ADMINISTRATIVE PROCEEDING
FILE NO. 3-6566

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
ADRIAN ANTONIU	:
	:

INITIAL DECISION

Washington, D.C.
September 23, 1986

Warren E. Blair
Chief Administrative Law Judge

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APPEARANCES: Anne C. Flannery, Jason R. Gettinger, Judith F. Kozlowski, and Mark A. Gomez, of the New York Regional Office of the Commission, for the Division of Enforcement.

David Stratman, Santa Fe, New Mexico, for Adrian Antoniu.

BEFORE: Warren E. Blair, Chief Administrative Law Judge.

These public proceedings were instituted by order of the Commission dated September 19, 1985 issued pursuant to Sections 15(b)(6) and 19(h) of the Securities Exchange Act of 1934 ("Order") to determine whether allegations made by the Division of Enforcement ("Division") against Adrian Antoniu ("Antoniu" or "respondent") are true and what, if any, remedial action would be appropriate in the public interest. 1/

In substance the Division alleged that Antoniu pled guilty on November 13, 1980 and was convicted on August 11, 1982 in the United States District Court for the Southern District of New York on two counts of an information charging securities fraud in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and of 18 U.S.C. §2. The Division further alleged that Antoniu's guilty plea related to securities purchases based upon material non-public information stolen from his former employer, Morgan Stanley & Co., Inc. ("Morgan Stanley").

At the pre-hearing conference held on February 26, 1986 and at the hearings on April 22 and 23, 1986 and May 13 and 20, 1986, Antoniu was represented by counsel. As part of the post-hearing procedures, successive filings

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1/ §§IID&IIE of the Order were amended February 26, 1986 in accordance with an oral motion by the Division. On March 12, 1986 the motion was reduced to writing and filed for the record.

of proposed findings, conclusions, and supporting briefs were specified. Timely filings thereof were made by the parties.

The findings and conclusions herein are based upon the preponderance of the evidence as determined from the record and upon observation of the witnesses.

RESPONDENT

Antoniu, now 40 years of age, received his undergraduate degree from New York University in 1969 and an M.B.A. degree from Harvard Business School in June, 1972. In August, 1972 he joined Morgan Stanley, a registered broker-dealer and investment banker, in its corporate finance department and worked for that firm until May, 1975. His next employment began in May, 1975 in a newly established mergers and acquisitions department of another registered broker-dealer and investment banker, Kuhn Loeb & Co. ("Kuhn Loeb"). He remained with that firm, which became Lehman Brothers Kuhn Loeb, Inc. ("Lehman Kuhn Loeb"), until his dismissal in July, 1978 when his employer learned that Antoniu was potentially a target of the investigation that culminated in his criminal convictions in August, 1982.

After leaving Lehman Kuhn Loeb, Antoniu was briefly employed in London as a financial consultant and then moved

to Milan, Italy where he worked for Egon Zehnder International, an executive placement firm, between January, 1979 and December, 1983. Upon his return to the United States in January, 1984 Antoniu moved to Minneapolis, Minnesota where he was a self-employed financial consultant until the middle of 1985. Presently he is operating a small company located in a suburb of Minneapolis which is engaged in franchising sporting-goods stores and home dealerships.

CRIMINAL CONVICTIONS

The record establishes that on November 13, 1980 Antoniu pled guilty in the United States District Court for the Southern District of New York to two counts of a criminal information, each of which charged him with securities fraud in violation of 15 U.S.C. §§78j(b) and 78ff and Rule 10b-5 thereunder, 17 C.F.R. 240.10b-5, and 18 U.S.C. §2. [2/] Those guilty pleas related specifically to securities of Northrup King & Co. ("Northrup") and of Deseret Pharmaceutical Company ("Deseret") which were purchased, respectively, in September and November, 1976 on the basis of material non-public information stolen from Antoniu's former employer, Morgan Stanley.

On August 11, 1982 judgment of conviction was entered against Antoniu on both counts of the criminal information

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2/ United States v. Antoniu, 80 Cr. 742 (S.D.N.Y. 1980).

and he was sentenced to 39 months on each count to run concurrently, with 3 months to be served in a prison and the remainder suspended. He was also placed on probation for 36 months and fined $5,000.[3/] On March 31, 1983 Antoniu's sentence was reduced to a suspended sentence of 39 months, unsupervised probation for a like period, and a fine of $5,000.[4/]

By pleading guilty, Antoniu admitted the allegations in the criminal information[5/] and, contrary to Antoniu's arguments, those admissions have high probative value. Those allegations spell out the unlawful scheme in which Antoniu played a leading role during the 5-year period from on or about January 1, 1974 to on or about December 31, 1978.[6/] It was a part of the scheme to defraud Morgan Stanley, Kuhn Loeb, and those corporations and shareholders on whose behalf Morgan Stanley or Kuhn Loeb owed fiduciary duties. In carrying out the scheme Antoniu and others misappropriated and caused others to misappropriate material non-public information entrusted to Morgan Stanley or Kuhn Loeb by clients

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3/ Division Exhibit 5.

4/ Division Exhibit 6.

5/ United States v. Ruttenberg, 625 F.2d 173,175 (7th Cir. 1980).

6/ Division Exhibit 2.

of those firms. In reliance upon that misappropriated information Antoniu traded and caused others to trade in the securities markets for himself and others in breach of the trust and confidence placed in the employees of Morgan Stanley and Kuhn Loeb by those firms and their clients.

In carrying out the fraud in his capacity as a trusted employee of Morgan Stanley and Kuhn Loeb, Antoniu personally received and misappropriated material non-public information concerning take-over bids and negotiations for a large number of companies. After leaving Morgan Stanley Antoniu received from one of his co-schemers, a trusted Morgan Stanley employee, material non-public information concerning additional impending take-over bids which the co-schemer misappropriated from Morgan Stanley. Upon receipt of the non-public information Antoniu passed it on to other co-schemers who, in turn, purchased or caused to be purchased stock of the target companies. Antoniu and his co-schemers agreed that Antoniu would receive a percentage of the profits realized upon the sale of the stock of the target companies.

Under the provisions of Section 15(b)(6) of the Exchange Act, [7/] the conviction of Antoniu within ten years of the commencement of these proceedings for any offense specified in Section 15(b)(4)(B) [8/] constitutes a basis on

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7/ 15 U.S.C. §78o(b)(6).

8/ 15 U.S.C. §78o(b)(4)(B).

which sanctions may be imposed. The Division contends that Antoniu's convictions are of a nature that fall within the categories specified under Sections 15(b)(4)(B)(i) and (ii) in that his offenses occurred within ten years of the institution of these proceedings and involved the purchase or sale of securities or conspiracy to commit that offense and arose out of the conduct of the business of a broker-dealer. 9/

Although admitting the convictions alleged in the Order, Antoniu argues that those convictions are not for any offense specified under Section 15(b)(4)(B)(i) and (ii). His arguments are found to be without merit and it is concluded that the convictions alleged and proved constitute a basis for the imposition of sanctions against Antoniu if the public interest warrants that action.

Antoniu's contention that his felony convictions did not "involve" the purchase or sale of any securities is without support in fact, law, or logic. His supposition that because he pleaded guilty to crimes in violation of Rule 10b-5 which entailed fraud "in connection with" the purchase or

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9/ Sections 15(b)(4)(B)(i) and (ii), in pertinent part, read:

> (i) involves the purchase or sale of any security, . . . or conspiracy to commit any such offense;
> (ii) arises out of the conduct of the business of a broker, dealer, ...

sale of securities his convictions cannot be said to "involve" the purchase or sale of securities is patently erroneous.

Assuming arguendo that the term "involves" as used in Section 15(b)(4)(B)(i) requires stronger evidence of a relationship between the crime and the purchase or sale of a security than that necessary to establish that a fraud occurred "in connection with" a purchase or sale of a security, the evidence that was used to establish the latter relationship may be more than sufficient to prove that the conviction "involves" a purchase or sale of a security. That is the case here as a result of the Division's introduction of the criminal information which, in addition to other details of the scheme, recited that "Antoniu and his co-schemers used a number of false pretenses, failed to disclose their misappropriation of material non-public information, and failed to disclose their securities trading to Morgan Stanley, Kuhn Loeb, and the clients of those firms." 10/ However, the assumption that the term "involves," here in question, requires stronger evidence than the phrase "in connection with" under Section 10(b) is rejected as being inconsistent with the intent of the Exchange Act. To accept Antoniu's position would lead to

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10/ Division Exhibit 2, at ¶9.

the anomalous result of a broker or a person associated with a broker not being subject to Commission proceedings where a violation of Section 10(b) and Rule 10b-5 has been proved beyond a reasonable doubt in a criminal proceeding, but being subject to revocation of registration or a bar from asociation with a broker-dealer in a proceeding in which the violation of Section 10(b) and Rule 10b-5 need be shown by only a preponderance of the evidence. The most reasonable interpretation of the language of Section 15(b)(4)(B)(i) is that it is broad enough to include all convictions for violation of Section 10(b) and Rule 10b-5 and extends as well to convictions for crimes in which violation of Section 10(b) and Rule 10b-5 was not charged but which involved the purchase or sale of a security. 11/

Antoniu's view that his convictions are not of a character contemplated by the Exchange Act because his fraud was against his employer, an investment banker not "deserving of the special protection of the [Exchange] Act" 12/ places an unacceptable restriction upon the protection afforded by the Exchange Act. In United States v. Naftalin, the Supreme Court addressed a similar argument regarding the

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11/ E.g., convictions under state blue-sky laws or other state laws in which the purchase or sale of a security was involved.

12/ Respondent's Brief, (August 19, 1986), at 6.

applicability of Section 17(a) of the Securities Act of 1933 after which Rule 10b-5 was patterned, and concluded that "neither this Court nor Congress has ever suggested that investor protection was the sole purpose of the Securities Act." [13/] The rationale of the Naftalin decision can be used to reach the same conclusion regarding the scope of the Exchange Act. [14/]

Antoniu's reliance upon the fact that his guilty plea predated the Newman case which decided that misappropriation of information by Newman "could be found to constitute a criminal violation of section 10(b) and Rule 10b-5" [15/] is misplaced, and his contention that the theory of misappropriation permits criminal liability even if a purchase or sale is not involved is simply wrong. The adoption of the misappropriation theory could not and did not read out of Section 10(b) and Rule 10b-5 the requirement that a charged violation thereof include a showing that the fraud was "in connection with the purchase or sale of any security." What was established by the Newman case was that criminal liability could be found under Section 10(b) and Rule 10b-5 if the fraud were a misappropriation of confidential information and in connection with the purchase

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13/ 441 U.S. 768, at 775.

14/ Cf. United States v. Newman, 664 F.2d 12, 18 (2d Cir. 1981); cert. denied, 464 U.S. 863 (1983).

15/ Supra, n. 14, at 16.

or sale of any security. A finding of violation of Section 10(b) and Rule 10b-5 satisfies the requirements of Section 15(b)(4)(B)(i).

As for Antoniu's complaint that he "could not have envisioned that his conduct might serve as predicate for SEC proceedings," the short answer is that the provisions of the Exchange Act here invoked were on the books long before his conviction. As a person with considerable experience in the securities business, and with representation by able counsel at the time of his guilty plea, Antoniu should have known, if he did not actually know, that his conviction for violation of Section 10(b) and Rule 10b-5 could subject him to these administrative proceedings.

Antoniu's further position that his convictions did not arise out of the conduct of the business of a broker or dealer is not in accord with the record. It is undisputed that in or around August, 1976, E. Jacques Courtois ("Courtois") an employee in Morgan Stanley's merger and acquisitions department, passed confidential non-public information to Antoniu concerning the acquisition of Northrup by Sandoz Seed Co. ("Sandoz") and of Deseret by Warner-Lambert, Inc. ("Warner"). Since the criminal information against Antoniu specifically recites that Count 1 relates to the purchase of 1,500 shares of Northrup stock and that Count 2 relates to the purchase of 2,000 shares of Deseret stock, Antoniu's criminal convictions

are traceable in part to Courtois' violation of the trust reposed in him in the course of his employment by Morgan Stanley. Inasmuch as Morgan Stanley has been registered as a broker-dealer under the Exchange Act since June 3, 1970 and in fact in December, 1976 was named as the dealer-manager for the offer to purchase all of the outstanding shares of common stock of Deseret by Warner and was named in October, 1976 as dealer-manager for the acquisition of Northrup by Sandoz, [16/] Antoniu's convictions have been shown to arise out of the conduct of a broker or dealer within the purview of Section 10(b)(4)(B)(ii) of the Exchange Act.

OTHER MATTERS

Jurisdiction

Rule 19h-1 Under the Exchange Act [17/]

Prior to the institution of these proceedings, the

16/ Official notice is taken of the contents of filings made by these companies pursuant to Rule 14d-1 under the Exchange Act. See Division of Enforcement's Proposed Findings of Fact and Conclusions of Law, at 8-10 nn.5&6 (July 18, 1986). Antoniu's objection on the basis that official notice is not "available when the matters to be taken notice are not timely made available to the opposing party" is without merit. Rule 14(d) of the Rules of Practice, 17 CFR 201.14(d) does not so limit the taking of official notice. Rather it provides: "If official notice is requested or taken of a material fact not appearing in the evidence in the record, the parties, upon timely request, shall be afforded an opportunity to establish the contrary." Respondent has not filed a request under Rule 14(d) of the Rules of Practice.

17/ 17 CFR §240.19h-1.

Commission reviewed the proposal of the National Association of Securities Dealers, Inc. ("NASD") to permit the association of Antoniu with a member firm notwithstanding his statutory disqualification arising from the same convictions under consideration here.[18/] In its Memorandum Opinion and Order, the Commission concluded that it was in the public interest and necessary for the protection of investors not to permit Antoniu in the securities business at that time, and directed the NASD to bar the proposed association of Antoniu with the member firm.

Antoniu contends that the disapproval of his proposed association acts as a bar to these proceedings and cites Rule 19h-1(a)(7) under the Exchange Act[19/] in support of his

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18/ Adrian Antoniu, Securities Exchange Act Release No. 34-22383 (September 3, 1985); 33 SEC Docket 1574.

19/ Rule 19h-1(a)(7) reads as follows:

> (7) The Commission, by written notice to a self-regulatory organization on or before the thirtieth day after receipt of a notice under this Rule, may direct that such organization not admit to membership, participation, or association with a member any person who is subject to a statutory disqualification for a period not to exceed an additional 60 days beyond the initial 30 day notice period in order that the Commission may extend its consideration of the proposal; Provided, however, That during such extended period of consideration, the Commission will not direct the self-regulatory organization to bar the proposed admission to membership, participation or assocaition with a member pursuant to section 6(c)(2), 15A(g)(2), or 17A(b)(4)(A) of the Act, and the Commission will not institute proceedings pursuant to section 15(b) or 15B of the Act on the basis of such disqualification if the self-regulatory organization has permitted the admission to membership, participation or association with a member, on a temporary basis, pending a final Commission determination.

position. Antoniu advanced the same contention in his Supplement to Motion for a More Definite Statement, November 12, 1985. In that supplement he sought "a statement explaining why the Commission regards as actionable a matter apparently barred by the explicit provisions of Rule 19h-1."

Consideration of Antoniu's request was given at the prehearing conference held on February 26, 1986, at which time it was concluded that his contention was contrary to the explicit and unequivocal language of Rule 19h-1.[20/] No reason has been shown to warrant a modification of the interpretation then given to Rule 19h-1, and it is concluded that Antoniu is mistaken in believing that the Commission's disapproval of his association with a member firm precluded institution of these proceedings.

Section 15(b)(6) of the Exchange Act

Antoniu asserts that whether he was associated or seeking to become associated with a broker, "the express requirement of Section 15(b)(6) is a conviction within ten years of an application for registration."[21/] Antoniu does not point to the words of Section 15(b)(6) which he relies upon, and a reading of that section does not disclose that

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20/ Tr., February 26, 1986, at 14-15.

21/ Respondent's Brief in Support of Respondent's Proposed Findings of Fact and Conclusions of Law, August 19, 1986, at 20.

requirement.[22] That being so, there is no need for proof that Antoniu had filed an application for registration with Kuhn Loeb as a registered representative, only that, as admitted by Antoniu in his answer, he was associated with Kuhn Loeb and Lehman Kuhn Loeb, registered broker-dealers, at the time of his offenses.[23]

Antoniu is also in error in his argument that because Commission disapproval of his association with an NASD member firm terminated Antoniu's status of a person seeking to become associated with a broker or dealer, the Commission

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22/ Section 15(b)(6) of the Exchange Act reads:

> (6) The Commission, by order, shall censure or place limitations on the activities or functions of any person associated, or seeking to become associated, with a broker or dealer, or suspend for a period not exceeding twelve months or bar any such person from being associated with a broker or dealer, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in subparagraph (A),(D), or (E) of paragraph (4) of this subsection, has been convicted of any offense specified in subparagraph (B) of said paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of said paragraph (4). It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with a broker or dealer is in effect willfully to become, or to be, associated with a broker or dealer without the consent of the Commission, and it shall be unlawful for any broker or dealer to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such broker or dealer knew, or in the exercise of reasonable care should have known, of such order.

23/ John Kilpatrick, 35 SEC Docket 1231,1237-39 (1986).

now lacks jurisdiction for proceeding against him as a person seeking such association. Antoniu's continuing interest in becoming associated with a broker or dealer is manifest from the fact that he sought review of the Commission's order of disapproval in a petition still pending before the United States Court of Appeals for the Eight Circuit.[24/] If Antoniu prevails in that appeal, the reasonable inference to be drawn from this record is that he will seek association with a broker or dealer.

Evidentiary Requests

Antoniu raises a number of objections to the Division's proposed findings of fact on the grounds that many of the proposals rely upon evidence introduced and admitted for purposes other than those now advanced by the Division. He also complains that the rebuttal witnesses called by the Division violated Rule 6(e) of the Federal Rules of Criminal Procedure relating to the preservation of grand jury secrecy and that his right of cross-examination was defeated when those witnesses refused to answer his questions because of the prohibitions of Rule 6(e). Antoniu requests rulings regarding the limitations of the Division's evidence, and asks that the proceeding be dismissed because of prosecutorial

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24/ Adrian Antoniu v. Securities and Exchange Commission, No. 85-5384.

misconduct. Alternatively he requests that the evidence he describes as tainted be stricken.

Careful consideration has been given to Antoniu's arguments regarding the evidence and its applicability to the issues in question and to the Division's responses. It is concluded that there is no reason to grant Antoniu's request for further rulings on the evidence now in the record and not the slightest indication whatsoever of prosecutorial misconduct in these proceedings. As stated earlier, the findings and conclusions herein are based upon preponderance of the evidence as determined from the record and upon observation of the witnesses. The proposals of the parties, respondent's as well as the Division's, are helpful in the task of making the necessary findings and conclusions, but need not be accepted if not supported by the record.

Motion to Dismiss

At the conclusion of the Division's case in chief, Antoniu filed a motion to dismiss these proceedings which was taken under advisement in order to give the Division an opportunity to reply and so as not to delay completion of the hearing. The Division timely filed its opposition.

Based upon a review of the Division's case in chief, the motion to dismiss is denied. The Division's proof during that phase of the hearing clearly established that

Antoniu had been convicted of the offenses alleged in the Order and that those convictions were for offenses for which remedial action could be taken pursuant to Section 15(b)(6) of the Exchange Act.

Respondent's complaint that he did not have adequate notice as required under the Administrative Procedure Act is without foundation. As the record reflects, when it became evident that Antoniu had a misunderstanding concerning the scope of the Division's allegations, the Division was immediately directed to furnish Antoniu a written theory of its case by April 25, 1986 and Antoniu was given 15 days from the time the Division filed its theory of the case within which to request any adjournment of the hearing beyond May 13, 1986. No request for adjournment of the May 13 hearing date was received from Antoniu after the filing of the Division's theory of the case on April 25. At the resumption of the hearing on May 13, consideration was given to the adequacy of notice and the ruling made that if Antoniu had been misled by previous statements of the Division, he had received notice through the Division's theory of the case and been given the opportunity to defend himself against that theory. 25/

Antoniu also refers to the fact that he is foreign-

25/ Tr., May 13, 1986, at 180-81.

born and claims that he has been singled out "for a prosecutorial barrage unprecedented in the annals of the SEC's enforcement." He attributes the institution of these proceedings and other actions by the Division to his national origin and claims that various of his constitutional rights have been violated. In similar vein, Antoniu attempted to justify his request of March 19, 1986 for the identification of another case or cases where a person convicted for misappropriating non-public information was subjected first to Rule 19h-1 proceedings, then prosecuted under Section 15(b)(4). When his request was denied, Antoniu was advised that the burden of showing selective enforcement was upon him,[26/] and that remains the ruling in connection with the present motion. Inasmuch as Antoniu has not offered any proof of discrimination against him by the Commission or its staff, his arguments concerning selective enforcement and violations of his constitutional rights must fall.

PUBLIC INTEREST

Having found that Antoniu has been convicted of two felony counts charging violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, it is necessary to consider the remedial action appropriate in the public interest.

26/ Tr., April 22, 1986, at 11-12.

The Division argues that a bar of Antoniu from association with any broker or dealer is in the public interest. In urging that action the Division argues that Antoniu initiated and controlled an international conspiracy over a six-year period, used his position within the securities industry to defraud members of that industry, and influenced others to join him in the fraud. In addition it believes that that a bar would serve as an appropriate general deterrent against similar violative conduct.

Respondent's position is that sanctions against him are not in the public interest and would be punitive, not remedial. He refers to his voluntary return from Italy for the purpose of admitting his wrongdoing and playing whatever part he could to right his wrongs, and further to his plea of guilty, and subsequent cooperation with the government for a period of four years. Additionally, Antoniu relies upon the testimony of his character witnesses to establish his present trustworthiness, and upon the view of his sentencing judge in August, 1982 that "Antoniu is highly unlikely to commit any further crimes in the future." 27/

Upon careful consideration of the record and contentions of the parties it is concluded, that in the public interest, Antoniu should be barred from association with any

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27/ Division Exhibit 10-C at 8.

broker or dealer. While mindful of the harshness of this remedial action, no lesser sanction can assure that the securities industry and the investing public will not again be put at risk of further predations by Antoniu.

The crime for which Antoniu was convicted was not one of impulse nor attributable to a temporary lapse in judgment or ethics. It arose out of a carefully conceived scheme to mulct the investing public at the expense of the reputations of his former and then existing employer. The character and strength of his purpose in launching and continuing his fraud is clear from his attempts to cover his tracks when he became aware that an investigation of his insider trading was underway and by his decision to continue the fraudulent scheme but with different personae.

Not until after his dismissal from Lehman Kuhn Loeb and his awareness that he was a potential target of an investigation by the United States Attorney's Office did he begin to suffer a sense of guilt and disgrace and decide to resolve his problems with a plea bargain and an undertaking to cooperate fully with the United States Attorney's Office in its investigation of his scheme.

Although the sentencing judge's view regarding the unlikelihood of Antoniu's committing further crimes is entitled to considerable deference, it must be borne in mind that the record before him is not the same as that compiled

in these proceedings. Here Antoniu was a person free of the depression and suicidal tendencies he experienced in the face of impending incarceration and he now lacks a sense of real guilt about his crimes.

Prevailing against his protestations that he is entitled to reenter the securities business is the impression Antoniu conveyed of a person unwilling to recognize or admit to the enormity of his offenses. On direct examination by his counsel, Antoniu voiced appropriate regrets for the shame and humiliation he experienced, using words that seemed well-rehearsed but which failed to ring true. But it was an entirely different Antoniu who responded on cross-examination. Then with a demeanor and tone of voice tinged at times with arrogance, he gave answers that suggested he thought of himself more as a victim of persecution than a convicted criminal. Most revealing, as well as indicative of his self-appraisal, is the opening of his cross-examination:

CROSS-EXAMINATION 28/

BY MS. KOZLOWSKI:

Q. Mr. Antoniu, in November of 1980 you pled guilty to a felony, did you not?

A. Yes, I did.

28/ Tr., May 13, 1986, at 239-40.

Q. And you pled guilty to the crime of federal securities fraud, didn't you?

A. I'm not exactly sure of the specifics, but I pled guilty to information related to 10(b)(5).

Q. And when you hear 10(b)(5), does that mean securities fraud to you?

A. It means something to do with insider trading, yes.

Q. And when you pled guilty to that felony, you were aware that each count of the indictment carried a possible five year prison term. Is that correct?

A. That's correct.

Q. And you understood that that was a serious charge, didn't you?

A. Yes, I did.

Q. And you pled guilty, as you said, because as part of an insider trading scheme. [sic] Is that correct.

A. I pled to guilty to get this thing behind me.

Q. Well --

A. That was my motivation, if that's what you are asking.

Q. No, I'm not asking for your motivation at this point, Mr. Antoniu. I'm asking only that you understood you were pleading guilty because [you] committed a crime as part of an insider trading scheme. Isn't that correct?

A. No, I pleaded guilty as part of a cooperation agreement to resolve this problem. Nobody, at that time and since then, has been able to clearly explain to me whether I committed a crime, and what the crime was.

Q. But did you understand at the time you pled guilty, Mr. Antoniu, that you were pleading guilty to a crime?

A. Yes.

Q. And that after you pled guilty, you were a convicted felon?

A. Yes.

Q. You understand that?

A. Yes.

Q. And was there any question in your mind at the time that you pled guilty that you were pleading guilty to a serious crime?

A. I understood that I was pleading guilty to a crime. How serious or not, I do not know.

Clearly, any remorse that Antoniu expressed on the witness stand is not traceable to a real understanding of the true nature of his crimes nor of the high ethical standards expected of those in the securities business. Further, looking at Antoniu's admission during the allocution before his sentencing that he knew that what he did was unlawful [29/] and comparing that admission with his testimony here creates grave suspicion that Antoniu has not been rehabiliated. Worse, he appears to have changed his thinking about the unlawfulness of his conduct and obviously has no concept of the moral turpitude associated with his crimes. [30/]

Neither the testimony of Antoniu's character witnesses

29/ Division Exhibit 3, at 11.

30/ Jordan v. DeGeorge, 341 U.S. 223,227,232 (1951).

nor his apparent good conduct since the termination of his fraudulent schemes dispel doubts regarding his rehabilitation. The character witnesses knew little about the nature or extent of his offenses or about his present business activities. They expressed confidence in his present honesty and trustworthiness but inasmuch as they were friends, such confidence must be viewed as an emotional response rather than opinion based upon known reputation. As for Antoniu's good conduct for the last eight years, it must be remembered that prior to his sentencing he was desperately concerned about the criminal penalties that might be imposed and thereafter about the need to behave properly during the probationary period which has only recently ended. His conduct during the last eight years most certainly had to be circumspect to avoid the possibility of incarceration.

Imposition of a bar against Antoniu is not punitive. He has been punished for his crimes. The sanction here is to discharge the Commission's responsibility to protect the public interest by not permitting persons who have committed certain criminal offenses to continue in the securities business without a strong showing that they do not pose an unacceptable risk to the investing public. Here the record reflects that the public interest is best served by barring Antoniu from association with any broker or dealer. 31/

31/ All proposed findings and conclusions submitted by the parties have been considered, as have their contentions. To the extent such proposals and contentions are consistent with this initial decision, they are accepted.

ORDER

IT IS ORDERED that Adrian Antoniu is barred from association with a broker or dealer.

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 as to a party, the initial decision shall not become final with respect to that party. 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.

Warren E. Blair
Chief Administrative Law Judge

Washington, D.C.
September 23, 1986