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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

HAYDEN LYNCH & CO., INC.
134 South LaSalle Street
Chicago, Illinois

(File No. 8-11990)

FILED

JUL 26 1965

SECURITIES & EXCHANGE COMMISSION

RECOMMENDED DECISION
(Private Proceedings)

Washington, D. C.
July 26, 1965

Samuel Binder
Hearing Examiner

The Securities and Exchange Commission ("Commission") instituted private proceedings on June 19, 1964, pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") to determine whether the application of Hayden Lynch & Co., Inc. ("Hayden Lynch" or "applicant") to become registered as a broker-dealer should be granted or denied.^{1/}

At that time Section 15(b) provided in pertinent part that:

"The Commission shall, after appropriate notice and opportunity for hearing, by order deny registration . . . to any broker or dealer if it finds that such denial . . . is in the public interest and that (1) . . . any person directly or indirectly controlling . . . such broker or dealer whether prior or subsequent to becoming such . . . (D) has willfully violated any provision of the Securities Act of 1933, as amended, or of this title or of any rule or regulation thereunder . . ." ^{2/}

The Division of Trading and Markets ("Division") charged that Hayden Lynch Leason ("Leason"), the president, a director and owner of 100 per cent of the stock of the applicant, and its controlling person, during the period from approximately September 1, 1959

^{1/} The Commission's order contained a provision requiring a preliminary hearing to determine whether it was in the public interest or for the protection of investors to postpone the effective date of applicant's registration until final determination of the question of denial. However, after a stipulation was entered into by the applicant and counsel for the Division of Trading and Markets, the Commission, on July 6, 1964, issued its order pursuant thereto providing that registration as a broker-dealer of Hayden Lynch & Co., Inc. would be deferred until final determination by the Commission whether or not such registration should be denied.

^{2/} The Commission's order was issued prior to the recent amendments to the Exchange Act and the provision quoted is set forth as it appeared prior to its amendment.

to approximately April 1, 1960, had willfully violated Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rules 10b-5 and 10b-6 adopted thereunder while engaged in the sale, purchase, and distribution of the securities of Amphibious Boats, Inc., a Texas corporation. A hearing with regard to these charges was held and was concluded on September 14, 1964.

The Division filed a motion on October 13, 1964 in which, among other things, it sought to reopen the hearing and upon such rehearing to amend the Commission's order of June 19, 1964, by adding thereto allegations that Leason had willfully violated Section 5(a)(1) of the Securities Act and Section 15(c)(1) of the Exchange Act and Rules 15c1-2(a) and (b) adopted thereunder, in connection with transactions in the securities of Amphibious Boats, Inc., from approximately September 1, 1959, to approximately April 1, 1960, i.e., during the same period as that set forth in the Commission's order of June 19, 1964.

In substance, the Division's motion was one to conform the pleadings to the proof which had already been adduced during the hearing which had been concluded earlier.

The Division's motion was granted by the hearing examiner over the opposition of the applicant and Leason, and an order was issued on October 27, 1964 which provided Leason and the applicant the opportunity to present rebuttal evidence at such reopened hearing concerning the additional allegations as well as the opportunity to file

additional findings of fact, conclusions of law, and a further brief at the conclusion of the reopened hearing related to such allegations.^{3/}

The hearing examiner issued a number of subpoenas at the request of Leason for witnesses who were called by him at the reopened hearing which was concluded on March 22, 1965.

Voluminous proposed findings and conclusions and briefs were filed by the Division, the applicant and Leason after the conclusion of the first hearing, and additional proposed findings and conclusions and supporting briefs were filed by all these parties following the conclusion of the reopened hearing.

Principal Issues

The principal issues in this proceeding are whether Leason willfully violated the provisions of Sections 5(a)(1) and 17(a) of the Securities Act, Sections 10(b) and 15(c)(1) of the Exchange Act,

^{3/} In this connection, it is noted that the briefs of the Division, the applicant, and Leason initially submitted herein prior to the reopening of the hearing as well as those finally submitted contained arguments which were addressed to the problem whether Leason had violated the registration provisions contained in the Securities Act.

and Rules 10b-5, 10b-6 and 15c1-2(a) and (b) adopted thereunder in connection with the sale, purchase and distribution of the securities of Amphibious Boats, Inc. acquired by Leason and Leason & Company and sold to the public in several states during a period extending from approximately September 1, 1959 to approximately April 1, 1960; and, if he violated any or all of such provisions, whether it would be in the public interest to deny registration as a broker-dealer to the applicant.

The following findings, conclusions, and recommendations of the hearing examiner are based upon the record in these proceedings, including the testimony of the witnesses and the exhibits introduced during the hearing. The hearing examiner has also fully considered all the proposed findings of fact and conclusions of law and the supporting briefs which have been filed in this proceeding.

I. WILLFUL VIOLATIONS OF SECTION 5(a)(1) UNDER
SECURITIES ACT

1. The uncontradicted evidence in this case shows, among other things (1) that Leason acquired 20,000 shares of Amphibious stock in October, 1959;^{4/} (2) that 50,000 newly issued shares of Amphibious were

^{4/} In discussing the evidence presented in these proceedings by the Division, Leason, at page 7 of his reply brief, dated December 16, 1964 conceded that "Hayden Leason did purchase 20,000 shares of stock in October 1959."

issued by the Company on November 19, 1959 at a price of \$2.55 per share (i.e. at a price substantially below the then market price),^{5/} Leason receiving thirty thousand shares, the balance being issued to four persons designated by him as follows: Geary Leason, 2,000 shares, Glen Leason, 5,000 shares; Arthur Thomsen, 1,000 shares; and Henry Steinmetz, 12,000 shares;^{6/} and (3) that Amphibious pursuant to a motion made on March 14, 1960 at a board of directors meeting by Leason (then a director of Amphibious) ratified the action of the board in issuing, as of February 15, 1960, \$75,000 in 6% bearer debentures immediately convertible into common stock of the company at the option of the bearer at the rate of \$2.50 per share,^{7/} (i.e. at a price which was substantially below the then market price of the stock). The Board's authorization for the issuance of this stock provided that these shares were to be received by only seven people who were to be members of the Board or their designees.^{8/} Twelve

^{5/} See Hayden Leason Ex. 6.

^{6/} See Division Exhibits 35, 38, 56 and 57.

^{7/} Under Section 2(3) of the Securities Act the sale of debentures which are immediately convertible into common stock involves a concurrent offering of the underlying stock.

^{8/} See Division Exhibits 36, 40.

thousand five hundred dollars in such debentures were issued to Leason & Co. ^{9/} and additional debentures were acquired by four other persons who purchased the securities following the recommendation of Leason.

2. The uncontradicted ^{10/} evidence is that Leason personally and Leason & Co., a broker-dealer controlled by Hayden Leason's father, aided and abetted by Hayden Leason, ^{11/} engaged in a wide public distri-

9/ Division Exhibits 36, 40 and 59.

10/ Leason's contentions as to the availability of exemptions from registration under the Act, upon which he relied were without merit and they will be discussed hereinafter. None of the shares of Amphibious was ever registered under the Securities Act of 1933. Leason claimed that an exemption under Section 3(a)(11) of the Act was available for the 20,000 share block he had acquired in October, 1959; and that a "private offering" exemption under Section 4(1) of the Act was available for the 50,000 shares which had been issued by Amphibious in November, 1959, and for the debentures and the underlying stock of Amphibious which had been issued by the company as of February 15, 1960. In addition, he claimed that an exemption under Section 4(2) of the Act was available for his transactions in Amphibious stock made through Tegtmeyer & Co., a broker dealer in Chicago, Illinois.

11/ The Commission in Burley & Co., 23 S.E.C. 461, fn. 1, held ". . . that anyone who aids and abets another's violations of a law has himself violated that law. Bogy v. U.S., 96 F. 2d 734 (C.C.A. 6, 1938); Alexander v. U.S., 95 F. 2d 873, 879 (C.C.A. 8, 1938); Greenberg v. U.S., 297 F. 45, 48 (C.C.A. 8, 1924) . . ." In Henry Friedlander et al, 2 S.E.C. 531, the Commission said at page 540, "Henry Friedlander is shown by the evidence to have induced, aided and participated in this violation of Section 5(a) of the Securities Act of 1933, and is thus a principal under the terms of Section 332, United States Criminal Code (Sec. 550 U.S.C.A., Title 18). This section reads in part as follows: 'Whoever . . . aids, abets, counsels, commands, induces, or procures . . . the commission of any offense defined in the law of the United States is a principal.' Accordingly, he is liable as such." (Citing cases).

12/ bution of these securities between approximately September 1, 1959 and April 1, 1960.

3. Attached hereto and made an integral part of these findings are Appendices A through E inclusive which reflect, among other things, the wide public distribution of unregistered Amphibious stock made by Hayden Leason 13/ and by Leason & Co., aided and abetted by 14/ Hayden Leason.

4. On November 19, 1959 (the same day that Amphibious issued 50,000 shares to Hayden Leason and his designees) Harvey G. Leason

12/ In connection with the meaning of the term "distribution" as employed hereinabove, reference is made to Oklahoma-Texas Trust, 2 S.E.C. 764, an early, well-known, and frequently cited opinion, in which the Commission pointed out at page 769 that "'Distribution' although not expressly defined in the Act comprises the entire process by which in the course of a public offering a block of securities is dispersed and ultimately comes to rest in the hands of the investing public . . . It is a process without finite boundaries and often includes one or more 'redistributions' by which portions of the issue are repurchased from speculative buyers or so-called 'weak hands,' with a view to replacement with permanent investors."

13/ See particularly Appendices C and D.

14/ These appendices are self-explanatory and were set forth as part of the Division's proposed findings and conclusions and supporting brief filed herein. Among other things, it should be noted that, contrary to Leason's contentions in his brief, the facts as to each one of the sales and purchases of Hayden Leason personally and Leason & Co. of Amphibious stock set forth in these appendices was derived from one or more of the exhibits received in evidence in this proceeding.

president of Leason & Company, addressed a letter to Wm. H. Tegtmeier & Company (Tegtmeier), a broker-dealer firm in Chicago, which authorized that firm to open an account for Hayden Leason so that he could trade in the securities of Amphibious Boats, Inc. and thereafter Tegtmeier in connection with the sale and purchase of Amphibious stock acted as broker-dealer for Hayden Leason.^{15/} Shortly after opening his account with Tegtmeier, Leason began selling and buying large quantities of Amphibious Boat stock.^{16/}

5. Charles G. Scheuer, the head of the trading department for Tegtmeier, testified that the only customer who dealt with his firm in regard to the purchases and sales of Amphibious stock was Hayden Leason. He also testified that Tegtmeier placed quotations in the "pink sheets" (National Daily Quotation Sheets) relating to Amphibious stock and in this connection the firm would check the market price of the stock. However, the quotations put in the pink sheets by Tegtmeier were always cleared with Hayden Leason. At the time Tegtmeier was acting for Leason the firm did not know he was a director of Amphibious and never knew of any claim that any Amphibious stock had been issued in reliance upon a "private offering" exemption.

6. In connection with the 50,000-share issue of Amphibious stock in November 1959 the facts were that Hayden Leason approached Vernon Thompson^{17/} in October 1959 and told him that there would be a new stock

^{15/} Exhibit 30.

^{16/} See particularly Appendices C and D attached hereto.

^{17/} Thompson was a shop foreman in a plant that made kitchen cabinets and had very little experience in the securities business and had never bought newly issued stock prior to his purchase of Amphibious.

offering in the near future. Thompson testified that after his conversations with Leason he borrowed money from the Continental Illinois National Bank & Trust Co. of Chicago and bought 5,000 shares of Amphibious stock on December 17, 1959 for \$3 a share from Leason & Company.

7: These 5,000 shares were a part of the 30,000 shares acquired by Hayden Leason on November 19, 1959. Thereafter and on January 1, 1960 Vernon Thompson and his wife, Alice Thompson, signed a letter addressed to Hayden Leason reading in pertinent part that "In connection with the purchase of 5,000 shares of the common stock of Amphibious Boats, Inc. which we have consummated, . . ."they were taking such "shares for investment and not for resale."^{18/} Thompson did not compose this letter but had received it from Hayden Leason in the mail and returned it to him. A dealer confirmation covering shares of Amphibious was issued to Vernon Thompson dated February 24, 1960 by Leason & Company carrying a notation that "Hayden" was the salesman.^{19/} On the back of this confirmation in Thompson's handwriting appears a notation as to his purchases and sales of Amphibious securities as follows:

<u>Bought</u>	12/17/59	5000	@	3.00	Total	15,000
<u>Sold</u>	1/11/60	1000	@			\$6,750.00
	1/12/60	1000	@			7,250.00
	1/22/60	1000	@			6,000.00
	2/24/60	1000	@			3,998.00
	2/26/60	1000	@			4,000.00

18/ Div. Ex. 211.

19/ Div. Ex. 210.

8. Thompson testified that the 5,000 shares which he obtained were sold to Leason and Company at the times and at the prices indicated by the notation quoted hereinabove and that Hayden Leason was the person through whom his sales of Amphibious were made after Hayden Leason had informed him of the rapid rise in the market price of the stock.

9. The third block of Amphibious securities described hereinabove was issued when the Board of Directors of Amphibious in March 1960 approved Hayden Leason's motion for the issuance of \$75,000 in 6% bearer debentures as of February 15, 1960 immediately convertible into common stock.^{20/} In connection with Leason's motion to issue the \$75,000 in convertible debentures, it is noted that the corporate resolution resulting therefrom included a provision that such debentures were to be delivered to members of the Board or their designees. As a result of Leason's activities \$27,500 in bearer debentures were converted on or about March 25, 1960 into 11,000 shares of common stock of Amphibious Boats. The records of the Texas Bank & Trust Company, transfer agent for Amphibious, shows that certain of these debentures numbered 1 through 5 inclusive in the amount of \$2500 each were issued in the name of Leason & Company by the Texas Bank pursuant to the direction of Amphibious Boats and were immediately converted into 5,000 shares of Amphibious common stock. These shares were then delivered to Denson, Inc.,

^{20/} Exhibits 35, 56 and 59.

a company not otherwise identified in the record.

10. There was no proof or evidence that either Leason & Co. or Denson took these securities for investment and not for resale.

11. Leason called Wilbert Cooper as a witness in this proceeding. He testified relative to his acquisition of Amphibious debentures, their conversion into common stock and the disposition of such stock.

12. Wilbert Cooper was issued debentures Nos. 12, 13, 14, 15 and 16 in the amount of \$2,000 each. These were converted into 4,000 shares of stock.^{21/}

13. Cooper was a member of an investment club to which Leason also belonged. Cooper bought his debentures following a recommendation to buy such securities made by Hayden Leason. He recalled that three other persons, all members of the investment club, participated in the purchase of these securities at the time and that the "four . . . individuals purchased them together."

14. The documentary evidence in this connection shows the issuance of a \$5,000 debenture to Frank Beazley, a \$12,500 debenture to Jack A. Tucker and a \$12,500 debenture to I. Marko. Beazley converted his debenture to 2,000 shares of stock, and Tucker and Marko each converted their debentures into 5,000 shares of stock.^{22/} All conversions took place on March 25, 1960. All these securities were subsequently sold to the public.

^{21/} Div. Exhibit 56.

^{22/} Ibid.

15. Cooper testified that while Leason told him these debentures were to be held for investment he didn't "think [his] intent was to hold these debentures for several years. The intent was to hold it and watch the market and see if there was a movement in the common stock price, at which time the intent was to sell." According to the witness this is what he meant when he took the stock for investment. He later testified that his intention when he took the stock was that if the market showed a good rise he would sell it. He also stated that he bought the stock to make a profit as quickly as possible and that so far as he was concerned there was no difference between taking for investment and taking for a quick profit. Cooper also testified that at the time he bought the convertible debentures he had a conversation with Leason and Leason told him that ". . . the stock was good, that it would move, that the debentures were being sold at a good price, that we should expect to sell, convert and sell in the next few days and that there could be a rise in the near future"

16. In connection with the relative size of Leason's operations in Amphibious, it should be kept in mind that in October 1959 Amphibious only had 53,000 shares outstanding.^{23/} Leason's October, 1959 acquisition constituted approximately 40% of the company's then outstanding stock. Further the next time Amphibious increased its authorized capitalization was in

^{23/} See Div. Ex. 35, Minutes of stockholders' meeting of June 8, 1959.

November 1959 when the company issued and Leason and his designees acquired 50,000 additional shares.

17. The testimony of Phyllis Katharine Altman (Altman), a secretary employed by Leason & Co., who also acted in a supervisory capacity, and took direction from Hayden Leason and his father is important not only in regard to Leason's personal activities in distributing the stock of Amphibious but also in regard to his activities in aiding and abetting Leason & Co. in the distribution of such securities. In this connection, Altman testified that Hayden Leason had prepared two brochures each entitled "Dont Miss the Boat,"^{24/} recommending the purchase of the stock of Amphibious Boats.^{25/} The principal difference between the first and the second brochures was that the first showed a current market price for the stock of \$3 per share and the second brochure showed a market price of \$6 per share. She further testified that the custom and practice at Leason & Co. with regard to the preparation of reports was that ". . . whoever stock it was, whoever had the greatest interest in it, would prepare the report because they knew the most about it, and they would either dictate it, or write it out on a regular legal sized pad, and I would type it out on that." [sic] Mrs. Altman further explained that Hayden Leason requested her to mail out reports on Amphibious, and to mail a highly

24/ Division's Exhibits 1 and 2.

25/ The false and misleading character of these brochures will be discussed hereinafter.

laudatory and misleading article on Amphibious Boats entitled "New Roadable Boat Kicking Up Spray" which appeared in the December 1959 issue of Traders Graphic.^{26/} This article appeared in Traders Graphic following a conversation between Hayden Leason and Henry Steinmetz of Traders Graphic.^{27/} On December 7, 1959 Leason & Co. was billed by O-T-C Publishing Co. "Att: Mr. Hayden Leason" for \$40.00 for the sponsorship of Amphibious Boats . . . in the December issue of Traders Graphic by O-T-C Publishing Company."^{28/} Leason & Co. was billed for an additional \$148.00 on December 22, 1959 for 2,000 reprints of the article on Amphibious Boats from the December issue of the Traders Graphic.^{29/} These reprints were mailed to brokers and customers of Leason & Co., as were the brochures during the period when Leason was distributing Amphibious securities. Approximately 9,000 copies of these brochures were printed and mailed out by Leason & Co.^{30/} The uncontradicted evidence is that these brochures were frequently mailed out at the specific request and direction of Hayden Leason.

26/ Division's Exhibits 11 and 12.

27/ As has been noted in the text hereinabove, Steinmetz obtained 12,000 shares of Amphibious stock through Hayden Leason in November 1959 at \$2.55 per share, i.e., a price substantially below the then market price of the stock.

28/ Division Exhibit 14.

29/ Division Exhibit 15.

30/ Division's Exhibits 9 and 10.

18. Section 5(a) of the Securities Act makes it unlawful in the absence of an exemption from registration for any person to make use of the mails or means of interstate commerce, to sell securities which are not registered in accordance with the provisions of the Act. Leason failed to establish that such an exemption from registration under the Act was available.^{31/}

19. Leason claimed that he was entitled to sell the 20,000 shares of Amphibious stock which he acquired in October, 1959, without registration, on the ground that such securities were exempt pursuant to Section 3(a)(11) of the Act.

20. The facts in this connection were that Amphibious had issued common stock in September, 1959 which it offered through Texas underwriters. Amphibious was a Texas corporation and the principal basis for claiming the exemption was that the securities were being offered only to residents of the State of Texas. Counsel for Amphibious had written an opinion that an exemption from registration under the Securities Act was available pursuant to Section 3(a)(11) based upon the express premise that the entire stock issue was being offered by a Texas corporation and would be offered to and purchased only by bona fide residents of the State of Texas. Hayden Leason, however, was a resident of the State of Illinois and by October, 1959 had purchased 20,000 shares which represented approximately 40% of all the shares of the company which had been issued up to that time.

21. Leason's briefs filed in this proceeding made it clear that he understood that a Section 3(a)(11) exemption was only available on the terms posited

^{31/} Exemptions from the general policy of the Securities Act requiring registration are strictly construed against the claimant of such an exemption and the burden of proof is on the claimant to establish his claim. See S.E.C. v. Ralston Purina Co., 346 U.S. 119 (1953); S.E.C. v. Sunbeam Gold Mines Co., 95 F. 2d 699 (C.A. 9, 1938); Gilligan, Will & Co. v. S.E.C., 270 F. 2d 461 (C.A. 2, 1959), cert. denied 361 U.S. 896; S.E.C. v. Culpepper, 270 F. 2d 241 (C.A. 2, 1959).

by counsel, i.e. the entire issue had to be offered and sold only to residents of Texas and it is reasonable to assume that Leason was aware that he was a resident of Illinois. In any event there was no exemption under Section 3(a)(11) or any other section available for this issue.

22. As long ago as May 29, 1937, in Securities Act Release No. 1459, 17 CFR Section 231.1459 the Commission's general counsel had pointed out in connection with Section 3(a)(11) that "In any consideration of the exemption, it is essential to appreciate that its application is thus expressly limited to cases in which the entire issue of securities is offered and sold exclusively to residents of the state in question . . . To give effect to the fundamental purpose of the exemption it is necessary to take the view that if the exemption is to be available it is clearly required that the securities at the time of completion of ultimate distribution shall be found only in the hands of investors within the state. . .

that if during the course of distribution any underwriter, any distributing dealer (whether or not a member of the formal selling or distributing group), or any dealer or other person purchasing securities from a distributing dealer for resale were to sell such securities to a non-resident, the exemption would be defeated. Moreover, since under Section 3(a)(11) the exemption is applicable only if the entire issue is distributed under the circumstances specified, any such sales to a non-resident in connection with the distribution of the new issue would destroy the exemption as to all securities which are a part of that issue. This is true regardless of whether such sales are made directly to non-residents or directly through residents who purchased with a view to resale and thereafter sold to non-residents. . .

23. This release further states that . . .

if the securities were resold but a short time after their acquisition, this fact, although not conclusive, would strengthen the inference that their original purchase had not been for investment, and that the resale therefore constituted a part of the process of primary distribution; and a similar inference would naturally be created if the seller were a security dealer rather than a non-professional. . .

24. The Commission again emphasized the limitations of Section 3(a)(11) in Securities Act Release No. 4386 (July 12, 1961). In discussing Section 3(a)(11) the Commission stated that. . .

Not only the original sale but any further transactions effected as part of the process of distribution to the public must be limited to residents. It should be emphasized, therefore, that the exemption is not necessarily available simply because initial sales are confined to residents of the state. If any person whether or not a professional underwriter or dealer, purchases the securities offered with a view to resale and does, in fact, resell them to non-residents, such person may be a statutory underwriter engaged in transactions forming a part of the distribution to investors. Where, as a result of such a chain of transactions, the process of distribution is not completed prior to the time the securities are acquired by non-residents, the exemption is not available to the issuer or to any person participating in the distribution. . .

25. These views regarding the limitations of Section 3(a)(11) have been sustained by the Commission and the Courts (see cases cited in Securities Act Release No. 4386).

26. Leason was a resident of Illinois in October, 1959, at the time he purchased 20,000 shares which had been issued in September, 1959, and Leason distributed these shares directly after he acquired them. His claim that Section 3(a)(11) afforded an exemption from registration was without merit.

27. Leason's claims to an exemption from registration for other securities of Amphibicus which he acquired and distributed are also without merit.

28. The first clause of Section 4(1) of the Securities Act exempts "transactions by any person other than an issuer, underwriter, or dealer." Section 2(11) of the Securities Act, in pertinent part defines the term "underwriter" as follows:

"The term 'underwriter' means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking. . ."

29. This section goes on to state,

"As used in this paragraph, the term 'issuer' shall include in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer."

30. A person who purchases stock from an issuer with a view to its distribution is an "underwriter," and sales made by such a person without registration in such circumstances constitute violations of Section 5(a) of the Act where the mails or means of interstate commerce are employed. S.E.C. v. Saphier, 1 SEC Judicial Decisions, 290, 293.

31. Leason claims that the securities when issued by Amphibious were issued upon the basis of an opinion by Douglas Bergman, its general counsel, and that a "private offering" exemption was available.

32. Bergman's opinion, however, was predicated upon the proposition that a limited number of persons would acquire the securities and that those who took the securities would take them for investment and not resale.

33. Leason and those designated by him who received Amphibious securities resold them to the public. Their action in so doing was wholly inconsistent with the basis upon which counsel for the company had expressed his opinion as to the availability of a "private offering" exemption under Section 4(1) of the Act. Bergman's opinion would not support a conclusion that an exemption was available where the persons who acquired the securities were only taking the stock in the hope and expectation of making a quick profit on a rise in the market price of the stock and who in fact sold their stock very shortly after acquiring it. Insofar as Leason was concerned, it was clear that he was simply taking for distribution and was an underwriter within the meaning of Section 2(11) of the Act.

34. Leason, under these circumstances could not in good faith have relied upon Bergman's opinion to support a claim for exemption since he was making a public distribution of the stock and not taking for investment. Leason could not in good faith place any reliance upon a claim for a "private offering" exemption where resales pursuant to his recommendation, occurred simply because there was a dramatic rise in the stock. The stock issued in November, 1959 and February, 1960 by Leason, was resold almost immediately after its issuance to members of the public who had no special relationship to the issuer, were relatively unsophisticated and were wholly lacking in knowledge of the issuer's affairs.^{32/} Under no circumstances could they be considered persons who did not need the disclosure requirements of the Securities Act.^{33/} Leason's claim that an exemption under Section 4(1) was available could only be considered an afterthought following a course of conduct wholly inconsistent with the opinion expressed by counsel for the company.

35. Leason also claimed that his sales of Amphibious securities through Tegtmeyer were exempt from registration under Section 4(2) of the Act.

36. Section 4(2) exempts "Brokers transactions, executed upon customers' orders on any exchange or in the open or counter market, but not the solicitation of such orders."

37. The broker's exemption does not extend to the selling customer and therefore was not available to Leason. The position that the Section 4(2)

32/ See testimony of Vernon Thompson and Wilbert Cooper.

33/ Robinette & Co., Securities Exchange Act Release No. 7386, August 11, 1964; S.E.C. v. Ralston Purina Co., 346 U.S. 119 (1953); Gilligan Will & Co., 38 S.E.C. 388 (1958); aff'd 267 F. 2d 461 (C.A. 2, 1950); cert. den. 361 U.S. 896; Securities Act Release No. 4622 (July 17, 1963); Advanced Research Associates, Inc., Securities Act Release No. 4630 (August 16, 1963).

exemption is limited to the broker's part of the transaction was established early in the history of the administration of the Act by the Federal Trade Commission.^{34/} The exemption is not available when the seller is acting as an underwriter or an issuer, and particularly when, as in this case, the stock was the subject of an aggressive selling campaign, the orders cannot be said to have been unsolicited.

38. There was no basis for the claim that an exemption was available under Section 3(a)(11) or 4(1) or 4(2) of the Act for any of the Amphibious securities which were sold by Leason or Leason & Co. aided and abetted by Leason.

39. It should be noted that Leason did not testify himself in this proceeding and the witnesses he produced in rebuttal did not refute the evidence presented by the Division. His claims that exemptions from registration were available to him and that he had not violated the anti-fraud and anti-manipulative provisions under the Securities Acts were made in his proposed findings and briefs and in statements during the hearing when he was not under oath and was acting as his own counsel.

40. Despite Leason's often reiterated claims made (not under oath) during the course of the hearing that the provisions of the Securities Acts afforded an exemption for all the substantial blocks of securities of Amphibious which he sold to the public and that he was acting in good faith and never had any intention to violate the Securities Acts, when he was called as a witness by counsel for the Division during the hearing, he refused to answer a single question bearing upon the charges of misconduct contained in the order initiating this proceeding. Instead, he claimed his privilege against self-incrimination.

^{34/} See Securities Act Release 131 (1934). It is also implicit in Rule 133(d) and (e) under the Act.

41. The questions directed to Leason by Division counsel pertained to the allegedly fraudulent selling material distributed by him to the public for the purpose of making sales of the stock of Amphibious Boats, Inc. in his account at William H. Tegtmeier and Company, a registered broker-dealer situated in Chicago Illinois; the manipulation of the market price of Amphibious Boats, Inc., stock; Leason's knowledge of the financial condition of Amphibious Boats, Inc.; and various other questions with respect to his activities in the sale and distribution of Amphibious Boats, Inc., stock. Hayden Leason also refused to state on the basis of his privilege under the Fifth Amendment to the Constitution whether or not he had filed on behalf of Hayden Lynch & Co., Inc., the broker-dealer application involved in this proceeding, or whether or not his signature appeared thereon or whether his middle name was Lynch or whether he was the president of Hayden Lynch and Company, Inc.

42. While no inference that Leason violated the provisions of the Securities Act is attributed to Leason by reason of his assertion of his constitutional rights, the fact remains that the Division's allegations against him were amply supported during the hearing by credible evidence and by the further fact that neither Leason nor any of the witness' produced by him gave any evidence which reasonably could be considered to be contradictory of the substantial evidence introduced in the record that he had in fact violated each one of the allegations contained in the Commission's order.

35/

35/ The evidence relating to the anti-fraud and anti-manipulation provisions of the Securities Acts were also amply supported and will be discussed hereinafter.

43. It should also be noted that the evidence regarding Leason's acquisition and disposition of his Amphibious stock was to a very large degree documentary in character consisting of the minutes of the Board of Directors and stockholders and stock transfer records of the Texas Bank and Trust Co., the stock transfer agent for Amphibious. The accuracy of these minutes and records was amply supported by testimony which was uncontradicted and is credited. The testimony of those to whom Leason sold stock and who resold to the public was also uncontradicted and is credited, as is the testimony of the other witnesses who testified during the Division's direct case.

44. Leason claimed throughout the hearing and in his briefs (which were adopted by the applicant) not only that he had not violated the Securities Acts but that even if he did, he did not intend to do so. He claimed in substance that the Division had not established that he intended to violate the law and that it was necessary to prove such intent to establish willfulness under Section 15(b). The same contention has been repeatedly rejected by the Commission and the courts. See Hughes v. S.E.C., 85 U.S. App. D.C. 56, 64, 174 F. 2d 969, 977 (1949); Schuck v. S.E.C., 105 U.S. App. D.C. 72, 264 F. 2d 358 (1959); Norris & Hirschberg v. S.E.C., 85 U.S. App. D.C. 268, 177 F. 2d 228 (1949); Tager v. S.E.C., 2 Cir., 344 F. 2d 5 (1965); Gilligan, Will & Co. v. S.E.C., 2 Cir. 267, F. 2d 461; Thompson Ross Securities Co., 6 S.E.C. 1111, 1122-23 (1940); Van Alstyne Noel & Co., 22 S.E.C. 176 (1946); The Whitehall Corporation, 38 S.E.C. 259, 270 (1938). The contention advanced by Leason was most

recently made in Gearhart & Otis, Inc., et al v. S.E.C. et al decided June 30, 1965 by the Court of Appeals for the District of Columbia.

The Court held in Gearhart & Otis that:

"This argument as to the definition of 'wilfully' under Section 15(b) has been rejected by this court, by the Second Circuit, and by the Commission. In fact, we are cited to no case wherein it has been accepted, and we have found none. 'It has been uniformly held that 'wilfully' in this context means intentionally committing the act which constitutes the violation. There is no requirement that the actor also be aware that he is violating one of the Rules or Acts.' Tager v. Securities & Exchange Commission, supra Note 16, 344 F. 2d at 8." (Footnotes omitted)

45. The oft repeated contentions of Leason and the applicant urging the employment of a definition of "wilfulness" for Section 15(b) purposes wholly inconsistent with the views expressed by the Court of Appeals in Gearhart & Otis are rejected as erroneous.

46. One more comment on Leason's contentions during the hearing and in his brief as to the law applicable to this proceeding appears appropriate. Leason and the applicant contended that it was the duty of the Division and the Commission, and possibly Douglas L. Bergman who was general counsel and secretary for Amphibious, not only to know that he was selling unregistered securities in violation of Section 5(a) of the Act at the time that he was selling such securities but it was also the duty of the Commission, the Division or possibly Bergman to call such facts to Leason's attention prior to the issuance of the Commission's order of June 19, 1964 (See Leason's brief, pages 20, 21, 22, 33, 39, 40 and 46 and pages 1 and 7 of the applicant's Brief). Neither the applicant nor Leason cited any authority for this untenable contention, but it is possible that they may have had references to Section 9(b) of the

Administrative Procedure Act. In any event, this contention that some form of warning or notification was required to be served upon him prior to the institution of this proceeding is without merit either under 9(b) of the Administrative Procedure Act or Section 15 of the Exchange Act. See Schuck v. S.E.C., (supra) and Sterling Securities Company, 37 S.E.C., 837 where somewhat similar contentions were rejected.

47. The wilful violations of Section 5 of the Securities Act by Leason resulted in a widespread distribution of unregistered securities of Amphibious throughout the nation. The evasion of the registration requirements cannot be considered a mere "technical violation." It is a very serious matter. The Court of Appeals for the Second Circuit in U.S. v. Doyle C.C.H. (Docket No. 29750) (Federal Securities Law Reports C.C.H. paragraph 91547) in an opinion issued on June 28, 1965 emphasized the seriousness of a violation of the registration provisions under the Securities Act. In U.S. v. Doyle, the defendant pleaded guilty to only one count of an eleven count indictment charging him with offenses under the Securities Act of 1933. This count related solely to a violation of the registration provisions under the Securities Act.

48. The Court in its opinion stated, among other things, that:

"The prison sentence of three years, with execution suspended after serving three months, and probation for a year must be conceded to be modest as compared with the five year maximum allowed by 15 U.S.C. Sec. 77X. Although Doyle's trial counsel chose to call the failure to register a technical violation, counsel can hardly be unaware of the close connection between a wilful failure to register securities and their fraudulent sale, which this court has often pointed out, United States v. Crosby, 294 F. 2d 928, 944-45 (2 CIR. 1961), cert. denied, 368 U.S. 984 (1962); United States v. Benjamin, 328 U.S. F. 2d 854, 864 (2 CIR.), cert. denied, 377 U.S. 953 (1964)."

49. The close connection between the filful failure to register the stock of Amphibious and its fraudulent sale is vividly illustrated by the facts of this case.

WILFULL VIOLATIONS OF THE ANTI-FRAUD
AND ANTI-MANIPULATION PROVISIONS OF
THE SECURITIES ACTS

50. The Division charged that Leason had violated the provisions of Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5, 10b-6, and 15c1-2 (17 CFR 240.10b-5, 10b-6 and 15c1-2) thereunder.

51. The effect of these provisions, as applicable here, is to make unlawful the use of the mails or facilities of interstate commerce, in connection with the purchase or sale of any security by means of a device to defraud, an untrue or misleading statement of a material fact, or any act, practice, or course of business which operates or would operate as a fraud or deceit upon a customer, or by means of any other manipulative or fraudulent device.

52. The Division presented evidence showing that Hayden Leason had prepared and mailed selling literature to investors containing false and misleading statements concerning Amphibious Boats' patent rights, its backlog of orders, its balance sheet, and the profits of the company and had also made unwarranted predictions as to future profits and increases in the market price of its stock.

53. The false and misleading statements were contained principally in three documents. Two of these documents were entitled "Don't Miss the Boat" and the third document was entitled "New 'Roadable' Boat Kicking Up Spray". Both of the documents entitled "Don't Miss the Boat" were prepared by Hayden Leason. Although there were a number of differences between these two documents, the principal difference between them (aside from the later enlargement of the false and misleading statements in the earlier brochure) was that in the earlier version the price of Amphibious stock was \$3 per share, and in the later version the price was \$6 per share. The principal reasons for the higher market price were the continued circulation of false and misleading literature and the manipulative activities of Leason in buying and selling Amphibious securities while engaged in making a distribution of such stock.

54. Hayden Leason not only prepared both versions of "Don't Miss the Boat" but was also instrumental in causing the false and misleading article entitled "New 'Roadable' Boat Kicking Up Spray" concerning Amphibious Boats, Inc. to be printed in the December 1959 issue of the magazine called Traders Graphic. Subsequently the magazine furnished Leason & Co. with lists of names of persons who wrote to it following publication of its article.

55. Leason & Co. purchased reprints of the latter article and Leason & Co. and Hayden Leason caused this article to be distributed through the mails to the investing public and broker-dealers throughout the country with the \$6 per share version of "Don't Miss the Boat".

56. During the period when these false and misleading pieces of literature were being widely distributed by them, both Leason & Co. and Hayden Leason were engaged in the distribution of Amphibious Boat stock and were purchasing and selling substantial volumes of such stock.^{36/}

57. The Commission pointed out in Landau Company et al, 40 S.E.C. 1119 (1962) at page 1125 that:

"Rule 10b-6 prohibits trading by persons interested in a distribution, and declares it to be a manipulative or deceptive device for any broker or dealer participating in a distribution of any security to bid for or purchase for his own account any such security, either directly or indirectly through an intermediary. A broker or dealer may be engaged in a distribution, in the sense of a major selling effort in his own behalf, notwithstanding the fact that the number of shares involved represent only a small part of the total number of shares outstanding. There is no evidence here of any substantial activity in the stock by others during the period in question. Moreover, in any event, there is no question that there was a major selling effort insofar as Scott Taylor itself was concerned. It sold a relatively large number of shares of one issuer in a period of a few months to many public investors throughout the United States through the use of long distance telephone calls and high pressure sales tactics involving numerous fraudulent representations."

58. There can be no question but that the activities of Hayden Leason and Leason & Co., Inc. in buying and selling a large number of Amphibious shares in the Over-the-Counter market, while circulating high pressure false and misleading sales literature at the same time and the concomitant use of stock quotations in the "pink sheets" had as

^{36/} During this same period Tegtmeyer & Co., Hayden Leason's broker, was placing quotations on Amphibious stock in the "pink sheets" after clearing such quotations with Hayden Leason.

prime purpose as wide a distribution of the stock as possible at rapidly ascending levels - a purpose which was achieved by Leason & Co. and Hayden Leason. This activity was proscribed by Section 10b of the Exchange Act and Rule 10b-6 adopted thereunder. The concept of the term "distribution" has a somewhat different and larger connotation under the Exchange Act than is commonly attributed to such term under the Securities Act. The Commission has referred to "distribution" in Rule 10b-6, in terms of "a major selling effort" and has identified as two basic factors to be considered in distinguishing a distribution from ordinary trading transactions "the magnitude of the offering" and "particularly . . . the selling efforts and selling methods utilized."^{37/}

59. Both versions of "Don't Miss the Boat" contained urgent recommendations to investors to purchase Amphibious stock. These recommendations were based, to a substantial degree, on references to or comparisons with stocks of other boat companies which had enjoyed extraordinarily rapid and spectacular increases in the market prices of their outstanding securities. The clear purpose of these comparisons was to convey to the readers of this "hard sell" literature the false and misleading impression that purchasers of Amphibious Boats stock would enjoy similar "short term appreciation" and "long term growth".

^{37/} Gob Shops of America, Inc., 39 S.E.C. 92 (1959); Bruns Nordeman & Co., 40 S.E.C. 652 (1961); "Rule 10b-6: The Special Study's Rediscovered Rule" by former Commissioner Jack M. Whitney II, Michigan Law Review, Vol. 62, No. 4, February 1964.

60. The use by Hayden Leason of the names of the boat companies set forth in his selling literature setting forth the spectacular increases in their sales figures and the tremendous increase in the market price of their securities ^{38/} was fraudulent and misleading particularly because of the omission of statements therein explaining the material differences which existed between the other companies named in "Don't Miss the Boat" and Amphibious. In addition, this material is highly misleading since it omitted to point out that there was no assurance that the performance of the security being offered would duplicate or be similar to the market performance of ^{39/} the companies referred to in the selling literature.

61. While Leason offered the testimony of a number of witnesses on rebuttal, these witnesses did not offer any evidence which contradicted the very substantial evidence of his serious and numerous violations of the Securities Acts introduced by the Division during the proceeding. Instead Leason took the position, principally in the briefs he filed in the proceeding, that he had various exemptions from the registration provisions

38/ G. J. Mitchell, Jr. Co., Exchange Act Release No. 6433, December 13, 1960; See Kay Brunell, Exchange Act Release No. 6913, October 15, 1962; Irving Grubman, Exchange Act Release No. 6546, May 15, 1961; The Whitehall Corporation, 38 S.E.C. 259, 266-7 (1958); Life Shares Trading Corporation, Exchange Act Release No. 7211, January 8, 1964.

39/ For example, in both versions of "Don't Miss the Boat" Leason referred to the similarity of the stock of Glasspar to the shares of Amphibious Boats. In this connection, Leason stated that "Glasspar's shares which sold for \$1.50 as recently as 1956 reached a high of \$36.75 this year" (1959). Leason then referred to the "striking parallel [of Amphibious] to the early capitalization of Glasspar Company."

(discussed hereinabove) and that in preparing his brochures he had employed selling literature drafted by a person named Townsend Miller (Respondent's Ex. 17) relating to Amphibious Boats, and had relied upon the correctness of the statements about Amphibious contained in Miller's literature.

62. Townsend Miller was called as a witness by counsel for Hayden Lynch, the applicant, Leason's wholly owned company. Miller testified that he had been employed by James C. Tucker & Co., a broker-dealer of Austin, Texas, during 1959 and had been requested to prepare a report on Amphibious Boats at about September 1, 1959 by R. L. McLeod, a director of Amphibious and the president of James C. Tucker & Co. The purpose of Miller's report (Respondent's Ex. 17) was to aid the distribution of Amphibious stock under the company's claim of an exemption from registration pursuant to Section 3(a)(11) of the Act.

63. Miller testified that Hayden Leason requested permission to use his report in connection with the selling literature which Leason was then preparing. In this way Leason obtained from Miller permission to use selling literature being distributed ostensibly under an intrastate exemption for use in an interstate distribution of the same issue of Amphibious stock. Hayden Leason then used material portions of Tucker's report as part of his brochure, "Don't Miss the Boat", which was distributed nationally.

64. Miller further testified that he had obtained the information contained in his report concerning Amphibious Boats in some telephone conversations which he had had with E. Richard Verrill, the then president

of Amphibious Boats. Miller did not testify that he had any personal knowledge of the operations of Amphibious Boats or that he had made any independent investigation or effort of any kind to determine whether the highly optimistic representations contained in his selling literature were correct or not. Further, there is no evidence that Leason made any independent investigation or effort to ascertain whether the representations he was making were true and correct. In fact, Leason's contentions indicate clearly that he made no such effort.

65. The brochure entitled "Don't Miss the Boat" was issued over the name of Leason & Co. Both Leason & Co. and Hayden Leason owed a duty to investors to find out whether the representations they were making in these brochures had any reasonable basis before publishing and circulating thousands of them to the public.

66. Hayden Leason cannot hide behind the claim that the representations made in the selling literature were based on information transmitted to Townsend Miller by Verrill. So far as Leason was concerned Miller's statements on Amphibious were hearsay at best, and Leason had the opportunity to ascertain what the facts really were before publishing and distributing this false and misleading information to the public. ^{40/}

67. Leason's self-serving statements in this proceeding were not made under oath but were made only in briefs and in declamatory remarks

40/ Investment Service Co., Exchange Act Release No. 6884, August 15, 1962; Keith Richard Securities Corp., 39 S.E.C. 231, 236 (1959).

made when he was acting as his own counsel during the hearing and they are not evidence and cannot be taken as having any probative value.^{41/}

68. While Leason presented no evidence to rebut the Division's evidence concerning the false and misleading statements contained in his advertising literature, he claimed in his brief that he believed at the time that he was circulating thousands of copies of this sales literature that the statements contained therein were truthful, and he contended that it followed that he was acting in good faith and not in violation of any of the provisions of the Securities Acts.^{42/}

69. The fact of the matter is that the falsity of certain of the statements contained in "Don't Miss the Boat" were directly brought to his attention while he was distributing his false and misleading brochures but he continued to circulate them anyway.^{43/} In addition, Leason's claims of good faith which, if they existed at all, were reached without reasonable basis and cannot lawfully be made the fulcrum for the false and misleading statements and predictions in the literature.

^{41/} The practice on the part of some broker-dealers to send out over their own names material prepared on behalf of issuing companies has been adversely commented upon in the Special Study Report, Pt. 3, Ch. 8 IX, pp. 76-86.

^{42/} These contentions were wholly inconsistent with the meaning of "wilfulness" under Section 15(b) of the Exchange Act. See Gearhart & Otis, supra.

^{43/} For example, see discussion hereinafter concerning representations concerning patent rights.

70. Furthermore, when Leason was selling Amphibious stock he was under an obligation to make known to the people he was urging to buy such securities the adverse factors related to such securities.

71. If Leason did not have enough information as to the facts necessary to reach an informed judgment as to the securities he was peddling, then it was misleading for him to make the statements contained in his advertising literature.

72. Both versions of "Don't Miss the Boat" strongly "recommended the purchase of AMPHIBIOUS BOATS, INC. stock at market for potential short term price appreciation and long term growth."

73. The first version bearing a current market price of \$3.00 per share was distributed during the period from on or about October 20, 1959 to about December 15, 1959. The second version bearing a current market price of \$6.00 per share was distributed from on or about December 15, 1959 to about March 31, 1960.

74. Leason & Co. and Hayden Leason distributed these two reports by the use of the mails to the investing public and to broker dealers throughout the country.

75. Both the earlier and later versions of "Don't Miss the Boat" represented, among other things, that Amphibious had "A patented, fully tested airplane-type retractable wheel assembly, which eliminates the need for a boat trailer, will be offered built into its boats as an optional feature, giving the company an imaginative, popular product -

in addition to a complete line of conventional fiberglass boats."

76. The fact was that Amphibian did not have clear title to any "patented" wheel assembly. According to Douglas Bergman, the company's general counsel, "We [Amphibious Boats, Inc.] had never accepted that title [to the patent]." Bergman, in fact expressed the opinion to the board of directors that Amphibious did not have good title to the patent at a meeting held on October 27, 1959 and the "patent" was discussed at length at such meeting.

77. The minutes of this board meeting of October 27, 1959 were read to Hayden Leason at his specific request on December 9, 1959 after he had become a director. Accordingly, by December 9, 1959 at the latest, Hayden Leason knew full well that the statement concerning Amphibious' ownership of a patent on a "fully tested airplane-type retractable wheel assembly" contained in his selling literature was false but he continued to circulate it to the public for months thereafter.

78. It may also be noted that an accountant for the company testified during the hearing that "through the corporate minutes and discussion with the attorney . . . it was arrived at that the patent could be circumvented or there really was no benefit to the company" and that the company "had no intention of paying" a royalty on any patent. Further Bray, who became president of Amphibious in January, 1960 at the request of Hayden Leason testified in regard to this alleged patented gear for Amphibious that there was no public acceptance of Amphibious boats because ". . . when people bought these boats or tried them out they were heavy, they are much heavier than the ordinary

boat, and its just, the American people like something fast, and if their friends have a boat, a light boat with a 24, 25 horsepower boat, the Amphibious goes much slower than the other one, and people just don't like that . . ."

79. Amphibious never in fact developed or had a boat with a commercial retractable wheel assembly. The models which had such an assembly were never put in commercial production by Amphibious.

80. The representations in "Don't Miss the Boat" regarding the existence of a patent owned by the company and the omission to point out the adverse factors inherent in the Amphibious wheel assembly such as the reduction in the speed of a boat brought about by its installation and the consequent lack of public acceptance of the boat, made the selling literature prepared by Leason false and misleading in very material respects.

81. The earlier version of "Don't Miss the Boat" (Division Ex. 1) stated that "From the beginning, sales have outstripped production, and tentative orders for over 2,500 boats are due to absorb current production for some time to come. . . ." The later version (Div. Ex. 2) which was distributed during the period when Leason had become a director of the company and its controlling stockholder increased the figure from 2,500 boats to 5,000 boats. Traders Graphic reported that "With some 5,000 orders now on hand, covering both its "Amphibian" and conventional "Falcon" models, the company has launched a full-throttle production drive to meet snowballing demand."

82. Both versions of "Don't Miss the Boat" stated that "Amphibious Boats, Inc., despite its youth, already has proven its ability to produce and sell its products. All boats have been sold, sales contracts are on hand for all boats to be produced in the near future, and the company is producing a full line of both conventional boats and trailer-boat combinations for the 1960 season." (Emphasis appears in "Don't Miss the Boat".)

83. The article in Traders Graphic carried the following statement:

"Capacity of the new plant on a two-shift basis is estimated at from 5,000 to 8,000 boats a year, depending on model mix and number of molds employed." At a later point, the article stated that, "Spurred by the size of its order backlog, the company had adopted production-line methods in its new plant. . . ."

84. While these and similar statements were being circulated by Hayden Leason and Leason & Co., Amphibious was having serious quality control problems with its conventional type boats, and had no workable amphibian. Moreover, there was no backlog of orders nor had any production-line methods been adopted.^{44/}

85. Both versions of "Don't Miss the Boat" set forth that "President Verrill has set a profit objective for the company at a minimum of \$100 per boat on smaller models and up to \$200 per boat on larger models. . . ."

^{44/} The Company had franchise agreements referring to the number of boats which the dealer would acquire from Amphibious in the future but these were not firm or actual orders for boats to be shipped at any specific time, and Amphibious' management did not consider them orders (see testimony of Bray, president of Amphibious).

86. Both versions of "Don't Miss the Boat" contained the following statements:

"The above records invite some interesting comparisons with the outlook for the 272,000 shares of AMPHIBIOUS BOATS, INC., currently priced in the \$5.00 range. The company's announced production schedule of 100 boats during October (annual rate of 1,200) could reasonably be expected to be a minimum for the future, bearing in mind the substantial backlog of orders and early sales successes. Again using the company's predicted minimum profit objective of \$100 per boat, net on a 12 month total of 1,200 boats would amount to \$120,000, or about 50 cents per share. Being even more pessimistic and cutting that figure in half, the possibilities for price appreciation on AMPHIBIOUS BOATS stock are impressive. On this grossly minimized basis, AMPHIBIOUS stock currently is selling far lower on an estimated times earnings basis than the 19 times predicted earnings for Glasspar, nearly 30 times predicted earnings for Pearson, and a price of \$4.50 per share for Wizard of Tennessee, organized at \$2 per share last year and which expects only to break even this year.

"Should the sales or profit margins of AMPHIBIOUS BOATS rise above the bare minimums used for comparison . . . or should they merely equal company expectations . . . the prospects are staggering. For instance, it is estimated that production capacity of the present plant is 20 boats per day or an 8 hour shift, or approximately 450 boats per month. Assuming this level of production for only 10 months, the company would earn an estimated \$450,000 before taxes and \$225,000 after taxes -- in excess of \$.80 per share earnings. Apparently, sales are no problem for the present since the company already has tentative orders for more than 5,000 boats, or all of its present production capacity. Plans to meet the demand for the company's products include future plant sites first in the areas of Indiana, New York, Florida, and California. The company is already embarked on an aggressive search for acquisitions which would complement its large order backlog, and at present is active in negotiations with two such companies. The future sales and earnings for AMPHIBIOUS appear bright indeed." (Underscoring in "Don't Miss the Boat")

The article in Traders Graphic contained similar statements.

87. The fact was that the company was losing money on every boat it was manufacturing, was having difficulty selling its boats, and there was no reasonable basis to justify any of the quoted statements regarding the order backlog or the predicted large profits.

88. The brochures carried a balance sheet dated September 30, 1959. This balance sheet was used without indicating that said balance sheet was unaudited and that the inventories, molds, plant equipment and small tools, delivery equipment, office equipment, plant development costs and leasehold improvements had been significantly written down and the patent and engineering and retractable gear had been written off on the November 30, 1959 audited balance sheet.

89. The statement in both versions of "Don't Miss the Boat" to the effect that ". . . on a comparative basis, the stock of Amphibious Boats, Inc. appears grossly undervalued" was utterly without basis particularly since the company had not been able to develop its key product, i.e., an amphibious boat, and was losing money on every boat it made, and its stock had a book value of only 87 cents per share.

90. In connection with an analogous statement the Commission in Heft, Kahn & Infante, Inc., Securities Exchange Act Release No. 7020 (February 11, 1963) held that:

"A prediction by a securities dealer to an investor that the price of the stock in a new, untried speculative venture is likely to increase materially or within a short period of time implies that there is an adequate foundation for such prediction and that there are no known facts which make such a prediction dangerous or unreliable. There is inherent in the dealer-customer relationship the implied representation that the customer will be dealt with honestly and fairly and that representations respecting a stock which the dealer recommends are reasonably made on the basis of knowledge and careful consideration. In the case of a new, untried enterprise such as USC with a product not yet produced or tested in the market, with no reliable cost data or sales experience, predictions, made by a broker-dealer for the purpose of inducing customer purchases of stock, of substantial short-term price rises in the stock and of annual earnings per share almost equivalent to the initial offering price of the shares cannot possibly be justified."

91. The balance sheet used in both versions of "Don't Miss the Boat" contained numerous items as assets which were worthless and which were therefore written off by the accountants for the company in the November 30, 1959 audit.

92. The balance sheet employed in the brochures was unaudited but this fact was not disclosed in the brochures. Although copies of the November 30, 1959 audited statement were delivered to the company for each director, these financial statements which materially modified the unaudited statement were not employed in the copies of "Don't Miss the Boat" circulated thereafter but instead Leason continued to employ the unaudited and misleading balance sheet.

93. In S.E.C. v. F. S. Johns, 207 F. Supp. 566 (D.N.J., 1962) the court said at page 573:

"The financing of a corporate enterprise by the sale of stock to the public is a fertile field for the practice of deception. The purchaser receives a piece of paper for his investment and must rely in large degree, as to the worth of it, upon representations made with respect to the nature and value of the interest he has acquired in the corporate business . . .

"The standards of conduct prescribed for this type of business cannot be whittled away by the excuse that false statements made were inadvertently made without intent to deceive, or by reliance upon the literal truth of a statement which, in the light of other facts not disclosed, is nothing more than a half-truth. Nor may refuge be sought in the argument that representations made to induce sale of stock dealt merely with forecasts of future events relating to projected earnings and the value of the securities, except to the extent that there is a rational basis from existing facts upon which such forecast can be made, and a fair disclosure of the material facts. The element of speculation is inherent in stock investments, but the investor is entitled to have the opportunity to evaluate the risk of loss, as against the hope of a lucrative return, from true statements of the financial status of the corporate enterprise in which he is acquiring an interest."

94. The uncontradicted evidence in this case discloses that Leason acquired substantial blocks of Amphibious securities, sold them to the public in numerous states without registration under the Securities Act, and in this connection prepared and circulated grossly false and misleading brochures and reprints of articles urging the public to buy Amphibious Boats, Inc. stock and at the same time also engaged in a manipulation of the over-the-counter market in the stock by causing bids to be placed in the pink sheets for such securities and by buying and selling substantial volumes

of the stock during the course of the distribution of such securities.

95. The transactions of Hayden Leason and Leason & Co. in the over-the-counter market represented a major portion of the outstanding stock. In every instance of the transactions outlined in Appendices A and B, with one exception, Hayden Leason acted as the agent for Leason & Co., Inc.

96. In this connection, the purchase and sale blotters of Leason & Co. (Div. Ex. 71) reflect that from the time that Hayden Leason and Leason & Co. started trading in the stock the stock more than doubled its price within a few months, and then went down to about \$3 per share. Since there were during this entire period only 293,100 shares of Amphibious Boats stock outstanding, it is evident that the activity of Hayden Leason and Leason & Co., Inc. in the market had a manipulative effect upon the price of the stock. In this connection, it is interesting to note that as Leason pointed out at page 22 of his brief, "Divisions Exhibit 231 is the customer's ledger for Hayden Leason at Tegtmeyer & Co. during the period November 25 through September 2, 1960. This ledger shows something like over 1000 individual trades, ranging in size, anywhere from 5 shares of Amphibious Boats, all the way up to 5000 shares of Amphibious Boats stock purchased and sold by Mr. Shure while trading this stock as agent for Hayden Leason."

97. There can be no question on the evidence in this record but that the activities of Hayden Leason and Leason & Co., Inc. in the market for

Amphibious Boats, Inc. stock were willful and that the bids and purchases were directed at obtaining the very effect they had, namely, increasing the price of Amphibious Boats stock.

CONCLUSIONS OF LAW

A. The distribution of both versions "Don't Miss the Boat" and the reprints of the article in Traders Graphic to the investing public and to broker-dealers throughout the country was in willful violation of Section 17(a) of the Securities Act of 1933 and of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, as well as Section 15(c)(1) of the Securities Exchange Act of 1934 and Rules 15c1-2(a) and (b) promulgated thereunder, in that they were distributed by Hayden Leason and Leason & Co., Inc. with full knowledge of the material misrepresentations contained therein and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

B. The purchases and sales of stock of Amphibious Boats, Inc. by Hayden Leason through Wm. H. Tegtmeier & Co. were in willful violation of Section 10 of the Securities Exchange Act of 1934 and Rule 10b-6, promulgated thereunder, in that such purchases and sales were made by persons who were participating in the distribution of securities in Amphibious Boats, Inc.

C. The sale of the stock of Amphibious Boats, Inc. caused by Hayden Leason were in willful violation of Sections 5(a)(1) of the

Securities Act of 1933 in that there was no registration statement in effect with the Securities and Exchange Commission as to the common stock of Amphibious Boats, Inc.

RECOMMENDATION

In view of the numerous, serious, and willful violations of the Securities Acts found hereinabove, it is respectfully recommended that the Commission enter an order (1) finding it is in the public interest and for the protection of investors to deny the application of Hayden Lynch & Co., Inc. to become registered as a broker-dealer,^{45/} and (2) finding Hayden Leason to be a cause for the denial of the application of Hayden Lynch & Co., Inc.^{46/}

Respectfully submitted,
Samuel Binder
Samuel Binder
Samuel Binder
Hearing Examiner

Washington, D. C.
July 26, 1965

45/ In Pierce v. Securities and Exchange Commission, 239 F. 2d 160, 163-164 (C.A. 9, 1956), the Court stated:

"Denial of registration is not to be regarded as a penalty imposed on the broker. To the contrary, it is but a means to protect the public interest. 15 U.S.C.A. §780(b); Wright v. Securities and Exchange Commission, 1940, 2 Cir., 112 F. 2d 89, 94; Smolowe v. Delendo Corporation, 1940, D.C.N.Y., 36 F. Supp. 790. The Commission is given the duty to protect the public. What will protect the public must involve, of necessity, an exercise of discretionary determination."

46/ To the extent that the proposed findings and conclusions and supporting briefs submitted by the Division of Trading and Markets, Hayden Leason, and Hayden Lynch & Co. are in accord with the views expressed herein they are sustained and to the extent they are inconsistent therewith they are expressly overruled.

APPENDIX A

Sales by Hayden Leason and Leason & Co., Inc. of Amphibious Boats, Inc.
Common Stock *

<u>Date</u>	<u>To Broker</u>	<u>No. of Shares</u>	<u>Price</u>	<u>Delivery Date</u>	<u>Exhibit Numbers</u>
12/21/59	Clement A. Evans & Co. Atlanta, Georgia	500	7 1/4	1/ 4/60	70, 71, 72, 75, 76, 77
1/ 4/60	Investment Income Service Lewiston, Idaho	100	6 5/8	1/22/60	70, 71, 72, 73, 143, 144, 145
1/ 5/60	Neary Purcell & Co. Los Angeles, California	300	6 5/8	1/15/60	70, 71, 72, 78, 79, 80
1/ 6/60	James G. Tucker & Co., Inc., Stocks Austin, Texas	200	6 5/8	1/15/60	70, 71, 72, 81, 82, 83
1/ 7/60	J. K. Rice, Jr. & Co. New York, New York	500	7 3/8	2/ 1/60	70, 71, 72, 162, 163, 164
1/ 7/60	Nolting Nichol & O'Donnell, Inc. Pensacola, Florida	100	6 7/8	1/19/60	70, 71, 72, 84, 85
1/ 7/60	Wertheim & Co. New York, New York	100	6 3/4	1/19/60	70, 71, 72, 86, 87
1/ 8/60	J. K. Rice, Jr. & Co. New York, New York	400	7 11/16	2/ 1/60	70, 71, 72, 88, 89, 90

APPENDIX A

<u>Date</u>	<u>To Broker</u>	<u>No. of Shares</u>	<u>Price</u>	<u>Delivery Date</u>	<u>Exhibit Numbers</u>
1/ 8/60	Wertheim & Co. New York, New York	100	7 7/8	2/ 1/60	70, 71, 72, 91, 92
1/ 8/60	C. H. Reiter & Co. Cincinnati, Ohio	300	7 1/8	1/21/60	70, 71, 72, 93, 94, 95
1/ 8/60	Clement A. Evans & Co. Atlanta, Georgia	200	7 1/2	1/20/60	16, 70, 71, 72, 96, 97
1/ 8/60	Peters Writer & Christensen, Inc. Denver, Colorado	500	7 3/4	2/ 1/60	70, 71, 72, 98, 99, 100
1/14/60	Strader & Company, Inc. Lynchburg, Virginia	500	7 1/4	2/19/60	70, 71, 72, 101, 102, 103
1/18/60	J. K. Rice, Jr. & Co. New York, New York	1000	7 1/4	1/22/60	70, 71, 72, 104, 105, 106
1/20/60	J. K. Rice, Jr. & Co. New York, New York	1000	6 7/16	2/ 1/60	70, 71, 72, 107, 108, 109
1/26/60	Bell & Farrell, Inc. Madison, Wisconsin	100	6 1/4	2/16/60	70, 71, 72, 114, 115, 116
1/29/60	Singer, Deane & Scribner Pittsburgh, Pennsylvania	400	5 1/4	3/17/60	70, 71, 72, 117, 118, 119, 120, 121, 122

APPENDIX A

<u>Date</u>		<u>No. of Shares</u>	<u>Price</u>	<u>Delivery Date</u>	<u>Exhibit Numbers</u>
1/29/60	J. K. Rice, Jr. & Co. New York, New York	600	5 1/4	3/16/60	70, 71, 123, 124, 125, 126, 127
2/ 2/60	Fusz-Schmelzle & Co. St. Louis, Missouri	100	5 1/4	3/ 1/60	70, 71, 72, 206, 207
2/ 5/60	North Central Securities, Inc. Ottawa, Illinois	100	5 5/8	2/10/60	70, 71, 72, 73, 128, 129, 130
2/ 5/60	Fusz-Schmelzle & Co. St. Louis, Missouri	100	5 1/2	3/ 1/60	70, 71, 72, 208, 209
2/16/60	Singer, Deane & Scribner Pittsburgh, Pennsylvania	1000	3 1/4	3/ 3/60	70, 71, 72, 146, 147, 148, 149
2/16/60	Singer, Deane & Scribner Pittsburgh, Pennsylvania	135	3 3/8	3/ 3/60	70, 71, 72, 490, 491, 492, 493
2/18/60	Singer, Deane & Scribner Pittsburgh, Pennsylvania	500	3 3/4	3/ 3/60	70, 71, 72, 135, 132, 133
2/19/60	John B. Joyce & Co. Columbus, Ohio	100	3 7/8	3/15/60	70, 71, 72, 134, 135, 136
2/29/60	Bruno-Lenchner, Inc. Pittsburgh, Pennsylvania	100	4 3/4	3/22/60	70, 71, 72, 137, 138
3/ 1/60	Bruno-Lenchner, Inc. Pittsburgh, Pennsylvania	500	4 1/2	3/22/60	70, 71, 72, 139, 140

APPENDIX A

<u>Date</u>	<u>To Broker</u>	<u>No. of Shares</u>	<u>Price</u>	<u>Delivery Date</u>	<u>Exhibit Numbers</u>
3/ 3/60	Bala Williams & Company Wichita Falls, Texas	100	4 7/8	3/22/60	70, 71, 72, 141, 142
3/ 3/60	Wm. B. Robinson & Co. Corsicana, Texas	250	\$4.83	3/15/60	70, 71, 72, 150, 151
3/ 9/60	Reinholdt & Gardner St. Louis, Missouri	400	4 3/4	4/ 4/60	70, 71, 72, 198, 199, 200, 201
3/11/60	Reinholdt & Gardner St. Louis, Missouri	100	4 5/8	4/ 4/60	70, 71, 72, 202, 203

* Transactions selected at random from aggregate of 454 sales totaling 136,118 shares of Amphibious Boats, Inc. common stock by Hayden Leason and Leason & Co., Inc. as reflected in the security ledger of Leason & Co., Inc. for Amphibious Boats, Inc. common stock.

APPENDIX B

Purchases by Hayden Leason and Leason & Co., Inc. of Amphibious Boats, Inc.
Common Stock *

Date	To Broker	No. of Shares	Price	Receipt Date	Exhibit Numbers
12/24/59	Wm. H. Tegtmeier & Co. Chicago, Illinois	3500	6 1/4	2/ 1/60	70, 71, 72, 152, 153
1/11/60	Vilas & Hickey New York, New York	100	7 3/8	1/19/60	70, 71, 72, 165, 166, 167, 168, 169, 170
1/18/60	Newhard Cook & Co. St. Louis, Missouri	100	7	1/22/60	70, 71, 72, 171, 172, 173, 174, 175
1/26/60	Semple Jacobs & Co., Inc. St. Louis, Missouri	400	6	2/11/60	70, 71, 72, 110, 111, 112, 113
1/28/60	Burton Dana & Co. New York, New York	100	5 3/4	2/17/60	70, 71, 72, 176, 177, 178, 179, 180, 181
2/ 8/60	Wm. H. Tegtmeier & Co. ** Chicago, Illinois	25	5 1/2	4/ 1/60	70, 71, 73, 154, 155, 156
2/15/60	W. E. Burnett & Co. New York, New York	400	4 1/8	2/23/60	70, 71, 72, 192, 193, 159, 160, 161
2/15/60	W. E. Burnett & Co. New York, New York	200	4 3/8	2/23/60	70, 71, 72, 157, 158, 159, 160, 161

APPENDIX B

Date	To Broker	No. of Shares	Price	Receipt Date	Exhibit Numbers
2/15/60	Indianapolis Bond and Share Corp. Indianapolis, Indiana	500	4 5/8	***	70, 71, 72, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191

* Transactions selected at random from aggregate of 219 purchases totaling 136,885 shares of Amphibious Boats, Inc. common stock by Hayden Leason and Leason & Co., Inc. as reflected in the security ledger of Leason & Co., Inc. for Amphibious Boats, Inc. common stock.

** Purchased by Leason & Co., Inc. for account of Reuel O. Lindberg, Branford, Connecticut. Other shares, by certificate number, were delivered by registered mail on 2/23/60 to said investor under the doctrine of fungibility of shares.

*** 400 received 2/17/60
100 received 3/25/60

APPENDIX C

Sales of Hayden Leason through his Account at Wm. H. Tegtmeier & Co. of Amphibious Boats, Inc. Common Stock *

Date	To Broker	No. of Shares	Price	Delivery Date	Exhibit Numbers
12/24/59	Leason & Co., Inc. Chicago, Illinois	3500	6 1/4	2/ 1/60	231, 253, 254, 376
12/30/59	Crowell, Weedon & Co. Los Angeles, California	100	6 1/2		231, 255, 256
1/ 4/60	Birely & Co. Washington, D. C.	100	6 5/8	2/ 2/60	321, 257, 260, 427
1/ 5/60	Hannaford & Talbot San Francisco, California	50	6 3/4	2/ 1/60	231, 261, 263, 377
1/ 7/60	Morfeld, Moss & Hartnett St. Louis, Missouri	200	7	2/ 2/60	231, 303, 304, 422, 467
1/ 8/60	G. H. Walker & Co. Providence, Rhode Island	100	8	2/ 2/60	231, 305, 307, 426
1/11/60	Charles Parcels & Co. Detroit, Michigan	100	8 1/2	2/ 2/60	231, 309, 312, 425
1/12/60	Yates-Heitner and Woods St. Louis, Missouri	100	7 1/2	2/ 2/60	231, 313, 316, 428, 468

APPENDIX C

Date	To Broker	No. of Shares	Price	Delivery		Exhibit Numbers
				Date	Date	
1/12/60	Wm. P. Harper & Son and Co. Seattle, Washington	100	7 3/8	2/ 2/60	2/ 2/60	231, 314, 315, 424, 468
1/13/60	Chaplin, McGuinness and Co. Pittsburgh, Pennsylvania	100	7 3/8	2/ 2/60	2/ 2/60	231, 317, 320, 423, 469
1/13/60	Reynolds & Co. New York, New York	200	7 1/2	2/ 2/60	2/ 2/60	231, 319, 322, 375, 469
1/13/60	Merrick & Co. San Mateo, California	100	7 1/2	3/ 1/60	3/ 1/60	231, 323, 324, 380
1/19/60	Hopper Soliday & Co. Philadelphia, Pennsylvania	50	6 7/8	3/31/60	3/31/60	231, 325, 327, 409
1/20/60	Schimer Atherton & Co. Boston, Massachusetts	100	6 5/8	3/11/60	3/11/60	231, 329, 330, 383
1/28/60	Laird & Co. New York, New York	100	5	3/28/60	3/28/60	231, 335, 336, 401
1/29/60	Bosworth, Sullivan & Co. Denver, Colorado	100	5 3/8	3/29/60	3/29/60	231, 337, 338, 387
2/ 3/60	Nugent and Igoe East Orange, New Jersey	200	5 1/4	3/31/60	3/31/60	231, 339, 340, 400
2/ 4/60	Robert C. Buell & Co. Hartford, Connecticut	50	5 5/8	4/ 1/60	4/ 1/60	231, 340, 342, 393

APPENDIX C

<u>Date</u>	<u>To Broker</u>	<u>No. of Shares</u>	<u>Price</u>	<u>Delivery Date</u>	<u>Exhibit Numbers</u>
2/8/60	Newhard Cook & Co. St. Louis, Missouri	125	5 3/8	4/ 1/60	231, 343, 344, 390, 473
2/ 8/60	Leason & Co., Inc. Chicago, Illinois	25	5 1/2	4/ 1/60	231, 345, 358, 394
2/10/60	Balogh & Co., Inc. Washington, D. C.	200	5 1/4	4/ 1/60	321, 347, 349, 391, 474
2/16/60	Newhard Cook & Co. St. Louis, Missouri	80	3 3/8	4/ 1/60	231, 352, 355, 389, 475
2/17/60	Strader & Company, Inc. Lynchburg, Virginia	100	3 1/2	3/31/60	231, 265, 266, 417, 476
2/18/60	Milburn, Cochran & Co. Wichita, Kansas	100	3 3/4	4/ 1/60	231, 267, 268, 392
2/19/60	United Securities Co. Greensboro, North Carolina	100	3 7/8	4/ 5/60	228, 229, 230, 231, 407
2/19/60	Strader & Company, Inc. Lynchburg, Virginia	25	3 3/4		231, 269, 270
2/23/60	United Securities Co. Greensboro, North Carolina	100	4 1/8	4/ 5/60	231, 271, 272, 406, 477
3/ 1/60	I. M. Simon & Co. St. Louis, Missouri	100	4 3/4	4/ 5/60	231, 276, 278, 399, 479

APPENDIX C

<u>Date</u>	<u>To Broker</u>	<u>No. of Shares</u>	<u>Price</u>	<u>Delivery Date</u>	<u>Exhibit Numbers</u>
3/ 2/60	Fusz-Schmelzle & Co. St. Louis, Missouri	500	4 3/4	4/ 5/60	231, 279, 285, 404, 480
3/ 2/60	Mitchum, Jones & Templeton Los Angeles, California	100	4 1/2	4/ 5/60	231, 280, 287, 398, 480
3/ 3/60	Hauser, Murdock, Rippey & Co. Dallas, Texas	200	4 7/8	4/ 5/60	231, 291, 295, 402, 481
3/ 3/60	Fusz-Schmelzle & Co. St. Louis, Missouri	300	5	4/ 7/60	231, 251, 292, 297, 410
3/ 3/60	Fusz-Schmelzle & Co. St. Louis, Missouri	300	4 7/8	4/ 5/60	231, 252, 293, 298, 405
3/ 3/60	Hauser, Murdock, Rippey & Co. Dallas, Texas	200	4 7/8	4/ 5/60	231, 294, 296, 403, 481
3/ 4/60	Newhard Cook & Co. St. Louis, Missouri	100	4 7/8	4/ 5/60	231, 300, 301, 397, 482
3/10/60	Mitchum, Jones & Templeton Los Angeles, California	100	4 3/4	4/11/60	231, 360, 361, 414, 483

* Transactions selected at random from aggregate of 535 sales totaling 72,251 shares of Amphibious Boats, Inc. common stock by Hayden Leason as reflected in his ledger account at Wm. H. Tegtmeier & Co.

APPENDIX D

Purchases by Hayden Leason through his Account at Wm. H. Tegtmeier & Co. of
Amphibious Boats, Inc. Common Stock *

<u>Date</u>	<u>From Broker</u>	<u>No. of Shares</u>	<u>Price</u>	<u>Receipt Date</u>	<u>Exhibit Numbers</u>
1/ 4/60	Stein Bros. and Boyce Baltimore, Maryland	100	6 1/8	1/11/60	231, 258, 259, 368
1/ 5/60	Filor, Bullard & Smyth New York, New York	100	6 1/4	1/13/60	231, 262, 264, 367
1/ 8/60	Langley Howard, Inc. Philadelphia, Pennsylvania	100	7 1/2	1/18/60	231, 306, 308, 373
1/11/60	M. R. Zeller & Co. New York, New York	100	7 7/8	1/18/60	231, 310, 311, 372
1/13/60	Neary Purcell & Co. Los Angeles, California	100	7	1/22/60	231, 318, 321, 433, 469
1/19/60	M. R. Zeller & Co. New York, New York	100	6 3/4	1/29/60	231, 326, 328, 371
1/25/60	Dallas Rupe & Son, Inc. Dallas, Texas	450	6	1/25/60	231, 332, 333, 370, 470
1/25/60	Dallas Rupe & Son, Inc. Dallas, Texas	100	6 1/8	2/11/60	231, 331, 334, 370, 470
2/10/60	Vilas & Hickey New York	200	4 7/8	2/19/60	231, 346, 348, 369, 474

APPENDIX D

<u>Date</u>	<u>From Broker</u>	<u>No. of Shares</u>	<u>Price</u>	<u>Receipt Date</u>	<u>Exhibit Numbers</u>
2/15/60	Indianapolis Bond and Share Corp. Indianapolis, Indiana	400	4 5/8	3/23/60	231, 350, 351, 385
2/16/60	Stroud & Co. New York, New York	100	3 3/4	3/14/60	231, 353, 356, 384, 475
2/16/60	Dempsey Tegeler & Co. San Francisco, California	100	3	4/ 8/60	231, 354, 357, 411, 475
2/24/60	Russell Investment Co. Denver, Colorado	100	4 1/4	4/11/60	231, 273, 274, 413
3/ 1/60	Neary Purcell & Co. Los Angeles, California	250	4 3/8	3/10/60	231, 275, 277, 382, 479
3/ 2/60	United Securities Co. Greensboro, North Carolina	100	4 1/4	5/ 9/60	231, 284, 288, 418, 480
3/ 2/60	Peters Writer & Christensen, Inc. Denver, Colorado	275	4 1/2	5/13/60	231, 282, 290, 420, 480
3/ 2/60	Peters Writer & Christensen, Inc. Denver, Colorado	1000	4 1/2	4/ 4/60	231, 283, 289, 395, 480
3/ 2/60	Peters Writer & Christensen, Inc. Denver, Colorado	100	4 1/2	3/ 7/60	231, 281, 286, 381, 480

APPENDIX D

Date	From Broker	No. of Shares	Price	Receipt Date	Exhibit Numbers
3/ 2/60	Peters Writer & Christensen, Inc. Denver, Colorado	100	4 1/2	3/28/60	231, 386, 480
3/ 7/60	B. C. Christopher & Co. Kansas City, Missouri	100	4 3/4	4/ 6/60	231, 299, 302, 408
3/10/60	Merrill Turben & Co. Cleveland, Ohio	100	4 1/2	4/19/60	231, 359, 362, 416, 483
3/12/60	Peters Writer & Christensen, Inc. Denver, Colorado	100	4 3/8	4/ 8/60	231, 363, 364, 412
3/16/60	Smith Barney and Co. New York, New York	200	4	4/ 5/60	231, 365, 366, 396, 486

* Transactions selected at random from aggregate of 153 purchases totaling 36,943 shares of Amphibious Boats, Inc. common stock by Hayden Leason as reflected in his ledger account at Wm. H. Tegtmeier & Co.

APPENDIX E

Unregistered Stock of Amphibious Boats, Inc., Issued to Hayden Leason or Nominees of Hayden Leason for Investment and Sold Directly or Indirectly through Hayden Leason to the Public 1/

<u>Date Sold</u>	<u>Sold To</u>	<u>Certificates Delivered</u>	<u>Tracing</u>	<u>Exhibits</u>
1/4/60	Birely & Co. Washington, D. C.	3542 n/o Carl M. Loeb Rhoades & Co. on 2/2/60	1101/1130 issued to Hayden Leason on 11/19/59 - 1111/1125 trans- ferred to 3455/3604 n/o Carl M. Loeb Rhoades & Co. on 1/19/60	427, 56
1/5/60	Hannafoord & Talbot San Francisco, California	4042 n/o Wm. H. Tegtmeier & Co. on 2/1/60	1101/1130 issued to Hayden Leason on 11/19/59 - 1126/1130 trans- ferred to 2694/2698 n/o Vernon L. Thompson & Mrs. Alice I. Thompson on 12/29/59 - 2694 transferred to 4042 n/o Wm. H. Tegtmeier & Co. on 1/25/60	377, 56
1/7/60	Morfeld Moss & Hartnett St. Louis, Missouri	3552/3553 n/o Carl M. Loeb Rhoades & Co. on 2/2/60	1101/1130 issued to Hayden Leason on 11/19/59 - 1111/1125 trans- ferred to 3455/3604 n/o Carl M. Loeb Rhoades & Co. on 1/19/60	422, 55
1/7/60 1/8/60 1/18/60 1/20/60	J. K. Rice Jr. & Co. New York, New York	3455/3483 n/o Carl M. Loeb Rhoades & Co. on 2/1/60	1101/1130 issued to Hayden Leason on 11/19/59 - 1111/1125 trans- ferred to 3455/3604 n/o Carl M. Loeb Rhoades & Co. on 1/19/60	56, 70

APPENDIX E

<u>Date Sold</u>	<u>Sold To</u>	<u>Certificates Delivered</u>	<u>Tracing</u>	<u>Exhibits</u>
1/8/60	G. H. Walker & Co. Providence, Rhode Island	3564 n/o Carl M. Loeb Rhoades & Co. on 2/2/60	1101/1130 issued to Hayden Leason on 11/19/59 - 1111/1125 transferred to 3455/3604 n/o Carl M. Loeb Rhoades & Co. on 1/19/60	426, 56
1/8/60	Peters, Writer & Christansen Denver, Colorado	3485/3489 n/o Carl M. Loeb Rhoades & Co. on 2/1/60	1101/1130 issued to Hayden Leason on 11/19/59 - 1111/1125 transferred to 3455/3604 n/o Carl M. Loeb Rhoades & Co. on 1/19/60	56, 70
1/12/60	Yates, Heitner & Woods St. Louis, Missouri	3595 n/o Carl M. Loeb Rhoades & Co. on 2/2/60	1101/1130 issued to Hayden Leason on 11/19/59 - 1111/1125 transferred to 3455/3604 n/o Carl M. Loeb Rhoades & Co. on 1/19/60	428, 56
1/12/60	Wm. P. Harper & Son and Co. Seattle, Washington	3573 n/o Carl M. Loeb Rhoades & Co. on 2/2/60	1101/1130 issued to Hayden Leason on 11/19/59 - 1111/1125 transferred to 3455/3604 n/o Carl M. Loeb Rhoades & Co. on 1/19/60	424, 56
1/13/60	Chaplin McGuinness & Co. Pittsburgh, Pennsylvania	3596 n/o Carl M. Loeb Rhoades & Co. on 2/2/60	1101/1130 issued to Hayden Leason on 11/19/59 - 1111/1125 transferred to 3455/3604 n/o Carl M. Loeb Rhoades & Co. on 1/19/60	423, 56

APPENDIX E

<u>Date Sold</u>	<u>Sold To</u>	<u>Certificates Delivered</u>	<u>Tracing</u>	<u>Exhibits</u>
1/18/60	Merrick & Co. San Mateo, California	5359 n/o Vernon L. Thompson & Mrs. Alice I. Thompson on 3/1/60	1101/1130 issued to Hayden Leason on 11/19/59 - 1126/1130 transferred to 2694/2698 n/o Vernon L. Thompson & Mrs. Alice I. Thompson on 12/29/59 - 2697/2698 transferred to 5351/5370 n/o Vernon L. Thompson & Mrs. Alice I. Thompson on 2/23/60	380, 56
1/29/60	Singer, Deane & Scribner Pittsburgh, Pennsylvania	2593/2594 n/o Arthur Thomson on 3/3/60	1138 issued to Arthur Thomson on 11/19/59 - 1138 transferred to 2585/89 n/o Wm. H. Tegtmeyer & Co. and to 2590/94 n/o Arthur Thomson on 12/29/59	56, 70
2/2/60	Fusz, Schmelzle & Co. St. Louis, Missouri	5366/5367 n/o Vernon L. Thompson & Mrs. Alice I. Thompson on 3/1/60	1101/1130 issued to Hayden Leason on 11/19/59 - 1126/1130 transferred to 2694/2698 n/o Vernon L. Thompson & Mrs. Alice I. Thompson on 12/29/59 - 2697/2698 transferred to 5351/5370 n/o Vernon L. Thompson & Mrs. Alice I. Thompson on 2/23/60	56, 70
2/18/60	Singer, Deane & Scribner Pittsburgh, Pennsylvania	5368/5370 n/o Vernon L. Thompson & Mrs. Alice I. Thompson on 3/3/60	1101/1130 issued to Hayden Leason on 11/19/59 - 1126/1130 transferred to 2694/2698 n/o Vernon L. Thompson & Mrs. Alice I. Thompson on 12/29/59 - 2697/2698 transferred to 5351/5370 n/o Vernon L. Thompson & Mrs. Alice I. Thompson on 2/23/60	56, 70

APPENDIX E

<u>Date Sold</u>	<u>Sold To</u>	<u>Certificates Delivered</u>	<u>Tracing</u>	<u>Exhibits</u>
2/19/60	United Securities Co. Greensboro, North Carolina	6085 n/o Wilbert Cooper on 4/5/60	Debentures 12/16 issued to Wilbert Cooper on 3/15/60 converted to 6082/6121 n/o Wilbert Cooper on 3/25/60	56, 407
2/23/60	United Securities Co. Greensboro, North Carolina	6087 n/o Wilbert Cooper on 4/5/60	Debentures 12/16 issued to Wilbert Cooper on 3/15/60 converted to 6082/6121 n/o Wilbert Cooper on 3/25/60	56, 406
3/10/60	Mitchum, Jones & Templeton Los Angeles, California	6083 n/o Wilbert Cooper on 4/11/60	Debentures 12/16 issued to Wilbert Cooper on 3/15/60 converted to 6082/6121 n/o Wilbert Cooper on 3/25/60	56, 412, 414
3/10/60 3/11/60 3/30/60	Reinholdt & Gardner St. Louis, Missouri	6106/6110 n/o Wilbert Cooper on 4/4/60	Debentures 12/16 issued to Wilbert Cooper on 3/15/60 converted to 6082/6121 n/o Wilbert Cooper on 3/25/60	56, 70

1/ The outline of the documentary proof of the sales is set forth in Appendices A and C and will not be repeated here. This appendix only traces the unregistered stock from its issuance by Amphibious Boats, Inc. by certificate number to its delivery after a sale made by Hayden Leason through his account at Wm. H. Tegtmeyer & Co. or through Leason & Co., Inc. The transactions proven were chosen at random.