

# SECURITIES AND EXCHANGE COMMISSION NEWS DIGEST



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

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**BERNHEIMER & CO. SUSPENDED FROM NASD.** The SEC today announced the issuance of a decision under the Securities Exchange Act (Release 34-7000) suspending D. F. Bernheimer & Co., Inc., 42 Broadway, New York, from membership in the National Association of Securities Dealers, Inc., for a period of six months beginning January 28, 1963. Kermit L. Bernheimer, vice-president and a principal stockholder, was found a cause of the suspension order.

The Commission ruled that in the offer and sale of the common stock of Continental Sulphur and Phosphate Corporation during 1955-59, Bernheimer & Co. ("registrant") and Bernheimer violated the Securities Act registration and anti-fraud provisions. Over 600,000 shares were sold, mostly by Bernheimer, at prices ranging from 7/16 to 6 1/2. According to the decision, registrant's sales representatives and Bernheimer made representations to customers and mailed sales literature to prospective customers containing predictions which were either outright falsehoods or lacking in an adequate factual basis, and used sales techniques which served not to inform fairly but to picture a highly speculative mining venture as a profit-making, dividend yielding investment, offering investors an unprecedented opportunity for certain and quick profits." In fact, the Commission found, Continental always operated at a loss, had borrowed funds from Bernheimer (who had become treasurer in 1958 as a result of a successful proxy fight in which Continental's management was removed), and was never in a position to pay dividends. Moreover, it did not own 50% of a sulphur plant as claimed in registrant's sales literature but had only a contract for 50% of the first year's production from the mill, which was owned by another company. The operations of the mill were not profitable and subsequently were abandoned in their entirety.

Registrant and Bernheimer contended that any fraudulent representations made to investors were the result of "overzealous enthusiasm" and errors of judgment, that Bernheimer's enthusiasm over Continental's future prospects was shared by articles appearing in various newspapers and by analyses published by reputable securities and investment advisers, and that the sincerity of their belief in Continental's prospects is evidenced by their own investment of over \$50,000 in the company's stock, their loans of over \$20,000 to the company, and the expenditure by Bernheimer of over \$12,000 in investigating and seeking to revitalize the company. The Commission recognized "that these factors may have provided a basis for hopeful optimism with respect to Continental's sulphur-producing operations," but noted that "faith in the ultimate success of a business enterprise is not the measure of responsibility under the federal securities laws." The Commission stated that it has "repeatedly held that it is inconsistent with principles of fair dealing and violative of the securities laws for a broker or dealer to induce purchases of securities by means of representations unsupported by a reasonable factual basis and without disclosure of known or reasonably available information necessary to provide the investor with a fair picture of the security being offered."

The Commission concluded that while it does not condone respondents' conduct in the sale of Continental securities, "the circumstances of this case suggest that it was not typical of their methods of selling securities." The Commission noted that registrant has been a broker-dealer for over 40 years and Bernheimer actively associated with it for over 32 years. Registrant and Bernheimer claimed that their activities were motivated by a belief in the merit of Continental and should be considered in the light of a bullish analysis of the company and its prospects made by at least one long established firm of substantial standing and favorable discussion and comments appearing in reputable financial publications during the same period. In addition, the Commission noted that when prospects for Continental's success failed to materialize, Bernheimer assumed a responsibility to protect his customers' investment and devoted personal funds and considerable effort to oust the original management in an attempt to revitalize Continental. Accordingly, the Commission considered that revocation of the firm's registration was not necessary and the public interest and protection of investors would be adequately served by suspending the firm from NASD membership for six months.

**SEC PERMITS WITHDRAWAL BY ZWANG & CO.** The SEC has issued an order under the Securities Exchange Act (Release 34-7001) permitting withdrawal of the broker-dealer registration of Benjamin Zwang & Co., Inc., Broadway, New York. The Commission's Hearing Examiner had found that the firm violated the financial reporting requirements of the Act and that Benjamin Zwang, president and board chairman, and Walter M. Holtzberg, director, while associated with A. G. Bellin Securities Corporation (whose broker-dealer registration was revoked by the Commission in 1961), were enjoined by a Federal court from violations of the Securities Act registration provisions in the sale of stock of General Oil & Industries, Inc. The Commission observed, however that the conduct involved in the injunction and reporting violations occurred after the firm had ceased doing business in 1957, and that Zwang and Holtzberg are already under disqualification from acting in the securities business by virtue of the court injunction and the Commission's findings in Bellin Securities case. The Commission concluded, in view of such circumstances, that further action in these proceedings would serve no useful purpose; and, accordingly, it granted the firm's request to withdraw its registration.

**J-F MACHINE, DIESEL & ELECTRONICS OFFERING SUSPENDED.** The SEC has issued an order under the Securities Act of 1933 temporarily suspending a Regulation A exemption from registration with respect to a public offering by J-F Machine, Diesel & Electronics, Inc., of King of Prussia, Pa. The order provides an opportunity for hearing, upon request, on the question whether the suspension should be vacated or made permanent.

OVER

Regulation A provides a conditional exemption from registration with respect to public offerings of securities not exceeding \$300,000 in amount. In a notification filed in December 1960, the respondent company (issuer) proposed the public offering of 100,000 Class A common shares at \$3 per share. The offering was commenced in January 1961; Vestal Securities Corporation was the underwriter and sold 70,010 shares; and in May 1961 Albert James Company was named as underwriter and sold the remaining 29,990 shares, the offering being completed in October 1961. In its suspension order, the Commission asserts that the issuer's offering circular was false and misleading with respect to various material facts. It is further alleged that the offering exceeded the \$300,000 limitation and that the issuer's subsequent reports did not provide accurate and adequate information with respect to the use of the proceeds of the offering.

The alleged misrepresentations relate, among other things, to the following: (a) failure to reflect a net loss for eight months in 1960 rather than a reported net profit; (b) failure to make proper disclosure of the intended use of the proceeds of the offering; (c) the statement that the exclusive license to manufacture the J-F 24 series engines had been assigned to the issuer by its president for a consideration of 160,000 common shares when, in fact, all rights, title and interest in the said engines had previously been assigned to certain creditors by the issuer's predecessor and president; and (d) the failure to disclose accurately the stock ownership of one of issuer's directors and that certain common shares were to be issued to a former director for services, as well as the terms of various agreements whereby the issuer was required to repurchase outstanding shares. Moreover, according to the order, Vestal Securities made an assignment of certain warrants in escrow contrary to provisions of Regulation A.

**WYOMING NUCLEAR SUSPENSION PERMANENT.** Wyoming Nuclear Corporation, Noble Hotel Bldg., Lander, Wyoming, has withdrawn its request for a hearing on the Commission's order of May 4, 1961, temporarily suspending a Regulation A exemption from Securities Act registration with respect to a public stock offering by that company. Accordingly, the suspension order has become permanent; and the hearing with respect thereto has been cancelled.

**1962 CORPORATE OFFERINGS REPORTED.** The SEC announces (for January 25th Newspapers) that new corporate securities offered for cash sale during 1962 totaled \$10.8 billion. This was \$2.3 billion less than the record volume of offerings in 1961. (For details, see Stat. Series Release No. 1878).

**KANSAS-NEBRASKA NATURAL GAS SEEKS ORDER.** Kansas-Nebraska Natural Gas Company, Inc., Hastings, Nebraska, registered holding company and gas utility company, has applied to the SEC for an order under the Holding Company Act declaring that it has ceased to be a holding company; and the Commission has issued an order (Release 35-14793) giving interested persons until February 12 to request a hearing thereon. According to the application, in December 1962 the company acquired North Central Gas Company, a nonaffiliated gas utility company. North Central and Western Gas Fuel Corporation, a wholly-owned utility subsidiary, were then merged into the company and were liquidated. As a result thereof the company is said no longer to own, control, or hold power to vote any voting securities of a public-utility company or of a company which is a holding company.

**CASTAWAYS BEACH MOTEL ASSOCIATES FILES FOR OFFERING.** Castaways Beach Motel Associates, Ltd., 700 N. Atlantic Ave., Daytona Beach, Fla., filed a registration statement (File 2-21031) with the SEC on January 22 seeking registration of \$840,000 of limited partnership interests in Associates, to be offered for public sale at \$1,000 per interest. The offering will be made on a best efforts basis by Hodgdon & Co., Inc., 1411 K St., N. W., Washington, D. C., which will receive a \$100 per interest selling commission. Associates will pay a \$5,000 legal fee to underwriter's counsel, and one of the general partners has agreed to assign to A. Dana Hodgdon, president of the underwriter, \$42,000 of subordinate limited partnership interests if the underwriter sells \$751,000 of interests within 60 days.

Associates is a limited partnership organized under Florida law in January 1963, with Murray Carlin and Allen J. Russell as general partners and Carlin and Russell together with Gerald Plotkin as subordinate limited partners. The partnership proposes to acquire for \$2,500,000, the Castaway Beach Motel, located at Daytona Beach Shores, Florida. Of the purchase price, \$625,000 is payable in cash and the balance is payable by taking title subject to mortgage deeds of \$1,875,000. Of the proceeds from this offering, \$625,000 will be paid as the cash portion of the purchase price, \$100,000 will be paid to Carlin to cover all expenses in connection with formation of the Partnership, acquisition of the Motel and this offering, and the balance for underwriting fees and expenses and working capital. The subordinate limited partners have received an aggregate of \$210,000 of subordinate limited partnership interests in return for their assignment to the Partnership of the agreement held by them to purchase the Motel. In addition, of the \$100,000 to be paid to Carlin to cover expenses, it is expected that \$40,000 will constitute a profit to him. Castaway Beach Motel, Inc., wholly-owned by the partners, will receive \$12,000 a year to manage the Motel, and Russell will receive a yearly salary of \$12,000 for services as general manager of the Motel.

**SECURITIES ACT REGISTRATIONS.** Effective January 23: General Time Corp. (File 2-20967); Petrolane Gas Service, Inc. (File 2-20955). Effective January 24: Circle K Food Stores, Inc. (File 2-20917).