



**SECURITIES AND
EXCHANGE COMMISSION**

Washington, D. C. 20549

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FOR RELEASE ON DELIVERY

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OPENING STATEMENT OF
COMMISSIONER PHILIP A. LOOMIS, JR.
AT HEARINGS ON THE IMPACT OF THE
COMMISSION'S RULES AND REGULATIONS
ON CAPITAL FORMATION BY SMALL BUSINESS

9:30 a.m.
Wednesday, April 12
Washington, D. C.

ON BEHALF OF THE SECURITIES AND EXCHANGE COMMISSION,
I AM PLEASED TO OPEN THESE PROCEEDINGS AND WELCOME YOU HERE
THIS MORNING. THE PUBLIC HEARINGS WHICH BEGIN TODAY ARE
PART OF AN EXTENSIVE INQUIRY, PURSUANT TO THE SECURITIES ACT
OF 1933 AND THE SECURITIES EXCHANGE ACT OF 1934, DESIGNED TO
EXAMINE THE IMPACT OF THE COMMISSION'S RULES AND REGULATIONS
ON THE ABILITY OF SMALL BUSINESSES TO RAISE CAPITAL AND TO
COMPLY WITH THE PERIODIC REPORTING REQUIREMENTS UNDER THE
EXCHANGE ACT.

THE COMMISSION'S CONCERN FOR THE VIABILITY OF THE
SMALL BUSINESS SECTOR OF OUR ECONOMY STEMS FROM THE PIVOTAL
ROLE THAT THOSE ENTERPRISES PLAY IN THE HEALTH OF THE
NATIONAL ECONOMY. IT IS ESTIMATED THAT THE APPROXIMATELY
13 MILLION SMALL FIRMS CURRENTLY IN EXISTENCE ACCOUNT FOR
ABOUT 55 PERCENT OF ALL PRIVATE EMPLOYMENT, 48 PERCENT OF
ALL BUSINESS OUTPUT AND 43 PERCENT OF THE GROSS NATIONAL
PRODUCT. EVEN THESE FIGURES FAIL, HOWEVER, TO CONVEY THE

FULL IMPORTANCE OF THE SMALL BUSINESS SECTOR. SMALL BUSINESS, FOR EXAMPLE, IS RESPONSIBLE FOR ONE HALF OF ALL OUR INNOVATIVE ACTIVITY.

THERE IS, HOWEVER, INCREASING EVIDENCE TO SUGGEST THAT SMALL, INNOVATIVE FIRMS ARE AFFECTED BY A NUMBER OF FACTORS WHICH, IN THE WORDS OF THE NATIONAL VENTURE CAPITAL ASSOCIATION, THREATEN TO MAKE THEM "AN ENDANGERED SPECIES." OF CRITICAL IMPORTANCE TO THE FORMATION AND GROWTH OF SMALL BUSINESS IS THE PROBLEM OF ACCESS TO CAPITAL. UNLIKE MATURE LARGE CORPORATIONS, SMALL VENTURES ARE GENERALLY INCAPABLE OF PROVIDING FOR THEIR CAPITAL REQUIREMENTS OUT OF INTERNALLY GENERATED FUNDS.

THE DISPARITY IN THE RELATIVE ABILITY OF LARGE AND SMALL BUSINESSES TO ATTRACT CAPITAL IS UNDERSCORED BY THE FACT THAT IN 1972 THERE WERE 418 FIRM UNDERWRITINGS FOR

CORPORATIONS WITH A NET WORTH UNDER \$5 MILLION; IN 1975 THERE WERE ONLY FOUR. IN 1972 OFFERINGS BY ISSUERS WITH A NET WORTH UNDER \$5 MILLION RAISED \$918 MILLION WHILE IN 1975 THESE ENTERPRISES RAISED ONLY \$16 MILLION. OVER THAT SAME PERIOD, THE CAPITAL RAISED THROUGH REGULATION A OFFERINGS, FELL FROM \$256 MILLION TO \$49 MILLION. WHILE THIS ALARMING DECLINE IN THE CAPITAL SMALL COMPANIES WERE ABLE TO OBTAIN IN OUR PUBLIC MARKETS WAS OCCURRING, THE NEW MONEY GENERATED FOR ALL CORPORATIONS IN REGISTERED OFFERINGS INCREASED NEARLY FIFTY PERCENT FROM \$28 BILLION TO OVER \$41 BILLION ANNUALLY.

RECENT CONGRESSIONAL HEARINGS AND STUDIES HAVE ATTEMPTED TO ISOLATE AND ANALYZE THE FACTORS WHICH IMPEDE THE SUCCESS OF SMALL BUSINESSES. THESE INQUIRIES HAVE REVEALED A COMPLEX MIX OF REASONS INCLUDING THE GENERAL ECONOMIC ENVIRONMENT, TAXATION AND REGULATORY POLICIES,

CHANGING ATTITUDES TOWARD RISK TAKING AMONG INVESTORS, INFLATION, AND TENDENCIES TOWARD GENERAL ECONOMIC CONCENTRATION.

NEVERTHELESS, IT HAS ALSO BEEN SUGGESTED THAT THE REGISTRATION REQUIREMENTS, AND THE COMMISSION REGULATIONS RELATING TO EXEMPTIONS THEREFROM, AND THE STATUTORY PERIODIC REPORTING REQUIREMENTS IMPOSE A RELATIVELY GREATER COMPLIANCE BURDEN ON SMALL COMPANIES THAN LARGE ONES, AND INDEED, MAY HELP TO ENDANGER THE CONTINUED EXISTENCE OF SMALL BUSINESSES AND INHIBIT THE FORMATION OF NEW ENTERPRISES. FOR EXAMPLE, THE REPORT OF THE TASK FORCE ON VENTURE AND EQUITY CAPITAL FOR SMALL BUSINESS HAS ESTIMATED THAT IN 1976 THE AVERAGE COST FOR A SMALL FIRM TO COMPLY WITH THE REGISTRATION REQUIREMENT WAS \$122,350. DURING THE 1971-1972 PERIOD, EXPENSES BORNE BY ISSUERS OF REGISTERED PRIMARY OFFERINGS OF COMMON STOCK

WITH AN OFFERING PRICE UNDER \$500,000 RAN AS HIGH AS TWENTY-FOUR PERCENT OF THE GROSS PROCEEDS.

IN ADDITION, THE RECENTLY SUBMITTED REPORT OF THE ADVISORY COMMITTEE ON CORPORATE DISCLOSURE CITED A NUMBER OF FACTORS WHICH SUGGEST THAT A REDUCTION IN THE REPORTING REQUIREMENTS UNDER THE EXCHANGE ACT, TO LESSEN THEIR IMPACT ON SMALL BUSINESSES, MAY BE WARRANTED. FIRST, THE COMMITTEE'S SURVEY OF PUBLICLY HELD COMPANIES INDICATES THAT THE BURDEN OF REPORTING WEIGHS MORE HEAVILY ON SMALL THAN LARGE COMPANIES. SECOND, DATA FROM THE ADVISORY COMMITTEE'S STUDIES AND CONSULTATIONS WITH INFORMATION DISSEMINATORS REVEALED THAT INSTITUTIONAL INVESTORS AND THEIR ADVISERS EVIDENCE LITTLE OR NO INTEREST IN THE SECURITIES OF SMALL COMPANIES. THIRD, IT DID NOT APPEAR THAT THE REDUCTION OF REPORTING WOULD ADVESELY AFFECT THE POSSIBILITY THAT SMALLER COMPANIES WILL ATTRACT ANALYST INTEREST.

THE COMMISSION IS SENSITIVE TO THE PROBLEMS WHICH SMALL ENTREPRENEURS FACE AND HAS LONG RECOGNIZED THAT THE REGULATIONS APPROPRIATE FOR LARGE FIRMS MAY NOT BE APPROPRIATE FOR SMALLER CONCERNS. IT SHOULD BE EMPHASIZED, HOWEVER, THAT THE FORMULATION AND ADMINISTRATION OF THE COMMISSION'S DISCLOSURE POLICY UNDER THE SECURITIES ACTS REQUIRES THAT THE COMMISSION BALANCE ITS CONCERN FOR THE SUCCESS OF SMALL BUSINESSES AGAINST ITS RESPONSIBILITIES TO PROTECT INVESTORS THROUGH THE DISCLOSURE OF MATERIAL INFORMATION NECESSARY FOR INFORMED INVESTMENT DECISION-MAKING AND TO ENSURE THE FAIRNESS OF THE SECURITIES MARKETS. FOR EXAMPLE, OFFERINGS BY SMALL BUSINESSES RANGE FROM THOSE IN WHICH THE ISSUER IS A RELATIVELY SEASONED COMPANY WITH CONCRETE BUSINESS PROSPECTS TO THOSE IN WHICH THE ISSUER HAS NEVER DONE ANY BUSINESS AND THE INVESTOR IS ENTIRELY DEPENDENT UPON THE VIABILITY OF A PROPOSAL AND THE GOOD FAITH OF THE PROMOTER. PERHAPS SPECIAL SAFEGUARDS FOR

INVESTORS ARE A NECESSARY COMPLEMENT TO ANY RELAXATION OF THE COMMISSION'S CURRENT REQUIREMENTS IN THE LATTER CASE.

ALTHOUGH THE COMMISSION DOES NOT FEEL THAT THE SECURITIES LAWS ARE THE PRINCIPAL OBSTACLE TO THE FORMATION AND SUCCESS OF SMALL BUSINESSES, WE WANT TO MAKE CERTAIN THAT OUR RULES AND REGULATIONS DO NOT UNNECESSARILY RESTRICT THE FORMATION OF VENTURE CAPITAL OR IMPOSE UNDUE BURDENS PURSUANT TO THE PERIODIC REPORTING REQUIREMENTS. FOR THESE REASONS WE HAVE EMBARKED ON THIS REEXAMINATION OF OUR RULES AND REGULATIONS TO DETERMINE THEIR IMPACT.

IN THIS PROCEEDING OUR PRIMARY FOCUS WILL BE UPON THE PROVISIONS OF THE SECURITIES ACT AND THE COMMISSION'S RULES THEREUNDER INCLUDING THE REGISTRATION REQUIREMENTS AND THE REGISTRATION PROCESS, THE INTRASTATE OFFERING EXEMPTION AND RULE 147, THE SMALL OFFERING EXEMPTION AND REGULATION A AND RULE 240, AND THE PRIVATE PLACEMENT

EXEMPTION AND RULE 146. IN ADDITION, BASED UPON THE RECOMMENDATION OF THE ADVISORY COMMITTEE ON CORPORATE DISCLOSURE, WE WILL CONSIDER THE NECESSITY, DESIRABILITY, AND FEASIBILITY OF A REDUCTION IN THE CONTINUOUS REPORTING REQUIREMENTS IMPOSED ON SMALL ISSUERS UNDER THE EXCHANGE ACT.

IN ALL LIKELIHOOD, MANY OF THE PROPOSALS WHICH WITNESSES MAY SUGGEST AT THESE HEARINGS TO AID SMALL BUSINESSES WOULD ENTAIL ACTION BEYOND THE SCOPE OF THE COMMISSION'S EXISTING AUTHORITY. THE COMMISSION WILL CONSIDER SUCH PROPOSALS AND ENCOURAGES THEIR SUBMISSION. ACCORDINGLY, AT THE CONCLUSION OF THE PROCEEDING WE WILL DETERMINE WHETHER TO RECOMMEND THE ENACTMENT OF NEW FEDERAL LEGISLATION IF IT APPEARS THAT SUCH PROPOSALS ARE DESIRABLE AND FURTHER LEGISLATIVE ACTION IS NECESSARY.

IN THESE HEARINGS, WHICH WILL CONTINUE IN LOS ANGELES, DENVER, ATLANTA, CHICAGO, AND BOSTON, THE

COMMISSION HOPES TO ILLUMINATE BOTH THE BROAD QUESTIONS WHICH I HAVE MENTIONED AND THE MORE NARROWLY FOCUSED ISSUES RAISED IN THE PUBLIC RELEASES ANNOUNCING THIS PROCEEDING. WE WILL BE ASSISTED IN THIS TASK BY A NUMBER OF DISTINGUISHED WITNESSES, INCLUDING GOVERNMENT OFFICIALS, CORPORATE OFFICERS, ATTORNEYS, ACCOUNTANTS, AND ACADEMICIANS. IT IS MY CONVICTION THAT SMALL BUSINESS HAS AN IMPORTANT, AND RATHER UNIQUE ROLE TO PLAY IN MEETING THE ECONOMIC CHALLENGES FACING OUR COUNTRY. IN CASE AFTER CASE, TECHNOLOGICAL INNOVATIONS AND NEW PRODUCTS HAVE ORIGINATED, NOT FROM LARGE AND ESTABLISHED BUSINESSES, BUT FROM SMALL START-UP FIRMS WITH LIMITED CAPITAL. IT IS ALSO CLEAR THAT CAPITAL INVESTMENT IN SMALL BUSINESS CREATES MORE JOBS THAN AN EQUIVALENT AMOUNT IN MAJOR COMPANIES. THE IMPORTANCE OF SMALL BUSINESS TO THE DEVELOPMENT OF MINORITY ENTERPRISE IS SIGNIFICANT. MOREOVER, THE OPPORTUNITY WHICH OUR ECONOMIC SYSTEM AFFORDS TO THE INDIVIDUAL TO GO INTO BUSINESS FOR HIMSELF IS ONE OF ITS GREATEST STRENGTHS. I HOPE THAT THE WITNESSES AT THIS PROCEEDING WILL SUGGEST CREATIVE, INNOVATIVE AND VIABLE PROPOSALS FOR COMMISSION ACTION WHICH TOGETHER WITH OTHER CHANGES IN FEDERAL POLICY WILL RESULT IN AN ECONOMIC ATMOSPHERE CONDUCTIVE TO THE FORMATION, GROWTH, AND SUCCESS OF SMALL BUSINESSES.