ADMINISTRATIVE PROCEEDING
FILE NO. 3-5164

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
PARCO MANAGERS CORPORATION	:
and	:
UNITED PARCEL SERVICE OF AMERICA, INC.	:
	:

INITIAL DECISION

June 24, 1977
Washington, D.C.

Max O. Regensteiner
Administrative Law Judge

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APPEARANCES: J. Gordon Cooney, Stephen J. Greenberg and Clinton A. Stuntebeck, of Schnader, Harrison, Segal & Lewis, for applicants.

Gerald Osheroff and Arthur J. Brown, for the Commission's Division of Investment Management.

BEFORE: Max O. Regensteiner, Administrative Law Judge

Parco Managers Corporation ("Parco") and United Parcel Service of America, Inc. ("UPS") have applied, pursuant to Sections 6(b) and 6(c) of the Investment Company Act of 1940 ("the Act"), for exemption of Parco from various provisions of the Act. 1/

Although Parco has been engaged from its inception in 1971 in the business of investing in UPS capital stock, it is not now subject to the Act because its securities are owned by less than 100 persons and it is not making and does not presently propose to make a public offering of its securities. 2/ However, if the requested exemptions are granted, Parco intends to offer its common stock to additional selected offerees after registering such stock under the Securities Act of 1933. It appears that the offering, and the resultant increase in the number of security owners, would subject Parco to the coverage of the Act and require its registration thereunder as a closed-end investment company.

1/ The original application, filed in November 1974, sought an exemption from the Act as a whole. As amended, the application requests exemption only from those sections of the Act which applicants state would be significant impediments to Parco's functioning.

2/ Section 3(c)(1) of the Act excludes such a company from the definition of "investment company."

Following hearings,[3/] applicants and the Division of Investment Management filed proposed findings and conclusions and briefs, with the Division opposing most of the requested exemptions.

The findings and conclusions herein are based on the record and on observation of the witnesses' demeanor. Preponderance of the evidence is the standard of proof applied.

I. Description of Applicants

As will appear more fully below, Parco is inextricably entwined with UPS. Among other things, its common stock is owned entirely by UPS managerial employees and its portfolio consists almost exclusively of UPS stock. Analysis of the issues presented by the application thus requires an understanding of pertinent facts concerning UPS, in particular the basis for and restrictions on stock ownership in that company and the nature of the market for its stock.

UPS is in the business of delivering small packages and parcels throughout most of the United States, primarily as a common carrier. Employing some 85,000 persons, it is the largest company of its kind and the largest motor carrier in the United States. Since 1975, it has had operating rights in all

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3/ No request to participate in the hearingswas received by the Commission in response to its "Notice of and Order for Hearing."

48 contiguous states. Its volume of packages delivered exceeds that of the U.S. Postal Service.

From its early days, UPS has been owned for the most part by its managerial and supervisory employees. With minor exceptions, its approximately 41 million outstanding shares of capital stock -- registered with the Commission under Section 12(g) of the Securities Exchange Act -- are owned by or held for the benefit of some 6900 active managers and supervisors or their families, by former employees, their estates or heirs, and by charitable foundations established by founders of the company.[4/] In order to preserve UPS's character as an employee-owned company, its stock is subject to various resale and transfer restrictions, which effectively preclude trading of the stock in any of the organized securities markets. The almost exclusive market for UPS stock is UPS itself. For many years, the company has had a policy of purchasing any shares which shareholders desire to sell, at a price determined on a quarterly basis by the board of directors. Following each such determination, shareholders are notified of the company's willingness

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4/ UPS has not sold any new stock for about the last 35 years. The only additional shares which have been issued were for stock dividends and in connection with stock splits.

to purchase shares at the specified price. Moreover, under UPS's certificate of incorporation, no outstanding shares may be transferred, except by bona fide gift or inheritance, unless the shares are first offered for sale to UPS at the same price and on the same terms upon which they are offered to the proposed transferee. UPS has waived this right of first refusal to enable Parco and its two sister companies (described below) and managerial employees to acquire UPS stock. Shares purchased by UPS have been used primarily to make incentive awards under the UPS Managers Incentive Plan. The shares distributed under that Plan are subject to the UPS Managers Stock Trust. 5/ When a participant in the Trust wants to withdraw shares, UPS is entitled to purchase such shares at their fair value. UPS has the right to purchase at fair value the shares of a participant who dies, retires or otherwise leaves UPS's employment. For many years, UPS has paid the current price determined by its board of directors for shares that had been held in the Trust.

5/ As of December 31, 1976, over 45% of the outstanding UPS stock was held by the Trust.

In its quarterly determinations of the price to be offered for UPS stock, the board of directors has considered a variety of factors, including past and current financial information, earnings estimates, other factors affecting UPS's business and outlook and general economic conditions, as well as opinions furnished semi-annually by Citibank and by Scudder, Stevens & Clark, an investment advisory firm, as to the value of UPS stock. The board has not followed any predetermined formula. It has considered a number of formulas commonly used in the evaluation of securities, but its decisions have been based primarily on its judgment as to UPS's long-range prospects rather than on short-term trends relating to UPS or to the value of securities generally.

During the period from 1967 through the end of 1976, the price of UPS stock set by the board of directors has increased every quarter except for a few in which it remained constant. 6/ In that period it has risen from about $3.25 to $19.75 per share. During the same period UPS's total revenues climbed from $367 million to $1.7 billion, and its net income increased

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6/ The record does not contain pre-1967 figures. Paul Oberkotter, chairman of UPS's executive committee, testified that the price had not decreased since "a good many years ago." (Tr. 189)

from $17.5 million to $90.7 million in 1975 before sinking to $23 million in 1976. That decrease was attributable primarily to two major strikes and a substantial delay by the Interstate Commerce Commission in granting (in part) a requested rate increase.

Parco, a New York corporation, was organized in 1971 under UPS's sponsorship to provide selected key managerial employees of UPS, already owners of UPS stock, with an additional incentive through an opportunity to increase their ownership interest in UPS. Parco's capital structure was designed to create the potential for sizeable gains in relation to the amount invested, through the operation of "leverage." The concept reflected in Parco was first developed by UPS's management in 1959 and resulted in the organization of two older "sister companies," Parmac Corporation in 1959 and Nuparmac Corporation in 1964. All three companies have basically the same plan of operation. The reason that three separate companies were created was to keep the number of their security owners at a level at which, until now, the companies were deemed to be outside the coverage of the Act.

UPS has no intention of offering investment in Parmac and Nuparmac, each of which has less than 100 security owners, to additional employees.

Parco's capital structure consists of three classes of stock: preferred, Class A and common, in order of seniority. The preferred stock has a $100 par value, pays 7% cumulative dividends, and is redeemable at Parco's option for $102.50 per share. It has no voting rights unless dividends are in arrears. All of Parco's outstanding preferred stock was purchased by UPS and in turn donated to educational and charitable institutions. The same method is expected to be followed for future sales of preferred stock. Parco's common stock has been (and is proposed to be) sold at net asset value to selected UPS management employees. In determining net asset value, Parco's board of directors values the UPS stock in its portfolio at the price established by the UPS board of directors at its most recent quarterly meeting. No cash dividends have been or will be paid on the common stock. Rather, Parco's earnings, which have consisted essentially of unrealized appreciation of the UPS stock which comprises Parco's portfolio and of cash dividends

on that stock, have been capitalized (to the extent they exceeded dividend requirements on the preferred and Class A stock) and distributed in the form of Class A stock as dividends on the common stock in amounts which have kept the net asset value of the common stock, immediately after such stock dividends, at $10 per share. The Class A stock has a $10 par value, carries a 6% dividend, and is redeemable at Parco's option for $10.30 per share. It has no voting rights.

As of the end of 1976, Parco had outstanding 75,000 shares of preferred stock representing an investment of $7.5 million by UPS; 43,187 shares of common stock, representing a total investment of $431,870 by 78 employees; and 94,323 shares of Class A stock owned by those 78 plus one former employee.

Parco's cash income from dividends on its UPS stock is far from adequate to meet the dividend requirements on Parco's own preferred and Class A stock. The additional amounts required have been derived from the proceeds of sales of preferred and common stock. The balance of such proceeds has been invested to the fullest extent possible in the purchase of UPS stock. To date, Parco has not acquired any such stock directly from UPS. All purchases have been from UPS stockholders, UPS having waived its rights

of first refusal, at the prevailing price set by UPS's board of directors. Pending availability of additional UPS shares, Parco has invested idle funds in short-term debt securities.

The common stock of Parco (and its sister companies) has been offered in the past to key UPS managerial employees selected by UPS. To be eligible, an employee must be at least a district manager of one of UPS's 60 districts or must perform an equivalent or more responsible national or regional staff function. At the moment, there are at the outside 300 employees who meet these standards, including 194 who are already shareholders of one of the three companies. 7/ Only about 59 persons would be given the opportunity to invest in Parco at this time, were the instant application to be approved. The minimum annual earnings of eligible candidates are about $25,000, including incentive plan awards. The maximum amount which may be invested in Parco common stock in any one year is equal to one month's salary; the cumulative maximum is 3.7 times one month's salary, subject to an absolute ceiling of 1,110 shares,

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7/ No UPS employee is a shareholder in more than one of the three sister companies.

representing an investment of about $11,100. Parco has undertaken not to lower existing eligibility standards if the requested exemptions are granted.

Each owner of Parco common stock has entered into a shareowner's agreement under which Parco has the right to reacquire his shares at net asset value upon termination of his employment with UPS. That right has been exercised in every instance so far. Parco also has a right of first refusal with respect to any proposed sale of common or Class A stock. Parco has undertaken to give its common shareholders the right to require Parco to purchase their shares at net asset value upon termination of their employment with UPS, if the requested exemption order is granted. 8/

With respect to the Class A stock, the owners have no obligation to sell back to Parco upon termination of their UPS employment, nor does Parco have any obligation to repurchase such stock offered to it.

8/ The right would not be exercisable if its exercise were prohibited by New York law or result in an impairment of Parco's capital, or if dividends on the preferred or Class A stock were in arrears.

However, to date Parco has not refused to repurchase any Class A stock so offered. Purchases have been effected at par value. As noted, Parco also has the right to call Class A or preferred shares at any time, but that right has not been exercised.

II. The Requested Exemptions

Applicants seek exemption for Parco, or for classes of transactions in which Parco proposes to engage, from Sections 2(a)(13), 10(a), 16(a), 17(a), (d) and (f), 18(a), (c) and (i), 19(b), 20(a), 23(b) and (c), and 30(a), (b) and (d) of the Act. Each of these sections will be discussed in turn. But first it is necessary to address the context within which the exemption requests must be evaluated.

The parties approach the issues from fundamentally different positions. Applicants, who originally sought to have Parco exempted from the Act as a whole, maintain that Parco is not an investment company of the sort which Congress intended to subject to regulation under the Act. In this connection, they stress, among other things, the purpose for which Parco was created, i.e., to promote

the owner-manager concept on which UPS is premised; the circumscribed and small class of persons eligible to invest in Parco common stock and the assertedly modest amounts to which their investments are limited; the fact that UPS is the primary source of Parco's capital; and the asserted unity of interest existing among Parco's common shareowners, its management and the management of UPS, the portfolio corporation. The Division, on the other hand, finds in Parco's structure and method of operation many of the very conditions recited in Section 1(b) of the Act which the Act was designed to "mitigate and, so far as is feasible, to eliminate" because, as Congress found, they "adversely affect the national public interest and the interest of investors." 9/ It levels its heaviest fire on the system by which UPS stock, and hence Parco common stock, is priced and on Parco's highly leveraged capital structure.

9/ Section 1(b).

In my judgment, the proper approach lies somewhere between these positions, though closer to that of applicants. On the one hand, there is a certain inconsistency between arguing that a company such as Parco was not intended to be regulated under the Act and at the same time contending, as applicants do, that Parco resembles an "employees' securities company," which, though unusual, is clearly covered by the Act.

On the other hand, the Act expressly provides for liberal exemptive treatment for employees' securities companies. And, whether or not Parco is to be treated as coming within that category, it is obviously a highly unusual type of investment company that does not present, except possibly in a very attenuated form, the problems and abuses which the Act was designed to mitigate. That such is the case is apparent from the facts, among others, that the investor class excludes the general public and is limited to a small group of relatively high-level employees of the sponsor, and that the sponsor-controlling person and the investment company shareholders basically have a mutual interest in the welfare of both. Thus, while the concerns expressed by the Division are very serious ones, they are in large measure presented too much in the abstract and without reference to the unusual features of Parco. For these reasons and

those stated below, I have concluded that Parco should be viewed as in essence an employees' securities company; that as such its application is to be considered under the liberal exemptive standards of Section 6(b) rather than the more stringent ones of Section 6(c); and that, although a sufficient showing has not been made with respect to certain of the requested exemptions, in its major aspects the application should be conditionally granted.

The Exemptive Provision to be Applied

Section 2(a)(13) of the Act, as here pertinent, defines an "employees' securities company" as an investment company all of whose outstanding securities are beneficially owned by present or former employees of a single employer or members of the immediate families of such persons or by such employer together with persons in the above categories. Section 6(b) provides a separate exemptive provision for employees' securities companies. It directs that the Commission "shall" exempt any such company "if and to the extent that such exemption is consistent with the protection of investors." In determining the scope of any exemptive order, due weight is to be given to such factors

as the company's capital structure, the persons who own its securities, the prices at which its securities are sold and the sales load thereon, the disposition of the proceeds of such sales, the character of the securities in which such proceeds are invested and any relationship between the company and the issuer of any such security. 10/ In contrast to Section 6(b), Section 6(c) provides that the Commission "may" exempt investment companies generally "if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions" of the Act.

Parco does not fall squarely within the definition of an employees' securities company because its preferred stock is owned by charitable institutions which are of course not within the described classes of security owners. To overcome this problem, applicants request an exemption under Section 6(c) from Section 2(a)(13) so as to permit application of Section 6(b) standards to their substantive exemption requests. The Division, while acknowledging the Commission's authority

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10/ The Act gives no hint, however, as to how these factors, stated largely in a neutral form, are to be evaluated or interpreted. No light is shed on this question by the little legislative history pertaining to the Act's treatment of employees' securities companies.

to grant an exemption from a definitional provision such as Section 2(a)(13), urges that this is not a proper case for doing so. It asserts that the situation here, unlike the instances cited by it where exemptions from Section 2(a)(13) were granted, is not one of mere technical nonconformance with the definition. Rather, it is urged, Parco is substantively different from the types of companies envisioned by Section 2(a)(13) since the preferred stockholders not only have no mutuality of interest with the UPS employees who own the common stock but have a dividend preference resulting in potential conflicts of interest with the common stockholders. The Division further points out that the preferred stock accounts for about 85 percent of Parco's total capital. And it asserts that even though the charitable institutions received the shares as donees, as investment company shareholders they need and are entitled to the same protection as shareholders who gave consideration for their shares.

I am persuaded that notwithstanding the identity of its preferred stockholders and the relative magnitude of the capital represented by their shares, Parco has the essential characteristics of an employees' securities company. Of particular note is the fact that the reason for its creation was to promote a closer identification

between the UPS employees who invest in its common stock and their employer which has supplied and can be expected in the future to supply most of its capital. As noted, voting rights (absent dividend arrearages) inhere only in the common stock. The preferred stock, which makes possible gains by the common stockholders disproportionate to their investment, exists largely as a by-product of a capital structure designed for the benefit of UPS employees. Finally, I cannot agree with the Division's argument that the securities laws do not differentiate among share owners on the basis of the consideration, if any, which they gave for their shares. By way of illustration, Section 5 of the Securities Act of 1933 which provides disclosure protections in the sale of the securities does not apply to gifts. This is not to say that the preferred stockholders are not entitled to the rights of security holders under the Investment Company Act. But in determining whether an exemption is warranted to permit Parco to be accorded the status of an employees' securities company, the manner in which they acquired their shares appears to me to be clearly relevant. Accordingly, the standards of Section 6(b) will be applied. 11/

11/ In view of my conclusion on this issue, there is no need to determine whether, as claimed by applicants, the Division waived its right to object to the requested exemptions from Sections 2(a)(13) and 6(b) by its failure to raise objection to such exemptions in advance of the hearing.

As the Commission stated in General Electric Company, [12] the Act "clearly discloses a Congressional intention to provide an employees' securities company with more favorable exemptive treatment than an ordinary investment company." It found that intention reflected in the fact that a separate exemptive provision was placed in the Act for employees' securities companies and in the contrast, noted above, between the terms of the exemptive provisions of Section 6(b) and 6(c). The Commission further referred to the statement in an early decision under the Act [13] that an employees' securities company is "a peculiar type of company which the Congress evidently desired to have treated as a special case," and that exemptions granted such companies were not necessarily precedents with respect to investment companies generally.

Consideration will now be given to the substantive exemptions requested.

Sections 17(a) and (d) and Sections 23(b) and (c)

a. Method of Pricing UPS and Parco Stock

Section 17(a) of the Act, insofar as pertinent, prohibits an affiliated person of a registered investment company, or an affiliated person of such a person,

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12/ 44 S.E.C. 87, 90 (1969).

13/ G.E. Employees Securities Corporation, 10 S.E.C. 652, 674 (1941).

acting as principal, from selling securities to such company or buying securities from it. Securities issued by the investment company are not encompassed within the prohibition. Applicants seek exemption from these provisions with respect to the following categories of transactions: (1) sales by UPS to Parco of UPS stock at a price no greater than the price at which UPS is at the time offering to buy such stock from its own shareowners; (2) sales by Parco to UPS of UPS stock at such price; (3) continuation of an option granted by Parco to UPS to purchase the UPS stock owned by Parco, at that price; and (4) sales of UPS stock at such price to Parco by persons affiliated with either Parco or UPS.[14/] [15/]

The record makes clear that UPS controls Parco. As a result, they are "affiliated persons" of each other within the definition of that term in Section 2(a)(3) of the Act. With reference to Category (4), any

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14/ Category (4) reflects an amendment of the application accomplished during the course of the hearing. See Tr. 198-99. While the amendment was not worded precisely in the form stated in the text, that clearly reflects applicants' intent.

15/ This is so notwithstanding the statutory presumption of non-control resulting from the fact that UPS does not have a voting securities interest in Parco of at least more than 25 percent. See Section 2(a)(9). As the Division points out, UPS organized Parco, controls Parco's ability to buy or sell UPS stock, is the sole purchaser of Parco's preferred stock and determines to whom its common stock will be offered, and is in control of the value of and prices for Parco stock. In addition, as discussed below, UPS employees occupy all managerial and directorial positions with Parco.

officer, director or employee of UPS or Parco is an affiliated person of his company under the statutory definition. While Section 17(b) of the Act authorizes the Commission, upon application, to exempt a proposed transaction from the provisions of Section 17(a) if it finds the terms of the transaction to be reasonable and fair and that certain other standards are met, applicants state that it would be impractical to follow that procedure for every transaction within the above categories.

Section 17(d) of the Act and Rule 17d-1 thereunder in substance prohibit an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or other joint engagement or profit-sharing plan in which such company is a participant, unless an application concerning the arrangement has been approved by the Commission.

Applicants seek an exemption from those provisions for all transactions for which exemption from Section 17(a) is sought and in addition for the following transactions: (1) voting of UPS shares owned by Parco or any affiliate of Parco; (2) sales by Parco of its preferred stock to UPS at a price equal to its par value;

(3) sales by Parco of its common stock to persons affiliated with it or with UPS at net asset value; (4) redemption or reacquisitions of Parco preferred and Class A stock owned by UPS or by persons affiliated with Parco or UPS, at the prescribed redemption price; and (5) purchases by Parco of its common stock, at net asset value, from persons affiliated with Parco or UPS.[16/]

Section 23(b), as pertinent here, provides that no registered closed-end investment company may sell any common stock of which it is the issuer at a price below its current net asset value. Exemption is sought to obviate the possibility that the manner in which Parco determines net asset value might be asserted to be in noncompliance with that provision. Section 23(c) and the rules adopted thereunder by the Commission, which prescribe the conditions under which a closed-end company may purchase its own securities, would have the effect of precluding Parco's repurchases of its stock.

16/ No issue has been raised concerning categories (1) and (2). It seems very doubtful that transactions in any of the five categories would fall within the purview of Section 17(d). However, categories (3)-(5) are covered by Sections 23(b) and (c).

The principal objection raised by the Division to the above exemption requests relates to the method by which the UPS stock is priced, which in turn controls the determination of Parco's net asset value and thus the price of its common stock.[17/] The Division maintains, first, that while under Section 6(c) the Commission has the authority to exempt proposed whole classes of transactions from Sections 17(a) and (d), the standards contained in Sections 17(b) and Rule 17d-1, respectively, for exemption or approval of specific proposed transactions must still be met. Here, the Division argues, it cannot be determined in advance whether, consistently with those standards, the price of UPS or Parco stock in particular future transactions will be fair and reasonable and will not involve overreaching by any person concerned. The Division points to the Commission's decision in Keystone Custodian Funds, Inc.,[18/] where an application by a trustee for affiliated investment funds for an exemption from Section 17(a) for possible future cross-sales transactions between such funds was denied. The Commission held that while

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17/ The Division has raised additional objections with respect to (1) UPS's option to purchase the UPS stock owned by Parco and (2) repurchases by Parco of its Class A stock. These are discussed below.

18/ 21 S.E.C. 295 (1945).

it had the authority to grant such a blanket advance exemption under Section 6(c) (although not under Section 17(b)), it would not be appropriate to do so.

Contrary to applicants' argument, the Division is correct in stating that the Commission has looked to Section 17(b) standards in considering applications for exemption from Section 17(a) under Section 6(c).[19] It has also done so in a Section 6(b) context.[20] However, in light of the unusual nature of Parco and the fact that the application is being considered under Section 6(b)'s liberal exemptive provisions, the blanket nature of the request does not in my opinion preclude its grant if in fact the UPS pricing system is found to be fair and reasonable. On the other hand, it does not appear to me that a case has been made by applicants for including within a blanket exemption in advance of actual proposed transactions any transactions in UPS stock directly between Parco and UPS. To date, Parco has not acquired UPS stock from UPS.

19/ See, e.g., the Keystone decision, supra, at 299; Hugh B. Baker, 24 S.E.C. 202,206 (1946).

20/ G.E. Employees Securities Corporation, 10 S.E.C. 652, 662-3 (1941).

As testified by Paul Oberkotter, chairman of UPS's executive committee and applicants' principal witness, while there is no "firm rule" against such acquisitions, Parco has always purchased UPS stock from individual shareowners because enough stock to fill Parco's demand was available from that source and "we have just felt it would be better to avoid the transaction directly" between Parco and UPS. (Tr. 228) Mr. Oberkotter further testified that he did not anticipate a change in the existing practice. There have been no sales of UPS stock by Parco. According to Parco's president, Parco would sell or consider selling UPS stock only if there were inadequate cash to pay preferred and Class A dividends or if it became convinced that UPS was no longer a good long-term investment. Since it thus appears that direct transactions between Parco and UPS are unlikely and at most would be of an infrequent nature, I am not persuaded of the asserted impracticality of bringing any such transaction before the Commission under the normal procedure provided by Section 17(b) and, to the extent it may apply, Rule 17d-1. Moreover, such transactions by their very nature,

i.e., transactions between the controlling corporation (UPS) and the controlled corporation, warrant a higher degree of scrutiny than the others for which exemption is sought.

With respect to prospective other purchases of UPS stock by Parco, a closer look at the UPS stock pricing system, briefly described above, is now required. As noted there, the stock price (i.e., the price at which UPS is willing to purchase shares) is determined each quarter by the board of directors. The price so determined remains in effect until the next determination is made. UPS's board currently consists of 14 persons of whom 10 are management directors. One of the other four, an eminent lawyer, is a partner in the law firm which is UPS's general counsel.[21/]

In its price determinations, the board does not follow any predetermined formula. Because it believes that UPS shareholders buy or hold the stock for the long term, the board's decisions have been based primarily on its judgment as to the company's long-range

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21/ One of the outside directors is a renowned economist.

prospects rather than on short-term trends relating to UPS or the values of securities generally. Significant weight has not been given to supply-demand considerations with respect to UPS shares. According to Mr. Oberkotter, the board is presented with pertinent historical and current information and with appropriate estimates and projections. It gives consideration, among other things, to various current problems, the regulatory outlook, pertinent financial data, relative performance of other transportation companies, including the price-earnings ratios of their securities, and some Dow Jones statistics.

In connection with every second price determination, the UPS board also has available to it as guides the independent written and detailed appraisals of Citibank and Scudder, Stevens as to the value of UPS shares.[22/] Both in writing and through interviews with top UPS management officials, UPS provides these firms with pertinent financial and operating information and with management's estimates of future results. The appraisers' reports are not as such distributed to the board members. The bottom-line figures are announced at the meeting, and

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22/ Citibank's recommendation is expressed in terms of "an appropriate basis for exchanging small numbers of shares among current and former employees" (Appl. Exs. 4 and 5), Scudder, Stevens' in terms of "fair market value." (Appl. Exs. 2 and 3)

the reports themselves are present and available to the directors.

At the conclusion of the board's initial discussion of the stock price, each member jots down what he considers to be a proper figure. These figures are then announced and further discussion may ensue. An effort is made to reconcile viewpoints that might be radically different from the others. A motion is eventually made that a specified figure be the price for the ensuing quarter; that motion is usually adopted. No director has ever requested that a dissent be noted.

Applicants urge that the record compels the conclusion that the pricing of UPS stock by the board of directors comports with standards of fairness, reasonableness and protection of investors under the Act. The Division, on the other hand, strongly challenges the soundness and integrity of the pricing system. It stresses that the price determinations rest in the absolute discretion of the management-controlled board, which is not bound by any established formula or the recommendations of the independent appraisers, and give no effect to supply and demand considerations. It points out that the long-term outlook for UPS is given the greatest weight, even though the uncertainties of forecasts are recognized. The Division further asserts that because each price remains in effect until the next

quarterly meeting, it is not responsive to changes in conditions occurring between meetings. Finally, the Division alleges that historically the UPS price determinations have not necessarily been within the range of fairness and reasonableness on which the Commission insists. In this connection it asserts that such prices have frequently differed by significant amounts from the independent appraisals and notes that, unlike the latter, the board-determined price has never decreased in recent times despite significant fluctuations in the results of the company's operations.

The misgivings expressed by the Division are of a serious nature. Further, it cannot be gainsaid that self-interest could creep into the board's determination, even if only subconsciously. And Mr. Oberkotter acknowledged that the board "can't be unaware" of the adverse impact on the morale of UPS's manager-owners if the stock price is reduced. (Tr. 189) He added, however, that in keeping with the board's fiduciary obligations, this realization could not be permitted to affect its judgment. I am persuaded, on the record before me and in light of Parco's particular attributes, that the UPS pricing system which has been in effect for many years provides an adequate assurance of fair-

ness for Parco's purchases of UPS stock from UPS shareholders. Where a security is not traded on an exchange or in the organized over-the-counter market, its valuation is at best a matter of considerable imprecision. The record here, in particular Mr. Oberkotter's testimony, which impressed me as forthright, shows that the pricing determinations represent a serious and good faith effort by the UPS board to arrive at a fair value.[23/] No showing has been made that a better or more reliable result would be reached if the board bound itself to abide by a specific formula.[24/] And the fact that supply and demand factors are given little or no weight does not detract from the soundness of the process. Indeed, since supply and demand in the UPS situation are interrelated with or caused by extraneous factors such as forced sales resulting from termination of employment, it would be inappropriate to grant them the kind of impact on price which they exert in the organized securities markets.

23/ In the case of a registered investment company which has in its portfolio securities for which market quotations are not readily available, the board of directors must determine fair value in good faith. See Section 2(a)(41) of the Act.

24/ One such formula might be tied to book value. But, as the Citibank official principally responsible for the UPS appraisals testified, in the case of a going concern book value merits very little weight.

Important independent corroboration of the reasonableness and lack of arbitrariness of the UPS board's price determinations is found in the Scudder, Stevens and Citibank appraisals. In this connection, I agree with applicants that for the most part there has been, over the past ten years, a high degree of correlation between the board-determined prices and the independent appraisals.[25/] While the Division

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25/ See Appl. Ex. 1. The Division suggests that on at least one recent occasion, the UPS management or board deliberately misread a Scudder, Stevens appraisal as higher than it actually was, so as to lend support to its pricing determination. The record is far from clear on this matter, however, as the following exposition shows:

A chart introduced in evidence by applicants (Ex. 1) to show the correlation between the outside appraisals and the board's determinations shows a Scudder, Stevens appraisal of $17.00, the same as the board's determination, in November 1974. Citibank's appraisal at that time was $16.25. Scudder, Stevens's report (Div. Ex. C) in fact stated that fair market value was $13.00. The conclusion of the report refers to the fact that UPS's board chairman had asked Scudder, Stevens to compute a valuation of UPS stock which, considering the long-term career investment nature of UPS stock and the possibility that current price-earnings ratios might be depressed, would take into account long-term Dow Jones Industrial Average price-earnings ratios. On that basis, the report concluded that a fair market value "equal to or somewhat exceeding $17.00" could be computed.

In his testimony, Mr. Oberkotter insisted that the latter figure represented Scudder, Stevens's determination. That such is not the case, however, is apparent both from the November 1974 report, from the next report in May 1975 (Div. Ex. D) which refers to the previous valuation of $13.00 and from the testimony of their principal author. However, there

stresses that the UPS stock price has never decreased during that period, it fails to note that Citibank arrived at a reduced appraisal only once.[26] With respect to the fact that the price remains constant for about three months following each determination, this appears to be principally a concession to the dictates of practicality. Moreover, as applicants point out, the prices are designed to reflect the company's long-term prospects, which are responsive to long-range trends rather than day-to-day events. It is reasonable to assume that if an unanticipated event of catastrophic proportions occurred, UPS would act promptly to adjust the stock price.

/ continued from page 30.

25/ is nothing in the record to indicate which of the figures was presented to the board for its consideration, or whether both were presented, together with their underlying bases. It is clear that Exhibit 1 should not have used the $17.00 figure, at least not without further explanation. However, the record does not warrant the implication of impropriety which the Division seeks to attach to UPS's management or board.

26/ Scudder, Stevens reduced its appraisals four times, including the November 1974 appraisal discussed in the previous footnote.

In determining the net asset value of Parco's common stock for the purpose of sales and repurchases of such stock, the Parco board of directors values the UPS stock in its portfolio, which represents about 1 percent of the outstanding UPS stock, at the price most recently determined by the UPS board. In view of my finding that the UPS pricing method is a reasonable one, it follows that it is reasonable for the Parco board to rely on the UPS determination rather than making an independent determination. Indeed, it would be unrealistic to do otherwise since UPS itself is the only market for its stock.

b. UPS's Option to Purchase Parco's UPS Stock

As noted, UPS has waived its right of first refusal in connection with Parco's acquisitions of UPS stock. In return for these waivers, UPS has required Parco to grant it an option, exercisable by UPS at any time on 90 days' notice, to purchase the UPS stock so sold at its fair market value. The option agreements provide that in the event of a disagreement as to fair market value, such value is deemed to be equal to the average price in all sales of UPS stock during the preceding 12-month period.[27/] The record

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27/ The application describes the options as giving UPS the right to purchase the stock at the price at which UPS is then offering to purchase stock from its shareholders. Presumably, the application was intended to encompass any transactions at the alternative price referred to above, which would be meaningful only in the event of a price decline.

shows that the option is designed as one more element in UPS's policy to confine ownership of the company to its employees.

The application, as noted, seeks exemption from Sections 17(a) and (d) for continuation of these options, presumably including the granting of identical options in connection with further purchases of UPS stock by Parco. I have already stated my conclusion that no blanket exemption from Section 17 prohibitions should be granted for direct transactions between Parco and UPS. That conclusion of course extends to exercise of the options. But there are further considerations which militate against exempting such exercise in advance.

Thus,it can hardly be deemed consistent with the protection of investors in Parco to give UPS complete latitude to buy from Parco the securities whose ownership is Parco's reason for existence. It may be answered that the purpose of the option is a limited one and that, in light of the substantial identity of interests that exists between UPS and Parco's investors, the likelihood of UPS's taking action detrimental to Parco is remote. But in as basic a matter as this, it is not desirable

to rely on an assumption that conflicts could never develop. That is particularly so since it has not been demonstrated that the options are in fact necessary to prevent the UPS shares owned by Parco from being transferred to or coming under the control of persons outside the UPS "family." The rights of first refusal which both UPS and Parco have with respect to sales of their respective stocks seem adequate to prevent any such situation from arising without UPS's acquiescence. 28/

What has been said above does not mean that the options can never be exercised. It means only that if an actual transaction is proposed, an application for exemption will have to be filed with the Commission at that time.

28/ While it is theoretically possible that Parco might find a buyer for UPS stock offering to pay a higher price than UPS would be willing to meet and thus conceivably force UPS to waive its right of first refusal, such a turn of events is in fact inconceivable in view of UPS's control of Parco.

c. Repurchases of Parco's Class A Stock

As noted, applicants seek an exemption from Section 23(c) of the Act, which in substance requires that any purchases by a closed-end company of its securities not be on a basis which unfairly discriminates against any holders of that class of securities, for repurchases and redemptions that cannot meet the terms of the Commission's implementing rules. The Division has raised an issue which was not contemplated by the application, namely, that an exemption from Section 23(c) would permit Parco to repurchase its Class A stock in a manner that would discriminate between shareholders similarly situated.

Unlike the situation with its common stock where Parco has a repurchase right upon termination of a shareholder's employment by UPS and has undertaken, subject to approval of the application, to grant its shareholders a right to require Parco to purchase their shares upon such termination, no such rights exist as to the Class A stock. However, Parco has never refused to buy Class A stock upon request, paying par value in each instance. And its intent is to continue doing so, unless the necessary funds are not available.

Applicants state that if the Class A shareowners were granted a "put" right similar to that to be granted for the common stock, it would become impractical to issue Class A stock because of the potential impact of such a right on Parco's capital structure.

While I am inclined to agree with applicants that it would be irrational and self-defeating for Parco, in terms of the reasons for its existence, to discriminate among the holders of Class A stock, who constitute a substantially homogeneous class, the Division is correct in pointing out that such action would be possible if the requested exemption were granted. Since the return on the Parco common stockholders' investment is principally in the form of Class A stock, this is obviously a matter of vital importance to the Parco investors. On the other hand, the present policy is nondiscriminatory.

The most appropriate disposition of the question under the circumstances appears to be to grant an exemption from Section 23(c) subject to the condition that a further application will be submitted in the event that Parco proposes to change its policy with respect to repurchases of Class A stock or available funds are no longer adequate to repurchase such stock offered to Parco. Such action will enable the Commission at that time to assure nondiscriminatory and fair treatment to investors.

Section 18 (Parco's Capital Structure)

Parco's capital structure runs directly counter to certain of the Act's provisions dealing with the capital structure of closed-end investment companies. Thus, Section 18(c) prohibits such a company from having more than one class of senior security which is a stock.[29/] Parco has two such classes, the Class A and preferred stocks. Section 18(a)(2) prohibits the sale or issuance of any senior stock unless (a) it has an asset coverage of at least 200 percent; (b) provision is made to prohibit the declaration of a dividend on or repurchase of the company's common stock unless, taking into account such dividend or repurchase, the senior security still has at least such asset coverage; and (c) the senior security has certain voting rights. Parco's capital structure meets none of these requirements. The asset coverage of its preferred stock is only 118 percent and that of the two senior securities, in the aggregate, only about 105 percent. The prescribed voting rights are absent.[30/] Applicants also ask to be exempted from Section 18(i) which states that, "except as provided in Section 18(a)," each share of stock

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29/ Technically, the prohibition runs against the issuance or sale of a senior stock if one such stock is already outstanding.

30/ For example, the holders of the senior securities, voting as a class, must have the right to elect at least two directors at all times and a majority in the event of default in dividends equal to two years' dividend requirements.

issued by a management investment company must be voting stock and have equal voting rights with every other outstanding voting stock. In view of the quoted phrase and the legislative history of this provision,[31/] it seems very doubtful whether it applies to senior securities at all.[32/] However, my disposition of the entire Section 18 issue makes it unnecessary to resolve that question.

The Division's opposition to the requested exemptions is essentially two-pronged: it urges that (1) the high degree of leverage inherent in Parco's capital structure makes investment in its common stock unduly speculative or risky and (2) inadequate asset coverage and lack of voting rights subject Parco's senior security holders to undue risk and give them inadequate control over Parco's management.

In addressing the issue raised with respect to the common stock, reference must first be made to applicants' argument that the Act's legislative history demonstrates that Section 18 was designed principally for the protection of investors in senior securities. The argument is soundly based. The Commission's massive Report on Investment Trusts and Investment Companies which led to the passage of the Act devoted

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31/ See The Solvay American Corporation, 27 S.E.C. 971 (1948).

32/ See Jaretzki, The Investment Company Act of 1940, 26 Washington University Law Quarterly 303, 335 (1941), indicating that Section 18(i) applies only to common stock.

most of a lengthy chapter (Part Three, Chapter V) to problems and abuses in connection with multiple-security or leverage investment companies. These problems and abuses pertained almost entirely to situations involving actual or potential injury to senior securityholders. But even applicants' argument concedes by implication that this was not the sole concern. More significantly, the Congressional concern for holders of junior securities in leverage companies is reflected in Section 1(b)(7)of the Act which states that investor interests are adversely affected when "investment companies by excessive borrowing and the issuance of excessive amounts of senior securities increase unduly the speculative character of their junior securities." Applicants would interpret this statement of policy as reflecting concern not with risks inherent in the ownership of junior securities, but with the power of the junior securityholders to speculate with the funds provided by the public owners of senior securities. That interpretation, however, strains the normal meaning of the words used. Moreover, it runs counter to the Commission's interpretation of Section 1(b)(7).[33/] Accordingly, I start with the premise that the Act reflects a policy against an investment company's having a capital structure which creates undue risks for the common stockholders.

33/ See J.D. Gillespie, Trustee, 13 S.E.C. 470 (1943), particularly at pp. 479-80.

Reference has been made above to the term "leverage," but without precise indication of its meaning or significance. Leverage exists where a company's capital structure includes senior securities having a fixed maximum participation in assets and earnings, with the result that any increase or decrease in the value of the company's total assets over and above the claims of the senior securities is reflected in its entirety in the equity of the common stock. As a consequence, a given change in the total assets will give rise to a more than proportionate change in that equity.

The record shows that as a result of the leverage factor and the steady and significant increases in the price of UPS stock, investment in Parco has yielded spectacular results. For example, an investment of $10 in Parco common stock in December 1971 would have produced by the end of 1976 a total return, in Class A stock and cash dividends on that stock, of over $115, or 1,153 percent. By comparison, the cumulative return on an investment in UPS stock over the same period was 123 percent. Just as the leverage factor presents opportunities for great gains, 34/ it carries with it risks of considerable loss. On that issue, a great deal of evidence, including various charts and graphs, was presented. The parties differ in their analyses of the precise extent of the risks and the proper

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34/ Considering limitations on UPS's further geographical expansion, however, it would be unrealistic to expect it to maintain the rate of growth it has experienced in the recent past.

methodology of measuring them. There is no need, in my opinion, to resolve these differences. It is clear that the degree of leverage is very high, particularly for new Parco common stockholders owning no Class A stock,[35/] and that, even assuming continuation of UPS's regular cash and stock dividends,[36/] the total return to Parco on its UPS stock could at times be inadequate to preclude substantial impairment of the common stock equity. For a hypothetical new Parco investor as of January 1, 1977, the break-even point, in terms of the total needed return on UPS stock for one year, would be about 6.6 percent. The potentially dramatic consequence of the leverage is indicated by the fact that a total return of 2 percent would result in a 95 percent decrease in the value of that stockholder's investment. A slightly lesser return or, a fortiori, any negative return, would make that investment worthless.

The degree of leverage and the resultant risks to the common stockholders would not normally be tolerable in an investment company. But under the unusual circumstances presented

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35/ Measured in terms of the ratio of total assets to the asset value of the common stock, the method employed by the Commission's Investment Trust Study (Part One, Chapter II, p. 28), the leverage ratio for Parco as of December 31, 1976 was 21:1. For a hypothetical average Parco shareholder, that ratio, computed by taking the total common and Class A equity and dividing it into total assets, would be about 7:1.

36/ UPS has for many years paid a cash dividend of about 2% and a 2% stock dividend, without reducing the price of its stock on account of the latter.

here, it is in my judgment consistent with the protection of the common stock investors to permit continuation of the existing arrangement. Those investors, as noted, are limited to a small group of high-ranking UPS officials. UPS itself has made by far the predominant investment, thereby creating the opportunity for those persons to reap benefits out of proportion to their own investment. And the potential conflicts of interest between the different classes of investors which normally attend a capital structure such as Parco's are absent or at least greatly attenuated here. Moreover, investor protection here can be accomplished in large measure through compliance with the Securities Act's disclosure requirements. I recognize, of course, that, as pointed out by the Commission,[37/] the Investment Company Act reflects a Congressional determination that the disclosure requirements of the pre-existing legislation did not meet the special problems presented by investment companies. Nevertheless, the Commission has given weight to an investment company's disclosure by means of a statutory prospectus as a significant element of investor protection.[38/] Considering the class of potential investors in Parco common stock, such disclosure can be expected to be effective here. While there may be some problems in providing

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37/ Pacific Scholarship Trust, Investment Company Act Release No. 8065 (OCtober 31, 1973), 2 SEC Docket 702, 703-4.

38/ See General Electric Company, 44 S.E.C. 87, 92 (1969).

adequate disclosure of leverage ratios and risks which change with the issuance of additional common or preferred stock, I feel confident that the combined efforts of applicants' counsel and Commission staff members experienced in dealing with disclosure problems will be able to cope with that challenge.

Turning to the preferred and Class A stockholders, I am not persuaded by the Division's argument that the granting of exemptive relief would represent an unwarranted negation of Congressional intent. The abuses cited in the Investment Trust Study and referred to by the Division, involving an inadequate "cushion" of junior capital contributed by a sponsor for the publicly held senior securities, are simply inapposite to the situation here. And the method by which the preferred stockholders received their holdings and the substantial identity of interest between the common and Class A stockholders lead me to the conclusion that it is consistent with the protection of investors to grant the requested exemptions.

Section 10(a) (Composition of Parco's Board of Directors)

Section 10(a) of the Act provides that not more than 60 percent of a registered investment company's board of directors may be persons who are "interested persons" of the company. The Act's definition of "interested person" (Section 2(a)(19)) includes an "affiliated person," but further provides that no one is to be deemed an interested person of an investment company solely because he is a director or a securities owner of the company. The definition of "affiliated person" of

another person (Section 2(a)(3)) includes a person controlling or under common control with such person, as well as an officer of such person.

Parco's board of directors is presently composed of three members, all of whom are managerial employees of UPS and two of whom are also officers of that company. Each of the directors is also an officer of Parco. None of them, however, is a shareholder of that company. These persons receive no compensation from Parco for their services to it.

In seeking an exemption from Section 10(a), applicants state that it is contemplated that future directors of Parco, like the incumbents, will be UPS officers or managerial employees. The need for an exemption is stated as residing in the fact that such persons, because of their close connection with UPS, which "may be deemed" to be an affiliated person of Parco, might be considered "interested persons." The conclusion that persons in the class under consideration are in fact "interested persons" seems even clearer than applicants suggest because such persons are properly viewed as representing UPS, an affiliated person, on the Parco board. Alternatively, they would appear to be under the common control, with Parco, of UPS. Moreover, applicants have overlooked the fact that each of the directors is also an officer of Parco and as such an "affiliated person" of that company.

Applicants urge that the present and proposed composition of the board is ideally suited to carrying out the functions for

which Parco was created. This is so, according to applicants, because directors within the indicated class are (1) knowledgeble about UPS, its goals for Parco and the concept of employee ownership and (2) representative of the class of managerial employees from which Parco's shareholders are drawn.

The Division takes the position that no need for an exemption has been shown. Overlooking the fact that all of Parco's common shareholders are UPS managerial employees, it states that a board consisting of such shareholders who were not officers of Parco would be in compliance with Section 10(a) and would in addition be truly representative of Parco's shareholders.

The realities of the situation militate in favor of the requested exemption, subject to a condition to be noted. Parco is dependent upon UPS for its existence. It can obtain neither portfolio securities nor substantial capital without favorable action by UPS. Moreover, there is, as has been discussed, a basic identity of interest between UPS, Parco and the Parco common shareholders. Under the circumstances, no purpose would be served by requiring that Parco have directors who are independent of UPS. And the fact that Parco's directors may also be officers of that company appears to be immaterial.

In G.E. Employees Securities Corporation,[39/] where it appeared that the directors of an employees' securities company

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39/ 10 S.E.C. 652 (1951).

might not be "outside" directors on the ground that their employers could be deemed to be investment advisers of that company, the Commission, in granting an exemption from Section 10(a), said:

> "In the case of an employees' securities company, cooperation of employer and the employees in the management of the company was apparently contemplated by the Congress. That is indicated by the definition of such companies contained in the Act. Because of the employer-employee relationship involved, such cooperation in management between an industrial employer and its employees does not seem to present any of the inherent dangers Section 10(a) attempts to avoid, at least, so long as the investment policy of the management is one of reasonable diversification, and does not involve intense concentration of investment in the securities of the employer company." 40/

Here, of course, the situation is the opposite of that referred to in the last part of the above quotation since Parco's investments are essentially limited to the employer's securities. But the Commission's observations concerning the nature of an employees' securities company and the absence of the dangers against which Section 10(a) is directed are nevertheless apposite because, with the possible exception of direct transactions between UPS and Parco, which are not being exempted from the prohibitions of Section 17, there is no danger of UPS's using Parco to buy or sell Parco stock for UPS's own purposes and contrary to the interests of Parco's shareholders.

40/ Id. at 660.

However, applicants have presented no reason why persons who are themselves Parco shareholders would not be more representative of those shareholders than persons simply drawn from the same class of UPS employees. Accordingly, it seems appropriate to condition the exemption from Section 10(a) on the presentation of a slate, at subsequent shareholders' meeting, to elect directors, consisting of Parco common shareholders.

Section 17(f) (Safekeeping of Securities)

Section 17(f) of the Act requires investment company portfolio securities to be kept in the custody of (1) a bank, (2) a member of a national securities exchange or (3) the investment company itself, but only in accordance with Commission rules. The pertinent rule, 17f-2, specifies the requirements for a self-custodianship.

The UPS stock certificates owned by Parco are kept in a safe at UPS's office, while the short-term debt securities it owns from time to time are held in safekeeping by a bank. The application represented that one individual, an officer of both UPS and Parco, was custodian of and had access to Parco's securities, and that he would be bonded under the provisions of Section 17(g) of the Act. Testimony given during the hearing indicated, however, that other officers and directors of Parco also had access to its portfolio securities. The Division thus argues that, at the least, the requested exemption should not be granted unless all persons with access to those securities are bonded. Applicants have undertaken that this will be done.

Under these circumstances and in light of the restrictions on transfer of UPS stock which make any misappropriation an apparent impossibility, it is consistent with the protection of investors to grant an exemption as requested.

Section 20(a) (Proxy Requirements)

Parco does not prepare or distribute a proxy statement in compliance with proxy rules under the Securities Exchange Act, as required by Section 20(a) of the Investment Company Act and Rule 20a-1 thereunder. Applicants request on exemption from those provisions on the grounds that the cost of preparing and distributing proxy material in conformance with the proxy rules would be excessive in view of the small number of stockholders and that those persons already have or receive adequate information. With respect to the latter, applicants point to the knowledge each present or potential shareholder has about UPS; the annual reports distributed to Parco shareholders; and the UPS annual reports and proxy materials which they receive in their capacity as UPS shareholders.

I agree with the Division, however, that no showing has been made that the kind and extent of information now furnished Parco shareholders is sufficient to permit them to exercise their franchise intelligently or that compliance with the proxy requirements would be unduly burdensome. Accordingly, the requested exemption will be denied.

Unopposed Exemption Requests

Certain of applicants' exemption requests are not opposed by the Division. These pertain to the following sections of the Act:

1. Section 16(a), so as to permit the filling of interim vacancies on the board of directors without holding the special shareholders' meeting which that section might otherwise require;

2. Section 19(b), so as to permit certain capital gains distributions for the purpose of satisfying cash dividend requirements; and

3. Sections 30(a), (b) and (d), pertaining to the filing of periodic and other reports, so as to permit the filing of audited financial statements, which in Parco's case are not prepared until June of each year, at a later date than would otherwise be required.

The above exemptions appear to be appropriate and will be granted.

III. Order

On the basis of the above findings and conclusions,[41/] IT IS ORDERED that, subject to the conditions and undertakings set forth in the application,

1. The application for exemption of Parco from the provisions of Sections 2(a)(13), 16(a), 17(f), 18(a), (c) and (i), 19(b), 23(b) and 30(a), (b) and (d) of the Investment Company Act of 1940 is hereby granted;

2. The application for exemption from Sections 10(a) and 23(c) of that Act is hereby granted, subject to the conditions stated on pages 47 and 36, respectively, of this decision;

3. The application for exemption from Sections 17(a) and (d) of that Act is hereby granted, except with respect to any transactions in UPS stock directly between Parco and UPS including exercise of UPS's options to purchase UPS stock from Parco; and

4. The application for exemption from Section 20(a) of that Act is hereby denied.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice.

41/ All proposed findings and conclusions and contentions submitted by the parties have been considered. To the extent such proposals and contentions are consistent with this initial decision they are accepted.

Pursuant to that rule, this initial decision shall become the final decision of the Commission as to each party which has not filed a petition for review pursuant to Rule 17(b) within fifteen days after service of the initial decision upon it, unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to it. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.

Max O. Regensteiner
Max O. Regensteiner
Administrative Law Judge

Washington, D.C.
June 24, 1977