

SECURITIES AND EXCHANGE COMMISSION NEWS DIGEST

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



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FOR RELEASE July 12, 1962

SALESMEN PARTICIPATION IN BOILER ROOM REAFFIRMED. In a decision announced today (Release 34-6846) pursuant to remand from the Court of Appeals for the Second Circuit, the SEC ruled that two salesmen of the firm of Mac Robbins & Co., Inc., of Jersey City, N. J., were aware of and participated in that firm's "boiler-room" activities and themselves engaged in fraudulent practices and a course of conduct which operated as a fraud upon their customers.

The salesmen, Irwin Berko and Arnold Leonard Kahn, had appealed a February 1961 decision of the Commission revoking the firm's broker-dealer registration for fraudulent representations in the sale of stock of Sports Arenas (Delaware) Inc. Berko and Kahn had been named as causes of the revocation order along with seven other salesmen, but neither the firm nor the other salesmen joined in the appeal. In remanding the case to the Commission, the Court asked the Commission to reexamine the participation by Berko and Kahn in the illegal operations of the firm, including the right of the salesmen to rely on information provided by their employer.

In its supplemental decision (written by Commissioner Cohen) the Commission ruled that the Mac Robbins firm engaged in "boiler-room" activities through the solicitation and sale by a large-scale telephone campaign, the firm sent prospective customers false and misleading brochures that falsely stated that the issuer was operating profitably, contained unwarranted earnings estimates and projections indicating that the issuer was adequately financed for extensive expansion and that its profitability was assured, identified Sports Arenas with other successful businesses, falsely represented that it had an experienced management and was on a dividend-paying basis, and omitted material facts necessary to make the statements in the brochures not misleading and to adequately inform investors of the true conditions. In an extensive review of the anti-fraud provisions of the Federal securities laws and the obligations of fair dealing borne by those who engage in the sale of securities to the public, as well as the "boiler-room" activities of the Mac Robbins firm and its salesmen in the offer and sale of Sports Arenas stock and the knowledge of and participation in these activities by Berko and Kahn, who themselves made unwarranted representations as to future earnings and future market price of the stock, the Commission concluded that by their actions they engaged in fraudulent practices and a course of conduct which operated as a fraud upon their customers. "It is clear from their own admissions," the Commission stated, "that Berko and Kahn knew a high-pressure telephone sales operation - a boiler room - was in progress;" and "they played important roles in this course of conduct, the very nature of which was a negation of their obligation of fair dealing to their customers."

"Whatever may be a salesman's obligation of inquiry, or his right to rely on information provided by his employer, where securities of an established issuer are being recommended to customers by a broker-dealer who is not engaged in misleading and deceptive high-pressure selling practices," the Commission stated, "that situation is not presented here. Certainly, there can be little, if any, justification for a claim of reliance on literature furnished by an employer who is engaged in a fraudulent sales campaign. In our view, a black letter rule providing exculpation of a salesman in such circumstances, because of reliance on his employer, would place a premium on indifference to responsibilities at the point most directly and intimately affecting the investor."

Accordingly, the Commission reaffirmed its previous finding that Berko and Kahn were each a cause of the prior revocation of the broker-dealer registration of Mac Robbins & Co. Inc.

DUKE POWER PROPOSES BOND OFFERING. Duke Power Company, 422 South Church Street, Charlotte, N.C., filed a registration statement (File 2-20577) with the SEC on July 11th seeking registration of \$50,000,000 of first and refunding mortgage bonds due 1992 (series B), to be offered for public sale at competitive bidding. The net proceeds from the bond sale, together with other funds, will be used to redeem and retire \$50,000,000 of outstanding 5-1/8% first and refunding mortgage bonds due 1990.

FIRST NATIONAL REALTY FILES FOR SECONDARY. First National Realty & Construction Corp., 630 Third Ave., New York, filed a registration statement (File 2-20576) with the SEC on July 11th seeking registration of 7,500 outstanding shares of common stock, to be offered for public sale by Harry Devenney on the American Stock Exchange at prices prevailing from time to time on that Exchange (~~maximum~~ \$5 per share*). The company is primarily engaged in the planning and execution of property development and construction projects of various types and sizes, with emphasis at the present time on the building and operation of income-producing properties for its own account and for the account of joint ventures in which it holds an interest. In addition to certain indebtedness and preferred stock, the company has outstanding 1,343,086 shares of common stock, of which Robert Grundt, board chairman, Max Steinberg, president, Jacob Greenman, executive vice president, and Andrew Catapano, vice president, own about 9%, 8%, 13% and 10%, respectively, and management officials as a group about 51%. The company also has outstanding warrants to purchase an aggregate of 567,000 common shares at \$6 per share, of which management officials as a group own 11.4%.

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FOUR DELISTINGS APPROVED. The SEC has granted applications of the Salt Lake Stock Exchange to delist the common stocks of Central Standard Consolidated Mines, East Crown Point Consolidated Mining Co., and Eureka Mines Company, and a similar application of the Pittsburgh Stock Exchange to delist the common stock of Plymouth Oil Company, all effective at the close of business July 27, 1962.

TRADING BAN IN TWO STOCKS CONTINUED. The SEC has issued orders under the Securities Exchange Act continuing for an additional ten-day period, July 13-22, 1962, inclusive, the ban on trading, on the American Stock Exchange and over-the-counter market, in the common stocks of E.L. Bruce Co. (Inc.) and Precision Microwave Corp.

NATIONAL SECURITY LIFE HEARING POSTPONED. On request of counsel for National Life Insurance Company, of Indianapolis, the SEC has postponed from July 16 to August 1, 1962, the hearing in the Indiana World War Memorial Building in Indianapolis on the question whether a stop order should be issued suspending the Securities Act registration statement filed by that company. The postponement was requested in order to provide an opportunity for counsel for the company and counsel for the Commission's staff to undertake to negotiate a stipulation of the facts which might obviate the necessity for an evidentiary hearing.

NEW ENGLAND POWER PROPOSES STOCK SALE. New England Power Company, Boston subsidiary of New England Electric System, has applied to the SEC for an order under the Holding Company Act authorizing its sale of an additional 342,857 common shares to NEES for a cash consideration of \$35 per share; and the Commission has issued an order (Release 35-14667) giving interested persons until July 31st to request a hearing thereon. The subsidiary will apply the proceeds of the stock sale to the payment of short-term note indebtedness incurred for capital expenditures.

SEC COMPLAINT NAMES GREEN SHIELD PLAN, G.S. LIFE, OTHERS. The SEC Denver Regional Office announced July 5th (Lit-2307) the filing of a complaint in the Federal court in Denver seeking to enjoin further violations of the Securities Act registration and anti-fraud provisions in the sale of common stock of Green Shield Plan, Inc., by that company and Green Shield Life Insurance Company, Green Shield Sales, Inc., Management Operations, Inc., Jack Londen, Jr., Robert Smellage, Herbert Greenberg, Jay D. Kuhl, Stuart J. Thomas, Jr., Hamilton S. Gregg and Henry Imada.

COURT ORDER RESTRAINS WESTERN TRAVEL, OTHERS. The SEC Denver Regional Office announced July 5th (Lit-2308) the entry of a Federal court order in Salt Lake City temporarily restraining Western Travel, Inc., Western Securities, Inc., their agents, employees and attorneys, from further violation of the Securities Act registration requirements in the offer and sale of stock and debentures of Western Travel.

SECURITIES ACT REGISTRATIONS. Effective July 11: Molecular Systems Corp. (File 2-19451). Effective July 12: Atlantic City Electric Co. (File 2-20457); Fairchild Camera and Instrument Corp. (File 2-20453); Financial Corporation of Santa Barbara (File 2-19960); W. R. Grace & Co. (File 2-20380); Sears, Roebuck & Co. (File 2-20471). Withdrawn July 12: Aerosystems Technology Corp. (File 2-20233); R. Hoe & Co., Inc. (File 2-19521); The Lincoln Fund, Inc. (File 2-17862); National Tele-Systems, Inc. (File 2-19846); Starmatic Industries, Inc. (File 2-19263); Valley Title & Trust (File 2-18293); Video Engineering Co., Inc. (File 2-20050).

*As estimated for purposes of computing the registration fee.

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