

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

August 16, 1988

The Honorable William Proxmire  
Chairman, Committee on Banking,  
Housing and Urban Affairs  
United States Senate  
Washington, DC 20510-6075

Dear Chairman Proxmire:

This is in response to your letter of July 19, 1988, in which you ask a series of questions concerning a July 15, 1988 article in The Wall Street Journal. That article concerned purchases of National Can Corp. securities by persons or partnerships affiliated with Drexel Burnham Lambert, Inc. ("Drexel") and a New York Stock Exchange inquiry which focused on these purchases. In addition, your letter poses questions about the status of certain investigations referred to by former Chairman John Shad in his testimony before your Committee on May 13, 1987.

With respect to National Can stock, I am enclosing a copy of a memorandum from a staff member of the New York Stock Exchange to a staff member of the Division of Enforcement dated May 6, 1985 with regard to National Can trading. This memorandum should provide answers to Questions 1-5 in your letter. The memorandum did not identify Drexel as investment bankers in the proposed National Can leveraged buy out, as The Wall Street Journal article suggests that they were. Questions 6-8 are more general in nature and have been referred to the Division of Market Regulation for their review and response.

Since answers to your questions about ongoing investigations would require the disclosure of confidential information that might prejudice those investigations, I believe that the Commission can more fully and appropriately respond to your concerns in a confidential briefing with you. However, let me assure you that the staff of the Division of Enforcement has advised me that, based on their knowledge of the investigations to which Chairman Shad was referring, those investigations have not become "bogged down and stalled."

The New York Stock Exchange staff memorandum contains nonpublic and sensitive information. Accordingly, we appreciate your assurance that you will take all necessary steps to

The Honorable William Proxmire  
Page Two

safeguard the memorandum from unauthorized disclosure to the public and that you will consult with the Commission before the Committee votes to disclose the memorandum.

If I can be of any further assistance, please let me know.

Sincerely,

David S. Ruder  
Chairman

Enclosure

# MEMORANDUM

Date: May 6, 1985

To: Mr. Richard Norell (SEC, Washington, D.C.)

From: Lancelott Allen

Subject: National Can Corp. (NAC) #84-504

The following information is submitted to you for surveillance purposes only, and confidential treatment is requested pursuant to the Freedom of Information Act and the applicable SEC Rules thereunder. Such treatment is requested on the grounds, among others, that the information submitted may contain confidential financial data of private parties, as well as sensitive surveillance data whose disclosure may significantly impair the effectiveness of the Exchange's self-regulatory mechanism. Accordingly, should any request be made for disclosure of these materials, or their contents, we ask that you notify us of this fact immediately, giving us an opportunity to interpose our objections.

## PERIOD OF REVIEW:

January 5-12, 1984

On January 12, 1984 at 1:47 p.m. it was announced over the Dow Jones Newswire that National Can Corp. (NAC) of Chicago, Illinois, was exploring various alternatives including a review of the feasibility of a leveraged buy-out of the company. During the review period, January 5-12, 1984, NAC advanced 8 1/4 points to a close of 36 on January 12. (On January 12, NAC opened at 30 3/8 and traded up to a price of 34 at 1:33 p.m. Trading in NAC was halted from 1:34 p.m. until 3:11 p.m. when it reopened at 37 1/2 on 55,000 shares. NAC then traded down to 35 3/4 at 3:57 p.m. and closed at 36 at 4:00 p.m.). Approximately 231,300 shares of NAC were traded during the review period, prior to the 1:47 p.m. news, or 38,550 shares daily, compared to average daily volume of 4,100 shares during the three week period prior to our review.

Detail on NAC's range on individual days during the review period is as follows:

<u>Date</u>	<u>Open</u>	<u>High</u>	<u>Low</u>	<u>Last</u>	<u>Volume</u>	<u>Change From Previous Close</u>
1/05/84	28	29 3/4	27 3/4	29 3/4	89,700	+ 2
1/06/84	30	30 1/4	29 3/8	29 5/8	22,900	- 1/8
1/09/84	29 7/8	30	29 3/4	30	14,600	+ 3/8
1/10/84	29 3/4	30 1/2	29 5/8	30 1/8	21,200	+ 1/8
1/11/84	30 1/8	30 1/4	30 1/8	30 1/4	9,800	+ 1/8
1/12/84	30 3/8	37 1/2	30 3/8	36	187,200	+ 5 3/8

(NAC traded 73,500 shares on January 12 prior the 1:47 p.m. news)

COMPANY DESCRIPTION:

National Can Corp. is a manufacturer of metal, glass and plastic containers, whose international division is located in Chicago, Illinois. NAC's four other divisions are located either in Indiana or Illinois. In January of 1984, NAC had 9,298,000 common shares outstanding. National Can's auditors are Touche Ross & Co., and their investment banking firms are Salomon Brothers and Lazard Freres. Earnings per share historically are as follows: 1979: 4.80; 1980: 5.03; 1981: 2.28; 1982: 3.35 and estimated 1983 earnings were 1.95. NAC traded at a high of 28 7/8 and a low of 20 5/8 during 1983.

PRIOR NEWS:

On November 25, 1983, Standard & Poor's Corp. announced it removed National Can Co. from the list of securities subject to possible ratings changes.

MOST ACTIVE FIRMS:

<u>Firm</u>	<u>Number of Cleared Shares Purchased</u>	<u>Percentage of Activity</u>
Spear, Leeds & Kellogg <sup>1*</sup> (Specialist)	54,766	15.85
First Boston Corp.	39,400	11.40
Drexel Burnham	36,400	10.53
Donaldson Lufkin Jenrette	33,600	9.72
L. F. Rothschild	23,700	6.86
Merrill Lynch	22,190	6.42
Goldman Sachs	16,300	4.71
Oppenheimer & Co.	16,000	4.63
Kidder Peabody	15,000	4.34
Mabon Nugent	14,400	4.16
Prescott, Ball & Turben	10,600	3.06
Lafer Amster	<u>5,000</u>	<u>1.44</u>
Total	287,356	83.12

FINDINGS:

To investigate trading in NAC prior to the announcement, eleven firms were contacted for trading information and requested to provide data on accounts purchasing 1,000 shares or more of NAC during the review period. In instances where the firm reported less shares than had cleared during the period, the balance of trades were under 1,000 shares.

---

\* Spear, Leeds Kellogg also sold 38,305 shares of NAC during the review period.

First Boston Corp. purchased 40,000 shares on January 12 for the firm trading account at a price of 37 1/2, the price indicating that the trade had occurred after the 1:47 p.m. announcement. First Boston also provided us with a research report on NAC indicating the firm had increased their 1984 earnings estimate. This research was broadcasted in the First Boston offices on January 5 at 10:40 a.m., but was not mailed out to clients until January 10.

Drexel Burnham Lambert reported 500 shares purchased on January 12 by M. J. Elias and 300 shares also purchased on January 12 by S. B. Elias, both at a price of 34. M. J. and S. B. Elias are two Brooklyn based investors who have been connected with trading before the corporate announcements of several oil and gas companies including Texas Oil & Gas and General American Oil Co. of Texas. In addition to the above, the American Airlines Pilot's Trust purchased 10,000 shares on January 5 on an unsolicited basis. Otter Creek Associates, an investment partnership made up of employees in the Beverly Hills Office High Yield Bond Department, purchased a total of 25,600 shares on an unsolicited basis, on January 5 and January 9.

We requested monthly statements for the account of Otter Creek Associates for the months of November 1983, December 1983 and January 1984, which provided the following activity in NAC:

<u>Trade Date</u>	<u>Transaction</u>	<u>Closing Position</u>	
		<u>Long</u>	<u>Short</u>
11/18	-	54,200	-
12/01	sold short 500		
12/01	sold short 500		
12/02	sold short 500		
12/02	sold short 500		
12/02	sold short 500		
12/13	sold short 1,000		
12/14	sold short 200	54,200	3,700
12/27	sold 3,700		
12/27	bought 3,700		
1/03	bought 10,000		
1/05	bought 4,100		
1/05	bought 2,500		
1/05	bought 15,000		
1/05	bought 2,000		
1/09	bought 2,000		
1/27	-	86,100	-

The firm indicates the account held both long and short positions in NAC because the "short position was effected for tax purposes, i.e., to defer the realization on the transactions into the following year." Consistent with this explanation, the position was covered in January of 1984.

Trades in this account are decided by a management committee of Otter Creek Associates. Drexel indicated the NAC transactions were investment decisions made in their normal course of business. The names of the 37 partners were submitted to us by Drexel Burnham. No geographic or familial connections were noted.

Donaldson Lufkin Jenrette purchased 20,000 shares on January 5 for the First National Bank of Boston. A total of 10,000 shares was purchased on January 11 and 12 for the DLJ Error Account to cover a short position of 10,000 shares, which the firm had to take in because they mistakenly sold the shares for a customer account. 5,000 shares were purchased on January 5 for the DLJ Block Trading Account for the facilitation of customer trades.

L.F. Rothschild reported 2,000 shares purchased by the Firm Miscellaneous Stock Trading Account, on January 12, which they indicate had been a continual purchaser of NAC and has not sold any of this January 12 purchase to date. 5,000 shares were purchased on an unsolicited basis by L. Messel & Co., a London Stock Exchange Member, on January 12. 1,000 shares were purchased by the St. Francis of Assisi Church account of Louisville, Kentucky, on January 6, and 1,400 shares were purchased by a N. Y. based retired employee of United Press Intl., both on an unsolicited basis on January 5, 10 and 11. 1,000 shares were purchased on January 6 on a solicited basis by a N. Y. based real estate employee based on technical and fundamental indicators. Three accounts reported by Rothschild were actually accounts of Haas Securities. Haas reported the following purchases on a solicited basis by accounts handled by registered representative Solomon Obsfeld on January 12, 1984:

Lillie Obsfeld (wife)	4,400 sh. @ 32 - 33 7/8
Naomi Mayer (husband is private investor)	1,500 sh. @ 33 7/8
Helen Tannebaum (interior decorator)	3,000 sh. @ 33 - 33 7/8

Obsfeld is a former diamond dealer who has been connected to previous investigations for insider trading in Texas Gas Resources and Pogo Producing Corp. The three accounts shown above are all located in Brooklyn, similar to the location of the diamond dealers. Obsfeld provided a statement to the Exchange stating he advised the clients to purchase shares in NAC based on the heavy trading volume and a rise in the price of the security.

Merrill Lynch reported the following unsolicited purchases:

Ellis, A.G., Zurich	6,100 sh. on January 6
G. Tarulli, Weston, Conn.	3,000 sh. on January 12
Archdiocese of Miami Pension	2,000 sh. on January 7
Mickelberry Capital, Dallas	2,000 sh. on January 10
L. Kotkin, New York City	1,500 sh. on January 12
S. Kotkin, New York City	1,000 sh. on January 12
R. Child, Las Vegas	1,000 sh. on January 5
H. Van Mechelen, Netherlands	1,000 sh. on January 6
J. Bowler, Jacksonville, Fla.	1,000 sh. on January 9

C. Marlas, New York City

1,000 sh. on January 10  
19,600 sh.

This activity by Merrill Lynch customers demonstrated no concentration by location or registered representative, nor does there appear to be any connections between these customers and National Can Corp. However, Ellis, A.G. is currently under investigation by the Securities and Exchange Commission for trading prior to numerous corporate announcements.

Goldman Sachs reported the firm trading account purchased 16,300 shares on January 12, the day of the NAC announcement. These shares were purchased at prices between 35 3/4 and 37 1/2, which indicates the purchases were made after the 1:47 p.m. announcement.

Oppenheimer & Co. reported a total of 16,000 shares, also purchased on January 12. Of the 16,000 shares, 4,000 shares were purchased at a price of 37 1/2 for the Investment Arbitrage Account and 2,000 shares were purchased at 37 1/2 for the account of Oddysey Partners Risk Arbitrage. Both of these trades were effected after the announcement. 4,000 shares were purchased on January 12 on an unsolicited basis at a price of 33 for the account of JRO Associates, a money manager. New account forms were requested on JRO Associates, which indicated they are located in New York City and the address is to the attention of John Oppenheimer. No connection has been made between these accounts and NAC.

Kidder Peabody reported that 15,000 shares were purchased and sold on January 5 at a price of 28 1/2 by the Block Department Trading Account.

Mabon Nugent reported two large trades on January 12, prior to the announcement by NAC: 3,500 shares purchased at an average price of 33.2 by Martin B. Perlman Associates, New York, N.Y. and 2,500 shares purchased at a price of 33.2 by Quantum II Alhambra, Curacao, Netherland Antilles. These two accounts were also discovered to be large purchasers of Natomas Co. (NOM) prior to the May 23, 1983 announcement of a tender offer by Diamond Shamrock Corp. (DIA). New account forms on the Perlman account indicate it to be a "delivery versus payment" account, and no occupation was supplied. Account forms on the Quantum account indicate it is also a "delivery versus payment" account, and its occupation is investment advisor.

Prescott Ball & Turben reported 13,000 shares purchased by the firm account on January 12, 1984 at prices between 35 3/4 and 37 1/2, indicating these trades were effected after the announcement by NAC.

Lafer Amster reported a purchase of 5,000 shares on January 12 at a price of 37 3/4, effected for the firm trading account to cover a short position effected earlier that day at a price of 37 1/2. Both trades were effected after the NAC announcement.

#### Second Investigation in NAC:

On March 5, 1984, National Can Corp. announced a possible merger with NVF Co. at \$40 per share of NAC. The announcement indicated the transaction was subject to negotiating a

definitive agreement, and that NAC was submitting the proposal to a special committee for evaluation. NAC advanced only one point to 36 3/4 on 45,000 shares subsequent to the announcement, however, a review of the clearing data for the one week period prior to the announcement disclosed a purchase concentration by one member firm of 50,000 shares, or 25%. The review period chosen for this investigation was February 27 through March 2, 1984. Except in one instance, (Solomon Obsfeld trading through L. F. Rothschild) no connections were uncovered between the purchasers of NAC during the two review periods. The specific results are addressed in a separate memorandum.

#### ISG COORDINATION:

The Philadelphia and Midwest Stock Exchanges were informed on March 5, 1984 that we had opened an investigation in NAC. Neither exchange opened a study in NAC.

#### CONCLUSION:

The majority of trading in NAC during the review period was effected on January 12, 1984, both before and after the 1:47 p.m. announcement. Trading prior to the announcement was noted by: (1) M. J. and S. B. Elias, Brooklyn based diamond dealers; (2) accounts handled by Soloman Obsfeld, also previously a diamond dealer, located in the Brooklyn area; (3) Ellis, A.G., Zurich, Switzerland, also under investigation by the SEC.

Robert Blackburn of the SEC's New York office had been notified early on in the investigation of activity by the two Elias individuals. Regarding Solomon Obsfeld and his customers, we are not concerned by this activity because it occurred the day of the announcement with the explanation of heavy trading volume with a rise in price, which, in fact, did occur. Robert Blackburn was also notified about trading by Ellis A. G. of Zurich, Switzerland prior to the January 12, 1984, announcement by National Can. The SEC has been investigating trading by Ellis A.G. prior to numerous corporate announcements.

Much of the activity in NAC was retail in nature with no known connections to National Can. We have uncovered no violations of Exchange or SEC regulations and are concluding our review.