

**SUPPLEMENTARY INFORMATION:** On January 16, 1979, the Supreme Court issued a decision in which it addressed for the first time in its history the application of the Securities Act of 1933 ("1933 Act") [15 U.S.C. 77a et seq.] to participation interests in a private pension plan. The decision, which was rendered in the case of *International Brotherhood of Teamsters v. Daniel* ("*Daniel*"),<sup>1</sup> has generated considerable controversy and comment.<sup>2</sup> Moreover, it has raised questions about the application of the Act to many types of employee benefit plans<sup>3</sup> not covered by the decision. In an effort to resolve the uncertainty which has developed and thereby assist employers and plan participants in complying with the 1933 Act, the Commission has authorized the issuance of this release setting forth the views of its Division of Corporation Finance (hereinafter, the "staff")<sup>4</sup> on the application of the Act to such plans.

The release initially discusses the circumstances under which interests in plans and related entities may be subject to the requirements of the 1933 Act. In this connection, an analysis is provided of the criteria to be used in determining when an offer or sale of a security will occur. There is also a discussion of the various exemptions from the Act's registration provisions that may be available for such offers or sales. This is followed by a brief discourse on the application of the Act both to the various types of securities transactions in which plans may engage

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**SECURITIES AND EXCHANGE  
COMMISSION**

**17 CFR Part 231**

**[Release No. 33-6188]**

**Employee Benefit Plans;  
Interpretations of Statute**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Interpretations of statute.

**SUMMARY:** The Commission has authorized the issuance of a release setting forth the views of its staff on the application of the Securities Act of 1933 to employee benefit plans. The purpose of the release is to provide guidance to the public and thereby assist employers and plan participants in complying with the Act.

**FOR FURTHER INFORMATION CONTACT:** Peter J. Romeo, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272-2573.

<sup>1</sup> 99 S. Ct. 790, — U.S. — (1979). In *Daniel*, the Supreme Court held that neither the 1933 Act nor the Securities Exchange Act of 1934 ("1934 Act") [15 U.S.C. 78a et seq.] apply to a compulsory, noncontributory pension plan.

<sup>2</sup> See, e.g., L. J. Haas, *Supreme Court in Daniel leaves open possibility that some plans may be subject to securities laws* J. Tax., 263-267 (May 1979); J. D. Mamorsky and T. L. O'Brien, *Securities Law and the Daniel Case*, Pension World (May 1979); H. S. Bloomenthal, *The ABC's of Employee Benefit Plans—D for Daniel*, Sec. Fed. Corp. L. Rep. Vol. 1, No. 3 at 17 (March 1979); B. W. Nimkin, *Noncontributory Benefit Plans*, Rev. Sec. Reg., Vol. 12:4 (February 28, 1979); H. L. Pitt, *Daniel: A Seed for More Difficulties for the SEC*, Legal Times of Wash., January 29, 1979 at 27, Col. 1; M. Siegel, *Pension Outlook*, N.Y.L.J. Vol. 181, No. 48 at 1, Col. 1; P. M. Kelly, *Securities Regulation of Retirement Plans after Daniel*, Loyola Univ. L. J., 631-665 (Summer, 1979).

<sup>3</sup> As used in this release, the term "employee benefit plan" means a pension, profit-sharing, or similar plan. It does not include welfare and similar plans which provide for hospitalization or disability benefits, funeral expenses, or social or cultural activities. These latter plans historically have not been considered subject to the securities laws because they do not involve any expectation of financial return on the employee's part.

<sup>4</sup> While this release was prepared by the Division of Corporation Finance, in some instances the views described were originally expressed by the Commission's Division of Investment Management. All such instances are duly noted in the release.

