

MEMO# 8334

October 17, 1996

SEC ADOPTS RULES REGARDING PERIODIC REPORTING OF UNREGISTERED EQUITY SALES

1 Securities Exchange Act Release No. 37801, International Series Release No. 1020 (October 10, 1996) ("Release"). October 17, 1996 TO: INTERNATIONAL COMMITTEE No. 36-96 SEC RULES COMMITTEE No. 110-96 RE: SEC ADOPTS RULES REGARDING PERIODIC REPORTING OF UNREGISTERED EQUITY SALES

The Securities and Exchange Commission recently issued final rule amendments relating to periodic reporting of exempt sales of equity securities.¹ The amendments are designed to address concerns that adequate and timely disclosure be made to shareholders and the markets of unregistered offerings of equity securities, particularly those made in reliance on Regulation S and Section 4(2) of the Securities Act. The Release is briefly summarized below. The rule amendments require registrants to report quarterly all exempt sales of equity securities other than sales made in reliance on Regulation S. (This information generally is required to be reported on Form 10Q or Form 10K.) The rule amendments require reporting of Regulation S sales on Form 8-K within 15 days of any such sale. The Commission reasoned that quarterly reporting for most exempt equity sales will provide adequate and timely disclosure because privately placed securities cannot be freely resold into the public markets until a significant period of time after the sale. In contrast, disclosure is required more quickly for Regulation S sales because of the shorter restricted period for resales in the U.S. of securities sold in reliance on Regulation S. (The Release also restates the Commission's intention to consider lengthening the restricted period for resales of Regulation S securities.) The amendments require certain information to be disclosed about unregistered sales of equity securities, including the title and amount of securities sold, the name of the underwriter, the consideration received, and the exemption from registration claimed. In addition, the amendments require issuers to identify the persons or classes of persons to whom the securities were sold. The Institute's comment letter on the proposed amendments had pointed out that while the title and amount of securities sold would alert investors to sales of securities that might significantly dilute their securities holdings, it is not necessary for shareholders to also know the identity of the purchasers of the securities. While the Commission did not eliminate this disclosure requirement, the Release points out that companies will have the option to describe the classes of persons to whom the securities were sold (e.g., accredited investors), as opposed to the names of individual investors. The amendments will be effective thirty days after publication in the Federal Register. The Release explains that sales that occur prior to the effective date, but for which a report is due after the effective date, must be reported. Dorothy M. Donohue Assistant Counsel Attachment

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