



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

October 15, 1999

Mail Stop 4-2

Louis Rorimer, Chairman
Jones, Day, Reavis & Pogue
North Point, 901 Lakeside Avenue
Cleveland, Ohio 44114-1190

Re: American Bar Association

Dear Mr. Rorimer:

In regard to your letter of September 29, 1999, our response thereto is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in your letter.

Sincerely,

Catherine T. Dixon
Chief Counsel



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September 29, 1999

Catherine T. Dixon, Esq.
Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Open Market Stock Purchase Plans Under Rule 16b-3

Dear Ms. Dixon:

On behalf of the Subcommittee on Employee Benefits and Section 16 of the American Bar Association Section of Business Law's Federal Regulation of Securities Committee, we are writing to request the staff's views on a question of general applicability relating to the rules under Section 16 of the Securities Exchange Act of 1934 ("1934 Act"). Rule 16b-3(a) states that the rule is available to exempt any "transaction between the issuer (including an employee benefit plan sponsored by the issuer) and an officer or director of the issuer" if the transaction satisfies the applicable conditions of the rule. We understand that the staff has reservations whether certain open market stock purchase plans qualify as employee benefit plans "sponsored by the issuer" under the rule. A determination by the staff that such plans are not sponsored by the issuer within the meaning of Rule 16b-3 would mean that acquisitions of stock by officers and directors under such plans would not be eligible for exemption under the rule.

The types of plans at issue are discussed by the Commission in various releases under the Securities Act of 1933 ("1933 Act"), including Release Nos. 33-4790 (1965), 33-5515 (1974), and 33-6281, § I.E. (1981). These plans generally involve purchases of the employer-issuer's stock in the open market by a broker on behalf of employees of the issuer or its subsidiaries. In Release No. 33-4790 ("Release 4790"), as supplemented by Release No. 33-5515, the Commission indicated that registration

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under the 1933 Act by the issuer of the stock acquired by participants in these plans would not be required where:

- All communications of a soliciting character are furnished by and in the name of a broker or other agent of the employees;
- The securities are acquired in ordinary brokerage transactions and the rights and obligations of the employee and the broker are consistent with the ordinary broker-client relationship, which might include leaving the securities in the custody of the broker or other person performing the custodial function; and
- The issuer or an affiliate performs no more than the following functions:
 - (1) Announces the existence of the plan;
 - (2) Makes payroll deductions at the request of employees for the purpose of participating in the plan;
 - (3) Makes available to the broker or other agent the names and addresses of employees for direct communications by it to such employees regarding the plan (as, for example, through addressing the communications to be sent by the broker or other agent, enclosing the broker's communications to employees with announcements by the issuer, or holding an initial meeting of employees at the issuer's premises);
 - (4) Pays no more than its expense of payroll deductions and the reasonable fees and charges of the broker or other agent for brokerage commissions and bookkeeping and custodial expenses; and
 - (5) Performs bookkeeping and similar administrative functions relating to the operation of the plan.

In connection with your consideration of the application of Rule 16b-3 to the above plans, you have asked us for certain information regarding the method of operation of such plans.

