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Page

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Securities and Exchange Commission (S.E.C.)

*1 Securities Act of 1933

Investment Company Act of 1940

Preparation of Forms S-4 and S-5 Including Prospectus for Management Investment
Company
June 28, 1972

Consistent with the Commission's practice of publishing the views of the staff to assist issuers, their counsel, accountants and others concerned in complying with the provisions of the Federal Securities Laws, this release sets forth guidelines prepared by the Division of Corporate Regulation for use in preparation and filing of registration statements pursuant to the Securities Act of 1933 (15 U.S.C. 77a-1 et seq.) for both open-end and closed-end management investment companies on Forms S-4 and S-5 (17 CFR 239.14, 239.15).

On March 11, 1969, the Commission published for comment proposed guidelines for the preparation of Forms S-4 and S-5 (Investment Company Act Release No. 5634, Securities Act Release No. 4953 (34 F.R. 5331)). A considerable number of helpful comments were received in response, and all comments have been carefully considered in the preparation of the definitive version of the guidelines which is attached. Certain changes have been made in the guidelines as a result of the staff's review of the comments and as a result of its further consideration of the various matters involved.

The Commission is today also publishing Investment Company Act Release No. 7221, guidelines for the preparation of Form N-8B-1 (17 CFR 274.11).

The guidelines are not specifically intended for variable annuity companies, which in certain respects present different disclosure problems under the Act. However, to the extent that the Form S-5 calls for disclosures which are also appropriate for variable annuity companies, the guidelines are applicable.

It is anticipated that adherence of these guidelines will substantially expedite the examination by the Division's staff of registration statements on Forms S-4 and S-5. The policies embodied in these guidelines will be changed should experience or altered factual situations require or should the forms be changed. These guidelines are not meant to be a complete guide for the preparation of Form S-4 or S-5, and it is contemplated that additional guidelines will be published from time to time as may be warranted. Interested persons are invited to submit, at any time, suggestions for modifications or for the publication of guidelines covering additional matters. All views or comments should be submitted in writing to the Securities and Exchange Commission, Washington, D.C. 20549. All communications will be available for public inspection.

Registrants are advised that while of course, the responses set forth in these guidelines are acceptable, other responses furnished by registrant may be equally acceptable. Further, the Commission wishes to caution that these guidelines may have only limited applicability to companies with unusual features. For example, companies with highly speculative investment policies may require special disclosures in the prospectus.

*2 It should also be noted that the responses now being set forth in the

(Cite as: 1972 WL 12416, *2 (S.E.C.))

prospectus by some companies may not in all respects meet these guidelines. Accordingly, prospective companies should not rely upon disclosures in existing prospectuses.

The guidelines cover only those items of Forms S-4 and S-5 which the staff believes require further explanation at this time. These guidelines are not rules of the Commission although some may later be incorporated in various rules and forms as experience and need suggest.

While the views expressed by the staff as set forth in this release are those of persons who are continually working with the provisions of the statutes and rules involved and can be relied upon as representing the views of the Division of Corporate Regulation, the public is cautioned that the opinions expressed in this release are not, and do not purport to be, an official expression of the Commission's views.

The terms used in these guidelines have the same meaning as prescribed in the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) and the Rules thereunder.

The guidelines should be read in conjunction with the Investment Company Act Releases cited herein in the 'Compilation of Releases, Commission Opinions, and Other Material dealing with matters frequently arising under the Investment Company Act of 1940' (October 1967), which may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

NOTE: Copies of the guidelines have been filed with the Office of the Federal Register and are contained in the Commission's Releases No. 33-5259 or IC-7220 and may be obtained, Upon request from the Securities and Exchange Commission, Washington, D.C. 20549.

By the Commission.

RONALD F. HUNT, Secretary.

JUNE 9, 1972.

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