ADMINISTRATIVE PROCEEDINGS
FILE NO. 3-7391

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	)
V.F. MINTON SECURITIES, INC. AND VERNON F. MINTON	)

INITIAL DECISION

Washington, D.C.
May 22, 1991

Brenda P. Murray
Administrative Law Judge

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APPEARANCES: Phillip W. Offill, Jr. and Robin B. Shipman for the Securities and Exchange Commission, Division of Enforcement.

Vernon F. Minton, pro se, for respondents with L.A. Newlan, Jr. of Newlan & Newlan, P.C., on the brief.

BEFORE: Brenda P. Murray, Administrative Law Judge

The Securities and Exchange Commission (Commission) initiated this public proceeding on September 21, 1990, to determine whether, in the period May 1989 to September 1989, V. F. Minton Securities, Inc. (Minton Securities) and Vernon F. Minton (Mr. Minton) willfully violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act), and Rule 10b-5 thereunder (17 CFR 240.10b-5), as the Commission's Division of Enforcement (Division) alleged, and if so, what, if any, remedial action is appropriate pursuant to Sections 15(b)(4) and 15(b)(6) of the Exchange Act.

I presided at a hearing in Fort Worth, Texas, on November 13 - 16, 1990. The record consists of approximately 100 exhibits and 1,141 pages of transcript containing the testimony of 18 witnesses. The parties all filed briefs. I received the last brief on March 14, 1991. On that date, the Division also filed Objections to Respondents' Proposed Findings of Fact and Conclusions of Law.

The Commission initiated a civil action against these respondents and seven other defendants in the United States District Court for the Northern District of Texas on November 21, 1989. All the defendants except Mr. Minton and Minton Securities consented to final judgments which included the entry of permanent injunctions against them. Pacific Equities Corp., Mr. G. Alfred Roensch, and Mr. Owen Stephenson also agreed to orders requiring disgorgement. (SEC v. U.S. General Corp., et al. CA 4-89-797-K) 1/

Findings of Facts

My findings and conclusions are based on the record and my observation of the witnesses' demeanor. I applied preponderance of the evidence as the applicable standard

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1/ U. S. Assurance, the public corporation, changed its name to U. S. General Corp. on September 25, 1989. (Exhibit L-11)

of proof.

As President and owner of over 90 percent of the shares, Mr. Minton directed the operations of Minton Securities, a Fort Worth, Texas, broker-dealer. Mr. Minton holds many securities licenses and has been an active and respected participant in the securities business in Fort Worth since 1976. Mr. Minton operated the firm of Minton and Schmid with another individual from 1978 until he registered Minton Securities with the Commision on September 4, 1987.

Mr. Minton met Dr. Wilma Jean Cloke in 1986. Dr. Cloke spent much of her employment career as a teacher and counsellor; she holds various insurance licenses and a Series 7 securities license. As a New York Life Insurance employee in 1986-87, Dr. Cloke had clients who needed financing, and Mr. Minton discussed the possibility of taking some of them public. Beginning in early 1989, Mr. Minton worked closely with Dr. Cloke to bring into being a public property and casualty insurance company which would issue surety bonds to construction companies. Dr. Cloke was convinced that a large demand existed for this business among small contractors, especially minority firms, and that such an enterprise would be a highly profitable business venture.

The creation of the public company was much more complicated than the creation described in Genesis. In the beginning, sometime prior to January 1989, Dr. Cloke changed the name of her privately held Texas corporation, Jean Cloke Investment, to U. S. Assurance. The latter's assets consisted of $1,000 each from Dr. Cloke and her daughter, Linda Hettick, and $100,000 from Mr. Ronald Welborn, at the time Dr. Cloke's business

associate. 2/ Dr. Cloke's family trust received 49,000 shares, Dr. Cloke and her daughter each received 500 shares, and Mr. Welborn received 50,000 shares of U. S. Assurance, the private corporation. Dr. Cloke was company president.

Dr. Cloke left it up to Mr. Minton to arrange for U. S. Assurance, the private corporation, to become U. S. Assurance, the public corporation. (U. S. Assurance). She consulted with Mr. Minton daily on the events and arrangements surrounding the formation of U. S. Assurance during most of the relevant time period, May to September 1989. Dr. Cloke depended on Mr. Minton for advice and assistance with the securities aspects of the various arrangements.

In order to raise the needed capital, Dr. Cloke and Mr. Minton began negotiations in February 1989 with Owen Stephenson and Alfred Roensch, an attorney. These men were equal owners of Pacific Equities Corp. (PE), a private Nevada corporation headquartered in San Francisco. Begun in 1985, PE's primary business was consulting with small corporations and advising them how they should grow. In 1984, Mr. Stephenson was convicted and sentenced to four years on each count of a multi-count indictment charging him with mail fraud, the interstate transportation of stolen property, fraud by wire, and submitting false information on a loan application. The four-year sentences were to be served concurrently with an additional five years probation. (Tr. 777-78)

On Mr. Minton's advice, Dr. Cloke signed a series of documents on behalf of U. S. Assurance, the private corporation, on March 9, 1989. (Exhibits 1, 2, B-3, and C-3) The documents titled Investment Banking Agreement and Declaration and Agreement of

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2/ It is not clear whether Mr. Welborn's contribution was in the form of a $100,000 cash contribution or whether it was the $100,000 CD dated April 28, 1989, which he cashed and put to personal use in May 1989. (Tr. 246-47, Exhibit B-11)

Business Trust specify U. S. Assurance, the private corporation. The other documents both titled Agreement mention U. S. Assurance Corp. and were obviously intended to apply to the public corporation the parties intended to create. The documents, prepared by Mr. Stephenson and Mr. Roensch, created USA Trust. Messrs. Roensch and Stephenson signed as trustees and Dr. Cloke signed as trustor. (Exhibit C-3) They provided that PE would act as investment banker for U. S. Assurance for a fee, that the assets in the USA Trust would be used for the benefit of U. S. Assurance, that in the first year of the agreement PE would provide the USA Trust with a minimum of $50 million in assets acceptable by the National Association of Insurance Commissioners (NAIC), and that U. S. Assurance would pay PE monthly $10,000 and a sum equal to six percent of the assets transferred to USA Trust. (Exhibits 1 and 2) PE intended that USA Trust would hold "restricted securities" as that term is defined in Rule 144 under the Securities Act. (Tr. 468)

Mr. Stephenson, on behalf of PE, notified Dr. Cloke on March 31, 1989, that he was conveying to the USA Trust shares of four securities with a total portfolio value of $21.1 million. Dr. Cloke requested that Mr. Minton confirm that the values which Mr. Stephenson quoted for these securities were accurate and Mr. Minton did so by informing her of the bid and asked prices. (Exhibits 5 and 9, Tr. 131) According to Dr. Cloke, Messrs. Roensch and Stephenson represented that even though these securities could not be freely traded in the United States they could be traded for 90 percent of their alleged value in overseas markets not regulated by this Commission. Mr. Minton did not disagree with this view. Dr. Cloke kept Mr. Minton fully informed of her conversations with Messrs. Roensch and Stephenson. She sent everything to Mr. Minton for his approval before she released it, she and Mr. Minton met with Messrs. Roensch and Stephenson in Mr. Minton's office, and she

sent Mr. Minton copies of all documents, letters, and memoranda. 3/ Mr. Stephenson ran everything by Mr. Minton that he was presenting to Dr. Cloke so as not to infringe on Mr. Minton's relationship with her.

On April 6, 1989, Mr. Stephenson informed Dr. Cloke that he had conveyed a portion of the securities named in his letter of March 31, with an alleged value of $12,700,000, to the Texas Commerce Bank, custodian of the USA Trust account. (Exhibits 5 and 6)

According to the terms of an agreement and plan of reorganization signed on May 15, 1989 and again on June 1, 1989, Dr. Cloke, Linda Hettick, and Mr. Welborn transferred their shares in U. S. Assurance, the private Texas corporation, to Pacific Equities Capital Management (PECM), and received PECM shares in exchange. The document stated that the PECM stock had not been registered, that in issuing the stock PECM was relying on the exemption in Section 4 (2) of the Securities Act of 1933, as amended, and that the recipients took it with the intent and purpose of retaining it for personal investment. (Exhibit B-6) 4/

PECM had been known previously as Mandella Corp., Inc. (Mandella), a dormant public Nevada corporation. Two individuals who had been active in "reviving" Mandella were indicted, in part, for illegally selling stock in over 100 dormant companies. One of

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3/ I reject Mr. Minton's position that he was uninformed because the record does not show that he received every single document. Taken as a whole, the record is overwhelmingly persuasive that Mr. Minton actively participated in the formation of U. S. Assurance and that Dr. Cloke shared all the information she had with him. The record does not contain sufficient evidence for a finding that Mr. Minton knew during the relevant period that Mr. Stephenson was a convicted felon.

4/ Mr. Welborn's shares were in the name of the Agricultural Land Trust, Inc. Dr. Cloke did not know why she signed an identical agreement twice.

them pled guilty and served a prison term. (Exhibit L-17) Messrs. Roensch and Stephenson, acting through PE, acquired Mandella in May or June 1988 from Mr. Gerald Walton after negotiating the purchase with Mr. Gerald Walton and his brother, John Worthern. (Tr. 353-54, 368, 461) 5/ Mr. John Worthern was convicted of the interstate transportation of stolen securities on October 15, 1974, and on September 11, 1989, pled guilty to several counts of a multi-count indictment for criminal contempt of a Commission injunction entered on December 17, 1987. (United States v. John Worthern, No. CR 74-27 (D. Utah 1974) and United States v. John Worthern a/k/a John Walton, No. CR 871387N (S.D. Cal. 1989)) Messrs. Roensch and Stephenson renamed Mandella as PECM effective August 10, 1988, and allegedly transferred securities to PECM worth $3.5 million. PECM's balance sheet as of September 30, 1988, audited by Coopers & Lybrand, showed assets of $3,461,426. Notes to the financial statements disclosed that PECM's securities of $3,456,426 had been valued at fair value in accordance with methods established by its Board of Directors which included Messrs. Roensch and Stephenson.

A registration statement for PECM stock was never filed with the Commission; however, its shares were listed in the National Daily Quotation Services' pink sheets and publicly traded in the over-the-counter market. Mr. Roensch could not recall the exemption which he claimed allowed trading in these unregistered securities. (Tr. 317-18) 6/

PECM changed its name to U. S. Assurance on May 17, 1989. (Exhibit L-10) Dr.

5/ In its Proposed Findings of Fact, the Division states that John Worthern and Gerald Walton were the same person. (Paragraph 72) I find that there were two individuals, Gerald Walton and John Worthern, based on Mr. Roensch's testimony that the negotiations were with two men by these names who were brothers and the criminal case reference to John Worthern a/k/a John Walton.

6/ The record indicates that trades in PECM occurred based on Rule 144(k). (Exhibits L-16 and L-17)

Cloke was President of the company. No one filed a registration statement for the common stock of U. S. Assurance pursuant to Section 5. At Mr. Minton's request, Mr. Roensch, as trustee of the McAlister Trust (Trust), signed a statement dated September 1, 1989, that the Trust had transferred 800,000 shares of U. S. Assurance common stock to Mr. Minton in May or June 1989, under conditions which satisfied the requirements of Rule 144(k) under the Securities Act. (17 CFR 230.144(k)) (Exhibit L-18) On July 12, 1989, U. S. Assurance issued 211,019 unregistered shares to Minton Securities for services rendered in the acquisition of U. S. Assurance, the private corporation. These shares could only be sold pursuant to Rule 144. (Exhibit K-4).

Mr. Minton, acting through Minton Securities, began making a market in U. S. Assurance common stock in the over-the-counter market in early June, 1989, and the company's inventory accounts show transactions through August 1989. (Exhibit I) The pink sheets for June, July, and August listed Minton Securities as a market maker for U. S. Assurance.

U. S. Assurance never had a license to sell insurance. At a preliminary hearing on its request for Form A authority, the Texas State Board of Insurance found certain of the securities on the company's balance sheet unacceptable, and on July 27, 1989, the Board gave U. S. Assurance 10 days to respond to allegations that it was engaging in the surety bond business without authority. An attorney advised Dr. Cloke on August 15, 1989, that "I do not believe there is any reasonable likelihood that a Form A can be approved." (Exhibit 4)

On August 24, 1989, U. S. Assurance was sued for non-payment on a bond it issued on May 26, 1989. (Henry Wehrmann, Jr. v. U. S. Assurance, et al., No. 352-122107-89, Dist. Ct. Tarrant County, Texas)

The Commission suspended trading in U. S. Assurance securities for a ten-day period beginning on October 11, 1989, pursuant to Section 12 (k) of the Exchange Act.

Findings of Fact

Antifraud Provisions

Mr. Minton's actions and knowledge are imputed to Minton Securities. (A. J. White & Co. v. SEC, 556 F.2d 619, 624 (1st Cir. 1977), cert den 434 U.S. 969, 54 L. Ed. 2d 457, 98 S. Ct. 516 (1977)) The evidence is overwhelming that Mr. Minton controlled Minton Securities, a registered broker-dealer in 1989, and that during that year Mr. Minton, and through him Minton Securities, used the mails and instrumentalities of interstate commerce to violate the antifraud provisions of the securities statutes and Commission rules - Section 17(a) of the Securities Act 7/ and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder 8/ by making material misrepresentations and omitting to state material facts

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7/ Section 17. (a) It shall be unlawful for any person in the offer or 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-

(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 under 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.

8/ Section 10. It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange- ***

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such

(continued...)

necessary in order to make the statements made not misleading, by employing a scheme to defraud, by engaging in transactions, practices, and a course of business which operated as a fraud or deceit upon the purchasers, and by employing manipulative and deceptive devices in violation of the Commission's rules in connection with the offer, purchase, and sale of U. S. Assurance common stock. Specifically, during the relevant time period, in an elaborate series of transactions, Mr. Minton, through Minton Securities, sold or distributed approximately half a million shares of U. S. Assurance common stock. (Tr. 595-96, 712-15, Exhibit I) Minton Securities sold some 99,872 shares of U. S. Assurance to the public directly and it sold approximately 361,971 shares to the inventory account of another securities firm, Vautrain, Nelson, LeFevre, Endsley & Durham, Inc. (Vautrain), which Vautrain resold to customers. (Exhibit I, Tr. 612-20, 1044-45) 9/ Sales to Vautrain were accomplished by moving shares, all of which originated with Mr. Minton, through a number

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8/(...continued)

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. It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

(1) To employ any device, scheme, or artifice to defraud,

(2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

9/ Vautrain would notify the trader at Minton Securities how many shares he wanted to buy based on his sales and the trader for Minton Securities would direct its clearing agent to transfer shares to the firm that cleared for Vautrain. (Tr. 879-83, 1040)

of accounts.

Minton Securities sold most of the shares to Vautrain at $.50 a share when its public quote was $1.00 bid to $1.25 asked. Minton Securities and Vautrain sold shares of U. S. Assurance to the public for $1.00 or more per share. Mr. Minton knew when he made these sales, when he urged brokers to sell U. S. Assurance securities, and when he advised people to buy shares in the company that the information he disseminated and which he helped disseminate was false and misleading in many material respects and that it omitted material facts necessary in order to make the statements made not misleading. Materiality is determined by whether a reasonable shareholder, given all available information, would consider the misstated or omitted information to be important in making an investment decision. (See Basic, Inc. v. Levinson, 485 U.S. 224, 99 L. Ed. 2d 194, 108 S. Ct. 978 (1988); TCS Industries, Inc. v. Northway, Inc., 426 U.S. 438, 48 L. Ed. 2d 757, 96 S. Ct. 2126 (1976))

Mr. Minton knew from Dr. Cloke that a property and casualty insurance business required two things: a license to do business, and a minimum of $11 to $13 million in capital, since the ability to write bonds is directly related to a company's "admitted" assets as determined by NAIC. He also knew that U. S. Assurance never had either requirement. The U. S. Assurance brochure which Dr. Cloke prepared in late May 1989, represented that "U. S. Assurance Corporation has authority to do business as a Property and Casualty Insurance Company in thirteen states," and it listed nine states and the District of Columbia as "States of Registration." (Exhibit D-1) In fact, U. S. Assurance held no state licenses. Its attempt to secure a license from the Texas State Board of Insurance was unsuccessful and it had not acquired any other company which had a license to sell insurance.

Respondents circulated a U. S. Assurance brochure and financial information

consisting of several documents: (1) the financial statements of PECM (balance sheet as of September 30, 1988, and changes in shareholders' equity and cash flow for the period August 10 through September 30, 1988) audited by Coopers & Lybrand, (2) the financial statements of U. S. Assurance, the private Texas corporation, (balance sheet as of April 30, 1989, and statements of operations, stockholders' equity, and cash flows for the year) audited by Milton M. Trujillo, a certified public accountant in Pueblo, Colorado, who Mr. Stephenson recommended 10/ (3) a consolidated financial statement of the merger of U. S. Assurance and PECM as of May 15, 1989, prepared by Linda Hettick, who was not a certified public accountant, and (4) a Two Year Proforma (June - May 1989-90) for U. S. Assurance prepared by Dr. Cloke. In the Notes which were an integral part of the financial statements audited by Mr. Trujillo, U. S. Assurance, the private Texas Corporation, stated that it had the following securities with a total market value of $22.3 million: Firestone Development Co., New Product Devel. Services, Numeric One Corp., Beta Tech Robotics, Inc., and American Air Craft.

These materials were replete with misrepresentations of material facts such as:

1. The statement that U. S. Assurance had "certified assets in excess of $50,000,000", and that on April 30, 1989, the company held equity securities with a market value of $22,300,000. (Exhibits D-1 and B-8) Mr. Minton circulated the brochure and financial statements when he knew that U. S. Assurance did not have assets of $50 million dollars, that U. S. Assurance, the private Texas corporation, did not hold the American Air Craft shares which were allegedly part of its assets, that the Firestone Development Co. stock valued at $2.7 millions in the Notes to the financial statements was probably worthless,

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10/ The Notes to the financial statements state that Jean Cloke Investment, Inc., was incorporated in Texas and changed its name to U. S. Assurance on March 28, 1989.

and that the market values of the equity securities listed in the Notes to the financial statements were false. Mr. Minton knew or should have known that PECM's balance sheet as of September 30, 1988, which showed it having almost $3.5 million in securities was highly suspect since these shares were restricted and valued "at fair value in accordance with methods established by the Company's Board of Directors." (Exhibit B-7)

2. The statement that as of May 15, 1989, the merger of U. S. Assurance, the private Texas corporation, and PECM would cause U. S. Assurance to have securities worth $25.8 million and a $30 million debenture. (Exhibit B-10) The testimony of Mr. Martin G. McEwin, Mr. Kirby G. Endsley, and Mr. Thomas E. Hill, Jr., is persuasive that a very basic inquiry revealed that this information was false. Mr. McEwin, who was just beginning employment in the securities business in the summer of 1989, learned by making a few phone calls that the securities were extremely overvalued, that there were no buyers for some of these securities, and that the alleged issuer knew nothing about the $30 million debenture. Mr. Endsley checked and found out that the securities U. S. Assurance, the private Texas corporation, represented were worth $22.3 million were only worth $2 million or $3 million. He reported this information to Mr. Minton, who agreed that the figures in the financials were "funny money", but who explained that the insurance industry operated in this manner. (Tr. 1076-81) About the same time, Mr. Hill, an experienced trader at Minton Securities, was only able to verify that there was a viable market in the one security listed in the NASDAQ system (American Air Craft). He checked various documents but could not find anything about any of the other securities listed as assets. Finally, Mr. Minton knew PECM never had the $30 million debenture, he knew that the USA Trust account never received the American Air Craft securities valued at $3 million on the balance sheet, and he knew in May or June that U. S. Assurance did not have the $100,000 certificate of

deposit. (Tr. 297-03, 343-44, 347)

3. The statement that in 1989 and 1990, U. S. Assurance would have a capital surplus of $2.5 million and $4.9 million, respectively, available for anticipated common stock dividends of $.15 per share in 1989 and $.29 per share in 1990. (Exhibit C-1) Mr. Minton disseminated financials which made this projection, and he arranged for Dr. Cloke to present this information to the brokers at Minton Securities and at Vautrain when he knew it was false. The only basis for the earnings projected in the Two Year Proforma Statement was Dr. Cloke's optimism - there were no objective analyses, supporting opinions, or studies, and U. S. Assurance did not hold the necessary licenses or have the necessary capital to engage in the insurance business so as to realize Dr. Cloke's projected earnings. (Tr. 770-71)

4. The statement that two prominent individuals, the Mayor of Fort Worth and a well-known news reporter, were on the Board of Directors of U. S. Assurance. Mr. Minton knew when he disseminated this information that Mr. Brad Wright and Mr. Bob Bolen had not agreed to serve on the Board. After receiving Mr. Wright's written declination to serve on the Board dated June 26, 1989, Mr. Minton did not correct the erroneous information he had provided.

In addition to these misrepresentations, Mr. Minton also willfully omitted to disclose material information about U. S. Assurance which was necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. For example, Mr. Minton knew and did not disclose that U. S. Assurance was experiencing financial difficulty, and that it was not able to pay its bills. (Exhibit 4, Tr. 519-21, 666) Mr. Minton knew and did not reveal that in early May 1989, Mr. Welborn cashed the $100,000 debenture which was listed as an asset, that Texas Commerce Bank

which held the securities for the USA Trust with a declared value of $19.3 million refused to accept these assets as collateral for a $250,000 loan, and that the Texas State Board of Insurance found certain of the securities unacceptable. (Exhibit G-6, Tr. 297-02) Mr. Minton failed to disclose that he owned all the allegedly unrestricted shares of U. S. Assurance that had been issued. Finally, Mr. Minton failed to disclose that on August 24, 1989, U. S. Assurance was sued for non-payment on a bond.

I find Mr. Minton committed these violations knowingly and willfully. The evidence is persuasive that Mr. Minton is very knowledgeable in the area of securities law, that he understood the significance of these actions, and that he was an active and willing participant in this illegal hoax on the investing public. The evidence and Mr. Minton's comments at the hearing demonstrate, without question, that he and Messrs. Roensch and Stephenson negotiated the arrangements, and that he understood every detail of the various transactions, but that Dr. Cloke did not. In addition to his awareness of all the particulars regarding the various transactions, Mr. Minton's characterizations of U. S. Assurance's assets as being "junk", "funny money" or "worthless" contradict his claim of innocence. (Tr. 113, 642-43, 749-52, and 1080)

Even if one believed Mr. Minton's claim that he was not an active participant but that he was a victim of the fraudulent actions of others, respondents still violated the antifraud provisions because a broker-dealer cannot recommend the purchase of a security unless it has enough reliable information to form a sound basis for the recommendation, and a violation of this duty to investigate indicates willful conduct. (Hanly v. Securities & Exchange Com., 415 F.2d 589, 595-97 (2d Cir. 1969), See Dlugash v. Securities & Exchange Com., 373 F.2d 107, 109-10 (2d Cir. 1967)) For the many reasons detailed above, I find that there was never a sound basis for any reasonable broker-dealer to recommend

purchases of U. S. Assurance securities. In addition, Minton Securities was not just any broker-dealer, it knew that there was no sound basis for this offering because Mr. Minton was involved in the negotiations and decisions that resulted in the offering and sale of U. S. Assurance securities to the public. Respondents' attorney is correct the U. S. Assurance, PECM, PE transaction was a shell game. (Post Hearing Brief, 27)

I reject respondents' position that the due diligence file was adequate. Mr. Hill, the experienced trader at Minton Securities, told Mr. Minton that "it didn't seem like there was much there", but most important much of the information in the file was false and respondents knew or should have known it was false. (Tr. 868-70)

Registration Requirements

To achieve disclosure to the public of adequate reliable information, Section 5 of the Securities Act makes it unlawful to use any instrumentality of interstate commerce or the mail to sell, or to deliver, or to offer to sell, or to offer to buy any security for which there is no registration statement on file or in effect. Section 5 is considered the heart of the Securities Act.

Mr. Minton claims that he did not violate Section 5 because of Rule 144(k) - Termination of Certain Restrictions on Sales of Restricted Securities by Persons Other than Affiliates. 11/ He maintains that he received U. S. Assurance securities from the McAlister Investment Trust and that the Trust's trustor and beneficiaries were not affiliates of U. S. Assurance at the time the shares were transferred to him, that the Trust acquired the shares from persons who (i) were not affiliates of U. S. Assurance at the time the Trust

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11/ As pertinent here, Rule 144 defines "restricted securities" as (i) securities that are acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving a public offering.

acquired the shares, and (ii) had not been affiliates of U. S. Assurance for three months prior to the transfer, and that the shares had been beneficially owned for three years prior to the transfer to the Trust. He also claims that Minton Securities' sales of U. S. Assurance shares were exempt under Section 4 (3) because in making the sales it acted as a dealer (a principal), not an underwriter. (Post Hearing Brief, 13-19)

I find that respondents willfully violated Section 5 as alleged. Persons claiming an exemption from the registration provision of Section 5 of the Securities Act have the burden of showing it is applicable. 12/ Respondents have not carried that burden. The record is unclear what is meant by the testimony that the Trust was the "source" of Mr. Minton's U. S. Assurance shares, or when and under what conditions the transfer to Mr. Minton occurred. Messrs. Roensch and Stephenson, who through PE acquired Mandella, were also trustees of the Trust. (Exhibit L-17). The record also contains references to two other trusts, the Skye Irrevocable Trust and the Noble Financial Trust, which together held 3 million shares of restricted Mandella shares. The record is unclear on the relationship, if any, between these two trusts and the McAlister Trust, and the affiliation, if any, of Mr. Gerald Walton, Mr. Roensch, and Mr. Stephenson to all these trusts. In addition, it is unclear whether the U. S. Assurance shares Mr. Minton offered to sell and did sell were the 800,000 allegedly unrestricted shares he claims to have obtained from the Trust or the

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12/ SEC v. Ralston Purina Co., 346 U.S. 119, 126, 97 L. Ed. 2d 1494, 73 S. Ct. 981 (1953) See also the following quotation from L. Loss, Fundamentals of Securities Regulation 366-67 (1988): ... persons who offer or sell restricted securities without complying with Rule 144 are hereby put on notice by the Commission that in view of the broad remedial purposes of the Act and of public policy which strongly supports registration, they will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales and that such persons and the brokers and other persons who participate in such transactions do so at their risk. (Securities Act Release 5223 (1972))

211,019 restricted shares he acquired from U. S. Assurance. 13/ Moreover, Mr. Minton's position is based on information supplied by Mr. Roensch who participated with Mr. Minton in the fraudulent scheme and whose credibility is questionable.

In addition, Rule 144 is inapplicable because it was designed to implement the fundamental purposes of the Securities Act - to provide full and fair disclosure of the character of the securities sold in interstate commerce and through the mails, and to prevent fraud in the sale thereof - and here respondent used it to commit fraud.

Finally, the exemptions in Sections 4 (1) and 4 (3) of the Securities Act are inapplicable. The evidence is that Mr. Minton was a statutory underwriter under Section 2(11) of the Securities Act because he acquired the stock from persons who controlled the issuer with a view towards distributing the stock to the public, and he began making a market soon after he acquired the shares. Mr. Minton has not shown that his status was "other than an underwriter" as that phrase is used in Section 4 (1), and Minton Securities has not shown that it was operating as a dealer and not an underwriter.

I find that respondents willfully violated Sections 5(a) and 5(c) of the Securities Act by using the mails and instruments of interstate commerce to offer to sell, to offer to buy, to sell, and to deliver shares of U. S. Assurance common stock when there was no registration statement filed or in effect for these securities.

Public Interest

Sections 15(b)(4) and 15(b)(6) of the Exchange Act require that the Commission sanction a broker-dealer and a person associated with a broker-dealer who have willfully

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13/ On May 15, 1989, Mr. Stephenson, at Mr. Minton's request, directed the transfer to Mr. Minton of 1,011,019 unrestricted shares of U. S. Assurance. (Exhibit 13) Mr. Stephenson testified that these shares were issued to Mr. Minton. (Tr. 464-68) 13/

violated the securities statutes if it is in the public interest to do so. The remedial action appropriate in the public interest depends on the facts and circumstances of each particular case. (See Butz v. Glover Livestock Com. Co., 411 U.S. 182, 187-89, 36 L. Ed. 2d 142, 93 S. Ct. 1455 (1973); Hiller v. SEC, 429 F.2d 856, 858-59 (2nd Cir. 1970)) The applicable criteria for selecting an appropriate sanction include the egregiousness of the conduct; the recurrent nature of the violations; the need to deter others from similar actions; the degree of scienter involved; the sincerity of respondent's assurances against future violations; respondent's recognition of the wrongful nature of his conduct; and the likelihood of future violations. (Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), affd Steadman v. SEC, 450 U.S. 91, 67 L. Ed 2d 69, 101 S. Ct. 999 (1981); SEC v. Blatt, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978))

A severe sanction is warranted here to preserve public confidence in the integrity of the securities markets and to deter Mr. Minton and others from similar actions. I reach this conclusion because here a securities professional knowingly, over at least a five-month period, used his reputation and professional standing in the community to perpetrate a fraud of major proportions on public investors. The protection of investors is the most important purpose and policy underlying the antifraud provisions of the securities statutes. Mr. Minton's conduct was egregious and violated the basic provisions of the securities statutes and regulations. He misused his position as a registered broker-dealer to distribute approximately half a million dollars of essentially worthless securities.

Other considerations which indicate that a severe sanction is in the public interest are that Mr. Minton's actions were deliberate, and that he was involved in this fraud from start to finish, i.e., he executed the fraudulent scheme he helped plan. In addition, he has shown no remorse or recognition that his actions were illegal. Instead he has blamed others

- "the bad guys who pulled off this deal" and "the swifties from San Francisco" - and offered distorted explanations for his conduct. (Post-Hearing Brief, 26) For example, throughout the hearing Mr. Minton insisted that Minton Securities gave U. S. Assurance stock to Vautrain when the latter was in financial difficulty. However, at least two witnesses testified that Mr. Vautrain and Mr. Minton agreed that Vautrain would pay, and paid, between $.50 and $.75 each for U. S. Assurance shares. Mr. Minton then claimed that he did not say that respondents did not get reimbursed, but rather that the Vautrain firm never wrote checks to pay for shares of U. S. Assurance, and that he gave the Vautrain firm the difference between $.50 or $.75 a share and the public bid of $1.25. (Tr. 1062-66) In an industry that depends on the integrity of its participants, Mr. Minton's position on this and several other matters indicates that as late as the hearing he was trying to obscure the facts and the true nature of the transactions.

There is no mitigating evidence in this record.

I have considered and rejected those proposed findings, arguments, and conclusions that are inconsistent with this decision.

Order

Based on the findings and conclusions made above, and pursuant to Section 15(b) of the Exchange Act, I ORDER that the broker-dealer registration of V. F. Minton Securities, Inc. is revoked and Vernon F. Minton is barred from being associated with any broker or dealer.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice. (17 C.F.R. 201.17(f)) Pursuant to that rule, this initial decision shall become the final decision of the Commission as to each party who has not filed a petition for review pursuant to Rule 17(b) within fifteen days

after service of the initial decision upon him, unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to a party. If a party timely files a petition for review, or the Commission acts to review as to a party, the initial decision shall not become final as to that party.

Brenda P. Murray

Brenda P. Murray
Administrative Law Judge

Washington, D.C.
May 22, 1991