

SECURITIES AND EXCHANGE COMMISSION NEWS DIGEST



Washington 25, D.C.

January 23, 1957

FOR RELEASE

Securities Exchange Act Release No. 5442

The Securities and Exchange Commission has ordered proceedings under the Securities Exchange Act of 1934 to determine whether the broker-dealer registration of Allen E. Beers Company, Philadelphia, should be revoked. A hearing for the purpose of taking evidence therein is scheduled for February 4, 1957, in the United States District Court House Building in Philadelphia.

Allen E. Beers Company (Respondent) is a partnership, and Allen E. Beers ("Beers") is a general partner thereof. In its order, the Commission asserts that information reported by its staff and obtained as a result of an investigation tends to show (1) that, during the period April 1, 1954 to August 1, 1955, Respondent and Beers sold shares of the common stock of Minerals Processing Company to certain persons and, in connection therewith, made false and misleading representations concerning the increase in the value and market price of the issuer's stock, dividends to be paid, present and future profits of the issuer, publicity to be given to the stock, the market in the stock, sale of the issue, financial condition of the issuer, and mineral discoveries on the properties of the issuer; and (2) that during the period January 1, 1956 to November 1, 1956, Respondent purchased and sold securities for the accounts of certain persons and falsely represented to such persons the prices at which such purchases and sales had been effected, thereby obtaining secret profits, and that Beers caused it so to do.

The Commission's order further asserts that Respondent failed to make and keep current certain books and records, as required by rules of the Commission, failed to file financial reports for the years 1954 and 1956, as required, and failed to cancel or otherwise liquidate purchases of securities by customers in special cash accounts, notwithstanding the failure of such customers to make full cash payment within 7 days, as required by Regulation T.

At the February 4th hearing, inquiry will be conducted into the foregoing matters for the purpose of determining whether the reported information is true and, if so, whether Respondent and/or Beers have wilfully violated provisions of the laws administered by the Commission and its rules thereunder and whether the broker-dealer registration of Allen E. Beers Company should be revoked.

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For further details, call ST. 3-7600, ext. 5526

Securities Act Release No. 3742

The SEC today announced the issuance of a stop order suspending the effectiveness of a registration statement filed by Ultrasonic Corporation of Cambridge, Massachusetts, covering an offering in 1954 of 200,000 shares of common stock at \$12.75 a share as well as warrants and additional shares of common stock issuable on exercise of the warrants and on conversion of outstanding bonds and debentures.

In an opinion accompanying the order the Commission found that the registration statement, which had become effective in July 1954 and was amended in August 1954 to reduce the offering price of the warrants, contained earnings figures which were very substantially inaccurate and misleading. It found that a profit of \$49,000 shown for the six months ended March 31, 1954 was at least \$900,000 in excess of the amount that should have been shown. In contrast with the \$49,000 profit figure shown for those six-months, which was unaudited, an audited statement for the 12 months ended September 30, 1954, prepared after the 200,000 shares of stock had been sold, showed a loss of \$3,324,724.

The Commission found the profit overstatement was the result of unwarranted adjustments and omissions in registrant's books which "produced a completely unrealistic picture and were the result of a deliberate design to present optimistic figures rather than the exercise of reasonable accounting judgments." It found that improper downward adjustments had been made to cost of sales, estimated profits from a few selected contracts in process were improperly included in the profit computations, and necessary reserves for losses were not provided. Although a cost system had been set up and written into the company's books, the books were rewritten to show costs of sales computed on the basis of a formula which resulted in lower costs and a resulting higher profit figure. The Commission found that the formula used, which was based upon experience in 1952, was unrealistic in the light of subsequent experience and major changes in the nature of the corporation's business and that its use was "beyond the limits of any reasonable judgment and can only be explained by a desire to show a profit." The opinion noted that much of the questioned action was taken by the corporation's then management contrary to the suggestions of the controller and his assistants, with most of the adjustments being made pursuant to the direction of the financial vice-president who knew the true situation, and that the president was informed of the corporation's financial difficulties and was chargeable with knowledge of the operating losses.

The Commission also found that the large operating losses entailed after March 31, 1954 were also not disclosed. Data available prior to the time the registration statement became effective showed losses in May and June, 1954 totalling over \$485,000 and of which the Commission held the management was chargeable with knowledge. Similar data given the management prior to the effectiveness of the amendment in August 1954, showed losses for the preceding May, June and July totalling over \$800,000.

The Commission also found that falsification of the six months' earnings' figure also rendered misleading various representations that the company's business was expanding and appeared well established.

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The Commission rejected registrant's contention that the earnings figures were not material because Ultrasonic was a "growth" company and no investor would be influenced by past earnings. It stressed the necessity for proper profit and loss figures in order that "investors will be in a position to form their own judgment as to their materiality." It also rejected the argument that a stop order should not be issued because the 200,000 share offering had been fully sold and management has been completely changed, and the prospects of the company might be impaired by further publicity about past activities. The Commission held that the stop order was required in view of the grossly misleading nature of the registration statement and the fact that investors had purchased stock in reliance thereon.

Investment Company Act Release No. 2474

The Securities and Exchange Commission today announced the issuance of a decision and order declaring that the name of The Private Investment Fund for Governmental Personnel, Inc., a registered investment company, is deceptive and misleading in violation of Sections 35(a) and 35(d) of the Investment Company Act of 1940.

In barring use of the name by the Fund, the Commission held that the name is deceptive and misleading as implying that its shares have investment and other advantages for the civilian and military government personnel to whom sales are to be restricted, and as further implying that the Fund or its shares have been guaranteed, sponsored, recommended or approved by the United States.

The Commission expressed the view that the government personnel to be offered shares do not constitute a homogeneous group with characteristics which would give financial advantages to a mutual fund limited to them or make the fund especially suited to such personnel. The opinion pointed out that such personnel included not only federal employees but also state, county, and municipal employees, and military personnel, who have widely varying financial positions and investment needs and vary greatly in their occupations, incomes, and family responsibilities.

The Commission found that registrant's maximum sales load of 7 $\frac{1}{2}$ %, and the rights given to customers to reinvest dividends of \$3.00 or more at net asset value with a bank charge of 40¢ per transaction and to accumulate shares with payments of \$50 without payment of a bank charge and \$25 with a 25¢ bank charge, "are not significantly more favorable, and in some respects are less favorable, than the terms available in other mutual funds." The Commission further found that a booklet proposed to be distributed by the Fund containing information with respect to social security, civil service retirement, group life insurance, and federal wage scales was "hardly the kind of advantage or bene-

fit the name of registrant will imply to prospective investors". As to the inclusion on the Board of former high government officials, the opinion stated that they "do not appear to have any investment or financial experience which would qualify them as investment managers and registrant's investment policy and the selection of investments will be handled by the investment adviser". The Fund's announced policy to invest entirely in common stocks, the Commission pointed out, is no different from that followed by a number of other mutual funds.

With respect to the implication of Federal sponsorship or approval, the Commission was of the opinion that the word "Governmental" in the name would carry an implication to government personnel of at least approval of the company and its securities by the United States, and that the word "Personnel" in association with the word "Governmental" has an official flavor which would contribute to such implication. The Commission noted that the Federal Government's increasing interest and participation in projects for the welfare of its employees such as group life insurance would further contribute to the misleading effect of the name. It held that neither the word "Private" in the name nor statements denying governmental approval or sponsorship in the prospectus and in the eligibility certificate a purchaser would have to sign, cured the misleading implication of government approval.

The Commission denied a request of Government Personnel Mutual Life Insurance Company for a ruling that the name of the Fund would result in confusion with its own name. The Commission held that while its name and the name of the Fund contain the same reference to government personnel, "there is no such likelihood of confusion between them as to render registrant's name deceptive or misleading . . . especially in view of the difference between the life insurance business of GPM and registrant's mutual fund activities".

Commissioner James C. Sargent, in a concurring opinion, expressed agreement with the views and conclusions of the majority except that in his view the name of the Fund does not imply sponsorship or approval by the United States.

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Securities Exchange Act Release No. 5443

The Securities and Exchange Commission today announced the issuance of two orders under Section 19(a)(4) of the Securities Exchange Act of 1934 summarily suspending trading in the capital stocks of Great Sweet Grass Oils Limited and of Kroy Oils Limited, respectively, on the American Stock Exchange for a period of ten days from January 24, 1957 to February 2, 1957, inclusive, and it declared that such action is necessary and appropriate for the protection of investors and to prevent fraudulent, deceptive or manipulative acts or practices.

The summary suspension orders heretofore entered on January 11, 1957 against trading in the two stocks expire at the close of business January 23, 1957. The result of the new orders is that it will continue to be unlawful under Section 15(c)(2) of the Securities Exchange Act of 1934 and the Commission's Rule X-15C2-2 thereunder for any broker or dealer to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, such securities otherwise than on a national securities exchange.

The Commission's action was taken because the questions raised in the Commission's orders and notices of hearings under Section 19(a)(2) of the Act as to alleged false statements in reports filed by both companies with the Commission have not been resolved. The Commission ordered the hearings in the two cases consolidated in order to expedite a final determination, and the consolidated hearing is still in progress.

Under these conditions, the Commission is of the opinion that it would be impossible for the investing public to reach an informed judgment at this time as to the value of the companies' securities, or for trading in such securities to be conducted in an orderly and equitable manner.

In light of the foregoing and other factors, the Commission is of the opinion that the public interest requires the summary suspension of trading in such securities on the American Stock Exchange and that such action is necessary and appropriate for the protection of investors and is necessary in order to prevent fraudulent, deceptive or manipulative acts or practices under the Act.

Holding Company Act Release No. 13369

Ohio Edison Company (Akron) has received SEC authorization to issue and sell 580,613 additional shares of its Common Stock, to be offered for subscription by common stockholders of record on January 31, 1957 on the basis of one new share for each ten shares then held. The company will determine the subscription price, and will invite competitive bids for the underwriting of the offering. Net proceeds, together with cash on hand and to be derived from operations, will be used for the company's 1957 construction program, estimated at \$54,944,000, and for an additional \$2,100,000 investment in the common stock of its subsidiary, Pennsylvania Power Company.

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Transition Metals & Chemicals, Inc., Wallkill, N. Y., filed a registration statement (File 2-13031) with the SEC on January 22, 1957, seeking registration of 1,615,500 shares of its Common Stock, of which 250,000 shares are to be offered under this financing proposal and (2) 1,126,500 Common Stock Purchase Warrants, of which 250,000 warrants are to be offered.

The company proposes to sell the 250,000 common shares and 250,000 warrants for sale in units of one common share and one warrant at an offering price of \$2.01 per unit. Each warrant will entitle the holder to purchase one share of common stock at \$2 per share at any time before 3:00 P. M. on February 28, 1959. The

prospectus names M. S. Gerber, Inc., of New York as underwriter. The underwriter will offer the securities as agent for the issuer on a best efforts basis, and will receive a selling commission of 35¢ per unit. The issuer has agreed to pay up to \$20,000 of the expenses of the underwriter; and it has further agreed to sell to the issuer, or its designees, at the price of 1¢ per warrant, 4 warrants for each 5 shares sold in this offering. Jean A. Lamoureaux and Clarence F. Hiskey, promoters, officers and directors of the issuer, have heretofore sold to Morris S. Gerber, president of the underwriter, a total of 87,500 warrants at 1¢ per warrant, and 87,500 shares at 1¢ per share, which shares he has agreed to hold for investment. Of the 1,126,500 warrants, 676,500 are presently outstanding.

Organized under Delaware law on February 23, 1956, the company's plant and executive offices are located at Wallkill. It has no operating history, but proposes to engage in the production of columbium and tantalum alloys, chemicals and metals, and in the manufacture of powders and chips of magnesium and magnesium alloys. At the present time its plant is being set up for the production of ferrotantalum-columbium and ferrocolumbium, master alloys used by the stainless steel and other industries. Net proceeds of the present financing, estimated at \$415,000 if all the securities now to be offered are sold, will be used as follows: \$75,000 for inventory of columbite ores; \$85,000 for construction of beneficiation plant; \$20,000 for buildings and installation of facilities for Magnesium division, \$100,000 for equipment for production of high purity columbium-tantalum products, and \$94,500 as working capital.

The company now has outstanding 676,500 common shares and a like number of warrants. A total of 487,500 shares were issued to officers, directors and promoters for patents, processes and good will. An additional 189,000 shares and warrants were sold to fourteen other persons at a price of \$1 per share and 1¢ per warrant. If all the 250,000 common shares and warrants are sold, the investing public will have contributed \$502,500 to the enterprise and will own approximately 27% of the shares and 22% of the warrants then to be outstanding; while the promoters, officers, directors and underwriter and others associated with the management will own approximately 73% of the shares and 78% of the warrants for a cash contribution of \$190,890 plus the patents, process and other assets of indeterminable value.

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