

SECURITIES EXCHANGE ACT

RELEASE NOS.

3480 TO 3521

UNITED STATES.

SECURITIES AND EXCHANGE COMMISSION.

PHILADELPHIA.

1943.

For IMMEDIATE Release Wednesday, August 18, 1943



SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3480 - 3521

The Securities and Exchange Commission today announced that it had declared effective the plans of the San Francisco Stock Exchange and the New York Curb Exchange for "special offerings" as modified, respectively, by amendments filed with the Commission on July 28 and August 7, 1943.

The principal changes in the special offering plans of the two exchanges are to permit overallocments to be made in special offerings, for the purpose of facilitating stabilization, up to 10 percent of the block of securities offered; they provide for announcements on the ticker tape upon the inception and termination of stabilizing, in accordance with present practice; they codify the information which member firms and their employees are compelled to disclose to customers in the solicitation and confirmation of purchases; and they provide for several other changes, primarily technical in character.

The text of the Commission's action follows:

The Securities and Exchange Commission having heretofore declared effective for an indefinite period special offering plans of the San Francisco Stock Exchange and the New York Curb Exchange; and the San Francisco Stock Exchange, on July 28, 1943, and the New York Curb Exchange, on August 7, 1943, having filed amended plans for such special offerings; and

The Securities and Exchange Commission having given due consideration to the special offering plans, as amended, of the San Francisco Stock Exchange and the New York Curb Exchange, and having due regard for the public interest and for the protection of investors, pursuant to the Securities Exchange Act of 1934, particularly Sections 10 (b) and 23 (a) thereof, and Rule X-10B-2 thereunder, hereby declares the respective special offering plans of the San Francisco Stock Exchange and the New York Curb Exchange, as modified by the aforesaid amendments, to be effective, on condition that if at any time it appears to the Commission necessary or appropriate in the public interest or for the protection of investors so to do, the Commission may suspend or terminate the effectiveness of either of said plans by sending at least ten days' written notice to the exchange whose plan is being suspended or terminated.

Effective August 18, 1943.

For Release in MORNING Newspapers of Wednesday, September 15, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3481

In the Matter of	:	
	:	
GUARANTY UNDERWRITERS, INC.	:	
310 West Adams Street	:	FINDINGS AND OPINION
Jacksonville, Florida	:	OF THE COMMISSION
	:	
Securities Exchange Act of 1934	:	
Section 15 (b)	:	

BROKER-DEALER REGISTRATION

Grounds for Revocation

Fraudulent Representations and Omissions

Material fraudulent misrepresentations and omissions made by respondent broker-dealer in sales of securities, held, willful violations of the Securities Act and the Securities Exchange Act.

Sales of Securities at Prices Not Reasonably Related to Market

Sales of securities to inexperienced customers, at prices bearing no reasonable relationship to market prices, held, willful violations of the Securities Act and the Securities Exchange Act.

Sales of Unregistered Oil Royalty Interests

Where in sales of oil royalty interests, respondent failed to deliver offering sheets to customers at time of initial offer, as required by the Rule, held, a condition of the exemption of the royalty interests from registration under the Securities Act was not met, and sales without registration were willful violations of the Act.

Jurisdiction

Respondent's filing notice of withdrawal of broker-dealer registration, ceasing to do business, and consenting to revocation of registration, held, not to deprive Commission of power to conduct proceedings and revoke respondent's registration.

APPEARANCES:

William Green, J. Cecil Penland, Woolvin Patten, William M. Simpson, and Sidney A. Manster, for the Trading and Exchange Division of the Commission.

John W. Muskoff of Cockrell & Cockrell, Jacksonville, Florida, and Lawrence S. Camp, of Howard, Camp & Tiller, Atlanta, Georgia, for respondent.

James C. Knight, Miami, Florida, for Earnest A. Fowler.

This proceeding was instituted by our order to determine whether the registration of Guaranty Underwriters, Inc. (the respondent) as a broker and dealer should be revoked pursuant to Section 15 (b) of the Securities Exchange Act of 1934, and whether or not respondent should be suspended or expelled from the National Association of Securities Dealers, Inc., a national securities association, pursuant to Section 15A (1) (2) of the Act. The order for hearing set forth information reported to us which, if true, indicated that respondent had willfully violated the anti-fraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934, as well as the provisions in the 1933 Act prohibiting the use of the mails in the sale or delivery of unregistered securities.

Subsequent to the issuance of the order, respondent addressed a letter to the Commission purporting to withdraw its broker-dealer registration and requesting and consenting to the revocation of its registration by the Commission. The letter also declared that respondent was "withdrawing and resigning" from its membership in the National Association of Securities Dealers, Inc. and was "resigning and withdrawing its registration" with the Securities Commission of the State of Florida. The letter did not admit the facts set forth in the Commission's order. The Commission took respondent's notice of withdrawal and consent to revocation under advisement and ordered the hearings to proceed.

At the opening of the hearings, of which appropriate notice had been given, respondent, after citing the above-mentioned actions it had taken and representing in addition that it had suspended its business and was no longer in business as a securities dealer, declared that, in view of these circumstances, the Commission had no jurisdiction to proceed with the hearing, and it moved that the hearing be dismissed. The trial examiner denied the motion. There followed a protracted series of suits in which respondent sought to enjoin the Commission from holding the ordered hearings, but which resulted in sustaining the Commission's power to proceed. 1/

1/ *Guaranty Underwriters, Inc. v. Johnson*, unreported memorandum and order by Waller, J., D.C. S.D. Fla., Jacksonville Div., Sept. 4, 1942; affirmed, 133 Fed. (2d) 54 (C.C.A. 5, Feb. 9, 1943); *Johnson v. McNeill*, 10 So. (2d) 143 (Fla. Sup. Ct., Oct. 23, 1942); *Guaranty Underwriters, Inc. v. Securities and Exchange Commission*, 131 Fed. (2d) 370 (C.C.A. 5, Nov. 7, 1942). See also *Guaranty Underwriters, Inc.*, S.E.C. (Dec. 1, 1942), Securities Exchange Act Release No. 3341.

Hearings went forward accordingly and the trial examiner filed an advisory report finding that respondent violated the statutes in the respects specified in the order. Respondent filed exceptions to the trial examiner's report, but filed no brief and requested no oral argument. Our findings are based upon an independent review of the record.

RESPONDENT AND ITS OPERATIONS

Respondent is a Florida corporation with its main office in Jacksonville, Florida, and with branch offices throughout the State. It registered as a broker and dealer in 1935 pursuant to Section 15 of the Securities Exchange Act. As indicated above, it was also a member of the National Association of Securities Dealers, Inc., at the time of our order for hearing.

Respondent's practice, it appears from the record, was to solicit the business of elderly persons, inexperienced in security dealings and dependent on their investments for all or a substantial proportion of their incomes. ^{2/} Respondent's salesmen held themselves out as being interested in the welfare of these customers, disparaged the securities these customers held, and induced them to sell their securities and switch into other investments which respondent recommended. Having thus procured the orders of these customers, and often their securities or cash, respondent proceeded to buy securities in the market and resell them to the customers at greatly increased prices, far in excess of prevailing market prices at the time of the sales. Further professing to act in the customers' interests, the salesmen would later advise them to turn these new securities in, often at a loss, and purchase still others, again at greatly excessive prices.

FRAUDULENT TRANSACTIONS WITH CUSTOMERS

Over forty customers testified as to their transactions with respondent in which this pattern of conduct was generally followed. We cite three representative cases.

Transactions with Mrs. Dawes

Mrs. Catherine D. Dawes was a widow of nearly 80. She had no experience in dealing in securities and no relatives in Florida to whom she could turn for advice. Her only occupations were "housework and my chickens." She had money on deposit in banks and was getting a small return on it. She replied to a post card sent her by respondent, and H. O. Alford, a salesman,

^{2/} That this was a deliberate policy of respondent is not only established by the evidence on particular transactions but is well illustrated by the following. Howell, a former salesman of respondent, testified that the manager of his branch office told him to go out and get "the senile and unsuspecting, and the old ladies sitting around the parks with money." He also testified that this manager, upon employing him, said:

"Now, Howell, you are well acquainted around here. You go around these rich old ladies and these winter visitors and get yourself about twenty or thirty customers, and you will be fixed."

called on her. She transferred two bank books to him and enabled him to obtain her deposits of \$4,000 and \$5,000. Details of her securities purchases appear in Appendix A. It will be noted that in these transactions respondent's mark-ups exceeded its contemporaneous cost by 13 to 50 percent. In the case of Jefferson Lake Sulphur Co. stock, a security listed on the New Orleans Stock Exchange, prices to Mrs. Dawes exceeded market prices on the Exchange at or about the days of the two sales to her by 33 and 54 percent. ^{3/} Alford, however, falsely represented the sale price to Mrs. Dawes as the market price, and in response to her inquiry as to what she owed him for his services in this transaction, he replied, "You owe me nothing." In the case of unlisted securities, prices to Mrs. Dawes exceeded the high asked prices reflected in the National Daily Quotation Sheets by 11 to 44 percent. It should be noted also that Mrs. Dawes' last purchases, on March 26, 1941, which totalled \$1,500, were paid for with the entire proceeds of the sale of bonds which she had bought from respondent less than 3 months previously for \$1,950.

The circumstances of the transfer of her second bank book to Alford were recited by Mrs. Dawes as follows: Paul B. Staninger, president of respondent, visited her, bringing with him a neighbor to recommend him and his company. Staninger told her:

"You want your money working for you. You want a nurse and you want more income. You have it in the bank. If you bring a nurse in here she will use that all up and you will have nothing. You want it invested so you can get what you want."

He told her his investments were just as safe as the bank's and that he wanted her to have a better living. He made no specific recommendations of securities at that time but the next morning Alford came. Mrs. Dawes testified:

"He talked and talked until I wanted him to quit. I was sick, and I was down and weary, and I wished there was no money in the world. He talked so much and it was afternoon, and I was fatigued, and just stupid. He talked and talked, and I said it was very true, 'If you can put my money into Government work and I get a reasonable interest it is all right.'"

^{3/} The point mark-up per share in these two sales was 1-3/4 and 1-1/4. However, the market price per share was also relatively small, and the total paid by Mrs. Dawes in the two transactions was \$4,000, a not insubstantial amount in an over-the-counter investment. While under some circumstances--e.g., a small total purchase of a low-priced security, or special difficulty in obtaining a security desired by a customer--there may be good reasons warranting a large percentage mark-up, we do not think that the ostensibly small point mark-up per share in this and similar sales justifies our ignoring the percentage mark-up taken by respondent on the overall transaction.

She gave him the bank book covering \$5,000 deposited in her Cleveland bank. When he left, however, she regretted her action and wired the bank to keep her money until she wrote for it, as she customarily did when she needed funds. Alford came back a day or two later and said he had ordered the securities. She told him about her telegram to the bank. He talked to her again, in a "very commanding spirit, and very bitter at all times." He gave her the impression that he was obliged to pay for the securities. He told her he had some connection with the Government, and she thought her funds were going into Government work. She testified:

". . . I do all my own work, and it is awfully tiresome, and I get weary and tired in the afternoon, and I was tired. . . I was alone, and I was afraid . . . I thought he was a brother and maybe God sent him to help me--I just felt stupid."

He wrote another telegram to the bank saying, "Pay no attention to the former telegram" and she signed it.

Respondent sent confirmations of sales to Mrs. Dawes through the mails.

Transactions with Mrs. Bodley

Mrs. Virginia Bodley had kept house all her life. She was 65. She had no experience in dealing in securities and was completely dependent upon her investment income. An acquaintance introduced her to William Sullivan, a salesman employed by respondent. He tried to interest her in buying securities, but her sister had lost heavily in stocks, and she was wary at first. Sullivan told her that respondent was not like a broker, that it watched securities and would take her out of an investment before it "got to the top." She told him of her inexperience and her dependence upon her holdings.

"Hell's fire is too good for you [she told him] if you cause me to lose any money because this is my living.' He just laughed and said 'You are not going to lose a penny.'"

When she asked what to do if she needed some of the money she would invest, he replied, according to the testimony,

"Let me know a few days before. If you come in one day and want it the next afternoon, you have to take a slight loss, but that will be all, but if you give me three or four days, I will give you what you put in it."

She entered into security transactions with respondent at his advice, and became very friendly with him, going to his home for Thanksgiving dinner, and being taken for long rides in his automobile. She testified that she trusted him implicitly and believed what he told her. When Mrs. Bodley asked what Sullivan was charging for the exchange of securities Sullivan replied he was not charging anything; he wanted to see her make money; that he got a commission on every new customer; and that a satisfied customer was a good advertisement.

Transactions between respondent and Mrs. Bodley are listed in Appendix B. As the Appendix shows, respondent sold Mrs. Bodley a total of 615 shares of Jefferson Lake Sulphur common in 6 transactions in 1940 and 1941 at prices ranging from 3-3/4 to 4-3/4 points per share. These prices exceeded respondent's contemporaneous cost by 25 to 50 percent and exceeded market prices and high asked quotations on the New Orleans Stock Exchange by 31 to 50 percent. On one occasion Mrs. Bodley learned that the price of the stock was less than she had paid and complained to Sullivan about the overcharge. He then spoke a different language:

"If you go . . . and ask for a dress, [he said] do you object to any price? We have a right to charge any price we want to and make money."

The 615 shares, which cost Mrs. Bodley \$2,742, were repurchased by respondent in January and June, 1942, for a total of \$954.33.

As is indicated in Appendix B, respondent engaged in sales of other securities to Mrs. Bodley at mark-ups ranging up to 52 percent of contemporaneous cost and 60 percent of the high asked price in the National Daily Quotation Sheets for the day of the sales.

Respondent sent securities and confirmations to Mrs. Bodley through the mails.

Transactions with Dr. Williams

Dr. R. H. Williams was a practicing physician. His previous securities experience appears to have been limited to following quotations on a few securities someone had bought for him which were listed on the New York Stock Exchange.

In September, 1940, Arthur E. Daye, a salesman for respondent, came to his office. Daye told Dr. Williams that respondent was a perfectly reliable concern, that it had been in the securities business for a number of years, was an expert in securities, and was in a much better position to manage investments than a busy doctor would be. Daye appeared to be familiar with Dr. Williams' holdings, went over them one by one, and suggested he exchange them for other securities. Dr. Williams told Daye that he knew nothing about stocks and bonds and, relying on Daye's representations, agreed to turn his securities over to respondent to see what it could do with them.

Daye told him that the exchanges would be made at market prices. Some time later, in the course of the transactions, Dr. Williams asked him,

"You are taking my stock at the market value and in exchange you are giving me so many shares of this other stock . . . You made several trips over here to my office to see me, and you spent a great deal of time waiting on me in my office. You certainly must have to make something on this. Where do you come in? And, as well as I remember he told me they didn't make anything off the exchange of the stock at all. That when my stock was sold . . . any brokerage company was allowed a certain percentage on the stock. He says it amounted to a very small amount . . . eight-tenths of a point, or something like that, of one percent. Well, I judged it wasn't very much."

In the latter part of September, 1940, respondent purchased Dr. Williams' listed securities and sold him various unlisted securities. Subsequently respondent made additional sales, occasionally as part of an exchange for securities Dr. Williams had previously purchased. Appendix C lists transactions between respondent and Dr. Williams in which respondent's mark-up ranged up to 60 percent above its contemporaneous cost and up to 39 percent above market prices or high asked prices reflected in the National Daily Quotation Sheets on the day of the sales.

In connection with the exchange in which Dr. Williams acquired 380 shares of Giant Portland Cement Co. stock, Daye told him that respondent would be his agent in the transaction; as Dr. Williams put it,

"They merely took my stock and sold it, and bought this other and turned it over to me."

Respondent, however, confirmed the purchase and sale as a dealer. Daye also said that the exchange would be made at the market. As Appendix C indicates, respondent's price of the stock to Dr. Williams was 30 percent in excess of the high asked price for the day as given in the National Daily Quotation Sheets.

Respondent sent Dr. Williams confirmations of its transactions with him through the mail.

Sales of Oil Royalty Interests

For several years during the course of its business respondent sold oil royalty interests to a number of customers. In their sales respondent repeated the pattern of conduct it had pursued in the sale of corporate securities. Here too, the customers were advanced in years and lacked experience in security dealings. Here too, respondent's officers and agents repeatedly protested their interest in the customers' welfare, their desire to increase the customers' income, and respondent's reliability as a securities dealer. The customers placed trust and confidence in respondent, and purchased royalties from it on the strength of these representations. Respondent frequently procured the customers' funds or securities before it purchased the royalties, thus engaging in riskless trading, yet the sales prices in almost every instance were greatly marked up over the cost of the royalties to respondent.

Transactions with Mrs. Jenkins

Mrs. Jean D. Jenkins was a widow of nearly 80. She had no financial experience. Some time after her husband's death in 1936, Alford, respondent's salesman, and later Staninger, respondent's president, called on her, and they visited her often thereafter. Letters by Staninger and Alford assured her that

"we have your interest at heart and are quite anxious to be of service;"

". . . (no) member of our organization will ever betray (your) confidence;"

"the small amount of commission which we make does not justify our advising you to do something that would not be to your advantage."

As their relationship with Mrs. Jenkins progressed, it assumed an increasingly friendly tone. Alford wrote:

"You would not let me talk to you about the 40 shares of A.T. & T. which you contemplate giving your sister while I was there Friday, but young lady, you will have to do some reading for I am going to discuss it now.

"I note that A.T. & T. closed yesterday at \$142-1/2 and this would make 40 shares worth \$6700.00. A.T. & T. has paid consistently \$9.00 per share per annum. This is equivalent to \$350 return each year on 40 shares, or approximately 6% on the value. \$6700.00 invested in good royalties would safely return you around \$60.00 per month or \$720.00 per year which is double the amount A.T. & T. is returning. . .

"I don't ever want you to do anything you do not want to, and I shall be the last one to insist that you do, but it is my responsibility to advise you properly, and I would not be doing my duty and trying to assist you safeguard your interest should I neglect to place before you the actual facts and tell what I think you should do. You are the one to make the decision, and I want you to carefully weigh the matter before you take any action."

Staninger wrote:

"This morning in a telephone conversation with Mr. Alford, or in other words 'your man Tuesday,' I asked him to insist on your converting your Allied Chemical and Coca Cola stock, also the cash you have in the Post Office, for none of these are bringing you a satisfactory return on the money invested.

"Now, our plan is to convert this into producing royalties, or other securities that will bring you a satisfactory return, and in the event you should at any time need cash for an emergency you will only have to notify us in order to get it, for we will be pleased to loan you money, using the securities we purchase for you as collateral. In this way you can obtain ready cash at any time you should need it . . .

"Please be assured that we have your interest at heart and want to be of service to you in every way possible."

Appendix D lists royalties sold by respondent to Mrs. Jenkins. They were selected by respondent, and ordered by Mrs. Jenkins on its recommendation. As the Appendix indicates, respondent's mark-ups over its contemporaneous cost in its two largest sales to Mrs. Jenkins--one of \$4,800 and another of \$8,500--were, respectively, 35 and 56 percent. In no transaction was the mark-up less than 35 percent. In one transaction it reached 431 percent. While this is

the highest mark-up over cost taken from any of the customers whose accounts appear in the record, there are numerous examples in oil royalty sales to the other customers of mark-ups of 40 and 50 percent over contemporaneous cost, some of more than 70 percent, and one of 94 percent.

Respondent used the mails in its sales of oil royalty interests.

Other Misrepresentations

In addition to the various false representations noted above, respondent's salesmen represented to the several customers that they could have confidence in respondent; respondent had their interests at heart; it would take care of them or look after them; it wanted to help people who had only small amounts to invest; it was making no charge, or a charge of a fraction of a point, or the same charge as other brokerage houses, in its transactions with them; and it was selling the securities at or below market prices. It is clear from the record that these statements were false.

In the sales of oil royalties, too, respondent's salesmen made various misrepresentations. They guaranteed purchasers a return of at least 1 percent per month on the royalties, and told them that the return would continue throughout their lifetime and longer. The customers received no such return.^{4/} The salesmen described the return from the royalties as income, and compared it to the return on corporate securities, omitting to state that an oil royalty interest was an investment in a wasting asset, and that payments thereon could not definitely be regarded as income until the capital invested had been returned.

The customers were not told of the cost of the royalties to respondent or the market prices of the corporate securities they bought, and they were unaware of the extent of the mark-ups which respondent charged them.

Concealment of Market Prices

The concealment of market prices of the securities was achieved not only by fraudulently representing that sales were at the market, nor merely by a passive omission to state the market prices. Respondent took active steps to see that its customers remained ignorant of the market price, as the following incident demonstrates.

Respondent frequently bought preferred and common stock of Jefferson Lake Sulphur Company and obtained teletype quotations on them from T. J. Feibleman, a New Orleans securities dealer and a member of the New Orleans Stock Exchange, on which the stocks were listed. In the early part of 1941 Feibleman circularized the stockholders of Jefferson Lake Sulphur Company and included in his circular the prices at which he was willing to trade in the stocks. Some of respondent's customers received these cards. On February 25, 1941, Henry G. Isaacs, vice president of respondent, sent a teletype message to Feibleman saying,

^{4/} Payments on Mrs. Jenkins' royalties, for example, appear to have declined from \$100 to \$56 a month. Even greater declines from the amounts represented by the salesmen as returns which the royalties would pay were experienced by other customers.

"It makes it pretty tough on us when we are retailing it with a profit for them to see you quoting it about 1/2 under our price. The only thing I can suggest is that if any of our customers come in, tell them that is a dealer quote only and that the retail price is higher and you can't get them stock at those prices."

Feibleman replied,

"I can only assure that this will not happen again . . . I will fully protect you on any inquiry . . ."

The next day he reported that only three cards had been sent into respondent's territory and that he had stopped a number of others just in time. However, a Mrs. Gillham, one of respondent's customers, replied to the card and repeatedly asked Feibleman for the current quotation. He first put her off by sending her only an analysis of earnings, a step which was approved by an office manager of respondent. When she persisted, Staninger, respondent's president, suggested that Feibleman tell her that the company was apparently progressing satisfactorily, but that he could not quote prices to her because he was not qualified to do business in Florida.

A few months later, respondent reported to Feibleman that another customer had received a card quoting a price on Jefferson Lake Sulphur common. Respondent teletyped to Feibleman:

"Please see that no info is mailed into Florida on this issue."

These occurrences reenforce the obvious conclusion that the omission on the part of respondent to disclose to its customers the market prices of securities at the time of its sales and the cost of the oil royalty interests was deliberate and fraudulent.

Conclusions as to Fraud

It is abundantly clear that the various statements and omissions made by respondent through its employees were designed to induce the unwary and the inexperienced to deal with respondent with trust and confidence and that they successfully accomplished this purpose. Respondent made untrue statements of material facts and omitted to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, and the statements or omissions were clearly made with knowledge or reasonable grounds to believe that they were untrue or misleading.

Furthermore, respondent's entire course of business as reflected in the record operated as a fraud and deceit upon the customers. A securities dealer is under an obligation to treat customers fairly. He may not exploit their ignorance or their confidence in him, and he may not charge them prices bearing no reasonable relationship to the market. Any other course of conduct knowingly undertaken has repeatedly been held fraudulent. ^{5/} Our comparisons of respondent's sales prices with the market (as established by prices in

^{5/} See *Lawrence R. Leiby*, S.E.C. (1943), Securities Exchange Act Release No. 3450, and cases cited therein at n. 11.

transactions on an exchange, current quotations, 6/ and respondent's own contemporaneous costs) permit no conclusion other than that respondent deliberately, repeatedly and systematically defrauded its customers through willful disregard of its duty to treat them fairly in accordance with standards imposed by respondent's registration as a broker and dealer.

We find that respondent willfully violated Section 17 (a) of the Securities Act and the provisions of Section 15 (c) (1) of the Securities Exchange Act as defined by Rules X-15C1-2 (a) and (b) thereunder. 7/

6/ In *Allender Company, Incorporated*, 9 S.E.C. 1043 (1941) at 1057, we discussed the probative weight of the National Daily Quotation Sheets as indications of the market price among wholesalers, which in turn is an indication of the market price in retail transactions. There was testimony here, as in the *Allender* case, showing the method of compiling the quotations in the sheets. Respondent presented no evidence on the market prices of the over-the-counter securities here under discussion.

In respondent's sales of oil royalties evidence of market price was lacking. In such a case, we have held, under circumstances similar to those here, that a dealer is under a duty to confine himself to a reasonable mark-up over wholesale levels, of which his own contemporaneous purchase price at wholesale is a *prima facie* indication. *Lawrence R. Leehy, supra*. By this test respondent's sales of oil royalty interests, like its sales of corporate securities, were made at fraudulent mark-ups.

7/ Section 17 (a) of the Securities Act of 1933 provides in part:

"It shall be unlawful for any person in the sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly--

"(1) to employ any device, scheme, or artifice to defraud, or

"(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

"(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser."

Section 15 (c) (1) of the Securities Exchange Act of 1934 provides in part:

"No broker or dealer shall make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security . . . otherwise than on a national securities exchange, by means of any manipulative, deceptive, or other fraudulent device or contrivance. The Commission shall, for the purposes of this subsection, by rules and regulations define such devices or contrivances as are manipulative, deceptive, or otherwise fraudulent."

(continued)

SALES OF UNREGISTERED OIL ROYALTY INTERESTS

Regulation B under the Securities Act of 1933, in effect at the time of these transactions by respondent, provides for an exemption from registration for oil royalty interests with a total offering price not exceeding \$100,000. As one of the conditions of such exemption, Rule 320 of the Regulation requires a dealer, at the time of the initial offer to sell a royalty interest, to deliver to the customer a copy of the offering sheet on file with the Commission which describes the interest in detail. Numerous customers testified that they were not shown offering sheets at the time respondent initially offered them the interests. While there was testimony that the offering sheets were delivered with the leases evidencing the interests, a number of customers left their leases in respondent's custody for some length of time and did not see the offering sheets until long after the consummation of the transaction. In any case, submission of the sheet with the delivery of the security did not achieve compliance with the Rule. Furthermore, a number of customers testified that the offering sheets were never delivered to them at all. Since, as indicated above, the delivery of an offering sheet at the time of the initial offer of an oil royalty interest to a customer was a condition of exemption from registration under the Securities Act, and since respondent did not comply with the condition, the exemption was not available. The royalty interests were not registered under the Securities Act, and respondent's use of the mails in their sale and delivery was a willful violation of Sections 5 (a) (1) and 5 (a) (2) of the Act. g/

7 cont'd/

Rules X-15C1-2 (a) and (b) promulgated under the latter provision, provide:

"(a) The term 'manipulative, deceptive, or other fraudulent device or contrivance,' as used in section 15 (c) (1) of the Act, is hereby defined to include any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

"(b) The term 'manipulative, deceptive, or other fraudulent device or contrivance,' as used in section 15 (c) (1) of the Act, is hereby defined to include any untrue statement of a material fact and any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, which statement or omission is made with knowledge or reasonable grounds to believe that it is untrue or misleading."

g/ Section 5 (a) of the Securities Act provides:

"Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly--

"(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell or offer to buy such security through the use or medium of any prospectus or otherwise; or

"(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale."

JURISDICTION

From certain of respondent's exceptions to the trial examiner's report it appears that it still presses its contention that, in view of the fact that it has consented to the revocation of its registration, has stated that it was no longer engaged in the securities business, and has purported to withdraw its registration, we have no jurisdiction to enter an order revoking respondent's registration. The answer to this contention was made by the District Court in *Guaranty Underwriters, Inc. v. Johnson*: 9/

"According to the statute . . . it does not appear that the registered broker or dealer has the unqualified privilege of withdrawing his registration, but that he may do so only upon such terms and conditions as the Commission may deem necessary for the protection of the public interest and investors. This being true, the mere announcement by the dealer that he was withdrawn and ceased to do business would not put an end to the Commission's jurisdiction over such registered dealer. It still has the right to determine what terms and conditions it would impose before allowing a withdrawal. It is conceivable that the Commission might, in the case of fraud, for instance, require the broker to make his investors whole. In order to do this it might be necessary to have a hearing and to have the investors give testimony as to their losses or as to what action might be necessary for their protection or as to what steps the investors considered should be taken for their protection.

"It is conceivable that a dealer might be guilty of willful violations of the law that would subject him to the criminal provisions of the law, in which event it would be the duty of the Commission to refer the matter to the Attorney General. It would not seem that a dealer, by stating that he had withdrawn or ceased to do business, could thereby end the matter. While the revocation of a registration or the expulsion of a member, strictly speaking, is not in the nature of a criminal proceeding, yet there is quite a distinction in the position of one who could say, 'I resigned,' and one who says, 'I was expelled.' It is conceivable that instances could arise where expulsion, with the onus that goes with it, might be more appropriate than voluntary withdrawal. Furthermore, a dealer should not be permitted to place himself beyond the jurisdiction of the Commission until he has fulfilled the obligations which he incurred while enjoying the franchise or privilege of a registered dealer with the Commission."

As the Court indicates, gradations are recognized between our finding that a broker-dealer has ceased to do business, permitting a notice of withdrawal of its registration to become effective, accepting its consent to revocation, and ordering revocation after a finding of statutory violation. The distinctions assume special significance where, as in this case, respondent has not admitted the violations or the reported facts on which the proceeding was predicated. Our review of the record establishes that respondent has callously and systematically defrauded innocent victims to whom it represented

9/ *Supra*, n. 1.

itself as an adviser and benefactor. With statutory violations of this character before us, the public interest requires nothing short of action on our part revoking respondent's registration. 10/ Respondent's notice of withdrawal and its statement that it has ceased to do business as a broker-dealer will accordingly be denied effectiveness, and its registration will be revoked.

An appropriate order will issue.

By the Commission (Chairman Purcell and Commissioners Healy, Pike, Burke and O'Brien).

Orval L. DuBois,
Secretary.

(SEAL)

10/ Respondent's resignation from the National Association of Securities Dealers, Inc. has already become effective.

APPENDIX A

Transactions With Mrs. Catherine Dawes

<u>Sales to Mrs. Dawes</u>				<u>Purchases by Respondent</u>				<u>Per Cent</u>	<u>Low Bid - High Asked</u>	<u>Per Cent Selling</u>	
<u>Date</u>	<u>Description</u>	<u>Unit Price</u>	<u>Total Price</u>	<u>Date Bought</u>	<u>Unit Cost</u>	<u>Total Cost</u>	<u>Mark-up</u>	<u>Above Cost</u>	<u>On Date of Sale From NDQ Sheets</u>	<u>Price to Customer Above High Asked</u>	
<u>1940</u>				<u>1940</u>							
Nov. 5	200 Jefferson Lake Sulphur	5	1000.00	Nov. 19	3-3/4	750.00	250.00	33	3-1/4 *	54	
Nov. 16	600 Jefferson Lake Sulphur	5	3000.00	Nov. 7 - 8 sha.	3-5/8	29.00	880.50	41	3-3/4 **	33	
				Nov. 19 - 75 sha.	3-3/4	281.00					
				Nov. 19 - 517 sha.	3-1/2	<u>1809.50</u>					
						<u>\$2119.50</u>					
<u>1941</u>				<u>1941</u>							
Jan. 15	300 Youngstown Steel Car	9.93333	2980.00	Jan. 15	6-5/8	1987.50	992.50	50	6-1/4	6-7/8	44
Jan. 15	3 M Old Ben Coal 6-48	65	1950.00	Jan. 9	55-1/2	1665.00	285.00	17	56	58-1/2-	11
Mar. 26	100 Remington Arms	7-1/2	750.00	Mar. 26	5-1/4	525.00	225.00	43	4-7/8	6-1/4	20
Mar. 26	50 Globe Steel Tube	15	750.00	Mar. 28	13-1/4	662.50	87.50	13	12-3/4	13-1/2	11

* Sale on the New Orleans Stock Exchange on Nov. 6, 1940. Exchange holiday on Nov. 5.

** Sales on the New Orleans Stock Exchange.

APPENDIX B

Transactions With Mrs. Virginia Bodley

<u>Sales to Mrs. Bodley</u>				<u>Purchases by Respondent</u>					<u>Per Cent Mark-up Above Cost</u>	<u>Low Bid - High Asked On Date of Sale From NDD Sheets</u>	<u>Per Cent Selling Price to Customer Above High Asked</u>
<u>Date</u>	<u>Description</u>	<u>Unit Price</u>	<u>Total Price</u>	<u>Date Bought</u>	<u>Unit Cost</u>	<u>Total Cost</u>	<u>Mark-up</u>				
<u>1940</u>				<u>1940</u>							
Dec. 2	100 Jefferson Lake Sulphur	4-3/4	475.00	Nov. 27	3-5/8	362.50	112.50	31	3-1/4 *	46	
Dec. 18	100 Okla.-Interstate Mining	2	200.00	Nov. 15	1.425	142.50	57.50	40	1 1-1/4	60	
Dec. 27	100 Barnard Aviation Equip.	3-3/4	375.00	Nov. 21	3-1/2	350.00	25.00	7	2-3/8 2-3/4	36	
<u>1941</u>				<u>1941</u>							
Jan. 2	100 Barnard Aviation Equip.	3-3/4	375.00	Jan. 2	2.675	267.50	107.50	40	2-3/8 2-3/4	36	
Jan. 11	40 Jefferson Lake Sulphur	4.6437	185.75	Nov. 4, 1940	3-3/8	135.00	50.75	38	3 ** 3-1/2	33	
Feb. 14	100 Jefferson Lake Sulphur	4-1/2	450.00	Feb. 15	3	300.00	150.00	50	3 *	50	
Apr. 4	175 Jefferson Lake Sulphur	4-3/4	831.25	Apr. 3	3-5/8	634.31	196.94	31	3-3/8 ** 3-5/8	31	
Apr. 15	200 Western Lt. & Tel.	1.2942	258.85	Apr. 16, 17, 18	85¢	170.00	88.85	52	80¢ 85¢	52	
June 14	100 Jefferson Lake Sulphur	4-1/4	425.00	June 16	3-1/16	306.25	118.75	39	2-7/8 ** 3-1/8	36	
Aug. 30	100 Jefferson Lake Sulphur	3-3/4	375.00	June 30	3	300.00	75.00	25	2-1/2 ***	50	
Sept. 17	50 Remington Arms	5-5/8	281.25	Sept. 18	4-5/8	231.25	50.00	22	4-1/8 5-1/2	2	

* Sale on the New Orleans Stock Exchange.

** Bid and asked on the New Orleans Stock Exchange.

*** Sale on the New Orleans Stock Exchange on Aug. 29, 1941. Exchange closed August 30.

APPENDIX G

Transactions With Dr. R. H. Williams

<u>Sales to Dr. Williams</u>				<u>Purchases by Respondent</u>				<u>Per Cent Mark-up Above Cost</u>	<u>Low Bid - High Asked On Date of Sale From NDQ Sheets</u>		<u>Per Cent Selling Price to Customer Above High Asked</u>
<u>Date</u>	<u>Description</u>	<u>Unit Price</u>	<u>Total Price</u>	<u>Date Bought</u>	<u>Unit Cost</u>	<u>Total Cost</u>	<u>Mark-up</u>				
<u>1940</u>				<u>1940</u>							
Sept. 20	125 Barnard Avia. Eq.	3.40 †	426.19	May 16	2-1/8	265.63	160.56	67	2	3	13
Sept. 27	125 Jefferson Lake Sulphur	4	500.00	Sept. 27	2-7/8	359.38	140.62	39	2-3/4 †	2-7/8	39
<u>1941</u>				<u>1941</u>							
Jan. 10	380 Giant Portland Cement	1-1/2	570.00	Jan. 2	1.12	425.60	144.40	34	1	1.15	30
Apr. 23	380 Western Lt. & Tel.	1.15	437.00	Apr. 22 Apr. 25	86¢	326.80	110.20	34	80¢	85¢	35

† Sales on New Orleans Stock Exchange.

APPENDIX D

Transactions With Mrs. Jean D. Jenkins

<u>Number of Royalty Interests</u>	<u>Sales to Mrs. Jenkins</u>		<u>Purchases by Respondent</u>		<u>Mark-up Over Cost on Sale to Mrs. Jenkins</u>	
	<u>Date</u>	<u>Price</u>	<u>Date</u>	<u>Cost</u>	<u>Amount</u>	<u>Per Cent</u>
	<u>1937</u>		<u>1937</u>			
1	Aug. 26	839.39	Aug. 26	601.25	238.14	40
1 *	Nov. 30	4835.34	Nov. 30	3577.25	1258.09	35
	<u>1938</u>		<u>1938</u>			
2	Feb. 24	1000.00	Feb. 24	601.25	398.75	67
1	June 28	360.00	July 11	67.75	292.25	431
2	Oct. 25	1844.46	Nov. 12	1287.40	557.06	43
	<u>1939</u>		<u>1939</u>			
4	Oct. 10	1200.00	Oct. 10	820.00	380.00	46
	<u>1940</u>		<u>1940</u>			
3	Mar. 11	8553.31	Mar. 7	5483.75	3069.56	56

* This transaction included a sale of shares in Guaranty Loan & Investment Company, a subsidiary of respondent.

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.,
on the 11th day of September, A.D., 1943.

In the Matter of	:	
	:	
GUARANTY UNDERWRITERS, INC.	:	ORDER
310 West Adams Street	:	REVOKING
Jacksonville, Florida	:	REGISTRATION
	:	
Securities Exchange Act of 1934 -	:	
Section 15 (b)	:	

The Commission having by order instituted proceedings pursuant to Sections 15 (b) and 15A of the Securities Exchange Act of 1934 to determine whether the registration of Guaranty Underwriters, Inc., respondent herein, as a broker-dealer pursuant to Section 15 of the Act should be revoked and whether or not respondent should be suspended or expelled from the National Association of Securities Dealers, Inc., a registered securities association;

Respondent having filed a notice of withdrawal from registration, having stated that it had ceased to do business as a broker-dealer, having consented to the revocation of its registration, and having resigned from the National Association of Securities Dealers, Inc.;

Hearings having been held after appropriate notice, and the Commission having this day filed its findings and opinion;

IT IS ORDERED, on the basis of said findings and opinion and pursuant to Section 15 (b) of said Act, that respondent's notice of withdrawal from registration and its statement that it has ceased to do business as a broker-dealer be and they hereby are denied effectiveness; and that the registration of respondent be and it hereby is revoked, effective September 15, 1943.

By the Commission.

Orval L. DuBois,
Secretary.

(SEAL)

For Release in MORNING Newspapers of Friday, September 3, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3482

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.,
on the 2nd day of September, A. D., 1943.

In the Matter of	:	
Applications by the NEW YORK CURB EXCHANGE	:	
to extend Unlisted Trading Privileges to	:	
	:	
	:	<u>File Nos.</u>
Farnsworth Television & Radio Corporation	:	7-700
Common Stock, \$1 Par Value	:	
Lukens Steel Company	:	7-701
Common Stock, \$10 Par Value	:	
Merck & Co., Inc.	:	7-702
Common Stock, \$1 Par Value	:	
Northern Natural Gas Company	:	7-703
Common Stock, \$20 Par Value	:	
Public Service Company of Indiana, Inc.	:	7-704
Common Stock, Without Par Value	:	
The Warner & Swasey Company	:	7-705
Common Stock, Without Par Value	:	
	:	
Securities Exchange Act of 1934	:	
Section 12 (f)	:	

ORDER Granting
Application to
Intervene

The New York Curb Exchange, pursuant to Section 12 (f) of the Securities Exchange Act of 1934 and Rule X-12F-1 promulgated thereunder, having made application to the Commission for permission to extend unlisted trading privileges to the above-mentioned securities;

The Commission having ordered that a hearing be held in this matter on Thursday, September 16, 1943, in Philadelphia, Pennsylvania; and

The National Association of Securities Dealers, Inc., by its Executive Director, Wallace H. Fulton, having filed on August 23, 1943 an application to intervene in the above-entitled proceeding; and

The Commission having considered the matter and being duly informed in the premises;

IT IS ORDERED that said application of the National Association of Securities Dealers, Inc. to be made a party to the said proceeding be and it hereby is granted.

By the Commission.
(SEAL)

Orval L. DuBois,
Secretary.

For IMMEDIATE Release Saturday, September 4, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3483

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.,
on the 3rd day of September, A.D., 1943

In the Matter of		
Applications by the PHILADELPHIA STOCK EXCHANGE to extend Unlisted Trading Privileges to		
	<u>File Nos.</u>	
American Cable & Radio Corporation Common Stock, \$1 Par Value	7-711	
American & Foreign Power Company, Inc. \$7 Cumulative 2nd Preferred Stock, Series A, No Par Value	7-712	
Gulf Oil Corporation Capital Stock, \$25 Par Value	7-713	
Morris & Essex Railroad Company 7-3/4% Non-Cumulative Guaranteed Capital Stock, \$50 Par Value	7-714	ORDER Setting Hearing on Applications to Extend Unlisted Trading Privileges
National Supply Company Common Stock, \$10 Par Value	7-715	
Pennsylvania Central Airlines Corp. Common Stock, \$1 Par Value	7-716	
Radio-Keith-Orpheum Corporation Common Stock, \$1 Par Value	7-717	
South American Gold and Platinum Company Common Stock, \$1 Par Value	7-718	
Standard Gas and Electric Company \$7 Cumulative Prior Preference Stock, No Par Value	7-719	
Sylvania Electric Products, Inc. Common Stock, No Par Value	7-720	
Twentieth Century-Fox Film Corporation Common Stock, No Par Value	7-721	
<u>Securities Exchange Act of 1934 - Section 12 (f)</u>		

The Philadelphia Stock Exchange, pursuant to Section 12 (f) of the Securities Exchange Act of 1934, and Rule X-12F-1 promulgated thereunder, having made application to the Commission to extend unlisted trading privileges to the above-mentioned securities; and

The Commission deeming it necessary for the protection of investors that a hearing be held in this matter at which all interested persons be given an opportunity to be heard;

IT IS ORDERED that the matter be set down for hearing at 10:00 a.m. on Monday, September 20, 1943, at the office of the Securities and Exchange Commission, 18th and Locust Streets, Philadelphia, Pennsylvania, and continue thereafter at such times and places as the Commission or its officer herein designated shall determine, and that general notice thereof be given; and

IT IS FURTHER ORDERED that Robert P. Reeder, or any other officer or officers of the Commission named by it for that purpose, shall preside at the hearing on such matter. The officer so designated to preside at such hearing is hereby empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, require the production of any books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law.

By the Commission.

Orval L. DuBois,
Secretary.

(SEAL)

For IMMEDIATE Release Saturday, September 11, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3484

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.,
on the 9th day of September, A.D., 1943.

In the Matter of	:	:
	:	:
Applications by the NEW YORK CURE EXCHANGE	:	:
to extend Unlisted Trading Privileges to	:	:
	:	:
	<u>File Nos.</u>	:
	:	:
Farnsworth Television & Radio Corporation	7-700	:
Common Stock, \$1 Par Value		:
	:	:
Lukens Steel Company	7-701	:
Common Stock, \$10 Par Value		:
	:	ORDER
	:	Postponing
Merck & Co., Inc.	7-702	:
Common Stock, \$1 Par Value		Date of
	:	Hearing
	:	:
Northern Natural Gas Company	7-703	:
Common Stock, \$20 Par Value		:
	:	:
Public Service Company of Indiana, Inc.	7-704	:
Common Stock, Without Par Value		:
	:	:
The Warner & Swasey Company	7-705	:
Common Stock, Without Par Value		:
	:	:
	:	:
Securities Exchange Act of 1934		:
Section 12 (f)		:

The Commission having on August 3, 1943 ordered a hearing pursuant to the provisions of Section 12 (f) of the Securities Exchange Act of 1934 to determine whether unlisted trading privileges should be extended to the above-mentioned securities; and

Said order having provided for the commencement of the hearing on September 16, 1943 at 10:00 a.m. at the office of the Securities and Exchange Commission, 18th and Locust Streets, Philadelphia, Pennsylvania; and

Counsel for all parties having requested that the hearing be postponed until November 15, 1943; and

The Commission having duly considered the matter and being fully advised in the premises;

IT IS ORDERED that the hearing schedules for September 16, 1943, be, and the same hereby is, postponed to November 15, 1943 at the hour and place heretofore designated.

By the Commission.

Orval L. DuPois,
Secretary.

(SEAL)

For Release in MORNING Newspapers of Tuesday, September 14, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3485

In the Matter of	:	
	:	
Application by the Cleveland Stock Exchange for permission to extend Unlisted Trading Privileges to the Common Stock, No Par Value, of Jones & Laughlin Steel Corporation	:	FINDINGS AND OPINION OF THE COMMISSION
	:	
File No. 7-676	:	
	:	
Securities Exchange Act of 1934 - Section 12 (f)	:	

UNLISTED TRADING PRIVILEGES

"Vicinity" of the Cleveland Stock Exchange

For the purposes of this application, vicinity of the Cleveland Stock Exchange held to comprise the State of Ohio.

Adequacy of Distribution and Trading Activity

Held that there exists in the vicinity of the applicant exchange sufficiently widespread distribution and sufficient public trading activity in the subject security to render the extension of unlisted trading privileges thereto appropriate in the public interest and for the protection of investors, and that the extension of those privileges is otherwise appropriate in the public interest and for the protection of investors.

APPEARANCES:

William J. Perry and William T. Robbins for the Cleveland Stock Exchange.

Myron Krottinger for the Trading and Exchange Division of the Commission.

The Cleveland Stock Exchange, a national securities exchange, filed an application pursuant to Section 12 (f) (2) of the Securities Exchange Act of 1934 seeking approval by the Commission of the extension of unlisted trading privileges to the No Par Common Stock of the Jones & Laughlin Steel Corporation. The stock is listed and registered on the New York Stock Exchange, a national securities exchange, and is traded on the applicant exchange as a security temporarily exempt from Section 12 (a) of the Securities Exchange Act of 1934 pursuant to Rule X-12A-5 of the Commission.

After notice to the New York Stock Exchange, to the issuer, and to the applicant, a hearing was held before a trial examiner of the Commission. There was no opposition to the granting of the application and no exceptions were taken to the advisory report filed by the trial examiner.

The Securities Exchange Act provides that no application to extend unlisted trading privileges to any security pursuant to Section 12 (f) (2) shall be approved unless the applicant exchange shall establish to the satisfaction of the Commission that there exists in the vicinity of such exchange sufficiently widespread public distribution of the security and sufficient public trading activity therein to render the extension of unlisted trading privileges necessary or appropriate in the public interest or for the protection of investors. Further, even if the adequacy of public distribution and public trading activity is successfully established, the Commission may not approve the application unless it finds that the extension of unlisted trading privileges is in other respects necessary or appropriate in the public interest or for the protection of investors.

One factor which ordinarily must be considered in determining whether the extension of unlisted trading privileges will be appropriate in the public interest or for the protection of investors is the operating mechanics of the applicant exchange. In an earlier case, ^{1/} the Commission found that the operating mechanics of the applicant exchange were such that "if sufficient public distribution and sufficient trading activity in the vicinity of the applicant exchange are established..., the extension of unlisted trading privileges to such security by the applicant exchange would be appropriate in the public interest and for the protection of investors." The operating mechanics described in the record in the present proceeding are the same as in the earlier application, except that the applicant exchange has in the interim amended its Floor Trading Rules, adding certain desirable requirements for transactions made on the floor of the exchange in which members of the applicant exchange act as principal. ^{2/} Consequently, our present information indicates that the operating mechanics of the applicant exchange will not prevent approval of the application.

VICINITY OF THE EXCHANGE

As in the former proceeding, ^{3/} the applicant asserts that its vicinity comprises the State of Ohio. There has been no substantial change in the facts pertaining to vicinity since that case. We therefore find, as we did in our former decision, that the vicinity of the Cleveland Stock Exchange comprises the State of Ohio.

^{1/} Applications by the Cleveland Stock Exchange, 6 S.E.C. 296 (1939).

^{2/} Cleveland Stock Exchange, Floor Trading Rules, Article XVI, effective July 23, 1942.

^{3/} Note 1, *supra*.

SUFFICIENCY OF DISTRIBUTION

The applicant avers that information concerning share and stockholder distribution of the subject security in the State of Ohio is not available from the issuer. It states, however, that as of July 31, 1942 9,936 shares were held in open accounts by its member firms for customers residing in the vicinity of the Cleveland Stock Exchange, and that as of the same date the four major banks in Cleveland held 15,982 shares in safekeeping and in a fiduciary capacity for Ohio residents. 4/ This represents a total of 25,818 shares so held.

Additional figures on distribution are submitted based on an exchange of securities incidental to the acquisition of Otis Steel Company, a Cleveland corporation, by Jones & Laughlin Steel Corporation, on June 30, 1942. Upon the dissolution of Otis Steel the holders of its stock received, in addition to other considerations, one share of Jones & Laughlin common for each share of Otis preferred stock held, and one share of Jones & Laughlin common for each four shares of Otis common held. On this basis, 366,308 shares of Jones & Laughlin No Par Common Stock were issued to former Otis Steel shareholders, increasing the amount of that security outstanding to 1,677,469 shares. Data on the amount of this stock issued to those former Otis Steel shareholders who resided within the vicinity of the applicant exchange indicate the following:

	No. of Share- holders with Ohio addresses	No. of Shares held by Ohio shareholders	No. of Shares of Jones & Laughlin common stock received in exchange
Otis Preferred Stock	365	63,030	63,030
Otis Common Stock	1,810	279,056	69,764
	2,175 <u>5/</u>	342,086	132,794

Thus it appears that 132,794 shares of the subject security were distributed within the vicinity of the applicant exchange to 2,175 former holders of Otis common and preferred. 6/

We find from the foregoing that there is sufficiently widespread public distribution of the subject security within the vicinity of the applicant exchange.

4/ The applicant avers that it is logical to assume that a "substantial number" of shares are held in like capacity by all banking institutions throughout Ohio.

5/ No attempt was made to eliminate possible duplications between former holders of Otis common and preferred.

6/ It is appreciated that some of the shares so distributed may be duplicated in the figures on member firm and bank holdings. Subsequent to the exchange, 62,363 shares of Jones & Laughlin common were held in the portfolio of the Cleveland Cliffs Corporation.

SUFFICIENCY OF TRADING ACTIVITY

The applicant has submitted the following figures on its members firms' transactions originating in the State of Ohio in the subject security and also in Otis Steel common during the period from August 1, 1941 to July 31, 1942:

Jones & Laughlin Steel Corporation	
Common Stock, No Par Value	20,415 shares
Otis Steel Company	
Common Stock	35,419 shares

The volume of trading which existed on the applicant exchange in Otis Steel common when the stock was listed on that exchange is an additional basis upon which to form a judgment as to whether there will be sufficient public trading activity on the exchange if this application is granted. The evidence shows the following from 1939 through June 30, 1942:

1939	7,961 shares
1940	8,638 "
1941	4,525 "
1942 (to June 30)	1,907 "

The probative value of these trading figures must be appraised in the light of the fact that the exchange of Otis Steel common for Jones & Laughlin common was on a four for one basis, reducing materially the number of shares in the hands of former holders of Otis common. However, a partially compensating factor is the fact that 63,030 shares of Jones & Laughlin common have been distributed to former holders of Otis preferred in the vicinity of the applicant exchange.

On the basis of the foregoing, we are satisfied that there is sufficient public trading activity in the subject security within the vicinity of the applicant exchange.

We further find that the extension of unlisted trading privileges to the above-named security is otherwise appropriate in the public interest and for the protection of investors.

The requirements of the Act having been met, an appropriate order will issue granting the application.

By the Commission (Chairman Purcell and Commissioners Healy and Pike),
Commissioners Burke and O'Brien being absent and not participating.

(SEAL) -

Orval L. DuBois,
Secretary.

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.,
on the 13th day of September, A.D., 1943.

<hr/>	
In the Matter of	:
	:
Application by the Cleveland Stock	:
Exchange for permission to extend	:
Unlisted Trading Privileges to	:
Jones & Laughlin Steel Corporation	:
Common Stock, No Par Value	:
	:
File No. 7-676	:
	:
Securities Exchange Act of 1934	:
Section 12 (f)	:
<hr/>	

ORDER Granting
Application
for Permission
to Extend
Unlisted Trading
Privileges

The Cleveland Stock Exchange having made application to the Commission, pursuant to Section 12 (f) of the Securities Exchange Act of 1934 and Rule X-12F-1, for permission to extend unlisted trading privileges to the Common Stock, No Par Value, of Jones & Laughlin Steel Corporation; and

After appropriate notice a hearing having been held in this matter at the Cleveland Office of the Commission; and

The Commission having this day made and filed its findings and opinion herein;

IT IS ORDERED, pursuant to Section 12 (f) of the Securities Exchange Act of 1934, that the application of the Cleveland Stock Exchange for permission to extend unlisted trading privileges to the Common Stock, No Par Value, of Jones & Laughlin Steel Corporation be and the same is hereby granted.

By the Commission.

Orval L. DuBois,
Secretary.

(SEAL)

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.,
on the 13th day of September, A.D., 1943.

<hr/>	
In the Matter of	:
	:
Application by the Cleveland Stock	:
Exchange for permission to extend	:
Unlisted Trading Privileges to	:
Jones & Laughlin Steel Corporation	:
Common Stock, No Par Value	:
	:
File No. 7-676	:
	:
Securities Exchange Act of 1934	:
Section 12 (f)	:
<hr/>	

ORDER Granting
Application
for Permission
to Extend
Unlisted Trading
Privileges

The Cleveland Stock Exchange having made application to the Commission, pursuant to Section 12 (f) of the Securities Exchange Act of 1934 and Rule X-12F-1, for permission to extend unlisted trading privileges to the Common Stock, No Par Value, of Jones & Laughlin Steel Corporation; and

After appropriate notice a hearing having been held in this matter at the Cleveland Office of the Commission; and

The Commission having this day made and filed its findings and opinion herein;

IT IS ORDERED, pursuant to Section 12 (f) of the Securities Exchange Act of 1934, that the application of the Cleveland Stock Exchange for permission to extend unlisted trading privileges to the Common Stock, No Par Value, of Jones & Laughlin Steel Corporation be and the same is hereby granted.

By the Commission.

Orval L. DuBois,
Secretary.

(SEAL)

For IMMEDIATE Release September 18, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT of 1934
Release No. 3486

The Securities and Exchange Commission today announced that a hearing has been set for October 4, 1943 at 10:00 A.M. on the application of the Detroit Stock Exchange to strike from listing and registration the Common Stock, \$1.00 par value, of the Auto City Brewing Company. The application states, among other things, that the Michigan Corporation and Securities Commission revoked its order, accepting for filing in Michigan the Common Stock of Auto City Brewing Company; that a receiver for the company has been appointed by the Circuit Court for the County of Wayne in Chancery in proceedings for the dissolution of the company; that the company has been ordered dissolved by order of said court; and that one of the requirements for listing securities on the Exchange is that such securities shall be accepted for filing by the Michigan Corporation and Securities Commission.

The hearing will be held at the Commission's Philadelphia office, 18th and Locust Streets.

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The Commission also announced that a hearing has been set for October 4, 1943 at 10:00 A.M. on the application of the Detroit Stock Exchange to strike from listing and registration the Common Stock, \$1.00 par value, of the Wolverine Brewing Company. The application states, among other things, that the Michigan Corporation and Securities Commission revoked its order accepting for filing in Michigan the common stock of Wolverine Brewing Company; that a receiver for the company has been appointed by the Circuit Court for the County of Wayne in Chancery to liquidate the company's assets; that one of the requirements for listing securities on the Detroit Stock Exchange is that such securities shall be accepted for filing by the Michigan Corporation and Securities Commission; and that the Exchange has suspended trade in the Common Stock of the company.

The hearing will be held at the Commission's Philadelphia office, 18th and Locust Streets.

For IMMEDIATE Release Thursday, September 23, 1943

**SECURITIES AND EXCHANGE COMMISSION
Philadelphia**

SECURITIES EXCHANGE ACT OF 1934
Release No. 3487

The Securities and Exchange Commission today announced that it had declared effective a plan of the Philadelphia Stock Exchange for "special offerings." The effect of the action taken by the Commission today will be to exempt distributions carried out in accordance with the plan from rules of the Commission prohibiting the payment of compensation for inducing purchases on the Exchange under certain conditions. The Philadelphia Stock Exchange is the fourth national securities exchange to file and to have declared effective by the Commission a plan for special offerings. The plan of the Philadelphia Stock Exchange is similar to the plans recently declared effective for the New York Stock Exchange, New York Curb Exchange, and the San Francisco Stock Exchange, except that since there are no specialists on the Philadelphia Stock Exchange no reference is made to them or their activities. A summary of the more important features of these plans appeared in Securities Exchange Act Release No. 3146, issued on February 6, 1942.

The text of the Commission's action follows:

The Philadelphia Stock Exchange, pursuant to Rule X-10B-2 (d), having filed on September 10, 1943, a plan for special offerings contained in Chapter XVIII, Sections 1-8, inclusive, of the rules of the Philadelphia Stock Exchange; and

The Securities and Exchange Commission, having given due consideration to the terms of such plan, and having due regard for the public interest and for the protection of investors, pursuant to the Securities Exchange Act of 1934, particularly Sections 10 (b) and 23 (a) thereof and Rule X-10B-2 (d) thereunder, hereby declares such plan to be effective, on the condition that if at any time it appears to the Commission necessary or appropriate in the public interest or for the protection of investors so to do, the Commission may suspend or terminate the effectiveness of said plan by sending at least ten days' written notice to the Philadelphia Stock Exchange suspending or terminating the effectiveness of such plan.

Effective September 23, 1943.

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For IMMEDIATE Release Monday, September 27, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3498

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.,
on the 24th day of September, A. D., 1943.

In the Matter of	:	
THE ATLANTA AND CHARLOTTE AIR	:	
LINE RAILWAY COMPANY	:	ORDER Granting
	:	Application to
\$100 Par Capital Stock	:	Strike from
	:	Listing and
File No. 1-913	:	Registration

The Baltimore Stock Exchange, pursuant to Section 12 (d) of the Securities Exchange Act of 1934 and Rule X-12D2-1 (b) promulgated thereunder, having made application to strike from listing and registration the \$100 Par Capital Stock of The Atlanta and Charlotte Air Line Railway Company; and

After appropriate notice, a hearing having been held in this matter; and

The Commission having considered said application together with the evidence introduced at said hearing, and having due regard for the public interest and the protection of investor;

IT IS ORDERED that said application be and the same is hereby granted, effective at the close of the trading session on October 4, 1943.

By the Commission.

(SEAL)

Orval L. DuBois,
Secretary.

For IMMEDIATE Release Wednesday, September 29, 1943

**SECURITIES AND EXCHANGE COMMISSION
Philadelphia**

SECURITIES EXCHANGE ACT OF 1934

Release No. 3489

The Securities and Exchange Commission today announced that a hearing has been set for October 11, 1943, at 10:00 a.m., on the application of the Pittsburgh Stock Exchange to strike from listing and registration the Common Stock, No Par Value, of Electric Products Corporation. The application states, among other things, that the stockholders of the corporation on June 4, 1943 voted for its voluntary dissolution and for permanent closing of the transfer books and that the committee on securities for the Exchange has voted to remove this stock from the list, effective at the close of business July 30, 1943.

The hearing will be held at the Commission's Philadelphia office, 18th and Locust Streets.

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For Release in MORNING Newspapers of Saturday, October 9, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3490

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pennsylvania,
on the 7th day of October, A. D., 1943.

In the Matter of	:	
	:	
CENTRAL STANDARD CONSOLIDATED MINES	:	
Common Stock, 10¢ Par Value	:	FINDINGS AND ORDER
	:	WITHDRAWING SECURITIES
File No. 1-2558	:	FROM REGISTRATION
	:	
Securities Exchange Act of 1934 -	:	
Section 19 (a) (2)	:	

This proceeding having been instituted pursuant to Section 19 (a) (2) of the Securities Exchange Act of 1934 to determine whether or not the Commission should suspend or withdraw the registration of the Common Stock, 10¢ Par Value, of Central Standard Consolidated Mines, listed and registered on the Salt Lake Stock Exchange, a national securities exchange;

A hearing having been held after appropriate notice to the registrant and the Salt Lake Stock Exchange; the trial examiner having filed an advisory report, finding that registrant has failed to comply with Section 13 of the Act and the rules and regulations promulgated thereunder in that it has not filed its annual report on Form 10-K for the fiscal year ended December 31, 1941; no exceptions to the trial examiner's report having been filed; the Commission having adopted the trial examiner's findings as being in accord with the evidence, and finding that it is necessary and appropriate for the protection of investors to withdraw the said stock from registration;

IT IS ORDERED, pursuant to Section 19 (a) (2) of the said Act, that the registration of the stock in question be, and the same hereby is, withdrawn, effective ten days after the date of this order.

By the Commission.

(SEAL)

Orval L. DuEois,
Secretary.

For IMMEDIATE Release Monday, October 11, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3491

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.
on the 7th day of October, A.D., 1943.

In the Matter of

WILLIAM J. ADAMS, doing business as
TRANSATLANTICA EXCHANGE & SECURITIES CO.
29 Broadway
New York, New York

FINDINGS AND ORDER
SUSPENDING REGISTRATION

Securities Exchange Act of 1934 - Section 15 (b)

1. William J. Adams, doing business as Transatlantica Exchange & Securities Co., a sole proprietorship, is registered as a broker and dealer pursuant to Section 15 of the Securities Exchange Act of 1934.

2. The Commission, on the basis of facts reported to it, ordered a hearing pursuant to Section 15 (b) of the Securities Exchange Act to determine whether or not the allegations of fact set out in its order for proceedings are true and whether or not said registration should be revoked or, pending final determination, suspended. The facts alleged, if true, tend to show that the registrant was convicted, on or about May 26, 1942, in the Court of Quarter Sessions of the Peace for the County of Allegheny in the State of Pennsylvania, of a felony arising out of the conduct of the business of a broker and dealer.

3. Notice of the proceeding was sent by registered mail to the registrant at the address designated by him in his application for registration. The notice was returned unclaimed. The registrant did not appear and was not represented at the hearing.

4. The Trial Examiner filed an advisory report, a copy of which was mailed to the registrant and returned unclaimed.

5. On an independent review of the record, we find that the registrant was convicted, on or about May 26, 1942 in the Court of Quarter Sessions of the Peace for the County of Allegheny in the State of Pennsylvania, of a felony arising out of the conduct of the business of a broker and dealer.

Since the notice of our proceeding was not received by the registrant, we do not decide at this time whether or not his registration should be revoked. However, in view of the conviction described above, we find that it is necessary in the public interest and for the protection of investors that Adams' registration be suspended pending final determination of whether or not his registration should be revoked, which matter will be determined when he comes in to be heard or notice is received by him. It is, therefore,

ORDERED, pursuant to Section 15 (b) of the Securities Exchange Act of 1934, that the registration of William J. Adams, doing business as Transatlantica Exchange & Securities Co., be, and it hereby is, suspended effective October 11, 1943, until further order.

By the Commission.

Orval L. DuBois,
Secretary.

(SEAL)

For IMMEDIATE Release Monday, October 11, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3492

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION
At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.,
on the 7th day of October, A.D., 1943.

In the Matter of	:	
	:	
SAMUEL SEGEL	:	
2204 Dirleton Road	:	FINDINGS AND ORDER
Utica, New York	:	REVOKING REGISTRATION
	:	
Securities Exchange Act of 1934 --	:	
Section 15 (b)	:	

1. Samuel Segel (the "registrant") is registered as a broker and dealer pursuant to Section 15 (b) of the Securities Exchange Act of 1934. We instituted this proceeding under Section 15 (b) to determine whether the registration of the above registrant should be revoked.

2. Our order of August 17, 1943, instituting proceedings, stated that the registrant is permanently enjoined by decree of the Supreme Court of New York State, in and for the County of Oneida, entered on or about November 23, 1942, from engaging in or continuing certain conduct and practices in connection with the sale of securities and that said registrant was convicted on or about June 29, 1943 in the Oneida County Court at Utica, New York, of a felony involving the purchase and sale of securities and arising out of the conduct of his business as a broker and dealer.

3. At the hearing held before the Trial Examiner on August 30, 1943, the registrant did not appear, but in an "Answer and Consent to Revocation", which he filed, registrant acknowledged receipt and service of adequate notice of said proceedings, waived his opportunity to be heard, admitted and acknowledged the existence of the facts as set forth in the Commission's order of August 17, 1943 and consented to the entry of an order by the Commission revoking his registration as a broker and dealer pursuant to Section 15 (b) of the Securities Exchange Act of 1934. The record shows, and we find, that by judgment of the Supreme Court of the State of New York, held in and for the County of Oneida, entered on or about November 23, 1942, that the registrant is permanently enjoined from engaging in or continuing certain conduct and practices in connection with the sale of securities and, further, that the registrant was convicted on or about June 29, 1943 in the Oneida County Court at Utica, New York, of a felony involving the purchase and sale of securities and arising out of the conduct of his business as a broker and dealer.

4. We find that revocation of registrant's registration as a broker and dealer is in the public interest.

Accordingly, IT IS ORDERED, pursuant to Section 15 (b) of the Securities Exchange Act of 1934, that the registration of Samuel Segel be, and the same hereby is, revoked effective October 11, 1943.

By the Commission.

Orval L. DuBois,
Secretary.

(SEAL)

For IMMEDIATE Release Saturday, October 9, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

Securities Exchange Act of 1934
Release No. 3493

The Securities and Exchange Commission today announced that a hearing has been set for October 25, 1943, at 10:00 a.m., on the application of the New York Curb Exchange to strike from listing and registration the Common Stock, 50¢ Par Value, of the Reiter-Foster Oil Corporation. The application states, among other things, that the aggregate market value of the entire outstanding issue of this security, coupled with unsatisfactory financial conditions and operating results, makes the issue unsuitable for dealing on the New York Curb Exchange, and that the Exchange suspended dealings in this stock on September 15, 1943. The hearing will be held at the Commission's New York office, 120 Broadway.

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The Commission has granted the application of The Loudon Packing Company to withdraw its Common Stock, No Par Value, from listing and registration on the Chicago Stock Exchange and the New York Curb Exchange. The application stated, among other things, that the stockholders of the company at a special meeting held on May 21, 1943 approved the sale of the assets and business of the company to Standard Brands, Incorporated, and voted to dissolve; and that the company terminated the transaction of all business as of May 30, 1943, except that of liquidating and winding up its affairs. The order will become effective at the close of the trading session October 14, 1943.

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The Commission also granted the application of the Cincinnati Stock Exchange to strike from listing and registration the \$25 Par Common Stock of The A. Nash Company. The application stated, among other things, that it is the opinion of the board of trustees of the Exchange that since 97.69% of the stock of the company is held by five stockholders, the stock is too closely held to be desirable for trading on the Exchange; that no trade in the stock has been made on the Exchange in 1943, and that only three trades were made during the entire year of 1942, the inactivity of the issue rendering it undesirable for trading; that the stockholders of the company authorized the officers to sell the assets and approved the discontinuation of the operation of the company. The order becomes effective at the close of the trading session October 13, 1943.

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The Commission also granted the application of the Cincinnati Stock Exchange to strike from listing and registration the Class A and B Common Stock, No Par Value of The Moores-Coney Corporation. The application stated, among other things, that proceedings had been instituted against The Moores-Coney Corporation by the First National Bank of Cincinnati, Trustee for the company's debenture holders, and it appears that there will not be sufficient funds to pay off the bonded indebtedness in full; that a certificate of dissolution of the corporation was filed with the Secretary of the State of Ohio on May 17, 1943. The order will become effective at the close of the trading session October 13, 1943.

For Release in MORNING Newspapers of Saturday, October 16, 1948

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934

Release No. 3494

In the Matter of	:	
	:	
LEROY A. STRASEURGER & CO.	:	
1 Wall Street	:	FINDINGS AND OPINION
New York, New York	:	OF THE COMMISSION
	:	
Securities Exchange Act of 1934 -	:	
Section 15 (b) and 15A	:	

BROKER-DEALER REGISTRATION

Revocation Proceedings Dismissed

In a proceeding instituted by the Commission pursuant to Section 15 (b) of the Securities Exchange Act of 1934, on the basis of charges submitted to the Commission, to determine whether respondent broker-dealer had willfully violated provisions of the Securities Act of 1933 and Securities Exchange Act of 1934, and whether it would be in the public interest to revoke respondent's registration as a broker and dealer, held that the charges of willful violations had not been sustained by the evidence, and the proceeding would be dismissed.

SUSPENSION OR EXPULSION OF MEMBERS OF NATIONAL SECURITIES ASSOCIATION

Proceeding Dismissed for Insufficient Evidence

In a proceeding instituted by the Commission pursuant to Section 15A (1) (2) of the Securities Exchange Act of 1934, on the basis of charges submitted to the Commission, to determine whether respondent broker-dealer had willfully violated provisions of the Securities Act of 1933 or the Securities Exchange Act of 1934, and whether it would be in the public interest to suspend or expel the respondent from a national securities association of which respondent was a member, held that the charges of willful violations had not been sustained by the evidence, and the proceeding would be dismissed.

APPEARANCES:

Edmond G. Blunner, for the Trading and Exchange Division of the Commission.

George H. Jaffin, for respondent.

Leroy A. Strasburger & Co. (the "respondent") is registered as a broker and dealer under Section 15 of the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc. ("NASD"), a national securities association registered under Section 15A of the Act.

On the basis of charges submitted to us, we instituted a proceeding to determine whether or not the allegations of fact set forth in such charges were true; whether or not the respondent's registration should be revoked pursuant to Section 15 (b); and whether or not the respondent should be suspended or expelled from the NASD pursuant to Section 15A (f) (2). Hearings were duly held after appropriate notice, and a trial examiner's advisory report was filed. Exceptions to that report and supporting briefs were filed and exchanged, and we heard argument. Our findings are based upon an independent review of the record.

Three general issues are raised:

A. Whether respondent sold specified securities by means of willfully false and misleading statements or omissions to state material facts, in violation of Sections 9 (a) (4), 10 (b) and 15 (c) (1) of the Exchange Act, and Section 17 (a) (2) of the Securities Act of 1933;

E. Whether respondent is chargeable with a willful market manipulation in such securities in violation of Section 9 (a) (2) of the Exchange Act; and

C. Whether respondent willfully failed to keep certain books and records required by Section 17 (a) of the Exchange Act and Rule X-17A-3 of the General Rules and Regulations promulgated thereunder.

THE RESPONDENT

The respondent is a partnership composed of Leroy A. Strasburger and his wife, having its principal office at 1 Wall Street, New York City. Leroy A. Strasburger has been engaged in the securities business in New York for over 27 years, and is active in the respondent's affairs. His wife does not actively participate.

In December of 1939 the respondent entered into an arrangement with Frank J. Shakespeare whereby the latter assumed charge of a separate department of the firm for the purpose of trading in the bonds of various railroads. Under the arrangement Shakespeare uses the firm's capital, its office and facilities, and divides the profits and losses of the railroad bond department (after operating expenses) equally with the firm. He has full authority over this part of the business, except that he may not employ the firm's capital beyond certain limits. The transactions involved in this proceeding were effected by Shakespeare in April 1941 under his arrangement with the respondent.

Shakespeare is an active trader with long experience in the securities business. In 1909 he started as secretary to the head of the railroad bond department of J. P. Morgan & Co., and later became manager of the railroad bond department of the firm of McKinley and Morris. From 1930 to 1936 he was head of his own firm, and from 1937 to 1939 he was manager of the railroad bond department of E. W. Hughes & Co.

The railroad bond business conducted by him for the respondent is confined to dealing with other securities dealers, and no business is done directly with the general public. It is based on a large volume of trading with a relatively small margin of profit. In each of the last two years the volume of business comprised trades in approximately \$26,000,000 par value of railroad bonds. In the regular course of its business the respondent often maintains substantial long positions in the securities in which it deals, thus enabling it to make firm direct offerings to out-of-town dealers, frequently in competition with prices prevailing on the New York Stock Exchange.

The business of the railroad bond department is carried on principally by means of the telephone and a teletype machine operated by Shakespeare personally. In addition, Shakespeare regularly composes and mails out bond letters, from two to four times a month, to between 650 and 700 dealers throughout the United States. The bond letters contain financial information and market gossip, and in part constitute offering sheets with respect to some of the securities in which the firm is interested.

A. *The Alleged Misrepresentations*

In March 1941 there was market activity in the lower grade railroad bonds on the New York Stock Exchange and over-the-counter which resulted in an upward price trend. Shakespeare became interested in Peoria & Eastern Railway Company 4% Income Bonds due 1990 when he noticed that the issue had not advanced in price to the same extent as other issues of that grade listed on the Exchange. There were \$4,000,000 principal amount of these bonds outstanding, interest on which was contingent and non-cumulative. They were junior to the lien of first mortgage 4% bonds of which there were about \$5,000,000 principal amount outstanding. Peoria & Eastern is part of the New York Central system, having a line of about 200 miles in Indiana and Illinois operated by New York Central under lease.

On March 31, 1941, the respondent's inventory included 23 of the income bonds. Shakespeare increased this on April 1 and 2 by purchasing 60 more, at prices ranging from 6-1/2 to 7-1/4, the bulk of such purchases being over-the-counter. ^{1/} On April 3 he sent to three securities dealers teletype messages which are alleged to have contained the misrepresentations charged.

The texts of these messages are similar, and we need concern ourselves only with the one sent to Alabama Securities Corporation of Birmingham, Alabama. This message was injected by Shakespeare into a teletype conversation with Alabama regarding the market in other bonds. In substance it was a tip that in Shakespeare's opinion Peoria & Eastern income bonds, then selling around 7-1/2 - 8, might be bought for a very handsome profit. It stated that Peoria & Eastern was part of the New York Central system but did not report separate earnings, that Shakespeare had talked personally the day before with the Treasurer's office and learned:

". . . the P and E mileage had net available for chfs
In the first 2 months this year over 110 percent
greater than same period last year and management
thinks will have best year in history this because
of defense shipments over road they think the Income
4 of 90 which are a second mortgage on all their prop-
erty following the first 4 which sell at 51-1/2 are
likely to receive a full interest payment this year my
guess is these P and E Incomes are now in the same
relative position that the Cent of Ga Consols and Wisc

Cent Sup Duls were sev months ago and I look for 5 6 point improvement in the bonds in forthcoming months expect to write em up in this weeks bond letter and think when earnings are disclosed as well as prospects they will do very nicely this to u because u have been nice to me . . ."

This message is said to have been inaccurate because, among other things, the "management" did not think the income bonds were likely to receive a full interest payment in 1941 and had no intention of paying any interest thereon; and a question was raised at the hearing as to whether Shakespeare had talked with the Treasurer's office as he claimed. The material inquiries are (1) whether Shakespeare had the conversation with the Treasurer's office; (2) whether, if he did, he repeated the information given with substantial accuracy; and (3) whether in doing so he had any reasonable ground to believe that what was told to him was false or misleading.

Shakespeare's account of what occurred is that on April 2, 1941, after having made a study of these bonds, he telephoned the Treasurer's office; that he spoke to someone who did not identify himself, stated his business, was connected with another unnamed person, and was advised by that second person that Peoria & Eastern published only annual statements; and that in response to questioning the informant stated:

"I can tell you the earnings have increased a great deal, in fact, they have jumped over 110 percent in the first two months of 1941 over the comparable period in 1940.

"That prompted the question by me (Shakespeare), 'Was that from defense business, the way it was in the case of most other railroads?'

"And he said, 'Yes, it was,' and, he said, 'We have been getting a good deal of defense business, we have had a couple of defense industries, sizeable ones, located on the line.' And he said, 'I think we are going to get a great deal of defense business from here on.'

"I asked him if he thought these earnings would continue the way they were going all through 1941, whether they had a good chance to make a good earning showing, and he said yes, he did think so.

"I asked him then whether he thought the earnings might be good enough to warrant some interest payment on the bonds, and he said, 'The way they are going now, I think they will warrant an interest payment on the bonds.'"

Shakespeare further testified that he consulted Poor's Railroad Manual and found no information that would throw doubt on what he had been told about these bonds, and that he became very enthusiastic about them. He had discovered a "sleeper."

That the current figures of the railroad's business were not public property was corroborated by the testimony of Willard Place, vice president of the New York Central system. Place also corroborated the statement that earnings had increased, and from his testimony it appears that the 110% figure was, if anything, an understatement. Thus it appears that Shakespeare did get his information from a source close to the road's management.

Place testified that he was in no position to know whether Shakespeare spoke with any of the 150 employees in the Treasurer's office, but he did know that a great many inquiries are made of the Treasurer's office, as well as his own, by people in the securities business. Shakespeare testified that he called "treasurers' offices" three or four times each week, and had probably called every railroad in the country many times.

The questions at issue are thus reduced to whether or not Shakespeare was told by the Treasurer's office that payment of interest on the bonds for 1941 was likely, and whether or not Shakespeare knew or, in the exercise of due diligence ought to have known, that such information was incomplete and misleading.

Actually, there was doubt that interest would be paid. Place testified that interest was not in fact paid for the years 1941 and 1942, and that the management had had no intention of making such payment in view of the fact that New York Central had an agreement with Peoria & Eastern whereby certain advances for operations had first to be paid by Peoria & Eastern before any interest payment on the income bonds could be considered.

Counsel for respondent states that there are negotiations in progress whereby a compromise might be reached between Peoria & Eastern and the New York Central system permitting some payment of interest on these bonds, notwithstanding the restriction. He pointed also to a recent judicial opinion which seems to provide that before New York Central can withdraw earnings from Peoria & Eastern it must prove its right to do so. ^{2/} It is not clear how that opinion affects the possibility of an interest payment, and we think the question immaterial to this inquiry. Place's testimony was that not all the employees in the Treasurer's office knew about the problem, and we think it entirely possible that one of them made some such statement as that quoted in Shakespeare's testimony.

Shakespeare undoubtedly went too far in attributing to the "management" the conjecture expressed to him by an anonymous employee of the Treasurer's office. He also appears to have exaggerated when he told Alabama that the "management" thought the bond would receive "a full interest payment this year," for in his own testimony Shakespeare quoted his informant as saying: "The way they are going now, I think they will warrant an interest payment on the bonds." In a different setting, these inaccuracies might well be regarded as so substantial that they could not be overlooked. However, in the light of the pressure under which Shakespeare worked and the character of the teletype conversation in which the inaccuracies appeared, we are unable to conclude that he intentionally distorted the information he received.

As we have noted, Shakespeare testified that he checked on the bonds by consulting Foer's Railroad Manual before passing his information along. This manual, which is a recognized source of financial information on railroad bonds, nowhere indicated that there was a restriction upon the payment of interest on Peoria & Eastern bonds. It did indicate that in the three preceding years, when the railroad had reported deficits in net earnings, the income bonds had sold as high as 11-7/8. He could estimate on the basis of increased net operating revenues that enough would be earned to cover interest requirements, but it does not appear that he would have any reason to suspect the existence or amount of any prior charges.

^{2/} *Even v. Peoria & E. Ry. Co.*, 34 F. Supp. 332, 336 (1940). An understanding of the Court's opinion depends on knowledge of numerous facts involved in the litigation.

It is contended by counsel for the Trading and Exchange Division that if Shakespeare had checked further with another reference work, Standard Corporation Records, he would have discovered the prior charges. Its description of the bonds contains the following:

"The directors shall ascertain for each year ending Dec. 31, the income applicable to interest on these bonds by deducting from the gross earnings all interest on prior liens, operating expenses, taxes, rentals, and like charges, repairs and betterments, and all deficiencies arising from payments for said purposes in former years, and all advances which shall have been made to provide for such deficiencies, such advances to bear interest at 6%, and shall apply net earnings to the payment of interest on these bonds."

It indicates that bond income is --

"subject to prior claims of the lessee or successor in interest for reimbursement for advances."

Poor's Manual had no such notation. It says simply:

"Interest Payable Annually, April 1, if earned, at Treasurer's office, 466 Lexington Ave., N. Y. C. . . Security-Secured on the property covered by the First Consolidated 4's, but subject thereto." 3/

We cannot find that the failure to consult Standard Corporation Records in addition to Poor's Manual constituted such negligence or irresponsibility as to lead to the inference that Shakespeare knew or had reasonable ground to know that the information which he repeated was false or misleading. The manual on which he was accustomed to rely set forth nothing of a warning nature.

We think the charges alleging willful violation of Sections 9 (a) (4), 10 (b) and 15 (c) (1) of the Exchange Act and Section 17 (a) of the Securities Act have not been sustained.

B. The Alleged Manipulation.

Counsel for the Trading and Exchange Division contends that the respondent's trading in Peoria & Eastern Income bonds, during April 1941, involved a manipulation in willful violation of Section 9 (a) (2) of the Exchange Act. This section makes it unlawful for any person, by the use of any instrumentality of interstate commerce or of any facility of any national securities exchange --

"(2) To effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others."

The respondent, through Shakespeare, bought and sold the bonds in relatively large volume during the period from April 1 to 4, then in diminished volume between April 7 to 15, and purchased from time to time between April 18 and the end of the month. It is the trading in the first four days of April that was said to have involved an unlawful manipulation.

3/ The road's annual report to stockholders dated December 31, 1940, does not mention the restriction.

Within this four-day period respondent effected a substantial volume of purchases and sales on the New York Stock Exchange, purchases in the over-the-counter market, and direct sales to other dealers by means of interstate messages on the teletype, and in fact created active trading in and raised the price of the bonds in question. ^{4/} This, however, is not in itself sufficient to constitute a violation of Section 9 (a) (2). There remains the question whether this series of transactions was effected by respondent for the purpose of inducing other persons to buy or sell the bonds.

Determination of the purpose of an act or series of transactions is at best a difficult task, involving the drawing of inferences from the transactions themselves and from the surrounding circumstances. Seldom if ever is there clear and convincing proof available as to the state of mind of the person involved.

The respondent here, as might be anticipated, denies that it had any unlawful purpose in effecting the transactions in question. It contends that it was engaged in accumulating the bonds in anticipation of an eventual rise in price which it expected to occur when the favorable earnings record of Peoria & Eastern became a matter of public knowledge or when an interest payment was made on the bonds. Meanwhile, it points out, the respondent was in the business of wholesaling railroad bonds to dealers throughout the country, and thus it explains the sales made by Shakespeare to dealers, at a small margin of profit, during the course of the accumulation. The respondent sought to explain the larger volume of sales made at the end of the four-day period, which temporarily left the firm with only its original small inventory, ^{5/} by evidence tending to show that Shakespeare feared a general market recession based on an accumulation of unfavorable war news, and that he hoped to restore the firm's long position later at lower price levels. Actually, a slight market recession occurred on April 4 and 5, and thereafter the respondent did restore its long position in the bonds, though not as cheaply as Shakespeare had hoped. Since 1941 the respondent has maintained an average inventory of between 50 and 125 of these bonds, and the price has ranged from 5 to about 20. No manipulation is charged as to any period since April 1941.

We need not recite at length the evidence in the record bearing upon the alleged unlawful purpose of the respondent. The respondent's transactions in the main consisted of a rapid accumulation which raised market prices, followed by a sudden switch to the selling side at the higher price level thus attained. However, the charge as to the unlawful purpose is based in large part on the premise that the teletype messages discussed above which were sent by Shakespeare on April 3, in the midst of his bond acquisitions, were willfully inaccurate and misleading; but we have concluded that the evidence does not sustain that premise and for the same reasons we

^{4/} Respondent's trading on the Exchange made up 52% of the total Exchange transactions in the bonds during the period in question. Its purchases totaled 189 bonds, 81 on the Exchange and 108 over the counter, while its sales totaled 188 bonds, 76 on the Exchange and 112 over the counter. The price rose from 6-1/2 at beginning of the period to 9-1/8 at the end.

^{5/} All but 24 of the bonds held by the respondent were sold by the end of the four-day period, as a result of which the respondent realized an average profit of 1.065 points, or total of \$2,002.20.

think the evidence relating to that issue fails to establish an unlawful purpose in connection with the alleged manipulation. It is true that the record contains evidence of the existence of an unlawful purpose and that the activity found here merited the attention of the Commission. However, it is our view that the evidence is not sufficient to establish the unlawful purpose. Therefore, the charge that the respondent willfully violated Section 9 (a) (2) will be dismissed.

C. *Failure to Keep Required Books.*

There is no dispute that the required ledger of long and short positions in separate securities was not kept. ^{6/} It is conceded, however, and the evidence shows, that respondent's books reflected every transaction of purchase and sale of securities; and that it is possible to reconstruct its position in a particular security, but not without a great amount of labor. It is argued that the failure to maintain the ledger is a serious matter, since it tends to impede the discovery of irregular practices; and it is claimed that the discovery of the facts in this proceeding was hampered by the failure to maintain specific position records.

However, it does not appear that respondent's omission was willful; and it is admitted that respondent cooperated in every way to facilitate the investigation of such books and records as it had, and that after the omission was called to its attention proper records were installed and have been maintained.

Therefore, although we find that respondent failed to maintain the proper books, we do not find that it willfully violated Section 17 (a) or Rule X-17A-3.

An appropriate order will issue dismissing the proceedings.

By the Commission (Chairman Purcell and Commissioners Healy, Pike and O'Brien). Commissioner Burke being absent and not participating.

Orval L. DuBois,
Secretary.

(SEAL)

6/ Section 17 (a) of the Exchange Act provides in part:

". . . every broker or dealer registered pursuant to section 15 of this title, shall make, keep, and preserve for such periods, such accounts, correspondence, memoranda, papers, books, and other records, and make such reports, as the Commission by its rules and regulations may prescribe as necessary or appropriate in the public interest or for the protection of investors."

Rule X-17A-3 adopted thereunder requires that --

". . . every broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934, as amended, shall make and keep current the following books and records relating to his business:

* * * * *

"(5) A securities record or ledger reflecting separately for each security as of the clearance dates all 'long' or 'short' positions (including securities in safekeeping) carried by such member, broker, or dealer for his account or for the account of his customers or partners and showing the location of all securities long and the offsetting position to all securities short and in all cases the name or designation of the account in which each position is carried."

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.,
on the 15th day of October, A.D., 1943.

In the Matter of	:	
	:	
LEROY A. STRASBURGER & CO.	:	
1 Wall Street	:	
New York, New York	:	ORDER DISMISSING
	:	PROCEEDINGS
Securities Exchange Act of 1934 -	:	
Sections 15 (b) and 15A	:	

Proceedings having been instituted to determine whether the registration of Leroy A. Strasburger & Co., the respondent, as a broker and dealer should be revoked pursuant to Section 15 (b) of the Securities Exchange Act of 1934, and whether or not the respondent should be suspended or expelled from the National Association of Securities Dealers, Inc., pursuant to Section 15A (4) (2) of said Act;

A hearing having been held after appropriate notice, and the Commission being fully advised and having made and issued its findings and opinion herein;

On the basis of said findings and opinion, it is hereby

ORDERED, that the proceedings herein be and they hereby are dismissed.

By the Commission.

(SEAL)

Orval L. DuBois,
Secretary.

For IMMEDIATE Release Wednesday October 18, 1943

**SECURITIES AND EXCHANGE COMMISSION
Philadelphia**

SECURITIES EXCHANGE ACT OF 1934
Release No. 3495

The Securities and Exchange Commission today granted the application of the Holly Oil Company to withdraw its Capital Stock, \$1 Par Value, from listing and registration on the Los Angeles Stock Exchange. The application stated, among other things, that withdrawal of the stock from the Los Angeles Stock Exchange is proposed because the trading facilities of that Exchange are being used very infrequently by applicant's stockholders; that there is little distribution of the subject security in California and in Los Angeles; that the company does not maintain a transfer office in California, and that a transfer office is maintained in Colorado Springs, the security being listed also on the Colorado Springs Stock Exchange. The order will become effective at the close of the trading session October 19, 1943.

---oOo---

For IMMEDIATE Release, Saturday, October 23, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

Securities Exchange Act
Release No. 3496

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.,
on the 22nd day of October, A. D., 1943.

<hr/>		
IN THE MATTER OF	:	ORDER FOR PROCEEDINGS AND NOTICE
	:	OF HEARING ON THE QUESTION OF
Kurt H. Schurig and Dorothy A. Maier,	:	REVOCATION AND SUSPENSION OF
co-partners, doing business as	:	REGISTRATION PURSUANT TO SECTION
	:	15 (b) OF THE SECURITIES EXCHANGE
Kurt H. Schurig & Co.	:	ACT OF 1934 AND SUSPENSION OR
50 Broadway	:	EXPULSION FROM A REGISTERED SECURI-
New York, New York	:	TIES ASSOCIATION PURSUANT TO SEC-
<hr/>		TION 15A OF SAID ACT

I

The Commission's public official files disclose that Kurt H. Schurig and Dorothy A. Maier, doing business as Kurt H. Schurig & Co., a partnership, hereinafter sometimes referred to as registrant, are registered as a broker and dealer, pursuant to Section 15 (b) of the Securities Exchange Act of 1934. The registrant is also a member of the National Association of Securities Dealers, Inc., a securities association registered pursuant to Section 15A of the Securities Exchange Act of 1934.

II

Members of its staff have reported to the Commission that Kurt H. Schurig and Dorothy A. Maier, individually, and as co-partners, doing business under the name of Kurt H. Schurig & Co., are permanently enjoined by decree of the Supreme Court of New York, in and for the County of New York, in the Borough of Manhattan, entered on or about October 11, 1943, from engaging in or continuing certain conduct and practices in connection with the purchase and sale of securities.

III

The Commission, having considered such information, deems it necessary and appropriate in the public interest and for the protection of investors that proceedings be instituted to determine:

- (a) Whether the statement set forth in Paragraph II hereof is true;
- (b) Whether, pursuant to Section 15 (b) of the Securities Exchange Act of 1934, it is in the public interest to revoke the registration of registrant;

(c) Whether, pursuant to Section 15(b) of the Securities Exchange Act of 1934, pending final determination, it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration of the registrant; and

(d) Whether, pursuant to Section 15A of the Securities Exchange Act of 1934, it is necessary or appropriate in the public interest or for the protection of investors or to carry out the purposes of said section to suspend said registrant for a period not exceeding twelve (12) months or to expel said registrant from the National Association of Securities Dealers, Inc.

IV

IT IS HEREBY ORDERED that a hearing for the purpose of taking evidence on the questions set forth in Paragraph III hereof be held at 10:00 A. M. on October 30, 1943, at the New York Regional Office of the Securities and Exchange Commission, 120 Broadway, New York, New York, and thereafter at such times and places as the officer hereinafter designated to conduct said hearing may determine; and William J. Cogan is hereby authorized to administer oaths and affirmations, sub-poena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material to the matters in issue at said hearing and to perform all other duties in connection therewith as authorized by law.

IT IS FURTHER ORDERED that this order and notice be served on said registrant personally or by registered mail not less than seven (7) days prior to the time of the hearing.

Upon the completion of the taking of evidence in this matter, the officer conducting said hearing is directed to conclude said hearing, prepare a report to the Commission and transmit same with a record of the hearing to the Commission.

By the Commission.

Orval L. DuBois,
Secretary.

(SEAL)

For IMMEDIATE Release Thursday, October 28, 1943.

**SECURITIES AND EXCHANGE COMMISSION
Philadelphia**

SECURITIES EXCHANGE ACT OF 1934
Release No. 3497

The Securities and Exchange Commission today announced that a hearing has been set for November 8, 1943, at 10:00 a.m., on the application of the Philadelphia Stock Exchange to strike from listing and registration the Common Stock, No Par Value, of the Philadelphia and Reading Coal and Iron Corporation. The application states, among other things, that the subject corporation is in effect a holding company, its only asset being the entire Capital Stock of the Philadelphia and Reading Coal and Iron Company; that under the terms of the reorganization plan for the Philadelphia and Reading Coal and Iron Company, approved by the U. S. District Court for the Eastern District of Pennsylvania on June 2, 1942, no provision was made for the Capital Stock of that company and that it was declared to be of no value; that the charter of the subject corporation was voided by the State of Delaware on April 11, 1941 because of nonpayment of the franchise tax; and that transfer facilities, as required by the Philadelphia Stock Exchange, were terminated by the subject corporation on February 27, 1941.

The hearing will be held at the Commission's Philadelphia office, 18th and Locust Streets.

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For IMMEDIATE Release Thursday, October 28, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3498

In the Matter of	:	
GEORGE LEWIS OHRSTROM	:	
doing business as	:	
G. L. OHRSTROM & CO.	:	FINDINGS AND OPINION
40 Wall Street	:	OF THE COMMISSION
New York, New York	:	
Securities Exchange Act of 1934 -	:	
Section 15 (b)	:	

BROKER-DEALER REGISTRATION

Effectiveness Permitted after Prior Revocation

Public Interest

Where, notwithstanding that prior registration had been revoked for willful violation of the Securities Act of 1933 and the Securities Exchange Act of 1934, and that subsequent application for registration was denied for failure to disclose material facts required to be disclosed therein, new registration permitted to become effective where, upon review of the record and observation of the applicant, it does not appear that the public interest requires applicant's further exclusion from the securities business.

APPEARANCES:

Edmond G. Blumner and William D. Moran, for the Trading and Exchange Division of the Commission.

George Lewis Ohrstrom, pro se.

George Lewis Ohrstrom, doing business as G. L. Ohrstrom & Co., a sole proprietorship, has filed an application for registration as a broker and dealer pursuant to Section 15 (b) of the Securities Exchange Act of 1934. These proceedings were instituted by order providing for hearing to determine whether, pursuant to that section, registration should be denied. ^{1/} A hearing

^{1/} Section 15 (b) provides, in part:

"The Commission shall, after appropriate notice and opportunity for hearing, by order deny registration to or revoke the registration of any broker or dealer if it finds that such denial or revocation is in the

(Continued)

has been held. 2/

In past proceedings, to be discussed, we found willful violations of the Securities Act of 1933 and of the Securities Exchange Act of 1934. The sole question in this case is whether it is in the public interest to deny registration.

Prior to 1939, Ohrstrom operated as a broker and dealer through a New York corporation, G. L. Ohrstrom & Co., Incorporated, and an Illinois corporation, G. L. Ohrstrom & Co., Inc., of Illinois. Both corporations, owned and controlled by Ohrstrom, were registered as broker-dealers. On March 4, 1939, the registration of these corporations was revoked upon stipulation and consent. 3/ The facts stipulated involved, for the most part, transactions in the capital stock of Sweet's Steel Company. According to the stipulation Ohrstrom (either individually or through his corporations) and an underwriter associated with him in the distribution of the stock were making the market in Sweet's Steel stock, and the stock was being sold at prices represented to be "at the market" without revealing this fact. In selling the stock Ohrstrom acted as principal although he represented to certain customers that he would act as agent. He failed to reveal payment of commissions to himself which increased the total commissions on the shares to 75% of the selling price. The shares had been sold on the representation that only one-third of the selling price represented commissions and discounts. There was one instance of a matched order for 100 shares of the stock with Ohrstrom on the selling side. Ohrstrom failed to disclose his control of the issuer in the course of sales of the security. It appears that in committing one of these violations Ohrstrom acted on the advice of counsel.

1 cont'd./

public interest and that (1) such broker or dealer whether prior or subsequent to becoming such, or (2) any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), or any person directly or indirectly controlling or controlled by such broker or dealer, whether prior or subsequent to becoming such, (A) has willfully made or caused to be made in any application for registration pursuant to this subsection or in any document supplemental thereto or in any proceeding before the Commission with respect to registration pursuant to this subsection any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact; . . . or (D) has willfully violated any provision of the Securities Act of 1933, as amended, or of this title, or of any rule or regulation thereunder."

2/ After the hearing, pursuant to Section 15 (b), we ordered postponement of the effective date of registration until final determination.

3/ Our order revoking registration was published in Securities Exchange Act Release No. 2034 (1939).

In May of 1943, upon Ohrstrom's reapplication, we denied registration on the ground that he had failed to disclose his control over Gordon & Co., a securities house by which he was purportedly employed subsequent to the revocation order. 4/ There too it appeared that Ohrstrom had acted on advice of counsel.

The statutory violations above described, and the public interest as it appeared in those proceedings, required the revocation, and later the denial, of Ohrstrom's registration. But in this proceeding we must view Ohrstrom's record as it relates to his future trustworthiness and the need, if any, for protecting the public interest by continuing to exclude him from the securities business.

No suggestion is made that Ohrstrom's customers have been injured since 1939 by his participation in the securities business. Such participation may well have been in violation of the Act by reason of the relationship between him and Gordon & Co., but not, so far as appears, by reason of the manner in which the business was conducted. From our review of the record and our observations of Ohrstrom we conclude that his past violations do not require further exclusion from the securities business. Upon reinstatement he will, of course, be subject to the powers of scrutiny and investigation which the legislation gives us over all registered brokers and dealers. 5/

An appropriate order will issue permitting Ohrstrom's registration to become effective.

By the Commission (Chairman Purcell and Commissioners Pike and O'Brien), Commissioner Healy dissenting. See dissenting opinion attached.

Orval L. DuBois,
Secretary.

(SEAL)

4/ *George Lewis Ohrstrom*, S.E.C. ____ (1943), Securities Exchange Act Release No. 3433.

5/ Section 17 (a) provides in pertinent part:

" . . . every broker or dealer registered pursuant to section 15 of this title, shall make, keep, and preserve for such periods, such accounts, correspondence, memoranda, papers, books, and other records, and make such reports, as the Commission by its rules and regulations may prescribe as necessary or appropriate in the public interest or for the protection of investors. Such accounts, correspondence, memoranda, papers, books, and other records shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by examiners or other representatives of the Commission as the Commission may deem necessary or appropriate in the public interest or for the protection of investors."

Section 21 (a) provides in pertinent part:

"The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this title or any rule or regulation thereunder, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Commission is authorized, in its discretion, . . . to investigate any facts, conditions, practices, or matters which it may deem necessary or proper to aid in the enforcement of the provisions of this title . . ."

Healy, C., dissenting

The facts basing our order of revocation in 1939 were admitted by Ohrstrom in a stipulation signed not only on behalf of Ohrstrom's controlled companies, but in Ohrstrom's personal capacity as well. Among other violations admitted, it appeared that he double-dealt with customers in Sweet's Steel stock representing that he would act as agent, and selling them securities which he had purchased from a trust account. He sold stock on representations that discounts and commissions were 33-1/3% of the selling price when in fact buyers were paying a 75% commission. He represented that an offering was "at the market" when the only market was created by himself and an underwriter for the stock.

Shortly after his registration was revoked he engaged in business through the medium of two firms -- continuing to deal with his personal accounts. We denied his application for re-registration because he failed to disclose that he controlled one of those firms, and that the firm was organized and operated substantially for the purpose of permitting Ohrstrom to continue in business in spite of the order of revocation. 1/

I do not regard the failure to file a truthful registration statement as having been the result of an oversight. Ohrstrom could not have revealed the truth without admitting a serious violation of Section 15 -- that he engaged in the business of a broker-dealer without registration.

I believe we were right in revoking Ohrstrom's registration and in denying his first application for re-registration, and I have been shown no facts which warrant changing our holdings that the public interest requires his exclusion.

By no means do I intend to say that revocation bars a broker-dealer forever from re-registration. Our only concern should be to determine whether customers' funds and investments may be safely trusted to an applicant for registration. When lapse of time, exemplary conduct during the period of non-registration, and other relevant factors, such as reparation to customers (absent here with respect to the harm done to the buyers of Sweet's Steel stock) together with a consideration of the nature of past violations, permit us to find that an applicant may be trusted to conduct himself in compliance with law, I believe the application for re-registration should be permitted to become effective.

I find no basis for such a belief in this case.

1/ See the opinion of the Commission in *George Lewis Ohrstrom*, _____ S. E. C. _____ (1974), Securities Exchange Act Release No. 3433.

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pennsylvania,
on the 28th day of October, A. D., 1943.

In the Matter of	:	
	:	
GEORGE LEWIS OHRSTROM	:	
doing business as	:	ORDER GRANTING APPLICATION
G. L. OHRSTROM & CO.	:	FOR REGISTRATION AS BROKER
40 Wall Street	:	AND DEALER
New York, New York	:	
	:	
Securities Exchange Act of 1934 -	:	
Section 15 (b)	:	

George Lewis Ohrstrom, doing business as G. L. Ohrstrom & Co., having filed an application for registration as a broker and dealer pursuant to Section 15 (b) of the Securities Exchange Act of 1934;

Proceedings having been instituted pursuant to an order of the Commission to determine whether or not such registration should be denied, a hearing having been held after appropriate notice, and the Commission having this day issued its findings and opinion herein;

IT IS ORDERED, on the basis of said findings and opinion, that such registration be and it hereby is permitted to become effective.

By the Commission.

Orval L. DuBois,
Secretary.

(SEAL)

For IMMEDIATE Release Friday, October 29, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3499

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.,
on the 28th day of October, A. D., 1943.

In the Matter of	:	
	:	
THE RENAUD CORPORATION	:	
120 Liberty Street	:	FINDINGS AND ORDER
New York, New York	:	REVOKING REGISTRATION
	:	
Securities Exchange Act of 1934 -	:	
Section 15 (b)	:	

1. The Renaud Corporation (the "registrant") is registered as a dealer pursuant to Section 15 of the Securities Exchange Act of 1934.

2. The Commission, on the basis of facts reported to it, instituted a proceeding pursuant to Section 15 (b) of the Securities Exchange Act of 1934 to determine whether the registration of the registrant should be revoked.

3. After due notice a hearing was held before a trial examiner. The registrant did not appear and was not represented at the hearing, but it acknowledged in writing service of adequate notice, waived a hearing, and requested the withdrawal of its registration.

4. The trial examiner filed an advisory report in which he found that on May 25, 1943, a judgment was entered in the Supreme Court of the State of New York permanently enjoining the registrant (and its principal officer and sole stockholder, Alfred R. Risse), among other things, from engaging in the sale of securities within and from the State of New York. This injunction was based upon a complaint by the Attorney General of New York charging (among other things) that the registrant had misappropriated customers' funds, converted their securities to its own use and benefit, and had otherwise defrauded customers in that it was operating while insolvent and concealed its insolvency. The decree was entered on the consent of the registrant.

5. On an independent review of the record, we adopt the trial examiner's findings and find further that revocation of the registration of The Renaud Corporation as a dealer is in the public interest, and that the registrant's request for withdrawal from registration should be denied.

On the basis of the foregoing, and pursuant to Section 15 (b) of the Securities Exchange Act of 1934, it is

ORDERED that the registration of The Renaud Corporation as a dealer be, and it hereby is, revoked, and that the request of The Renaud Corporation to withdraw its registration as a broker be, and it hereby is, denied.

By the Commission.

(SEAL)

Orval L. DuBois,
Secretary.

For IMMEDIATE Release Friday, October 29, 1948

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3500

In the Matter of	:	
	:	
HERMANN GRAEN & CO., INC.	:	FINDINGS AND OPINION
401 Broadway,	:	OF THE COMMISSION
New York, New York	:	
	:	
Securities Exchange Act of 1934	:	
Section 15 (b)	:	

BROKER-DEALER REGISTRATION

Grounds for Revocation

Injunction against Engaging in Purchase or Sale of Securities.

Where registrant has been permanently enjoined from selling securities on the ground, among others, of conversion of customers' monies, held, that it is in the public interest to revoke registration.

Withdrawal of Registration

Notice of Withdrawal not Permitted to Become Effective.

Where proceedings were instituted within thirty days after registrant filed notice of withdrawal from registration; where the evidence showed that registrant had been permanently enjoined from selling securities; and where registrant's denial of guilt did not adequately controvert the charges on which the injunction was based, held, public interest requires revocation of registration and refusal to permit notice of withdrawal to become effective.

- - - - -

APPEARANCES:

Joseph G. Connolly of the New York Regional Office of the Commission.

Hermann Graen, for the respondent.

- - - - -

This is a proceeding instituted under Section 15 (b) of the Securities Exchange Act of 1934 to determine whether the broker-dealer registration of Hermann Graen & Co., Inc., should be revoked or suspended, or whether the registrant should be permitted to withdraw its registration.

After appropriate notice a hearing was held before a trial examiner. The registrant appeared through Hermann Graen, its president. The trial examiner has submitted an advisory report recommending revocation. The registrant has taken exception to this recommendation of the trial examiner. Our findings and conclusions are based upon an independent review of the record.

It is undisputed that on June 17, 1943, the Supreme Court of the State of New York permanently enjoined the registrant from engaging in the sale of securities. This injunction was based upon a complaint by the Attorney General of New York charging that the registrant had misappropriated customers' funds, had made misrepresentations to its customers, had made false entries in its books, and was insolvent. The decree was entered on the consent of the registrant.

On June 17, 1943, the registrant filed with the Commission a letter attempting to withdraw its registration as a broker-dealer.

On July 2, 1943, we instituted this proceeding to determine whether the registration of the registrant should be suspended or revoked, or whether the registrant's notice of withdrawal should be accepted.

Since the existence of the permanent injunction against the registrant is not in dispute, the only question which remains is whether it is in the public interest to permit withdrawal or to revoke the registration.

The complaint on which the injunction was granted contained very serious charges, including the conversion of customers' funds. Although the registrant consented to the entry of the injunction, its president testified in this proceeding that it was not guilty of at least part of the offenses with which it was charged. However, this testimony is very confusing and carries little conviction.

On the basis of the entire record we find that the public interest requires revocation and does not permit an acceptance of the withdrawal. An appropriate order will issue.

By the Commission (Chairman Purcell and Commissioners Healy, Pike, and O'Brien).

(SEAL)

Orval L. DuBois,
Secretary.

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.,
on the 28th day of October, A. D., 1943.

In the Matter of	:	
	:	
HERMANN GRAEN & CO., INC.	:	ORDER DENYING EFFECTIVENESS
401 Broadway	:	TO NOTICE OF WITHDRAWAL AND
New York, New York	:	REVOKING REGISTRATION
	:	
Securities Exchange Act of 1934 -	:	
Section 15 (b)	:	

The Commission having by order instituted proceedings pursuant to Section 15 (b) of the Securities Exchange Act of 1934, to determine whether the registration of Hermann Graen & Co., Inc. as a broker and dealer should be revoked or whether Hermann Graen & Co., Inc. should be permitted to withdraw its registration;

Hearings having been held after appropriate notice, and the Commission having this day filed its findings and opinion;

IT IS ORDERED, on the basis of said findings and opinion, that the registration of Hermann Graen & Co., Inc. as a broker-dealer be, and it hereby is, revoked, and that the notice of withdrawal of registration of the said Hermann Graen & Co., Inc. as a broker-dealer be, and it hereby is, denied effectiveness.

By the Commission.

Orval L. DuBois,
Secretary.

(SEAL)

For Release in MORNING Newspapers of Saturday, November 6, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3501

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.,
on the 5th day of November, A. D., 1943.

In the Matter of	:	
	:	
ACME MINING COMPANY	:	FINDINGS AND
Assessable Common Stock, 10¢ Par Value	:	ORDER WITHDRAWING
	:	SECURITIES FROM
File No. 1-2243	:	REGISTRATION
	:	
Securities Exchange Act of 1934 -	:	
Section 19 (a) (2)	:	

1. The assessable capital stock, par value 10¢ per share, of Acme Mining Company is listed and registered on the San Francisco Mining Exchange. On August 6, 1943, the Commission issued its order instituting this proceeding under Section 19 (a) (2) of the Securities Exchange Act of 1934 to determine whether or not Acme Mining Company, the registrant, has failed to comply with certain provisions of said Act or the rules and regulations thereunder, and whether or not the registration of said stock should be suspended or withdrawn.

2. After appropriate notice a hearing was held in the City of San Francisco at which neither the registrant nor the exchange appeared. The trial examiner filed an advisory report containing his findings of fact and recommending that the stock be withdrawn. Copies of this report were sent by registered mail to the registrant and the exchange, and receipt thereof was duly acknowledged.

3. The trial examiner found that the registrant has failed to comply with the provisions of Section 13 of the Act and Rules X-13A-1 and X-13A-2 promulgated thereunder in that:

(a) It has failed to file its annual report for the year ended December 31, 1942, which was required to be filed not later than April 30, 1943.

(b) In its annual reports for the years ended December 31, 1940, and December 31, 1941, the registrant failed to meet the requirements of Regulation S-X and included financial statements which are false and misleading in several respects.

4. No objections appear to have been made to the trial examiner's rulings, findings or recommendation, and no exceptions thereto have been filed with the Commission. The Commission therefore adopts the findings of the trial examiner, finds that the registrant has failed to comply with the requirements of Section 13 of the Act and Rules X-13A-1 and X-13A-2 and Regulation S-K promulgated thereunder, and concludes that it is in the public interest to withdraw the registration of registrant's stock.

Accordingly it is

ORDERED, pursuant to Section 19 (a) (2) of the Act, that the registration of the stock in question be and it hereby is withdrawn, effective ten days after the date of this order.

By the Commission.

(SEAL)

Orval L. DuBois,
Secretary.

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For Release in MORNING Newspapers of Monday, November 8, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3502

In the Matter of :
: Applications by THE WHEELING STOCK :
EXCHANGE for Permission to Extend :
Unlisted Trading Privileges to :
: :
Ward Faking Company :
27 Cumulative Preferred Stock, :
Par Value \$50 :
: :
Continental Faking Company :
Common Stock, No Par Value :
: :
File Nos. 7-693, 7-694 :
: :
Securities Exchange Act of 1934 :
Section 12 (f) (2) :

FINDINGS AND OPINION
OF THE COMMISSION

UNLISTED TRADING PRIVILEGES.

Vicinity of The Wheeling Stock Exchange

For the purposes of this application, vicinity of The Wheeling Stock Exchange held to embrace the State of West Virginia, the western part of Pennsylvania, and the eastern part of Ohio.

Adequacy of Distribution and Trading Activity

Held that sufficiently widespread public distribution and sufficient public trading activity within the vicinity of the applicant exchange exist with respect to one security to render the extension of unlisted trading privileges thereto necessary and appropriate in the public interest and for the protection of investors, and that the extension of those privileges is otherwise appropriate in the public interest and for the protection of investors.

Held, with respect to one security, that the applicant has not established to the satisfaction of the Commission that there exists within its vicinity sufficient public trading activity therein to render the extension of unlisted trading privileges thereto necessary or appropriate in the public interest or for the protection of investors.

APPEARANCES:

William H. Wheeler for The Wheeling Stock Exchange.

Nyron Krotinger for the Trading and Exchange Division of the Commission.

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The Wheeling Stock Exchange, an exempt exchange, 1/ on May 15, 1943 filed applications pursuant to Section 12 (f) (2) of the Securities Exchange Act of 1934, as amended, seeking our approval of the extension of unlisted trading privileges to the following securities, both of which are listed and registered on the New York Stock Exchange:

Continental Baking Company
Common Stock, No Par Value

Ward Baking Company
\$7 Cumulative Preferred Stock, Par Value \$50

After notice to the New York Stock Exchange, to each of the issuers, and to the applicant, a hearing was held at the Cleveland Regional Office of the Commission. There was no opposition to the granting of the applications and no exceptions were taken to the advisory report filed by the trial examiner.

By amendment to the original order granting The Wheeling Stock Exchange a conditional exemption from registration as a national securities exchange, the extension of unlisted trading privileges to securities on that Exchange is permitted, provided the requirements of Section 12 (f) of the Securities Exchange Act of 1934 are met. 2/ That section provides that no application to extend unlisted trading privileges pursuant to clause (2) shall be approved unless the applicant exchange shall establish to the satisfaction of the Commission that there exist in the vicinity of such exchange sufficiently widespread public distribution and sufficient public trading activity in the subject security to render the extension of unlisted trading privileges necessary or appropriate in the public interest or for the protection of investors. Further, even if the adequacy of public distribution and public trading activity is successfully established, the Commission may not approve the application unless it finds that the extension of unlisted trading privileges is otherwise necessary or appropriate in the public interest or for the protection of investors.

In previous opinions we have found that the operating mechanics and practices of the applicant exchange were not such as to render an extension of unlisted trading privileges inappropriate in the public interest or for the protection of investors. 3/ At the hearing on this application it was stipulated that the evidence presented in these earlier applications concerning the

1/ Pursuant to Section 5, Clause 2, of the Securities Exchange Act of 1934, as amended,

2/ See: Applications by The Wheeling Stock Exchange, 5 S.E.C. 266 and Securities Exchange Act Release No. 2191 (1939); 7 S.E.C. 102 (1940),

3/ *Ibid.*

applicant's operating mechanics and practices might be considered as part of the record in the present proceeding, insofar as now relevant and uncontradicted. In view of the testimony that there has been no change in the trading procedure since the previous hearings, there are no facts which would require our coming to a different conclusion at this time.

VICINITY OF THE EXCHANGE

The Wheeling Stock Exchange deems its vicinity to embrace the State of West Virginia, the western part of Pennsylvania, and the eastern part of Ohio. The evidence submitted is substantially similar to that introduced in the earlier hearings on applications by this Exchange. Accordingly, in the absence of any facts indicating a change in vicinity, we follow the findings in our previous opinions that the vicinity of the applicant exchange embraces the State of West Virginia, the western part of Pennsylvania, and the eastern part of Ohio.

PUBLIC DISTRIBUTION AND TRADING ACTIVITY

The president of the applicant exchange testified that the predecessor and, in some cases, constituent companies of each of the issuing corporations received some of their financing in the vicinity of The Wheeling Stock Exchange. He testified further that various securities of each of these issuers have been traded on that Exchange during the past nineteen years.

The evidence submitted by the applicant with respect to the Common Stock, No Par Value, of Continental Baking Company shows: that 1,075,429 shares of the subject stock are outstanding; that 37,835 shares are held by 833 individuals in West Virginia alone; 4/ and that, as reported by members of the applicant exchange, 11,388 shares were publicly traded in 109 transactions in the vicinity of the exchange in the twelve-month period ending March 31, 1943.

With respect to the \$7 Cumulative Preferred Stock of Ward Baking Company, the evidence shows: that 255,808 shares of the subject stock are outstanding; that 29,233 shares are held by 454 individuals in West Virginia alone; and that, as reported by members of the applicant exchange, 2,635 shares were publicly traded in 38 transactions in the same twelve-month period.

We are satisfied from the evidence submitted with respect to the Common Stock, No Par Value, of Continental Baking Company that there is sufficiently widespread public distribution and sufficient public trading activity in that security within the vicinity of the applicant exchange. We further find that the extension of unlisted trading privileges to that security is otherwise appropriate in the public interest and for the protection of investors.

4/ There is no evidence in the record as to distribution of either of the securities in question in the remainder of the area deemed to constitute the vicinity of The Wheeling Stock Exchange.

We have considered the evidence introduced with respect to the \$7 Cumulative Preferred Stock, Par Value \$50, of Ward Baking Company in the light of the fact that the exempt status of the applicant exchange indicates a small volume of trading activity than would normally occur on a national securities exchange. ^{5/} Notwithstanding the application of that standard, we are unable to find that there has been shown to exist in the vicinity of the Exchange sufficient public trading activity in that security to render the extension of unlisted trading privileges to it necessary or appropriate in the public interest or for the protection of investors. In view of this conclusion we do not pass on the sufficiency of public distribution of that security in the vicinity of the Exchange.

An appropriate order will issue in accordance with this opinion.

By the Commission (Chairman Purcell and Commissioners Healy, Pike, and O'Brien).

Orval L. DuBois,
Secretary.

(SEAL)

^{5/} See: Applications by The Wheeling Stock Exchange, 5 S.E.C. 266 and Securities Exchange Act Release No. 2191 (1939); 7 S.E.C. 102 (1940).

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.,
on the 6th day of November, A. D., 1943.

In the Matter of	:	
	:	
Applications by THE WHEELING STOCK	:	
EXCHANGE for Permission to Extend	:	
Unlisted Trading Privileges to	:	
	:	
Ward Baking Company	:	
\$7 Cumulative Preferred Stock,	:	ORDER Disposing
Par Value \$50	:	of Applications
	:	for Permission
Continental Baking Company	:	to Extend Unlisted
Common Stock, No Par Value	:	Trading Privileges
	:	
File Nos. 7-693, 7-694	::	
	:	
Securities Exchange Act of 1934	:	
Section 12 (f) (2)	:	

The Wheeling Stock Exchange having made applications to the Commission, pursuant to Section 12 (f) (2) of the Securities Exchange Act of 1934 and Rule X-12F-1, for permission to extend unlisted trading privileges to two securities;

A hearing having been held after appropriate notice and the Commission having this day made and filed its findings and opinion herein;

IT IS ORDERED, pursuant to Section 12 (f) (2) of the Securities Exchange Act of 1934, that the application of The Wheeling Stock Exchange for permission to extend unlisted trading privileges to Continental Baking Company Common Stock, No Par Value, be and it hereby is approved;

IT IS FURTHER ORDERED, pursuant to Section 12 (f) (2) of the Securities Exchange Act of 1934, that the application of The Wheeling Stock Exchange for permission to extend unlisted trading privileges to Ward Baking Company \$7 Cumulative Preferred Stock, Par Value \$50, be and it hereby is denied.

By the Commission.

(SEAL)

Orval L. DuBois,
Secretary.

For Release in MORNING Newspapers of Friday, November 12, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3503

In the Matter of	:	
	:	
ELY & WALKER DRY GOODS COMPANY	:	
\$100 Par 7% Cumulative First	:	
Preferred Stock	:	
\$100 Par 6% Cumulative Second	:	FINDINGS AND OPINION
Preferred Stock	:	OF THE COMMISSION
\$25 Par Common Stock	:	
	:	
File No. 1-45	:	
	:	
Securities Exchange Act of 1934	:	
Section 12 (d)	:	

WITHDRAWAL OF SECURITIES FROM LISTING AND REGISTRATION

Application by Issuer

Terms and Conditions

Where an application has been filed by an issuer to withdraw its securities from listing and registration on a national securities exchange, and where the rules of the exchange requiring stockholder approval have been complied with, held, application must be granted; and further held, that certain alleged inaccuracies in the applicant's proxy solicitation material sent to stockholders prior to the vote were not, under the circumstances presented, materially misleading so as to require resolicitation and a new stockholder vote. As to an omission to state certain matter known to representatives of the Commission who examined the solicitation material prior to mailing and made no objection thereto, held, doubt as to materiality would be resolved in favor of the applicant, though a different result might be reached upon an initial examination of the material prior to mailing.

APPEARANCES:

Crawford Johnson and Thomas S. McPheeters, Jr., of St. Louis, Missouri, for the applicant.

R. Halston Chubb, of St. Louis, Missouri, for the St. Louis Stock Exchange

George T. Crossland, of the Chicago Regional Office, for the Trading and Exchange Division of the Commission.

Ely & Walker Dry Goods Company has filed an application for withdrawal of its securities from listing and registration on the St. Louis Stock Exchange, a national securities exchange, in accordance with Section 12 (d) of the Securities Exchange Act of 1934, and Rule X-12D2-1 promulgated thereunder.

After due notice, including notice to stockholders, a hearing was held before a trial examiner. The applicant, the Exchange, and counsel for our Trading and Exchange Division appeared, and evidence was taken. Requests for findings were filed; the trial examiner filed an advisory report; exceptions were filed by the applicant; briefs were filed and exchanged, and we heard oral argument.

It is conceded, and we find, that the applicant complied with the rules of the St. Louis Stock Exchange in that it submitted the question of withdrawal to a stockholders' vote, and that a large majority of the holders, and the holders of a large majority of all three classes of stock, voted in favor of withdrawal.

The Exchange and counsel for the Division contend that the proxy solicitation material sent by the applicant to stockholders prior to the vote was deficient in that it tended to be misleading as to material facts. The trial examiner's findings support these contentions in large part. Our findings are based on an independent review of the record.

1. Originally, the company had sent a proxy statement and letter to its stockholders and received signed proxies. These were never voted, however, because the representatives of this Commission charged with the examination of proxy material made certain objections. Thereafter, new proxy material was filed and was sent to the stockholders without objection. Accompanying the second proxy statement was a letter from the president of the company in which he made reference to the favorable result of the prior proxy solicitation, and this is said to have misled the stockholders. We do not believe the solicitation material was deficient in this respect. It plainly states that the first proxies were not voted because of objections made thereto by representatives of this Commission.

2. It is claimed that the applicant understated the amount of its purchases of its own stock during the five-year period 1937 to 1941, inclusive. The second proxy statement sets forth: "out of the [estimated] total of 68,506 shares sold off the Exchange 46,906 shares were purchased by the Company . . ." It also contains a tabulation showing the totals for exchange trading for the same period as follows: First Preferred, 1,986 shares; Second Preferred, 1,720 shares; Common, 14,201 shares. The evidence shows that of the 14,201 shares of common traded on the Exchange, about 7,000 thereof were purchased by the applicant. The failure to mention company purchases made on the Exchange is said to have been materially misleading. Under the circumstances, we do not think this omission could have contributed to the vote favoring withdrawal. The figures given for company purchases indicated that applicant was a heavy buyer of its own stock in the over-the-counter market, and tended to detract from the importance of that market in terms of public trading activity. The omission to state that the applicant was also a heavy buyer on the Exchange tended to enhance the importance of the Exchange market in terms of public trading activity, in the minds of the stockholders, and thus if it had any effect at all it would have tended to influence them to vote against the delisting proposal.

3. The applicant's estimated total for sales other than on the Exchange, 68,506 shares, is criticized as being a mere "conjecture." Applicant's officers arrived at this figure by using as a base the total transfers on the books of the transfer agent for the five-year period. From total transfers there were deducted all those known not to represent sales, leaving a balance of transfers of 150,873 shares which included both sales and other types of transfer. From this there were deducted the known purchases of the applicant both on and off the Exchange, plus the purchases by others on the Exchange -- leaving a balance of transfers which might or might not represent sales. The applicant's officers, on the basis of personal knowledge of numerous stockholder transactions, estimated that at least 25% of this balance represented sales. They used the 25% figure in their final estimate, and disregarded the other 75% of the doubtful category of transfers. We do not agree that their final estimate was pure conjecture. Absolute accuracy was out of the question. The method they followed appears to us to have been conservative, and we cannot conclude that the estimate as presented was misleading.

4. The figures for expenses of continued listing (less than 1¢ per share per year) do not appear to have been materially overstated. The trial examiner was of the same opinion in this instance.

5. Applicant further stated:

"If the Company's stocks are no longer listed on the St. Louis Stock Exchange the Company will no longer be required to make public facts about its business and operations which, under the rules of the Securities and Exchange Commission, it now might be forced to publish. Such facts include information relative to ownership by the Company of securities of companies with whom we, as well as our competitors, transact business. It is the opinion of the management that knowledge of such trade information in the hands of other competing organizations may be definitely disadvantageous to the Company and to its stockholders as owners of the enterprise."

It is not claimed that the above statement is in itself untrue, but it is said that the failure to include a statement that applicant never made application under the provisions of Section 24 of the Securities Exchange Act and Rule X-24B-2 for confidential treatment of information contained in documents filed with the Commission or the Exchange, rendered the statement so incomplete as to be misleading. While it might have been better in the interest of full disclosure to include such a qualification, the necessity for doing so is not free from doubt. The applicant's statement was that it "might" be required to publish the information described. No definitive statement could have been made as to whether confidential treatment would or would not be granted, and of course we cannot guess what effect a general statement of the problem might have had on the stockholders' vote. Without committing ourselves as to the policy we may pursue in future cases, where solicitation material is under examination before mailing, we conclude here that in view of the failure of our staff to require qualification of the statement in question, the doubt as to materiality should be resolved in favor of the applicant. The omitted information was certainly known to our staff and must have been given consideration. While this fact is not conclusive upon us, we feel that under the circumstances of this case we would not be justified in requiring resolicitation and a new vote of stockholders.

Applicant's exceptions to the trial examiner's report are sustained. The application must be granted and, in the light of all the foregoing, we observe no basis for imposing any terms for the protection of investors other than the usual one postponing the effectiveness of the order for ten days. An appropriate order will issue.

By the Commission (Commissioners Healy, Pike, and O'Brien), Chairman
Purcell being absent and not participating.

Orval L. DuBois,
Secretary.

(SEAL)

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.,
on the 11th day of November, A. D., 1943.

In the Matter of	:	
	:	
ELY & WALKER DRY GOODS COMPANY	:	
\$100 Par 7% Cumulative First	:	
Preferred Stock	:	
\$100 Par 6% Cumulative Second	:	ORDER GRANTING APPLICATION
Preferred Stock	:	AND IMPOSING TERMS
\$25 Par Common Stock	:	
	:	
File No. 1-45	:	
	:	
Securities Exchange Act of 1934 -	:	
Section 12 (d)	:	

Ely & Walker Dry Goods Company having filed an application, pursuant to Section 12 (d) of the Securities Exchange Act of 1934 and Rule X-12D2-1 adopted thereunder, to withdraw its Common Stock \$25 Par Value, its 7% Cumulative First Preferred Stock \$100 Par Value and its 6% Cumulative Second Preferred Stock \$100 Par Value from listing and registration on the St. Louis Stock Exchange; a hearing having been held after appropriate notice, and the Commission being duly advised and having this day issued its findings and opinion herein;

On the basis of said findings and opinion and pursuant to Section 12 (d) of said Act, it is hereby

ORDERED that the application be and it hereby is granted, effective ten days from the date of this order.

By the Commission.

Orval L. DuBois,
Secretary.

(SEAL)

For IMMEDIATE Release Thursday, November 11, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3504

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.,
on the 9th day of November, A. D., 1943.

In the Matter of		:
Applications by the NEW YORK CURB EXCHANGE		:
to Extend Unlisted Trading Privileges to		:
		:
	<u>File Nos.</u>	:
Lukens Steel Company	7-701	:
Common Stock, \$10 Par Value		:
Merck & Co., Inc.	7-702	:
Common Stock, \$1 Par Value		:
Northern Natural Gas Company	7-703	:
Common Stock, \$20 Par Value		:
Public Service Company of	7-704	:
Indiana, Inc.		:
Common Stock, Without Par Value		:
The Warner & Swasey Company	7-705	:
Common Stock, Without Par Value		:
Securities Exchange Act of 1934		:
Section 12 (f) (3)		:

ORDER
Postponing
Hearing

The New York Curb Exchange having filed applications with the Commission, pursuant to Section 12 (f) (3) of the Securities Exchange Act of 1934 and Rule X-12F-1, for permission to extend unlisted trading privileges to the above-mentioned securities;

The Commission having on August 3, 1943 ordered a hearing to be held on September 16, 1943 at 10:00 a. m. at the office of the Securities and Exchange Commission, 18th and Locust Streets, Philadelphia, Pennsylvania, which hearing has been heretofore postponed until November 15, 1943;

Counsel for all parties having requested further postponement of the date of hearing; and

The Commission having duly considered the matter and being fully advised in the premises;

IT IS ORDERED that the hearing scheduled for November 15, 1943, be, and the same hereby is, postponed to December 15, 1943, at the hour and place heretofore designated.

By the Commission.

Orval L. DuBois,
Secretary.

(SEAL)

For Release in MORNING Newspapers of Tuesday, November 16, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES ACT OF 1933

Release No. 2356

SECURITIES EXCHANGE ACT OF 1934

Release No. 3506

The Securities and Exchange Commission today made public an opinion of James A. Treanor, Jr., Director of the Trading and Exchange Division, discussing the effect of the anti-manipulative provisions of the Securities Exchange Act of 1934 and the Securities Act of 1933 on the activities of a manager of an underwriting syndicate.

Mr. Treanor's opinion deals primarily with the case of a manager of an underwriting syndicate who effects purchases of a security to reduce the short position of the "syndicate account" in that security while the members of the syndicate or members of the selling group are engaged in the retail distribution of such security. In this situation, Mr. Treanor points out, a manager's transactions which raise the price of the security or create excessive trading therein, will violate the anti-manipulative and fraud provisions of the Securities Exchange Act of 1934 and the Securities Act of 1933.

The opinion also discusses the factors which indicate the presence or absence of manipulative intent.

The opinion applies to securities which are traded on national securities exchanges as well as to those which are traded in the over-the-counter market.

The text of the opinion follows:

"You have inquired whether transactions effected by the manager of an underwriting syndicate to cover an over-allotment short position of the syndicate are subject to the anti-manipulative provisions of the Securities Exchange Act of 1934 and the Securities Act of 1933.

"As I understand it, you are the manager of a syndicate which is underwriting an issue of shares of stock of 'X Y Z' Corporation. The issue is being publicly offered at a fixed price, having recently become effectively registered under the Securities Act of 1933. I also understand that the syndicate account is 'short' shares in the amount of approximately 8% of the amount originally offered, resulting from over-allotment. It also appears that the individual members of the underwriting group are 'long', in the aggregate, approximately 17% of the amount originally offered, representing the unsold portion of the original offering. Moreover, the members of the selling group who are not underwriters have an aggregate long position amounting to approximately 12% of the original offering.

"In considering the question which you have raised, we may start with the premise that a syndicate over-allotment is customarily made for the purpose of facilitating the orderly distribution of the offered securities by creating

buying power which can be used for the purpose of supporting the market price. Thus, it would appear, in the absence of circumstances indicating the contrary, that purchases made for the purpose of covering the 'short position' of the syndicate are effected for the purpose of facilitating the distribution. Moreover, if such purchases are effected to facilitate the offering, it is obvious that there exists the intention or purpose of inducing the purchase of the offered security by others.

"Under these circumstances, all purchases which raise the market price of the offered security or create excessive trading activity would appear to contravene the anti-manipulative provisions of law. In this connection, you may be interested in examining Securities Exchange Act Release No. 3505 issued by the Commission under date of November 16, 1943.

"However, not all purchases for the purpose of covering a short position impel the conclusion that the underwriters still have the purpose of facilitating a distribution. There are a number of factors which must be considered in determining whether that purpose is still present. Some of the external factors indicating that the manager no longer has the intention of facilitating an offering, but has only the purpose of covering the syndicate short position, are as follows:

"1. Neither the underwriters nor the selling-group members have remaining unsold any shares of the offered security, and hence are no longer engaged in soliciting purchases thereof;

"2. reasonable efforts have been made by the manager to acquire securities away from the market, i.e., in privately negotiated transactions, for the purpose of covering the syndicate short position;

"3. the independently established market price of the offered security is above the fixed offering price;

"4. the manager has not, while covering the syndicate short position, made additional short sales of the offered security;

"5. a reasonable period of time has elapsed between the termination of distributive efforts on the part of participants in the distribution and commencement of covering of the syndicate short position;

"6. the underwriting group holds no options on securities of the same class as those being offered; and

"7. all agreements with the syndicate manager or underwriters restricting the right of any person to sell the securities of the same class as the offered security have been terminated.

"It should be noted that the factors mentioned above do not necessarily include all of the factors to be taken into consideration, nor is it necessary for all of the factors to be present before the conclusion can be reached that in a given setting the purpose of facilitating an offering no longer exists.

"Applying these principles to the facts which have been presented by you, it is obvious that the position of the underwriting group is only technically short, the underwriters as a group actually having a net long position amounting in the aggregate to 9% of the amount of the securities originally offered. Moreover, the selling group members have securities remaining unsold in the additional amount of 12%. It is obvious that participants in the distribution are still engaged in inducing the purchase of the offered security by others. Under these circumstances, purchases of the stock effected by the syndicate manager as agent for the underwriting group which raise the price of the stock or which create excessive trading activity, would clearly be unlawful, even though one of the purposes of the manager in effecting such purchases is that of extinguishing the technical short position of the syndicate account.

"The statement has frequently been made by managers of syndicates that they are not in a position to know whether the individual underwriters or selling-group members have securities remaining unsold, and that managers have no means of requiring members of underwriting or selling groups to supply them with the offered securities to permit the extinguishment or reduction of the short position.

"Considering these contentions first with respect to the individual underwriters, it should be noted that the manager of a syndicate is an agent for the members of the underwriting group and that the individual members of the group are principals in any transaction effected by the manager as such. The failure of an agent of an underwriting group to inform himself with respect to the status of the distribution cannot, in my opinion, grant immunity to any such agent or to his principals from the anti-manipulative provisions of law. On the contrary, no such agent should permit his principal's act or refusal to act, to force him, the agent, to violate the law in attempting to protect such principal's interests.

"In view of the foregoing, it would seem incumbent upon the manager to insure his ability to obtain all necessary information concerning the status of the distribution. In this connection, it would seem appropriate for the agreement between underwriters to contain provisions stating, in effect, that the manager, upon request, shall be informed of the amount of the offered securities which the individual underwriters have remaining unsold. Moreover, it would also seem appropriate for the agreement between underwriters to contain provisions requiring the individual underwriters, upon request of the manager, to deliver to him unsold securities, at or below the offering price, for the purpose of reducing the syndicate short position.

"While an agency relationship may not exist between the manager of the syndicate and members of the selling group, there is a community of interest between them and the manager's purchases redound to the benefit of the members of the selling group. And since the relationship between the selling group and the syndicate is customarily determined by contract between the two, and since, in effect, the members of the selling group are selling securities for the manager and the syndicate which he represents, it would likewise seem appropriate for the contract between the underwriting syndicate and the selling group to contain provisions analogous to those mentioned above."

For IMMEDIATE Release Thursday, November 18, 1943

**SECURITIES AND EXCHANGE COMMISSION
Philadelphia**

SECURITIES EXCHANGE ACT OF 1934
Release No. 3507

The Securities and Exchange Commission today announced that it had declared effective a plan of the Detroit Stock Exchange for "special offerings." The effect of the action taken by the Commission today will be to exempt distributions carried out in accordance with the plan from rules of the Commission prohibiting the payment of compensation for inducing purchases on the Exchange under certain conditions. The Detroit Stock Exchange is the fifth national securities exchange to file and to have declared effective by the Commission a plan for special offerings. The plan of the Detroit Stock Exchange is generally similar to the plans recently declared effective for the New York Stock Exchange, New York Curb Exchange, San Francisco Stock Exchange, and the Philadelphia Stock Exchange. A summary of the more important features of these plans appeared in Securities Exchange Act Release No. 3146, issued on February 6, 1942.

The text of the Commission's action follows:

The Detroit Stock Exchange, pursuant to Rule X-10B-2 (d), having filed on November 13, 1943, a plan for special offerings contained in Chapter I, Section 19 (1)-(8) inclusive, of the rules of the Detroit Stock Exchange; and

The Securities and Exchange Commission, having given due consideration to the terms of such plan, and having due regard for the public interest and for the protection of investors, pursuant to the Securities Exchange Act of 1934, particularly Sections 10 (b) and 23 (a) thereof and Rule X-10E-2 (d) thereunder, hereby declares such plan to be effective, on the condition that if at any time it appears to the Commission necessary or appropriate in the public interest or for the protection of investors so to do, the Commission may suspend or terminate the effectiveness of said plan by sending at least ten days' written notice to the Detroit Stock Exchange suspending or terminating the effectiveness of such plan.

Effective November 18, 1943.

---oOo---

For IMMEDIATE Release Tuesday, November 23, 1943.

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3508

The Securities and Exchange Commission announced today that the New York Curb Exchange had withdrawn its application filed under Section 12.(d) of the Securities Exchange Act of 1934 to strike the Common Stock, 50¢ Par Value, of Reiter-Foster Oil Corporation from listing and registration on that exchange, and that the hearing on the said application, scheduled for November 24, 1943, had been cancelled.

---oOo---

For Release in MORNING Newspapers of Thursday, November 25, 1948

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3509

In the Matter of	:	
Application by the BOSTON STOCK EXCHANGE	:	
for Permission to Extend Unlisted Trading	:	
Privileges to	:	
Sylvania Electric Products, Inc.	:	FINDINGS AND OPINION
Common Stock, No Par Value	:	OF THE COMMISSION.
File No. 7-699	:	
Securities Exchange Act of 1934	:	
Section 12 (f) (2)	:	

UNLISTED TRADING PRIVILEGES

Vicinity of the Boston Stock Exchange

Previous finding that vicinity of the Boston Stock Exchange embraces all the New England states exclusive of Fairfield County, Connecticut, followed.

Adequacy of Distribution and Trading Activity

Held that there exist in vicinity of the applicant exchange sufficiently widespread public distribution and sufficient public trading activity in the subject security to render the extension of unlisted trading privileges thereto appropriate in the public interest and for the protection of investors, and that the extension of those privileges is otherwise appropriate in the public interest and for the protection of investors.

APPEARANCES:

Henry E. Tracy for the Boston Stock Exchange.

Edward McPartlin for the Trading and Exchange Division of the Commission.

The Boston Stock Exchange, a national securities exchange, on June 25, 1943 filed an application pursuant to Section 12 (f) (2) of the Securities Exchange Act of 1934, as amended, seeking our approval of the extension of unlisted trading privileges to the Common Stock, No Par Value, of Sylvania Electric Products, Inc.

After notice to the New York Stock Exchange, to the issuer, and to the applicant, a hearing was held at the Boston Regional Office of the Commission. There was no opposition to the granting of the application and no exceptions were taken to the advisory report filed by the trial examiner.

The Securities Exchange Act provides that no application to extend unlisted trading privileges to any security pursuant to Section 12 (f) (2) shall be approved unless such security is duly listed and registered on a national securities exchange and unless the applicant exchange shall establish to the satisfaction of the Commission that there exist in the vicinity of such exchange sufficiently widespread public distribution of the security and sufficient public trading activity therein to render the extension of unlisted trading privileges necessary or appropriate in the public interest or for the protection of investors. Further, even if the adequacy of public distribution and public trading activity is successfully established, the Commission may not approve the application unless it finds that the extension of unlisted trading privileges is otherwise necessary or appropriate in the public interest or for the protection of investors. Privileges so granted may continue in effect only so long as such security shall remain listed and registered on any other national securities exchange.

We find that the vicinity of the Boston Stock Exchange embraces all the New England states, exclusive of Fairfield County, Connecticut, as we have done in previous cases. 1/

In our previous opinions we found also that the operating mechanics of the applicant exchange pertaining to trading in unlisted securities were not such as to render an extension of unlisted trading privileges inappropriate in the public interest or for the protection of investors. 2/ At the hearing on this application it was stipulated that there has been no change in trading procedure since the previous hearings. Accordingly, there are no facts which would require our coming to a different conclusion at this time.

This stock is listed and registered on the New York Stock Exchange.

The evidence submitted by the applicant as to distribution and trading activity with respect to the subject security within its vicinity shows: that 843,071 shares of the subject stock are outstanding; that 291,956 shares are held in the New England states by 1968 shareholders, 3/ 15,510 shares of which are held in Connecticut by 181 shareholders; and that, as

1/ Applications by the Boston Stock Exchange, 2 S.E.C. 513 (1937); 3 S.E.C. 691 (1938); 5 S.E.C. 389 (1939); _____ S.E.C. _____ (1943), Securities Exchange Act Release No. 3364, January 19, 1943; _____ S.E.C. _____ (1943), Securities Exchange Act Release No. 3382, February 17, 1943,

2/ Ibid.

3/ On the question of the extent to which the total of shares held locally reflects concentrated holdings, the Exchange alleged that there were only twenty-eight holders owning from 1,000 to 4,999 shares, only three owning from 5,000 to 9,999 shares, and only three owning 10,000 shares or over.

reported by member houses of the applicant exchange in response to a questionnaire sent for that purpose, 88,500 shares were publicly traded in 1,226 transactions in the vicinity of the Exchange in the twelve-month period ending May 29, 1943.

On the basis of the foregoing, we are satisfied that there is sufficiently widespread public distribution and sufficient public trading activity in the subject security within the vicinity of the applicant exchange.

We further find that the extension of unlisted trading privileges to the above-named security is otherwise appropriate in the public interest and for the protection of investors.

The requirements of the Act having been met, an appropriate order will issue granting the application.

By the Commission (Chairman Purcell and Commissioners Healy, Pike, and O'Brien).

(SEAL)

Orval L. DuBois,
Secretary.

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.,
on the 23rd day of November, A. D., 1943.

In the Matter of	:	
	:	
Application by the BOSTON STOCK EXCHANGE	:	
for Permission to Extend Unlisted Trading	:	
Privileges to	:	ORDER Granting
	:	Application
Sylvania Electric Products, Inc.	:	for Permission
Common Stock, No Par Value	:	to Extend
	:	Unlisted Trading
File No. 7-599	:	Privileges
	:	
Securities Exchange Act of 1934	:	
Section 12 (f) (2)	:	

The Boston Stock Exchange having made application to the Commission, pursuant to Section 12 (f) (2) of the Securities Exchange Act of 1934 and Rule X-12F-1, for permission to extend unlisted trading privileges to the Common Stock, No Par Value, of Sylvania Electric Products, Inc.;

After appropriate notice a hearing having been held in this matter at the Boston Regional Office of the Commission; and

The Commission having this day made and filed its findings and opinion herein;

IT IS ORDERED, pursuant to Section 12 (f) (2) of the Securities Exchange Act of 1934, that the application of the Boston Stock Exchange for permission to extend unlisted trading privileges to the Common Stock, No Par Value, of Sylvania Electric Products, Inc. be and the same is hereby granted.

By the Commission.

Orval L. DuEois,
Secretary.

(SEAL)

For IMMEDIATE Release Thursday, December 2, 1943

**SECURITIES AND EXCHANGE COMMISSION
Philadelphia**

SECURITIES EXCHANGE ACT OF 1934
Release No. 3510

The Securities and Exchange Commission today announced that an application filed by the New York Curb Exchange under the Securities Exchange Act of 1934, to strike from listing and registration the \$6.00 Cumulative Preferred Stock, No Par Value, of Brown-Forman Distillers Corporation (File 1-123), had been scheduled for hearing in the Commission's Philadelphia Office on Wednesday, December 15, 1943, at 10:00 A. M.

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For IMMEDIATE Release Monday, December 6, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3511

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.,
on the 4th day of December, A. D., 1943.

In the Matter of	:	
	:	
Application by the NEW YORK CURB EXCHANGE	:	
to extend Unlisted Trading Privileges to	:	ORDER Reopening
	:	Hearing, Granting
Puget Sound Power & Light Company	:	Application to
Common Stock, \$10 Par Value	:	Intervene, and
	:	Directing Consoli-
File No. 7-710	:	dation
	:	
Securities Exchange Act of 1934	:	
Section 12 (f)	:	

The New York Curb Exchange, pursuant to Section 12 (f) of the Securities Exchange Act of 1934, and Rule X-12F-1 promulgated thereunder, having made application to the Commission to extend unlisted trading privileges to the above-mentioned security;

The Commission having held a hearing in the matter and the record therein having been closed on August 17, 1943;

The National Association of Securities Dealers, Inc. having filed on December 3, 1943 and application to intervene in the above-entitled proceeding; and

The Commission having considered the matter and being duly informed in the premises;

IT IS ORDERED that said application of the National Association of Securities Dealers, Inc. to be made a party to the said proceeding be and it hereby is granted.

IT IS FURTHER ORDERED that the hearing in this matter be reopened and set down for hearing for the production of additional evidence material to the issues on December 15, 1943 at 10:00 a.m. at the office of the Securities and Exchange Commission, 13th and Locust Streets, Philadelphia, Pennsylvania.

IT IS FURTHER ORDERED that this proceeding be consolidated with the proceeding entitled In the Matter of Applications by the New York Curb Exchange to Extend Unlisted Trading Privileges to Five Securities, File Nos. 7-701 to 7-705, heretofore scheduled to be heard at the same time and place, before Willis E. Monty, an officer of the Commission, designated by it to preside at such hearing.

By the Commission.

Orval L. DuBois,
Secretary.

(SEAL)

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

December 13, 1943

ERRATA SHEET

SECURITIES ACT OF 1933
Release No. 2961
SECURITIES EXCHANGE ACT OF 1934
Release No. 3512
ACCOUNTING SERIES
Release No. 46

The following changes are to be made in the Commission's release bearing the above designations, issued under date of December 9, 1943:

On page 1, in the text of Rule 5-04, as amended, second line, the word "each" is to be substituted for the word "cash", so that the text reads: "The schedule prescribed by Rule 12-06 shall be filed in support of caption 13 of each balance sheet. . ."

On page 2, in the first line, the Roman numeral "II" is to be substituted for the Arabic numeral "11".

---oO---

For Release in MORNING Newspapers of Thursday, December 9, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES ACT OF 1933

Release No. 2961

SECURITIES EXCHANGE ACT OF 1934

Release No. 3512

ACCOUNTING SERIES

Release No. 46

The Securities and Exchange Commission today announced the adoption of amendments to Rules 5-04 and 12-06 of Regulation S-X. On December 22, 1942 the Commission adopted comprehensive amendments to Regulation S-X designed to simplify and shorten reports required to be filed by registrants by permitting under designated conditions the omission or partial omission of certain schedules. The Commission's experience with these amendments has not been entirely satisfactory. The present revisions are designed to secure with a minimum burden and expense certain information deemed essential relating to property, plant, and equipment under designated conditions. While the rules as amended call for the filing under certain circumstances of information with respect to property, plant, and equipment not now required, the present requirements relating thereto are less than those existing prior to December 22, 1942.

As amended, Rule 5-04 permits the omission of Schedule V. Property, plant and equipment, if the total of such assets at both the beginning and end of the period does not exceed 5% of total assets (exclusive of intangibles) and if neither the additions nor deductions during the period exceeded 5% of total assets (exclusive of intangible assets). The amendment to Rule 12-06 provides that, in case the additions and deductions columns are omitted from Schedule V, as permitted by Note 3 of Rule 12-06, the total of additions and the total retirements and sales shall be given in a footnote to the schedule.

The text of the Commission's action follows:

The Securities and Exchange Commission, acting pursuant to authority conferred upon it by the Securities Act of 1933, particularly Sections 7 and 19 (a) thereof, and the Securities Exchange Act of 1934, particularly Sections 12, 13, 15 (d), and 23 (a) thereof, and deeming such action necessary and appropriate in the public interest and for the protection of investors and necessary for the execution of the functions vested in it by the said Acts, hereby amends Regulation S-X as follows:

I. The text of Rule 5-04 following the caption, Schedule V. Property, plant, and equipment, is amended to read as follows:

"The schedule prescribed by Rule 12-06 shall be filed in support of caption 13 of cash balance sheet, provided that this schedule may be omitted if the total shown by caption 13 does not exceed 5% of total assets (exclusive of intangible assets) as shown by the related balance sheet at both the beginning and end of the period and if neither the additions nor deductions during the period exceeded 5% of total assets (exclusive of intangible assets) as shown by the related balance sheet."

11. Rule 12-06. Property, Plant, and Equipment, is amended by changing Note 3 to read as follows:

"The balance at the beginning of the period of report may be as per the accounts. If neither the total additions nor the total deductions during the period amount to more than 10% of the closing balance and a statement to that effect is made, the information required by Columns B, C, D, and E may be omitted provided that the totals of Columns C and D are given in a footnote and provided further that any information required by Notes 4, 5, and 6 shall be given and may be in summary form."

Effective Dec. 9, 1943.

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3513

In the Matter of
:
:
FULLER MANUFACTURING COMPANY
:
Common Stock, \$1 Par Value
:
:
File No. 1-2859
:
:
Securities Exchange Act of 1934 -
:
Section 12 (d)
:

FINDINGS AND OPINION
OF THE COMMISSION

WITHDRAWAL OF SECURITIES FROM LISTING AND REGISTRATION

Application by Issuer

Compliance with Rules of Exchange

Where, after issuer filed application for withdrawal of its stock from listing and registration, the exchange adopted rule requiring stockholders' vote approving application, held, that such rule is not applicable in the case. Further held, since no rule of the exchange was applicable to the withdrawal, the application complied with the rules of the exchange within the meaning of Section 12 (d) of the Act, and must be granted subject to appropriate terms.

Imposition of Terms

Upon application by the issuer under Section 12 (d) of the Act to withdraw securities from listing and registration on a national securities exchange, where the exchange requests the Commission to impose terms requiring stockholders' vote upon the question of withdrawal; held that the Commission would not depart from its prior decisions or impose such terms in the case presented, under its present rules and without warning, the Commission stating, however, that its rules under Section 12 (d) may be amended.

APPEARANCES:

Eric William Passmore, of Bloodgood and Passmore, Milwaukee, Wisconsin, for the applicant.

Jess Halstead, of Scott, MacLeish and Falk, Chicago, Illinois, for the Chicago Stock Exchange.

George T. Crossland, for the Trading and Exchange Division of the Commission.

Fuller Manufacturing Company has filed an application pursuant to Section 12 (d) of the Securities Exchange Act of 1934 and Rule X-12D2-1 adopted thereunder to withdraw its common stock, \$1 par value, from listing and registration on the Chicago Stock Exchange. 1/ The applicant gave its stockholders due notice of the hearing on the application, but did not submit the question of withdrawal to a stockholders' vote.

The application as amended sets forth, as reasons for withdrawing the stock from listing and registration, the following:

"The Applicant procured the listing because of the request of the Bankers and in anticipation of the possible issue and sale to the public of all or part of the remaining unissued stock. The Applicant has steadily improved its financial condition, has no current bank loans or funded indebtedness, and does not intend to offer for sale any of its unissued stock. The small number of transactions upon The Chicago Stock Exchange does not justify the expense and time necessary on the part of the Applicant to continue the listing. The prices at which the stock is sold upon The Chicago Stock Exchange do not accurately reflect the changes in the financial position of the Applicant. A ready over-the-counter market exists . . ." 2/

After notice a hearing was held before a trial examiner at which the applicant and the exchange appeared. Two stockholders appeared to protest the withdrawal. Letters from 22 stockholders were placed in evidence by counsel for the Trading and Exchange Division of the Commission, of which 5 expressed approval of the application and 9 expressly disapproved. 3/

The trial examiner has recommended that the application be granted, but has made no recommendation as to terms to be imposed for the protection of investors. Both the applicant and the exchange have filed briefs, the latter also having filed exceptions to the trial examiner's advisory findings and report. We heard oral argument.

1/ Section 12 (d), insofar as relevant, provides:

"A security registered with a national securities exchange may be withdrawn or stricken from listing and registration in accordance with the rules of the exchange and, upon such terms as the Commission may deem necessary to impose for the protection of investors, upon application by the issuer or the exchange to the Commission . . ."

Rule X-12D2-1 requires, *inter alia*, that an application under Section 12 (d) --

". . . shall state the reasons for such proposed withdrawal . . . together with all material facts relating thereto and such facts as in the opinion of the applicant have a bearing on whether the Commission should impose any terms for the protection of investors."

2/ This sentence was, after hearing, amended to read: "A ready over-the-counter market *will* exist upon the withdrawal of listing upon the Chicago Stock Exchange."

3/ Eight stockholders expressed apprehension over the proposed delisting; some of these requested further information.

Compliance with Rules of the Exchange

On March 24, 1943, two weeks after the amended application was filed, the Chicago Stock Exchange adopted the following rule:

"Removal of securities from the list, whether on action by the Exchange or upon request or application of the issuer, shall be made only by the Board of Governors. In the absence of special circumstances a security considered by the Exchange to be eligible for continued listing will not be removed from the list upon the request or application of the issuer, unless the proposed withdrawal from listing is approved by sixty-six and two-thirds percent (66-2/3%) of the outstanding security, and then only provided less than ten percent (10%) of the number of bona fide individual holders thereof have not objected to such removal." (Article 14, Section 3.) 4/

The present application was filed prior to the adoption of the rule, and we do not regard the rule as applicable. Cf. *Troxel Manufacturing Company*, 9 S. E. C. 55 (1941). It is not claimed that the applicant has failed to comply with any other rule of the exchange, and we find that there has been compliance with the rules of the exchange within the meaning of Section 12 (d). There has also been substantial compliance with our rules.

Accordingly, the application must be granted, and the only remaining question is what terms, if any, should be imposed for the protection of investors. *Allen Industries, Inc.*, 2 S. E. C. 14 (1937).

Terms for Protection of Investors

The exchange argues that, if its rule was adopted too late to govern the present application for withdrawal, we should nevertheless impose terms, in our order granting the application, which would require submission of the management's proposal to a stockholders' vote of the kind specified in the rule. Thus the question is whether or not it is "necessary" to impose such terms "for the protection of investors," within the meaning of Section 12 (d). The applicant argues that this is not necessary, since the applicant's management and stockholders have had harmonious relations for many years and the holding of a stockholders' vote would be a waste of time and expense. It also states that the record contains no evidence in support of the contention that a stockholders' vote is necessary for the protection of investors in this particular case.

4/ No doubt the last sentence is intended to provide: and then only provided less than 10% of the number of bona fide individual holders thereof have objected to such removal.

Although the applicant claims that the expense of maintaining listing is unwarranted in the face of small amounts of trading, it is evident that such expense is not claimed to be a burden upon the corporate entity as such. ^{5/} Moreover, the number of shares traded on the exchange has not been particularly small in comparison with a great many other securities. The volume of trading in the security is indicated by the following table, which shows the volume of exchange trading and summarizes the sales prices of the stock.

Period	Volume in Shares	High	Low	Closing Price at End of Period
May 26, 1937 to December 31, 1937	24,900	5-1/2	2	2-1/8
January 1, 1938, to December 31, 1938	25,500	2-3/4	1-1/2	2
January 1, 1939, to December 31, 1939	18,200	4-1/4	2	4
January 1, 1940, to December 31, 1940	46,450	5	3	3
January 1, 1941, to December 31, 1941	25,950	5-1/8	3-1/2	3-3/4
January 1, 1942, to December 31, 1942	18,600	4-1/4	3-3/8	3-7/8
January 1, 1943, to May 15, 1943	14,300	4-7/8	3-7/8	4-5/8

The applicant claims to have steadily improved its financial condition since 1937. It has no current bank loans or funded indebtedness. The book value of the stock is said to have steadily increased from \$3.40 per share in 1937 to \$7.84 in 1943. The earnings of the company have steadily increased from \$.515 per share in 1937 to \$6.24 per share in 1942 before taxes for both years, and from \$.418 to \$1.534 after taxes.

The record discloses no reason for doubting the good faith of the directors in concluding that prices on the exchange do not reflect the apparent improvements in the company's financial position. However, the state of the market generally, public appraisal of the nature of the company's business and its management, dividend policies ^{6/} and many other factors affect market price. It is not our function to make, nor would the evidence in this record support, a finding as to whether or not the exchange prices are out of line

^{5/} Furthermore, the record indicates that even if the stock were delisted the expense of maintaining a registrar and transfer agent, and of securing independent audits, probably would not be reduced.

^{6/} There is no evidence in the record as to applicant's dividend history.

with true values. Moreover, if they are out of line, it has not been shown that the reasons for such deficiency are to be found in conditions peculiar to the exchange market; and the evidence does not demonstrate that the securities will find a higher level through the operation of the over-the-counter market. 7/

We are loath to take the action advocated by the Exchange in this case. This application was filed in apparent good faith in reliance upon earlier decisions in which no such term was imposed. Neither our prior decisions nor rules under which this application was filed contain any indication that a stockholders' vote might be required under Section 12 (d).

It may well be that our present rules under that section do not provide adequate protection to stockholders. The problems presented in this and similar cases have prompted us to direct our staff to study the question and to make recommendations. Should the staff recommend the adoption of new rules or amendments to our present rules we will follow our practice of circulating the proposals among interested persons whose comments and criticisms will be invited.

In the present case the application will be granted subject only to the usual term deferring the effective date of our order for a period of ten days.

By the Commission (Chairman Purcell and Commissioners Pike and O'Erien),
Commissioner Healy filing a concurring statement, attached.

(SEAL)

Orval L. DuBois,
Secretary.

7/ The term "over-the-counter" refers to the market in securities which exists outside of organized securities exchanges. It is admitted that there is no existing over-the-counter market in the subject security except for isolated transactions in which exchange prices prevail. To be sure, six securities dealers, two from Kalamazoo, three from Milwaukee and one from Chicago, stated that it was their opinion that if the stock were delisted the prices would improve. Whether this is so or not we are not in a position to judge, but we think it only fair to point out that this opinion represents only a prediction by persons whose business would stand to benefit from delisting, and that other persons might reasonably take a different view.

Healy, C., *concurring*:

I concur. However, I have substantial doubt as to the fairness of the exchange rule. It permits 10% of the security holders, owning perhaps no more than a fraction of one percent of the stock outstanding, to frustrate the wishes of holders of a very high percentage of the total stock. This matter should be studied by our staff and appropriate recommendations made as to whether revisory action by the Commission under Section 19 (b) of the Act is indicated.

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.,
on the 9th day of December, A. D., 1943.

In the Matter of	:
	:
FULLER MANUFACTURING COMPANY	:
Common Stock, \$1 Par Value	:
	:
File No. 1-2859	:
	:
Securities Exchange Act of 1934 -	:
Section 12 (d)	:

ORDER GRANTING
APPLICATION AND
IMPOSING TERMS

Fuller Manufacturing Company having filed an application, pursuant to Section 12 (d) of the Securities Exchange Act of 1934 and Rule X-12D2-1 adopted thereunder, to withdraw its common stock from listing and registration on the Chicago Stock Exchange; a hearing having been held after appropriate notice, and the Commission being duly advised and having this day issued its findings and opinion herein;

On the basis of said findings and opinion and pursuant to Section 12 (d) of said Act, it is hereby

ORDERED that said application be and hereby is granted, *provided*, however, that this order shall not become effective, until ten days after the date hereof.

By the Commission.

Orval L. DuBois,
Secretary.

(SEAL)

For Release in MORNING Newspapers of Saturday, December 11, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934

Release No. 3514

In the Matter of	:
	:
AMERICAN BOX BOARD COMPANY	:
Common Stock, \$1 Par Value	:
	:
File No. 1-2635	:
	:
Securities Exchange Act of 1934 -	:
Section 12 (d)	:

WITHDRAWAL OF SECURITIES FROM LISTING AND REGISTRATION

Application by Issuer

Where application for withdrawal complies with rules of the exchange, and certain misstatements contained in the application were apparently inadvertent and were corrected at the hearing, held, application granted effective after 10 days.

APPEARANCES:

Carl J. Hiddingg, for American Box Board Company.

Myron Krotzinger, for the Trading and Exchange Division of the Commission.

American Box Board Company has filed an application pursuant to Section 12 (d) of the Securities Exchange Act of 1934 and Rule X-12D2-1 adopted thereunder to withdraw its common stock from listing and registration on the New York Curb Exchange. ^{1/} The application was authorized by a resolution adopted by the applicant's board of directors.

The applicant gave its stockholders due notice of the hearing on the application before this Commission, after which a hearing was held before a trial examiner. The applicant appeared and offered testimony in support of its application. The New York Curb Exchange, which had previously notified the Commission that it would not oppose the application, did not appear. However, it

^{1/} Section 12 (d), insofar as relevant, provides:

"A security registered with a national securities exchange may be withdrawn or stricken from listing and registration in accordance with the rules of the exchange and, upon such terms as the Commission may deem necessary to impose for the protection of investors, upon application by the issuer or the exchange to the Commission . . ."

Rule X-12D2-1 requires, *inter alia*, that an application under Section 12 (d)--

". . . shall state the reasons for such proposed withdrawal . . . together with all material facts relating thereto and such facts as in the opinion of the applicant have a bearing on whether the Commission should impose any terms for the protection of investors."

wrote to us challenging the accuracy of some of the statements contained in the application. No stockholders appeared but there were introduced letters from stockholders, 15 of whom opposed the proposed withdrawal from listing and registration. Five stockholders expressed approval. The trial examiner filed an advisory report, and the case was submitted to us without briefs and without oral argument. Our findings are based on an independent review of the record.

The application sets out a number of reasons why the board of directors of the applicant desires withdrawal from listing. While there were some inaccurate statements in the application, 2/ these were corrected at the hearing and appear to have been inadvertent. Since the applicant has complied with the rules of the exchange, the application must be granted, and there remains only the question of what terms, if any, should be imposed for the protection of investors. *Allen Industries, Inc.*, 2 S.E.C. 14 (1937); *Fuller Manufacturing Company*, S.E.C. (1943), Securities Exchange Act Release No. 3513, issued December 10, 1943.

Since 1936, when the common stock was listed, many individuals have purchased the stock on the exchange, and it is reasonable to suppose that many of them bought it on the assumption that there would be an exchange market through which they could dispose of their investment, and that meanwhile they would have the benefits attached to a registered security. The same may be true of investors who bought the stock on the basis of a prospectus used in making a public offering of a portion of the stock in 1936, since the prospectus specifically referred to an undertaking by the company to apply, upon request by the underwriters, for listing of the stock on the New York Curb Exchange.

The applicant, by its management, now states that in its opinion, based on a study made by its Executive Committee, persons who may wish to buy or sell the stock would benefit from having the stock traded over the counter instead of on the exchange. It does not appear from the record in this case that the management's opinion is substantiated by the known facts or by the study that is claimed to have been made of the market situation, 3/ and,

2/ See footnote 3, *infra*.

3/ The opinion of the management appears to have been based in part upon inaccurate data, since the application for withdrawal states that such opinion was based on "investigations made by said directors which show that during the six-month period ending August 15, 1942, a total of 400 shares of said common stock had been sold through said Exchange amounting to practical cessation of trading in said stock . . ." The evidence showed and the applicant's witness admitted that, during that period, 2,700 shares had in fact been traded on the exchange in round lots. We note in passing that in the first ten months of 1942 there were 7,400 shares in round lots traded on the Curb Exchange.

It appears that members of the board considered the over-the-counter activity of allegedly comparable securities, and were assisted by the advice of one member who had formerly been the local representative of a securities firm. The only affirmative result of the study appearing in the record is the conclusion that over-the-counter quotations for comparable

(continued)

under the facts, the question of whether or not delisting is in the best interests of stockholders is one which might be presented to them for an expression of their views.

However, for the reasons stated in *Fuller Manufacturing Company, supra*, the application will be granted subject only to the usual term deferring the effective date of our order for a period of ten days.

By the Commission (Chairman Purcell and Commissioners Healy, Pike and O'Erien).

(SEAL)

Orval L. DuBois,
Secretary.

---oOo---

3 cont'd/

securities appeared in local papers. No assurances were obtained that over-the-counter quotations for the applicant's stock would be published in the local papers, and no dealer was approached to ascertain whether or not he would make a market in this security upon delisting. It should be noted that even if assurances as to the publication of over-the-counter quotations had been obtained, these quotations would not represent actual transaction prices such as are published by an exchange.

There was an expression of opinion by applicant's witness, not substantiated by evidence, that the market prices on the Curb Exchange undervalued the stock; and the witness made some general statements concerning the cost of trading on the New York Curb Exchange, particularly by holders of less than 100-share lots, but made no attempt to compare that cost with the cost which would be involved in over-the-counter transactions.

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.,
on the 10th day of December, A. D., 1943.

In the Matter of	:	
	:	
AMERICAN BOX BOARD COMPANY	:	
Common Stock, \$1 Par Value	:	ORDER GRANTING
	:	APPLICATION AND
File No. 1-2635	:	IMPOSING TERMS
	:	
Securities Exchange Act of 1934 -	:	
Section 12 (d)	:	

The American Box Board Company having filed an application, pursuant to Section 12 (d) of the Securities Exchange Act of 1934 and Rule X-12D2-1 adopted thereunder, to withdraw its common stock from listing and registration on the New York Curb Exchange; a hearing having been held after appropriate notice, and the Commission being duly advised and having this day issued its findings and opinion herein;

On the basis of said findings and opinion and pursuant to Section 12 (d) of said Act, it is hereby

ORDERED that said application be and hereby is granted, *provided*, however, that withdrawal shall not become effective until ten days after the date of this order.

By the Commission.

Orval L. DuEois,
Secretary.

(SEAL)

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3515

In the Matter of	:	
	:	
PHILIP Z. KOHLER	:	
doing business as	:	
	:	MEMORANDUM OPINION
P. Z. KOHLER CO.	:	OF THE COMMISSION
9 Clinton Street	:	
Newark, New Jersey	:	
	:	
Securities Exchange Act of 1934 -	:	
Section 15 (b)	:	

BROKER-DEALER REGISTRATION

Public Interest

Withdrawal of Registration

In proceedings under Section 15 (b) of the Act instituted within thirty days after registered broker-dealer filed notice of withdrawal from registration, where the evidence showed certain grounds existed for revoking registration but did not show registrant's methods of conducting securities business; held that the evidence did not establish that revocation would be in the public interest, and withdrawal from registration permitted to become effective, the Commission observing that examination of registrant's conduct could be made in the event that he later applied for re-registration.

APPEARANCES:

Edmond G. Plummer, for the Trading and Exchange Division of the Commission.

Samuel J. Ohringer, for Philip Z. Kohler.

This is a proceeding pursuant to Section 15 (b) of the Securities Exchange Act of 1934 to determine whether the registration as a broker and dealer of Philip Z. Kohler, doing business as P. Z. Kohler Co., a sole proprietorship, should be revoked. 1/

1/ The pertinent provisions of Section 15 (b) read as follows:

"The Commission shall, after appropriate notice and opportunity for hearing, by order . . . revoke the registration of any broker or dealer if it finds that such . . . revocation is in the public interest and that (1) such broker or dealer . . . or (2) . . .

(continued)

On September 12, 1942, registrant filed with the Commission a notice to withdraw his registration. 2/

The order instituting the proceeding was entered October 8, 1942, and a hearing was held pursuant to the order. The registrant appeared at the hearing and testified in his own behalf. Through his counsel he waived the filing of an advisory report by the trial examiner.

No evidence was submitted at the hearing to support several of the charges made in the Commission's order, namely that the registrant, contrary to the information supplied in his application for registration, carried margin accounts for customers, sold securities on partial-payment contracts, or held customers' securities for safekeeping. In brief, the record shows:

(1) Registrant gave one incorrect answer in his application for registration (filed with us in 1941), in that he answered "No" to the question whether he engaged in the sale of fractional oil, gas or mineral royalties. He states the error was inadvertent.

(2) Registrant failed to file supplemental statements with respect to the number of salesmen he employed from time to time. He claims this was due to a misunderstanding of the requirements of our rules. 3/

(3) Two of registrant's salesmen, more than one year prior to entering the employ of registrant, had been permanently enjoined from selling securities within or from the State of New York, and one of these salesmen had also been convicted of a felony, or misdemeanor committed in the sale of securities. 4/

1 cont'd/

any person directly or indirectly . . . controlled by such broker or dealer . . . (E) has been convicted within ten years preceding the filing of any such application or at any time thereafter of any felony or misdemeanor involving the purchase or sale of any security or arising out of the conduct of the business of a broker or dealer; or (C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security; or (D) has willfully violated any provision . . . of this title, or of any rule or regulation thereunder."

- 2/ Rule X-15B-6 provides that such notice shall become effective on the thirtieth day after the filing unless prior to its effective date the Commission institutes a revocation proceeding pursuant to Section 15 (b).
- 3/ Rule X-15B-2 requires the filing of supplemental statements to report and correct inaccuracies in the information furnished in the application for registration.
- 4/ The registrant's employment of these persons as salesmen is not of itself a violation of the Act, but constitutes a ground upon which his registration may be revoked if revocation is in the public interest. See footnote 1, *supra*.

The record contains no evidence of any misconduct on the part of these salesmen while in the registrant's employ, and it does not appear that they were precluded from engaging in the securities business in New Jersey, where the registrant conducted his business.

(4) A few days after registrant filed with us his notice of withdrawal of registration, he was permanently enjoined from selling securities within or from the State of New Jersey, but neither the decree nor the complaint on which it was based indicates the grounds for injunction, other than that it would be "against public interest" for the defendant to sell securities within or from said State. The record contains no evidence of the manner in which registrant conducted his business prior to the filing of his notice of withdrawal.

We see no basis in the record for a finding that registrant's violation of the Act and of Rule X-15B-2 was willful or of such character as to warrant our revoking his registration rather than permitting his notice of withdrawal to become effective. The public interest is adequately served for the time being by his withdrawal from interstate business in securities. If he should apply for re-registration in the future we can then examine his application in the light of all the circumstances, including facts not in the present record, and determine at that time what further action the public interest requires.

An appropriate order will issue permitting registrant's notice of withdrawal to become effective and dismissing the proceeding.

By the Commission (Chairman Furcell and Commissioners Healy, Pike, and C'Erien).

(SEAL)

Orval L. DuEois,
Secretary.

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.,
on the 11th day of December, A. D., 1943.

In the Matter of	:	
	:	
PHILIP Z. KOHLER	:	
doing business as	:	
	:	
P. Z. KOHLER CO.	:	ORDER PERMITTING WITH-
9 Clinton Street	:	DRAWAL FROM REGISTRATION
Newark, New Jersey	:	AND DISMISSING PROCEEDING
	:	
Securities Exchange Act of	:	
1934 - Section 15 (b)	:	

Philip Z. Kohler, doing business as P. Z. Kohler Co., having filed with the Commission a notice to withdraw his registration as a broker-dealer, and the Commission having by order instituted proceedings pursuant to Section 15 (b) of the Securities Exchange Act of 1934 to determine whether his registration should be revoked;

A hearing having been held after appropriate notice, and the Commission being fully advised and having this day issued its memorandum opinion herein;

On the basis of said memorandum opinion, it is hereby

ORDERED that said registrant's notice of withdrawal be and it hereby is permitted to become effective, and that the proceeding under Section 15 (b) of said Act be and it hereby is dismissed.

By the Commission.

(SEAL)

Orval L. DuPois,
Secretary.

For IMMEDIATE Release Monday, December 13, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3516

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.,
on the 11th day of December, A. D., 1943.

In the Matter of		
Applications by the NEW YORK CURB EXCHANGE to Extend Unlisted Trading Privileges to		
	File Nos.	
Lukens Steel Company Common Stock, \$10 Par Value	7-701	
Merck & Co., Inc. Common Stock, \$1 Par Value	7-702	ORDER
Northern Natural Gas Company Common Stock, \$20 Par Value	7-703	Postponing
Public Service Company of Indiana, Inc. Common Stock, Without Par Value	7-704	Consolidated Hearing
The Warner & Swasey Company Common Stock, Without Par Value	7-705	
Puget Sound Power & Light Company Common Stock, \$10 Par Value	7-710	
Securities Exchange Act of 1934 Section 12 (f) (3)		

The New York Curb Exchange having filed applications with the Commission, pursuant to Section 12 (f) (3) of the Securities Exchange Act of 1934 and Rule X-12F-1, for permission to extend unlisted trading privileges to the above-mentioned securities;

The Commission having on August 3, 1943 ordered a hearing to be held on September 16, 1943 at 10:00 a.m. at the office of the Securities and Exchange Commission, 18th and Locust Streets, Philadelphia, Pennsylvania, on the proceeding entitled In the Matter of Applications by the New York Curb Exchange to Extend Unlisted Trading Privileges to Five Securities, File Numbers 7-701 to 7-705, which hearing has been heretofore postponed until November 15, 1943 and December 15, 1943, successively;

The Commission having on December 4, 1943 reopened the hearing in the proceeding entitled In the Matter of Application by the New York Curb Exchange to Extend Unlisted Trading Privileges to Puget Sound Power & Light Company, Common Stock, \$10 Par Value, File No. 7-710, and having consolidated said hearing with the foregoing proceeding;

Counsel for all parties having requested that the hearing be further postponed until January 19, 1944; and

The Commission having duly considered the matter and being fully advised in the premises;

IT IS ORDERED that the consolidated hearing scheduled for December 15, 1943 be, and the same hereby is, postponed to January 19, 1944 at the hour and place heretofore designated by the Commission.

By the Commission.

(SEAL)

Orval L. DeBois,
Secretary.

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For Release in MORNING Newspapers of Wednesday, December 15, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3517

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pennsylvania,
on the 13th day of December, A. D., 1943.

In the Matter of	:	
	:	
KURT H. SCHURIG AND DOROTHY A. MAIER,	:	
doing business as	:	
	:	FINDINGS AND ORDER
KURT H. SCHULIG & CO.	:	REVOKING REGISTRATION
50 Broadway	:	
New York, New York	:	
	:	
Securities Exchange Act of 1934 -	:	
Section 15 (b)	:	

1. Kurt H. Schurig & Co., a partnership composed of Kurt H. Schurig and Dorothy A. Maier, is registered as a broker and dealer pursuant to Section 15 (b) of the Securities Exchange Act of 1934.

2. The Commission, on the basis of facts reported to it, instituted a proceeding under Section 15 (b) of said Act to determine whether or not the registration of the respondent as a broker and dealer should be revoked. The facts alleged were to the effect that Kurt H. Schurig and Dorothy A. Maier, individually and as co-partners, are permanently enjoined by decree of the Supreme Court of New York, in and for the County of New York, entered on or about October 11, 1943, from engaging in or continuing certain conduct and practices in connection with the purchase and sale of securities.

3. The respondent, in an "Answer and Consent to Revocation," acknowledged service of adequate notice, waived its opportunity to be heard, admitted the facts alleged, and consented to the entry of an order by the Commission revoking its registration as a broker and dealer.

4. The Commission finds, on the basis of the foregoing, that the facts so admitted are true and that revocation of the respondent's registration as a broker and dealer is in the public interest. Accordingly, it is

ORDERED, pursuant to Section 15 (b) of the Securities Exchange Act of 1934, that the registration of the respondent as a broker and dealer be and hereby is revoked effective December 15, 1943.

By the Commission.

Orval L. DuBois,
Secretary.

(SFAL)

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3518

In the Matter of	:	
LINCOLN SERVICE CORPORATION	:	
Common Stock, \$1 Par Value;	:	
7% Cumulative Prior Preferred	:	FINDINGS AND OPINION
Stock, \$50 Par Value	:	OF THE COMMISSION
	:	
File No. 1-2836	:	
	:	
Securities Exchange Act of 1934 -	:	
Section 12 (d)	:	

WITHDRAWAL OF SECURITIES FROM LISTING AND REGISTRATION

Application by Issuer

where application for withdrawal complies with rules of the exchange, held, application granted effective after ten days.

- - - - -

APPEARANCES:

Alvord & Alvord, by Thomas E. Jenks, Arthur H. Kent and John H. Loyle, for the applicant.

William H. Malone and James J. Duncan, for the Commission.

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This proceeding arises upon the application of Lincoln Service Corporation to withdraw its common stock, \$1 par value, and its 7% cumulative prior preferred stock, \$50 par value, from listing and registration on the Washington Stock Exchange. The application was made pursuant to Section 12 (d) of the Securities Exchange Act of 1934 and Rule X-12D2-1 promulgated thereunder. 1/

1/ Section 12 (d), in so far as relevant, provides:

"A security registered with a national securities exchange may be withdrawn or stricken from listing and registration in accordance with the rules of the exchange and, upon such terms as the Commission may deem necessary to impose for the protection of investors, upon application by the issuer or the exchange to the Commission. . ."

Rule X-12D2-1 requires, *inter alia*, that an application under Section 12 (d) --

1) ". . . shall state the reasons for such proposed withdrawal . . . together with all material facts relating thereto and such facts as in the opinion of the applicant have a bearing on whether the Commission should impose any terms for the protection of investors."

As reasons for delisting, the application stated that the securities are held for investment purposes rather than for purposes of speculation; that trading in them on the Exchange has been inactive; that an adequate market for the securities exists in the over-the-counter market; that low "nuisance bids" or the absence of bids have caused unjustified concern among the stockholders as to the financial condition of the applicant; that the applicant's ability to secure additional financing or refinancing is adversely affected by the "artificial quotations" on the Exchange and the negligible trading activity; and that the small volume of trading does not warrant the expense necessary to maintain the listing, amounting to \$486.50 annually.

After due notice to the applicant's stockholders and to the Exchange, a hearing was held before a trial examiner at which the applicant appeared. No stockholders appeared. The trial examiner filed an advisory report to which exceptions were taken. Oral argument was waived.

The Washington Stock Exchange has no specific rule applying to the delisting of securities, and it has stated that it has no objection to the withdrawal from listing of the securities involved in this proceeding. We therefore find that the rules of the Exchange have been complied with within the meaning of Section 12 (d). The application must therefore be granted, and the only remaining question is whether any terms and conditions should be imposed. *Allen Industries, Inc.*, 2 S.E.C. 14 (1937); *Fuller Manufacturing Company*, S.E.C. (1943), Securities Exchange Act Release No. 3513.

The applicant is engaged in the small loan business. Its principal office and place of business is in Washington, D. C., and it operates in Virginia, West Virginia, Maryland and Pennsylvania. The securities which are the subject of the application were listed on the Washington Stock Exchange in 1937. The common stock issue consists of 30,000 shares, all of which are outstanding. The owners of 26,686 shares, comprising 88.8 percent of the issue, reside in the District of Columbia or adjacent territory. As to the 7 percent preferred, 10,000 shares have been authorized, of which 9,737 shares are outstanding; and 7,019 shares, comprising 72 percent, are similarly held by persons residing in the immediate vicinity of Washington, D.C.

The expenses incidental to listing were shown to consist of \$486.50 annually, of which \$200 represents the cost of maintaining an independent registrar. These items are not a substantial consideration, and it is not certain that delisting will necessarily do away with these expenditures.

Applicant's contention that its ability to secure additional financing or refinancing is adversely affected by the "artificial quotations" on the Exchange, and the negligible trading activity thereon, was shown to be a mere matter of precaution, since the company has no present intention of issuing new securities.

As to the claim that trading has been insufficient, the volume by years since 1937 was shown to be as follows:

	1937	1938	1939	1940	1941	1942	1943 (to April 28)
Common	70	20	65	160	280	10	75
7% Pfd.	211	14	0	0	30	20	40

The spread between the bid and asked prices for both stocks has been, at times, very large, ^{2/} despite the fact that the preferred has paid a 7% dividend regularly since 1937, and the common has paid at least \$1 per year.

The inactivity of the securities indicates an infrequent use of the exchange as a market for the transactions of investors.

There was some evidence of present over-the-counter trading and it was claimed that a wider and more active market over the counter would follow upon delisting.

On the facts presented we find nothing to necessitate the imposition of any terms for the protection of investors other than that the withdrawal shall not be effective until ten days after the date of our order.

An appropriate order will issue.

By the Commission (Chairman Purcell and Commissioners Healy, Pike, and O'Brien).

(SFAL)

Orval L. DuBois,
Secretary.

^{2/} E.g., 8 bid 13 asked, 5 bid 11-1/2 asked for the common stock; 34-1/2 bid 42 asked, 35 bid 42 asked for the preferred stock.

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.,
on the 17th day of December, A.D., 1943.

In the Matter of	:	
	:	
LINCOLN SERVICE CORPORATION	:	
Common Stock, \$1 Par Value;	:	
7% Cumulative Prior Preferred	:	ORDER GRANTING APPLICATION
Stock, \$50 Par Value	:	AND IMPOSING TERMS
	:	
File No. 1-2836	:	
	:	
Securities Exchange Act of 1934 -	:	
Section 12 (d)	:	

Lincoln Service Corporation having filed an application, pursuant to Section 12 (d) of the Securities Exchange Act of 1934 and Rule X-12D2-1 adopted thereunder, to withdraw its common stock, \$1 par value, and its 7% cumulative prior preferred stock, \$50 par value, from listing and registration on the Washington Stock Exchange; a hearing having been held after appropriate notice, and the Commission being duly advised and having this day issued its findings and opinion herein;

On the basis of said findings and opinion and pursuant to Section 12 (d) of said Act, it is hereby

ORDERED that the application be and the same hereby is granted, *provided*, however, that withdrawal shall not become effective until ten days after the date of this order.

By the Commission.

Orval L. DuBois,
Secretary.

(SEAL)

For Release in MORNING Newspapers of Monday, December 20, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3519

In the Matter of	:	
	:	
FIREMAN'S FUND INSURANCE COMPANY	:	
File No. 1-1832	:	
	:	
HOME FIRE AND MARINE INSURANCE COMPANY	:	
OF CALIFORNIA	:	
File No. 1-1833	:	
	:	FINDINGS AND OPINION
OCCIDENTAL INSURANCE COMPANY	:	OF THE COMMISSION
File No. 1-1834	:	
	:	
FIREMAN'S FUND INDEMNITY COMPANY	:	
File No. 1-1835	:	
	:	
Securities Exchange Act of 1934 -	:	
Section 12 (d)	:	

WITHDRAWAL OF SECURITIES FROM LISTING AND REGISTRATION

Application by Issuer

*Where application for withdrawal complies with rules of the exchange,
held, application granted effective after 10 days.*

APPEARANCES:

*Hillyer Brown, of Orrick, Dahlquist, Ness & Herrington, San Francisco,
California, for the applicants.*

*Arthur J. Berggren, for the Trading and Exchange Division of the
Commission.*

Fireman's Fund Insurance Company ("Fireman's Fund") and three of its subsidiary companies have filed applications pursuant to Section 12 (d) of the Securities Exchange Act of 1934 for the withdrawal of their capital stocks from listing and registration on the San Francisco Stock Exchange. The four proceedings were consolidated for the purpose of hearing, and will be disposed of together.

The three subsidiary companies concerned are: Home Fire and Marine Insurance Company of California ("Home"), Occidental Insurance Company ("Occidental"), and Fireman's Fund Indemnity Company ("Indemnity"). The first two are virtually wholly owned by the parent company and the third is a majority-owned subsidiary. 1/

The applicants gave their stockholders due notice of hearing on the applications, after which a consolidated hearing on the four applications was held before a trial examiner. Two stockholders of the parent company appeared in person and opposed delisting of its stock, and letters from nine stockholders were placed in evidence. Of these, seven opposed delisting, one expressly approved, and one took neither position but criticized one of the reasons advanced by the parent company for its application to delist.

All of the applications herein comply with the rules of the exchange and with our rules. 2/ Accordingly, under the provisions of Section 12 (d), all of them must be granted. *Allen Industries, Inc.*, 2. S.E.C. 14 (1937); *Fuller Manufacturing Company*, ___ S.E.C. ___ (1943), Securities Exchange Act Release No. 3513. The only question before us being what terms, if any, should be imposed for the protection of investors, we turn to a consideration of the facts relating to that question in respect of the several applicant companies.

In their applications, Fireman's Fund and its subsidiary, Indemnity, set forth two main reasons why the management desires to withdraw their stocks from listing and registration. In substance they state:

1. That the great majority of insurance stocks are traded over-the-counter; that in the judgment of the board of directors the existence of a market for the stock on the San Francisco Stock Exchange "is of comparatively little value" to many of its stockholders; and that in the opinion of the board the stockholders "will find the over-the-counter market for the stock at least as active as that provided by the San Francisco Stock Exchange";

2. That continued listing and registration subjects the company to requirements under the Commission's proxy rules 3/ which, in the judgment of the board of directors, are "contrary to the best interests of the Company."

Of the presently outstanding stock of Fireman's Fund (approximately 509,000 shares of \$10 par value each) about 64,000 shares were issued after December 1, 1942, in exchange for stock of two subsidiaries (Home and Occidental) on the strength of a prospectus which stated, among other things, that "Fireman's Fund, new shares of ten dollar par value are listed on the San Francisco Stock Exchange." 4/

1/ Fireman's Fund owns some of the stock of these three subsidiaries indirectly through a wholly-owned subsidiary, Occidental Indemnity Company, which is not otherwise involved in these proceedings.

2/ Rule X-12D2-1 sets forth the formal requirements that must be met by applicants under Section 12 (d).

3/ Regulation X-14 of the General Rules and Regulations promulgated under the Securities Exchange Act of 1934.

4/ Practically all of the shares of Home and Occidental not already owned by Fireman's Fund were acquired by May 20, 1943, through the offer mentioned.

The decision of the management to apply for delisting took formal shape on March 11, 1943. Shortly prior to that date representatives of the management had been preparing the company's proxy statement for the annual stockholders' meeting, and had been in communication with our Corporation Finance Division with respect to the inclusion of certain data as to officers' salaries and directors' business connections pursuant to our amended proxy rules which became effective January 15, 1943. The application herein states:

"Under the requirements applicable to listed securities, proxies cannot be solicited from stockholders without a proxy statement containing information from time to time prescribed by the proxy rules. Most of the Company's competitors, since their stocks are unlisted, are not subject to these rules. Under these conditions the Company suffers certain disadvantages which its competitors do not share.

"The latest revision of the rules requires that the names and salaries of all officers receiving remuneration of over \$20,000 in the most recent year be disclosed, which requirement also involves the disclosure of which of the Company's officers receive less than \$20,000. While this is unobjectionable in the case of the Chairman of the Board, the President and First Vice President who received, respectively, \$30,872, \$56,200.50 and \$38,822.50 from the Company and subsidiaries in 1942, in the judgment of the board it is contrary to the best interests of the Company -- particularly in these days of manpower shortage and restrictions on salary increases -- to make the balance of this information public. Another of the new proxy rules requires the Company to give certain information regarding insurance taken out in the Company or any of its subsidiaries by any corporation of which a member of this board is an officer. In the judgment of the board, the disclosure to competitors of these sources of the Company's business is inimical to its best interests."

In formulating the rules we, of course, held the view that the required disclosures would be beneficial to stockholders and would deal with matters that the stockholders are entitled to know about as the real owners of the company. The information to be disclosed is in the nature of an accounting by the management to the stockholders as to the manner in which it has employed stockholders' funds and looked after their interests. The management's claim is that disclosure as to certain matters subjects the companies themselves to "disadvantages" in relation to their competitors. Let us see what the claimed "disadvantages" amount to.

(a) *Officers' salaries.* The management does not object to disclosing the salaries of the applicants' three highest paid officers, but says it fears raids by competitors if it must disclose the names of the other officers or employees receiving over \$20,000 a year. This information has been disclosed repeatedly by Fireman's Fund in its annual reports on Form 13-K, filed publicly with the Commission in past years, although it was not required by the form. The evidence shows that no raid by competitors was ever attempted on the strength of such disclosures. But the information was not supplied in the report for 1942, filed this year, so we may assume that the new factors mentioned by the management -- manpower shortage and

restrictions on salary increases -- have raised a new fear that competitors may raid the company's personnel. The evidence does not support the assumption that, if a raid were attempted, it would be conducted on the basis of disclosures made in a proxy statement. 5/ However, if the management is serious in expressing this fear, the proper procedure would be to apply to us for confidential treatment of the information to be withheld pursuant to Section 24 (b) of the Act and Rule X-24B-2, which are applicable to information generally required by the proxy rules.

(b) *Business interests of directors.* The management implies that Fireman's Fund and Indemnity would be at a "disadvantage" (in relation to their competitors) because the proxy rules require disclosure to stockholders (in the case of the parent company) of "certain information regarding insurance taken out in the Company or any of its subsidiaries by any corporation of which a member of this board is an officer." It is not claimed that the details or dollar amount of any such business would have to be disclosed. 6/ That would not be required except in unusual circumstances where the information would be of particular significance to stockholders, as it might be if unusually favorable terms were being given to one or more companies which had representation on the board of directors. The disclosure required in the usual course would be brief and would be no more than a competitor could in all probability obtain for itself. The management has not made clear, nor has it attempted to explain, how competitors could utilize disclosure of such information (assuming it is not already in their possession). Moreover, as we pointed out above in connection with disclosure of salaries, if the management is serious in expressing this fear the statutory provision for confidential treatment may be invoked.

With respect to the statement that the exchange market "is of comparatively little value," the record indicates that the stockholders of Fireman's Fund have made substantial use of the facilities of the San Francisco Stock Exchange in the past. Out of a total of 505,877 shares outstanding April 5, 1943, held by 5,576 holders, 313,553 shares were held by a total of 2,926 stockholders in the State of California. The volume and range on the San Francisco Stock Exchange from January 1, 1942, to May 15, 1943, have been as follows:

5/ The management says that what it really fears is disclosure, by inference, of the officers or employees receiving salaries of less than \$20,000 -- which would not be affirmatively shown in the statement. While this information could be obtained by comparing the statement with a list of the officers and employees, it is questionable whether anyone would organize a personnel raid in this fashion. For one thing, it should not be difficult for a competitor familiar with the personnel to guess which ones receive less than \$20,000, except perhaps in borderline cases. Moreover, if a competitor wanted the services of another's employee, it would seem probable that the abilities of the employee would be the first consideration, and of course matters of salary could be discussed directly with him.

6/ See the advisory opinion of the Director of our Corporation Finance Division, Securities Exchange Act Release No. 3385.

Fireman's Fund Common Stock
(\$25 Par Value)

<u>Month</u>	<u>Shares</u> (Unit of trading 10 sh.)	<u>High</u>	<u>Low</u>	<u>Last</u>
<u>1942</u>				
January	1,137	108	101	107 1/2
February	564	107 1/2	90	92 1/2
March	290	94 3/4	91	94 3/4
April	390	95 1/2	83	83
May	727	89 1/2	84	89 1/2
June	538	93	89 1/8	91
July	742	93	90 1/2	92 1/2
August	359	93 3/4	91 3/4	93 3/4
September	263	97	90 1/2	97
October	319	103	99	101 1/2
November 1 to 28, incl.	452	104 1/4	101 1/2	102 1/4

(\$10 Par Value)

<u>1942</u>				
November 30	51	67	66 5/8	66 5/8
December	900	73 1/2	68	73 1/2
<u>1943</u>				
January	1,362	75 1/2	74	74 1/2
February	857	77 1/2	74 1/2	74 1/2
March	1,448	79 3/4	77 5/8	79 1/2
April	1,098	79 1/2	77	78
May 1 to 15, incl.	558	78	77	77

While the management expresses the opinion that the over-the-counter market would be "at least as active" as that provided by the exchange, ^{7/} it has furnished no evidence or prediction as to the quality of the over-the-counter market in this stock.

The management of Indemnity is dominated by one shareholder--Fireman's Fund -- which owns 63.066% of the outstanding shares. The balance of the shares is held by 739 stockholders distributed in 39 States, the District of Columbia, Hawaii and 7 foreign countries, and of these stockholders 497 (exclusive of the parent), in the State of California, own 34,636 shares.

The volume and range on the San Francisco Stock Exchange from January 1, 1942, to May 15, 1943, has been as follows:

^{7/} The volume of over-the-counter purchases and sales shown in the record is less than the exchange volume, though of course it is recognized that complete over-the-counter figures are not available.

<u>Month</u>	<u>Shares</u>	<u>High</u>	<u>Low</u>	<u>Last</u>
<u>1942</u>				
January	54	50	50	50
February	186	50 1/2	50	50
March	no sales			
April	no sales			
May	147	45	43	43
June	238	44	44	44
July	720	46	44	46
August	29	47	47	47
September	57	49	47	49
October	10	50	50	50
November	no sales			
December	20	55	55	55
<u>1943</u>				
January	no sales			
February	357	65	64	65
March	70	63	63	63
April	113	65	64	65
May 1 to 15, incl.	19	66	66	66

While the trading activity in this security on the exchange has been smaller than that of the parent company, it has averaged about 125 shares per month. The unit of trading on the exchange is 10 shares. No evidence was produced as to over-the-counter transactions except some testimony that certain dealers would show some "interest" in the stock if it is delisted.

Despite the unsatisfactory nature of the management's reasons for desiring withdrawal, and of the evidence submitted in support thereof, we may not pass upon the wisdom of their choice. Possibly some form of stockholders' vote might be required for the protection of investors, but for the reasons stated in *Fuller Manufacturing Company, supra*, we will not impose such a term under our present rules.

Through its recent offering, Fireman's Fund has acquired virtually all the outstanding stock of Home and Occidental, and may well acquire all such shares eventually. As of May 20, 1943, out of 100,000 shares issued by each of these companies, there were held by public investors only 405 shares in the case of Home and only 1,576 shares in the case of Occidental. The reasons for delisting these stocks are clear.

Conclusions

In view of the foregoing we do not find it necessary to impose terms in these cases, except the usual one deferring effectiveness of withdrawal for a reasonable period. An appropriate order will issue accordingly, granting the applications in question effective upon the expiration of ten days.

By the Commission (Chairman Purcell and Commissioners Healy, Pike, and O'Brien):

Orval L. DuRois,
Secretary.

(SEAL)

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pennsylvania,
on the 18th day of December, A. D., 1943.

In the Matter of	:	
	:	
FIREMAN'S FUND INSURANCE COMPANY	:	
File No. 1-1832	:	
	:	
HOME FIRE AND MARINE INSURANCE COMPANY	:	
OF CALIFORNIA	:	
File No. 1-1833	:	ORDER GRANTING
	:	APPLICATIONS AND
OCCIDENTAL INSURANCE COMPANY	:	IMPOSING TERMS
File No. 1-1834	:	
	:	
FIREMAN'S FUND INDEMNITY COMPANY	:	
File No. 1-1835	:	
	:	
Securities Exchange Act of 1934 -	:	
Section 12 (d)	:	

Fireman's Fund Insurance Company, Home Fire and Marine Insurance Company of California, Occidental Insurance Company, and Fireman's Fund Indemnity Company having filed applications, pursuant to Section 12 (d) of the Securities Exchange Act of 1934 and Rule X-12D2-1 adopted thereunder, to withdraw their respective capital stocks from listing and registration on the San Francisco Stock Exchange; a hearing having been held after appropriate notice, and the Commission being duly advised and having this day issued its findings and opinion herein;

On the basis of said findings and opinion and pursuant to Section 12 (d) of said Act, it is hereby

ORDERED that the applications be and hereby are granted, *provided, however,* that withdrawal shall not become effective until ten days after the date of this order.

By the Commission.

Orval L. DuBois,
Secretary.

(SEAL)

For Release in MORNING Newspapers of Wednesday, December 22, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3520

The Securities and Exchange Commission today announced that it had granted the application of the Philadelphia Stock Exchange to strike from listing and registration the Common Stock, No Par Value, of the Philadelphia and Reading Coal and Iron Corporation. The application stated, among other things, that the subject corporation is in effect a holding company, its only asset being the entire Capital Stock of the Philadelphia and Reading Coal and Iron Company; that under the terms of the reorganization plan for the Philadelphia and Reading Coal and Iron Company, approved by the U.S. District Court for the Eastern District of Pennsylvania on June 2, 1942, no provision was made for the Capital Stock of that company and that it was declared to be of no value; that the charter of the subject corporation was voided by the State of Delaware on April 11, 1941 because of nonpayment of the franchise tax; and that transfer facilities, as required by the Philadelphia Stock Exchange, were terminated by the subject corporation on February 27, 1941. The order becomes effective at the close of the trading session on December 30, 1943.

* * * * *

The Commission also granted the application of the Pittsburgh Stock Exchange to strike from listing and registration the Common Stock, No Par Value, of Electric Products Corporation. The application stated, among other things, that the stockholders of the corporation on June 4, 1943 voted for its voluntary dissolution and for permanent closing of the transfer books and that the committee on securities for the Exchange has voted to remove this stock from the list, effective at the close of business July 30, 1943. The order becomes effective at the close of the trading session on December 30, 1943.

* * * * *

The Commission also granted the application of the Detroit Stock Exchange to strike from listing and registration the Common Stock, \$1 Par Value, of Auto City Brewing Company. The application stated, among other things, that the Michigan Corporation and Securities Commission revoked its order, accepting for filing in Michigan the Common Stock of Auto City Brewing Company; that a receiver for the company has been appointed by the Circuit Court for the County of Wayne in Chancery in proceedings for the dissolution of the company; that the company has been ordered dissolved by order of said court; and that one of the requirements for listing securities on the Exchange is that such securities shall be accepted for filing by the Michigan Corporation and Securities Commission. The order becomes effective at the close of the trading session on December 30, 1943.

* * * * *

The Commission also granted the application of the Detroit Stock Exchange to strike from listing and registration the Common Stock, \$1 Par Value, of Wolverine Brewing Company. The application stated, among other things, that the Michigan Corporation and Securities Commission revoked its order accepting for filing in Michigan the Common Stock of Wolverine Brewing Company; that a receiver for the company has been appointed by the Circuit Court for the County of Wayne in Chancery to liquidate the company's assets; that one of the requirements for listing securities on the Detroit Stock Exchange is that such securities shall be accepted for filing by the Michigan Corporation and Securities Commission; and that the Exchange has suspended trade in the Common Stock of the company. The order becomes effective at the close of the trading session on December 30, 1943.

For IMMEDIATE Release Tuesday, December 28, 1943

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES EXCHANGE ACT OF 1934
Release No. 3521

The Securities and Exchange Commission announced today that it has granted the application of the New York Curb Exchange to strike from listing and registration the \$6.00 Cumulative Preferred Stock, No Par Value, of Brown-Forman Distillers Corporation. Pursuant to a Plan of Recapitalization approved by the stockholders, the subject security was exchanged for shares of a new class of \$5.00 Cumulative Prior Preferred Stock and Common Stock. The order will become effective at the close of the trading session on January 3, 1944.

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