

Washington Service Bureau, Inc.

Letter: Norton Simon, Inc.WSB Division #: 33-8-145File # within division: 77Letter also listed in file
guide under division(s): 33-40Availability date: 10-8-76AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549Simon M. Lorne, Esq.
Munger, Tolles & Rickershauser
606 South Hill Street
Los Angeles, California 90014Re: Norton Simon, Inc.

Dear Mr. Lorne:

This is in response to your letter of August 5, 1976, regarding the status of shares of the above corporation ("NSI") held by Sidney Factor and Dorothy Factor, who are husband and wife. You are of the opinion that the disposition of such shares need not be made pursuant to the registration provisions of the Securities Act of 1933 (the "Act") or the provisions of Rule 145(d) under that Act. You state that NSI has requested a statement by the Division that it will not recommend any enforcement action if such a disposition of those shares is effected prior to removal of the transfer restrictions from the share certificates so that Mr. and Mrs. Factor may use the shares as collateral for margin or other purposes and sell covered options in NSI Common Stock.

You state that Mr. Factor owns 154,850 shares, and Mrs. Factor, 129,850 shares, of the Common Stock of NSI. All shares were acquired in exchange for shares of Max Factor & Company ("MFC") in the merger with a subsidiary of NSI on February 14, 1973. At the time of the merger, Mr. and Mrs. Factor executed letters stating that they were "affiliates" of MFC as a condition to the consummation of the merger. Similar letters were executed by some, but not all, directors of MFC. Such letters were executed to ensure compliance with Rule 145 and a "pooling" accounting treatment of the merger. Consequently, Mr. and Mrs. Factor's shares bear legends preventing their transfer without registration except in compliance with Rule 145(d).

At the time of the merger, Sidney Factor was a director of MFC. He had previously served as a Senior Vice President and a member of the Executive Committee, but resigned those positions on December 31, 1963. Dorothy Factor was never a director or officer of MFC. Immediately preceding the merger, Sidney Factor owned about 1.2%, and Dorothy Factor, 1.1%, of the outstanding common stock of MFC. Relatives of Mr. and Mrs. Factor, trusts and a charitable foundation of which such relatives were trustees owned about 20% of the MFC stock at the time of the merger. At the time of the execution of the agreement of merger, all of the foregoing agreed to vote their shares in concert in favor of the transaction.

Act	33
Section	4(1)
Rule	145(c)
Public	
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In your opinion, for the purpose of Rule 145(c), Mr. and Mrs. Factor were not "affiliates" of MFC or NSI at the time of the merger. Accordingly, you suggest that they are not restricted to disposing of shares acquired in the merger through the provisions of Rule 145(d) or the registration requirements of the Act.

On the basis of the facts presented, this Division is unable to conclude that Mr. and Mrs. Factor were not "affiliates" of MFC at the time of the merger transaction. Consequently, we are unable to express a view as to whether or not we would recommend enforcement action to the Commission if dispositions of their shares were effected without compliance with the registration requirements of the Act or the provisions of Rule 145(d).

Sincerely,

Consuela M. Washington
Attorney Adviser