

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-6743

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of :

JOHN G. RINALDO :

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INITIAL DECISION

August 18, 1987  
Washington, D.C.

David J. Markun  
Administrative Law Judge

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APPEARANCES: Robert D. LaFrumenta and Lori A. Richards,  
Esqs., Los Angeles Regional Office, for  
the Division of Enforcement.

Respondent John G. Rinaldo, pro se.

BEFORE: David J. Markun, Administrative Law Judge.

I. THE PROCEEDING

This public proceeding was instituted by an order of the Commission dated September 16, 1986 ("Order") pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") <sup>1/</sup> to determine: (a) whether the Respondent, John G. Rinaldo, was, as alleged by the Division of Enforcement ("Division") in the Order, convicted on May 23, 1985, before the United States District Court for the Central Division of California, upon his plea of guilty, to one count of mail fraud in violation of 18 U.S.C. §1341, based upon his conduct in connection with Western State Pension Corporation ("WSPC") and American Home Mortgage Corporation ("AHMC"); (b) whether Respondent Rinaldo during the period from about April 1979 through February 1983 ("the relevant period") wilfully violated various antifraud and reporting provisions of the federal securities laws, namely, Sections 206(1), 206(2) and 207 of the Advisers Act, <sup>2/</sup> Section 17(a)(1) of the Securities Act of 1933 ("Securities Act"), <sup>3/</sup> Sections 17(a)(2) and 17(a)(3) of the Securities Act, <sup>4/</sup> and Section

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1/ 15 U.S.C. §80b-3(f).

2/ 15 U.S.C. §80b-6(1); 80b-6(2); 80b-7.

3/ 15 U.S.C. §77q(a)(1).

4/ 15 U.S.C. §77q(a)(2),(3).

10(b) of the Securities Exchange Act ("Exchange Act"<sup>5/</sup>) and Rule 10b-5 thereunder;<sup>6/</sup> and (c) the remedial action, if any, that may be appropriate in the public interest pursuant to Section 203(f) of the Advisers Act.

The evidentiary hearing was held on November 21, 1986, at Lompoc Federal Prison Camp, Lompoc, California. The hearing was immediately preceded by a prehearing conference. Respondent Rinaldo appeared pro se.

At the hearing Respondent moved for a six to eight month postponement of the hearing on the ground, principally, that he wished to obtain counsel, though he had not been able to obtain counsel to date because of financial problems. The requested postponement was denied; however, at Respondent's request he was given until January 22, 1987 to obtain counsel with the understanding that if counsel were obtained and counsel entered an appearance for Respondent by that date, a motion to reopen the hearing would then be entertained. No counsel has entered an appearance on behalf of Respondent.

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5/ 15 U.S.C. §78j(b).

6/ 17 C.F.R. §240.10b-5.

The Division has filed proposed findings of fact, conclusions of law, and a supporting brief. Respondent has filed no counterproposed findings, conclusions, or brief, and his time for doing so has long since expired.

The findings and conclusions herein are based upon the record. No witnesses were called. The Division relies for its proposed findings upon the entire record, including but not limited to the Order, Respondent's answer, the transcript of the November 21, 1986 hearing, and the following four certified Division Exhibits:

Exhibit 1

First Superseding Information, Mail Fraud, 18 U.S.C. §1341 filed on February 27, 1985, U.S. v. John G. Rinaldo, CR-84-734(A)-TJH, U.S. District Court for the Central District of California.

Exhibit 2

Transcript of Proceedings, plea of guilty entered on February 27, 1985, U.S. v. John G. Rinaldo, CR-84-734-TJH.

Exhibit 3

Western State Pension Corporation, Investment Adviser Registration, Form ADV, File No. 80116736, filed with the Commission on December 10, 1981.

Exhibit 4

Report and Statement of the Reorganization Trustee, In re American Home Mortgage Corporation, In re Western State Pension Corporation, In re American American Home Mortgage Trust Deed Service Corporation, Debtors, Case Nos. SA 82-05097-PE, SA 82-05098-PE and SA 82-05095-PE, filed in the U.S. Bankruptcy Court, Central District of California on January 22, 1987.

The standard of proof applied is that requiring proof

by a preponderance of the evidence. <sup>7/</sup>

## II. FINDINGS OF FACT AND LAW

Respondent Rinaldo incorporated American Home Mortgage Corporation ("AHMC") in California in 1977. AHMC was a loan broker which arranged and serviced mortgage loans for borrowers for a fee. Beginning in 1977, AHMC began soliciting funds from investors to invest directly in trust deeds offered by AHMC. Rinaldo was at all relevant times the principal or sole shareholder and chairman of the board of AHMC. Rinaldo created and at all relevant times, directly or indirectly, controlled AHMC.

Rinaldo admits that in April, 1979 he incorporated Western State Pension Corporation ("WSPC") in the name of his eleven year-old stepdaughter to allow AHMC access to IRA and Keough plan funds, and to avoid provisions of the Employee Retirement Income Security Act ("ERISA") that would have prohibited him from owning both AHMC and WSPC. WSPC was at all times controlled by Rinaldo.

In early 1980, WSPC began offering fractionalized interests in first, second, third and fourth trust deeds, promising investors a 16%-24% return on investment. Investors' profits were to be derived from the investment expertise of WSPC "investment managers".

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<sup>7/</sup> Steadman v. S.E.C., 450 U.S. 91, 101 S.Ct. 999 (1981).

Although Rinaldo advertised WSPC as an independent company offering investment advisory services, all funds obtained from WSPC investors were in fact invested through AHMC. AHMC paid WSPC's operating expenses. Rinaldo failed to disclose to WSPC investors that WSPC was in essence simply a financing vehicle for AHMC.

WSPC investor funds were pooled and allotted among trust deeds, each investor having a fractionalized interest in more than one trust deed.

Investors would earn profits on their investment when and if AHMC obtained repayment from the borrower, or the real estate collateralizing the loan was foreclosed and sold at a profit. AHMC (and, indirectly, WSPC) generated revenue by AHMC's charging "points" and commissions on these transactions. The fortunes of the investor were linked with and dependent upon those of WSPC and AHMC.

WSPC investors had little or no control over the use of their funds, and depended upon the management skill and integrity of Rinaldo. Rinaldo had complete discretionary authority to evaluate trust deeds, select those for investment by WSPC investors, and to manage the loans once they had been funded.

On January 2, 1982, WSPC registered with the Commission as an investment adviser pursuant to the Advisers Act,

thus giving the appearance of being an independent pension plan administrator and adviser. In its Form ADV as filed with the Commission, WSPC failed to disclose that Rinaldo controlled WSPC, and that AHMC financed WSPC. Such disclosure is required by Items 9(a) and 9(b) of the Form ADV.

In offering and selling investment contracts in the form of fractionalized interests in first, second, third, fourth and fifth trust deeds, Rinaldo led investors to believe that WSPC was an independent pension plan administrator and "investment manager", and would seek out the best trust deeds for investors. In fact, as already noted, WSPC invested only in trust deeds generated by AHMC. At their peak, WSPC and AHMC had raised a combined total of more than \$55 million from more than 7,000 investors, who had invested in nearly 51,000 fractionalized interests in notes secured by AHMC deeds of trust. At no time was the relationship between WSPC and AHMC disclosed to investors.

The record establishes that within the relevant period Rinaldo through AHMC extended new loans to borrowers who had defaulted on earlier AHMC loans to enable those borrowers to make payments on their earlier loans, and to earn commissions for AHMC. Thus, WSPC investor funds were knowingly extended to borrowers in order to pay "returns" to earlier WSPC investors, and to conceal the defaulted loans. Rinaldo failed to inform investors in the new loans that the borrowers had defaulted on earlier loans.



As already noted, WSPC investors had little or no control over the use of their funds, and depended entirely upon the management skill and integrity of Rinaldo. In pleading guilty to the criminal charge (discussed further below) Rinaldo admitted: "I was the broker for the borrower and my income from American [AHMC] came from commissions paid by the borrowers for loans, yet I also decided on behalf of the lenders, the investors, whether to make the loan".

As a result of Rinaldo's approval of loans to unqualified or poorly qualified borrowers, many borrowers defaulted. AHMC began making interest payments to WSPC investors out of AHMC and WSPC operating funds. In addition, funds that were paid to AHMC as prepaid interest were used to pay the operating expenses of AHMC, instead of being paid to WSPC investors.

On July 20, and September 17, 1981, the California Department of Real Estate ("CDRE") issued two separate Desist and Refrain Orders against AHMC, prohibiting AHMC from soliciting funds and doing business as a mortgage broker until the company established and maintained proper books and records. Rinaldo admits that these orders created adverse publicity and curtailed the flow of investor funds to AHMC. In an attempt to counteract these effects, Rinaldo sent a letter to investors falsely claiming that the CDRE had completed a full audit of AHMC

and had approved its continued operation. This letter constituted the mail fraud count to which Rinaldo pled guilty, discussed further at a later point. In pleading guilty, Rinaldo admitted that the letter was false, and deliberately designed to deceive investors.

On November 15, 1982, Rinaldo caused AHMC and WSPC to file for protection under Chapter 11 of the U.S. Bankruptcy Code, and a trustee in bankruptcy was appointed.

In February 1984, Rinaldo was indicted on fifteen counts of mail fraud in violation of 18 U.S.C. §1341, in connection with the AHMC/WSPC scheme. On February 27, 1985, the United States Attorney filed a First Superseding Information, based upon the indictment, in the U.S. District Court for the Central District of California, charging Rinaldo with fifteen counts of mail fraud. Rinaldo pled guilty to the one count already mentioned, and on May 23, 1985, was sentenced to three years imprisonment at the Lompoc Federal Prison Camp, Lompoc, California.

In pleading guilty to the criminal charge, Rinaldo admitted that (Transcript of guilty plea, Exhibit 2):

- 1) He formed AHMC in 1977, whose business was to obtain real estate loans for borrowers for a commission;
- 2) The Employee Retirement Income Security Act ("ERISA") prohibited AHMC from dealing directly with IRA and Keough plans;

- 3) He created WSPC in the name of his teenage stepdaughter in order to evade provisions of ERISA and to obtain IRA and Keough plan funds from investors, to invest through AHMC;
- 4) WSPC investors received sales materials that described WSPC as an independent pension administration company;
- 5) Describing WSPC as an independent pension administration company was misleading, as WSPC served the needs of both the WSPC investors and AHMC and the role of AHMC was not made as clear as it should have been;
- 6) The IRA and Keough investors designated a WSPC investment manager to review the trust deeds offered by AHMC;
- 7) Rinaldo was responsible for deciding which loans and which extension of loans would be submitted (by AHMC) to WSPC for funding by the investor and, in making these decisions, his interests were in conflict with the WSPC investors, and such conflict of interest was not disclosed to the WSPC investors;
- 8) He was the broker for the borrower and his income from AHMC came from commissions paid by the borrowers for loans, yet he also decided on behalf of the lenders (investors) whether to make the loan;
- 9) AHMC made interest payments to WSPC investors from its own funds when AHMC borrowers missed payments;
- 10) He recklessly approved loan extensions to borrowers who were already in default, which had the effect of earning a commission for AHMC to help meet its cash-flow problems;
- 11) Prior to approving these loans, he failed to inform the WSPC investors that the borrowers were already in default on the earlier loans;

- 12) In 1981, the California Department of Real Estate issued two Desist and Refrain Orders requiring AHMC to correct certain accounting procedures, and these orders created a great deal of adverse publicity, curtailing the flow of investor funds to AHMC;
- 13) Attempting to counteract these effects, he permitted a letter to be sent by AHMC to investors claiming that the California Department of Real Estate had given AHMC a clear bill of health;
- 14) This letter did not mention the Cease and Refrain Orders, and in fact the California Department of Real Estate had not given AHMC a complete clean bill of health; and,
- 15) He failed to inform the investors of all material facts and recklessly approved providential loans.

The respondent's criminal conviction alone provides a sufficient basis for remedial sanctions pursuant to Sections 203(e) and 203(f) of the Advisers Act. <sup>8/</sup>

In addition, the facts which Rinaldo admitted in pleading guilty to the criminal action together with the record

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8/ Section 203(f) of the Advisers Act provides that the Commission, by order, shall censure or place limitations on the activities of any person associated with an investment adviser, or suspend for a period not exceeding twelve months or bar any such person from being associated with an investment adviser, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in paragraphs (1), (4) or (5) of Section 203(e) of the Advisers Act, or has been convicted of any offense specified in paragraph (2) of Section 203(e) within ten days of the commencement of the administrative proceedings.

as a whole, also establish the charged violations of the antifraud and reporting provisions of the federal securities

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8/ (CONTINUATION OF FOOTNOTE)

Section 203(e) of the Advisers Act provides in pertinent part that sanctions shall be imposed when an investment adviser, or any person associated with such investment adviser, whether prior to or subsequent to becoming so associated -

(1) has wilfully made or caused to be made in any application for registration or report required to be filed with the Commission under this title, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein.

(2) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor which the Commission finds --

(A) involves the purchase or sale of any security, . . . making of a false report . . . ;

(B) arises out of the conduct of the business of a . . . investor adviser . . . ;

(C) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; or

(D) involves the violation of sections . . . 1341 of title 18, United States Code.

\* \* \*

(4) has wilfully violated any provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, this title . . . or the rules, or regulations under any such statutes . . . or is unable to comply with any such provision. [emphasis added]

laws, i.e. Sections 206(1), 206(2) and 207 of the Advisers Act, Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 10b-5 thereunder. These violations provide an independent basis for remedial sanctions.<sup>8/</sup>

Rinaldo, through WSPC and AHMC, offered and sold securities. An investment in a fractionalized deed of trust is a security if it meets the criteria established for an investment contract. Wright v. Schock, 571 F. Supp. 642, 647 (N.D. Cal. 1983). An investment contract is an investment of money in a common enterprise with an expectation of profit to be derived from the efforts of others. SEC v. W.J. Howey Co., 328 U.S. 293, 298-99 (1946). Rinaldo, through AHMC and WSPC, offered and sold investment contracts in the form of fractionalized interests in first, second, third, fourth and fifth trust deeds.

Within the relevant period, Respondent wilfully and with scienter violated antifraud provisions of Section 206(1) of the Advisers Act in that he, by use of the mails and means and instrumentalities of interstate commerce, directly and indirectly, employed devices, schemes and artifices to defraud advisory clients and prospective clients in the

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<sup>8/</sup> Footnote 8 appears on pages 11 and 12 above.

respects found herein, especially at pp. 9-11 above.

Within the relevant period, Respondent wilfully violated antifraud provisions of Section 206(2) of the Advisers Act, in that he, by use of the mails and means and instrumentalities of interstate commerce, directly and indirectly, engaged in transactions, practices and courses of business which operated as a fraud and deceit upon advisory clients and prospective clients in the respects found herein, especially at pp. 9-11 above.

Within the relevant period, Rinaldo wilfully and with scienter violated Section 17(a)(1) of the Securities Act of 1933 ("Securities Act"), in the offer and sale of securities, namely investment contracts, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, in that he directly and indirectly, employed devices, schemes and artifices to defraud by engaging in the fraudulent conduct described above with reference to his violation of Section 206(1) of the Advisers Act.

Within the relevant period, Rinaldo wilfully violated Sections 17(a)(2) and 17(a)(3) of the Securities Act in that, in the offer and sale of securities, namely investment contracts, by use of the means and instrumentalities of transportation and communication in interstate commerce and by use of the mails, in that he

obtained money and property by means of untrue statements of material facts and by omission to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and engaged in transactions, practices, and courses of business which operated as a fraud upon investors by engaging in the fraudulent conduct described above with reference to his violation of Sections 206(1) and 206(2) of the Advisers Act.

Within the relevant period, Rinaldo wilfully and with scienter violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder in that, in connection with the purchase and sale of securities, namely investment contracts, by use of the means and instrumentalities of interstate commerce and of the mails, he directly and indirectly, with scienter, employed devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and engaged in acts, practices, and courses of business which operated as a fraud and deceit upon investors, in that he engaged in the fraudulent conduct found herein with reference to his violations of Section 206(1) of the



Advisers Act.

Rinaldo wilfully violated Section 207 of the Advisers Act, in that, through WSPC, he made or caused to be made in an application for registration required to be filed with the Commission, an untrue statement of a material fact and a statement which was at the time in the light of the circumstances under which it was made, false or misleading with respect to a material fact and omitted to state in such application, a material fact which was required to be stated therein, in that he failed to disclose that he controlled and financed the operations of WSPC, and affirmatively represented that he did not control and finance the operations of WSPC, in response to Items 9(a) and 9(b) of the Form ADV filed on behalf of WSPC on December 10, 1981, as found herein.

Rinaldo acted with the scienter that is required under Section 17(a)(1) of the Securities Act, Section 10(b) of the Exchange Act, and Section 206(1) of the Advisers Act in that he knowingly carried out and attempted to cover up the fraudulent scheme as found herein. See Ernst & Ernst v. Hochfelder, 425 U.S. 185 (1976); Steadman v. SEC, 603 F.2d 1126 (5th Cir., 1979). Subsequent decision of the Courts of Appeals have held that recklessness is sufficient to satisfy the scienter

requirement. <sup>9/</sup> Thus, although the findings herein are of knowing and intentional fraud on the part of Respondent Rinaldo in violation of the mentioned statutes, if there were any doubt of such knowledge and intentions, the record would clearly support a finding of scienter under the recklessness standard.

Fraudulent conduct carried out knowingly or with reckless disregard of the consequences is, a fortiori, "wilful" conduct for purposes of Sections 203(e) and 203(f) of the Advisers Act. Where a finding of scienter is not required, as is the case under Sections 206(2) and 207 of the Advisers Act and Sections 17(a)(2) and 17(b)(3) of the Securities Act, all that is required to support a finding of wilfulness under the securities laws is proof that a respondent acted intentionally in the sense that

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9/ Eisenberg v. Gagnon, 766 F.2d 770, 776 (3d Cir. 1985); Hackbart v. Holmes, 675 F.2d 1114, 1117-18, (10th Cir. 1982); Healey v. Catalyst Recovery of Pennsylvania, Inc., 616 F.2d 641, 649 (3d Cir. 1980); McLean v. Alexander, 599 F.2d 1190, 1197 (3d Cir. 1979); Edward J. Mawod & Co. v. S.E.C., 591 F.2d 588, 595-597 (C.A. 10, 1979); Mansbach v. Prescott, Ball & Turben, 598 F.2d 1017, 1023-1025 (C.A. 6, 1979); Rolf v. Blyth, Eastman Dillon & Co., Inc., 570 F.2d 38, 44-46 (C.A. 2, 1978), cert. denied, 439 U.S. 1039; Coleco Industries, Inc. v. Berman, 567 F.2d 569, 574 (C.A. 3, 1977); Wright v. Heizer Corporation, 560 F.2d 236, 251-52 (C.A. 7, 1977), cert. denied, 434 U.S. 1066 (1978); Sundstrand Corporation v. Sun Chemical Corporation, 553 F.2d 1033, 1039-40 (C.A. 7, 1977), cert. denied, 434 U.S. 875; First Virginia Bankshares v. Benson, 559 F.2d 1307, 1314 (C.A. 5, 1977), cert. denied, 435 U.S. 952 (1978).

he was aware of what he was doing and either consciously, or in careless disregard of his obligations, knowingly engaged in the activities which are found to be illegal.<sup>10/</sup>

### III. THE PUBLIC INTEREST

In determining what sanctions, if any, it is appropriate to apply in the public interest, it is necessary for the Commission, among other factors, to ". . . weigh the effect of. . . action or inaction on the welfare of investors as a class and on standards of conduct in the securities business generally."<sup>11/</sup>

The fraudulent scheme that Rinaldo carried out within a period of four years was egregious indeed. It resulted not only in violation on consent of the federal mail fraud statute but also in violations, as found herein, of a

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<sup>10/</sup> Arthur Lipper Corp., v. S.E.C., 547 F.2d 171, 180 (2d Cir. 1976), cert. denied, 434 U.S. 1009 (1978); Hanly v. Securities and Exchange Commission, 415 F.2d 589, 595-6 (2d Cir. 1969); NEES v. Securities and Exchange Commission, 414 F. 2d 211, 221 (9th Cir. 1969); Dlugash v. Securities and Exchange Commission, 373 F.2d 107, 109-10 (2d Cir. 1967); Tager v. Securities and Exchange Commission, 344 F.2d 5, 8 (2d Cir. 1965).

<sup>11/</sup> Arthur Lipper Corporation, Securities Exchange Act Release No. 11773 (October 24, 1975) 8 SEC DOCKET 273, 281. Although the reviewing Court in Arthur Lipper Corp. v. S.E.C., 547 F.2d 171, 184-5 (2d Cir. 1976) reduced the Commission's sanctions on its views of the facts, it recognized that deterrence of others from violation is a legitimate purpose in the imposition of sanctions.

large number of antifraud and reporting provisions of the federal securities laws.

The scheme was carried out knowingly, with scienter. The scheme had aspects of a Ponzi scheme, destined inevitably to collapse with resultant harm to investors and others. The collapse of the scheme and the enterprises through which it was carried on caused substantial losses to thousands of investors of their retirement and other funds, extreme emotional distress to investors, and a great deal of litigation.

The Federal Judge who sentenced Rinaldo to three years imprisonment on Rinaldo's plea of guilty to one count of mail fraud specifically rejected an argument made at the sentencing hearing (Exhibit A to Exhibit 4 at p. 32) that it was a case of "reckless errors in judgment" and expressed the view that "it was clear fraud." The Judge further expressed his view, in response to an argument that Rinaldo was a nonviolent offender, that ". . . violence has been done to the psyches of some of the people who were investors here." Id., at p. 34.

In rejecting an argument for a nonprison, community-service sentence, the sentencing judge concluded that the necessity for deterrence in a case such as this required imposition of a prison sentence. Id., at pp. 33-34.

In addition to the egregious violation of federal law found herein, the record relative to sanctions further discloses, in the report of the trustee in bankruptcy, (Division's Exhibit 4, at pp. 23 et seq.) numerous instances of outrageous self-dealing by Rinaldo in the misuse of AHMC funds during the same period that the violations found herein occurred and as a part of the massive overall fraud.

The Division urges strongly that only a permanent bar will adequately protect the public from a recurrence of misconduct on Rinaldo's part and also deter other potential violators. I concur in the view that a permanent bar, both for remedial and deterrent purposes, is appropriate and necessary in the public interest.

#### IV. ORDER

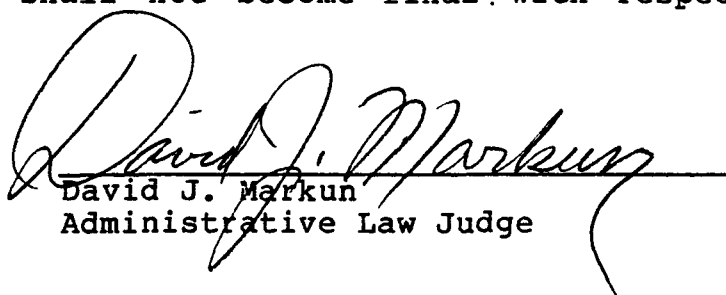
Accordingly, IT IS ORDERED that Respondent John G. Rinaldo is hereby barred from association with an investment adviser. <sup>12/</sup>

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<sup>12/</sup> The Division urges that Rinaldo be barred from association with any "regulated" entity or person, e.g., brokers, dealers, investment companies, under its authority to "place limitations" on regulated entities and persons. No authority is cited for this proposition. I conclude that the "place limitations" language cannot be given such an expansive application, however desirable and practical that result might be in particular cases.

This order shall become effective in accordance with and subject to Rule 17(f) of the Commission's Rules of Practice, 17 CFR §201.17(f).

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen (15) 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. <sup>13/</sup>

  
David J. Markun  
Administrative Law Judge

Washington, D.C.  
August 18, 1987

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13/ All proposed findings, conclusions and supporting arguments have been considered. To the extent that the proposed findings and conclusions submitted are in accordance with the findings, conclusions and views stated herein they have been accepted, and to the extent they are inconsistent therewith they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues presented.