

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

FILED

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SECURITIES & EXCHANGE COMMISSION

In the Matter of :
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SECURITY SAVINGS AND LOAN :
(A Stock Corporation) :
:
24 East Fayette Street :
Baltimore, Maryland :
:
(81-100) :
:
Securities Exchange Act of 1934 :
Section 12(h) :
:

INITIAL DECISION

Sidney L. Feiler
Hearing Examiner

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Section 12(h)	:	

APPEARANCES: P. Dennis Belman, Esq., of Smith, Somerville & Case, 1700 One Charles Center, Baltimore, Maryland 21201 for Security Savings and Loan; Ralph H. Tracy, Alois Lubiejewski, and Tobey Kaczensky, Esqs., for the Division of Corporation Finance, Securities and Exchange Commission.

BEFORE: Sidney L. Feiler, Hearing Examiner.

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I. THE PROCEEDINGS

These are proceedings instituted by order of the Commission pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), to determine whether a finding should be made, as requested in an application filed by Security Savings and Loan (A Stock Corporation) ("Applicant"), that an exemption of Applicant's guaranty stock from the provisions of Section 12(g) of the Exchange Act would not be inconsistent with the public interest or the protection of investors. Exemption from Section 12(g) will have the additional effect of exempting the Applicant from Sections 13 and 14 of the Exchange Act and any officer, director, or beneficial owner of more than 10 percent of Applicant's equity securities from Section 16 thereof.

Section 12(g) of the Exchange Act, in pertinent part, requires the registration of the equity securities of every issuer engaged in interstate commerce, or in a business affecting interstate commerce, or whose securities are traded by use of the mails or any means or instrumentality of interstate commerce, with certain exceptions set forth therein, within one hundred and twenty days of the last day of its first fiscal year on which such issuer has total assets exceeding \$1,000,000, and a class of equity security held of record by 500 or more persons (formerly 750). Applicant meets the requirements for registration under this Section.

Section 12(h) of the Exchange Act empowers the Commission, by order, upon application of an interested person and after notice and opportunity for hearing, to exempt any issuer in whole or in part from

the registration provisions of Section 12(g) or from the periodic reporting and proxy solicitation provisions of Sections 13 and 14 of the Exchange Act and from the insider reporting and trading provisions of Section 16 of the Exchange Act, if the Commission finds, by reason of the number of public investors, the amount of trading interest in the securities, the nature and extent of the activities of the issuer, the income or assets of the issuer, or otherwise, that such exemption is not inconsistent with the public interest or the protection of investors.

The matters put in issue by the order for proceedings are:

1. Whether the number of public investors and the amount of trading interest, actual or potential, in Applicant's securities is sufficiently limited to justify the requested exemption; and
2. Whether the nature and extent of the activities of the Applicant are such as to justify the requested exemption; and
3. Whether adequate information is and will be available to investors concerning the financial and business affairs of the Applicant, the management of the Applicant, the principal holders of the securities of the Applicant, any transactions of management in the securities of the Applicant and the nature and description of the Applicant's securities; and
4. Generally, whether the requested exemption is consistent with the public interest and with the protection of investors.

Pursuant to notice, a hearing was held in Washington, D.C. The Applicant and the Division were represented by counsel. Full opportunity to be heard and to examine and cross-examine witnesses was afforded the parties. At the conclusion of the presentation of

evidence, opportunity was afforded the parties to present oral argument, but such argument was waived. Proposed findings of fact, and conclusions of law, together with supporting briefs were filed by the parties.

Upon the entire record, including the testimony adduced, the undersigned makes the following:

II. FINDINGS OF FACT AND LAW

A. The Applicant

Applicant is a savings and loan institution organized and existing under the State of Maryland with its principal office and place of business in Baltimore, Maryland.

The Maryland Savings and Loan Law provides for two types of Maryland savings and loan institutions, namely, (i) a mutual savings and loan (a "mutual association"), and (ii) a guaranty stock savings and loan (which bears the required designation "Stock Corporation") (a "stock corporation") (Md. Ann. Code, art. 23, §161P [1966 and Supp. 1969] Ex.(b)(1)(iii) to application).

A mutual association has only one class of stock consisting of free (savings and withdrawable) shares held by the free shareholders and represented by their free savings account books. In a Maryland mutual association the free shareholders would be entitled, upon liquidation, to a pro rata distribution of the undivided profits and reserves of the corporation (Md. Ann. Code, art. 23, §161A et seq. [1966 and Supp. 1969]).

A Maryland stock corporation has two classes of stock consisting of (i) free (savings or withdrawable) shares and (ii) shares of

guaranty stock. Guaranty stock constitutes a secondary reserve out of which losses are to be paid after other available reserves have been exhausted. In a stock corporation, the guaranty stockholders, upon liquidation, would be entitled to the distribution of the undivided profits and reserves of the corporation but only after all required payments had been made to free shareholders. Statutory limitations are also imposed on the declaration of dividends on shares of guaranty stock (Md. Ann. Code, art. 23, §161A et seq. [1966 and Supp. 1969]).

Applicant is also subject to regulation by the Board of Building, Savings and Loan Association Commissioners of the State of Maryland under the provisions of Md. Ann. Code, art. 23, §161A et seq. (1966 and Supp. 1969) ("Maryland Savings and Loan Law," Ex. (b)1(iv) to application).

Applicant is a stock corporation. Applicant was originally organized on March 18, 1895. It was then known as The Young Men's Savings and Loan Building Association of Baltimore City. Its name was changed to the Park Central Savings and Loan Association on January 14, 1954. In recent years the Applicant has grown by merging with 3 mutual savings and loan associations. On March 1, 1968 when it was doing business as Park Central, it merged with Security Savings and Loan Association, Inc. The surviving corporation, Park Central, then changed its name to the present form, Security Savings and Loan (A Stock Corporation). On December 31, 1968, The Lyndhurst Building and Loan Association of Baltimore City, Incorporated was merged into

Security. On August 29, 1969 Security effected a statutory merger with Colonial Savings and Loan Association by way of a purchase of substantially all of the assets of Colonial.

The merger agreements were all subject to approval by the Director of the Department of Building, Savings and Loan Commissioners of Maryland. In each of the mergers the free shares or deposits in the mutual associations were exchanged for an equal amount of free shares in the Applicant. However, since the Applicant also was acquiring the interest of such free shareholders in their mutual association's undivided profits and reserves, it was further provided that in each case the Applicant should issue to each mutual association a block of its guaranty shares for distribution to the free shareholders of each mutual association to represent their interest in the undivided profits and reserves in their mutual association. The number of guaranty shares involved in each transaction was determined by fixing the then value of a share of Security's guaranty stock and dividing it into the appraisal of the undivided profits and reserves of the mutual institution involved.

The Applicant, as a savings and loan institution has for its stated purposes the accumulation of funds and the making of loans on mortgages on real and leasehold property and such other business as may be permitted under the laws of Maryland. Its powers are set forth in Maryland statutes. As of the close of its fiscal year ending February 28, 1970, Applicant had total assets of \$8,023,234.90. Most of its assets (\$7,436,641.83) consisted of first mortgage loans. As of February 28, 1970 Applicant had outstanding free shares representing

\$6,647,730.17. Operations for the fiscal year ending February 28, 1970 resulted in a gross operating income of \$446,887.62.

Operating expenses were \$140,144.66. There remained an operating income totalling \$306,742.96. After dividends on savings of \$288,695.46 and Federal income taxes were paid, there remained net income of \$16,977.41 (App. Ex.4). Applicant ranked 9th in total assets among non-Federally insured state chartered associations.

Affairs of the Applicant are managed by an elected board of directors which elects officers for the Applicant. Day-to-day operations of the Applicant are conducted under an arrangement with a mortgage banking firm whereby in consideration of an equal fee, office space and an office staff are provided for Applicant's business.

B. The Number of Public Investors in Applicant's Securities and the Amount of Trading Interest Therein

Prior to March 1, 1968, the effective date of the first merger involving the issuance of guaranty stock to the free shareholders of a merging savings and loan mutual association, 85 persons had purchased and were then entitled to certificates for shares of Security's guaranty stock. As each merger was consummated guaranty shares were issued to the free shareholders of the merging association, representing the value of the surplus and undivided profits being acquired by Security. These shares were distributed to the free shareholders in proportion to their free shareholdings or deposits in the merging association. As a result of this process, the number of guaranty stockholders was increased by 1,360 persons who received 46,603 shares.

The number of guaranty stockholders as of July 1, 1970 was 1,376 who held 113,145 shares. Since March 1, 1968 no shares of guaranty stock have been issued by Security except those necessary to effectuate the three aforementioned mergers.

The following is a table showing the distribution of guaranty stockholders (i) on July 1, 1969 (after Applicant's merger with The Lyndhurst Building and Loan Association of Baltimore City, Incorporated, but prior to its merger with Colonial Savings and Loan Association, Inc.), (ii) on September 2, 1969 (after Applicant's merger with Colonial Savings and Loan Association, Inc.) and (iii) on July 1, 1970:

	(i) July 1, <u>1969</u>	(ii) Sept. 2, <u>1969</u>	(iii) July 1, <u>1970</u>
Total No. of Guaranty Stockholders	1,087	1,387	1,376
Total Holding 25 Shares or Less	(Total holding less than 50 -	831	878
Total Holding More Than 25, Less Than 51	844)	217	197
Total Holding More Than 50, Less Than 101	(Total holding more	148	132
Total Holding More Than 100, Less Than 251	than 50 -	149	127
Total Holding More Than 250, Less Than 501	243)	19	19
Total Holding More Than 500		23	23

(Application, P.4, App. Ex. 2, 6).

As of July 1, 1970 officers and directors as a group owned 40,598 shares or 36 percent of the 113,145 guaranty shares outstanding (Tr.24-30). The ten largest stockholders of the Applicant owned as of record and bene-

ficially 45,462 guaranty shares or 42.2 percent. It is asserted in the application for exemption that no person owns of record or beneficially more than 10 percent of any class of voting securities of the Applicant. Officers and directors also owned less than 3 percent of the free shareholdings of the Applicant.

The guaranty shares of Security are not listed on any exchange nor are they regularly traded in the over-the-counter market. A publication of the National Daily Quotation Service, Inc., notes 3 instances of bids being published in its "pink sheets" over the last 6-month period for which such information is available. Quotations for the stock were published in a Baltimore newspaper for some time but were discontinued at the request of the Applicant because it was felt that these quotations were not reliable and because a lack of share transactions the quotations did not reflect the true value of the stock (Tr.45).

A computation of sales transactions as prepared by the treasurer of the Applicant was received in evidence. In preparing the table which follows, this officer attempted to eliminate transfers which he felt were not true sales; i.e., mistakes in spelling of the names of stockholders, family transfers, etc.

This table was prepared from the records of Applicant's transfer agent and sets forth the number of sale transactions and the total number of shares of Security's guaranty stock involved in such transactions from March, 1968, through and including June 30, 1970:

	<u>Month</u>	<u>Number of Sale Transactions</u>	<u>Total Number of Shares Involved</u> 1/	
1968	March	0	0	
	April	0	0	
	May	10	1,367	
	June	7	796	
	July	7	326	
	August	10	1,845	
	September	0	0	
	October	1	103	
	November	4	271	
	December	1	38	
	1969	January	4	556
		February	3	195
March		0	0	
April		6	329	
May		3	207	
June		3	127	
July		2	110	
August		3	486	
September		0	0	
October		6	282	
November		1	17	
December		6	910	
1970	January	17	1,145	
	February	2	50	
	March	3	427	
	April	2	1,259	
	May	2	305	
	June	4	966	

(Applic. Ex. 2 and 6)

1/ Figures have been presented for the period September 1969 to June 1970 indicating the number of certificates cancelled and issued and the number of transfers involved, whether sales or otherwise (Ex.6). Whereas the sales transactions for that period are listed as 43 for a total of 5,361 shares, the number of all transfers totaled 85 for 11,291 shares (App.'s Ex.6).

C. Information Available to Investors Concerning the Financial and Business Affairs of the Applicant

Applicant is subject to regulatory procedures prescribed by the Board of Building, Savings and Loan Association Commissioners of the State of Maryland and regulations prescribed by its Director. It is required to submit annually a statement of its financial condition in a prescribed form, present it at its annual meeting of shareholders, and to keep it on file at its principal office. A certified copy of this statement is filed with the Director and also is furnished to any member upon request. A statement is also required to be filed of the salaries, fees and expenses paid to officers and directors of the association, which statement is also available to free shareholders upon request (Md. Ann. Code Art. 23, Sec. 161S--as contained in Ex.(b)(iii) attached to the application). Applicant is also subject to examination by examiners of the Department. Following such an examination, the Department prepares a "report of examination". The report of examination, when necessary, is implemented by a "supervisory letter" containing comments on the operations of the association as well as instructions for any action to be taken. Applicant has agreed to make the report of examination available to its guaranty stockholders and its free shareholders if its application is granted. Applicant also is a member of the Maryland Savings-Share Insurance Corporation, a State agency formed to provide for insurance of eligible Maryland savings and loan institutions. It is subject to examination, audit and reporting procedures imposed by that corporation.

Copies of current reports filed by the Applicant with appropriate authorities were submitted at the hearing (App. Ex.3).

Information is furnished by the Applicant in the required reports of the names of its officers, directors, attorneys and employees, with a notation of their positions, time devoted to the affairs of the Applicant and annual salaries or fees, the total free share accounts held by these persons and surety bonds provided. However, no information is filed or sent to stockholders concerning the principal holders of the guaranty shares of the Applicant and any transactions of management in those securities. Thus, information as to the holdings of officers and directors and the 10 largest stockholders as contained on page 7, supra, is not furnished. The annual report of the Applicant while available to shareholders is not mailed to them. Additional information required by the reporting and filing provisions of the Exchange Act is not required to be reported or filed under Maryland law and is not made public.

D. Contentions of the Parties

The Applicant contends that there are relatively few persons with any substantial holdings of the Applicant's guaranty stock and that the substantial number of stockholders of the Applicant's stock resulted from the aforementioned mergers wherein free shareholders of mutual associations received guaranty stock more or less as a windfall and as a result of their free shareholdings in the acquired companies. They therefore, it is argued, were not true investors who

bought their shares in the open market. It is further contended that there is very little trading in the guaranty stock of the Applicant and these trades have no significant impact in the trading markets. It is also pointed out that Applicant is in a strictly regulated business under State supervision and can only engage in prescribed activities and is subject to continued supervision. Therefore, it is asserted, the public interest does not require any additional filings to disclose Applicant's activities. Finally, it is argued that the public disclosure of financial information is now adequate for the needs of investors and there is no need to file an additional series of reports (Application, pp. 5-8; Tr. 63-66 and App. brief, pp. 11-15).

The Division contends that Applicant meets the requirement both as the number of shareholders and assets as set forth in Section 12(g), of the Exchange Act. It is argued that regardless of how they obtained their interest, Applicant's guaranty stockholders are owners of equity securities and are thus investors entitled to the protection provided under the Exchange Act. It maintains that data as to share transactions in the Applicant's guaranty stock indicates significant trading interest in its securities and that there exists a potential for heavy trading in its securities. While it is conceded that certain financial information is disclosed to Maryland regulatory agencies and is made available to Applicant's shareholders, it is contended that the information is in no way analagous to that required under the provisions of Sections 12(g),13 and 14 of the Exchange Act. It is

also noted that while there is an exemption contained in Section 12(g) (2)(C) for free shareholdings of savings and loan institutions, Congress specifically excluded guaranty stock. It is therefore urged that Congress felt a need to provide the protection of the disclosure and reporting sections of the Exchange Act to the public in addition to State supervision. Finally, it is urged that since Applicant's treasurer testified that it is possible that Applicant in the future may be involved in additional mergers, the information required under the Exchange Act would be of value to the stockholders of the companies involved. It urges that the request for exemption be denied.

III. CONCLUDING FINDINGS, PUBLIC INTEREST

The history of the distribution of the common stock of the Applicant establishes that there is no regular over-the-counter market in its securities. While this is an important factor, it is not determinative of the issues herein.

Section 12(g) of the Exchange Act was enacted as part of the Securities Act Amendments of 1964.^{2/} These Amendments were preceded by a Special Study of Securities Markets by the Securities and Exchange Commission, authorized by Congress; a Report of the Special Study, including a Supplement containing comments from the Chairman of the Commission on recommendations contained therein;^{3/} hearings before the House Committee on Interstate and Foreign Commerce and the Senate Committee on Banking and Currency on proposed legislation and reports

^{2/} Pub. Law 88-467, 88th Cong. (Aug. 20, 1964).

^{3/} House Doc. No. 95, 88th Cong. 1st Sess. (1963).

of those Committees;^{4/} discussion of the proposed Amendments in the Congress and the enactment of the legislation.

With respect to the obligations of issuers of publicly held securities, it was pointed out in the Special Study that, "The keystone of the entire structure of Federal securities legislation is disclosure. Making available to investors adequate financial and other information about securities in which they might invest or have invested is the best means of enabling them to make intelligent investment decisions and of protecting them against securities frauds."^{5/} There was unanimous agreement by those conducting the Special Study and by the congressional committees concerned that ideally all public companies in which there is public investor interest ought to be included in the coverage of the filing, reporting, and proxy requirements of the Exchange Act. However, it was decided on purely practical grounds that the number of issuers required to file should be manageable, from the regulatory standpoint, and not disproportionately burdensome on issuers in relation to the national public interest to be served. After an exhaustive research of the problem it was recommended in the Special Study Report that the filing, reporting, and proxy requirements of the Exchange Act be extended, in stages, to all issuers having 300 or more equity security holders.^{6/} The final legislation incorporated the 500 shareholders and \$1,000,000 asset standard. This standard is

^{4/} Sen. Report No. 379, 88th Cong. 1st. Sess. (1963); House Report No. 1418, 88th Cong. 2d. Sess. (1964).

^{5/} Special Study, op. cit., Pt. 3, p.1.

^{6/} Special Study, op. cit., Pt. 5, pp. 149-153.

the result of very careful administrative and legislative study and is not to be lightly disregarded.^{7/}

In the instant case, the amount of assets of the Applicant is substantially in excess of the amount required for filing. The number of shareholders is more than double the required minimum number of 500. Under any standard they must be considered "public" stockholders.^{8/}

Applicant points out that it is subject to State regulation, including the inspection of its records and accounts and is limited as to the business activities in which it may engage. Section 12(g) of the Exchange Act contains a subsection exempting from its provisions, "... any security, other than permanent stock, guaranty stock, or any similar certificate evidencing nonwithdrawable capital, issued by a savings and loan association... which is supervised and examined by State or Federal authority having supervision over any such institution (Sec 12(g)(C)). This subsection clearly evidences congressional intent that the fact that a savings and loan association is subject to

^{7/} "It is clear that by any standard the companies with between 500 and 1,000 shareholders represent substantial enterprises. In addition, your committee believes that the primary test in selecting coverage standards for inclusion in S.1642 should be the public interest as measured by the number of shareholders. A company with between 500 and 1,000 shareholders represents a substantial public interest. The asset test is designed to assure that no disproportionate burden is placed either on the companies or on the Government in relation to the public interest to be served." (Report, Senate Banking and Currency Committee, op. cit., p. 21).

^{8/} S.E.C. v. Ralston Purina Co., 346 U.S. 119(1953).

supervision and regulation should not in and of itself confer on it exemption from Section 12(g). The undersigned also agrees with the contention of the Applicant that the subsection does not require the denial of exemption to every savings and loan association.

There is no basis for denying the guaranty stockholders of Security the protection afforded by the Exchange Act because of the way most of them obtained their shares. They received shares evidencing their interest in the surplus and undivided profits of their mutual associations and thus surrendered tangible interests for the shares they received.^{9/}

A substantial number of the Security guaranty stockholders own small amounts of shares. However, this furnishes no basis for excluding them from consideration and there is no warrant for this in the legislative history. Small shareholders are those primarily benefited by the disclosure provisions of the Exchange Act since they have no other practical way of obtaining information on their investment.

Data presented indicates that a substantial number of Applicant's guaranty shares have changed hands in the last three years, although the number of transactions has not been large. However, background

^{9/} For a somewhat similar example, see, Orchard Supply Building, Co., Sec. Exch. Act Rel. No. 8104, June 20, 1967 (distribution of shares of stock owned by a cooperative to its members, on dissolution (no petition for review of initial decision filed)).

studies leading to the enactment of Section 12(g) as well as the entire legislative history establishes that it was contemplated that the coverage criteria would extend to large numbers of inactively traded securities.^{10/} The Commission has stated:

"Moreover, while trading interest is undoubtedly an important factor in measuring the significance of the public investor interest,^{7/} its small scale does not detract from the need of Applicant's existing and potential shareholders for at least the principal protections provided through registration under Section 12(g). ^{11/}

^{7/} See Report of Special Study of Securities Markets, Part 3, pp. 18, 23(1963)".

The Applicant conducts an important business operation. It has grown substantially in recent years both in assets and in number of stockholders. Existing State regulatory procedures are designed to protect the free shareholders or depositors in savings and loan associations. Of course, this is a benefit to guaranty stockholders also. However, this regulatory system does not contain the safeguards of investor stockholder interest afforded under the Exchange Act.^{12/}

^{10/} Phillips and Shipman, "An Analysis of the Securities Acts Amendments of 1964," Duke Law Journal, Vol. 1964, p.706, 762-763.

^{11/} The National Dollar Stores, Ltd., Sec. Exch. Act Rel. No. 8403, Sept. 11, 1968, p.5.

^{12/} For instance, Security is required to annually furnish the Director of the aforementioned Board a list showing the name, address, and number of shares owned by each owner of guaranty stock, but it is further provided that that list shall be kept confidential by the Director (Md. Ann. Code, art. 23, §161P(f)).

The burden of justifying an exemption from statutory and regulatory requirements is on an Applicant.^{13/} It is concluded that the number of public investors and the amount of trading interest in Applicant's securities is not sufficiently limited to justify the requested exemption. The nature and extent of the activities of the Applicant, in view of the size of its business and the substantial amount of its assets, are not such as to justify the requested exemption. Adequate information is not and will not be available to investors concerning the financial and business affairs of the Applicant, its management, the principal holders of the securities of the Applicant, any transactions of management in the securities of the Applicant, and other key items of information required to be furnished under Sections 12, 13, 14 and 16 of the Exchange Act, if the application were granted. It is further concluded that the requested exemption would not be consistent with the public interest and the protection of investors.

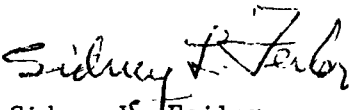
However, while it has been determined that the application for full exemption from the filing and reporting requirements of the Exchange Act should not be granted, the undersigned finds that in view of the nature of Applicant's business it would not be inconsistent with the public interest or the protection of investors to grant Applicant an exemption from the requirement to file quarterly reports, if other requirements are complied with. This would reduce any additional expense to Applicant and impose upon it the obligation to

^{13/} S.E.C. v Ralston Purina Co., supra.

conform ^{its} ~~the~~ presently certified annual reports to the requirements of the Exchange Act and applicable rules and to comply with other provisions previously mentioned. Accordingly,

IT IS ORDERED that the application of Security Savings and Loan (A Stock Corporation) for an exemption from Section 12(g) of the Exchange Act be, and it hereby is, denied, except that Applicant is exempted from the requirement to file quarterly reports.

Pursuant to Rule 17(b) of the Commission's Rules of Practice a party may file a petition for Commission review of this initial decision within fifteen days after service thereof on him. This initial decision pursuant to Rule 17(f) shall become the final decision of the Commission as to each party unless he files a petition for review pursuant to Rule 17(b) or the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition to review or the Commission takes action to review as to a party, this initial decision shall not become final as to that party.^{14/}


Sidney L. Feiler
Hearing Examiner

Washington, D.C.
November 16, 1970

^{14/} All contentions and proposed findings have been carefully considered. This initial decision incorporates those which have been found necessary for incorporation therein.