

Washington Service Bureau, Inc.	
Letter:	<u>Energy Conversion Devices</u>
WSB Division #:	<u>33-R-144</u>
File # within division:	<u>494</u>
Letter also lists in file guide under division(s):	<u>33-4(1)</u>
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Act	<u>33</u>
Section	<u>4(1)</u>
Rule	<u>144</u>
Public Availability	<u>9-27-76</u>

David I. Faust, Esq.  
425 Park Avenue  
New York, New York 10022

Re: Energy Conversion Devices, Inc.

Dear Mr. Faust:

This is in response to your letter of August 11, 1976, on behalf of Mr. Michael Rothenberg, concerning the proposed offer and sale without compliance with the registration requirements of the Securities Act of 1933 (the "Act") of certain warrants or underlying common stock initially issued by Energy Conversion Devices, Inc. ("ECD") as underwriting compensation.

We understand the facts to be as follows. In May 1972 Agio Capital Corp. ("Agio"), a subsidiary of Schweickart & Co. ("Schweickart"), was the underwriter of an offering of 425,000 units on behalf of ECD. Each unit consisted of one share of ECD common stock and one warrant for the purchase of one share of common stock. The offering terminated in May 1972, and no subsequent offering of these shares or warrants has been made pursuant to an effective registration statement. In connection with the offering, Agio received as additional underwriters' compensation warrants to purchase 42,300 shares at a price of \$.01 per warrant.

Mr. Rothenberg, as an officer of Agio, received 7,083 warrants, and he now proposes to offer and sell either the warrants or the underlying common stock. Mr. Rothenberg is no longer associated in any manner with ECD or Agio. Although the registration statement covering the initial offering contained an undertaking by ECD to file a post-effective amendment prior to any sale of these warrants, and the underwriting agreement contained a like provision, neither Agio nor its parent, Schweickart, are still active or thus in a position to request the filing of such a post-effective amendment. Therefore, even though, as underwriters' compensation obtained in connection with a registered offering, these warrants are not "restricted securities" as defined by Rule 144(a)(3) under the Act, it is proposed to offer and sell the warrants or the stock pursuant to the provisions of Rule 144. ECD is current in all reports required to be filed pursuant to the Securities Exchange Act of 1934.

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Based on the facts presented, and policy considerations, this Division will not recommend any action to the Commission if said warrants or stock are sold without compliance with the requirements of the Act provided (a) two years have elapsed since the last sale of securities under the registration statement as to the offering in which these warrants were acquired and (b) the sales are made in compliance with all the other provisions of Rule 144 under the Act except for the filing of Form 144.

Because this position is based upon the representations made to the Division in your letter, it should be noted that any different facts or conditions might require a different conclusion. Further, this letter only expresses the Division's position on enforcement action and does not purport to express any legal conclusion on the questions presented.

Sincerely,

Consuela M. Washington  
Attorney Adviser

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