

Section 16 of Exchange Act

John -
I thought you'd be interested
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MEMORANDUM

To: John Fedders
From: Dan Goelzer *Dan G*
Re: "Failure to File Timely Forms 4 Statements of Changes in Beneficial Ownership," draft memo, dated February 2, 1984

I have reviewed the draft Form 4 memo. I concur in the proposed recommendation. I agree that it is appropriate to bring a series of enforcement actions demonstrating that we take the Form 4 filing requirement seriously and that the criteria suggested in your memo -- delinquency on at least five occasions or delinquency plus short swing profits are appropriate.

I have the following comments:

1. In its present format, it is somewhat difficult to readily grasp why particular people are to be included as defendants and others excluded. I would suggest that the chart specifically indicate which reporting persons are proposed defendants. In addition, it would be helpful if some comment about the reasons for naming or not naming each reporting person were furnished. I would assume, for example, looking only at the first page of the chart, such comments would run something like this:
 - (1) Jacobs, Bernard not to be named as a defendant -- fewer than five delinquencies.
 - (2) Chemical Bank not to be named as a defendant -- Rule 16a-8 exemption claimed.
 - (3) Sallie Russell not to be named as a defendant -- Rule 16a-9 exemption apparently applies; aggregate amount of transactions less than \$10,000.

- (4) Aaron Galvin proposed defendant -- five delinquencies; aggregate amount of transactions exceeds \$200,000; no apparent exemption.
- (5) Life Investors, Inc. -- not a proposed defendant -- fewer than five delinquencies.
- (6) Robert R. Buckmaster proposed defendant -- more than five delinquencies; aggregate amount of transactions exceeds \$1.3 million; exemption available for only one transaction.

In addition, it would be useful, where possible, to identify the proposed defendant. For example, who is proposed defendant Aaron Galvin. Is he the CEO of American District Telegraph Company or the fifth vice president in charge of floor mops?

2. As footnote 8 indirectly acknowledges, these proposed enforcement actions ironically focuses on those who are stupid or careless, but not dishonest. Those who are truly dishonest or grossly careless would never have filed their Form 4s and thus would have escaped inclusion in our action. Indeed, it might be said that this proposed enforcement action encourages those who know they are late in their filing to never file at all. Presumably, this is the opposite of the result we would desire. If it would be at all possible to identify some persons who totally failed to file Form 4s until the Commission brought the matter to their attention that would, I think, serve to make the Form 4 program more balanced. I appreciate this may be extremely difficult.
3. While I have done no research, it is difficult for me to see how FRCP 20(a) would permit these persons to be joined as defendants in one action. But why would we want to do so? It would seem to me that, if they are joined in one action, there may be some press reaction that the Commission has gathered together alot of the technical violations and proceeded against them all at once. From purely a public relations/deterrence standpoint, wouldn't it be more effective to file 34 separate actions, three or four at a time, over nine or ten consecutive business days. By the

time days three or four rolled around, the press would be in a veritable frenzy to learn who would be named in the actions filed the following day. Drama aside, it does seem to me that 34 separate actions, not all filed on the same day, would give the impression a more credible and ongoing Form 4 enforcement program.

4. I have to admit, it runs somewhat against the grain to take any type of action which Ralph Nador will likely trumpet as resulting from his efforts. Unfortunately, I suppose this is unavoidable.

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I hope the foregoing is helpful. If there is anything further you would like from me on this, please let me know.

cc: L. Quinn
W. Wood
T. Levine
B. Hiler
L. Mendelson