

# 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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(In ordering full text of Releases from Publications Unit, cite number)

FOR RELEASE April 16, 1962

Statistical Release No. 1821. The SEC Index of Stock Prices, based on the closing price of 300 common stocks for the week ended April 13, 1962, for the composite and by major industry groups compared with the preceding week and with the highs and lows for 1961 - 1962 is as follows:

	1957-59 = 100		Percent Change	1962	
	4/13/62	4/6/62		High	Low
Composite	137.8*	139.8	-1.4	144.3	137.8
Manufacturing	128.1*	130.1	-1.5	135.0	128.1
Durable Goods	128.6*	130.6	-1.5	135.6	128.6
Non-Durable Goods	127.7	129.7	-1.5	134.4	126.2
Transportation	103.2*	104.2	-1.0	111.0	103.2
Utility	179.8	182.1	-1.3	185.5	179.6
Trade, Finance & Service	171.1	173.9	-1.6	178.2	170.0
Mining	103.4	104.1	-0.7	113.3	99.7

\*New Low

SECURITIES ACT REGISTRATION STATEMENTS. During the week ended April 12, 1962, 34 registration statements were filed, 62 became effective, 10 were withdrawn, and 867 were pending at the week-end.

INDEPENDENT DIRECTORS OF THREE MUTUAL FUNDS CHALLENGED. Applications have been filed with the SEC which challenge the "non-affiliated directors" of Fundamental Investors, Inc., of Elizabeth, N. J., Investors Mutual, Inc., of Minneapolis, Minn., and Television-Electronics Fund, Inc., of Chicago, Ill. In view of the "common legal issues" raised by the respective applications, the Commission has invited the submission of briefs on the legal issues by May 4, 1962, and reply briefs by May 18, 1962; and it has scheduled an oral argument before the Commission on the legal issues for May 23, 1962. The briefs and argument are to be directed to: (1) The scope of the jurisdiction, power and duty of the Commission under Section 2(a)(9) of the Act, including (a) whether, in view of the fact that "control" is defined in the first sentence of Section 2(a)(9) in terms of control over the management or policies of a company, an "interested person" may file, and the Commission may entertain, an application seeking an order declaring that a natural person is controlled by a company or another natural person, except in reaching a determination as to control of a "company;" (b) whether any order issued pursuant to Section 2(a)(9) of the Act can have retroactive effect; and (c) the effect upon such jurisdiction, power and duty, if any, of the pendency, in a court of competent jurisdiction, of litigation involving, among other things, the same question as to whether the non-affiliated directors of the respective investment companies are in fact persons controlled by the investment adviser of such investment company. (2) Whether a shareholder of a investment company is an interested person within the meaning of the fourth sentence of the second paragraph of Section 2(a)(9) of the Investment Company Act.

The application with respect to Fundamental Investors (the "Fund") was filed by Hyman Saminsky, holder of 650 shares of Fund stock and plaintiff in a court action against Hugh W. Long et al. Hugh W. Long and Company Inc. ("Long & Co.") is principal underwriter of Fund shares. In his application, Saminsky requests a determination by the Commission that certain directors of the Fund were and/or now are directly or indirectly controlled by, or under common control with Long & Co. and Investors Management Company, Inc., the investment adviser of the Fund. The application states that since 1954 Long & Co. has owned all the stock of the investment adviser and that the Fund since 1955 has had a total of 14 directors, six of whom were and/or affiliated with Long & Co. or the investment adviser ("affiliated directors"); and he asserts that seven of the remaining directors of the Fund heretofore were and now are directly or indirectly controlled by, or under common control with, Long & Co. and the investment adviser.

The application with respect to Investors Mutual was filed by Harold C. Ackert, as trustee for the benefit of Laura B. Smith, holder of 1,568 shares of Investors Mutual stock. It seeks a determination that (1) Alleghany Corporation ("Alleghany"), either alone or together with Allan P. Kirby and/or Murchison Brothers, has had control of IDS since at least 1955; and (2) certain directors of the Fund were and/or now are directly or indirectly controlled by, or under common control with Investors Diversified Services, Inc. ("IDS"), the principal underwriter and investment adviser of the Fund. Applicant is the plaintiff in an action against Evan L. Ausman, et al, which alleges among other things that the personnel of Investors Mutual is dominated and controlled by IDS.

In the case of Television-Electronics Fund ("TE Fund"), the application is filed by Harris J. Simonson, holder of 20 shares of TE fund stock. Simonson seeks a determination that certain directors of the TE Fund were and/or now are directly or indirectly controlled by, or under common control with, Television Shares Management Corporation (the "Management Company"), the investment adviser and principal underwriter of TE Fund. The application states that the Management Company and its predecessor by merger have acted as investment adviser of the TE Fund pursuant to successive investment advisory agreements dated, respectively, June 2, 1948 and January 4, 1954. The Management Company has also acted as the principal underwriter for TE Fund

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pursuant to successive underwriting agreements dated respectively, June 2, 1948, November 1, 1950 and January 4, 1954. Applicant further states that TE Fund has ten directors (nine directors prior to January 18, 1962), four of whom were at all times during their director-ships affiliated persons of Management Company ("affiliated directors"). It is alleged that of the remaining directors of TE Fund ("non-affiliated" directors), four of the present and one of the prior non-affiliated directors were and/or now are directly or indirectly controlled by, or under common control with, the Management Company. In an action entitled "Harris J. Simonson, et al., Plaintiffs, against William H. Cooley, et al., Defendants," applicant charges that the non-affiliated directors of TE Fund are dominated and controlled by the affiliated directors.

**DELAYED STOCK DELIVERIES QUESTIONED.** The SEC today cautioned broker-dealer firms that they risk violation of the anti-fraud provisions of the Federal securities laws in the delayed delivery of securities sold to their customers. Commenting upon "numerous complaints" from customers that they have encountered considerable delay in receiving securities purchased from broker-dealer firms, the Commission indicated that in a number of these cases the dealers sold to customers securities which they did not own (short sales) and did not, for a substantial period of time, effect the off-setting purchases for purposes of delivery. "Dealers who sell securities to customers should exercise diligence to deliver the securities promptly," the Commission stated; "and if they have any reason to believe they will be unable to deliver promptly, they should disclose to the customer all material facts with respect thereto before the transaction is entered into."

The courts and the Commission have consistently held that a dealer impliedly represents that he will deal fairly with the public, and this implied representation of fair dealing includes an implied representation that the transaction will be consummated promptly unless there is a clear understanding to the contrary. Failure to disclose any intention not to make prompt delivery of securities purchased by a customer would operate as a "fraud or deceit" upon the customer violative of the anti-fraud provisions of the Federal securities laws. In Lewis H. Ankeny (29 SEC 514) the Commission stated: "Inherent in the relationship between a dealer and his customer is the vital representation that the customer will be dealt with fairly, and in accordance with the standards of the profession. At a minimum, he represents that he will act in accordance with reasonable trade custom. Trade custom requires a dealer to consummate transactions with customers promptly, and in every transaction an implied representation to this effect is made, unless there is a clear understanding to the contrary. If a dealer intends not to consummate a transaction promptly, and fails to disclose this intention to his customer, he omits to state to that customer a material fact necessary to make the above representation not misleading, in violation of the anti-fraud provisions of the Securities Act and the Exchange Act."

The misrepresentation inherent in this situation is aggravated, the Commission stated, when the dealer recommends the security and sells it to the customer in a short-sale, but delays effecting the covering transaction to acquire the security. Under these circumstances it is not unreasonable to assume that the dealer delayed the execution of his covering transaction because he believed that by postponing such transaction he would be able to acquire it at a cheaper price; and the failure to disclose this material fact compounds the violation.

**TEXAS PORTLAND CEMENT PLAN ENDORSED BY SEC.** The SEC today announced the filing with the U. S. District Court for the Eastern District of Texas (Beaumont Division) of an Advisory Report pursuant to Section 173 of Chapter X of the Bankruptcy Act concluding that the Trustees' plan for the reorganization of Texas Portland Cement Company, is fair, equitable and feasible. The petition for reorganization was filed with the Court by Texas Portland Cement (the "Debtor") in July 1958 and Judge Joe W. Sheehy then appointed Chilton O'Brien and Martin Davis as Co-Trustees. Following hearings before the Court in February 1962 upon the reorganization plan filed by the Trustees, Judge Sheehy referred the plan to the Commission for examination and report.

The Debtor was organized in 1955 to construct and operate a plant for the manufacture of cement at Echo, Texas. The cost of the plant (completed in April 1957), exclusive of financing charges, was \$5,150,000 an amount far in excess of the \$2,750,000 initially estimated by the promoters. Various adverse operating factors, including heavy borrowings and competition, resulted in substantial losses which precipitated the reorganization proceeding.

Creditor claims of \$5,200,000 were filed with the Trustees, but their investigations, legal actions and compromises have reduced these claims to \$2,016,659 (including interest). Of the 885,000 shares, 1,892 could not be substantiated by the auditors; 175,511 were cancelled during the proceedings as having been invalidly issued; and 35,663 were surrendered by certain company directors in settlement of the Trustees' claims for mismanagement and for subordination. Trustees' certificates, plus interest thereon, together with current liabilities of the Trustees, amounted to \$861,965, as of January 31, 1962.

The plan of reorganization is based upon an offer of Alpha Portland Cement Company to purchase all of the Debtor's fixed assets and intangibles for a base purchase price of \$4,250,000, following which the Debtor will be liquidated and dissolved. As consideration for such purchase, Alpha will pay \$1,000,000 in cash, issue \$2,742,000 of 4½ debentures and assume a \$508,000 claim against the Debtor. Under the plan, the Debtor will retain the cash equivalent of its total current assets, or about \$550,000. Hence, upon consummation of the sale to Alpha the Trustees will have available about \$1,550,000 in cash (less the costs and expenses of administration), plus the \$2,742,000 of debentures. After payment of the administration costs and expenses and the liabilities of the Trustees, general claims of about \$1,443,868 will receive cash pro rata to the extent that such cash is available. The cash distribution on each claim will be adjusted so as to leave a balance in multiples of \$100, and such balance will be paid with Alpha debentures. Accumulated interest on certain claims also will be paid in cash.

The holders of 669,638 common shares will receive the balance of the Alpha debentures not required to satisfy the claims of general creditors. An initial distribution will be made to these stockholders at the rate of \$2 in debentures for each share held. An equivalent amount of cash will be paid to each shareholder entitled to less than a full \$100 debenture. The remaining 2,326 shares, held by four directors, will not

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participate under the plan unless other stockholders first receive for each share held the equivalent in value of \$5 per share, the price at which the stock was originally issued and sold (the Trustees estimate that the distribution to other stockholders, however, will not exceed \$2.50 per share). Based upon its analysis of various facts pertinent to a valuation of the Debtor's estate, the claims of creditors and other matters, the Commission concluded that the reorganization plan was fair, equitable and feasible. (Copies of the full text of the Commission's report, Release CR-169, are available on request.)

**GORDON PROMOTED, ZAZOVE BECOMES EXAMINER.** SEC Chairman Cary today announced the promotion of Alan R. Gordon to the position of Chief Counsel of the Division of Corporate Regulation, succeeding Frederick Zazove who has been appointed as a Hearing Examiner (Release U-326).

Mr. Gordon has served as an Attorney on the staff of the Division of Corporation Finance since October 1956 and more recently as Senior Trial Attorney in its Branch of Administrative Proceedings and Investigations. He received his B.A. degree in 1953 from Cornell University and his LL.B. from Harvard Law School in 1956.

Mr. Zazove joined the Commission's staff in August 1941 as an Attorney assigned to the Division of Public Utilities (now Corporate Regulation), and has served as Chief Counsel to the Division since June 1956. He is a graduate of Northwestern University (B.S.C., 1933) and Northwestern University Law School (J.D., 1936).

**NET WORKING CAPITAL UP.** In a report for release in TUESDAY Newspapers, Stat. Release 1820, the SEC reports that the net working capital of U.S. corporations increased \$1.7 billion in the fourth quarter of 1961 and totalled \$141 billion at the year-end. The increase in net working capital for the full year 1961 amounted to \$8.5 billion compared with \$5 billion in 1960 and \$8.8 billion in 1959.

**SEC COMPLAINT NAMES WORLD LAND-WORLD LIFE ET AL.** The SEC Denver Regional Office announced April 12th (Lit-2232) the filing of a complaint in Federal court (USDC, Denver) seeking to enjoin further violations of the Securities Act registration and anti-fraud provisions by World Land Corporation, World Life Assurance Society Ltd., World Drilling Corporation, Investment Bankers, Inc., World Oil & Gas Corporation, William R. Cunningham, Evelyn Cunningham, T. H. Ruth, J. B. Walling, Irvin Heyman and Jennings B. Moss, in the offer and sale of World Land stock and promissory notes which pledged World Land stock as collateral.

**GUILTY VERDICT IN COLUMBUS REXALL OIL CASE.** Irwin C. Glaser was found guilty on April 3d (USDC, Fla.) of violating Securities Act anti-fraud provisions in sale of stock of Columbus Rexall Oil Co. through Alfred D. Laurence and Co., Miami broker-dealer firm. Sentencing deferred until April 26th (Lit-2233). Kirby G. Freeman was found not guilty and Alfred D. Laurence was confined to mental institution for treatment. Guilty pleas previously were entered by the following and various sentences imposed: Jack L. Cayias, William J. Cayias, Joel A. Burns, Nick S. Vidalakis, E. H. A. Andrews, S. M. Brooks, Sr., Lyman Louis Cromer, Stephen J. Dinneen, Robert D. Sills, John K. Coffroth, Jr., Ralph H. Whitmore. Columbus Rexall Oil plead nolo contendere. Jacob P. Bluestein was tried without a jury and the verdict has not been filed by the Court. The trial of the defendants Warren Nesse, John W. H. Price, and Alfred D. Laurence and Co. was continued, while the defendant Lawrence Silverman was dismissed. The defendants Steven Van Gelder, Daniel J. Scholtz, and Norman A. Trevour have not been apprehended and are fugitives.

**RE & RE INDICTMENT.** In Litigation Release No. 2234, the SEC reports the indictment on April 2d (USDC SDNY) of Jerry A. Re, Gerard F. Re, Lowell M. Birrell, Charles A. Casagrande (aka Charles A. Grande), Ely Batkin, Jacob Yaffe and Verna Skoglund for conspiracy to manipulate the market price of Swan-Finch Oil stock on the American Stock Exchange, to defraud purchasers of the stock and to sell unregistered Swan-Finch Oil Stock.

**JOE BERT SISSOM ENJOINED.** The SEC Fort Worth Regional Office announced April 11th (Lit-2235) the entry of a Federal court order (USDC, Waco, Tex.) permanently enjoining Joe Bert Sissom, individually and doing business as Sissom Investment Securities, from further violations of the anti-fraud provisions of the Federal securities laws and the SEC net capital and record-keeping rules thereunder.

**KINGDOM OF DENMARK PROPOSES BOND OFFERING.** The Kingdom of Denmark filed a registration statement (File 2-20240) with the SEC on April 13th seeking registration of \$20,000,000 of External Loan Bonds due 1977, to be offered for public sale through underwriters headed by Kuhn, Loeb & Co., 30 Wall Street, N. Y., and three other firms. The interest rate, public offering price and underwriting terms are to be supplied by amendment. The net proceeds from the bond sale (or the Danish Kroner equivalent thereof) will be applied to a large extent to finance a part of the cost (including cost of equipment purchased outside Denmark) of electric power projects being carried out in Denmark by public utilities owned by municipalities or jointly by municipalities and consumer cooperatives or private consumers.

**SECURITIES ACT REGISTRATIONS.** Effective April 14: L. M. Ericsson Telephone Co. (ADR's), (File 2-20049). Effective April 16: American Pipe & Construction Co. (File 2-20194); Lowell Toy Manufacturing Corp. (File 2-19537); Mississippi-Red River Transport Co. (File 2-19653); The Rucker Co. (File 2-19797); Southern Bell Telephone & Telegraph Co. (File 2-20061); Sportmen's, Inc. (File 2-19395); TEC-Torch Company, Inc. (File 2-19370). Withdrawn April 16: An-Son Petroleum Corp. (File 2-17893); Jefferson Counsel Corp. (File 2-17713); Midwestern Acceptance Corp. (File 2-17017).