

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

FILED

AUG 11 1972

SECURITIES & EXCHANGE COMMISSION

In the Matter of :
:
WASHINGTON MINERAL PRODUCTS, INC., :
a Washington Corporation :
:
File No. 81-109 :
:
Section 12(h) of the Securities :
Exchange Act of 1934, as amended :
:

INITIAL DECISION

Sidney L. Feiler
Hearing Examiner

Washington, D.C.
August 9, 1972

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APPEARANCES: Louis C. Kiefer, Esq., 1313 Washington Building, Seattle,
Washington 98101, for Washington Mineral Products, Inc.

Jack H. Bookey and Robert S. McConnell, Esqs., of the
Seattle Regional Office of the Commission, for the
Division of Corporation Finance

BEFORE: Sidney L. Feiler, Hearing Examiner

I. THE PROCEEDINGS

These are proceedings instituted by order of the Commission pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), to determine whether a finding should be made, as requested in an application filed by Washington Mineral Products, Inc. ("Applicant"), that an exemption of its common stock from the provisions of Section 12(g) of the Exchange Act would not be inconsistent with the public interest or the protection of investors. Exemption from Section 12(g) would have the additional effect of exempting Applicant from Sections 13 and 14 of the Exchange Act and any officer, director, or beneficial owner of more than 10% of Applicant's equity securities from Section 16 of the Exchange Act.

Section 12(g) of the Exchange Act requires the registration of the equity securities of every issuer which is engaged in, or in a business affecting interstate commerce, or whose securities are traded by use of the mails or any means or instrumentality of interstate commerce and, on the last day of its fiscal year, has total assets exceeding \$1,000,000 and a class of equity security held of record after July 1, 1966 by 500 or more persons.

Section 12(h) empowers the Commission to exempt, in whole or in part, any issuer or class of issuers from the registration, periodic reporting and proxy solicitation provisions and to grant exemptions from the insider reporting and trading provisions of the Exchange Act if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of

the activities of the issuer, or otherwise, that such exemption is not inconsistent with the public interest or the protection of the investors.

The matters put in issue by the order for proceedings are:

1. Whether the number of public investors and the amount of trading interests, actual or potential, in Applicant's securities is sufficiently limited to justify the requested exemptions;
2. Whether the nature and extent of the activities of the Applicant are such as to justify the requested exemptions;
3. Whether adequate information is and will be available to potential investors concerning the financial affairs of the Applicant.
4. Generally whether the requested exemption or some form of a conditional exemption in modified form would be consistent with the public interest and with the protection of investors.

Pursuant to notice, a hearing was held in Seattle, Washington.

The Applicant and the Division were represented by counsel. Full opportunity to be heard and to examine and cross-examine witnesses was afforded the parties. At the conclusion of the presentation of evidence, opportunity was afforded the parties to present oral argument, but such argument was waived. Proposed findings of fact and conclusions of law, together with a supporting brief, were filed by the Division. Counsel for Applicant waived the filing of the proposed findings and a brief, stating that Applicant lacked the funds for the preparation of this material.

Upon the entire record and from his observation of the sole witness who was produced, the undersigned makes the following:

II. FINDINGS OF FACT AND LAW

A. The Applicant

Washington Mineral Products, Inc., a Washington Corporation with its business address in Centralia, Washington, the Applicant, was incorporated on July 29, 1965.^{1/} The Applicant was formed to extract and concentrate magnetite and titanium bearing ore from sands at the mouth of the Columbia River on the Washington State side and sell such concentrates and produce pig iron and titanium slag from it. It owns certain mining leases and real property in Washington, including a mineral separation plant and research laboratory.

Effective August 31, 1968, Imperial Metals and Abrasives, Inc., a Nevada corporation, was merged into the Applicant by means of a stock exchange. Imperial was incorporated in 1965 and was engaged in the business of processing a high grade of silicon metal. It owned a smelter and two electric furnaces.

After the merger Applicant continued to carry on some operations until February, 1969, when it was forced to shut down operations due to a lack of working capital. No operations have been conducted since then. Applicant is seeking to arrange a merger with a company capable of providing the necessary financial resources

^{1/} The findings ^{of} or fact herein are based primarily on material contained in the application for exemption (File No. 81-109-1) and the testimony of Mr. E. Chadwick Hughes, Jr., a member of the Board of Directors of Applicant.

to resume operations or to obtain substantial new private financing.

B. Number of Public Investors in Applicant and Amount of Trading Interest in Applicant's Securities

The Applicant has 1 million shares of \$1.00 par value stock authorized. There are 491,176 shares outstanding. These are held by approximately 570 stockholders. It had assets as of June 30, 1971 with a book value of \$2,120,650.^{2/} The Applicant, therefore, is prima facie subject to the registration provisions of Section 12(g) of the Act.

Most of the distribution of the stock of the Applicant took place in 1966 and 1967. No registration statement was ever filed with the Commission or any state regulatory agency covering the securities of the Applicant. At the present time members of the Hughes family collectively own 277,041 shares and are in control of the Applicant. The shares of the Applicant are not publicly quoted and there has been little trading in the stock. In the calendar year 1971 up until November 30, the date of the hearing herein, outside of transactions among members of the Hughes family, 150 shares have been traded in one transaction. The stock transfer records of the Applicant show that 13 transfers of shares took place in 1970 totalling 5,420 shares. Of these, four

^{2/} Applicant attached a statement as of June 30, 1970 to its original application. Counsel for Applicant submitted a statement by a firm of certified public accountants as of June 30, 1971. This statement, filed June 20, 1972, is received as a supplement to the original application.

transfers totalling 3,100 shares were transfers by one of the controlling persons to relatives without payment of a consideration.

C. Financial Condition of the Applicant

The 1971 statement submitted by counsel for the Applicant shows total assets including property, plant and equipment at \$2,120,650. However, total liabilities are listed at \$4,045,568 and stockholders equity is noted minus \$1,924,918. It is apparent that the book value of Applicant's stock is a sizeable negative value. According to E. Chadwick Hughes, Jr., the Hughes family has invested a very substantial amount of money to keep Applicant alive while efforts are being made to arrange additional financial support for it.

D. Contentions of the Parties

The Applicant contends that there is a question whether it is covered by the provisions of Section 12(g) of the Exchange Act because it has not conducted any business activities since February 1969.^{3/}

It also urges that in any event it should be given an exemption from the provisions of Section 12(g) pursuant to the provisions of Section 12(h) because the Applicant has been dormant and there has been no trading activity in its shares.

Applicant states that it is not financially able to incur the expenses of full registration and the filing of the required periodic

^{3/} The undersigned concludes that Applicant is subject to the provisions of Section 12(g) of the Exchange Act even though it is not now carrying on active operations in view of other provisions of that section dealing with the use of the mails or the use of any means or instrumentality of interstate commerce in the trading of Applicant's securities. It is also noted that Applicant intends to communicate and has communicated with its stockholders by use of the mails.

reports. It affirms that it wishes to hold a shareholders meeting and to furnish information concerning its condition to its shareholders but cannot do so because it is unable to meet the requirements of Section 14 governing proxy statements.

Hughes stated, in the course of his testimony, that if an exemption were granted the Applicant would be willing to make monthly or bi-monthly status reports to the Seattle Regional Office of the Commission regarding activities of the Applicant. The Division takes the position that a full exemption should not be granted to the Applicant in view of (1) the uncertainty surrounding the duration of the current lull in Applicant's business operations, (2) the lack of any trading restrictions on Applicant's shares, (3) the possibility that the current lull in trading of Applicant's shares is merely temporary, and (4) the need for public disclosure due to Applicant's adverse financial condition in order to assist investors and brokers in making intelligent investment decisions.

III. CONCLUDING FINDINGS

It is evident from the record herein that the Applicant is dormant and has not carried on any business operations for 3½ years and that while the number of public investors and the assets of the Applicant satisfy the statutory requirement, there is little trading interest in the securities of the Applicant since its shares have a negative book value. It also is apparent from the accountant's statement that whatever liquid assets of the Applicant exist, they are pledged to creditors and could not be used to defray the expenses of registration.

Applicant, therefore, if required to register would have to receive a donation of funds from some outside source to meet its obligations or it might have to consider liquidation.

The Commission has recently issued a release dealing with the application of the reporting provisions of the Exchange Act to issuers which have ceased or severely curtailed their operations.^{4/} In this release the Commission pointed out that the registration and reporting provisions of the Exchange Act are among the more important requirements adopted by Congress "to insure the maintenance of fair and honest markets in securities transactions. . ." However, it has also pointed out that where a company has virtually ceased doing business modification of filing requirements might be permitted until such conditions change.

The undersigned concludes that it would not be in the public interest to require the Applicant to fully comply with the registration provisions of Section 12(g) and the reporting and proxy provisions (Sec. 13 and 14). Such a requirement, as has been pointed out, would either force the Applicant into bankruptcy or compel those in control of the Applicant who have already contributed substantial sums to it to make a further donation to keep it alive. The public interest and the interest of investors would be better served if Applicant were granted an exemption from the provisions of Section 12(g), the proxy solicitation provisions of the Exchange Act and the periodic reporting provisions of Section 13 referred to above, but were required to prompt-

^{4/} Sec. Exch. Act Rel. No. 9660, June 30, 1972.

ly report current developments to the Commission. Specifically, this would include Form 8-K, the Current Report required to be filed pursuant to Rule 13 a-11 of the Exchange Act. Information which would have to be promptly furnished in this report includes changes in control of the Applicant, changes in its securities, and other materially important events. Thus, information on important changes in the affairs of the Applicants would become available promptly.^{5/}

There is no apparent basis for granting an exemption from the insider trading provisions and none will be granted for future transactions in the securities of the Applicant. All reports should be filed with the Seattle Regional Office of the Commission in addition to the regular filings.

It is further found that the most recent financial statement of the Applicant should be sent to shareholders to give them additional information on the affairs of the Applicant. A provision directing that this be done will be included in the order herein.

It is concluded that the partial exemption granted herein will permit the Applicant without undue hardship to meet its obligations to its shareholders and is in the public interest. Of course the exemption granted is based on existing conditions at the Applicant company. Jurisdiction will be reserved in the Commission to modify or revoke the order herein should any material change occur in the facts recited herein to make such action necessary or appropriate. These provisions should meet the objections voiced by the Division. Accordingly,

^{5/} Applicant as noted has expressed a willingness to file these reports (Tr. 23).

IT IS ORDERED that the application of Washington Mineral Products, Inc. for an exemption from the provisions of Section 12(g) of the Exchange Act be, and it hereby is, granted, upon the following terms and conditions:

(1) Applicant is exempted from the provisions of Section 13 of the Exchange Act (Periodic~~al~~ and Other Reports) except that it shall be subject to the requirements of Rule 13 a-11 and shall file current reports on Form 8-K.

(2) Applicant is exempted from the provisions of Section 14 of the Exchange Act (Proxies).

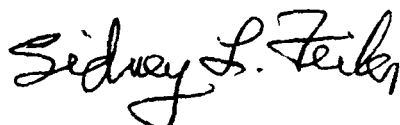
(3) Owners of Applicant's securities shall remain subject to the provisions of Section 16 of the Exchange Act (Directors, Officers, and Principal Stockholders) with respect to all future transactions in the stock of the Applicant.

(4) Copies of the most recent financial report of the Applicant shall be sent to all stockholders of record within sixty (60) days of the effective date of this order.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved in the Commission to modify or revoke this order should any material change occur in the affairs of the Applicant as set forth herein.

Pursuant to Rule 17(b) of the Commission's Rules of Practice a party may file a petition for Commission review of this initial decision within fifteen days after service thereof on him. This initial decision pursuant to Rule 17(f) shall become the final decision

of the Commission as to each party unless he files a petition for review pursuant to Rule 17(b) or the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition to review or the Commission takes action to review as to a party, this initial decision shall not become final as to that party.^{6/}



Sidney L. Feiler
Hearing Examiner

Washington, D.C.
August 9, 1972

^{6/} All contentions and proposed findings and conclusions have been carefully considered. This initial decision incorporates those which have been accepted and found necessary for incorporation herein.