

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C. 20549

SECURITIES ACT OF 1933
Release No. 5226
SECURITIES EXCHANGE ACT OF 1934
Release No. 9444

APPLICABILITY OF ANTI-FRAUD PROVISIONS OF SECURITIES ACTS
TO CERTAIN ACTS AND PRACTICES IN CONNECTION WITH OFFERING
AND SALE OF SECURITIES IN NON PUBLIC OFFERINGS

The Securities and Exchange Commission today called attention to the applicability of the anti-fraud provisions of the securities acts to certain acts and practices in connection with the offering and sale of unregistered securities in transactions not involving any public offering--so called "private offerings". Such transactions are exempt from registration under Section 4(2) of the Securities Act of 1933 but such exemption does not apply to a public resale of the securities by the purchaser. The Commission is particularly concerned about the position in which the purchasers of securities in such transactions may find themselves when they later desire to resell the securities.

Section 17(a) of the Securities Act of 1933 makes it unlawful in connection with the offer or sale of a security, and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder makes it unlawful in connection with the purchase or sale of a security, to make misleading statements or to omit the disclosure of material facts and prohibits other fraudulent or deceptive acts or practices. In the opinion of the Commission, these provisions are violated when an issuer, a person in a control relationship with an issuer, or any other person, in connection with the private placement of securities, fails to inform the purchaser fully as to the circumstances under which he is required to take and hold the securities.

The Commission regards it as a deceptive act or practice for an issuer, a control person, or any other person to sell unregistered securities in a private transaction without fully informing the purchaser as to the applicable limitations upon the resale of the securities by the purchaser. The seller should inform the purchaser that the securities are unregistered and must be held indefinitely unless they are subsequently registered under the Securities Act of 1933 or an exemption from such registration is available. It should be pointed out that any routine sales of securities made in reliance upon Rule 144 can be made only in limited amounts in accordance with the terms and conditions of that rule and that in the case of securities to which that rule is not applicable compliance with Regulation A or some other disclosure exemption will be required.

If at the time a private sale of securities is made it is represented to the purchaser that an attempt will be made to register the securities at some future date or that compliance with Regulation A or some other exemption will be effected, the purchaser should be informed specifically as to the time when and the circumstances under which such attempt to register will be made or compliance with such exemption will be effected. If the issuer is under no obligation to register the securities or to comply with any such exemption, that fact should be made clear to the purchaser. The purchaser should also be informed as to whether the seller will supply the purchaser with any information necessary to enable the latter to make routine sales of the securities under Rule 144.

The Commission strongly recommends the use of restrictive legends on stock certificates and stop-transfer instructions to transfer agents as a means of preventing the illegal sale of privately placed securities (see Securities Act Release 5121), and the purchaser should be informed prior to being committed to purchase the securities whether such a legend will be placed on the certificate or such instructions will be issued.

By the Commission.

Ronald F. Hunt
Secretary