ADMINISTRATIVE PROCEEDING
FILE NO. 3-1947

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of JACKPOT EXPLORATION CORP. E. 802 Pacific Spokane, Washington (24S-2168) Securities Act of 1933 Section 3(b) and Regulation A	INITIAL DECISION

Sidney L. Feiler
Hearing Examiner

Washington, D. C.
September 26, 1969

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APPEARANCES: Jack H. Bookey and Walter F. Pitts, Esqs., for the Division of Corporation Finance

Robert D. McGoldrick, Esq., 102 Southtown Office Building, E. 2810 - 29th Avenue, Spokane, Washington 99203 for Jackpot Exploration Corp.

BEFORE: Sidney L. Feiler, Hearing Examiner

I. THE PROCEEDINGS

On February 19, 1969 Jackpot Exploration Corp. ("the issuer"), filed with the Commission a notification relating to a proposed offering of 300,000 shares of common stock at $1 per share, seeking an exemption from the registration provisions of the Securities Act of 1933, as amended ("Securities Act"), pursuant to the provisions of Section 3(b) thereunder and Regulation A promulgated by the Commission pursuant to the terms of said Section. 1/

On April 17, 1969 the Commission issued an order pursuant to Rule 261 of the General Rules and Regulations under the Securities Act temporarily suspending the exemption under Regulation A of securities of the issuer, stating that there was reasonable cause to believe that the terms and conditions of Regulation A had not been compiled with in that certain disclosures had not been made on Form 1-A, that adequate and accurate information concerning the history of the issuer's property had not been made, and that the

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1/ It is provided in Section 3(b) that the Commission from time to time, by its rules and regulations, and subject to such terms and conditions as may be prescribed therein may exempt certain issues from full registration requirements by reason of the small amount involved where the aggregate amount at which an issue is offered to the public does not exceed $300,000.

Pursuant to this Section the Commission has enacted Regulation A as part of its General Rules and Regulations under the Securities Act. (Sections 251-263). Among other requirements are a filing of a notification on a prescribed form (Form 1-A) as well as an offering circular to be used in the proposed sale.

proposed offering would be made in violation of Section 17 of the Securities Act in that the notification and the offering circular filed with it contained untrue statements of material facts and omitted material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading. 2/

In its aforesaid Order of Temporary Suspension the Commission gave notice that request could be made for a hearing to determine whether the order of suspension should be vacated or

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2/ Rule 261 under the Securities Act provides in pertinent part:

"(a) The Commission may, at any time after the filing of a notification, enter an order temporarily suspending the exemption, if it has reason to believe that -

(1) No exemption is available under this regulation for the securities purported to be offered hereunder or any of the terms or conditions of this regulation have not been complied with, including failure to file any report as required by Rule 260.

(2) The notification, the offering circular or any other sales literature contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(3) The offering is being made or would be made in violation of section 17 of the Act;. . ."

Section 17, as here pertinent, provides that it shall be unlawful for any person in the offer or sale of any security by the use of the facilities of interstate commerce and the mails, to employ any device, scheme or artifice to defraud; to obtain money or property by means of any untrue statement of material fact or any omission to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or to engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon purchasers.

made permanent. Such request was filed on behalf of the issuer, together with an answer denying that it had not complied with the terms of Regulation A.

Pursuant to notice a hearing was held at Spokane, Washington. Both the Division and the issuer were represented by counsel. Full opportunity to present evidence was afforded the parties. At the conclusion of the presentation of evidence the parties were given an opportunity to file proposed findings of fact and conclusions of law, together with supporting briefs. Such documents were filed by the parties who also filed reply briefs.

On the basis of the entire record and from his observation of the witnesses, the undersigned makes the following:

II. FINDINGS OF FACT AND LAW

A. The Issuer

The issuer, a Washington corporation, was incorporated on July 3, 1968 with an authorized capital of 4,000,000 shares of no-par value non-assessable common stock. On June 21, 1968, prior to the formation of the issuer, Adam Miller and Norman L. Warner leased from Mrs. Edith Old four unpatented mining claims, known as the Jackpot Quartz Claims on the Salmon River in the Camp Howard Mining District in Idaho. The lease provided that Mrs. Old would receive 10,000 shares of a corporation to be formed and certain rental royalty payments. On July 9, 1968, shortly after the

incorporation of Jackpot, Miller and Warner assigned all their right, title and interest in the lease to Jackpot in exchange for 250,000 shares of its common stock, Miller receiving 200,000 shares and Warner 50,000 shares.

The issuer has 770,000 shares of common stock outstanding. In addition to the 250,000 shares held by Miller and Warner, Mrs. Old owns 10,000 shares, counsel for the issuer was issued 10,000 shares for services and 500,000 shares were sold to others at 5¢ per share.

B. Deficiencies in the Notification

It is alleged in the Order of Temporary Suspension that the issuer failed to disclose the jurisdictions in which the offering was to be made, as required by Iten 8 of Form 1-A, and has further failed to disclose in the notification the issuance of securities within one year of the date of filing of the notification, as required by Item 9 of Form 1-A.

Item 8 of Form 1-A requires a listing of jurisdictions in which securities are to be offered. The issuer's response to this item was, "The issuer is not subject to Rule 253(b)." This answer is correct as far as it goes, since Rule 253(b) deals with certain requirements for issuers proposing to conduct their principal business operations in Canada. However, no information was given in this response of the jurisdictions within the United States in which the securities were to be offered.

Item 9 of Form 1-A requires information on unregistered securities issued or sold within one year. Issuer's reply to this item was "None." In fact, as noted above, 770,000 shares of Jackpot common stock had been issued from the incorporation of the issuer until the date of the Form 1-A filing.

It is urged on behalf of the issuer that there was a misunderstanding by the issuer as to Item 8 which was clarified in a conference between Miller, then and now president of Jackpot, and Division counsel, and that the offering circular indicates that the securities have been registered in the State of Washington (Div.Ex. 2, p.3). With respect to information furnished on outstanding shares, it was pointed out that Miller testified that he did not intend to mislead and understood that the question applied only to stockholders other than those listed in the offering circular (Tr. p.62) and that the offering circular lists the correct number of the outstanding shares (Div. Ex. 2, p.4).

On both items set forth above, the information contained on Form 1-A was incomplete, misleading, and in some respects contradictory to information contained in the offering circular. The fact that correct information was contained in the offering circular does not cure the deficiencies in the notification. Obviously the public interest is not served when members of the public are required to guess which document, as between the notification or the offering circular, contains the correct information. The fact that additional information was given Division counsel in a conference does not correct these

deficiencies on the record. The undersigned therefore concludes that the notification was deficient as alleged in the order.[3/]

C. Underwriting Arrangements

The offering circular lists four underwriters for the proposed issue and further states that the underwriters are to handle the issue for the corporation on a best efforts basis, with combined total commissions not to exceed 15%. Listed among the underwriters are B. J. Securities, Inc. and Frank D. Ford Co. B. J. Securities was also named in the notification but Frank D. Ford Co. was not.

Miller testified that although he had a discussion with a person who was buying control of the Ford Co., Harm Schlomer, the latter did not agree to become an underwriter and did not authorize Miller to so list his name. Mervin O. Bjurstrom, owner of B. J. Securities, executed a consent and certification to being named as underwriter for the proposed offering. According to Bjurstrom he agreed with Miller to act as underwriter but only after the offering was "cleared" by the Commission. He took no part in the preparation of the notification and offering circular and had never had any discussion with anyone about the merits of the company or its prospects. His testimony was not denied.

It is evident that the issuer included the names of B. J. Securities and Ford Co. as underwriters in the offering circular

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3/ Selevision Western, Inc., 37 S.E.C. 411, 413 (1956).

without the permission of their principals and that no agreement had been completed at the time of their inclusion for those concerns to act as underwriters. The material filed by the issuer was thus misleading and misrepresented the underwriting interest in the proposed issue.[4/]

D. History of the Properties and Extent and Results of Prior Exploratory Work by Issuer's Predecessor

It is further alleged in the Order of Temporary Suspension that the issuer has failed to furnish adequate and accurate information concerning the history of the subject properties, as required by Item 8A(e) of Schedule I[5/] and that the offering would be made in violation of Section 17 of the Securities Act in that the notification and offering circular contain untrue statements of material facts and omissions with respect to the extent and results of prior exploratory work and operations on the properties by issuer's predecessor.

In a section of the offering circular headed "Description

4/ The active participation of an underwriter in connection with any stock issue is a matter of prime importance to prospective investors. Dix Uranium Corporation, 37 S.E.C. 828, 830 (1957). While this deficiency was not specifically alleged in the order, it was fully litigated and falls within the general allegation of violations of Section 17 of the Securities Act.

5/ "If the properties are known to have been previously explored, developed or mined by anyone and that fact or the results of such previous work is material, furnish information as to such work insofar as it is known and material."

and History of the Property " (Div. Ex. 2, pp.5-7), the exact location of the property is set forth together with a note that the claims are located in extremely rugged mountainous country where access is difficult and may be made only by boat up the Salmon River or by helicopter. In a portion labelled "Origin of the Discovery," information is furnished on development work of a predecessor owner of the property, Robert C. Old, husband of Mrs. Edith Old, from whom the lease now owned by Jackpot was obtained.[6/] Old spent 30 years prospecting on the Salmon River. He did dredging work in the river and found some gold. In July 1954, according to the recitals in the offering circular, Old, using a scuba diving outfit, examined the bottom of the river to try to determine the source, if possible, of the gold. It is further stated that, "He did find a ledge of gold-bearing rock in place and according to his wife quite a bit of gold was taken out, although there are no shipping records."

In 1955, Old bought a small diamond core drill and commenced drilling on the Jackpot claims. Drilling was done intermittently by Old until 1962. According to the offering circular, he drilled three holes, two of which were completed "to cut the vein." "The three holes were drilled in a line in an approximately north-south direction; the first hole was drilled about 34 feet south of the river's edge and about sixty feet from where the gold was found in the middle of the

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6/ Information on the activities of Old was compiled by Miller from records left by Old, who died in 1964, and from Mrs. Old. Miller had never met Old.

river. This hole was drilled to approximately 72 feet in depth and two ore horizons were found with quartz being found at 41 feet to a depth to 47 feet or 6 feet of quartz and at 61 to 63 feet for an additional 2 feet of quartz. The second hole was drilled approximately 45 feet south of the No. 1 hole with one horizon being found at 61 feet. The third hole was drilled at a point 64 feet south of this and drilled to a depth of 72 feet, but was not finished." (Div. Ex. 2, p.7).

The Division contends that the language used in the offering circular to describe the work of Old and what he found on the Jackpot properties was misleading in that the terms denote concrete findings and commercial possibilities of the mineral materials on the property for which there is no definite evidence. Particular objection is taken to the use of the terms "the deposit," the "ore ledge," the "ore," the "ledge of gold-bearing rock," the "vein," "two ore horizons" and "one ore horizon." (Div. Ex. 2, pp.5-7). Benjamin Adelstein, Chief Mining Engineer for the Commission, testified that some of the terms used properly have a commercial connotation. He defined the word "ore" as a "mineralized material that can be mined on a commercial basis. . . it has to be mined with a profit." (Tr. p.111). A ledge he defined as a mineralized structure usually tubular in shape having two long dimensions and one narrow one. According to Adelstein, an "ore ledge" therefore would be a ledge known to contain a commercially mineable deposit; a mineralized structure could include a ledge or a vein but need not have any fixed shape; and the term "vein" is substantially synonymous with the term "ledge." An "ore horizon," he stated, is

equivalent to a ledge or vein, and when coupled with the word "ore" it denotes that the material is commercially mineable. The issuer relies on definitions contained in Dictionary of Mining, Mineral and Related Terms, compiled and edited by Paul W. Thrush, of the Staff of the Bureau of Mines, 1968 Edition, U. S. Department of the Interior, in which are listed alternative definitions for these terms which do not contain the emphasis on commercial possibilities discussed by Mr. Adelstein. The Division has countered by quoting other sources in its reply brief (Reply Brief, pp.2-3).

The fundamental purpose of an offering circular is to interest prospective investors in a commercial venture which hopefully may yield a profit. From this standpoint the commercial value of what has been found in land sought to be mined must be clearly set forth so that there be no misunderstanding. The Commission has applied to the term "ore" the definition supplied by the Division's expert witness. 7/ Additional terms used in the offering circular to describe what Old found implied the discovery of valuable material on the property for which proof does not exist.

The issuer claims that reliance was placed on the books and records of Old as a source for the statements made. Old was a self-taught mining prospector with no formal engineering training. Miller

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7/ National Boston Montana Mines Corporation, 2 S.E.C. 226, 258 (1937); See also, State v. Northwest Magnesite Co., 182 P. 2d 643, 661 (1947).

had no source of information other than what he could reconstruct from records left by Old. Careful checking would have revealed that any statements as to ore, ore ledge or veins should be evaluated carefully. Mrs. Old testified that although more than $10,000 in cash had been invested on the Jackpot claims, Mr. Old had no income from any material he took out of them and recovered from the river only small amounts of gold which he traded for groceries at a store (Tr. pp.183, 205 and 209). These facts were not revealed in the offering circular.[8/] Instead, it was stated that quite a bit of gold was taken out of the property by Old. (Div. Ex. 2, p. 7). The caveat contained in the offering circular that the securities offered must of necessity be regarded as speculative and that no assurance could be given the investor that gold or any other minerals would be discovered and produced in commercial quantities on any of the property in which the company now holds an interest or may later acquire does not dissipate the effect of the language used to describe what had been found by prior exploration on the property. The undersigned, crediting the testimony of Adelstein, concludes that the deficiencies alleged in the Order of Temporary Suspension with respect to information concerning the history of the subject properties and the results of prior exploratory work and operations on it have been established.

8/ See Tri-Nite Mining Co., 41 S.E.C. 494, 495 (1963).

E. Extent and Results of Exploratory Work by the Issuer

The issuer had additional reason to consider carefully the description of prior work because of certain negative results which it obtained from its own drilling.

In September 1968 Jackpot had three holes drilled on the property to check on the information recorded on records and maps left by Old. Miller, who is a graduate mining engineer and has worked in the Spokane area for a number of years, supervised operations. Jackpot No. 1 was drilled for the purpose of hitting a downward extension of the ore horizon reported in Old Hole No. 1. It was drilled to a depth of 81.5 feet, but no ore horizons were found. Miller examined the drill core and found no mineral structures in it and no gold worthy of assaying. The core was neither split[9/] nor assayed. This hole was drilled 24 feet northwest of Old No. 1.

The second hole was drilled approximately 1 foot away from Old Hole No. 1 and its purpose was to check the information recorded by Old of finding 2 "ore horizons." It was drilled to a depth of 77.7 feet, but no mineral structures, ore horizons or gold ledges were found. Miller examined this core also but did not have it split or assayed.

Jackpot No. 3 was drilled at an angle from the No. 1 hole for the purpose of intersecting a 6-foot ore horizon referred to in an Old map of drill hole No. 1. No such intersection was made nor were any minerals cut in the hole. Miller examined this core but again did not deem it worthwhile to have the core split or assayed. Core recovery was

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9/ A process of splitting it down the middle so that half could be assayed and the other half retained by the company.

very good. According to Miller the cores were not assayed because no free gold was found in any of them and there was no reason for assaying them since to do so would be a waste of time and money. (Tr. p.54). Maps showing the horizontal locations of all the drill holes and a vertical section are in evidence. (Div. Exs. 7 and 8). Despite the negative results of the Jackpot drilling operations as found by Miller, it was stated in the offering circular:

> "The drill core has not been analyzed and will not be until enough work is done to thoroughly understand the origin and the nature of the disposition of the mineral. This will be done during the first phase of the Exploration Program we have outlined here; at this time the drill core will be completely studied petrologically, mineralogically, and analytically."
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> (Div. Ex. 2, p.8).

F. Future Work

It is stated in the offering circular that further drilling would be necessary to "delineate the deposit at depth and laterally." A two-phase program was outlined which included more diamond core drilling and, as previously mentioned, laboratory study of the drill cores.

It is apparent that nowhere did the issuer clearly set forth the lack of any commercial recovery by Old from the property despite his investment of considerable cash, much time and effort. Neither was there a plain statement of the negative results obtained by Jackpot when it attempted to check the reported findings of Old. While these negative findings might not have completely ruled out some of the claims made by Old, it left Jackpot in a position where it had no affirmative evidence to substantiate some of the optimistic

claims made by Old in view of the results of the Jackpot drilling program. With relation to the Old Hole No. 1, considerable doubt was cast on the idea that there might be any vein or substantial deposit intersecting Old Hole No. 1 to the depths that the Jackpot holes were drilled. The proposed drilling program was based on assumptions having no basis in fact.

It is alleged in the Order of Temporary Suspension that the offering would be made in violation of Section 17 of the Securities Act because of misstatements and omissions with respect to the extent and results of exploratory work of the issuer, the economic feasibility of production of gold, if discovered, and the proposed use of proceeds of the offering. The record establishes that such deficiencies do exist. The negative results obtained by the issuer are not set forth and the proposed drilling program refers to the existence of a mineral deposit whose existence has not been established.

III. CONCLUDING FINDINGS

It has been found that as alleged in the Order of Temporary Suspension the issuer has failed to comply with the terms and conditions of Regulation A by failing to disclose certain information in the notification and in the offering circular and that the offering would be made in violation of Section 17 of the Securities Act in that the notification and offering circular contain untrue statements of material facts and omit statements of material facts necessary in order to make the statements made in the light of the circumstances

under which they were made, not misleading with respect to the extent and results of prior exploratory work and operations on the properties by issuer's predecessor, the extent and results of exploratory work by the issuer, the economic feasibility of production of gold, if discovered, and the proposed uses of the proceeds of the offering.

Regulation A is an exemptive provision permitting an issuer to avoid the requirements of full registration as prescribed in the Securities Act. The burden is on an issuer to comply with applicable rules and regulations if an exempt status is to be maintained for the issuance of its securities.

It is urged on behalf of the issuer that a conscientious effort was made to avoid exaggerated claims and that no use was made of an assay found among Old's papers which was very favorable. According to the testimony of a nephew of Old the latter had shown him a sample and pointed out material which he claimed was gold. It is further argued that the offering circular clearly indicated that the projects for which the funds were being sought were entirely exploratory in nature with an uncertain outcome and that Old was engaged in such a program when he was unable to continue with the work after 1962. The issuer further contends that to find for the Division on the question of the information furnished by the late Robert Old would require a finding that Old purposely falsified information contained in his drilling data, that this information was not true, and that Miller had no right to rely upon it. It is argued that the information furnished by Old

was proven by evidence at the hearing and that Miller had a right to rely on its accuracy and that his statements were conservative and correct. It is further urged that the Division seeks to brand the issuer as a purveyor of false and misleading information and to prevent it from undertaking further exploratory work.

Good faith on the part of an issuer and honest belief in the future of a proposed project do not furnish a basis for excusing a failure to comply with applicable rules and regulations. Neither does lack of willfulness excuse a failure to protect the investing public from inaccuracies and omissions. The Commission has stated,

> "The Securities Act of 1933 requires more than good faith; it requires, as well, that those who seek trusteeship of the public's money on the basis of information in the registration statement and the prospectus, must live up to certain minimum standards of ability and due care in their preparation. It will not suffice that a registrant has attempted to prepare a registration statement to the best of its ability. It is necessary that it meet the standards imposed by the law." 10/

The issuer has failed to meet prescribed standards and, accordingly

IT IS ORDERED that the Commission's Order of Temporary Suspension be made permanent.

Pursuant to Rule 17(b) of the Commission's Rules of Practice a party may file a petition for Commission review of this

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10/ Herman Hanson Oil Syndicate, 2 S.E.C. 743, 746 (1937); Del Consolidated Industries, Inc., Securities Act Release No. 4795, p.3 (1965); Gold Dust Mining & Milling Company, 3 S.E.C. 55, 56 (1938); Franchard Corporation, Securities Act Release No. 4710, pp.16-17 (1964).

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. 11/

Sidney L. Feiler

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11/ All contentions and proposed findings have been carefully considered. This initial decision incorporates those which have been found necessary for incorporation therein.

The issuer has contended that Section 17 of the Securities Act is not applicable here since no securities were actually offered to the public. This contention is rejected since Regulation A provides that suspension action may be taken if an offering ". . .would be made in violation of Section 17 of the Act;" (Rule 261(a)). The issuer has also moved that these proceedings be dismissed. This motion is rejected in view of the findings made herein.