

Local Policy 3.14

Clearing Of Issues By Exemption Orders

Date: June 22, 1983

On December 13, 1978, the Commission issued a Notice in respect of "real estate tax shelters" indicating that the general practice of clearing such issues by means of exemption orders (typically section 59(1.1) of The Securities Act), subject to conditions, would change. That practice had been largely based on the absence of an acceptable format for prospectuses relative to that type of offering. The Notice observed that in fact, a reasonably satisfactory prospectus format had since developed (thereby removing the main reason for the conditional exemption order approach), and went on to state that in future the Commission would, as a general rule, require future offerings to be cleared by means of a prospectus filing, as in the case of the distribution of other securities.

Since that time, sponsors of other so-called tax shelter offerings (oil and gas drilling programs and movies, for example), have followed the same route as real estate offerings.

Responding to representations originally made by a limited number of prospective issuers, the Commission has given a broad latitude in the exercise of that policy, to the point where it feels it necessary to re-state the policy and apply the guidelines much more firmly. It is concerned by the fact that there is an increasing volume of applications for exemption orders under sections 20 and 59(1.1) of the Act in circumstances where the offering clearly could and should be made by way of prospectus.

One of the cornerstone provisions of The Securities Act is section 35, which requires a prospectus in the case of a primary distribution of securities to the public. The exemption-granting powers of sections 20 and 59(1.1) are clearly meant to provide relief from the provisions of section 35 only in unusual or exceptional circumstances.

Accordingly, the Commission re-states its policy that unless exceptional circumstances exist, offerings to the public require the filing of a prospectus. Applications under sections 20 or 59(1.1) which do not demonstrate at the outset that exceptional circumstances do exist, will be rejected by the Commission.