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UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

In the Matter of SAN FRANCISCO MINING EXCHANGE File No. 10-38 Securities Exchange Act of 1934 - Section 19(a)(1)	RECOMMENDED DECISION

Washington, D. C.
May 10, 1965

James G. Ewell
Hearing Examiner

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In the Matter of SAN FRANCISCO MINING EXCHANGE File No. 10-38 Securities Exchange Act of 1934 - Section 19(a)(1)	RECOMMENDED DECISION

BEFORE: James G. Ewell, Hearing Examiner

APPEARANCES: Frank E. Kennamer, Jr., Edward B. Wagner and William P. Sullivan, Esqs., for the Division of Trading and Exchanges (now known as the Division of Trading and Markets) of the Commission.

Gardiner Johnson, Esq., of Johnson & Stanton, Esqs., 221 Sansome Street, San Francisco, California, for the San Francisco Mining Exchange.

These are public administrative proceedings instituted by order of the Securities and Exchange Commission dated July 26, 1962 to determine whether, pursuant to the provisions of Section 19(a)(1) of the Securities Exchange Act of 1934 (Exchange Act), it is necessary or appropriate for the protection of investors to withdraw the registration of the San Francisco Mining Exchange (respondent) as a national securities exchange by reason of alleged violations of certain provisions of the Exchange Act and the Securities Act of 1933 (Securities Act) by said Exchange and by certain of its officers, members and issuers of securities listed thereon - all as specified in the above-mentioned order a copy of which is attached hereto for ready reference as Appendix "A". The allegations of misconduct aforesaid will be more particularly set forth hereinafter.

After appropriate notice a hearing was held before the undersigned hearing examiner in the Regional Office of the Commission in San Francisco, California commencing on December 12, 1962 and concluding on February 11, 1963. The parties were represented as noted on the facing sheet hereof. Approximately 2300 pages of oral testimony were taken and a large volume of documentary material was also introduced.

At the conclusion of the hearing in San Francisco the proceeding was continued "subject to call of the hearing officer" following disposition of certain interlocutory motions and applications made by counsel for the respondent to the hearing examiner.

Rulings on the latter, upon request of the respective parties aggrieved, were certified to the Commission for review and were thereafter disposed of by the Commission in due course. Subsequently, the record was closed by order of the Examiner dated April 16, 1964, which also specified a schedule for the filing of proposed findings and briefs by the parties. Such proposed findings and briefs were thereafter submitted by counsel on both sides and these have been duly considered. On the basis of the entire record as thus constituted including oral and documentary evidence and from observation of the witnesses the undersigned makes the following findings:

BASIC FACTS AND PRELIMINARY STATEMENT OF ISSUES

Historical Outline

The record shows that the San Francisco Mining Exchange (Exchange) is an unincorporated business association and has been in operation as a public auction mart for mining stocks in the city of San Francisco for over 100 years. The membership has ranged generally between thirty and forty until recently when it dropped to about thirteen. Seats on the Exchange are restricted to individuals but various firms engaged in the securities business are permitted to designate one of their officers as eligible for membership and a seat is generally purchased in the name of the person so chosen.

The business of the Exchange, during the entire period under review, has been conducted by its principal officers functioning under the over-all direction of five committees consisting of the Governing Committee, of five members, the Committees on Membership, Stock List and Commissions, of three members each, and the Finance Committee, composed of two members. As the name implies, most of the important policy matters are referred to, and decided by, the Governing Committee, except on occasions of serious controversy when such matters are generally referred to the full membership in meetings convened for that purpose.

The names of the persons serving on the above-mentioned committees from time to time will be more particularly referred to in the discussion of the testimony. It should be noted at the outset, however, that the Exchange was and still is headed by George J. Flach (Flach), president, who has held that office since 1939 and has actively managed and directed the operations and policies of the Exchange at all times here relevant. Frank J. Carter (Carter) has occupied the office of Secretary of the Exchange since 1936 and has served on various committees in addition to performing the usual duties of Secretary. In the latter capacity, he had charge of preparation and filing with the Commission of various required reports and the "processing" of applications for listing of securities to be admitted to trading on the Exchange.

During the decade from 1951 the number of stocks admitted to trading on the Exchange ranged between 41 and 56 with an average of 42

during 1961. The average price per share of the various securities listed ranged between 7¢ and 26¢ during the same period with an average of 14¢ during 1961. It will thus be noted that trading has consistently been limited to very low priced issues. (See Exhibits "A" through "F" attached to the Commission's order for proceedings included herein as Appendix "A" for detailed charts containing the foregoing and other pertinent statistical and financial data.)

The Issues

With the foregoing organizational structure of the Exchange in mind, the issues raised by the Commission's order for proceedings comprising 14 pages of text and six "exhibits" will now be summarized. 1/

In Article I, paragraph "A" of said order it is stated that the Exchange is registered as a national securities exchange pursuant to Section 6 of the Exchange Act and has been so registered since October 1, 1934.

In paragraphs "B" through "F" of said Article it is stated that the names of committee members and of the companies listed for

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1/ The Securities Acts and the Commission's Rules and Regulations thereunder have, of course, been amended from time to time and particularly by the Securities Acts Amendments of 1964 (Public Law 88-467), which amended a number of provisions of the Securities Act and Exchange Act under the effective date of August 20, 1964. However, since these proceedings were instituted on July 26, 1962 all references to the provisions of such Acts and Regulations in this recommended decision will be to such provisions as in effect prior to July 26, 1962.

trading on the Exchange together with other pertinent data including net assets, source of income, the number of shares for each issue and the total of all issues traded during 1961 together with the market value and total volume of sales effected, are as specifically set forth in Exhibits "A" through "F" attached to the order for proceedings and incorporated therein by reference. Other statistical data including the number of shares of each listed issuer held by officers, directors and beneficial owners of more than 10 percent of such shares or other so-called "insiders" are also included.

In Article II, paragraph "A," it is alleged that the Exchange has failed to enforce compliance with the Exchange Act and the Commission's Rules and Regulations thereunder by a number of issuers of securities listed thereon in respect of the filing of annual and interim reports required by Section 13(a) [1/] of the Exchange Act and the Commission's Rules and Regulations thereunder, during a number of

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1/ Section 13 of the Exchange Act requires issuers of securities registered on a national securities exchange to file annual and current reports with the Exchange and with the Commission pursuant to rules prescribed thereunder.

Rule 13a-1* under Section 13 of said Act, requires that an annual report be filed within 120 days after the close of each fiscal year, and contain specified financial and other information. Rule 13a-11 requires that a current report be filed within 10 days after the close of a month during which specified events have occurred - including acquisitions of significant amount of assets, material legal proceedings and changes in control of registrant - to disclose information with respect to such events.

*The Commission's Rules under the Exchange Act are officially cited by the prefatory designation, "17 CFR 240," followed by the rule number. For brevity, however, this rather cumbersome prefix will be omitted herein, the Rules being designated by number only.

specified calendar years. These companies are, Operator Consolidated Mining Company (Operator), Reorganized Carrie Silver Lead Mines Corporation (Reorganized), Consolidated Virginia Mining Company (Consolidated), Eureka Company (Eureka), Apex Minerals Corporation (Apex) and Comstock, Ltd. (Comstock). Additionally, it is alleged in subdivision 8 of said paragraph that Ambrosia Minerals, Inc. (Ambrosia) violated the certification requirements of Rule 12b-2 under Section 12 of the Exchange Act in connection with its financial statements filed in 1956; also, that Apex, above mentioned, violated Section 14(a) of the Exchange Act and the Commission's rules and regulations thereunder in connection with a proxy solicitation during 1961. 1/

Finally, in sub-divisions 9 and 10 of said paragraph it is alleged that Comstock filed a false and misleading current report for 1957 in violation of Section 13(a) of the Exchange Act and that its Board of Directors issued a letter to stockholders in connection with a distribution of its securities containing false and misleading statements and omissions in violation of the anti-fraud provisions of Section 10(b) and 15(c) of the Exchange Act and Rules 10b-5 and 15c1-2

1/ Section 14(a), supra, prohibits the solicitation of proxies in respect of a security registered on a national securities exchange in contravention of rules prescribed by the Commission in the public interest or for the protection of investors. Regulation 14 under said section requires that each person solicited be furnished a written proxy statement containing specified information (Rule 14a-3), that preliminary copies of all soliciting material be filed with the Commission in advance of the date such material is first sent or given to security holders (Rule 14a-6), and that soliciting material shall not contain any false or misleading statements with respect to any material facts (Rule 14a-9).

thereunder;[1/] also, that Comstock violated Section 13(a), supra, in connection with annual reports required for the years 1955 and 1956 due to the fact that Archie H. Chevrier (Chevrier), one of its principal officers, a member of the Exchange and former Chairman of its Governing Committee had withheld company records rendering it impossible to prepare the required financial statements.

In Article II, paragraph "B," it is alleged that the Exchange has failed to enforce compliance with the Exchange Act and rules and regulations thereunder by members in that no appropriate disciplinary action, pursuant to Article XXIII of the Exchange Constitution[2/] has been taken against such members in respect of the following matters:

1/ The composite effect of the anti-fraud provisions referred to above as applicable here is to make unlawful the use of the mails or means of interstate commerce in connection with the purchase or sale of any security by the use of a device to defraud, an untrue or misleading statement of a material fact, or any act, practice or course of business which operates or would operate as a fraud or deceit upon investors, or by the use of any other manipulative, deceptive or fraudulent device.

2/ Article XXIII of the Exchange Constitution, under the heading, "Expulsion, suspension and disciplining of Members," and comprising 13 Sections dealing with a wide range of offenses, provides generally, among other things, that a member of the Exchange who shall have been adjudged guilty of fraud; or of entering into fictitious transactions for the purchase or sale of securities; or of making misleading statements or omissions of material facts, shall be suspended or expelled from membership as the Governing Committee shall determine. Additionally, Section 5, paragraph (c) of said Article specifically provides that willful violation of any provision of the Exchange Act or any rule or regulation thereunder shall be considered conduct inconsistent with fair and equitable principles of trade and further ground for suspension or expulsion. (Emphasis added.)

(1) That George J. Flach, president of the Exchange, Paul W. Schwarz, a former vice president and chairman of the Governing Committee, Archie H. Chevrier, also a former chairman of the Governing Committee, Frank J. Carter, secretary, and each of them while serving in these capacities, together with Arnold Toews, brother-in-law of Chevrier and member of the Exchange, violated Section 16(a) of the Exchange Act and Rule 16a-1 1/ thereunder in that they failed to report at various times during the period 1947 through 1961 their election as officers and directors of certain companies whose stock was listed on the Exchange, together with the number of shares of stock in each of such companies beneficially owned, and other important

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1/ Section 16(a) of the Exchange Act provides in pertinent part:

"Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of any equity security (other than an exempted security) which is registered pursuant to Section 12 of this title, or who is a director or an officer of the issuer of such security, shall file, at the time of the registration of such security on a national securities exchange. . .or within ten days after he becomes such beneficial owner, director, or officer, a statement with the Commission (and, if such security is registered on a national securities exchange, also with the exchange) of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the Commission (and if such security is registered on a national securities exchange) a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month."

Rule 16a-1 thereunder specifies the forms and other information for implementation of the statutory requirements above indicated.

information required by the above-mentioned Rule, particularly transactions in the securities of such companies by each of the individuals named. The companies involved are: Operator, Manhattan Gold Mines, Inc. (Manhattan), Pony Meadows Mining Company (Pony Meadows), Smuggler Mining Company (Smuggler), Silver Divide Mining Company (Silver Divide), Comstock-Keystone Mining Company (Comstock-Keystone), Industrial Enterprises (Industrial), Sunburst Petroleum Corporation (Sunburst) and Comstock, Ltd.(Comstock). (See sub-paragraphs B(1) thru (14) of Article I of Appendix "A," for specification of dates, offices held and related information.

(2) That Chevrier, while serving as chairman of the Governing Committee and as vice president of the Exchange, violated the anti-fraud and anti-manipulative provisions of Sections 9(a)(2), 9(a)(4), 10(b), 11(d)(2) and 15(c) of the Exchange Act together with Rules 10b-5, 10b-6 and 15c1-2 thereunder 1/ in connection with transactions in the stock of

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1/ The purpose and effect of the anti-fraud provisions of Sections 10(b) and 15(c) of the Exchange Act and Rules and Regulations thereunder have already been noted in footnote 1 on page 8, supra.

Section 9(a)(2) of said Act as applicable here makes it unlawful for any person or for any member of a national securities exchange to effect any transaction in any security registered on a national securities exchange for the purpose of creating actual or apparent active trading in such security or raising or depressing the price thereof for the purpose of inducing the purchase or sale of such security by others.

Similarly, Section 9(a)(4) makes it unlawful for a dealer or broker, or other person offering for sale or to purchase a security, to make, regarding any security registered on a national securities exchange, for the purpose of inducing the purchase or sale of such security, any false or misleading statement with respect to any material fact

Industrial in 1961 and 1962, and also falsified his records for such years in connection with such transactions in violation of Section 17(a) 2/ of the Exchange Act and Rules 17a-3 and 17a-4 thereunder.

(3) That various and sundry members of the Exchange also violated the anti-fraud provisions of Sections 10(b) and 15(c) of the Exchange Act and Rules 10b-5 and 15c1-2, supra, in connection with false and misleading representations to customers with respect to transactions in the stock of issuers whose securities are listed on the Exchange.

In the final paragraph of Section II, it is alleged that withdrawal of the registration of the Exchange is necessary and appropriate for the protection of investors because of the allegations set forth in the foregoing and on the additional grounds:

(1) That members of the Exchange and its Governing Committee

(Continued from previous page)

which he knew or had reasonable ground to believe was so false or misleading.

Section 11(d)(2) of said Act makes it unlawful for a member of a national securities exchange or broker or dealer or any person to effect through use of any facility of a national securities exchange or otherwise any transaction with respect to any security unless he discloses to the customer in writing at or before completion of the transaction whether he is acting as a dealer for his own account, as a broker for such a customer, or as a broker for some other person.

2/ Section 17(a) of the Exchange Act, as here applicable, requires registered broker-dealers to keep such books and records as the Commission by rules and regulations may prescribe as necessary and appropriate in the public interest or for the protection of investors. Rules 17a-3 and 17a-4 specify the books and records which must be maintained, preserved and kept current.

and officers have violated or been involved in violations of the Securities Act in the following instances:

(i) Chevrier violated Section 17(a) of the Securities Act in connection with false and misleading representations made in the offer and sale of stock of Industrial during 1961 and 1962; and, as controlling stockholder of said corporation during said period, violated Sections 5(a) and (c) [1/] of the Securities Act in offering to sell, selling and delivering after sale, securities of said company when no registration statement had been filed or was in effect with respect to such securities under said Act.

(ii) Carter and Toews violated Section 17(a) of the Securities Act by promulgating during 1957 false and misleading information to stockholders to promote the sale of stock of Comstock by H. Carroll & Company (Carroll) and Chevrier.

(2) That the Exchange lent its facilities in 1957 to a distribution of the stock of Wilson Oil and Gas Company (Wilson) in violation of Section 5 of the Securities Act; also, in connection with a merger involving Apex, stockholder approval of which had been obtained in

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1/ Sections 5(a) and (c) of the Securities Act in general make it unlawful to use the mails or interstate facilities to sell or deliver a security unless a registration statement is in effect as to such security, or to offer to sell or offer to buy a security unless a registration statement has been filed as to such security.

violation of the proxy rules of Section 14(a) of the Exchange Act in addition to distribution of its securities in violation of Section 5 of the Securities Act aforesaid.

(3) That the Exchange is not properly organized in that its committees have failed adequately to function; that it does not have adequate listing standards; has not taken action to delist unsuitable or delinquent issuers; and has not sought nor obtained legal advice during the past thirty years.

(4) That during 1960 and 1961 more than half of the listed companies were inactive and of the remainder sixteen reported net losses; that twenty companies had less than 500 stockholders, and out of a total of forty-two listed issuers twenty-eight were dominated by "insiders", and that from 1936 to 1961 it became necessary for the Commission to remove twenty-seven issuers from listing and trading because of various reporting and other violations of the Federal securities laws.

(5) That, in order to broaden the scope of its business, the Exchange has changed its policies so as to list industrial companies in addition to those in the mining industry; and, to accomplish this,

engaged in the dubious expedient of having one or more of the dormant corporations listed on the Exchange acquire assets of questionable value, through the efforts of its officers and members, and thereafter distribute its securities on the basis of such newly acquired "assets" to the public, citing as examples, transactions in Comstock in 1957 and Industrial in 1962.

Finally, Section B of Article II was amended by order of the Commission dated December 6, 1962 by adding paragraph 18 to said Section, alleging that during the period June 30, 1949 to May 31, 1962 Flach aided and abetted violation of Section 7(c) of the Exchange Act[1/] and Section 4(c) of Regulation T thereunder by R. L. Coburn & Co., a broker-dealer transacting business on the Exchange, in that the latter and Flach, singly and in concert, extended credit to customers for purchases of securities in contravention of the rules and regulations above mentioned appertaining thereto.[2/]

In Article III, the issues are raised of whether the allegations set forth in the foregoing Articles I and II are true and if so whether,

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1/ Section 7(c) of the Exchange Act, as applicable here, in general makes it unlawful for any broker or dealer who transacts a business in securities through the medium of any member of a national securities exchange to extend credit to a customer in contravention of regulations prescribed by the Federal Reserve Board under Section 7 of said Act. Section 4(c) of Regulation T, promulgated by the Federal Reserve Board as here applicable, provides (with certain exceptions that will be dealt with where permanent) that a broker or dealer shall promptly cancel or otherwise liquidate the transaction where a customer purchases a security in a special cash account and does not make full cash payment within 7 business days.

2/ A copy of the above-mentioned amending order is attached as Appendix "B".

pursuant to the provisions of Section 19(a)(1) [1/] of the Exchange Act it is necessary or appropriate for the protection of investors to withdraw the registration of the Exchange as a national securities exchange.

Basic and Supplementary Stipulations

As previously noted, counsel for the parties, during the early part of the hearing, entered into two stipulations which are in evidence as Division's Exhibits Nos. 1 and 2, respectively. [2/] The former dated December 13, 1962 and referred to as a "Basic Stipulation" is relatively brief and states in substance that all stipulations of fact that might be entered into would be without prejudice to the right of both parties to introduce additional evidence supplementing

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1/ Section 19(a) of the Exchange Act provides in pertinent part:

"The Commission is authorized, if in its opinion such action is necessary or appropriate for the protection of investors -

(1) After appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding twelve months or to withdraw the registration of a national securities exchange if the Commission finds that such exchange has violated any provision of this title or of the rules and regulations thereunder or has failed to enforce, so far as is within its power, compliance therewith by a member or by an issuer of a security registered thereon."(Emphasis added.)

2/ Division Exhibits will hereafter be designated "DX," Respondent's Exhibits "RX" and references to the transcript of testimony by "R" and the page number.

the facts so stipulated. The second or "Supplementary Stipulation," (DX-2), dated December 12, 1962 was read into the transcript of record in toto, at pages 85 to 132 thereof at the request of counsel for the respondent. Since this stipulation comprises 40 pages of text and 6 exhibits designated "A" through "F" inclusive, which were extracted from the Commission's order for proceedings, it would of course unduly extend this discussion to reproduce said stipulation verbatim here. Thus, an endeavor will be made to summarize those portions only which are believed to be material and necessary to support the findings and conclusions hereinafter set forth. In this regard, it should also be noted that said stipulation follows closely the specification of charges set forth in the order for proceedings, using the same paragraph designations thereof, for the purpose of facilitating concordance.

Thus, in Section I of the Supplementary Stipulation, it is conceded that the facts stated in Article I of the Commission's order for proceedings are true and correct. The facts so stipulated are briefly that the names and dates of tenure of officers, directors and executive committee members of the Exchange(together with the statistical and financial data regarding the companies whose securities are listed thereon as contained in Exhibits "A" through "F" of said order) are as set forth therein.

In Section II of said stipulation the following allegations contained in Article II, Section "A" and paragraphs (1), (2), (3),

(5) and (11) of the order for proceedings, are conceded:

1. In paragraph A (1) of the stipulation it is admitted that Operator Consolidated Mining Company (Operator), of which Flach was a major stockholder and Carter, also a stockholder, failed to file annual reports with the Exchange for the calendar years 1942, 1943, 1944, 1945, 1946 and 1950 until long after their due date of April 30 of each succeeding year, as reflected in the following table:

Calendar Year	Due Date	Date Filed	Delinquency 1/
1942	April 30, 1943	Oct. 5, 1943	Approximately 6 mos. Late
1943	" 1944	July 29, 1944	" 3 mos. "
1944	" 1945	Sept. 24, 1945	" 5 mos. "
1945	" 1946	Nov. 12, 1946	" 7 mos. "
1946	" 1947	June 30, 1947	" 1 yr. & 2 mos. "
1950	" 1951	Aug. 6, 1951	" 4 mos. "

2. That Operator also failed to report (on Form 8-K) the following reportable events occurring in 1956. 2/

1/ The periods of delinquency have been supplied by the Examiner from dates specified in the stipulation.

2/ As previously noted, Rule 13a-1 under Section 13(a) of the Exchange Act requires issuers of securities registered on a national securities exchange to file an annual report within 120 days after the close of each fiscal year. Rule 13a-11 requires that a current report on Form 8-K be filed within 10 days after the close of a month in which certain specified events have occurred.

(a) An assessment in May 1956 of 2¢ per share on all outstanding stock, [1/]

(b) The sale of 22,860 shares of stockholders who were delinquent in paying the assessment,

(c) A charter amendment approved by stockholders on October 30, 1956 increasing the authorized shares from $3 million to $10 million.

3. That Reorganized Carrie Silver Lead Mines Corporation (Reorganized) failed to file or filed late required annual reports, as follows:

Calendar Year	Due Date	Date Filed	Delinquency
1939	April 30, 1940	July 22, 1940	Approximately 3 mos. Late
1940	" 1941	June 30, 1941	" 2 mos. "
1942	" 1943	Nov. 3, 1943	" 6 mos. "
1944	" 1945	June 20, 1945	" 2 mos. "
1945	" 1946	July 12, 1946	" 2½ mos. "
1946	" 1947	March 9, 1948	" 2 years "

4. That Consolidated Virginia Mining Company (Consolidated) failed to file or filed late required annual reports as follows:

1/ It should be further noted that supporting documentation is included in the stipulation throughout but it is not deemed necessary to specify such material here.

Calendar Year	Due Date	Date Filed 1/	Delinquency
1953	April 30, 1954	Nov. 24, 1954	Approximately 7 mos. Late
1954	" 1955	May 25, 1956	" 1 mo. "
1957	" 1958	June 30, 1958	" 2 mos. "
1958	" 1959	Sept.21, 1959	" 5 mos. "

5. That Eureka Company failed altogether to file a report with the Commission for the calendar year 1955.

In Section II, B, of the Stipulation, the Exchange concedes the following facts regarding the allegations in Article II, Section "B", paragraphs (1) through (14) of the order for proceedings:

(1) That Flach, Exchange president and as president of Manhattan Gold Mines (Manhattan) failed to report on or before January 16, 1949 to the Commission and to the Exchange (as required by Section 16(a) of the Exchange Act and Rule 16a-1 thereunder) 2/ his election on January 6, 1949 to that office and his beneficial ownership of 6,300 shares of its equity securities, such report not having been

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1/ With regard to all reports filed pursuant to the Commission's Rules and Regulations it should be noted that the stipulation also includes the dates on which a copy of each report was filed with the Exchange as further required under such rules. But since these filings appear to have been made in virtually all cases within a few days to a week of the date of filing with the Commission, the specific dates are not considered significant. The filings themselves, however, are deemed important to show actual or constructive notice by the Exchange of all facts revealed thereby.

2/ See footnote 1/ on page 9, supra.

filed until June 13, 1949 or approximately five months late; also, his receipt of an option to buy 55,000 shares during the month of August 1950 a report of which was not filed until July 23, 1951 or more than eleven months late.

(2) That Flach, while president of Manhattan, failed to file, as required under the Rule, or filed late, reports of his transactions for purchases and sales of stock of that company, as reflected by the following table:

PURCHASES

Number of Shares	Period	Due date of Report	Date Filed	Approximate Delinquency
2500	May 1950	June 10, 1950	July 23, 1951	1 year late
4000	June 1950	July 10, 1950	July 23, 1951	1yyear late
500	Jan. 1951	Feb. 10, 1951	July 23, 1951	5½ mos. late
1000	Aug. 1951	Sept.10, 1951	Dec. 10, 1951	3 mos. late
25000	Sept.1951	Oct. 10, 1951	Dec. 10, 1951	2 mos. late
181,410	Nov. 1959	Dec. 10, 1959	Sept.17, 1962	2 yrs.& 10 mos.late

SALES

Number of Shares	Period	Due date of Report	Date Filed	Approximate Delinquency
1000	May 1951	June 10, 1951	July 23, 1951	1½ mos. late
1000	June 1951	July 10, 1951	July 23, 1951	2 weeks late
1000	July 1951	Aug. 10, 1951	Dec. 10, 1951	4 mos. late
3000	Sept.1951	Oct. 10, 1951	Dec. 10, 1951	2 mos. late
2000	Oct. 1951	Nov. 10, 1951	Dec. 10, 1951	1 mo. late
6000	Dec. 1951	Jan. 10, 1952	Feb. 20, 1952	1⅓ mos. late
2000	Jan. 1952	Feb. 10, 1952	Feb. 20, 1952	10 days late

(3) That Flach, as director of Operator Consolidated Mines failed to report as required on or before June 12, 1941 his election on June 2, 1941 to that office and his beneficial ownership of 1000 shares of its stock, such report not having been filed until September 5, 1941 or approximately 3 months late; and likewise his purchase of 102,500 shares of said stock during October 1947, a report of which was not filed until June 13, 1949, approximately 1 year and 7 months after its due date of November 10, 1947.

(4) That Paul W. Schwarz, vice president of the Exchange and its then chairman of the Governing Committee, as vice president and a director of Manhattan Gold Mines, supra, failed to report, as required under the Rule, on or before January 16, 1949 his election on January 6, 1949 to these offices, as well as his beneficial ownership of 3,000 shares of its stock, such report not having been filed until June 13, 1949, or approximately 5 months late; and likewise failed to report on

September 10, 1950 his receipt during August 1950 of an option to purchase 55,000 shares of Manhattan, such report not having been filed until July 23, 1951, or approximately 10 months late.

(5) That Schwarz, as secretary, treasurer and director of Pony Meadows Mining Company, failed to report on August 10, 1950, as required, his purchase of 3,000 shares of its common stock during July 1950, such report not having been filed until March 31, 1953 or 2 years and 7 months late; and likewise failed to report on or before September 10, 1960 his purchase of 2,000 shares of said stock during the month of August 1960.

(6) That Schwarz, as secretary, treasurer and director of Silver Divide Mines, failed to report on or before December 10, 1953, as required, the purchase of 117,000 shares of its stock during November 1953, such report not having been filed until April 27, 1954 or approximately 4 months late. He also failed to report the purchase of 61,000 shares of said stock during the calendar year 1954.

(7) That Schwarz, while holding the above-mentioned offices, failed to report the sale of 51,350 shares of Silver Divide during 1955, notwithstanding the filing (presumably under his supervision as secretary-treasurer of the corporation) of annual reports for both of the years 1954 and 1955, from which reports such information was omitted.

(8) That Schwarz, as secretary-treasurer and director of Smuggler Mining Co., Ltd. failed to report as required on September 25, 1958 his election on September 15, 1958 to these offices and his

ownership of 1,000 shares of said company's stock, such report not having been filed until December 2, 1958, or approximately 2-1/2 months late.

(9) That Schwarz, as president and director of Comstock-Keystone Mining Company failed to report, as required, on or before March 6, 1948 his election to these offices on February 24, 1948 and also beneficial ownership of 9,000 shares of its stock. He likewise failed to report as required on or before September 10, 1955 his receipt during August 1955 of an option to purchase 250,000 shares of said company's stock.

(10) That Archie H. Chevrier, formerly vice president of the Exchange and chairman of its Governing Committee and as president and director of Industrial Enterprises (formerly Best & Belcher Gold and Silver Mining Company), failed to report, as required, his purchase of 23,500 shares of said company's stock during August 1958, which report became due September 10, 1958 but was not filed until October 8, 1958, or approximately one month late; and also failed to file, within the time required, reports of the following purchases and sales which took place thereafter but which, as appears below, were in certain instances grossly understated:

PURCHASES

Number of Shares	Period	Due Date of Report	Date Filed	Approximate Delinquency
1000	Oct. 1960	Nov. 10, 1960	Feb. 13, 1961	3 mos. late
7000	Nov. 1960	Dec. 10, 1960	Feb. 13, 1961	2 mos. late
10,200	Oct. 1961	Nov. 10, 1961	Feb. 16, 1962	3 mos. late
17,450	Nov. 1961	Dec. 10, 1961	Feb. 16, 1962	2 mos. late
10,500*	Dec. 1961	Jan. 10, 1962	Feb. 16, 1962	1 mo. late
7,100	Jan. 1962	Feb. 10, 1962	Feb. 16, 1962	1 week late

SALES

500	July 1959	Aug. 10, 1959	Aug. 27, 1959	2 weeks late
5450	Oct. 1961	Nov. 10, 1961	Feb. 16, 1962	3 mos. late
2140	Nov. 1961	Dec. 10, 1961	Feb. 16, 1962	2 mos. late
7850*	Dec. 1961	Jan. 10, 1962	Feb. 16, 1962	1 mo. late
450	Jan. 1962	Feb. 10, 1962	Feb. 16, 1962	1 week late

*The initial report of these transactions was not filed with the Exchange until March 6, 1962, or 3 weeks later.

(11) That Chevrier falsely reported his transactions in Industrial occurring during the month of February 1962, as reflected in the above table, showing purchases of 7,100 shares and sales of 450 shares, whereas his transactions in such stock actually consisted of the acquisition of a total of 188,800 shares and transfers or sales totalling 191,160 shares. Corrected reports were filed by Chevrier on February 19 and 28, 1962, respectively.

(12) That Chevrier's transaction in Industrial during

October, November, December 1961 and January 1962 were also falsely reported in that they failed to disclose all of his transactions in said stock and likewise the full extent of his holdings. Amended reports for these months were likewise filed in the latter part of February 1962.

(13) That Chevrier as beneficial owner of more than 10% of the equity securities of Pony Meadows, supra, failed to report his acquisition in July 1960 of 164,000 shares of stock in said company, representing 10% or more thereof; and also failed to report the purchase during July 1960 of 11,000 shares on or before the due date of August 10, 1960 and the purchase of 3,000 optioned shares in August 1960 on or before the due date of September 10, 1960. In addition, he failed to report the sale of 3,000 of such shares during September 1960 on or before the due date of October 10, 1960.

(14) That Arnold Toews, Exchange member and, as previously noted, brother-in-law of Chevrier, as President and Director of Comstock, Ltd., failed to report his election to these offices together with his beneficial ownership of 15,000 shares of said company's equity securities on the due date of October 29, 1955, such report not having been filed until March 12, 1956, or approximately 4-1/2 months late.

(15) That Toews was elected Vice President and Director of Industrial Enterprises but failed to report such event together with his beneficial ownership of 18,000 shares of the stock of said corporation on the due date of August 24, 1958, such report not having

been filed until October 3, 1958, or approximately 1-1/2 months late; and likewise failed to report the sale of 1,000 shares of Industrial during the calendar year 1958.

(16) That Toews as Vice President and Director of Sunburst Petroleum Corporation (Sunburst), failed to report, as required, his election to such offices on August 12, 1958 together with the number of equity securities beneficially owned by him, which report became due August 22, 1958 but was not filed until September 15, 1958, or approximately 3 weeks late. He likewise failed to report, (1) his purchase of 61,000 shares of Sunburst during March 1959, which report became due April 10, 1959 but was not filed until November 27, 1959, or approximately 7 months late and (2) the subsequent sale of 36,000 shares during the calendar year 1960.

(17) Regarding Article II, Section E, paragraph (3) of the order for proceedings the respondent Exchange concedes that during the period 1934 through 1961 the Commission, acting pursuant to the provisions of Section 19(a)(2) of the Exchange Act, removed from listing and registration all of the securities listed in Exhibit F included in said order for proceedings totalling 27.

(18) Regarding Article II, Section E, paragraph (7) of said order, the Exchange admits the data contained in Exhibit C attached to the order for proceedings comprising extensive financial and statistical information regarding the 42 companies listed on the Exchange in respect of net assets or deficits, income and expense, source of income, net income or loss, number of shares outstanding at

January 1962 and total shares traded in 1961. However, respondent does not admit the allegations in paragraph (7) on page 12 of the order for proceedings to the effect that 22 of the companies listed "are substantially inactive or dormant" and that 20 of the active companies "have net losses."

(19) Regarding Article II, Section E, paragraph (8) of the order for proceedings, the Exchange admits the data contained in Exhibit E attached to the order for proceedings regarding the above-mentioned 42 listed companies in respect of the number of shares outstanding, the number of stockholders, the number and percentage of shares "held by insiders" and the summary of such data contained in paragraph (8) on page 12 of the order for proceedings reading:

> "According to Exhibit E hereto, 20 of the 42 listed companies have less than 500 stockholders. In 28 companies holdings by officers, directors and beneficial owners of more than 10 percent of the outstanding stock are in excess of 20% of the outstanding stock and in 10 of these, holdings by such persons amount to over 50% of the outstanding stock."

(20) In the final paragraph of the supplementary stipulation admissions were made regarding statements and documentary material referred to in paragraph (9) of Article II, Section A, of the order for proceedings. However, at the conclusion of the reading of the stipulation into the record, a colloquy occurred between counsel for the parties at pages 129 to 131 inclusive of the transcript, resulting in withdrawal of this portion of the stipulation. Additionally, it should be noted that counsel for the respondent thereupon moved that all allegations in the stipulation regarding occurrences taking place prior

to July 26, 1959, or three years prior to the date of the Commission's order for proceedings, be stricken from the evidence on the ground that they are irrevelant and immaterial and on the further ground of some sort of equitable estoppel by reason of the considerable lapse of time between such occurrences and the institution of proceedings. This motion was denied by the examiner as being without merit for the reasons stated in the record at the pages above indicated, with the result that in the present posture of the case the stipulation stands - except for the relatively minor modifications noted - as an admission by the respondent of the facts set forth therein.

With the foregoing "Basic" and "Supplementary" stipulations in mind, the evidence which was thereafter introduced on both sides for the purpose of supplementing the stipulations by such additional facts as were deemed necessary to support the Commission's charges and also to afford the respondent opportunity to present its defense, will now be considered.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At the outset of this discussion some further reference to the statutory scheme or climate of regulation of national securities exchanges under the Federal securities laws should be made. Thus, as counsel for the Division points out in the brief (pp.1 and 2). Section 6(a) of the Exchange Act requires, in substance, that an application for registration as a national securities exchange shall contain an agreement by the Exchange "to comply, and to enforce so far as is within its powers compliance by its members, with the provisions of

this title. . .and any rule or regulation. . .thereunder." (Underscore added.) In this regard it should be noted that the registration application of the respondent here contains an undertaking to such effect so that it was and is clearly aware of the obligation created thereby.

2. Similarly, Section 6(b) of the Exchange Act provides that "no registration [of an exchange] shall remain in force unless the rules of the exchange include provision for the expulsion, suspension or disciplining of a member for conduct or proceeding inconsistent with just and equitable principles of trade, and declare that the willful violation of any provisions of this title or any rule or regulation thereunder shall be considered conduct or proceeding inconsistent with just and equitable principles of trade." (Underscore added.) Here again, the Constitution of the Exchange in Article XXIII thereof contains, in subsections (b) and (c) of Section 5 thereof, provisions to similar effect.

3. From the foregoing it is clear that a national securities exchange from its very inception is patently on notice of its obligation to comply with all applicable provisions of the Exchange Act and the Commission's rules and regulations thereunder in the conduct of all of its affairs and operations as a quasi-public facility and auction mart for the purchase and sale of securities by and through its members on behalf of the public; and further, that such an exchange is under obligation to insure compliance with the Federal securities laws by

enforcement of its own rules and regulations by appropriate disciplinary action against its members where necessary for that purpose. Thus, failure by a national securities exchange itself or by any of its members to comply with the applicable provisions of the Federal securities laws, particularly the Securities Exchange Act and the Commission's Rules and Regulations thereunder, would constitute grounds for withdrawal of registration under the provisions of Section 19(a)(1) of the Exchange Act, hereinbefore noted and pursuant to which this proceeding has been brought. [See footnote 1 on p.15, supra.]

4. Turning now to a discussion of the evidence, further reference to the organization of the Exchange at various times during the period under review would appear to be helpful. Thus, the record shows that Flach has been president continuously since 1939 and is an ex officio member of the Governing Committee; also, that he appears to have actively dominated the management and operation of the Exchange except possibly during the short time when Chevrier became chairman of the Governing Committee from January 30, 1962 until his resignation about three months later, on March 14, 1962. Carter has served as Secretary of the Exchange since 1936 and as Chairman of the Stock List Committee from 1950 until his recent death on January 17 of the current year. Schwarz has also been a member of the Governing Committee since 1950 and was elected its Chairman in April 1962 and Vice President of the Exchange at about the same time, following the resignation of

Chevrier. It further appears that Schwarz had previously held both of these offices from 1951 through 1956 and during a subsequent period in 1960 and 1961.

5. In addition to the foregoing, Raymond A. Broy has served continuously as a member of the Governing Committee and as Vice President of the Exchange since 1936 and a member of the Stock List Committee since 1950. Walter D. Forsyth was also a member of the Governing Committee from 1944 to 1963. Chevrier, Schwarz, Broy and Forsyth constituted the Governing Committee during the period from January 1957 to March 1962 and Carter, Chevrier and Broy comprised the Stock List Committee during said period, which is important by reason of the fact that a substantial number of the activities of alleged misconduct by members of the Exchange and its officers occurred during that time.

Membership of the Exchange and
Trading Activities thereon

6. The membership of the Mining Exchange during the entire period of registration as a national securities exchange appears to have undergone a slow but steady decline until, as previously noted, there were only thirteen regular memberships as of December 1962, of whom only six were actively engaged in the securities business as representatives of broker-dealer firms. Thus, Flach, together with Norman Hudson and Samuel Apple, represented the R. L. Colburn Co., a corporate broker-dealer registered with this Commission and having

offices in Los Angeles and San Francisco. Raymond A. Broy, above-mentioned, and Victor J. Herrman represented the Broy Company, a sole proprietorship also registered as a broker-dealer. Forsyth, a registered broker-dealer, actively engaged in trading on the Exchange as a sole proprietorship until his death in 1963 during the pendency of these proceedings. Chevrier, a sole proprietor and registered broker-dealer, became a member of the Exchange in February 1953 and actively engaged in trading until he was suspended for misconduct by the Exchange in June 1962. The remaining members of the Exchange were relatively inactive except Carter who engaged in a few transactions in securities but was, of course, also active in the management of the Exchange in connection with his official duties as Secretary.

7. By way of summary, it should be noted that during the past ten years virtually all of the active trading on the floor of the Exchange was conducted by or through Flach, Broy, Herrman and Chevrier, with Flach acting as floor trader for Colburn & Co. and manager of its San Francisco Branch Office and with Broy and Herrman performing similar functions for the Broy Company.

Listed Issuers and their Financial Status

8. As previously noted, there were approximately 42 companies whose securities were listed on the Exchange during the period with which we are chiefly concerned and of these it is conceded that the securities of only about 26 had a book value in excess of 1¢ per share and ranging

between 1½¢ and $1 per share, with the vast majority being less than 25¢. Moreover, 9 of the companies listed reported net asset deficits and consequently zero book value. Additionally, the average market price of shares traded on the Exchange during the decade commencing in 1951 ranged from a low of 7¢ per share in 1953 to a high of 26¢ in 1956. The total number of issues traded during the same period ranged from a low of 41 in 1953 to a high of 56 in 1956.

Failure of the Exchange to Enforce the Reporting Requirements of the Exchange Act by Listed Issuers

9. It will be recalled that Section 13(a) of the Exchange Act requires every issuer of securities registered on a national securities exchange to file an annual report for each fiscal year within 120 days after the close thereof and Rule 13a-11 thereunder requires such issuers to file interim current reports disclosing any materially important events involving, for example, the corporate structure and capitalization of the company, stockholder assessments, mergers, major acquisitions or sales of assets and the like. Similarly, Section 16(a) of said Act and Rule 16a-1 thereunder requires a listed corporation to file current reports reflecting changes in officers and directors and ownership of the equity securities of the corporation by all of such officers, directors and owners of more than 10% of such equity securities outstanding - within ten days after occurence of such events; also all trading activities in such securities by such "insiders."

10. Numerous and repeated violations of the reporting requirements of both of the above-mentioned Sections of the Exchange Act and the Rules and Regulations thereunder have been set forth in great detail in the stipulation already discussed and summarized above. It is therefore deemed necessary hereinafter only to supplement such material by analysis of the evidence tending to show the degree of culpability and its source in respect of the various listed issuers and officials involved.

Operator Consolidated Mining Company

11. As previously noted and at risk of some repetition, Operator failed to file annual reports for the calendar years 1942, 1943, 1944, 1945, 1946 and 1950 with delinquencies ranging from one to six months beyond the due dates of such reports. And, in this regard it should also be noted that such delinquencies occurred while Flach was a major stockholder and director and Carter was also a stockholder of the company - and, despite the fact that Carter, as Secretary of the Mining Exchange, had received warning letters from the staff of the Commission calling his attention thereto. Moreover, such delinquencies were admittedly revealed on the face of the reports themselves.

12. Additionally, the record shows that Operator levied an assessment of 2¢ per share on its outstanding stock in May of 1956 and that as a result, 22,860 shares were sold at an assessment sale because of non-payment by the holders thereof. None of these events were reported, however, by Operator, as required by Rule 13a-11.

13. The record also shows that in October 1956 Operator effected a charter amendment increasing the authorized capitalization of the company from 3 million to 10 million shares. And, although this action was communicated to all registered stockholders and was therefore known or should have been known by both Flach and Carter as stockholders of Operator and principal officers of the Mining Exchange, Operator again failed to file a current report reflecting these events during 1956. Subsequently, the Commission instituted delisting proceedings against Operator pursuant to Section 19(a)(2) of the Exchange Act in March 1957 which resulted in withdrawal of its securities from listing on the Exchange on the basis of a number of violations including those discussed above. See Operator Consolidated Mining Company, supra, 39 S.E.C. 580 at p. 584 (1959).

14. Notwithstanding the circumstances described above, the respondent Exchange took no disciplinary or corrective action against Operator until after the delisting proceedings had been instituted by the Commission, at which time the Exchange suspended trading in its stock. Such belated action of course clearly reflects an attitude of indifference and neglect of its obligation to enforce the applicable provisions of the Exchange Act and the Commission's Rules and Regulations thereunder, and the Examiner so finds.

Reorganized Carrie Silver Lead Mines Corporation

15. As previously noted, the above-mentioned company filed late annual reports for the calendar years 1939, 1940, 1941, 1943,

1945, 1946 and 1947 in violation of Section 13(a) of the Exchange Act and Rule 13a-1 thereunder, with delinquencies in such filings ranging from two to eleven months. Here also, the Mining Exchange had received warning letters from the Commission's staff regarding the late filings which were, of course, also revealed on the face of the reports themselves. Again, no action was taken by the Exchange to enforce compliance with the Rule despite the fact that the violations were flagrant and repeated, resulting in the withdrawal of the stock from listing in 1949 by order of the Commission pursuant to proceedings under Section 19(a)(2) of the Exchange Act. See Reorganized Carrie Silver Lead Mines Corporation, supra, 29 S.E.C. 49, (1949).

Consolidated Virginia Mining Company

16. The record shows that during October 1956 Consolidated acquired Hampton Mining Company by issuance and distribution of 12,475,375 shares of Consolidated stock directly to the shareholders of Hampton in exchange for their Hampton stock. No current report of this transaction was filed within ten days after the event, as required by Rule 13a-11 and reporting Form 8-K thereunder. In February 1957 the Commission instituted delisting proceedings under Section 19(a)(2) of the Exchange Act against Consolidated. Thereafter, Consolidated filed the overdue annual report for 1956 on May 20, 1957, containing ironically, the following significant disclosure: "The registrant

is reporting herein certain previously unreported transactions subject to Form 8-K during 1956." This statement of course referred to the Hampton acquisition described above, thus indicating an admission of violation by the issuer of the reporting requirements mentioned, plus actual notice to officials of the Exchange of such violation. Nevertheless, the evidence shows that respondent took no action, disciplinary or otherwise, and merely awaited the outcome of the proceedings by the Commission which resulted in a delisting order in February 1960. (See Consolidated Virginia Mining Company, supra, 39 S.E.C. 705.)

17. The record also shows repeated violations of Rule 13a-1 by Consolidated in its failure to file annual reports for the calendar years 1953, 1955, 1957 and 1958 with delinquencies ranging from one to seven months - notwithstanding receipt of warning letters from the staff of the Commission, thus compounding the violations described.

18. Finally, by reason of the repeated and flagrant delinquencies in the filing of required reports by Consolidated and a number of other listed issuers, certain members of the Commission's staff conferred with Carter and Flach with a view to securing the cooperation of the Exchange and its officials in correcting the situation which, by that time, had become a matter of deep concern. As a result of these discussions a detailed chart containing a summary of the reporting obligations of listed issuers was prepared by the staff and 100 or more copies

thereof furnished to the Exchange for distribution to its members and listed issuers, together with transfer agents, attorneys and others concerned. However, notwithstanding this effort to achieve compliance, the results were negligible.

Apex Minerals Corporation

19. The record shows that Apex filed a current report on Form 8-K for the months of January and February, 1961 on March 13, 1961 stating that a proposed recapitalization and merger with two other corporations, with Apex as the surviving corporation, would be submitted for stockholder approval at an annual meeting to be held on March 20, 1961. The plan involved a reverse split of the Apex stock and an increase in its par value from 10¢ to $1 per share; also an increase in the authorized capital and issuance of a half million shares of new Apex stock for the purpose of acquiring Interstate Oil and Development Corporation (Interstate) and Churchill Exploration Corporation (Churchill) in effectuation of the proposed merger with these companies.

20. The current report above mentioned included a proxy statement which did not contain required financial statements of the two companies to be acquired. Upon examining the report, Carter advised Apex of the absence of the financial statements but failed to take any other action. Subsequently, the 8-K report for March, aforesaid, was amended on June 25, 1962 in which it was disclosed that said proxy statement had not been submitted to the Commission prior to its use, as required by

Regulation 14 under Section 14(a) of the Exchange Act. On April 10, 1961 Apex filed an additional 8-K report stating that the stockholders had approved the merger but again the financial statements of the two companies to be acquired were omitted.

21. In view of these deficiencies, Carter wrote to Apex on April 1, 1961 requesting that the financial statements be supplied, whereupon Apex forwarded certain financial data, consisting of an uncertified balance sheet for Interstate dated December 31, 1960 only, and a certified financial statement dated December 31, 1959 for Churchill, together with an uncertified balance sheet dated April 14, 1961. Despite the admitted inadequacy of the material supplied, the Mining Exchange again took no further action.

22. The record shows and it is not disputed, that under Rule 14a-6 of Section 14 of the Exchange Act, as noted above, all proxy material must be submitted to the Commission prior to its use so that the use of this material by Apex without such submission is clearly a violation of said section and rule. Moreover, Form 8-K requires an issuer, in reporting a merger with or acquisition of other companies, to file current balance sheets for such company, together with profit and loss statements for the three most recent prior years. Thus, under the circumstances related, it is clear that the financial statements for Churchill and Interstate failed to meet the requirements of Form 8-K under Rule 13a-11. It is also clear and the Examiner finds that the feeble efforts of the Exchange to effect compliance here with the

applicable Rules and Regulations of the Commission fall far short of what was reasonable and necessary under the circumstances.

Ambrosia Minerals, Inc.

23. The record shows that Ambrosia filed an application for registration on May 11, 1956 and submitted financial statements certified by one Hinton W. Haynes, secretary-treasurer of the corporation. Under Rule 12b-2 of the Exchange Act, financial statements filed in connection with an application for listing are required to be certified by an independent public accountant and inasmuch as Haynes was an officer of the company, it is obvious that his certification failed to comply with the rule and is therefore in violation thereof.

24. Moreover, the record shows that Flach and Carter were both acquainted with officials of Ambrosia at the time application for listing was made. Furthermore, Flach received from such officials an option to purchase 6,000 shares of Ambrosia stock at $1 per share - after the application for listing had been filed but prior to its approval and certification. It also appears that no consideration was given by Flach for said option. On June 11, 1956 the stock opened for trading at $1.25 per share and a few days later Flach exercised his option to the extent of 2,000 shares.

25. The testimony shows, and it is not disputed, that Flach examined both the application of Ambrosia for listing on Form 10 and

also an 8-K current report for July, 1956, but did not take note that the financial statement had been certified by Haynes as an independent accountant whereas, in fact, he was, as noted, an officer and part of the management of the corporation. In view of Flach's experience of over twenty years as President of the Exchange, such an oversight was at best grossly negligent and is not helped by his acceptance and exercise of a gratuitous option at the time the application was being considered and acted upon by the Exchange.

Eureka Company

26. The above listed company failed to file an annual report for the calendar year 1955 and since there is no explanation or extenuating circumstance of record it is clear, and the Examiner finds, that such omission resulted in a violation of Section 13a of the Exchange Act and Rule 13a-1 thereunder. An issuer's failure to file an annual report also, of course, placed the Exchange on notice of the violation. In addition, the record shows that the Exchange received warning letters from the staff of the Commission calling attention to the above violation, and notwithstanding took no action whatever to enforce compliance. Moreover, and despite such violation, the Exchange subsequently approved a supplemental application by Eureka for listing an additional 2,000,000 shares of its stock. Shortly after this event, however, the Commission instituted proceedings under Section 19(a)(2) of the Exchange Act which resulted in an order delisting the stock in July 1958.

27. Under the circumstances related, the failure of the Exchange to take action to enforce compliance with the reporting requirements of the Commission's Rules and Regulations, together with its approval of an additional listing by this company in the face of the violation cited, is further evidence of the utter failure and neglect of the Exchange to live up to its obligation to enforce compliance by issuers of listed securities with the applicable Rules and Regulations under the Exchange Act. In addition, further evidence of reporting violations was adduced in respect of two other companies, namely, Comstock, Ltd., and Industrial Enterprises, Inc.; but, since these companies are also charged with fraud and deceit allegedly perpetrated both by officials of such issuers and by certain members of the Mining Exchange, it is deemed appropriate to consider below such reporting violations together with the allegations of fraud.

Fraudulent Activities of Certain Listed Issuers and Members of the Exchange

Comstock, Ltd.

28. The evidence shows that the above-named corporation had been inactive and practically dormant for a considerable period of time prior to 1954 and that a large amount of its common stock was owned by a decedent estate administered by the Wells Fargo Bank of San Francisco. The stock of the company was not then listed on the Exchange and some time during 1954 Chevrier purchased a block of 200,000 shares through

the Wells Fargo Bank at a price of approximately $7,000, representing less than one cent per share. The testimony further shows, and it is not disputed, that the corporation had virtually no assets of substantial value at the time of Chevrier's purchase and that the company's capitalization consisted of 1 million shares of authorized common stock of which 700,000 shares were then outstanding in the hands of approximately 300 stockholders.

29. After making the above-mentioned purchase Chevrier acquired an additional 100,000 shares in the over-the-counter market at various prices ranging from 3¢ to 10¢ per share, with the result that his ownership totalling 300,000 shares gave him assured working control, and enabled him to proceed immediately to reorganize the management of the corporation, making himself president and Carter vice president and director.

30. Application for listing Comstock, prepared by one Ralph Tucker an attorney of Reno, Nevada, was thereafter filed in the fall of 1955. Certain difficulties arose in connection with the application on Form 10 whereupon Carter, at Chevrier's request, prepared a Form 8-K Amendment with the view of correcting the deficiencies in said application. For his services in this and related matters Chevrier awarded Carter 10,000 shares of stock. Thus, the evidence shows that Carter acted in dual capacities, to wit: by participating in the preparation of an application for listing by an issuer in which he had a substantial interest and, at the same time, as one of the principal officers of the

Mining Exchange and a member of its Stock List Committee, by reviewing and "processing" the same application to ready it for approval by the Governing Committee of the Exchange which registered the stock for trading on or about November 19, 1955.

31. Shortly after acquiring effective control of Comstock Chevrier secured a lease on a quick silver mine located in Cloverdale, California, and in connection therewith advanced to the corporation $45,000 for operation of the property, receiving in consideration thereof, 285,000 shares of the company's stock. The operation of the mine proved unprofitable, however, and it was later shut down. During the period of operation it should be noted that Carter acted as pay master for the company.

32. Some time after the shutdown of the mine and in the fall of 1956 one David Alison, who was then engaged in the production and marketing of charcoal in California, inquired of Chevrier whether he would be interested in effecting a merger between Comstock and the Country Club Charcoal Corporation (Country Club) which was operating his charcoal business. Alison represented to Chevrier that Country Club was specializing in the production and sale of charcoal briquettes which had developed into a tremendous market through the current fad for outdoor cooking by home owners throughout the country, and that the company had already acquired timber rights on several thousands of acres in California and already had facilities in operation for production of charcoal. As a result of these representations,

Chevrier agreed to the merger, which was arranged during December 1956. Under the merger agreement, it was planned to have Comstock increase its authorized capitalization from 1 to 2½ million shares of common stock, of which 1½ million would be issued for acquisition of Country Club.

33. In addition to Chevrier and Alison, the testimony shows that Carter was also present at the meeting, at which the terms of the merger were agreed upon, and that Carter agreed to serve as director of Comstock until a group headed by Alison had succeeded to the control of that corporation in pursuance of the merger. Carter continued to serve, however, until much later, when he resigned in September 1957.

34. During Carter's service as director of Comstock and in June 1957 Comstock made application for the supplemental listing of the above-mentioned 1½ million shares of Comstock issued for acquisition of Country Club and in connection with such application represented that the 1½ million shares was exempt from the registration requirements of the Securities Act on the ground that such shares had been issued and distributed under agreements that they be held by the purchasers for investment. Despite the large number of shares involved and his long experience as Secretary of the Mining Exchange, Carter accepted the claim of exemption at face value and admitted in his testimony that he took no precautionary steps to prevent the resale of the stock in possible distribution in circumvention or violation of the registration provisions of Section 5 of the Securities Act.

35. It will be remembered that prior to the proposed merger with Country Club, Chevrier had acquired 200,000 shares of Comstock from the Wells Fargo Bank plus 100,000 shares in the open market and had subsequently received 285,000 shares in consideration of his advances to the company for acquisition and operation of the Cloverdale quick silver mine, making total holdings of 585,000 shares out of 700,000 then outstanding and giving Chevrier undisputed control of the corporation. Pursuant to a letter contract with Alison dated December 12, 1956 (DX-19) in connection with the proposed merger, Chevrier transferred to Alison and five other individuals a controlling block of 500,000 shares of Comstock for a total consideration of $125,000 at 25¢ per share represented by six promissory notes dated January 1, 1957 and payable December 31, 1957. These notes were made by Alison and said other persons, each of whom allegedly purchased 90,000 shares for $22,500 (at the contract price of 25¢ per share), with Alison taking the remainder of 50,000 shares for $12,500 - making up the total of 500,000 shares (DX-18). Under the terms of the contract the shares were to be held in escrow by H. Ward Dawson, attorney for Alison, pending execution of the contract. The purchase and escrow agreement further provided that the purchasers had the option either of paying the notes when due or returning the stock to Chevrier. Thus, the effect was to give the purchasers or transferees only a one-year option on the stock which could not be considered actually sold until the stock had been paid for, leaving Chevrier still the beneficial owner thereof.

36. In its current report on Form 8-K for February 1957 dated March 11, 1957 and filed with both the Commission and the Exchange

Comstock reported the above described transactions as a sale of 500,000 shares by Chevrier to six purchasers with the obvious purpose of indicating that neither Chevrier nor Alison nor any of the six purchasers would be the beneficial owner of 10% or more of the corporation's stock then outstanding. 1/

37. It is clear, however, that Carter, who later became escrow agent under the purchase agreement, knew of the conditional "sale" of the 500,000 shares and that the 8-K Report, above mentioned, was false and misleading in reporting the transaction as a sale whereas in fact it was only an option; also that under such circumstances Chevrier still remained the beneficial owner of well over 10% of the outstanding securities of Comstock, a fact that, in itself, required disclosure under both Sections 13(a) and 16(a) of the Exchange Act together with Rules 13a-11 and 16a-1 thereunder. Additionally, the transaction resulted in other liabilities in connection with subsequent events involving the resale of the optioned stock under circumstances indicating a violation of Section 5 of the Securities Act as hereinafter described.

1/ The form 8-K report, supra, states in part:

Item 1 - Changes in Control of Registrant.

> A. H. Chevrier did finalize by private transaction the sale of 500,000 shares of the stock of this corporation to six different persons and A. H. Chevrier has been instructed to file Form K reporting said sale. No person, therefore, holds at the present time 10% or more of registrant's shares. (Emphasis added.)

38. In any event, it is obvious of course that the filing of the false and misleading report of Chevrier's holdings was in violation of the provisions above mentioned. Indeed, the Commission has repeatedly held that the requirement that reports be filed necessarily embodies the requirement that such reports be true and correct. See Great Sweet Grass Oils Limited, 37 S.E.C. 683, 684 (1957), Aff'd 256 F 2d 893 (C.A.D.C. 1958) and cases cited. Again, the fact that Chevrier and Carter were both officers of Comstock and were also members and principal officers of the Mining Exchange at the time the foregoing transactions and subsequent filings were made, clearly establishes their participation and complicity in the violations indicated and the Examiner so finds.

39. In addition to the foregoing, the evidence shows that under date of February 4, 1957 Comstock distributed to its stockholders, "By order of the Board of Directors," a mimeographed letter (DX-6) headed "To the shareholders of Comstock, Ltd.," which letter described in glowing terms the merger with Country Club and the operation and business prospects of the charcoal business. Attached to said letter there were an uncertified balance sheet of Comstock as of December 31, 1956 as Exhibit I, a balance sheet reflecting the acquisition of Country Club as Exhibit II, and a "Pro forma balance sheet of production of charcoal as projected for the 1957 season" as Exhibit III. A copy of said letter was received by the Mining Exchange and came to the attention of Carter as Secretary who admitted reading the letter and placing it in the Exchange files. Carter also admitted that he was

still serving as a director of Comstock at the time but claims he had not participated in any action of the Board of Directors authorizing distribution of the letter since he considered himself a director of Comstock in "name only" and had assumed that the letter had been prepared and sent to stockholders through action of the new management of Comstock under Alison - particularly since the letter dealt in large part with a description of the charcoal business which was under Alison's direction. In any event, the letter contained a glowing description of the charcoal operation in terms that should have aroused Carter's suspicion but apparently did not. The following excerpts are illustrative:

* * *

> "The prize plum however is the 270,000 cords of live oak wood which is under contract for $1.50 per cord, but which the company is assured it could turn over without cutting for a profit of $1.00 per cord."

* * *

> "The reserves of live oak would represent, therefore, in gross charcoal and briquettes values, almost $20,000,000.00.
>
> "The cost figures on Exhibit III (pro forma profit and loss statement) have intentionally been doubled in order to provide for all contingencies. Even so, your company looks forward to a net profit in excess of $50,000.00 a month from charcoal operations."

* * *

> "This company's quicksilver operation in Cloverdale has, as you know, been shut down for many months. The directors have made a reappraisal of the situation and intend within the near future to put the Cloverdale Quicksilver Mine back into operation. Reports from qualified persons lead your directors to believe that the quicksilver operation should be as profitable as the charcoal business."

The record shows, and it is not disputed, that the claim for "a net profit in excess of $50,000 per month" was without any reasonable basis in fact and that the estimate of timber reserves valued at $20,000,000 upon conversion into charcoal was equally visionary, as the unsuccessful results of the operation and need of further financing (as will appear more fully below) indicated. Carter also admitted that he was not aware of any plans to reactivate the quick silver mine.

40. Moreover, in addition to the letter to stockholders, the record shows that Carter as Secretary of the Mining Exchange received a pamphlet which was referred to in the testimony as a "brown brochure" (in evidence as DX-20) titled "Charcoal - a report on one of the fastest growing industries in the country," and containing virtually the same representations as the letter to stockholders regarding the assets, operations and anticipated profits of Comstock. Carter admitted reading this brochure, but stated that he believed the representations made and again took no action to ascertain its purpose or to whom it was being distributed and also did not bring it to the attention of the Governing Committee.

41. In this connection, it is also worthy to note that in addition to a description of the operations and prospects of Country Club the "brown brochure" stated that under the merger Comstock would have the benefit of the supervision and guidance of Colonel T. R. Gillenwaters, "an industrial counsel and attorney with a string of organizational triumphs to (sic) his record." In his testimony regarding this matter Carter admitted that Gillenwaters was not even connected

with the company at the time indicated - having severed whatever connection he had ever had with the company some time previously.

42. In any event the evidence further shows that the brown brochure had been and was being distributed by H. Carroll & Co.(Carroll), a broker-dealer firm headed by Howard P. Carroll, with headquarters in Denver, Colorado and a branch office in Beverly Hills, California. Early in 1957 it appears that Howard P. Carroll, aforesaid, had communicated with Chevrier and informed him that his firm was presently making a market in the Comstock stock and asked Chevrier what his intentions were regarding the balance of his holdings which then amounted to approximately 150,000 shares, following delivery of 500,000 shares to Alison and his associates, as described above. Chevrier assured Carroll that he intended to retain these holdings for himself and family; whereupon Carroll further revealed that his firm had already distributed to the public substantial amounts of the stock which he had obtained from Alison and his associates and that these shares were being sold principally through his Beverly Hills office.

43. Upon receiving this assurance from Chevrier and to facilitate his distribution operations, Carroll immediately began to place orders with Chevrier to purchase shares of Comstock on the Mining Exchange. As a result, the evidence shows that during the period March 1 to July 31, 1957 158,000 shares of Comstock were traded on the Mining Exchange and that from March 5 to June 20, 1957 alone, Chevrier

purchased a total of 88,100 shares on the Exchange for the account of Carroll at prices ranging between 25¢ and 36¢ per share, indicating a market rise of more than 40% in a period of only slightly more than two months - without any developments in the history and operations of Comstock that could reasonably be considered a basis for such rise. The inference therefore would appear to be justified that the market behavior of the stock resulted from the manipulative activities of Chevrier and Carroll. Moreover, as will appear more fully below, the record shows that the Carroll distribution was made by use of misleading sales literature including the "brown brochure" and the letter to stockholders, supra, and by what are generally known in the industry as "boiler room" methods.

44. It is obvious, of course, that Chevrier's motive for collaborating with Carroll stemmed from his purpose and intent to recoup the substantial investment he had made in Comstock, particularly the $45,000 advance for the unsuccessful quick silver mining operation. Thus, his participation with Carroll in the market operations in Comstock on the Mining Exchange by transactions in Comstock for his own and Carroll's account, with knowledge, and for the purpose, of facilitating the over-the-counter distribution to the public by Carroll - plus the fact that a further source of Comstock shares was the 500,000 share block held in escrow but made available to Carroll by the Alison group which then controlled Comstock - clearly resulted in violation of Section 9(a)(2) of the Exchange Act; such transactions having been made at a time when he

knew or had reason to believe that the effect of the transactions would be, not only to induce trading by others, but also to influence the price of the stock - as they did. See Junius A. Richards, 4 S.E.C. 742 (1939); Cf. White Weld & Co., 3 S.E.C. 466 (1938).[1/]

45. In addition to the foregoing, counsel for the Division contends, in the brief at pp. 45 to 48 inclusive, that the distribution by Carroll without registration of the Comstock securities constituted a violation of Section 5 of the Securities Act, the claimed exemption pursuant to Section 4 of said Act as a private placement of securities to holders for investment, not being applicable inasmuch as the 500,000 shares delivered to the Alison group by Chevrier was a controlling block and was immediately made available to Carroll, a broker-dealer, for resale to the public.[2/] See Robert W. Wilson, 39 S.E.C. 752 (1960); Cf. also S.E.C. v. Culpepper 270 F. 2d 241 (C.A.2, 1959).

46. Besides the above-described violation it is pointed out by the Division that since Chevrier admitted that a substantial portion of his trading in Comstock on the Exchange was for his own account, as

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1/ Chevrier's manipulative purpose and intent is further evidenced by his assurances to Carroll to retain his personal holdings of Comstock - such withholding agreements, by restricting the "floating supply" of a security, being characteristic of a scheme to manipulate the price of a stock on an Exchange. Aurelius F. DeFelice, 29 S.E.C. 595 (1949) and White Weld & Co., supra.

2/ In this regard it should also be noted that for services in connection with the acquisition of the assets of Charcoal Corporation, Comstock also granted Alison and his associates an option for 18 months to purchase 500,000 shares of Comstock stock at 25¢ per share. (See Item 9 of Comstock 8-K current report for February 1957, supra.) This of course created an additional source of control stock.

well as for the account of Carroll, and such trading having involved purchases of a security by a broker-dealer (Carroll), acting as underwriter thereof and during a distribution of the same stock to the public - aided and abetted by Chevrier, also a broker-dealer - were violative of Section 10(b) of the Exchange Act and Rule 10b-6 1/ thereunder. S.E.C. v. Scott Taylor & Company, Inc., 183 F. Supp 904 (1959); Bruns, Nordeman & Company, 40 S.E.C. 652, 660 (1951). However, inasmuch as violation of Section 5 of the Securities Act and Rule 10b-6 under Section 10(b) of the Exchange Act does not appear to have been specifically alleged in the order for proceedings in respect of the transactions in Comstock described above and no amendment of said order in such respect having been applied for, pursuant to Rule 6(d) of our Rules of Practice, the undersigned makes no findings herein in respect thereof.

47. In passing though, it might be mentioned that official notice was taken during the hearing in the instant matter, of the Commission's findings and opinion in a broker-dealer revocation proceeding subsequently brought against Carroll & Co., as reported in 39 S.E.C. 780 (1960). In said decision, on the basis of facts virtually identical with those described above, the Commission found that the Carroll distribution was not exempt from registration under the Securities Act and had been made in violation of Section 5

1/ Rule 10b-6, supra, provides, in pertinent part, that it shall constitute a "manipulative or deceptive device or contrivance" for any person who is an underwriter in a distribution of securities, or who is a broker or dealer or other person who has agreed to participate or is participating in such distribution, directly or indirectly, either alone or with one or more other persons, to bid for or purchase for any account in which he has a beneficial interest, any security which is the subject of such distribution until after he has completed his participation therein.

thereof; also, that it had been made by means of misleading and fraudulent sales literature (which appears to include the brochures referred to above) in violation of the anti-fraud provisions of Section 10(b) and 15(c)(1) of the Exchange Act, together with Rules 10b-5 [1/] and 15c1-2 thereunder.

48. In any event even though specific findings of the above-mentioned violations have not been made by the Examiner here, the record shows that the evidence upon which they were based, as described in the Division's brief referred to above, is at least relevant to the issue of the Exchange's failure to enforce compliance by its members with applicable provisions of the Federal securities laws and its own rules and regulations adopted in pursuance thereof. This is especially true in view of Carter's knowledge of the circumstances, as an officer and director of Comstock and Secretary of the Exchange and particularly of Chevrier's participation therein while a member and high official thereof - thus putting the Exchange on notice of the violations taking place and placing it under obligation to investigate the facts and take appropriate disciplinary or preventive action against the members involved. Flach as President and Carter both admitted this was not done. However, it must be acknowledged that the Exchange, in a belated effort along these lines as noted, suspended trading in Comstock on September 9, 1957 - but only after it had learned that the matter was under investigation by this Commission. Even then, the Secretary in a

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1/ Rule 10b-5, supra, as distinguished from Rule 10b-6, which is applicable principally to trading by a broker-dealer during a public distribution, prohibits any person (including a broker-dealer) from using interstate facilities or the facilities of any national securities exchange to effect transactions in any security by means of any false or misleading statement or any fraudulent device or practice.

letter during January 1958 to a New York broker, was careful to advise that the suspension would not affect trading in the security over-the-counter, thus giving encouragement to further trading despite its suspension by the Exchange for the violations described. (DX-12A and 12B).

49. In addition to the manipulative activities described, the record shows that the annual reports of Comstock for 1955 and 1956 did not contain financial statements as required by Section 13(a) of the Exchange Act and Rule 13a-1 thereunder and that this had been due to the fact that dissension had arisen between Chevrier and the Alison group with the result that Chevrier withheld and sequestered certain books of original entry for said years rendering it impossible for accountants to prepare the necessary statements. The controversy with Chevrier finally developed into a stalemate with the result that the Comstock management itself made application to remove the stock from listing on the Exchange.

50. Prior to the application for delisting, the Comstock management addressed a letter to Chevrier making demands upon him for return of the corporate records and a copy of this letter was sent to the Secretary of the Mining Exchange.[1/] Carter admitted having read the letter and stated that although he recognized that it contained serious charges against Chevrier, a member and official of the Exchange, he did not report the matter to the Governing Committee or to Flach the president. Instead, he merely filed the letter and took no further

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1/ See DX-21; Cf. also DX-22.

action. And in this regard it should also be noted that in addition to the above-mentioned letter the delisting application of the Comstock management recited as principal grounds for the inability of the issuer to comply with the reporting requirements of the Exchange Act, the wrongful withholding of records by Chevrier, which action by Chevrier was thus brought to the attention of the Governing Committee of the Exchange. The latter, however, made no investigation of the charges of misconduct against Chevrier and took no action in respect thereof.

51. Regarding the enforcement obligations of a national securities exchange, perhaps the leading court decision is the celebrated case involving defalcation and other misconduct by a prominent member of the New York Stock Exchange culminating in a suit against said Exchange to recover losses sustained by customers of the member resulting from his unlawful activities. In that case, entitled Baird v. Franklin, 141 F. 2d 238 (1944), Cert. denied 323 U. S. 737 (1944), the court held at p. 245 in pertinent part:

> "There can be no doubt that §6(b) places a duty upon the Stock Exchange to enforce the rules and regulations prescribed by that section. Any other construction would render the provision meaningless. * * * If all that §6(b) meant was that every exchange should pass token regulations, incapable of enforcement except at the wish of the exchange itself, there would have been no purpose for its inclusion in the Act. Sections 6(b) and (d) were surely intended to be read together, and the latter makes it clear that the purpose of the requirements of the former is 'to insure fair dealing and to protect investors.' This can be realized only if §6(b) is construed as imposing the twofold duty upon an exchange of enacting certain rules and regulations and of seeing that they are enforced.
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> "The Stock Exchange, therefore, was under a duty on November 24, 1937, to take disciplinary action against . . . . . for the various violations of the Securities Exchange Act and the Rules of the Exchange which it either knew of or at least had reasonable cause to suspect. Its complete inaction for some two months was a dereliction of that duty and a violation of §6(b) of the Act."
> (Emphasis added.)

52. Similarly, in another case the obligation of a national securities exchange to enforce its own rules by appropriate disciplinary action against members guilty of misconduct is set forth in Avery v. Moffett, 55 N.Y.S. 2d 215 (1945) at p.227 as follows:

> "The court is mindful of the importance of effective enforcement by Exchanges of their own rules with respect to fair trade practices. Disciplinary proceedings in the New York Curb Exchange and in other Securities Exchanges throughout the country are of vital importance to the public interest and the protection of investors. The Federal public policy as enunciated in the Securities Exchange Act of 1934 and construed by the courts does not place upon the Securities and Exchange Commission the entire burden of policing the Exchange markets, but relies in some measure upon the Exchanges themselves to assure high standards of trade and to discipline members who violate those standards. Baird v. Franklin, 2 Cir., 141 F.2d 238, 244. Moreover, securities trading is a highly complex field in which it is not always feasible to define by statute or by administrative rules having the effect of law every practice which is inconsistent with the public interest or with the protection of investors. As a result there is a large area for the operation of Exchange rules on the level of business ethics rather than law, and in that sphere the statute leaves it to the Exchanges to carry on the necessary work of prevention [through] discipline. (Emphasis added.)

53. On the basis of the evidence set forth above it is fully established and the Examiner finds that Comstock, Ltd., aided and abetted by Chevrier and Carter, violated the reporting requirements of Sections 13(a) and 16(a) of the Exchange Act, together with Rules 13a-1 and 16a-1 thereunder; that Comstock, aforesaid, together with Carroll & Co., a registered broker-dealer, aided and abetted by both of said

members of the Mining Exchange did effect distribution of Comstock common stock to the public in violation of the anti-fraud provisions of Sections 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act together with Rules 10b-5 and 15c1-2 thereunder; that said Exchange, having obtained through its Secretary and Chevrier, a member thereof, both actual and constructive notice of the violations aforesaid and, despite such notice, having failed to take appropriate action to discipline said members for such misconduct in violation of its own rules and regulations appertaining thereto under Article XXIII of its Constitution, did thereby violate Section 6(b) of the Exchange Act as charged in the Commission's order for proceedings. 1/

1/ Cf. also a recent case involving a suit against the American Stock Exchange entitled Pettit v. American Stock Exchange, 217 F. Supp. 21 (1963) wherein the court held in part (certain footnotes omitted):

"[6,7] Count 2 of the trustees' complaint arises under Section 6 of the Securities Exchange Act, which placed upon the Exchange defendant, as a condition of registration as a national exchange, the adoption and enforcement 26/ of just and equitable principles of trade. The trustees contend that had the Exchange properly carried out the obligation imposed by Section 6, that Birrell and the other conspirators could not have accomplished their scheme. The Exchange argues, as it did in the case of the first count, that the statute is designed solely to protect investors and therefore cannot be utilized to vindicate rights of the corporation that stem primarily from mismanagement of insiders. As in the case of Section 10(b), however, the statutory scheme should not be so restricted where, as here, the loss to the corporation arises from a fraudulent transaction in its (Cont'd)

26/ See Baird v. Franklin, 141 F.2d 238 (2d Cir.), cert. denied 323 U.S. 737, 65 S. Ct.38, 89 L.Ed. 591 (1944).

Industrial Enterprises, Inc.

54. The evidence shows that Chevrier during December 1960 was president and director of Best and Belcher Mining Corporation and the owner of 76,500 shares out of a total of 249,640 shares then outstanding in the hands of 73 shareholders. The company at that time had a book value of 1¢ per share with net assets of $2,943 and had been dormant for approximately twenty years. Its current assets amounted to only $609.00 with current liabilities of ten times that much in the sum of $6901.00. It was thus what the Division has aptly termed a "corporate shell."

55. At about the time mentioned one James W. Brewer, a promoter and acquaintance of Chevrier, informed the latter that he was

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securities which is successfully perpetrated through the conduct of the Exchange.

"The Exchange also argues that liability arises only when it has notice of the violations of its members. Concededly, in Baird v. Franklin, the leading case on the obligations created by Section 6, and a case on which both the trustees and the Exchange rely, it appears that the officials of the New York Stock Exchange had knowledge of violations of its rules that they then failed to enforce. However, neither Judge Augustus Hand, writing for himself and Judge Swan, nor Judge Clark, in dissent, were willing to restrict Section 6 liability to cases of actual knowledge. Thus, directly at the outset of the opinion, Judge Hand states:

> 'We accede to the view that the Stock Exchange violated a duty when it failed to take disciplinary action against . . . on November 24, 1937, after there was reason to believe that the latter had converted the plaintiffs' securities.'"

(Emphasis added.)

desirous of locating a company whose securities were listed on the Mining Exchange and which might be available for merger with one or more companies with which he was associated having assets consisting largely of discounted notes and mortgages. Chevrier suggested Best and Belcher as a possibility for the proposed merger but Brewer stated that his plans would require an authorized capitalization of about 10 million shares. Chevrier replied that he did not believe that Best and Belcher, being a California corporation, could be recapitalized in the manner desired, under California law which, in addition, would require that any new issue of stock pursuant to the merger be held in escrow for investment and thus prevent its distribution and sale to the public. As an alternative, Chevrier and Brewer decided to form a Nevada corporation and to merge the new corporation with Best and Belcher with the latter as surviving corporation in order to retain the trading rights of Best and Belcher on the Mining Exchange. The name of the corporation, however, would be changed, under said plan, to Industrial Enterprises, Inc.

56. Industrial Enterprises was duly incorporated in Nevada in October 1961 with an authorized capital of one million shares of common stock of $1 par value, of which three shares were issued and outstanding at the date of organization. Chevrier, Arnold Toews and Brewer were elected directors and at a meeting of the Board of Directors of Best and Belcher, a resolution to be submitted to stockholders, was adopted providing for immediate merger of that corporation into Industrial Enterprises, as aforesaid, on a share-for-share basis. In this regard

it should be noted that the record shows, and it is not disputed, that at the time of the proposed merger Industrial Enterprises, as well as Best and Belcher, was a mere "corporate shell" with virtually no assets.

57. During the nine-month period, from January 1 to the end of September 1961, the volume of trading in Best and Belcher on the Mining Exchange was very light, amounting to only about 5,000 shares with 3,000 shares changing hands during the month of September at prices ranging from 17¢ to 19¢ per share. During October, however, trading jumped to 72,540 shares at prices ranging from 25¢ to a high of $1.30 per share. Chevrier's purchases for his own and family accounts and as agent for certain other brokers who were not members of the Exchange, amounted to 53,740 shares during that month with sales for the same accounts totalling 44,950 shares.

58. Trading in Best and Belcher on the Mining Exchange during the month of November 1961 amounted to 68,940 shares at prices ranging from $1 per share to $1.65 per share, indicating a further rise. Chevrier's purchases of said stock for his personal and family accounts and as agent for other brokers totalled 47,100 shares with sales for the same accounts amounting to 64,140 shares. On November 27, 1961 the Best and Belcher shareholders duly approved the merger with Industrial Enterprises and notice thereof was sent to shareholders on December 8, 1961. Thereafter, the merger became effective on December 11, 1961 and the common stock of Industrial Enterprises was listed on the Mining Exchange pursuant to Rule 12a-5 of the Exchange Act in the place and

stead of Best and Belcher. Thus, it appears that the only practical effect of the merger was that Industrial Enterprises, the surviving corporation, was subject to the laws of Nevada rather than California and its stock admitted to trading on the Exchange in substitution for Best and Belcher.

59. In any event, pending completion of the merger, a total of 24,850 shares of Best and Belcher and Industrial Enterprises were traded on the Exchange at prices ranging from $1.10 to $1.75 per share, showing a continued rise in price. Of this amount, Chevrier purchased 18,300 shares for himself and the accounts heretofore indicated and during the same month sold 15,850 shares for said accounts.

60. It will be remembered that the original plans leading to the merger involved proposals by Brewer to transfer several companies which he owned or controlled, having assets consisting primarily of discounted notes and mortgages. These plans fell through, however, not being satisfactory to Chevrier, whereupon Brewer proposed the acquisition of Caloric Foods, Inc. (Caloric), a North Carolina corporation which allegedly owned certain formulas for the production of low calorie diets. Among the promoters of Caloric Foods were Dr. Alfred Smith who claimed to be a dietary expert and one Gene Jackson. The latter visited the Mining Exchange in the latter part of December 1961 and conferred with its officials with the view of assisting Chevrier in furthering his plans for the development and expansion of Industrial Enterprises upon acquisition of Caloric. Photographic slides and sample packages of merchandise were exhibited during the presentation.

61. The Board of Directors of Industrial Enterprises approved acquisition of a controlling interest in Caloric on December 28, 1961 and authorized the issuance of 750,000 additional shares to be distributed as follows: 150,000 shares to Caloric Foods, Inc., 365,000 shares to Dr. Smith, 185,000 shares to Chevrier and 50,000 shares to Arnold Toews. At the time of acquisition Caloric appears to have had 50,000 shares of common stock outstanding in the hands of about 25 shareholders.

62. Immediately after issuance of the stock for the Caloric acquisition, Industrial Enterprises made application for supplemental listing of 750,000 shares of its stock on the Mining Exchange, which application was approved January 30, 1962. No certified financial statements were submitted by Caloric, however, either in connection with the application for supplemental listing or the current report of the merger on Form 8-K for February 1962. Thus, approval of the acquisition of Caloric appears to have been effected on the basis of unaudited financial statements dated August 23, 1961, together with certain pro forma profit projections. Moreover, there is no evidence of record regarding actual production by Caloric and under the cimcumstances its acquisition was clearly a promotional venture, designed to stimulate interest and activity in its stock without evidence of substantial income or assets.

63. In any event the trading in Industrial Enterprises on February 1, 1961, a day or two after approval of the supplemental

listing, amounted to 3700 shares at prices ranging from $1.95 to $2.00 per share. The following day 3900 shares changed hands at from $1.85 to $2.25 per share.

64. Due to the unusual activity and market behavior of the stock indicated in the foregoing, Paul W. Schwarz who, it will be remembered, had been a member of the Mining Exchange for many years and had served on various committees from time to time, made a personal visit to the regional office of the Commission in San Francisco for the purpose of advising officials of the Commission regarding the trading and sudden price increases in the Industrial Enterprises stock and the further fact that Chevrier, Chairman of the Governing Committee of the Exchange at the time and its Vice President, was openly touting the stock. 1/

65. As a result of Schwarz's disclosures certain members of the Commission's staff visited the Mining Exchange on February 4, and 5, 1962 and conducted an examination of Chevrier's records for the month of January 1962. Certain unexplained discrepancies appeared in Chevrier's records and these were reported to officials of the Mining Exchange, which thereupon rescinded its approval of the supplemental listing of 750,000 shares of Industrial Enterprises on February 6, 1962. On the same date the Commission entered an order suspending trading in the stock on the Exchange pursuant to the provisions of Section 19(a)(4) of the Exchange Act.

1/ Exhibit "A" to the order for proceedings indicates that Chevrier was elected to the above-mentioned offices on January 30, 1962, but that since 1957 he had been a member of the Stock List Committee which "processed" the listing of the supplemental issue of 750,000 shares in connection with the Caloric acquisition.

66. By way of summary of the Best and Belcher-Industrial Enterprises promotion, the evidence shows that trading in the stock from September 18, 1961 to March 1962 totalled 212,540 shares at a price range of 14¢ in September 1961 to $2.25 in February 1962 and during this period Chevrier's purchases for his own and family accounts together with the accounts of brokers who were not members of the Exchange, amounted to 156,560 shares with sales for such accounts totalling 137,300 shares. During said period Chevrier appears to have purchased solely for his own account 53,590 shares and to have sold 55,340 shares. Also, in this connection it should be noted that Flach, President of the Exchange, admitted knowledge of the fact that the greater portion of the trading detailed above had been effected by Chevrier.

67. Following examination of Chevrier's accounts by the Commission's staff referred to above, and on March 25, 1962, Chevrier contacted the staff members who had conducted the examination and admitted that he had falsified his records, having concealed purchases and sales for his own accounts by reporting them as trades for customers. Upon receipt of this information the staff again examined Chevrier's trading account which he had meanwhile corrected and prepared an analysis showing that during the period from September 18, 1961 to January 31, 1962 Chevrier had made purchases for his own account of 52,890 shares instead of 34,050 shares which he had falsely recorded and sales of 48,090 shares instead of 12,740 shares as previously reported.

68. Finally, the Best and Belcher-Industrial Enterprises situation presents an outstanding example of the so-called "corporate shell game," as such activities are popularly known in the industry. For here we have Chevrier, a member of the Stock List Committee and later Chairman of the Governing Committee and Vice President of the Mining Exchange, as a director, major stockholder and controlling person of a long dormant corporation listed on the Exchange, taking on the role of principal actor in a scheme for promotion of said corporation whose stock had a book value of about 1¢ per share and involved a merger with another corporation of obvious manipulative purpose and design, as reflected in trading activities that raised the price of the stock from a low of 14¢ per share in September 1961 to about $2.25 per share in February 1962, a rise of approximately 16 times its original price at the beginning of the period, thereby enabling Chevrier and others to realize substantial profits. Indeed, Chevrier not only profited personally from his operations in said stock but also acquired a large block of additional shares of Industrial Enterprises in connection with the acquisition of Caloric.

69. Moreover, it should be emphasized that Chevrier's trading in Industrial Enterprises on the Exchange was clearly a dominant influence in the spectacular rise of the stock, such dominance being reflected in the trading analysis prepared by members of the staff, already noted, and placed in evidence as DX-57(6). Furthermore, such trading by

Chevrier, a registered broker-dealer, as a controlling person of Industrial Enterprises without compliance with the registration requirements of the Securities Act was clearly in violation of Section 5 thereof. H. Carroll & Co., Inc., 39 S.E.C. 780 (1960), supra; Gilligan, Will & Co., 38 S.E.C. 338 (1958), aff'd Gilligan, Will & Co. v. Securities and Exchange Commission, 267 F. 2d 461 (1958), cert. denied 361 U. S. 896; W. H. Bell & Co., Inc., 29 S.E.C. 709 (1949). Additionally, such trading on the Exchange by a member thereof during a distribution to the public also violated Section 9(a)(2) of the Exchange Act. White, Weld & Co. and R. J. Koeppe & Co., supra; Aurelius F. DeFelice, 29 S.E.C. 595 (1949). Likewise, Chevrier's trading in his personal holdings violated Section 10(b) of the Exchange Act and Rule 10b-6 thereunder. S.E.C. v. Scott Taylor & Company, Inc., 183 F. Supp. 904 (1959); Bruns, Nordeman & Company, 40 S.E.C. 662 (1961). See also footnote 1 on p. 54, supra.

70. Additionally, it should be noted that since certified financial statements for Caloric were not included in the application for supplemental listing nor in subsequent reports (such statements allegedly not being available) it is obvious that Chevrier could not have made adequate disclosure to his customers, to whom he admitted he sold shares of Industrial Enterprises, of the financial condition of Caloric which constituted the principal but dubious asset of the corporation. Distribution of such securities in these circumstances thus violated the anti-fraud provisions of Section 17(a) of the Securities Act and

Section 10(b) of the Exchange Act, together with Rule 10b-5 thereunder. Barnett & Co., Inc., 40 S.E.C. 521 (1961); Pinsker & Co., Inc., 40 S.E.C. 285 (1950). See also footnote 1 on p. 55, supra.

71. Finally, Chevrier's falsification of his records for the purpose of concealing the violations above described, constituted a flagrant violation of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder. P. J. Gruber & Co., Inc., 38 S.E.C. 171, 173 (1958). It has already been pointed out that the record keeping requirements under the above-mentioned rules embody the requirement that they be true and accurate. Great Sweet Grass Oils, Ltd., supra.

72. On the basis of the foregoing, the Examiner finds that Chevrier's activities described above, together with approval by the Exchange of the supplemental listing of Industrial Enterprises shares without requiring adequate financial information, clearly demonstrates a woeful lack of adequate listing standards as charged in the order for proceedings; also, that the Exchange lent its facilities to an unlawful distribution of the above-mentioned securities to the public in violation of the Federal securities laws hereinabove set forth, and thereby failed and neglected to enforce its own rules under Article XXIII of the Exchange Constitution requiring it to take appropriate action to discipline members involved in violations of said Federal securities laws, and that, as a consequence, said Exchange violated Section 6(b) of the Exchange Act. Authorities in support of the violation of Section 6(b)

of the Exchange Act have been cited in the concluding findings in respect of Comstock, Ltd., supra, and are incorporated by reference here.

Additional Instances of Violation of the Federal Securities Laws by Members and Use of the Facilities of the Exchange in Furtherance thereof due to Inadequacy of Listing Standards and Procedures

Secondary Distribution of Apex Minerals Corporation

73. The evidence shows that on March 13, 1961 the Mining Exchange received a current 8-K report for Apex covering the months of January and February of that year stating that a merger was in process between Apex, Churchill Exploration Corporation and Interstate Oil and Development Corporation, as heretofore more particularly described at pp. 38 to 40, supra; that Apex was to undergo recapitalization involving a reverse split with the par value increased from 10¢ to $1 per share and the amount of outstanding stock increased to 2½ million shares to provide for issuance of 1½ million shares of new Apex stock to acquire Churchill and Interstate, aforesaid, and an additional 1 million shares of said stock to be issued in exchange for outstanding old stock of Apex.

74. As heretofore mentioned (pp. 38 - 39, supra), the Apex proxy statement and current report of the merger failed to include current financial statements for Churchill and Interstate, whereupon the Mining Exchange requested such data but received only inadequate financial information for the companies to be acquired. Nevertheless,

the Stock List Committee of the Exchange approved an application which became effective May 5, 1961 for supplemental listing of 2½ million shares of the new Apex stock described above, together with 600,000 shares of old stock held by officials of Apex and their associates. On May 11, 1961 the Commission suspended trading in the stock pursuant to Section 19(a)(4) of the Exchange Act, such suspension remaining in effect until September 2, 1962.

75. During 1960 and prior to completion of the recapitalization of Apex, the record shows that the 600,000 shares of old Apex stock mentioned above had been issued to one Louis Sonnen and certain associates, promoters of Apex, at a cost of 8¢ per share. In fact, Sonnen was subsequently elected president and director of Apex in March 1961 (DX-37b). In early 1961 Sonnen opened a trading account with the Broy Company, a registered broker-dealer and member of the Mining Exchange for more than 25 years. Raymond A. Broy, floor trader for said firm, had been a member of the Stock List Committee, Finance Committee and Governing Committee of the Exchange since at least 1950. (See Exhibit "A" to order for proceedings.) In fact, he was a member of the Stock List Committee when it approved the supplemental listing of Apex in the face of inadequate financial information regarding two of the companies involved in the above-mentioned merger - another instance of laxity in application of listing requirements by the Exchange. Indeed, such laxity is high-lighted by the fact that at the request of counsel for Apex by letter dated April 14, 1961 the Exchange permitted trading

in the new Apex stock to commence on April 17, 1961 - more than two weeks before the supplemental application for listing had been approved, effective as aforesaid on May 5, 1961.

76. It should also be noted that the 600,000 shares of old Apex stock issued to Sonnen and associates were claimed, in the supplemental listing application, to be exempt from registration under the provisions of Section 4(1) of the Securities Act on the ground that such stock had been issued and "acquired for investment only and not for resale or redistribution." See DX-37-F.

77. After opening the account with Broy, Sonnen sold through Broy, during the period from March 22 to April 14, 1961, a total of 120,500 shares of old Apex stock and prior to approval of the supplemental listing on May 5, 1961, namely from April 17 to May 4, 1961, also sold 4275 shares of new Apex. From May 4 to May 8, 1961 Broy sold 10,100 additional shares of the new Apex stock for Sonnen, raising the total to 14,375 shares as of the latter date. (DX-38). Exemption from registration was claimed in the listing application in respect of the new Apex stock on the ground that it had been issued in connection with the merger and acquisition of Churchill and Interstate by Apex and therefore came under the "no sale" concept of Rule 133, under the Securities Act which is

applicable under certain conditions to securities acquired pursuant to a merger consolidation or reclassification. 1/

78. However, Broy, although a broker-dealer of long experience, did not question either of the claimed exemptions for Apex but relied solely upon the opinion of counsel included in the application for listing; and so far as the Section 4(1) exemption was concerned, admitted that he depended entirely upon the transfer agent to prevent resale or redistribution in violation of the "hold for investment" requirements of the rule.

79. In any event the record shows that the exemptions claimed

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1/ In Great Sweet Grass Oils Limited, et al, supra, (37 S.E.C. 689, 690) at footnote 6 commencing at p. 689, Rule 133 is summarized as follows:

'For purposes only of section 5 of the Act, no 'sale', 'offer to sell', or 'offer for sale' shall be deemed to be involved so far as the stockholders of a corporation are concerned where, pursuant to statutory provisions in the State of incorporation or provisions contained in the certificate of incorporation, there is submitted to the vote of such stockholders a plan or agreement for a statutory merger or consolidation or reclassification of securities, or a proposal for the transfer of assets of such corporation to another person in consideration of the issuance of securities of such other person or voting stock of a corporation which is in control, as defined in section 368(c) of the Internal Revenue Code of 1954, of such other person, under such circumstances that the vote of a required favorable majority (1) will operate to authorize the proposed transaction so far as concerns the corporation whose stockholders are voting (except for the taking of action by the directors of the corporation involved and for compliance with such statutory provisions as the filing of the plan or agreement with the appropriate State authority), and (2) will bind all stockholders of such corporation except to the extent that dissenting stockholders may be entitled, under statutory provisions or provisions contained in the certificate of incorporation, to receive the appraised or fair value of their holdings.'

for both the 600,000 shares issued to Sonnen "for investment" and the new shares issued pursuant to the merger, of which Sonnen had also acquired and sold a substantial amount, had admittedly been vitiated by the premature and untimely sales of large blocks of shares of both securities. This admission is reflected in an amended 8-K report covering the period January 1 to April 14, 1961, which report is in evidence as DX 37-M. Item 7 of said report describes the situation in substance as follows:

1. That 600,000 shares of old Apex stock had been issued to Sonnen to be held for investment under a claimed Section 4(1) exemption from registration;

2. That a portion of 300,000 shares of old Apex stock issued to Sonnen in 1960 together with a portion of 300,000 additional shares of old Apex stock issued to him on or before April 14, 1961 making up the total of 600,000 shares had been resold;

3. That the resale by Sonnen of a large number of the old Apex shares had destroyed the Section 4(1) exemption from registration and made the corporation contingently liable for violation of Section 5 of the Securities Act thus involved;

4. That exemption under Rule 133 claimed for the new Apex stock also was apparently not available due to the sales of substantial amounts of such stock immediately following the merger and likewise giving rise to a contingent liability on account thereof.

It is apparent, of course, that Broy was at best grossly negligent in effecting the transactions for Sonnen without adequate investigation of whether the stock was subject to registration inasmuch

as he himself had sold more than $50,000 worth of Apex for Sonnen's account during March, April and May of 1961-under circumstances clearly indicating that the so-called "investment stock" was involved in a possible violation of the registration requirements of the Securities Act. Cf. Skiatron Electronics and Television Corporation, 40 S.E.C. 236 (1960).

80. Although the record does not contain any testimony on the point it might be contended that the exemption for "brokerage transactions" provided by Section 4(2) of the Securities Act might have been applicable to Broy's sales of Apex for Sonnen's account. However, this exemption would not be available to a broker acting as a so-called statutory underwriter which would be the case here since the definition of an underwriter under Section 2(11) 1/ of the Act includes any person who sells for a controlling person or stockholder in connection with a distribution. Ira Haupt & Company, 23 S.E.C. 589 (1946). Indeed, the criteria to be considered under this exemption were fully developed in

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1/ Section 2(11) of the Securities Act provides in part:

> "The term 'underwriter' means any person who has purchased from an issuer with a view to, or offer or sells for an issuer in connection with, the distribution of any security, . . . but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. As used in this paragraph the term 'issuer' shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer."

the discussion of Comstock, Ltd. and Industrial Enterprises, supra, and so need not be repeated here. Broy of course had reason to believe, and indeed admitted, knowledge of the fact that Sonnen was one of the controlling persons in Apex so that sales of the large blocks described would have made him a statutory underwriter under Section 2(11) supra. Moreover, the record shows that the sales effected for Sonnen amounted to more than 25% of Sonnen's total holdings, which in turn amounted to 10% of the 6,000,000 shares then outstanding, facts which were reflected in the listing application and alone should have put Broy on notice that a distribution of unregistered stock, in the hands of a controlling person, was in progress in violation of Section 5 of the Securities Act. 1/

81. On the basis of the foregoing it is clear, and the Examiner finds, that Raymond A. Broy, doing business as The Broy Company, a member and official of the Mining Exchange, aided and abetted Louis Sonnen, a controlling person of Apex, to effect sales of Apex stock in a secondary distribution to the public of unregistered stock of said corporation in violation of Section 5 of the Securities Act and also Section 10(b) of the Exchange Act, together with Rules 10b-5 and 10b-6 thereunder. (See findings in respect of Comstock, Ltd. and Industrial Enterprises, supra.)

1/ Indeed, strong motive for the Sonnen sales through Broy may be inferred from the fact that the price of old Apex stock during the period from March 22 to April 14, 1961 rose from 17¢ to 70¢ per share - vis-a-vis Sonnen's assigned cost of 8¢ per share as stated in the Form 8-K current report for January and February 1961. (DX-37A).

Having so found, the Examiner further concludes that by reason of serious and unexplained laxity on the part of the Exchange in applying its listing standards as demonstrated by extension of its trading facilities to Apex common stock during a period of more than two weeks prior to the date when listing of said stock had been approved; and, by lending said facilities to Broy, one of its members, to effect sales of unregistered Apex stock in violation of the Federal securities laws mentioned above, the Exchange did thereby fail, refuse and neglect to enforce its rules under Article XXIII of the Exchange Constitution requiring it to discipline members for violation of such laws and thereby did violate Section 6(b) of the Exchange Act as charged in the order for proceedings.[1/]

Wilson Oil and Gas Company

82. The record shows that the above company filed an application to list its securities on the Mining Exchange on or about March 4, 1957. Said application on Form 10 disclosed that the company had been organized in Colorado in December 1956 and that H. Carroll & Co., of Denver, Colorado, a broker-dealer heretofore mentioned, acted as underwriter for distribution of 7,500,000 shares of the company's stock to

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1/ It is manifest of course that the Exchange had actual and constructive notice of the dubious claims of exemption for the Apex stock through its Stock List Committee and likewise of Broy's transactions in the stock, thus rendering its failure to take appropriate action culpable.

residents of the state of Colorado without registration under the Securities Act and pursuant to the so-called intra-state exemption allowed by Section 3(a)(11) of said Act for offerings made exclusively to bona fide residents of a single state. The underwriting, aforesaid, was completed in December 1956, at which time, according to the application, Wilson Oil & Gas Company (Wilson) had 8,500,000 shares outstanding in the hands of about 100 shareholders. Said application further indicated that Carroll & Co. owned of record approximately 5,000,000 shares of Wilson stock, which shares were beneficially owned by its customers, thus presenting a distorted picture of investor holdings.

83. Upon receipt of the listing application the Secretary of the Mining Exchange requested a list of the Wilson shareholders due to the fact that the Governing Committee had raised the question of whether the distribution of the stock was sufficiently widespread to comply with the Exchange's listing requirements. By way of response, counsel for Wilson advised by letter dated April 15, 1957 that Carroll & Co., the underwriter, was in the process of requesting all of its customers, holding Wilson stock in "street name," to make application to register their shares in their own names; and that the issuer had also instructed its transfer agent to send a certified list of shareholders as of April 15, 1957 to the Exchange. Upon receipt of this list, officials of the Exchange observed that included in a total of 148 stockholders, there were at least seven who had mailing addresses in states

other than Colorado, namely: California, Nebraska, New Mexico, North Dakota, Texas and Wyoming, thus indicating a strong possibility that the requirements of the intra-state exemption had not been complied with, rendering the exemption unavailable and indicating that the distribution had been effected in violation of Section 5 of the Securities Act. The stock list further revealed that only 18 individuals owned approximately 6½ million out of the total of 8,500,000 shares outstanding, which of course indicated very narrow distribution and dense concentration of ownership. However, notwithstanding the unfavorable factors regarding public distribution described and substantial evidence that the entire issue had been sold in violation of the registration requirements of the Securities Act, the record shows, and it is not disputed, that the Mining Exchange made no further investigation of the facts in respect of the potential violation indicated but, instead, approved the application and admitted the stock to trading on June 21, 1957.

84. It is well settled that in order to qualify for the exemption from registration provided by Section 3(a)(11) of the Securities Act the entire issue must be offered and sold to bona fide residents of a single state. See Opinion of the General Counsel of the Commission, Securities Act Release No. 1459 (1937); also, Securities and Exchange Commission v. Hillsborough Investment Corp., 173 F. Supp. 86, 87-88 (1958), aff'd sub nom. 276 F. 2d 665 (1960). Indeed, it has been held that a single sale of a security to a non-resident of the specified state of distribution renders the claimed exemption void for

the entire issue. Professional Investors, Inc., 37 S.E.C. 173 (1956), Universal Service Corp. Inc., 37 S.E.C. 559, 563-564 (1957). Moreover, it was held in the Hillsborough case, supra, that if, during a distribution and prior to its completion, the underwriter resells certain of the securities to a non-resident the exemption becomes unavailable for the entire offering since it is applicable only where the entire issue is distributed to residents within a single state. A fortiori sales to seven non-residents would surely have put the Exchange on notice that a potential violation of the registration requirements of the Securities Act had already occurred. Its approval of the listing application in the face of such facts presents another instance of flagrant laxity in the enforcement of the Exchange's own standards and rules in violation of Section 6(b) of the Exchange Act - and the Examiner so finds.

85. In any event, when the foregoing facts came to the attention of the staff of the Commission through receipt of a copy of the listing application and subsequent correspondence heretofore mentioned, a telegram was sent to the Mining Exchange on July 1, 1957 requesting that its certification of the Wilson issue be withdrawn. The Exchange immediately complied with this request and withdrew its certification the following day, July 2, 1957.

86. Finally, the careless handling of these two issues, namely, Apex and Wilson, the former by Broy, a member of the Stock List Committee,

and the latter by Carter,[1/] the Exchange Secretary, demonstrates that the Exchange became a willing tool for unloading large amounts of highly speculative securities of questionable value upon the public, and likewise a vehicle for evading and circumventing provisions of the Federal securities laws designed for the protection of investors and in the public interest.

Violation of Regulation T by the President of the Exchange

87. The evidence shows that as a result of an inspection in May 1962, by the staff of the San Francisco Regional Office, of the broker-dealer firm of R. L. Colburn & Co. which had been under the management of Flach, president of the Mining Exchange for many years, such inspection revealed 55 instances in the accounts of 33 customers in which the firm had extended credit in special cash accounts without requiring the customers to make full cash payment for their purchases within seven days, and without obtaining extensions for payment or thereupon cancelling or otherwise liquidating the transactions - all in admitted violation of Section 7(c) of the Exchange Act and Section 4(c)(2) of Regulation T, supra, promulgated by the Federal Reserve

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1/ It is regretted of course that it has been necessary to make findings in this recommended decision that are derogatory to former Secretary Frank Carter, now deceased; but the Examiner is aware of no alternative.

Board. The total of the debit balances in these accounts amounted to over $35,000 and the period of delinquency in payments ranged from one to twelve years. For example, 5 of the unpaid balances had existed for one year, 4 for 2 years, 3 for 3 years, one for 4 years, 2 for 5 years, one for 6 years and 3 for 7 years. The amounts of the unpaid balances were also substantial, ranging from $100 to about $5,000.

88. With regard to these violations it should be noted that all of the delinquent accounts had been opened as cash accounts and as already mentioned no extensions of time for payment were requested although Flach admitted familiarity with the requirements of Regulation T. His only explanation was that he intended to assume personal responsibility for payment of all of the delinquent accounts in order to protect his employer R. L. Colburn & Co., and in furtherance of that purpose notified the principals of the firm regarding extensions of credit in said delinquent accounts. Flach also admitted that, as of February 1, 1963 (while the hearing was in progress), there were additional delinquent accounts other than those revealed by the inspection of May 1962.

89. It should also be noted that enforcement of Regulation T by the Mining Exchange consisted merely of distribution of copies of the Regulation to the members by the Secretary together with a form of application to be prepared when requesting extensions of time. It was testified by Carter, however, that only about 100 requests for extensions had been received during the period of more than 25 years from

June 1, 1936 - when the Exchange's registration as a national securities exchange became effective - to the beginning of 1963. Thus, it appears that the Mining Exchange assumed virtually no responsibility worthy of the term to ensure compliance by its members with the credit regulations adopted and promulgated by the Federal Reserve Board pursuant to Section 7(c) of the Exchange Act - its president and chief executive officer being an admitted and inveterate violator thereof. Indeed, official notice was taken at the hearing of a disciplinary proceeding instituted in December 1962 against R. L. Colburn & Co. involving charges of violation of Regulation T. In its published findings and opinion in that Case, dated March 9, 1965, the Commission found that the respondent and Flach willfully violated Section 7(c) of the Exchange Act and Section 4(c)(2) of Regulation T on the basis of unlawful extensions of credit to customers which included substantially all of those mentioned above.[1/] Thus, it is apparent that the failure of the Mining Exchange to adopt procedures for discovery and prevention of violations of Regulation T contributed to such violations and furnishes yet another instance of gross neglect and malfeasance. Cf. Sutro Bros. & Co., Securities Exchange Act Release No. 7052 (1963).

1/ It should be noted that counsel for the Mining Exchange herein also represented the respondents including Flack in the Colburn case, supra.

Inadequate Organization of the Exchange

Professional Advice

90. As mentioned in the stipulation it is admitted that the Mining Exchange has not obtained the advice either of legal counsel or of a certified public accountant to advise it regarding the duties and responsibilities entailed in compliance with the requirements of the Federal securities laws. In fact, the evidence shows that the Exchange had obtained legal counsel on only two occasions prior to the institution of these proceedings, namely, in 1936, in connection with its registration as a national securities exchange and on one other occasion in defense of a suit for non-payment of rent. Moreover, it is admitted that on no occasion whatever has it retained the services and advice of a certified public accountant to assist it in evaluating financial statements included in applications for listing and in subsequent periodic reports, together with sales literature promulgated by listed issuers.

Committees and Personnel

91. Additionally, it is admitted that none of the committees other than the Governing and Stock List Committees performs any of the functions attributed to them. There are no salaried employees except Flach's brother who places quotations on the blackboard during trading hours and prepares daily quotation sheets together with monthly summaries. Carter, as previously mentioned, as Chairman of the Stock

List Committee, examines all listing applications and reviews the same orally with members of both the Stock List and Governing Committees. Carter admitted that he has had no professional accounting training or experience.

92. Flach as President of the Exchange since 1936 has served principally as the floor trading representative of R. L. Colburn & Co. and, although admittedly devoting the greater part of his time to the business of his employer and to his own personal affairs, regularly attends trading sessions of the Exchange and makes himself available for consultation regarding the day-to-day operations over which he exercises general but clearly inadequate supervision.

Discipline of Members

93. The record shows and it is not disputed that the only disciplinary action taken against any of the members of the Exchange during the past ten years consisted of imposition of a fine against Chevrier in 1961 for use of intemperate and obscene language on the floor of the Exchange, and an indefinite suspension of Chevrier in 1962 by reason of his role in the Industrial Enterprises debacle and resulting investigation by the Commission. In fact, Flach testified that Chevrier had been a serious problem to the Exchange because of his irregular conduct for at least five years prior to his suspension.

Discipline of Issuers

94. Prior to the instances already cited, the record shows and it is not disputed that the Mining Exchange has suspended trading

in listed securities on only two grounds, (1) non-payment of fees, and (2) failure to file annual reports. Such suspensions did not, however, affect over-the-counter trading by members which of course continued unabated.

95. In contrast, as previously noted in the summary of the Supplementary Stipulation (DX-2, supra), this Commission brought delisting proceedings under Section 19(a)(2) of the Exchange Act against 22 issuers named in Exhibit F to said stipulation.[1/] Significantly, these proceedings were instituted in all instances on the basis of staff charges and in no instance on the basis of any complaint or request by the Mining Exchange. The findings of violations and grounds therefor are as noted and summarized in the Supplementary Stipulation mentioned above.

96. In any event, as a result of the large number of delisting proceedings instituted by the Commission against issuers listed on the Exchange, members of the Commission staff conferred with officials of the Exchange regarding the need of certain changes in its rules and procedures to enable it to properly perform its functions as a registered national securities exchange. Following these conferences, the Commission's staff prepared and submitted in September 1957 recommendations comprising an eight-point program requiring in substance the following: (Cf. RX-5).

1/ It will be recalled that Exhibit "F" to the stipulation is identical to Exhibit F to the order for proceedings.

1. A change in the floor plan of the Exchange so as to screen the activities of its members from the public;

2. Installation of appropriate designations on the quotation board and the daily transaction sheets to identify and differentiate between operating companies, non-operating companies, and companies issuing assessable stocks;

3. The adoption by the Exchange of rules designed to enforce the reporting requirements applicable to all companies whose securities are listed on a national securities exchange under the Exchange Act, with penalties to be provided for the suspension of listed companies which fail to comply promptly with those requirements;

4. Adoption of rules by the Exchange to enable it to supervise personal trading of its members, including provisions for sanctions against members whose trading for their own accounts causes unjustified price fluctuations of a substantial nature;

5. Adoption of an Exchange policy of cooperating with the Commission by advising the Commission of management changes in listed issuers occurring by way of mergers, proxy contests, or any other unusual activity;

6. Adoption by the Exchange of a policy of promptly submitting to the Commission's San Francisco Regional Office any and all proxy material received by the Exchange or its members relating to listed companies, together with a further policy of advising the management of listed companies of the necessity of obtaining preliminary

clearance from the Commission of all proxy material;

7. Review by the Exchange of all listings with the objective of removing from listing on the Exchange of securities of dormant and inactive issuers; and

8. Improvement of the quality of listed stocks through Exchange revision of its listing standards.

97. The foregoing eight-point program for reform of the Exchange's procedures was considered by the Governing Committee and in September 1957 Carter advised the staff of the Commission by letter (RX-6) that the Exchange would endeavor to put the recommended changes into effect at the earliest practicable time, reporting progress to date. However, the intentions of the officials of the Exchange proved to be half-hearted; for virtually nothing of substantial consequence was accomplished until five years later following the Apex and Industrial Enterprise difficulties, as a result of which the Governing Committee held its first formal meeting to develop plans for implementing the eight-point program, and consulted counsel for advice and assistance. By that time the present proceedings had already been instituted.

98. Nevertheless, it should be acknowledged that during the third year after the eight points had been formulated, the Exchange effected substantial compliance with point No. 1 in June 1960 by securing more suitable quarters under a 15-year lease. Partial compliance with point No. 2 was also achieved during 1957 by designating stocks subject to assessment with an asterisk on the quotation board and in quotation

sheets. The Exchange did not, however, adopt any method to differentiate operating companies from non-operating companies because both Flach and Carter took the position that such a differentiation wasn't practicable although the record shows that virtually all of the listed issuers had been inactive for the past four or five years.

99. During 1957, partial compliance with the third point was effected by adoption of a rule providing for suspension of trading on the Exchange in the stock of issuers that had become delinquent in reporting requirements, with continued delinquency to be followed by delisting of such issues. The record shows, however, that this rule was rarely, if ever, enforced as the foregoing evidence amply demonstrates.

100. Regarding the fourth point, officials of the Mining Exchange appeared to consider the matter of trading by members for their own account as of relatively little consequence until the disclosure of Chevrier's activities in the Industrial Enterprises debacle. However, spurred on by these events the Exchange wrote a letter over Flach's signature in March 1962 to the staff of the Commission stating: "The recent developments that resulted in the Commission's suspending trading in the stock of Industrial Enterprises, Inc. has caused members to realize that drastic changes must be made in the Constitution, rules and operation of our Exchange if we are to prevent the recurrence of situations of this sort and survive as a national securities exchange." (DX-41(c)) (Emphasis added.)

101. Soon after writing this letter the Exchange adopted a rule (proposed back in 1957 but without result) providing for surveillance of trading by members by requiring the latter to file weekly reports with the Governing Committee revealing all trades for their personal account. Fines are imposed for the first, second and third offense, with 30-day and 6-month suspensions, respectively, for the fourth and fifth offense. Expulsion from the Exchange is not imposed, however, until after the sixth offense. Finally, the rule also prohibits excessive trading by members for their own personal account but no standards or criteria are included to define what would be considered excessive.

102. Notwithstanding the purported compliance with the reform program it is admitted that the Exchange has never undertaken a review of its listings with the objective of delisting the securities of dormant and inactive companies or "corporate shells" as envisioned by point No. 7; and likewise has failed to adopt any effective procedures for revision upward of its listing standards, that is to say, it continues to "process" listing applications by mere informal discussion among the members of the Stock List and Governing Committees and has sought no advice or assistance from competent members of the accounting or legal profession in the matter of analysis and evaluation thereof. Thus, it is admitted that the listing requirements have remained virtually unchanged during the past 20 years. Indeed, the only definitive listing standard having practical application appears to be the requirement of public ownership of at least 15% of an issuer's outstanding stock and

to this a rule of thumb criterion of a minimum of from 100 to 150 public shareholders is applied. As for the implementation of these rather vague minimal standards it is admitted that the Exchange has never made an independent investigation of the financial condition of an applicant for listing, nor has it, as indicated above, ever employed a public accountant to examine any of the required financial information. Indeed, the laxity on the part of the Exchange in applying such standards as it had, is illustrated by the fact that even after the eight-point reform program had been agreed upon in principle in 1957 - but only partially complied with and with indifferent results - the record shows that the Commission found it necessary to institute delisting proceedings under Section 19(a)(2) of the Exchange Act, as heretofore noted, against the following companies: Eureka Co., Verdi Development Co. in 1958, Operator Consolidated Mining Company in 1959 and Ambrosia Minerals Inc. and Consolidated Virginia Mining Company in 1960. Additionally, out of the 42 listed companies only about 7 were actively engaged in operations during the five-year period from 1957 to 1962 while 15 were inactive and dormant during this period. During 1962, 10 additional listed companies became inactive, making a total of 25 dormant listings at the commencement of the hearing in December 1962 - leaving only 17 out of the 42 listings in an active status.

103. Besides the meagerness of the Exchange's listing standards the record shows that it failed to apply even these standards in several notable instances which have already been described, namely,

Comstock, Industrial Enterprises, Apex, and Wilson Oil and Gas Corp. Thus, the four instances cited clearly demonstrate, and the Examiner finds, that the Mining Exchange applied whatever listing standards existed, in a manner that was lax, perfunctory and ineffectual.

104. Indeed, the serious consequences of the failure of the Mining Exchange to formulate and maintain adequate listing standards and to make an adequate evaluation of the promotional plans and financial condition of listed issuers - particularly those which had remained inactive for long periods - was described in the Commission's opinion in the delisting proceeding involving Operator Consolidated Mining Company, supra, where the Commission said:

> "The situation here presented is one where a dormant, insolvent corporation, whose chief value lay in the registration and listing of its stock on the Exchange, was reactivated by a group which accumulated various properties to be transferred to the registrant in exchange for large blocks of its stock. Most of the properties were undeveloped or of a speculative nature and in large measure were subsequently abandoned. The large blocks of stock issued in exchange therefor were not registered under the Securities Act and were issued without any restrictions or precautions to prevent illegal public distribution of unregistered securities, and in fact some of those shares were involved in a public distribution without the disclosures and safeguards inherent in registration under the Securities Act." Operator Consolidated Mines Company, 39 S.E.C. 580, 594 (1959).

Additionally, in the recent Special Study conducted by the Division of Trading and Markets involving the American Stock Exchange the obligation of registered national securities exchanges to enforce compliance by its members with the Exchange Act by means of its own rules and

regulations are summarized as follows:

> "The Exchange Act contemplates that the responsibility for regulation of members of national exchanges be divided between the Exchange and the Commission, the initial and direct responsibility being placed on the Exchanges themselves." (Emphasis added.)

Again, this concept was emphasized and reiterated in the staff report on Organization, Management and Regulation of Conduct of Members of the American Stock Exchange, as announced in the Special Study Market Release No. 2 (1962) as follows:

> "The entire statutory scheme contemplates self-regulation by the Exchanges with supervisory power lodged in the Commission."

And, at page 3 of Part I id., it is stated that:

> "The second regulatory technique of the Exchange Act is reliance on supervised self-regulation. This involves control of exchange markets by requiring or permitting national securities exchanges to adopt rules governing their practices and procedures and the business conduct of their members, and in each case imposes the responsibility for enforcement of these rules on the exchanges themselves. It requires exchanges, for instance, to adopt rules providing for the expulsion, suspension, or disciplining of a member for conduct inconsistent with just and equitable principles of trade; . . ." (Emphasis added.)

Judicial sanction, as already noted, has also been accorded these principles, notably in Baird v. Franklin and Avery v. Moffatt, supra.

105. Finally, on the basis of the foregoing, the evidence overwhelmingly establishes, and the Examiner finds, that the Mining Exchange, through its failure and neglect to enforce its own rules and the applicable provisions of the Securities Act and Exchange Act together with the Rules and Regulations thereunder, violated

Section 6(b) of the Exchange Act, together with the anti-fraud and anti-manipulation provisions of said Act and lent its facilities to aid and abet violations of the Securities Act and Exchange Act by others, particularly the issuers of listed securities and indeed worse, even by its own officials and members as charged in the order for proceedings.

Contentions of Respondent

106. It should be stated at the outset that the respondent interposed virtually no countervailing evidence of substantial weight in respect of the facts recited in the Supplementary Stipulation summarized in the foregoing, nor in respect of additional evidence presented by the Division to supplement such stipulated facts. Instead, it relied almost entirely upon the results of cross-examination by its able and astute counsel and a general denial of the evidence adduced to support said stipulated facts. However, it introduced what might be considered evidence in mitigation designed to establish a basis for avoidance of the ultimate sanction comprehended in the order for proceedings and to afford the Exchange a final but further opportunity to put into effect measures that would prevent the recurrence of the violations and shortcomings that have been spread upon the record of the proceedings.

107. As its first witness the respondent called Flach, President of the Mining Exchange, who endeavored to make explanation for the deficiencies in the Exchange's operations as set forth in the testimony. These explanations have been considered but in the opinion

of the Examiner, are insufficient to have any real mitigating force. In fact, his testimony did not even provide a satisfactory explanation for the Exchange's failure for a period of more than five years to effectively carry out the 8-point program of reform.

108. Indeed, Flach manifested a mildly resistant attitude about points Nos. 2 and 7 calling for designations on the Quotation Board and in monthly summaries to differentiate between operating and non-operating companies - stating that such procedure was not deemed practicable due to the fact that dormant companies might become active almost overnight making any such differentiation inaccurate. This contention is believed to be without substance, however, inasmuch as price quotations are changed almost instantly on the Board and no reason was advanced indicating that appropriate designations of the operating status of listed issuers could not be as readily kept current.

109. Additionally, much of Flach's testimony was devoted to defending himself against the charge of numerous violations of Regulation T, previously discussed. However, since the Commission in its opinion in the Colburn case, supra, has already ruled against him on these charges, based on substantially identical facts, no further mention is deemed necessary, particularly in view of the fact that counsel for respondent here represented all respondents in that proceeding including Flach, as heretofore noted.

110. By way of summary Flach admitted laxity in enforcement of the rules of the Mining Exchange and also in taking steps toward

implementation of the eight-point reform program. Regarding his own personal conduct he also admitted the late filings for Operator Consolidated Mining Company but claimed that this was due primarily to the fact that he was not then an officer of the company and was working in a shipyard in connection with the war effort. He acknowledged, however, that he was a director of Operator at the time.

111. Additionally, Flach admitted that during his term of office as President, the Mining Exchange had not retained counsel for the reason that it had not become involved in any litigation requiring such measures except on one or two occasions which did not involve its operations as a securities exchange. He also emphasized that neither he nor the Mining Exchange had ever been cited by this Commission for any violations of the Federal securities laws and that he had never been in a courtroom or legal proceeding of any kind except as a witness.

112. Finally, Flach testified that he and other officials of the Mining Exchange had prepared a list of proposed changes in its rules for submission to the staff of the Commission on July 23, 1962 - about four days prior to receipt of the Commission's order for proceedings - and emphasized that the Exchange was still willing and anxious to go forward with such a program and to comply with any other requirements which the Commission might suggest or impose as a condition of settlement or discontinuance of these proceedings.

113. In addition to Flach, respondent called Frank Carter, Secretary, who testified by way of explanation for his failure to file

reports under Sections 13 and 16 of the Exchange Act regarding his election as a director of Comstock, that inasmuch as he was listed as a director on the Form 10 application he thought it was unnecessary to duplicate the information in subsequent reports. Regarding his efforts to inform issuers of the reporting requirements of the above-mentioned sections of the Exchange Act he testified that he had prepared and distributed what he termed a "syllabus" of such filing requirements which was offered in evidence as respondent's Exhibit 14(a); and that this syllabus, together with a number of sample forms, were mailed to listed issuers and in some cases delivered by hand to their officials or their attorneys as occasion arose. Regarding the letter to Comstock shareholders (DX-6), Carter testified that after its receipt he read and filed it, but could not recall whether he showed it to Flach or discussed it with him.

114. In any event, upon hearing and review of the testimony of both Flach and Carter the Examiner is of the view that the explanations offered are insufficient to excuse or mitigate to any material extent the delinquencies admitted and established by the testimony, particularly the documentation discussed in the foregoing that remains unshaken.

115. In addition to Flach and Carter, respondent introduced oral and documentary evidence of various state and civic bodies and officials for the purpose of indicating public approval of the activities, services and functions of the Mining Exchange and urging its

continued existence, subject, of course, to enforcement of and compliance with all applicable state and Federal laws and regulations. The first witness called for this purpose was Phillip Bradley, a member of the California State Mining Board for about nineteen years and its current chairman. Bradley testified that the State Mining Board is composed of five members, appointed by the Governor of California, who serve without pay in an advisory capacity. He further stated that one Lewis Holland, an employee of the San Francisco Chamber of Commerce, had asked him to act as chairman of the Mining Committee of that organization, which thereafter held a meeting in early December 1962 at the suggestion of counsel for the respondent for the purpose of considering the charges brought by the Commission against the Mining Exchange. The meeting, aforesaid, was attended by five or six other members of the Committee together with counsel for the Mining Exchange who explained the issues involved. As a result of the ensuing discussion a resolution was adopted authorizing the president of the Chamber of Commerce to address a letter to whomever it might concern stating that it was the opinion of the Chamber that the Mining Exchange had performed a useful function for the economic development of the mining industry in California and the West for many years and that it was the consensus that it be permitted to continue to function but, of course, subject to compliance with all applicable laws and regulations. This resolution was summarized in a letter to the then Chairman of this Commission from the Chamber of Commerce dated December 12, 1962 and introduced in evidence as RX-3.

116. In addition to the resolution of the Chamber of Commerce, The California State Mining Board itself held a meeting which was attended by Bradley, who reported on various items of interest to the mining industry including the Commission's charges against the Mining Exchange. The minutes of said meeting concludes with the following paragraph:

> "San Francisco Mining Exchange: Discussed effects of closing the Exchange, as is being contemplated by the Securities and Exchange Commission. The Board authorized the following resolution: Resolved, that the State Mining Board recognizes the need and value of a Stock Exchange such as the San Francisco Mining Exchange, and is in sympathy with the furtherance of such an Exchange, provided that it operates within the regulations of the Security (sic) Exchange Commission, and that any irregularities within the Exchange be corrected."

In addition to the above resolution, Bradley testified that, from daily contact with many people in the mining industry, it was his belief that the San Francisco Mining Exchange had made a substantial and useful contribution to the financing of the mining industry in the West and urged that it be permitted to survive but, of course, under appropriate regulation. His testimony, however, was considerably weakened on cross-examination by his admission that he had made no investigation regarding the basis of the charges of misconduct by members and officials of the Mining Exchange and therefore had no first-hand knowledge thereof.

117. Nevertheless, taking into account the fact that a state public official serving without pay could not reasonably be expected to conduct a personal investigation of extensive charges by an agency of the Federal Government, his opinions, although obviously in the nature

of hearsay and therefore susceptible of some evidentiary weakness, are, notwithstanding, entitled to such weight as his long experience and general knowledge of the industry as a professional mining engineer for twenty-five years or more should warrant. Moreover, because of their spontaneity and freedom from any taint of discernible self-interest, such views should, as a matter of common every day experience, be entitled to consideration, particularly when supported as they are here by similar opinions from others.[1/] Thus, for example, Governor Sawyer of Nevada, a state close to the heart of the mining industry in the West, wrote a letter to the then chairman of this Commission dated January 9, 1963, containing similar views which, because of the high rank and office of their author, are

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1/ Needless to say, heresay evidence is clearly admissible under Section 8(c) of the Administrative Procedure Act and likewise S.E.C. and court decisions too well established to require citation.

reproduced here - a copy of the letter having been placed in evidence as RX-20, reading as follows:

"I have been informed that proceedings have been instituted by the Securities and Exchange Commission to bring about the closing of the San Francisco Mining Exchange. Because of the importance of this Exchange to the already depressed mining industry in Nevada and because of the reliance of many small mining enterprises in this state on the services of the Exchange, I am writing to request that further consideration be given before making your final decision.

"The San Francisco Mining Exchange has been in operation for almost one hundred years, and in its history, has made a unique contribution to the development of the western mining industry. Today, it is small, both in membership and volume of transactions, and the mining industry has fallen on hard times. However, the mining industry, I believe, still has a future in Nevada, as in certain other western states, and I feel that the contribution of this industry to Nevada's economic well being is still substantial. An important phase of mining in coming years will continue to be carried on by small, independent mining enterprises, and the existence of an exchange close to Nevada which can provide marketing services is of great importance to their continued well-being. The San Francisco Mining Exchange, both because of its geographical location and its specialized services, is an important aspect of Nevada and western mining.

"I understand that the San Francisco Mining Exchange has been charged with certain violations of the regulations and infractions of the rules of the Securities Exchange Commission, the seriousness of which I have no knowledge. However, should the requirements of the SEC be able to be met by the Exchange by action short of outright closing down of the Exchange, the result would be most gratifying.

Concurring opinions were expressed in a letter to said Chairman dated January 4, 1963 from the Honorable George Christopher, Mayor of San Francisco, reading in part as follows: (DX-19).

> "Without in any way wishing to appear presumptuous, or to prejudge the hearings, I wish to convey some views on the role of the San Francisco Mining Exchange in the growth and economy of San Francisco.
>
> "The City of San Francisco is the financial and corporate headquarters city of the Pacific Coast. The mining industry has played a most important part in San Francisco's reaching this position. Needless to add, the San Francisco Mining Exchange, established on September 11, 1862, has also been instrumental in San Francisco's growth by performing a much needed service in the purchase and sale of mining securities.
>
> "I, therefore, join with the San Francisco Board of Supervisors, the San Francisco Chamber of Cimmerce, and other civic organizations in requesting that in your deliberations at the conclusion of the hearings you give consideration to the many contributions the San Francisco Mining Exchange has rendered to San Francisco and the entire western section of the United States."

118. In addition, the following letter dated December 11, 1962 was addressed to former Chairman Carey by the Honorable Jack F. Shelley, Member of Congress from the 5th District (San Francisco) of California, reading in part: (DX-23).

> "For over a century the San Francisco Mining Exchange has been an intimate part of the City of San Francisco. Over the years its operations have meant much to the economic development and growth of San Francisco and the West Coast. The continued operation of the Exchange as a trading center for the purchase and sale of stock in mining corporations appears to be necessary in light of the adverse conditions facing these corporations."

Similarly, the Honorable Harold T. Johnson, Member of Congress for the 2nd District of California wrote on December 13, 1962 as follows: (DX-24)

"Dear Mr. Cary:

> "It has come to my attention the Securities Exchange Commission is currently considering the closing of the San Francisco Mining Exchange.
>
> "As the Representative of one of the largest mining areas in California, I believe that this would be a serious mistake. Although the Securities Exchange Commission has taken the position that the mining exchange is relatively small and therefore unimportant, I do believe that this is true because the mining industry of California and Nevada rely substantially on the continuation of the services of this exchange and I believe that to discontinue it at this time would impose a great hardship on the mining industry of California and Nevada."

Finally, a letter was addressed under date of December 17, 1962 to former Chairman Cary with copies to the other members of the Commission, by J. Allen Overton, Jr., Administrative Vice President of the American Mining Congress, with headquarters in Washington, D. C. The text of the letter (RX-21) is reproduced below:

> "It has come to our attention that the Securities and Exchange Commission has instituted proceedings which might result in closing the San Francisco Mining Exchange, and that hearings on the charges against the Exchange were held in San Francisco on December 12.
>
> "The American Mining Congress represents the producers of a majority of the Nation's minerals in all of the major branches of the mining industry. We are advised that a number of members of the industry are of the opinion that the San Francisco Mining Exchange has provided an important service for the mining industry for the last 100 years. We are further advised that they believe this Mining Exchange can, under proper regulation, continue to provide a valuable service in the development of mining production for the benefit of the entire Nation.

"We are enclosing a copy of the Declaration of Policy adopted by the membership of the American Mining Congress at San Francisco in September, 1962. Beginning on page 5 you will find a section dealing with 'Financing of Mining'. In keeping with that Declaration of Policy, we strongly urge that the Securities and Exchange Commission do whatever it can to preserve the operation of the San Francisco Mining Exchange -- coupled, of course, with the 'reasonable measures designed to prevent misrepresentation, misapplication of funds and bad-faith practices in the field of mining', as called for in our Declaration of Policy.

"We hope you will conclude that any errors of judgment or laxity in compliance with regulations which may have occurred in the past will not necessitate closing the San Francisco Mining Exchange, which, we are informed, has played and can continue to play an important part in the development of minerals in the West." (Emphasis added.)

CONCLUSIONS AND RECOMMENDATIONS

In sum, the evidence on behalf of respondent in the form of opinions of public bodies and officials although, as already pointed out, susceptible of the weakness inherent in all hearsay testimony, nevertheless is regarded by the Examiner as worthy of consideration - inasmuch as there is no evidence of demonstrable self-interest or any motive other than a desire, on the part of the givers of the testimony, to serve the public welfare. Perhaps the closest analogy suggested by this type of testimony may be drawn from the concept which, since time immemorial, has sanctioned the admissibility of evidence of character and reputation. For as every lawyer knows, evidence of character and reputation does not rest upon recitation of specific instances of either good or bad conduct as the case may be but, rather, upon what might even be called the rankest type of hearsay, namely, knowledge only of the reputation of a person in the community in which he lives - gleaned from the mouths of those who know him but without specific instances or

examples of his conduct. Indeed, such instances or examples, if proffered, are barred under the general rule except, of course, on behalf of the opposing party in rebuttal.[1/] Therefore, applying this criterion in a broad sense, it would seem to follow that the opinions of the public bodies and officials placed upon the record here are entitled to be considered substantial evidence at least of the reputation of the Mining Exchange as having rendered valuable service to the Mining industry in the community in which it has operated for more than 100 years.

On the other hand the evidence of misconduct by Exchange officials, as already noted, fully establishes the charges alleged in the order for proceedings. In fact, in view of the number and flagrant nature of the violations perpetrated by such officials - together with their repetition and inveterate nature - compels the conclusion that remedial action must be taken in the public interest. Indeed, there can be no serious question that all of the officials of the Mining Exchange during the past ten years or more have been guilty of some if not all of the transgressions and violations alleged against them - resulting in circumvention and defeat of the fundamental purposes of the provisions of the Federal securities laws enacted for the protection of investors. Indeed, a more pervasive and abysmal abdication of responsibility by officials of a quasi-public institution can hardly be imagined.

1/ Character evidence is of course generally applicable only to criminal trials which are not strictly relevant here except a fortiori.

Moreover, because of public confidence in the Exchange as a long established reliable institution, such officials have made of it an unsuspected tool for manipulative practices perpetrated by its members and principal officers for their own personal and unconscionable gain. And while it must be acknowledged that no evidence was introduced in this proceeding of specific losses sustained by the public (although such may well have occurred in light of the conditions revealed by the record here) this is not regarded as a substantially mitigating factor nor even a necessary element of proof, in the face of flagrant and repeated violations of law by persons, basking in what counsel for the Division has aptly termed an "aura of legitimacy surrounding a long-established quasi-public institution."

Thus, if a starkly cold and inexorable logic—that vaunted fetish of the so-called legal mind, which so often confuses the facile certitude of the syllogism with the ultimate of wisdom—were to be applied in all its rigidity here, there would of course be no alternative but to recommend that the law's extreme sanction of withdrawal of registration be ordered forthwith. But, since life itself is not always logical, and since the persons comprising the "management" of the Exchange rather than its legal entity are the real malefactors here, it is difficult for the undersigned to refrain from disassociating the human element of "management" from the <u>chartered institution</u> that is but the inanimate creature of the law. The undersigned therefore concludes, in exercise of what is believed to be due moderation, that the public interest [indeed, as here attempted to be

expressed by responsible persons of high office and by recognized professional and civic bodies] might well be served if the present officials of the Mining Exchange were accorded a further but final opportunity, under the guidance of their counsel, to reorganize the Mining Exchange in all of its functional aspects so as to present entirely new personnel in every department of management without exception - with suitable undertakings by the offending members noted in the foregoing, to disassociate themselves immediately and permanently from further participation directly or indirectly in any of the managerial functions of the Exchange, and in addition with appropriate evidence of financial responsibility in the new management; such reorganization to be accomplished within a period of 90 days from the date of the order so providing; and providing further that upon failure to comply fully with the conditions hereinabove set forth, an order be issued pursuant to the provisions of Section 19(a)(1) of the Exchange Act withdrawing respondent's registration as a national securities exchange forthwith.

Disposition of this proceeding in accordance with the foregoing is believed to be reasonable and just, under the particular and somewhat unique circumstances attending here, and it is therefore respectfully recommended.

The proposed findings submitted by the parties have been affirmed to the extent that they are consistent with the foregoing and are otherwise denied.

James G. Ewell
Hearing Examiner

Washington, D.C.
May 10, 1965

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
JUL 26 1962

APPENDIX "A"

In the Matter of SAN FRANCISCO MINING EXCHANGE	ORDER FOR PUBLIC PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 19(a)(1) OF THE SECURITIES EXCHANGE ACT OF 1934.

I

The Commission's public official files disclose that:

A. The San Francisco Mining Exchange (Exchange), an unincorporated business association is registered as a national securities exchange pursuant to Section 6 of the Securities Exchange Act of 1934 (Exchange Act), and has been so registered since October 1, 1934.

B. The officers and committee members of the Exchange for the period 1950 to date are as listed in Exhibit A hereto, which is hereby incorporated by reference.

C. The present members of the Exchange, the dates of their election to membership, the names of the firms which they represent and the functions which they perform are as stated in Exhibit B hereto, which is hereby incorporated by reference.

D. The companies listed on the Exchange; their net assets, source of income, expenses and net earnings for the periods therein stated; their shares outstanding as of January, 1962; and the number of shares traded on the Exchange during 1961; and the other Exchanges

on which such shares are traded, are as stated in Exhibit C hereto, which is hereby incorporated by reference.

E. The market value and the volume of stock sales effected on the San Francisco Mining Exchange together with certain other information relating thereto are as stated in Exhibit D hereto, which is hereby incorporated by reference.

F. The number of shares outstanding for each stock issue listed on the San Francisco Mining Exchange, the number of stockholders of record of each such issue, the number of such shares held by officers, directors, and beneficial owners of more than 10 percent of such shares and the percent thereof of the total shares outstanding, all as of the dates therein specified, are as stated in Exhibit E hereto, which is hereby incorporated by reference.

II

As a result of an examination of the public official files of the Commission and other relevant material and an investigation, the Division of Trading and Exchanges has obtained information which tends to show and it alleges that:

A. The Exchange has failed to enforce compliance with the Exchange Act and the rules and regulations thereunder by issuers of securities registered thereon, in respect to the following matters:

(1) Operator Consolidated Mining Company (Operator), of which George J. Flach, Exchange President, was President and a major stockholder, and of which Frank J. Carter, Exchange Secretary, was also

a stockholder, failed to file annual reports for the years 1942, 1943, 1944, 1945, 1946 and 1950 as required under Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

(2) Operator violated Section 13(a) of the Exchange Act and Rule 13a-11 thereunder in that it failed to report as required by such section and rule the following reportable events occurring during 1956: the levy of an assessment on its outstanding stock, a sale of stock the holders of which were delinquent in paying the assessment, and a charter amendment.

(3) Reorganized Carrie Silver Lead Mines Corporation failed to file annual reports for the years 1939, 1940, 1942, 1944, 1945, and 1946 as required under Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

(4) Consolidated Virginia Mining Company (Consolidated), of which Archie H. Chevrier, former Chairman of the Governing Committee of the Exchange and former Vice President, was a major stockholder, failed to report issuances of stock in 1956 as required by Section 13(a) of the Exchange Act and Rule 13a-11 thereunder.

(5) Consolidated failed to file annual reports for the years 1953, 1955, 1957 and 1958 as required by Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

(6) Apex Minerals Corporation (Apex) violated Section 14(a) of the Exchange Act and the rules and regulations thereunder in connection with the solicitation of proxies in 1961.

(7) Apex violated Section 13(a) of the Exchange Act and the rules and regulations in that its current report filed in April, 1961 was not responsive to the requirements of Form 8-K.

(8) Ambrosia Minerals, Inc. violated Rule 12b-2 of the Exchange Act in connection with the certification of financial statements filed with its Form 10 filed in 1956.

(9) Comstock, Ltd. (Comstock), of which the three Directors and officers were Frank J. Carter, Exchange Secretary, Arnold Toews, an Exchange member and brother-in-law of Archie H. Chevrier, and Myron Grotyohn, a friend of Chevrier, filed a false and misleading current report in 1957 in violation of Section 13(a) of the Exchange Act and the rules and regulations thereunder. The Board of Directors, constituting the above three persons, issued a letter to stockholders which was false and misleading and contained material omissions in violation of Sections 10(b) and 15(c) of the Exchange Act and Rules 10b-5 and 15c-1 thereunder.

(10) Comstock violated Section 13(a) of the Exchange Act and the rules and regulations thereunder in connection with annual reports for the years 1955 and 1956 because Chevrier rendered compliance in respect to financial statements impossible by withholding relevant company records.

(11) Eureka Company failed to file its annual report for 1955 as required under Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

B. The Exchange has failed to enforce compliance with the Exchange Act and the rules and regulations thereunder by members in that no appropriate disciplinary action pursuant to Article XXIII of the Exchange Constitution has been taken against its members in respect to the following violations:

(1) George J. Flach, Exchange President, violated the reporting requirements of Section 16(a) of the Exchange Act and Rule 16a-1 thereunder in that as President of Manhattan Gold Mines he failed to report as required thereby his election in 1949 as President of said company, the equity securities of such company of which he was the beneficial owner, and his transactions in the stock of said company occurring during the period 1949 through 1959.

(2) George J. Flach violated the reporting requirements of Section 16(a) of the Exchange Act and Rule 16a-1 thereunder in that as a Director of Operator Consolidated Mines Company he failed to report as required thereby his election in 1941 as a Director of said company, the equity securities of such company of which he was the beneficial owner, and his transactions in the stock of said company occurring during 1947.

(3) Paul W. Schwarz, Chairman of the Governing Committee of the Exchange and its Vice President, violated the reporting requirements of Section 16(a) of the Exchange Act and Rule 16a-1 thereunder in that as Vice President and a Director of Manhattan Gold Mines he failed to report as required thereby his election in 1949 to these offices, the equity securities of such company of which he was the beneficial owner, and his transactions in the stock of said company occurring during the period 1949 through 1951.

(4) Paul W. Schwarz violated the reporting requirements of Section 16(a) of the Exchange Act and Rule 16a-1 thereunder in that as Secretary, Treasurer and Director of Pony Meadows Mining Company he failed to report as required thereby his transactions in the stock of said company occurring during the period 1950 through 1960.

(5) Paul W. Schwarz violated the reporting requirements of Section 16(a) of the Exchange Act and Rule 16a-1 thereunder in that as Secretary, Treasurer and Director of Silver Divide Mines Company he failed to report as required thereby his transactions in the stock of said company occurring during the period 1953 through 1955.

(6) Paul W. Schwarz violated the reporting requirements of Section 16(a) of the Exchange Act and Rule 16a-1 thereunder in that as Secretary, Treasurer and Director of Smuggler Mining Company, Ltd. he failed to report as required thereby his election in 1958 to these offices and the equity securities of such company of which he was the beneficial owner.

(7) Paul W. Schwarz violated the reporting requirements of Section 16(a) of the Exchange Act and Rule 16a-1 thereunder in that as President and Director of Comstock-Keystone Mining Company he failed to report as required thereby his election in 1948 to these offices, the equity securities of such company of which he was the beneficial owner, and a transaction in the stock of said company occurring in 1955.

(8) Archie H. Chevrier, former Chairman of the Governing Committee of the Exchange and its former Vice President, violated the reporting requirements of Section 16(a) of the Exchange Act and Rule 16a-1 thereunder in that as President and a Director of Industrial Enterprises, Inc. he failed to report and falsely reported transactions in the stock of said company occurring during the period 1958 into 1962.

(9) Archie H. Chevrier violated the reporting requirements of Section 16(a) of the Exchange Act and Rule 16a-1 thereunder in that as the beneficial owner of more than 10 percent of the equity securities of Pony Meadows Mining Company he failed to report as required thereby his acquisition of stock in this amount in 1960, the equity securities of such company of which he was the beneficial owner, and his transactions in the stock of said company occurring during 1960.

(10) Frank J. Carter, Exchange Secretary, violated the reporting requirements of Section 16(a) of the Exchange Act and Rule 16a-1 thereunder in that as a Director and Vice President of Comstock, Ltd. he failed to report his election in 1956 to these offices and the equity securities of such company of which he was the beneficial owner as required thereby.

(11) Frank J. Carter violated the reporting requirements of Section 16(a) of the Exchange Act and Rule 16a-1 thereunder in that as Director of Industrial Enterprises, Inc. he failed to report as required thereby a transaction in the stock of said company.

(12) Arnold Toews, Exchange member, and brother-in-law of Archie H. Chevrier, has violated the reporting requirements of Section 16(a) and Rule 16a-1 thereunder in that as President and a Director of Comstock, Ltd. he failed to report as required thereby his election in 1955 to these offices and the equity securities of such company of which he was the beneficial owner.

(13) Arnold Toews violated the reporting requirements of Section 16(a) of the Exchange Act and Rule 16a-1 thereunder in that as Vice President and Director of Industrial Enterprises, Inc. he failed to report as required thereby his election in 1958 to these offices, the equity securities of such company of which he was the beneficial owner, and his transactions in the stock of said company occurring during 1958.

(14) Arnold Toews violated the reporting requirements of Section 16(a) of the Exchange Act and Rule 16a-1 thereunder in that as Vice President and Director of Sunburst Petroleum Corporation he failed to report as required thereby his transactions in the stock of said company occurring during the period 1959 through 1960.

(15) Archie H. Chevrier, during the period when he was Chairman of the Governing Committee and Exchange Vice President, violated Sections 9(a)(2), 9(a)(4), 10(b), 11(d)(2) and 15(c) of the Exchange Act and Rules 10b-5, 10b-6 and 15c1-2 thereunder in connection with transactions in the stock of Industrial Enterprises, Inc. in 1961 and 1962. Chevrier falsified his records in 1961 and 1962 in connection with transactions in said stock in violation of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder.

(16) Members of the Exchange violated Sections 10(b) and 15(c) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder in connection with representations made to customers with respect to transactions in the stock of issuers the securities of which have been registered on the Exchange.

(17) There are incorporated herein by reference Paragraphs 1, 9 and 10 of Section A of this Article II.

C. The Exchange has violated Section 6(b) of the Exchange Act in that the Exchange has failed to enforce Article XXIII of the Constitution of the Exchange against its members for the violations set forth in Section B of this Article II.

D. The Exchange has violated Sections 6(a) and 17(a) of the Exchange Act and Rule 6a-3 thereunder in that a written notification reflecting changes effected in the form of supplemental listing application was not filed as required by such rule.

E. Withdrawal of registration of the Exchange is necessary and appropriate for the protection of investors because of the information set forth in Article I hereof and the allegations of Sections A, B, C and D of this Article II and further because:

(1) Members of the Exchange and of its Governing Committee and its officers have violated or been involved in violations of the Securities Act of 1933 and the Rules and Regulations thereunder in the following instances:

(a) Archie H. Chevrier violated Section 17(a) of the Securities Act of 1933 in connection with representations made in the offer and sale of stock of Industrial Enterprises, Inc. in 1961 and 1962.

(b) Archie H. Chevrier, as a controlling stockholder in Industrial Enterprises, Inc. in 1961 and 1962 violated Sections 5(a) and 5(c) of the Securities Act of 1933 in offering to sell, selling and delivering after sale securities of said company when no registration statement had been filed or was in effect with respect to such securities under said Act.

(c) Frank J. Carter and Arnold Toews violated Section 17(a) of the Securities Act of 1933 in issuing in 1957, false and misleading information, containing material omissions, to stockholders to promote the sale of stock in Comstock, Ltd. by H. Carroll & Co. and Archie H. Chevrier.

(d) The Exchange by approving in 1961 the listing of 2,500,000 shares of Apex Minerals Corporation issued in connection with a merger

(shareholder approval of which merger was obtained in violation of the proxy requirements of Section 14(a) of the Exchange Act and the rules and regulations thereunder) facilitated a distribution of such shares to the public without registration in violation of Section 5 of the Securities Act of 1933.

(2) The Exchange lent its facilities in 1957 to a planned distribution of the stock of Wilson Oil and Gas Company to the public in violation of Section 5 of the Securities Act of 1933 by certifying an application on Form 10 to list such securities shortly after an allegedly exempt intrastate offering under Section 3(a)(11) of the Securities Act of 1933.

(3) During the period 1934 through 1961 it was necessary for the Commission pursuant to Section 19(a)(2) of the Exchange Act to remove from listing and registration the securities listed in Exhibit F hereto, which is hereby incorporated by reference. These 27 securities constitute more than one-third of the 72 securities removed from listing on all exchanges during the same period.

(4) The Exchange is not properly organized to discharge its responsibilities as a national securities exchange. No Committee other than the Governing Committee has performed any of its functions and the Exchange has only two paid employees. The Exchange has retained no legal counsel for about 30 years and has not had adequate legal advice during this entire period.

(5) The Exchange does not have adequate listing or delisting standards. It has not delisted securities which were unsuitable for trading, and it has not enforced its delisting rule upon companies that have been delinquent in filing annual reports.

(6) The Exchange does not have adequate standards for listing additional shares and in 1962 approved an application to list additional shares of Industrial Enterprises, Inc. without obtaining any financial statements with respect to Caloric Foods, Inc., a controlling interest in which was acquired by Industrial Enterprises, Inc. for the stock issued.

(7) According to figures as of December 31, 1960 and 1961 (See Exhibit C hereto) 22 or more than half of the 42 companies listed on the Exchange are substantially inactive or dormant. Of the remaining 20 active companies, 16 have net losses.

(8) According to Exhibit E hereto, 20 of the 42 listed companies have less than 500 stockholders. In 28 companies holdings by officers, directors and beneficial owners of more than 10 percent of the outstanding stock are in excess of 20% of the outstanding stock and in 10 of these holdings by such persons amount to over 50% of the outstanding stock.

(9) In an attempt to justify its continued existence the Exchange has announced that it intends to change its status from that of a mining exchange to one dealing in industrial companies. The only way in which this has, in fact, been done is by conveying dubious industrial assets to one of the dormant listed corporations, and then

attempting to distribute and distributing substantially worthless securities to the investing public. Examples of the foregoing are the transactions of Comstock, Ltd. in 1957 and of Industrial Enterprises, Inc. in 1962.

III

In view of the allegations made by the Division of Trading and Exchanges, the Commission deems it necessary and appropriate for the protection of investors, that public proceedings be instituted to determine:

(a) Whether the allegations set forth in Article II hereof are true; and

(b) Whether pursuant to Section 19(a)(1) of the Exchange Act, it is necessary or appropriate for the protection of investors to withdraw the registration of the Exchange.

IT IS ORDERED that a public hearing on the questions set forth in Article III hereof be held at a time and place to be fixed, and before a hearing officer to be designated, by further order as provided by Rule 6 of the Rules of Practice of the Commission.

This order shall be served upon the Exchange by personal service or by registered mail forthwith.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon this

matter except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 4(c) of the Administrative Procedure Act, it is not deemed to be subject to the provisions of that section delaying the effective date of any final Commission action.

By the Commission.

Orval L. DuBois
Secretary

SAN FRANCISCO MINING EXCHANGE
OFFICERS AND COMMITTEE MEMBERS
1950 - 1962

	Year 1962	Year 1961	Year 1960	Years 1957, 1958 & 1959	Years 1955 & 1956	Years 1952, 1953 & 1954	Year 1951	Year 1950
PRESIDENT	George J. Flach (Since 12-28-39)	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -
VICE PRESIDENT	Archie H. Chevrier 1/	Paul W. Schwarz (Since 3-17-60)	- - - - -	Herman G. Frese	Paul W. Schwarz (Since 1-22-51)	- - - - -	- - - - -	R.W.Lauterwasser
SECRETARY	Frank J. Carter (Since 1-13-36)	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -
TREASURER	Raymond A. Broy (Since 1-9-33)	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -
GOVERNING COMMITTEE								
Chairman	Archie H. Chevrier 1/	Paul W. Schwarz (Since 3-17-60)	- - - - -	Herman G. Frese	Paul W. Schwarz (Since 1-22-51)	- - - - -	- - - - -	R.W.Lauterwasser
	Raymond A. Broy (Since 1-13-36)	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -
	Victor J. Herrman	Archie H. Chevrier (Since 1-14-57)	- - - - -	- - - - -	Frank J. Carter (Since 12-28-39)	- - - - -	- - - - -	- - - - -
	Walter D. Forsyth (Since 1-10-44)	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -
	Paul W. Schwarz	One Vacancy	C.G. Loewenstein	Paul W. Schwarz	Herman G. Frese (Since 1-14-52)	- - - - -	R.W.Lauterwasser	Paul W. Schwarz
FINANCE COMMITTEE								
Chairman	Raymond A. Broy*	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -
	Walter D. Forsyth*	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -
STOCK LIST COMMITTEE								
Chairman	Frank J. Carter*	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -
	Archie H. Chevrier (Since 1957)	- - - - -	- - - - -	- - - - -	Herman G. Frese (Since 1-14-52)	- - - - -	R.W. Lauterwasser*	- - - - -
	Raymond A. Broy*	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -
MEMBERSHIP COMMITTEE								
Chairman	Herman G. Frese	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	R.W.Lauterwasser*	- - - - -
	Paul W. Schwarz*	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -
	Walter D. Forsyth*	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -
COMMITTEE ON COMMISSIONS								
Chairman	Paul W. Schwarz*	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -
	Walter D. Forsyth*	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -
	Frank J. Carter*	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -

1/ Archie H. Chevrier, after having been elected on January 30, 1962, resigned as Vice President, Chairman of the Governing Committee, and a member of that Committee effective March 14, 1962. Walter D. Forsyth was elected Vice President and Chairman of the Governing Committee March 22, 1962, and when he resigned April 18, 1962, Paul W. Schwarz was named to fill these vacancies.

* These men have been on the indicated committees since at least 1950.

EXHIBIT A

EXHIBIT B
(Page 1 of 2)

MEMBERS OF SAN FRANCISCO MINING EXCHANGE

Regular Members	Date Elected	Name of Firm	Function
Apple, Samuel	7-28-61	R. L. Colburn Co.	Manager of R. L. Colburn Co., commission brokerage firm, at Ventura, California, office.
Broy, Raymond A.	10-29-28	The Broy Company	Floor trading representative of the Broy Company, commission brokerage firm.
Carter, Frank J.	1-13-36	None	Exchange Secretary. Inactive.
Chevrier, Archie H. Suspended indefinitely by the Exchange on June 26, 1962, due to S.E.C. proceedings	2-2-53	A. H. Chevrier	Floor trading representative of commission brokerage firm of A. H. Chevrier.
Flach, George J.	5-21-33	R. L. Colburn Co.	Floor trading representative of commission brokerage firm of R. L. Colburn Co. and manager of San Francisco office of Colburn Co.
Forsyth, Walter D.	7-30-41	W. D. Forsyth	Floor trading representative of commission brokerage firm of W. D. Forsyth.
Gentles, Frank	6-15-61	None	Inactive.
Herrman, Victor J.	7-1-55	The Broy Co.	Employee and floor trading representative of The Broy Co., commission brokerage firm.
Hudson, Norman 1/	6-1-44	R. L. Colburn Co.	Employed by R. L. Colburn Co., Los Angeles office.
Judge, Elmer W.	2-5-51	None	Deceased.
Mintz, Samson S.	11-21-61	None	Inactive.

1/ R. L. Colburn Company is a corporation in which Norman Hudson is a stockholder. All other member firms are sole proprietorships, having no partners.

EXHIBIT B
(Page 2 of 2)

MEMBERS OF SAN FRANCISCO MINING EXCHANGE

Regular Members	Date Elected	Name of Firm	Function
Schwarz, Paul W.	10-15-47	None	Inactive.
Toews, Arnold	8-25-60	None	Inactive.

NOTE. Most members transact business for their own personal or trading accounts. There are neither specialists nor odd-lot dealers.

Associate Members

Hogle, James E.	8-28-56	J. A. Hogle & Co.	This firm is entitled to a rebate of 50% of the regular commission but does not have representation on the floor of the Exchange.

COMPANIES LISTED ON THE SAN FRANCISCO MINING EXCHANGE

Company	Net Assets (deficit) a/	Earnings a/ Source of Income	Income	Expenses	Net Earnings (Loss)	Shares Outstanding Jan. 1962	Shares Traded On Exchange Year 1961	Other Exchanges On Which Traded
Acme Mining Co.	$ (48,408)	Stock in Trabella Mine	$ none	$ 2,030	$ (2,030)	1,124,800	75,000	
American Copper Co.	10,687	Interest Earned	159	384	(225)	600,000	3,000	
Apex Minerals Corp.	2,405,041	Sale of ore	215,965	308,789	(92,824)	2,500,000	1,522,793	
Associated Manufacturers Co., Inc.	61,254	Sheet metal fabrication	687,096	765,836	(78,740)	1,552,531	503,150	
Black Bear Industries, Inc.	(88,134) b/	Oil sales by subsidiary	1,021	22,570	(264,441) c/	499,541	14,370	
Black Mammoth Consolidated Mining Co.	103,142	Operation of civilian billets at Vandenberg AF Base d/	142,558	81,914	60,644	10,000,000	8,000	Pacific Coast
Blue Crown Petroleums Ltd.	261,815	Canadian crude oil	27,445	56,990	(29,545)	2,693,436	Listed 12/28/61	
Blue Ridge Midway Gold Mines Co., Ltd.	79,560	Oil and sale of equipment	404	24,969	(24,565)	1,500,000	-	
California Engels Mining Co.	2,696	Sale mining lease and Xmas trees	3,605	5,323	(1,718)	770,883	6,050	
Commonwealth Resources	287,850	Sale of equipment	857	1,321	(464)	2,969,675	6,000	Salt Lake
Comstock Keystone Mining Co.	(6,438)	-	none	1,176	(1,176)	1,135,000	132,500	
Comstock Tunnel and Drainage Co.	(379,842)	-	none	4,224	(4,224)	2,250,000	100,300	
Consolidated Chollar Industries	(550,614)	Sale of machinery	369	31,473	(31,104)	959,521	60,950	
Double O Timber and Mining Co.	218,566	Interest on notes receivable	3,948	11,902	(7,954)	1,029,927	59,650	
Entrada Corporation	(9,940)	Sale of assets	8,713	83,176	(74,463)	7,238,349	964,030	
Eureka Hamburg Development Co.	82,316	-	none	3,234	(3,234)	3,874,910	302,000	National
Golconda Mining Corporation	359,929	Dividends and Milling	139,333	46,593	92,740	2,000,000	19,770	Salt Lake
Gold Canyon Mines Inc.	197,803	-	none	3,683	(3,683)	2,000,000	37,500	Spokane
Goldfield Corporation	4,732,193	Sale of concentrates	3,912,498	3,418,642	493,856	4,684,488	1,525	American
Goldfield Development Co.	70,132	-	none	none	-	3,579,057	429,741	
Gold Metals Consolidated Mining Co.	278,782	Crude oil and gas	28,685	86,604	(214,976) e/	8,452,857	2,182,773	
Hercules Mines Co.	121,533	-	none	46,528 f/	-	3,543,500	1,616,300	
Industrial Enterprises Inc.	(2,944)	-	none	961	(961)	249,640	166,330	
Jack Waite Mining Co.	931,382	Share of mining profits and securities	924	57,201	(56,277)	4,453,655	29,500	Spokane
Manhattan Consol. Mines Development Co.	145,253	Oil sales g/	2,261	11,423	(9,162)	8,263,725	792,017	
*Manhattan Gold Mines Co.	221,926	Interest on loan	93	2,387	(2,294)	1,889,000	111,500	
Mt. Union Industries, Inc.	109,285	-	Not reported	-	-	13,433,220	4,167,550	
New Metals Corporation	251,930	Oil production	2,135	2,209	(74)	1,615,561	18,000	
Pony Meadows Mining Co.	(8,738)	-	none	1,170	(1,170)	1,488,653	57,000	
Red Hill Uranium Co.	345,472	Oil sales	14,035	53,705	(39,670)	6,136,897	650,200	
Rosegold Beryllium Corporation	27,806	-	none	1,283	(1,283)	1,684,551	31,170	
*Round Mountain Mines Co.	233,946	-	none	none h/	-	1,650,000	81,392	
Seventy Six Development Co.	(1,859)	See note i	none	19,995	(19,995)	10,000,000	1,725,800	
Silver Divide Mines Co.	38,187	-	none	1,175	(1,175)	1,048,203	18,500	
Siskon Corporation	640,311	Gold and silver	280,729	327,498	(46,769)	2,990,866	42,900	
Smuggler Mining Co. Ltd.	1,062	-	none	5,317	(5,317)	361,575	8,000	
Sunburst Petroleum Corporation	j/	Bankrupt 1959, discharged 1960		-	-	1,454,955	-	
Tonopah Divide Mining Co.	444,040	-	none	1,026	(1,026)	2,500,000	213,900	
*Transierra Exploration Corporation	293,599	Insurance refund	185	1,485	(1,300)	2,004,897	97,300	
Twentieth Century Fuels Inc.	652,238	Oil sales	8,010	251,464 k/	(243,454)	7,996,540	656,225	
United States Mill.& Minerals Corp.	1,660,176	Gold and silver bullion	335,914	307,459	28,455	1,814,558	367,898	
White Cape Gold Mining Co.	435,264	Sale of ore	233	49,901	(48,668)	5,533,746	3,267,998	

* Assessable

a/ Assets in most cases consist principally of capitalized expenditures on mining claims and unrecovered promotional and development costs; statements are latest available at various dates between 12/31/60 and 12/31/61.

b/ CPA refused to certify because "-- books (etc.) -- in very bad state -- do not clearly or correctly reflect correct financial condition or operations -- " (Frank Lam, CPA, 3/22/62.)

c/ Includes loss on foreclosure of mortgage and sale of assets.

d/ This source of revenue was terminated by Air Force July 15, 1961; Co. holds inactive mining claims.

e/ Includes loss on disposal of all of company's producing oil and gas properties.

f/ Development and administrative expense capitalized.

g/ Control of Co. acquired by new interests 11/27/61 (business management consultants).

h/ Company is inactive; Exchange listing, filing fees, etc. are paid by Nevada Porphyry Gold Mines, Inc., 39.97% owned.

i/ Control of Co. acquired by new interests 9/1/60 (motion picture films and super markets).

j/ Following bankruptcy, company has neither assets nor liabilities other than a possible tax liability not exceeding $8,000.

k/ Includes $208,356 loss on sale of oil and gas lease, depletion and abandonment of oil properties.

EXHIBIT C

MARKET VALUE AND VOLUME OF STOCK SALES
EFFECTED ON THE SAN FRANCISCO MINING EXCHANGE

(Calendar Years - 1951-1961)

Year	Number of Stocks Admitted to trading (As of June 30)	Market Value (Dollars)	As % of Value on all Registered Exchanges	Number of Shares	As % of Shares on all Registered Exchanges	Average Price Per Share 1/	Total No Registered Exchanges 2/	SFM Ranking on Basis of Market Value of Transactions
1951	41	625,279	.003	5,378,551	.68	12¢	15	15
1952	41	452,263	.003	5,119,416	.82	9¢	15	15
1953	41	358,763	.002	5,195,663	.82	7¢	15	15
1954	43	3,320,050	.012	20,578,575	2.07	16¢	14	13
1955	50	5,497,967	.015	23,811,367	1.96	23¢	14	13
1956	56	8,151,043	.023	31,111,168	2.87	26¢	14	11
1957	56	5,830,622	.018	24,404,416	2.28	24¢	13	10
1958	49	2,015,378	.005	14,169,387	1.08	14¢	13	11
1959	47	2,446,146	.005	19,644,953	1.22	12¢	13	11
1960	45	1,185,948	.003	11,153,372	.80	11¢	13	12
1961	42	2,893,541	.005	20,128,636	1.00	14¢	13	12

1/ Represents total market value divided by number of shares traded.

2/ Excluding the Chicago Board of Trade which, while a registered national securities exchange, is primarily a a commodities exchange. There have been no securities transactions effected on this Exchange since September 22, 1953.

EXHIBIT D

EXHIBIT E

NUMBER OF STOCKHOLDERS AND SHAREHOLDINGS OF OFFICERS, DIRECTORS AND LARGE STOCKHOLDERS OF STOCKS LISTED ON SAN FRANCISCO MINING EXCHANGE

Company	Number of Stockholders a/	Shares Outstanding Jan. 1962	Held by "Insiders" Shares b/	% of Total
Acme Mining Co.	248	1,124,800	233,200	20.7
American Copper Co.	113	600,000	352,150	58.7
Apex Minerals Corp.	2,700	2,500,000	1,126,846	45.1
Associated Manufacturers Co., Inc.	372	1,552,531	584,698 c/	37.7
Black Bear Industries Inc.	945	499,541	270,000	54.0
Black Mammouth Consol. Mining Co.	1,700	10,000,000	5,007,332	50.1
Blue Crown Petroleums Ltd.	1,428	2,643,436	325,373	12.3
Blue Ridge Midway Gold Mines Co., Ltd.	150	1,500,000	439,400	29.3
California Engels Mining Co.	1,834	770,883	116,591	15.1
Commonwealth Resources	462	2,969,675	469,100	15.8
Comstock Keystone Mining Co.	281	1,135,000	343,550	30.3
Comstock Tunnel and Drainage Co.	1,350	2,250,000	947,800	42.1
Consolidated Chollar Industries	728	959,521	936,915	97.6
Double O Timber and Mining Co.	486	1,029,927	168,800	16.4
Entrada Corp.	4,000	7,238,349	1,710,357	23.6
Eureka Hamburg Development Co.	325	3,874,910	2,210,000	57.0
Golconda Mining Corp.	1,600	2,000,000	243,775	12.2
Gold Canyon Mines Inc.	225	2,000,000	1,276,000	63.8
Goldfield Corp.	11,299	4,684,488	341,206	7.3
Goldfield Development Co.	300	3,579,057	none	none
Gold Hatale Consolidated Mining Co.	835	8,452,857	5,749,475	68.0
Hercules Mines Co.	250	3,543,500	1,550,333	43.8
Industrial Enterprises, Inc.	73	249,640	106,355	42.6
Jack Waite Mining Co.	2,400	4,453,655	1,150,800 d/	25.8
Manhattan Consolidated Mines Devel. Co.	569	8,263,725	1,515,030	18.3
Manhattan Gold Mines Co.	396	1,889,000	475,435	25.2
Mt. Union Industries, Inc.	1,900	15,433,220	1,451,234	9.4
New Hatale Corp.	228	1,615,561	331,420	20.5
Pony Meadows Mining Co.	407	1,488,653	3,000	0.2
Red Hill Uranium Co.	1,059	6,136,897	310,150	5.1
Rosegold Beryllium Corp.	351	1,684,551	1,238,327 e/	73.5
Round Mountain Mines Co.	470	1,650,000	566,020	34.3
Seventy Six Development Co.	1,025	10,000,000	6,812,400 f/	68.1
Silver Divide Mines Co.	238	1,048,203	243,000	23.2
Siskon Corp.	800	2,990,866	1,806,485	60.4
Smuggler Mining Co., Ltd.	89	361,575	62,000	17.1
Sunburst Petroleum Corp.	3,200	1,454,955	35,000	2.4
Tonopah Divide Mining Co.	2,400	2,123,349	631,831	29.8
Transierra Exploration Corp.	438	2,004,897	281,500	14.0
Twentieth Century Fuels Inc.	2,500	7,996,540	3,929,160 g/	49.1
United States Mill & Minerals Corp.	500	1,814,558	646,140	35.6
White Caps Gold Mining Co.	1,400	5,533,746	1,603,250	29.0

a/ At latest available reports, 12/31/60 - 12/31/61.

b/ From 10-K and Sec. 16 Reports.

c/ 249,664 shs. (16%) owned by Double O Timber & Mining Co.

d/ 955,000 shs. (21.4%) owned by Canadian Javelin, Ltd.

e/ 881,927 shs. (52%) owned by Double O Timber & Mining Co.

f/ 400,000 shs. (4%) owned by Black Bear Industries Inc.; 2,303,600 shs. (23%) owned by Caribbean & Southeastern Development Corp.

g/ 3,884,160 shs. (48.5%) owned by Mid-East Oil & Mining Co.

EXHIBIT F

SAN FRANCISCO MINING EXCHANGE

Securities Removed Pursuant to Section 19(a)(2) of the Securities Exchange Act of 1934

1934 - 1961

Issuer	Issue	Removed
National Silver Corp.	Common	1937
Jumbo Extension Mining Co.	Common	1938
Obra Mines Corp.	Common	1938
Rosetta Mines Co.	Common	1938
Belmont Metals Corp.	Common	1939
Mother Lode Gold Mines	Common	1939
Simon Silver Lead Mines, Inc.	Common	1939
Arrowhead Development Co.	Common	1940
Bullion Gold and Silver Mining Co.	Common	1940
Lepanto Consolidated Mining Co.	Common	1940
No. California Gold Fields, Inc.	Common	1940
Reorganized Wilson Mining Co.	Common	1942
Belmont Uncle Sam Mining Co.	Common	1943
Brougher Divide Mining Co.	Common	1943
Reorganized Booth Mining Co. of Goldfield	Common	1943
Trinity Goldbar Mining Co.	Common	1943
Acme Mining Co.	Common	1944
Aladdin Gold Mining Co.	Common	1944
Reorganized Broken Hills Silver Corp.	Common	1944
Union Consol. Mining Corp.	Common	1945
Reorganized Carrie Silver-Lead Mines Corp.	Common	1949
New Sutherland Divide Mining Co.	Common	1950
Eureka Co.	Common	1958
Verdi Development Co.	Common	1958
Operator Consolidated Mines Co.	Common	1959
Ambrosia Minerals, Inc.	Common	1960
Consolidated Virginia Mining Co.	Common	1960

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

APPENDIX "B"

DEC 6 1962

In the Matter of the SAN FRANCISCO MINING EXCHANGE	AMENDMENT TO ORDER FOR PUBLIC PROCEEDINGS PURSUANT TO SECTION 19(a)(1) OF THE SECURITIES EXCHANGE ACT OF 1934.

The Order for Public Proceedings and Notice of Hearing pursuant to Section 19(a)(1) of the Securities Exchange Act in the above matter is hereby amended to add the following paragraph (18) to Section B of Article II thereof:

> "During the period June 30, 1949 to about May 31, 1962, George J. Flach (Flach) aided and abetted violations of Section 7(c) of the Exchange Act and Section 4(c) of Regulation T thereunder by R. L. Colburn Company (Colburn) acting as a broker-dealer transacting a business through the medium of members of the Exchange, in that Colburn and Flach, singly and in concert, directly and indirectly, extended and maintained credit and arranged for the extension and maintenance to and for customers purchasing securities (other than exempted securities) in special cash accounts without requiring such customers to make full cash payment within 7 days after the dates on which said securities were purchased and without promptly cancelling or otherwise liquidating such transactions or the unsettled portions thereof."

This amendment shall be served upon the San Francisco Mining Exchange by personal service or by registered mail forthwith.

By the Commission

Orval L. DuBois
Secretary