.C. 78*l*(g)(1) and 17 CFR 240.12g–1. When Section 12(g) was enacted, the asset threshold was set at $1 million. The asset threshold has been increased on several occasions, most recently to $10 million in 1996. *See Relief From Reporting by Small Issuers,* Release No. 34–37157 (May 1, 1996) [61 FR 21353].

application or the desirability of a hearing thereon.'' [5] The Commission received nine comment letters on the application,[6] some of which were from shareholders of BF Enterprises and all of which opposed the application.

Commentators contended that the Commission should deny the application because the company's shareholders have been harmed by the company's decision to cease filing reports under the Exchange Act. Among other things, the commentators raised concerns about the company's lack of transparency [7] and the detrimental effect of that lack of transparency on security holders, particularly in terms of liquidity [8] and accountability of management.[9] Specifically, some commentators claimed that the company's reverse/forward stock split transaction was unfair to shareholders by leaving them with few or no alternatives to achieving fair value for their investment, particularly when there is a concentration of share ownership in management.[10] In the view of one of these commentators, it would have been fairer to shareholders if the company had chosen to go private—*e.g.,* through a management buyout or sale to a third party—rather than ''go dark.'' [11] Commentators also expressed concern that the lack of publicly available information about the company may have resulted in the company repurchasing its common stock from the public at prices lower than those that would have been available in a more informed and liquid market.[12] Others expressed concern about a perceived trend in companies ''going dark'' and the negative impact this trend has on the capital markets generally.[13]

Some commentators urged the Commission to revise the definition of ''holder of record'' to reflect the concentration of ownership of securities of current and former Exchange Act reporting companies in ''street name,'' noting that the current definition allows companies to deregister under the Exchange Act despite having beneficial owners well in excess of current thresholds.[14] One commentator explained that company shareholders who purchased their shares on the open market ''did so with the reasonable expectation that their shares would enjoy continued liquidity for so long as the Company's business remained viable.'' [15] This commentator argued that the purpose for establishing the BFE Trusts as owners of BF Enterprises common stock should not serve as grounds for granting the application when the company's purpose in effecting the reverse/forward stock split was to cease filing Exchange Act reports. Some commentators urged the Commission not to provide the relief requested in the application, but, rather, to address the company's arguments in the context of a reconsideration of how shareholders are counted and how many holders should trigger Exchange Act registration.[16] Finally, certain of the commentators also disputed factual assertions in the application, claiming that the ''market value'' or ''intrinsic value'' of the company's assets is in excess of $30 million [17] and that there is trading interest in the company's common stock.[18]

II

Section 12(g) was enacted in 1964 following a study of the securities markets commissioned by Congress and conducted by the staff of the Commission in the early 1960s (the ''Special Study'').[19] In this study, the staff was asked to develop a recommendation for a standard for registration that would be both reasonably reliable and easily enforceable and cover issuers that are ''sufficiently significant from the point of view of the public interest to warrant the regulatory burden to be assumed by the Government and the compliance burden to be imposed on the issuers involved.'' [20] Based on a balance of theoretical and practical considerations, the Special Study concluded that the holder of record test would be the most appropriate measure of public interest for imposing statutory disclosure requirements on issuers whose securities trade over-the-counter.[21] The Commission added an asset test to avoid imposing Exchange Act reporting obligations on insubstantial issuers for which the burden of compliance would be disproportionate to the public interest served by public disclosure.[22] The Commission subsequently noted that ''[t]he shareholder-of-record criteria were intended to provide a certain and easily applied measure of public investor interest and to avoid the difficulties inherent in a standard based on the number of beneficial owners. Congress enacted Section 12(g) and 15(d) on the assumption that there was a significant correlation between the number of recordholders and the number of underlying beneficial owners.'' [23]

Shortly after Congress enacted Section 12(g) in 1964, the Commission adopted Exchange Act Rule 12g5–1 to define ''held of record'' for purposes of Section 12(g).[24] This definition requires an issuer to count, as holders of record, only persons identified as owners on the record of security holders maintained by or on behalf of the issuer in accordance with accepted practice and subject to certain conditions. The Commission determined not to require issuers to count as holders of record the separate accounts in which securities are held by brokers, dealers, banks or their nominees for the benefit of other persons. The Commission explained that this would ''have the effect of simplifying the process by which companies determine whether or not they are covered by [Section 12(g)].'' [25] The Commission further stated that it would ''determine in the light of experience whether inclusion of these accounts at a future date is necessary or appropriate to prevent circumvention of the [Exchange] Act and to achieve the

[5] *See* Notice of an Application of BF Enterprises, Inc. under Section 12(h) of the Securities Exchange Act of 1934, Release No. 34–64479 (May 12, 2011) [76 FR 28482].

[6] Seven different commentators submitted the nine comment letters. The commentators were: Daniel F. Raider (June 6, 2011 and June 27, 2011) (''Raider Letters''); John D. Browning (June 16, 2011) (''Browning Letter''); Jeremy Q. Zhu (June 16, 2011) (''Zhu Letter''); Paul Blumenstein (June 16, 2011 and Aug. 2, 2011) (''Blumenstein Letters''); John H. Norberg (June 15, 2011) (''Norberg Letter''); Joseph M. Sullivan (June 13, 2011) (''Sullivan Letter''); and James E. Mitchell (June 13, 2011) (''Mitchell Letter'').

[7] *See, e.g.,* Browning Letter and Raider Letters.

[8] *See, e.g.,* Browning Letter; Raider Letters and Zhu Letter.

[9] *See, e.g.,* Raider Letter and Blumenstein Letters.

[10] Sullivan Letter; Blumenstein Letters and Zhu Letter.

[11] Blumenstein Letters.

[12] Blumenstein Letters, Mitchell Letter and Norberg Letter.

[13] Blumenstein Letters and Zhu Letter.

[14] *See, e.g.,* Sullivan Letter; Norberg Letter; and Blumenstein Letters.

[15] Blumenstein Letters.

[16] *See, e.g.,* Sullivan Letter; Norberg Letter; and Blumenstein Letter.

[17] Raider Letters and Blumenstein Letters.

[18] Raider Letters; Blumenstein Letters; and Sullivan Letter (asserting that ''[t]he Company's stock has been continuously offered for purchase and sale by multiple market makers in the over the counter market since the Company's deregistration became effective'').

[19] Report of Special Study of Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 88–95 (1963).

[20] *Id.* at 17, pt. 3.

[21] *Id.*

[22] *See* SEC Chairman William Cary's remarks in the Report of the Committee on Banking and Currency to Accompany S. 1642, S. Rep. No. 88–379 (1963) (''Committee Report'') at 52.

[23] *See On the Practice of Recording the Ownership of Securities in the Records of the Issuer in Other Than the Name of the Beneficial Owner of Such Securities,* Final Report of the Securities and Exchange Commission (Dec. 3, 1976) at 53.

[24] 17 CFR 240.12g5–1.

[25] *See Adoption of Rules 12g5–1 and 12g5–2 Under the Securities Exchange Act of 1934,* Release No. 34–7492 (Jan. 5, 1965) [30 FR 483].

intended coverage on a uniform and acceptable basis.'' [26] The Commission currently is undertaking such an assessment.[27]

Congress added the exemptive authority in Section 12(h) of the Exchange Act to provide the Commission with ''flexibility in the administration'' of Section 12(g) and other reporting provisions of the Exchange Act applicable to securities traded in the over-the-counter market.[28] To this end, Congress provided the Commission with ''ample authority to modify, and provide exemptions from, the statutory requirements for different issuers on the basis of the number of shareholders, trading interest in their securities, nature and extent of their business activities, income, asset size, or other relevant considerations.'' [29] Congress also recognized that strict application of numerical triggers may not, in all cases, be consistent with its desire to balance the public benefits of reporting with its burdens on reporting companies, particularly smaller companies.[30]

The Commission balances the factors in Section 12(h), with no single criterion alone serving as the basis for granting an exemption; rather, the criteria set forth in Section 12(h) serve as ''guidelines'' and the Commission looks at the particular circumstances of each matter to determine whether an exemption meets the standards in Section 12(h).[31] We address each of the factors below.

Number of shareholders: The company asserts, and the commentators do not dispute, that the company had fewer than 85 beneficial holders of its common stock and, excluding the BFE Trusts, fewer than 25 holders of record of its common stock as of December 31, 2010. It also is undisputed that the only reason why BF Enterprises would be deemed to have 500 or more record holders is the action of a single beneficial owner to create 500 trusts and to transfer ownership of shares of BF Enterprises' common stock to those trusts for the sole purpose of attempting to cause the company to register its common stock under Section 12(g). It is further undisputed that this shareholder is the only beneficiary of these trusts.

In our view, this increase in the number of owners appearing on the company's books does not reflect a growth in public holders that requires the protections of Exchange Act reporting; nor is this increase ''sufficiently significant from the point of view of the public interest to warrant the regulatory burden to be assumed by the Government and the compliance burden to be imposed on the [issuer] involved.'' [32] Further, imposing Exchange Act reporting obligations on BF Enterprises solely because of the creation of, and deposit of company shares into, the BFE Trusts would not result in an increase in ''the number of investors protected'' by such reporting, as Congress used that phrase in the Committee Report. As such, requiring the company to report under the Exchange Act does not advance the public policy underlying the Exchange Act's reporting provisions.

Trading interest in the securities: In its application, BF Enterprises asserts that ''there is no trading activity in, and an absence of any regular market for, the Company's securities.'' While some commentators disputed the unqualified nature of this statement, they acknowledged that the company's stock does not trade frequently.[33] Indeed, legal counsel representing the shareholder who created the BFE Trusts acknowledged that, ''[i]n 2010, there were only a few reported trades, and, to Leeward's knowledge, there have been no reported trades in 2011.'' [34] However, all of these commentators asserted that the level of trading interest in BF Enterprises' stock depends to some extent upon the availability of its financial information and news.[35]

While we are mindful that the shareholders of BF Enterprises may benefit in the ways they explained in their comment letters if the company were to resume Exchange Act reporting—*e.g.,* increased transparency, greater market liquidity, enhanced management accountability—we also must consider the burden of Exchange Act reporting on an entity such as BF Enterprises and whether there is currently sufficient trading interest to warrant the compliance burden to be imposed. While we recognize that, with more information, there may be more trading interest, it does not appear to us that there currently exists sufficient trading interest that would justify imposing the compliance burdens of Exchange Act reporting on the company.

We note that, according to otcquote.com, 47 trades, covering fewer than 27,000 shares, in the company's common stock were effectuated in the over-the-counter market during the three-year period from January 1, 2009 through December 31, 2011.[36] This trading activity is of a level that the Commission has determined in the past militates toward granting exemptive relief under Section 12(h).[37] That the

[26] *Id.*

[27] *See Testimony on the Future of Capital Formation,* by Mary L. Schapiro, Chairman, U.S. Securities and Exchange Commission, before the U.S. House of Representatives Committee on Oversight and Government Reform (May 10, 2011), available at *http://www.sec.gov/news/testimony/2011/ts051011mls.html. See also Testimony on Crowdfunding and Capital Formation,* by Meredith B. Cross, Director, Division of Corporation Finance, U.S. Securities and Exchange Commission, before the Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs of the U.S. House of Representatives, Committee on Oversight and Government Reform (Sept. 15, 2011), available at *http://www.sec.gov/news/testimony/2011/ts091511mbc.html.*

[28] Committee Report at 63.

[29] *Id.*

[30] The Senate Committee observed: ''Under the Investment Company Act of 1940, Congress set 100 shareholders as the standard for measuring the public interest. Such inclusive coverage might, however, create a burden on issuers and the Commission unwarranted by the number of investors protected, the size of companies affected, and other factors bearing on the public interest. Unlike the Securities Act, which requires filing only on the occasion of an offering, the Exchange Act requires at least annual filings. It is therefore necessary on purely practical grounds to limit in some manner the number of issuers required to comply, so that the flow of reports and proxy statements will be manageable from the regulatory standpoint and not disproportionately burdensome on issuers in relation to the national public interest to be served.'' Committee Report at 19.

[31] *See, e.g., In the Matter of The National Dollar Stores, Ltd.,* Admin. Proc. File No. 3–1212, 81–79 (Sept. 11, 1968) (explaining that ''the criteria [set forth in Section 12(h)] are designed merely to provide us with guidelines in considering the basic tests'' of whether an exemption is not inconsistent with the public interest or the protection of investors; and concluding that limited, conditional relief warranted ''under the circumstances''); *In the Matter of Lake Ontario Concrete Limited,* Admin. Proc. File No. 3–2615 (May 23, 1973) (where Commission recognized ''unusual combination of circumstances'' in granting limited exemption); and *In the Matter of Multi Benefit Realty Fund, et al.,* Admin. Proc. File No. 3–4400 (Mar. 11, 1976) (where four partnerships with aggregate assets of $183 million and 5,600 limited partners denied exemption despite lack of trading interest in applicants' securities and purported sophistication of investors because those factors ''outweighed'' by the applicants' size and by the number of investors involved, with Commission specifically noting ''[t]hough significant, trading interest is not the sole consideration to be looked at in these matters'').

[32] *Special Study* at 17.

[33] Raider Letters; Blumenstein Letters; and Browning Letter.

[34] Blumenstein Letters.

[35] *See, e.g.,* Raider Letters (explaining that, due to the company deregistering under the Exchange Act, ''it is no surprise that there is only limited interest in trading Company stock'').

[36] Specifically, in 2009, there were 11 trades on six days on volume of 6,446 shares; in 2010, there were 22 trades on nine days on volume of 13,200 shares; and in 2011, there were 14 trades on eight days on volume of 7,127 shares.

[37] The Commission determined that there was an ''absence of a regular market for the [issuer's] stock'' and a ''relatively small number of transactions effected'' in the stock where there were only four bid and one ask quotations for the shares for a one-year period (followed by a cessation of published quotations), and a total of 107 sales, involving 12,117 shares, were effected over a 27-month period. *In the Matter of Security Savings and Loan,*

primary reason for the low level of trading may be the company's decision to effect the reverse/forward stock split and ''go dark'' does not, in our view, negatively impact an application under Section 12(h) where, as here, an issuer accomplishes deregistration after notice to its shareholders, including notice of the negative impact on the market for the issuer's securities.[38] Further, we note that the Exchange Act does not require reporting companies to facilitate or maintain a market for their securities: Exchange listing is purely voluntary as is qualifying for quotation on the OTC Bulletin Board.

Nature and extent of business activities, income and asset size: In its application, BF Enterprises asserts that it had total assets of $13.3 million as of December 31, 2010. BF Enterprises also states that is a ''real estate developer whose primary business comprises two properties: a real estate development in suburban Tampa, Florida, and an office building in Tempe, Arizona'' with its assets ''consisting primarily of real estate, mortgage loans receivable and cash and cash equivalents.'' One commentator has disputed BF Enterprises' statement that its total assets as of December 31, 2010 amounted to $13.3 million and its 2010 annual net income was approximately $103,000.[39] Specifically, this commentator estimates the company's assets at more than $30 million and questions the net income amount given total revenues in 2010 of approximately $2.7 million. However, even if this commentator is correct, it is undisputed that BF Enterprises' assets exceed the Section 12(g) asset threshold of $10 million as of December 31, 2010.

It is relevant, nevertheless, that the securities at issue and the company's operations are not of a particularly complex nature, given the type and nature of the company's assets and its small workforce.[40] In particular, BF Enterprises' assets and income are clearly not ''substantial'' and the company's operations are ''limited'' under Commission precedent.[41]

Other factors: Several commentators expressed their concern that a company ''going dark'' can repurchase their securities from stranded shareholders at very substantial discounts to intrinsic value. While an illiquid market can result in a market price lower than that available in a more liquid market, we note that the antifraud provisions of the federal securities laws apply to company repurchases from its shareholders.[42] Accordingly, while the availability of current Exchange Act information about a company may benefit its shareholders who seek to sell their shares into a public market, shareholders of all companies—whether or not subject to Exchange Act reporting—are protected against fraud in connection with their sales or purchases of company stock.

Commentators also expressed a general concern about the ability of public companies to ''go dark'' [43] and the potentially negative impact an exemption in this matter would have on the over-the-counter markets generally.[44] However, the act of ''going dark'' is not itself grounds for denying the application. The appropriate thresholds for ''going dark'' generally are a subject for study and broad public input and therefore more appropriately handled through rulemaking.

III

Having considered the application and the comment letters, we find that the requested exemption is not inconsistent with the public interest or the protection of investors and the purposes fairly intended by the policy and provisions of the Exchange Act, for the following reasons:

(1) As of December 31, 2010, the company had fewer than 85 beneficial owners of its common stock and, excluding the BFE Trusts, fewer than 25 holders of record of its common stock;

(2) The BFE Trusts have only one beneficiary, who has expressly stated that its shares are held indirectly through 500 trust entities formed solely for the purpose of attempting to cause the company to register its common stock under Section 12(g);

(3) There currently appears to be extremely limited trading interest in BF Enterprises' common stock, although we recognize that this may be due, in part, to the company having ceased filing reports under the Exchange Act;

(4) The limited nature and extent of BF Enterprises' business activities; and

(5) Repurchases by the company of its securities are subject to certain anti-fraud provisions of the federal securities laws, including Section 10(b) of the Exchange Act and Rule 10b–5 thereunder.

Accordingly, *it is ordered,* that pursuant to Section 12(h) of the Exchange Act, BF Enterprises is hereby exempted from the requirement to register its common stock under Section 12(g) of the Exchange Act, effective immediately; and

It is further ordered, that this exemption shall remain in effect only for so long as counting each of the BFE Trusts as a separate ''holder of record'' for purposes of Section 12(g) would be the sole reason for the number of holders of record of BF Enterprises' common stock to equal or exceed 500.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.[45]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6067 Filed 3–13–12; 8:45 am]

BILLING CODE 8011–01–P

Admin. Proc. File Nos. 3–2511, 81–100 (Aug. 25, 1971). The Commission characterized trading interest as ''inconsequential,'' ''virtually dormant'' and ''insignificant'' where there was an average of five over-the counter transactions per month for a total monthly trading volume of 600 to 700 shares, when compared to 441,700 shares of the same class traded in one year on the Toronto Stock Exchange. *In the Matter of Lake Ontario Cement Limited,* Admin. Proc. File No. 3–2615 (81–99) (May 23, 1973).

[38] Blumenstein Letters (explaining that ''[t]he Company acknowledged in its information statement regarding the Reverse Split that a 'public market * * * would cease to exist' for its shares following the transaction.'')

[39] Raider Letters.

[40] The application states that the company has a total of seven employees. *Compare In the Matter of Multi Benefit Realty Fund, et al.,* Admin. Proc. File No. 3–4400 (Mar. 11, 1976) (where Commission found relevant in assessing this factor that the investment at issue was ''more complex than those in most securities'' because it involved limited partnership interests in ''highly-leveraged, tax-oriented real estate speculations'').

[41] The Commission characterized the applicant's income as ''limited'' where it had ''gross operating income of $446,888 and net income, after dividends on savings accounts and federal income taxes, of $16,988.'' *In the Matter of Security Savings and Loan,* Admin. Proc. File Nos. 3–2511, 81–100 (Aug. 25, 1971). *See also In the Matter of Orchard Supply Building Co.,* Admin. Proc. File No. 3–789; 81–41 (May 1, 1967) (finding retail sales of over $3.5 million to be ''substantial'' and recognizing that the ''impact of those sales on interstate commerce cannot be immaterial'' where applicant engaged in the operation of three diversified hardware stores in the City of San Jose, California).

[42] For example, under Section 10(b) of the Exchange Act and Rule 10b–5 under the Exchange Act, a privately-held company may be liable for material misrepresentations or materially misleading omissions when repurchasing securities from its shareholders. *See, e.g., Smith* v. *Duff and Phelps, Inc.,* 891 F.2d 1567, 1574 (11th Cir.1990) (holding that closely-held company had duty to disclose to retiring employee negotiations with prospective stock purchaser).

[43] *See, e.g.,* Browning Letter.

[44] *See, e.g.,* Blumenstein Letters (arguing that ''[a]lthough the Commission would only be granting relief to one company, investors in OTC stocks may take the granting of such an exemption as an indication that they should be wary of investing in any OTC company that is susceptible of going dark'').

[45] 17 CFR 200.30–1(e)(7).