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BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Action Needed To Better Protect Investors From Fraud In Purchasing Privately Placed Securities

Investors are being defrauded of hundreds of millions of dollars--sometimes their life savings--by buying securities purported to be privately placed and therefore exempt from registration with the Securities and Exchange Commission.

GAO offers several options for the Congress to consider in amending the Securities Act of 1933 to better protect investors while continuing to allow legitimate businesses to raise capital through privately placed securities.

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UNITED STATES GENERAL ACCOUNTING OFFICE

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

Investors have been defrauded of hundreds of millions of dollars--sometimes their life's savings--as a result of buying securities which were purported to be sold in private placement transactions. Under the Securities Act of 1933, privately placed securities are exempt from registration with the Securities and Exchange Commission.

We are recommending that the Congress amend the Securities Act of 1933 to better protect investors while at the same time enabling legitimate business promoters to raise capital through use of the private placement exemption from registration. Because the issues are complex and will require a careful balancing of interests, we are recommending three options for the Congress to consider.

We are sending copies of this report to the Director, Office of Management and Budget and to the Chairman, Securities and Exchange Commission.

Sincerely yours,

Milton J. Socolar

Acting Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

ACTION NEEDED TO BETTER PROTECT INVESTORS FROM FRAUD IN PURCHASING PRIVATELY PLACED SECURITIES

D I G E S T

Investors are being defrauded of hundreds of millions of dollars--sometimes their life savings--by buying securities purported to be private transactions and therefore exempt from registration with the Securities and Exchange Commission. Many persons being defrauded are novice investors who do not have the knowledge or experience to buy unregistered securities. By the time they realize they bought securities interests in fraudulent business schemes, it is generally too late to recover their money.

The Securities Act of 1933 (15 U.S.C. 77a) imposes disclosure and antifraud requirements on securities issues. All securities sold in interstate commerce must be registered with the Commission unless the issue is exempt from registration. This requirement is intended to insure "full and fair disclosure" in securities sales to enable investors to make informed investment decisions. The act provides exemptions from registration generally where the public benefits of registration are considered remote. One such exemption in section 4(2) of the act--commonly called the private placement exemption--is for issues which are sold to investors in private transactions. (See pp. 1 to 3.)

MISUSE OF THE PRIVATE PLACEMENT EXEMPTION

During the 3 years ended September 30, 1978, the Commission investigated 142 purported private placement offerings involving fraud. According to Commission investigative files, investors were not given accurate and complete information which would have been available to them had the securities been registered as public offerings. (See pp. 6 and 7.)

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For example, in raising $10.3 million to construct apartment buildings, promoters overstated their experience and financial strength and the profitability of their previous real estate businesses. They did not disclose that the businesses were in serious financial difficulty, that a prominent businessman represented as an investor was, in fact, one of the promoters, or that funds had been diverted to other projects and used to pay off unrelated debts. By the time the scheme collapsed, investors had been defrauded of $9 million. (See p. 7.)

Many persons who bought these securities and lost their savings were novice investors who did not have the requisite experience to invest in unregistered securities. While the Commission's 142 investigations showed that the general public was defrauded, the investigations did <u>not</u> indicate that the purchase of fraudulent securities was also a problem for institutional investors, such as insurance companies, which ordinarily are very experienced in investment matters. (See pp. 7 to 9.)

GAO noted that the private placement exemption is not always a problem. It pointed out that legitimate businesses have raised billions of dollars by legitimately selling unregistered securities under the private placement exemption. Although investor losses may also occur in these sales, they would result from normal business risks associated with any investment.

EXTENT OF INVESTORS' LOSSES

No one knows how many investors have bought private placement securities sold on a fraudulent basis or what their losses were. However, in 95 of the 142 Commission investigations, roughly 30,000 investors were defrauded of over $255 million. Loss estimates were not available for the other 47 investigations. The losses disclosed by the Commission may be only the tip of the iceberg. In reply to a GAO questionnaire, 28 State securities commissioners reported that their investigations in 1978 alone showed that investors in their States lost between $330 and $350 million by buying securities in fraudulent private placement schemes. (See p. 10.)

The losses can be devastating. Many investors, because of their advanced age or for other reasons, were not in a position to recover. In some cases, family savings were wiped out. One man, for example, sold his home and invested the proceeds--more than $30,000--to ensure an income to care for his brain-damaged child. After finding he had been defrauded of his entire investment, he committed suicide. (See p. 10.)

WHY THE PRIVATE PLACEMENT EXEMPTION CANNOT BE ADEQUATELY POLICED

Misuse of the exemption is difficult to control under any circumstance, but the Commission is hampered in its enforcement efforts because:

--the act does not provide guidance and criteria as to the use of the private placement exemption, and promoters use this vagueness to their advantage,

--the Commission frequently does not know that a promoter is relying on the private placement exemption to sell unregistered securities, and

--the Commission does not have ready access to the promoter's records to determine whether the claimed use of the exemption is justified. (See pp. 11 to 15.)

There has been much uncertainty over the past 45 years as to what section 4(2) means. An American Bar Association committee concluded in 1975 that it was difficult, if not impossible, to determine the proper use of the private placement exemption. (See pp. 11 and 12.)

The Commission attempted to reduce the uncertainty by issuing Rule 146, detailing requirements for a private placement. However, because substantial questions exist as to the extent of the Commission's authority to issue rules limiting the use of the section 4(2) exemption, use of Rule 146 is optional. An issuer can claim the exemption under section 4(2) without regard to the rule. (See p. 11 and 12.)

The Commission is also hampered because issuers are not required to give notice when they sell securities under the section 4(2) exemption. Rule 146 requires notice of a sale, but a promoter wishing to defraud investors through a private placement can merely claim the sale is exempt under section 4(2) without providing prior notice. As a result, enforcement is reactive because the Commission is usually unaware of use of the exemption in cases where there were fraudulent sales until it receives a complaint or other indication that abuses are occurring. (See pp. 12 to 14.)

If issuers were required to give notice as a condition of the section 4(2) exemption, the Commission would have a tool to monitor use of the exemption.

The Commission is further hampered because it cannot readily obtain the promotional literature and other information which could indicate misuse of the section 4(2) exemption. Commission experts can identify inconsistencies, misstatements, and inadequate disclosure by reviewing promotional literature and may thus be able to stop fraudulent promotions in the early stages and better protect investors. (See pp. 14 and 15.)

The Commission's staff may be able to obtain evidence of violations from other sources, but this may require many months of investigation. During this period, use of the exemption is not suspended, and more persons may be drawn into fraudulent business schemes.

RECOMMENDATION TO THE CONGRESS

GAO recommends that the Congress amend section 4(2) of the Securities Act of 1933 to better protect investors, while at the same time enabling legitimate promoters to raise capital through use of the private placement exemption. GAO is offering the following alternatives for consideration. (See pp. 17 to 19.)

--Amend the Securities Act of 1933 to provide guidance and criteria under which the private placement exemption may be used.

--Amend the act to provide the Commission with authority to establish mandatory rules governing the conditions for use of the private placement exemption.

--Amend the act to provide the Commission with pertinent information on the use of the exemption by requiring issuers, unless specifically exempted by the Commission, to (a) notify the Commission when they plan to issue privately placed securities and (b) provide the Commission with immediate access to promotional literature and other information relevant to the sale of the securities.

In considering the options GAO offers and other options that might be developed, the Congress may wish to solicit the views of the Commission, the Small Business Administration, and other interested agencies and organizations.

RECOMMENDATION TO THE COMMISSION

The Commission should establish and publicize a toll-free telephone service to enable earlier contact with investors. This would help strengthen oversight and enforcement capabilities to prevent misuse of the private placement exemption. (See p. 19.)

AGENCY COMMENTS

GAO provided a draft of this report to officials of the Securities and Exchange

Commission and the Small Business Administration. GAO discussed the report with officals of these agencies and, where appropriate, their comments were considered.

Officals of the Small Business Administration expressed concern about the options that GAO offers to help prevent misuse of the exemption. Their comments and GAO's analysis are included on pages 19 and 20.

Contents

CHAPTER 1

INTRODUCTION

The Securities Act of 1933 (15 U.S.C. 77a), imposes disclosure and antifraud requirements on issuers of securities. Before passage of this legislation, state securities laws had not been able to stem the widespread abuses which occurred in interstate sales of securities and which contributed to the 1929 stock market crash. Senate hearings conducted after the crash disclosed that numerous unethical and fraudulent practices had been used by business promoters and others to sell securities. The public sought assurances that these practices would not recur. The act is administered by the Securities and Exchange Commission and provides for a dual Federal-State regulatory system for securities.

REGISTRATION OF SECURITIES WITH THE COMMISSION

All securities sold in interstate commerce must be registered with the Commission unless the issue is exempt from the registration. Otherwise, it is unlawful for a person to sell securities in interstate commerce. This requirement is intended to insure "full and fair disclosure" in securities sales to enable investors to make informed investment decisions.

Registration requires an issuer to disclose significant information about the securities issue, the business enterprise and its management. The Commission's role is to review the issuer's registration to determine whether the issuer is providing adequate and accurate disclosure of material facts to investors, and not to pass judgment on the merits of the investment.

Before a securities issue may be sold, the investors must be furnished a prospectus which contains much of the information which the securities issuer provided to the Commission in a registration statement. The purpose of the prospectus is to enable the investor to assess the fairness and reasonableness of the securities being offered.

EXEMPTIONS FROM REGISTRATION

The act provides a number of exemptions from registration generally where the public benefits of registration are considered to be remote. Most of the exemptions pertain to special securities transactions or to organizations operating in specialized fields, such as banking. A large number of companies, by the nature of their operations, are limited to the following three types of registration exemptions:

- --The section 3(a)(11) intrastate exemption for securities sold in a single State or territory.
- --The section 3(b) small offering exemption, which permits the Commission to adopt special exemption rules for issues that do not exceed $2 million.
- --The section 4(2) exemption for issues which are placed with investors in private transactions.

Our report deals with the section 4(2) exemption for privately placed securities.

THE PRIVATE PLACEMENT EXEMPTION

Section 4(2) of the act states that registration requirements shall not apply to "transactions by an issuer not involving any public offering." This exemption is commonly referred to as the private placement exemption.

The Commission's General Counsel concluded in 1935 that whether the private placement exemption could be used depended on how many persons were offered the securities and on other factors, such as the relationships between the securities issuer and the investors. The General Counsel did not indicate how the various factors were to be combined to make the exemption available.

In a 1953 decision, the Supreme Court decided that the applicability of the exemption depended on whether the particular class of persons needed the protection of the act. Consequently, the Court held that the exemption is available when the prospective investors are (1) able to fend for themselves and (2) provided with "access to the kind of information which registration would disclose." The attributes set forth are commonly known as the investor sophistication and information access requirements.

Since 1953, the Federal courts have applied the investor sophistication and information access requirements with varying degrees of emphasis. Some court opinions minimized investor sophistication in favor of information access. Some decisions stressed access and concentrated on the relationship between the issuer and the persons offered the securities. Other decisions stressed different aspects of information access.

THE COMMISSION'S RULE 146

In 1974, the Commission adopted Rule 146 which set out requirements that issuers must meet to qualify for the exemption. According to the Commission, the rule was intended to (1) deter use of the exemption for offerings of securities to persons who were unable to fend for themselves in terms of obtaining and evaluating information about the issuer, and therefore needed the protection of the act's registration process and (2) reduce the uncertainty of businessmen relying on the exemption by providing objective standards governing its use.

Rule 146, as amended in 1978, includes the following requirements:

--Offers may be made only to persons who have the requisite business and financial knowledge and experience--sophisticated investors--or to persons who can bear its economic risks and are represented by advisors who can evaluate the offering for them.

--The persons offered the securities must be given the same access to information that registration would have provided.

--No more than 35 purchasers may be in the offering, excluding purchasers buying more than $150,000 of securities.

--No general advertisement may be made of the offering.

--The purchaser must not resell the securities without registration or an exemption from registration.

--A short notification must be filed with the Commission when issuers rely on the rule for an exemption from registration.

Rule 146 is intended to provide a "safe harbor" for issuers. This means that issuers complying with the requirements of the rule are considered by the Commission to have complied with the requirements set forth in the act's section 4(2). However, because substantial questions exist as to the extent of the Commission's authority to issue rules which limit or condition use of the section 4(2) exemption, use of Rule 146 is optional. An issuer can claim the exemption under section 4(2), whether or not he complies with the requirements set forth in the rule.

SCOPE OF REVIEW AND METHODOLOGY

We reviewed the legislative history of the Securities Act of 1933, Commission rules and releases, and court decisions regarding the private placement exemption. We reviewed Commission investigative files concerned with misuse of the exemption.

We used a questionnaire to solicit the views of the 50 State securities commissions regarding the exemption. We received replies from 43 State commissioners (see app. I).

We interviewed officials and reviewed operations at the Commission's headquarters in Washington, D.C., and at its regional offices in New York, Los Angeles, Fort Worth, Chicago, and Washington, D.C. We also interviewed officials of State securities commissions in California, Texas, Wisconsin, Michigan, Arizona, Oklahoma, and Illinois.

Information on violations of the private placement exemption was obtained from 142 investigations which the Commission conducted during the 3 years ended September 30, 1978. The Commission's enforcement actions were in various stages, ranging from the completion of informal investigations to the issuance of court injunctions enjoining promoters from further fraudulent sales. We were provided estimates of investor losses by the Commission staff who had conducted the investigations. These estimates were based on information available to the Commission staff at the time of our review and were verified where possible.

On April 28, 1980, we provided preliminary information to Senator Paul S. Sarbanes, Chairman, Subcommittee on Securities, Committee on Banking, Housing, and Urban Affairs, on misuse of the private placement exemption (FGMSD-80-55).

CHAPTER 2

MISUSE OF THE PRIVATE PLACEMENT EXEMPTION RESULTS IN LARGE LOSSES TO THOUSANDS OF INVESTORS

The general public has been defrauded of hundreds of millions of dollars by buying securities which were purported to be privately placed issues and exempt from registration with the Commission. The investors were not given accurate and complete information which would have been available to them had the securities been registered as public offerings. Many persons who bought these securities and lost their savings were novice investors. They did not have the requisite expertise to be investing in unregistered securities, and some were not in a position to recover from the losses incurred.

The Commission has been unable to curb misuse of the exemption for two major reasons. First, the Securities Act of 1933 does not provide adequate guidance and criteria as to the specific conditions under which the exemption can be used and on the types of investors that can be expected to have the necessary skills and knowledge to buy privately placed securities. Promoters of fraudulent business schemes have used the ambiguity of the act to their advantage.

Secondly, substantial questions exist as to the extent of the Commission's authority to issue rules which limit or condition use of the exemption. Therefore, the Commission has not stipulated the conditions which must be followed in selling private placement offerings, and it does not have timely access to information regarding use of the exemption. This means that the Commission often does not know when such securities are being sold and cannot take action until it learns through investor complaints or by other means that the exemption is being misused. By that time, the investor's money is generally lost, and the possibility of recovery through Commission efforts is small.

This report sets out several options for the Congress to consider to better protect investors from buying fraudulent private placement offerings and at the same time preserve the ability of legitimate businesses to raise capital.

MISUSE OF THE PRIVATE PLACEMENT EXEMPTION

Many promoters improperly used the private placement exemption to avoid registering securities with the Commission. According to the Commission's investigations, promoters violated the act's disclosure and antifraud provisions by not providing the investors with information needed to make informed investment decisions and by making fraudulent sales representations. Further, these promoters generally sold securities to investors who lack the training and experience necessary to buy privately placed securities.

Inaccurate and incomplete information furnished to investors

During the 3 years ended September 30, 1978, the Commission investigated 142 purported private placement offerings involving fraud. These investigations showed that investors were not given the accurate and complete information necessary to make informed investment decisions which would have been available to them had the securities been registered as public offerings.

The Commission becomes aware of fraudulent private placement schemes through a variety of sources. The most common are complaints by investors, tips from other agencies, and the Commission's own surveillance of the securities markets. If a preliminary investigation indicates that the exemption has been misused, the Commission may issue an order of investigation, which gives the Commission staff authority to use subpoenas requiring the production of records and testimony under oath. In making an investigation, the Commission staff tries to determine whether the promoter provided investors with adequate disclosure, complied with the antifraud provisions of the act, and sold only to sophisticated investors. If, upon completion of the investigation, the Commission authorizes a civil or administrative action, pleadings are filed with a Federal court or an administrative law judge. Criminal violations normally are referred to the Department of Justice for prosecution.

As discussed on pages 2 and 3, the Supreme Court ruled in 1953 that investors who buy private placement securities should have access to the same kind of information that registration would provide. The Commission's investigations showed that the investors frequently failed to receive adequate information in areas such as financial status of the business, risks of the business undertaking, and how the investors' money was to be used. This information would have been available to the investors if the securities had been registered. The Commission's investigations also showed that the promoters in these 142 cases violated the act's antifraud provisions.

The defrauded investors represent a broad cross section of the investing public--retirees; professionals, independent businessmen and salaried and hourly employees; persons of wealth and limited means; and sophisticated as well as unsophisticated investors. The single most common characteristic among these diverse investors was that they acted on the basis of inaccurate and incomplete information.

The following examples from Commission files on its 142 investigations of exemption misuse show where investors were provided inaccurate and incomplete information.

--Promoters raised $10.3 million selling securities in businesses to construct apartment buildings. They overstated to investors their experience, their financial strength, and the profitability of their previous real estate businesses. They did not disclose that the businesses were in serious financial difficulty when the investors bought their interests, that a prominent businessman who was represented as an investor was in fact one of the promoters, and that funds had been diverted to other projects and used to pay off unrelated debts. By the time the scheme collapsed, investors had been defrauded of $9 million.

--Promoters raised $700,000 from investors by selling oil and gas interests. The promoters falsely claimed extensive experience in the oil and gas industries. They claimed the investment carried little risk because they were drilling "inside" developed fields, but this was not true. They also claimed that they had no royalty interest in the wells, but they did. The investors' entire $700,000 was lost.

--A promoter selling $600,000 in securities told investors that he was about to build a $14 million resort complex. He did not disclose that he had not obtained zoning approvals, prepared plans, or obtained financing, and that he lacked training and experience to operate a resort. Commission investigators could find no assets, and because of the promoter's poor records, could not determine what happened to the investors' money.

Many persons had little experience in investing

According to the Supreme Court, offers of private placement securities should be made only to persons who are shown to be able to fend for themselves and who have requisite knowledge and experience in business matters. The Commission's investigative files, however, showed that many persons who purchased fraudulent private placement securities lacked the sophistication needed to make informed investment decisions.

purchased fraudulent private placement securities lacked the sophistication needed to make informed investment decisions.

In commenting on the investors' lack of sophistication, the Commission staff in one investigation stated that investors had little or no experience in investing in any securities, much less a speculative issue. The staff found that investors' experience in financial and business matters was limited to running small businesses and related enterprises unconnected with the securities industry. Also, based on their lack of investment experience, the investors were found to have had no demonstrable expertise or sophistication in securities investments.

While the Commission's 142 investigations showed that the general public was defrauded, the investigations did not indicate that the purchase of fraudulent securities was a problem for institutional investors, such as insurance companies. There could be a number of reasons for this. Institutional investors develop in-house capability for evaluating investment opportunities which enables them to request and use information which would be provided for securities registered with the Commission. The institutional investors generally buy debt securities, such as bonds, since Federal and State regulations often prevent them from buying speculative securities.

Many noninstitutional investors--usually persons who invest their savings to supplement their salaries or pensions--are novice investors and are no match for promoters who misuse the exemption to sell securities in fraudulent schemes. The promoters often locate these investors by engaging in general advertising and massive interstate sales solicitations. These investors are likely to consider a promoter's securities offering in isolation, without the perspective of other offerings. They may be rushed into buying as a result of the promoter's high-pressure sales tactics. They generally lack the background which would enable them to identify factors which would make a business a high-risk investment.

The following examples from Commission files on the 142 fraudulent schemes involving misuse of the private placement exemption illustrate the investors' lack of investment sophistication.

--Promoters raised $45 million by selling securities in real estate businesses which were represented as tax shelters. Investors who did not have sufficient income to benefit from tax shelter investments were nevertheless sold such investments.1/ One investor was a widow, with five children, who had no taxable income and whose main support was veterans and social security benefits. Another tax shelter investor was a 71-year-old retiree living on a social security pension and a low paying, part-time job. Investors lost at least $5 million.

--A promoter raised more than $5 million from investors to drill oil and gas wells. Many of the investors were retired or were persons of moderate means. In general, the investors had never before purchased limited partnership interests and were unfamiliar with gas and oil financing. Their investment experience was confined solely to mutual funds. The entire $5 million was lost.

--A promoter raised about $270,000 in sales of unregistered securities. The promoter said he sold only to sophisticated investors, who he described as "people who are sane and have the faculties and can make life-type decisions." He sold to almost anyone and did not inquire into the buyers' backgrounds to determine their investor sophistication. Investors lost about $160,000.

It should be noted, however, that businesses, including venture capital companies, have raised billions of dollars in legitimate sales of unregistered securities under the private placement exemption. Although investor losses may also occur in these cases, they would result from normal business risks associated with any investment.

No one knows how much capital is being raised through sales of privately placed securities as there is not a reporting requirement. However, the value of privately placed securities is large. For instance, the Commission found that in 1978, private placement transactions with 48 life insurance companies totaled $18 billion.

INVESTORS SUFFERED SERIOUS LOSSES

According to Commission investigations, investors who bought privately placed securities were defrauded out of

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1/ The congressional intent of a tax shelter investment is to achieve national goals such as encouraging oil and gas exploration. Generally, a taxpayer must be in a 50 percent or higher tax bracket to benefit from a tax shelter investment.

hundreds of millions of dollars. Some investors, because of their advanced age, limited earning power, or ill health, were not in a position to recover from the losses incurred. In some cases, the investors' losses wiped out family savings. The Commission's investigative files showed that in 95 of the 142 investigations, roughly 30,000 investors were defrauded of over $255 million. In the remaining 47 investigations, inadequate records prevented the Commission from estimating the losses to the investing public.

The following examples from Commission files on the 142 fraudulent schemes involving exemption misuse illustrate the serious harm suffered by investors who were defrauded.

--A man invested over $30,000 to ensure an income to help care for his brain-damaged child. He raised the money by selling his home and was promised a 30- to 40-percent annual return on his investment by the promoter. After finding he had been defrauded of his entire investment, the man committed suicide.

--An investor who worked for 30 years and whose recent annual salary was about $12,500 lost his entire life savings of more than $45,000. He needed money because he was in ill health and could not work.

--A man, 84 years old and senile, was induced to invest $37,400 for interest in a business purported to be a recreational resort and an oil and gas venture. The promoter used the $37,400 to pay his personal expenses.

The losses disclosed by the Commission's investigations may be only the tip of the iceberg. In reply to a questionnaire we designed to obtain State views on the Federal private placement exemption, State securities commissioners reported that thousands of investors had lost hundreds of millions of dollars by investing in fraudulent private placement schemes. Twenty-eight commissioners reported that their investigations in 1978 alone showed that investors in their States were defrauded out of $330 to $350 million. Forty-three State commissioners said that there appeared to be fraud in 462 of the 528 investigations they conducted in 1978 involving the private placement exemption.

COMMISSION CANNOT EFFECTIVELY ENFORCE PRIVATE PLACEMENT PROVISIONS

Misuse of the exemption is difficult to control under any circumstance, but the Commission is hampered in its enforcement efforts by two major factors. First, the act does not provide criteria or identify the conditions under which the exemption may be used. Promoters of fraudulent business schemes use the vagueness of the act to their advantage in claiming the exemption. Secondly, the Commission cannot resolve this issue because substantial questions exist as to the extent of its authority to issue rules which limit or condition use of the act's exemption and it does not have timely access to information regarding use of the exemption. With its authority limited, the Commission's response to these schemes is mostly reactive. Its involvement often starts after the investors have been defrauded and when there is little or no prospect of recovering their money.

Use of exemption has been a continuing source of uncertainty

Because the act does not provide adequate guidance, there has been much uncertainty over the past 45 years as to what section 4(2) means in exempting from registration "transactions by an issuer not involving any public offering." As the As the number of investors increases and their relationship to the issuer becomes more remote, it becomes difficult to determine whether a sale is a legitimate private placement. Because there are no specific statutory conditions on the exemption's use, the Commission's enforcement capability is limited, and as discussed previously, serious abuses have resulted.

As discussed on pages 2 and 3, the Supreme Court in 1953 found that the proper use of the exemption depended on whether the investor needed the protection resulting from registration. The Court held that privately placed securities could be sold only to persons who could fend for themselves--commonly called sophisticated investors--and that investors had to be given access to information which registration would have disclosed. The Court, however, did not further define these requirements.

For the two decades following the Supreme Court's decision, other Federal courts and the Commission attempted to develop objective definitions to clarify the Supreme Court's requirements. Because these efforts used a variety of approaches, the decisions and interpretations caused further uncertainty. As a result, an American Bar Association committee concluded in 1975 that it was difficult, if not impossible, to state what the law was concerning proper use of the private placement exemption. The committee found that the sophistication and access requirements were too vague.

As discussed on pages 3 and 4, the Commission attempted to reduce the uncertainty by issuing Rule 146. This rule details requirements which the Commission considers issuers must meet to qualify for the private placement under Rule 146 exemption. If these requirements are met, the Commission considers that the issuer has met the requirements of section 4(2).

However, as discussed previously, compliance with Rule 146 is optional. Promoters take advantage of this escape hatch and the ambiguity of the act in selling fraudulent securities. In response to our questionnaire, 31 State securities commissioners felt that Rule 146 had not reduced fraud in the sale of privately placed securities.

Commission cannot act quickly

The Commission does not have the capability to initiate timely investigations of exemption misuse. Generally, the Commission is limited to reacting when it receives a complaint or other indication that securities law violations are occurring. By that time, the investors' money is usually lost. To provide earlier enforcement capability, the Commission would need clear authority to require that it be notified when securities are to be sold under the section 4(2) exemption. Further, the Commission would need clear authority to obtain immediate access to promotional literature and other information on private placement offerings.

Commission does not have notification of exemption use

The Commission does not have the clear authority to require issuers to give notice of intent to sell securities under the private placement exemption. Rule 146 was amended May 3, 1978, to require such notice for securities offerings of $50,000 or more. Because use of Rule 146 is optional, however, an issuer can always rely on the section 4(2) exemption, which does not require notification. Thus, a promoter wishing to defraud investors through the private placement exemption can merely claim that the sale is exempt under section 4(2) without providing notification.

A great deal of time can pass before the Commission becomes aware of use of the exemption by promoters selling fraudulent private placement securities. Commission files show that many of the 142 fraudulent schemes operated for a number of years. For example, a business scheme in which investors who bought private placement securities were defrauded of at least $5 million operated from 1971 to 1977. The Commission was not aware that these securities were being sold until it inadvertently uncovered the scheme in 1976, as a result of another regulatory investigation.

If issuers were required to give notice as a condition of the section 4(2) exemption, the Commission would have a tool to monitor use of the exemption. Information as to the company's name, the names of the promoters, the nature of the business, the States in which the securities are being sold, and the amount of securities being sold, would enable the Commission to:

--Determine whether the promoters have been previously subject to Federal or State securities investigations. For 68 of the 142 Commission investigations involving misuse of the exemption, the promoters had previously been subject to a Federal or State securities investigation.

--Select private placement offerings to test for compliance with the provisions of the act. This would serve as a deterrent, helping the Commission provide front-end surveillance rather than merely reacting to investor complaints. We noted that in June 1979 the Commission had 40 ongoing investigations resulting from their review of Rule 146 notifications.

--Provide statistical information needed to spot trends and problem areas, and judge the the magnitude of private offerings.

--Provide information to investors inquiring about private offerings.

--Better coordinate investigations with State securities commissions. In response to our questionnaire, 28 State securities commissioners indicated a need for better Federal-State coordination of fraud investigations involving purported private placements. Our analysis of the Commission's 142 investigations showed that less than half of the investigations were coordinated with the State commissions.

If a notification was required and not provided by the issuer, the Commission could bring immediate action to halt the sale upon receiving a complaint. Commission investigative files showed that, without a notification requirement, it often took a year or more after a complaint was made to the Commission to develop a case to stop the sale of fraudulent securities. Our questionnaire revealed that 27 State securities commissioners felt the lack of notification facilitated the sale of unregistered securities in connection with fraudulent schemes.

In adopting a notice requirement under Rule 146, the Commission cited two reasons for needing notice. First, they needed information on the volume and nature of exemption use. Secondly, they needed to be able to readily perceive exemption misuse and thus become aware of possible fraud in its early stages.

Mandatory notification need not be burdensome. Issuers would not need to furnish the detailed information required by registration, but would merely advise the Commission that they are selling exempt securities and provide certain information such as the name of the company, its promoters and the nature of the securities being offered. The one-time filing of a single sheet form, which is a short, simple, and inexpensive reporting process, would be sufficient. A copy of the notice form required under Rule 146 is shown as appendix II.

Certain other exemptions, such as the small offering exemption in section 3(b) of the act, are governed by Commission rules which include mandatory notification. Rule 242 was adopted by the Commission under section 3(b) on January 30, 1980, to provide small businesses more flexibility in raising capital. As with Rule 146, under Rule 242 the issuer is not required to file any offering material with the Commission. However, Rule 242 requires that before the commencement of the offering, at its completion, and every 6 months during its duration, the issuer must file a notification form with the Commission. This notice gives the Commission the statistical and other information needed to monitor use of the exemption. If the exemption under Rule 242 is used, notice is mandatory.

Commission does not have prompt access to information on private placement offerings

The Commission does not have the clear authority to readily obtain issuers' promotional literature and other information which could indicate misuse of the section 4(2) exemption. This enables promoters to continue to sell fraudulent securities and to further divert investors' money.

As discussed on pages 2 and 3, even though private placements are exempt from registration, it is intended that investors have access to the same kind of information that registration would provide. Commission experts can identify inconsistencies, misstatements, and inadequate disclosure by reviewing promotional literature and other information.

For example, a promoter obtained $20 million by informing investors that leases had been obtained on 15,300 acres to mine coal. The promoter did not disclose, however, that the lease covered only surface rights to use the land and not mineral rights which were needed to mine the coal in the ground. Had the Commission experts been able to review the promotional literature and other information on a more timely basis, they might have been able to stop the promotion in its early stages and protect investors.

Under its existing authority, however, the Commission cannot easily obtain promotional literature and other information from the issuer unless it is furnished voluntarily. If the issuer refuses to provide the information, the Commission is forced to use subpoenas. A Commission official told us, in June 1979, that the Commission found it necessary in 18 out of 40 investigations to use subpoenas because the issuers did not provide requested information voluntarily. The Commission is careful in using subpoena power and requires its staff to show that a likely violation of the act's provisions has occurred before approving use of subpoenas. Without access to the promotional literature and other information, this evidence is difficult to obtain.

For example, a promoter who defrauded investors out of more than $5 million began operating in June 1972. Commission staff began investigating the promoter's activities after receiving an investor complaint in December 1974. The promoter and a key witness refused to provide the Commission access to records. Over the next 10 months, while the Commission developed its case, the promoter continued to sell securities to investors. In September 1975, the Commission approved its staff's use of subpoenas, and as a result the promoter's operation was closed down in December 1975--1 year after the investor complained.

The Commission's staff may be able to obtain evidence of violations from sources other than the promoter. Even where practicable, however, this approach can require many months of investigation by the staff. During this period, use of the exemption is not suspended and more persons may be drawn into investing in a fraudulent business scheme.

The Commission needs earlier communication with investors

The Commission could further improve its capability to detect misuse of the private placement exemption by (1) increasing the public's awareness of the Commission's regulatory role and of the risks involved in investing in privately placed securities, and (2) making it easier for the public to contact the Commission through a publicized toll-free telephone line.

In 1979, the Commission received from the public about 15,000 inquiries and complaints, most of them in writing. The public's point of contact is the Office of Consumer Affairs at headquarters in Washington, D.C. and the Commission's regional offices at the local level.

The Commission plans to provide more current and practical information to the investing public. It plans to update its booklet, "The Work of the SEC" and to prepare another booklet on its procedures for handling complaints. Also, the Commission recently began to distribute to newspapers various information for articles informing investors about the securities industry and the steps to be taken to avoid fraudulent schemes.

The actions planned or taken are steps in the right direction for educating the public about investing and its pitfalls. However, given notice and access to records, as discussed on pages 12 to 15, the Commission, could establish earlier contact with investors through use of a toll-free telephone line. This could improve its ability to detect possible misuse before investors have been defrauded. Many promoters use high-pressure sales tactics to induce investors to buy hastily. By maintaining a list of companies furnishing notice, the Commission could respond promptly to investor inquiries concerning promoters claiming the exemption.

We noted that the Commodity Futures Trading Commission uses seven toll-free telephone lines to exchange information with the public. The director of this operation said that the communications system not only aids the investor, but also provides the enforcement group with much useful information on specific ongoing frauds and on the overall pattern of violations. Using a toll-free telephone service, in tandem with notification and access to information provisions, should enable the Commission to obtain similar results and act earlier to prevent private placement frauds.

CHAPTER 3

CONCLUSIONS AND RECOMMENDATIONS

Legitimate businesses have raised billions of dollars by selling unregistered securities under the private placement exemption. Insurance companies and other institutional investors are the primary source of this capital.

On the other hand, thousands of noninstitutional investors--many who are members of the general public--lost hundreds of millions of dollars by buying private placement securities in fraudulent businesses. These investors either were not given the type of information needed to make intelligent investment decisions or they did not have the necessary skills and experience to determine whether such purchases were suitable for them.

It is doubtful that the fraudulent sale of private placement securities could ever be completely eliminated. However, we believe that the Congress and the Commission, with the proper authority, could take action to control the use of the private placement exemption and thereby reduce the opportunities for issuers of such securities to defraud the investing public.

RECOMMENDATION TO THE CONGRESS

We recommend that the Congress amend the Securities Act of 1933 to better protect investors, while at the same time enabling legitimate businesses to raise capital through use of the private placement exemption. Because the issue is complex and because potential amendments to the act will require careful deliberation, we are offering three options for the Congress to consider.

I. Provide guidance and criteria under which the private placement exemption can be used

Under this option the Congress would need to amend the Securities Act of 1933 to set forth conditions on use of the private placement exemption. Section 4(2) has not been amended since it was enacted over 45 years ago. It has been the source of much uncertainty and confusion. In deciding whether to amend this provision, the Congress should consider the following questions:

--Should the exemption be limited to specified institutional investors, such as insurance companies, and certain other investors who have the knowledge to understand the risk of investing in speculative securities and the economic means to bear the losses that might result? As provided for in Rule 146, persons able to meet the economic risk, but without the requisite knowledge and experience, could employ a representative with such knowledge and experience.

--Should dollar criteria be established for sales to noninstitutional investors? For example, the act could stipulate that privately placed securities be sold only to persons investing $100,000 or more in an issue.

--Should the act stipulate the number of investors? Rule 146 limits the number of investors to 35 excluding investors buying more than $150,000 worth of securities.

--Should there be limits on the manner of selling private placement securities to prohibit any form of general advertisement or solicitation?

--Should section 4(2) be abolished and substitute legislation enacted covering specific sales that would be exempt from registration?

II. Provide the Commission with authority to establish mandatory rules conditioning use of the exemption

Should the Congress not wish to incorporate in the act specific guidance and criteria for use of the exemption as discussed in option I, it could amend the Securities Act of 1933 to give the Commission authority to set the rules for use of the exemption. As discussed in our report, the Commission's Rule 146 spells out the criteria to be used in determining whether an offering is eligible under the private placement exemption. However, issuers now may claim exemption under the section 4(2) provisions without regard to the rule. Promoters of fraudulent business schemes have used the ambiguity of the act and the Commission's lack of rulemaking authority to their advantage.

III. Provide the Commission with pertinent information on the use of the exemption

Under this option, the Congress could amend section 4(2) to require that issuers, unless specifically exempted by the Commission, notify the Commission when they plan to sell privately placed securities. Further, the Congress could require the promoters to provide the Commission prompt access to promotional literature and other information relevent to the sale of exempt securities. With this information, the Commission would be in a better position to judge whether the promotions are legitimate undertakings aimed at the proper audience and whether immediate action is needed to investigate or halt the sale of questionable private placement securities.

- - - -

In considering the options we offer and others that might be developed, the Congress may wish to solicit the views of the Commission, the Small Business Administration, and other interested agencies and organizations.

RECOMMENDATION TO THE COMMISSION

We recommend that the Commission establish a publicized toll-free telephone service to enable earlier contact with investors and help strengthen oversight and enforcement capabilities.

AGENCY ACTIONS AND UNRESOLVED ISSUES

GAO provided a draft of this report to officials of the Securities and Exchange Commission and the Small Business Administration. GAO discussed the report with officials of these agencies and, where appropriate, their comments were considered.

Officials of the Small Business Administration expressed great concern that a notification requirement for all issuers would impede capital formation for small businesses. They desired the easing of registration and cost burdens for small businesses. Further, they questioned whether through notification the Commission could in fact control fraud.

As discussed in this report, the Commission amended Rule 146 to require the filing of a short notification form when issuers rely on the rule for an exemption from registration. The Commission considered this action necessary because there had been numerous instances in which issuers made offerings relying on Rule 146 without complying with the conditions, and because some fraudulent securities sales had been promoted under the guise of the Rule 146 exemption.

The notification was to provide a means to detect misuse of the rule and thus to become aware of and prevent frauds in their early stages. The Commission also believed that statistical information regarding the volume and nature of Rule 146 transactions was essential to determine the impact of Rule 146 on capital formation.

Shortly after the Rule 146 notification was instituted, the Commission held public hearings to identify the effects of its rules and regulations on the ability of small businesses to raise capital and to comply with the disclosure requirements of the Federal securities acts. Several witnesses said that the securities acts have a significant inhibiting effect on the capital formation of small businesses. The majority of the witnesses, however, believed that a number of other factors presented substantially greater obstacles to capital formation than the costs or burdens of registration and reporting. Several witnesses observed that the ability to raise capital is enhanced by the protection afforded investors, and that investor confidence must be maintained if investors are to be attracted to equity securities of small businesses.

In recommending mandatory notifications as one of the options for the Congress to consider, we do not envision an extensive reporting burden on the issuer--in particular small businesses. Notification under Rule 146 involves the one-time filing of a single sheet form. Also, mandatory notification is not new. Under Rule 242, which was adopted by the Commission in January 1980, under section 3(b) of the act to provide small businesses more flexibility in raising capital, notification is mandatory.

We recognize that it may not be desirable to require notice from some issuers selling securities under the private placement exemption. In option III, we provided that the Commission have the authority to exempt certain issuers from this requirement. This gives the Commission the flexibility to protect the investing public, while at the same time considering capital formation and the burden on the issuer.

We also recognize that the fraudulent sales of securities can never be completely eliminated. However, as pointed out on pages 12 to 15 of this report, the Commission with proper authority, could take timely action to control the use of the private placement exemption and thereby reduce opportunities for the public to be defrauded.

U.S. General Accounting Office

QUESTIONNAIRE ON UNREGISTERED AND PRIVATELY PLACED SECURITIES

This questionnaire is designed to obtain views of State Securities Commissioners on the Federal private placement exemption. Our objectives include determining how the exemption is used, the materiality of its use, losses borne by investors as a result of its use, and the effectiveness of regulatory actions intended to prevent misuse of the exemption.

While most answers can be completed by checking the appropriate blocks or referring us to reports already prepared, a few may require the involvement of your staff.

We would appreciate your returning the completed questionnaire in the enclosed envelope by March 30, 1979.

Should you have any questions, please contact Mr. Jeremiah Sullivan, telephone number: (212) 264-0979.

Name of State agency regulating securities:

____

Questionnaire completed by:____________________

Title:____________________________

Telephone:__________________________

(Page 6 provides additional space for answers requiring additional clarification or explanation.)

1. Are private (non-public) placements of securities by issuers exempt from registration in your State?

   1 - /35/ Yes

   2 - /8/ No

2. If yes for which, if any, of the following categories of private placements does your State require notification of offer-for-sale/sale? (CHECK ALL THAT APPLY)

   1 - /7/ All private offerings

   2 - /19/ Private offerings where more than a specified number of investors are contacted.

   How many investors? ________________

   3 - /1/ Private offers/sales exceeding a specified amount?

   What amount? $________________

   4 - Private offers/sales involving:

   /13/ Oil and natural gas

   /14/ Real estate development

   /13/ Coal ventures

   /13/ Theatrical productions

   /13/ Tax shelter investments

   /6/ Franchises

   /11/ Other activities (please specify)

   ____

   ____

   ____

   ____

3. For securities transactions exempt from registration but requiring notification, what specific information does your State require? (Check all that apply)

1 - /13/ Identification information only (name & address of issuer, amount of issue, etc.)

2 - /16/ Offering memoranda, prospectus, or other promotional materials.

3 - /7/ History of issuer

4 - /8/ List of offerees/purchasers

5 - /9/ Other (please specify) ____________

/If providing us a copy of state statute(s)/regulation(s) would better indicate required notification information, please enclose the statute(s)/regulation(s) and check the box below./

7 - /23/ Statute(s)/regulation(s) enclosed

4. (a) If notification is required, is State approval either affirmative or by failure to deny an exemption within a limited initial period required before unregistered securities can be offered for sale or sold?

1 - /21/ Yes

2 - /6/ No (Skip to question 5)

(b) Before your State approves unregistered securities offerings, does it determine whether the offerings conform to "merit review" standards (such as being "fair, just, and equitable")?

1 - /11/ Yes

2 - /10/ No

INVESTIGATIONS

5. Over the past 3 years, would you say the number of security violation investigations initiated by your staff has:

1 - /29/ increased?

2 - /2/ decreased?

3 - /12/ remained about the same?

6. If there has been either an increase or a decrease in the number of security violation investigations, what is the primary reason for this change? (Check only one)

/8/ increase or decrease in size of investigative staff

/3/ increase or decrease in number of securities transactions in the State

/12/ increase or decrease in allegations/complaints of wrong doing

/1/ legislated changes

/3/ other (please describe) ____________

7. How many of your securities investigations during your most recent reporting year involved:

1 - private placements? 528

2 - claimed exemptions from registration, other than private placement? 252

3 - unregistered securities where no exemption was claimed? 1026

APPENDIX I

8. In how many of the above cited investigations involving private placements did <u>fraud</u> appear to be present in the offering? (Exclude investigations where the offer was made in good faith but inadvertently violated a technical requirement.)

   462

9. Regarding the investigations of fraudulent private placements conducted by your staff during the most recent year, please estimate the amount of investor losses.

   $ 330 million to $350 million

   (responses from 2[illegible] States)

10. (a) Over the past 3 years has the number of private placement investigations:

   1 - /22/ increased?

   2 - /2/ decreased?

   3 - /16/ remained about the same?

   (b) Of the private placement investigations over the past 3 years, has the number involving fraudulent schemes:

   1 - /17/ increased?

   2 - /3/ decreased?

   3 - /18/ remained about the same?

COORDINATION WITH OTHER AGENCIES

11. How many of the State investigations initiated during the most recent reporting year were the result of:

	Percent
1 - a lead or referral by SEC?	7
2 - a lead or referral by another Federal agency?	3
3 - a lead or referral by an agency of another State?	6
4 - a lead or referral by another agency within your State?	13
5 - an investor complaint to your office?	45
6 - State surveillance activities?	13
7 - newspaper articles?	8
8 - Other? (please specify) Includes referrals from attorneys, accountants, broker-dealers, etc.	5

The above percentages were calculated from [illegible]2[illegible] investigations reported by 17 States. Similar results were reported by 12 States which reported in percentages.

12. a) During your most recent reporting year, in how many of your investigations did your staff notify SEC of the possible existence of violations of Federal securities laws?

   639 (responses from 39 States)

   b) During what stage of such investigations, does your staff typically notify SEC of possible Federal violations? (Check only one)

   /21/ preliminary investigation stage

   /3/ formal investigation stage

   /3/ after completion of the State investigation

   /12/ no typical stage

   /1/ other

APPENDIX I

13. In your opinion to what extent, if any, has the following Federal legislation hindered the exchange of information between securities enforcement agencies?

EXTENT TO WHICH EXCHANGE HINDERED	Freedom of Information Act 1	Privacy Act 2	Tax Reform Act 3	Financial Privacy Act 4
1 - To a very great extent	9	14	11	13
2 - To a great extent	10	11	2	7
3 - To a moderate extent	7	7	5	3
4 - To a slight extent	3	[illegible]	5	3
5 - To a very slight extent	4	3	7	5
6 - Not a factor	1	0	1	1

14. Please list below any suggestions you have as to actions that would further facilitate coordination between State and Federal securities agencies?

Twenty-five States responded. Although their responses were diverse, each of the following suggestions were made by three to five States.

- --Appoint SEC liaison officers to work with State commissions.
- --Revise legislation to require additional reporting on private placement issues.
- --Increase or expedite the exchange of investigative information and/or investor complaints.
- --Notify the State when SEC action is started in the State.

THE PRIVATE PLACEMENT EXEMPTION

15. Regarding the private placement of securities by issuers, in your opinion, has the need for State regulation increased or decreased in recent years?

/32/ 1. Need for State regulation has increased

/1/ 2. Need for State regulation has decreased

/10/ 3. Need for State regulation has remained about the same

If you would care to elaborate on your answer, please do so below.

16. a) Would you say that the current Rule 146 private placement exemption and notification requirement provides adequate protection to investors in your State?

/13/ 1. Yes

/27/ 2. No

If no, why not?

Twenty-five States provided reasons why Rule 146 and current notification were not adequate. The reasons most commonly offered were:

- --insufficient or lack of review of issuers' disclosures
- --lack of notification to the State and insufficient information on the current notification
- --lack of merit review of the offering.

b) Would you say that the current Rule 146 private placement exemption and notification requirement provides a viable means for small business to raise capital?

/25/ 1. Yes

/14/ 2. No

If no, why not?

Eleven States provided the following responses:

- 6 - Rule too complex and/or costly for small businesses
- 3 - Rule used to syndicate tax shelters not capital for small businesses
- 2 - Rule limits the number of purchasers
- 1 - Notification deters use
- 1 - Small buinesses cannot find investors.

17. In your opinion, has the Rule 146 private placement exemption reduced the fraudulent sale of unregistered securities in your State? (Please check the appropriate line.)

1 - /_0_/ Definitely yes

2 - /_3_/ Probably yes

3 - /_8_/ Undecided

4 - /_26_/ Probably not

5 - /_5_/ Definitely not

18. Since the May 1978 implementation of the Rule 146 notification requirement, how many notifications has your commission obtained/ seen.

1,756 (responses from 28 States)

19. Do the notifications generally provide sufficient information for the State to identify potentially fraudulent promotions or promotions otherwise in violation of State regulations?

1 - /_5_/ Yes (responses shown only if State obtained/reviewed notifications)

2 - /_18_/ No

20. What additional information, if any, on the notification would help identify potentially illegal or fraudulent promotions?

17 - Prospectus - offering memoranda

12 - Commission review of offering

11 - List of States where sold

7 - Identification of promoters

7 - List of purchasers/offerees and amount of offering

5 - Reduction in number of purchasers/offerees

4 - Information on salespersons/offeree representatives

3 - Identification of compensation paid to promoters and use of proceeds

2 - No additional information will help.

1 - List of previous offerings by general partners

21. Where issuers rely upon section 4 (2) of the Securities Act of 1933 as the basis for a private placement exemption, does the lack of a notification requirement facilitate the fraudulent sale of unregistered securities in your State?
(Please check the appropriate line.)

1 - /_11_/ Definitely yes

2 - /_16_/ Probably yes

3 - /_7_/ Undecided

4 - /_6_/ Probably not

5 - /_1_/ Definitely not

22. In your opinion which of the following would provide the best means of improving investor protection in Section 4(2) transactions? (Check only one.)

/_18_/ 1. Increased policing with stiffer penalties for offenders

/_5_/ 2. Increased investor information and education programs

/_2_/ 3. Increased disclosure requirements

/_8_/ 4. A notification requirement

/_6_/ 5. Other (specify) ____________

____

____

____

 APPENDIX I

23. If you have any comments on aspects of private placement or on ways to improve Rule 146 and/or Section 4(2), whether treated in this questionnaire or not, please provide those comments in the space below. Thank you.

FORM 146

Approved by GAO
B-180231 (R0525)
Expires 5/31/81

U. S. SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
REPORT OF OFFERING IN RELIANCE
UPON RULE 146

SEC USE ONLY
Serial: Region:
29-

ATTENTION: Transmit for filing 3 copies of this form
If this is an amended report check . . . . ☐

1 NAME OF ISSUER

ADDRESS OF ISSUER STREET CITY STATE ZIP

AREA CODE–TELEPHONE NO.	ISSUER'S STATE *(or other jurisdiction)* OF INCORPORATION OR ORGANIZATION:	DATE OF INCORPORATION OR ORGANIZATION:	SEC USE ONLY

1B TYPE OF BUSINESS: *(check one)*
☐ OIL/GAS ☐ REAL ESTATE ☐ OTHER *(specify)*:

1C FULL NAME OF CHIEF EXECUTIVE OFFICER, GENERAL PARTNER(S), PROMOTER(S) AND CONTROLLING PERSON(S).
NAME: *(last, first, middle)*

INSTRUCTION: If the General Partner(s), Promoter(s) or Controlling Person(s) is *(are)* not a natural person(s), so state and provide similar information for a natural person(s) having primary responsibility for the affairs of the issuer.

1D NAMES AND ADDRESSES OF ALL ORGANIZERS, PROMOTERS AND SPONSORS OF, AND OF ALL OFFEREE REPRESENTATIVES *[as that term is defined in Rule 146(a)(1)]* INVOLVED IN, THE OFFERING REPORTED ON THIS FORM, INDICATING THE CAPACITY IN WHICH THEY ACTED.

NAME 1		CAPACITY		SEC USE
ADDRESS 1	STREET	CITY	STATE	ZIP
NAME 2		CAPACITY		SEC USE
ADDRESS 2	STREET	CITY	STATE	ZIP
NAME 3		CAPACITY		SEC USE
ADDRESS 3	STREET	CITY	STATE	ZIP
NAME 4		CAPACITY		SEC USE
ADDRESS 4	STREET	CITY	STATE	ZIP
NAME 5		CAPACITY		SEC USE
ADDRESS 5	STREET	CITY	STATE	ZIP

SEC 1996 (9-78) GA-041878-2

2 TITLE OF THE CLASS OF SECURITIES SOLD OR TO BE SOLD IN THIS OFFERING . . . ____________
AGGREGATE DOLLAR AMOUNT OF SALES TO DATE AND SALES TO BE MADE IN THE FUTURE IN THIS OFFERING . . . .$ ________

INSTRUCTION: As to any securities sold or to be sold other than for cash or partly for cash and partly other consideration, state the nature of the transaction and the source and aggregate amount of consideration received or to be received by the issuer.

---

3 INDICATE BY CHECKMARK WHETHER THE ISSUER HAS MADE ANY PREVIOUS FILINGS WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER:

- RULE 146 *(If so, specify number of filings)* . . . . Number [ ] . . . ☐ YES ☐ NO
- THE SECURITIES ACT OF 1933 AS AN ISSUER OF SECURITIES . . . . ☐ YES ☐ NO
- THE SECURITIES EXCHANGE ACT OF 1934 AS AN ISSUER OF SECURITIES . . . . . ☐ YES ☐ NO

ATTENTION: Pursuant to the requirements of Rule 146 under the Securities Act of 1933, the issuer has duly caused this report to be signed on its behalf by the undersigned officer or person acting in a similar capacity.

DATE OF REPORT ____________ ____________________________
(ISSUER)

(SIGNATURE) ____________________________

INSTRUCTION: Print the name and title of the signing representative under his signature. At least one copy of the report shall be manually signed. Any copies not manually signed shall bear typed or printed signatures.

ATTENTION

Intentional misstatements or omissions of facts constitute federal criminal violations (SEE 18 U.S.C. 1001).

ADDRESSES OF COMMISSION REGIONAL OFFICES

Securities and Exchange Commission
Atlanta Regional Office
1375 Peachtree Street, N.W.
Atlanta, Georgia 30309

Securities and Exchange Commission
Boston Regional Office
150 Causeway Street
Boston, Massachusetts 02114

Securities and Exchange Commission
Chicago Regional Office
Everett McKinley Dirksen Bldg.
219 South Dearbon Street
Chicago, Illinois

Securities and Exchange Commission
Denver Regional Office
Two Park Central
1515 Arapahoe Street
Denver, Colorado 80202

Securities and Exchange Commission
Fort Worth Regional Office
503 U. S. Court House
10th and Lamar Streets
Fort Worth, Texas 76102

Securities and Exchange Commission
Los Angeles Regional Office
10960 Wilshire Boulevard
Los Angeles, California 90024

Securities and Exchange Commission
New York Regional Office
26 Federal Plaza
New York, New York 10007

Securities and Exchange Commission
Seattle Regional Office
3040 Federal Building
915 Second Avenue
Seattle, Washington 98174

Securities and Exchange Commission
Washington Regional Office
Ballston Center Tower 3
4015 Wilson Boulevard
Arlington, Virginia 22203

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