



Rules & Regulations Under the Securities Act of 1933

JULY 6, 1933

Federal Trade Commission

“**A**T ITS CORE,” WRITES JOEL SELIGMAN of Washington University, “the primary policy of the federal securities laws involves the remediation of information asymmetries, that is, equalization of the information available to outside investors and insiders. This is most obviously true with respect to the mandatory disclosure system, which ... was, in essence, a response to the failure of business and foreign investment issuers sufficiently to disclose information material to investment decisions in the period preceding the enactment of the Securities Act of 1933, which for one year was enforced by the Federal Trade Commission, and the Securities Exchange Act of 1934.” *No One Can Serve Two Masters*, 80 Wash. U. L.Q. 449, 450 (2002). During its one-year stint as federal securities and exchange watchdog, the FTC wasted no time getting down to the business of putting regulatory meat on the statutory bones of mandatory disclosure. Which means, in the land of alphabet soup, regulations. They are reproduced in their entirety below. In the 70-odd years since then, the SEC has substantially improved, or at least expanded, on the FTC’s first cut. The FTC’s original eight-page pamphlet (price: 5¢) has become 1,700 pages spread over two volumes of the Code of Federal Regulations, Title 17 (total price: \$120). Take a moment to return to the good old days when typing was optional and purple ink was prohibited.

– *The Editors*

Charles H. March, Chairman, Garland S. Ferguson, Jr., William E. Humphrey, Ewin L. Davis, and Raymond B. Stevens, with Otis B. Johnson, Secretary.

ARTICLE 1. **Promulgation of Rules.**— The following rules and regulations are hereby prescribed and promulgated by the Federal Trade Commission under and pursuant to the Securities Act of 1933, and are effective from and after the date of publication. All references to sections refer to sections of said act.

ART. 2. **Business Hours of the Commission.**— The office of the Commission for the transaction of business under the said act will be open at Washington, D.C. on business days between the hours of 9 a.m. and 4:30 p.m. except Saturday when the office will be open from 9 a.m. to 1 p.m.

ART. 3. **Signature of Commission Orders.**— All orders of the Commission will be signed by the Secretary.

ART. 4. **Address of the Commission.**— All communications to the Commission should be addressed to the Federal Trade Commission, Washington, D.C., unless otherwise specifically directed.

ART. 5. **Definitions.**— (a) Unless otherwise specifically stated the terms used in these rules and regulations shall have the meaning defined in the Securities Act of 1933.

(b) *Registrant.*— As used in these rules and regulations, the term “registrant” shall mean the issuer and each and every person required by section 6 to sign the registration statement.

ART. 6. **Forms.**— The registration statement shall be in the form prescribed therefor by the Federal Trade Commission and in effect upon the date of filing and shall contain the full and complete information required or called for by the several questions, directions, instructions, and other requirements set forth in said form of registration statement. The registration statement shall be on unglazed paper of good quality and of the size prescribed by the Commission (9 x 14). All amendments,

schedules, statements, exhibits, and other documents filed in connection with or as a part of the registration statement shall, where practicable, be on unglazed paper of good quality and of the size prescribed for the registration statement. The text of all such documents shall be printed or typewritten, where practicable, and be in distinct and easily readable type. All printing, typing, or other markings used in said documents shall be in ink of a color suitable for photostating. (Purple ink should therefore not be used.) Such papers shall not be bound together except on the left hand side, and shall have a left margin of at least 1½ inches.

ART. 7. **Filing.**— The registration statement and all other papers required to be filed with the Federal Trade Commission shall be delivered in TRIPLICATE through the mails or otherwise to the securities division, Federal Trade Commission, Washington, D.C. The date on which such papers are actually received by the securities division, Federal Trade Commission, Washington, D.C., shall be the date of filing thereof: *Provided, however,* That all the requirements of said statute and the rules and regulations promulgated thereunder with respect to such filing have been complied with and the required FEE paid.

ART. 8. **Fees.**— (a) At the time of filing said registration statement the registrant shall definitely state therein the maximum aggregate price at which such securities are proposed to be offered and shall pay the registration fee of one one-hundredth of 1 percent based upon such price, said fee, however, in no case to be less than \$25.

(b) Any and all payments of such fees or sums shall be made by cash, United States postal money order, or certified bank check made payable to the disbursing clerk of the Federal Trade Commission.

(c) The registrant shall file with the Commission within 10 days after the security is actually offered to the public a statement setting forth the actual price at which the security was so offered, and if there be a difference between such price and the proposed price set forth in the registration statement a brief explanation of such difference shall be made.

ART. 9. Sale of copies of registered information.— Copies of any or all information filed in connection with or as a part of any registration statement will be furnished to the public upon request and upon the payment of the charge therefor. Photostatic copies will be furnished at the rate of 20 cents per page or typewritten copies at 25 cents per page. Payment shall be made to the Commission at the time of ordering copies and shall be by cash, United States postal money order, or certified bank check payable to the Federal Trade Commission. Estimates as to prices for photostatic, mimeographed, typewritten, or printed copies of any or all such information, and the time required for their production, will be furnished to any person desiring to purchase such copies.

ART. 10. Inspection of registered information.— The registration statement and all information filed in connection therewith will be open to the public for inspection and examination in the office of the Commission, Washington, D.C., during all business hours, except any portion of a contract the disclosure of which the Commission determines would impair the value thereof and would not be necessary for the protection of the investors.

ART. 11. Filing of additional and supplemental information.— The registrant shall file in connection with the registration statement such information as the Commission may from time to time require and direct as being necessary or appropriate in the public

interest or for the protection of investors.

ART. 12. Effective dates of amendments.— (a) A registrant desiring the Commission's consent that an amendment filed prior to the effective date of the registration statement shall be deemed to have been filed when such statement was filed, may apply for such consent at or before the time of filing such amendment, which application shall be signed by the registrant and shall state fully the grounds upon which such consent is requested. Such consent, however, shall not be deemed to have been given nor shall such amendment be treated as a part of the registration statement unless and until the Commission shall have in writing so notified the registrant.

(b) An amendment filed after the effective date of the registration statement, which amendment upon its face appears to the Commission not incomplete or inaccurate in any material respect, shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

ART. 13. Signatures to amendments.— Any and all amendments to the registration statement shall be signed by each issuer, its principal executive officer or officers, its principal financial officer, its comptroller or principal accounting officer, and the majority of its board of directors or persons performing similar functions (or, if there is no board of directors or persons performing similar functions, by the majority of the persons or board having the power of management of the issuer); and in case the issuer is a foreign or Territorial person, by its duly authorized representative in the United States; except that when such amendment relates to a security issued by a foreign government, or political subdivision thereto, it need be signed only by the underwriter of such security.

ART. 14. Accountants.— The Commis-

sion, unless it otherwise specifically directs, will not recognize any person as a certified accountant who is not duly registered and in good standing under the accounting laws of the State, Territory, or country of his residence or principal office as a certified public accountant. The Commission will not recognize any person as a public accountant who is not duly recognized, in good standing and entitled to practice as such under the laws of the State, Territory, or country of his residence or principal office.

The Commission will not recognize any such certified accountant or public accountant as independent if such accountant is not in fact independent. Unless the Commission otherwise directs, such accountant will not be considered independent with respect to any person in whom he has any interest, directly or indirectly, or with whom he is connected as an officer, agent, employee, promoter, underwriter, trustee, partner, director, or person performing similar function.

ART. 15. Certifications by accountants or other experts.— Any certificate by an independent certified or public accountant with respect to any part of the registration statement, any papers or documents used in connection therewith, shall be dated and shall state that such accountant or other expert has, after reasonable investigation, reasonable grounds to believe, and does believe, at the time of the date of such certificate, that the statements therein are true and that there is no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, except as specifically noted.

If in any case such accountant or other expert is unable to satisfy himself concerning the correctness of any item in the said part of the registration statement, papers or documents, he shall refer to such items in his certificate and give appropriate explanation thereof.

If anything comes to the attention of such accountant or other expert, or he obtains knowledge of any facts before the effective date of registration which would make any of the material items therein untrue or indicate that there was an omission to state a material fact required to be stated or necessary to make the statements therein not misleading, he shall bring such immediately to the attention of the Commission.

In determining what constitutes reasonable investigation and reasonable grounds for belief, the standard of reasonableness shall be that required of a person occupying a fiduciary relationship.

Where a partnership of certified or public accountants certifies to a registration statement or any part thereof or any document used in connection therewith, the certificate shall be signed with the partnership name and by a member thereof.

ART. 16. Contents of prospectus.— The information set forth in the prospectus, including financial statements, except as to the latest balance sheet and the profit and loss statement for the latest fiscal year, may be expressed in a condensed or summarized form and need not follow the numerical sequence of the items of information required in the registration statement, provided that such condensation and rearrangement shall not omit any item of information which may be material or may be necessary in order that the other statements contained in such prospectus shall not be misleading. There shall be inserted in a conspicuous part of the prospectus, and in type as large as that used in the body thereof, the following statement:

Copies of the registration statement on file with the Federal Trade Commission may be procured from the Commission upon payment of the legal charge therefor. Neither the fact that such registration statement has been filed with the

Commission, nor the issuance of the prospectus under the rules of regulations prescribed, shall be deemed a finding by the Commission that this prospectus is true and accurate on its face, or omits to state a material fact or to mean that the Commission has in any way passed upon the merits of, or given approval to, such prospectus or the security mentioned therein.

Subject to the foregoing provisions, there may be omitted from a prospectus the following items of information contained in the registration statement:

(1) If the registration form A-1 is filed as to any issuer or security: 9; 17; 18; 23, except as to the issue for which the registration statement is filed; 28; 29, as of a date approximately 1 year prior to the filing of registration; 31, except as to principal underwriters; 36; 37; 38; 39; 46; 48; 49; 51, except the last balance sheet and last profit and loss statement; 52, except that the number of subsidiaries and affiliates shall be stated; 54, except as to latest balance sheet; 55, except as to latest profit and loss statement; 56; all supporting schedules to balance sheets and profit and loss statements; and all exhibits.

If the registration form B-1 is filed as to any issuer or security:

[blank in original -eds.]

If the registration form C-1 is filed as to any issuer or security:

[blank in original -eds.]

If the registration form D-1 is filed as to any issuer or security:

[blank in original -eds.]

All information required by this rule to be included in a prospectus shall be placed in a conspicuous part of the prospectus in type as large as that generally used in the body of the prospectus.

The registrant shall file with the prospectus a complete reconciliation and tie of all data shown in the prospectus with that shown in the registration statement.

ART. 17. Prospectuses.— (a) Five copies of the form of prospectus proposed to be issued with respect to a security shall be filed with the registration statement. The Commission shall be notified of the price and date to be inserted in the prospectus prior to the date of the public offering.

(b) No prospectus purporting to comply with the requirements of section 10 shall be used unless and until 5 copies of such form of prospectus shall have been filed with the Commission.

(c) In a case where a prospectus consists of a radio broadcast such prospectus shall be reduced to writing and five copies thereof shall be filed by the user of such prospectus with the Commission at least 5 days before such prospectus is to be broadcast or otherwise issued to the public.

(d) Each prospectus and form of prospectus shall have the date on which it is to be issued, printed in a conspicuous place.

ART. 18. Computation of time.— Unless otherwise required, the following rules shall govern in computing time under section 8:

(a) Sundays and legal holidays shall be counted in the same respect as business days.

(b) In computing the effective date of the registration statement such date shall be the twentieth day after the filing of said statement, counting the next day after the filing thereof as the first of said 20 days.

(c) In computing the effective date of the registration statement in the case of securities of any foreign public authority, which has continued the full service of its obligations in the United States, the proceeds of which are to be devoted to the refunding of obligations payable in the United States (as provided in

subsection (a) of said section 8), the effective date shall not be before 7 full days have elapsed after the filing of such registration statement, counting the next day after the date of filing as the first of said 7 days.

(d) In computing the number of days of notice of hearing, the next day after the date of sending confirmed telegraphic notice, or the next day after the date of personal service of such notice shall be counted as the first day of the respective period within which opportunity for hearing is to be accorded as provided in subsections (b) and (c) of said section 8.

ART. 19. Application for waiver of written consent under section 7.— In section 7 it is provided that:

If any such person is named as having prepared or certified a report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement unless the Commission dispenses with such filing as impracticable, or as involving undue hardship on the person filing the registration statement.

Application to the Commission for dispensing with such written consent shall state the grounds on which such application is based and be supported by affidavit covering all the material facts and showing specifically why the obtaining of such written consent is impracticable or involves undue hardship on the person filing the registration statement. Such application shall be filed and consent of the Commission obtained prior to the filing of the registration statement.

ART. 20. Gold Obligations.— When the issuer continues to sell subsequent to July 26,

1933, securities which in compliance with the provisions of the indenture (mortgage) purports to give the obligee the right to require payment in gold coin or a particular kind of coin or currency of the United States, such security shall have printed in type the size and kind used on the face of the security, a statement substantially as follows:

The within provision that the principal of and interest on this bond is payable in gold coin of the United States of America of the standard of weight and fineness existing on the ___ day of ____ was included therein in compliance with the terms of the within-described indenture (mortgage) which was executed prior to the approval, on June 5, 1933, of Public Resolution No. 10 of the Seventy-third Congress. Specific attention is called to the fact that said public resolution provides in part as follows:

“Every obligation heretofore or hereafter incurred whether or not any such provision is contained therein or made with respect thereto shall be discharged upon payment dollar for dollar in any coin or currency which at the time of payment is legal tender for public and private debts.”

ART. 21. Hearings by the Commission.— All hearings shall be public and may be held before the Commission or an officer or officers of the Commission designated by it, and appropriate records thereof shall be kept. Unless otherwise directed, the place of hearing will be the office of the Federal Trade Commission in Washington, D.C. All proper parties entitled to be heard at such hearings may appear in person or by counsel or other duly authorized representative.

ART. 22. Appearance of counsel or other duly authorized representative.— Any person appearing as counsel or representative of any registrant for the transaction of any business before the Commission under

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said act shall thereupon file with the Commission in writing due authorization to act as such counsel or representative.

ART. 23. **Rules.**— The Commission may from time to time make, amend, rescind or add to the rules and regulations herein described.

The foregoing rules and regulations of the Federal Trade Commission are hereby published on this 6th day of July 1933 and are effective from and after said date.

By the Commission:

CHARLES H. MARCH,
Chairman.

Attest:

OTIS B. JOHNSON,
Secretary.

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