



FOR RELEASE: 9:30 a.m. Thursday, September 21

78-34

ORAL STATEMENT OF THE HONORABLE HAROLD M. WILLIAMS, CHAIRMAN
SECURITIES AND EXCHANGE COMMISSION, BEFORE THE SENATE
SELECT COMMITTEE ON SMALL BUSINESS

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE THE
COMMITTEE TODAY TO TESTIFY ON THE CAPITAL FORMATION
PROBLEMS OF SMALL BUSINESSES AND TO DESCRIBE THE
COMMISSION'S CURRENT EXAMINATION OF THE EFFECT OF
THE FEDERAL SECURITIES LAWS AND REGULATIONS ON SMALLER
COMPANIES AND NEW VENTURES. THE PROBLEM OF CAPITAL
FORMATION IS PARTICULARLY CRITICAL FOR SMALLER
BUSINESSES BECAUSE, UNLIKE MATURE LARGE CORPORATIONS,
THEY ARE INCAPABLE OF PROVIDING FOR THEIR CAPITAL
REQUIREMENTS FROM INTERNALLY GENERATED FUNDS, AND, IN
TODAY'S CONDITIONS, ARE LARGELY FORECLOSED FROM THE
EQUITY MARKETS.

MY PREPARED STATEMENT, WHICH HAS PREVIOUSLY BEEN
FURNISHED TO THE COMMITTEE, DISCUSSES IN SOME DETAIL THE
COMMISSION'S EFFORTS TO HARMONIZE THE SPECIAL NEEDS OF
SMALL BUSINESS WITH THE REQUIREMENTS OF THE FEDERAL
SECURITIES LAWS. IN ADDITION, MY STATEMENT DETAILS
SOME OF THE MORE SIGNIFICANT ASPECTS OF THE TESTIMONY
RECEIVED AT THE COMMISSION'S HEARINGS ON SMALL BUSINESS.
THESE HEARINGS, WHICH WERE RECENTLY CONCLUDED, DEALT
WITH THE EFFECTS OF THE COMMISSION'S RULES ON THE
ABILITY OF SMALL BUSINESS TO RAISE CAPITAL AND WITH THE
IMPACT ON SMALL BUSINESS OF THE DISCLOSURE REQUIREMENTS
UNDER THE STATUTES ADMINISTERED BY THE COMMISSION.

THE COMMISSION'S STAFF PRESENTLY IS PREPARING A SUMMARY OF THE VIEWS EXPRESSED AT THE HEARINGS, AND I EXPECT TO SEND IT TO THE COMMITTEE IN THE NEXT SEVERAL WEEKS.

RATHER THAN REPEAT THE CONTENT OF MY PREPARED REMARKS, I WOULD LIKE TO TAKE A FEW MOMENTS THIS MORNING TO DISCUSS, ON A MORE PERSONAL LEVEL, MY VIEWS ON THESE IMPORTANT ISSUES, AS WELL AS TO BRING YOU UP-TO-DATE ON THE COMMISSION'S MOST RECENT EFFORTS TO ASSIST SMALL BUSINESS CAPITAL FORMATION.

AS ONE WHO HAS LONG RECOGNIZED THE VITAL IMPORTANCE TO OUR ECONOMY OF A STRONG SMALL BUSINESS SECTOR, I AM SYMPATHETIC TO LEGISLATION AND REGULATORY MEASURES WHICH ARE DESIGNED TO ENCOURAGE A CLIMATE COMPATIBLE WITH THE

GROWTH OF THOSE FIRMS. THE IMPORTANCE TO OUR NATION
OF AN ECONOMIC CLIMATE CONDUCIVE TO THE BIRTH AND GROWTH
OF SMALL BUSINESSES CANNOT BE OVERSTATED. MANY
TECHNOLOGICAL INNOVATIONS AND PRODUCTS WITH A
PROFOUND IMPACT ON OUR SOCIETY HAVE ORIGINATED -- NOT
FROM LARGE AND ESTABLISHED BUSINESSES -- BUT FROM SMALL
INNOVATIVE FIRMS, WHICH SERVE TO IMPROVE OUR QUALITY
OF LIFE AND KEEP OUR ECONOMY COMPETITIVE. SMALL FIRMS
ARE ALSO, AS YOU KNOW, THE MAJOR SOURCE OF EMPLOYMENT
GROWTH, BOTH ABSOLUTELY AND PER DOLLAR OF CAPITAL INVESTED
AND PROVIDE THE BASE FOR THE GROWTH OF MINORITY ENTERPRISE.
THE OPPORTUNITY WHICH OUR ECONOMIC SYSTEM AFFORDS THE

INDIVIDUAL TO GO INTO BUSINESS FOR HIMSELF IS ONE OF ITS
GREATEST STRENGTHS.

UNFORTUNATELY, HOWEVER, OUR ECONOMY TODAY OFTEN
APPEARS INCREASINGLY HOSTILE TO THE SMALL VENTURE.
MANY OF THE PROBLEMS WHICH FACE THE SMALL ENTREPRENEUR
RESULT FROM FACTORS ROOTED IN THE BROAD ECONOMIC ENVIRONMENT
AND THUS BEYOND THE CONTROL OF OF THE FEDERAL GOVERNMENT.
YET A LARGE SHARE OF THE RESPONSIBILITY MUST BE CARRIED
BY GOVERNMENT POLICY.

AS MANY COMMENTATORS AT THE COMMISSION'S SMALL
BUSINESS HEARINGS POINTED OUT, THERE ARE A NUMBER
OF FACTORS WHICH HAVE A SUBSTANTIALLY GREATER IMPACT

ON ACCESS TO THE PUBLIC MARKET-PLACE THAN THE COSTS OR
BURDENS, FOR EXAMPLE, OF REGISTRATION AND REPORTING
UNDER THE FEDERAL SECURITIES LAWS.

A MAJOR OBSTACLE TO CAPITAL FORMATION IS A FEDERAL
TAX STRUCTURE WHICH IS PERCEIVED BY INVESTORS AS INCREASINGLY
INSENSITIVE TO THE NEED TO PROVIDE ADEQUATE INCENTIVES
AND REWARDS TO INDUCE THEM TO FOREGO HIGH INTEREST
RATE, LOW-RISK RETURNS ON CAPITAL FOR THE POSSIBILITY
OF LONG-TERM CAPITAL GROWTH. A TAX POLICY WHICH RECOGNIZES
THAT LARGE INVESTORS WITH THE CAPABILITY OF COMMITTING SUBSTANTIAL
SUMS TO SPECULATIVE SMALL VENTURES ARE UNLIKELY TO
DO SO UNLESS THERE IS AN OPPORTUNITY FOR A COMMENSURATE

LEVEL OF AFTER-TAX RETURNS WOULD OPEN SIGNIFICANT
NEW SOURCES OF CAPITAL TO SMALL BUSINESSES. I PREVIOUSLY
HAVE TESTIFIED BEFORE THE THE SENATE FINANCE COMMITTEE
IN SUPPORT OF LEGISLATION TO LOWER THE TAX RATE ON
CAPITAL GAINS. SUCH LEGISLATION WOULD, IN MY JUDGMENT
BE A MAJOR STEP TOWARD READJUSTING THE RISK/RETURN
RATIO IN A MANNER WHICH WOULD SIGNIFICANTLY STIMULATE
INVESTMENT.

SIMILARLY, THE CORPORATE TAX STRUCTURE IS SUBTLY
SKEWED AGAINST SMALL VENTURES. WHILE THE TAX INCENTIVES
AND OFFSETS AVAILABLE TO BIG BUSINESS ARE TECHNICALLY
ALSO AVAILABLE TO SMALL FIRMS -- THOSE TRYING TO GROW

TO BECOME EFFECTIVE COMPETITORS -- AS A PRACTICAL MATTER,

THEY ARE FORECLOSED FROM BENEFITING FROM MANY OF THEM.

FOR EXAMPLE, THE INVESTMENT TAX CREDIT IS MOST BENEFICIAL

TO ENTERPRISES WHICH ARE HIGHLY CAPITAL INTENSIVE,

AND WHICH HAVE THE FUNDS AVAILABLE FOR LARGE CAPITAL

INVESTMENT. SMALL BUSINESS FIRMS, ON THE OTHER HAND,

ARE MORE TYPICALLY ENGAGED IN LABOR INTENSIVE ACTIVITIES

THAN IN THOSE WHICH ARE CAPITAL INTENSIVE.

ANOTHER SIGNIFICANT FACTOR IMPACTING ON CAPITAL

FORMATION IS GENERAL ECONOMIC CONDITIONS, ESPECIALLY

INFLATION, WHICH ALSO IMPACTS ON SMALL CONCERNS MORE

HEAVILY THAN ON THEIR LARGER COMPETITORS. FOR EXAMPLE,

THE DEPRESSED STOCK MARKET OVER THE PAST SEVERAL YEARS,
HIGH INTERESTS RATES AND A GENERAL ATMOSPHERE OF UNCERTAINTY
NOT CONDUCTIVE TO EQUITY INVESTMENT HAVE CLOSED INVESTOR DOORS,
PARTICULARLY TO SMALL VENTURES.

IN ADDITION, INSTITUTIONAL INVESTORS AND THEIR ADVISERS
EVIDENCE LITTLE OR NO INTEREST IN THE SECURITIES OF SMALL
COMPANIES. IN THIS REGARD, THE ERISA LEGISLATION AND ITS
LIABILITY STANDARD FOR INVESTMENTS BY FIDUCIARIES HAVE MADE
PENSION MANAGERS MORE RELUCTANT TO ALLOCATE A PORTION OF
THEIR FUNDS TO RISK-ORIENTED INVESTMENTS.

FINALLY, OTHER GOVERNMENT REGULATION, SUCH AS ENVIRON-
MENTAL AND SAFETY LAWS, WHILE DESIRABLE, MAY HAVE A

DISAPPROPORTIONATE AFFECT ON SMALLER BUSINESS.

DESPITE THE PREPONDERANCE OF OTHER FACTORS
AFFECTING THE VIABILITY OF SMALL BUSINESS, THE COMMISSION
IS COGNIZANT THAT THERE ARE WAYS IN WHICH THE SPECIAL NEEDS
OF SMALL BUSINESS CAN BE BETTER ACCOMMODATED WITHIN THE
REQUIREMENTS OF THE FEDERAL SECURITIES LAWS CONSISTENT
WITH THE COMMISSION'S BROAD STATUTORY RESPONSIBILITY
TO ENSURE THE PROTECTION OF INVESTORS AND RECOGNIZING THAT
RELAXATION IN THE FEDERAL SECURITIES LAWS REDUCES THE PROTECTION
OF INVESTORS WHICH IN TURN MAY LEAD TO ABUSES WHICH DIMINISH
THE CONFIDENCE OF INVESTORS IN THE STOCK MARKET AND, THUS, THEIR
FUTURE WILLINGNESS TO INVEST.

MY PREPARED STATEMENT OUTLINES IN SOME DETAIL THE PROVISIONS OF THE FEDERAL SECURITIES LAWS WHICH THE PARTICIPANTS IN OUR HEARINGS IDENTIFIED AS HAMPERING SMALL BUSINESS CAPITAL. I'D LIKE TO DESCRIBE BRIEFLY THREE ACTIONS THE COMMISSION HAS TAKEN IN THE PAST FEW WEEKS TO ASSIST SMALL BUSINESSES.

FIRST, FOLLOWING CONGRESSIONAL ACTION RAISING THE SMALL OFFERING EXEMPTION IN THE SECURITIES ACT OF 1933 FROM \$500,000 TO \$1,500,000, THE COMMISSION ADOPTED AN AMENDMENT TO REGULATION A, WHICH IMPLEMENTS THE SMALL OFFERING EXEMPTION, TO INCREASE THE AGGREGATE OFFERING PRICE OF SECURITIES WHICH MAY BE SOLD THEREUNDER WITHIN A

TWELVE MONTH PERIOD FROM \$500,000 TO TO THE NEW \$1,500,000

STATUTORY LIMIT. THIS INCREASE SHOULD SERVE TO MAKE

REGULATION A OFFERINGS CONSIDERABLY MORE ATTRACTIVE TO

SMALL BUSINESSES, PERMITTING THEM TO OBTAIN NEEDED

CAPITAL FROM A PUBLIC OFFERING OF THEIR SECURITIES,

IF SUCH FUNDS ARE AVAILABLE, WITHOUT A FULL SCALE

REGISTRATION.

SECOND, THE COMMISSION HAS ADOPTED AN AMENDMENT

TO RULE 146, UNDER THE PRIVATE OFFERING EXEMPTION OF

THE SECURITIES ACT, TO ALLOW LESS DISCLOSURE FOR OFFERINGS

UP TO \$1,500,000.

THE THIRD RECENT ACTION WHICH SHOULD ASSIST SMALL
BUSINESSES IS THE COMMISSION'S DECISION TO AMEND RULE 144,
WHICH CONTAINS RESTRICTIONS ON SECONDARY SALES, OR REALES,
OF CERTAIN SECURITIES. COMMENTATORS WERE OF THE VIEW THAT
THIS PROVISION SEVERELY RESTRICTED THEIR ABILITY TO
ATTRACT CAPITAL BECAUSE OF THE LONG PERIOD OF TIME
BEFORE AN INVESTOR COULD LIQUIDATE AN INVESTMENT.
IT ALSO HAD THE EFFECT OF LOCKING INVESTORS INTO THEIR
SECURITIES SO THAT THEY COULD NOT LIQUIDATE THEIR
HOLDINGS AND RECYCLE THEIR INVESTMENT INTO NEW ENTERPRISES.
AT THE TIME OF THE COMMISSION'S HEARINGS ON SMALL
BUSINESS, THE RULE PROVIDED THAT AFFILIATES AND OTHERS

SELLING SECURITIES SUBJECT TO THE RULE COULD SELL,
DURING A SIX MONTH PERIOD, THE LESSER OF ONE PERCENT
OF THE SECURITIES OF THE CLASS OUTSTANDING OR THE
AVERAGE WEEKLY TRADING VOLUME.

THE COMMISSION RESPONDED BY AMENDING THE RULE
TO ALLOW SALES NOT TO EXCEED THE GREATER OF ONE PERCENT
OF THE CLASS OUTSTANDING OR THE AVERAGE WEEKLY TRADING
VOLUME DURING A THREE MONTH RATHER THAN A SIX MONTH
PERIOD. IN ADDITION, THE COMMISSION DETERMINED TO
PROPOSE AN AMENDMENT TO THE RULE WHICH WOULD PERMIT
PERSONS WHO HAVE HELD SECURITIES COVERED BY THE RULE
FOR A FIVE YEAR PERIOD TO SELL SUCH SECURITIES WITHOUT

ANY VOLUME LIMITATIONS, PROVIDED SUCH PERSONS ARE
NOT AFFILIATES OF THE ISSUER.

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THESE ACTIONS ARE A PART OF THE COMMISSION'S CONTINUING
EFFORT TO ADDRESS THE PROBLEMS FACED BY SMALL BUSINESSES
AND THE EXTENT TO WHICH THE FEDERAL SECURITIES LAWS IMPACT
UPON THEIR ABILITY TO RAISE CAPITAL. OVER THE NEXT SEVERAL
MONTHS, WE WILL BE REVIEWING THE SUMMARY OF OUR SMALL BUSINESS
HEARINGS AND WILL EXPLORE WHAT FURTHER STEPS THE COMMISSION
CAN TAKE TO MINIMIZE THE IMPACT OF THE FEDERAL SECURITIES LAWS
ON SMALL FIRMS WHEREVER POSSIBLE CONSISTENT WITH OUR MANDATE
TO PROTECT THE INVESTING PUBLIC. I AM HOPEFUL THAT WITH

IMAGINATIVE APPROACHES, WE CAN FIND SOLUTIONS THAT FULFILL BOTH
OF THESE GOALS.

I WOULD BE PLEASED TO ANSWER ANY QUESTIONS YOU MIGHT
HAVE.