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1933 Act
Section 5
Form S-1
Rule 144

CONBOY, HEWITT, O'BRIEN & BOARDMAN

20 EXCHANGE PLACE

NEW YORK, N. Y. 10005

JAMES T TYNION
EDWARD F BUTLER
MARVIN F. HANTUNG
HOBART L. KRINSMADE
THOMAS J NEVILS
DAVID J MOUNTAIN JR.
THOMAS V MCMANON
GEORGE P. KRAMER
DONALD I FRIED
MYRON D COHEN
AXEL P. SEYLER

TELEPHONE (212) 344-3131
CABLE ADDRESS DIALBOARD
TELEX 23510 CHOB

April 14, 1972

Neil S. McCoy, Esq.
Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
Washington, D.C. 20549

Re: Electro-Nucleonics, Inc.
Registration on Form S-1
File No. 2-35976

Dear Mr. McCoy:

This letter is written to you after telephone discussions on the subject matter hereof with Mr. Peter J. Romeo and Mrs. Virginia Campbell of the Division of Corporation Finance.

On January 13, 1970, our client, Electro-Nucleonics, Inc. ("ENI"), filed a registration statement on Form S-1 under the above file number. This registration statement included shares of ENI Common Stock being offered from time to time by ENI pursuant to unexercised qualified stock options theretofore granted and shares of Common Stock for which options might still be granted under ENI's Qualified Stock Option Plans. In addition, shares of ENI Common Stock were registered for resale by selling stockholders, including 93,000 shares owned by certain officers and directors who had acquired such shares in transactions qualifying under Section 4(2) of the 1933 Act upon exercise of options granted under ENI's 1964 Stock Option Plan. These options were exercised at a time when no registration statement was in effect for the shares issuable upon such exercise. Form S-1 was utilized since ENI does not have any securities listed on a national securities exchange. This registration statement became effective on April 14, 1970.

On December 29, 1970, post-effective amendment no. 2 to the above mentioned registration statement was filed. The prospectus continued to cover shares of ENI Common Stock issuable upon exercise of options and also resales of all or part of the shares of Common Stock acquired pursuant to the exercise of the

qualified stock options. Post-effective amendment no. 3 reflecting oral comments received from the Division of Corporation Finance was declared effective on February 23, 1971.

On December 28, 1971, post-effective amendment no. 4 was filed. Pursuant to Rule 427(b), the prospectus included in this post-effective amendment was prepared in accordance with the requirements of Form S-8. This prospectus covered only shares of Common Stock being offered from time to time by ENI pursuant to qualified stock options. The S-8 form of prospectus was used in anticipation of the Commission's promulgation of Rule 144 substantially in the form of the proposed rule published on September 10, 1971. It was felt, at least with respect to those optionees who had acquired their shares prior to the registration of the Stock Option Plan, that Rule 144 would be available since the shares acquired by them met the definition of restricted securities under proposed Rule 144(a)(3).

This was confirmed, or at least the undersigned thought it was confirmed, following the adoption of Rule 144, by statements made on the morning of Saturday, February 19, 1972 at the PLI lecture, entitled "The SEC Speaks". The undersigned and his associates who were present at this meeting distinctly recall that Mr. Levenson stated in the course of discussing the Rule that while Rule 144 could not be used if the securities to be sold pursuant thereto were registered, sales pursuant to the Rule would be permitted once the shares were de-registered. Evidently, we were not the only ones who understood this to be so. Writing in the New York Law Journal of Monday, March 20, 1972, Professor Martin Lipton, a member of the New York Bar and an Adjunct Professor at the New York University School of Law, states:

> "If there is a shelf registration, unsold securities may not be sold under the rule; the shares must be deregistered before they can be sold under the rule. The two-year holding period is not suspended during the period the securities are registered." NYLJ, 3/20/72, page 6, column 2.

Accordingly, on April 4, 1972, ENI filed post-effective amendment no. 5, the principal change of which was to remove from registration 94,313 shares of ENI's Common Stock previously registered which had been issued to optionees pursuant to exercis of qualified stock options and of which 93,000 shares had been issued to optionees prior to the registration of the Stock Option Plans. We have now been advised by Mrs. Campbell and Mr. Romeo that the de-registration will not be permitted and that the selling stockholders will not be permitted to rely on Rule 144.

We are completely at a loss to understand this reinterpretation of the Staff. Nowhere does Rule 144 require that securities not be registered under the 1933 Act before Rule 144 can be used. While we can understand that a selling stockholder should not be permitted to use Rule 144 if he has a currently effective prospectus covering his shares, we see no reason why an issuer must continually maintain a current prospectus for such a person just because his shares had once been registered. We see nothing in Rule 144 or in the policy underlying the 1933 Act which requires such an interpretation, an interpretation which leads to rather anomalous results.

The original ENI registration statement included, in addition to the shares acquired by optionees pursuant to the exercise of options, shares held by other stockholders of ENI and contained an undertaking to the effect that the registrant would de-register such amounts of securities being offered by the prospectus as remain unsold upon termination of the offering. Certain of the shares covered by the original registration statement were in fact withdrawn from registration by post-effective amendment no. 1 filed on July 20, 1970 and declared effective by order of the Commission dated August 24, 1970. Thus, those stockholders who were fortunate enough to de-register their shares prior to the promulgation of Rule 144 presumably are free to use Rule 144, while the other stockholders whose shares remain registered are not permitted to use the Rule. We see no reason why an investor should get a prospectus from one of such selling stockholders and not from the other.

We accordingly request an interpretation that Rule 144 is applicable to shareholders whose shares were included in a shelf registration statement provided the prospectus with respect thereto is no longer current and the shares to be sold pursuant to Rule 144 are de-registered. We further request such interpretation be implemented by permitting de-registration of the shares covered by the above mentioned registration statement.

If there are any questions or comments with respect to the above, the undersigned would appreciate a collect telephone call. In his absence, would the caller please speak to Mr. Richard P. Bourgerie who is fully familiar with this matter. If, for some reason, the Staff is not prepared to give the relief requested herein, it would be appreciated if a conference could be arranged in Washington to discuss the situation.

Because this matter is raised in connection with a pending registration statement and because optionees have made

plans based upon the availability to them of Rule 144, it would be appreciated if the resolution of the questions raised herein could be expedited.

Very truly yours,

Donald Fried

DF/amp

cc: Mr. Alan B. Levenson
Peter J. Romeo, Esq.
Mrs. Virginia Campbell