

APPENDIX

## II. POLICY AND PROGRAMS REVIEW AND ANALYSIS

### APPENDIX

(This appendix contains the unofficial Fourth Regulatory Agenda of the Commission for Fiscal 1981, which was supplied to the Transition Team by the Commission staff. The regulatory initiatives are divided by subject area. Many of these current initiatives are inconsistent with an overall deregulatory policy favored by the Reagan administration. References are provided to the relevant Commission releases.)

A. Significant Initiatives in the Areas of Capital Formation and Corporate Disclosure

1. Classification of Issuers

On June 2, 1980, the Commission published a release which solicits comment on the feasibility of establishing defined classes of small issuers for purposes of reducing certain reporting and other obligations under the Securities Exchange Act of 1934 ("Exchange Act"). The Commission also released statistical data with respect to those companies that are subject to the Exchange Act pursuant to Sections 12 and 15(d) thereof, for the purpose of evaluating potential classification criteria. Based on the public comments, the staff will consider whether to recommend that the Commission propose reduced or streamlined disclosure obligations either with respect to the frequency of reports or the type of information reported, or both, for one or two additional classes of issuers.

For further information, see Securities Exchange Act Release No. 16866 (June 2, 1980) [45 FR 40145].

2. Expansion of the Availability of Form S-18 to Mining Issuers

On October 7, 1980, the Commission published a release seeking public comment on a proposal to expand the availability of Form S-18 to mining issuers. Form S-18 is a specialized short form registration statement available to certain small companies.

The release proposes the inclusion in Form S-18 of a new disclosure item applicable to mining issuers. In addition, public comment is solicited on a proposal to update the mining disclosure requirements in Item 2 of Regulation S-K. Regulation S-K sets forth a series of disclosure items which are common to a number of registration forms under the Securities Act of 1933 (the "Securities Act") and the continuous reporting forms under the Exchange Act.

For further information, see Securities Act Release No. 6245 (October 7, 1980). [45 FR 68965].

3. Interim rules under the exemptive provisions of the Trust Indenture Act of 1939

On October 23, 1980, the Commission adopted on an interim basis and simultaneously published for public comment, rules establishing ceiling amounts under the exemptive provisions of the Trust Indenture Act of 1939 (the "Trust Indenture Act"). Pursuant to the recently enacted Small Business Investment Incentive Act of 1980, the \$250,000 ceiling amount on offerings which may be totally exempt from the Trust Indenture Act pursuant to Section 304(a)(8) thereof and the \$1,000,000 ceiling amount on offerings which may be exempt from the qualification provisions of the Trust Indenture Act pursuant to Section 304(a)(9) thereof, were raised to "the figure stated in Section 3(b) of the Securities Act" (raised to \$5,000,000 pursuant to the Small Business Investment Incentive Act) and \$10,000,000 respectively or such lesser amounts as the Commission may prescribe.

These amendments were made in response to the Commission's legislative proposal which indicated that, in view of the fact that compliance with the Trust Indenture Act has become a significant burden to small business, flexibility in the administration of the Trust Indenture Act was necessary. Accordingly, the Commission adopted adopted interim rules raising the exemptive amounts under Sections 304(a)(9) from \$250,000 to \$2,000,000 and from \$1,000,000 to \$5,000,000.

For further information, see Trust Indenture Act Release No. 594 (October 23, 1980) [45 FR 71776].

4. Notice of Sales: Form 4(6)

On November 7, 1980, the Commission adopted on an interim basis and simultaneously published for public comment Form 4(6), a notice of sales form to be utilized by issuers seeking to sell securities pursuant to Section 4(6) of the Securities Act. Section 4(6) was included in the Securities Act pursuant to Title VI, the "Small Business Issuer's Simplification Act," of the recently enacted Small Business Investment Incentive Act of 1980. It provides an exemption from the registration

provisions of the Securities Act for transactions involving offers and sales of securities by an issuer solely to one or more "accredited investors" if the aggregate offering price does not exceed the amount allowed under Section 3(b) of the Securities Act (raised to \$5,000,000 by the Act). No advertising or public solicitation is permitted in connection with such transactions, and the issuer is required to file a notice of such sales with the Commission on such forms as the Commission shall prescribe. In order to permit issuers immediately to utilize Section 4(6), the Commission adopted Form 4(6) on an interim basis and is seeking public comment with respect to the form and content of a final notice.

For further information, see Securities Act Release No. 6256 (November 7, 1980) [45 FR 75182].

5. Relaxation of the Disqualifications from the Use of the Regulation A and Rule 242 Exemptions

On June 19, 1980, the Commission published for comment proposed amendments to Rules 242 and 252. Provisions of these rules disqualify certain persons from utilizing Regulation A and Rule 242, unless the Commission finds good cause to grant relief. The proposed amendments would codify the appropriate objective criteria utilized in decisions on applications for relief pursuant to Rule 252(f).

For further information, see Securities Act Release No. 6214 (June 19, 1980) [45 FR 42642].

6. Form 10-Q

On September 2, 1980, the Commission published for public comment proposed amendments to Form 10-Q under the Exchange Act. Such amendments are designed to: (1) encourage and facilitate the integration of formally filed quarterly reports with information quarterly reports furnished to shareholders; (2) make certain disclosure requirements for interim periods consistent with revised disclosure requirements for annual periods; and (3) centralized uniform set of instructions for interim financial statements in Regulation S-X.

For further information, see Securities Act Release No. 6236 (September 2, 1980) [ FR ].

7. Forms ABC

On September 2, 1980, the Commission published for comment three proposed forms to be used to register offerings for securities under the Securities Act. These three forms, denominated forms A, B and C for proposal purposes, would replace the most widely used existing registration statement forms and would constitute the basic framework for Securities Act registration, with different level of disclosure and delivery requirements applicable for different levels of companies registering offerings of securities.

For further information, see Securities Act Release No. 6235 (September 2, 1980) [ FR ].

8. Rule 463 Amendments and Form SR

On October 23, 1980, the Commission published for public comment proposed amendments to Rule 463 and related Form SR under the Securities Act. The proposals would extend the requirements to file Form SR (reports of the sales of securities and use of proceeds therefrom) to issuers of securities which will be sold by a direct distribution or by a best efforts underwriting and would reduce the number of reports which must be filed regarding a given offering. The proposals would also change Form SR to a standardized short-answer format, requiring issuers to provide additional identifying information in a more detailed accounting of offering expenses and the use of proceeds.

For further information, see Securities Act Release No. 6251 (October 23, 1980) [ FR ].

9. Proposed Amendments to Tender Offer Rules

On November 29, 1979, the Commission proposed a series of amendments to the various rules governing tender offers to provide definitional clarity, to provide equivalent treatment of shareholders and to prevent manipulation in connection with tender offers.

For further information, see Securities Act Release No. 6159 (November 29, 1979) [44 FR 70:49].

10. Rule 144 Amendment

On October 24, 1980, the Commission published for public comment a proposal to amend Rule 144, which provides a safe harbor for the resale of securities to the public. The proposed amendments would permit persons who have held securities covered by the Rule for periods of three or four years, depending on the status of the issuer of the securities, to sell such securities without compliance with the provisions of the Rule relating to amount limitation, manner of sale and notice, provided such persons are not affiliates of the issuer and there is current information available to the public concerning the issuer.

For further information, see Securities Act Release No. 6252 (October 24, 1980) [ FR ].

11. Advance Notice Release Regarding Small Business Capital Formation

The Small Business Investment Incentive Act of 1980 adopted new Section 4(6) of the Securities Act. It provides an exemption for sale of securities to an unlimited number of "accredited investors" as defined in new Section 2(15) of the Securities Act. The Small Business Investment Incentive Act also amended Section 3(b) of the Securities Act, under which are promulgated Rules 240 and 242 and the Regulation A exemption, to raise the amount which may be exempted by the Commission from registration from \$2,000,000 to \$5,000,000. Prior to these changes, the Commission also adopted a number of rule and form amendments to facilitate small business capital formation such as Form S-18 and Rule 242.

The Division believes it is appropriate at this time to publish a "concept" type release which would solicit public comment on (1) the issues raised by the adoption of Section 4(6); (2) the interrelationship of the various public and private capital raising vehicles available to small business under the Securities Act; and (3) the Commission's present thinking as to potential amendments in these areas. It is anticipated that several rulemaking projects relating to Rules 144, 146, 147, 240, and 242, the Regulation A exemption, and Form S-18 may be initiated in 1981 as a result of the release.

12. Regulation A - Revision of Disclosure Schedule

At the Commission's Small Business Hearings, a number of commentators noted that the disclosure provisions of the Regulation A exemption were significantly out of date. These witnesses felt that the absence of a revision to Schedule I since 1956 and the consequent failure to include in the requirements the types of disclosure presently provided by issuers could impose a burden on smaller issuers. These issuers might spend a longer period in the pre-offering period after filing since inexperienced counsel may believe that Schedule I accurately reflects the Regulation A disclosure requirements.

The Division, in connection with the disclosure staff of the Commission's regional offices, has drafted revisions to Schedule I which are designed to codify current disclosure policies with respect to Regulation A.

13. Withdrawal, Revision and Codification of Registration and Reporting Guides

"Sunset" review of the "Guides for Preparation and Filing of registration statements under the Securities Act of 1933" and the "Guides for Preparation and Filing of Reports and Proxy and Registration Statements under the Securities Exchange Act of 1934." Many of the guides are to be withdrawn while others are to be revised and codified in rules and forms.

14. Proxy Rule Changes

Simplification and reduction of reporting director's and officer's security holdings in proxy statements; addition of requirements with respect to proponents of shareholder proposals; simplification of disclosure covering relationships and transactions involving officers and directors.

15. Form 8-K -- Timely Disclosure

Re-evaluation of periodic reports of material developments in integrated disclosure system.

16. International Integration

Short forms for registration of securities of foreign issuers under the integrated disclosure system.



B. Significant Issues Affecting Regulation of the Securities Markets and the Securities Industry

1. Rule 10b-10 and 15c2-12

On October 6, 1978, the Commission proposed amendments to Rule 10b-10 and adoption of Rule 15c-12 under the Exchange Act which would require brokers, dealers, and municipal securities dealers to disclose on customer confirmations, the amount of remuneration received in certain transactions in debt securities.

For further information, see Securities Exchange Act Release No. 15220 (October 6, 1978) [43 FR 47538].

2. Proposed Rule 11Ac1-3

On April 26, 1979, the Commission proposed for comment Rule 11Ac1-3 under the Exchange Act which would provide protection for all displayed public limit orders against executions at inferior prices by requiring satisfaction of those orders at their limit prices (or, under certain circumstances, the transaction price).

For further information, see Securities Exchange Act Release No. 15770 (April 26, 1979) [44 FR 26692].

3. Proposed Rule 11Aa2-1

On June 1, 1979, the Commission proposed for public comment Rule 11Aa2-1 which would provide procedures by which certain securities would be designated as qualified for trading in a national market system.

For further information, see Securities Exchange Act Release No. 15926 (June 15, 1979) [44 FR 36912].

4. Proposed Rule 11Aa3-2

On December 7, 1979, the Commission proposed for comment Rule 11Aa3-2 which would establish procedures and requirements for plans governing planning, developing, operating or regulating a national market system or one or more facilities thereof.

For further information, see Securities Exchange Act Release No. 16410 (December 7, 1979) [44 FR 72606].

5. Proposed Rule 13e-2

On October 17, 1980, the Commission repropoed for comment a revised version of Rule 13e-2 under the Securities Exchange Act which would regulate purchases of certain classes of common stock and preferred stock by or for the issuer, any affiliate of the issuer, and certain other persons.

For further information, see Securities Exchange Act Release No. 17222 (October 17, 1980) [45 FR 70890].

6. Proposed Rule 15b7-1

On June 7, 1977, the Commission proposed for comment Rule 15b7-1 under the Securities Exchange Act which would establish minimum qualification requirements for brokers and dealers and their associated persons.

For further information, see Securities Exchange Act Release No. 13079 (June 27, 1977) [43 FR 34328].

7. Rules 15c3-1 and 15c3-3

On October 9, 1980, the Commission proposed amendments to the net capital rule which would affect those brokers and dealers who have elected the "alternative" net capital requirements by requiring lower net capital in certain circumstances and by making changes in the computation of required net capital. The Commission also solicited comments on a broad range of questions regarding the financial responsibility rules for brokers and dealers as part of a reexamination of the scope, adequacy, and necessity of those rules.

For further information, see Securities Exchange Act Release No. 17208 (October 9, 1980) [45 FR 69915].

8. Rule 15c3-1

On October 9, 1980, the Commission proposed amendments to the net capital rule which would increase the percentage deductions from the market value of certain debt securities in the proprietary or other accounts of the broker or dealer which must be made in computing net capital to reflect sharp fluctuations in the market value of the securities. The Commission also solicited comments on whether and to what extent these deductions should be reduced by hedging positions in financial futures or securities of a different issuer.

For further information, see Securities Exchange Act Release No. 17209 (October 9, 1980) [45 FR 49911].

9. Broker-Dealer Financial and Operational Reporting

On September 9, 1980, the Commission proposed amendments to the report required under Exchange Act Rule 17a-5 (1) to provide more useful information that will assist the Commission in monitoring the operations and financial condition of broker-dealers and in evaluating the likely effect of proposed and existing regulations on the industry, (2) to define items more clearly so information will be reported in a consistent manner by all firms, and (3) to streamline the FOCUS Report and associated requirements so that the reporting burden is minimized, consistent with the attainment of other public policy objectives.

For further information, see Securities Exchange Act Release No. 17138 (September 9, 1980) [45 FR 62092].

10. Rule 10b-6

The Commission's staff is considering whether to recommend that the Commission propose certain amendments to Rule 10b-6, which regulates the trading activities of issuers and certain other persons during the distribution of securities. The amendments would be intended primarily to eliminate certain disparities that now exist as a result of changes in the trading markets that have occurred since the adoption of the Rule.

11. Rule 15c2-11

The Commission's staff is considering whether to recommend that the Commission propose for comment several amendments to Rule 15c2-11 under the Exchange Act, which regulates the publication or submission of quotations by brokers and dealers. Certain of the amendments would supplement the existing provisions of the Rule in order to afford investors additional safeguards. The other amendments would liberalize the Rule where requirements currently imposed by the Rule may not be necessary to accomplish its purposes.

12. Broker-Dealer Quotation Reporting

The Commission's staff is considering whether to recommend that the Commission propose an amendment to Rule 11Ac-1 under the Exchange Act, the "Quote Rule," to permit "responsible" broker-dealers, under certain circumstances to communicate quotations on a voluntary, as opposed to mandatory, basis.

13. Customer Statements of Accounts

The Commission's staff is considering whether to recommend that the Commission propose, under the Exchange Act a rule of general application with regard to quarterly customer account statements which would require all broker-dealers to make certain disclosures to their customers.

C. Significant Accounting Related Initiatives

1. Reporting of Supplementary Information on the Effects of Changing Prices

The Commission has proposed for comment rules under the Securities Act and the Exchange Act which would require that certain companies include supplementary information on the effects of changing prices (as specified by Statement No. 33, "Financial Reporting and Changing Prices," of the Financial Accounting Standards Board) in filings with the Commission. In addition, the Commission has proposed an expansion to its safe harbor rule for projections to cover the changing price information.

For further information, see Securities Act Release No. ( ) [ FR ].

2. Ratio of Earnings to Fixed Charges

On March 7, 1980, the Commission issued a concept release requesting comments on the usefulness of the requirement that registrants present a ratio earnings to fixed charges in filings with the Commission. The staff intends to recommend that the Commission propose for comment certain amendments to Regulation S-K which would govern the disclosure of the ratio in filings with the Commission and in annual reports to shareholders.

For further information, see Securities Act Releases No. 6196 (March 7, 1980) and No. 6211 (May 9, 1980) [45 FR 16498 and 33650].

3. Revision of the Property, Plant & Equipment Schedules

The Commission's staff is considering whether to recommend to the Commission that it propose certain amendments to the property, plant and equipment schedule and the related schedule of accumulated depreciation, depletion and amortization (Rule §§210.12-06 and 12-07) whereby the percentage test for application would be raised, therefore requiring fewer registrants to provide this information. The schedules would then be reformatted to provide the appropriate information by industry segment. Consideration is also being given whether to require companies to disclose certain available capital expenditure budget information.

4. Revision of Regulation S-X

In ASR 280, the Commission committed to its continued revision of Regulation S-X, specifically with regard to Articles 6, (Investment Companies) 7, 7a, (Insurance Companies) and 9 (Banks). The general purpose of the revision would be to eliminate rules which duplicate generally accepted accounting principles and to further evaluate the present rule to identify requirements which are no longer necessary or are in need of modification. The revisions will be effectuated in a manner to enhance the Commission's program of integrating the financial accounting and reporting requirements under the Securities Act and the Exchange Act.

5. Convenience Financial Statements

The Commission's staff is in the process of considering a project regarding convenience translations in filings by foreign issuers. The objective of the project is to consider possible modifications concerning the Commission's current practice that financial statements of foreign issuers be presented both in the currency of the issuer's domicile and in U.S. dollars.

6. Pro Forma Financial Statements

The Commission's staff is considering whether to recommend that the Commission propose rules in the area of pro forma financial statements. Pro forma

financial statements are presently required in registration statements when an entity is planning or has completed a transaction which will have a significant effect on the composition of the entity. Such transactions include business combinations and dispositions, and the issuance of debt. Currently, there are no rules or guidelines for preparing pro forma financial statements.

D. Significant Initiatives Affecting Investment Companies and Investment Advisers

1. Modification of Requirements Concerning Financial Statements for Prospectuses and Shareholder Reports

On December , 1980, the Commission published for public comment a proposed rule which would standardize financial statement requirements in prospectus and shareholder reports for investment companies. Under the proposed rule, open end investment companies would be able either to (a) eliminate shareholder reports, if the shareholder is supplied with a current prospectus or (b) eliminate financial statements from the prospectus if investors are supplied with a copy of the shareholder report containing financial statements.

For further information, see Investment Company Act Release No. (December , 1980) [ FR ].

2. Revision of Form N-1Q

On November 17, 1980, the Commission proposed a rule to revise Form N-1Q under the Investment Company Act of 1940 and the Exchange Act. The proposed rule would reduce the amount of information required to be reported by management investment companies on that form. Some of the omitted information would be reported, instead, as part of the company's annual update of its registration statement. One main effect of the amendment would be to make it unnecessary for most investment companies to file Form N-1Q on a regular basis.

For further information, see Investment Company Act Release No. 11448 (November 17, 1980) [ FR ].

3. Individual Investment Management Services (mini-accounts)  
Proposed Rule 3a-4

On October 10, 1980, the Commission proposed a rule which would provide a safe harbor from regulation under the Investment Company Act for certain investment management services. Generally, if the clients and their accounts are given individualized treatment by the investment manager, such services would not be considered as investment companies.

For further information see Release No. Investment Company Act Release No. 11391 (October 10, 1980) [ FR ].

4. Exemption from Registration of Interests and Participation  
in Certain H.R. 10 Plans

On October 14, 1980, the Commission proposed a rule that would provide an exemption from the registration requirements of the Securities Act for interests and participations issued in connection with the tax-qualified retirement plans ("H.R. 10" plans) of certain partnerships that meet the criteria set forth in the proposed rule. The proposed rule, if adopted, would obviate the need for these H.R. 10 plans to apply for exemptions from such registration requirements.

For further information, see Securities Act Release No. 6247 (October 14, 1980) [ FR ].

5. Investment Company Status Rules

On November 13, 1979, and November 16, 1979, the Commission proposed Rules 3a-1, 3a-2 and 3a-3 dealing with three different, but common types of "inadvertent" investment company status problems. Each proposed rule would exempt from the registration and regulatory requirements of the Investment Company Act an industrial company which is not, and does not intend to be, an investment company.

For further information, see Investment Company Act Release Nos. 10937 (November 13, 1979), 10943 (November 16, 1979) and 10944 (November 16, 1979).

6. Beneficial Ownership Rule

On November 13, 1979, the Commission proposed amendments to Rule 3c-2 dealing with attribution of beneficial

ownership in Section 3(c)(1). These proposed amendments were held in abeyance during the pendency of the venture capital company legislation. The venture capital company legislation, as adopted, "codified" Rule 3c-2, thereby rendering moot the proposed amendments. The staff intends to recommend that the proposed amendments to Rule 3c-2 be terminated and that existing Rule 3c-2 be rescinded.

For further information, see Investment Company Act Release No. 10938 (November 13, 1979) [ FR ].

7. Intra-complex Securities Transactions

On April 21, 1980, the Commission proposed amendments to Rule 17a-7 which would permit principal transactions between investment companies and other members of an investment advisory complex where the securities transaction is executed at the prevailing market price. The proposed amendments would enable investment advisers to make a greater variety of securities transactions in a more flexible manner among their clients.

For further information, see Investment Company Act Release No. 11136 (April 21, 1980) [ FR ].

8. Fidelity Bonding

On June 2, 1980, the Commission proposed amendments to Rule 17g-1 which would require fidelity bonding of all persons who have access to an investment company's portfolio securities, even if they are employees of the investment adviser. These proposed amendments would resolve the problems raised by the Ninth Circuit decision in the Index Fund case.

For further information, see Investment Company Act Release No. 11193 (June 2, 1980) [ FR ].

9. Service Contracts

The Commission has proposed rules in the past concerning the regulation of contracts involving administrative services between an investment adviser and the investment company. Unlike Section 15 for investment advisory contracts, there is no statutory scheme



