

# sec news digest

Issue 95-128

July 5, 1995

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## COMMISSION ANNOUNCEMENTS

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### RICHARD ROBERTS ANNOUNCES INTENTION TO RESIGN

Richard Y. Roberts today announced his intention to resign as a Commissioner of the United States Securities and Exchange Commission effective July 15, 1995. Upon leaving the SEC, Commissioner Roberts will become an Executive Vice President of Princeton Venture Research ("PVR"), a consulting firm, and a managing director of PVR Securities, a securities firm specializing in raising venture capital for high technology companies. Both companies are headquartered in Princeton, New Jersey, and Mr. Roberts will be opening an office in Washington, D.C., for the two companies.

Mr. Roberts stated: "I have thoroughly enjoyed my four plus years at the Commission. It was exciting to strive both to protect investors and to maintain our securities markets as the greatest in the world. The experience was memorable, and it was a privilege to work with the outstanding individuals employed at the Commission. I now look forward to joining PVR and working in the securities industry."

Chairman Arthur Levitt said: "Commissioner Roberts' leadership at the Commission has been extraordinary. Long before anyone else, he focused his energies on reforming the municipal securities market, and it is largely due to his efforts that we have made such progress in increasing the market's disclosure, transparency and integrity. In addition to his dedication to investor protection, Rick's sense of humor, his perspective, and his good nature have made working at the SEC a more rewarding experience for all Commission employees. He will be greatly missed."

### COMMISSION SOLICITS PUBLIC COMMENT ON PROPOSAL BY AZX, INC. TO OPERATE ARIZONA STOCK EXCHANGE DURING REGULAR TRADING HOURS

The Commission is publishing notice soliciting public comment on whether the Commission should amend its order granting AZX an exemption from registration as an exchange to reflect AZX's proposed operation during regular trading hours.

Publication of the notice is expected in the Federal Register during the

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**ENFORCEMENT PROCEEDINGS**

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**WARREN RAWLS, CPA, SANCTIONED**

The Securities and Exchange Commission has instituted administrative proceedings against Warren L. Rawls, chief financial officer of Littlefield, Adams & Company (LFA) pursuant to Section 21C of the Securities Exchange Act of 1934 and Rule 2(e) of the Commission's Rules of Practice.

According to the Commission's Order Instituting Proceedings, shortly after joining the company in January 1994, Rawls, a Certified Public Accountant, learned that LFAA's president and chief executive had previously deceived the company's independent auditors concerning LFA's receipt of consulting fee income in a material amount. Rawls failed to disclose what he had learned to the auditors and, in order to prevent the auditors from discovering that the CEO had lied to them, Rawls falsely described the nature and circumstances underlying a receivable in LFA's books and records. Rawls thereafter signed LFA's 1993 Annual Report filed with the Commission on Form 10-K and provided the auditors with a management representation letter which contained both false and misleading statements and omissions concerning LFA's receipt of consulting fee income.

The Commission simultaneously accepted an Offer of Settlement submitted by Rawls pursuant to which, without admitting or denying the Commission's findings, Rawls consented to the entry of a Commission Order which finds that Rawls willfully violated Rules 13b2-1 and 13b2-2 under the Exchange Act and that he caused violations of Exchange Act Sections 13(a), 13(b)(2)(A) and (B), and Rules 12b-20 and 13a-1. The Order requires Rawls, pursuant to Section 21C of the Exchange Act, to cease and desist from committing or causing any violation and from committing or causing any future violation of Sections 13(a), 13(b)(2)(A) and (B) of the Exchange Act, and Rules 12b-20, 13a-1, 13b2-1 and 13b2-2 thereunder. The Order also denies Rawls, pursuant to Rule 2(e) of the Commission's Rules of Practice, the privilege of appearing or practicing as an accountant before the Commission for two years, after which time he may apply to resume such practice or appearance on such conditions as the Commission may impose. (Rel. 34-35892; AAER-684)

**NASD ACTION AGAINST PATRICIA SMITH SUSTAINED**

The Commission has found that Patricia H. Smith of Hanover, Pennsylvania, formerly a salesperson with NASD members Buckhead Financial Corporation and American Capital Corporation, as well as non-member C.I.C. Financial Group, Inc., violated just and equitable principles of trade. The NASD found that Smith submitted applications to purchase securities that listed her as the representative involved

when the transactions in fact had been solicited by non-registered salespersons. Smith was censured, fined \$7,500, suspended in all capacities for 15 days, and required to requalify by examination before being registered in any capacity.

The Commission found that on four separate occasions, Smith affirmatively misled her employing broker-dealer regarding the identity of the soliciting salesperson. Smith did not deny that she engaged in misconduct but argued that the fine was excessive. The Commission disagreed and observed that the NASD registration requirement "provides an important safeguard in protecting public investors" and, consequently, "'strict adherence' to that requirement is 'essential.'" (Rel. 34-35898)

#### COMMISSION SUSTAINS NASD DISCIPLINARY ACTION AGAINST ROBERT GARDNER

The Commission has sustained the disciplinary action taken by the NASD against Robert Lester Gardner of Castaic, California, a former salesman for NASD member Toluca Pacific Securities Corp. The NASD had censured Gardner, fined him \$50,000, suspended him from association with any member firm for 30 days, and ordered him to requalify by examination as a general securities representative.

The Commission found that Gardner purchased, without his customer's authorization, 50,000 shares of Cannon Pictures, Inc. for \$16,502.75. When the customer complained about the unauthorized transaction, Gardner falsely represented that it was a mistake and then later attempted to convince the customer to accept the trade. In sustaining the sanctions imposed, the Commission concurred with the NASD's assessment that these actions were "egregious violations of the duty of good faith and fair dealing owed by a representative to his customer." (Rel. 34-35899)

#### ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AGAINST BILTMORE SECURITIES, INC., ET AL.

The Commission announced the institution of public administrative proceedings pursuant to the Securities Exchange Act of 1934 against Biltmore Securities, Inc. ("Biltmore"), a Florida corporation and registered broker-dealer, Elliot Loewenstern of Boca Raton, Florida, Richard Bronson of North Miami Beach, Florida and Alexander Barletta of Miami, Florida. The Commission also instituted cease and desist proceedings pursuant to the Exchange Act and the Securities Act of 1933 against Biltmore and Barletta.

The Commission simultaneously accepted offers of settlement submitted by the respondents whereby they consented to an Order containing findings that Biltmore and Barletta violated the anti-fraud provisions of the federal securities laws, and that Loewenstern and Bronson failed reasonably to supervise. The Order also censures Biltmore, suspends Barletta for a period of twelve months, suspends Bronson and Loewenstern from association in a supervisory capacity for staggered twelve month terms and requires Biltmore and Barletta to cease and desist from violating the anti-fraud provisions.

A final judgment entered in a related civil action, SEC v. Biltmore

Securities, Inc., et al., No. 93-6837 (S.D. Fla.), requires Biltmore to disgorge \$1 million and to implement compliance related recommendations of a consultant appointed by the Court. (Rel. 34-35900)

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## INVESTMENT COMPANY ACT RELEASES

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### MAXIM SERIES FUND, INC.

An order has been issued under Sections 6(c) and 17(b) of the Investment Company Act exempting Maxim Series Fund, Inc., (Fund) from the provisions of Sections 17(a)(1) and 17(a)(2) of the Act to the extent necessary to permit the exchange of shares between portfolios of the Fund. (Rel. IC-21176 - June 30)

### PAINE WEBBER GROUP INC.

A notice has been issued giving interested persons until July 26 to request a hearing on an application filed by Paine Webber Group., et al. under Section 2(a)(9) of the Investment Company Act. General Electric Company (GE) acquired securities of Paine Webber Group Inc. (PWG) that, upon conversion of certain of such securities into common stock, would result in GE owning more than 25% of PWG's outstanding voting securities. The PWG securities owned by GE are subject to certain restrictions, obligations, and prohibitions as described in a stockholders agreement. Applicants request an order declaring that the presumption of control by a greater than 25% shareholder under Section 2(a)(9) of the Act has been rebutted. The order would be effective for so long as the stockholders agreement remains in full force and effect without any amendment that would materially reduce the restrictions, obligations, and prohibitions with respect to GE's ownership of PWG's securities. (Rel. IC-21177 - June 30)

### PIONEER MONEY MARKET ACCOUNT, INC.

A notice has been issued giving interested persons until July 25 to request a hearing on an application filed by Pioneer Money Market Account, Inc. for an order under Section 8(f) of the Investment Company Act declaring that applicant has ceased to be an investment company. (Rel. IC-21178 - June 30)

### PIONEER AMERICA FUND, INC.

A notice has been issued giving interested persons until July 25 to request a hearing on an application filed by Pioneer America Fund, Inc. for an order under Section 8(f) of the Investment Company Act declaring that applicant has ceased to be an investment company. (Rel. IC-21179 - June 30)



# U. S. Securities and Exchange Commission

Washington, D.C. 20549

(202) 942-0020

News  
Release

FOR IMMEDIATE RELEASE

95-122

## RICHARD Y. ROBERTS ANNOUNCES INTENTION TO RESIGN

Washington, D.C., July 5, 1995 -- Richard Y. Roberts today announced his intention to resign as a Commissioner of the United States Securities and Exchange Commission effective July 15, 1995.

Upon leaving the SEC, Commissioner Roberts will become an Executive Vice President of Princeton Venture Research ("PVR"), a consulting firm, and a managing director of PVR Securities, a securities firm specializing in raising venture capital for high technology companies. Both companies are headquartered in Princeton, New Jersey, and Mr. Roberts will be opening an office in Washington, D.C., for the two companies.

Since joining the SEC, Commissioner Roberts has become best known for his work with respect to the municipal securities market. For years Commissioner Roberts delivered speeches calling for certain reforms in this marketplace and, in 1994, the SEC approved a number of municipal securities market initiatives, including several designed to improve disclosure to investors.

Early in his tenure, Commissioner Roberts was very active in the SEC's proxy reform initiative which resulted in the deregulation of the shareholder communication rules in 1992. Later in his tenure, Commissioner Roberts took the lead in reforming the SEC's administration of the Public Utility Holding Company Act of 1935, and, just a few weeks ago, the SEC published a formal study recommending a number of legislative and regulatory changes in this area.

Beyond his leadership in those areas, Commissioner Roberts also has become known as a champion for improved disclosure of environmental liabilities, improved disclosure of potential mutual fund investments for participants in 401(k) pension plans, functional regulation of bank securities activities, reform of the shareholder proposal process, and improved disclosure of risks involving derivatives activities.

Mr. Roberts stated: "I have thoroughly enjoyed my four plus years at the Commission. It was exciting to strive both to protect investors and to maintain our securities markets as the greatest in the world. The experience was memorable, and it was a privilege to work with the outstanding individuals employed at the Commission. I now look forward to joining PVR and working in the securities industry."

Chairman Arthur Levitt said: "Commissioner Roberts' leadership at the Commission has been extraordinary. Long before anyone else, he focused his energies on reforming the municipal securities market, and it is largely due to his efforts that we have made such progress in increasing the market's disclosure, transparency and integrity. In addition to his dedication to investor protection, Rick's sense of humor, his perspective, and his good nature have made working at the SEC a more rewarding experience for all Commission employees. He will be greatly missed."

Mr. Roberts was nominated to the SEC by President Bush and sworn in as a Commissioner on October 1, 1990 by the Honorable Stanley Sporkin, Judge for the United States District Court of the District of Columbia.

He and his wife, the former Peggy Frew, make their home in Fairfax, Virginia with their son and two daughters.

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FOR IMMEDIATE RELEASE

95-123

IN THE MATTER OF WARREN L. RAWLS, CPA

Washington, D.C., July 5, 1995 -- The Commission announced the settlement of administrative proceedings, instituted on July 5, 1995 pursuant to Section 21C of the Securities Exchange Act of 1934 and Rule 2(e) of the Commission's Rules of Practice, against Warren L. Rawls, CPA and chief financial officer of Littlefield, Adams & Company (LFA). The proceedings were based on allegations that shortly after joining LFA in January 1994, Rawls learned that LFA's president and chief executive (the CEO) had previously deceived the company's independent auditors concerning LFA's receipt of consulting fee income in a material amount. Rawls failed to disclose what he had learned to the auditors and, in order to prevent the auditors from discovering that the CEO had lied to them, Rawls falsely described the nature and circumstances underlying a receivable in LFA's books and records. Rawls thereafter signed LFA's 1993 Annual Report filed with the Commission on Form 10-K, and provided the auditors with a management representation letter which both contained false and misleading statements and omissions concerning LFA's receipt of consulting fee income. The Commission ordered Rawls to cease and desist from committing or causing any violation, and from committing or causing any future violation, of Sections 13(a), 13(b)(2)(A) and (B) of the Exchange Act, and Rules 12b-20, 13a-1, 13b2-1 and 13b2-2 thereunder, and denied Rawls the privilege of appearing or practicing as an accountant before the Commission for two years, after which time he may apply to resume such practice or appearance on such conditions as the Commission may impose.

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UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act of 1934  
Release No. 35892 / June 27, 1995

Accounting and Auditing Enforcement  
Release No. 684 / June 27, 1995

Administrative Proceeding  
File No. 3-8738

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In the Matter of	:	ORDER INSTITUTING PUBLIC
	:	PROCEEDINGS PURSUANT TO
WARREN L. RAWLS, CPA,	:	SECTION 21C OF THE SECURITIES
	:	EXCHANGE ACT OF 1934, AND RULE 2(e)
Respondent.	:	OF THE COMMISSION'S RULES OF
	:	PRACTICE, MAKING FINDINGS AND
_____	:	IMPOSING SANCTIONS

I.

The Commission deems it appropriate and in the public interest that public administrative proceedings pursuant to Section 21C of the Securities Exchange Act of 1934 and Rule 2(e) of the Commission's Rules of Practice be, and they hereby are, instituted against Warren L. Rawls.

In anticipation of these proceedings, Respondent has submitted an Offer of Settlement which the Commission has determined to accept. Solely for the purpose of these proceedings, and any other proceeding brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the Commission's findings or conclusions contained herein, Respondent consents to the issuance of this Order, the entry of the findings contained herein, and the imposition of the sanctions set forth below.



## II.

The Commission makes the following findings: <sup>1/</sup>

### A. FACTS

#### 1. Respondent

Warren L. Rawls, age 40, is a Certified Public Accountant licensed by the State of Texas since 1984. In January 1994, Rawls became the chief financial officer of Littlefield, Adams & Company ("LFA"). In August 1994, he was elected a director, and named secretary and treasurer of LFA.

#### 2. Other Relevant Entity

Littlefield, Adams & Company ("LFA"), a holding company, recently moved its headquarters from San Antonio, Texas, to Sturgeon Bay, Wisconsin. LFA's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed for trading on the American Stock Exchange, Inc.

#### 3. Rawls' Conduct

One of Rawls' first tasks after becoming chief financial officer in January 1994 was to provide financial information to LFA's independent auditors in connection with their audit of LFA's financial statements for the year ended December 31, 1993. During a review of LFA's 1993 financial activity, Rawls attempted to determine the source of a \$250,000 deposit in LFA's May 1993 bank statement. Rawls questioned both LFA's bookkeeper and the auditors about the \$250,000 deposit and received conflicting information. The bookkeeper correctly informed Rawls that the deposit represented proceeds from common stock sales. The auditors, on the other hand, told Rawls the deposit represented payment of a receivable recorded at year-end 1992 for consulting fees.

Rawls thereafter questioned LFA's then president, chairman and chief executive officer ("the CEO") about the \$250,000 deposit. The CEO confirmed that the \$250,000 deposit represented proceeds from LFA stock sales, but that, during the 1992 audit, he had told LFA's independent auditors that this deposit represented LFA's receipt of consulting fee income earned in 1992. The CEO also told Rawls that he had received the consulting fees directly and therefore owed \$250,000 to LFA. That statement was false.

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<sup>1/</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity named as a respondent in this or any other proceeding.

In fact, LFA never received these consulting fees and neither the CEO nor anyone else at LFA had ever earned such fees. Before Rawls joined the company, the CEO had made it appear, through material misrepresentations and fabricated documents that he had performed consulting services for clients of his long-time friend and that LFA received \$250,000 for those services. Unbeknownst to Rawls, the CEO had fabricated the entire consulting fee arrangement as part of his ongoing scheme to inflate artificially LFA's revenues. 2/

Thus, shortly after joining LFA in January 1994, Rawls learned that the CEO had misrepresented the source of the \$250,000 bank deposit to LFA's auditors as payment for consulting services earned in 1992. Rawls informed the CEO that he should tell the auditors that the \$250,000 deposit represented stock sale proceeds rather than consulting fees. The CEO instructed Rawls not to provide this information to the auditors because they might resign as LFA's auditors. Rawls did not tell the auditors what he had discovered until after the CEO was removed from the company.

At year end 1993, LFA's books and records still reflected a receivable related to the unpaid consulting fees. To prevent the auditors from discovering that the CEO had previously lied to them concerning LFA's receipt of \$250,000 in consulting fees, in LFA's books and records, Rawls falsely described this receivable as owing from the CEO for stock sale proceeds, rather than consulting fees.

Rawls also provided the auditors with a management representation letter in connection with the 1993 audit that falsely stated, among other things, that LFA had made available all financial records and related data, and that there had been no material transactions that had not been properly recorded in the accounting records underlying the financial statements. For the reasons set forth above, this representation letter was materially false and misleading.

Further, Rawls falsely disclosed in LFA's 1993 Annual Report filed with the Commission on Form 10-K that LFA had received \$250,000 in consulting fee income.

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2/ As a result of recognizing the fictitious consulting fees, LFA overstated reported net income by at least \$226,000 for the period ended September 30, 1992 and, for the year ended December 31, 1992, LFA understated its reported net loss by at least \$250,000.

## B. LEGAL DISCUSSION

### 1. LFA's Violations of Sections 13(a), 13(b)(2)(A) and (B) of the Exchange Act and Rules 12b-20 and 13a-1 Thereunder

Section 13(a) of the Exchange Act requires issuers with securities registered pursuant to Section 12 of the Exchange Act to file periodic and other reports with the Commission containing such information as the Commission prescribes. Because the reporting requirements of Section 13(a) necessarily include the requirement of supplying accurate information, a violation of the section is established if a report is shown to contain materially false or misleading information. *SEC v. Savoy Industries, Inc.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978), cert. denied, 440 U.S. 913 (1979); *SEC v. Kalvex, Inc.*, 425 F. Supp. 310, 316 (S.D.N.Y. 1975); *SEC v. IMC Int'l., Inc.*, 384 F. Supp. 889, 893 (N.D.Tex.), aff'd., 505 F.2d 733 (5th Cir. 1974), cert. denied, 420 U.S. 930 (1975). No showing of scienter is required to establish a violation of Section 13(a) of the Exchange Act. *SEC v. Savoy*, 587 F.2d at 1167.

Section 13(b)(2)(A) of the Exchange Act requires an issuer which has a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer. Section 13(b)(2)(B) of the Exchange Act further requires that an issuer devise and maintain a system of internal accounting controls.

Rules 13a-1 and 13a-13 of the Exchange Act require issuers to file annual and quarterly reports, respectively, with the Commission. Rule 12b-20 requires that such reports include all material information necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

LFA's recognition of income based on fictitious consulting services caused the company's Quarterly Report on Form 10-Q for the period ended September 30, 1992, and its 1992 Annual Report filed with the Commission on Form 10-K and two amendments thereto to be materially false and misleading, in violation of Section 13(a) and Rules 13a-1, 13a-13 and 12b-20 thereunder. LFA also violated Section 13(b)(2)(A) of the Exchange Act by failing to make and keep books, records, and accounts, and Section 13(b)(2)(B) by failing to devise and maintain an adequate system of internal accounting controls.

## 2. Rawls Violations

Rule 13b2-1 prohibits any person from, directly or indirectly, falsifying or causing the falsification of, any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act.

Rule 13b2-2 prohibits officers and directors of an issuer from, directly or indirectly, making or causing to be made materially false or misleading statements, or omitting to state, or causing another person to omit to state, any material fact in order to make statements made not misleading to an accountant in connection with any audit or examination of the financial statements required to be filed with the Commission, or the preparation or filing of any document or report required to be filed with the Commission.

Although Rawls may not have had actual knowledge that LFA did not earn the consulting fee income, he knew that LFA had not collected the fees and that the CEO had lied to the auditors about the source of a \$250,000 deposit reflected in a May 1993 bank statement. After he confronted the CEO with the bank statement, the CEO claimed that the fees had been paid directly to him and instructed Rawls to keep silent.

As LFA's chief financial officer, Rawls willfully violated Rules 13b2-1 and 13b2-2 by mischaracterizing the \$250,000 in LFA's books, records, and accounts, providing this information to the auditors, and by failing to inform the auditors of the true source of the \$250,000 bank deposit. Rawls did this with knowledge that the auditors would rely on this information in conducting their audit of LFA's 1993 financial statements.

Rawls acted in a manner that was inconsistent with his duties and responsibilities as LFA's chief financial officer. Rawls should have served "the function of a check on more senior management's ability to override the company's internal controls." In the Matter of Michael V. Barnes, Exchange Act Rel. No. 33754 (March 11, 1994). As set forth above, his acts and omissions aided the CEO in avoiding detection of his fraudulent scheme and were a further cause of LFA's violations of Sections 13(a), 13(b)(2)(A) and (B) of the Exchange Act and Rules 13a-1 and 12b-20 thereunder.

### III.

Section 21C of the Exchange Act applies to any person who "is, was or would be a cause of [a] violation due to an act or omission the person knew or should have known would contribute to such violation."

Paragraph (1) of Rule 2(e) of the Commission's Rules of Practice provides, in relevant part, that the "Commission may deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission

after notice and an opportunity for hearing in the matter ... (iii) to have willfully violated, or willfully aided and abetted the violation of any provision of the federal securities laws (15 U.S.C. §§ 77a - 80b-20), or the rules and regulations thereunder."

Based on the foregoing discussion, Rawls willfully violated Rules 13b2-1 and 13b2-2 under the Exchange Act.

#### IV.

Based on this Order and the Offer of Settlement submitted by Rawls, the Commission finds that Rawls:

- A. caused violations of Sections 13(a), 13(b)(2)(A) and (B) of the Exchange Act, and Rules 12b-20 and 13a-1, and violated Rules 13b2-1 and 13b2-2 thereunder; and
- B. willfully violated Exchange Act Rules 13b2-1 and 13b2-2.

#### V.

In view of the foregoing, it is in the public interest to impose the sanctions agreed to in the Offer of Settlement.

Accordingly, IT IS HEREBY ORDERED that:

- A. Rawls, pursuant to Section 21C of the Exchange Act, cease and desist from committing or causing any violation, and from committing or causing any future violation, of Sections 13(a), 13(b)(2)(A) and (B) of the Exchange Act, and Rules 12b-20, 13a-1, 13b2-1 and 13b2-2 thereunder; and
- B. Rawls, pursuant to Rule 2(e) of the Commission's Rules of Practice, is denied the privilege of appearing or practicing before the Commission as an accountant; provided that:
  - 1. after two years from the date of this Order, Rawls may resume appearing before the Commission as a preparer or reviewer, or a person responsible for the preparation or review, of financial statements of a public company to be filed with the Commission, upon submission of an application to the Office of the Chief Accountant containing a showing satisfactory to the Commission that Rawls' work, in his practice before the Commission, will be reviewed by the independent audit committee of any company with which he

is or becomes associated, or in some other manner acceptable to the Commission;

2. after two years from the date of this Order, Rawls may resume appearing before the Commission as an independent accountant upon submission of an application to the Office of the Chief Accountant containing a showing satisfactory to the Commission that:

a. Rawls or any firm with which Rawls is or becomes associated in any capacity as an auditor is a member of the SEC Practice Section of the American Institute of Certified Public Accountants Division for CPA Firms ("SEC Practice Section") and he or the firm has received an unqualified report relating to its most recent peer review conducted in accordance with the guidelines adopted by the SEC Practice Section; and

b. Rawls has undertaken to remain a member or be associated with a member of the SEC Practice Section as long as he practices before the Commission, and will comply with all applicable requirements, including all requirements for periodic peer reviews, concurring partner reviews and continuing professional education, as long as he appears or practices before the Commission; and

3. the Commission's review of any application by Rawls to resume appearing or practicing before the Commission may include consideration of any other matter relating to Rawls' character, integrity, professional conduct or qualifications to practice before the Commission.

By the Commission.

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Jonathan G. Katz  
Secretary

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Rel. No. 35898 / June 27, 1995

Admin. Proc. File No. 3-8553

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In the Matter of the Application of

PATRICIA H. SMITH  
2304 Carlisle Road  
Hanover, Pennsylvania 17331

For Review of Disciplinary Action Taken by the  
NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DISCIPLINARY  
PROCEEDINGS

Violation of Rules of Fair Practice

Where salesperson submitted to member firms applications for the purchase of securities that falsely indicated that the salesperson had solicited transactions that had in fact been solicited by three separate unregistered salespersons, held, association's findings of violation and the sanctions it imposed sustained.

APPEARANCES:

Patricia H. Smith, pro se.

T. Grant Callery and Deborah F. McIlroy, for the National Association of Securities Dealers, Inc.

Appeal filed: November 14, 1994  
Last brief received: March 8, 1995

I.

Patricia H. Smith, formerly associated with Buckhead Financial Corporation ("BFC") and American Capital Corporation ("ACC" and, with BFC, the "Firms"), both members of the National Association of Securities Dealers, Inc. (the "NASD"), appeals

from an NASD disciplinary action. 1/ The NASD found that Smith violated Article III, Section 1 of the NASD's Rules of Fair Practice, 2/ by submitting applications to purchase securities that listed her as the representative involved when the transactions in fact had been solicited by non-registered salespersons. Smith was censured, fined \$7,500, suspended in all capacities for 15 days, and required to requalify by examination before being registered in any capacity. 3/

## II.

Smith was secretary/treasurer and 15 percent shareholder of C.I.C. Financial Group, Inc. ("CIC"). CIC was not registered with the NASD but it sold, through its employees, mutual fund securities as well as insurance products. Although Smith and at least one other CIC employee were also associated with unrelated NASD member firms, other CIC employees were not so associated. During the first half of 1993, three of these non-associated employees solicited securities purchases from CIC customers.

On January 25, 1993, Mark Longnecker, a CIC employee, solicited a \$20,000 mutual fund investment from Charles and Ann Becker. One month later, Ann Becker made a second mutual fund investment through Longnecker of roughly \$60,000. Longnecker, whose NASD registration terminated in July 1992, was not associated with any member at the time of either of these transactions. He was prohibited, therefore, from soliciting them. 4/ Consequently, when the Beckers' two purchase applications were submitted to BFC, Smith listed herself as the registered representative involved.

On February 10, 1993, Raymond Cleary, CIC's president, solicited a \$9,000 mutual fund investment from Vernon Hertz. Like Longnecker, Cleary had been -- but was not at the time in question -- registered with the NASD. Smith, therefore, listed herself as the registered representative on Hertz's purchase application before submitting it to BFC.

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- 1/ Smith was associated with BFC from July 21, 1992 to April 16, 1993, and with ACC from June 10 to July 29, 1993.
  - 2/ Section 1 of the Rules requires the observance of high standards of commercial honor and just and equitable principles of trade.
  - 3/ The NASD also assessed costs.
  - 4/ See Section 15(a) of the Securities Exchange Act of 1934. See also Article IV of the NASD By-Laws, and Part III, Section 1 of Schedule C to the By-Laws. NASD Manual (CCH) Paragraphs 1151 and 1785.



In March 1993, BFC notified Smith that it was terminating her registration because, among other things, BFC had learned that CIC personnel were misrepresenting that they were associated with BFC. Smith then became associated with ACC.

On June 18, 1993, Raymond Swartz, a CIC employee, solicited Barbara Lawrence to transfer funds from an employee profit sharing plan into an individual retirement account sold through ACC. Swartz, who had failed the NASD's qualifying exam, had never been associated with an NASD member. Here, too, Smith listed herself as the registered representative involved in the transaction. On July 21, 1993, ACC, having learned that the NASD was investigating CIC, directed Smith to cease "solicit[ing], sell[ing] or submit[ting] any business until further notice . . . ." ACC terminated Smith's registration shortly thereafter, and she has not associated with an NASD member since.

### III.

Smith does not dispute the NASD's findings of violation, which are fully supported by the record. Nor does she dispute the majority of the sanctions imposed by the NASD. However, she contends that the fine of \$7,500 is excessive. 5/ Smith claims that she did not intend to harm any client. She notes that ACC has already "fined" her \$1,000 (presumably for her role in this matter). 6/ She also argues that other persons found liable by the NASD for similar or more egregious misconduct in other proceedings have been given less onerous fines.

As we have often pointed out, the appropriate remedial action depends on the facts and circumstances of each particular case, and cannot be precisely determined by comparison with action taken in other cases. 7/ Smith's transgressions were not insignificant. On four separate occasions, involving three different customers and three different salespersons, Smith affirmatively misled the broker-dealer with which she was associated regarding the identity of the soliciting salesperson for the particular transaction. Smith, in this way, actively facilitated illegal conduct by these unregistered salespersons. As a result of her actions, securities sales were solicited and effected without the supervisory protections mandated by the

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5/ Smith's motion to adduce additional evidence related to this claim is granted.

6/ ACC deducted this amount from the commissions that ACC owed her.

7/ See Butz v. Glover Livestock Commission Co., Inc., 411 U.S. 182, 187 (1973); Hiller v. S.E.C., 429 F.2d 856, 858-9 (2d Cir. 1970).

securities laws and NASD rules. This situation, which continued over a period of six months and notwithstanding the warning of BFC, presented obvious and potentially significant risks to both the Firms and customers. 8/

As we previously have observed, the NASD's registration requirement "provides an important safeguard in protecting public investors" and, consequently, "'strict adherence' to that requirement is 'essential.'" 9/ Under the circumstances, we believe that the NASD's sanctions are neither excessive nor oppressive. 10/

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8/ Smith blames her misconduct on the training she received at another firm, where she claims that it was common practice for registered representatives to sign the purchase applications of non-registered salespersons. We have held, however, that ignorance of NASD requirements is no excuse for violative behavior. See Carter v. S.E.C., 726 F.2d 472, 473-74 (9th Cir. 1983) (court of appeals rejected representatives' defense that they were unaware of NASD rules regarding private sales of securities, stating "[a]s employees, [the representatives] are assumed as a matter of law to have read and have knowledge of these rules and requirements"); Sirianni v. SEC, 677 F.2d 1284, 1288 (9th Cir. 1982); Gilbert M. Hair, Securities Exchange Act Rel. No. 32187 (April 21, 1993), 53 SEC Docket 3935, 3941 n. 12.

Moreover, it is no defense that others in the industry may have been operating in a similarly illegal or improper manner. Donald T. Sheldon, Securities Exchange Act Rel. No. 31475 (November 18, 1992), 52 SEC Docket 3826, 3838 n. 32, aff'd, 45 F.3d 1515 (11th Cir. 1995); C.A. Benson & Co., Inc., 42 S.E.C. 107, 111 (1964). In any event, we do not believe that Smith who, as a part-owner of CIC, benefited from these transactions, was oblivious to the impropriety of her actions.

9/ First Capital Funding, Inc., 50 S.E.C. 1026, 1029-30 (1992) (citations omitted). See also L.B. Securities Corp., 42 S.E.C. 885, 889 (1966) ("The requirements of NASD approval of registration before a member's employee may engage in dealings with the public serves a significant purpose in the policing of the securities markets and in the protection of the public interest . . .").

10/ We also note that the NASD will permit Smith, a single mother of three, to pay her fine over time through an installment payment program. As we have previously observed, the availability of this option can significantly ameliorate the financial hardship that might otherwise

(continued...)

An appropriate order will issue. 11/

By the Commission (Chairman LEVITT and Commissioners ROBERTS and WALLMAN).

Jonathan G. Katz  
Secretary

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10/ (...continued)

result. See Toney L. Reed, Securities Exchange Act Rel. No. 33676 (February 24, 1994), 56 SEC Docket 387, 394 n. 25; Stephen Russell Boadt, Securities Exchange Act Rel. No. 32905 (September 15, 1993), 54 SEC Docket 2685, 2689.

11/ All of the arguments advanced by the parties have been considered. They are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed herein.