

**GATES & LABER**  
COUNSELLORS AT LAW

3  
SPE. REG. 7720

NATHAN H. GATES  
ALVIN A. LABER  
STEPHEN A. ZUMWELT  
ANDREW S. MALPHEM  
GEORGE J. BENTEL

1345 AVENUE OF THE AMERICAS  
NEW YORK, N. Y. 10019

March 7, 1972

Neil S. McCoy, Esq.  
General Counsel  
Securities and Exchange Commission  
Division of Corporation Finance  
500 North Capitol Street  
Washington, D. C. 20549

Dear Mr. McCoy:

We understood the Panel at yesterday's Bar Association meeting to say that increases in the amount of trading on a national securities exchange are not reflected in the amount of securities which can be sold under Rule 144. Our difficulty with this view is perhaps most clearly put by the following two hypothetical situations (both of which assume that the average weekly reported volume of trading is less than 1% of the outstanding shares):

1. Assume that the average weekly reported volume of trading is 50,000 shares during the four weeks preceding the filing of the seller's notice covering the sale of 10,000 shares (which is all the seller has decided he wants to sell at that particular time). Assume further that during the same six month period (and more than four weeks after the completion of the first sale), the average weekly volume of trading is 75,000 shares. It is the seller's desire this time to sell such a number of shares which together with the 10,000 shares already sold, will equal the maximum amount of shares permitted by the Rule.

2. Now assume that the average weekly volume of trading is 75,000 shares during the four weeks preceding the filing of the seller's notice covering the sale of 10,000 shares. Assume next that during the same six month period (and more than four weeks after the completion of the first sale), the average weekly volume of trading is a low number, say 20,000 shares. Again, as in the first hypothetical, assume it to be the seller's desire on this second occasion, to sell such a number of shares which together with the 10,000 shares already sold, will equal the maximum amount of shares permitted by the Rule.

Continued ....

GATES GLASSER

Neil S. McCoy, Esq.

-2-

March 7, 1972

If we understand the position expressed last night, the seller in the first hypothetical could sell a total of 50,000 shares and therefore his second sale would be for only 40,000 shares. Carrying this position consistently into the second hypothetical, the limitation would be 75,000 shares totally and hence, despite the lower trading volume in the second four week period, the seller could sell 65,000 additional shares.

Taking into account not only matters of logic, anomaly, etc., but also the basic policy considerations related to the impact of large sales on the trading market during a period of relatively inactive trading, should not the approach be the same under Rule 144 as it now is under Rule 154. Concretely, should not the operation of Rule 144 be that the weekly trading volume preceding each sale during a six month period be determined and sales be permitted based on that average less the amount of sales previously made during the same six month period.

I would appreciate your comments and also I do want to join in Arthur Fleischer's expression of thanks for last night's excellent presentation.

Very truly yours,

*Nathan H. Gates*  
Nathan H. Gates

NHG:fg

Company \_\_\_\_\_  
Letter from \_\_\_\_\_  
Subject \_\_\_\_\_  
Assigned to Branch \_\_\_\_\_  
To be Answered by *Neil S.*  
For Signature of \_\_\_\_\_

DATE \_\_\_\_\_  
Letter \_\_\_\_\_  
Rec'd by S.E.C. \_\_\_\_\_  
Rec'd by Branch \_\_\_\_\_  
Answer Sent by \_\_\_\_\_  
ANSWER FILED \_\_\_\_\_