U.S. SECURITIES & EXCHANGE COMMISSION
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ADMIN. PROCEEDINGS

ADMINISTRATIVE PROCEEDING
FILE NO. 3-4726

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

WALTER W. IRWIN
and
LEARY C. WILLIS, JR.

(AMBASSADOR CHURCH FINANCE/
DEVELOPMENT GROUP, INC.)

INITIAL DECISION

February 22, 1977
Washington, D.C.

Jerome K. Soffer
Administrative Law Judge

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APPEARANCES: J. Carlton Ivey, of the Atlanta Regional Office of the Commission, for the Division of Enforcement

Frank C. Ingraham (Ingraham, Young & Corbett), attorney for respondent Walter W. Irwin

R. Maynard Holt, attorney for respondent Leary C. Willis

BEFORE: Jerome K. Soffer, Administrative Law Judge

On September 4, 1975, the Commission issued an Order for Public Proceedings (Order) pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act) and Section 10(b) of the Securities Investor Protection Act of 1970 (SIPA), naming as respondents Walter W. Irwin and Leary C. Willis, Jr., as well as Ambassador Church Finance/Development Group, Inc. (Ambassador), Henry C. Atkeison, Jr., Jack Altman, H. Carlton Bell, Audy Eugene Corder, Walter Newt Roberts, Jr., Harold Wayne Stanfill, and Harry L. Winters.

The Order alleges that various specified respondents violated (1) the registration provisions of the Securities Act of 1933 (Securities Act), (2) the antifraud provisions of the Securities Act and the Exchange Act and Commission Rule 10b-5 thereunder, (3) the record-keeping requirements of the Exchange Act and Rule 17a-3 thereunder, and (4) the registration provisions of the Exchange Act and Rule 15b3-1 thereunder; and, additionally, (5) that they were associated with a registered broker-dealer when a trustee was appointed under SIPA, and (6) that a consent order of permanent injunction was entered against the registrant and its president.

This administrative proceeding has been terminated and remedial sanctions imposed with respect to all of the named respondents except Irwin and Willis. On November 14, 1975, an

order was entered against Ambassador Church and Atkeison because of their default in answering, revoking the registration of the former and barring the latter from associating with any broker-dealer. The remaining respondents made acceptable offers of settlement generally involving the barring of them from association with any broker or dealer, with the right to apply to become so associated in a non-supervisory capacity after the expiration of one year.[1/]

The Order directed that a public hearing be held before an Administrative Law Judge to determine the truth of the allegations set forth and what, if any, remedial action is appropriate in the public interest and for the protection of investors. Public hearings involving respondents Irwin and Willis were held before the undersigned Administrative Law Judge on September 14, 15 and 16, 1976 in Nashville, Tennessee. Thereafter, concurrent supporting briefs were filed respectively by counsel for the Division of Enforcement and for the respective respondents, and each was permitted to file a reply brief.[2/] The parties waived the filing of proposed findings of fact and conclusions of law. The findings and conclusions herein are based upon a preponderance of the

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1/ Specifically, these sanctions are found against Bell, Corder, and Winters in SEA Rel. No. 12046 of January 26, 1976, against Stanfill in SEA Rel. No. 12174 of March 8, 1976, against Roberts in SEA Rel. No. 12180 of March 9, 1976, and against Altman in SEA Rel. No. 12474 of May 24, 1976.

2/ Irwin, however, chose not to file a reply brief.

evidence as determined of the record and upon observation of the demeanor of the witnesses.

The allegations of the Order contain separate and distinct charges with respect to Willis and Irwin. It specifies that from sometime in June, 1973 to on or about November 7, 1974, Willis violated the antifraud provisions of the securities laws in connection with the sale of church bonds; that as vice-president of the registrant, he wilfully aided and abetted violations of the record-keeping requirements of the Exchange Act; and that he was an officer at the time a trustee was appointed under SIPA on December 17, 1974. The charges against Irwin include the sale of unregistered securities between December 1, 1970 and November 7, 1974, specifically investment certificates of Atalbe Christian Credit Association, Inc. (Atalbe), a corporation of which Atkeison, Altman and Bell were the owners and officers, and the commission of certain fraudulent practices in connection therewith.

The Registrant

Ambassador is a Tennessee corporation which has been registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act since April 18, 1970. Atkeison was its president and sole owner. Its officers included Altman, as Assistant Secretary, Stanfill as Executive Vice-President, and Willis, as Vice-President. During the relevant periods

hereinafter described, Irwin was employed as a securities salesman by registrant.

The basic business of Ambassador from the time of its incorporation in 1969 until it ceased operations in or about November, 1974 was to assist local churches in financing capital expansions through the setting up of a program of selling bonds to the churches' congregations. The services provided included consultation with church officials, determination of the amount of bonds that could be sold to the congregation, the preparation of a prospectus, and planning the best method of effecting the sale of bonds. For this assistance, Ambassador would be paid a fee computed on a percentage of the total involved in the program.

In the execution of these functions, Ambassador employed salesmen in the field, supervised by program directors in various territories, whose function it would be to seek out churches planning expansion or construction, obtain from them pertinent information needed to prepare a prospectus, and assist the churches in various ways including the setting up of local committees, record-keeping, and sales programs. Information gathered from the churches would be forwarded to Ambassador's office, where it would be assembled into a prospectus by specified employees, reviewed as to form and content by house counsel, before being printed by Ambassador, and then returned

to the church for use in the sale to its members of the bonds (also printed by Ambassador). Salesmen received a commission and program directors were paid an annual salary plus an override based upon the total program involved. Ambassador's fees for its services would be paid in advance.

When the salesmen and program directors would send back to Ambassador the information obtained from the client-church, a recommendation would also be made by the program director as to the ability of the church to handle the size of the loan. Presumably, all decisions concerning the transaction would ultimately be made by Atkeison. There appears to have been a complete separation of functions between the program director's initiating activities, the work done at the home office, and the ultimate sale of the bonds. Normally, the sale, plus the distribution of prospectuses and other materials would be handled directly by the church.

Over the years, Ambassador developed some variations in its basic activities. Thus, in some instances, it would undertake to sell for the church, on a commission basis, any unsold bonds remaining after the conclusion of the program. Some times, Ambassador would undertake to handle from the beginning the entire sale of the bond issue, in which case it would receive both a program fee and a commission. A variation of the latter plan would have Ambassador guarantee the proceeds of all or part

of the total amount of sales and advance fund to the church, frequently financed through bank loans. In all cases, Ambassador's advances, fees and commissions would be a first priority payment out of the proceeds of sales. In some instances, its program fees would be paid in bonds (so-called "fee bonds"). In order to effect bond sales, Ambassador employed a distinct group of salesmen and supervisors, selling bonds both on behalf of a church or for Ambassador's own account. Usually, the program directors had no direct connection with sales, whether by the staff or by the church.

The entire Ambassador operation was under the complete domination and control of Atkeison, its president and sole owner. His relatives were directors and nominal officers. Other principals in these affairs included house counsel, a Mr. David Thompson, who was consulted on all legal matters involved, its bookkeeper, respondent Roberts, who was in charge of its books and records, and Betty Jean Brumley, who was Atkeison's secretary and "girl Friday". Respondent Winters was the sales manager during most of the relevant periods and, like most of the other principals, managers and supervisers in the firm, had been an ordained minister, specifically of the Church of God.

The manner of handling the records, paperwork, bonds, and other administrative details of individual bond programs was not well defined, nor were the lines and demarcations of

authority clearly delineated. As seen, individual programs varied with respect to the participation by Ambassador in the sale of bonds. Nevertheless, all bonds, whether "fee" or "commission" were treated interchangeably -- and casually. Thus, these negotiable "bearer" bonds were kept principally in Atkeison's office, but also in Winter's office, or in Brumley's desk, or sometimes in the trunk of salesmen's cars. It is not at all clear that Roberts, the bookeeper, was either apprised of, or kept records of, the receipts and sales of these bonds. As a result, both Brumley and Winters kept their own personal records of bonds which came into their custody or passed through their hands. Brumley, in particular, kept a notebook on an informal basis, since she was frequently consulted concerning the status of bonds as being the most reliable source of information, in which she recorded receipts, descriptions and sales of those bonds of which she was aware, between June 18, 1973 and October 19, 1974 when Ambassador's operations ceased. Yet, other than Brumley's notebook, there was no central record for keeping track of the receipt or disbursement of bonds.

Monies received from sales would usually cross the desk of Brumley,[3/] and she would arrange for their deposit in a rather unusual manner.

3/ Sometimes, deposits would be made by other firm employees or members which are not reflected in her notebook.

There were three bank accounts involved with the deposit of funds, namely, the Ambassador account, the Atalbe account, (the activities of this company will be described later) and Mr. Atkeison's personal account. Whether funds were received representing program fees, the sale of church bonds (whether "fee" bonds or "commission" bonds), or from the sale of Atalbe certificates, they would be deposited in whichever of the three bank accounts was running short of funds. Thus, Brumley would check each morning with the bank to determine which of the accounts was running low, and then deposit whatever receipts came in that day to the account needing it. After the deposit was made, she would then turn over the deposit slips to Roberts, the bookeeper. This was a procedure that was adopted in late 1973 or early 1974 with the knowledge and consent of Atkeison, and was designed to prevent any one account from becoming overdrawn.

The books and records were audited periodically by outside auditors, but Brumley's personal notebook record of receipts and sale of bonds was not shown to them.

Willis

In December of 1973, Respondent Willis was engaged by Atkeison as a district program director for Ambassador. He had four years of similar duties with "Fidelity Plan", a registered broker-dealer. Another, Willis L. Kirk, was hired in the same

capacity at the same time. Willis's initial salary was $25,000 per year, plus a 2 1/2% override on gross fees from programs organized for churches in his assigned territory, the states of Florida, Texas, Oklahoma and Colorado. Because Fidelity Plan had been under investigation by this Commission, Willis asked for assurances from Atkeison that Ambassador was in compliance with the requirements of the securities laws.

Sometime between January and March of 1974, Willis was given the title of a Vice-President in Ambassador.[4/] This was done in order to enable Ambassador to register as a broker-dealer in a number of states in which it was transacting business, and he was the only individual at the office who had passed the requisite NASD or SECO examination. His appointment made no change in his duties as program director, his compensation, or in the authority he exercised. No entry was made on the corporate books. According to Brumley, Atkeison continued to operate Ambassador as if it were his personal company, and when he was absent from the office (a frequent occurrence), she, rather than any of the nominal officers, would be in charge. However, Willis did sign applications for state registrations, and was known to prospective church customers as a vice-president.

4/ An amended Form BD, dated February 15, 1974 and filed February 21, 1974, shows the appointment of Willis to this office.

During the early months of his employment at Ambassador, Willis noted that the procedures adopted and used at Ambassador were relatively loose and not as strict and precise as those he had encountered when he worked for Fidelity Plan. He observed particularly that duties and responsibilities of various individuals were neither rigidly fixed nor defined anywhere, bearer bonds were not kept securely, and all policy functions were centralized in the hands of Atkeison. Further, he had heard rumors in the office that Ambassador was not keeping a daily blotter of bond sales and transactions, a record which had been kept at his previous employment. He inquired of Atkeison concerning this, but was assured that the books were in order, that they were being properly kept by Roberts under instructions from house counsel, Thompson, that they were periodically audited by an outside firm of accountants, and that the reports required by the S.E.C. were being submitted in proper form. In sum, he was advised by Atkeison that the books were in order and that he should not concern himself with rumors. Moreover,the registrations filed with the various state commissions between January and March, 1974, included certified balance sheets and income statements for the years 1972 and 1973. These were made known to Willis, and show Ambassador in good financial condition with a net profit in 1973 of almost $60,000. He was present on one or two

occasions at discussions wherein it appeared that Ambassador was pressed for funds to remit proceeds of bonds sales, but these were generally taken care of subsequently.

During the eleven-month period that he was connected with Ambassador, Willis never had occasion to examine or sought to examine, the books and records of the company, or particularly, the notebook held by Mrs. Brumley. However, he did know she kept this record and did ask her from time to time for information contained therein. Moreover, he had no connection directly with bond sales, except that in one or two instances, the sales manager, Winters, made a request of Willis to deliver some bonds from a current program which could be available for potential sales.

From time to time, meetings would be held at the offices of Ambassador to discuss various aspects of the company's activities. Willis attended many of them. It is not clear whether the financial situation of Ambassador was ever brought up or discussed at these meetings, except for those at the end when the company came under investigation for its financial difficulties.

The tight financial situation became noticeable when calls began to come in from churches that they were not receiving the proceeds from bond sales. Then, in October of 1974, on a day when Atkeison was away from the office, Willis, as vice-president of Ambassador,was advised by an employee of the Commission of

certain financial difficulties involving overdraft checks as well as general capital deterioration. A meeting was held forthwith among the officers and employees then present, including Willis, at which it was agreed to cease operations. This was followed by a meeting including Atkeison the following day, where the true financial picture of Ambassador began to emerge. At a general meeting several days later, the various officers and employees compiled a list of monies, approximately $348,000, owed to various churches as a result of sales.

Thereafter, on November 6, 1974, one day prior to the appointment of a receiver, Atkeison received some checks for bond sales, totalling about $21,000. Rather than turn the money into the firm's account, he gave it directly to Altman for distribution among various individuals connected with the firm to whom monies were owed as commissions or fees. Willis received $4,000 out of these monies on account of $10,000 owed him as fees for services in connection with two previous bond programs he helped organize. No claim has since been made against him for his shares of the proceeds.

During the eleven months that Willis worked for Ambassador he was involved with two specific bond programs pertinent to the charges herein.

In early 1974 Willis and two local salesmen whose activities he directed entered into an understanding with the Joy

Baptist Temple of Fort Worth, Texas involving a bond issue totalling $285,000. The outline of the agreement was that the church would dispose of $100,000 worth of the bonds through an exchange with outstanding bondholders, and Ambassador undertook to sell the remaining bonds and to guarantee that payment of the churches' shares of the funds (after deducting $26,000 program fees and sales commissions) by advancing money to a building contractor for construction work at the church, in accordance with a schedule to be furnished by the contractor. Thereafter, on April 5, 1974, a written contract was entered into between the parties, which, because of clumsy attempts to modify existing printed forms, contains ambiguities and inconsistencies. Nevertheless, the parties proceeded upon the basis of the oral arrangements agreed upon, and the contractor furnished a schedule of payments to be advanced by Ambassador. In accordance with normal procedures, church officials furnished appropriate information to Ambassador for its preparation of the prospectus. Willis signed the contract on behalf of Ambassador as its "Administrative Vice-President" which was delivered to the church by his field salesmen. A prospectus dated April 15, 1974 was printed, and sales were commenced, neither of which actions directly involved Willis.[5/]

5/ He claims not to have seen the prospectus prior to the proceedings herein.

Thereafter, Ambassador defaulted in making the first two payments as required by the contractor's schedule. The pastor of the church complained to Willis on both occasions and the latter in turn advised Atkeison thereof. Upon the default the church retained an attorney who, among other things, advised that the prospectus was incorrect in failing to state that Ambassador was guaranteeing the payments for the bonds it was selling. Consequently, an amended prospectus dated July 1, 1974 was issued.[6/] A meeting was arranged for August 9, 1974 at which Atkeison, Willis and Brumley for Ambassador and the minister and his attorney were present. In order to cover the defaults, Ambassador issued checks totalling $32,166, but Atkeison stopped payment thereon the very next day. However, it issued other checks, post-dated, in their place, some of which were honored and some were not. Ultimately, the church received a total of $42,166 and has in its possession $80,000 to $90,000 in bonds unsold by Ambassador. Thus, after allowing Ambassador its fees and commissions, there remains unaccounted to the church, either in the form of bonds or cash, approximately $28,000 to $38,000. It has instituted legal action with respect to the unaccounted for monies.

6/ The first prospectus was not offered into the record and the language of the second one does not contain such a guarantee. There is no basis for comparing the two prospectuses and wherein they differed from each other.

The other bond program involved the second of two issues organized by Ambassador for Westgate Baptist Church of Tampa, Florida. In early 1974, there had been a bond program involving some $600,000 in bonds, arranged for by Willis and handled satisfactorily by Ambassador. The entire bond issue had not been sold, and, since Ambassador had advanced all of the funds to Westgate, there was still an overpayment to the church of about $53,909. In addition, the church needed some funds to complete a construction contract.

Accordingly, at the suggestion of Willis, a program for the sale of $150,000 short-term bonds at 10% interest was worked up. Ambassador was to sell the entire issue, retain $53,909 thereof,[7/] plus a $9,000 fee and remit the balance ($88,000) to Westgate. Information for the prospectus was worked up involving church officials and the local Ambassador salesmen, which was then sent to the Ambassador office for processing in the usual manner. The prospectus, as issued, contains the statement that the church was indebted to the Brentwood County Bank for $53,909 and that the proceeds of the bond sales would be used to pay off this loan. No mention was made of payment thereof to Ambassador Moreover, the prospectus contains a purported balance sheet of Westgate, as provided by church officials, which fails to show

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7/ There is a difference of understanding as to whom the $53,909 was owed. The church minister thought it was owed to Ambassador, but Willis thought it was owed to the Williamson County Bank of Brentwood, Tennessee, through whom the original financing was arranged on the previous bond program.

this indebtedness specifically.[7A/] According to the church minister, the only connection that Willis had with the bond issue was at the initial meeting; thereafter, all matters were taken care of by the local salesmen or by Ambassador employees at the home office.

Ultimately, the church received $7,000 in cash and remains with $4,000 in unsold bonds, but the balance of its share, $77,000 has not been accounted for. The church is presently unable to pay existing bond holders either interest or principal. Willis professes no knowledge as to the extent that sales were made, although in the closing days of Ambassador he eventually learned that all the bonds, or their proceeds, were not accounted for.

Willis is presently the president and majority stockholder of United Church Finance, Inc., a Tennessee corporation, which has been granted a license as a limited dealer in securities within that state. The license was acquired after a formal hearing inquiring into Willis's involvement with Ambassador, and contains a restriction voluntarily consented to that United would not handle any money or securities belonging to a client. Thus, its operation is limited to assisting its clients in setting up bond sales programs within the state of Tennessee. This business represents Willis's only means of support at the present time, except for some occasional part-time duties as a pastor.

7A/ But the liability for the debt would appear to be embraced in an obligation of $600,000 set forth for the March 1974 bond issue.

Atalbe

Atalbe was incorporated on June 3, 1971 in Tennessee. According to a prospectus, initially issued on December 1, 1970, and amended on August 1, 1972, Atalbe was formed to provide capital for financing the purchase of church bonds by investors, out of funds it proposed to obtain through the sale of investment certificates to a total maximum of $100,000. The principals of this company were Atkeison (Secretary-Treasurer), Altman (Vice-President), and Bell (President), its sole officers and directors. However, according to Brumley, Atkeison operated Atalbe in the same fashion as he did Ambassador, i.e., in complete control. He was the only one who had any input with respect to the corporate prospectus; records of sales and redemption of Atalbe certificates were kept in his office. In fact, she expresses the belief that Atalbe had been absorbed into Ambassador.

The initial prospectus issued by Atalbe (the amended prospectus appears to be identical in content except for a change of address, and some additional data respecting Ambassador Church) recites "total underwriting discounts or commissions - none", but that, "the cost incurred by this type of offering will be paid by Atalbe," since Atalbe was itself offering the certificates. It further recites that Atalbe "will be organized* under the laws of Tennessee", a statement which is repeated in the amended prospectus, even though Atalbe was apparently incorporated in the

intervening period. It further states that "none of these securities being registered* are to be offered for the account of stockholders or other security holders" even though admittedly the securities were never registered with this Commission. (*Underlining added in both places.) Finally, it states that the certificates will be offered "to business acquaintances of" Atalbe's officers and promoters.

The prospectus offers as a security for certificate holders, that the loans to individual church bond purchasers "will be collateralized by the church bond itself," which will be held until the loan is repaid. Mention is made of three church finance companies as having guaranteed a market for the Atalbe funds, with Ambassador being mentioned as the principal supporting company (the other two being unnamed). This is the only mention of Ambassador's connection, except for the fact that Atkeison is identified as Ambassador's president. It is further noted that the prospectus does not contain a financial statment with respect to Atalbe.

Irwin

Respondent Irwin was employed by Ambassador as a program director and securities salesman from some time in November, 1970 to about January 15, 1974. He had been employed previously for approximately three years commencing in 1964 by a registered broker-dealer.

Between May, 1971 and July 2, 1973, he sold some $60,000 worth of the investment certificates of Atalbe to residents of

Georgia, Mississippi, and Tennessee. In connection with such sales, he used the two prospectuses issued by Atalbe.[8/] He advanced to prospective customers the representations contained therein, such as that the monies derived from the sale were to be used to finance the purchase of church bonds, and that the investment certificates would be secured by the underlying church bonds purchased with the proceeds. With some few exceptions, he was paid a commission, usually of 10% of the proceeds of the sale, a fact which he did not disclose to purchasers.[9/]

Concededly, the investment certificates of Atalbe were not registered despite the reference in the prospectus to "the securities being registered," (underlining added), and were sold by Irwin to individuals who were not "business acquaintances of officers and promoters". Irwin never inquired as to whether these securities were ever registered and, in fact, felt that they were exempt from registration as being church related securities, because of the purported intent to advance loans to purchasers of church bonds which would also collaterize the loans. Moreover, he "assumed" that the certificates were "properly drawn up". It is further conceded that more than $650,000 in Atalbe certificates

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8/ However, he did not give prospective purchasers copies in all instances. He sometimes relied upon Ambassador sending them out with the confirmations of sale.

9/ Although he testified at his investigatory examination to the fact that he was being paid a commission, he attempted at the hearing herein to modify this testimony by stating that these monies were "selling expenses" which were being paid to him by Ambassador.

were sold, and that the Atalbe corporation has been insolvent and without assets since the date of its incorporation on June 3, 1971. Irwin, however, denies having any knowledge of these facts prior to this proceeding. Although he was not the only salesman selling these certificates, he believed that the total sales outstanding never exceeded $100,000, particularly since a number of those sold were being redeemed during the period of sales. Nor was he concerned over the fact that Ambassador was handling the sales of Atalbe certificates, despite the statement of "no underwriting agreement" in the prospectus, because he assumed that Atalbe was a subsidiary of Ambassador.[10/]

As part of his efforts at selling Atalbe certificates, Irwin made use of this Commission's Release SEA 9064, dated January 22, 1971, concerning the then recently enacted SIPA and the protection it afforded of up to $50,000 per account on customer claims for cash and securities in the event of liquidation of an SIPC member (which would include Ambassador as a registered broker-dealer). Ambassador had made a copy thereof available to Irwin, who, without prior consultation with any member of the firm, its counsel, or anyone else, concluded that the SIPA protection would extend to purchasers of church bonds, and hence of Atalbe certificates which were to be secured by

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10/ In fact, Brumley believed that the two corporations had been merged.

such bonds. He thereupon on his own initiative sent letters to prospective customers containing copies of Release 9064, in which he asserted that the "recent legislation" would give bond holders (by whom he intended to include Atalbe certificate holders) "the same protection that the FDIC (Federal Deposit Insurance Corp.) of the banking gives to their depositors" up to $50,000 per account.

Irwin made his last sale of Atalbe certificates in July of 1973. Shortly thereafter, he began to receive complaints from customers that the interest thereon was not being paid. He subsequently discussed these certificates with Ambassador's house counsel, David Thompson, who expressed some reservations about their validity. Thereafter, Irwin made no further effort to sell these certificates.

Two of the individuals who purchased Atalbe certificates from Irwin were Mrs. Beulah Villines, of Tennessee, and Mrs. Pearl E. Moore, of Mississippi. Mrs. Villines, a prior investor in church bonds purchased $17,000 worth of these certificates at 8 per cent interest renewable annually in reliance upon the contents of the prospectus plus the representations by Irwin of their being backed by church bonds and that her investment would be protected by some sort of federal insurance. She permitted the certificates, purchased in July, 1971, to renew annually until 1974, when she asked for the return of her investment.

She was visited by Respondent Corder, who prevailed upon her to continue holding the bonds at an increased interest of 9 per cent.[11/] She has received no further payments of interest or principal, and has presently an outstanding claim against the SIPC trustee of Ambassador with respect to the certificates as well as to the bonds supposedly supporting them. The claim based upon the certificates has already been rejected.[12/]

Irwin sold to Mrs. Moore, who had previously known him both as a preacher and socially, a $1,000 Atalbe certificate in June of 1973. She was not shown a prospectus but relied upon his representations that the certificates were backed by church bonds and were guaranteed individually by officers of Atalbe. When she did not receive her semi-annual interest payment, she complained to Irwin. As a result of his efforts, she finally received a check for past interest as well as a post-dated check for future interest due. Her certificate is in default at the present time, although the checks for the interest have been honored.

Irwin left the employ of Ambassador on January 15, 1974, and went to work as a church bond program director for "American

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11/ He physically changed the printed "8 per cent" legend on the certificates at that time.

12/ At the time of his visit, Corder interested Mrs. Villines in purchasing some $30,000 of the church bonds of Westgate Baptist Church heretofore described. These bonds are also in default.

Securities", a registered broker-dealer of Birmingham, Alabama. He has registered as a representative of this company with this Commission and with a number of states. American Securities does not engage in securities sales or trading, but is exclusively devoted to the setting up of church bond programs. Irwin has continued training in the securities field, and has passed the SECO examination as well as a number of state exams. This employment is his sole source of livelihood. He asserts that as a result of his experience with Ambassador he has learned to be more precise in dealing with the public and to study all prospectuses carefully.

Irwin offered the testimony of two witnesses to attest to his good character. Roger Church, an insurance man, and Willie Kato, the superintendent of a "Boy's Ranch" in Tennessee, have known Irwin for a long period of time, both socially and through their joint work in their church. All three are connected with the African Christian School Foundation, of which Irwin is a board member. They attest to his devotion to the promotion of church activities, and to his good reputation in the community. Kato had bought $5,000 of Atalbe certificates upon the representations by Irwin that the funds would be used to finance church bonds, which would then serve as their collateral. He now knows that these certificates are valueless and may not have been backed by church bonds. Nevertheless, he still has full faith in the honesty and reliability of Irwin.

Fred D. Bryan, a certified public accountant, was appointed trustee of Ambassador under SIPA in December of 1974, following his appointment a month earlier as its temporary receiver. His examination of the books, records and affairs of Ambassador disclosed that approximately $360,000 to $375,000 in church bonds proceeds which had been sold by Ambassador, were not turned over to the respective churches and that there was outstanding some $413,000 of Atalbe certificates. To date, SIPC has paid out some $12,000 to investors and has authorized an additional $14,000 to be paid. It disputes liability with respect to remaining claims totalling almost $750,000, and presently is in litigation against it.

The trustee has examined the books and records kept by Walter Roberts as turned over to him by Ambassador and bearing such designations as "vendor's accounts payable ledger", "payroll records", "cash receipts records", "accounts receivable", "journal", "accounts payable", and "securities transaction and positions". He has determined that these records do not show that the firm was insolvent, although it was, and falsely shows a net worth in excess of $100,000. Moreover, there were no records of liabilities to churches, or to bond holders, nor any records of transactions with customers. They do not acknowledge sales of securities to customers nor receipt of securities from churches.

The opinion of Mr. Bryan is that the records of Ambassador fail to accurately make and keep current its blotters, ledgers,

ledger accounts, and the other books as alleged in items 1 through 4 in Paragraph "G" of the Order. There is no contrary evidence in the record.[13/]

By order dated January 16, 1975, of the U.S. District Court for the Middle District of Tennessee, Nashville Division, (Civ. No. 74-471-NA-CV), it was declared that, for the purpose of the SIPC trusteeship, Ambassador and Atalbe shall be deemed the alter egos of Atkeison, that the trusteeship should extend to the assets and liabilities of all of them, and that the title of the proceeding be amended to show it to be involving Atkeison d/b/a Ambassador and d/b/a Atalbe. The order was entered upon consent of all the parties and without opposition from the Commission. Its terms were extended following the first meeting of creditors by order dated April 7, 1975.[14/]

13/ One of the problems encountered by Bryan in functioning as trustee was his inability to determine who was responsible for what in the Ambassador organization. He could find no pattern of control over the securities handled. From time to time, receipts were deposited in the accounts of individual employees of Ambassador. The question of what to do about the $21,000 received at about the time of his appointment as receiver and disbursed by Altman without going through the company's accounts is still the subject of consideration by him.

14/ As a result of his activities in the affairs of Ambassador, Atkeison was indicted on February 18, 1976 by a Federal Grand Jury for securities fraud in connection with the offer and sale of bonds of various churches and the Atalbe certificates, for the sale of unregistered Atalbe certificates, for violating the bookkeeping requirements for broker-dealers, and for causing Ambassador to file false reports with this Commission. (Litigation Release No. 7287/February 25, 1976). Thereafter he pleaded guilty to two counts of the indictment and was sentenced to two years' imprisonment and fined $30,000. However, the sentence was suspended, and Atkeison was placed on probation for five years (L.R. 7428/June 2, 1976).

Discussion and Conclusions

Willis

I.

Willis is charged with violations of the securities laws in three respects. First, there is the charge of wilfully aiding and abetting violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder in that registrant failed to accurately make and keep current the books and records itemized in substantial parts of said rule, specifically blotters, ledgers, ledger accounts, etc. The specific acts of aiding and abetting are not set forth.

The initial question of whether the books and records of Ambassador were kept in conformity with the requirements of the statute and of the Commission's rules is definitively answered by the uncontroverted testimony of the SIPC trustee, Fred D. Bryan, himself an experienced accountant and familiar with the record keeping requirements of brokers and dealers, that they were not.

The Division argues that Willis is, in fact, responsible for the state of the books and records of Ambassador by virtue of his position as "vice-president", by what he should have learned from his observations of the sloppy manner in which the business affairs of Ambassador were being conducted, and, finally, by his participation in an improper distribution of some $21,000

of income, immediately prior to the appointment of a receiver.

The first question for disposition relates to what kind of "vice-president" Willis actually was. He would have you believe that his title was merely nominal, and did not confer upon him any greater authority, duties, or responsibilities than other mere employees in the same position that he occupied, i.e., program director. While it is true that the conferring of the title did not enhance his income or his duties, and that the corporation remained under the virtual domination of Atkeison, the use of the title by all concerned cannot be taken as lightly as Willis would have it done. For one thing, the filing of an amended BD registration with this Commission to show his appointment as an officer is a step taken to announce to all the world that he was the vice-president. Secondly, in a number of state BD registrations, he was designated an officer for the purpose of meeting the regulatory requirements of these various jurisidictions. As Willis well knew, if he were not the vice-president, these registrations would not have been accepted for filing. Finally, customers dealing with Ambassador, particularly in his territory, were made aware of the fact he was the vice-president and frequently contacted him in that capacity with respect to some of their problems. So, Willis cannot escape those obligations and those responsibilities which would normally devolve upon him as vice-president of Ambassador.

The ultimate question, then, is the extent to which Willis is chargeable and responsible for the failure of Ambassador to properly keep its books and records, either by virtue of his office, or by his actions or failure to act under the given circumstances. During his eleven-month period of association with Ambassador, Willis had no responsiblity for, nor anything to do with the keeping of the books. He had no way of knowing, nor should he be charged with responsibility for knowing, that Brumley was making deposits of receipts indiscriminately, that receipts of bonds or cash were not being recorded, or that funds were not being properly disbursed. The time that he heard some rumor that a daily blotter was not being kept, he promptly made inquiry of the one person who would know, Atkeison, and was put off with a logical explanation by Atkeison. Nor should he be chargeable with these violations by virtue of being vice-president, since there were other officers and employees responsible for keeping the books. Such things as careless handling of church bonds by some employees or unclear delineations of responsiblities of various individuals, of which the Division makes particular emphasis, had nothing to do with the improper keeping of the books and records of the company.

The cases cited by the Division do not help its general position. They either involve the president of a registrant, an officer who is always ultimately responsible for the compliance

of his firm with regulatory requirements, even if he is a mere figurehead (See Joseph Elkind, SEA Rel. No. 12485, May 26, 1976, 9 SEC DOCKET, 736), or the treasurer, or some other officer with responsibility for the books and records. Should a mere "vice-president" be alerted to the practices involved, he is only required to take appropriate steps (Billings Associates, Inc., supra) to guard against the infractions of which he may learn. The Division has not established that the financial situation of Ambassador was ever discussed at any meetings other than those last few at the time of crisis for the company. But even this did not reveal the sorry state of the company's record-keeping. Moreover, Willis could well rely upon the financial statements issued by the firm's auditors and attached to the intra-state registrations of which he became aware.[15/] Those times when he learned that churches had complained of non-remittance of bond proceeds were taken care of forthwith. The giving of post-dated checks to Joy Baptist Church was not alarming, since these were "guaranteed" funds and it is not shown that actual proceeds were being withheld or delayed.

15/ Tennessee Code Annotated, Sec. 48-813 states that, "* * * In discharging their duties, directors and officers, when acting in good faith, may rely upon financial statements of the corporation represented to them to be correct by the president or the officer of the corporation having charge of its books of account, or stated in a written report by an independent public or certified public accountant or firm of such accountants represented to them fairly to reflect the financial condition of such corporation."

In one aspect, however, Willis did seriously aid and abet in the record-keeping violations. As noted, about a day before the receiver was appointed, and during the period after notification by the Division of Enforcement of the precarious financial situation in which Ambassador was found, Atkeison paid out some $21,000 of monies received by Ambassador to a number of individuals, including Willis, all of whom were owed monies for personal services to Ambassador. It is not charged or even inferred that these individuals were not entitled to the money, although whether they could be preferred over other creditors is not clear. This is of no importance. What is significant is that by failing to enter the money received and paid out on the books of Ambassador, there was a failure to accurately make and keep current certain of the books and records of the registrant. Even though ordered by Atkeison, Willis did participate therein, and was conscious of the fact that these monies were being paid out without going through the accounts. To this extent, therefore, the proof establishes that Willis aided and abetted in such violations, wilfully, as that term is understood in proceedings of this type. It is well established that a finding of wilfulness under the securities laws does not require an intent to violate the law; it is sufficient that the person charged with the duty consciously performs the acts constituting the violation. (Billings Associates, Inc., 43 SEC 641, 649 (1967); and Hughes v. S.E.C., 174 F. 2d 969, 977 (C.A.D.C., 1949)).

II.

Secondly, Willis is charged with violating the antifraud provisions of the securities laws, including Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder,[15A/] in connection with the offer and sale and the effecting of transactions in unspecified "church bonds issued by various churches" on the basis of the following specifications as to untrue statements or omissions to state: 1) that registrant guaranteed customers against the loss of money resulting from the purchase of church bonds; 2) that registrant failed to meet its commitments to churches on whose behalf it sold church bonds; 3) the use of the proceeds from the sale of the bonds; 4) that registrant guaranteed churches' funds regardless of the sale of its bonds; 5) that monies due churches were commingled and used in the operation of the business of registrant and Atalbe; and 6) that monies were diverted to the personal use of Atkeison.

The briefs of the Division do not clearly delineate specific fraudulent statements or omissions to state, chargeable directly to Willis, in connection with specified sales to any particular individuals. They contain a muddling together of arguments intended to show that although not a salesman, Willis, as a vice-president and a program director, bore some responsibility for the sales of bonds and for the general fast and loose atmosphere that prevailed

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15A/ These sections are set forth in footnote 20, *infra*, at page 44.

in the operations of Ambassador under Atkeison which resulted eventually in Ambassador owing large sums of monies to various churches and losses to individual Atalbe certificate holders.

While it is true that Willis's functions did not include the sale of church bonds, which was carried out either by the church itself, or by Ambassador through its sales department, nevertheless, his duties as program director (including consulting with prospective church clients, assembling material for the prospectus, assisting the church setting up of committees for the sale and promotion of bonds, etc.), and the fact that he was the individual generally looked to for guidance by a participating church, involved him with some responsibility for sales representation, particularly with respect to the contents of the prospectus used, or where he might become aware of any information which would be of a material nature and should be disclosed by the sales department to avoid any fraud. He could also be chargeable for fair dealing with the churches whose program he was helping to set up, particularly where Ambassador was to sell bonds on behalf of the church. In other words, he bore some responsibility in the total scheme that always encompassed both the planning and the execution thereof through sales of bonds which he could not avoid merely because there was a division of labor between the two.

However, there remains the further question as to whether there were fraudulent misstatements or omissions in connection with the sale of church bonds, for which responsibility should be placed on Willis. In this regard, it must be noted that only two bond programs have been shown, and that there is no testimony from any purchasers of church bonds with respect to representations made to them as part of the sale.[16/] Thus, the fraud, if any, must be found either in the prospectuses generally or in the dealings with church officials.

Joy Baptist Temple of Fort Worth

The Division's briefs argue, as specifications of fraud, first, that the prospectus was silent with respect to the fact that Ambassador guaranteed a portion of the proceeds to the church, whether or not the bonds were eventually sold, and second, that after having agreed to make a schedule of payments to the contractor, Ambassador defaulted on its commitments, then issued post-dated checks, made good on some, but not on all.[17/]

With respect to the first specification, it has not been

16/ It is true that Mrs. Villines bought some $30,000 worth of the Westgate Baptist Church Bonds and that she was given a copy of the prospectus at that time. That's all we know about that transaction.

17/ As seen, out of a total bond issue of $288,000, some $28,000 to $38,000 remains unaccounted for.

established in this record that failure to advise prospective purchasers that the proceeds were guaranteed was a material inducing element in their purchases. Perhaps the contrary might be inferred. A positive statement that proceeds were being guaranteed, might have been a greater inducement to purchasers, in view of their interest in the church-related use to be made of these funds.

As to the second charge, no doubt the church officials were induced to enter into this loan program on the basis of the commitment by Ambassador and Willis. However, it has not been demonstrated that this representation was untrue when made, only that Ambassador was unable to live up to it later. Nor is it clear that Willis should have known at the time of the representation that Ambassador's financial condition made it unlikely that it could perform.

The arrangements for this loan were agreed upon between Willis and the church officials in early 1974, at a time when he had been with the company but a few months, and at a time also when there was no evidence that Ambassador was not meeting such commitments. Although Ambassador eventually defaulted, with a resultant loss to the church and probably to bondholders, the record does not support any finding that the guarantee by Willis and by Ambassador was false or untrue at the time it was given.

Westgate Baptist Church, Inc.

The Westgate program was the follow-up of a previous one in early 1974, which had been successfully consummated. A careful gleaning from the admixture of various charges in the briefs of the Division disclose two grounds of claimed misrepresentations. The first is that Ambassador, through Willis, had guaranteed to the church that the registrant would not touch any of the money derived from the sale of the bonds "like Fidelity Plan had done", but, in fact, failed eventually to remit either the funds or the bonds for the amount of the bond issue owing to the church.

Similar to the Joy Baptist Church program, the record does not show that at the time Willis, on behalf of registrant, made the statement charged, he knew or had reason to believe, such a promise was false. As a matter of fact, since Ambassador was to retain the first proceeds for its commissions, and for the indebtedness owed from the previous bond issue, it had to touch some of the monies received from sales. The eventual failure of Ambassador to account for some $77,000 in cash, or unsold bonds, may very well have resulted from an inability as with Joy, which developed later.

The second specification is based upon the failure to show in Westgate's balance sheet attached to the prospectus a specific obligation of $53,909 owed to Ambassador (or to the Williamson County Bank). However, on page 4 of the prospectus,

under the heading, "Purpose -- Use of Proceeds", it clearly states that of the total $150,000 in bonds to be sold, there would be a repayment of a loan balance of $53,909.42 to the Williamson County Bank. This should have alerted purchasers relying upon the prospectus to the existence of the obligation. Moreover, as shown, previously in footnote 7A above, this obligation was embraced in the stated liability of $600,000 owed in connection with the first bond sale in which only about $500,000 of these bonds were sold, and there remained the debt to Ambassador of $53,909 in guaranteed funds. Thus a prospective purchaser would not be mislead as to the total obligations owed from the previous bond issue. If the balance sheet is incorrect in any other respect, there is no proof of the same in the record. Finally, there is no testimony of any purchasers as to the effect these statements had upon them, nor any other reason to infer that they were fraudulent or material.

Under all the circumstances, it is found that the Division has failed to establish any of the specifications in the order for proceedings concerning violations by Willis of the antifraud provisions of the securities laws.

III.

Finally, there is the charge that Willis was associated with registrant as a "vice-president" on December 17, 1974 when a trustee was appointed. Section 10(b) of the SIPA, entitled "Engaging in Business After Appointment of a Trustee" provides, among other things, that:

"The Commission may, by order, bar or suspend for any period, any officer, director, general partner, owner of more than ten percentum of the voting securities, or controlling person of any broker or dealer for whom a trustee has been appointed pursuant to this Act, from being or becoming associated with a broker or dealer, if after appropriate notice and opportunity for hearing, the Commission shall determine such bar or suspension to be in the public interest."

According to the form BD filings with the Commission, Willis was vice-president of Ambassador from sometime in about January, 1974 until it was taken over, first by a receiver, and then by the SIPC trustee, a period of perhaps some ten or eleven months later.[18/]

The responsibility of one who is an officer against whom the proposed sanctions of Section 10(b) are invoked is discussed quite adequately in Carrol P. Teig, (SEA Rel. No. 12812, SIPA

18/ In his written answer to the order herein, Willis admitted the allegation that he was associated with registrant as its vice-president on December 17, 1974, when the trustee was appointed. In his reply brief, served December 8, 1976, he moves to amend the answer, so as to deny that he was associated with registrant in any capacity on December 17, 1974 Whether or not he was a vice-president on that particular day is unimportant, since the statute does not require that he be a vice-president on the day of appointment of the trustee of the SIPC, so long as he was an officer of the registrant, and hence, presumably responsible for its acts. Moreover, it is elemental that the appointment of a receiver or trustee does not affect the corporate structure, per se, but merely is a device to take over and to conserve its assets for the benefit of creditors or other individuals. The BD registration continued in effect until revoked (as it subsequently was). If the respondent wishes to have the record show that he is not admitting this allegation, he may do so, and the amendment is granted. Nevertheless, for the purposes of the charge brought under Section 10(b) of the SIPA, it is found that he was an officer, subject to that Section.

Rel. No. 159, September 17, 1976, 10 SEC DOCKET, 510.)

One of the respondents in the Teig case was a vice-president, director and stockholder of registrant, the only allegation against him. The Commission held that a charge that one is a person falling within the reach of Section 10(b), standing alone, is not a sufficient basis for barring or suspending him, since the statutory provision for a hearing requires that specifications be set out in the order, or other adequate notice be provided, as to the grounds upon which the Commission should impose sanctions and to allow respondent to answer thereto. In that case, the Commission did not disturb a finding of the Administrative Law Judge that there was inadequate notice and that consequently the proceedings against respondent be dismissed.

In this case, however, there are allegations against Willis with respect to violations of the antifraud provision and the bookkeeping requirements based upon specific acts spelled out with reference thereto. Furthermore, at the prehearing conference and also at the opening of the hearing, counsel for the Division specified the basis for its proceeding against Willis. Hence, although the mere fact that Willis was "vice-president" may be insufficient to invoke the provisions of Section 10(b) against him, the establishment of the specifications of misconduct alleged may be considered in determining whether the public interest requires the imposition of appropriate sanctions.

The Commission in the Teig case tells us, at page 513 of 10 SEC Docket:

> "We consider it significant that the category of persons subject to potential sanction all share one common trait -- each could reasonably be expected to be aware of the broker-dealer's practices and financial condition, and to take or demand action to avoid the financial collapse that leads to SIPC trusteeship. This fact, *** persuades us that failure to act in such a responsible manner can form the basis for a bar or suspension from association with a broker or dealer. Thus, simple neglect or nonfeasance can provide an adequate basis for sanction under Section 10(b), even in cases in which the conduct might not give rise to a finding of aiding and abetting a specific violation of the securities laws, *** provided adequate notice of the charge is given, and an opportunity to defend against it is afforded. It follows, of course, that substantive violations of the federal securities laws or other laws can likewise form a basis for sanctions under Section 10(b) of the SIPA."

The thrust of the Division's position in this proceeding against Willis is based upon his overall conduct as Ambassador's vice-president. This position is summarized in its brief, at pp. 39-40:

> "***it is apparent that Willis did nothing to avoid the financial collapse of registrant which led to the SIPC trusteeship. If anything, he added to the increased costs of administration of the estate by diverting funds when the collapse was not only obvious but an actuality. His knowledge of the improper handling of securities, the dire financial condition of registrant, the issuance of post dated checks, guarantees of offerings, guarantees of funds from the sale of securities, and the unusual practice of secretaries recording transactions in a spiral notebook as opposed to a bookkeeper in the registrant's regular books and records shows that he does not have the requisite ability or responsibility to participate in a securities business and demands that he be barred from association with any broker or dealer."

The Division has referred throughout these proceedings to Willis's descriptive words that he found everything at Ambassador to be "as loose as a goose", as demonstrating his awareness of the true state of affairs. Nevertheless, although the finding that he aided and abetted a record keeping violation, with respect to the receipt and disbursement of $21,000, is itself ground for invoking the Section 10(b) sanctions, the other charges of securities laws violations have not been sustained, nor have most of the items spelled out in the above quotation been satisfactorily established against him.

Yet, on the basis of the entire record, the conclusion is inescapable that Willis bears some responsibility in the total event. There is no proof as to why Ambassador eventually wound up owing almost $375,000 to churches, with an additional $413,000 outstanding to Atalbe certificate holders. There is no charge or evidence of embezzlement, or of deliberate intent to cheat or defraud the customers of Ambassador. What does appear in this record is that the top management, under the leadership of Atkeison, but with the acquiescense of the other officers, was overly liberal and profligate in the handling of the funds that came in their hands. Handsome salaries and generous commissions were being paid to officers, program directors and salesmen, which seriously depleted the funds needed to meet obligations. Because of the terrible bookkeeping and record keeping, this did

not become apparent until too late to save the company and in turn, to save its church customers from serious financial harm.

As seen, the holding out by Willis as a vice-president was more than a mere nominal act, although his responsibilities were not as extensive as someone who had a greater interest in the company. He did play a part in the events. He did aid and abet a violation of the record keeping requirements. These are factors which must be considered in the public interest.

Irwin

The Order for Proceedings herein charges Irwin with a two-fold violation of the securities laws with respect to his sale of the Atalbe investment certificates.

I.

The first charge relates to violations of the registration provisions of the Securities Act, specifically Sections 5(a) and 5(b) thereof, in that the sales were made when no registration statements was filed or was in effect with the Commission as to said securities. As noted, Irwin concedes that he made these sales in the amount of $60,000 and that the certificates in fact were not registered. However, he assumed that they were properly drawn and issued and, further, that they were exempt as being church related securities.[19/] He then argues that since he did not intentionally offer to sell securities which he knew to be in violation of the registration requirements, his acts were not "wilful".

It is well settled that the burden of proving the availability of an exemption rests with the person claiming the exemption (S.E.C. v. Ralston-Purina Company, 346 U.S. 119, 126 (1953); and Herbert L. Wittow, 44 SEC 666, 671 (1971)). Irwin has offered no support for his belief that the Atalbe certificates were exempt

19/ Undoubtedly, respondent has reference to the exemption set forth in Section 3(a)(4) of the Securities Act.

church-related certificates under Section 3 of the Securities Act. As a matter of fact, Atalbe was a finance company, and its securities were in no sense those of a "religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit" of the issuer, Atalbe. The purpose of the registration requirements of the Securities Act is to protect investors by promoting full disclosure of information thought necessary to informed investment decisions. (S.E.C. v. Ralston-Purina Company, supra, page 124) Because public policy strongly supports registration, the exemption when relied upon, must be strictly construed against those claiming it. (Quinn Company v. S.E.C., 452 F. 2d 943, 946).

It is not necessary for Irwin, in his admitted selling of the unregistered Atalbe certificates, to have intended a violation of the law. As stated hereinbefore, it is sufficient that he consciously performed the acts constituting the violation. (Billings Associates, Inc., supra, and Hughes v. S.E.C., supra.) Consequently, a finding that Irwin wilfully violated the registration provisions of the Securities Act is warranted under the circumstances. The matter raised by him with respect to reliance upon proper action by other, or his belief of "exemption" is more properly to be considered in determing the sanction, if any, to be imposed.

II.

The other charge against Irwin relates to violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, the so-called antifraud provisions, in the selling and offering to sell of the Atalbe investment certificates.[20/] Specifically, he is charged (along with a number of the other respondents who have settled) with

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20/ Section 17a makes it unlawful for any person "in the offer and sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce, or by the use of the mails, directly or indirectly" - to do any of the following:

(1) to employ any device, scheme, or artifice to defraud, or,
(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading, or
(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

Section 10(b) makes it unlawful, in connection with the purchase or sale of any secuirty to use or employ, "any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors."

Rule 10b-5 promulgated thereunder, extends,in effect and with a few language changes, the provisions of 17(a) relating to the <u>sales</u> of securities to both the <u>purchase or sale</u> thereof.

making untrue statements of material facts or omitting to state material facts concerning: (1) the financial condition of Atalbe, (2) the use to be made of the proceeds of the sale of said certificates, (3) the commission to be paid for selling said certificates, (4) the total amount of investment certificates being offered, (5) the bonding of persons who would disburse Atalbe funds, (6) the registration of Atalbe securities, (7) the management and control of the affairs of Atalbe, and (8) the protection offered by the SIPA to investment certificate purchasers for possible losses. The basis for the charges relating to misrepresentations and omissions (except for item "8") is to be found in the prospectuses used by Irwin, since he either offered them or repeated the contents thereof in effecting the sale of the certificates.

With respect to the first specification relating to Atalbe's financial condition, neither prospectus offers any information relating thereto. Irwin has admitted that he knew such information should have been contained therein. The financial condition as reflected in accurate financial statements would have been material in influencing a prospective investor in making a decision to buy or not to buy. Whether Irwin was aware of the misuse being made of the funds received from certificate sales or that Atalbe was insolvent from the day of its incorporation is not determinative. He at least should have been aware that the prospectus upon which purchasers were

expected to rely was devoid of information concerning the company's financial condition. This is a material omission. (Compare Affiliated Ute Citizens v. United States, 406 U.S. 128, 153 (1972)).

On the other hand, Irwin's failure to disclose that he was being paid a commission (Item "3"), or that more than $100,000 of the certificates were being sold (Item "4"), is not material, despite the statements in the prospectus that no underwriting discounts or commission were being paid, and that the total offering amounted to $100,000. "Underwriting commissions" may not be the same as salesmen commissions, and it has not been shown that knowledge that Irwin was receiving selling commissions would have influenced prospective purchasers. Moreover, Irwin had no reason to know that more than $100,000 worth of certificates were being sold, particularly since, as shown by Exhibit D, there were regular redemptions of outstanding certificates.[21/]

However, the failure to disclose that the securities were not "being registered", as promised in the prospectus, would be a material fact to a prospective purchaser, since registration embraces the meeting of specific statutory and Commission requirements. The statements contained in the original and amended

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21/ As a matter of fact, of some 36 certificates represented on this Exhibit, about 25 were paid off during the intervening period.

prospectuses should have caused Irwin to have made appropriate inquiry and not rely upon unwarranted belief of exemption or of proper conduct by company officials.

In the Division's briefs, no argument is made concerning Items "2", "5", and"7" hereinabove, nor is there any proof of fraudulent statements or omission with respect to the use of proceeds, the bonding of persons and the management and control of Atalbe's affairs. However, for the first time, the Division urges specifications of fraud not found in the Order for Proceedings, specifically, statements in the prospectuses relating to the incorporation of Atalbe and to the limitation of sales to specified customers. These arguments are deemed to be improperly raised (see International Shareholders Services Corp., SEA Rel. No. 12389, April 29, 1976, FN 19) and, in any event, not proven. The fact is that Atalbe was incorporated, as promised, and the claimed sales restriction is not worded in absolute terms or meaning.

Of significance herein is the use made by Irwin of the Commission's release relating to SIPA. According to Irwin, he came to the conclusion on his own that purchasers of Atalbe certificates would be protected up to $50,000 by SIPC. He neither sought nor obtained this advice from anyone. As a matter of fact, the opinion that the protection offered was the same as that given bank depositors by Federal Deposit Insurance Corporation is

his own idea. Considering his professed lack of sophistication in securities matters, and his claim of reliance for legality upon others in the organization, it would appear to be a bold step indeed for him, on his own, to circularize the Commission's release and his interpretation thereof. These statements, consciously made by Irwin, must have had a strong bearing upon the decision made by individuals to buy these certificates. These are serious misrepresentations as to the meaning of the law, made by Irwin in reckless disregard of his obligations to his customers, in order to induce them to purchase Atalbe certificates from which he profited to the extent of 10 percent of the proceeds. Despite the argument in his brief that the question as to who is a protected customer under SIPA is still pending in the courts (the only excuse offered), it is concluded that holders of the subject certificates are not, and Irwin had no basis to misrepresent that they were.

Summarizing, then, it is found that Irwin violated the stated antifraud provisions of the securities laws in failing to advise prospective purchasers of the financial condition of Atalbe, failing to advise them that the certificates had not been registered and wholly misleading them concerning the protection afforded by the SIPA.

The remaining question is whether these violations were "wilful" on the part of Irwin. As stated heretofore, wilfulness under the securities laws does not involve an intent to violate

the law, but merely that there be a conscious performance of the acts constituting the violation. Irwin, however, argues that by virtue of the decision of the Supreme Court in Ernst & Ernst v. Hochfelder, 425 U.S. 185 (1976), it is necessary for the Division to establish an intent to defraud, a "scienter", on his part, not merely negligent conduct. He urges that he was only a salesman, accustomed to selling exempt church-related securities, who depended upon the expertise of those in the home office, including house counsel, as to the truth of the statements in the prospectus. Thus, he concludes that the necessary intent to defraud has not been established against him.

Reliance upon the Hochfelder case is inappropriate. That case dealt with a civil action for damages against a firm of accountants based upon alleged violations of Section 10(b) of the Exchange Act and the Rule 10b-5 promulgated thereunder. In concluding that the plaintiffs in that action had to prove "scienter" - an intent to deceive - the Supreme Court pointed out that the language Section 10(b) uses as a basis, "manipulative or deceptive devices or contrivances", would extend to any rule promulgated by the Commission thereunder (i.e., 10(b)-5). It held that these terms connote intentional or wilful conduct, rather than merely negligent conduct.

Subsequent decisions of various circuit courts have left uncertain whether the Hochfelder civil action doctrine would extend to administrative or injunctive proceedings (See, for example, Arthur Lipper Corporation v. S.E.C., (CA2, December 10, 1976), Docket No. 76-4067; S.E.C. v. Universal Major Industries Corp., No. 75-6111 (CA2 December 16, 1976); S.E.C. v. World Radio Mission, No. 76-1285 (CA1 November 1, 1976); and S.E.C. v. Bausch & Lomb, Inc., No. 73-2458 (U.S.D.C. S.D.N.Y., October 1, 1976)). However, discussions of these cases is unnecessary for the determination of the issue of wilfullness herein. All of these cases, including Hochfelder, deal with Section 10(b) and Rule 10b-5 thereunder. In this proceeding, violation of Section 17(a) of the Securities Act is also charged. This section, as quoted above, makes it unalwful to sell securities through the making of any untrue statement of a material fact or any omission to state a material fact, independent of the existence of a device, scheme, or artifice to defraud. Hence, the rationale of Hochfelder is inapplicable. All that has to be shown herein to make Irwin's misrepresentations and omissions "wilful" is that he did the acts complained of in connection with the sale of Atalbe certificates, even though he may not have had an intent to defraud. Moreover, his conduct can also be chargeable as reckless and negligent under the circumstances.

As stated by the Court of Appeals for the Second Circuit in Hanley v. S.E.C., 415 F. 2d 589, 595-7:

"Brokers and salesmen are under a duty to investigate, and their violation of that duty brings them within the term "wilful" in the Exchange Act. Thus, a salesman cannot deliberately ignore that which he has a duty to know and recklessly state facts about matters of which he is ignorant. He must analyze sales literature and must not blindly accept recommendations made therein.

* * *

A securities dealer occupies a special relationship to a buyer of securities in that, by his position, he implicitly represents he has an adequate basis for the opinions he renders. * * *

In summary, the standards by which the actions * * * must be judged are strict. He cannot recommend a security unless there is an adequate and reasonable basis for such recommendation. He must disclose facts which he knows and those which are reasonably ascertainable. By his recommendation he implies that a reasonable investigation has been made and that his recommendation rests on the conclusions based on such investigation. Where the salesman lacks essential information about a security, he should disclose this as well as the risks that arise from his lack of information.

A salesman may not rely blindly upon the issuer for information concerning a company, although the degree of independent investigation that must be made will vary in each case. * * *"

In this case, Irwin failed to make any reasonable investigation with respect to facts which he should have recognized. For one thing, there was an absence of any financial information in the prospectus or otherwise concerning Atalbe. There is no reasonable basis for a salesman to recommend a security about which there are no financial statements. See Richard C. Spangler, Inc., SEA Rel. No. 12104, (February 12, 1976), 8 SEC DOCKET, 1257, 1264. As stated in Willard G. Berg, SEA Rel. No. 12846, (September 30, 1976), 10 SEC DOCKET, 601, 602:

> "A professional who recommends the unknown securities of obscure issuers is under a duty to investigate it and to see to it that his recommendations have a reasonable basis. In prior cases, we pointed out that a salesman cannot recommend the equity securities of such issuers without reliable financial data."

Irwin sold the Atalbe certificates over several years without ever having seen any financial data concerning the company. This violation was "wilful".

The failure of Irwin to advise prospective customers of the fact that Atalbe certificates were not registered cannot be justified. As seen, both the first prospectus and its amendment some 18 months later called them securities "to be registered". this alone should have caused him to make some inquiry as to whether registration had in fact been done, or if not, why not. This he did not do. This violation was "wilful".

Finally, he undertook without seeking any advice, to explicitly advise prospects of his unwarranted interpretation of the SIPA and to assure them that their investment in Atalbe certificates were being protected in a manner similar to bank deposits. This violation was also "wilful", as that term is understood in the securities laws.

Public Interest

In determining whether sanctions should be imposed against respondents for their wilful violations as outlined above, and, if so, the extent of such sanctions, certain basic principles have become well established.

In the first place, the imposition of sanctions is remedial only, and intended to protect the public interest from harm at the hands of wilful violators and not to punish them. See Berko v. S.E.C., 316 F. 2d 137, 141 (C.A. 2, 1963), and Leo Glassman, SEA Release No. 11929 (December 16, 1975), 8 SEC DOCKET, 735, 737. In fact, the prospect of their future honesty is said to be the crucial factor in cases of this type. Richard C. Spangler, Inc., SEA Release No. 12104 (February 12, 1976), 8 SEC DOCKET 1248, note 71, citing Foelber-Patterson, Inc., 12 S.E.C. 330, 336 (1942).

Moreover, in order to preserve the remedial aspect of these proceedings, sanctions imposed must have a deterrent effect on others in the business "who may otherwise be tempted to succumb to the lethal admixture of mindless enthusiasm and overweening greed that so often brings fraud and deceit in its wake." See Richard C. Spangler, Inc., supra, note 67.

However, sanctions cannot be assessed mechanically. Due regard must be given to the facts and circumstances of each particular case and to find those that differentiate one man's case from another's. See Robert F. Lynch, SEA Release No. 11737, (October 15, 1975), 8 SEC DOCKET, 75, 78; and Leo Glassman, supra, at page 736.

The distinctive feature of this case is the fact that the subject matter embraces the financing of religious and charitable

endeavors through the sale of church bonds to individuals. Investors are generally members of the respective congregations, or outside individuals such as Mrs. Villines and Mrs. Moore, all of whom are motivated by a mixture of desire to support and advance religious acitivites with a desire and need for income on their investment. The issuers of the bonds herein were usually ministers and other church officials, unsophisticated in business affairs. The professionals who assisted them in organizing their programs and selling their bonds were individuals particularly knowledgeable of church matters by virtue of past affiliations as ministers and otherwise.

The story in these proceedings, as recited heretofore, has shown that severe financial losses have been suffered by a number of the described individuals and religious organizations who became involved with Ambassador as the organizer of their sales programs. Although church bonds are exempt from the registration requirements of the securities laws, those involved in their sales, distribution and purchase are entitled to the protection of these laws from the practices therein proscribed. Moreover, the public is entitled to protection against any future recurrence of similar losses as a result of violations of these laws.

Willis had a relatively brief (eleven-month) association with Ambassador. During this time, his earnings as program director were substantial. His violations of the law have been

outlined heretofore, including his aiding and abetting of record keeping violations and the extent of his involvement as vice-president in the activities leading up to the appointment of the SIPC trustee. However, he has not been found to have committed any fraudulent acts.

In considering the sanction which would be appropriate for Willis, due regard is given his previous and current good record in the securities business and his otherwise unmarked personal and professional life, as well as to the limited violative acts found to have been committed by him. In the light of the principles applicable for the imposition of sanctions, it is concluded that a suspension for Willis from association with any broker or dealer for a period of 30 days followed by a restriction for a period of one year thereafter from association with any broker or dealer in a supervisory capacity would be appropriate under the circumstances.

For a number of years, Irwin was a salesman for Ambassador and Atalbe, and had previous experience in the securities business. Although he claims to have been a mere salesman relying upon the propriety of the actions of his superiors, it is clear that he was not averse to doing things on his own in order to increase sales and thereby his commissions. On the other hand, consideration must also be given to the fact that he is a minister of his church, he continues to engage in religious and charitable pursuits, his present work does not involve the sale of securities,

he has continued his training in the securities field, and professes to having learned a lesson as a result of his experience with Ambassador as to the duties and obligations of a salesman to his customers. However, we must not overlook Mrs. Villines, who was told that her investment in Atalbe certificates would receive the same protection as the FDIC gives to bank depositors, and Mrs. Moore, who withdrew her last one thousand dollars in savings to buy an Atalbe certificate from Irwin upon his representations that the certificates was backed by church bonds and was guaranteed individually by officers of Atalbe. The violative acts of which he has been found to have engaged in call for a greater sanction than for those committed by Willis.

Under all of the circumstances, and in the light of the principles governing the imposition of sanctions, it is concluded that a suspension of Irwin for a period of 120 days from associating with any broker or dealer and that he thereafter be barred from association with any broker or dealer in a supervisory or proprietary capacity is appropriate under the circumstances.

Both Willis and Irwin, in their briefs, charge that they have been discriminated against in their selection as being the subjects of these proceedings. Willis claims that "the Commission has flagrantly discriminated" in its selection of him as a respondent. And Irwin charges that the Division has created a "totally inconsistent pattern of enforcement" in proceeding

against him. In view of the large number of respondents in this proceeding who have been charged and sanctioned, plus the numerous cases of similar proceedings against others, as cited on page 2 of the Division's Reply Brief, together with the severe losses sustained by investors and churches, and the findings herein against both of the respondents, it is concluded that such charges of discrimination are unfounded (Compare Oyler v. Boles, 368 U.S. 448, 454-457 (1962)).[22/]

ORDER

Under all of the circumstances herein, IT IS ORDERED:

1. That Leary C. Willis, Jr. be and he hereby is, suspended from association with any broker or dealer for a period of thirty days following the effective date of this Order and that he be barred for a period of one year thereafter from association with any registered broker or dealer in a supervisory or proprietary capacity.

2. That Walter W. Irwin be and he hereby is, suspended from association with any broker or dealer for a period of 120 days following the effective date of

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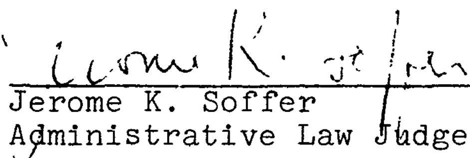
22/ In their briefs and arguments, the parties have requested the Administrative Law Judge to make findings of fact and have advanced arguments in support of their respective positions other than those heretofore set forth. All such arguments and expressions of position not specifically discussed herein have been fully considered and the Judge concludes that they are without merit, or that further discussion is unnecessary in view of the findings herein.

this Order and that he be thereafter barred from association with any registered broker or dealer in a supervisory or proprietary capacity.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice.

Purusant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen days after service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), unless the Commission pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.



Jerome K. Soffer
Administrative Law Judge

February 22, 1977
Washington, D.C.