

PLEASE RETURN TO JOHN B. MORRIS, ROOM 307 NORTH

MEMORANDUM

October 18, 1954

To: THE COMMISSION

From: DIVISION OF CORPORATE REGULATION

Subject: AMPAL-AMERICAN ISRAEL CORPORATION  
Considerations as to whether proceedings should be instituted to terminate the exemption from all provisions of the Investment Company Act heretofore granted to Ampal-American Israel Corporation pursuant to Section 6(c) of the Investment Company Act of 1940.

File No.: 812-400-3

Ampal-American Israel Corporation ("Ampal"), which by the Commission's order dated January 6, 1947,<sup>1</sup> has been exempted from all the provisions of the Investment Company Act pursuant to Section 6(c) thereof, has pending before the Commission a registration statement filed pursuant to The Securities Act of 1933 with respect to \$10,009,771 aggregate principal of debentures. In view of the time that has elapsed since Ampal was exempted, the size of the proposed public offering and the provisions of Section 38(a) of the Act conferring upon the Commission the authority to rescind its order,<sup>2</sup> it seems desirable to determine whether action should be taken to

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<sup>1</sup> Ampal-American Palestine Trading Corporation, 25 S.E.C. 24. The name of the corporation has been changed to Ampal-American Israel Corporation.

<sup>2</sup> Section 38(a) provides in pertinent part as follows: "The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the powers conferred upon the Commission elsewhere in this title..."

rescind the exemption before the company's 1933 registration statement becomes effective.

The question presented is whether as a result of changed circumstances the Commission should now find it necessary or appropriate to exercise the powers conferred on it by the Act with respect to Ampal. This issue should be determined with reference to the policy and provisions of the Act. Resolution of this problem involves consideration of the purposes of Ampal, its capital structure and the public interest therein at the time exemption was granted and as of the present time. These matters are discussed below.

Ampal was incorporated under the Stock Corporation Law of the State of New York in February, 1942. At the time the Commission exempted Ampal, it found that the apparent purpose of Ampal was to develop trading between the United States and Palestine (now Israel) and generally to assist in Israel's economic development. Instead of doing this by making direct investments in Israel enterprise, Ampal, up to that time, had been advancing funds to other organizations seeking to achieve the same ends. As of July 31, 1945, Ampal had total assets of about \$1,196,000. Of this amount about \$1,113,000 was represented by note obligations of three domestic charitable organizations, each of which had the purpose of aiding Israel.

At about the time it was exempted, Ampal had outstanding 16 shares of common stock with a par value of \$50 a share and 306,473 shares of 4% cumulative non-voting preferred stock with a par value of \$5 a share.<sup>1</sup>

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<sup>1</sup> Part payment had also been made on 6,025 additional shares.

Of the 16 shares of common stock outstanding, one share was held by each of Ampal's eight directors and the remaining eight were held by Workers' Bank, Ltd. of Tel-aviv, Israel. In January, 1947, when the exemption was granted, Ampal had about 3,900 preferred stockholders.

Total assets at January 31, 1947, amounted to \$1,992,784.

At January 31, 1947, Ampal's preferred stock and common stock equity represented, respectively, 96.33% and 3.67% of total capitalization and surplus. For the 12 months ended January 31, 1947, Ampal's gross income amounted to \$55,959, which was equivalent to 9.42 times interest on debt (virtually all of which was bank debt) and to .84 times interest and preferred dividend requirements.

In concluding that Ampal should be exempted pursuant to Section 6(c) because of its nature and purpose the Commission said:<sup>1</sup>

“Its [Ampal's] activities, although somewhat similar in form, are in substance different from the normal investment company business. It was designed to appeal particularly to those interested in the Zionist Movement or in the economic development of Palestine rather than to those primarily interested in making investments in the securities of concerns from which a profitable return may be expected.8/”

“8/ Prospective investors were informed in the prospectus used in offering 400,000 4% Cumulative Preferred Non-Voting Shares:

“ ‘ In considering investments the directors have two objectives in mind; first, the security of the corporation's funds and a reasonable return on its capital; and secondly, the maximum benefit which the corporation can render to the economic development of Palestine.

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<sup>1</sup> Ampal-American Palestine Trading Corporation, 25 S.E.C. 24, cited supra note 1.

“ ‘ The corporation has not in the past been able to pay a full dividend, and there is no assurance that the corporation will be able to pay the 4% dividend rate on the preferred stock outstanding and to be outstanding.’ ”

Ampal's outstanding capital stock as of July 31, 1954, consisted of 191 shares of \$50 par value voting common stock, 45,457 shares of \$10 par value Class A voting common stock, and 600,000 shares of 4% cumulative, convertible, non-voting preferred stock with a par value of \$5 a share. As of September 8, 1954, dividend arrears on the preferred stock amounted to \$65,395, or a little less than the requirements for six months.

Ampal also had outstanding as of July 31, 1954, \$11,298,000 principal amount of long term debt consisting of debentures in three series.

All of the Class A common stock is owned or controlled by the General Cooperative Association of Jewish Labor in Palestine and one of its subsidiaries. The Workers' Bank, Ltd. of Tel-aviv. The preferred stock is publicly owned except for 2.9% owned by Ampal's officers and directors. At September 30, 1954, Ampal had 6,640 preferred stockholders and 4,249 holders of debentures. About 35% of the debenture holders also hold preferred stock. Therefore, the total number of holders of Ampal's senior securities is now about 9,400.

The total assets of Ampal at July 31, 1954, amounted to about \$25,739,000. The company's principal assets consist of equity securities of affiliates carried at \$1,026,000 and debt securities of about \$21,000,000. Included in the latter amount are the following debt obligations: \$10,895,819 of the Treasury of Israel; \$1,101,108 of the Workers' Bank, Ltd. (a parent of Ampal); \$3,637,228 of the National

Committee for Labor Israel, a New York membership corporation which solicits financial support in the United States for Israel business and social institutions; and \$3,303,400 of Jewish Agency, Inc.

The proportions of Ampal's capitalization and surplus represented by the various segments of its capital structure per books at July 31, 1954 are as follows: Long-term debt – 73.66%; Preferred stock – 19.55%; Common stock and surplus 6.79%. At such date the total of long-term debt and preferred stock represented 93.21% of capitalization and surplus. If Ampal's capitalization and surplus at July 31, 1954 is adjusted to reflect the issuance of \$10,009,771 of additional debt, the latter ratio is increased to 95.90%.

For the 12 months ended January 31, 1952, Ampal's gross income amounted to \$987,224. Such gross income covered interest charges 1.47 times, fixed charges 1.33 times and fixed charges and preferred dividend requirements 1.14 times.

According to the prospectus regarding the proposed additional debentures now in the process of registration, the original purpose of Ampal to develop Israel has not been changed. The method of accomplishing this has been changed somewhat in that Ampal now makes direct investments in Israel enterprises in addition to making indirect investments by advancing funds to other organizations which invest in Israel enterprises.

Staff Comment

If Ampal were a registered investment company it would not be able to issue any part of the proposed \$10,009,771 of debentures because of the provisions of

Section 18(a)(1)(A) of the Act.<sup>1</sup> Registration of the company might interfere with its method of operations because its present practice of entering into transactions with affiliates would be subject to the prohibitions of Section 17(a) of the Act.

As heretofore stated, Section 38(a) authorizes the Commission to rescind such orders “as are necessary or appropriate to the exercise of the powers conferred upon the Commission....” by the Act.

Based on the foregoing discussion, it is apparent that the public interest in the company has been enlarged in both dollar amount and in number of participating senior security holders since the Commission’s exemptive order was issued in 1947. Such discussion shows that since the order was issued, the coverage of total fixed charges and preferred dividend requirements has improved somewhat, although the capital structure now, as before, remains over-burdened with senior securities and the preferred stock has been made subject to excessive debt since 1947. Consequently, the coverage of fixed charges and of total fixed charges and preferred dividend requirements is exceedingly thin. This is particularly significant because of the character of Ampal’s foreign investments.

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<sup>1</sup> Section 18(a)(1)(A) of the Act prohibits any registered closed-end investment company from issuing any senior debt security unless after such issuance the company’s senior debt securities have asset coverage of 300%.

It appears that control was inequitably distributed in 1947 and that this condition still exists despite the increase in the company's assets from about \$2,000,000 to approximately \$26,000,000.<sup>1</sup>

Although the Commission in 1947 stated that the company "...was not of a type contemplated for regulation...", the subsequent rapid growth of the company and the consequent increase in public investor interest in it, and the proposal to register and sell an additional \$10,000,000 of debt, raise a serious question as to whether it is necessary or appropriate to revoke the exemption so as to enable the Commission to exercise its regulatory powers as to Ampal. This question is also raised by Ampal's practice since its inception to enter into transactions with affiliates and controlling persons of the type contemplated by the prohibitions of Section 17(a) and 21(b). While the Commission's exemption anticipated the continuance of this practice, the increase in the amounts involved may be such a change of circumstances as to warrant the Commission's examination of future transactions of this type.

#### Staff Recommendation

It is recommended that the staff be authorized to inform the company that proceedings will be instituted by the Commission to determine whether the Section 6(c) exemption of Ampal should be revoked if it goes forward with the proposed sale of debentures. However, if Ampal withdraws the registration of the debentures the staff recommends that no action be taken to revoke the exemption.

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10/18/54

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<sup>1</sup> Section 1(b)(4) of the Act declares an inequitable distribution of control to be an evil adversely affecting the public interest and the interest of investors.