FILE COPY

For Mr. Schilling

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matters of

ATLANTIC EQUITIES COMPANY
1500 Massachusetts Avenue, N. W.
Washington, D. C.
File No. 8-8415

BLAIR F. CLAYBAUGH & COMPANY
1714 North Second Street
Harrisburg, Pennsylvania
File No. 8-2851

FIRST PENNINGTON COMPANY
410 Gulf Building
Pittsburgh, Pennsylvania
File No. 8-7626

LENCHNER, COVATO & CO., INC.
Bigelow Square
Pittsburgh 19, Pennsylvania
File No. 8-6692

JOHN RANDOLPH WILSON, JR. d/b/a
JOHN R. WILSON, JR. CO.
3714 Fulton Street, N. W.
Washington, D. C. 20007
File No. 8-6784

STRATHMORE SECURITIES, INC.
605 Park Building
355 5th Avenue
Pittsburgh, Pennsylvania
File No. 8-7323

SHAWE & CO., INC.
1028 Connecticut Avenue, N. W.
Washington, D. C.
File No. 8-9486

KLEIN, RUNNER & COMPANY, INC.
Suite 903 Shoreham Building
15th and H Streets, N. W.
Washington 5, D. C.
File No. 8-9930

HOWARD JAMES HANSEN, d/b/a
H. J. HANSEN & COMPANY
1914 Connecticut Avenue, N. W.
Washington 9, D. C.
File No. 8-11747

[Section 17(a) of the Securities Act of 1933 and Sections 15(b), 15A and 19(a)(3) of the Securities Exchange Act of 1934]

In the Matter of

SILTRONICS, INC.
2231 Saw Mill Run Boulevard
Pittsburgh, Pennsylvania
File No. 24W-2490

[Securities Act of 1933 -
Section 3(b) and Regulation A]

RECOMMENDED DECISION

Washington, D. C.
August 30, 1965

James G. Ewell
Hearing Examiner

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RECOMMENDED DECISION

BEFORE: James G. Ewell, Hearing Examiner

APPEARANCES: Alexander J. Brown, Jr., William R. Schief and Thomas H. Monahan, Esqs., for the Division of Trading and Markets.

(Continued on next page.)

APPEARANCES: (Continued)

Murray A. Kivitz, Esq., Washington, D. C., for Atlantic Equities Company and Oliver Stone, Esq. of Washington, D. C. for Barbara J. Black.

Robert G. Nunn, Jr., Esq. of Washington, D. C., on behalf of Blair F. Claybaugh & Company, together with Blair F. Claybaugh, Ethel I. Weber and Edward G. Griffiths, individually.

Joseph Schuchert, Esq. of Pittsburgh, Pennsylvania for First Pennington Company, together with Edward L. Batz, Naomi R. Jezzi and William J. Abbott, individually.

Edward T. Tait and William D. Matthews, Esqs. of Whitlock, Markey & Tait of Washington, D. C. and Edward M. Citron, Esq. of Pittsburgh, Pennsylvania for Lenchner, Covato & Co., Inc., together with Nicholas Covato, Joseph S. Lenchner and Norman C. Eisenstat, individually.

James R. Jones, Esq. of McLean, Virginia for John Randolph Wilson, Jr., d/b/a John R. Wilson, Jr. Co.

William J. Crowe, Jr., Esq. of Havens, Wandless, Stitt and Tighe of New York City for Strathmore Securities, Inc., together with Charles E. Klein (now deceased) and Auldus H. Turner, Jr.

Milton Gordon, Esq. of Washington, D. C. for Shawe & Co., Inc., together with Walter Ladusky and Irvin B. Shawe, individually.

George S. Leonard and Robert H. S. French, Esqs. of Steadman, Collier & Shannon of Washington, D. C. for Klein, Runner & Company, Inc., together with Milton I. Klein and Earl I. Runner, Jr., individually.

Howard J. Hansen (pro se)[1/]

Phillip F. Herrick & John S. Yodice, Esqs. of Armour, Herrick, Kneipple & Allen of Washington, D. C., for Siltronics, Inc.

1/ Hansen was represented successively at various times by Mark P. Friedlander and John J. Murray, Esqs., both of Washington. These attorneys withdrew their appearances during the course of the proceedings, however, and Hansen appeared and participated thereafter pro se.

These are public consolidated proceedings instituted by the Commission on November 24, 1961 pursuant to Sections 15(b) and 15A[1/] of the Securities Exchange Act of 1934 (Exchange Act) to determine whether it is necessary or appropriate in the public interest or for the protection of investors to revoke the broker-dealer registration of any or all of the following: Atlantic Equities Company (Atlantic), First Pennington Company (Pennington), Shawe & Co., Inc. (Shawe), John Randolph Wilson, Jr., d/b/a John R. Wilson, Jr. Co.(Wilson), Lenchner, Covato & Co., Inc., formerly known as Bruno Lenschner & Co. (Lenchner), Strathmore Securities, Inc.(Strathmore) and Klein, Runner & Company, Inc.(Klein-Runner); or to suspend for a period not exceeding 12 months or to expel Atlantic, Pennington, Wilson, Lenchner or Strathmore from membership in the National Association of Securities Dealers (NASD); whether it is in the public interest to deny the application for registration as a broker-dealer of Howard James Hansen, d/b/a H. J. Hansen & Company; and whether, within the meaning of Section 15A(b)(4)[2/] of the Exchange Act, the Commission should find that

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1/ Section 15(b) of the Exchange Act, as applicable here, provides that the Commission shall revoke the registration of a broker or dealer if it finds that it is in the public interest and that such broker or dealer, or any officer, director, or controlling person of such broker or dealer has willfully violated any provision of that Act or of the Securities Act of 1933 or any rule or regulation thereunder.

Section 15A(1)(2) of the Exchange Act provides for the suspension for a maximum of 12 months or the expulsion from a registered securities association of any member thereof who has violated any provision of the Act or rule thereunder, if the Commission finds such action to be in the public interest or for the protection of investors.

2/ Under Section 15A(b)(4) of the Exchange Act, in absence of approval by the Commission, no broker or dealer may be admitted to or continued in membership in a national securities association if the broker or dealer or any partner, officer or director of, or any person controlling or controlled by, such broker or dealer, was a cause of any order of revocation, suspension or expulsion which is in effect.

Barbara J. Black (Black), Milton I. Klein (M. Klein), Earle I. Runner, Jr. (Runner), Howard James Hansen (Hansen), Ethel I. Weber (Weber), Edward G. Griffiths (Griffiths), William J. Abbott (Abbott), Naomi R. Jezzi (Jezzi), Irvin B. Shawe (I.Shawe), Walter Ladusky (Ladusky), Nicholas Covato (Covato), Joseph S. Lenchner (J. Lenchner), Norman C. Eisenstat (Eisenstat), Charles E. Klein (C. Klein) and Auldus H. Turner (Turner), or any of them, are a cause or causes of any order of revocation, suspension or expulsion which may be hereafter entered in these proceedings against any one or more of the above-named broker-dealer firms hereinabove mentioned.

The foregoing proceedings arose out of a public offering of the common stock of Siltronics, Inc. (Siltronics) a corporation which is engaged in the manufacture and marketing of electronic communication devices in Pittsburgh, Pennsylvania. Said public offering had been made pursuant to a claimed exemption from the registration requirements of the Securities Act of 1933 (Securities Act) allowed by Regulation A adopted by the Commission under Section 3(b) of said Act covering the issue and distribution to the public of securities having an aggregate value at the offering price to the public not exceeding $300,000.

As a result of information coming to the attention of the Commission, the latter issued an order on November 24, 1961 temporarily suspending the Regulation A exemption in respect of the Siltronics offering on the ground of alleged violation of the registration and

anti-fraud provisions of the Securities Act in connection therewith. Thereafter, a hearing was ordered on the question of whether the suspension of the Siltronics exemption should be made permanent. Meanwhile, and on the same date that the suspension order for Siltronics was entered, the Commission entered the previously mentioned orders, as amended, instituting proceedings to determine whether the broker-dealer registration of Atlantic, Claybaugh, Pennington, Lenchner, Klein-Runner, Strathmore, Wilson and Shawe should be revoked as previously indicated by reason of alleged violations of the registration provisions of the Securities Act, aforesaid, and the anti-fraud provisions of Section 17(a) of said Act and Sections 10(b) and 15(c)(1) of the Exchange Act together with Rules 10b-5, 10b-6 and 15c1-2 thereunder[1/] in connection with the offer and sale of Siltronics' stock.

Prior to the foregoing and on March 30, 1961, the Commission issued an order instituting a proceeding to determine whether the registration of Atlantic should be revoked by reason of alleged violations of the bookkeeping and net capital requirements of Sections 17(a) and 15(c)(3) of the Exchange Act, together with Rules 17a-3 and 15c3-1 of the Commission's rules and regulations thereunder,[2/] and naming Black

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1/ The composite effect of the anti-fraud provisions referred to above as applicable here is to make unlawful the use of the mails or means of interstate commerce in connection with the purchase or sale of any security by the use of a device to defraud, an untrue or misleading statement of a material fact, or any act, practice, or course of business which operates or would operate as a fraud or deceit upon a customer, or by the use of any other manipulative, deceptive or fraudulent device.

2/ Section 17(a) of the Exchange Act, as here applicable, requires registered broker-dealers to keep such books and records as the Commission (Cont'd on next page.)

as a possible "cause" pursuant to Section 15A(b)(4), supra. A hearing was held in that proceeding by Hearing Examiner Sidney Gross who issued a recommended decision finding the violations charged and recommending that the registration of Atlantic be revoked. Before the matter reached the Commission for final decision, however, the above-described consolidated proceedings involving the several broker-dealers heretofore mentioned had already been instituted and because of alleged participation and complicity of Atlantic in the public offering and distribution of the Siltronics stock the Commission entered a further order dated November 24, 1961 amending its order of March 30, 1961, which was based on the bookkeeping and net capital violations alleged against Atlantic, so as to include, in addition, charges similar to those alleged against the other participating broker-dealers mentioned above, of violation of the registration provisions of the Securities Act together with the anti-fraud provisions of said Act and the Exchange Act in connection with the Siltronics offering. Said order of November 24, 1961, further provided for consolidation of said proceedings against Atlantic with the proceedings against the other broker-dealers heretofore mentioned, together with the

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(Cont'd from preceding page.)
by rules and regulations may prescribe as necessary and appropriate in the public interest or for the protection of investors. Rule 17a-3 specified the books and records which must be maintained, preserved and kept current.

Section 15(c)(3) of the Exchange Act prohibits the use of the mails or interstate facilities by a broker or dealer to effect any transaction in any security, otherwise than on a national securities exchange, in contravention of the rules prescribed thereunder providing safeguards with respect to the financial responsibility of brokers and dealers. Rule 15c3-1 provides that no broker or dealer, with exceptions not applicable here, shall permit his aggregate indebtedness to all other persons to exceed 2,000 per cent of his net capital computed as specified in the rule.

proceeding involving the question of whether the suspension of the Regulation A exemption in respect of the Siltronics offering should be made permanent. Thus, due to the Commission's further determination that all of the proceedings heretofore described contained common questions of law and fact, the Commission ordered that they be consolidated for hearing and the taking of evidence on all issues involved.

After appropriate notice, hearings were held before the undersigned Hearing Examiner during the period from March 5, 1962 through July 13, 1962 on which latter date the Division of Trading and Markets concluded its presentation of evidence in chief in support of the various charges involved in the proceedings; whereupon a recess of the hearings was taken pending determination of certain motions which had been made by various parties including a motion made by Claybaugh, joined in by respondents Atlantic, Lenchner, Klein-Runner and Wilson to dismiss the proceedings or, in the alternative, to order a hearing for the purpose of determining whether Commissioner Manuel F. Cohen, who is now Chairman of the Commission, should be disqualified from participating in said proceedings on the ground that he had allegedly participated in the investigatory aspects of the Siltronics Regulation A issues, as a former member of the Commission's staff. Said motion invoked the so-called Amos Treat doctrine involving similar charges. See Amos Treat & Co., Inc. v. S.E.C., 306 F. 2d 260 (C.A.D.C. 1962).

On December 21, 1962, an order was entered disposing of the

aforesaid motion by terminating the proceedings as to the five moving respondents without prejudice, however, to the institution of new proceedings based upon the same or other charges. Subsequently, Pennington made a similar motion on the same grounds and on February 1, 1963 the Commission issued a supplemental order terminating the proceedings as to that respondent, also without prejudice to the institution of new proceedings as in the case of the five respondents already mentioned.

In this regard it may be noted that three respondents, namely, Shawe, Strathmore and Siltronics, did not join in the so-called Amos Treat motions so that the original proceedings as to them were retained. However, on January 24, 1963 the Commission entered orders instituting new proceedings against Atlantic, Claybaugh, Wilson, Lenchner and Klein-Runner and consolidated the same with the original proceedings still pending against Shawe, Strathmore and Siltronics. Likewise, on February 7, a supplemental order was entered re-instituting the proceedings against Pennington and consolidating the same with the other proceedings which had already been set down for hearing before the undersigned, scheduled to commence on February 11, 1963 but subsequently adjourned to April 22, 1963.

At the opening of the hearing of the reinstituted proceedings on the latter date counsel for the Division of Trading and Markets (Division) offered in evidence the entire record of testimony and exhibits adduced in the prior proceedings which had been dismissed

without prejudice under the Amos Treat motions as already described. And in this connection, it should be noted that the reinstituted proceedings contained not only all of the charges alleged in the original proceedings but amplified such charges against Claybaugh, Atlantic, Lenchner, Shawe and Klein-Runner so as to include violations of the anti-fraud provisions of the Securities Act and the Exchange Act, based upon substantially the same facts and circumstances alleged in the original proceedings. In ruling on the aforesaid offer the undersigned was of the view that the record of the prior proceedings was admissible in the new proceedings and this ruling was affirmed by the Commission upon review in an opinion and order dated September 30, 1963 (Exchange Act Release No. 7150).

In this regard it should also be noted that the aforesaid ruling contained a provision that counsel for the Division would make available for cross-examination by respondents, all of the witnesses who had testified in behalf of the Division in the prior proceedings. Virtually all of such witnesses were accordingly produced and cross examined by the parties. Additional evidence was also adduced on behalf of both the Division and certain respondents following which the hearings were concluded on September 17, 1964 and a schedule prescribed by the Examiner for submission by all parties of proposed findings and supporting argument. 1/ Such proposed findings and briefs were duly filed by the

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1/ The transcript of record in these proceedings comprises a total of approximately 8,000 pages of testimony and about 300 documentary exhibits.

parties with exception of Shawe, Claybaugh, Hansen and Black. Regarding Claybaugh, it should be noted that the Commission issued an opinion and order on October 16, 1963 revoking the registration of Claybaugh based upon an offer of settlement by said firm and Blair F. Claybaugh individually. (See Exchange Act Release No. 7157). Likewise, Pennington submitted an offer of settlement which it is understood has already been accepted by the Commission, but an order in respect thereof has not yet been issued.

Additionally, it should be noted that on October 28, 1963 Howard J. Hansen, d/b/a H. J. Hansen & Company, a sole proprietorship, filed an application for registration with the Commission as a broker-dealer. However, on November 26, 1963, by reason of Hansen's activities as a registered representative and syndicate manager of Atlantic Equities in connection with the Siltronics offering, the Commission instituted public proceedings against him to determine whether his application should be denied on the ground of alleged violations of the registration and anti-fraud provisions of the Federal securities laws, hereinabove mentioned. On December 5, 1963 the Commission ordered that said proceeding be consolidated with the pending proceedings against all other respondents herein. On December 9, 1963 the entire record of the original proceedings in respect of all respondents, other than Hansen, was admitted into evidence against Hansen who had appeared and participated as a party in the reinstituted proceedings both before and after the filing of his application for

registration as a broker-dealer.[1/]

On the basis of the record as thus constituted and from observation of the witnesses the undersigned makes the following findings:

BASIC FACTS

Historical Background

1. As previously touched on, Siltronics is a manufacturing corporation owned and controlled by the Silverman family. Ralph Silverman is president and his son, Joel, is vice president. Sarah Silverman, wife of Ralph Silverman, is secretary, and all three are directors. The capitalization of the corporation consists of 400,000 shares of authorized common stock of 10¢ par value, of which 210,000 shares were outstanding as of April 1, 1961 in the hands of the three Silvermans mentioned. The company has been in business for about ten years and formerly operated as a partnership until the present corpora-

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1/ It should be noted here that counsel representing certain other respondents withdrew their appearance during the course of the proceedings. This occurred in respect of Messrs. George S. Leonard and Robert H. S. French of Steadman, Collier & Shannon on behalf of Klein-Runner and Milton Gordon on behalf of Shawe and Ladusky. James M. Murray and Mark P. Friedlander also withdrew on behalf of Hansen as previously mentioned. Robert G. Nunn likewise announced during the course of the proceedings that he no longer represented Weber or Griffiths. However, at the conclusion of the hearing Murray A. Kivitz filed proposed findings and a brief on behalf of Klein-Runner. In any event all of these parties continued to participate in the proceedings throughout without counsel.

tion succeeded thereto following its organization in 1958. The company prospered and made rapid progress, as shown by the financial statements filed with the Commission, its net income for 1960 being approximately double that for the previous year.

2. In order to provide for retirement of certain development expenses and for expansion of its business and facilities the management of Siltronics decided in the latter part of 1960 to raise additional capital by "going public" and made these plans known to certain of its associates and employees, particularly one Schmeltzer, an accountant in charge of the corporation's books. Schmeltzer communicated this information to one Hugh Casper, a registered representative of Blair F. Claybaugh & Company, having its main office in Harrisburg, Pennsylvania and a branch office in Pittsburgh. Casper was employed in the Pittsburgh office of Claybaugh and worked under the direction of Ethel I. Weber who had been manager of the Pittsburgh office during the previous two or three years.

3. The record shows that Casper had become acquainted with Hansen, who was then employed as a registered representative and manager of the underwriting department of Atlantic Equities Company of Washington, D. C.; and on learning of Siltronics' plans for public financing, Casper put both Weber and Hansen in touch with officials of Siltronics and arranged an appointment for discussion of the proposed financing. As a result it was agreed that Siltronics would prepare and file a Notification and Offering Circular under Regulation A covering a public

offering of 150,000 shares of its common stock at $2 per share, naming Atlantic Equities as its principal underwriter and Blair F. Claybaugh & Company as statutory co-underwriter. For his services in bringing the parties together it was further agreed that Casper be paid a finders fee of $2,000. Similarly, for services in developing the Regulation A financing and other activities as financial consultant to Siltronics, said agreement provided for payment of a fee of $3,000 to Hansen who, in addition to being a registered representative as previously mentioned, also acted as syndicate manager for Atlantic Equities under a contract which gave him the right to sell or to make arrangements with others to sell 70% of any and all securities underwritten by the firm.

4. To further implement these plans an underwriting agreement was entered into between Atlantic and Siltronics which provided that the sale to the public of the Siltronics stock would be at a discount of 25¢ per share to the underwriters plus certain specified expenses with net proceeds to the issuer of $1.75 per share or a total of $262,500. It was further agreed that the public offering would be made on a "best efforts basis" and by reason of Hansen's right and authority mentioned above to arrange for the sale of 70% of the issue, the latter entered into a further agreement on behalf of Atlantic through Weber for Claybaugh which provided that 105,000 shares or 70% of the total of 150,000 shares would be alloted to Claybaugh at a discount of 12-1/2¢ per share for distribution to customers in the Pittsburgh area, leaving

45,000 shares to be distributed by Atlantic in the Washington area.

5. By reason of the allotment of so large a block to Claybaugh it was necessary to name Claybaugh as a statutory or co-underwriter, as aforesaid, and this was reflected in a letter agreement between Weber and Hansen dated June 9, 1961. Upon completion of the terms outlined above a Notification on Form 1 A, together with an offering circular, was duly filed with the Commission and became effective on June 23, 1961, which date fell on Friday so that the public offering did not actually commence until Monday morning of June 26, 1961.

6. In order to put the issues involved in these proceedings in proper prospective, a word regarding the investment climate prevailing at the time is essential. During the late 1950's and early 1960's it was a matter of general knowledge in the investment community that securities of companies successfully engaged in the electronic and allied industries enjoyed great popularity because of many spectacular successes that had been experienced by such companies. Thus, the sale of such securities was generally accomplished with exceptional facility and speed, with the result that rapid rises in the market value thereof frequently and almost immediately occurred. This trend, reflecting as it did the strong public avidity for such securities, gave rise to the term "hot issue" which was applied by the investment community to issues of securities showing promise of immediate market appreciation.

7. It was in this very climate of public enthusiasm for electronic issues that the Siltronics' offering was launched and

because of the favorable development of the corporation and its rapid expansion, as shown by its current financial reports, the proposed financing became quite widely known as a potential "hot issues" in both the Pittsburgh and Washington areas, particularly among dealers in over-the-counter securities including all of the broker-dealer respondents in these consolidated proceedings. Thus, although the exact time when completion of the ensuing public offering and distribution actually took place is very much in issue - as subsequent discussion will demonstrate - the evidence shows that the principal underwriters, namely, Claybaugh and Atlantic, both claimed that the entire public offering under Regulation A was sold and distributed in a single day, to wit, on Monday, June 26, the first business day following "clearance" by the Commission on June 23, 1961 as aforesaid.

8. In light of the foregoing background the allegations set forth in the orders for proceedings as reinstituted and consolidated will now be summarized.

The Issues

9. In general, each of the orders instituting the proceedings against the various respondents contained a statement of the effective date of the broker-dealer registration, the type of organization, whether a proprietorship, partnership or corporation; the identity of the principals of the company and the offices held by each; also, whether it is a member of the NASD and the names of the individuals

alleged to be possible "causes" of the violations charged and any resulting disciplinary action. In addition, the orders, aforesaid, contain the following common questions of law and fact based upon allegations to the effect that as a result of an investigation by the Division of Trading and Exchanges the Commission has obtained information tending to show that:[1/]

A. During the period from approximately October 1, 1960 to approximately July 15, 1961 the registrant broker-dealers and certain named "causes" offered and sold the common stock of Siltronics, Inc. pursuant to a claimed Regulation A exemption and in connection therewith, singly and in concert and together with others, willfully violated the anti-fraud provisions of Section 17(a) of the Securities Act and of Sections 10(b) and 15(c)(1) of the Exchange Act, together with Rules 10b-5, 10b-6 and 15c1-2 thereunder[2/] in that said respondents, in the offer, sale and delivery after sale of said securities of

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1/ Since virtually all of the orders for consolidated proceedings as reinstituted (with certain exceptions applicable to particular respondents) follow the general pattern described in the order dated January 24, 1963 in respect of Lenchner Covato & Co., Inc., a copy of that order is attached for convenient reference as Appendix A.

2/ The Federal securities acts and the Commission's Rules and Regulations thereunder have, of course, been amended from time to time and particularly by the Securities Acts Amendments of 1964 (Public Law 88-467), which amended a number of provisions of the Securities Act and Exchange Act under the effective date of August 20, 1964. However, since all of these proceedings were instituted during the calendar years 1961 and 1963 all references to the provisions of such Acts and Regulations in this recommended decision will be to such provisions as in effect during those periods.

Siltronics, engaged in the following practices which operated as a fraud and deceit upon certain persons. These activities included a scheme to create a false and misleading appearance with respect to the market for said securities for the purpose of inducing the purchase and sale thereof by others and in connection therewith singly and in concert and together with others, as aforesaid, would and did:

1. Stimulate public demand for said securities by circulating reports that the market price thereof would rise upon completion of the Regulation A offering,

2. Withhold substantial blocks of the original offering from distribution to bona fide public purchasers so as to control the flow of the securities into the market,

3. a. Arrange by pre-determined plan for certain designated persons to purchase a substantial block of Siltronics at the offering price of $2 per share from John R. Wilson Jr. Co., which shares were acquired by the latter through a series of transactions involving Atlantic Equities, Blair F. Claybaugh & Co. and First Pennington Co. and, further, to arrange in accordance with said plan for such persons to resell such shares at an increased price to Shawe & Co.

b. Arrange by said pre-determined plan for Strathmore

Securities, Inc. to acquire the shares referred to in the preceding paragraph through another series of transactions which caused said shares to pass at ever increasing prices through the brokerage firms of Shawe & Co., Lenchner Covato & Co. and Blair F. Claybaugh & Company.

4. Arrange by pre-determined plan for certain other designated persons including an officer of Siltronics to purchase a substantial block of the original Regulation A offering of Siltronics at the offering price of $2 per share and thereafter, in accordance with said plan, to resell such shares to Claybaugh & Co. at a pre-determined price of $3 per share,

5. Offer, sell and deliver after sale to certain persons, shares of Siltronics when no registration statement had been filed or was in effect as to said securities,

6. While participating in the distribution and public offering of Siltronics, directly and indirectly, alone or with other persons, bid for and purchased for accounts, in which respondents had a beneficial interest, shares of Siltronics and attempted to induce other persons to purchase such securities prior to

completion of said respondents' participation in such distribution in willful violation of the anti-fraud provisions heretofore mentioned.[1/]

7. Make false and misleading statements and omissions of material facts to purchasers of Siltronics concerning:

a. The activities described in the foregoing,

b. The plan of distribution and the identities of all underwriters of the offering,

c. The sale of Siltronics in violation of Section (5) of the Securities Act[2/] and the contingent liabilities arising therefrom,

d. The offering price and the entire compensation

1/ The proceedings against Claybaugh, Pennington, Strathmore and Lenchner allege, in addition to violation of Rule 10b-5 under Section 10(b) of the Exchange Act, violation of Rule 10b-6 thereunder which in general prohibits any person who is an underwriter or broker or dealer, or other person participating in a distribution of securities, from directly or indirectly bidding for or purchasing for any account in which he has a beneficial interest any such security until after his participation in such distribution has been completed.

Rule 10b-5, as distinguished from Rule 10b-6, is applicable chiefly to trading by a broker-dealer during a public distribution and prohibits any person, including a broker-dealer, from using interstate facilities or the facilities of any national securities exchange to effect transactions in any security by means of any false and misleading statement or any fraudulent practice.

2/ Section 5(a) and (c) of the Securities Act in substance makes it unlawful to use the mails or interstate facilities to sell or deliver or to offer to sell or offer to buy a security unless a registration statement is in effect as to such security. Thus, if a claimed Regulation A exemption from registration is unavailable, a public offering thereunder would be violative of the foregoing provisions.

to be received by the underwriters,

e. The purchase or right to purchase by Weber and certain salesmen of Claybaugh of 2,000 shares of Siltronics at 1¢ per share.

B. While engaged in the foregoing activities respondents used the mails and instrumentalities of interstate commerce in effectuation thereof and effected certain of the transactions otherwise than on a national securities exchange.

C. Finally, the issues are raised whether by reason of the willful violations alleged, the registration of each broker-dealer respondent should be revoked and/or whether each said respondent should be suspended or expelled from membership in the NASD and whether the Commission should make findings under Section 15A(b)(4) of the Exchange Act, supra, that any one or more of the individuals named in the several orders for proceedings as hereinbefore mentioned on pages 3 and 4, supra,[1/] are a cause of any such disciplinary order which may be

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1/ As previously noted, the record shows that Charles E. Klein, former president of Strathmore, is deceased so that the proceeding is now moot as to him. Moreover, there is no evidence of record that Klein aided or abetted the violations alleged against Strathmore excepting, of course, by reason of his vicarious responsibility as president and director of the corporate registrant. Additionally, the Division has indicated that it has no objection to dismissal of the proceeding as to this individual respondent.

entered in these proceedings.[1/]

Alleged Predetermined Plan of Distribution

10. Due to the fact that Siltronics had become known as a "hot issue" and potential for quick profits as described above, the record shows that an agreement was entered into between Hansen and Weber at Hansen's request whereby 25,000 shares of a total of 105,000 shares allotted to Claybaugh for distribution in the Pittsburgh area would be earmarked and set apart for transfer to such persons or nominees as Hansen might designate and at the offering price of $2 per share. The precise terms of this arrangement are in dispute in some respects by both Hansen and Weber and these aspects of the transaction will of course be dealt with more fully below. Suffice it to say here that the 25,000 shares was duly set apart in pursuance of the agreement and transferred to other broker-dealers and their friends in a series of transactions which will now be described.

11. In this regard, the testimony shows that Hansen had recently become a close friend of Dr. Joseph Casolaro (Casolaro), a practicing physician in Washington, D. C. whom he had met through

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1/ In the proceedings in respect of Claybaugh, Lenchner and Wilson, the question is also raised whether a notice of withdrawal of registration as to each of said respondents should be permitted to become effective, and if so, what terms if any should be imposed in the public interest.

one William J. O'Connor, a former associate of Hansen's while both of the latter were employed as registered representatives of Balogh & Co., a registered broker-dealer of Washington, D. C. It further appears that Hansen informed Casolaro of the Siltronics financing some two or three months prior to "clearance" by the Commission of the Regulation A Notification and Offering Circular and that both Casolaro and O'Connor made a trip to the Siltronics plant in Pittsburgh in company with Hansen and Weber, to inspect the properties and discuss the company's operations and prospects with its principals, Ralph and Joel Silverman. During this inspection tour it appears that Weber and O'Connor developed a certain amount of mutual antagonism, with the result that most of the subsequent discussions and arrangements took place between Hansen, Weber and Casolaro.

12. In any event, the record shows and it is not disputed that immediately prior to the SEC "clearance" Hansen informed Casolaro, who in turn informed O'Connor, that 25,000 shares of Siltronics would be made available by Weber of Claybaugh's office in Pittsburgh for distribution at Hansen's direction. It further appears that Weber had already made arrangements to transfer 25,000 shares to First Pennington Company of Pittsburgh on Monday, June 26, 1961 and had at the same time transferred 5,000 additional shares out of its 105,000 share allotment to that firm as one of the selected dealers for the Pittsburgh area - at the offering price of $2 per share, less 6-1/4¢ per share, representing half of the discount allowed Claybaugh as one of the

principal underwriters.

13. According to the testimony of Edward Batz, president of Pennington, its 5,000 share allotment was sold and distributed in small amounts to some 40 or 50 of the firm's customers on June 26, the opening day of the public offering.

14. Regarding the 25,000 share block, however, the record shows that Casolaro had been informed by Hansen it would be necessary to designate a broker-dealer firm in Washington to purchase the stock for him from Pennington; whereupon Casolaro chose the John R. Wilson Jr. Co., with which he and O'Connor had maintained trading accounts, and instructed the latter to contact Pennington and complete arrangements for purchase and delivery of the stock to O'Connor and himself.

15. Pursuant to these instructions John Randolph Wilson, Jr., proprietor of the John R. Wilson Jr. Co., telephoned Batz of First Pennington and advised that he had an order for the purchase of the 25,000 share block as agent for certain customers at $2 per share, whereupon Batz agreed to deliver the stock on condition that immediate payment be made by certified check for the total price of $50,000. This demand of Batz caused considerable consternation to both Wilson and Casolaro who, nevertheless, took immediate steps to effect the transaction. To accomplish this Casolaro advanced Wilson $10,000 and assisted him in obtaining a loan of $40,000 from the National Bank of Washington, upon completion of which a cashier's check in the

amount of $50,000 was obtained from the bank and delivered to Batz on the following day, June 27. Delivery of the check was made by one Tracy, a mutual friend of Casolaro and Wilson, who was accompanied to Pittsburgh by Hansen. A few days later and on July 5, 1961 Hansen again went to Pittsburgh and certified to delivery to Wilson of certificates representing 25,000 shares, all of which were in "street name" with stock power attached. Immediately after making payment for the stock Wilson confirmed half of the block (less 1000 shares) to certain nominees designated by Casolaro and the other half to nominees of O'Connor at the offering price of $2 per share plus 1/4 of a point commission for himself. The details of the completed transaction are reflected in order tickets and confirmations prepared by Wilson indicating the purchase, "as agent" for others, of 24,000 shares at $2 per share as follows: Casolaro - 4,000 shares, Paul H. Lindgren - 4,000 shares, and Lillian Martin - 4,000 shares, the last three being nominees of Casolaro and, in addition, 4,000 shares to J. Stephen Duffey, 4,000 shares to Ann Super and 4,000 shares to Frances E. O'Connor, all nominees of O'Connor. Wilson delivered said confirmations to the persons named therein and likewise prepared a confirmation reflecting that he had purchased the remaining 1,000 shares of the 25,000 share block for his own account at the offering price of $2 per share. The latter transaction appears to have represented additional compensation to Wilson for his services to Casolaro and O'Connor in obtaining the shares from Pennington.

16. No very convincing explanation was given by either Casolaro or O'Connor for the use of nominees in the above transactions wherein both admitted that none of such nominees paid any part of the purchase price of the securities or had any beneficial interest therein. On this point Casolaro was very vague and said that he used nominees because he understood that broker-dealers, in disposing of a sizable block of securities, generally want to distribute the same to a number of customers rather than to a single purchaser. O'Connor was even more vague in his testimony on the point stating - despite his considerable experience as a securities salesman - that he had used the nominees largely as a "whim". While the use of nominees is quite common for lawful purposes the fact that no reasonable explanation for their use was offered by either Casolaro or O'Connor leaves the question of what the actual motives were, open to inferences which are not favorable as these and other circumstances established by the testimony will show.

17. Before proceeding to describe the next step in the route taken by the 25,000 share block it is important to note that about a month prior to the S.E.C. clearance the Washington Regional Director of the Commission arranged a conference with Weber and one James Carway, a close friend and associate of Weber, together with Klein and Runner of Atlantic Equities, for the purpose of discussing certain rumors that had come to the attention of said S.E.C. officials to the effect that the Siltronics issue was already being touted in the local invest-

ment communities of both Washington and Pittsburgh as a "hot issue" that was expected to rise from the offering price of $2 to from $8 to $10 as soon as the public offering had been completed, and thereupon cautioned the aforesaid that appropriate preventative measures should be undertaken. Notwithstanding this advance warning, however, the record shows not only that no such preventive measures were adopted or utilized by the representatives of the principal underwriters of Siltronics but that the 25,000 share block hereinabove mentioned was thereafter transferred through the circuitous route of First Pennington and Wilson to the fictitious purchasers or nominees of Casolaro and O'Connor with a special bonus allotment to Wilson of 1,000 shares as additional compensation for his services in effecting the transaction.

18. Moreover, despite the S.E.C. warning, the record shows and it is not disputed that, within a few hours after the transaction had been completed by Wilson, both Casolaro and O'Connor instructed him to sell their holdings in accordance with further instructions to be provided by Hansen who suggested to Wilson that he contact Shawe & Co., Inc. as a possible purchaser. Following this advice, Wilson was able to dispose of 15,000 shares to Shawe at 3-1/2 yielding a profit to Casolaro and O'Connor of approximately $18,000. In this connection it is also important to note that despite the S.E.C. warning, aforesaid, the record shows that none of the discussions between Weber, Hansen or Casolaro reflected any purpose or intention to require that

Casolaro or O'Connor make a commitment that the stock would be held for investment and not for resale.

19. In any event the testimony shows that Shawe had visited Weber in Pittsburgh a day or two prior to the S.E.C. clearance, seeking participation in the public offering as a selected dealer, but Weber demurred on the ground that there was not enough stock to go around; whereupon it was understood and agreed that Shawe would assist her in the "after market" as soon as trading commenced. Additionally, from an entirely unrelated source, namely, the testimony of Richard Bauer, a government employee and part-time securities salesman, the record shows that Bauer visited Shawe's office on Monday, June 27, for the purpose of obtaining information, supposedly available from Shawe, regarding certain securities owned by him, namely, shares of United Fuel and Chemical Corporation. After completing discussion of the last-mentioned security Shawe suddenly embarked upon a sales talk regarding Siltronics stating it was due for an immediate and substantial price increase and by way of "impressing" Bauer, exhibited a confirmation from Lenchner - then or formerly known as Bruno Lenchner & Co.[1/] - covering the purchase from Shawe of 15,000 shares of Siltronics at a total price of about $48,000 or $50,000. During the course of the conversation Bauer asked Shawe why he did not keep the stock for himself if he was so sure that

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1/ Lenchner Covato & Co., Inc. will sometimes be referred to herein as Bruno Lenchner.

it was going up in price - to which Shawe replied that the sale to Lenchner had been prearranged. This testimony of course fits in with Wilson's activities under the continued direction of Hansen to dispose of the Casolaro and O'Connor holdings.

20. Following the course of the Shawe transaction a step further, the evidence shows that immediately after the purchase from Wilson, Shawe contacted Joseph Lenchner of Bruno Lenchner & Co. and inquired whether his firm would be interested in a sizable block of Siltronics stock, namely, about 15,000 shares. In reply, Lenchner asked Shawe to hold the offer open for about 40 minutes to enable him to consider the transaction; and to this Shawe readily agreed.

21. According to Joseph Lenchner's testimony, he had already seen a copy of the Siltronics offering circular so that he was aware that Claybaugh was listed as one of the underwriters and accordingly contacted that firm immediately and spoke to Weber, who indicated to him that she might be interested in a sizable block. As a result of the negotiations between Lenchner and Weber it was agreed that Weber would purchase 14,100 shares of Siltronics at a price of 3-3/4, representing an advance of 1/4 of a point above Lenchner's cost of 3-1/2.

22. Upon receiving this assurance Lenchner immediately contacted Shawe and arranged for the purchase of the entire block of 15,000 shares and confirmed 14,100 shares to Claybaugh, retaining 900 shares for his firm's trading account with the explanation that the

900 shares were being withheld to cover the firm's existing short position in the security. No explanation was given, however, of how it happened that the firm already had a short position in Siltronics notwithstanding the fact that Lenchner's further testimony clearly indicated that he was not then assured that the public offering had been completed and the stock admitted to trading. This is shown by the fact that Lenchner testified that during the 40-minute interval during which Shawe held the offer open, he proceeded to make inquiries as to whether the public offering had been completed and also as to the source of such a large block of stock which was admittedly unusual under the circumstances - bearing in mind that the public offering had commenced less than 24 hours before and that the price demanded by Shawe was more than 50% in excess of the offering price. Thus, he inquired of Weber whether Shawe was a member of the NASD, of which he was assured, whereupon he telephoned the NASD for further information about Shawe but claims that he was unable to reach anyone who might supply such information since his call had been made during the lunch hour of the day.

23. Failing in this effort, Lenchner then called Shawe to find out the source of the stock and was informed that it had come through John R. Wilson & Co. as agent for his customers and that the stock was "registered with no restrictions." He also ascertained that Wilson was a member of the NASD and largely on account of the fact that both Shawe and Wilson were members apparently in good standing of that organization he concluded that the stock was free for trading. For

still further assurance, he contacted Atlantic Equities, the principal underwriter, and was informed that the public offering had already been completed.[1/] After receiving all of these assurances Lenchner contacted Shawe again and completed the transaction in the manner already described.

24. The measures taken by Lenchner at face value would of course seem to be appropriate and all that should reasonably be required of a broker-dealer in such a situation, having in mind that securities transactions in an active market - albeit the over-the-counter market - are frequently executed in rapid fire fashion. It would therefore seem unrealistic to hold that a broker-dealer, faced with an opportunity to make a quick profit (which is certainly not unlawful per se) in what might be called a riskless transaction - a commitment for resale of the stock having already been obtained prior to any commitment for its purchase - should be required to conduct a full-scale exhaustive investigation to resolve any possible doubt as to whether the particular block of securities is completely free of any conceivable restriction; or to have a lawyer constantly at his elbow to facilitate such an inquiry before making a deal with a customer in the ordinary course of business. Therefore, on this state of facts alone the undersigned would be unable to find that Lenchner had been negligent or had otherwise violated Rule 10b-6 under Section 10(b) of the Exchange Act which prohibits a broker-dealer from selling or bidding for a security in which he has an interest during a public offering and distribution and prior to its completion.

1/ Contrary to this assurance Atlantic filed a report on Form 2A stating that public distribution was not completed until July 5, 1961.

25. However, there are two factors, one of which has already been alluded to, which place Lenchner's action in a different light. Firstly, no explanation was offered of how his firm (without having been a member of the selling group) had acquired a short position in Siltronics before he had obtained assurance that the public offering had been completed. Indeed, according to Lenchner's own testimony he did not receive this assurance until his inquiries in connection with the Shawe transaction had been completed in the manner described.

26. Secondly, the record shows that the transaction with Shawe included not only the purchase of the 15,000 share block but also 500 additional shares as a bonus - not at the price paid for the 15,000 share block but, instead, at the offering price of $2 per share. In fact, it was testified that in the sale by Wilson to Shawe, Wilson had also included 900 shares at the $2 offering price as a bonus to Shawe and that Shawe in turn had allotted 500 of these shares to Lenchner on the same basis and for the same purpose. These circumstances obviously raise a serious question of why - if this 15,000 share riskless transaction were as clean as it is claimed - it became necessary for Shawe to offer a portion of this bonus stock to Lenchner as a special inducement for him to effect it.[1/] Similarly, the further question arises whether the asserted inquiries and investigation by Lenchner as to whether the public offering had in fact been completed, were bona fide or whether, instead, they were an after thought and represent a bit of window dressing

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1/ It is also significant that the evidence shows that at the very time of this transaction Siltronics was being quoted in the "Pink Sheets" of the National Quotation Bureau by the Lenchner firm itself at 4-1/2 bid, 5 asked. (II R 2895, et seq.)

or stage setting to create the appearance of compliance with the Federal securities laws.

27. Since the record is devoid of any inkling of circumstances that would afford a reasonable explanation for the anomalous situation described, the undersigned is compelled to find that Lenchner, Covato & Co. did not in fact take appropriate measures to assure that the public offering had been completed and that the stock was free for trading at the time it made the trade with Shawe and therefore that, aided and abetted by Joseph Lenchner, willfully violated Section 10(b) of the Exchange Act and Rules 10b-5 and 10b-6 thereunder. 1/

28. This finding has been made reluctantly since the undersigned is fully mindful of the heavy responsibilities and restrictions placed upon a broker-dealer conducting his business in an active market infused with public fervor; and as already indicated, absent Lenchner's admitted and untimely short position in Siltronics and the bonus deal with Shawe at the public offering price, vis-a-vis, the sale of 14,100 shares at more than 50% in excess of that price, the undersigned would be inclined to absolve this respondent from complicity in the overall scheme alleged in the order for proceedings to dispose of the 25,000 share Casolaro-O'Connor block to unsuspecting investors in a series of

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1/ Additionally, it should be pointed out that completion of a distribution of securities has been held to be that point in time when all of the securities in a public offering come to rest in the hands of members of the public who purchase for bona fide investment and without any intention to resell on a quick-turnover basis. Thus, transactions between broker-dealers trading in large blocks for their own account as here within 24 hours after commencement of a public offering, hardly fit into such a category. See Oklahoma-Texas Trust, 2 S.E.C. 764 at 769 (1939); Cf. also Lewisohn Copper Corp., 38 S.E.C. 226 (1958).

successive transactions at consistently increasing prices. The circumstances described, however, would seem to preclude any other view than the one expressed - as further testimony which will now be reviewed serves only to conform.[1/]

1/ In a comparatively recent case involving circumstances similar to those described in the foregoing the Commission stated in part in C. A. Benson & Co., Inc., Securities Exchange Act Release No. 7038 dated March 26, 1963:

"Under the circumstances, the public offering had not been completed on. . ., as stated in the report filed with the Commission. Such offering in fact continued during the immediately following period in which registrant sold. . .shares at prices in excess of the stated public offering price. By its activities, . . .respondent. . .willfully violated Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 17 CFR 240.10b-5, 10b-6 and 15c1-2, in that they bid for and purchased for registrant's account shares of. . .stock while engaged in a distribution of such shares, and failed to disclose the facts with respect to the actual offering price, the method of distribution and registrant's large inventory of. . .shares, and that the market price was a price determined by registrant's own quotations.

"During May 1961 registrant purchased 767,500 shares of. . . stock at 6 cents per share, increasing its net long position to 918,500 shares at the end of that month. In June 1961 registrant sold more than 860,000 shares of. . .stock in 328 separate retail transactions at 8 cents per share. This activity constituted a distribution of. . .stock. On every business day during the period May 1 to June 30, 1961, registrant published bids for . . .stock in the National Daily Quotation Sheets and it made additional purchases of more than 100,000 such shares at 6 cents per share during June 1961. The mails and interstate facilities were used in these activities. By such bids for and purchases of . . .shares while engaged in a distribution of such shares, respondents further willfully violated Section 10(b) of the Exchange Act and Rule 10b-6."

Strathmore Transactions

29. The record shows that this respondent became a member of the selling group for Siltronics pursuant to arrangements between Weber of Claybaugh and Turner, vice president and director of Strathmore, which were entered into a few days prior to the commencement of the public offering. This agreement provided for an allotment to Strathmore of 6,000 shares of Siltronics at the public offering price less the underwriting discount allowed to participating selected dealers. Because of public demand the record shows that the Strathmore allotment was fully sold to approximately 60 retail customers of the firm on June 26, the opening day - all at the public offering price of $2 per share.

30. Due to the apparent success of the offering and demand from customers, Turner, who acted as principal trader for the firm, claims he decided to acquire additional shares of Siltronics if the public offering and distribution had been completed, and contacted Weber by telephone on June 27, for that purpose.[1/] At about 1:30 in the afternoon of that day - approximately 24 hours after the opening - Turner placed an order with Weber for 3,000 shares of Siltronics at $4 per share; and about an hour later, placed additional orders for 1,000 shares at 4-1/4 and 1,000 shares at 4-3/8, making a total of 5,000 shares - at prices which it will be noted averaged more than double the offering price.

31. Following the acquisition of these shares the record also shows, through the testimony of Turner and by confirmations sent to customers,

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1/ The record shows that Turner had received at 10:51 A.M. on June 27 a telegram from Claybaugh reading as follows: "Siltronics syndicate closed. Please state position." (DX-16-3). Since Claybaugh was a party to the manipulative scheme the quoted statement is not entitled to belief.

that approximately 2,450 shares were sold chiefly to retail customers on the day of acquisition, i.e., June 27, and that the entire remainder of the block purchased from Claybaugh was sold to various such customers on the next day, June 28. The selling prices for the shares retailed on June 27 ranged between 4-1/4 and 4-5/8 and between 4-3/8 and 5-1/4 on June 28.

32. Subsequent to the 5,000 share transactions described above, the record shows that Strathmore continued to trade extensively in Siltronics, including a substantial volume of transactions with individual customers of the firm - all within the price range indicated above. In fact, the Strathmore confirmations show that sales were made on July 10, 1961 to customers at 5-1/2 (including at least one confirmation signed by Turner himself) indicating the possibility that the firm's trading activity had raised the price of the security to the public to that level. Cf. Gob Shops of America, 39 S.E.C. 92 (1959).

33. Counsel for the Division contends that Strathmore's purchase of the 5,000 shares from Claybaugh through Weber was in pursuance of the alleged scheme to utilize the 25,000 share "give-up" to Hansen as a means of raising the market price of Siltronics so that each participant in the scheme would be enabled to profit accordingly from each of the successive steps in the prearranged scale of prices. In support of this contention, the Division points to the fact that the 5,000 shares transferred to Strathmore was part of the 14,100 share block purchased by Claybaugh from Lenchner at $3 per share. And, although

the record does not identify the stock certificates as forming a part of the Lenchner block, the fact is not disputed by Strathmore.

34. In any event, since securities are generally considered fungible merchandise the identity of specific certificates is not deemed essential. Moreover, Weber testified that Claybaugh was short 20,000 shares of Siltronics on June 27 at the time she made the purchase from Lenchner and that the transaction with Lenchner was for the purpose of covering the firm's short position. In addition, the Division points to the fact that Weber admitted that she had agreed to include Strathmore as a selected dealer in the selling group which she and Hansen had organized a few days prior to the public offering, largely because Turner had given assurance that his firm would cooperate with her in the "after-market."

35. Strathmore, on the other hand, contends that the 5,000 share transaction was entered into solely for the purpose of filling orders from customers and that the firm considered itself under "fiduciary obligation" to go into the market and purchase sufficient stock to take care of customer demand. It denies any knowledge of a prearranged plan among other brokers, including Claybaugh, Wilson, Shawe, Pennington or Lenchner, for distribution of the 25,000 share "give-up" block and claims that it acted in what it considered to be an entirely normal practice in accordance with established customs in the trade. Thus, to fill the alleged orders from customers Turner testified that he checked the market on Siltronics with at least two other brokers, namely, Troster Singer and Arthurs LeStrange & Company, following which he decided that

his firm would pay the prices demanded by Claybaugh referred to above, and accordingly concluded the transactions on that basis. 1/

36. Strathmore's contentions, however, appear to lack adequate support. In the first place, Turner admitted that on the same date that he purchased the 5,000 share block from Weber his firm was already in the "pink sheets" with quotations of 4 bid and 4-1/2 asked, followed by additional quotations of 4-1/4 - 4-3/4 on the following day, June 28. (I.R. 1763-1771). Such action clearly appears to be inconsistent with Strathmore's claim that its purchase of the 5,000 share block from Claybaugh was effected solely for the purpose of filling orders from customers since Turner had thus already acquired a block of shares almost equal to the firm's original allotment. In fact, this view finds support in Turner's own testimony in the earlier proceeding wherein at pp. 1776, 1777 of the transcript he testified in response to questions by counsel for the Division as follows:

"Q I think you have testified, Mr. Turner, that you put in a bid for the 5,000 shares on June 27 because you had customers who wanted the stock, is that correct?

A Yes, not only that, I had salesmen that wanted to sell it and that liked the issue.

Q Did you want a position stock at that time?

A Sure. I sure did not want to be shy.

Q Did you in fact position it on the 27th?

1/ In fact Turner said he concluded from the fact that the price was considerably above the offering price that the stock was "free" for trading.

A Yes.

Q Do you recall approximately how many shares?

A I don't know exactly how many shares were confirmed out on the 27th. I would say roughly probably around 3,000.

Then some of the salesmen came to me and told me they wanted to call some people, that they could not get in during the day in reference to Siltronics.

At that time maybe I had a very short position in it, not many shares, long, or something like that. They told me, you know, they wanted to sell this.

So as a result I called up at around 3:30 or 4:00 o'clock and bought 2,000 more. That is when I bought the second block that day."

Thus, from Turner's own testimony it appears that his salesmen were engaged in actively soliciting orders for Siltronics, from which it may be inferred that such activity was being undertaken for the purpose of distributing the 5,000 share block to the public.[1/] On this point it is also significant that the firm's quotations in the sheets were higher than prices paid to Claybaugh, and, in addition, the record shows that Lenchner had also placed quotations in the pink sheets[2/] on the same dates

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1/ It was settled in an early decision of the Commission that sales by dealers purchasing directly from the underwriter are part of the distribution. Brooklyn Manhattan Transit Corp., 1 S.E.C. 147 (1935).

2/ The testimony shows that the Lenchner firm quoted 4-1/2 bid 5 asked in the sheets on June 27 and 28, 1961. II R.2895 et seq.

at the same and even higher prices.

37. It is well settled that where, as here, quotations are placed in the sheets at prices which are higher than the price at which the security could be currently purchased, such action is a strong indication of a manipulative purpose to raise the price of the security. Charles C. Wright et al, 35 S.E.C. 190 at 187 (1938); Kidder Peabody & Co. 18 S.E.C. 559, 563 (1945). Moreover, Weber's admission that she had selected Strathmore as a member of the selling group because it had indicated a willingness to assist in the "after-market" is also a strong indication of participation by both Claybaugh and Strathmore in the manipulative scheme involving the 25,000 share "give-up" block. Additionally, although the prices demanded by Weber averaged more than double the offering price within 24 hours after the alleged completion of distribution, Turner, who had had more than five years' experience in the securities business, failed to make any inquiries, either regarding the reason for the sharp rise in the price, or the source of such a large block in the hands of one of the principal underwriters. When counsel for the Division asked Turner about this he stated that he was not in the habit of asking such questions of other brokers who were in good standing in the investment community - a position which, up to that time, Claybaugh had long held.

38. In addition, Strathmore urges that the circumstances come within the so-called broker's exemption provided in Section 4 of the Securities Act reading (as in effect during the period under review)

in pertinent part as follows:

> "The provisions of section 5 shall not apply to:
>
> '(1) transactions by any person other than an issuer, underwriter, or dealer;
>
> * * *
>
> (3) transactions by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction), except. . . 1/
>
> (4) Brokers' transactions, executed upon customers' orders on any exchange or in the over-the-counter market, but not the solicitation of such orders.'" (Underscore added.)

39. It will be noted that the above exemption is not available to underwriters (which, of course, includes a so-called statutory underwriter) or dealers; also, that a broker's exemption is limited to execution of customers' orders and is under a further express limitation barring the "solicitation of such orders." Moreover, the record shows that all the transactions for the sale of the 5,000 shares bought from Claybaugh were confirmed out as principal - thus negating any claim that they were agency transactions in execution of customers' orders.

40. In any event, no affirmative evidence was offered of the claimed customers' orders other than Turner's self-serving testimony which clearly reflects the solicitation of such orders by the firm's salesmen with the result that the exemption under Section 4 of the Securities Act is clearly not available.

1/ Subject to certain exceptions not relevant here.

41. Under all the circumstances related, and particularly by reason of the Strathmore bids in the sheets on June 27, 28 and thereafter - during distribution of the 5,000 share block purchased from Claybaugh - the undersigned concludes that the transactions involved in such distribution were effected in collaboration with and furtherance of the scheme engineered by Weber, Hansen and the other respondents heretofore mentioned, to take advantage of the "hot issue" aspects of the Siltronics offering by passing large blocks of stock as hereinbefore described through the hands of participating brokers and insiders on a prearranged rising scale of prices in clear violation of the anti-fraud provisions of the Federal securities laws already set forth and particularly of Rule 10b-6 1/ under Section 10(b) of the Exchange Act.

1/ It will be recalled that Rule 10b-6, supra, as indicated in footnote 1 on p. 19, supra, provides in pertinent part that it shall constitute a "manipulative or deceptive device or contrivance" for any person who is an underwriter in a distribution of securities, or who is a broker or dealer or other person who has agreed to participate or is participating in such distribution, directly or indirectly, either alone or with one or more other persons, to bid for or purchase for any account in which he has a beneficial interest, any security which is the subject of such distribution until after he has completed his participation therein.

Investment Guild Transactions

42. Approximately two months prior to the commencement of the public offering Hansen informed Joel Silverman, vice president of Siltronics, that if he or any of his friends or relatives wished to purchase stock he, Hansen, would make the necessary arrangements. Silverman was also a member of a small investment group or club called the F.M.F. Investment Guild, which included certain friends of Silverman, namely, Kenneth Bress, Norman Weizenbaum and Bernard Redlich. Upon receipt of the above assurances from Hansen, Silverman informed his fellow club members of Hansen's suggestion and as a result it was agreed that the Guild members would purchase about 4,000 shares and Silverman was authorized to proceed to make the arrangements.

43. In addition to the club members mentioned, it appears that certain employees of Siltronics, John Warren and Kenneth Gould, who also were close friends of Silverman, learned of the proposed Siltronics financing and expressed a desire to purchase some of the shares; whereupon it was agreed that each of said employees would purchase 500 shares - thus increasing the total to be acquired by the group to 5,000 shares.

44. Shortly after the foregoing, Silverman informed Hansen that he and his friends wished to purchase 5,000 shares, whereupon Hansen contacted Runner of Atlantic who agreed to supply Hansen with 5,000 shares for distribution to the Silverman group. Hansen then told Silverman that arrangements for the purchase of the stock had been completed but

that a condition would be imposed to the effect that Silverman and his associates would be required to resell the shares to Claybaugh at $3 per share when directed to do so. The Silverman group reluctantly agreed to these terms and so informed Hansen who in turn suggested that Silverman contact Runner to arrange for completion of the transaction as soon as the public offering commenced.

45. On May 16, 1961, about five weeks prior to the clearance of the Regulation A Notification by the Commission, Silverman visited the offices of Atlantic and presented to Runner checks and cash totalling $10,000, the exact cost of the 5,000 shares. Runner refused to accept the money in the form and amounts offered, however, stating that it would be necessary for Silverman and his associates each to write a letter to Atlantic requesting that trading accounts be opened in their respective names and to enclose checks for odd amounts which would total more than the purchase price of the securities for each account, in order to make it appear that the accounts were ordinary customer trading accounts and had not been opened for the express purpose of purchasing the stock of Siltronics.

46. Silverman and his friends complied with these instructions and made a second visit to Runner's office during which Runner telephoned Weber in Pittsburgh and informed her of the proposed transaction and that the Silverman group had agreed to resell the shares

to her firm at $3 per share upon direction so to do. Before concluding the conversation with Weber, however, Runner put Silverman on the phone so as to confirm the arrangements directly with Weber, which he did. This took place a day or two after the first visit.

47. In order to insure that the letters to Atlantic for the purpose of opening the accounts were in proper form, Silverman sought the advice of Hansen who prepared a hand written draft of the proposed letter which was later used by each member of the group. Accordingly, on or about May 18, 1961 Kenneth Bress, who was treasurer of the Investment Guild, transmitted a check payable to Atlantic in the amount of $8,250, by letter addressed to the attention of Hansen, to open accounts in the names of four members of the Guild, covering the purchase of 4,000 shares. Warren and Gould likewise each sent similar letters conforming substantially with the Hansen draft on or about the same date. Warren enclosed a check for $1150 for the purchase of 500 shares and Gould, a check for $1135 for an additional 500 shares, making a total of $10,535.

48. From the foregoing, it is clear that the above-mentioned accounts were opened in the manner described for the sole purpose of concealing the fact that the accounts were intended for an officer and controlling person of Siltronics together with his friends and associates. This deceptive purpose is further established by the fact that, shortly after receiving the above-mentioned letters and checks, Runner advised Silverman that it was not considered desirable for so large a block as

4,000 shares to appear as having been bought by any one person and therefore requested that the Investment Guild account be split among several names. This information was communicated by Silverman to his associates, whereupon Bress sent another letter to Atlantic dated June 23, 1961 requesting the transfer of the sums of $2750 and $2500, respectively, from the Investment Guild account to new accounts in the names of Weizenbaum and Redlich, respectively, the other participating members of the Guild.

49. Upon completion of the final arrangements described, the record shows that Hansen personally made out order tickets dated June 26, 1961 reflecting the sale to Bress, Redlich, Weizenbaum, Warren and Gould of Siltronics shares in the amounts hereinabove stated. The following day, June 27, Silverman contacted Weber and told her of the arrangements with Hansen to sell the stock to Claybaugh at $3, whereupon Weber informed Silverman that she had already purchased the 5,000 shares from these accounts through Atlantic at the prearranged price of $3 per share. Silverman expressed some surprise at this development inasmuch as neither he himself nor any of his friends had issued any instructions authorizing the transactions - a circumstance that provides further evidence that Hansen and Weber had taken and utilized complete control of the situation. Weber's statement regarding her prearranged purchase is also confirmed by the fact that order tickets were made up by Claybaugh covering the purchase of a total of 5,000 shares at $3

per share on the very same date from Bress, Redlich, Warren, Gould and Weizenbaum. These tickets are in evidence as DX 41-13 to 18 inclusive.

50. It is significant of course that none of the letters to Atlantic nor the order tickets made out by Atlantic or Claybaugh reflect the purchase or sale of any portion of these shares by Joel Silverman. And in this connection, it is important to note that when both Silverman and Bress first testified in the earlier proceedings, instituted in November 1962, regarding the Investment Guild transactions, each denied that Silverman took any part in the arrangements with Hansen or Runner, or had any beneficial interest therein. Some time later, however, and during the hearing in said prior proceedings both Silverman and Bress requested an opportunity to correct their testimony, admitting that it was false. On being accorded that opportunity both witnesses recanted their former testimony in the above respects by full admission of the fact that all of the arrangements with Hansen and Weber had been made solely by Silverman. Additionally, Silverman admitted that he also shared in the proceeds of the transactions.

51. Since these admissions were made in the course of purging themselves of false testimony, they are believed to be entitled to belief particularly since they were, at least partially, corroborated by testimony of both Hansen and Runner. Runner admitted that Silverman had visited him at the offices of Atlantic and discussed the transactions in detail but, of course, denied giving any instructions to Silverman to

have his friends deposit sums in excess of the amount required to purchase the securities in order to conceal the real purpose for which the accounts had been opened. Hansen's participation in the scheme is also apparent from the fact that he prepared the draft of the deceptive letters to Atlantic in his own handwriting. He also did not deny discussing the transactions with Silverman and Runner nor the fact that he made out the Atlantic order tickets for each transaction - all dated June 26, 1961. (DX 10-1 to 9 inclusive).

52. On the basis of Hansen's deal with Joel Silverman, the Investment Guild and Weber, it is clear that a substantial block of Siltronics stock, namely, 5000 shares, were withheld from public investers during the public offering commencing on June 26, 1961 and, instead, were channeled into the hands of selected insiders and their friends under a prearranged bid or agreement to resell at a higher price, which resales were immediately effected during the progress of the distribution under Regulation A.

53. The Commission has consistently held that the withholding of shares from the market during a public offering or distribution or at any time by an underwriter or participating broker-dealer, for the purpose of inducing others to purchase such securities at the same or higher prices, is an unlawful interference with a free and open market and constitutes a manipulative and fraudulent device or practice in violation of Section 10(b) of the Exchange Act and Rules 10b-5 and

10b-6 thereunder. C. A. Benson & Co., Inc., supra; Halsey Stuart & Co., Inc., 30 S.E.C. 106 (1946). In fact, this type of situation was discussed in the recent Special Study of the Securities Markets wherein, in Part I thereof, at page 502, the following occurs:

> "Quite a different kind of problem is presented, of course, where the entire issue is not in fact offered for sale initially at the price stated in the prospectus or offering circular. In these situations, the public offering price and the amount of the offering stated in the prospectus or offering circular are being misrepresented because shares are deliberately withheld from the market until they can be sold at premium "after-market" prices. Despite NASD and Commission prohibitions against such withholding, precisely this occurred in the case of some of the offerings by marginal underwriters during 1959 to 1961. Substantial blocks of shares were sometimes allotted to accounts owned or controlled by the underwriter and selling group members in the expectation of reoffering them to the public at a higher price in the after-market. Under these circumstances, the question of what criteria were used to fix the public offering price as set forth in the prospectus or offering circular became academic." (Emphasis added.) 1/

1/ The sales by Atlantic to the Investment Guild at the public offering price of $2 and the subsequent resales to Claybaugh at $3 on the opening day of the public offering, clearly comes within the type of situation referred to in the Special Study quoted above to the effect that such transactions constitute a misrepresentation of the price to the public set forth in the offering circular, rendering the same false and misleading. This fact alone would likewise make the public offering false and fraudulent in violation of Section 17(a) of the Securities Act which, in turn, would destroy the availability of the exemption under Regulation A and therefore result in violation also of the registration requirements of Section 5 of the Securities Act. Arizona Aviation and Missile Corp., 39 S.E.C. 539 (1959).

54. Under the circumstances related, the undersigned concludes that Atlantic and Claybaugh, aided and abetted by Klein, Runner, Weber and Hansen, willfully[1/] violated the anti-fraud provisions of Section 17(a) of the Securities Act and Section 10(b) and 15(c)(1) of the Exchange Act, together with Rules 10b-5, 10b-6 and 15c1-2 thereunder.[2/]

False and Misleading Statements of Respondents' Sales Representatives

55. In addition to the 5,000 share transaction with the Investment Guild, above described, several investor witnesses testified regarding purchases of Siltronics through Klein, president of Atlantic, and John Shaghrue, J. Freschi and Joseph Carney, salesman.

56. Harry Blumenthal, of Washington, D. C., testified that about two months prior to the commencement of the public offering on June 26, 1961 Klein telephoned him and urged that he purchase at least 1,000 shares of Siltronics, stating that it was expected that the issue would probably be oversubscribed and that he ought to deposit about $2,000 in his account with Atlantic to take care of the order which would be executed as soon as the public offering was cleared by the S.E.C. Shortly after this conversation, Blumenthal complied with Klein's suggestion and forwarded a check for $2,000 to cover the purchase of 1,000 shares at $2 per share for which he received a confirmation on June 26,1961.

1/ See definition of willfulness as applicable to the Federal securities laws, infra.

2/ The impact of Section 15A(b)(4) of the Exchange Act in respect of Klein, Runner, Weber and Hansen will be dealt with hereafter.

57. John Hoffman, of Adelphi, Maryland, testified that about a month prior to June 26, 1961 he received a telephone call from J. Freschi who stated that Siltronics would be a good investment and that it should go up in price substantially as soon as the public offering had been completed.[1/] As a result of this conversation, Hoffman ordered 100 shares at the $2 offering price. A day or two prior to June 26 Freschi called him again and stated that the stock was in short supply and that he, Freschi, could sell him only 25 shares at $2 but that the witness could purchase as much as he desired at 4-3/4. Hoffman thereupon ordered 25 shares at $2 and 75 shares at 4-3/4. This witness further testified that he sold all of his Siltronics stock at 5-3/4 about two months before he was called to testify at the hearing.

58. John J. Rachel, of Washington, testified that some time prior to the public offering Freschi telephoned him on several occasions regarding Siltronics and stated that it was considered a fast growth stock and should make him some money if he bought it as soon as it came out on June 26, 1961. On that date, Freschi called him again and stated that he would not be able to let him have more than 25 shares at the public offering price of $2.00 because the stock was in such short supply, but that he could have additional shares if he would be willing to pay a higher price. Freschi also stated in this conversation that the stock should go to $7 or $8 within about a month after the completion of the public offering. On the basis of these representations

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1/ Freschi also cited large contracts with the U. S. Government to substantiate his price rise prediction for Siltronics.

Hoffman purchased 25 shares on June 26 at $2, and on June 27 ordered 100 shares at 4-1/4 and 25 at 5.

59. Charles N. Acheson, of Arlington, Virginia, received a phone call from Joseph Carney, another salesman for Atlantic, who urged him to invest in Siltronics, whereupon the witness ordered 200 shares at $2 per share about two days prior to the commencement of the public offering. Before the order was executed, however, Carney telephoned him again and stated that the offering was already oversubscribed and that he would only be able to let him have 50 shares at said price - indicating another instance showing use of the "short supply" technique and limitation of the offering to investors for the manipulative purpose and design of raising the price of the security.

60. Richard Bauer testified that he had an account with Atlantic and had entered into several transactions in various securities from time to time with John Shaghrue, sales representative. A couple of weeks prior to the public offering he had a discussion with Shaghrue about Siltronics in which Shaghrue indicated that it was going to be a "hot issue" and that it would be a good investment; also that it was in short supply and was expected to go up in price immediately after completion of the public offering. In this conversation Shaghrue further stated that he thought he could obtain 2,000 shares for Bauer provided the latter would agree to resell the stock when requested at a scale of higher prices of from $3 to $4 per share.

As a further condition for obtaining the stock for Bauer, Shaghrue suggested that in placing the order for a block of stock as large as 2,000 shares, Bauer should use nominees as purchasers, whereupon Bauer testified that he became suspicious and declined to go along with the deal. In fact, Bauer added that shortly before this he had received a similar proposition which had been made to him during a recent trip to New York by James Carway who, as previously noted, was a close personal friend of Weber. On this occasion Carway had told him that through his friendship and association with Weber he expected to control 35,000 to 40,000 shares of Siltronics and inquired whether Bauer would be interested in handling about 5,000 shares at $5 per share since he believed that the trading market in the stock would open at about 8 and rise to about 20 in a relatively short time. Carway further stated, however, that such an allotment to Bauer would require agreements from customers that they resell their stock at about $10 upon request - a proposition that Bauer also turned down as he did the deal with Shaghrue.

61. The latter incident is concededly not germane to the activities of Atlantic but rather of Claybaugh through Carway and Weber; but by reason of its impact upon other respondents as well, it tends to show the pervasiveness and continuity of the scheme to manipulate the market on Siltronics as soon as a trading market could be established.

Activities of Claybaugh Representatives

Edward G. Griffiths

62. William Nesbitt of Pittsburgh testified that he received several telephone calls in May, 1961 from Griffiths, stating that Siltronics would be a good investment at $4 per share. However, having seen a newspaper advertisement indicating that the public offering of Siltronics would be at $2 per share, he questioned Griffiths about this, whereupon the latter explained that Claybaugh had been compelled to buy the stock locally but that he should not worry as it would go to $8 as soon as public trading opened.

63. As a result of Griffiths' solicitation Nesbitt ordered 500 shares at $4 but prior to June 26, the opening date, Griffiths called Nesbitt again and told him that he would be able to purchase 100 shares at the public offering price of $2 per share and 400 shares at $4, to which the witness readily assented.

Sara Balsam

64. Oscar Roth, a pharmacist of Pittsburgh, Pennsylvania, during May 1961 received several telephone calls from Balsam, a registered representative of Claybaugh, who urged him to invest in Siltronics and stated that the price would open above $2 when public trading commenced; also, that the stock was in short supply and in great demand, so that he would probably have to pay about $4 a share after trading opened.

65. As a result of this solicitation Roth ordered 100 shares about a month prior to the public offering. When he received his confirmation, however, he was surprised to find that his order had been reduced from 100 shares to 50. Upon inquiry of Balsam regarding the reasons for the reduction in the number of shares allotted to him Balsam explained that her firm simply did not have enough shares to fill all of the orders from customers.

66. Louis C. Baldizar in May 1961 received a number of phone calls from Balsam who urged that he invest in Siltronics which she said would probably be over-subscribed; that it was a "hot issue" and would probably double in price in a short time. As as result of these conversations Baldizar ordered 200 shares at $2 per share in the early part of June 1961 - at least a couple of weeks before the commencement of the public offering.

67. A few days before the public offering Balsam called again and stated that she could let him have the 200 shares he had ordered at $2 but only if he were willing to purchase another 200 shares at $4. Upon inquiry regarding the jump in price to $4 per share on the second 200 shares Balsam stated that her firm was simply not making enough money at the $2 offering price and that it could sell all the Siltronics stock available at $4 as the company was earning money and the stock would surely go up.

Shortly after these conversations and before the commence-

ment of the public offering, the witness stated that he asked Balsam if it would be possible for some of his friends and associates to purchase Siltronics, to which Balsam replied that each could purchase 50 shares at $2 per share and 50 shares at $4.

Ethel Weber

68. Albert Maurer. This witness had an account with Claybaugh through Weber who gave him a sales talk about Siltronics and stated that it would soon reach $10 per share, whereupon he told Weber that he and his brother would each like to purchase 1,000 shares. During the course of his conversations with Weber the latter also stated that several other brokers would support the price of Siltronics until it reached higher levels; that because of the great demand for the stock and short supply she would only be able to let him and his brother have 500 shares each. In view of these representations Mauer placed an order for 200 shares at $2 and 100 shares at $4-1/4 and a similar order for his brother, but complained about the $4-1/4 price, whereupon Weber agreed to reduce the price to $3-1/2 for the additional hundred shares. The last mentioned adjustment was made on June 29 but the confirmation was back dated to June 27, 1961.

69. This witness was interrogated by counsel for the Division as to whether or not, during the course of his conversations with Weber about Siltronics, she had ever made any of the disclosures to him of the matters set forth in the order for proceedings, to which he replied in the negative. The disclosures referred to were, in substance, as follows:

1. The plan of distribution involving the "give-up" block of 25,000 shares and the 5,000 shares purchased from the Investment Guild;

2. The withholding arrangements for the above-mentioned shares and the agreements to resell the same on a scale of designated higher prices;

3. The identities of all of the underwriters of the offering;

4. The sale of the Siltronics stock in violation of Section 5 of the Securities Act and the contingent liabilities arising therefrom;

5. The actual offering price of the stock resulting from the plan of distribution referred to above;

6. The purchase by or the right of Claybaugh, Weber and certain salesmen of Claybaugh to purchase 2,000 shares of Siltronics at 1¢ per share;

7. The entire underwriting compensation to be received by Claybaugh.

Failure of Respondents to Disclose Certain Material Facts

70. In the above regard it should be noted that the record shows that similar inquiries were directed by counsel for the Division to the principals and all of the sales representatives of both Claybaugh and Atlantic Equities, whose testimony has been discussed in the foregoing findings, and that all of such witnesses uniformly admitted that no disclosure was made to purchasers of Siltronics regarding the

matters set forth in paragraphs 1 through 7 above.

71. It is obvious of course that the matters referred to were necessary and material to enable investors to make an informed judgment regarding the investment value of the Siltronics offering. The undersigned therefore finds that the respondents in these consolidated proceedings made false and misleading omissions of material facts in connection with the offer and sale of Siltronics stock.

72. From the foregoing, it is clear that Weber, Griffiths and Balsam, representatives of Claybaugh, touted the Siltronics stock, stating that it would increase rapidly in price because it was a "hot issue" and in short supply. Additionally, price increases in specific amounts were predicted within certain periods of time regarding this new and unseasoned security - a practice which has been repeatedly condemned by the Commission and characterized in Alexander Reid, Co., Inc. as a "hallmark of fraud."[1/] Securities Exchange Act Release No. 6727, February 8, 1962. And although it is true that the Siltronics stock did in fact increase in price, this circumstance is not only fortuitous but was created largely by the manipulative

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1/ Since neither Weber nor Griffiths were mentioned in the Commission's opinion and order of October 18, 1963 accepting an offer of settlement by Claybaugh it is considered appropriate and necessary to make findings on all issues involving these respondents here - jurisdiction regarding such issues having been expressly reserved in said order.

activities of Atlantic, Claybaugh and the other respondents who participated in the public offering. Additionally, the evidence shows that representatives of these respondents not only represented that the stock was in short supply but arbitrarily and deliberately restricted the number of shares which customers were allowed to buy even though they were able and willing to purchase larger amounts. By using this technique customers were induced to purchase shares at prearranged substantially higher prices in willful[1/] violation of the anti-manipulation and anti-fraud provisions already set forth. Additionally, by reason of the activities described, the undersigned is compelled to find that Weber and Griffiths should be named as additional causes of the order dated October 28, 1963, supra, revoking the broker-dealer registration of Claybaugh & Co.

1/ Although there is ample evidence of overt willfulness on the part of these respondents it should be noted that the Commission has consistently held that in order to establish willfulness as that term is applied under Sections 15(b) and 15A of the Exchange Act it is only necessary to prove that the persons charged with a duty were aware of what they were doing and it is not necessary for them to have been aware of the legal consequences of their acts. Hughes v. S.E.C., 174 F. 2d 969, 977 (C.A.D.C. 1958); Shuck v. S.E.C., 264 F. 2d 258 (C.A.D.C. 1958); Thompson Ross Securities Co., 6 S.E.C. 1111, 1122 (1940); Carl M. Loeb Rhoades & Co., S.E.A. Release No. 5870 (Feb. 9, 1959); Whitehall Corp., S.E.A. Release No. 5667 (April 2, 1958). See also recent opinion in Gearhart & Otis infra.

Alleged Violation by Certain Respondents of
Section 5(a) and (c) of the Securities Act

73. As previously noted, the above-mentioned Section of the Securities Act makes it unlawful to use the mails or interstate facilities to sell or deliver after sale any security, other than exempt securities, unless a registration statement is in effect as to such security; or to offer to sell such security unless a registration statement has been filed as to such security. Here, the securities were claimed to be entitled to exemption from the registration requirements of said Act by reason of purported compliance with the terms and conditions of Regulation A previously adverted to. It is well settled, however, that an exemption under Regulation A is a conditional one and must be in strict compliance with the provisions thereof; also, that one claiming the exemption has the burden of establishing it. S.E.C. v. Ralston Purina Co. 346 U.S. 119 (1953); Gilligan Will & Co. v. S.E.C. 270 F. 2d 699 (1959); S.E.C. v. Culpepper, 270 F. 2d 241 (C.A. 2, 1959).

74. The foregoing discussion and findings show that the Siltronics offering was made in violation of the anti-fraud provisions of the Securities Act and the Exchange Act, which fact alone is sufficient to destroy the availability of the exemption under Regulation A. Moreover, the Siltronics Notification and offering circular failed to disclose that Pennington, Wilson, Lenchner, Shawe and Strachmore were statutory underwriters by reason of their participation in the scheme heretofore described to withhold from the market large blocks of

Siltronics stock included in the Regulation A filing and to distribute said securities in a series of transactions falsely represented to have been effected after the alleged close of the public offering but actually taking place during said distribution process and at successively higher prices - rather than at the public offering price. 1/

75. All of these activities were clearly in violation of the Federal securities laws cited in the foregoing and, hence, made the Regulation A exemption unavailable, which in turn caused the public offering to be made in willful violation of Section 5(a) and (c) of the Securities Act as charged in the order for proceedings. Since all of the respondents actively participated in such offering and in the violation of the anti-fraud provisions of the securities laws set forth above it follows that each of them, willfully violated the

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1/ In Securities Exchange Act Release No. 6097 (1959) the Commission pointed out that:

> "The registration statement and prospectus, or the offering circular may be materially misleading because of the failure to disclose the actual plan of distribution and the marketing arrangements for the issue. The usual representations in these documents imply that the securities will be offered to the public by the underwriters and selected dealers at the public offering price. These disclosures are misleading if, in fact, substantial blocks of shares are not to be offered to the public at the prospectus price, but rather are to be allotted to 'insiders', trading firms and others who may be expected to reoffer at a higher price." (Underscore added.)

registration requirements of Section 5 of the Securities Act mentioned above. 1/

1/ In the above regard it should be noted that an offer of settlement was submitted by Siltronics Inc. and accepted by the Commission resulting in an order dated June 4, 1964 (Securities Act Release No. 4700), permanently suspending the Regulation A Exemption as to Siltronics on the ground that the offering had been made in violation of Sections 5 and 17(a) of the Securities Act. Said order also reserved jurisdiction in respect of the issues affecting the remaining respondents and expressly stated it was without prejudice thereto. The question of whether the Regulation A exemption was available however has thus already been determined adversely to respondents and to that extent is res adjudicata here.

Proceedings Against Klein, Runner & Company, Inc.

76. The above-mentioned revocation proceedings were brought solely on the basis of the activities of Klein, president and director of the company, and of Earl I. Runner, its vice president and also a director - while said individuals as officials of Atlantic Equities were engaged in the offer and sale of Siltronics stock. The charges are accordingly identical with those included in the order for proceedings against Atlantic.

77. Section 15(b) of the Exchange Act, supra, as noted in Footnote 1 on p. 3 hereof, provides inter alia that the Commission may revoke the registration of a broker-dealer, not only by reason of any violation of the Federal securities laws by such broker-dealer, but also by reason of any such violation by its officers, directors or other principals either prior or subsequent to becoming such. Therefore, inasmuch as both Klein and Runner have been found to have willfully violated the registration provisions of Section 5 of the Securities Act and also of the anti-fraud provisions of that Act and of Sections 10(b) and 15(c)(1) of the Exchange Act, together with the Commission's rules and regulations thereunder in the proceeding against Atlantic Equities, it follows that adequate ground exists also for revocation of the registration of Klein, Runner & Company, Inc. For like reasons, it is obvious that both Klein and Runner should be named as causes of any disciplinary order which may be hereafter entered

against said company - their complicity in the violations of Atlantic Equities having already been demonstrated.

Responsibility of Officers and Directors of Certain Respondents

First Pennington Company

78. Edward L. Batz, it will be recalled, was president of Pennington and was also a prime mover in connection with the transfer of the 25,000 shares "give-up block" into the hands of John R. Wilson, Jr. Co. In fact, Batz admitted that he had already set the transaction up on his company's books before Wilson had even contacted him regarding the purchase of said block - clearly indicating the prearrangement of the transaction through Weber and Hansen. His complicity in the resulting violations by Pennington already set forth is accordingly clear.

79. Naomi R. Jezzie was secretary, treasurer and director of Pennington during the period under review and as such participated actively with Batz in the daily operations of the business. She claims, however, not to have learned of the 25,000 share transaction until after it had been consummated.

80. William J. Abbott, vice president and also a director for registrant, was likewise active in the daily operations of the business and interposed the same defense, namely, that he did not learn of the violation until late in the day, after it had occurred. However, no

affirmative evidence, other than their own self-serving testimony, was offered by either Jezzie or Abbott to support these contentions; nor to show that they had instituted any procedures of internal control to prevent violation of the Federal securities laws by its officers and employees. The undersigned is therefore compelled to find that both of these officials of Pennington aided and abetted by omission rather than commission in the violations perpetrated by Batz and, therefore, together with Batz, should be named causes of any disciplinary order against Pennington resulting therefrom. 1/

Shawe & Co., Inc.

81. Walter Ladusky was president and director of Shawe & Co., Inc. and actively participated in the daily operations and management of the company. The record shows that on June 27, 1961 Ladusky was present when Shawe discussed the purchase and subsequent sale of the 15,000 share block with Wilson and Batz and likewise the 1200 share bonus stock at the time the latter was discussed with Hansen and Lenchner - but took no action toward preventing consummation thereof. The record also shows that Ladusky himself sold a substantial portion of the bonus stock and failed to disclose the plan of distribution of the 15,000 share block despite the fact that these transactions were effected within 24 hours after the alleged close of the public offering. His complicity with Irvin Shawe may therefore reasonably be inferred and likewise that, together with Shawe, he should be named a cause of any resulting disciplinary order against the company.

1/ Regarding duty of supervision see Aldrich Scott & Co., Inc., 40 S.E.C. 775 at 778 (1961); Thompson & Sloan, Inc., 40 S.E.C. 451 (1961).

Charges against Hansen

82. Section 15(b) of the Exchange Act[1/] as in effect during the period under review and therefore as applicable here authorizes the Commission to deny a broker-dealer application for registration if it finds such action to be in the public interest and that the applicant has willfully violated any provision of the Securities Act or of the Exchange Act or any rule or regulation thereunder.

83. The foregoing findings overwhelmingly establish that Hansen actively participated in the activities found to be in violation of Section 5 of the Securities Act and the anti-fraud provisions of Section 17(a) of that Act and of Sections 15(c)(1) and 10(b) of the Exchange Act, together with the Commission's Rules and Regulations

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1/ Section 15(b), supra, as then in effect provides in pertinent part:

> "The Commission shall, after appropriate notice and opportunity for hearing, by order deny registration to. . .any broker or dealer if it finds that such denial. . .is in the public interest and that (1) such broker or dealer whether prior or subsequent to becoming such. . .has willfully violated any provision of the Securities Act of 1933, as amended, or of this title, or of any rule or regulation thereunder."
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> In the above regard, it should also be noted that although this Section was amended by the Securities Acts Amendments of 1964, the foregoing provisions were substantially retained in additional paragraphs of said Section as thus amended.

thereunder. Thus, it is clear that Hansen's activities permeate the entire record of these consolidated proceedings and that his participation in the violations mentioned were willful within the meaning of that term as applied by the Commission in disciplinary proceedings under the Federal securities laws. The Examiner, therefore, is compelled to find, on the basis of evidence involving Hansen, that sufficient ground exists in the public interest for denial of his application for registration as a broker-dealer - in absence of any mitigating circumstances which will be dealt with hereinafter.

Net Capital and Bookkeeping Violations by Atlantic Equities

84. The order instituting new proceedings against Atlantic follows the same general pattern as the charges against the various other broker-dealer respondents but, in addition, alleges that aided and abetted by Barbara Black, its former president, Atlantic, during the period January 31, 1961 to February 16, 1961, willfully violated the net capital requirements of the Commission's rules and regulations as embodied in Rule 15c3-1 under Section 15(c)(3) of the Exchange Act. Said Rule makes it unlawful for a broker-dealer to use the mails and instrumentalities of interstate commerce to effect transactions in securities otherwise than on a national securities exchange at a time when the aggregate indebtedness of the firm exceeds 2000% of net capital as computed in accordance

with the provisions of the Rule. Additionally, the said order charges that Atlantic, aided and abetted by said Black, also violated Section 17(a) of the Exchange Act and Rule 17a-3 thereunder in that, during the period mentioned above, it made false entries in certain of its books and records required to be made and kept current under said Rule.

85. Identical charges had previously been incorporated in an order for proceedings against Atlantic dated March 30, 1961, which came on for hearing before Hearing Examiner Sidney Gross who filed a recommended decision on August 4, 1961 at the conclusion thereof. However, before the Commission had entered its findings and opinion on the basis of the record before Gross, it amended its previous order of March 30, 1961 in that proceeding, to allege additional violations of the Securities Acts involving Klein, Runner and Hansen, which proceeding, as thus amended, was subsequently dismissed under the Amos Treat motions previously mentioned. The instant proceeding was thereafter instituted against Atlantic on January 24, 1963 as a new proceeding based upon the same issues set forth in the prior proceeding as amended, including the net capital and bookkeeping violations referred to above. The order of January 24, 1963, aforesaid, also consolidated said proceeding with the pending proceedings against all other respondents herein.

86. At the conclusion of the hearing in the new consolidated proceedings now under consideration it was stipulated that the entire

record of the proceeding before Hearing Examiner Gross, together with the proposed findings and briefs filed therein - but excluding Gross' recommended decision - might be considered by the undersigned in determining whether the charges of net capital and record-keeping violations are sustained by the evidence adduced in the whole record as thus constituted.

87. With respect to these issues involving Atlantic and Black it is deemed sufficient to point out here that both of said respondents were represented in the proceeding before Gross by counsel who filed on June 7, 1961 "Proposed Findings of Fact and Conclusions" containing in pertinent part the following admissions in the following numbered paragraphs, with supporting references to the record:

> "13. Respondent has been in complete cooperation with the SEC in this matter, has furnished its books and reports promptly and without subpoena and has admitted it was in violation of the Exchange Act (Tr. 32).
>
> 14. Black has fully admitted making the false entries in the records of respondent, that they were made on the spur of the moment without reflection or considered judgment, and that they were made by her alone without consulting any other person either within or without the respondent corporation (Tr. 84-86).
>
> 15. Registrant has admitted it was temporarily in violation of Section 15(c)(3) of the Exchange Act and Rule 17 CFR 240.15c3-1 requiring its aggregate indebtedness to all other persons to be not more than 2,000 per cent of its net capital as defined by SEC rule (Tr. 57).
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> 16. Registrant's violation of the net capital ratio requirement was caused by a high business volume in November and December 1960 resulting in a temporary backlog in unposted bookkeeping entries (Tr. 84-85).
>
> Conclusions
>
> 1. Registrant was temporarily in violation of Sec-

tion 15(c)(3) of the Exchange Act and Rule 17 CFR 240.15c3-1 thereunder.

2. Registrant was in violation of Section 17(a) of the Exchange Act and Rule 17 CFR 240.17a-3 thereunder."

88. In a brief filed by said counsel on the same date, the foregoing admissions were reiterated together with the further concession that Black was a cause of the admitted violations alleged. In view of these admissions and the willful and flagrant nature of the violations - both the net capital and record keeping violations having involved the making of false and fictitious entries in respondent's books under the personal direction and with the direct participation of Black, registrant's then principal officer - it is clear of course that the public interest on such facts alone would require that the registration of Atlantic be revoked[1/]; and

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1/ The record before Gross shows, and it is not disputed, that on January 31, 1961 Atlantic had a net capital deficiency of $10,937.22 and an aggregate indebtedness of $68,643.78, as computed in accordance with Rule 15c3-1; also, that in a subsequent inspection by representatives of the Commission on February 9, 1961, a net capital deficiency of $4,224.95 was found to exist pursuant to the provisions of the above-mentioned Rule (See Division's Exhibit No. 8.) and that a capital deficiency continued to and including February 17, 1961.

Additionally, the willful nature of Black's actions is plainly apparent from the following excerpts from her testimony. Thus, commencing at page 56 of the transcript Black was shown certain corporate records regarding the purchase and sale of 2,000 shares of Franklin Broadcasting Co. by one Robert J. Bowie, whereupon she testified, in pertinent part, as follows in response to questions by counsel for the Division of Trading and Markets: (Underscore added)

Q: Could you state whether or not these are the records of Atlantic Equities?

(Cont'd on following page.)

that Black be found to be a cause of any order of revocation or other disciplinary action, which may be hereafter entered by the Commission against said registrant. 1/

89. Furthermore, of course, the record in the consolidated proceedings, as reinstituted, contains ample proof of additional violation by these respondents of the registration requirements of the Securities Act and of the anti-fraud provisions of that Act and the Exchange Act as the foregoing findings, and discussion of further evidence to follow, will demonstrate.

90. Finally, it is urged in said brief, in mitigation, that Black's actions were the result of panic, inexperience and bad judgment.

(Cont'd from preceding page)

A: Yes, they are.

Q: Would you state whether or not this reflects a bona fide transaction?

A: It does not.

Q: Would you explain why this information is entered on the books in this way?

A: In my own words?

HEARING EXAMINER: Yes.

THE WITNESS: For about two months, or, two months prior to the time Mr. Shantz came in for a routine audit, we were hit with our first real volume of business, and we were understaffed at the time. We put on two girls in December and January, and when Mr. Shantz came in we were just coming out of our backlog. Normally, up to this point of getting behind in the books, I would take a 28 to 1 ratio at the end of each month to make sure I was in good shape. I hadn't done that for two or three months. When Mr. Shantz came in, on February 8th, I took it off, and knowing I was close, because of my large inventory, I took off a ratio picture as of the end of January and immediately saw I was out of ratio. Never having been in this position before and -- I found out later the

(Cont'd on following page.)

1/ Despite the change of control there is no evidence that Black has divested herself of all of her stock in Atlantic.

However, since the making of false and fictitious entries in books of account obviously strikes at the very heart of their purpose, and completely vitiates their usefulness, such factors are not deemed to be an adequate basis for leniency. See Lowell F. Niebuhr & Company, 18 S.E.C. 471 (1945) wherein the Commission held that the requirement that books and records be kept emdodies also the requirement that they

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(Cont'd from preceding page.)

SEC is understanding about such things -- I thought I would be closed immediately until the money could be raised, and, the salesmen in this City -- so many firms have been closed up -- I could see all of them walking out. Two things had put me out of ratio, my large advances and my large inventory, and very foolishly, I did these two transactions.

At page 60:

Q: And were the two $5,000 items entered on the books and records of Atlantic Equities?

A: Only the one which I put in as a subordinated loan of $5,000. The second was to offset the deposit that wasn't actually made, in the 10 days prior.

Q: The second was to offset --

A: The false entry.

Q: The withdrawal that had not been made. Now, I show you, again, Division's Exhibit No. 5 and ask you what happened to the original check?

A: I destroyed it. It is a normal reaction when you do something wrong, and you try to cover up. You do just that, you cover up, right, wrong or indifferent, that is what was done.

* * *

MR. BROWN: Do you mean by this, Miss Black, that you feel that this is the way you did it. It was a legal purchase and sale of stock?

THE WITNESS: It was legal?

MR. BROWN: Yes.

THE WITNESS: No, sir.

MR. BROWN: It was purely fictitious?

THE WITNESS: Yes, sir.

be true and accurate. See also Luster Securities, 36 S.E.C. 298, 303 (1955).[1/]

91. On the basis of the foregoing the undersigned accordingly finds that Atlantic Equities Company aided and abetted by Barbara Black willfully violated Sections 15(c)(3) and 17(a) of the Exchange Act together with the Commission's Rules 15c3-1 and 17a-3 thereunder.[2/]

1/ Counsel for respondents stipulated that from mid-January through March 1, 1961 the registrant effected transactions in non-exempt securities in the over-the-counter market and that during said period used the mails and facilities of interstate commerce in effecting such transactions. See Tr. 36, id. supra.

2/ The impact of Section 15A(b)(4) of the Exchange Act as applicable to Black will be dealt with hereinafter.

CONCLUSIONS AND RECOMMENDATIONS

Before proceeding further, it should be stated that the undersigned is of the view that it would not be appropriate for him to make recommendations in respect of whatever sanctions should be imposed against those respondents which have submitted offers of settlement to the Commission which has already either issued an opinion and order accepting and giving effect to such settlements or which - on the basis of information contained in the brief of counsel for the Division - has accepted offers of settlement in respect of certain other respondents but has not yet issued its opinion and order giving effect thereto.

On the other hand, in view of the fact that the evidence adduced at the hearings is, to a great extent, inextricably woven into the issues affecting all of the respondents in at least some and in most cases many respects, it has, as a practical matter, been quite unavoidable to make findings of fact and conclusions of law on the basis of all of the evidence which in some cases may overlap findings which have been covered in the offers of settlement, the precise terms of which, however, are not known to this Examiner. Therefore, without in any sense presuming to pass upon any matter which has heretofore been submitted to the Commission for determination, the undersigned will attempt to make such findings and reach such conclusions of law here as are deemed essential for the Commission's final determination of all of the intricate and complicated issues involved in the massive

record under consideration.

Accordingly, on the basis of the foregoing findings the Examiner concludes:

1. That Atlantic, Claybaugh, Pennington, Wilson, Shawe & Co., Lenchner-Covato & Co., Strathmore, M. Klein, Runner, Edward L. Batz (Batz), Naomi R. Jezzie (Jezzie), William J. Abbott (Abbott), Hansen, Weber, Griffiths, Irvin Shawe, Ladusky, Covato, Eisenstat, Lenchner, and Turner [1/] willfully violated Sections 5(a) and 5(c) of the Securities Act;

2. That Atlantic, Claybaugh, Pennington, Batz, Jezzie, Abbott, Wilson, Shawe & Co., Lenchner-Covato & Co., Strathmore, M. Klein, Runner, Hansen, Weber, Griffiths, Irvin Shawe, Ladusky, Covato, Eisenstat, Lenchner, and Turner willfully violated Section 17(a) of the Securities Act;

3. That Atlantic, Claybaugh, Pennington, Batz, Jezzie, Abbott, Wilson, Shawe & Co., Lenchner-Covato & Co., Strathmore, M. Klein, Runner, Hansen, Weber, Griffiths, Irvin Shawe, Ladusky, Covato, Eisenstat, Lenchner, and Turner willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

1/ It will be recalled that Charles E. Klein of Strathmore is deceased.

4. That Claybaugh, Lenchner, Covato & Co., Strathmore, Weber, Covato, Eisenstat, Lenchner, and Turner willfully violated Section 10(b) of the Exchange Act and Rule 10b-6 thereunder.

5. That Atlantic, Claybaugh, Pennington, Wilson, Shawe, Lenchner, Covato & Co. and Strathmore willfully violated Section 15(c)(1) of the Exchange Act and Rule 15c1-2 thereunder and that M. Klein, Runner, Hansen, Weber, Batz, Jezzie, Abbott, Griffiths, Irvin Shawe, Ladusky, Covato, Eisenstat, Lenchner, and Turner aided and abetted such willful violations. 1/

1/ In addition to violation of Section 5 of the Securities Act and of the anti-fraud provisions of that Act and the Exchange Act as hereinabove set forth, the Commission's order revoking the registration of Claybaugh dated October 18, 1963 found that Claybaugh had willfully violated Section 7 of the Exchange Act in arranging extension of credit to a certain customer on a security which is not listed on a national securities exchange. However, since this issue does not involve any of the other respondents except Weber and has already been passed upon by the Commission as to Claybaugh, it is not deemed necessary to deal further with it here, since Weber has been already found, on the basis of evidence in connection with other issues, to have willfully violated numerous other provisions of the Federal securities laws, which violations are deemed adequate for imposition of whatever sanctions may be deemed appropriate as to her.

The Public Interest

Having found that the respondents, named above, have willfully violated the Federal securities laws as hereinbefore set forth the next question is what sanctions, if any, should be applied. Under Section 15(b) of the Exchange Act the Commission is empowered to impose the sanctions provided therein if it finds that such action is in the public interest. On this question it would appear to suffice here to say that the whole mass of testimony and exhibits, summarized and reviewed above, establishes that the violations found as to each of the respondents named were not only willful in the sense already alluded to but, in most cases, were deliberate and premeditated. Moreover, the record is quite devoid of any persuasive extenuating circumstances so far as what might, in a broad sense, be called the res gestae aspects of the findings hereinabove set forth. Therefore, with one or two exceptions which will be referred to hereinafter, the undersigned is compelled to find that the public interest requires imposition of the ultimate sanctions provided under the Federal securities laws in respect of all of the aforementioned respondents. Thus, it is the recommendation of the Examiner that:

A. The broker-dealer registration of Atlantic, Wilson, Shawe [1/]

1/ Regarding certain respondents, issues were raised in the respective orders for proceedings (a) whether an application for withdrawal for registration should be permitted to become effective and (b) whether pursuant to Section 15A(1)(2) of the Exchange Act the registrant broker-dealer should be suspended or expelled from membership in the NASD. However, since imposition of the ultimate sanction of revocation has been recommended as to all of such respondents, it is believed that the lesser sanctions above mentioned are thereby rendered moot.

Lenchner, Covato & Co., Strathmore and Klein-Runner be revoked pursuant to the provisions of Section 15(b) of the Exchange Act.[1/]

B. Within the meaning of Section 15A(b)(4) of the Exchange Act, the Commission find that Barbara Black, Earl I. Runner, M. Klein and Howard Hansen are causes of any order of revocation which may be entered against Atlantic Equities Co. as a result of these proceedings;

C. Within the meaning of Section 15A(b)(4) of the Exchange Act, the Commission find that Abbott and Jezzie[2/] are causes of any order of revocation which may be entered against Pennington;

D. Within the meaning of Section 15A(b)(4) of the Exchange Act, aforesaid, the Commission find that Weber and Griffiths are causes of the order of the Commission heretofore entered on October 18, 1963 revoking the broker-dealer registration of Blair F. Claybaugh & Co., Inc.;

E. Within the meaning of Section 15A(b)(4) of the Exchange Act, the Commission find that Irvin Shawe and Walter Ladusky are causes of any disciplinary order which may be entered against Shawe & Co., Inc. as a result of these proceedings:

1/ There is of course ample evidence to support a recommendation that the registration of Pennington also be revoked, but this issue is presently before the Commission, as already mentioned, upon an offer of settlement - presumably made by Batz, president of the Company and therefore is moot here.

2/ The undersigned is not advised whether Abbott and Jezzie have been included in the offer of settlement by Pennington (and presumably on behalf of Batz as aforesaid) and hence the issues as to them have been dealt with here in the usual manner as if they had not been so included.

F. Within the meaning of Section 15A(b)(4) of the Exchange Act, the Commission find that Joseph S. Lenchner, Norman C. Eisenstat and Nicholas Covato are causes of any disciplinary order which may be entered against Lenchner, Covato & Co., Inc. as a result of these proceedings;

G. Within the meaning of Section 15A(b)(4) of the Exchange Act, the Commission find that Aldus Turner is a cause of any disciplinary order which might be entered against Strathmore as a result of these proceedings;

H. Within the meaning of Section 15A(b)(4) of the Exchange Act, the Commission find that M. Klein and Earl I. Runner are causes of any disciplinary order which may hereafter be entered against Klein, Runner & Company, Inc. as a result of these proceedings;

I. On the basis of the findings of willful violations of the Federal securities laws hereinabove set forth in respect of Hansen the public interest requires that the application of Howard James Hansen, d/b/a H. J. Hansen & Company for registration as a broker-dealer be denied pursuant to the provisions of Section 15(b) of the Exchange Act.

Possible Mitigating Circumstances Deemed Entitled to Consideration under Section 15A(b)(4) of the Exchange Act

It has already been pointed out that there are no persuasive mitigating circumstances so far as the res gestae aspects of the violations found are concerned. On the other hand, due to the extraordinary

length of these proceedings extending over a period of nearly four years, it is believed that the full scope of the proceedings and its effects cannot be evaluated on the "res gestae" aspects of the testimony alone.[1/] Thus, regarding some of the respondents there are certain circumstances which are deemed appropriate for consideration on the question of the impact of findings under Section 15A(b)(4) of the Exchange Act. For example, Griffiths, salesman for Claybaugh, was described in the testimony as a neophite in the securities business and the record contains evidence of only one Siltronics transaction in which he was involved.[2/] Under such circumstances, it is believed that his offense is not of sufficient gravity to warrant barring him from employment or other association with a broker-dealer pursuant to the provisions of Section 15A(b)(4) of the Exchange Act. Similarly, as to Covato and Eisenstat, both of whom failed to exercise appropriate supervision over the activities of Lenchner the fact remains, as the record shows, that neither of these respondents were apprised by Lenchner of the purchase of the 15,000 share block from Shawe, nor the sale to Claybaugh through Weber, until after the transaction had been consummated by commitment on both sides. Under these circumstances, although their failure to exercise adequate supervision over Lenchner's transactions cannot be condoned, a single instance of the sort described, occurring in the operations of a firm having an undisputed large volume of business at the time and otherwise in good standing, would not seem to be sufficient ground for barring

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1/ Cf. Recent opinion of the United States Court of Appeals for the District of Columbia in Gearhart & Otis, Inc. (No.18,817 decided June 30, 1965).

2/ The record contains vague references to additional transactions by Griffiths but nothing of sufficient specificity to warrant discussion.

either of them from employment or association with other broker-dealers.

Regarding M. Klein, the record shows that he has been engaged primarily in the retail liquor business in Washington for a number of years and, like Griffiths, is also a neophite in the securities business. However, since he assumed the offices of chief executive officer, namely president of both Atlantic Equities and Klein Runner & Co. as well as member of the Board of Directors of each, his lack of knowledge and experience in the securities business is not by itself regarded as a substantially mitigating circumstance. In fact, on the contrary, his assumption of these offices under such circumstances would seem to point the other way. Thompson Sloan & Co., Inc., supra.

Regarding Runner, his complicity in the transaction involving Silverman and the Investment Guild was such as to leave little doubt as to his culpability so that no basis would appear to exist upon which to formulate a recommendation of leniency in his behalf - except, perhaps, that his offenses were not multiple and he appears otherwise to have had a good record.

Regarding Hansen, the testimony overwhelmingly establishes, as previously indicated, that he played a leading role in the instigation and execution of the plan for the withholding and subsequent distribution of the 25,000 share "give-up" block and likewise the 5,000 share transaction with Silverman and the Investment Guild. Additionally, the undersigned has been compelled to find that Hansen not only willfully violated

the registration and anti-fraud provisions of the Securities Act and the Exchange Act, but in so doing aided and abetted such violations by other respondents. And, as already alluded to, there do not appear to have been any persuasive extenuating circumstances so that, again, on the res gestae aspect alone of Hansen's activities there is no basis for a recommendation of leniency.

On the other hand, the record shows that Hansen is young, well-educated and has what appears to be an exceptional knowledge of the securities business. However, by reason of the damaging impact of these proceedings upon his employment opportunities, the record shows that Hansen has already suffered considerable unemployment and has been compelled to accept a job as a house-to-house book salesman. Thus, taking all of these circumstances into account and the further fact that the record shows that Hansen has not been involved in any other violations of law it is deemed appropriate to suggest- although his application tion for registration as a broker-dealer should be denied- that the Commission's order of denial contain a further provision to the effect that such order would not be a bar to Hansen's employment or association with other broker-dealers upon a showing of appropriate supervision.

In addition to Hansen's difficulties it may also be noted that other respondents have experienced similar hardships.

For example, the record shows that the firm of Lenchner, Covato & Co., Inc. was sold to another broker-dealer firm at a claimed substantial loss to its previous owners who are respondents in this proceeding. Claybaugh & Company, Pennington, John R. Wilson, Jr. Co. and Shawe appear to be out of the securities business. Blair F. Claybaugh, president of Claybaugh & Company and reputedly highly respected in the local financial community prior to institution of these proceedings, has sought employment with other broker-dealers. Likewise, Atlantic Equities and Klein, Runner & Company, Inc. are inactive and Hansen, as already noted, is now working as a house-to-house book salesman - so that virtually none of the respondents seem to have survived without serious financial loss and[1/] damage to reputation and standing in the community.

It may well be of course that several of the respondents contributed to the protraction and volume of these proceedings by reason of various interlocutory maneuvers made during the course of the proceedings. On the other hand, since these measures were undoubtedly undertaken in good faith in defense to the charges against them, they do not appear, on balance, to have equal weight - when the relative strength and resources of such respondents vis-a-vis these same attributes on the part of the Federal Government - are borne in mind. Moreover, the proceedings exceeded 5000 pages of oral testimony and

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1/ These views of course are necessarily based largely on the statements of the parties and their counsel, which statements under all the circumstances are deemed entitled to consideration.

many hundreds of exhibits even before the above-mentioned legal measures were resorted to.

Additionally, it might be mentioned that the record contains no evidence of loss by investors from transactions in Siltronics and, while this is not relevant to an issue of violation of law, it would appear to have some significance on the question of the public interest - having in mind that the "protection of investors" is the keystone of all of our Federal securities laws.

This of course is not by any means to say that manipulation of the securities markets or other violations should ever be condoned, but, rather, that under certain circumstances, as here, it appears that offenders may already have paid their debt to society by reason of untoward but fortuitous events, so that opportunity for rehabilitation rather than further travail might be appropriate in such cases.

Thus, inasmuch as the discretionary powers of the Commission have been greatly broadened by the Securities Acts Amendments of 1964, whereby the Commission is now enabled to tailor its disciplinary sanctions more properly to fit particular offenses under its jurisdiction, 1/ it has occurred to the undersigned who has presided over the amassing of the enormous record before this tribunal and has thus witnessed in at least some measure, its disintegrating erosion upon the fortunes of the respondents - to suggest, without any thought of being presumptuous, that the Commission might wish to assay these factors among others with the possible view of extending some

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1/ Cf. Axe Securities Corp., Securities Exchange Act Release No. 7442, dated October 14, 1964.

further lenience to certain respondents than the undersigned has seen fit to recommend in the posture of the case as it now stands - under the provisions of law in effect during the period under review and the interpretative decisions of the Commission and the Courts.

The proposed findings and conclusions of law submitted by the parties have been affirmed insofar as they are consistent with the foregoing and are otherwise denied.

Respectfully submitted,

James G. Ewell
Hearing Examiner

Washington, D. C.
August 30, 1965

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

January 24, 1963

In the Matter of LENCHNER, COVATO & CO. INC. Bigelow Square Pittsburgh 19, Pennsylvania File No. 8-6692	ORDER FOR PUBLIC CONSOLIDATED PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTIONS 15(b) AND 15A OF THE SECURITIES EXCHANGE ACT OF 1934

I

The Commission's public official files disclose that:

A. Lenchner, Covato & Co. Inc., a Pennsylvania corporation, hereinafter referred to as registrant, has been registered as a broker-dealer pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act) since July 25, 1958. On January 11, 1963 registrant filed a notice of withdrawal of registration. Such withdrawal has not yet become effective.

B. Nicholas Covato (Covato) is president, a director, and the owner of 10% or more of the common stock of registrant.

C. Joseph S. Lenchner (Lenchner) is vice president, a director, and the owner of 10% or more of the common stock of the registrant.

D. Norman C. Eisenstat (Eisenstat) is secretary treasurer, a director, and the owner of 10% or more of the common stock of the registrant.

E. Registrant is a member of the National Association of Securities Dealers, Inc., a national securities association registered pursuant to Section 15A of the Exchange Act.

II

The Division of Trading and Exchanges charges that as a result of an investigation it has obtained information which tends to show and it alleges that:

A. During the period from approximately October 1, 1960 to approximately July 15, 1961 registrant, Covato, Lenchner and Eisenstat, hereinafter sometimes collectively referred to as respondents, offered and sold the common stock of Siltronics, Inc. pursuant to a claimed exemption under Regulation A under the Securities Act of 1933 and in connection therewith, singly and in concert and together with others, wilfully violated Section 17(a) of the Securities Act of 1933 in that said respondents, directly and indirectly, employed devices, schemes and artifices to defraud, obtained money and property by means of untrue statements of material facts and omitted to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, and engaged in transactions, acts, practices and a course of business which would and did operate as a fraud and deceit upon certain persons. A part of the aforesaid conduct and activities included a scheme to create a false and misleading appearance with respect to the market for said securities and for the purpose of inducing the purchase and sale of said securities by others, and in connection therewith said respondents singly and in concert and together with others, would and did, among other things:

(1) stimulate public demand for said securities by circulating reports that the market price of the securities would rise upon the completion of the Regulation A offering;

(2) withhold substantial blocks of the original offering of said securities from immediate distribution to bona fide public purchasers so as to control the flow of the securities into the market;

(3) (a) arrange by predetermined plan for certain designated persons to purchase a substantial number of shares of the original Siltronics, Inc., stock at the offering price of $2 per share from John R. Wilson, Jr. Co., which shares had been acquired by John R. Wilson, Jr. Co. by means of a series of transactions involving Atlantic Equities Company, Blair F. Claybaugh & Co. and First Pennington Company in accordance with said plan, and further, to arrange for such persons, in accordance with said plan, to resell such shares at an increased price to Shawe & Co., and

(b) arrange by said predetermined plan for Strathmore Securities, Inc., to ultimately acquire the shares referred to in subparagraph (a) above by means of a series of transactions which caused said shares to pass at ever increasing prices through the brokerage firms of Shawe & Co.; registrant and Blair F. Claybaugh & Co.,

(4) arrange by predetermined plan for certain other designated persons, including an officer of Siltronics, Inc., to purchase a substantial number of shares of the original Siltronics, Inc., stock offering from Atlantic Equities Co. at the offering price of $2 per share and, further, in accordance with said plan to resell such shares to Blair F. Claybaugh & Co. at a predetermined price of $3 per share.

(5) offer to sell, sell and deliver after sale to certain persons shares of the common stock of Siltronics, Inc., when no registration statement had been filed or was in effect as to said securities under the Securities Act of 1933, as amended;

(6) while participating in the distribution of Siltronics stock, directly and indirectly, alone or with other persons, bid for and purchase for accounts in which registrant had a beneficial interest, shares of Siltronics stock and attempt to induce other persons to purchase said securities before registrant had completed its participation in such distribution;

(7) make false and misleading statements of material facts and omissions of material facts to purchasers of Siltronics stock concerning, among other things:

(a) the activities described in subparagraphs (1) through (6) above;

(b) the plan of distribution of the Siltronics, Inc. offering;

(c) the identities of all of the underwriters of such offering;

(d) the sale of Siltronics stock in violation of Section 5 of the Securities Act;

(e) the contingent liabilities arising from the sale of such Siltronics stock;

(f) the offering price of Siltronics stock;

(g) the purchase by or the right of Blair F. Claybaugh & Co., Ethel Weber and certain salesmen of Blair F. Claybaugh & Co. to purchase 2,000 shares of Siltronics stock at one cent per share;

(h) the entire underwriting compensation to be received by Blair F. Claybaugh & Co.; and

statements and representations of similar object and purport.

B. In carrying out the activities and course of business described in paragraph A of Section II above, and during the period of time described therein, respondents, singly and in concert and together with others, wilfully violated and aided and abetted in wilful violations of Section 5(a) and (c) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5, 10b-6 and 15c1-2 thereunder, in the manner and means more fully described in the referenced subparagraphs:

Section 5(a) and (c) of the Securities Act	Subparagraph (5)
Section 10(b) and Rule 10b-5 of the Exchange Act	Subparagraphs (1) through (7)
Section 10(b) and Rule 10b-6 of the Exchange Act	Subparagraph (6)
Section 15(c)(1) and Rule 15c1-2 of the Exchange Act	Subparagraphs (1) through (7)

C. While engaged in the offer, sale and delivery of the securities as set forth in paragraphs A and B hereof, respondents directly and indirectly, made use of the mails and means and instruments of transportation and communication in interstate commerce, and of the means and instrumentalities of interstate commerce.

D. While engaged in the activities set forth in paragraphs A and B hereof, respondents effected certain of the transactions mentioned in paragraphs A and B hereof, otherwise than on a national securities exchange.

III

In view of the charges made by the Division of Trading and Exchanges, the Commission deems it necessary and appropriate in the public interest and for the protection of investors that public proceedings be instituted to determine:

(a) whether the statements set forth in Section II hereof are true;

(b) whether, pursuant to Section 15(b) of the Exchange Act it is in the public interest to revoke the registration of registrant;

(c) whether, pursuant to Section 15(b) of the Exchange Act, pending final determination of the question of revocation, it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration of registrant;

(d) whether, pursuant to Section 15A(1)(2) of the Exchange Act, it is necessary or appropriate in the public interest or for the protection of investors, or to carry out the purposes of said section, to suspend registrant for a period not exceeding twelve (12) months, or to expel registrant from membership in the National Association of Securities Dealers, Inc.;

(e) whether, within the meaning of Section 15A(b)(4) of the Exchange Act, the Commission should find that Nicholas Covato, Joseph S. Lenchner and Norman C. Eisenstat, or any of them, is a cause of any order of revocation, suspension or expulsion which may be entered pursuant to paragraphs (b) and (d) of Section III hereof.

(f) whether to permit the notice of withdrawal from registration of the registrant to become effective, and if so, whether it is necessary in the public interest or for the protection of investors to impose terms and conditions under which the said notice of withdrawal may be permitted to become effective.

IV

IT IS ORDERED that a public hearing on the questions set forth in Section III hereof, be held before James G. Ewell, Hearing Examiner, at 10:00 A.M. on February 11, 1963 at the Securities and Exchange Commission, 425 Second Street, N.W., Washington 25, D. C.

IT IS FURTHER ORDERED that these proceedings be consolidated with proceedings this day ordered pursuant to the Exchange Act in the matters of Atlantic Equities Company; John Randolph Wilson, Jr., doing business as J.R. Wilson, Jr. Company; Blair F. Claybaugh & Co. and Klein, Runner & Co., and further with the proceedings ordered by the Commission pursuant to the Securities Act of 1933 in the matter of Siltronics, Inc., and further with proceedings ordered by the Commission on November 24, 1961, as amended, pursuant to the Exchange Act in the matters of First Pennington Company, Shawe & Co., Inc., and Strathmore Securities, Inc.

This order shall be served on registrant, Nicholas Covato, Joseph S. Lenchner and Norman C. Eisenstat personally or by registered mail forthwith.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon this matter except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule-making" within the meaning of Section 4(c) of the Administrative Procedure Act, it is not deemed to be subject to the provisions of that section delaying the effective date of any final Commission action.

By the Commission.

Orval L. DuBois
Secretary