

MEMORANDUM

July 30, 1959

To: Byron D. Woodside, Director
Division of Corporation Finance

From: Eugene H. Rotberg and
Frederick Moss, Attorneys
Division of Corporation Finance

Re: Market Study: Registered Issues

A preliminary investigation of recent market activity in newly issued securities registered under the Securities Act of 1933 has recently been completed.

Generally speaking, the study related to offerings of securities which had no available market prior to their public offering within the past six months. It appears that over one-third of such offerings indicated substantial price rises within the first twenty-four hours after the registration statement became effective. As the attached chart shows, increases of 150 percent to 200 percent on the first day of trading were not uncommon. Most of the new offerings were the so-called glamour stocks and were underwritten by a variety of underwriters.

Ten striking examples of significant price rises immediately after or at the time of the initial public offering follow:

| Filing | Effective | Underwriter | First Day | | Current | |
|---------------------|----------------|------------------------|-----------|---------|---------|---------|
| | Data & Price | | Bid | Ask | Bid | Ask |
| Silicon Transistors | :1/9 - \$3 | :Dealers | :6 3/4 | :7 3/8 | :9 3/8 | :9 7/8 |
| Glass-Tite | :3/13 - \$3 | :Stanley Heller | :6 | :6 3/4 | :17 3/4 | :18 1/4 |
| F X R | :3/26 - \$12 | :Unterberg, Towbin Co. | :18 1/2 | :19 | :31 1/2 | :32 1/2 |
| Dynacolor | :4/22 - \$8.75 | :Lea Higginson Corp. | :14 | :14 1/2 | :25 | :27 |

(continued)

| Filing | Effective | Underwriter | First Day | | Current | |
|----------------------|----------------|-----------------|-----------|---------|---------|---------|
| | Data & Price | | Bid | Ask | Bid | Ask |
| Loral Electronics | :5/7 - \$12 | :Kidder-Peabody | :19 | :19 1/4 | :22 1/2 | :22 3/4 |
| Avnet Electronics | :6/1 - \$5.75 | :Kletz; Treat | :11 1/2 | :12 1/2 | :13 1/4 | :14 1/4 |
| De Jur Amsco | :6/3 - \$9 | :Byllsby | :14 1/4 | :14 3/4 | :13 5/8 | :14 |
| Pyrometer Corp. | :6/4 - \$3 | :Malkan | :6 | :6 1/4 | :5 3/4 | :6 |
| Accurate Specialties | :6/25 - \$2.50 | :Blauner | :6 3/4 | :7 | :5 3/4 | :6 |
| Telemeter Magnetic | :7/1 - \$5.50 | :Lehman Bros. | :10 1/2 | :10 3/4 | :15 3/4 | :16 1/2 |

In addition to the foregoing, three offerings became effective within the last ten days and immediately rose in price.

On July 21, the registration statement of Trans Sonics, Inc. became effective with Kidder-Peabody named as underwriter; the offering price was \$12.50 per share. The first quotations noted in the pink sheets appeared on the effective date as 16 1/2 bid; 17 1/2 asked.

On July 20, the registration statement of Reheis Company, Inc. became effective for an offering of securities at \$5 per share with Aetna Securities named as underwriter. On July 23, the first day quotations were noted in the pink sheets, shares were offered at 9 1/4 bid; 9 3/4 asked.

On July 30, the registration statement for Hexcel Products, Inc. became effective for an offering of securities at \$17.50 per share, with F.S. Smithers & Co. named as underwriters. Less than three hours later the shares were offered at 24 1/2 bid; 27 1/2 asked.

Possible Manipulative Techniques

If in some instances manipulative techniques have been employed to create immediate substantial price increases, through means designed to dry up the available supply of securities offered and/or to permit the underwriter to retain control of the distribution for a given period, the Commission should be informed from the point of view of information generally. Further, if methods of distribution are being followed which reflect upon the adequacy and accuracy of the prospectus' disclosures, as to the proposed offering and price, there should be modifications in our handling of the current filings.

It is possible that a number of different techniques might be employed designed to create or to profit by a price rise. For example:

Hold Back

This is a device whereby the underwriter and dealers hold back the securities prior to and immediately after the effective date. They tell prospective purchasers that no stock is available, that it is all committed or sold, when in fact the distribution has not been completed.

Preferred Subscribers List

Coupled with, or instead of, the hold back, the underwriter may commit all of the shares to be offered to a small list of selected customers. It is possible that the preferred list may include partners of the underwriting firm (or their nominees), insiders or persons connected with the issuer, or other persons who stand to profit by a quick turn and who in fact may be regarded as performing an underwriter's function.

Free Riding

This practice may be a factor in some of the issues and if so a disclosure problem is presented as well as a violation of NASD rules and the 34 Act.

Various combinations of the foregoing techniques as well as others may be employed by underwriters and dealers to stimulate public appetite and create a quick rise in price.

Some of these situations, of course, may not involve any violation of federal securities laws and the rules and regulations promulgated thereunder. In some cases it may be that the underwriter has merely misjudged the market in pricing the issue.

Possible Courses of Investigation

It is our thought that at this point there are three problems which must be considered. First, it must be determined from whom to obtain evidence in order to ascertain what actually happens; secondly, the investigatory vehicle to be used to obtain such evidence must be determined; and thirdly, which issues, if any, should be used as guinea pigs.

Possible Sources of Evidence

Examination of the underwriters for the issues selected for review is indicated; they should be required to produce the records relating to distribution of the new issue immediately after the registration statement becomes effective. Thereafter, if the circumstances warrant, it might be advisable to interview the initial distributees of the new issue to determine exactly when agreements to purchase the shares were made, the nature of such agreements, who were the beneficial owners of the stock purchased, who paid for the stock, and to whom and when the shares were subsequently sold. In this connection, it would seem more fruitful to limit the investigation to examination of the "purchasers" of large blocks of the new offering. In addition, an examination could be made of the records of all broker-dealers making the market during the two-day period immediately following the clearance of the registration statement in order to determine their holdings in the subject securities.

Procedural Devices

It would appear that an inquiry could be conducted under Section 20(a) of the Securities Act and Section 21 of the Exchange Act. At this juncture it does not seem appropriate to institute any public proceedings, particularly since we are only hypothesizing as to the techniques employed which indeed may, in certain circumstances, not even be in contravention of the Act or rules thereunder.

Hearings under Sections 8(e) and 8(d) would appear to be inappropriate unless it should appear that the prospectus' disclosures were inadequate or misleading.

Classes of Cases Available for Investigation

The cases can be divided into three categories:

- (a) those which have cleared during the past six months;
- (b) those which have cleared during the past week; and
- (c) those which have been filed but not yet cleared.

With respect to Class (a), the older cases, there would be an advantage in having a larger number of cases from which to choose for investigatory purposes. In addition, since several months have passed, the various patterns developed in the distribution and trading will be more easily recognizable in retrospect. The books and records, too, in the older cases, might be in better condition for examination than in the newer cases, since checks have cleared and entries as to the distributions have been recorded.

With respect to the newer cases, Class (b), if the facts justified proceedings against the registrant, we could move promptly for a stop order proceeding or an injunction.

With respect to pending cases which have not yet become effective, the staff might inquire in selected cases as to the nature of any understandings, contracts or commitments and/or the proposed mode of distribution to be employed in the initial distribution including the names and addresses of participants in the proposed offering.

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