

# 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.

FOR RELEASE December 17, 1956

## Statistical Release No. 1423

The SEC Index of Stock Prices, based on the closing prices of 265 common stocks for the week ended December 14, 1956, for the composite and by major industry groups, compared with the preceding week and with the highs and lows for 1956, is as follows:

	<u>(1939 = 100)</u>		<u>Percent Change</u>	<u>1956</u>	
	<u>12/14/56</u>	<u>12/7/56</u>		<u>High</u>	<u>Low</u>
Composite	343.7	346.0	- 0.7	366.2	319.0
Manufacturing	441.0	443.9	- 0.7	468.6	398.6
Durable Goods	425.0	427.5	- 0.6	437.6	369.4
Non-Durable Goods	456.1	459.5	- 0.7	500.8	425.2
Transportation	314.8	318.9	- 1.3	353.0	303.2
Utility	151.9	152.4	- 0.3	161.5	151.6
Trade, Finance & Service	288.3	290.8	- 0.9	325.5	290.7
Mining	362.7	365.4	- 0.7	383.2	326.8

## Investment Company Act Release No. 2458

The SEC has issued an order granting an application of National Aviation Corporation, New York investment company, for exemption from the Investment Company Act with respect to its acquisition of 15,000 shares of the \$1 par Common Stock of Northeast Airlines, Inc., during the existence of an underwriting syndicate for the public offering of 784,402 of such shares. The 15,000 shares constitute 1.9% of the total offering and represent less than 1% of the total assets of National. The acquisition was made from two members of the underwriting syndicate other than Paine, Webber, Jackson & Curtis, a partner of which is a director of National.

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Preston Moss Fund, Inc., Boston investment company, filed a registration statement (File 2-12957) with the SEC on December 14, 1956, seeking registration of 20,000 shares of its \$1 par Capital Stock.

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Allied Resources Fund, Inc., Minneapolis investment company, filed a registration statement (File 2-12958) with the SEC on December 14, 1956, seeking registration of 400,000 shares of its 1¢ par Common Stock

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Jefferson Custodian Fund, Inc., New York investment company, filed an amendment on December 14, 1956, to its registration statement (File 2-8437), seeking registration of an additional 200,000 shares of its \$1 par Capital Stock.

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El Paso Natural Gas Company, El Paso, Texas, filed a registration statement (File 2-12959) with the SEC on December 14, 1956, seeking registration of 5,235,952 shares of Common B Stock (\$3 par). El Paso proposes to offer to holders of the shares of common stock of Pacific Northwest Pipeline Corporation the privilege of exchanging their shares of common stock of that company for shares of the Common B Stock of El Paso.

According to the prospectus, El Paso desires to acquire a minimum of 2,435,000 shares of the outstanding common stock of Pacific and as many additional shares as it can acquire by this offer. If all Pacific shares are acquired, El Paso will issue and deliver a maximum of 5,235,952 shares of its Common B stock. The rate of exchange is fourteen shares of the El Paso Common B stock for eight shares of the Pacific Common.

In connection with the exchange offer, an agreement has been entered into between El Paso, Pacific, and ten stockholders of Pacific owning an aggregate of 348,000 shares of its common stock and comprising the entire membership of its board of directors. Under this agreement, El Paso is required to make the exchange offer; and the Pacific stockholders who are parties to the agreement agree to deposit their stock pursuant to the exchange offer. The agreement contains various representations, warranties and covenants on the part of El Paso and Pacific, including an agreement by El Paso, at the request of Pacific, to lend to Pacific from time to time prior to December 31, 1957, up to \$15,000,000 against subordinated unsecured 5% promissory notes of Pacific payable on or before December 31, 1957 at Pacific's option either in cash or by delivery of shares of common stock of Pacific at the rate of one share for each \$30 of notes.

If the exchange offer is consummated, it is expected that Pacific will be operated as a subsidiary of El Paso, and the management of the latter has no present intent of merging Pacific into El Paso or having the company acquire Pacific's assets. The operations of the two companies would be coordinated in such a manner "as to maximize the effective and economic utilization of the natural gas resources of both companies in the United States. The company is convinced that the most economic and efficient use of Canadian gas from the British Columbia-Alberta fields, as it becomes available, will be unlikely unless its use is fully coordinated with gas from the San Juan Basin and elsewhere along the lines of the pipelines of the Company and Pacific."

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For IMMEDIATE Release Monday, December 17, 1956

SECURITIES AND EXCHANGE COMMISSION  
Washington, D. C.

SECURITIES ACT OF 1933  
Release No. 3728

NOTICE OF PUBLIC HEARING ON PROPOSED REVISION OF RULE 133  
AND EXTENSION OF TIME FOR SUBMITTING WRITTEN COMMENTS THEREON

The Securities and Exchange Commission announced today that it will hold a public hearing in regard to the proposed revision of Rule 133 which was announced October 2, 1956, in Securities Act Release No. 3698. The hearing will be held on January 17, 1957, at 10:00 A.M. in Room 193, at the office of the Commission, 425 Second Street, N. W., Washington, D. C. The rule, as presently in effect, declares that there is no sale to stockholders, for the purposes of the registration and disclosure requirements of Section 5 of the Securities Act of 1933, when securities are issued in connection with certain mergers, consolidations, reclassifications, and transfers of assets, pursuant to the vote of the required majority of such stockholders. The effect of the proposed revision of the rule would be to reverse this so-called "no-sale theory."

Any person interested in presenting his views on the proposed revision at the public hearing should, not later than 5:30 P.M. on January 15, 1957, notify the Commission in writing of his intention to appear at the hearing and indicate the length of time desired to make his oral presentation. The Commission has also extended to January 15th the time within which written comments on the proposed revision may be submitted.

Because of the unusual number and tenor of the public comments which have been received to date, the Commission added the following statement:

"A review of the comments received to date indicates a general lack of understanding as to the reasons for the proposed revision of Rule 133 and the effect the revised rule would have.

"The 'no-sale' theory was adopted in the early days of the Securities Act of 1933 at a time when neither the Commission nor its predecessor in administering the Securities Act, the Federal Trade Commission, had had much experience with the application of the Securities Act to various types of situations. While the 'no-sale' doctrine has been continued over the intervening years (by rule from 1935 to 1947 and from 1951 to date and by administrative interpretation on a case-by-case basis from 1947 to 1951), various Commissioners, staff members, legal writers and others have had doubts both as to the validity of the 'no-sale' theory and as to its effect upon the investing public.

"The Commission has reviewed the legislative history of the Act and its experience under the rule and considered it appropriate to invite discussion as to whether or to what extent, in the

light of experience and the basic concepts of the statute, a rule of statutory construction of this character should be continued. Referring to the exemption now contained in Section 3(a)(10) of the Act, House Report No. 85 stated (p. 16):

' . . . This paragraph also exempts the distribution of securities during a bona fide reorganization of a corporation when such reorganization is carried on under the supervision of a court.

'Reorganizations carried out without such judicial supervision possess all the dangers implicit in the issuance of new securities and are, therefore, not exempt from the Act. For the same reason the provision is not broad enough to include mergers or consolidations of corporations entered into without judicial supervision.'

"The 'no-sale' doctrine has not been applied to exempt securities issued in such transactions from the fraud provisions of the Act. Moreover, the 'no-sale' doctrine has not operated to except from registration securities issued in connection with mergers, consolidations, reclassifications of securities and transfers of assets except in the limited area intended to be covered by Rule 133.

"The registration provisions of the Securities Act have always been held to apply to voluntary exchanges of securities between a corporation and the security holders of another corporation unless an exemption was available. The basic question posed by the proposed revision of Rule 133 is whether the law and the public interest does not require adherence to the same statutory standards of disclosure when an exchange of securities involving a public distribution is effected by means of a merger, consolidation, reclassification or transfer of assets.

"Comments on the proposed revision so far received indicate that some doubt may exist as to whether under the revised rule the exemptions set forth in the Act and in the Commission's rules and regulations would be available. The proposed rule, if adopted, would not have the effect of denying the availability of any exemption contained in the Act or in the Commission's rules and regulations thereunder. Thus, reclassifications or stock-splits meeting the conditions of Section 3(a)(9) would be exempt under that section, intrastate offerings meeting the conditions of Section 3(a)(11) would be exempt under that section, and non-public transactions meeting the conditions of the second clause of Section 4(1) would be exempt thereunder. Similarly, Regulation A and the other exemption regulations of the Commission under the Act would continue to be available in appropriate cases.

"The comments also have indicated a fear that under the proposed rule stock dividends would require registration under the Act. The declaration or payment of a stock dividend, irrespective of Rule 133, is not deemed to involve the sale of a security and the proposed rule would have no applicability thereto.

"It has been stated that investors are afforded ample protection by the laws of the various States and by the right given security holders to receive the appraised value of their securities. The State laws do not operate to furnish security holders with adequate information upon which such security holders may base an informed judgment as to how they should vote their securities or whether they should exercise the right to receive the appraised value of their securities.

"The Commission is considering means by which technical and other problems, as to how the registration provisions might be adapted to certain types of transactions heretofore considered not to constitute a sale by reason of Rule 133, can appropriately be solved if the proposed revision should be adopted. For example, as was stated in our Securities Act Release No. 3698 of October 2, 1956, we are considering whether provision can be made so that information furnished to security holders in a Securities Act prospectus will not be unnecessarily duplicated in a proxy statement under the Securities Exchange Act proxy rules, where the latter apply.

"In considering the proposed revision, the Commission must give weight to the public interest sought to be protected by requiring registration and by strengthening the Commission's enforcement procedures and programs. It has been increasingly clear that the 'no-sale' rule, which is a rule of statutory construction or definition, has become an instrument of evasion of the law and a means by which illegal distributions of securities have been achieved in secrecy and in violation not only of the registration and disclosure provisions of the Securities Act but also of the anti-fraud and anti-manipulation provisions of the Securities Act and the Securities Exchange Act."

By the Commission.

Orval L. DuBois  
Secretary