

(Securities Exchange Act Release No. 5706)

SECURITIES AND EXCHANGE COMMISSION  
Washington, D. C.  
June 2, 1958

In the Matter of

BELLANCA CORPORATION  
21-29 Nottingham Way  
Trenton, New Jersey

(File No. 1-2115)

(Securities Exchange Act of 1934 -- Section 19(a)(2))

FINDINGS AND OPINION OF THE COMMISSION

REGISTRATION OF SECURITIES ON NATIONAL SECURITIES EXCHANGE

Grounds for Withdrawal of Registration

Failure to File Reports  
Misstatements and Omissions in Reports and Preliminary Proxy Material  
Protection of Investors

Where corporation whose stock is registered on national securities exchange failed to file required reports and filed false, misleading and inadequate reports and preliminary proxy material concerning, among other things, the acquisition and disposition of large blocks of securities, financing and other undertakings with respect thereto, the interest in the transactions of the corporation's president and other insiders, the revision of transactions to the disadvantage of the corporation, increases in the amount of the corporation's outstanding stock, the gain reportedly realized on an acquisition of securities in exchange for other securities, the existence of pending bankruptcy reorganization proceedings involving subsidiaries whose securities had been acquired, litigation involving the corporation, and the president's use for his own benefit of securities owned or held by the corporation or a subsidiary; and where corporation filed financial statements which were not certified, held, violations of Sections 13 and 14(a) of Securities Exchange Act of 1934 and rules thereunder. Notwithstanding dissociation from corporation of former president who was principally responsible for corporation's violations of reporting and proxy rules, and notwithstanding representation of corporation that a new and adequate board of directors would be sought, held, protection of investors required withdraw of exchange registration of corporation's stock, where violations had been flagrant and continued after institution of proceedings, existing management of corporation included

persons selected or recommended by former president, record indicated lack of candor and reluctance on part of present chief executive officer of corporation, who had participated in the violations, to disclose facts respecting the transactions involved in the violations, and there was no assurance that an independent management would be elected.

APPEARANCES:

Frederick Moss and Robert H. Kubie, and Daniel J. McCauley, Jr., Associate General Counsel, for the Division of Corporation Finance of the Commission.

Milton S. Gould, of Gallop, Climenko & Gould, and Bernard D. Cahn, for Bellanca Corporation.

Albert B. Kahn, of Kahn, Schildkraut & Levy, for Sidney L. Albert.

Ganson Purcell, of Purcell & Nelson, for Joseph Abrams.

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These are proceedings under Section 19(a) (2) of the Securities Exchange Act of 1934 (“Act”) 1/ to determine whether it is necessary or appropriate for the protection of investors to suspend for a period not exceeding twelve months, or to withdraw, the registration of the common stock of Bellanca Corporation (“Bellanca”) on the American Stock Exchange (“Exchange”), a national securities exchange, for failure to file certain reports and for filing false, misleading and inadequate reports in violation of Section 13 of the Act and the rules thereunder, and for filing false, misleading and inadequate preliminary proxy material in violation of Rule 14a-6 (17 CFR 240.14a-6) adopted under Section 14(a) of the Act. 2/

After appropriate notice, hearings were held before a hearing examiner, during the course of which the parties waived a recommended decision by the hearing examiner and Bellanca consented that our Division of Corporation Finance may assist in the preparation of our decision. Proposed findings and briefs were waived and we heard oral argument, at which Bellanca admitted that it had not complied with our requirements respecting reports but urged that we permit it to retain its Exchange registration. 3/ On the basis of our review of the record we make the following findings.

The Respondent

Bellanca is a Delaware corporation and registered its capital stock on the Exchange in 1935. In February 1955, it was a small manufacturer of aircraft parts and had 229,650 shares of \$1 par value common stock outstanding. At that time, Sydney L. Albert, a buyer and liquidator of failing businesses, acquired over 80% of the stock of Bellanca by transferring to Bellanca the assets of L. Albert & Son, a family firm engaged in the rebuilding and sale of used machinery, in exchange for 1,071,250 shares of stock issued

by Bellanca. Albert became president of Bellanca and his designees became directors, and Albert was responsible for all the transactions discussed below involving Bellanca during 1955 and 1956 which the order instituting these proceedings alleges were not adequately disclosed in Bellanca's reports and preliminary proxy solicitation material filed with us.

Beginning in March 1955 and continuing until June 1956 Bellanca through Albert engaged in a program of acquiring interests in other companies. During this period, Bellanca obtained control of N. O. Nelson Company ("Nelson"), a heating and plumbing supply firm, Waltham Watch Company ("Waltham"), a manufacturer of precision instruments and watches, and Automatic Washer Company ("Automatic"), a manufacturer of washing machines, and acquired large blocks of stock of Glenn Uranium Mines, Ltd. ("Glenn"), a corporation engaged in mineral exploration in Canada, and Selby Shoe Company ("Selby"), a shoe manufacturer.

The market price of Bellanca stock on the Exchange had ranged from 4-3/8 to 8 in the eleven-month period prior to December 1954 when Albert began his negotiations for the acquisition of the Bellanca stock. By July 1955, a few months after the commencement of Bellanca's acquisition program, which was given extensive publicity, the market price had risen to a peak of 30-1/2. In early June 1956, the market price of the stock broke sharply and continued to decline through 1956 to about \$2 per share. During the period from June 1956 to the end of that year some of Bellanca's holdings were liquidated to pay debts to Albert and others. Bellanca's investments in Waltham and Selby and part of Bellanca's real estate, plant and equipment were sold, and Nelson and Automatic became the subject of reorganization proceedings under the Bankruptcy Act.

### Noncompliance with Reporting and Proxy Requirements

#### 1. Acquisition of Nelson

In March 1955, Bellanca entered into a contract with certain stockholders of Nelson and of Joplin Supply Company ("Joplin"), a 54.5%-owned subsidiary of Nelson, for the purchase of 65,421 shares of Nelson stock at \$43.50 per share, upon condition that the selling stockholders would deliver sufficient additional shares to assure that Bellanca would receive not less than 80% of the outstanding Nelson stock, and 910 shares or 45.5% of the outstanding stock of Joplin at \$275 per share. A finder's commission was to be paid in connection with the transaction. The contract fixed the closing date at or before June 1, 1955, and pursuant to the contract Bellanca deposited \$250,000 to guarantee performance. The contract was amended in April and July 1955. The latter amendment extended the closing date to July 29, 1955 because Bellanca was unable to raise the funds to pay for the Nelson and Joplin stock, and a further extension was thereafter obtained upon the deposit of an additional \$250,000.

Bellanca closed its purchase agreement with the Nelson and Joplin shareholders in late August 1955 and acquired approximately 105,600, or 96.89%, of the outstanding Nelson shares and 910 Joplin shares for an aggregate price of approximately \$4,850,000. The

two deposits totaling \$500,000 were applied to the purchase price, and the balance was obtained by Bellanca in substantial part through a loan of \$3,976,090 from The Mastan Company ("Mastan"), a commercial financing firm, in August 1955. The loan was payable on demand although it was understood that it could be repaid in ten monthly installments, and the loan agreement imposed an additional obligation to pay \$500,000 as a premium for the loan. Bellanca thus became indebted to Mastan in the total amount of \$4,476,090, plus 6% interest thereon.

The loan agreement also required the deposit of collateral and guarantees of payment and placed various restrictions on Bellanca's control over Nelson and Joplin while the loan was outstanding. The collateral deposited with Mastan consisted of the stock owned by Bellanca in Nelson, Joplin and Blue Star Airlines, a dormant wholly-owned subsidiary of Bellanca, and 20,000 shares of Bellanca stock held by Joseph Abrams, a business broker who assisted Albert in effecting Bellanca's acquisition program. Payment of the loan was guaranteed by Albert, his wife, L. Albert & Son and Abrams, as well as by Nelson, Joplin and Blue Star Airlines. Albert deposited \$500,000 in cash and 85,000 Bellanca shares as collateral on his guarantee. Abrams' guarantee was limited to \$500,000 of the principal amount of the loan and was to terminate when the loan was reduced by \$2,000,000, and Albert indemnified him against loss.

We find that Bellanca failed to file any current reports disclosing the terms and conditions of the March 1955 contract to acquire Nelson and Joplin stock, the April and July 1955 amendments to that contract, the subsequent further postponement of the closing date upon the payment of an additional deposit, or the fact that a finder's commission was to be paid. We further find that Bellanca's current report for August 1955 was deficient in failing to disclose the terms of the Mastan loan, with its collateral and guarantee requirements and the restrictions on Bellanca activities. <sup>4/</sup> While that report disclosed the acquisition of stock of Nelson and Joplin, it failed to state the amounts paid for Nelson and Joplin stock, the number of shares purchased, and the identity of the sellers.

In addition Bellanca's 1956 annual report, filed with us in April 1957, was deficient in its reporting concerning the finder's commission paid in connection with the acquisition of the Nelson and Joplin stock. In May 1956 Bellanca had transferred to the finder, a person who had in April 1955 become one of its directors, 10,400 shares of Automatic stock then held by it which had a market value at the time of around 7-1/4 per share. A stock-ownership report filed with us in July 1956, a special report to stockholders in October 1956, and the preliminary proxy material filed with us in March and April 1957 all reflected that transfer as a payment of a commission. However, the 1956 annual report to us stated that those shares, the market price of which had dropped to 75¢ per share at the time the report was filed, were collateral for a cash commission due the finder in the amount of \$95,500, of which \$5,500 had been paid to him on account. The 1956 report should have explained the change in the form and amount of the commission from that which had been previously reflected.

Bellanca also did not file any reports disclosing subsequent events relating to the Mastan loan. Bellanca made only two monthly payments on account of the Mastan loan, with the second payment advanced by Albert because Bellanca did not have the cash. In order to refinance the Mastan loan, which would relieve Bellanca of making the high monthly payments required under the loan and release the guarantors of their obligations thereunder, Albert in December 1955 negotiated a loan on behalf of Nelson and Joplin in the amount of \$3,600,000, at 12% interest, from Walter E. Heller Company ("Heller"), another commercial financing firm. The loan was secured by certain Nelson real estate and Nelson and Joplin inventories and accounts receivable and was payable in monthly installments of \$75,000 plus collections on accounts receivable. Bellanca issued six-month notes to Nelson and Joplin for \$3,400,000 and \$200,000, respectively, and Albert personally guaranteed the Nelson and Joplin obligations to Heller. The borrowed funds were delivered directly to Bellanca by Heller, and \$3,212,950 of such funds were used to liquidate the unpaid balance of the Mastan loan. As a result of this refinancing, Mastan was paid a total of \$4,554,540 on an original loan of \$3,976,090 in slightly more than three months; Bellanca became indebted to its subsidiaries, Nelson and Joplin, which in turn became indebted to Heller; the collateral furnished by Albert and Abrams to secure the Mastan loan was returned; and Abrams' guarantee was released.

Bellanca's indebtedness to Nelson was to be paid by having Nelson declare a dividend of \$33 per share and credit \$3,488,958, Bellanca's share of the dividend, to the amount receivable from Bellanca. The dividend was due to be paid on May 8, 1956, but on the preceding day a minority shareholder of Nelson filed suit to enjoin such payment, and payment was withheld pending further investigation.

We find that Bellanca should have filed a current report for December 1955 disclosing the refinancing of the Mastan loan through Heller, and a current report for May 1956 to disclose the Nelson stockholder suit.

## 2. Sale of Nelson Stock to Automatic

On December 23, 1955, agreements were made among Bellanca, Automatic and Albert whereby Automatic was to issue 1,255,000 shares of its stock for all of Bellanca's shares of Nelson stock. The Automatic stock was to be issued in two blocks, 305,000 shares to Albert in consideration for a promissory note in the amount of \$1,525,000, and the remaining 950,000 shares to Bellanca. In addition, the note to be received by Automatic was to be turned over to Bellanca as partial consideration for the Nelson stock. The note was executed by Albert on behalf of Bellanca and was made payable to Albert, purportedly to reimburse him for loans to Bellanca in connection with its acquisition of Nelson stock, although the record shows that Bellanca's net indebtedness to Albert at the time he executed the note was slightly under \$1,000,000 and the note was never recorded on Bellanca's books. At the time of the December 23 agreements, Albert not only controlled Bellanca but also was in a controlling position with respect to Automatic. 5/

Between December 23, 1955, and the closing of the Bellanca-Automatic agreement on April 6, 1956, the terms of the December 23 agreements were modified with respect to

the assets to be exchanged. The 950,000 shares to be issued by Automatic for the Nelson stock were reduced by 262,500 shares, and Bellanca agreed to deliver 100,000 shares of its own stock to Automatic for those 262,500 shares. 6/ The amount of the Bellanca note to Albert which Automatic was to transfer to Bellanca was reduced to \$1,220,000, 7/ and Albert delivered to Automatic his personal note in that amount but the original note was not returned to him. 8/ For a period of time until April 1956, Bellanca and Automatic regarded the amount of the consideration passing from Albert to Automatic to Bellanca to be \$1,220,000.

Subsequent to April 6, 1956, Albert advised Bellanca's treasurer, Arthur K. Rothschild, that the \$1,220,000 note was reduced to \$915,000, despite the fact that Albert had received all the 305,000 shares of Automatic stock by that date. The consideration received by Bellanca for the Nelson shares, as recorded on Bellanca's books, included the amount of \$915,000, which was reflected by an entry reducing Bellanca's indebtedness to Albert by that amount, rather than \$1,220,000. 9/ The two successive reductions in the amount of the consideration for the 305,000 Automatic shares acquired by Albert, which resulted in a debit to Bellanca's account payable to Albert of \$915,000 instead of \$1,220,000 or \$1,525,000, represented a decrease in the consideration Bellanca was to receive for its Nelson shares and a corresponding decrease in the cost to Albert for the 305,000 Automatic shares.

Bellanca recorded its investment in the 950,000 Automatic shares, less 50,000 shares transferred as a finder's commission to a company controlled by Abrams, 10/ on the basis of the market price of 7-5/8 on March 19, 1956 for 637,500 shares and of \$8 per share on April 4, 1956, for 262,500 shares. 11/ The Automatic shares held by Bellanca as of December 31, 1956, which had been further reduced by almost 50,000 shares by sales or other dispositions, were carried at \$5,863,465, or an average price of approximately 7-3/4, on Bellanca's balance sheet as of December 31, 1956 which was submitted with Bellanca's preliminary proxy material and its 1956 annual report filed with us.

The carrying value recorded for the Automatic shares on the December 31, 1956 balance sheet was substantially higher than the market price at the time of the December 1955 contract and on December 31, 1956. It was clear that the value of Bellanca's investment in the Automatic shares was permanently impaired. Not only had there been a drastic decline in the market price of such shares commencing in May 1956 and a note to the financial statements themselves referred to the fact that the market prices of Automatic stock on December 31, 1956 and on March 22, 1957, the Bellanca audit date, were 75¢ and \$1 per share, respectively -- but at December 31, 1956 Automatic and its principal subsidiary, Nelson, were the subject of reorganization proceedings under the Bankruptcy Act. In addition, the carrying value of the Automatic shares in the December 31, 1956 balance sheet filed with the preliminary proxy material exceeded the amount of Bellanca's net investment in the Nelson shares for which the Automatic shares were exchanged by \$3,971,325. That figure was shown as a gain in the statement of operations for 1956, while Albert's letter in the preliminary proxy material described that gain as a "gross book profit of over \$4,000,000."

We find that Bellanca's balance sheet and statement of operations as of December 31, 1956, were misleading because the carrying value presented with respect to Bellanca's investment in Automatic was excessive and resulted in an overstatement of the assets and an understatement of the deficit shown in the balance sheet. When Bellanca's 1956 annual report was filed with us in June 1957, an adjustment was made in the financial statements therein, following a conference with our representatives, reducing the carrying value of the Automatic shares by \$3,971,325. This adjustment eliminated the claimed profit on the Bellanca-Automatic transaction, although it did not take into account the loss resulting from the permanent impairment of Bellanca's investment in Automatic as of December 31, 1956.

The certified public accounting firm which conducted an audit of Bellanca's books for the year ending December 31, 1956 stated in its letter attached to the financial statements in the preliminary proxy material that it was unable to express an overall opinion of such statements because of the high proportion of assets represented by items that were then the subject of litigation and the possible effect of such litigation on operations. In addition to the reorganization proceedings involving Automatic and Nelson, there were pending the action by a Nelson stockholder to enjoin the payment of a dividend by Nelson and litigation between Bellanca and Bankers Life & Casualty Co. ("Bankers Life") concerning a contract for the sale by Bellanca of its Automatic shares to that company, which is discussed below. After the adjustment eliminating the profit on the sale of the Nelson stock from the financial statements in the 1956 annual report, the accounting firm issued a revised letter which recited that the financial statements other than the balance sheet complied with generally accepted accounting principles but that no opinion could be expressed with respect to the balance sheet, which still reflected items in litigation.

We find that Bellanca should have filed a current report for December 1955 disclosing the agreements entered into that month providing for the exchange by Bellanca of its Nelson shares for 950,000 Automatic shares and a note in the amount of \$1,525,000 and for Albert's acquisition of 305,000 Automatic shares, the amount of the finders' commissions to be paid and the identity of such finders, and Albert's controlling position in Automatic. In addition, Bellanca should have submitted financial statements of Automatic as well as a copy of the December 23 agreement between Bellanca and Automatic.

Bellanca should also have filed current reports in the early months of 1956 to disclose the reductions in the amount of the note consideration to be received by Bellanca for the Nelson shares from \$1,525,000 to \$1,220,000 and then to \$915,000, as well as the additional consideration of 100,000 Bellanca shares passing from Bellanca to Automatic. In addition current reports for July and October 1956 should have been filed to disclose the commencement of the bankruptcy reorganization proceedings.

The current report filed by Bellanca for April 1956 reported the exchange of the Nelson shares for 687,500 Automatic shares and a note for \$915,000, but failed to disclose the agreements pertaining to the exchange or Albert's controlling position in Automatic and

his interest in the transactions, and also failed to include copies of the December 23 agreement between Bellanca and Automatic and the amendments thereto or financial statements of Automatic. Further, this report was misleading in that it reported the issuance of 100,000 Bellanca shares in exchange for 262,500 Automatic shares as an independent transaction without disclosing that the Bellanca shares represented additional consideration for the total of 950,000 Automatic shares specified in the December 23 agreements.

Bellanca's preliminary proxy material, filed in March and April 1957, contained similar misleading and inadequate disclosures with respect to the Bellanca-Automatic transaction, except that Albert's controlling position in Automatic was disclosed. In addition, as shown above, the preliminary proxy material was misleading in stating that a gross book profit of over \$4,000,000 resulted from the Bellanca-Automatic transaction, and the financial statements submitted with that material were misleading in reflecting a gain of \$3,971,325 on that transaction, in view of the impairment of the value of Bellanca's investment in Automatic shares evidenced by the market decline which occurred commencing in May 1956 and the institution of the Nelson and Automatic reorganization proceedings.

Bellanca's 1956 annual report contained deficiencies similar to those contained in the current report for April 1956. It stated that 687,500 shares of Automatic stock were received by Bellanca and that Bellanca issued 100,000 shares of its stock for 262,500 Automatic shares as a separate transaction. This statement was misleading in failing to disclose Bellanca's transfer as a finder's commission of 50,000 of the Automatic shares received by it and the fact that the 100,000 Bellanca shares constituted additional consideration for the 950,000 Automatic shares specified in the December 23 agreement, and in failing to describe Albert's interest in the various transactions.

We further find that the financial statements submitted with the annual report overstated Bellanca's assets by failing to give full recognition to the impairment of its investment in Automatic, and were not certified in accordance with our form and our Regulation S-X because the accountant's letters accompanying the financial statements did not under the circumstances constitute compliance with the certification requirements thereof.

### 3. Sale of Automatic Shares to Bankers Life

In May 1956, Bellanca contracted with Bankers Life to deliver to the latter 1,112,500 shares of Automatic stock on August 8, 1956 in exchange for certain hotel and oil and gas properties, valued in the contract at \$8,900,000. Bellanca did not itself own the full number of Automatic shares specified in the contract and expected to buy the needed balance from Albert personally and from Pierce Governor Company, Inc. ("Pierce"), a company controlled by Albert. Bellanca deposited 500,000 shares of Automatic stock with Bankers Life when the agreement was executed, but was unable to supply the remaining shares on August 8, 1956. Bankers Life claimed that Bellanca was in default and that it was entitled to retain the 500,000 shares of Automatic stock deposited with it, and in September 1956 it instituted an action to establish its ownership of those shares.



In March 1957 Bellanca filed a counter-claim for specific performance of the May 1956 agreement and for damages.

We find that Bellanca should have filed current reports for May and September 1956 to disclose the terms of its agreement with Bankers Life and the nature of the legal proceedings which followed.

#### 4. Waltham Transactions

In August 1955 Bellanca agreed with Waltham's two principal stockholders to acquire from them 322,700 shares, or about 16%, of Waltham stock in exchange for 29,337 shares of Bellanca stock and to offer Bellanca shares, at their market price at the time of the offer, to the remaining Waltham stockholders in exchange for Waltham shares at a price of \$1.87-1/2 per share. Such offer was subject to Bellanca's securing within a stated period registration of such Bellanca stock under the Securities Act of 1933 and the listing of that stock on the Exchange. The two principal Waltham stockholders agreed to deliver to Bellanca the resignations of a majority of Waltham's directors, whose places were to be filled by Bellanca's designees. This agreement was amended in October 1955 to provide that the 322,700 Waltham shares be sold to Bellanca for \$586,740, and that Bellanca for a certain period may offer cash instead of Bellanca stock for the Waltham shares held by the remaining stockholders.

Bellanca paid for the Waltham shares purchased from the two principal Waltham stockholders with the proceeds of a bank loan secured by such shares and other securities, valued at approximately \$100,000, which were personally pledged by Abrams. It does not appear whether Bellanca made an offer to the remaining Waltham stockholders, but it is clear that it did not acquire any of the additional Waltham shares.

Bellanca's current report for August 1955 referred to the August agreement but was misleading in stating that it was "contemplated" that Bellanca shall offer to purchase the Waltham stock of the remaining stockholders, when in fact it was obligated to make such offer, and in failing to state that Bellanca's potential obligation to such stockholders was \$3,132,337 in Bellanca stock. The October 1955 report referred to the October amendment to the August agreement but failed to disclose the obligation to offer to purchase the remaining Waltham shares as well as the pledge of the Waltham shares and the Abrams stock to secure the bank loan. That report was also misleading in stating that the Waltham shares were purchased "for cash", when in fact Bellanca financed the purchase by a bank borrowing secured by a pledge of the shares.

In March 1956, Bellanca entered into a contract with Pierce under which Bellanca agreed to exchange its Waltham shares for Pierce stock on the basis of eight Waltham shares for one Pierce share. The exchange was contingent upon ratification by the stockholders of the two companies and upon the consent of the bank with which the Waltham shares had been pledged to the substitution of the Pierce shares for such shares. In July 1956 Pierce was informed that the pledgee of the Waltham stock had refused to consent to the substitution, and that the exchange transaction was therefore rescinded.

Bellanca's current report for April 1956 falsely stated that it had exchanged its Waltham shares for the Pierce shares in April 1956, when in fact Bellanca never delivered such shares to Pierce. This report also failed to disclose that delivery of the Waltham shares required the pledgee's consent. Although Bellanca filed an amended report for April disclosing that the exchange had not been consummated in that month, it failed to file a report for June 1956 to disclose rescission of the exchange agreement with Pierce. Moreover, the statement in that report that the pledgee had "indicated its consent to the substitution" but then refused to permit it, is not supported by the record.

In October 1956 Bellanca's Waltham shares were sold for \$550,381. However, Bellanca failed to file a current report as required in order to disclose such sale.

#### 5. Acquisition and Disposition of Selby Shares

In May 1956 Bellanca sought to acquire voting control of Selby through the purchase of shares of the latter's stock. In that month it purchased a total of 72,975 shares of Selby stock through a number of brokers for \$1,448,032. Almost all the shares were purchased in margin accounts collateralized by the Selby shares and blocks of Bellanca and Automatic stock owned by Bellanca or a subsidiary. In the same month Albert purchased 1,800 Selby shares for about \$37,000 on margin, claiming they were for Bellanca's account, although the account was collateralized by his own securities. The Selby shares purchased did not constitute a majority of the outstanding shares, and Bellanca was able to elect only two nominees to the Selby board of directors.

Albert stated that as a result of the failure to obtain control of Selby, and because of Bellanca's financial condition at the time, it became necessary to dispose of the Selby stock. In August 1956, the 1,800 shares acquired by Albert and 72,275 of the shares acquired by Bellanca were sold for \$1,440,945, and the following month 6,600 additional Selby shares then held by Bellanca were sold for about \$90,000. The loss on those sales amounted to \$85,814.

Bellanca should have, but did not, file current reports for May and August 1956 to report the acquisition and disposition of the Selby shares and the pledging of those and other shares to finance the acquisition. 12/

#### 6. Tanker Program Transactions

Bellanca's annual report for 1956 and its preliminary proxy material stated that in April 1956 its subsidiary, Oleum Atlantic Corporation ("Oleum"), acquired from Albert all the outstanding stock of Big Tankers Corporation ("Big Tankers") and North-Western Tanker Corporation ("North-Western") for \$25,000, which was stated to represent Albert's cost of the stocks. The two tanker corporations were formed to secure the construction by shipbuilders of tankers which would be leased to and operated for the government.

The record shows that this statement was false and misleading in a number of respects. While there is some conflict in the evidence as to the date of the transfer of Big Tankers stock from Albert to Oleum, we find that it did not actually take place until some months after April 1956, at a time when it had become clear that Big Tankers could not finance the construction of its required tankers and that Albert as owner of the stock would incur substantial termination charges to a shipbuilder. Moreover, since those termination charges were approximately \$157,000 and in addition Big Tankers had to pay legal fees and incidental expenses and forfeit a \$25,000 bond, it was misleading to represent that the stocks of Big Tankers as well as North-Western were acquired for \$25,000 without mentioning the obligations assumed by Oleum. Further, Albert was never the owner of North-Western's stock, although Pierce owned a substantial portion of such stock prior to its transfer to Oleum. Pierce's ownership was required to be disclosed in the annual report and preliminary proxy material because Pierce was an "associate" of Albert within the meaning of the rules under the Act.

#### 7. Albert's Use of Securities Owned or Held by Bellanca or Oleum

Bellanca's annual report for 1956 and preliminary proxy material failed to disclose that during that year Albert used for his personal benefit securities owned or held by Bellanca or Oleum.

The record shows that in May 1956 Albert caused Rothschild to transfer to a friend of Albert 5,000 Pierce shares then held by Bellanca. Albert stated that the transfer of the 5,000 shares represented a personal loan by him and admitted that such transfer was not related to any corporate purpose of Bellanca. By September 1956 Albert had replaced the 5,000 shares transferred to his friend with 5,000 other Pierce shares.

In addition, Albert in April 1956 obtained two personal loans, totaling \$300,000, which he partially secured with 50,000 Automatic shares owned by Bellanca. About September 1956 Albert returned an equal number of Automatic shares to Bellanca. 13/

Early in 1956 Bellanca issued 300,000 of its shares to Oleum in exchange for Oleum stock. 110,000 of these Bellanca shares were delivered directly or indirectly to Albert in March and April 1956. Albert caused 10,000 of such shares to be deposited in escrow in March 1956 in connection with an agreement by him to purchase certain stock for his own account, but it does not appear what use, if any, he made of the remaining shares. Subsequently the 110,000 shares were delivered to Oleum. 14/

We find that Bellanca's 1956 annual report and the preliminary proxy material should have disclosed Albert's use of the Pierce, Automatic and Bellanca shares owned or held by Bellanca or Oleum.

#### 8. Other Deficiencies

Bellanca's current report for October 1955 recited that Bellanca had acquired 325,000 shares of Glenn stock in exchange for 15,000 of its own shares, but failed to disclose that

Bellanca was obligated to repurchase the 15,000 shares at \$20 per share upon demand of the seller of the Glenn stock at the end of one year or within 30 days thereafter. 15/

Bellanca also should have, but did not, file a current report for August 1956 to disclose the sale by pledgees of approximately 88,000 Bellanca shares which had been issued to Blue Star Airlines, Bellanca's wholly-owned subsidiary, and pledged as collateral to secure loans for the purchase of Selby shares. The sale to the public by the pledgees was a transaction in "securities held for the account of the issuer thereof" and accordingly was required to be reported under the instructions in the report form.

Bellanca failed to file a current report for October 1956 to disclose the terms of an agreement to sell certain assets to Piasecki Aircraft Corporation for about \$1,400,000. In addition the 1956 annual report, although disclosing the terms of that agreement and the consummation of the sale, failed to state, as required by the report form, that as a result of the sale Bellanca was no longer engaged in the aircraft parts manufacturing business. Furthermore, neither the annual report nor the preliminary proxy material disclosed, as required by the report form and the proxy rules, that at least \$245,000 of the sale proceeds were used to liquidate almost all of Bellanca's existing indebtedness to Albert.

Bellanca's 1956 annual report and preliminary proxy material overstated by a substantial amount the number of Bellanca shares beneficially owned by Albert. Such overstatement resulted from the inclusion of shares loaned by Albert to Abrams and other persons and sold by them. In addition, no disclosure was made in the annual report of the fact that Albert, despite his small holdings of Bellanca shares as of the date the report was filed, was in control of Bellanca because all the members of its board had been selected or recommended by him and had been voted into office on the basis of Albert's majority stock interest at the time of their election.

Bellanca's preliminary proxy material was misleading in stating that Bellanca's net worth had increased from \$560,000 in February 1955 to \$4,581,000 by the end of the year, without disclosing that Bellanca's outstanding shares had increased during the period from 229,650 to 1,370,900. The preliminary material was also false and misleading in stating that Bellanca's net worth had increased to over \$7,000,000 by May 1956, in that such amount improperly included the asserted \$4,000,000 profit on the Bellanca-Automatic transaction discussed earlier in this opinion, particularly since at the time the material was filed it was clear that a loss had been suffered on the transaction.

In addition, Bellanca failed to file a semi-annual report for the six months ended June 30, 1956, as required by Rule 13a-13 under the Act.

### Conclusions

In view of our findings as to Bellanca's failure to comply with the reporting and proxy requirements, under the provisions of Section 19(a)(2) of the Act here applicable we may suspend for a period not exceeding twelve months, or withdraw, the registration of the

Bellanca stock on the Exchange if we find that such action is necessary or appropriate for the protection of investors.

The record discloses that Albert with the assistance of other insiders engaged in a large number of complex transactions involving Bellanca and various other corporations, many of which were tailor-made to suit the purposes of Albert and the other insiders and were revised without adequate consideration to Bellanca and to its detriment; that the salient facts concerning these transactions were not made known to the public stockholders in accordance with the requirements of our reporting rules, and reports and preliminary proxy material filed contained false and misleading statements; and that Bellanca's financial statements did not accurately or adequately reflect the transactions and were not certified.

Bellanca contends that the protection of investors does not require suspension or withdrawal of exchange registration. It asserts that Albert and others responsible for Bellanca's violations are no longer associated with it, that only the continued registration of the stock will assure to stockholders full disclosure of relevant information through compliance with the reporting requirements and the protection afforded by the proxy rules, and that the withdrawal of its registration would deprive the stockholders, who have already sustained substantial losses, of the benefits of an exchange market and preclude the salvaging of Bellanca's remaining assets. It has stated that if its listing on the exchange is preserved it will make full and accurate disclosure of all the transactions discussed herein and properly report its future transactions, and that an "adequate" board to replace the present board, which has indicated a desire to resign, will be sought.

While Albert has resigned from his position as president and a director of Bellanca, it is clear that Bellanca does not now have a management which is independent of the participants in the activities described, and there is no assurance that if and when a new board is elected it will be independent. The present board is composed entirely of Albert's nominees. Rothschild, who is now Bellanca's chief executive officer, performed services as treasurer and a director at Albert's behest in connection with a number of the transactions discussed herein, and his testimony in these proceedings, like Albert's, demonstrated a lack of candor and a reluctance to disclose all the facts within his knowledge.

The evidence shows a course of conduct over an extended period involving flagrant violations of the reporting and proxy provisions of the Act. The purpose of the reporting provisions is to inform existing and potential investors of material corporate activities as they occur, and the purpose of the proxy provisions is to enable stockholders to exercise their voting rights upon the basis of an informed judgment. The reports that were filed through June 1956 served only to materially mislead the public and obscure the facts by failing to disclose unfavorable aspects of Bellanca's transactions and of the financing arrangements that were made in effecting such transactions. After June 1956 Bellanca completely ignored its obligations under the Act by not filing any current reports to disclose those matters required to be reported, and in April 1957, through the filing of the preliminary proxy material, reverted to its previous practice of making false, misleading,

and inadequate disclosures. Bellanca's flagrant disregard of its responsibilities to public investors was made evident when, two months after these proceedings were instituted, it filed an annual report containing similarly misleading disclosures.

In our opinion, the record establishes that the protection of investors requires withdrawal of the registration of Bellanca's securities on the Exchange. Aside from the fact that withdrawal would not, as suggested by Bellanca, relieve Bellanca of its obligation to report to its stockholders, 16/ such withdrawal would conform with the Congressional intent reflected in Section 19(a)(2). As we stated in Great Sweet Grass Oils Limited in ordering withdrawal of exchange registrations for noncompliance with the reporting requirements:

"Use of the facilities of a national securities exchange by an issuer is a privilege involving important responsibilities under the Act, including compliance with the reporting requirements. When those responsibilities are abused, the integrity of the exchange market is vitiated. Congress has specified that when violations have occurred we may require the delisting of securities of the issuer if necessary or appropriate for the protection of investors. And in considering investors, regard must be had not only for existing stockholders of the issuer, but also for potential investors." 17/

We shall accordingly enter an order withdrawing the registration of the stock of Bellanca on the American Stock Exchange, effective upon the expiration on June 3, 1958, of our presently outstanding order under Section 19(a)(4) of the Act suspending trading in that stock through that date.

By the Commission (Chairman Gadsby and Commissioners Orrick., Patterson, Hastings, and Sargent).

Orval L. DuBois  
Secretary

1/ Section 19(a)(2) of the Exchange Act provides in pertinent part:

"The Commission is authorized, if in its opinion such action is necessary or appropriate for the protection of investors --

"(2) After appropriate notice and opportunity for hearing, by order . . . to suspend for a period not exceeding twelve months, or to withdraw, the registration of a security [on a national securities exchange] if the Commission finds that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder."

2/ Section 13 of the Act requires issuers of securities registered on a national securities exchange to file annual, current, and other interim reports with the exchange and with us pursuant to rules prescribed thereunder by us.

Under our rules, current reports are required to be filed after the close of a month to disclose information with respect to specified events occurring during such month, including the acquisition or disposition of a significant amount of assets, material legal proceedings, and significant increases in the amount of securities outstanding, and such reports must include financial statements of any businesses acquired. Semi-annual reports containing profit and loss and earned surplus information are required for the first half of the fiscal year. The annual report must furnish information concerning, among other things, changes in the business, the parents of the issuer, the amount of shares of any class of equity securities of the issuer beneficially owned by a director, and the interest of management and others in certain transactions, and must contain certified financial statements.

Section 14(a) of the Act makes it unlawful for any person, by use of the mails or interstate facilities, to solicit proxies in respect of listed securities in contravention of rules prescribed thereunder by us. Rule 14a-6 requires that preliminary copies of the proxy statement and form of proxy and any other soliciting material to be furnished to security holders be filed with us prior to the time definitive copies of such material are first given to security holders. The proxy statement must describe, among other things, the approximate amount of equity securities of the issuer beneficially owned by nominees for election as directors and the interest of officers and directors and their associates in any material transactions since the beginning of the issuer's last fiscal year to which the issuer or any of its subsidiaries was a party.

The requirement that reports and preliminary proxy material be filed necessarily embodies the requirement that such reports and material be true and correct. See Great Sweet Grass Oils Limited, Securities Exchange Act Release No. 5483, p. 3 (April 8, 1957); Lowell Niebuhr & Co. Inc., 18 S.E.C. 471, 1475 (1945)

3/ We suspended trading in the stocks of Bellanca Corporation on the Exchange during these proceedings by a series of orders entered pursuant to Section 19 (a)(4) of the Exchange Act, which provides in pertinent part:

“The Commission is authorized, if in its opinion such action is necessary or appropriate for the protection of investors –

“(4) And if in its opinion the public interest so requires, summarily to suspend trading in any registered security on any national securities exchange for a period not exceeding ten days . . .”

4/ The minutes of meetings of the Bellanca board did not reflect any discussion or approval of the Mastan loan until October 1955.

5/ Albert's controlling position in Automatic resulted from his control of Pierce Governor Company, Inc., a manufacturer of speed-control devices. On December 8, 1955, Pierce agreed to purchase 330,000 shares of stock to be issued by Automatic. By

February 1956, Pierce had acquired 230,000 Automatic shares, and pursuant to an assignment by Pierce the remaining 100,000 shares were acquired by a company owned by Abrams. Albert personally arranged for this purchase by Pierce on the basis of an engineering report, unaudited financial statements, and an oral representation that Automatic had 42 million dollars in future orders, although he was aware that Automatic was not yet producing any washing machines. In fact only a few of such orders were bona fide and these were cancelled for lack of production.

6/ These changes were effected by agreements drawn on April 6, 1956 although the agreement providing for the 262,500 share reduction in the amount of Automatic stock receivable under the terms of the December agreements was backdated to February 28, 1956. The reason, if any, for the backdating does not appear.

7/ Bellanca's treasurer, Arthur K. Rothschild, at Albert's direction informed Automatic that the balance due on the \$1,525,000 note had been reduced to \$1,220,000, although he knew that Bellanca's indebtedness to Albert was substantially less.

8/ The record is not clear as to the significance of Albert's note of \$1,220,000. Albert and Rothschild testified that the Bellanca note of \$1,525,000 was collateral for Albert's personal note, although neither Bellanca nor Automatic ever described the Bellanca note as collateral in their reports to us or to the stockholders or in any other document in the record.

9/ Automatic's books continued to show the amount of the consideration for Albert's 305,000 shares of Automatic stock as \$1,220,000. A note drawn by Albert for \$915,000, dated February 3, 1956, payable to and endorsed by Automatic, was produced by Bellanca at the hearings although neither Rothschild nor Bellanca's independent auditor had previously seen such note. In fact, Bellanca in its annual report for 1956 filed with us in June 1957, referred to the \$1,220,000 note as having been written down to \$915,000, without mentioning the existence of a note in the latter amount.

10/ A total of 100,000 shares of Automatic stock was transferred to the company owned by Abrams as a finder's commission in connection with the Bellanca-Automatic transaction, 50,000 of such shares being transferred by Bellanca out of the shares it received in the transaction and 50,000 shares being issued by Automatic. In order to serve Abrams' tax purposes, the latter 50,000 shares were ostensibly issued in exchange for certain machinery which Abrams stated had been sold to him by Albert for \$10,000. However, no machinery was ever delivered by either Albert or Abrams and the record indicates that if such machinery did in fact exist it was the property of Bellanca.

11/ The selection of these dates is not explained.

12/ Under the instructions in our current report form, the acquisition of the Selby shares was required to be reported because their cost exceeded 15% of Bellanca's total consolidated assets at June 30, 1956 as adjusted to eliminate, as items not properly includable under this requirement, the cost of the Selby shares acquired, the excess of the



carrying value of the Automatic shares over the cost of Bellanca's net investment in Nelson, and the dividend receivable by Bellanca from Nelson. The disposition of the Selby shares in August 1956 also had to be reported on the basis of an adjustment eliminating the last two items.

13/ We note in this connection that the market prices of Automatic stock ranged from 6-7/8 to 8-5/8 in April 1956, and from 1-5/8 to 2-3/4 in September 1956.

14/ Of the 300,000 shares of Bellanca stock issued to Oleum, 50,000 shares were used to pay certain termination charges and legal fees incurred in the tanker construction program. The remaining 250,000 shares were returned to Bellanca in 1957 for cancellation, and Oleum's stock was never issued to Bellanca.

15/ The record shows that the resale option was exercised and demand made for the total repurchase price of \$300,000, but that Bellanca rejected the claim.

16/ In a registration statement filed under the Securities Act of 1933 (File No. 2-3914) Bellanca undertook, pursuant to Section 15(d) of the Act, to comply with Section 13, and such undertaking would become effective upon withdrawal of registration of the Bellanca stock.

17/ Securities Exchange Act Release No. 5483 (April 8, 1957).

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION  
June 2, 1958

In the Matter of  
BELLANCA CORPORATION  
(File No. 1-2115)

(Securities Exchange Act of 1934 - Section 19(a)(2))

ORDER WITHDRAWING REGISTRATION OF SECURITY ON NATIONAL  
SECURITIES EXCHANGE

Proceedings having been instituted pursuant to Section 19(a)(2) of the Securities Exchange Act of 1934 to determine whether it is necessary or appropriate for the protection of investors to suspend for a period not exceeding 12 months, or to withdraw, the registration of the common stock of Bellanca Corporation on the American Stock Exchange, a national securities exchange;

Hearings having been held after appropriate notice, the parties having waived a recommended decision by the hearing examiner and proposed findings and briefs, respondent having consented that the Division of Corporation Finance may assist in the preparation of the Commission's decision, and oral argument having been heard;

The Commission having this day issued its Findings and Opinion; on the basis of said Findings and Opinion

IT IS ORDERED that the registration of the common stock of Bellanca Corporation on the American Stock Exchange be, and it hereby is, withdrawn, effective upon the expiration on June 8, 1958, of the Commission's outstanding order under Section 19(a)(4) of the Securities Exchange Act of 1934 suspending trading in such stock through that date.

By the Commission.

Orval L. DuBois  
Secretary