

SECURITIES AND EXCHANGE COMMISSION

NEWS DIGEST

A brief summary of financial proposals filed with and actions by the S.E.C.

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SEC PROPOSES "BOILER ROOM" RULE. The SEC today announced a proposed new Rule 15c2-6 under the Securities Exchange Act (Release 34-6885) "in an effort to deal more effectively with what is commonly referred to as the "boiler room" problem. Interested persons are invited to submit their views and comments thereon not later than September 28, 1962.

Boiler room operations in their most typical form involve the distribution of low priced and unseasoned securities to investors, whose names are generally obtained from lists, by means of high-pressure selling methods or other fraudulent means. In its most common form the sales campaign is generally conducted, and sometimes the transactions are consummated, over the telephone, frequently the long distance telephone. Boiler room activities have presented a serious problem for the Commission in recent years, and in spite of vigorous enforcement efforts the problem still exists.

The proposed rule would make it unlawful for a broker or dealer to offer or sell certain low-priced equity securities by telephone to any person other than a broker, dealer, institutional customer or regular customer unless the broker or dealer establishes that one of the exemptions enumerated in the rule is available. The rule would exempt unsolicited transactions; isolated transactions not part of a concentrated sales effort by the broker-dealer; and securities offered or sold as part of a distribution made in compliance with the registration and prospectus requirements of the Securities Act of 1933. There would also be an exemption for securities of issuers whose current financial statements show that they are operating at a profit and which are either currently subject to the reporting requirements of the federal securities laws or are companies as to which specified data is contained in a recognized financial manual which has been published for more than 5 years by a registered investment adviser. The rule would also contain a provision excluding specific transactions which the Commission exempts as not comprehended within its purposes.

The proposed rule is essentially based upon the fact that the selling practices which it prohibits, when utilized under the circumstances specified in the rule, are almost invariably accompanied by high pressure and fraudulent practices. Case after case has come before the Commission in recent years involving the sale of low priced and obscure securities over the telephone to persons who are not regular customers of the broker-dealer and whose names are commonly derived from lists. In practically every instance, the course of business has proved to be fraudulent. The reasons are not difficult to discover. The selection of little-known securities, about which there is no information accessible to prospective investors, obviously facilitates high-pressure selling methods and fraudulent practices, since the investor has no independent way of verifying the representations made. Furthermore, this method of selling is inherently costly. Telephone solicitation, particularly by use of the long distance telephone, results in high telephone bills and a large percentage of expensive calls in which the prospect refuses to buy. Considerable skill in telephone selling is required to produce a profitable ratio of sales to calls and salesmen having these skills commonly command a substantial remuneration. Consequently, high-pressure and misleading selling methods are almost essential if a sufficient number of sales are to be made, at prices sufficiently above the cost of doing business, so as to result in a profitable operation.

Under these circumstances, as appears from the Commission's experience with this problem, the protection of the investing public demands that sales methods so fraught with opportunities for fraud and so commonly accompanied by fraud be outlawed. The proposal merely endeavors to identify and prohibit those situations in which the Commission's experience shows that boiler-room tactics are most likely to occur. It does not attempt to encompass all situations where such tactics are possible. The other anti-fraud provisions of the federal securities laws continue to be applicable to all solicitations of this character. It is also believed that the proposed rule and particularly the requirement to obtain more complete records concerning telephone calls to non-regular customers and the list from which the prospects' names were obtained should facilitate enforcement and expedite proceedings and other actions against "boiler room" operators.

VIOLATIONS CHARGED TO NANCE-KIETH. The SEC has ordered proceedings under the Securities Exchange Act of 1934 to determine whether Nance-Kieth Corporation, 99 Wall Street, New York, engaged in practices which operated as a "fraud and deceit" upon investors and, if so, whether its broker-dealer registration should be revoked.

The said company ("registrant") has been registered with the Commission as a broker-dealer since November 4, 1959. William L. Wiener is president. In its order, the Commission recites charges of its staff that information developed in an investigation tends to show that in the offer and sale of stock of North American Cigarette Manufacturers, Inc. from May through July 1962, registrant, Wiener and Sidney Cranwell, an employee, "engaged in transactions, practices and a course of business which would and did operate as a fraud and deceit upon certain persons," in violation of the anti-fraud provisions of the Federal securities laws, in that they offered and sold North American's speculative securities to certain customers with whom they were unacquainted and by means of an intensive telephone, and direct mail and advertising campaign, including flamboyant and misleading literature and advertisements, and without any knowledge of the individual investment needs and circumstances of such customers' or of the suitability of these securities to their needs and, in connection therewith, made false and misleading statements of material facts. The alleged misrepresentations related to an increase in the price of North American stock; the assets, financial condition and operations of North American, the length of time registrant had been in business; and the number of people employed by registrant.

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The staff also alleges that registrant engaged in the distribution and sale of North American stock without first having made such reasonable and diligent inquiry as to the true worth of its securities as would have revealed the background of North American, its operations, earnings, current financial condition and other matters (and without disclosing to customers their failure to have made such inquiries); and that in connection with such sale and distribution, it endeavored to place customers in a position where they were asked to make hasty decisions to buy such stock upon the basis of undocumented representations and without having disclosed to them material facts concerning the true nature and worth of such stock. It is also charged that registrant and said persons, together with Henry Scharf, secretary-treasurer, offered and sold North American stock in violation of the Securities Act registration requirement.

A hearing will be held on Sept. 11th in the Commission's New York Regional Office for the purpose of taking evidence of the foregoing to determine whether the staff charges are true and, if so, whether the broker-dealer registration of Nance-Kieth should be revoked. The hearing will initially concern itself with the question whether to suspend Nance-Kieth's registration pending decision on the question of revocation. The firm is a member of the National Association of Securities Dealers, Inc.; and one of the issues in these proceedings is whether it should be suspended or expelled from NASD membership.

INVESTMENT SERVICE REGISTRATION REVOKED. The SEC has issued a decision under the Securities Exchange Act (Release 34-6884) revoking the broker-dealer registration of Investment Service Co., 818 - 17th Street, Denver, Colo., for violations of the anti-fraud provisions of the Federal securities laws. Maurice Barnett, Jr., president and a principal stockholder, was found to be a cause of the revocation order.

The Commission ruled that between November 1957 and November 1959 Investment Service ("registrant") violated the anti-fraud provisions of the Federal securities laws in that it made various false and misleading statements in the offer and sale of the common stock of Westminster Corporation, sold stock of Colotah Corporation at prices in excess of prevailing market prices of such stock without disclosing such market prices, and failed to execute a customer's order to sell Westminster stock. According to the decision, Barnett and Paul W. Mohr, another officer of registrant, agreed with Westminster, which was engaged in purchasing and operating oil and mining claims and properties, to establish a secondary market in Westminster stock and, in connection therewith, to prepare and distribute a brochure concerning Westminster and its properties and to perform other services as a broker-dealer and financial adviser. The Commission found that statements in the brochure prepared by Barnett were of a "fraudulent nature" and that Barnett knew that many of the representations were false and misleading. With respect to the sale of Colotah stock, the decision states that registrant effected 31 sales (132,000 shares) of such stock to customers at 5¢ to 7¢ per share, including mark-ups of 25% to 67% over its own contemporaneous cost, without disclosing the amount of mark-up charged. In addition, the Commission found that registrant accepted an order to sell for a customer "at the earliest possible date," 660 Westminster shares at 50¢ a share and that registrant returned those shares to the customer about two months later with the explanation that it had been unable to execute the order, despite the fact that during such period registrant sold for its own account 500 shares at 80¢ per share and 380 shares at \$1 per share.

The Commission rejected respondents contentions that Barnett had a good record during his 30 years in the securities business; that registrant discontinued its transactions in Westminster stock when Barnett learned that it was in a serious financial condition and became suspicious of the integrity of Westminster management; that registrant sold only about 3,900 shares out of 2,350,877 shares outstanding; that the overcharges were in sales of a penny stock; that the failure to execute the sell order was an isolated instance; and that Barnett had abandoned the securities business. The Commission observed, however, that in September 1958 registrant had been censured by the National Association of Securities Dealers, Inc. for unfair pricing practices in the sale of certain securities and that although the total sales volume in Westminster stock was relatively small, the solicitation had been conducted on a widespread scale.

LLOYD, MILLER CO. REGISTRATION SUSPENDED. The SEC today announced a decision under the Securities Exchange Act (Release 34-6883) suspending the broker-dealer registration of Lloyd, Miller and Company, formerly of 1411 Pennsylvania Ave., N. W., Washington, D. C., and now 550 Fifth Avenue, New York City, pending decision on the ultimate question whether registration should be revoked. These administrative proceedings were based upon staff charges that the Lloyd-Miller firm violated the Securities Act registration and anti-fraud provisions in the offer and sale of Class A common stock of American International Savings and Loan Association, of Takoma Park, Md. Evidence adduced at the hearing, the Commission ruled, shows that the stock was sold in violation of the registration requirement and that the said firm "made false and misleading representations in connection with such sales and otherwise engaged in a course of conduct which operated as a fraud and deceit on investors in violation of the anti-fraud provisions of the securities acts." Upon the basis thereof, the Commission concluded that it is in the public interest to suspend the firm's registration pending final determination of the revocation issue. According to the Commission's decision, the firm, its president, Howard Mallek, and its employees offered and sold the American International stock through telephone and mail solicitations and newspaper advertisements and in connection therewith made false and misleading representations concerning the future price of the stock, its listing on an exchange, the amount of stock available, the prospects for dividends and a stock split, the quality of the stock, use of proceeds of the stock sale, and the source and cost of the stock. On October 31, 1961, the Lloyd-Miller firm was permanently enjoined by the U. S. District Court in Maryland, on SEC complaint, from the offering and sale of American International stock in violation of the Securities Act registration requirement.

SEC NEW YORK OFFICE PROMOTIONS. SEC Chairman Cary today announced the promotion of several career employees and a realignment of functions in the Commission's New York Regional Office under Llewellyn P. Young, Regional Administrator. John J. Devaney, Jr., has been promoted to the position of Associate Regional Administrator, replacing William D. Moran, who has resigned. The enforcement activities of that Office have been consolidated under Warren E. Blair, Assistant Regional Administrator. Mr. Devaney joined the Commission's staff in 1934, transferred to the New York Regional Office in 1954 and has served as an Assistant Regional Administrator since 1960. Mr. Blair joined the Commission's staff in 1947 and transferred to the NYRO in 1960 where he has since served as Assistant Regional Administrator. In addition, Mr. Richard V. Bandler has been advanced to the position of Assistant Regional Administrator. In that capacity he will direct the Commission's functions under Chapter X of the Bankruptcy Act and the Investment Company and Investment Adviser inspection program in the New York region. Ezra Weiss has been promoted to the position of Regional Counsel, Charles C. Ferrall to the position of Special Investigations Consultant, and Arthur Goldman to the position of Special Trial Counsel. Serving under Mr. Blair will be Andrew N. Grass, Jr., Chief Enforcement Attorney; John W. Puls, Chief, Branch of Markets and Trading; and John F. Bradicich, Chief, Branch of Broker-Dealer Inspections.

TEXAS FUND SEEKS ORDER. Texas Fund, Inc., Houston investment company, has applied to the SEC for an exemption order under the Investment Company Act with respect to the proposed issuance of its shares at net asset value for substantially all of the cash and securities of The Ansonia Investment Company; and the Commission has issued an order (Release IC-3522) giving interested persons until August 30th to request a hearing thereon. Ansonia is an unregistered investment company with total assets in excess of \$3,800,000 as of July 17, 1962.

FIRST AMERICAN ISRAEL MUTUAL FUND FILES FOR OFFERING. The First American Israel Mutual Fund, 141 Milk Street, Boston, filed a registration statement (File 2-20649) with the SEC on August 15th seeking registration of 2,750,000 shares of beneficial interest in the Fund, to be offered for public sale at \$10 per share. The underwriters, headed by Paine, Webber, Jackson & Curtis, 24 Federal Street, Boston, will receive a 85¢ per share commission. Payment may be made in cash or certain State of Israel bonds.

The Fund was organized under Massachusetts law in April 1962 and intends to become an open-end investment company with the principal objective of obtaining capital appreciation primarily through investment in securities of Israeli companies. The Fund's investment adviser is John P. Chase, Inc., of Boston. Lawrence G. Laskey is president and owner of 1,640 shares of beneficial interest (27.3%) acquired at \$9.15 per share.

STOWE-WOODWARD FILES FOR OFFERING AND SECONDARY. Stowe-Woodward, Inc., 181 Oak Street, Newton Upper Falls, Mass., filed a registration statement (File 2-20650) with the SEC on August 15th seeking registration of 200,000 shares of common stock, of which 100,000 shares are to be offered for public sale by the company and 100,000 shares, being outstanding stock, by the holders thereof. Fulton, Reid & Co., Inc., 2100 East Ohio Bldg., Cleveland, heads the list of underwriters. The public offering price (maximum \$11 per share*) and underwriting terms are to be supplied by amendment.

The company supplies rubber covered rolls used primarily in the paper, textile, plastic and leather industries; and its Ebonite Division manufactures bowling balls and distributes other bowling supplies. Of the net proceeds from the company's sale of additional stock, \$500,000 will be used to retire outstanding bank indebtedness incurred largely for capital improvements, \$300,000 for leasehold improvements and equipment for the company's new location at Sandusky, Ohio, and the balance for general working capital. In addition to certain indebtedness, the company has outstanding 360,510 shares of common stock, of which Embert W. Peterson, board chairman, together with his wife, own an aggregate of 18.8%, William E. Greene, Jr., a director, 9.8% and management officials as a group 37%. David W. Stapleton is president. The list of selling stockholders is to be supplied by amendment.

SECURITIES ACT REGISTRATIONS. Effective August 15: Beneficial Thrift Plan (File 2-20047). Withdrawn August 15: Aries Corp. (File 2-20506); Gould Paper Co. (File 2-19046); Santa Fe Drilling Co. (File 2-20130).

*As estimated for purposes of computing the registration fee.

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