Corporate
Finance
& The
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Laws

Charles J.
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Part II

Chapter 8

SHELF REGISTRATIONS—RULE 415

If an issuer expects to be making frequent public offerings of its securities, and especially if it is eligible to use Form S-3 or Form F-3, it will probably decide to file a shelf registration statement as permitted by Rule 415 under the 1933 Act. A shelf registration statement covers securities that are not necessarily to be sold in a single discrete offering immediately upon effectiveness, but rather are proposed to be sold in a number of tranches over a period of time or on a continuous basis.

Issuers used shelf registration during the period from January 1992 through December 1995, on a value-weighted basis, for approximately one-half of all their underwritten offers of preferred stock and approximately 40% of all their underwritten offers of corporate debt.[1] Shelf registration was used over this period for only approximately 10% of all underwritten offers of common stock, but there is evidence that issuers are increasingly using shelf registration for this purpose. For example, takedowns from shelf registrations amounted in 1992 to 3% of all underwritten offers of additional common stock, but

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1. *Report of the Advisory Committee on the Capital Formation and Regulatory Processes* (July 24, 1996), Appendix A at 15. All of the statistics in this paragraph are taken from the report.

these offerings increased to 9% in 1993 and to 15% in each of 1994 and 1995. One explanation for issuers' increased interest in the use of shelf registration to sell common stock may be the opportunity to use an unallocated shelf (as discussed below) to mitigate any "overhang" effect; it appears that some 80% of the common stock sold using shelf registration from 1992 through 1994 had been registered on an unallocated basis.

If a qualified issuer decides to take the shelf route, it will register a specified dollar amount of securities pursuant to Rule 415. Since 1992, U.S. issuers eligible to use Form S-3 have been permitted to register both debt and equity securities on the same registration statement on an unallocated basis, i.e., without specifying the principal amount of debt and the amount of shares of equity securities being registered.[2] (In 1994, this privilege was extended to non-U.S. issuers eligible to use Form F-3.[3]) In the aggregate, the amount of securities that may be registered is supposed to be limited to that which "is reasonably expected to be offered and sold within two years from the initial effective date of the registration."

Issuers eligible to use Form S-3 or Form F-3 may offer their securities either on a continuous or delayed basis. For example, either immediately or at some time after effectiveness, when market conditions appear favorable, the issuer may request proposals or bids from one or more underwriters for the sale of, e.g., $150 million principal amount of debt securities of a specified maturity or range of maturities. The issuer weighs the various proposals and decides to accept terms that include, by way of illustration, a 6% coupon, a seven-year maturity and a specific price to public and underwriting discount. The securities are then "taken off the shelf," i.e., the issuer and the underwriters sign a terms agreement that is based on a full-scale underwriting agreement that was previously filed as an exhibit to the registration statement, and the terms of the securities and the underwriting arrangements are set forth in a supplement to the basic prospectus that is filed with the SEC under Rule 424(b)(2) by the close of business on the second business day after pricing. There is no need for the SEC to take any action.

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2. SEC Release No. 33-6964 (October 22, 1992).
3. SEC Release No. 33-7053 (April 19, 1994).

Three months later, when the issuer needs funds or simply wishes to take advantage of a perceived "market window," it may repeat the process, this time ending up with a $100 million issue of five-year notes with a specified coupon, public offering price and underwriting discount. It may issue additional securities from time to time until all of the registered securities have been sold, at which time it may file a new shelf registration statement. With the availability of the unallocated shelf procedure, the issuer has the ability to move rapidly with great flexibility to take advantage of market opportunities.

The use of Form S-3 or Form F-3 greatly simplifies a shelf registration program because the issuer can incorporate its 1934 Act reports by reference rather than amend or supplement the registration statement and prospectus each time a material event occurs. The rule does not require, however, that an issuer be eligible to use Form S-3 or Form F-3 in order to take advantage of shelf registration for purposes other than "delayed" offerings. For example, shelf registration is available to any issuer for "continuous" offerings of securities such as in the case of MTN programs, discussed below.

Shelf registrations were also used by issuers of mortgage related securities long before Rule 415, and the technique continues to be used to register billions of dollars of asset-backed securities each year.

Rule 415 specifically permits shelf registration of secondary offerings by selling securityholders from time to time on a securities exchange or otherwise at prices current at the time of sale. This technique also predates Rule 415 by many years.

Rule 415 permits shelf registration of securities offered under a dividend or interest reinvestment plan or an employee benefit plan; securities to be issued upon the exercise of outstanding options, warrants or rights or upon the conversion of other outstanding securities; securities that have been pledged as collateral; and ADSs registered on Form F-6.

Shelf registration has made it possible for issuers to use highly efficient methods of distributing securities, but Rule 415 did not come about without controversy. As will be seen, the SEC did not escape criticism and opposition as it sought to adapt its rules and policies to evolving practices in the securities markets.

The process by which the SEC sought to deal with registration "for the shelf" began in the 1930s. The way that the law has developed in this area is not unlike that described by Professor Lon Fuller in his jurisprudence classes at the Harvard Law School. As an example of how the law responds to the realities of life, Professor Fuller would point to the flagstone paths laid out on the Cambridge Common. If the otherwise law-abiding citizens of Cambridge consistently strayed from the paths designated for their use, wearing away the grass as they followed a more convenient route from one point to another, the city fathers simply would pave over the paths that they had created. The SEC has followed similar pragmatic principles in coping with shelf registration, and Rule 415 can be viewed as a pavement that has been laid to widen and improve an already existing path.

The Evolution of Shelf Registrations

Section 6(a) of the 1933 Act provides, "[a] registration statement shall be deemed effective only as to the securities specified therein as proposed to be offered."[4] Shortly after the adoption of the 1933 Act, the SEC had occasion to interpret this sentence and took the position that it permitted the registration only of securities intended to be offered presently (i.e., soon) and not those intended to be offered at some remote future date.[5] The SEC's theory was that, if securities are registered for future distribution, prospective investors relying on the registration statement may receive stale information. Among the amendments to the 1933 Act proposed in 1941[6] was a modification of Section 6(a) to permit registration for the shelf. This amendment was opposed by the SEC and was never enacted.

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4. For a discussion of the legislative history of Section 6(a), *see* S. Hodes, *Shelf Registration: The Dilemma of the Securities and Exchange Commission*, 49 Va. L. Rev. 1106, 1108–15 (1963).

5. United Combustion Corp., 3 S.E.C. 1062 (1938); Shawnee Chiles Syndicate, 10 S.E.C. 109 (1941).

6. H.R. 4344, 77th Cong., 1st Sess. (1941); S. 3985, 76th Cong., 3d Sess. (1940).

• *Traditional Shelf Registrations*

In time, the SEC backed away from a rigid interpretation of Section 6(a), and it had become established by the early 1960s that certain types of offerings could be covered by shelf registration statements.[7] For the most part, these were offerings that by their very nature were required to be put on the shelf. The following minute of a June 8, 1961 meeting of the SEC summarized the status at that time:

> Discussion also was had concerning the general problem involved in the registration of stock which was not to be made the subject of an offering in the immediate, foreseeable future. Mr. [Manuel F.] Cohen suggested that the Commission should continue the practice of permitting registration (a) in the American Marietta type of case in which a reasonable number of shares were being registered for future issuance under a continuing program for the issuance of stock in connection with the acquisition of other companies by purchase or merger; (b) in cases involving "private placements" under circumstances which suggest the necessity for registration; (c) where there was a likely distribution within the reasonable future upon conversion of privately placed debentures and similar situations in which the Commission insisted upon registration, including the issuance of options and stock to underwriters; (d) for sale of shares by "controlling" persons of acquired companies following transactions falling within Rule 133; and (e) where there was a representation that the shares were otherwise proposed for distribution within a reasonable period after the effective date of registration. However, he further suggested that registration for cash sale would not be in order, whether for new or control shares, if there was no bona fide intention to sell within a reason-

7. *See generally* C. Israels, *S.E.C. Problems of Controlling Stockholders and in Underwritings* 182 (Practising Law Institute Transcript 1962).

able period but only at some indefinite future period and eventuality.

Charles E. Shreve, general counsel of the Division of Corporation Finance, described the SEC's position in somewhat more pragmatic terms:

> The policy of the Commission is to afford the opportunity for registration where it seems consistent with the Congressional intention of having you register offerings proposed to be made. Sometimes the line is not easy to draw. It is not possible under § 6(a) to register all of the outstanding stock simply because someday somebody might want to sell it. On the other hand, it is recognized that sales are not always made by a conventional offering. Controlling persons who must register the securities when they want to sell to the public, may want to sell by normal market trading transactions. That may take a matter of months. If they seem to have a real present intention of selling a designated maximum amount of stock in that way, we say "All right; go ahead and register."[8]

One type of shelf transaction that the SEC had no intention of permitting was one in which an issuer, as opposed to a selling shareholder, sought to register a block of shares to be sold for cash from time to time in the future.[9] One that slipped through the cracks, however, was a prospectus dated August 5, 1966 of Industrial Electronic Hardware Corp. covering 100,000 shares of common stock offered by the issuer "from time to time, for a maximum period of two years, in brokerage transactions on the American Stock Exchange or otherwise at prices then current on that Exchange." As a rule, this type of transaction was not permitted.

• • *Continuous Acquisition Programs.* The use of shelf registration statements to cover shares of common stock to be is-

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8. C. Israels & G. Duff, *When Corporations Go Public,* 115–16 (1962).
9. C. Israels, *supra* note 7, at 208.

sued in future acquisitions was to all intents and purposes mandated by the SEC in the late 1950s and early 1960s. At that time, a number of companies launched programs that contemplated future acquisitions of privately owned companies on a more or less regular basis. Each separate acquisition might qualify as a private placement, but applying its integration doctrine (see Chapter 7), the SEC took the position that the transactions were sufficiently interrelated as to require registration of the shares to be issued. Of necessity, the registered shares were kept on the shelf until the closing of each particular transaction. One example of this type of shelf registration was the prospectus dated February 24, 1961 of American-Marietta Company covering nearly 5 million shares of common stock to be issued from time to time in the acquisition of other businesses. Prospectuses of this type came to be known as "American Marietta-type" prospectuses, as indicated by Mr. Cohen's reference in the above quoted SEC minute.

Other early examples of shelf registrations designed for acquisitions were the February 28, 1961 prospectus covering 95,000 shares of common stock of Sports Arenas, Inc. and the May 14, 1963 prospectus of Holiday Inns of America, Inc., which stated, "The Common Stock is to be offered from time to time in connection with acquisition by the Company of licensee-owned Holiday Inns and in isolated instances for motel properties owned by non-licensees."

• • *Sales Following Private Placements.* The most common type of shelf registration was one covering securities issued in a private placement to persons wishing to be in a position to resell if they should choose to do so. Frequently, the transaction would have involved the acquisition of a privately owned company in exchange for the acquiring company's shares. The registration statement would be filed pursuant to a registration rights agreement or simply because the issuer was willing to accommodate the holders of the securities.

Prior to the adoption of Rule 144 in 1972,[10] there was substantial uncertainty as to when and under what circumstances a

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10. SEC Release No. 33-5223 (January 11, 1972).

person acquiring securities in a private placement could resell them without being deemed a statutory underwriter. The holder may have signed an investment letter stating that he had not purchased the securities "with a view to distribution," the key words in the Section 2(11) definition. But conduct inconsistent with this representation, such as a sale shortly after the acquisition, could lead to the conclusion that the seller was indeed an underwriter and that accordingly the securities should have been registered to cover his sale.

In some private acquisition transactions, not all of the stockholders were willing to give investment representations. The solution in some cases was to register the securities for the shelf to enable the holders to sell from time to time at prices prevailing at the time of sale. The SEC was willing to allow these registration statements to become effective without any representation from the holders that they had an immediate intention to sell. An October 4, 1961 prospectus of Universal Match Corporation is an apt illustration. There the statement is made:

> On June 30, 1961, the Company acquired all the outstanding capital stock of Reflectone Electronics, Inc., a Connecticut corporation, in exchange for 120,000 shares of the Company's common stock. As to 84,000 of said shares, the recipients represented to the Company that they were acquiring said shares for investment and not for distribution. No such representation was made with respect to the remaining 36,000 shares which are covered by this Prospectus and which may be sold by the holders thereof as set forth on the cover page of this Prospectus.

• • *Shares Issued Upon Conversions of Privately Placed Securities.* Section 3(a)(9) of the 1933 Act exempts the issuance of common stock upon the conversion of outstanding convertible debentures or preferred stock but does not exempt the resale of that stock. Rule 155, adopted by the SEC in 1962[11] but subsequently rescinded, provided in effect that the public sale

11. SEC Release No. 33-4450 (February 7, 1962).

of shares acquired upon conversion of a privately placed security would require registration unless the shares were not acquired with a view to distribution. Unlike Rule 144, which now permits tacking in these circumstances, under Rule 155 the holding period for the underlying shares began upon conversion and not when the convertible securities were purchased. In the 1960 release reproposing Rule 155, the SEC indicated its willingness to be flexible in its interpretation of Section 6(a) in the context of resales of privately placed convertible securities or the shares into which they were converted.[12]

• • *Underwriters' Stock and Warrants.* The SEC has consistently taken the position that cheap stock and immediately exercisable warrants sold to underwriters in connection with a public offering of securities should be registered at the same time as the securities to be offered to the public. In a published response to an inquiry regarding underwriters' warrants, where it was stated that for tax reasons none of the warrants or the underlying stock would be reoffered for at least six months after the effective date of the registration statement, the SEC said that, since it was not contemplated that the warrants or the underlying stock would be distributed immediately, the registration statement should contain an undertaking to file a post-effective amendment that would disclose the terms of the distribution.[13] Amended prospectuses covering the resale of underwriters' warrants or stock were permitted to provide for sales on a delayed or continuous basis.

• • *Resales Following Rule 133 Transactions.* Prior to the adoption of Rule 145 in 1972,[14] a merger or similar transaction requiring a vote of stockholders was not deemed to involve a "sale" of the securities issued in exchange for shares of the acquired corporation. The "no sale theory" was upheld by the Court of Appeals for the Ninth Circuit in the famous *Leland Stanford*

12. SEC Release No. 33-4248 (July 14, 1960). Rule 155 was originally proposed in SEC Release No. 33-4162 (December 2, 1959).

13. SEC Release No. 33-3210 (April 9, 1947).

14. SEC Release No. 33-5316 (October 6, 1972).

decision[15] and was codified when Rule 133 was adopted in 1951.[16] But abuses arose. Controlling stockholders would arrange questionable mergers to "free up" large blocks of stock.

In *Great Sweet Grass*,[17] the SEC held that Rule 133 could not be relied upon where there was a preexisting plan to use the stockholders of an acquired corporation as a conduit in distributing a block of stock to the public. In *SEC v. Micro-Moisture Controls, Inc.*,[18] the court held that, where the persons negotiating a merger had such control over the process as to make the stockholder vote a mere formality, there was no "corporate action" on which Rule 133 was premised, and registration would be required.

In 1959, the SEC amended Rule 133[19] to spell out the circumstances under which the stockholders of an acquired corporation would be deemed underwriters in reselling the securities received in the acquisition transaction. Registration of any resales would be required if the issuer had made arrangements with an underwriter to purchase the securities issued to the stockholders of the constituent corporation. Absent such arrangements, only the constituent corporation and its affiliates (those in a control relationship with it) would be considered underwriters if they acquired their securities with a view to distribution. The rule excluded from the term "distribution" brokerage transactions of the type then permitted by Rule 154, the predecessor to the current Rule 144.

At the same time as it amended Rule 133, the SEC adopted Form S-14, which permitted an issuer whose shares were listed on an exchange to file with a prospectus consisting of the proxy statement used in the acquisition transaction with a wraparound spelling out the plan of distribution. One issuer, Schering-White

15. *National Supply Co. v. Leland Stanford Junior Univ.*, 134 F.2d 689 (9th Cir. 1943), *rev'g* 46 F. Supp. 389 (N.D. Cal. 1942).

16. SEC Release No. 33-3420 (August 2, 1951).

17. *In re Great Sweet Grass Oils Ltd.*, 37 S.E.C. 683 (1957).

18. 148 F. Supp. 558 (S.D.N.Y. 1957) (preliminary injunction), 167 F. Supp. 716 (S.D.N.Y. 1958) (permanent injunction), *aff'd sub. nom. SEC v. Culpepper*, 270 F.2d 241 (2d Cir. 1959). *See also U.S. v. Crosby*, 294 F.2d 928 (2d Cir. 1961).

19. SEC Release No. 33-4115 (July 16, 1959).

Laboratories, had been permitted to use this type of wraparound prospectus prior to the adoption of Form S-14.[20] Form S-14 required an undertaking to update the registration statement to comply with Section 10(a)(3) of the 1933 Act for a period of 24 months after its effective date. Implicit in the adoption of Form S-14 was a waiver in this context of any restriction that Section 6(a) might impose upon registration for the shelf.

In the years following the amendment of Rule 133, there were occasions when registration for the shelf was all but insisted upon by the SEC. An Allied Chemical Corporation prospectus dated February 28, 1963 covering 2.5 million of the 6.3 million shares of common stock issued a year earlier upon the acquisition of Union Texas Natural Gas Corporation contained the following statement on its cover page:

> This Prospectus relates to an aggregate of 2,595,511 shares of the Common Stock of Allied issued upon the merger to the stockholders of Union Texas listed under the heading "Certain Stockholders of Union Texas" in this Prospectus. Such stockholders were unwilling to represent that they were acquiring such shares for investment. Allied understands that, under such circumstances, the Securities and Exchange Commission takes the position that such stockholders may be "underwriters" as such term is defined in the Securities Act of 1933; and, accordingly, such shares have been registered. Allied disclaims that such stockholders are "underwriters" under such Act or that sales of such shares by them will constitute a public offering of such shares by Allied.

Shelf-type prospectuses have been used to cover resales by certain stockholders of companies acquired in a registered exchange offer. The SEC has taken the position that those stockholders of the target company who negotiated the exchange offer will be considered underwriters in reselling the securities acquired by them in exchange for those of the acquired com-

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20. C. Israels, *supra* note 7, at 211–12. This is the transaction referred to in SEC Release No. 33-3846 (October 10, 1957).

pany. There are numerous examples of exchange offer prospectuses that contain a paragraph at the foot of the cover page to the effect that the prospectus may also "be used to cover resales of shares acquired in the exchange offer by those persons who may be deemed to be underwriters in making such sales."

• • *Stock Option Plans.* One type of shelf registration not referred to by Mr. Cohen in his June 8, 1961 presentation to the SEC was a Form S-8 registration statement covering shares that could be issued from time to time under an employee stock option plan or other type of employee benefit plan. By the very nature of these plans, the securities are registered for sale at some unspecified time in the future. With respect to resales of the registered shares by officers deemed to be in control of the issuer, there always has been some question as to whether a prospectus designed for an employee offering is suitable to cover resales to the public. At one point, the SEC permitted the Form S-8 prospectus to be used for resales if beefed-up in certain respects. Instruction C to the form now provides that the Form S-8 prospectus is not available for this purpose but that resales under Rule 415 may be made with a separate prospectus filed as part of the Form S-8 registration statement. The prospectus may be prepared in accordance with the requirements of Form S-3. Resales are permitted without limitation if the issuer meets the registrant requirements of that form; if that is not the case, then the amount of securities proposed to be sold during any three-month period by any person may not exceed the amount provided for in Rule 144(e).

• • *Pledged Securities.* Another type of shelf registration not referred to by Mr. Cohen is one covering securities pledged by a control person or a statutory underwriter as collateral for a loan. Unless it makes a private sale or sells under Rule 144, the creditor foreclosing on the collateral may have to comply with the registration and prospectus delivery requirements of Section 5 of the 1933 Act.[21] A pledgee, of course, does not gener-

21. *SEC v. Guild Films Co., Inc.* 178 F. Supp. 418 (S.D.N.Y. 1959), *aff'd,* 279 F.2d 485 (2d Cir. 1960); *In re Skiatron Electronics and Television Corp.,* SEC Release No. 33-4282 (October 3, 1960).

ally take securities as collateral with a view to selling them. It makes a secured loan with the full intention that interest and principal will be paid at the required time. If, however, the borrower does not meet its obligations, the lender wishes to be in a position to foreclose on the collateral and to sell it promptly. Registration of pledged securities to deal with this contingency has been permitted by the SEC without question and with little, if any, concern over the language of Section 6(a).

- *"90-Day Undertakings"*

In addition to the undertaking to update the registration statement specifically called for by former Form S-14, the SEC sometimes required similar undertakings to justify the use of shelf registration. In 1961, the SEC began to call for so-called "90-day undertakings." These undertakings required a registrant to file a post-effective amendment disclosing such current information as would have been required in the filing of a new registration statement if the first offering of the securities took place more than 90 days after the effective date of the registration statement.

In attempting to be flexible, the SEC received a certain amount of criticism from those who believed that Section 6(a) should be strictly construed. One commentator complained that the Commission was in effect "disregarding the thrust of section 6(a), which ensures current information by prohibiting shelf registration; at the same time it is stepping outside the governing statute by administratively requiring the issuer to incorporate an undertaking to update the registration statement.[22] The same person concluded that "[p]roper enforcement of the Securities Act requires that Section 6(a) not be emasculated by allowing the filing of post-effective amendments in lieu of strict adherence to congressional intent that securities not be registered unless they are presently intended to be offered for sale."[23] Other commentators questioned the SEC's authority to

22. S. Hodes, *supra* note 4, at 1140.
23. *Id.* at 1148.

require undertakings in the absence of a statute conferring this power.[24]

• *The Hazel Bishop Case*

In June 1960, Hazel Bishop Inc. filed a registration statement relating to 1.1 million shares of its outstanding common stock. This represented approximately 61% of the number of shares outstanding, and the registration statement named 70 selling stockholders who might offer shares from time to time at prices current at the time of sale through brokers on the American Stock Exchange, in the open market, or otherwise. An amendment filed in October 1960 increased the number of shares to 1.3 million and the number of selling stockholders to 112.

Shortly thereafter, the SEC initiated proceedings under Section 8(d) of the 1933 Act to determine whether a stop order should be issued suspending the effectiveness of the registration statement. In issuing a stop order, the SEC found that the registration statement contained numerous false and misleading statements, including deficiencies in the financial statements.[25] More significantly, the SEC raised fundamental questions with respect to a massive uncoordinated distribution of this type.

It first questioned the efficacy of Rule 153, which permits the prospectus delivery requirements of the 1933 Act to be satisfied as between brokers in a transaction on a national securities exchange by delivering copies of the prospectus to the exchange. The SEC noted that members of the exchange may or may not request copies for their own use or for delivery to customers and that there was a real danger that the information contained in the registration statement might not in fact come to the attention of brokers and dealers or buyers of the securities and that the public would not be aware of the material facts pertaining to Hazel Bishop and the circumstances of the distribution. The SEC stated:

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24. A.H. Dean, *Twenty-Five Years of Federal Securities Regulation by the Securities and Exchange Commission*, 59 Colum. L. Rev. 697, 726 (1959).

25. *Hazel Bishop Inc.*, SEC Release No. 33-4371 (June 7, 1961).

> We believe that it would be highly prejudicial to the protection of investors and the public interest generally if the massive distribution here proposed by a large group which numbers among it the controlling persons of Hazel Bishop should be initiated through the facilities of the Exchange unless prior thereto facts of this case are given a much wider public distribution than is likely to result from the mere delivery of copies of the prospectus to the Exchange. Accordingly, it is our view that prior to the final effective date of this registration statement, the public interest requires the transmittal by registrant of our opinion accompanied by an adequate prospectus to all of the selling stockholders and the members of the Exchange community.

The SEC also noted that in a conventional distribution of securities the activities of underwriters are governed by the underwriting documents which provide "a controlled procedure designed to bring about an orderly marketing of the security free of practices prohibited by the statutes or rules as manipulative, deceptive or fraudulent, or otherwise unlawful." The SEC noted that here there were at least 112 selling stockholders and that no procedures had been established to coordinate their activities or guard against unlawful practices such as bids and purchases in violation of Rule 10b-6.

The SEC also expressed concern that there might be written communications that violated the prohibitions of Section 5 of the 1933 Act. It observed that one of the selling stockholders was the specialist in the common stock of Hazel Bishop and expressed skepticism as to how a specialist could properly discharge its function and at the same time comply with Rule 10b-6 and the other applicable provisions of the 1934 Act. The SEC concluded:

> In summary, we think that under the factual situation here presented the potentialities for violations of the law, witting or unwitting, on the part of those who are about to offer their stock on the basis stated are so grave that consistent with our obligations under the Exchange

> Act, they should be called to the attention of the selling stockholders, the issuer, the Exchange, the existing stockholders of Hazel Bishop and the general public.

Shortly after this decision was handed down, the stop order was lifted and an amended registration statement became effective. In order to meet the problems raised by the SEC's opinion, the selling stockholders and Hazel Bishop entered into an agreement designed to assure compliance with the 1934 Act, with particular reference to Rules 10b-2, 10b-6 and 10b-7. The company instructed its transfer agent to honor requests for transfer only for those selling stockholders who were signatories to this agreement. Hazel Bishop sent a copy of the SEC's opinion and the final prospectus to all members of the NASD and the American Stock Exchange and recommended that they not execute any orders without confirming that the selling stockholder had signed the requisite agreement. The notice to dealers stated that "any broker who acts for any of the selling shareholders named in the Registration Statement must be furnished by such selling shareholders with copies of the Prospectus to enable him to deliver a prospectus to the buying broker, who may be required to deliver a copy of its prospectus to its customer." The notice to dealers also contained warnings with respect to compliance with Rules 10b-2, 10b-6 and 10b-7.[26]

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26. The following year, the SEC issued a stop order suspending the effectiveness of a registration statement filed by American Finance Company, Inc. covering an offering of units, on the basis of misleading statements and omissions with respect to, among other matters, a proposed offering by a group of selling stockholders, 17 in number. The prospectus disclosed that the Lomasney underwriting firm was to purchase 60,000 shares at an advantageous price for its own account and for the account of favored customers. These shares were included in the registration statement, and the prospectus stated that they would be reoffered subsequently pursuant to an appropriately supplemented prospectus furnishing additional information. "However," said the SEC, "the prospectus does not inform prospective investors of the possible effects on the market in the common stock, following the completion of the sale of the Units, of a subsequent distribution of the 60,000 shares, which is a very large number of shares in relation to the 75,000 shares that will be available for trading on the comple-