

SECURITIES AND EXCHANGE COMMISSION NEWS DIGEST

A brief summary of financial proposals filed with and actions by the S.E.C.



Washington 25, D.C.

(In ordering full text of Releases from Publications Unit, cite number)

(Issue No. 63-4-20)

FOR RELEASE April 26, 1963

"EX PARTE COMMUNICATIONS" CODE ADOPTED. The SEC today announced the adoption of a "Code of Behavior" which will prohibit certain classes of written and oral ex parte communications between particular persons outside the Commission and Commission personnel acting in a decisional capacity. The Code relates only to ex parte communications made with respect to "on the record" proceedings, which are defined generally as proceedings where an evidentiary hearing has been ordered by the Commission. The Code prohibits ex parte communications to any Commission member, hearing officer assigned to the case, member of the staff of the Office of Opinion Writing, or legal or executive assistant to a Commission member.

The Code also prohibits any of the foregoing Commission personnel from requesting or considering unauthorized ex parte communications and requires that such communications together with all other communications which the recipient believes, in fairness, should be brought to the attention of the other participants to the proceeding, be transmitted by the recipient to the Secretary of the Commission (first, reducing it to writing, if oral) who will place it in the public file and send copies of it to all the participants. The Code provides that when the communications are made public, all participants are then permitted to request an opportunity to answer any allegations or contentions contained in them. The Commission will grant such request whenever it determines that fairness so requires.

The prohibitions extend not only to participants and their agents but also to persons who intercede in a proceeding by volunteering communications which they may be reasonably expected to know might advance or adversely affect the interest of a participant. The Code also prohibits the solicitation by participants and their agents of other persons to make unauthorized ex parte communications. Persons practicing before the Commission who make unauthorized ex parte communications may be censured, or may have their privilege to practice suspended or revoked. If a participant to the proceeding, he may also be denied the relief he is seeking if such sanction is permitted by law. Violation of the Code by any Commission employee is ground for censure, suspension or dismissal.

The prohibitions do not extend to ex parte communications which take the form of "status" requests; nor do they include (1) communications authorized by statute or Commission rule, (2) communications relating to matters which the Commission member or decisional employee is authorized by law to dispose of an ex parte basis, (3) communications made openly or on the record at scheduled hearing sessions, (4) communications made with the consent of all the participants to the proceeding, (5) communications of general significance when the person making them could not be expected to know that they might bear upon a current proceeding, or (6) communications made with respect to a private proceeding if the communicator is unaware of the pendency of the proceeding.

The Code generally conforms to a recommendation of the Administrative Conference of the United States. Neither the Conference recommendation nor the Code attempts to deal with problems of internal separation of functions, i.e., ex parte communications by members of the Commission's staff, which is a broader problem which should be considered separately. (The Code is effective June 1, 1963).

RULE AMENDED. The SEC has amended the title to Rule 12(c) of its Rule of Practice to add the word "stays" to said title and to read as follows: Filing of motions to Commission: briefs; stays. In 1962 the Commission amended Rule 12(c) to set forth the procedure whereby petitions may be made to the Commission for a stay of the effectiveness of any of its orders; and the purpose of the present amendment is to facilitate reference to this portion of the Rules of Practice.

TRI-NITE MINING SUSPENSION MADE PERMANENT. The SEC today announced the issuance of a decision under the Securities Act (Release 33-4603) making permanent its September 1962 order temporarily suspending a Regulation A exemption from registration with respect to the proposed public offering by Tri-Nite Mining Co., 405 Fidelity Bldg., Spokane, Wash., of 400,000 common shares at 50¢ per share. Tri-Nite entered into a factual stipulation and consented to the permanent suspension order.

In its decision, the Commission found that the company's offering circular was false and misleading in that it did not adequately describe the history of issuer's properties and previous exploratory and development work, and failed to disclose that the properties on which Tri-Nite's principal exploration work was to be done had originally been purchased by D. A. Newland, vice-president of Tri-Nite, for \$2,600 and resold in August 1958 for \$12,500 to Triton Mining Company, which is designated in the notification as the predecessor and affiliate of Tri-Nite, and four of whose directors are also directors of Tri-Nite. Those properties and others had been acquired by Tri-Nite from Triton in exchange for 1,500,000 shares of Tri-Nite at the time of the latter's formation in June 1962. The Commission also found that the offering circular failed to disclose that Triton and an established mining company had expended substantial sums, including funds from two previous public offerings under Regulation A totalling \$328,013, in extensive exploratory work on the property, but had failed to discover a substantial body of commercially mineable ore. In addition, no disclosure was made of the fact that a number of large, established mining companies had been permitted to examine the property at various times between 1959 and the summer of 1962 in conjunction with efforts to secure an offer to purchase or participate in the development of the property, but that no such offers

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resulted.

The Commission further observed with respect to the following statement in the offering circular: "The prospects for development of a paying mine ... are considered geologically favorable," that a qualified mining engineer testified that it is not possible, in regard to a mine dependent for substantial production on the outcome of exploration for ore bodies, to tell in advance of exploratory work whether the mine will be a paying mine; and the Commission concluded that the quoted statement in this case rested substantially on conjecture and its inclusion rendered the offering circular materially misleading. The offering circular also failed to provide financial statements of the issuer's predecessor, Triton, including statements of its cash receipts and disbursements for two full fiscal years.

SOUTHERN CO. RECEIVES ORDER. The SEC has issued an order under the Holding Company Act (Release 35-14860) authorizing The Southern Company, Atlanta registered holding company, and seven subsidiaries, to use a method of allocating the group's consolidated income tax liabilities which will give to each of the companies included in consolidated tax returns of Southern and its subsidiaries the full investment credit each company contributes to the total investment credit allowed on the consolidated returns.

MIDDLE SOUTH UTILITIES RECEIVES ORDER. The SEC has issued an order under the Holding Company Act (Release 35-14861) authorizing certain transactions in connection with the proposed merger of Mississippi Power & Light Company, a Florida company, into a newly organized company, Mississippi Power & Light Company (both subsidiaries of Middle South Utilities, New York registered holding company), organized in January 1963 for such purpose. The Florida subsidiary is engaged in the business of supplying electric service in Mississippi and all of the properties owned and operated by it are located in Mississippi. The Florida subsidiary desires to change its corporate domicile from Florida to Mississippi and, to effectuate such change, proposes to merge with the Mississippi subsidiary.

PRINCIPAL CERTIFICATE SERIES RECEIVES ORDER. The SEC has issued an order under the Investment Company Act (Release IC-3679) approving a depository agreement between Principal Certificate Series, Inc., Seattle registered face-amount certificate company, and Bankers Trust Company, wherein Principal undertakes to deposit and maintain with the Bank qualified investments and reserves as required by the Act with respect to its Series of Certificates mentioned therein.

UNLISTED TRADING GRANTED. The SEC has granted applications of the Boston Stock Exchange (Release 34-7071) for unlisted trading privileges in the common stocks of Northern Indiana Public Service, American Home Products Corporation and American Hospital Supply Corporation.

TWO DELISTING APPROVED. The SEC has granted applications of the New York Stock Exchange to delist the common stock of Motec Industries, Inc., and the common stock and 5% series A preferred stock of The New York, New Haven and Hartford Railroad Company, both effective at the opening of business on April 30, 1963. (Release 34-7071)

COMPLAINT CITES FUTURES UNLIMITED OF FLORIDA. The SEC Atlanta Regional Office announced April 23 (LR-2604) the filing of court action (USDC, SD, Fla.) seeking to enjoin Futures Unlimited of Florida, Inc., and its president, Eugene J. Dunnigan (of Coral Gables, Fla.) from violations of the Commission's net capital rule. A temporary restraining order was issued by the court, and a hearing on the Commission's motion for a preliminary injunction is scheduled for May 3, 1963.

EKCO PRODUCTS FILES FOR SECONDARY. Ekco Products Company, 1949 North Cicero Ave., Chicago, filed a registration statement (File 2-21348) with the SEC on April 22 seeking registration of 80,000 outstanding shares of common stock, to be offered for public sale by the holders thereof through underwriters headed by Lehman Brothers, One William St., New York. The public offering price (maximum \$30 per share*) and underwriting terms are to be supplied by amendment. The company is primarily engaged in the manufacture and sale of housewares, bakers pans, builders hardware and rigid aluminum foil containers. In addition to certain indebtedness and preferred stock, it has outstanding 2,691,185 shares of common stock, of which management officials as a group own 9.23%. Arthur Keating is board chairman and Robert C. Sabini is president. The selling stockholders, Continental Illinois National Bank and Trust Company of Chicago, as trustee under the Ekco Security and Profit Sharing Plan, Mortimer Marder, a director, and Laura Jane Marder, propose to sell 50,000, 15,000 and 15,000 shares, respectively, of 101,918, 29,210 and 43,716 shares owned, respectively.

SECURITIES ACT REGISTRATIONS: Effective April 25: The Emerson Electric Manufacturing Co. (Files 2-21207-2-21211). Effective April 26: Columbia Broadcasting System, Inc. (File 2-21311); The Gillette Company (File 2-21205). Withdrawn April 24: National Telepix, Inc. (File 2-20621); and April 25: Eagle's Nest Mountain Estates, Inc. (File 2-21279).

*As estimated for purposes of computing the registration fee.

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