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SEC PROPOSES "EX PARTE COMMUNICATIONS" POLICY. The SEC announces (for Sunday, January 6th Newspapers) a proposal for the adoption of a statement of policy which would prohibit certain classes of written and oral ex parte communications between particular persons outside the Commission and Commission personnel acting in a decisional capacity in on-the-record proceedings. The effect of the adoption of the proposed statement of policy* would be to enlarge the scope of and strengthen the provisions of the Canons of Ethics, CFR 200.62, now applicable with respect to certain ex parte communications made to members of the Commission. *(Release 33-4571)

The proposed statement of policy conforms to Recommendation No. 16 of the Administrative Conference of the United States. In its June 29, 1962 session the Conference determined it "essential that the administrative process . . . be protected from improper influences" and urged that each agency "promulgate a code of behavior governing ex parte contacts between persons outside and persons inside the agency," setting forth the provisions that should be contained therein.

It should be noted that neither the Conference recommendation nor the proposed statement of policy attempt to deal with the subject of intra-Commission communications. At the Conference it was noted that this problem is an even broader one than the subject of ex parte communications between persons outside and persons inside the agency, and that it should, of necessity, be considered separately.

The proposed statement of policy would prohibit participants and their agents from making certain communications, directly or indirectly, about the proceeding to any Commission member, hearing officer assigned to the case, member of the staff of the Office of Opinion Writing, legal or executive assistant to a Commission member, or to any other Commission employee participating in the decision. It would also prohibit any of the foregoing Commission personnel from requesting, entertaining or making any unauthorized ex parte communication to participants and their agents. The prohibition would extend, as well, to communications from persons who intercede in a proceeding by volunteering communications which they may be reasonably expected to know might advance or adversely affect the interest of a participant. The proposed statement of policy would also prohibit the solicitation by participants or their agents of other persons to make unauthorized communications.

Unauthorized ex parte communications would include oral and written statements made without the knowledge of all parties to the proceeding. However, they would not include "status" requests, nor would they include communications of general significance when the person making them could not be expected to know that they might bear upon a current proceeding, communications made pursuant to law, or communications made with the consent of all the participants to the proceeding. It should be noted, further, that the proposed statement of policy would not prohibit a Commission member or decisional employee from seeking the views of some disinterested expert; but in such event, the views would be made available to the participants when required by considerations of fairness.

Persons who make unauthorized ex parte communications could be censured or prohibited from practicing before the Commission in accordance with the provisions of Rule 2(e) of the Rules of Practice. If a party to the proceeding, he might also be denied the relief he is seeking if such sanction would be permitted by law.

Under the proposed statement of policy any Commission official who receives an unauthorized ex parte communication or any other communication that he believes in fairness should be brought to the attention of the other parties to a proceeding would be required to transmit it to the Secretary of the Commission (first, reducing it to writing, if oral), who would place it in the public file and send copies to all of the participants. There is an alternative procedure that could be invoked where the communication is not from a participant to the proceeding, whereby the Secretary would merely notify the other participants that the communication had been received and placed in the public file; but this alternative would be available only if the communication were of borderline relevance to the proceeding, or where sending copies to the parties would be burdensome either because of the voluminous number of communications received, or because of the great number of parties to the proceeding. The proposed statement of policy provides that when communications are made public, all participants would be permitted to request an opportunity to rebut the facts or arguments contained in them. The Commission would grant such request whenever it determined that fairness so required.

Violation of the proposed statement of policy by any Commission employee would be ground for censure, suspension or dismissal.

Interested persons are invited to submit their views and comments upon the proposal on or before January 31, 1963.

NASD ACTION AGAINST GENTRY & CO. AFFIRMED. The SEC today announced the issuance of a decision under the Securities Exchange Act (Release 34-6986) affirming the action of the National Association of Securities Dealers, Inc. in expelling F. R. Gentry & Co., Inc., of Houston, Texas, from membership in the NASD, naming Theodore R. Gentry, its president, as the cause of such action and revoking his registration as a registered representative, and assessing certain costs to the firm. The NASD's action was based upon its finding that the firm and Gentry engaged in conduct inconsistent with just and equitable principles of trade in pledging a customer's securities as collateral for a bank loan to Gentry, commingling a customer's securities with those of Gentry and failing to keep proper records, in violation of the NASD's Rules of Fair Practice. The Commission found that the sanctions and costs imposed by the NASD were not excessive or oppressive.

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The Commission found that in 1959, Gentry borrowed \$4,000 from the Texas National Bank of Houston, signing a 12-month instalment note in that amount. Included in the collateral pledge as security on this note were 1,000 Managed Funds, Inc. General Industries shares issued in the name of Thomas E. Brown, a customer of the firm, as well as certain securities owned by Gentry. Subsequently, Gentry borrowed an additional \$4,249 from the bank, \$3,271 of which was applied to payment of the balance of the previous loan, with the 1,000 Brown shares remaining as part of the collateral. In sustaining the NASD action, the Commission stated that the record supports its refusal to accept Gentry's explanation that the bank borrowings and the pledging of the Brown shares was an accommodation to Brown to whom an initial \$800 loan and a subsequent advance of \$2,400 of the funds purportedly was made. The pledging of Brown's securities as collateral for Gentry's indebtedness "was highly improper use of the customer's securities," the Commission observed. Furthermore, the failure of the records of Gentry & Co. to show the amount owed by Brown and the payments made to him or the location of Brown's securities violated the NASD rules.

DESERT STAR MINING OFFERING SUSPENDED. The SEC has issued an order temporarily suspending a Regulation A exemption from registration under the Securities Act of 1933 with respect to a stock offering of Desert Star Mining Co., Kingman, Arizona. The order provides an opportunity for hearing, upon request, on the question whether the suspension should be vacated or made permanent.

Regulation A provides a conditional exemption from registration with respect to public offerings of securities not exceeding \$300,000 in amount. In a notification filed on October 7, 1959, Desert Star Mining proposed the public offering of 300,000 common shares at \$1 per share. According to the order, the offering began in November 1959 and has not been completed; and revised offering circulars were filed in September 1960 and June 1961. The Commission asserts in its suspension order that it has reasonable cause to believe (1) that certain terms and conditions of the Regulation were not complied with in that, subsequent to the filing of its second revised offering circular, the issuer did not propose, file or use a revised offering circular as required, (2) that the company's offering circular is false and misleading in respect of certain material facts with regard to the issuer's financial condition, (3) that the company failed to file a report of stock sales as required, and (4) that the company and its officers, directors and promoters failed to cooperate with the Commission by withholding basic information requested in deficiency letters.

GENESCO FILES FOR SECONDARY. Genesco Inc., 111 Seventh Avenue, North Nashville, Tenn., filed a registration statement (File 2-21002) with the SEC on January 3 seeking registration of 36,378 outstanding shares of common stock, to be offered for public sale by the holders thereof from time to time on the New York Stock Exchange at market prices then prevailing (maximum \$40 per share*).

The company is engaged principally in the manufacture of apparel and footwear for men, women and children, and the sale of these products through both wholesale and retail outlets. In addition to certain indebtedness and preferred stock, the company has outstanding 3,935,786 shares of common stock, of which management officials as a group own 9.71%. W. M. Jarman is board chairman and B. H. Willingham is president. The prospectus lists 7 selling stockholders (who received such stock pursuant to company acquisitions owning an aggregate of 39,092 shares. Paul D. Blackman proposes to sell 9,212 shares and others propose to sell amounts ranging from 1,707 to 7,681 shares.

GEN. AMERICAN TRANSPORTATION ORDER. The SEC issued an order on December 28 under the Trust Indenture Act (Release TI-176), granting an application of General American Transportation Corporation that Manufacturers Hanover Trust Company be permitted to serve as trustee under indentures with respect to six existing series of equipment trust certificates of the company (not previously qualified under the Act) and under a new indenture which is proposed to be qualified under the Act, namely, the indenture securing \$35,000,000 of equipment trust certificates due 1983 (series 60) to be sold to the public.

SECURITIES ACT REGISTRATIONS. Effective January 4: Nibot Corp. (File 2-20849).
Withdrawn January 4: Normandy Oil & Gas, Inc. (File 2-16991); The Turbodyne Corp. (File 2-19889).

ORAL ARGUMENT, COMING WEEK. Babson, Kaye & Robb Co., January 8, 2:30 P.M.

*As estimated for purposes of computing the registration fee.

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