Memorandum **THE New York Stock Exchange**

November 6, 1974

cc: Chairman Needham
Henry Poole

TO: Bob Bishop

FROM: Gordon Calvert

SUBJECT: Meeting at SEC on Special Offerings

Attending for the Exchange:
- Robert Bishop
- Gordon Calvert
- Bruce Davis
- Joel Matcovsky (Merrill Lynch)
- Lou Weston (Goldman, Sachs)
- Judy Shepard (Goldman, Sachs)
- Alan Greenberg (Bear, Stearns)
- Mike Saperstein (Bear, Stearns)
- Dan Murphy (Shields)
- Frank Collins (Merrill Lynch)

Attending for the SEC:
- Sheldon Rappaport
- Francis Snodgrass
- Robert Bretz
- Ed Lyon
- Jeffrey Steele

Since Bruce Davis was also taking notes on the meeting, this memorandum will attempt to summarize only the major comments without including every detail.

Rappaport suggested that the discussion focus on questions of concern to the public interest, particularly whether in special offerings under Rule 391 there should be a requirement for disclosure to investors of the amount of the gross spread. He asked why there is an objection to such disclosure.

Greenberg responded that the reason is that special offerings are risk transactions, and are unlike registered offerings under the 1933 Act where there is "no risk." (Others later dissented from this comment that there is no risk in registered offerings under the 1933 Act and commented that perhaps there is less risk for reasons subsequently explained.) He commented that disclosure of the acquisition cost would permit competitors to "murder us" with their knowledge of the price paid, and that it would wreck the mechanism for such offerings.

Weston stated that the risk is greater in special offerings than in registered offerings because of the marketing time. In a special offering a professional value judgment must be made immediately on the telephone to take or reject a block, whereas in registered offerings there is opportunity to sound out the market in advance before setting a final price.

Rappaport commented that he found difficulty to concede that ’33 Act offerings are “riskless” but that he would concede that for purposes of discussion, and questions why an acquisition cost should not be disclosed to customers in this type of transaction which is an exception to the usual auction market transaction.

Shepard responded that the major factor is that if the customer is satisfied with the price as an investment, they are not concerned with the gross spread and that traders also are not concerned primarily with the spread (but Rappaport challenged that traders would be concerned because they might think that they could buy cheaper tomorrow if they knew the amount of spread).

Murphy emphasized that disclosure of acquisition cost would make it almost impossible to effect special offerings because an institution casually interested in buying and seeing the offering half-sold, if it knew the acquisition cost, might offer simply to take the remainder at cost to clean out the offering.

Weston suggested that disclosure of acquisition cost also could mislead the public because the public might be reluctant to buy if they saw a spread “higher than usual” and they did not know the reasons justifying such high spread.

Snodgrass emphasized that the key issue is whether acquisition cost is material to investors in making an investment decision. Bishop responded that it is not material to regular investors but might be to professionals. Saperstein commented that the amount to be sold is more important than the acquisition cost and Rappaport agreed.

Greenberg added that publicity of the amount of spread could be unfavorable because in occasional cases it might appear that there is a high profit, without knowledge of cases where there had been losses in similar offerings. Murphy added that disclosure of acquisition cost also could be difficult for the selling institution which might be criticized for not obtaining a higher price when persons were not familiar with all of the circumstances or reasons for selling.

Rappaport addressed a question specifically to Collins (Merrill Lynch) asking what problems he would anticipate in disclosing gross spread in terms of customer resistence in retailing. Collins responded that assuming a fixed rate environment, if they were convinced that such disclosure would serve a useful purpose to retail customers, they probably would encounter no serious resistance; but that they are not convinced it is important or material to retail customers.

Rappaport attempted to focus the discussion back to the original question which he raised at the beginning of the meeting, noting that we are discussing securities which by definition ordinarily would be part of the auction market, we are excluding all blocks which are positioned and we are dealing with a special type situation, with a key question whether disclosure of gross spread is material to investors. Greenberg and Murphy challenged use of the assumed “gross spread,” urging that reference always be to acquisition cost, recognizing that an anticipated spread might or might not be realized. Murphy and Weston repeated that this information would not be material to retail investors.

<u>Rappaport</u> then commented that he did not understand the difference in techniques, why a securities firm in one situation would block position 100,000 shares for sale and in another situation would offer those shares in a special offering. Greenberg and Murphy explained that a firm usually will position a block where they know in advance that they can sell a substantial portion of the block and will have to position only the balance, while they would more likely make a special offering where they had no advance indications of interest and seek exposure on the floor for assistance in selling.

<u>Weston</u> and <u>Murphy</u> noted that they did not concur in an earlier comment that offerings registered under the '33 Act are riskless, but agreed that perhaps such offerings have less risk than a special offering. They noted that in a registered offering there is an opportunity to explore market interest before agreeing on a final price, whereas in special offerings a commitment must be made immediately without any advance indications of interest.

Rappaport concluded by noting that the reasons why acquisition costs are not disclosed to investors would have to be explained to the press and to the Congress and suggested that the Exchange or the interested firms express their reasons in writing to the SEC staff if they feel that those reasons can be expressed more effectively than they were in the Exchange letter in May of 1974.