

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

FILED

FEB - 3 1965

SECURITIES & EXCHANGE COMMISSION

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In the Matter of :

NATHAN SALINGER, d/b/a  
SALINGER INVESTMENT CO.  
P. O. Box 912, R. 6  
Mahopac, New York

: INITIAL DECISION REVOKING  
REGISTRATION AND EXPELLING  
REGISTRANT FROM NATIONAL  
ASSOCIATION OF SECURITIES  
DEALERS, INC.

File No. 8-10740 :

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INITIAL DECISION

Samuel Binder  
Hearing Examiner

Washington, D. C.  
February 3, 1965

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BEFORE: Samuel Binder, Hearing Examiner.

APPEARANCES: Robert M. Laprade, Haig M. Casparian, and Paul Zola,  
Esqs., for the Division of Trading and Markets.

Nathan Salinger, d/b/a Salinger Investment Co., pro se.

This is a proceeding under Section 15(b) of the Securities Exchange Act of 1934 ("Act") to determine whether Nathan Salinger, doing business as Salinger Investment Co. ("registrant"), a registered broker-dealer, and a member of the National Association of Securities Dealers ("NASD"), a national securities association registered pursuant to Section 15A, wilfully failed to file with the Commission a report of his financial condition for the calendar year 1963, as required by Section 17(a) of the Act and Rule 17a-5 (17 CFR 240.17a-5) thereunder, and, if so, to determine the remedial action to be taken in the public interest.

The Commission's order instituting the proceeding was issued August 26, 1964. The registrant filed no answer although required to do so by the Commission's order, but he appeared at the hearing. After appropriate notice, a hearing was held before the undersigned hearing examiner, at which the Division of Trading and Markets ("Division") and the registrant were given full opportunity to be heard and to file proposed findings of fact and conclusions of law and a brief. The Division filed such documents. The registrant filed a letter on

December 28, 1964 stating that while he "may have committed a wrong act," he would act in "complete conformity with the law in the future" and the registrant expressed the hope that he would be permitted "to continue to do business as a Broker-dealer." [sic]

The pertinent facts may be summarized as follows:

The registrant, a sole proprietor, became registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Act on May 31, 1962 and is a member of the NASD.

On the same day that his registration became effective, the Commission wrote a letter to the registrant emphasizing the importance of complying with Rule 17a-5. On September 13, 1962, the Commission addressed a second letter to the registrant reminding him again of his obligation to file under Rule 17a-5. Nevertheless he failed to comply with Rule 17a-5 in 1962. Accordingly, the Commission instituted proceedings on August 2, 1963 alleging that the registrant had violated Rule 17a-5 in 1962 in that he had failed to comply with Rule 17a-5.

The registrant in the latter proceeding claimed that an exemption from the filing requirements of Rule 17a-5 was available to him "because his securities business was limited to acting as agent for mutual funds and he promptly transmitted to the issuers either the customers' checks or his own checks for the amounts paid by the customers less his commission." The Commission in an order issued on April 3, 1964 pointed out that "Registrant's construction of Rule 17a-5 was obviously unsound. The Rule clearly requires every registered broker-dealer to file financial statements. Although the rule exempts from the requirement that financial

statements be certified by an independent accountant, any broker-dealer who acts only as agent for an issuer in soliciting subscriptions for its securities and promptly transmits all funds to the issuer and securities to the subscriber, the exemption does not effect the requirement of the filing of a financial statement."<sup>1/</sup>

Between August 2, 1963 when the Commission instituted its earlier proceeding against the registrant and April 3, 1964 when it issued its findings, opinion and order suspending the registrant from membership in the NASD, the following occurred:

On August 26, 1963, the Commission received a letter from the registrant containing three attachments, one being a photocopy of registrant's balance sheet as of July 31, 1962, the second being a photocopy of registrant's balance as of July 31, 1963, and the third a statement of income and expenses from June 1, 1962 to July 31, 1963.

On November 12, 1963 the New York Regional Office wrote the registrant in response to his letter of August 26, 1963 and pointed out again that his claim of exemption from the filing requirements of Rule 17a-5 was without basis, and that his 1963 report was deficient in that it was not certified as required by the rule. It was also pointed out that financial reports filed under Rule 17a-5 were required to be certified by a factually independent public accountant. The financial reports filed by registrant were not certified. In addition, registrant

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<sup>1/</sup> Securities Exchange Act Release No. 7286.

was informed by the New York Regional Office in its November 12, 1963 letter that his "1963 report would, of course, have to speak as of a date not later than December 31, 1963; be filed in this office within 45 days of the date of which it will speak; and otherwise conform to the provisions of Rule 240.17a-5 and the instructions of its Form X-17A-5."

On November 27, 1963, or approximately two weeks later, the New York Regional Office wrote another letter to the registrant again reminding him to file his annual report for 1963 in accordance with Rule 17a-5.

On March 23, 1964, the New York Regional Office wrote another letter to the registrant calling his attention to its November, 1963 letter and again warning that the administrator would be impelled "to recommend to the Commission that it institute proceedings to revoke your registration or take other appropriate action. I draw your attention to the fact that the Commission recently has brought such proceedings for failure to file timely reports."

Despite the institution on August 2, 1963 of the Commission's earlier formal proceeding against the registrant, and despite the fact that he had been repeatedly requested to comply with Rule 17a-5, and despite the warning in the regional administrator's November 12, 1963 letter again calling attention to the fact that "every registered broker-dealer . . . must file a report of its financial condition as of a date within each calendar year" (underscoring contained in the regional

administrator's letter to registrant), and despite the regional administrator's letter of November 27, 1963 stating, among other things, that he would be impelled to recommend to the Commission that it institute proceedings unless the registrant complied with Rule 17a-5, which was repeated in another letter mailed March 23, 1964, the registrant failed and refused to file a report of his financial condition for 1963, as required by the rule.<sup>2/</sup>

In John J. Murphy, 38 S.E.C. 430, 432, the Commission said:

"The requirement that annual financial reports be filed is an important keystone of the surveillance of registrants and NASD members with which we and the NASD are charged in the interest of affording protection to investors, and it is obvious that full compliance with the requirement must be enforced."

It is important that reports in compliance with Rule 17a-5 be filed within the required time limits. In John Monroe, 39 S.E.C. 308, (July, 1959), the Commission said:

"The registrant was under an obligation to file its financial report . . . within the required time limits and he was not free to wait until he received a reminder notice from the Commission before attempting compliance. It was his affirmative duty to take action."

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<sup>2/</sup> The registrant attempted to file a certified financial report dated July 31, 1964, which was returned by the New York Regional Administrator as unacceptable. This, of course, would not excuse or be a defense to his refusal to file in 1963. Moreover, his claim of exemption could not possibly go to the failure to file but only to the matter of certification. Here the offense was the failure to file.

Recently the Court of Appeals for the Second Circuit in referring to Rule 17a-5 said that:

The regulations are not shown to be unreasonable; indeed, it is difficult to see how the Commission could carry on its task of protection of the public investor without financial information such as it sought here.<sup>3/</sup>

The Division's contention that the registrant wilfully violated Section 17(a) of the Act and Rule 17 CFR 240.17a-5 thereunder in that he failed to file a report of his financial condition for the calendar year 1963 as required is supported by substantial evidence.

It is concluded that it is in the public interest to revoke the registration of registrant pursuant to Section 15(b) of the Act and that it is necessary and appropriate in the public interest and for the protection of investors to expel registrant from the NASD pursuant to Section 15A(1)(2) of the Act, and accordingly

IT IS SO ORDERED.

  
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Samuel Binder, Hearing Examiner

Washington, D. C.  
February 3, 1965

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3/ Boruski v. S.E.C., C.C.A. 2 (January 26, 1965).