(Securities Act Release No. 5061)

ADMINISTRATIVE PROCEEDING
FILE NO. 3-1947

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
April 22, 1970

In the Matter of JACKPOT EXPLORATION CORP. E. 802 Pacific Spokane, Washington (24S-2168) Securities Act of 1933 - Section 3(b) and Regulation A	FINDINGS AND OPINION OF THE COMMISSION AND ORDER PERMANENTLY SUSPENDING EXEMPTION

EXEMPTION FROM REGISTRATION

Grounds for Suspension of Exemption

Opportunity to Correct Deficiencies

Where notification and offering circular, filed pursuant to Regulation A for purpose of obtaining exemption from registration requirements of Securities Act of 1933, were materially deficient in that, among other things, offering circular failed to disclose adequately and accurately history of prior exploration of issuer's mining property and negative results of issuer's drilling, and notification omitted or misstated required information regarding jurisdictions in which offering was to be made and prior issuance of unregistered stock, held, since offering circular raised serious questions as to its adequacy it was in the public interest in first instance to suspend exemption temporarily without issuance by staff of deficiency letter, and in view of deficiencies and lack of care to present adequate and accurate filing, exemption should be permanently suspended notwithstanding issuer's willingness to file correcting amendments.

APPEARANCES:

Jack H. Bookey and Walter F. Pitts of the Seattle Regional Office of the Commission, for the Division of Corporation Finance.

Robert D. McGoldrick, for Jackpot Exploration Corp.

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Jackpot Exploration Corp., a Washington corporation organized in July 1968 which has been conducting explorations for gold on certain mining claims in Idaho, filed with us on February 19, 1969, a notification on Form 1-A and an offering circular for the purpose of obtaining

an exemption from the registration requirements of the Securities Act of 1933, pursuant to Section 3(b) thereof and Regulation A thereunder, with respect to a proposed public offering of 300,000 shares of its no-par value common stock at $1.00 per share.

On April 17, 1969, we entered an order pursuant to Rule 261 of Regulation A temporarily suspending the exemption. The temporary suspension order stated there was reasonable cause to believe that the notification and offering circular contained materially misleading statements concerning, among other things, the extent and results of exploratory work by the issuer and the issuer's predecessor, the economic feasibility of the production of gold, if discovered, and the proposed uses of the proceeds of the offering; and that the issuer had failed to disclose required information regarding the jurisdictions in which the offering was to be made and the issuance of securities within one year of the filing.

At the issuer's request a hearing was held to determine whether to vacate that order or to enter an order permanently suspending the exemption. The hearing examiner submitted an initial decision in which he found that the notification and offering circular were deficient as alleged in the temporary suspension order, and concluded that a permanent suspension order should issue. We granted a petition filed by the issuer for review of the initial decision, and briefs were submitted by the issuer and by our Division of Corporation Finance. On the basis of our independent review of the record, we make the following findings.

Deficiencies

The Mining Properties

The issuer holds a lessee's interest in four unpatented mining claims ("Jackpot claims") on the Salmon River in the Camp Howard Mining District Near White Bird, Idaho, an extremely rugged mountainous area in which the lessor's late husband, Robert C. Old, had intermittently prospected for gold from about 1932 to about 1962.

The offering circular stated that in 1934 Old began dredging work in the river; he found some gold and in 1954 he examined the bottom of the river for the source of the gold and found "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 he began drilling on the Jackpot claims near the river's edge in an effort to determine the direction of what was thought to be a fissure type vein; he expended over $10,000 in the drilling which continued until 1962; of the three holes which he drilled, two were completed and the third had approximately 50 feet to go "to cut the vein"; one of the completed holes located two "ore horizons" and the other, one ore horizon; and the sole surface expression of "the deposit" was a few seams of quartz in the rock.

It further stated that when the issuer acquired the lease interest in 1968, it drilled an additional three holes to determine "the nature and attitude of the mineralized structure"; the drill cores obtained by the issuer in this drilling were not analyzed and will not be until enough work is done to understand the origin and nature of "the deposition of the mineral"; at that time the drill cores "will be completely studied petrologically, mineralogically, and analytically"; gold is "the only metal of economic interest in the deposit"; further drilling will be necessary "to delineate the deposit at depth and laterally"; and the proposed public offering is intended to raise funds to continue drilling and related activities.

The principal question in this proceeding is whether the issuer's offering circular accurately states and properly qualifies the known material facts concerning the history of the mining claims, as required by Item 8A(e) of Schedule I of Form 1-A. 1/ That requirement is designed to give the prospective investor an accurate basis for evaluating the risks involved in the proposed venture. We find that the offering circular does not meet that standard.

The descriptions in the offering circular of Old's prospecting activity, and particularly the references to "deposit," "vein," "ore horizons," and "mineralized structure," were materially misleading. Among other things, no disclosure was made that such descriptions were based solely on records and maps left by Old, supplemented by the recollections of his wife, and that Old was not a geologist or engineer. In describing the drilling by the issuer, which was intended to test the accuracy of the information derived from Old's records and maps, the offering circular failed to disclose that the three holes drilled by issuer intersected no ore horizons and found no mineral structures, or that one of the holes so drilled was about one foot from one in which Old was reported to have found two "ore horizons." And in stating that the drill cores would not be analyzed until further work was done, the offering circular omitted to disclose, as Adam Miller, issuer's president, testified, that no "free" gold or gold worthy of assay was found in the drill cores from these holes and that it would have been a waste of time and money to assay them.

The use of the term "deposit" carried an implication not justified by the lack of success experienced by Old over many years and the negative results of the issuer's own drilling. We have held that the term "ore" is applied properly only to mineralized material which may be mined at a profit, 2/ and while the term in other contexts may include materials without regard to commercial extraction possibilities, we agree with the hearing examiner that in the context of an offering circular intended to offer stock for public sale, the use of the term ore without qualification implies ore of commercial value. Moreover, the statement that "quite a bit of gold was taken out" was misleading in view of the omission to state that Old had obtained no income from material taken from the Jackpot claims and that he recovered only small amounts of gold from the river which he traded for groceries.

The misleading nature of the statements with respect to the extent and results of the exploratory work done by Old and by the issuer in relation to the economic feasibility of the production of gold and to the proposed use of the proceeds of the offering is not dissipated by the fact that elsewhere, on the face of the offering circular and in an introductory section, there were included statements that the securities were offered as a "speculation," that the project for which

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1/ Item 8A(e) directs that: "If the properties are known to have been previously explored, developed or mined by anyone and that fact or the results of such work is material, furnish information as to such work insofar as it is known and material."

2/ National Boston Montana Mines Corporation, 2 S.E.C. 226, 258 (1937); Marquette Mines, Inc., 8 S.E.C. 172, 179 (1940); National Lithium Corporation, 40 S.E.C. 747, 752 (1961).

funds were sought was entirely exploratory in nature, and that no assurance could be given that gold would be discovered and produced in commercial quantities on the issuer's properties. While cautionary statements were appropriate, such statements in one part of an offering circular cannot be deemed to cure the misleading impression conveyed by the other statements we have discussed and a failure to disclose vital facts cannot be offset by a general disclaimer. 3/

Other Matters

Under Item 8 of the notification, calling for information with respect to the jurisdictions in which the securities were to be offered, the issuer stated only that it was not subject to Rule 253(b), which sets forth certain requirements for an issuer organized or conducting business in Canada, and failed to list the jurisdictions in which it did propose to offer securities. Under Item 9 of the notification, which called for information with respect to unregistered securities issued or sold within one year of the filing, the issuer stated "none," although it appears that 770,000 shares of stock were so issued.

It is clear that the notification was deficient with respect to these two items. 4/ The issuer asserts that it had not yet decided in which jurisdictions it was going to make its offering and points out that the offering circular stated that the securities proposed to be offered had been registered in the State of Washington. 5/ The issuer further contends that it misunderstood the question in Item 9 as referring only to sales of unregistered securities to the public, and that there was no intent to mislead. In this connection it points out that the offering circular shows that 770,000 shares had been issued to 14 persons who were incorporators or persons to whom stock had been issued in exchange for leases or services, and that all these shares were held in escrow in compliance with Rule 253(c). However, disclosures in an

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3/ See, for example, Continental Distillers & Importers Corp., 1 S.E.C. 54, 80-81 (1935); Mining & Development Corporation, 1 S.E.C. 786, 798-799 (1936); Income Estates of America, Inc., 2 S.E.C. 434, 442 (1937); Queensboro Gold Mines, Ltd., 2 S.E.C. 860, 862 (1937); National Lithium Corporation, 40 S.E.C. 746, 761 (1961).

4/ The hearing examiner also found that the filing was misleading in including the names of two broker-dealer firms as underwriters. This deficiency was not included in the original allegations in the suspension order nor was it specifically added by amendment. (See Rule 6(d) of our Rules of Practice.) Moreover, one of the named firms had executed a consent to being named as an underwriter in the filing, although it had not participated in the preparation of the notification or the offering circular. No agreement or consent had been obtained from the second firm, which was named as an underwriter in the offering circular but not in the notification. We are inclined to accept the issuer's statement that this firm's name was left in the offering circular by mistake. While this appears as another instance of a careless preparation of the filing, under all the circumstances, we do not base our decision herein on the listing of the underwriters.

5/ It should be noted that Miller testified that he intended to offer the stock in Washington and Idaho.

offering circular cannot be considered to cure defects in the notification. In order to insure a complete presentation of all required information, it is necessary that the answer to each item be complete and accurate in itself through a full statement of the relevant facts, or at least by appropriate cross-reference to another part of the filing in which the facts are stated. 6/

Conclusions

The issuer asserts that there have been no sales of stock to the public, that no use has been made of the offering circular except to file it with us for review, that any deficiencies in the filing were unintentional, that it was not furnished with a letter of comments by our staff or given an opportunity to correct the deficiencies before the temporary suspension order was issued, and that it was not given an opportunity to amend the filing thereafter, which it is willing to do. The issuer contends that under the circumstances it was premature to issue the temporary suspension and that it would be unfair to make it permanent. We cannot agree.

Contrary to issuer's suggestion, the issuer was not entitled to a deficiency letter as a matter of right. While it is stated in Section 202.3 of the Code of Federal Regulations (17 CFR 202.3) that "the usual practice is to bring the deficiency to the attention" of the issuer, that Section further provides that "this informal procedure is not generally employed where the deficiencies appear to stem from careless disregard of the statutes and rules or a deliberate attempt to conceal or mislead or where the Commission deems formal proceedings necessary in the public interest." The public interest warranted issuance of the temporary suspension order without our staff first sending a deficiency letter in view of the serious questions as to the adequacy of the offering circular. 7/

It is equally clear that the issuer does not have an absolute right to amend its filing as an alternative to or substitute for a permanent suspension. The exemption afforded by Regulation A is a conditional one based on compliance with express provisions and standards, and Rule 261 specifically provides that we may suspend an exemption in the event of noncompliance. The opportunity to amend or withdraw a deficient filing cannot be permitted to impair the required standards of careful and honest filings or to encourage a practice of irresponsible or deliberate submission of inadequate material to be followed by withdrawal or correction when deficiencies are found by our staff. 8/

6/ Cf. Ypres Cadillac Mines Limited, 3 S.E.C. 41, 49 (1938); Comico Corporation, 39 S.E.C. 62, 73 (1959).

7/ Mutual Employees Trademart, Inc., 40 S.E.C. 1092, 1097-98 (1962); Capitol Leasing Corporation, Securities Act Release No. 4714, p. 5 (August 18, 1964).

8/ Inspiration Lead Company, Inc., 39 S.E.C. 108, 114 (1959); Edsco Manufacturing Co., Inc., 40 S.E.C. 865, 869 (1961); General Aeromation, Inc., 41 S.E.C. 219, 227-228 (1962); Del Consolidated Industries, Inc., Securities Act Release No. 4795, p. 5 (July 26, 1965).

(CONTINUED)

In this case there were a number of serious deficiencies, primarily the failure to disclose material facts with respect to the prior exploration of the mining claims and the negative results of the issuer's drilling, as well as a number of deficiencies which at the least demonstrate a lack of care in the preparation of the filing. Under all the circumstances we cannot find that this filing demonstrates such a diligent and careful effort to present an accurate and adequate filing as to lead us in the exercise of our discretion to vacate the suspension.

We conclude, as did the hearing examiner, that it is appropriate in the public interest to make the suspension permanent. The suspension of the privilege of selling securities under Regulation A will leave the issuer free to offer its securities to the public if it complies with the registration provisions of the Act by filing a registration statement, from which a public investor may make an informed judgment as to whether the issuer's business venture involves risks which he is willing to assume. 9/

We have considered the initial decision of the hearing examiner and the exceptions thereto, and to whatever extent such exceptions involve issues which are relevant and material to the decision of this case, we have by our Findings and Opinion herein ruled upon them. We hereby expressly sustain such exceptions to the extent that they are in accord with the views set forth herein, and we expressly overrule them to the extent that they are inconsistent with such views.

Accordingly, IT IS ORDERED, pursuant to Rule 261 of Regulation A under the Securities Act of 1933, that the exemption from registration with respect to the proposed public offering by Jackpot Exploration Corp. be, and it hereby is, permanently suspended.

By the Commission (Chairman BUDGE and Commissioners OWENS, SMITH, NEEDHAM and HERLONG).

Orval L. DuBois
Secretary

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8 Continued/

We have also noted that our policy of considering amendments to a Regulation A filing after the issuance of a temporary suspension order would be more limited than in the case of a registration statement in view of the simplified requirements under Regulation A. See Illowata Oil Company, 38 S.E.C. 720, 723-24 (1958); Hart Oil Corporation, 39 S.E.C. 427, 432 (1959).

9/ Gold Crown Mining Corporation, 39 S.E.C. 619, 622 (1960); Aluminum Top Shingle Corporation, 40 S.E.C. 941, 946-947 (1961); U.S. Systems, Inc., Securities Act Release No. 4734, page 3 (November 24, 1964). Moreover, while under Rule 252(c) a suspension order will bar the use of Regulation A by the issuer for five years, it may file an application for relief from such bar upon a proper showing made pursuant to Rule 252(f). Nevada Consolidated Mines, Inc., Securities Act Release No. 4717 (August 20, 1964).