ADMINISTRATIVE PROCEEDING
FILE NO. 3-3

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

Stuart Perlman (24A-1733)
Clifford Perlman
Aetna Securities Corporation - Offerors
Lum's Inc. - Issuer

INITIAL DECISION

Sidney Cross
Hearing Examiner

Washington, D. C.
February 28, 1966

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Before: Sidney Gross, Hearing Examiner

Appearances: William J. Schifino of Whitehead and Schifino for Lum's Inc., Stuart Perlman, Clifford Perlman and Aetna Securities Corporation.

J. Cecil Penland for Division of Corporation Finance.

This proceeding is brought pursuant to Rule 261 of Regulation A of the General Rules and Regulations under the Securities Act of 1933 ("Securities Act") [1/] to determine whether the order of the Securities and Exchange Commission ("Commission") dated January 19, 1965, temporarily suspending an exemption under Regulation A from registration in respect of an offering of the stock of Lum's, Inc. ("Lum's" or "issuer") by Stuart Perlman, Clifford Perlman and Aetna Securities Corporation ("Aetna") should be vacated or made permanent.

The order alleges failure of compliance by the issuer and offerors with Regulation A in neglecting to file two pieces of sales literature as required by Rule 258 of Regulation A. It alleges, further, that one of these was false and misleading and that Aetna, prior to and during the course of the offering, employed manipulative and deceptive devices without disclosure thereof in the offering circular which constituted

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1/ Regulation A, adopted under Section 3(b) of the Securities Act, provides for an exemption from registration when an issuer offers securities with an aggregate public offering price not exceeding $300,000 provided, among other things, that the issuer files with the Commission a notification and an offering circular containing certain minimum information.

Rule 261 provides for the issuance of an order temporarily suspending an exemption if the Commission has reason to believe that the terms and conditions of the regulation have not been complied with, that any 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 not misleading or that the offering would be made in violation of Section 17 of the Securities Act. The rule further provides that where a hearing is requested, the Commission will, after notice of and opportunity for such hearing, either vacate the order or enter an order permanently suspending the exemption.

practices in violation of Section 17(a) of the Securities Act.[2/] The order afforded interested persons an opportunity to request a hearing for the purpose of determining whether it should be vacated or the suspension made permanent. Pursuant to respondents' request the Commission, on February 8, 1965, issued its order and notice of hearing.

Upon motion by the Division of Corporation Finance ("Division"), the Hearing Examiner authorized an amendment to the order for proceedings adding, as an additional issue, the question whether all respondents employed manipulative and deceptive devices prior to and during the course of the offering in violation of Section 17(a) of the Securities Act.

All respondents were represented by counsel. Proposed findings of fact and conclusions of law and a brief have been filed by the Division and by respondents. Division has also filed a reply brief to which the respondents have replied.[3/]

2/ Section 17 makes unlawful the use of the mails or means of interstate commerce in connection with the purchase or sale of any security by the use of a device to defraud, an untrue or misleading statement or omission to state a material fact, or any act, practice or course of business which operates or would operate as a fraud or deceit upon a customer, or by use of any other manipulative, deceptive or fraudulent device.

Rule 261 provides for suspension of the exemption under Regulation A if "the offering is being made or would be made in violation of Section 17 of the Act."

3/ It was not the Hearing Examiner's intention to afford respondents an opportunity to reply to the Division's reply brief. However, because of an ambiguity in the record, respondents' reply brief is hereby accepted for filing.

Lum's is a Florida corporation organized in 1958. It operates a chain of restaurants, principally in Florida. Stuart Perlman is President of Lum's and Clifford Perlman is Secretary-Treasurer. Both are directors. Prior to the offering Stuart and Clifford each owned 32,950 shares of Class A common stock. 4/ Aetna is a broker and dealer. Ira Krupnick ("Krupnick") is its President.

On September 30, 1964, Lum's together with the three selling stockholders filed a notification and offering circular relating to a proposed offering of 35,900 shares of its 10¢ par value Class A common stock, "in the over-the-counter market at such prices as may prevail therefor," with a maximum aggregate offering price of $200,000, for the purpose of obtaining an exemption from the registration requirements of the Securities Act pursuant to the provisions of Section 3(b) and Regulation A promulgated thereunder. Each of the Perlmans offered 12,600 shares and Aetna offered 10,700. The offering commenced on November 4, 1964 and was terminated on December 7, 1964 with the sale of 31,985 shares, the balance of the offering presumably being withdrawn.

Subsequent to November 4, 1964 and during the distribution Lum's issued a letter dated November 9, 1964, setting forth sales and profit

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4/ 200,000 of these shares were outstanding. Stuart and Clifford each also owned 72,450 shares of the issuer's Class B common stock constituting all the outstanding Class B shares. These shares do not bear dividends until converted and are convertible to Class A shares at the option of the holder.

figures for the first fiscal quarter of 1963-4 and 1964-5 (ending October 31) and commenting on prospects for the current year. The letter was mailed to its stockholders by Lum's and distributed to stockholders and other brokers by Aetna. In addition, the Miami News, a daily newspaper, published an article in its Sunday edition of November 15, 1964, resulting from an interview with Perlmans held on November 11 or 12, regarding the issuer's operations and prospects. Aetna caused 500 reprints of the newspaper article to be made and distributed to the issuer's stockholders and to brokers. Manifestly, both documents were utilized as sales literature in furtherance of and to facilitate the sale of the offered stock prior to completion of the distribution. Respondents admit that neither of these documents were filed with the Commission,[5/] thus constituting a failure of compliance with the terms and conditions of Regulation A.[6/]

It is pertinent that the Commission's letter of October 6, 1964, addressed to issuer's counsel, with copies to its officers, commented on the notification and offering circular and specifically called attention to the requirements of Rule 258 advising that failure to file selling literature "may cause the loss of the exemption under Regulation A." In the face of this clear caveat neither the fact that the November 9, 1964

5/ Rule 258 of Regulation A requires, in substance, the filing with the Commission at least five business days prior to its use in connection with an offering, of virtually every type of literature prepared or authorized by the issuer or underwriter.

6/ Arizona Aviation and Missile Corporation, 39 S.E.C. 359 (1959); S.E.C. v. Searchlight Consolidated Mining and Milling Co., 112 F. Supp. 726 (U.S.D.C., D. Nev. 1953).

letter to stockholders was actually a regular quarterly report nor that the interview by the newspaper reporter was permitted by the Perlmans only with considerable reluctance constitute exculpation. The obvious purpose of Rule 258 is to afford the Commission an opportunity to examine sales literature and take such action in respect thereof, before the offering, as it may deem necessary or appropriate for the protection of potential investors.

Moreover, the article of November 15, 1964, contains misstatements and omissions of material facts. The article states "This past year [of operation][7/] the chain has been expanding at the rate of one [store] a month * * *." The word "year" refers to the fiscal year which terminates July 31. The amended offering circular filed on November 2, 1964, discloses that four new stores were opened during the fiscal year ended July 31, 1964,[8/] and its financial statements indicate that six stores were opened during that period.[9/] Respondents' argument that the quoted portion of the article speaks to the current rather than the past fiscal year overlooks the opening phrase, "This past year," and accordingly

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7/ The paragraph which includes this statement commences, "In the first four years of operation * * *."

8/ And one commenced operations in August 1964.

9/ A note to the Comparative Consolidated Statement of Profit and Loss reads: "As of July 21, 1963, there were 11 units in operation; as of July 31, 1964, there were 17 units in operation."

is rejected.

The article also includes the statement "All of our stores make money, . . ." Respondents attempt to establish the accuracy of this statement by their contention that a charge regularly made against each store for its pro rata share of the overall management expenses should be eliminated in determining whether the store was making money. Their position is untenable. The financial statements attached to the offering circular show that as of July 31, 1964, four stores sustained a net loss and Division's assertion that these figures properly included the pro rata management charge in accordance with established principles of accounting is not disputed by respondents. Further, the profit and loss statements regularly maintained by the issuer for each store also are predicated upon allocation of the pro rata management expense charge to each store and these statements demonstrate that five stores[10/] sustained losses for the month of October 1964 and three stores[11/] suffered losses for the quarter ending October 31, 1964. In addition, issuer's records also disclose that even after reduction of the allocated management expense two stores operated at a loss for the quarter ending October 31, 1964, and one store operated at a loss for the month of October. It is evident, therefore, that the quotation from the article is misleading both on the bases of issuer's bookkeeping practices and of respondents' own contentions.

10/ Including two closed in September.

11/ Including one of those closed in September.

Moreover, respondents' further assertion that overall profitability of the company rather than that of each store is of greater significance to the investor is totally unpersuasive. The issue here involves the accuracy of the representation made -- not of a representation which might have been made.

The article states, further, that "in another year 'We'll be starting one new store a week.'" Perhaps issuer's rate of expansion warranted its expectation, appearing elsewhere in the article, that 30 stores would be in operation at the end of the fiscal year. But most certainly the specification of an acceleration to the opening of one store in each week of the following year does not find justification in the record. On the basis of the issuer's current rate of expansion and the distant period covered by the prediction, i.e., a period to commence about nine months after the prediction was made, it is readily apparent that the statement constituted little more than a conjecture and, as established by a preponderence of the evidence in the record, was misleading.

Nor have respondents attempted to establish the accuracy of this statement. Instead, they take refuge in the position that the burden of proof was on the Division to establish that there was no factual basis for the representation. Albeit the Division clearly has sustained that burden, it should be noted that the burden is not the Division's.

Respondents have overlooked the well established principle that the burden of proving entitlement to an exemption from the registration requirements of the Securities Act rests on the persons claiming the exemption,[12/] including the broker-dealer asserting the exemption.[13/]

Although the article includes the information that 207,000 shares of issuer's stock are owned by the Perlmans, it fails to furnish the necessary and pertinent fact that the Perlmans are engaged in a public offering of over 25,000 shares of their stock. Respondents' position that this omission was immaterial and in no way mislead the purchasing public is not well taken. It is too evident to require extended discussion that the potential investor might view the Perlmans' glowing report of the issuer's operations, progress and potential with considerably more circumspection and accept it with greater reluctance if he were aware that they were in the midst of a distribution of their own securities.

The record is clear that the article contained misstatements of material facts and failed to state material facts, that 500 copies thereof were distributed by Aetna and, accordingly, that misleading sales literature was used in connection with the offering in violation of the anti-fraud provisions of Section 17 of the Securities Act.[14/]

12/ S.E.C. v. Ralston Purina Co., 346 U.S. 119 (1953); Advanced Research Associates, Inc., Securities Act Release No. 4630 (August 16, 1963).

13/ Gilligan, Will & Co. v. S.E.C. 267 F. 2d 461 (C.A. 2, 1959); cert.den. 361 U.S. 896 (1959).

14/ Aluminum Top Shingle Corporation, 40 S.E.C. 941 (1961); Arizona Aviation and Missile Corporation, supra.

Aetna had commenced trading in Lum's stock in March 1964. By the end of May it was making a market in the stock. Aetna also qualified Lum's stock for trading in the State of Florida and applied to the National Association of Securities Dealers, Inc. for listing of quotations of Lum's stock in the local newspapers.

In early August 1964 Joseph Weill ("Weill"), a broker and dealer in New York City wrote to issuer indicating that he wished to sell 10,700 shares of the Class A common stock of Lum's which he had obtained from Bayes & Rose, Inc., a broker and dealer who had acted as underwriter in a prior public offering by issuer. These shares were unregistered and Weill advised that if the purchase were not made "he would prepare a no action letter and he would sell it in the market and get the best price he could." Clifford feared this "might have disturbing influences." He spoke with Krupnick in or about the middle of August, 1964, and the latter agreed to purchase the shares at $1.75, the current market price on that day, with the understanding that Aetna and the Perlman brothers, who wished to sell 10,000 shares of their stock each, would effect a public offering.[15/] The sale of Weill's 10,700 shares to Aetna was completed on or about September 4, 1964.

15/ Krupnick testified: "I said if I could buy the [Weill] stock at or near the cited market, I would take it on and register it with the S.E.C."

"* * * [Perlman] indicated * * * we would register this stock but it would not be wise for them to each register but approximately 10,000 shares for each. I said that would be okay for fee and so forth. That is how we proceeded."

Aetna's insertion of quotations on Lum's stock in the "pink sheets" did not exceed five for any of the months during the period April through July 1964. However, commencing with August 27, 1964, after the public offering had been agreed upon, and through September 24, 1964 it entered bids in the pink sheets on twenty trading days or virtually daily, generally at progressively higher prices albeit not inconsistent with quotations of other firms in the sheets. Thus, from August 27 through September 18, 1964 its bids rose steadily from 1-7/8 to 3.[16/] On the last four days, through September 24, 1964, its bid held at 2-7/8.[17/] Eight of Aetna's bids were higher than its bid on the preceding trading day and fourteen bids were equal to the highest of the other bidders. It is also pertinent that during that period the majority of Aetna's purchases of Lum's stock, as principal, were at prices which exceeded its bid price for the respective trading day.

Respondents acknowledge that Aetna entered bids for Lum's stock and purchased that stock at progressively higher prices during the pre-offering period. They contend, however, that such acts were not designed or intended to create actual or apparent activity in Lum's stock for the purpose of inducing its purchase by others at higher prices and that the record contains no evidence of motive to support the allegation of

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16/ On two days, September 11 and 12, its bid reached 3-1/8.

17/ It is noted that during the months April through August 27, a period of almost 5 months, the stock rose from 5/8 to 1-7/8 or about the same increase as occurred in the single month commencing August 27, 1964. The record discloses no reason related to issuer's business affairs to which the increase in the price of its stock might be ascribed.

manipulation. Respondents emphasize that Aetna was not in the sheets from September 25 to November 6 and made no purchases from September 28 to November 9; that during the period August 14, 1964 to September 25, 1964, between two and five other dealers also appeared in the sheets at various times; that these dealers had no relationship to Aetna; that Aetna's bids were never the highest and were in line with other bids; that Aetna did not dominate or control the market in Lum's stock; that the market price of Lum's stock during the period September 25 to November 5, when Aetna entered no bids in the pink sheets, rose from 2-7/8 to 3-7/8.

Clearly, a finding of manipulation must be predicated upon a determination that Aetna's activity was designed to induce others to buy Lum's stock at increased prices. However, absent subjective evidence of such a purpose, the finding may be based upon circumstantial evidence.[18/] It is significant that the record is devoid of any explanation by respondents for the sudden acceleration of Aetna's activities in the pink sheets for the period August 27 to September 24 during which time its increased bidding equalled the total number of its bids between April 3, 1964 to August 21, 1964, a period of about 5 months. But the forthcoming offering by Aetna and the Perlmans raises a compelling inference of the motive of Aetna's increased activity to support or raise the market.[19/] The fact

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18/ Halsey, Stuart & Co., Inc., 30 S.E.C. 106, 123-4 (1949); The Federal Corporation, 25 S.E.C. 227, 230 (1947).

19/ Cf. Allen & Company, Inc., 35 S.E.C. 176 (1953).

that other dealers also appeared in the pink sheets during the period does not absolve the manipulation.[20] Moreover, a finding of manipulation does not require that manipulator's bid need always be the highest.[21] Nor are the other factors raised by respondents controlling. It is sufficient that with awareness of the intended offering Aetna abnormally increased the number of its bids (in the light of its earlier activity) and that its bids were at increasingly higher prices, thus constituting a commonly used manipulative device to create apparent activity and to support the price of the stock at its inflated level.[22]

Division urges that respondents reduced the floating supply of Lum's stock, a recognized manipulative device,[23] through the purchase by Aetna of the 10,700 shares referred to above and through respondents' arrangements in respect of the disposition of an additional 10,675 shares also owned by Weill.

The record is clear that Weill's desire to dispose of the first 10,700 shares, if necessary on the open market, raised the fear in

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20/ Cf. Bruns, Nordeman & Company, 40 S.E.C. 652 (1961); Gob Shops of America, Inc., 39 S.E.C. 92 (1959); S. Wein & Co., 23 S.E.C. 735 (1946).

21/ Cf. Bruns, Nordeman & Company, supra.

22/ Ibid.

23/ R. L. Emacio & Co., Inc., 35 S.E.C. 191 (1953).

Clifford that this "might have disturbing influences." He "was afraid *** that it might destroy the market and our securities entirely for no reason at all." Indeed, since the dumping of 10,700 shares on the market may well have adversely affected the price of the Class A stock, of which he and his brother together owned about 66,000 shares, he had cause for concern. And when taken together with the obvious inference that a public offering was a condition precedent to Aetna's purchase of the 10,700 shares, it is not unreasonable to conclude that that purchase constituted a reduction of the floating supply.

Moreover, some time in September 1964 Weill communicated to Clifford that he had an additional amount of 10,675 shares of Lum's stock and that he "had a no action letter on it." Clifford promptly arranged for his relatives to purchase all but 1,275 shares which were taken by Aetna. The transaction was consummated on September 29, 1964, one day prior to the filing by issuer of its notification and offering circular with the Commission. It is difficult, if not virtually impossible, to attribute to respondents any purpose other than to prevent the realization of Clifford's fears, expressed earlier, that sale of these shares by Weill on the open market might destroy the market. Under these circumstances which present the removal of a substantial block of stock from the market on the eve of the filing for a public offering, respondent's protestations that the purchase was effected,

not with intent to manipulate but with the best interests of the company at heart, are unconvincing.

The offering commenced on November 4, 1964. By November 6, 1964, Aetna had sold all of the 10,700 shares it offered. Aetna continued, however, to sell the Perlmans' offered stock, as agent, for a few days until the Perlmans objected to paying commissions on their sales. Thereafter, Aetna, as principal, purchased the remaining 14,960 shares of the Perlmans' stock and promptly resold it.

During the distribution period but after it had disposed of the shares it offered, Aetna continued its bidding in the pink sheets commencing with a bid of 3-7/8 on November 6, 1964, at almost constantly increasing prices until December 7, 1964, when its bid was 7-1/4. From November 6 through the end of that month Aetna placed quotations in the pink sheets 16 times and from December 1 through December 7, when the offering was terminated, it appeared daily. Two to four other firms appeared in the sheets between November 6 and November 27. From November 28 through December 7 six others were in the sheets. On three days Aetna had the high bid and on eleven days Aetna's bid equalled the high bid. Further, Aetna also engaged in the purchase, as principal, of shares of Lum's stock other than those of the Perlmans.

Rule 10b-6 of the General Rules and Regulations under the Exchange Act provides, in substance, as applicable here, that a manipulation occurs where an underwriter or prospective underwriter in a distribution, or a broker-dealer or other person who has agreed to participate or is participating in a distribution, bids for or purchases for his own account any security which is the subject of the distribution.

Aetna denies that it was an underwriter except in respect of its own 10,700 shares offered by the offering circular. Certainly, the first page of the offering circular includes the statement that Aetna may be deemed an underwriter with respect to those shares. But it also contains the additional statement that "Under the provisions of the Securities Act of 1933, as amended, any Dealer handling a selling transaction for any of the persons on whose behalf these securities are being offered may be considered an Underwriter." Since there is no question that all the Perlmans' offered shares were disposed of through Aetna acting as agent in some transactions and as principal in others, this would seem conclusive. Moreover, the notification includes Aetna's signed consent dated October 2, 1964, "to being named as underwriter *** in connection with a proposed offering of 35,900 shares of Class A common stock (10¢ par value) to the public".

Aetna recognizes that it was an underwriter as that term is defined in Section 2(11) of the Securities Act[24/] and, indeed, the purport

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24/ Section 2(11). The term "underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking ***.

of that provision appears on the face of the offering circular as described above. It denies, however, that it is an underwriter under Rule 10b-6 under the Exchange Act since by definition under that rule an underwriter means a person who has entered into agreements regarding distribution of the stock.[25/] Respondents assert Aetna made no such agreements and therefore was not an underwriter under Rule 10b-6 subject to its prohibitions. But the facts do not support respondents. Granted the record contains no specific written or oral words of agreement. But Aetna made all purchases of Lum's stock for the issuer in connection with its employees stock purchase plan which was in effect since May 1964. It never occurred to issuer to do business elsewhere than with Aetna. Marvin Timko, Aetna's salesman who interested Aetna in Lum's stock initially, would go to issuer's office, meet with the Perlmans and "get figures". The Perlmans referred persons interested in purchasing Lum's stock to Aetna. And, as stated by Krupnick in relation to the Perlmans' sale of their offered stock, "It is natural for the Perlmans to favor us." The record leaves no question that despite the absence of any written or oral agreement there existed a tacit understanding, never subject to any doubt, that the Perlmans' stock would be distributed through Aetna and, accordingly, that Aetna was an underwriter within the meaning of Rule 10b-6(c)(1).

25/ Rule 10b-6(c)(1) provides:

> The term "underwriter" means a person who has agreed with an issuer or other person on whose behalf a distribution is to be made (A) to purchase securities for distribution or (B) to distribute securities for or on behalf of such issuer or other person or (C) to manage or supervise a distribution of securities for or on behalf of such issuer or other person.

And if this is not enough, it is readily apparent that Aetna's activity in the purchase and sale of the Perlmans' stock placed it in the position of a "broker, dealer, or other person who has agreed to or is participating in such distribution ***" within the meaning of Rule 10b-6(a)(3) and accordingly subject to the anti-manipulative provisions of Rule 10b-6 which Aetna clearly violated by reason of its bidding and purchasing activities during the distribution.

Division also asserts that the issuer engaged in manipulation through the purchase of its own shares under its employee stock purchase plan which became effective in May 1964. The order for the shares would be placed by Lum's with Aetna and the purchasing employee would be permitted to pay for his shares over a ten-week period. Although Lum's would advance the funds to cover the purchases, the stock would be issued in the name of Colkay Company, a nominee for Aetna, and held by Colkay, as trustee, until Lum's was repaid by the employee at which time the stock would be transferred to the name of the employee and delivered to him.

From May to about the end of October 20, 1964, a total of 2275 shares were purchased under this plan. Two of these transactions, one for 25 shares and the other for 100 shares, occurred within ten days prior to the commencement of the distribution.

In view of the fact that the employee purchasing plan had been established long before the offering was contemplated and there is no indication of a stepped-up or increased amount of purchases under the plan between mid-August, 1964, when the offering was conceived, and

the commencement of the distribution,[26/] a finding of manipulation grounded upon these transactions is not justified.

Accordingly, on the basis of the record and the foregoing, it is concluded that where, as here, the offering was made "at the market," Aetna's accelerated insertion of bids in the pink sheets prior to but in contemplation of the offering, respondents' activities in restricting the floating supply of Lum's stock, the insertion of bids and the purchases of Lum's stock by Aetna during distribution all constituted manipulative devices designed to create actual or apparent trading in or to raise or support the market price of Lum's stock. Failure of the offering circular to disclose these manipulative activities constitutes a violation of Section 17 of the Securities Act as does the utilization of the newspaper article containing misrepresentations and omissions of material facts in connection with the distribution. In addition, as shown above, respondents' failure to file the letter to stockholders of November 9, 1964 and the newspaper article constituted a failure of compliance with Regulation A.

Under these circumstances the order temporarily suspending the issuer's exemption under Regulation A should be made permanent.

Despite the fact that the activities described above

26/ Between May 21, 1964, and August 14, 1964, 1,500 shares were purchased. Between August 14 and November 4, 1964, 775 shares were purchased.

contravene the statutes and rules governing the conduct of issuers, offering stockholders and underwriters in connection with a distribution, there are factors present here which indicate that mitigation of the five-year bar on the issuer, offering stockholders and underwriter from the use of Regulation A would be appropriate.

The letter of November 9, 1964 was a routine quarterly report as to which no misrepresentations are alleged. The interview given by the Perlmans leading to the newspaper article was not sought by them but arose out of the reporter's request which they were reluctant to reject since they had refused a similar interview to the same newspaper at an earlier time. And although the purchases of Weill's shares undoubtedly resulted in a reduction of the floating supply, it is apparent that these transactions were not initiated by the respondents and do not represent the usual situations where preconceived, deliberate and affirmative steps are taken to achieve the constriction, either unsought by the third party security holder whose shares are removed from the market or through purchase and sale machinations in the market.

Moreover, Aetna disposed of its offered shares in the first few days of the distribution and held no inventory thereafter contrary to the circumstances generally present in this type of violation. It is also pertinent in connection with Aetna's predistribution activities that it refrained from either entering the pink sheets or the purchase of Lum's stock, as principal, for more than one month prior to the commencement of

the distribution. In addition, Krupnick's insistence that he regarded Aetna as an underwriter only in respect of its 10,700 shares, the presence of a statement to that effect in the offering circular and his testimony that he went back into the pink sheets on November 6, 1964, after consulting counsel, warrant consideration.

While under all the circumstances present here the Hearing Examiner does not agree that, as urged by respondents, they have been amply punished by the temporary suspension order, he is of the view that the factors set forth above should be given consideration in any application which may be filed by the respondents under Rule 252(f) of Regulation A after January 19, 1967, i.e., two years after the issuance of the order temporarily suspending the exemption under Regulation A. 27/

Sidney Gross
Hearing Examiner

Washington, D. C.
February 28, 1966

27/ 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.