

These public proceedings were instituted by an Order of the Securities and Exchange Commission dated September 30, 1994, ("Order") issued pursuant to Sections 15(b) and 19(h) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") to determine whether allegations of misconduct made by the Division of Enforcement ("Division") against Richard D. Chema ("Chema" or "Respondent") are true and what, if any, remedial action would be appropriate in the public interest.

In substance, the Division alleged that the Respondent was a registered representative employed by H. Beck from April 1989 to January 1992. From April 7, 1989 to June 20, 1990, Chema was the account representative of John G. Broumas, who for most of that period was chairman of the board of Madison Bank of Virginia ("Madison of Virginia") and a director of James Madison, LTD ("JML"), a bank holding company for Madison of Virginia. The Respondent, during the last noted period, executed for Broumas 119 "wash trades" and "matched orders" and 18 "marking-the-close" trades in JML stock. The Order further alleges that in executing these trades Chema aided and abetted the violations of Broumas of 9(a)(1) and 9(a)(2) as well as 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with fraudulent conduct in the sale and purchase of JML stock. By answer dated October 19, 1994, Chema admitted making the trades for Broumas, but he essentially denied knowing the trading strategy Broumas employed or aiding and abetting Broumas in a scheme. Additionally, Chema claimed that the trades that Broumas ordered were consistent with normal trading strategies.

The findings and conclusions herein are based upon the preponderance of the evidence as determined from the record and upon my observation of the various witnesses that testified at the hearing that was held in Washington, D.C. from December

12 through December 14, 1994 and April 3 through April 4, 1995 as well as the briefs, arguments, and proposals of facts and law of the parties and the relevant statutes and regulations.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission filed a complaint in the U.S. District Court for the District of Columbia against Broumas on September 27, 1991.^{1/} It was alleged that from January 1989 through July 1990, Broumas violated the federal securities laws by marking-the-close and executing wash trades and matched orders in JML stock. At the same time, Broumas consented, without admitting or denying the allegations, to the entry of a permanent injunction prohibiting him from future violations of Sections 9(a)(1), 9(a)(2), 10(b) and 16(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 10b-5 and 16a-3 thereunder. Ex. 830.^{2/}

In 1989 and 1990, JML Class A common stock was listed on the American Stock Exchange ("AMEX"). As of November 7, 1989, there were 6,490,126 shares of JML Class A common stock outstanding. Officers and directors owned about 32%, leaving a float of approximately 4,413,200 shares. Officers and directors of JML also owned 37% of JML common stock, which was traded over-the-counter and was convertible into the Class A stock, share for share. Ex. 300 (8/17/90 memo); Dec. Tr. 347 (Savarese). Between January 1989 and January 1990, the price of JML Class A stock traded in a range between

^{1/} SEC v. John G. Broumas, Civil Action No. 91-2449 (L.R. No. 12999).

^{2/} References to the page numbers of the transcript of the hearing held in these matters on December 12, 13 and 14, 1994 are noted as "Dec. Tr. __ (___)." References to the page numbers of the transcript of the hearing held April 3 and 4, 1995 are noted as "Apr. Tr. __ (___)." All references to the Division's Exhibits admitted into evidence at the hearing are indicated as "Ex. ___."

\$5 5/8 and \$7 1/2 (closing price), with most closing prices higher than \$6 per share. In February 1990, the price declined, and fell to \$2 1/2 per share on July 20, 1990. From March 16, 1990 through May 9, 1990, the closing price was between \$5 and \$5 1/2 per share. After May 9, 1990, it remained below \$5 per share again. Ex. 306.

On December 31, 1986, JML became owner of the McLean Bank, which changed its name to Madison National Bank of Virginia. Dec. Tr. 120-121 (Broumas). Broumas, a substantial stockholder in the McLean Bank, received a combination of stock and cash for his 6 million dollar interest. Dec. Tr. 121-122 (Broumas). He stayed on as chairman of the board of Madison of Virginia until May 24, 1990, and a member of the board of JML, the holding company, until May 24, 1990. Dec. Tr. 122 (Broumas). Broumas obtained equal shares of both JML Class A and common stock. Dec. Tr. 122-123 (Broumas). Broumas owned approximately 198,000 shares of JML Class A common stock on January 31, 1989 [Ex. 808], and on March 13, 1989, Broumas owned 193,268 shares or 2.98% of the total amount outstanding. Ex. 300 (8/17/90 Memo, p. 6); Ex. 807. He was very wealthy, but suffered severe financial reverses early in 1989. Ex. 120 (pp. 19, 34-36), 807 (p.3). In October 1987, when the market crashed, Broumas held mostly on margin 225,000 shares of a stock called Syntec. After the crash, Syntec dropped from \$16 to \$4 per share, resulting in Broumas receiving margin calls on the stock. To meet those calls, he borrowed approximately \$300,000 from Madison of Virginia. Dec. Tr. 123-125.

Broumas on May 1, 1989 was personally liable on notes owed to banks in the amount of \$2,733,064, and owed \$904,000 in mortgages with payments of \$128,008 per quarter. Ex. 801; Dec. Tr. 168-173 (Broumas). Many of his liquid assets were in the form of JML stock, both Class A and common, which were held in margin accounts. Dec. Tr. 173-174 (Broumas); Ex. 801. As of May 1, 1990, Broumas's bank loans totaled \$2,621,981,

with quarterly payment requirements of at least \$104,500. Broumas was having difficulty meeting those interest and loan payments. In addition, the value of his real estate holdings was dropping. Ex. 801,802; Dec. Tr. 175-176 (Broumas). As a result of these liabilities, among others which he could not repay, Broumas eventually filed for personal bankruptcy, pursuant to Chapter 7, in February 1991. Dec. Tr. 214-215 (Broumas); Ex. 800. In November 1994, the United States Attorney for the District of Columbia filed an Information against Broumas charging him with one count of misapplication by a bank officer in violation of 18 U.S.C. § 656 (United States v. Broumas, Crim. No. 94-442 (D.D.C.)). Ex. 706. The Information alleged a check-kiting scheme conducted by Broumas, using six separate bank accounts at three banks, including Madison of Virginia and Madison of Washington. The purpose of the scheme was to use the float generated by writing checks against accounts for which insufficient funds existed, and using the checks to meet stock margin calls for JML stock from April through June, 1990. On November 23, 1994, Broumas pled guilty to this Information and admitted to the conduct charged. Ex. 720; Dec. Tr. 209-212 (Broumas).

During 1989 and 1990, Broumas controlled approximately 25 different brokerage accounts, in his own name and others, located at 14 different broker-dealers, through which he placed his wash trades, matched orders, and marking-the-close trades in JML Class A stock. Ex. 1. During 1989 and 1990, Broumas held three accounts at H. Beck--a joint account, and accounts in the name of Les Girls and BC Theatres. He held two brokerage accounts at Lara Millard, one in joint name with his wife and one in the name of BC Theatres. He had two accounts at Scott & Stringfellow, one held in the name of John Broumas and the other a joint account with his wife. He had two accounts at Voss & Company, one in a joint name and the other in the name of Les Girls. He had three

accounts at First Potomac--one in joint name, one in the name of Les Girls, and one in the name of BC Theatres. Broumas had one account at Capitol Securities in joint name with his wife, and another at City Securities Corporation. He had a joint account at Investors Group, Ltd. Broumas had two accounts at Johnston Lemon each held in the name of John Broumas. He had one account at Koonce Securities in a joint name, and one in his name at Staib Roberts. He had three accounts at Swan Securities--one in joint name, one as BC Theatres, and one as Les Girls. He had a joint account at Titan Value Equities Group. Broumas had an account in his name at Washington Investment Corp. He had three accounts at Carey Jamison Securities--in joint name, BC Theatres, and Les Girls. Dec. Tr. 126-142 (Broumas).

Broumas had sole authority to place trades, and he was the only person who traded in these accounts; he paid for them out of funds he controlled; and when shares were sold, he received payment. He had the power to control or direct the voting of the shares of JML stock in these accounts during 1989 and 1990. Dec. Tr. 126-142 (Broumas). In 1989 and 1990, Broumas held his JML Class A stock in margin accounts, and he received margin calls that he had to meet or risk sale of the stock. Dec. Tr. 186-189 (Broumas). Broumas believed that broker-dealers required that stock must have a value of \$5 or more to be held on margin. Dec. Tr. 192 (Broumas). Eventually, Broumas received margin calls from his brokers that he could not meet, and all of his accounts that held JML Class A stock were sold out by the brokers. Dec. Tr. 212-213 (Broumas).

In order to meet margin calls in 1989 and 1990, Broumas admitted that he sold JML stock to himself many times. He called brokers during that time period and asked them whether he had any equity in his margin accounts. Dec. Tr. 193 (Broumas). Then he would direct that shares be bought or sold from one account controlled by him

into other accounts controlled by him. Dec. Tr. 193-194 (Broumas); Ex. 1.

Between January 1, 1989, and June 30, 1990, Broumas ordered approximately 545 trades of JML Class A stock. Ex. 1. Of this amount, 420 trades consisted of wash trades or matched orders, constituting 203 wash trade or matched order transactions. These trades typically involved the purchase and sale of between 3,000 and 12,000 shares of JML stock. Ex. 2. Broumas orchestrated these trades through at least 29 brokerage accounts that he maintained or controlled at 13 brokerage firms in the Washington, D.C. area. Ex. 2, 6.

Broumas could not go to the JML banks and borrow cash because he had reached his limit. Dec. Tr. 201 (Broumas). He therefore arranged wash trades and matched orders for the purpose of obtaining a float in a scheme similar to check-kiting. Under this scheme, Broumas orchestrated trades between accounts he held at different brokerage firms by calling registered representatives on each side of his trades and giving them instructions to call each other and to trade a specific amount of his JML Class A stock at a specified price. Broumas knew that by calling both sides of the trades, the trades would be executed on the over-the-counter market. Once the trades were completed, Broumas obtained the proceeds from the sale side one day later, but waited until the settlement date at least one week later to pay for the corresponding buy side of the trade. When the settlement date arrived, he sometimes executed another set of wash trades or matched orders and repeated the process. By engaging in this activity, Broumas could, in effect, obtain a "loan" from the brokerage firms where he traded his JML stock. Similarly, Broumas arranged a smaller number of matched orders by following the same procedure, except that he solicited third parties, nominees, to call in one side of the trade. Dec. Tr. 195-201 (Broumas).

Broumas was able to borrow cash by this method of selling shares to himself, and did this instead of selling JML stock to a buyer in the open market because he wanted to maintain his large holdings of JML stock "at that price." It was important to him to maintain the same general level of JML stock ownership. Dec. Tr. 199-200 (Broumas). For each of the 203 transactions [Ex. 2]., Broumas made two phone calls, one to each broker on either side of each trade. In instances where stock was moved to or from accounts that he controlled (John Broumas, John and Ruth Broumas, Les Girls or BC Theatres) to or from nominee accounts, the mechanics of how the calls were made and how the trade was executed was the same as when he moved stock between his own accounts. Dec. Tr. 202-203 (Broumas).

In addition to his own accounts, Broumas also traded JML Class A stock through the accounts of four nominees: a business associate as well as three former Madison employees, one of whom was his grandson--Respondent L. Lawton Rogers, Matthew Johnson, Michael Connolly, and Kevin Lemmon. Ex. 2, 6. Broumas initiated this arrangement with each nominee. During the Trading Period, L. Lawton Rogers ("Rogers") maintained accounts at H. Beck, Voss & Co., and First Potomac which Broumas controlled. Ex. 120 (pp. 14-15), 280, 281. Rogers ordered, at Broumas's request, 21 trades of JML stock through the above-mentioned accounts. The value of Rogers's trades in JML stock totaled approximately \$1,060,000. Seventeen of the trades amounted to matched orders, and the other four were two sets of trades that washed between Rogers's accounts. Ex. 2, 6.

Broumas directed Rogers to call specific registered representatives and place a buy or sell order at a specific price for JML stock. Rogers then called in the trade, giving the registered representative the price, amount of shares, and to whom it was to be traded.

Ex. 120 (pp. 24-26, 30, 37-38); 282. On two occasions, Rogers placed wash trades between his own accounts. On January 25, 1990, Rogers sold 12,000 shares of JML stock at \$6.375 per share from his H. Beck account, and bought 12,000 shares of JML stock at \$6.375 per share for his First Potomac account. Similarly, on February 12, 1990, Rogers sold 12,000 shares of JML stock at \$5.625 per share from his First Potomac account, and bought 12,000 shares of JML stock at \$5.625 per share for his Voss & Co. account. Ex. 2. Broumas also traded JML stock through nominee accounts in the names of Matthew Johnson, Michael Connolly, and Kevin Lemmon. During the period from November 1989 to May 1990, Broumas placed 12 matched orders through Johnson's account at H. Beck. Ex. 2, 6. During the period from February 1989 to April 1989, Broumas placed four matched orders through an account Johnson maintained at Swan Securities. Ex. 2, 6; Dec. Tr. 252-253 (Johnson).

Michael J. Connolly ("Connolly") was employed by Madison of Virginia during the relevant period as a vice president and cashier. In the fall of 1989, Broumas told Connolly that he was using these transactions to generate cash to pay maturing bank notes. Connolly understood that Broumas used these trades in his margin accounts to obtain a float, or use of the funds, for several days. Ex. 249. Connolly opened an account with Mr. Chema at H. Beck. Although Connolly agreed to allow Broumas to conduct trades through Connolly's account, he never subsequently signed any documents giving Broumas authority to trade on his behalf, or had any dealings with the broker again. Dec. Tr. 269 (Connolly); Ex. 249. Between January 1990 and May 1990, Broumas placed nine matched orders in JML Class A stock through Connolly's H. Beck account.

Kevin K. Lemmon ("Lemmon") was employed by Madison of Virginia during the trading period as a vice president in the lending department. Between December 1989

and May 1990, Lemmon maintained accounts at First Potomac and H. Beck through which he allowed Broumas to place 14 matched orders in JML Class A stock. Ex. 2, 6. None of Broumas's wash trades and matched orders placed between January 1, 1989 and July 2, 1989 were reported by the registered representatives and broker-dealers who executed Broumas's trades, in violation of the requirements of NASD Schedule G. Ex. 2, 4, 310. In addition, many trades after July 3, 1989 were not reported either, again in violation of NASD Schedule G. Ex. 2, 4.

From January 1, 1989 to June 30, 1990, the Trading Period at issue, all of Broumas's reported trades constituted 40.34% of the total reported market volume for JML Class A stock. From July 1, 1989 to December 31, 1989, all of Broumas's reported trades constituted 55.25% of the total reported market volume for JML Class A stock during that time period. From July 1, 1989 to June 30, 1990, all of Broumas's reported trades constituted 48.19% of the total reported market volume for JML Class A stock during that time period. Ex. 8, 304, 306; Dec. Tr. 61-69 (Boeggeman).

With regard to only the volume of Broumas's wash trades and matched orders reported, from January 1, 1989 to June 30, 1990, all of Broumas's reported wash trades and matched orders constituted 36.55% of the total reported market volume for JML Class A stock. From July 1, 1989 to December 31, 1989, all of Broumas's reported wash trades and matched orders constituted 53.45% of the total reported market volume for JML Class A stock during that time period. From July 1, 1989 to June 30, 1990, all of Broumas's reported wash trades and matched orders constituted 44.07% of the total reported market volume for JML Class A stock during that time period. Ex. 4, 8, 304, 306; Dec. Tr. 61-69 (Boeggeman). Finally, comparing the total volume of wash trades and matched orders reported with the total volume reported only on those days on which reported wash trades

and matched orders occurred, from January 1, 1989 to June 30, 1990, Broumas's trades constituted 73.71% of the reported market volume for JML Class A stock. From July 1, 1989 to December 31, 1989, the applicable percentage is 72.43%. From July 1, 1989 to June 30, 1990, the applicable percentage is 73.71%. Ex. 4, 8, 304, 306; Dec. Tr. 61-69 (Boeggeman).

In an attempt to support the price of JML stock, Broumas also engaged in the practice of "marking-the-close." Marking-the-close refers to a series of transactions, at or near the close of trading, i.e., at or within minutes of 4:00 p.m., which either uptick or downtick a security. Dec. Tr. 356 (Savarese). Marking-the-close represents a possible departure from the normal forces of supply and demand that result in the fair auction price for a security, and is of concern to those who regulate the markets. Dec. Tr. 356-357 (Savarese). Between January 18, 1989 and June 25, 1990, Broumas ordered 64 purchases that occurred within the final ten minutes of the trading day; of these, 54 constituted the last trade of the day; and 47 of these purchases were executed on an uptick. Ex. 3, 7; Dec. Tr. 208 (Broumas). An uptick is a transaction in a security which is at a price that is higher than the previous transaction in that same security. Dec. Tr. 342 (Savarese). These purchases were made on the AMEX and the Midwest Stock Exchange. By using the exchanges, Broumas could assure that his closing purchases would be reported by the exchanges, the reporting services, and the newspapers. Broumas primarily placed his late-day purchases through accounts held at Scott & Stringfellow and H. Beck. Ex. 3, 7. In marking-the-close, registered representatives executed Broumas's purchases on either the AMEX or the Midwest Stock Exchange. Broumas typically bought 100-200 shares of JML stock at or near the close of the trading day. These purchases characteristically occurred within the final ten minutes of the trading day, generally constituted the last trade of the

day, and were usually executed on an uptick. On a number of occasions, Broumas's trades raised the closing price of JML stock by 1/8. Ex. 3, 7. During this time period, he followed the price of JML Class A stock in the newspaper daily. Dec. Tr. 207 (Broumas).

Purchases at the close are especially significant for two reasons. First, brokerage firms use the closing price of a security to arrive at their margin calculations in determining what their margin requirements will be for customers. Generally, many firms require maintenance of equity of 35% in margin accounts. Some firms also use \$5.00 per share as a level at which they raise margin requirements. Other firms use a lower price. When the stock price reaches that level, many firms raise their requirements in margin accounts to 100% equity, essentially requiring full cash payment for the security. Second, the closing price of a security is the price reflected in the newspapers as the final price for that security for that trading session. Dec. Tr. 357-359 (Savarese). The concern about marking-the-close arises when the practice is repeated, is ongoing, and develops into a pattern. Dec. Tr. 358 (Savarese).

At some point, Respondent Adrian C. Havill ("Havill") told Broumas that his office said that Havill could not take these uptick trades any longer. Havill told him the trading was not proper, and that it might affect the market. Dec. Tr. 207-208 (Broumas). Broumas conducted some of his marking-the-close trades through two accounts at Scott & Stringfellow, which he opened in late August 1989. Ex. 7; Dec. Tr. 288-289 (Havill). Broumas's purpose in conducting these marking-the-close trades was to create interest in the stock. He knew that if nobody bought the stock on a certain day, it would not show up in the newspaper listings the next day. Dec. Tr. 292-294 (Havill). At Scott & Stringfellow, in particular, Broumas would often call and execute trades near the end of the day. If the stock had not traded that day, Broumas bought some shares just to make sure

it traded. Dec. Tr. 295-296 (Havill). Broumas would call many times between 3:00 and 4:00 p.m. and instruct Havill, his registered representative at Scott & Stringfellow, to buy at or near the close. Dec. Tr. 300 (Havill).

In 1990, the American Stock Exchange ("AMEX") conducted an inquiry, which they call a "study," concerning certain trading activity in James Madison, Limited Class A stock, which was then traded on the AMEX. Dec. Tr. 341-342 (Savarese). The study was initiated by the Equities Surveillance Department of the AMEX in January 1990 when a Participant-at-the-Close Report, which highlights patterns of either upticks or downticks over a period of time in any security, showed a pattern of upticks at or near the close of trading for JML Class A stock. Dec. Tr. 341-342 (Savarese); Ex. 300. The Participant-at-the-Close Report had revealed that, on 9 out of 10 trading days from December 29, 1989 through January 12, 1990, JML closed on a plus or zero plus tick, and that Scott & Stringfellow had effected the last purchase of the day on 8 of the 9 days. Seven of the 8 were executed in the last 5 minutes of trading. All of the firm's at-the-close purchases were for 100 shares and were done on plus or zero plus ticks. Ex. 300 (8/17/90 memo). The study was extended to encompass the time period August 30, 1989 through January 17, 1990. The study concluded that, of the 39 trading sessions during which Broumas was active at Scott & Stringfellow, he executed the last trade of the day on 32 occasions and the trade was effected on a 1/8 uptick on 27 occasions. Ex. 300 (8/17/90 memo). In September 1989, Broumas ordered 15 wash trade transactions, and 11 marking-the-close trades, 9 of which were on the same days as the wash trades. In December 1989, Broumas ordered 11 wash trades or matched order transactions, and 9 marking-the-close trades, 4 of which were on the same days as the wash trades. The pattern continued throughout the Trading Period. Ex. 2, 3.

Market manipulation refers generally to practices--such as wash sales, matched orders or rigged prices--that are intended to mislead investors by artificially affecting market activity. Schreiber v. Burlington Northern, Inc., 472 U.S. 1, 6 (1985). Manipulation subverts the objectives of the Exchange Act which, among other things, are intended to "insure the maintenance of fair and honest markets,"--that is, "markets where prices may be established by the free and honest balancing of investment demand with investment supply." H.R. Rep. No. 1383, 73d Cong., 2nd Sess. (1934) at 11. Section 9(a)(2) of the Exchange Act, which prohibits the manipulation of securities listed for trading on a national exchange, makes it unlawful for a person to engage in a series of transactions that create actual or apparent activity or raise or depress the stock's price when done for the purpose of inducing others to buy or sell the security. Section 9(a)(2) was considered by Congress to be "the very heart" of the Exchange Act, and "its purpose was to 'outlaw every device used to persuade the public that activity in a security is the reflection of a genuine demand instead of a mirage.'" Crane Co. v. Westinghouse Air Brake Co., 419 F.2d 787, 794 (2d Cir. 1969) (quoting 3 L. Loss, *Securities Regulation* 1549-55 (2d ed. 1961)), cert. denied, 400 U.S. 822 (1970).

Section 9(a)(2) violations are established by a showing that an individual:

- 1) effected a series of transactions in a security registered on a national securities exchange;
 - 2) which created actual or apparent active trading in such security, or raised or depressed the price of the security;
 - 3) for the purpose of inducing the purchase or sale of the security by others.
- Crane at 794-795; Section 9(a)(2) of the Exchange Act. Section 9(a)(1) prohibits certain manipulative practices, including wash trades and matched orders, when such transactions are done for the purpose of creating the false or misleading appearance of active trading in a security listed on a national securities exchange, or a false or misleading

appearance with respect to the market for any such security. To establish a violation of Section 9(a)(1), it must be shown that one or more individuals effected a transaction in a security registered on a national securities exchange which involved no change in beneficial ownership, or with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, have been or will be entered by or for the same or different parties. It also must be established that the transaction was done for the purpose of creating a false or misleading appearance of active trading in such security, or a false or misleading appearance with respect to the market in such security. Michael Batterman, 46 S.E.C. 304, 305 (1976); Section 9(a)(1) of the Exchange Act.

The manipulative activities expressly prohibited by Sections 9(a)(1) and 9(a)(2) of the Exchange Act with respect to a listed security constitute violations of Section 10(b) of the Exchange Act and Rule 10b-5 when such activities involve trading in the over-the-counter market. See, e.g., United States v. Charnay, 537 F.2d 341, 350-51 (9th Cir. 1976), cert. denied, 429 U.S. 1000 (1976); SEC v. Resch-Cassin & Co., Inc., 362 F. Supp. 964, 975 (S.D.N.Y. 1973); Edward J. Mawod & Co., 46 S.E.C. 865, 869-71 (1977), aff'd, Mawod & Co. v. SEC, 591 F.2d 588 (10th Cir. 1979); Batterman, 46 S.E.C. at 305; Russell Maguire & Co., Inc., 10 S.E.C. 332, 347-49 (1941).

To establish that an individual has engaged in manipulative practices in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, the Division must prove: that one or more individuals engaged in any act, practice, or course of business which **operated** as a fraud or deceit upon any person in connection with the purchase or sale of the security. See SEC v. Kimmes, 799 F. Supp. 852, 858 (N.D.Ill. 1992). In establishing a violation of Section 10(b) and Rule 10b-5, the Commission must show that

the individual acted with scienter. Aaron v. SEC, 446 U.S. 680, 701-02 (1980).

"Rule 10b-5 . . . require[s] no additional proof of facts creating a higher burden of proof when compared to subsection 9(a)(1), (2) and (6). In fact, Rule 10b-5 create[s] a lower burden of proof." Chemetron Corp. v. Business Funds, Inc., 682 F.2d 1149, 1165 (5th Cir. 1982), reh'g denied, 689 F.2d 190 (5th Cir. 1982), vacated, remanded, 460 U.S. 1007 (1983), on remand, 718 F.2d 725, cert. denied, 460 U.S. 1013 (1983).

The third element required under Section 9(a)(2)--manipulative purpose-- is not required to establish a violation of Section 10(b) and Rule 10b-5. Instead, "[i]t is sufficient for the person to engage in a course of business which operates as a fraud or deceit as to the nature of the market for the security." Batterman, 46 S.E.C. at 305; see also Charnay, 537 F.2d at 350-51.

From January 1, 1989 to June 30, 1990, Broumas repeatedly placed orders for wash trades and matched orders in JML Class A stock, which constituted manipulative practices in violation of Sections 9(a)(1) and 9(a)(2) of the Exchange Act. Furthermore, this pattern of conduct violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder because, by creating a false or misleading appearance of active trading in JML Class A stock, it operated as a fraud or deceit upon the marketplace.

Broumas's wash trades and matched orders violated Sections 9(a)(1) and 9(a)(2) of the Exchange Act. Sections 9(a)(1) and 9(a)(2) require that the proscribed activities be engaged in with the requisite manipulative intent. Transactions which violate Section 9(a)(1) can serve as the basis for a violation of Section 9(a)(2). Michael J. Meehan, 2 S.E.C.588, 615-618 (1937). However, transactions such as wash sales and matched orders, which constitute violations of Section 9(a)(1), have been held to be per se manipulative. Mawod & Co., 591 F.2d at 595-96.

The Respondent argues,^{3/} in effect, that there were no wash sales involved here inasmuch as the trades were not, for the most part, formally reported. As was pointed out at the Commission level in Mawod & Co., however, formal reporting is not a necessary ingredient in a wash sale violation:

In the over the counter markets there was no tape. And until the National Association of Securities Dealers, Inc. developed the automated quotation system known as NASDAQ, trading volume was normally something that even an astute professional could only guess atBut the brokers and dealers through whom orders in a particular issue funnel know whether it is active or inactive. And when it is active that information filters out to investors.

Mawod & Co., 46 S.E.C. at 870 n. 24.

In other instances, the Commission has recognized that, absent an admission, an inference of manipulative intent may be drawn, and a prima facie case shown when a person with substantial pecuniary interest in achieving a price change engages in the type of market activity proscribed by Sections 9(a)(1) and 9(a)(2). Batterman, 46 S.E.C. at 305; Halsey, Stuart & Co., Inc., 30 S.E.C. 106, 123-24 (1949); The Federal Corp., 25 S.E.C. 227, 230 (1947).

Broumas's pattern of placing wash trades and matched orders in JML Class A stock constituted a manipulative practice per se under Section 9(a)(1) of the Exchange Act because it created the false or misleading appearance of active trading in JML Class A stock, and a false or misleading appearance with respect to the market for JML Class A stock. This pattern of conduct also violated Section 9(a)(2) of the Exchange Act because Broumas's purchases and sales created the false and misleading appearance of active trading in JML Class A stock. Broumas's motive can be inferred from the fact that he engaged in

^{3/} The argument is doubtful from an actual standpoint. Chema reported volume for 45 trades, totaling 393,675 shares. Apr. Tr. 284 (Chema); Ex. 4.

an extensive and repeated pattern of placing wash trades and matched orders while having a clear and substantial financial interest in raising or depressing the price of JML Class A stock. Broumas admitted that he faced margin calls if the price of JML Class A stock dropped significantly. He also admitted that he engaged in the pattern of wash trades and matched orders to take advantage of the "float," i.e., he obtained the use of the proceeds generated by a "sale" immediately while not being required to pay for the corresponding "purchase" until seven days later. During the eighteen month period in question, Broumas arranged for a total of 484 violative trades in JML Class A stock. See Thornton & Co., 28 S.E.C. 208, 222-225, 224 n.21 (1948). The respondent in Thornton used sales tickets for collateral. The Board found that the purpose of the trade was to create a false and misleading impression of active trading in violation of 9(a)1 and 9(a)2 of the Exchange Act. As Thornton indicates, "Purchasers in over-the-counter as well as the Exchange market are entitled to believe that the Exchange market price which governed the price charged them represents a price established in an independent market free of artificial devices." Id. at 224. This would by implication require that all transactions be reported and be subject to, as well as effect, the competitive market. Here the failure to report in many instances and the fixing of the prices subverted operation of a free marketplace. Further, the parties who loaned money on margin were defrauded as Broumas engaged in a charade pretending that there were genuine trades at a price set competitively.

Whatever other motives he might have had, Broumas must be deemed reasonably to have anticipated what would follow from his activity. As indicated, Broumas's wash trades and matched orders had a significant effect on the reported volume during the relevant period. Furthermore, the sheer number of wash trades and matched orders placed by Broumas in JML Class A stock over an eighteen month period, combined with his use

of numerous brokers and nominee accounts, clearly leads to the conclusion that Broumas effected a series of transactions in JML Class A stock, creating apparent active trading in that stock for the purpose of inducing others to buy the stock. See Meehan, 2 S.E.C. at 615-618. "[A]ctivities [constituting wash sales and matched orders under Section 9(a)(1)] in connection with the purchase or sale of any security operate as a fraud or deceit upon any person and are prohibited by Section 10(b) of the Exchange Act and Rule 10b-5 thereunder." Batterman, 46 S.E.C. at 305.

The Commission has held that elements of proof under Section 10(b) and Rule 10b-5 are different from those under Sections 9(a)(1) and 9(a)(2). Unlike Sections 9(a)(1) and 9(a)(2), no showing of manipulative purpose is required to establish a violation of Section 10(b) and Rule 10b-5. "It is sufficient for the person to engage in a course of business which **operates** as a fraud or deceit as to the nature of the market for the security." Id. at 305 (emphasis added).

Broumas's pattern of placing orders for wash trades and matched orders in JML Class A stock clearly operated as a fraud or deceit upon the investing public by creating the false and misleading appearance of activity in the stock. The investing public is led to believe that the volume in a given stock--as reported in the newspaper--reflects genuine supply and demand for that security. The investing public is deceived when, as here, during an eighteen month trading period, at least 36.55% of the total reported volume in a particular security represents a complete fiction in that there is absolutely no change in beneficial ownership of that stock. The use of nominee accounts in which to conduct such manipulative trading--especially when third party trading authority was lacking--is not genuine demand. United States v. Stein, 456 F.2d 844, 850 (2d Cir. 1972); SEC v. Commonwealth Securities, Inc., 410 F. Supp. 1002, 1009-1012 (S.D.N.Y. 1976), aff'd in part.

modified in part, and remanded, 574 F.2d 90 (2d Cir. 1978); Mawod & Co., 46 S.E.C. at 871-72. That practice in and of itself is deceptive. To establish a violation of Section 10(b) of the Exchange Act, it must be proved that Broumas acted with scienter. Scienter has been defined by the Supreme Court as a "mental state embracing intent to deceive, manipulate or defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 (1976).

The Commission and most circuit courts, however, have held that recklessness will suffice. See e.g., Mawod & Co., 591 F.2d at 595-96; Michael Joseph Boylan, 47 S.E.C. 680, 687 (1981). The usual formulation of recklessness cited by the courts is set forth in Sundstrand Corp. v. Sun Chemical Corp., 553 F.2d 1033 (7th Cir. 1977), cert. denied, 434 U.S. 875 (1977):

Reckless conduct may be defined as a highly unreasonable omission, involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers and sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.

Id. at 1045.

Proof of scienter in manipulation cases need not be direct, but rather may be inferred from circumstantial evidence, including evidence of price movement, trading activity, and other factors. See, e.g., Herman & MacLean v. Huddleston, 459 U.S. 375, 390-91 n.30 (1983); Santa Fe Industries v. Green, 430 U.S. 462, 475 (1977); Pagel, Inc. v. SEC, 803 F.2d 942, 946 (8th Cir 1986); Mawod & Co., 591 F.2d at 596. Proof of a manipulation is generally not based on a single activity, but rather on a course of conduct showing an intentional interference with the normal functioning of the market for a security. Indeed, manipulation is usually the result of acts, practices, and courses of conduct that deceive the marketplace. "Proof of a manipulation almost always depends on inferences drawn from a mass of factual data. Findings must be gleaned from **patterns of behavior**,

from apparent irregularities, and from trading data. When all of these are considered together, they can emerge as ingredients in a manipulative scheme designed to tamper with free market forces." Pagel, Inc., 48 S.E.C. 223, 226 (1985) (emphasis added). Moreover, the Division need not rely on direct evidence that Broumas willfully manipulated the market. Instead, the Division may rely on inferences drawn from the evidence adduced at the hearing to reach the conclusion that an illegal manipulation occurred. Collins Securities Corp. v. SEC, 562 F.2d 820, 822-23 (D.C. Cir. 1977).

Broumas had a pecuniary interest in the manipulation for several reasons: he was a director of JML and chairman of the board of Madison of Virginia; he held JML Class A stock on margin in numerous accounts, including nominee accounts; and he was heavily in debt. In addition, by placing wash trades and matched orders, Broumas engaged in a pattern of trading which is clearly proscribed by Sections 9(a)(1) and 9(a)(2), and which operated as a fraud or deceit on the marketplace by creating the false and misleading appearance of active trading in JML stock. Broumas engaged in this conduct either intentionally or recklessly.

Broumas repeatedly engaged in a pattern of activity designed to mark-the-close in JML Class A stock. By placing a series of transactions in JML Class A stock which marked-the-close, Broumas violated Section 9(a)(2) of the Exchange Act because this pattern of trading artificially raised or supported the market price of JML Class A stock at the close. Furthermore, this pattern of conduct violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder because the repeated purchases--executed on an uptick, or a zero plus tick--at or near the end of the day had the effect of increasing or supporting the closing price of JML Class A stock on those days.

"Marking-the-close" generally refers to "the practice of executing the last

transaction of the day in a particular security in order to affect its closing price" Richard L. Warner, 53 SEC Docket 0377, 0379 (1992). It is a short-hand term for a practice of attempting to execute transactions at or near the close of the day in a particular security on an uptick (i.e., a purchase executed for a price higher than the previously executed trade), or a zero plus tick (i.e., a purchase executed for the same price as the previously executed trade where that trade was executed for a price higher than the immediately preceding trade), in order artificially to influence or affect its closing price.

The Commission has held that the practice of placing orders at or near the end of the day in order to cause the stock to close at an uptick violates Section 9(a)(2) of the Exchange Act. Jacob Schaefer, 12 SEC Docket 1128, 1129 (1977). As stated above, in order to prove that Broumas violated Section 9(a)(2) by placing marking-the-close trades, it must be proved that he did so for the purpose of inducing the purchase or sale of the security by others. Absent an admission, manipulative intent may be inferred from circumstantial evidence. Although there is plentiful evidence of record from which such intent might be inferred, this tribunal need not rely upon a mere inference; Broumas clearly stated to Mr. Havill that at least one of his motives for placing the late day trades was "to create some interest in the stock because if nobody buys it on a certain day, it doesn't show up in the listing in the paper." He went on to tell Mr. Havill that he didn't want investors to forget that the bank was around, "so he was just trying to stir up a little interest in the stock." Dec. Tr. 293 (Havill).

The practice of marking-the-close also constitutes a violation of Section 10(b) and Rule 10b-5 of the Exchange Act. See e.g., Stein, 456 F.2d 844 (2d Cir. 1982) (artificial shoring up of the price through purchases of 100 share round lots, often at the end of the day, on a "plus tick" at various brokers and in the names of various nominees); Broumas's

pattern of marking-the-close injected into the marketplace an artificial price for JML Class A stock, thus operating as a fraud or deceit on the investing public. Information concerning a manipulation and the artificiality of the market price is material information the public is entitled to know. Given that the Commission has specifically recognized the impropriety of the practice of marking-the-close when done to avoid or reduce margin calls, it is considered that Broumas acted with scienter. Andrew Doherty, 49 SEC Docket 0859, 0861 (1991).

Chema's Background: From April 1989 to January 1992, Respondent Richard D. Chema was employed as a registered representative and securities trader by H. Beck, Inc. ("H. Beck"), a registered broker-dealer located in Bethesda, Maryland. He has been licensed by the National Association of Securities Dealers ("NASD") since 1980. Chema Answer ¶II.F. Chema is a lawyer and a member of the Washington, D.C., bar. Except for some legal research and other small matters, Chema has not practiced law since graduating from law school. Apr. Tr. 43 (Chema). From 1975 until 1979, Chema was employed as a commodities broker with Smith Barney. He then worked for Richards and Greenfield Securities, and then Laidlaw, Adams and Peck. From September 1984 until September 1986, Chema worked at Voss & Co., Inc. ("Voss & Co.") as a securities broker and registered representative. Apr. Tr. 34-36 (Chema); Ex. 1106-B. When he worked at Voss & Co., Steven C. Voss ("Voss"), a respondent in one of the related Commission administrative proceedings (Admin. Proc. File No. 3-8511), owned the firm. Apr. Tr. 36 (Chema).

After leaving Voss & Co. in 1986, Chema was next employed at First Potomac Securities from September 1986 until October 1987. Apr. Tr. 37 (Chema); Ex. 1106-B. At First Potomac Securities, Chema worked with and for Carole L. Haynes ("Haynes"). Haynes

is also a respondent in one of the related Commission administrative proceedings (Admin. Proc. File No. 3-8512). Apr. Tr. 37 (Chema); Ex. 1106-B. In October 1987, as a result of the stock market crash, First Potomac Securities went out of business, and Chema became employed with Hibbard-Brown, a brokerage firm, which subsequently changed its name to Carey-Jamison. Apr. Tr. 38 (Chema); Ex. 1106-B. Carey-Jamison ceased doing business in April 1989, and Chema was hired by H. Beck as a registered representative, as well as an operations person for the firm. Apr. Tr. 41-42 (Chema). In January 1992, Chema left employment with H. Beck. For the next two years, he was not employed in the securities industry, instead doing odd jobs. Apr. Tr. 42-45 (Chema). In January 1994, Chema re-entered the securities industry, when he went to work for Carol Haynes, owner of First Potomac Investment Services, Inc. ("First Potomac"). Haynes had started First Potomac in May 1989. Chema is currently employed at First Potomac Apr. Tr. 43-45 (Chema); Apr. Tr. 163, 171 (Haynes); Ex. 1106-B.

Broumas had several accounts at H. Beck during the time Chema was employed there, commencing in April 1989. Chema was the registered representative for all of these accounts at H. Beck. Apr. Tr. 48 (Chema). Broumas had there a joint account with his wife; as a partner in "BC Theatres;" and "Les Girls." Apr. Tr. 48 (Chema). All transactions in the accounts were placed by Broumas, and Broumas called in every trade for the BC Theatres account. Apr. Tr. 48-49, 60-61 (Chema).

As part of his duties as a registered representative, Chema maintained what he termed a "rep book" which contained posting sheets for each active account. The posting sheets reflected trading activity in the account. Apr. Tr. 53 (Chema); Ex. 285. The purpose of the posting sheets was to reflect trading activity in the accounts, and to determine profit and loss. Apr. Tr. 53-54 (Chema). For the Broumas accounts, Chema personally recorded

each trade. Apr. Tr. 53-54 (Chema). Chema entered a trade into the posting sheets subsequent to the transaction, sometimes on the same day, but often at a later time. In order to make the entry, he would refer to a copy of the same trade confirmation which was sent to the client. Chema received copies of these confirmations. Apr. Tr. 55-56 (Chema).

Each trade in a specific account was entered separately, and Chema's intention was to reflect all trades in the account, the date on which the trade occurred, the quantity bought or sold, and the price. Apr. Tr. 56-58 (Chema). Government Exhibit 285 contains Chema's posting sheets for the joint account, BC Theatres, Les Girls, and individual accounts in the names of Kevin Lemmon, Matthew Johnson, Michael Connolly and L. Lawton Rogers. Ex. 285; Apr. Tr. 54 (Chema). The posting sheet for the Broumas joint account reflects all of the trading in the account while it was open. Except for four trades in Washington National Bancorp stock (representing the purchase and sale of 300 shares), all of the trades in the Broumas joint account involved JML stock, either Class A or common stock. Apr. Tr. 54-55, 59-60 (Chema); Ex. 285.

Broumas began trading in the joint account in April 1989 and stopped in July 1990. The majority of transactions in the account were wash sales in JML Class A stock. Ex. 285; Apr. Tr. 59-60 (Chema). Trading in the Les Girls account began in July 1989 and stopped in July 1990. Every trade in that account was for JML Class A stock. Ex. 285; Apr. Tr. 60 (Chema). All of the trading in the BC Theatres account occurred between March and May 1990, and all of the trades were for JML Class A stock. Ex. 285; Tr. 60-61 (Chema). Chema acknowledged that Government Exhibit 1105 includes, among other things, an accurate listing of trading of JML Class A stock in seven separate accounts at H. Beck. Ex. 1105; Apr. Tr. 62-63 (Chema). Each of the trades reflected on the chart represents an individual order ticket written by Chema. Apr. Tr. 64 (Chema).

During the period from April 7, 1989, through June 21, 1990, Broumas directed Chema to execute a total of 109 trades^{4/} for JML Class A stock at H. Beck, in which 903,425 shares were traded, using seven different accounts. Apr. Tr. 88 (Chema); Ex. 2, 6, 1105. Each of the seven accounts was a margin account. Apr. Tr. 96 (Chema). Of these 109 trades, Chema executed 23 trades with Voss & Co.; 28 trades with First Potomac; and 22 trades with Lara Millard. Ex. 2, 6, 1105. The vast majority of trades that Chema did for Broumas were executed over-the-counter. Apr. Tr. p. 65 (Chema).^{5/}

According to Chema, he had an explicit conversation with Broumas about the commission that was to be charged for Broumas's trades. Broumas asked for a two cent per share commission, and Chema agreed on behalf of his firm. Chema agreed because Broumas promised that the account would be active, and Chema knew that if he was able to do the trades over-the-counter there would be no floor brokerage charge, which was two cents a share. Apr. Tr. pp. 69-70 (Chema). Although Chema did not remember whether it was Broumas's idea to do the trades over-the-counter, he knows that based upon what Broumas asked for, the trades had to be done that way. Apr. Tr. 69 (Chema). Chema admitted that he never questioned why Broumas's trades were being done over-the-counter. Apr. Tr. 78 (Chema).

When his initial account was opened, Broumas told Chema that he would

^{4/} mainly wash sales.

^{5/} Chema claimed the trades were done over-the-counter for two specific reasons: First, because the cost of doing the transaction was substantially less than if it was done on the listed exchange, and Broumas believed that because he was trading so extensively, he was entitled to pay very small commissions. Second, because JML stock was relatively thinly traded, and it was necessary to find buyers and sellers other than on the open market in order to negotiate a price and quantity. Broumas offered to locate buyers and sellers in return for the lower commission charges. Apr. Tr. 66-67 (Chema).

be concentrating his trading in JML stock, and offered an explanation about maintaining his position with the bank. Apr. Tr. 67 (Chema). In 1989 and 1990, Chema knew that Broumas was a high ranking officer of Madison of Virginia, and believed he was president. He also knew that Broumas was a director of James Madison, Ltd. Chema Answer ¶II.J.; Apr. Tr. 68 (Chema). Although he did not know the exact quantity, Chema knew that Broumas owned a large number of shares of JML stock. Apr. Tr. 76, 78 (Chema). Chema's claimed understanding of Broumas's rationale for his trading in JML stock was as follows: Broumas was employed by Madison of Virginia and sought to buy large amounts of JML stock in order to maintain a large ownership position in JML stock. Broumas claimed this was necessary to maintain his employment at the bank as higher-ranking bank officers were attempting to force Broumas out in favor of younger people. Apr. Tr. 66, 79-80 (Chema).

Broumas's Directed Trading: The joint account, in the name of John and Ruth Broumas, began trading in April 1989, and it was then that Chema began arranging each trade of JML Class A stock at Broumas's request. Apr. Tr. 70-71 (Chema). According to both Broumas and Chema, the general pattern of communications for a directed trade was as follows: Broumas would contact Chema and tell him that he wished to buy or sell a certain quantity of JML stock. Broumas would state how many shares of stock he wanted bought or sold, and at what price. Broumas would then tell Chema that Broumas would see if he could find anyone who had stock available to sell or who was willing to buy. Broumas would then call Chema back and tell him where buyers or sellers were available. Apr. Tr. 71 (Chema); Apr. Tr. 245-247 (Broumas). Haynes confirmed Chema's description of the manner in which Broumas directed his trades. Apr. Tr. 172-174 (Haynes). In this second conversation, Broumas would tell Chema the name of the

broker-dealer, and direct Chema to buy or sell a specific quantity of shares at a specific price from or to the other firm. Apr. Tr. 71-72 (Chema); Apr. Tr. 245-247 (Broumas). Sometimes Chema would have only one conversation with Broumas, in which Broumas provided all of the necessary information. For each transaction, Chema had at least one conversation with Broumas and one with an employee of the contra broker. Apr. Tr. 71-72 (Chema). Broumas decided when to do each trade; he decided which of the three accounts would actually trade JML stock; he placed each transaction order in a telephone call to Chema; the accounts traded almost exclusively as wash sales in JML stock; Broumas would determine the volume of the trade: he would tell Chema how many shares were available for a buy, and where; and where and how many shares to sell. Apr. Tr. 73-75 (Chema). Broumas set the price for the transaction after Chema looked up the bid and ask price on the AMEX terminal; when Chema called the contra broker or the contra broker called him, the transaction would be consummated at that price. Apr. Tr. 75-76 (Chema).

Broumas purportedly told Chema that he had accounts at various brokers around town and that he wanted to keep his ownership in the stock spread between various firms for the purpose of protecting himself if some firm went out of business or for some other reason the shares were placed at risk. Apr. Tr. 77 (Chema). Chema knew that Broumas traded JML stock through accounts at other broker-dealers in the Washington, D.C. area. Chema knew Broumas had accounts at Voss & Co. and with Haynes at First Potomac Securities, and he knew generally that Broumas had accounts elsewhere. Chema Answer ¶II.J.; Apr. Tr. 77 (Chema). Chema claimed he never asked Broumas if he controlled the other side of the directed trades. Apr. Tr. 132 (Chema). However, because of the extent of Broumas's directed, over-the-counter trading, Chema considered his case unusual. Apr. Tr. 79 (Chema). Chema attempted to match buys with sells in terms of

quantities. Apr. Tr. 80-81 (Chema); Ex. 285, the posting sheets. By looking at the posting sheets for the Broumas accounts, Chema could see a snapshot of the activity in the account. He was immediately able to see the history of trading in the account, how often buys and sells took place, and the flow of shares through the account. Apr. Tr. 82 (Chema). This information permitted him to identify and track wash sales.

Nominee Accounts: Broumas controlled four separate nominee accounts established at H. Beck. Each of the nominee accounts traded only JML stock, either Class A or common. Apr. Tr. 87 (Chema); Ex. 285, 1105. The trading in the four nominee accounts commenced on November 14, 1989 with Johnson and ended May 10, 1990 with Connolly. During that time, Broumas ordered no trades in either the joint account or the Les Girls account. Ex. 1105; Apr. Tr. 89 (Chema). The accounts for Connolly, Lemmon, Johnson and Rogers were introduced to Chema by Broumas. Apr. Tr. 83-84 (Chema). The Connolly, Lemmon, and Johnson nominee accounts were each opened in a separate telephone conversation between Chema and Broumas from Broumas's office at Madison of Virginia. Apr. Tr. 83-84 (Chema). Even though it is claimed that he did not have discretion to trade the accounts on behalf of the nominees, Broumas called in all the trades on these accounts. Apr. Tr. 84 (Chema). These accounts were used to make wash sales. According to Chema, Broumas told him he would be calling in the trades for these accounts because the purpose of the accounts was to support Broumas in his efforts to maintain stock ownership in JML. For this purpose, Broumas would be using both his own accounts and those of these nominees. Broumas said he would provide each individual with the

confirmation of their trades. Apr. Tr. 84-85 (Chema). 6/

Chema believed that Connolly, Lemmon, and Johnson were each employees of the bank. Other than the initial telephone conversation at which each was present, these individuals never talked to Chema again about their respective accounts. Apr. Tr. 85 (Chema). With regard to Lawton Rogers, whose account was opened in January 1990, Broumas often called in the trades, although Rogers also did so on several occasions. Chema believed that Rogers's account was opened for the same purpose as the other nominees, i.e., as a source of credit for Broumas to trade JML stock. Apr. Tr. 86-87 (Chema); Ex. 280, 442. He also believed that Rogers had an account at that time with Haynes at First Potomac. Apr. Tr. 113-114 (Chema).

Cross Trades: On seven separate occasions, representing fourteen trades, Chema executed trades in JML Class A stock, at Broumas's direction, between one or more of the seven accounts Broumas controlled at H. Beck, i.e., the joint account, BC Theatres, Les Girls, and the four nominee accounts ("cross trades"). Ten of the fourteen trades occurred in the nominee accounts. Apr. Tr. 98-99 (Chema); Ex. 2, 6, 1105. The first of these seven internal cross trades at H. Beck, between accounts controlled by Broumas, occurred after Chema had already executed 63 over-the-counter trades in JML Class A stock for Broumas. Apr. Tr. 112-113 (Chema); Ex. 6, 1105. Chema asserted that these trades occurred because of Broumas's inability to find the other side of the transaction elsewhere, i.e. at another broker-dealer. Broumas would state that one of the nominees needed money, that he had to sell JML stock, and that Broumas would try to find

6/ With regard to the nominees, Chema claimed that, although Broumas was using their credit to buy shares because of his own financial situation, shares that would be used in support of his position at the bank, the nominees actually owned the shares in the account. Apr. Tr. 90-91 (Chema). I do not find this claim credible.

a buyer. Later Broumas would call back and say he could not find one, and that he had persuaded one of the other accounts at H. Beck to take the shares. Apr. Tr. 99-103 (Chema). He claimed that, for Rogers's trades, it was Rogers's decision, i.e., that Broumas told Chema that Rogers wanted money and needed to sell his shares of JML stock. Apr. Tr. 104-106 (Chema). I do not find Chemas's explanation credible and consider that those transactions were clearly wash sales.

Chema had no specific memory of a trade on March 19, 1990, in which BC Theatres sold 12,000 shares to Lemmon's account at H. Beck, except that Broumas called in both sides of the trade. Apr. Tr. 106-107 (Chema); Ex. 2. Chema did not know why BC Theatres sold 12,000 shares of JML Class A stock on March 19, 1990, and on April 10, 1990 bought 12,600 shares from the Lemmon account. He knew that Broumas called in both sides of each trade, and that he called in every order for both BC Theatres and Lemmon. Apr. Tr. 107-108 (Chema); Ex. 2. He had no recollection of the cross trades on April 23 or 26, 1990. Apr. Tr. 108-109 (Chema); Ex. 2. These were all wash trades.

Checks changed hands on each of these cross trades. Chema claims that he thought that Lemmon was a separate entity, and he paid for his own trades. Apr. Tr. 111 (Chema). Chema asserted that he did not find these seven internal trades, arranged by Broumas for accounts within H. Beck, problematic. His reason was that Chema reported each of these transactions to Bear Stearns, the clearing house, after the markets had closed. Thus, to Chema they constituted only bookkeeping entries at Bear Stearns, and no one else knew that the trades had occurred. Apr. Tr. 109-111 (Chema). Chema claimed that he did not know how to report these cross trades, so he decided to call them into Bear Stearns after all the markets had closed so that they could be handled as a journal entry. He claimed there was no one at H. Beck to ask. Chema did not call Bear Stearns to ask. Nor

did he ask anyone at the NASD or the SEC. Apr. Tr. 109-111 (Chema). Although the cross trades were not reported, Chema acknowledged that once shares were purchased into an account in one of the cross trades, a subsequent sale of the shares could have been reported. Apr. Tr. 111-112 (Chema).

Chema's Commissions: On each of the 109 wash sale and marking-the-close transactions in the seven accounts, a commission was charged, usually two cents per share. Order tickets for the trades reflect a total gross commission charge of \$21,343. Apr. Tr. 91-92 (Chema). The nominee accounts were charged a higher commission because their activity was less than Broumas's accounts. Apr. Tr. 92-93 (Chema). After a small ticket charge on each trade, Chema received one-half of the gross commissions charged. Apr. Tr. 93-95 (Chema). On the cross trades, H. Beck received commissions from both sides. Apr. Tr. 189 (Chema).

Broumas paid for his trades in accordance with the industry requirement, i.e., five business days after a purchase transaction. On his sales, Broumas often asked to receive funds early, before the five days passed. Bear Stearns paid him the funds, charging interest accordingly. Apr. Tr. 96-97 (Chema). Broumas rarely had extra margin equity in his accounts to cover a purchase, because he often spent whatever extra margin he had on 100, 200, or 300 share purchases late in the day. Apr. Tr. 97 (Chema). Broumas paid for his larger purchases by check, and he waited until the five days were up before paying. Apr. Tr. 97 (Chema). Broumas was able to request and receive money early on his margin accounts because that is standard industry practice, as long as the clearing firm charges interest on the debit balance. A customer can receive payment immediately on a credit balance on a margin account. Apr. Tr. 97-98 (Chema). Chema believed that Broumas asked for payment the next day after a sale on several occasions. Apr. Tr. 98 (Chema).

In 1989 and 1990, H. Beck was a member of the NASD. Apr. Tr. 115 (Chema). In 1989 and 1990, Chema claims he was not aware of the volume reporting requirement set forth in Schedule G of the NASD Rules of Practice. He only became aware of it, so he testified, when this hearing began. Apr. Tr. 114 (Chema). Sometime during 1989, another broker asked Chema if he was going to report the volume on a Broumas over-the-counter trade, and Chema claims he had no idea what the person was talking about. Apr. Tr. 115-116 (Chema). Chema stated that he then called the NASD and asked how volume figures were reported. The NASD provided Chema with a telephone number and guidance on how to report. This was how he found out about reporting volume. Other than this, he never knew what the requirement was. Apr. Tr. 115-116 (Chema). Chema claimed that, at the time, he had no awareness of the purpose of reporting volume on these kind of trades. None of the firms he had ever worked with ever reported such trades. He knew nothing about it when he got to H. Beck. The conversation with another broker was the first he had heard about reporting over-the-counter trades. Apr. Tr. 116 (Chema). Chema had no training in reporting volume, and claimed that he did not know he was supposed to do it. He did not know any requirement existed. He had no knowledge of over-the-counter transactions ever being called in. Apr. Tr. 117 (Chema). Chema insisted that he was totally ignorant of volume reporting in 1989, even regarding NASDAQ transactions for stocks trading solely over-the-counter. He claimed to have no knowledge of how the over-the-counter market worked in terms of volume reporting. Apr. Tr. 117-118 (Chema). He claimed that he was ignorant of the requirements even though, as part of his duties at H. Beck, Chema acted as a securities trader who called in orders to Bear Stearns from various registered representatives around the country, and as a result called in many over-the-counter trades. Apr. Tr. 118-119 (Chema).

The only trades Chema reported were ones in which he was the sell side. He personally reported a total of 18 of the Broumas over-the-counter trades, all in which he was the seller. Apr. Tr. 122 (Chema); Ex. 4. Chema did not know whether, on those transactions in which he was not the selling side, volume was reported or not. He does not recall ever having a discussion with a contra broker as to who was going to report a given trade. Apr. Tr. 122-123 (Chema). Out of 95 trades at H. Beck (excluding the cross trades), and including the 18 reported by Chema, volume was reported for 45, totaling 393,675 shares. Ex. 4; Apr. Tr. 284 (Chema). It was not a regular part of Chema's conversation with the contra brokers on Broumas's directed trades to discuss who would report the volume on the trade, although it is possible it was discussed on one or two occasions. Apr. Tr. 126-127 (Chema).

In one trade in which the contra broker was Lara Millard, Chema did not report the volume on the trade even though the other broker's ticket indicated that Chema "will report trade." Apr. Tr. 123-125 (Chema); Ex. 4, 1091. As of September 1989, Chema started reporting trades. It is considered that he knew at that time that there was some reporting requirement for third market trades. Apr. Tr. 126 (Chema).

However, with regard to the seven cross trades at H. Beck, which occurred after this time, Chema did not report them because he claims he did not know how to report trades where he was on both sides. Chema did not call the NASD telephone number, which he then had, to inquire. Apr. Tr. 126 (Chema). He knew that of the 55 trades in which he was the seller and supposedly the one to report, he only reported 18. Thus, he knew that two-thirds of Broumas's transactions were not being reported by him. Therefore, because Chema did not believe the trades were being reported, he claims that he did not believe that Broumas's trading was a vehicle for inducing others to buy. Apr.

Tr. 128-129 (Chema). Chema found Broumas's trading to be "unusual," and "bizarre." Apr. Tr. 128 (Chema). Broumas traded often and for reasons that Chema claims he could not fathom. Apr. Tr. 129 (Chema).

Because he did not believe most of the volume was being reported, however, Chema claims he, as indicated, eliminated wash trading as a motivation for Broumas's trading. Chema further claimed that no one knew that the trades were occurring. As long as the public was unaware that the trades occurred, Chema indicates that he did not have a problem with the transactions--all 109 of them. Apr. Tr. 128-129 (Chema). On many of the trades, Chema stated that since he did not report the trades to Bear Stearns until after the market was closed, it was impossible for the volume to be reported. Apr. Tr. 130 (Chema). He claimed that he was unaware of what Broumas was doing, except in terms of writing and filling the orders, and that he was unaware of the volume of trading in JML Class A stock, or of the price movement. Apr. Tr. 130 (Chema). When the frequency of Broumas's trades increased, Chema claims he wondered what was going on. But he did not have any concern for the public because of the nature of the transactions. Apr. Tr. 131 (Chema). He claims that he did not know why his name or telephone number are on more than one-half of the order tickets for the contra side of the trades with which he was involved. He suspects Broumas gave his name because he was the only one at H. Beck that was there to be called. Apr. Tr. 132-133 (Chema).

Marking-The-Close Trades: Broumas also occasionally asked Chema to buy shares of JML Class A stock on the stock exchange. Apr. Tr. 133-134 (Chema). Between November 27, 1989 and May 2, 1990, Chema executed 15 trades of JML Class A stock for Broumas during the last 10 minutes of the trading day. Ex. 7; Apr. Tr. 134-135 (Chema). Each of these trades involved the purchase of 500 or fewer shares and were executed on

the AMEX. Of the 15 trades, 13 were the last trade of the day, and 10 were executed on an uptick. The remaining 5 trades were executed on a zero plus tick. Ex. 7. These trades were all called in by Broumas to Chema shortly before they were executed, and they would be executed on the AMEX within a matter of minutes. Apr. Tr. 135-138 (Chema).

Broumas called in these trades near the end of the day. He wanted to know his buying power, i.e., how much free margin he had in his account. This was dependent on how JML Class A stock had performed during the day. If it had gone up in price, it created additional equity that Broumas could then use. Apr. Tr. 138-139 (Chema). If there was equity available, Broumas would usually try to spend that money, and buy small amounts of shares of JML Class A stock. Apr. Tr. 139 (Chema). All of these small purchases by Broumas were done "at the market," which means that an order is called in to the exchange and the specialist determines at what price the transaction is executed. Apr. Tr. 141 (Chema). When a purchase is made at the market, the price obtained is usually whatever the offering price is by a seller, i.e., the ask price. The result is that purchases at the market usually result in an uptick of the price from the previous trade. Apr. Tr. 141-143 (Chema). Chema entered these purchases at the close on the posting sheets in the same way as the over-the-counter trades. Apr. Tr. 143 (Chema). On occasion, Broumas would sell all of his holdings in a given account up to that point, including both his large over-the-counter purchases and exchange purchases. Apr. Tr. 144 (Chema). Until the SEC investigation, Chema claims he was not aware that these kinds of transactions could in any way be significant or meaningful. Apr. Tr. 144-145 (Chema). Respondent erroneously argues that Frank J. Savarese, the Division expert, admitted that the marking-the-close transactions here were too infrequent to constitute manipulation. Dec. Tr. 356-358 (Savarese), 399 (Chema). Respondent, however, assumes that the marking-the-close

trades in issue are only the ones he made for Broumas. Rather, it is the whole pattern of marking the close trades made by the several respondent brokers in companion proceedings--not the trades made by Chema--that establishes the marking-the-close manipulation.

Carole Haynes's Testimony: Haynes is currently employed at First Potomac Investment Services, where she is president and trustee and income beneficiary of a trust that is the owner of the stock. Apr. Tr. 161-162 (Haynes). In March 1990, Haynes became aware that Broumas maintained accounts with Chema. She discussed with Chema that Broumas would be in trouble if the price of JML stock fell below \$5 or \$4. Apr. Tr. 175-176 (Haynes). She knew that Broumas was on margin, that he was frantically trying to hold onto his stock ownership and pay some loans to Madison Bank on which he had co-signed and still keep his job. She believed Broumas's obligations were far in excess of his salary. Apr. Tr. 176-177 (Haynes). In June 1990, Haynes talked to Chema about the fact that Broumas was running out of money and "desperately" trying to avail himself of seven-day loans by selling his JML stock out of one firm to an account at another firm. Apr. Tr. 177-178 (Haynes). If Broumas would do the last trade of the day, he could force the stock price up to a marginable level. All of the computer systems used the last trade of the day as their pricing. Haynes thinks that is what Broumas might have been doing if he placed orders for 100 shares at various places on different days. She discussed this with Chema in June 1990. Apr. Tr. 178-179 (Haynes).

Haynes began to report volume on Broumas's over-the-counter trades in JML Class A stock in July 1989 after a conversation with Richard Kulak at Lara Millard. Kulak observed that the NASD had just finished an examination at Lara Millard and had cited the firm for failure to report volume on third market trades. Apr. Tr. 181-182

(Haynes). Haynes believed that she discussed the requirement with Chema when she did a trade with him and told him that there was a volume reporting requirement. It was probably in September 1989, because the NASD had examined First Potomac in August, and had discussed the volume reporting requirements with her. Apr. Tr. 182-183, 199-200 (Haynes). In 1989, Haynes discovered from the NASD that the volume reporting rule required that the sell side of the transaction report the volume. If a broker did not have a NASDAQ machine, she was to call a NASDAQ operations center in New York and report the volume. Apr. Tr. 183-184 (Haynes). Haynes knew from 1984 that Broumas was using the float on his margin account--that whenever he sold a stock he would want the money right away, and when he bought he would wait until the last minute to pay. Apr. Tr. 205-206 (Haynes). The earliest she discussed this with Chema was in March 1990. Apr. Tr. 206 (Haynes). During the trading period, First Potomac did 26 trades with H. Beck, 13 with Lara Millard, and 13 with Voss & Co. First Potomac did 61 directed trades for Broumas in JML Class A stock involving 506,109 shares. Ex. 1105; Apr. Tr. 209-211 (Haynes).

John Broumas's Testimony: Broumas has known Chema for seven or eight years. Apr. Tr. 235 (Broumas). From April 1989 to May 1990, Broumas opened seven different brokerage accounts with Chema through which he traded JML stock. Apr. Tr. 241 (Broumas). Broumas believed that he opened his first account with H. Beck and Chema in April 1989 because he needed to sell some stock. He had accounts at other brokerage firms in April 1989, but he opened an account at H. Beck to continue to do the same type of trading he had done at other firms, i.e., to sell stock to himself and use the margin float for about seven days. Apr. Tr. 237-238 (Broumas). In July 1989, Broumas opened the Les Girls account because he thought he was overloaded in his own account. He opened it as

another source of being able to buy and sell. Apr. Tr. 238 (Broumas). When he needed yet another source to buy and sell JML stock, he asked his grandson Matthew Johnson to open an account with Chema. Only JML stock was traded in Johnson's account. Apr. Tr. 238-239 (Broumas).

In December 1989, Broumas asked his friend Rogers to open an account with Chema, again for the same reason. Apr. Tr. 239 (Broumas). In January 1990, Broumas had Connolly open an account with Chema, again to provide a source for Broumas to effect his wash trades. Connolly allowed Broumas to trade JML stock through that account. Apr. Tr. 239-240 (Broumas). In February 1990, Broumas had Lemmon open an account with Chema, for the same reasons. Broumas traded only JML stock in Lemmon's account. Apr. Tr. 240-241 (Broumas). In March 1990, Broumas opened the BC Theatres account with Chema, an account through which he had been trading with other brokers for many years, to trade only JML stock. Apr. Tr. 241 (Broumas). Broumas believed that, at some time during 1989 or 1990, Chema knew that Broumas had accounts at "a couple" of other brokerage firms. He believed he would have told Chema that he had other brokerage accounts at other firms during that time period. Apr. Tr. 242-243 (Broumas). From April 1989 through June 1990, Broumas spoke to Chema at least once a week, and ordered over 150 trades of JML stock. Apr. Tr. 243-244 (Broumas). In 1989, Broumas was the third largest shareholder in the Madison Group, and he was trying to use that ownership to maintain his position at Madison of Virginia by being elected to the Board of Directors of the holding company, James Madison, Ltd. Broumas probably told Chema of his desire to maintain his stock position. Apr. Tr. 247-248 (Broumas).

Broumas believed that he could have told Chema of his desire to take advantage of the seven day float. Apr. Tr. 248 (Broumas). Although Broumas does not

have a specific recollection of telling Chema that he controlled both sides of his trades, he was not intentionally withholding any of the details of his trading from any brokers. Apr. Tr. 250-251 (Broumas). Broumas believes that he was known throughout the brokerage industry as someone who used the seven day float for obtaining money. He does not see how it could have been a mystery to anyone, because he always asked for his check the next day in his margin accounts. Apr. Tr. 254-257 (Broumas). Broumas never intended to dispose of his shares of JML stock in 1989. He needed to maintain his stock position because of the upcoming stockholders' meeting. Any sales he made would be recaptured through another account of his own or which he held in nominee form. Apr. Tr. 257-258 (Broumas).

In order to establish liability for aiding and abetting, the Division must establish (1) the existence of a primary violation, (2) a "knowledge" requirement, i.e., that the aider and abetter had general awareness that his role was part of an overall activity that was improper, and (3) that the aider and abetter substantially assisted the principal violation. Dominick & Dominick, Inc., 50 S.E.C. 571, 577 (1991); Kevin Upton, 58 SEC Docket 1993, 2001 (1995). In applying these elements, all three should be examined collectively, and no single element should be considered in isolation. See ITT, International Investment Trust v. Cornfeld, 619 F.2d 909, 922 (2d Cir. 1980).

Primary Violation: In my March 24, 1995 Order, I found that Broumas manipulated the market for JML Class A stock, and in doing so violated Sections 9(a)(1), 9(a)(2) and 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Chema's General Knowledge of The Improper Activity: The Respondent here had an "awareness of the underlying facts, not the labels the law places on those facts A knowledge of what one is doing and the consequences of those actions suffices." SEC

v. Falstaff Brewing Corp., 629 F.2d 62, 77 (D.C.Cir.1980), cert. denied, 449 U.S. 1012 (1980). The Commission found a broker willfully aided and abetted violations of Section 10(b) and Rule 10b-5 for supplying market information during the trading day and for executing trades at the end of the trading day which frequently resulted in upticks on 253 of 424 trading days because the broker "was aware that the trades which he executed for the Chromalloy accounts at the end of the trading day were very frequently executed on upticks, and [because he] was also aware that the trading information which he supplied to Friedman and Manning enabled Friedman and Manning to successfully perpetrate their uptick scheme." Jack Schaefer and Evans & Co., Inc., 12 SEC Docket 1128, 1129 (1977).

Actual Knowledge of Chema: Respondent argues lack of knowledge. The evidence, however, demonstrates that Chema knew that he was assisting Broumas in carrying out his manipulative scheme inasmuch as he knew that Broumas was the president of Madison of Virginia and a director of JML, and that he was a large shareholder of JML stock. Chema knew that Broumas had opened several accounts at H. Beck specifically for the purpose of trading JML stock. Chema knew that Broumas had accounts at other broker-dealers in the Washington, D.C. area through which he traded JML stock. He knew that Broumas had accounts at Voss & Co., and with Carole Haynes at First Potomac Securities, where he had previously worked. Chema knew that Broumas directed him to make 109 over-the-counter trades in JML Class A stock, through seven separate accounts, involving 903,425 shares.^{7/} He knew that 23 trades were with Voss & Co., that 28 trades were with First Potomac, and that 22 trades were with Lara Millard. Chema knew that the seven accounts at H. Beck which Broumas used traded JML stock almost exclusively.

^{7/} These trades had the indicia of wash trades.

Chema knew that Broumas ordered the trading in the four nominee accounts, and that Broumas used these accounts to trade only JML stock. Chema knew that when the nominee accounts were buying and selling JML Class A stock, that Broumas's joint account and the Les Girls account were not, and that the BC Theatres account only began trading in March 1990. Chema knew that he had executed seven separate cross-trade transactions for Broumas within H. Beck, and that he had intentionally failed to report the volume on those trades. Chema kept posting sheets for each account which reflected the exact nature of Broumas's trading, and which provided Chema with an instant "snapshot" of that account's activity. The posting sheets clearly reflected that Broumas's ownership increased and decreased over time, sometimes completely emptying out an account.

Chema knew that Broumas often asked for and received payment within a day or two after a sale, but waited the full five business days before paying for a purchase of JML stock. Chema knew that Broumas was his only customer during this time period who traded JML stock. Chema knew that, even though he had been told of the volume reporting requirements, he only reported 18 of Broumas's directed trades. With regard to the marking-the-close trades, Chema knew that Broumas was calling in trades at the end of the day, that he did it regularly, and that purchases at the market would be at an uptick. Eventually, after conversations with Carole Haynes in 1990, Chema knew exactly what Broumas was doing, and Broumas's motivation.

Recklessness of Chema: The Commission has found recklessness to be sufficient for purposes of aiding and abetting liability. Raymond L. Dirks, 47 S.E.C. 434, 447 (1981), reversed on other grounds, Dirks v. SEC, 463 U.S. 646 (1983). In Lanza v. Drexel & Co., 479 F.2d 1277, 1306 n.98 (2d Cir. 1973) (en banc) (emphasis added) the court stated:

[T]he inquiry normally will be to determine whether the defendants knew the material facts misstated or omitted, or failed or refused, after being put on notice of a possible material failure of disclosure, to apprise themselves of the facts where they could have done so without any extraordinary effort.

Respondent argues, in substance, that he was not reckless. The record, however, reflects extreme recklessness: Chema totally accepted Broumas's supposed rationale for trading, even though it was clear from the posting sheets that Broumas was not maintaining his JML stock position in those accounts. Chema was reckless in accepting Broumas's rationale for the cross trades, that a nominee account desired to sell stock, when on several occasions the nominee bought JML stock. Chema was unaware of the trading volume for JML stock or of the stock's price movement. He was reckless in assuming, because he only reported volume on 18 of 109 trades, that wash trading could not be taking place. Chema claims he thought Broumas's trading was "unusual," "bizarre," and he could not fathom it, yet he executed 109 trades 8/ for Broumas, including 14 cross trades. Chema never spoke with Connolly, Lemmon, or Johnson again after Broumas opened their accounts, yet he continued to execute wash trades in those accounts. Chema was reckless in not realizing that all of the above facts led to the conclusion that Broumas's trading was improper, and manipulative. Chema also knowingly assisted Broumas in carrying out his scheme by failing to make appropriate inquiries notwithstanding the large number of red flags. Frederick H. Joseph, 54 SEC Docket 283, 291 (1993).

Chema Knowingly and Substantially Assisted Broumas's Violations: To constitute substantial assistance, the broker's actions must be a causal factor in bringing about the primary violation. See e.g., Index Fund, Inc. v. Hagopian, 609 F. Supp. 499, 510

8/ wash trades.

(S.D.N.Y.1985). Broumas could not have conducted his manipulation without the willing assistance of several registered representatives. Chema provided the most assistance, allowing Broumas to open seven accounts, and to order 109 wash trades and matched orders, and 15 marking-the-close trades. The Commission has found brokers liable as aiders and abettors for executing orders placed at the end of the day to cause the stock to close on an uptick. See Jacob Schaefer and Evans & Co., Inc., 12 SEC Docket at 1129.

Respondent Chema Caused The Violations: Section 21C of the Exchange

Act provides that:

If the Commission finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this title, or any rule or regulation thereunder, the Commission may publish its findings and enter an order requiring such person, **and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation**, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation.

15 U.S.C. § 78u-3 (emphasis added).

A finding that the respondent aided and abetted a violation will also constitute a finding that the "[respondent's] conduct was necessarily a 'cause' under Section 21C of the Exchange Act of a violation of the securities laws." Dominick & Dominick, Inc., 50 S.E.C.at 578 n. 11. Because Chema aided and abetted Broumas's violations of Section 9(a)(1), 9(a)(2) and 10(b) of the Exchange Act, and Rule 10b-5 thereunder, he also caused the manipulation in violation of Section 21C.

Sanctions: Imposition of administrative sanctions requires consideration of:

...the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that his occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S.

91 (1981). The amount of a sanction depends on the facts of each case and the value of the sanction in preventing a recurrence. Berko v. SEC, 316 F.2d 137, 141 (2d Cir. 1963); Leo Glassman, 46 SEC 209, 211 (1975); Richard C. Spangler, Inc., 46 SEC 238, 254 n. 67 (1976). "It is well established that a finding of willfulness does not require an intent to violate the law; it is sufficient that the person charged with the duty knows what he is doing." Billings Associates, Inc., 43 SEC 641, 649 (1967); see Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965). Chema was willful and reckless. The trading in question and Chema's role in getting Broumas's trades executed did not occur just once, or several times, but over one hundred times. His motivation was clear. For each trade, Chema received a commission. For the cross trades, he received two. He did what Broumas asked, and he claims that he either did not question it, or he rationalized his behavior. Chema acknowledges no wrongdoing on his part. Since Chema shows no appreciation for the meaning and significance of his illegal activities, there is a real danger that he could engage in similar such conduct in the future. Chema obviously did and does not appreciate the high standards of conduct to which he is subject as a registered securities professional.

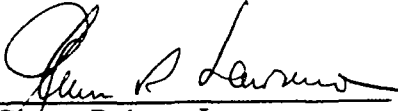
The Division seeks an 18 month bar which I consider too severe. It is noted, however, that Chema is still employed in the securities industry as a registered representative and, accordingly, will have ample opportunity to engage in similar misconduct in the future. It is concluded that it is in the public interest that Chema be sanctioned as follows:

ORDER

IT IS ORDERED that Richard D. Chema be suspended from association with any broker or dealer under Section 15(b)(6) of the Exchange Act for a period of eight months. Chema is ordered under Section 21C of the Exchange Act to permanently cease and desist from committing or causing any violation and committing or causing any future violation of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

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

Pursuant to Rule 17(f) of the Rules of Practice, 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.


Glenn Robert Lawrence
Administrative Law Judge

Washington, D.C.
August 24, 1995