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Re: Securities Exchange Act Release No. 9169

Leonard M. Savoie

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AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

666 FIFTH AVENUE
NEW YORK, N. Y. 10019

LEONARD M SAVOIE CPA
EXECUTIVE VICE PRESIDENT

June 10, 1971

Mr. Charles J. Sheppe
Chief, Branch of Forms, Rules,
Regulations and Legislative Matters
Division of Corporation Finance
Securities and Exchange Commission
Washington, D.C. 20549

RE: Securities Exchange Act Release No. 9169

Dear Sir:

I submit herewith on behalf of the American Institute of Certified Public Accountants comments on the proposed amendments of Form 8-K and Form N-1Q which are set out in the above cited Release.

With respect to the proposed addition to Item 10(a) of Form 8-K and the new corresponding Item 9(b) on Form N-1Q, regarding material charges and credits of an unusual nature, we are sympathetic with what we understand to be the objectives sought. We agree that it would be useful to be more specific about the nature of the items reported, such as the proposed changes to include a material charge to costs or expenses in connection with obsolescence of inventory. We agree also that it would be well to have timely reporting of other material charges or credits of an unusual nature. However, the intent described in the Release does not appear to be adequately carried out in the specific text of the proposed amendment. For one thing, the words "of an unusual nature" are missing from the text. However, the problem is more fundamental, since if the phrase "material charge or credit of an unusual nature" were used in the text, this would introduce a new term of art which would require definition and probably the establishment of criteria. We suggest that the proposed additional coverage under Item 10(a) be more precisely defined. If we had further information as to the specific kinds of matters which the Commission contemplates requiring to be disclosed, we would be glad to attempt to be more specific in our suggestions for the amended item.

With respect to the proposed new Item 13 of Form 8-K and Item 11 of Form N-1Q, regarding changes in accounting principles and practices, we request leave to submit comments at a later date. This subject is under consideration by a

committee of the Accounting Principles Board which has responsibility for the proposed Board Opinion on Accounting Changes. The relationship of this subject to the proposed Opinion appears to warrant time for further deliberation.

The comments that follow are directed to the proposed new Item 12 of Form 8-K and the identical Item 10 of Form N-1Q. (For simplicity, reference will hereafter be made only to Form 8-K.)

1. We agree with the premise of the Item, that a change in independent accountants is an event of sufficient importance to warrant current reporting.

2. We also agree with the proposed Item 12 as respects the event to be reported in connection with the change of independent accountants: that is, the engagement of new principal accountants. In this connection, we have considered whether the reportable event should instead be the termination of the engagement of the prior independent accountant (whether by discharge, a decision not to renew the engagement, or withdrawal or resignation on the part of the independent accountant). We recognize that such termination could occur substantially in advance of the time when a new independent accountant is engaged, so that there would be presented some possible advantage by way of timeliness of reporting if the reportable event were the termination of the former principal accountant's engagement. However, our conclusion was that the engagement of a new principal accountant can be expected to be a more definite and readily identifiable event than termination of the former accountant's engagement, and for this reason would be preferable for use as the reportable event.

3. As regards timing of the report to be called for by the new Item 12, we think the proposal that this be done by way of Form 8-K is preferable to the other alternatives which the Release indicates the Commission is considering. The timing of this Form (ten days after the month in which the new accountant is engaged) is at once both more prompt than that involved in Form 10-Q (which in the last fiscal quarter would be supplanted by Form 10-K, so that the reporting date could be as far as 180 days beyond the reported event), and more practical than a requirement for a report within ten days of the event itself.

4. As respects the proposed requirement that the registrant report the reasons for the change in principal accountants, we agree with what we understand to be the purpose sought to be achieved: that is, to provide a means of identifying and where appropriate bringing to the Commission's attention those instances where a change of accountants may have occurred because of disagreements over accounting principles or practices, financial statement disclosure, or auditing procedures. We submit, however, that a requirement in all instances of a statement of "reasons for the change" would be substantially broader than is needed to serve the intended purpose, and to the extent that it goes beyond such purpose, would serve no legitimate public interest. There are numerous possible reasons for a change of independent accountants, as there are for a change in any professional relationship. Most of such possible reasons, whether on the side of the client or that of the professional, are wholly proper and affected by no special public interest which would justify requiring disclosure beyond the parties themselves. Moreover, to call for subjective "reasons" rather than objective facts relating to the particular kind of problem to which the Item is directed might well tend to obscure, rather than reveal, the occurrence of a problem in which the Commission is interested. In light of these considerations, we suggest that Item 12 be recast to require from the registrant, in addition to the report on Form 8-K of the engagement of a new principal accountant, a separate statement by letter, as to whether there were disagreements between the former accountant and the registrant on matters of accounting principles or practices, financial statement disclosures or auditing procedures of a nature sufficiently grave that, if not resolved to the accountant's satisfaction, the accountant would have made reference in connection with his opinion to the subject of such disagreement. We believe that a statement so limited would suffice to identify those cases where the change of accountants might have come about for reasons which would be of interest to the Commission in carrying out its statutory responsibilities.

5. We suggest that the period of time required to be covered by the registrant's statement as to disagreements with the previous independent accountant should be the eighteen months immediately preceding the engagement of the new independent accountant. Such a period would provide reasonable assurance that significant disagreements in connection with the last previous audit, as well as an audit in progress, would be covered. With such a requirement, the last sentence of proposed Item 12 becomes superfluous.

6. We agree with the proposed Item 12 as to the desirability of securing comment by the replaced accountant with respect to the matters to be stated by the registrant which affect him. We also think the Item correctly recognizes that the reporting obligation lies upon the registrant, and that in consequence, comments by the former accountant can be called for only by way of requiring the registrant to request a letter from such accountant. We submit, however, that for reasons parallel to those discussed in paragraph 4, regarding the content of the registrant's statement, the replaced independent accountant should not be requested to comment upon his "understanding of the reasons for the change." We suggest instead that the accountant's letter should state whether he agrees or disagrees with the statements made in the letter of the registrant, and explain any disagreements with the registrant's letter. Not only would this change confine the accountant's letter to the subject of principal concern and avoid wholly subjective and speculative responses, but it would tend to assure that the former accountant would be fully apprised of the statements made by the registrant and thus provide a check on the accuracy of those statements.

7. Although the language of the proposed Item 12 is somewhat ambiguous on the point, we understand it to contemplate that the letter from the former accountant would be addressed to the Commission but actually furnished to the registrant, which in turn would file the letter with the Commission. We think this procedure the proper one, and suggest that Item 12 make clear that it is the one intended.

8. Finally, on the question that the Release states the Commission is considering whether the registrant's statements regarding the background of the change of independent accountants, and the former accountant's letter with respect thereto, should be public or be treated as non-public information, we think the balance tips toward the latter. If, contrary to our recommendation in paragraph 4 above, the subject matter of the reports to be required includes statements of reasons (or the accountant's understanding of reasons) for the change in accountants, then confidential treatment is most certainly indicated, since, as has been noted, such reasons may include a variety of entirely legitimate considerations which are affected by no public interest justifying automatic disclosure to the world at large. Even if, as we suggest, the subject matter of the registrant's letter and the former accountant's letter is limited to disagreements about accounting or auditing matters sufficiently major to bring into question the content of the

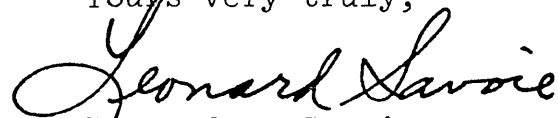
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auditor's report, we believe the public interest would be better served by not giving such letters the automatic general distribution that would be entailed by treatment as part of the public 8-K file which includes reproduction and distribution on microfiche. The fact that there have been serious disagreements would not in itself indicate that the change of independent accountants came about as a result of any wrongful purpose on the registrant's part; yet giving undue publicity to such disagreements might tend to imply such impropriety. We think, therefore, that it would be preferable for the registrant's letter and the accountant's letter normally to be treated as non-public information -- subject, of course, to the right of the Commission to authorize publication in a particular case.

The suggestions set out above, if adopted, would result in an Item 12 reading substantially as follows:

"If an independent accountant has been engaged as the principal accountant to audit the registrant's financial statements, who was not the principal accountant for the registrant's most recently filed certified financial statements, state the date when such independent accountant was engaged. The registrant shall also furnish the Commission with a separate letter stating whether in the eighteen months preceding such engagement there were any disagreements with the former principal accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing procedure, which disagreements if not resolved to the satisfaction of the former accountant, would have caused him to make reference in connection with his opinion to the subject matter of the disagreement. The registrant shall also request the former principal accountant to furnish the registrant with a letter addressed to the Commission stating whether he agrees with the statements contained in the letter of the registrant, and if not, stating the respects in which he does not agree; and the registrant shall furnish such letter to the Commission together with its own. Both the registrant's letter and the independent accountant's letter shall be treated as non-public information unless the Commission shall find it in the public interest to rule otherwise in a particular instance."

Yours very truly,


Leonard M. Savoie
Executive Vice President