

# SECURITIES AND EXCHANGE COMMISSION NEWS DIGEST

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



Washington 25, D.C.

FOR RELEASE

July 5, 1957

## Securities Exchange Act Release No. 5538

In a decision announced today, the Securities and Exchange Commission set aside disciplinary action of the National Association of Securities Dealers, Inc., against one of its members, Louis C. Lerner, of Boston, who operated under the name Lerner & Co.

The case arose out of a controversy between Lerner and Ball, Burge & Kraus, of Cleveland, over the purchase of stock of Morgan Engineering Company of Alliance, Ohio. The conduct of both firms was reviewed by the NASD, which censured Ball-Burge and imposed a \$500 fine and costs upon it. The NASD also censured Lerner for its failure to accept delivery of and pay for a 6,100-share block of Morgan stock acquired by Ball-Burge for Lerner, and ordered that unless Lerner paid for the stock within 30 days, he be suspended from NASD membership until he did so. Lerner appealed to the Commission from this action.

In February 1955, Lerner began acquiring Morgan stock from various brokers, including Ball-Burge, who was the most active dealer in Morgan stock. Lerner talked with Paul Gaither, a Ball-Burge partner, about his interest in Morgan. Gaither indicated that he could supply Lerner with a great deal of Morgan stock over a period of time. Lerner testified that in view of the substantial number of shares available through Gaither, he decided to seek representation on Morgan's Board, that he told Gaither of this purpose, and that Gaither assured him that he would obtain proxies on all the shares purchased for use on Lerner's behalf at Morgan's annual meeting of stockholders scheduled for March 22. By March 18, 1955, Lerner had agreed to buy from Ball-Burge through Gaither a total of 27,010 shares of Morgan stock at an aggregate price of \$694,352, the per-share prices ranging from 23½ up to 29, which would have been more than enough to elect one director on a cumulative voting basis. Gaither did not obtain proxies for all the shares sold to Lerner, nor did he attend the Morgan meeting to vote on Lerner's behalf such proxies as he had obtained.

Delivery of the last 6,100 shares purchased by Ball-Burge for Lerner was delayed until March 23, 1955, the day after the annual meeting for the election of directors of Morgan. On that day, Lerner strongly protested to Gaither that he had breached the contracts relating to the purchase of Morgan stock by not delivering proxies for stock so acquired and not using his influence to obtain representation for Lerner on Morgan's board; and Lerner further refused to accept the 6,100 shares and advised Gaither that he reserved the right to sue for damages.

"We have no doubt," the Commission stated, "that in the absence of justifying and extenuating circumstances a member's failure to live up to contract obligations owed to a customer or a fellow member of the NASD would constitute dishonorable

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and inequitable conduct not consistent with 'just and equitable principles of trade' under the NASD's Rules of Fair Practice. "However," the Commission continued, "this is not to say that every failure to perform a contract violates the NASD Rule. To come within the NASD rule it should appear that the breach was committed without equitable excuse or justification.

"On this view of the case, it is not necessary to determine whether the delivery of proxies was an integral part of the contracts. Even assuming, as the NASD found, that it was not, it is our conclusion that Lerner's refusal to accept the 6,100 shares did not under all the circumstances represent unethical or dishonorable conduct. We think the record shows that Lerner considered the delivery of proxies to be a vital part of its agreement to purchase the Morgan shares and that he honestly and reasonably believed that upon Gaither's failure to procure and vote the proxies he was no longer legally or morally obligated to accept the undelivered shares."

"Under the circumstances," the Commission concluded, "Lerner's refusal to accept delivery of the 6,100 shares of Morgan stock cannot be viewed as a deliberate or frivolous breach of contract or as an otherwise unethical business practice. We conclude that Lerner's conduct was not inconsistent with 'just and equitable principles of trade' within the meaning of the Rule, and that accordingly the action taken by the NASD against Lerner must be set aside."

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McClouth Steel Corporation, Detroit, filed a registration statement (File 2-13464) with the SEC on July 3, 1957, seeking registration of 105,000 shares of Cumulative Convertible Preferred Stock, \$100 par. McClouth proposes to offer this stock for public sale through an underwriting group headed by The First Boston Corporation. The dividend rate, public offering price and underwriting terms are to be supplied by amendment. The company proposes to use the net proceeds of the sale of the preferred stock to provide a portion of the funds needed for its 1957-58 expansion program. This program, which calls for the expenditure of approximately \$34,000,000, has been designed, according to the prospectus, to reduce production costs and to increase the steel producing capacity of the company.

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Tung-Sol Electric Inc., Newark, N. J., filed a registration statement (File 2-13465) with the SEC on July 3, 1957, seeking registration of 100,000 shares of Cumulative Preferred Stock, Series of 1957 (\$50 par; convertible after August 1, 1967). The company proposes to offer this stock for public sale through an underwriting group headed by Harriman Ripley & Co., Inc. The dividend rate, public offering price and underwriting terms are to be supplied by amendment.

The company presenting has outstanding \$6,600,000 of short term bank borrowings, \$2,000,000 of which was incurred in 1956 to finance expanded inventories and \$4,600,000 of which was incurred in connection with the purchase of Tung-Sol's Chatham Electronics Division. The company believes that additional working capital of \$1,000,000 to \$1,500,000 will be required by the Chatham Electronics Division and the company's other operations. The proceeds of the sale of the new preferred will be applied to such working capital requirement and to the reduction of the bank borrowings. The company is said to be negotiating with an institution for a long

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term loan in the amount of \$5,000,000 to fund the remainder of the bank loans, and to finance a proposed expansion of electronic tube and semiconductor facilities in late 1957 and 1958 at a cost of about \$1,000,000 to \$1,500,000.

The Chatham Electronics Division was acquired on May 20, 1957, from Gera Corporation for a total purchase price of \$5,052,486. Its principal products are power tubes and hydrogen thyratron tubes.

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