

MEMO# 7155

August 2, 1995

SEC PROPOSES REVISIONS TO REGULATION S AND RELATED RULES UNDER THE 1933 ACT

1 Securities Act Release No. 7189, International Series Release No. 820 (June 27, 1995) and Securities Act Release No. 7190, International Series Release No. 821 (June 27, 1995). August 2, 1995 TO: INTERNATIONAL COMMITTEE No. 21-95 SEC RULES COMMITTEE No. 90-95 RE: SEC PROPOSES REVISIONS TO REGULATION S AND RELATED RULES UNDER THE 1933 ACT _____ The

Securities and Exchange Commission recently issued for public comment two releases relating to the use of Regulation S under the Securities Act of 1933.¹ The Commission's releases are briefly summarized below. Streamlining Disclosure and Requiring Quarterly Reporting The Commission proposed amendments to several rules under the Securities Act that would reduce the need for companies to issue unregistered securities in reliance on Regulation S. The amendments would streamline certain requirements applicable to registered offerings of securities under the Securities Act. The Commission proposed, among other things, (i) eliminating the requirement to provide audited financial statements for pending business acquisitions in Securities Act registration statements and (ii) waiving the requirement to provide certain audited financial statements for a consummated business acquisition if those financial statements are not readily available. The Commission also proposed requiring in annual and quarterly reports disclosure of unregistered sales of common equity securities during the previous fiscal quarter, whether the sales are pursuant to a private placement, a Regulation S offering or otherwise. Amendments to Regulation S The Commission stated its views regarding the availability of Regulation S with respect to certain transactions and several problematic practices that have developed involving unregistered sales of equity securities of domestic reporting companies purportedly in reliance on Regulation S. The Commission also requested comment regarding whether Regulation S should be amended to impose additional restrictions on its use to impede attempts to use the Regulation to evade the registration requirements of the Securities Act. The Commission requested comment on, among other things, (i) extending the restricted period for certain offerings of securities under Regulation S from 40 days to one year, (ii) limiting the use of one of Regulation S's safe harbors by domestic issuers offering common stock to offerings sold at market price or with a specified minimal discount, (iii) requiring selling restrictions that limit purchasers' ability during the restricted period to sell short or otherwise take a short position with respect to or otherwise hedge the risk of holding common equity securities, and (iv) prohibiting the payment for common equity securities with certain types of non-recourse or other types of promissory notes where the expectation of repayment derives solely from the proceeds of resale of the securities. Comments on the proposals must be provided to the Commission by September 8, 1995.

Accordingly, please provide me with any comments you have on the proposals no later than August 22, 1995. You can reach me by phone at (202) 326-5821 or by fax at (202) 326-5827. Dorothy M. Donohue Assistant Counsel Attachment

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