

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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SUTRO SUSPENDED FOR MARGIN VIOLATIONS. In a decision announced today (Release 34-7052), the Securities and Exchange Commission suspended Sutro Bros. & Co., 80 Pine Street, New York, from membership in the National Association of Securities Dealers, Inc., for a period of 15 days beginning on April 22, 1963. In its opinion (by Commissioner Woodside), the Commission found that Sutro and its then managing partner, Harold Friedman, had violated Federal Reserve Board margin requirements by reason of their failure to maintain proper and effective supervision to prevent improper factoring arrangements by salesmen in several branch offices which violated the Board's Regulation T.

Regulation T restricts the amount of credit that may be extended by broker-dealers in connection with securities transactions, by setting maximum loan values which are referred to as "margin" requirements. In addition, it prohibits a broker-dealer subject to its provisions from arranging for the extension or maintenance of credit by any other person to or for any customer in excess of the amount which the broker-dealer himself could extend. In recent years, unregulated lenders known as factors have provided credit in increasing amounts in connection with securities transactions. A number of Sutro's customers financed securities transactions through First Discount Corp., a factoring firm whose principal officers and stockholders were Arthur Katz and Leo Sinsheimer. In addition, a number of Sutro's salesmen obtained credit through First Discount in connection with securities transactions in their own accounts or the accounts of members of their families. The amounts of credit extended to the Sutro customers and salesmen by First Discount were in excess of those which Sutro itself could have lawfully extended under the margin requirements of Regulation T. First Discount and its principals became insolvent in 1961, owing both Sutro and a number of customers money or securities. Arthur Katz and Leo Sinsheimer were enjoined from violations of the fraud provisions of the Federal securities acts and were also convicted of violations of New York and Federal laws in connection with their factoring activities.

The Commission's Opinion noted that the extension of credit by a factor such as First Discount of itself involved no violation of law by either the factor or the customer and, further, that Sutro itself was not charged with having extended credit illegally. The Commission found, however, that through various of its salesmen representatives Sutro had illegally "arranged" for the extension of credit by First Discount. The illegal arrangements consisted of the conduct of salesmen who acted as intermediaries between customers and First Discount, conveyed customers' communications or instructions to the factor or vice versa, and responded to requests or directives of the factor concerning a customer's transactions. A total of 21 salesmen in 4 branch offices were involved in such activities in connection with 60 accounts.

The Commission noted that during the period involved, January 1960 to May 1961, Sutro and Friedman had first issued instructions against illegal arranging and subsequently had forbidden all transactions with customers who were known to be utilizing the services of factors, and that the officials of First Discount and some of Sutro's salesmen had sought to conceal the factoring practices in various ways. Nevertheless, the Commission concluded that Sutro had not been alert and diligent enough in their supervision procedures under all the circumstances, noting that Katz and Sinsheimer had been frequent visitors to various branch offices and had left their cards and business forms with salesmen from whom they solicited factoring business.

The Commission emphasized the need for adequate supervision of branch offices in large organizations, pointing out that the internal controls had broken down, particularly in Sutro's Huntington, L. I., branch, where the branch manager and all the salesmen had engaged in improper factoring arrangements accounting for about half of all the transactions involved. The Commission concluded, however, that in view of the steps already taken by Sutro, a 15-day suspension from membership in the NASD would be adequate in the public interest. Among other things, the Commission took into consideration the fact that Sutro had closed or disposed of several branch offices (including the Huntington office), had agreed to compensate customers for whom illegal arrangements had been made and who had securities on deposit with First Discount when it collapsed, and had instituted procedures intended to prevent recurrence of factoring transactions in its customers' accounts. It also noted that Friedman, who had been with the firm for many years, had relinquished his position as managing partner and severed his relationship with the firm.

The Commission found that Friedman and 21 registered representatives of the firm were each a cause of the suspension order. However, the Commission specified that, except for Russell Siebach, such finding is not to be considered a bar to the future employment of such individuals in the securities business. Siebach was manager of the firm's Huntington office; and "the plethora and nature" of his violations, the Commission indicated, would seem to dictate a sanction more severe than the one imposed on his employer. This is not possible under the statutory framework; but the Commission observed that its finding of willful violation on the part of Siebach constitutes grounds for the institution of revocation proceedings against any broker-dealer employing him.

Chairman Cary, while joining in the majority opinion, expressed the view that he would have been inclined to condition the Commission order on the permanent closure of the Huntington office but that since that office had been closed voluntarily, the likelihood of its reopening and becoming a problem in the future was minimal.

Commissioner Frear concurred in the views of the other Commissioners but felt that the sanction should have been a suspension for 30 days instead of 15.

OVER

OTHER SUTRO VIOLATIONS. In a companion decision (Release 34-7053), also written by Commissioner Woodside, the Commission rules that, in the offer and sale of stock of a promotional company through its Washington branch office, Sutro Bros. violated the registration and anti-fraud provisions of the Federal securities laws. The issuer was Agricultural Research Development, Inc. ("AGR"), a Colorado corporation, which had been organized in 1959 to raise hogs and engage in related activities. AGR made a public offering of 120,000 common shares in 1960 pursuant to a Regulation A exemption from registration. Its promoter and controlling stockholder, Eugene Petersen, through a representative of Sutro's Washington branch office, arranged for such representative to open an account in that office in the name of Emil Jensen, another AGR promoter, in which 10,000 shares were placed for sale, which stock was part of a 30,000-share block which purportedly had been sold pursuant to the Regulation A offering but, in fact, according to the decision, was retained by AGR and Petersen.

According to the Commission's decision, Sutro Bros., through salesmen in its Washington office, participated in the public offering of AGR stock in violation of the Securities Act registration requirement, made false and misleading statements in the offering and sale of the stock, and while engaged in such offering published bids for the stock, thus violating the anti-manipulative provisions of the law. The Commission concluded that there was a laxity in office procedures and supervision by Sutro Bros. and Irving Rudd, its Washington office branch manager (and also a general partner), as well as a failure to make a proper inquiry and investigation with respect to the AGR stock, which requires a sanction against the firm and a finding that Rudd was a participant in the violations. Under the facts and circumstances here involved, the Commission concluded that a 15-day suspension from the NASD was appropriate, such suspension to run concurrently with the period of the 15-day suspension outlined above in the factoring case. The Commission found that Rudd, together with Stanley Bennett and David Hersh, salesmen for the firm, was a cause of the suspension order, but in the case of Rudd and Bennett indicated that under the circumstances such finding was not to be a bar to their future employment. As in the factoring case, Commissioner Frear agreed with the views of the majority opinion but felt that the period of suspension should have been 30 days.

NEW RULE PROPOSED. The SEC today announced a proposal to adopt a new Rule 16b-9 pursuant to Section 16(b) and 23(a) of the Securities Exchange Act exempting from Section 16(b) certain acquisitions of shares of stock in exchange for similar shares of stock of the same issuer. Section 16(b) provides for the recovery, by or on behalf of the issuer of equity securities registered on a national securities exchange, of short term trading profits realized by directors, officers and principal security holders of the issuer. The Commission is authorized to exempt from Section 16(b) transactions not comprehended within the purpose of that section. (Release 34-7058)

The proposed rule would exempt from the operation of Section 16(b) any acquisition of shares of stock of an issuer in exchange for an equal number of shares of another class of stock of the same issuer pursuant to a right of conversion under the terms of the issuer's certificate of incorporation, for the purpose or in contemplation of a public sale which in fact occurs. The exemption would be available only if the shares surrendered and those acquired in exchange therefor evidence the same rights and privileges except that the shares surrendered may, in the discretion of the board of directors, receive a lesser cash dividend than the shares for which they are exchanged. The exemption would be further conditioned upon there being no other acquisitions of securities of either class within six months before or after the exempted transaction. The exemption would apply to any such acquisition occurring either before or after the effective date of the rule, except that it would not affect judgments rendered prior to the effective date.

DISNEY STREET CORP. SEEKS EXEMPTION. Disney Street Corporation, Cincinnati registered closed-end investment company, has applied to the SEC for an order under the Investment Company Act declaring that it has ceased to be an investment company; and the Commission has issued an order (Release IC-3664) giving interested persons until April 29, 1963 to request a hearing thereon. According to the application, the company's outstanding securities are beneficially owned by 20 persons (none of which are corporations or companies); and the company does not presently intend to make a public offering of its securities.

UNIFIED FUNDS SEEKS ORDER. Unified Funds, Inc., an Indiana registered face-amount certificate company, has applied to the SEC for an order under the Investment Company Act approving a depository agreement between Unified and the Merchants National Bank & Trust Company of Indianapolis whereby Unified undertakes to deposit and maintain with the Bank qualified investments and reserves as required under the Act with respect to its Single Payment Certificates, the first series of single payment face-amount certificates proposed to be created and issued by Unified; and the Commission has issued an order (Release IC-3665) giving interested persons until April 30, 1963 to request a hearing thereon.

CENTRAL AND SOUTH WEST CORP. SEEKS ORDER. Central and South West Corporation, Wilmington registered holding company, and its subsidiaries, have applied to the SEC for an order under the Holding Company Act with respect to their proposal to utilize a method in the allocation of the group's consolidated income tax liabilities which will give to each of the companies included in the consolidated tax returns of Central and its subsidiaries the full investment credit each company contributes to the total investment credit allowed on the consolidated returns (except that with respect to Transok Pipe Line Company); and the Commission has issued an order (Release 35-14849) giving interested persons until April 30, 1963 to request a hearing thereon.

COURT ACTS AGAINST JAY & COMPANY. The SEC San Francisco Regional Office announced April 8 (LR-2578) the entry of a Federal court order (USDC, Phoenix) temporarily restraining Jay & Company, a Phoenix broker-dealer; and Jay F. Dodd and Rosemary S. Coleman, its principal officers and directors, from violations of the Exchange Act anti-fraud, hypothecation, net capital and bookkeeping provisions. A hearing on the Commission's motion for a preliminary injunction is scheduled for April 15.

PALOMAR MORTGAGE SHARES IN REGISTRATION. Palomar Mortgage Company, Fifth and University Avenues, San Diego, filed a registration statement (File 2-21292) with the SEC on April 8 seeking registration of 639,426 shares of common stock. Such stock includes (1) 88,338 shares to be issued pursuant to the company's acquisition of all of the outstanding stock of Central Investment and Mortgage Company, including 69,265 shares to be issued to Jere M. Mills in exchange for capital stock of Central, (2) 37,000 shares to be offered in exchange for outstanding shares of Palomar's \$1 par preferred stock, and (3) 514,088 shares owned by certain management officials. The latter shares, and shares to be issued to Mills, are being registered solely in connection with their being pledged as collateral for loans.

The company acts principally as a mortgage servicing firm, the primary business of which is obtaining, arranging and servicing real estate loans. It also acts as loan correspondent for four life insurance companies. From December 1959 until August 1962, 67,332 common shares of the company were issued on exercise of warrants (originally attached to \$750,000 of debentures issued in 1959). According to the prospectus, all of such shares were issued either without the benefit of a prospectus or with a prospectus which did not meet the requirements of the Securities Act, and the company may have incurred a contingent liability with respect thereto. In addition to certain indebtedness and preferred stock, the company has outstanding 1,484,119 shares of common stock, of which Nels G. Severin, president, owns 27.2% and management officials as a group 42.6%.

TROPICAL GAS FILES STOCK PLAN. Tropical Gas Company, Inc., 2151 Le Jeune Road, Coral Gables, Florida, filed a registration statement (File 2-21308) with the SEC on April 10 seeking registration of 100,000 shares of common stock, to be offered pursuant to its Stock Purchase Plan.

NORTH AMERICAN COAL FILES STOCK PLAN. The North American Coal Corporation, 12800 Shaker Boulevard, Cleveland, filed a registration statement (File 2-21309) with the SEC on April 10 seeking registration of 70,000 shares of common stock, to be offered pursuant to its Stock Option Plan.

GENERAL TELEPHONE OF CALIF. PROPOSES BOND OFFERING. General Telephone Company of California, 2020 Santa Monica Boulevard, Santa Monica, Calif., filed a registration statement (File 2-21307) with the SEC on April 10 seeking registration of \$25,000,000 of first mortgage bonds (series O) due 1993, to be offered for public sale at competitive bidding. The net proceeds from the bond sale will be used to discharge short term loans from the company's parent, General Telephone & Electronics Corporation (outstanding in the amount of \$29,000,000), incurred for construction purposes. Gross property additions for 1963 are estimated at \$72,200,000.

HOUSEHOLD FINANCE FILES FOR SECONDARY. Household Finance Corporation, Prudential Plaza, Chicago, today filed a registration statement (File 2-21310) with the SEC seeking registration of 175,000 outstanding shares of common stock, to be offered for public sale by the holders thereof through underwriters headed by Lee Higginson Corporation, 20 Broad Street, New York, and two other firms. The public offering price (maximum \$53 per share*) and underwriting terms are to be supplied by amendment. The company is engaged in the consumer finance (small loan) business. In addition to various indebtedness and preferred stock, the company has outstanding 9,633,739 shares of common stock, of which Popular Finance Corporation (Wilmington) owns 13.7% and management officials as a group 2.4%. Popular Finance is 16%-owned by A. D. Williams, a director of the company. H. E. MacDonald is president. The prospectus lists 6 selling stockholders (all trustees of various trusts) holding an aggregate of 254,064 shares of the company, which shares were acquired by the selling stockholders in connection with the company's acquisition in 1961 of Coast-To-Coast Stores, Incorporated. The selling stockholders include Maurice L. Melamed and Arthur C. Melamed, as trustees of trusts for the principal benefit of each other, who propose to sell 50,000 shares each of 63,820 shares held by each. Arthur C. Melamed, as trustee of another trust, proposes to sell an additional 35,000 shares and the remaining trustees propose to sell an aggregate of 40,000 shares.

CONSERVATOR APPOINTED FOR CONTINENTAL VENDING MACHINE CORP. The SEC New York Regional Office announced April 8 (LR-2577) the entry of a Federal court order (USDC, SDNY), on application of the Commission, appointing John P. Campbell, of New York, as conservator for Continental Vending Machine Corp., a corporation listed on the American Stock Exchange with over 5,000 security holders. The Commission's complaint, which charged Continental with failure to file its annual report on Form 10-K for its fiscal year ended September 30, 1962, also named certain additional defendants, including Harold Roth.

SEC ANNUAL REPORT FILED WITH CONGRESS. The SEC today filed with Congress its Annual Report (28th) for the Fiscal Year ended June 30, 1963. Copies may be purchased from the Superintendent of Documents, Government Printing Office, Washington 25, D. C., for 60¢ each.

CORRECTION. The News Digest of April 2d referred to the withdrawal of a registration statement by Kansai Power Company, whereas the correct name of the company whose statement was withdrawn is The Kansai Electric Power Co., Inc. (File 2-17587)

SECURITIES ACT REGISTRATIONS: Effective April 10: Commonwealth of Australia (File 2-21195); Financial Federation, Inc. (File 2-21138); Hewlett-Packard Company (File 2-21186); Inter-Mountain Telephone Company (File 2-21189); Lone Star Gas Company (File 2-21172) and Pacific Northwest Bell Telephone Company (File 2-21193).

*As estimated for purposes of computing the registration fee.