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## Certification of financial statements

United States. Securities and Exchange Commission

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For Release February 19, 1970

SECURITIES AND EXCHANGE COMMISSION  
Washington, D. C. 20549

SECURITIES ACT OF 1933  
Release No. 5049  
ACCOUNTING SERIES  
Release No. 115

CERTIFICATION OF FINANCIAL STATEMENTS

There have recently been filed with the Commission a number of registration statements under the Securities Act of 1933 which include accountants' opinions that are qualified as to matters of such significance to the registrant that there is serious question as to whether the certificate meets the requirements of Rule 2-02 of Regulation S-X.

The following is the pertinent part of an accountant's report as to the type of situation to which reference is made:

"Substantial losses have been experienced during the past four years and nine months and continuation of the business is dependent upon the Company's attaining sufficiently profitable operations and/or additional capital to satisfy all of its liabilities as they become due.

"In our opinion, subject to the Company's ability to attain profitable operations and/or to successfully obtain additional capital, the accompanying financial statements . . ."

The Commission, of course, does not expect an accountant to express any opinion as to the future earnings of the registrant. However, where, as here, the financial statements are prepared on a "going concern" basis, while at the same time the accountant's opinion is so qualified as to indicate serious doubt as to whether or not the preparation of financial statements on that basis is warranted, then a significant question arises as to whether the financial statements are certified as required by Schedule A of the Securities Act of 1933 and the rules and regulations thereunder.

Rule 2-02(a) of Regulation S-X states that "The accountant's certificate shall state clearly: (i) the opinion of the accountant in respect of the financial statements covered by the certificate and the accounting principles and practices reflected therein . . ." In Accounting Series Release No. 90, the Commission reached a conclusion as to certification requirements as follows:

"If, as a result of the examination and the conclusions reached, the accountant is not in a position to express an affirmative opinion as to the fairness of the presentation of earnings year by year, the registration statement is defective because the certificate does not meet the requirements of Rule 2-02 of Regulation S-X."

The problem is an important one. If the business will not continue and the proceeds of the present offering will simply be used to pay existing creditors, then the offering may be deceptive to the public. The Commission does not expect accountants to express opinions that are unwarranted in the circumstances. Indeed, if there is a question as to whether the business will continue, no amount of changing the accountant's certificate would appear to solve the underlying problem.

The Commission has concluded that a registration statement under the 1933 Act will be considered defective because the certificate does not meet the requirements of Rule 2-02 of Regulation S-X when the accountant qualifies his opinion because of doubt as to whether the company will continue as a going concern. The Commission does not intend to preclude companies with pressing financial problems from raising funds by public offerings of securities. It does, however, believe it clear that an accountant's report cannot meet the certification requirements of the 1933 Act unless the registrant can arrange its financial affairs so that the immediate threat to continuation as a going business is removed. The independent accountant must be satisfied that it is appropriate to use conventional principles and practices for stating the accounts on a going concern basis before a registration statement under the 1933 Act can be declared effective.

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
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