ADMINISTRATIVE PROCEEDING
FILE NO. 3-1758

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of
LOUIS P. NICHOLS & COMPANY
(8-14103)

INITIAL DECISION

Samuel Binder
Hearing Examiner

Washington, D.C.
January 29, 1969

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APPEARANCES: G. Gail Weggeland, Attorney-in-Charge Salt Lake Branch Office, Attorney for the Division of Trading and Markets.

Alexander H. Walker, Jr., Suite 500 Kennecott Building, Salt Lake City, Utah, and Warren M. Weggeland, Kennecott Building, Salt Lake City, Utah, Attorneys for the Respondent Louis P. Nichols & Company.

BEFORE: Samuel Binder, Hearing Examiner

These public proceedings against the respondent Louis E. Nichols & Co., a sole proprietorship, effectively registered with the Commission as a broker-dealer on October 3, 1968 were instituted by Commission order dated October 31, 1968 pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act").

The Commission's order provided initially for a hearing on the issue of suspension of registration to be followed thereafter by a hearing on the merits of the question whether the respondent's previous conduct in violating and in aiding and abetting serious violations of the Exchange Act, as alleged in the Commission's order warranted revocation or other remedial action in the public interest. The parties to the proceedings stipulated, however, that there would be only one hearing held herein and only one hearing examiner's decision which would cover all the issues raised by the Commission's order and the respondent's answer, and that he would not engage in the securities business for a period of 75 days from the date of the hearing which was held on December 17, 1968, i.e., he would not engage in business as a broker-dealer until March 2, 1969.

A formal hearing on the Division's charges was held in Salt Lake City, Utah on December 17, 1968 and was concluded on the same day.

As part of the post-hearing procedures the Division submitted proposed findings of fact and conclusions of law together with a supporting brief. Thereafter counsel for the respondent

addressed a letter to the hearing examiner filed on January 7, 1969, with which he enclosed a Form BDW 1/ executed by the respondent. In his letter counsel stated in pertinent part that "As a result of the submission of this form to the United States Securities and Exchange Commission the proceedings instituted against him should now be moot." On January 13, 1969 the Division filed a reply pointing out, among other things, that the Commission had instituted a formal proceeding against respondent and that under the provisions of Rule 15b6-1 the filing of such form would not automatically effect a withdrawal from registration as a broker-dealer. 2/ The Division in this connection requested the hearing examiner to adopt the findings of fact and conclusions of law as proposed by the Division. The respondent on January 17, 1969 filed another document with the hearing examiner entitled "REGISTRANT'S SUBMISSION TO HEARING EXAMINER ON STATUS OF RECORD IN LIEU OF FILING PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND BRIEF". The body of this document sets forth that "The Respondents, Louis P. Nichols & Company and Louis P. Nichols, submit the matter on the basis of the present record and subject to its request for withdrawal filed pursuant to Section 15b6-1 of the Securities Exchange Act of 1934, as amended." Accordingly it appeared that the respondent recognized the correctness of the

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1/ A Form BDW is a "Notice of Withdrawal From Registration as a broker-dealer pursuant to Rule 17 CFR 240.15b6-1."

2/ Cf. Christopulos & Nichols Brokerage Company, Inc., 38 SEC 400 footnote 1 where the Commission pointed out in the revocation case of the broker-dealer firm with which Nichols had been associated a request for withdrawal from registration pursuant to Rule 15b-6 had been filed but that the effectiveness of such withdrawal "was stayed pursuant to Rule 15b-6" by the institution of the disciplinary proceedings.

Division's position that the mere filing of a Form BDW would not have the effect of withdrawing its registration as a broker or dealer and was requesting the hearing examiner to consider such request upon the basis of the record and the provisions of Rule 15b-6 which affords discretion to grant withdrawal subject to such terms and conditions as would be necessary or appropriate in the public interest or for the protection of investors.

The Division on January 24, 1969 filed a reply to the respondent's submission stating that the Division was opposed to the acceptance of respondent's withdrawal from registration unless the withdrawal were subject to the condition that respondent would not engage in the securities business or be associated with a broker or dealer or engage in the business of or become associated with an investment adviser without the prior consent of the Commission.

The respondent in this proceeding has not waived his right to an initial decision and "in lieu of filing of proposed findings of fact and conclusions of law submitted the matter [to the hearing examiner] on the basis of the present record and subject to its request for withdrawal filed pursuant to Rule 15b6-1 of the Exchange Act of 1934, as amended".

The findings and conclusions herein are based upon the preponderance of the evidence as determined from the record and upon observation of the witnesses, upon consideration of the pleadings, the Division's proposed findings and conclusions of law and its supporting brief as well as the respondent's filing on January 7, 1969

of a Form BDW and accompanying letter, the reply of the Division to such filing by the respondent, the filing on January 17, 1969 of "REGISTRANT'S SUBMISSION TO HEARING EXAMINER ON STATUS OF RECORD IN LIEU OF FILING OF PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND BRIEF" and the reply of the Division filed on January 24, 1969 to such "Submission".

The basis upon which the Division sought remedial action may be described, in pertinent part, as follows:

Louis P. Nichols had been an officer and major stockholder of Christopulos & Nichols Brokerage Company ("C & N"), a registered broker-dealer. 3/ Such broker-dealer had willfully violated the Exchange Act in material respects over a substantial period of time. Nichols had aided and abetted C & N in the Commission of numerous and serious violations of the Exchange Act despite repeated warnings by members of the Commission's staff against such practices. After such warnings had been ignored by C & N, and Christopulos and Nichols, individually, the United States District Court for the District of Utah, Central Division (Civil Action No. C-178-56), at the instance of the Commission, issued a judgment on November 6, 1956 permanently enjoining C & N, Nichols, then secretary-treasurer of the company, and all other officers and employees of the company from violating Section 7(c) of the Exchange Act and Regulation T adopted thereunder,

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3/ Nichols owned 49% and his wife owned 1% of C & N's outstanding stock and Nichols was secretary-treasurer of the corporation, the balance of the stock was owned by Christopulos and his wife in the same percentages.

as well as Sections 15(c)(1) and 17(a) of the Exchange Act and Rules X-15c1-4 and X-17A-3 adopted thereunder.

The Commission's complaint in the injunction proceeding was supported by affidavits executed by members of its staff 4/ reporting that they had found numerous violations of the Commission's bookkeeping rules and regulations. The Commission's staff reported that C & N permitted a period of 47 days to elapse without posting to the firm's general ledger and that it was not possible therefor to prepare trial balances of net capital position and to prepare and determine therefrom whether the firm had complied with Rule 15c-3, the net capital rule, and was solvent; that ledger accounts of brokers and customers

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4/ In Gibbs & Company, 40 SEC 963, 965 the Commission stated that "The existence of the injunction against registrant and its partners itself provides a statutory basis for revocation of the broker-dealer registration pursuant to Section 15(b) of the Securities Exchange Act, provided we find that such revocation is in the public interest. In determining the public interest it is appropriate to consider the nature of the acts enjoined, and in this connection to refer to the statements in the complaint and supported affidavits on which the Court made its findings." (Footnotes omitted).

In Kimball Securities, Inc., 39 SEC 921, 923 the Commission pointed out that "The present proceedings involve not only the question whether an injunction of the kind delineated in Section 15(b) of the Act has been entered against registrant and its associates, but also the question whether it is in the public interest to revoke registrant's registration. The proof of the entry of such an injunction, whether based on the defendant's consent or otherwise, and whether the defendant has denied the allegations of the complaint or not, may in itself form a sufficient finding that revocation is in the public interest. However, the documents on which the Court has based its action serve to place the injunction and its terms in perspective and should, we think, be included in the record for the purpose of assessing the public interest in relation to the injunction. We therefore receive in evidence, as Division's Exhibit 4, the certified copies of the complaint, answer, final judgment and other papers relative to the injunction proceedings, as offered in evidence by the Division." (Footnotes omitted).

were not currently posted or maintained, there being 8 days delay in posting; that posting on to customer ledger accounts was not done in chronological order; that customer ledger accounts were marked "closed" although the record reflected that money balances on securities were owed to customers; that stock position records did not indicate securities in transfer, securities failed to receive and failed to deliver, and long and short positions were erroneously reflected in the customers' and firm's inventory accounts; that memoranda of brokerage orders were not prepared; that customers' accounts did not contain addresses of the beneficial owner of the account; that there was a failure of the firm to send written confirmations to customers; a failure to advise customers in writing that it was acting as a broker for both buyer and seller and to disclose facts as required by Rule 15c1-4. In the period from July 1, 1955 to June 30, 1956, there were 58 instances of failure to obtain payment within 7 business days after the date of purchase in a cash account when funds for the purchase were not held in the account; and the firm failed to cancel or otherwise liquidate the transaction as required by Section 4(c)(2) of Regulation T. The firm in these transactions failed to obtain authority for extension of the seven-day period as provided by the Rule. There were 21 instances of "free rides" in allowing purchases of securities within 90 days within a cash account where there had previously been a purchase and sale of securities without prior payment for the purchased security. In addition the staff reported that within a seven-month period subsequent to January 1, 1955, 56 instances of

violations of Regulation T were found in the accounts of C & N.

Despite the issuance of such injunction C & N and Nichols continued to violate the Exchange Act and the rules and regulations adopted thereunder and to violate the provisions of the permanent injunctive decree.

Thereafter, the United States District Court for the District of Utah on December 11, 1957 on petition of the Commission issued a decision and judgment 5/ after a contested hearing on the merits, holding C & N and Nichols and Christopulos individually in criminal contempt for violating provisions of the Exchange Act and rules thereunder for which they had been enjoined in the Court's judgment of November 6, 1956 and imposed sentence on January 9, 1958 fining C & N $1,000 and fining Christopulos and Nichols $500 each. 6/

5/ SEC v. Christopulos & Nichols Brokerage Company, et al. (U.S.D.C. CR-122-57).

6/ In its findings of fact and conclusions of law the United States District Court in the criminal contempt case stated, among other things, that

> "The acts and practices above referred to and each and all of them [i.e. violations of the provisions of Section 4(c)(1)(B) of Regulation T promulgated by the Board of Governors of the Federal Reserve System, pursuant to Section 7 of the Securities Exchange Act, and violations of paragraph 1(b) of the Court's judgment, order and decree related thereto, violations of Section 15(c)(1) of the Exchange Act and Rule X-15c1-4 thereunder, violations of paragraph 4 of the Court's judgment, order and decree related thereto and violations of Section 17(a) of the Exchange Act and Rule X-17A-3 thereunder and paragraph 5 of the Court's judgment related thereto] are hereby found by the Court beyond all reasonable doubt to have been committed by the defendants wilfully, intentionally and subsequent to and with knowledge of this Court's judgment, order and decree in Civil Cause No. 179-56." i.e. the judgment of permanent injunction. (Underscoring supplied).

Thereafter the Commission instituted disciplinary proceedings and on May 27, 1958 issues its findings, opinion and order In the Matter of Christopulos & Nichols Brokerage Company, 38 SEC 400, an administrative proceeding revoking the registration of C & N and holding that Christopulos and Nichols, individually, were each a cause for the order of revocation. 7/

The respondent did not deny the facts alleged in the Commission's order regarding the two judgments in the United States District Court and the Commission's order of revocation but urged in his testimony given during the hearing that C & N had paid all its debts and obligations, that his experience in the restaurant and liquor business in which he has engaged since the revocation order, his intention to employ competent "back office" personnel, to employ a well known firm of certified public accountants, and the good opinion of him entertained by certain of his friends and acquaintances was a sufficient basis upon which to dismiss the Division's contention that an order of revocation should issue.

Nichols in his testimony sought to minimize the impact of the Court's action in its effect on the appropriate action to be taken here, particularly with regard to the wilfullness of his past misconduct. As the Commission pointed out in a similar situation in

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7/ The Commission in its order revoking the registration of C & N referred, among other things, to the criminal contempt case and pointed out at 38 SEC that

"The Court found that the defendants had after the entry of the injunction effected sales for and purchases from customers without either having the securities in the customers' accounts or obtaining agreements in good faith that the securities would be promptly deposited; that they sent confirmations to customers which stated that registrant acted as agent for the customer when in fact it acted as principal; and that they failed to record transactions with customers properly."

Gibbs & Co., 40 SEC 963, ". . . these are matters which were in issue in the Court proceedings, and the Court having found violations as charged in the complaint, respondents may not in these administrative proceedings relitigate the factual matters determined in the injunction decree."

On November 1,1968 Nichols applied for registration as a broker with the Utah Securities Commission. In order for the respondent to be registered with such Commission it was necessary for him to pass a test given by such Commission. The test was in two parts, one part containing questions relating to the Utah Uniform Securities Act and the second part consisting in part of questions pertaining to operations and practices in the securities business in general and some questions on the National Association of Securities Dealers and the New York Stock Exchange. The test taken by the respondent was one which could be taken by persons seeking to become brokers as well as salesmen under Utah law. The Director of the Utah Securities Commission testified that the passing mark for a broker was 85% and 75% for "agents". 8/ Nichols scored 72% on the part dealing with the Utah Uniform Securities Act and 70% on the general section. 9/ Accordingly, the respondent has not qualified to become a broker in Utah, the State in which he intends to conduct a broker-dealer business and under Utah

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8/ Utah salesmen or registered representatives are referred to as "agents" under Utah law. See Utah Code Annotated, Sec. 61-1-6.

9/ The respondent had been furnished with a study kit by the Utah Commission but despite such study was not able to pass the examination.

law he would not be permitted to do business in Utah unless he passed the test given by the Utah Securities Commission.

Cross examination of the respondent during the course of the hearing held herein reflected that when he was associated with C & N the company was engaged very largely in selling uranium stock and other mining securities of a speculative character. The respondent stated that if he were permitted to engage in business as a broker and dealer at this time, he expected that his brokerage business would largely be concerned with selling the same kind of securities. 10/

Cross examination of the respondent also reflected that he did not possess sufficient knowledge or training to supervise either registered representatives or back office employees as required of management under the Exchange Act.

Although one of the most important allegations in prior litigation brought against the respondent and the broker-dealer firm with which he had been associated in the past, related to violations of Regulation T, it appeared clear that he had little understanding of the provisions of Regulation T, and in fact had many misconceptions as to the meaning and purposes of Regulation T. In addition it appeared that he had little knowledge of bookkeeping, and is uninformed as to what books and records are required to be kept and maintained by a registered broker-dealer.

10/ On February 21, 1957 the District Business Conduct Committee for District No. 3 of the National Association of Securities Dealers, Inc. censured C & N for violating its Rules of Fair Practice and held, among other things, that the firm had not conformed to Section 60 of the Code because of its failure to honor a liability and also held that the firm did not observe high standards of commercial honor and just and equitable principles of trade and fined C & N $500 plus costs.

Nichols did not take the Utah Securities examination again since he did not feel himself ready to do so. Nor had Nichols taken the National Association of Securities Dealers examination for supervisory employees and principals. Furthermore, the respondent had been away from the brokerage business for more than 10 years and has not familarized himself with the changes which have occurred in such business in the intervening period. It is clear enough that the respondent is not qualified to supervise employees of a registered broker-dealer. Nichols testified that he had talked with some person employed by a broker-dealer whom he contemplated using as "back office" help but conceded he had no assurance that he would leave his present employer to work for Nichols and it was not clear that he could obtain any adequate back office help. Moreover, it was clear that he did not have enough knowledge to be able to supervise back office help even if he were fortunate enough to be able to obtain such personnel in Salt Lake City.

The respondent has no assurance that he can obtain membership in the NASD.

The Commission has held in numerous cases that an injunction coupled with a finding that it is in the public interest to do so would be sufficient ground for disciplinary action. Furthermore, where statutory grounds for censure, denial, suspension, or revocation, exist it does not matter whether the grounds existed or occurred prior to subsequent to the making of the application or to registration

or as insofar as an associated person is concerned whether prior to or subsequent to the commencement of the association. 11/

Accordingly, grounds which might serve as a basis for denial prior to the effectiveness of an application for registration may be employed as a basis for the specified sanctions after registration has been permitted to become effective. 12/

The record in the criminal contempt case reflects that C & N aided and abetted by Nichols violated Regulation T in 13 cash accounts at least 24 times. There were further violations of Regulation T in permitting purchase transactions in the account without 90 days of the so-called "free ride". The firm engaged in at least 55 transactions with customers where it acted as principal for its own account and charged the Commission to the customer. In at least 50 transactions customers received confirmations indicating that the firm was acting as agent for its own account. There were other violations of the bookkeeping rules. The findings of willful violations by Nichols even after numerous warnings given him by the Division of Trading and Markets reflected either a gross disregard for the Securities Exchange Act and the rules and

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11/ Section 15(b)(5). See Peoples Securities Co. v. SEC, 289 F.2d 268 (5th Cir. 1961); N. Sims Organ & Co., Inc., SEC Securities Exchange Act Release No. 6495, March 14, 1961, pp. 5-6, aff'd 293 F.2d 78 (2d Cir. 1961). Union Securities Corporation, SEC Securities Exchange Act Release No. 6749, March 7, 1962. Edmund S. Reed, SEC Securities Exchange Act Release No. 6877, Aug. 10, 1962, p. 1. And see Batten & Co., Inc., SEC Securities Exchange Act Release No. 6734, pp. 3-4. Haley & Company, 37 SEC 100, 107 (1956); Ramey Kelly Company, 39 SEC 756, 762 at n. 12; Realty Securities, Inc., SEC Securities Exchange Act Release No. 7271, March 20, 1964.

12/ See N. Sims Organ & Co. N. 5 Securities Exchange Act Release No. 6495, March 14, 1961, aff'd 293 F.2d 78 (2d Cir. 1961).

regulations adopted thereunder or, at best, Nichols' inability to conduct a brokerage business. The record in this case does not indicate that Nichols is any more competent to conduct the brokerage business now than he was at the time the Commission revoked the registration of Christopulos & Nichols Brokerage Company and found that Nichols was one of the causes for such revocation. The securities business is complex and necessarily the investing public places reliance upon the competence and character of professionals in the securities markets. The entry of non-qualified persons into the business subjects the investing public to undue hazards and unnecessarily complicates the task of regulation.

The fact that four witnesses testified as to their good opinion of the respondent would not be a sufficiently good ground to permit the respondent to conduct a broker-dealer business.

In further connection with the public interest factors which are required to be considered in this case, it should be observed that the Commission has been seriously concerned with the back office problem now confronting the securities industry. 13/ In light of the past conduct of Nichols in the securities industry, it would appear that it would not serve the public interest to permit his registration to remain effective.

13/ See Securities Exchange Act Release No. 8335, 9341, 8405, 8413, 8368, all of which are comparatively recent releases as of this writing, and a release issued on September 11, 1968 dealing with supervisory responsibilities of broker-dealers management.

In the hearing examiner's opinion the facts urged by the respondent are not sufficient to overcome the serious nature of the persistent and willful violations of the Exchange Act established in the injunction and criminal contempt proceedings. In addition, it appears that the respondent was censured by the NASD and that he was found to be a cause for the revocation of C & N in the Commission's disciplinary proceedings against such broker-dealer.

It appears clear that in the light of Nichols' past conduct in the securities industry it would not serve the public interest to permit his registration to remain effective. Were it not for the filing of the respondent's "SUBMISSION TO THE HEARING EXAMINER ON THE STATUS OF THE RECORD IN LIEU OF FILING OF PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND BRIEF" and the Division's reply thereto, the hearing examiner would have issued an order revoking respondent's registration[14/]. However, the hearing examiner considers that the elements of public interest and protection of investors referred to Rule 15b-6 would be equally served if he granted respondent's request for withdrawal of registration subject to the condition that the respondent may not engage in the securities business or be associated with a broker or dealer or engage in the business of or become associated with an investment adviser prior to the consent of the Commission.

14/ To the extent that the proposed findings and conclusions submitted to the hearing examiner are in accord with the views set forth herein they are accepted, and to the extent they are inconsistent therewith they are expressly rejected.

Accordingly, IT IS ORDERED that the registration of Louis P. Nichols & Co. be and it hereby is withdrawn subject to the condition that respondent may not engage in the securities business or be associated with a broker or dealer or engage in the business of or become associated with an investment adviser without the prior consent of the Commission.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice.

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 15 days after service thereof on him. Pursuant to Rule 17(f) this initial decision 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.

Samuel Binder

Samuel Binder
Hearing Examiner

January 29, 1969
Washington, D.C.