

MAY 10 2002

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-10625

CTFD. NO. \_\_\_\_\_

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
May 9, 2002

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In the Matter of :  
: ORDER  
F.X.C. INVESTORS CORP. and :  
FRANCIS X. CURZIO :  
:

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The hearing in this matter was held in New York City on April 8 and 9, 2002. This Order addresses certain discrepancies in the hearing transcript and resolves several open issues regarding Respondents' exhibits.

Hearing Transcript

On May 6, 2002, this Office received a corrected copy of the hearing transcript for April 9, 2002, the second day of hearing. However, despite repeated efforts, this Office has been unable to obtain a signed certificate attesting to the accuracy of the corrected copy of the transcript for April 9, 2002. The certificate appearing on page 344 of the corrected copy of the transcript states—incorrectly—that it involved a “hearing conference” held at “233 Broadway.” In fact, the hearing took place at 26 Federal Plaza. The identity and signature of the attesting typist/proofreader is also still missing. A copy of this Order will be served upon Diversified Reporting Services, Inc., in a final effort to cure these discrepancies.

On May 6, 2002, the Division submitted six pages of corrections to the hearing transcript, under Rule 302 of the Commission's Rules of Practice. I have reviewed the Division's proposed changes, and I accept them, with two exceptions: the proposed changes to page 37, line 24, and to page 145, line 17, will not be made. The Division's proposed changes to page 86, lines 6, 8, 10, and 24, will be made to page 87, lines 6, 8, 10, and 24, and its proposed change to page 229, line 6 will be made to page 229, line 5.

In addition to the changes proposed by the Division, I propose the additional changes that are listed in the attachment to this Order. If the parties disagree with these additional changes, they should state their objections in writing within seven days after service of this Order. If an objection is filed, I will issue another Order ruling on the objection. If no party objects within the time specified, the additional changes will be adopted without further Order.

With the consent of the parties, John A. Norwood, the Division's rebuttal witness, testified by telephone from his office in Raleigh, North Carolina. Mr. Norwood's testimony was recorded twice: first, by the court reporter in New York City and, second, by a court reporter in North Carolina. Both transcripts are on file with the Office of the Secretary. If the parties cite Mr. Norwood's testimony in their posthearing pleadings, I request that the citation be to pages 289-302 of the official transcript. If the parties believe that there are material discrepancies between the two transcripts of Mr. Norwood's testimony, they should identify the pages and lines of transcript in question, and I will address the matter in a separate Order.

#### Respondents' Exhibits

Rule 351(b) of the Commission's Rules of Practice requires the hearing officer to transmit to the Secretary a list of the exhibits offered at the hearing and accepted into evidence. After reviewing the hearing transcript and considering Respondents' letters of April 25, 2002, and April 29, 2002, I have prepared a draft exhibit list that treats Respondents' Exhibits A, B, C, J, M, N, O, and P as admitted, and Respondents' Exhibits D, E, F, G, H, and I as withdrawn. Respondents did not offer any Exhibits K or L. Within seven days from the date of this Order, the parties may file any objections they have to this proposal.


Respondents' Exhibits D, E, F, G, H, and I are summary comparisons between the performance of F.X.C.'s Newsletter and the performance of F.X.C.'s managed accounts. The Division objected to the admission of these exhibits both before and at the hearing (Division's Prehearing Memorandum at 23-24; Prehearing Conference of March 21, 2002, at 18-24; Tr. 225-46). I accepted these exhibits into evidence, subject to the condition that Respondents provide the underlying source documents to the Division after the hearing for the Division's review (Tr. 237-45, 341). By letter dated April 29, 2002, Respondents advised me that they were unable to locate all the underlying source documents and they requested that their Exhibits D through I be withdrawn. The Division does not object. The withdrawn exhibits will be retained pursuant to Rule 350(b) of the Commission's Rules of Practice, but they will not be considered in reaching an Initial Decision.

Respondents' Exhibits M and N provide financial information in support of Respondents' claim of inability to pay civil monetary penalties. I deferred admission of these two exhibits at the hearing because I was concerned about their completeness and accuracy (Tr. 280, 287, 336). Respondents' late-filed Exhibits O and P provide additional data in support of Respondents' claim of inability to pay civil monetary penalties. These two late-filed exhibits are intended to address the concerns I expressed at the hearing about Respondents' Exhibits M and N. I accept Respondents' late-filed Exhibits O and P into the record. Because the hearing transcript discusses Exhibits M and N, I also accept them into the record.

#### Protective Order

Pursuant to Rules 322 and 630(c) of the Commission's Rules of Practice, Respondents seek a protective order against the disclosure of their confidential financial information to the public. The Division does not oppose the request. I find that the harm resulting from disclosure of this

confidential financial information would outweigh the benefits of disclosure, and I grant the motion for a protective order. The protective order shall apply not only to Respondents' Exhibits M, N, O, and P, but also to the advance copies of Respondents' Exhibits M and N that Respondents filed with the Office of the Secretary on April 3, 2002.

  
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James T. Kelly  
Administrative Law Judge

Attachment to Order of May 9, 2002  
Proposed Transcript Changes  
F.X.C. Investors Corp. and Francis X. Curzio  
A.P. No. 3-10625  
Hearing held in New York City on April 8 and 9, 2002

<u>Page/line</u>	<u>Change</u>	<u>To</u>
5/12	offered	authored
10/17	that	who
10/19	him	himself
13/2	CROSS	DIRECT
32/24	judgements	judgments
50/15	the	a
108/10	flush	flesh
170/7	bare	bear
178/4	an don	and on
211/17	here say	hearsay
212/21	talking	talking about
275/13	refer	differ
296/23	a company in	accompany
336/2	shows	seems
342/11	file a proposed	file proposed
342/12	law brief	law and a brief