ADMINISTRATIVE PROCEEDING
FILE NO. 3-2135-1

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

INTERNATIONAL AEROSPACE ASSOCIATES, INC.

File No. 24B-1625

Securities Act of 1933
Section 3(b) and Regulation A

INITIAL DECISION

Washington, D.C.
March 18, 1970

Sidney Ullman
Hearing Examiner

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APPEARANCES: Willis H. Riccio and Arthur F. Carr, Attorneys, Boston Regional Office, for the Division of Corporation Finance.

Robert V. Pace, its President, for International Aerospace Associates, Inc.

BEFORE: Sidney Ullman, Hearing Examiner

Nature of the Proceedings

The Commission issued an order dated October 6, 1969 ("Order"), pursuant to Rule 261(a) of the General Rules and Regulations promulgated under the Securities Act of 1933, as amended ("Act"), temporarily suspending the Regulation A exemption of the public offering of common stock of International Aerospace Associates, Inc. ("IAA" or "Issuer") from the requirements of registration under the Act. 1/ The Order states that based upon information received from its staff, the Commission has reasonable cause to believe that a notification and an offering circular filed by I.A.A. on July 24, 1969, contains material misstatements and omissions with respect, among other things, to the issuer's assets, operating and earnings history, and facilities, and that the issuer has violated the terms and conditions of the Regulation A exemption as more particularly described in the Order and discussed below. The Order also asserts that the information received by the Commission indicates that "The use of the offering circular would operate as a fraud and deceit upon prospective purchasers of securities offered by I.A.A. pursuant to Regulation A in violation of Section 17(a) of the Securities Act of 1933." Accordingly,

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1/ Regulation A, adopted under Section 3(b) of the Act, provides for exemption from registration when an issuer offers securities with an aggregate public offering price not exceeding $300,000 provided, among other things, that the issuer files with the Commission a notification (and except where dispensed with under Rule 257 an offering circular) containing certain minimum information.

Rule 261(a), as applicable here, provides for the issuance of an order temporarily suspending an exemption if the Commission has reason to believe that any of the terms or conditions of Regulation A have not been complied with, that the notification contains any untrue statement of a material fact or omits to state a material fact, or that the offering is being made or would be made in violation of Section 17 of the Act, which pertains to fraudulent interstate transactions.

the exemption of the issuer under Regulation A was temporarily suspended by the Order, in accordance with he provisions of Rule 261(a), assertedly "in the public interest and for the protection of investors."

The Order provided for a hearing, upon request of any person having an interest in the matter, on the issue whether the temporary suspension should be vacated or made permanent. The issuer requested such hearing and by order dated November 3, 1969, the Commission set the matter down for hearing. The issuer also filed an answer to the charges, in effect constituting a general denial, and in addition it requested more specific information concerning the charges. In accordance with an order of the undersigned dated November 26, 1969, counsel for the Division of Corporation Finance ("Division") furnished more specific information in a statement dated December 1, 1969.

A public hearing was held at the Boston Regional Office of the Commission on December 4, 1969. The Division was represented by counsel who produced oral and documentary evidence concerning the deficiencies charged in the Order. IAA appeared by and was represented by its President, Robert V. Pace, who is not an attorney. The hearing was concluded on the same day, and post-hearing filings of proposed findings of fact, conclusions of law and a brief in support thereof were made by Division counsel. Mr. Pace thereafter filed similar documents in response, on behalf of the corporate issuer, and Division counsel filed a reply brief. (Although the reply brief was authorized, Pace objected to it as "unsolicited" and he, in turn, filed a "reply brief" which, although unauthorized,has been considered).

Based upon my observation of the witnesses and the record in the proceedings, including the post-hearing documents, the following findings of fact and conclusions of law are made on the issue raised in the Order, i.e. whether the temporary suspension of the Regulation A exemption should be vacated or should be made permanent. For reasons set forth herein, it is clear that the suspension should be made permanent, and an order to that effect is included herein.

Findings of Fact.

IAA was organized as a corporation under the laws of the Commonwealth of Massachusetts on April 23, 1969. Robert V. Pace its President and promoter, prepared a notification for the proposed offering under which the sale of 50,000 shares of $1 par value stock at $1 per share was to be made. The notification on Form 1-A under Regulation A was filed with the Boston Regional Office of the Commission on July 24, 1969. No underwriting by a broker or dealer was contemplated, and sales were to be made by the officers and directors of the corporation.

Apart from and without regard to the above-mentioned Regulation A filing, IAA through the efforts of Mr. Pace, had offered and sold to the public during the period beginning about April 1, 1969 and ending approximately October 31, 1969, some 3,100 shares of its common stock to approximately 30 individuals for the total amount of approximately $3000. The sales were effected in large measure by newspaper advertisements which Pace inserted in the Boston Globe,

according to Pace.[2/] In addition, sales literature prepared by Pace was used in making offers and effecting th sales of the corporation's stock. These shares were not registered with the Commission and apparently were offered and sold pursuant to a claimed exemption as an intrastate offering.[3/]

The notification filed with the Commission was defective in several respects, and sale of the stock pursuant to the offering would have constituted a fraud on the public, as charged. The document was ineptly and imprecisely drawn and was sorely lacking in accuracy and in the necessary disclosure of many items of material information. For example, the notification included no indication of an indebtedness of the issuer to Pace; but when Pace was asked by Division counsel whether he is a stockholder of the issuer, he responded:

> "International Aerospace owes me $6000 in a sort of debenture. I have not issued myself stock if that's what you mean: but for all intents and purposes I would be a stockholder, yes."

The $6000, according to Pace, had been advanced by him for expenses of the issuer.[4/]

Pace also testified that he and other officers of the corporation had reserved to themselves options for common stock and for debentures convertible into common stock. The discussion of options in the

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2/ The testimony of Pace was confusing in many respects. He testified that 3,100 shares were sold in July 1969 and no shares were sold thereafter. A few moments later he testified that T.N. "was one of the last ones. He might have come in in September or October" of 1969.

3/ Section 3(a)(11) of the Act provides exemptions for intrastate offerings.

4/ The expenses of the issuer totalled $9000, Pace testified, and $3000 of the $9000 came from the sale of the stock pursuant to the above-mentioned claimed intrastate offering.

notification is vague and it makes no mention of certain persons who, according to Pace's testimony, are entitled to exercise such options.

As alleged in the Order, there was no disclosure in the notification that IAA had no assets other than an office of place of business; there was no disclosure that the operating and the earnings history of IAA was nil.

From the notification it would appear that the purpose of IAA and the primary aim of Pace was to develop an airport for supersonic transports. Nevertheless, the following colloquy between Division counsel and Pace took place at the hearing:

> "Q. What exactly is International Aerospace? What type business is it in?
>
> A. What type business is it in?
>
> Q. Yes.
>
> A. At the moment or it was in the research and development."

No mention of research and development is contained in the notification. It may be that what Pace intended to convey was stated in subsequent testimony to the effect that the funds would be used <u>for a study</u> of facilities suitable for an airport for supersonic transports.

The notification failed abysmally to describe the facilities which the issuer represented, expressly and by implication, to be its property. Thus, the issuer's response to a request for a statement of "The location and general character of the plants or other physical properties now held or presently intended to be acquired and the nature of the title under which such properties are held or proposed to be

held" was as follows:

"A. The actual location for the SST jet port is presently withheld in order to prevent speculation and competition. Meanwhile, the company is presently negotiating for the acquisition of Bedford Aviation Inc., Acorn Development and the Hookset Airport.

1. Bedford Aviation Inc.
Bedford Aviation Inc., is now in litigation in the federal courts relevant to a bankruptcy proceedings and Bedford Aviation Inc., is in dispute with the Massachusetts Port Authority over certain lease rights that were given to Bedford Aviation Inc., including the fueling of jet planes at the Bedford Airport. With the approval of the courts Bedford Aviation Inc., could be acquired at very favorable terms and should its lease rights be returned to Bedford Aviation Inc., I.A.A.I. would then have an extremely valuable asset.

2. Acorn Development Inc.
I.A.A.I. is now negotiating for the acquisition of Acorn Development Inc., which is a real estate holding company specializing in the commercial properties. Presently, it appears that Acorn Development can be purchased at a favorable price and offices for I.A.A.I. could be installed thereby providing low cost office space as income from the other tenants with long term leases are adequate to cover expenses.

3. Hookset Airport.
I.A.A.I. is presently negotiating for the acquisition of Hookset Airport, Hookset, New Hampshire. Said airport has been made available to I.A.A.I. since April 25, 1969. I.A.A.I expects to use part of Hookset Airport as a storage and maintenance base for its air taxi activities. The remainder of the airport will be developed into a fly-in resort."

The testimony of Pace disclosed that he is President of Bedford Aviation Inc., and that it had been adjudicated a bankrupt and its assets sold at public auction in December 1968. Pace protested at the hearing, however, that the sale by the Trustee in Bankruptcy was invalid. He also stated:

" . . . right at present there is a petition for review in the federal courts in trying to get this company out of bankruptcy."

When asked about the facilities of Bedford Aviation he stated

> "We're still claiming a twenty-year lease at Bedford Airport for the dispensing of jet fuel . . . and all rights of a fixed base operator at Bedford. It is in dispute and we are still claiming that is our lease."

Thereafter he stated that the court required a deposit of $24,000 for Bedford to maintain its lease and when asked whether the deposit had been made he testified:

> "It has not been made. It was made and there was some interference with the deposit. I was under the impression the deposit was made. I have evidence and letters that the deposit was made. Later on the Referee said the deposit was never made."

Apparently, public funds were to be raised in the offering because ultimately

> ". . . [the issuer] was set up to pick up the lease at Hookset, to bail out Bedford Aviation and to straighten out Acorn Development, Inc., and that would have tremendous assets. The reason it was necessary was because Bedford Aviation, Inc. or Robert V. Pace was squeezed financially through outside influences which I think you are familiar with."

Acorn Development's problem and the method by which it might be straightened out, according to Pace, were not delineated.

As to Hookset Airport, the evidence disclosed that Pace, individually, was the owner of a lease of certain airport facilities which required the payment of $80,000 by October 1970 for its continuance. These facilities consisted of a runway and a hanger which was in a state of disrepair. The notification indicates, or at the least suggests to a potential investor that the offering was intended to raise the funds in order to develop flight facilities which could be

used by supersonic transports.[5/] But the flight facilities at Hookset not only were unavailable after September except on extension of the lease to Pace, but also they were totally incapable of handling such aircraft. Those facilities did not include radio or navigational aids or lighting and they were not capable of supporting any aircraft other than small single engine planes. The runway was no longer than 200 feet. No mention was made of these facts.

Other defects in the notification are as follows: it failed to list, as required, the names of each person who owns of record or beneficially 10% or more of the outstanding stock of the corporation; it stated, contrary to the evidence at the hearing, that 25,000 shares of stock had been sold in the alleged intrastate offering for the total amount of $25,000, whereas the evidence indicated that approximately 3,100 shares of the company's stock had been sold for approximately $3,000; it failed to disclose the names, addresses, and the number of individuals to whom those shares had been sold; and it failed to indicate in Schedule I, as required, the cost of the public offering being made pursuant to Regulation A. Item 11 of the notification on Form 1-A requires the filing of copies

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5/ The response to Item 8C of Schedule I (information furnished in lieu of an offering circular), which asked for "The nature of issuer's present or proposed products of [sic] services." was as follows:

> "A. I.A.A.I. is a newly formed corporation to develop a landing for the SST jet planes. The company will also engage in selected supporting activities. Initially, I.A.A.I. will serve as a shell for the acquisition of required assets."

This information, as well as other information in Schedule I, was given in what is sometimes referred to as a "Rule 257 Statement". Rule 257 obviates the need for filing an offering circular with the notification (except under certain conditions discussed later in the text), provided the information required by Schedule I is furnished.

of the provisions contained in governing instruments and defining the rights of holders of equity securities, but no copies of such provisions were filed.[6/]

The notification was inadequate for further reasons. As pointed out below it failed to reasonably itemize and state accurately the proposed use of the proceeds of the offering; it failed to include a cash cost comparision between the holdings of management and those members of the public who might acquire the stock pursuant to the offering and it contains no language with respect to the dilution of the value of shares to be purchased by the public.[7/] Nor did the notification disclose the specific risks attendant upon an investment in IAA, such as the corporation's potential financial liability for violation of the Act in its earlier sale of shares of stock to approximately 30 individuals.[8/]

No offering circular was filed with the notification, inasmuch as the issuer professed to be taking advantage of Rule 257 under the Act. This Rule obviates the need for filing an offering circular with a Regulation A notification for an offering not exceeding $50,000 "except to issues specified in paragraph (a) of Rule 253 . . . ." Rule 253(a) excepts securities of any issuer which "was incorporated or organized within 1 year prior to the date of filing the notification. . .

6/ The articles of incorporation and corporate by-laws, if properly drawn, probably would have been an adequate response. Cf. Aetna Oil Dev. Co., Inc., 40 SEC 784 (1961).

7/ Cf. Universal Camera Corporation, 19 S.E.C. 648, 653 (1945); Flintlock Land Investment Corp., Admin. Proc. File No. 3-2221, January 15, 1970.

8/ The possibility of corporate liability exists and should have been disclosed. SEC v. Ralston Purina, 346 U.S. 119 (1953); Hamilton Oil and Gas Corporation, 40 SEC 796 (1961).

and has not had a net income from operations." The evidence shows that the issuer was incorporated within one year from the date of filing the notification and that it never had a net income from operations. Accordingly, it was not qualified to omit the filing of an offering circular. Moreover, the information filed in lieu of the offering circular (as required by Rule 257 where an offering circular need not be filed) was to a great extent, as indicated above, inaccurate and misleading. It is also significant that the offering circular would have included financial statements of the issuer, but because of the claimed exemption under Rule 257 no financial statements were filed, as required.

Other deficiencies delineate the character of the filing. For example, Item 8b of the Form 1-A notification requests a statement of the names of the states in which the securities will be offered. The request was mis-read by the issuer and as "re-stated" in the filing it incorporated part of Item 8a. Accordingly the response "Not Applicable" was made. But this obviously was not an answer to the information requested in Item 8b and required to be furnished in the notification. In Arliss Plastics Corporation, 38 S.E.C. 610 (1968) among other decisions, the Commission held that "The failure to designate all such jurisidctions was an important material omission. Among other things, full disclosure in this respect aids enforcement activities for the protection of investors".

Item 6(a) of Schedule I requires a reasonably itemized statement of the purposes for which the net cash proceeds from the offering are to be used, and the amount to be used for each such purpose, with a statement of the order of priority in which the proceeds will be used for the respective purposes. In response, the issuer stated "The proceeds are to be used as forwarded [sic]: 25,000 cost of administration, 25,000 for architectural, engineering and surveying costs." However, on being questioned by Division counsel as to the proposed use of the proceeds Pace responded,

> "I think we have covered that. I will repeat it though. We were going to pick up the option at Hookset in order to secure the investment up there. We were going to bail Bedford Aviation out of the bankruptcy proceeding and we were going to -- I use the word straighten out Acorn Development, Inc."

Obviously, Pace must have been speaking not only of the $50,000 he hoped to raise in the Regulation A offering but also of proceeds he intended to raise for the issuer in a subsequent offering. At best, however, the response of Item 6(a) of Schedule I was confusing, was not reasonably itemized and did not indicate an order of priority for the use of proceeds which might be raised. In this respect the notification was materially misleading. American Television & Radio Co., 40 SEC 641 (1961); Mon-O-Co Oil Corp., 38 SEC 833 (1959).

The Commission has often stated that false information with regard as to the property of the issuer is a basis for finding that the filed document is materially false and misleading and supports a permanent suspension of the Regulation A exemption. North Star Oil and Uranium Corp., 38 SEC 655 (1938); Mon-O-Co Oil Corp., supra. As indicated above, the notification was inaccurate, confusing and misleading in describing properties proposed to be acquired. Moreover,

the notification is totally lacking in the careful and organized description of the issuer's business which would permit a potential investor to assess intelligently the nature and extent of risk involved in the venture. This, too, is a defect which requires a permanent suspension of the Regulation A exemption. Texas-Augello Petroleum Exploration Co., 39 SEC 292 (1959). Cf. Universal Camera Corp., 19 SEC 648 (1945); Woodland Oil & Gas Co., Inc., 38 SEC 485 (1958).

It is clear that the issuer has not sustained the burden of establishing the existence of an exemption from the registration requirements of the Act.[9/] Conversely, the notification is deficient in the several respects noted above because it contains misstatements and omits 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. The offering would frustrate the purpose of the Act which, as stated in its preamble, is designed "To provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof, and for other purposes." It would be made in violation of Section 17(a) of the Act if any of the shares were to be offered or sold "by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails."[10/] It is clear, therefore, that the

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9/ The burden of establishing an exemption from the registration requirements is on one who claims it. SEC v. Ralston Purina, 346 U.S. 119 (1953); SEC v. Sunbeam Gold Mines Co., 95 F.2d 699 (C.A. 9, 1938).

10/ Although the Form 1-A notification does not respond to the request for a statement of the names of the states in which the securities will be offered (as discussed at page 10, supra), it may be fairly assumed that the intent or expectation was for an interstate offering and for the use of interstate means or the mails. If an intrastate offering were intended there would be no need for the issuer to request a Regulation A exemption from the requirements of the Act, as it might have relied on the intrastate exemption of Section 3 (a)(11).

Commission's order suspending the exemption under Regulation A with respect to the proposed offering should be made permanent.[11/]

Accordingly, IT IS ORDERED that the Commission's Order of Temporary Suspension be made permanent.

Pursuant to Rule 17(b) of the Commission's Rules of Practice a party may file a petition for Commission review of this initial decision within fifteen days after service thereof on him. This initial decision, pursuant to Rule 17(f) shall become the final decision of the Commission as to each party unless he files a petition for review pursuant to Rule 17(b) or the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition to review or the Commission takes action to review as to a party, this initial decision shall not become final as to that party.[12/]

Sidney Ullman
Hearing Examiner

March 18, 1970
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11/ Discussion of other inaccuracies and deficiencies in the filing would serve no purpose. The post-hearing documents filed by the issuer, including "Exhibits" bearing little relation to the issues before me, were largely a series of charges of improper actions by a host of people, and they served no legitimate and persuasive purpose in this proceeding.

12/ All proposed findings and conclusions submitted by the parties have been considered, as have their respective arguments. To the extent that the proposed findings and conclusions are in accord with the views set forth herein they are accepted, and to the extent that they are inconsistent therewith they are rejected.