The Securities Acts Amendments of 1964: New Registration and Reporting Requirements

Hugh L. Sowards
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INTRODUCTION

The Securities Acts Amendments of 19641 have been described as "the most significant statutory advance in federal securities regulation and investor protection since 1940. . . ."2 Of practical importance to attorneys practicing in the domain of corporation law is the fact that, for the first time, corporate clients may be subjected to the registration and reporting requirements of the federal securities laws.3 This stems from the fact that a major objective of the 1964 amendments is "to afford investors in publicly-held companies whose securities are traded over-the-counter the same fundamental disclosure protections as have been provided to investors in companies whose securities are listed on an exchange."4

Background of the 1964 Amendments

Broadly speaking, in the event of a public distribution of securities, the Securities Act of 1933 provides investor protection by requiring full disclosure of all material facts. The required information is contained in a registration statement, and in the prospectus filed with the Securities and Exchange Commission and distributed to prospective investors. The accuracy and adequacy of this information is determined as of the effective date of the registration statement—that date on which the first public sale of the securities may occur.5 This is in accord with the basic philosophy of the 1933 act in that persons are furnished with adequate financial and other information about the securities in which they might invest. The Securities Exchange Act of 1934,6 on the other hand, implements such full disclosure protection by requiring, under certain circumstances, that information be made available concerning securities in which persons have invested. By way of illustration, section 13 of the 1934 act

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1. 78 Stat. 565 (U.S. Code Cong. & Ad. News 2798 (1964)).
3. It has been estimated that some 3,000 corporations will be affected by the 1964 amendments. Wall St. J., Aug. 7, 1964, p. 2, col. 2. "The provisions of the new law also will apply to some 600 banks and 400 insurance companies." SEC News Digest, supra note 2.
4. SEC Securities Act Release No. 4725 (Sept. 15, 1964). It has been reported that the 1964 amendments "are creating a rush to the exchanges by many corporations whose stocks long have been the bread and butter of the over-the-counter market." Wall St. J., Aug. 21, 1964, p. 4, col. 2.
provides that every issuer of a security registered on a national securities exchange must file with the Commission and the exchange "such information and documents as the Commission may require to keep reasonably current the information and documents filed pursuant to section 12." The Commission has adopted regulations under section 13 providing for the filing of: (1) annual reports; (2) semi-annual reports; (3) current reports; in certain instances, interim and quarterly reports; and (4) annual reports to stockholders, all of which will be discussed below. In short, one of the objectives of the 1934 act is to provide investor protection after the effective date.

Until 1964, however, the protection afforded by sections 12 and 13 of the 1934 act was generally available only to persons who owned securities registered on a national securities exchange. Companies whose securities had not been registered under the 1933 act but which were traded in the over-the-counter market were not subject to the registration and reporting requirements of sections 12 and 13. Section 15(d) of the 1934 act, enacted in 1936, did provide that under certain circumstances the reporting requirements of section 13 were applicable to unlisted companies which filed registration statements under the 1933 act. These so-called "15(d) companies," to be discussed later, and their present status under the reporting requirements at best provided investor protection in the over-the-counter market on a fragmentary basis. As the Senate Report proposing new legislation on this matter aptly expressed:

There is no convincing reason why the comprehensive scheme of disclosure that affords effective protection to investors in the exchange markets should not also apply to the over-the-counter market. Nothing in the nature of the securities traded in that market make any less necessary the disclosure of basic information. On the contrary, because the over-the-counter market includes not only securities of widely known and seasoned companies but also those of relatively unknown and insubstantial ones, the need of investors for accurate information is at least as great, if not greater than in the exchange markets. . . . Moreover, the disparity between the disclosure requirements of the exchanges and the over-the-counter markets itself stands as an undesirable artificial factor in the allocation of securities between the two markets. . . . The public should not be asked to buy and sell in darkness. . . .

7. Securities Exchange Act § 13(a)(1), 48 Stat. 894 (1934), as amended, 15 U.S.C. § 78 (1958). In general, § 12 of the 1934 act provides that, as a condition precedent to listing and registration of a security on a national securities exchange, the issuer must file an application for registration with both the exchange and the Commission containing financial and other information necessary for the investor to make a determination with respect to the merits of the security.

Congress, the Commission and the securities industry in general were aware for years of this disparity between the disclosure requirements for listed and unlisted securities. Numerous proposals were made to amend the 1934 act so as to eliminate the double standard of disclosure. In 1961 a special study of the securities markets was authorized by Congress. The report of this study, transmitted to Congress in 1963, further underscored the need for new legislation. As a result, remedial legislation, known as the “Securities Acts Amendments of 1964,” was enacted the following year.

The primary objectives of the new legislation were: (1) to extend to investors in the larger unlisted companies the same protection formerly afforded only to investors in companies whose securities were listed on an exchange; (2) to strengthen the standards of entrance into the securities business and to expand disciplinary controls over brokers, dealers and other security industry personnel.

The task of the attorney who processes his client’s registration statement under the 1933 act is not terminated on the effective date, for the 1934 act may subject that client to specific reporting responsibilities after the effective date. Furthermore, as will be seen below, even when there has been no public offering under the 1933 act, the client still may be subject to registration and reporting duties under the 1934 act. Thus, the attorney must be in a position to advise what reports or filings must be made and when they must be made. The material in this article is limited to an examination of the reporting and filing requirements of the 1934 act. For example, one of the objectives of the 1964 amendments was to improve investor protection by extending to the larger unlisted companies the registration (section 12), reporting (section 13), proxy (section 14) and insider trading (section 16) requirements of the 1934 act. This article is concerned only with the new registration and reporting requirements of the 1934 act, as amended in 1964.

Registration Requirements

To Whom Applicable

Section 12(a) of the 1934 act provides that:

It shall be unlawful for any member, broker or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange in accordance with the provisions of this title and the rules and regulations thereunder. (Emphasis added.)

11. 78 Stat. 565 (U.S. CODE CONG. & AD. NEWS 2798 (1964)).
In short, this section of the act subjects securities of listed companies only to registration requirements. The 1964 amendments extended these registration requirements to unlisted companies meeting certain statutory tests. Specifically, the 1964 amendments extend the registration provisions of section 12 of the 1934 act to issuers of securities with total assets in excess of one million dollars and a class of equity security (other than an exempted security) held of record by 750 or more persons, if such issuers are engaged in interstate commerce, or in a business affecting interstate commerce, or if their securities are traded by use of the mails or any means or instrumentality of interstate commerce. The 1964 amendments also provide that after July 1, 1966, registration will be required of any company having both total assets in excess of one million dollars and a class of equity securities held of record by 500 or more persons. Since the applicability of these registration requirements to unlisted companies depends upon the existence of key factors such as "class," "equity security," "held of record" and "total assets," an examination of the meaning of these terms is in order.

Section 3(a)(11) of the 1934 act defines "equity security" to mean "any stock or similar security; or any security convertible, with or without consideration, into such security; or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right."  

Section 12(g)(5) now grants power to the Commission to define by rules and regulations, for purposes of applicability of the registration provisions of the 1934 act, the terms "held of record" and "total assets." Pursuant to this grant of power, the Commission has proposed rules defining these terms.

The first of these proposed rules, Rule 12g5-1, treats "held of record" in the following manner:

Co-owners: Each person, including each separate co-owner, is regarded as a separate holder. However, if securities are held

13. Securities Acts Amendments of 1964 § 3(c), 78 Stat. 565 (U.S. CODE CONG. & AD. NEWS 2800 (1964)). "The proposed registration form is now in preparation, and it is expected to be similar to the forms now applicable to the listing of securities on an exchange." SEC News Digest, supra note 2. In general, these forms will "require the issuer to furnish information with respect to its business, its management, and the securities being registered. The revised forms will also require the issuer to file material contracts, not made in the ordinary course of business." SEC Securities Exchange Act Release No. 7425 (Sept. 15, 1964).


15. The term "class" is defined in § 12(g)(5) to include "all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges." Securities Acts Amendments of 1964 § 3(c), 78 Stat. 565 (U.S. CODE CONG. & AD. NEWS 2802 (1964)).

16. Rule 12g5-1(a):

For the purpose of determining whether an issuer is subject to the provisions of Sections 12(g) and 15(d) of the Act, securities shall be deemed to be "held of record" by each person who is identified either as an owner or as a co-owner
of record by two persons with the same surname, such as husband and wife holding as co-owners, such securities are deemed to be held by one person.

**Securities held of record by a corporation, partnership, trust or other organization:** Such securities are regarded as being held by a single record holder. The same treatment is accorded to securities held by one or more fiduciaries for a single trust, estate or account.

**Outstanding certificates for an unregistered bearer security:** Each such certificate is regarded as being held of record by a separate person unless the issuer can establish that if such securities were registered, they would be held of record, under the provisions of the rule, by a lesser number of persons.

**Securities held subject to a voting trust, deposit agreement or similar arrangement:** Such securities are regarded as held of record by the record holders of the voting trust certificates, certificates of deposit, receipt or similar evidence of interest in such securities.

**Securities held by a stock purchase, savings, pension, retirement or similar plan for the benefit of employees:** These securities are included as held of record by the employees.

**Securities registered in the name of a broker, dealer or bank or nominee:** Such securities are counted as held of record by the number of separate accounts for which the securities are held.17

Rule 12g5-2 defines “total assets” to mean the “total assets as shown on the issuer’s balance sheet or the balance sheet of the issuer and its subsidiaries consolidated, whichever is the larger, as required to be filed on the form prescribed for registration under this section and prepared in accordance with the pertinent provisions of Regulation S-X.”

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17. Rule 12g5-1(b) (3). Rule 12g5-1(b) (4) also provides:
Each registered owner known by the issuer, or a person maintaining its record of security holders, to be a broker, dealer, or bank or nominee for any of them shall be requested to furnish the issuer the number of such separate accounts. A recipient of such a request will be expected to comply only to the extent the information can be readily supplied, and the issuer may rely in good faith on such information as is received in response to the request. (4) If the issuer knows or has reason to know that the form of holding of securities of record is used primarily to circumvent the provisions of Section 12(g) or 15(d) of the Act, the beneficial owners of such securities shall be deemed to be the owners thereof. SEC Securities Exchange Act Release No. 7426 (Sept. 15, 1964).
**Time of Filing**

Section 12(g) of the 1934 act requires over-the-counter issuers meeting the prescribed statutory tests to file a registration statement within 120 days after the end of the issuer's first fiscal year after July 1, 1964, in which those statutory tests are met. But, pursuant to authority granted to the Commission by section 12(g), Rule 12g-1 was adopted so as to extend the period for filing by these issuers to April 30, 1965. However, by its own terms this rule did not extend the time for "issuers which are, at the time such registration statement otherwise would be due, required to file reports with the Commission under sections 13 or 15(d) of the act and the rules and regulations adopted thereunder."

Section 12(g) provides that the registration statement does not become effective until 60 days after it is filed with the Commission or within such shorter period as the Commission may direct. Furthermore, until the registration statement becomes effective, it is not deemed filed for the purposes of the civil liability sanction of section 18 of the 1934 act.

Provision is also made in section 12(g) for the voluntary registration of any class of equity security not required to be registered.

**Termination of Registration**

Section 12(g) of the 1934 act provides for the termination of registration of a class of securities registered under that section when the record ownership of that class is reduced to less than 300 holders. Registration will be terminated 90 days, or such shorter period as the Commission may determine, after a certification to that effect is filed by the issuer. However, the Commission has authority, after notice and opportunity for hearing, to deny termination of registration if it finds that such a certification is untrue. In such an instance, termination of registration will be deferred pending a determination on the question of denial. Finally, if registration is terminated, re-registration by the issuer will be required if and when the statutory tests of section 12(g) again are met.

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18. If the issuer has total assets of more than $1,000,000 and a class of equity security held by 500 or more but fewer than 750 persons, § 12(g)(B) provides for filing the registration statement "within one hundred and twenty days after the last day of its first fiscal year ended after two years from the effective date of this subsection. . . ." (July 1, 1964).
19. "Whether registration is required is determined at the fiscal year end and the entire fiscal year need not expire after the effective date of this amendment, July 1, 1964." SEC Securities Exchange Act Release No. 7425 (Sept. 15, 1964).
21. Id. Rule 12g-1(a).
22. With respect to the filing of reports, documents and other information during the period that registration was effective, the following observation is pertinent: After termination of registration, the Commission could require information,
Exemption from the Registration Requirements

Exemption from the registration requirements of section 12(g) are available with respect to the following securities: (1) securities listed and registered on a national securities exchange; (2) securities issued by registered investment companies; (3) securities (other than stock generally representing non-withdrawable capital) of savings and loan associations and similar institutions supervised and examined by state or federal authority; (4) securities of certain non-profit organizations operated exclusively for religious, educational, benevolent, fraternal, charitable or reformatory purposes; (5) securities of certain agricultural marketing cooperatives; and (6) securities of certain non-profit mutual or cooperative organizations which supply a commodity or service primarily to members.

It will be recalled that section 12(g) provides that registration will not be required, although the statutory tests are met, if the security in question is an exempted security. The term “exempted security” includes direct obligations of or obligations guaranteed as to principal or interest by the United States, or a state or political subdivision thereof. Additionally, the 1964 amendments grant to the Commission the power to exempt, in whole or in part, any issuer or class of issuers from the registration requirements of section 12(g) if such exemption “is not inconsistent with the public interest or the protection of investors.”

Moreover, section 12(g)(3) of the 1934 act as amended in 1964 specifically authorizes the Commission to exempt from the registration requirements securities of foreign issuers and certificates of deposit issued against such securities, “if the Commission finds that such exemption is in the public interest and is consistent with the protection of investors.”

documents, and reports in respect of periods while a security was registered. For example, if a calendar year issuer, first registering a security under section 12(g)(1) on March 1, 1966, validly terminates registration on March 1, 1968, the Commission could, after March 1, 1968, require information, documents and reports in respect of events happening in 1968 before March 1 of that year and could require such information, documents, and reports in respect of events happening in all or any part of 1967. S. REP. No. 379, 88th Cong., 1st Sess. 62 (1963).


25. Securities Acts Amendments of 1964 § 3(c), 78 Stat. 565 (U.S. CODE & AD. NEWS 2802 (1964)). On September 15, 1964, the Commission adopted Rule 12g3-1 which provides that securities of a foreign issuer and certificates of deposit therefor will be exempt from the provisions of § 12(g)(1) of the 1934 act until November 30, 1965, thus postponing the earliest date on which a foreign issuer will be required to register until 120 days after its first fiscal year following November 30, 1965. SEC Securities Exchange Act Release No. 7427 (Sept. 15, 1964).
THE CONDITIONAL EXEMPTION FOR INSURANCE COMPANIES

An insurance company whose securities are traded over-the-counter is exempt from the registration requirements of section 12(g) if that company is regulated by the state in which it is incorporated in all of the following ways:

(1) The company is required to and does file an annual statement with the regulatory insurance agency and such statement substantially conforms to that prescribed by the National Association of Insurance Commissioners.

(2) The company is subject to regulation in the solicitation of proxies and such regulation conforms to that prescribed by the National Association of Insurance Commissioners.

(3) After July 1, 1966, the purchase and sale of securities issued by the company by beneficial owners, directors, or officers of such company are subject to regulation (including reporting) substantially in the manner provided by section 16 of the 1934 act.26

Emphasis is placed on the fact that the reporting requirements of section 15(d), to be discussed shortly, do apply to insurance companies filing registration statements under the 1933 act. Additionally, if the securities of the insurance company are registered on a national securities exchange or if they are registered under section 12(g) of the 1934 act, such securities are subject to the periodic reporting, proxy solicitation and insider reporting and trading provisions of the 1934 act.27

THE EXEMPTION FOR BANKS

The registration provisions of section 12(g) of the 1934 act as applied to banks (whether their securities are listed or unlisted) are administered and enforced by the federal bank regulatory agencies.28

26. Securities Acts Amendments of 1964 § 3(c), 78 Stat. 565 (U.S. CODE CONG. & AD. NEWS 2802 (1964)). Section 16 of the 1934 act provides that (1) each officer and director of a corporation whose securities are registered and each beneficial owner of more than 10% of any class of registered equity security must file with the Commission and the exchange initial reports showing his holdings in the company's equity securities and reports for each month thereafter in which changes occur in his holdings; and (2) profits obtained by any of these persons from transactions completed within six months in equity securities in corporations with which they are associated may be recovered by the corporation or by any security holder in its behalf.


28. The following federal regulatory agencies are specified for different banks: (1) for securities issued by national and District of Columbia banks, the Comptroller of the Currency; (2) for securities issued by all other member banks of the Federal Reserve System (state banks), the Board of Governors of the Federal Reserve System; and (3) for securities issued by all other insured banks, the Federal Deposit Insurance Corporation. Securities Acts Amendments of 1964 § 3(e), 78 Stat. 565 (U.S. CODE CONG. & AD. NEWS 2803 (1964)).
However, if a bank is not subject to regulation by a federal bank regulatory agency and meets the statutory tests of section 12(g), it is subject to the registration requirements of that section as administered by the Commission.

PERIODIC REPORTING REQUIREMENTS

Section 13(a) of the 1934 act provides:

Every issuer of a security registered pursuant to section 12 of this title shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security—

(1) such information and documents as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to section 12, except that the Commission may not require the filing of any material contract wholly executed before July 1, 1962.

(2) such annual reports (and such copies thereof) certified if required by the rules and regulations of the Commission by independent public accountants and such quarterly reports (and such copies thereof), as the Commission may prescribe.

To Whom Applicable

An examination of section 13 makes it plain that the reporting requirements apply to both listed and unlisted companies whose securities are registered pursuant to section 12. This means, of course, that these requirements are applicable to issuers registered under the new section 12(g), discussed earlier. Also within the purview of section 13 are "15(d) companies," but since these companies are accorded special treatment by the 1934 act, they are discussed separately in a subsequent section of this article.29

Reports Required and Time of Filing

Assuming that the reporting requirements are applicable, which reports must be filed and when must the filings be made?

29. See text accompanying notes 42-49 infra. The Commission has adopted rules for the filing of reports by "15(d) companies" which, for the most part, parallel those rules governing reports by companies with securities registered on a national securities exchange. In this connection, Regulation 12B of the 1934 act provides as follows: "The rules contained in this regulation shall govern all applications for registration pursuant to section 12 of the Act and reports pursuant to sections 13 and 15(d) of the Act." This regulation contains general requirements concerning such matters as the size and kind of paper to be used, the legibility of the report, the information to be given whenever the title of securities is required, and the filing of the report. Regulation 13A of the Act and the rules and regulations thereunder apply to reports of issuers of securities registered pursuant to Section 12 of the Act, while Regulation 15D of the Act and the rules thereunder apply to reports of "15(d) companies."
CURRENT REPORTS—FORM 8-K

First, section 13(a)(1) requires that issuers keep the information in the registration statement "reasonably current." The Commission has adopted rules to implement this section which provide that registrants must file a "current report on Form 8-K within ten days after the close of any month during which any of the events specified in that form occurs, unless substantially the same information as that required by Form 8-K has been previously reported by the registrant." In short, issuers subject to the reporting requirements must file Form 8-K at the times specified above upon the occurrence of any one or more of the following events:

(1) Change in control of the issuer;
(2) Acquisition or disposition of a significant amount of assets by the issuer other than in the ordinary course of business;
(3) Material legal proceedings to which the issuer (or any of its subsidiaries) has become a party or to which any of its property is the subject;
(4) Material modifications in the issuer's securities;
(5) Material withdrawals or substitution of assets securing any class of the issuer's registered securities;
(6) Defaults upon senior securities;
(7) Increase in excess of five percent in the amount of securities of any class outstanding;
(8) Decrease in excess of five percent in the amount of securities of any class outstanding;
(9) Granting of options to purchase securities when the amount of securities optioned exceeds five percent of the outstanding securities of that class;
(10) Material revaluation of assets by way of write-up, write-down, write-off or abandonment, material restatement of capital account;
(11) Submission of any matter to a vote of the issuer's security holders, through the solicitation of proxies or otherwise; or,
(12) Other materially important events.

30. Rules 13a-11, 15d-11 and 12b-2 define the term "previously reported" to mean "previously filed with, or reported in an application under section 12, a report under section 13 or 15(d), a definitive proxy statement under section 14 of the Act, or a registration statement under the Securities Act of 1933." Extensions of time for filing may be granted. See note 33 infra and accompanying text.

Section 13(a)(2) provides for the filing of annual reports. Issuers subject to the reporting requirements must file an annual report within 120 days after the close of each fiscal year. The issuer may request an extension of time for filing its annual report, or for that matter, for "any required information, document or report." Furthermore, under certain conditions other documents may be filed in lieu of the appropriate annual report form.

Form 10-K is the general form of annual report for use by issuers subject to the requirements of section 13 or 15(d), for which no other form is prescribed. However, the Commission has prescribed additional annual report forms for special types of issuers.

32. Rule 13a-1; Rule 15d-1. Rule 15d-2 provides that if the registration statement contained uncertified financial statements for the most recent full fiscal year for which financial statements were included, the registrant, within 120 days after the effective date of its registration statements, must file a special report furnishing certified financial statements for the most recent fiscal year meeting the requirements of the appropriate form for annual reports.

33. Rule 12b-25 provides:
If it is impractical to furnish any required information, document or report at the time it is required to be filed, the registrant may file with the Commission as a separate document an application (a) identifying the information, document or report in question, (b) stating why the filing thereof at the time required is impracticable, and (c) requesting an extension of time for filing the information, document or report to a specified date not more than 60 days after the date it would otherwise have to be filed. The application shall be deemed granted unless the Commission, within 10 days after receipt thereof, shall enter an order denying the application.

34. Rules 13a-3 and 15d-3. See also Rules 13a-4 and 15d-4, providing for incorporation in annual report of information contained in a prospectus; Rule 15a-2, providing for annual reports of predecessors.

35. Form 10-K, Instr. A.

36. With respect to §13 requirements: Form 11-K, reports of employee stock purchase, savings or similar plans; Form 14-K, for reports of certificates of deposit issued by a committee; Form 16-K, for reports of voting trust certificates and underlying securities; Form 18-K, for reports of foreign governments and political subdivisions; Form 19-K, for American certificates of deposit against foreign issues and for the underlying securities; Form 20-K, for securities of foreign private issuers, other than bonds; Form 21-K, for bonds of foreign private issuers; Form USS (may be filed pursuant to §§13 or 15(d) in lieu of separate annual reports thereunder by registered holding companies); Form N-30A-1, for reports by management investment companies registered under the Investment Company Act of 1940, except those issuing periodic payment plan certificates.

With respect to §15(d) requirements: Form 11-K, for reports of employee stock purchase, savings and similar plans. (The issuer must file this report even though the employer files annual reports under §§13 or 15(d) of the 1934 act. However, a new Rule 15d-21 provides that separate annual and other reports need not be filed with respect to any plan if the issuer of the stock or other securities offered to employees through the plan files annual reports on Form 10-K or USS an as a part of such reports furnishes the information, financial statements and exhibits required by Form 11-K and if it furnishes to the Commission copies of any annual report submitted to employees in regard to the plan.) See SEC Securities Exchange Act Release No. 6857 (1962). Form 2-MD, for securities of unincorporated investment trusts of the fixed or restricted management type; Form 3-MD, for voting trust certificates; Form 4-MD, for certificates of
SEMI-ANNUAL REPORTS—FORM 9-K

An issuer required to file an annual report on Form 10-K (or on Form U5S, the annual report form under the Holding Company Act) also must file a semi-annual report on Form 9-K for the first half of each fiscal year ending after the close of the latest fiscal year for which financial statements were filed in a registration statement. Form 9-K must be filed not more than 45 days after the end of the period for which it is filed. Certain types of issuers are excepted from the semi-annual reporting requirements.

QUARTERLY REPORTS OF CERTAIN REAL ESTATE COMPANIES—FORM 7-K

Rules 13a-15 and 15d-15 require the filing of quarterly reports by: (1) real estate investment trusts and, (2) real estate companies which as a matter of policy or practice make cash distributions to shareholders from sources of other than current or retained earnings. Other real estate companies are required to file reports with respect to any quarter in which a distribution is made from sources other than current or retained earnings. These rules provide for the filing of quarterly reports on Form 7-K not more than 60 days after the end of the fiscal quarter to which they relate, except that the report for the last quarter of the fiscal year must be filed not more than 120 days after the close of the fiscal year.
SECURITIES ACTS AMENDMENTS

INTERIM REPORTS

Whenever an issuer subject to the reporting requirements changes its fiscal closing date after the last fiscal year in which certified financial statements were filed in its registration statement, that issuer must file a report covering the interim period not more than 120 days after the close of the interim period or after the date of the determination to change the closing date, whichever is later.41

PERIODIC REPORTING REQUIREMENTS PURSUANT TO SECTION 15(d)

Before enactment of the Securities Acts Amendments of 1964, certain companies whose securities were traded in the over-the-counter market were subject to the reporting requirements of section 13 of the 1934 act. In effect, former section 15(d) required that all registration statements filed pursuant to the 1933 act contain an undertaking by the registrant to comply with the reporting requirements of section 13. However, this undertaking became operative and the reports were required only when the value of the securities offered, plus the value of all other outstanding securities of the same class, amounted to two million dollars or more. The duty to file was suspended if, and for as long as, the value of securities outstanding was reduced to less than one million dollars or the issuer had become subject to an equivalent reporting requirement.42 But this section by no means eliminated the "double standard" with respect to reporting by listed and unlisted companies.43

The Securities Acts Amendments of 1964 amended section 15(d) by deleting the requirement of an undertaking and providing that every company filing, after August 20, 1964, [the effective date of the present section 15(d)], a registration statement under the 1933 act must file for the fiscal year in which the registration statement becomes effective quarter for which it is required to file a quarterly report pursuant to Section 30(b)(1) of the Investment Company Act of 1940." Any issuer which files quarterly reports pursuant to Rules 13a-12 and 15d-12 for the first two fiscal quarters of any fiscal year need not file a semi-annual report on Form 9-K for the period covered by such quarterly reports. Rules 13a-15(c); 15d-15(c).

41. Rule 13a-10; Rule 15d-10.
42. Problems arose with respect to the precise conditions which activated and automatically suspended these reporting requirements. See SEC v. Union Corp. of America, 205 F. Supp. 518 (E.D. Mo. 1962), aff'd, 309 F.2d 93 (8th Cir. 1962).
43. The Commission's experience with the [15(d)] provision indicates that they frequently create unintended results or operate in a manner inconsistent with the public interest. For example, securities publicly offered sometimes come to be held by a comparatively small number of investors. The duty to file nevertheless continues so long as the value of the outstanding securities of the class, even though closely held, exceeds $1 million. Conversely, the value of the outstanding class may drop below $1 million, thus cutting off the reporting obligations even though the securities are held by a very large number of shareholders, and a significant public interest continues. S. REP. No. 379, 88th Cong., 1st Sess. 26-27 (1963).
the reports required by the Commission under section 13.44 The duty to file reports for any later fiscal year is suspended if at the beginning of that fiscal year the securities of each class to which the registration statement relates are held of record by fewer than 300 persons.45

In discussing the reporting requirements as applied to "15(d) companies," the Commission had this to say:

Issuers required to file under section 15(d) which meet the . . . asset and shareholder tests of section 12(g) will be required to register under that section. Although their obligation to file reports pursuant to section 15(d) will be suspended while a class of securities is registered under the Exchange Act, they nevertheless will be required to file reports under section 13 by virtue of being registered under section 12(g) of the Act. An issuer which is not registered under section 12(g) but which has filed a Securities Act registration statement on or prior to August 20, 1964, whether or not it becomes effective after that date, generally will be obligated to file reports pursuant to the terms of the undertaking contained in its registration statement. However, in addition to the provisions for the suspension of the duty to file reports specified by the undertaking, the duty to file reports is now automatically suspended for any fiscal year, if at the beginning of such year, each class of securities offered under the registration statement is held of record by less than 300 persons, unless a Securities Act registration statement of the issues becomes effective during that year.

44. Section 15(d) provides:
Every issuer which has filed a registration statement containing an undertaking which is or becomes operative under this subsection as in effect prior to the date of enactment of the Securities Acts Amendments of 1964, and each issuer which shall after such date file a registration statement which has become effective pursuant to the Securities Act of 1933, as amended, shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, such supplementary and periodic information, documents and reports as may be required pursuant to section 13 of this title in respect to a security registered pursuant to section 12 of this title. The duty to file under this subsection shall be automatically suspended if and so long as any issue of securities of such issuer is registered pursuant to section 12 of this title. The duty to file under this subsection shall also be automatically suspended as to any fiscal year, other than the fiscal year within which such registration statement became effective, if, at the beginning of such fiscal year, the securities of each class to which the registration statement relates are held of record by less than three hundred persons. For the purposes of this subsection, the term "class" shall be construed to include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. Nothing in this subsection shall apply to securities issued by a foreign government or political subdivision thereof.

45. In commenting upon the present (then proposed) § 15(d) with respect to suspension of reporting requirements, the Senate Committee on Banking and Currency observed:

[I]f any Securities Act registration statement filed by the issuer at any time after the date of the enactment of the bill (regardless of the security to which the registration statement relates) becomes effective . . . in a later fiscal year, then, as of the date of such effectiveness, such suspension would be lifted in respect of all such year, and filings could be required in respect of any part or all of such year. S. Rep. No. 379, 88th Cong., 1st Sess. 67 (1963).
fiscal year. Thus, the obligation of an issuer presently filing reports under section 15(d) may now be automatically suspended if it has not offered securities under a Securities Act registration statement within its last fiscal year and if, at the beginning of its last fiscal year, it did not have any class of securities offered under a Securities Act registration statement which were held by 300 or more persons.46

Translated into terms of concrete illustrations,47 suppose that ABC, Inc. is a domestic corporation whose only outstanding security from January 1, 1963 to July 1, 1966 is its common stock, whose fiscal year is the calendar year, and which at no time has any security registered under section 12 of the 1934 act.

Example No. 1. ABC, Inc. files, in 1963 before the effective date of the 1964 amendments, its first Securities Act registration statement, relating to its common stock. This registration statement becomes effective later in 1963. No further registration statements are filed or become effective in 1963 or 1964. Accordingly, ABC, Inc.'s. obligation to file under section 15(d) with respect to 1963 and 1964 will be determined solely by reference to the terms of its undertaking, filed pursuant to the former provisions of section 15(d). If on January 1, 1964, its common stock is held of record by fewer than 300 shareholders, it will be under no obligation to file in respect of the calendar year 1964, regardless of the number of shareholders of record at any later date in the year. There will be an obligation to file with respect to 1963 only if that obligation exists under the undertaking because the registration statement was filed on or before the effective date of the 1964 amendments.

Example No. 2. If on January 1, 1963, ABC, Inc. has of record fewer than 300 shareholders of its common stock, but files a registration statement under the 1933 act with respect to its common stock becoming effective on July 1, 1965, then as of July 1, 1965, ABC, Inc. will have an obligation to file with respect to all of 1965—regardless of the terms of the undertaking—the amount of its assets, or the number of holders of record of its common stock.

Example No. 3. If on January 1, 1966, ABC, Inc. has of record fewer than 300 shareholders of its common stock, but files a registration statement under the 1933 act becoming effective on July 1, 1966, and relating to debentures with no conversion rights and with no warrants attached, then as of July 1, 1966, ABC, Inc. has an obligation to file with respect to all of the calendar year 1966. This results from the fact that the registration statement becomes effective in that year,

even though that registration statement relates to securities that are not "equity securities" as defined in the 1934 act.\footnote{See text accompanying note 14 supra.}

Example No. 4. If on January 1, 1967, there are of record fewer than 300 holders of common stock and fewer than 300 holders of record of the debentures, ABC, Inc. will have no obligation to file with respect to the calendar year 1967, but if at any time during that year a registration statement becomes effective under the 1933 act as to any of its securities, then as of such date ABC, Inc. will have a duty to file with respect to all of 1967.

**ENFORCEMENT POWERS**

The 1964 amendments added a new paragraph (4) to section 15(c) of the 1934 act, empowering the Commission to find, after notice and opportunity for hearing, that any person subject to the requirements of sections 12, 13 or 15(d) has failed to comply with any of these requirements. Under this paragraph the Commission may publish its findings and issue an order requiring compliance and, when the circumstances of the particular case so warrant, apply to a United States district court for enforcement of its order pursuant to the provisions of section 21(f) of the 1934 act.\footnote{Upon application of the Commission, the district courts of the United States, the United States District Court for the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States, shall also have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this title or any order of the Commission made in pursuance thereof or with any undertaking contained in a registration statement as provided in subsection (d) of section 78(o) of this title. Securities Exchange Act § 21(f), 48 Stat. 901 (1934), as amended, 15 U.S.C. § 78(f) (1958). Additionally, § 20(c) of the 1934 act was amended to make it unlawful "for any director or officer, or any owner of any securities issued by, any issuer required to file any document, report or information under this title or any rule or regulation thereunder without just cause to hinder, delay or obstruct the making or filing of any such document, report or information." See United States v. Guterma, 281 F.2d 742 (2d Cir. 1960), cert. denied, 364 U.S. 871 (1960). See also Securities Acts Amendments of 1964 § 9, 78 Stat. 565 (U.S. Code Cong. & Ad. News 2816 (1964)).}

Section 15(c) was further amended by adding a new paragraph (5), which vests the Commission with authority summarily to suspend over-the-counter trading in any security (other than an exempted security) for a period not exceeding 10 days. Brokers and dealers are prohibited from trading in any such security during the suspension period.

**CONCLUSION**

The new registration and reporting requirements are complicated. Moreover, they may prove onerous to corporate clients who already feel that they are unduly harassed by governmental regulation. But
securities are intricate merchandise. One who takes in members of the public as his “partners” should pay the price of full and fair disclosure. It seems safe to predict that the public benefits resulting from the new legislation will outweigh the businessman's burdens. As Mr. Justice Brandeis remarked over 50 years ago in *Other People's Money*, “Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.” In this respect, the Securities Acts Amendments of 1964 constitute a welcome innovation.