ADMINISTRATIVE PROCEEDING
FILE NO. 3-2991

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
INTERSEARCH TECHNOLOGY, INC.	:
File No. 801-6220	:
INTERSEARCH PUBLICATIONS, INCORPORATED	:
File No. 801-5067	:
JESSE B. REID	:
	:

INITIAL DECISION

February 28, 1975
Washington, D.C.

David J. Markun
Administrative Law Judge

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JESSE B. REID	:	
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APPEARANCES: Alfred E. T. Rusch, Special Counsel (on the brief), Rodney K. Vincent, and August Bequai, Washington, D.C., for the Division of Enforcement.

Mark Gasarch, of Schulman, Gasarch & Scheichet, P.C., New York, New York, for Respondents.

BEFORE: David J. Markun, Administrative Law Judge.

THE PROCEEDING

This public proceeding was instituted by an order of the Commission dated April 27, 1971 ("Order"), pursuant to Sections 203(e) and 203(f) [1/] of the Investment Advisers Act of 1940 ("Advisers Act") to determine whether, as alleged in the Order, Respondents wilfuly violated the anti-fraud provisions of Sections 206(1), 206(2), and 206(4) [2/] of the Advisers Act and Rules 17 CFR §275.206 (4)—1(a)(2)(3) and (5) thereunder during portions of 1970 and 1971 ("the relevant period") in connection with publication, dissemination, and advertising of two investment advisory services, whether Respondents wilfuly violated or wilfuly aided and abetted violations of Sections 203 and 204 [3/] of the Advisers Act and Rule 17 CFR §275.204—1(b) thereunder during the relevant period by failing promptly to file with the Commission certain amendments on Form ADV respecting one of the Respondents, whether Respondents wilfuly violated or wilfuly aided and abetted violations of Sections 203 and 204 [4/] of the Advisers Act and Rule 17 CFR §275.204—2(a)(e) and (f) thereunder by failing to make, keep and maintain and preserve certain books and records of the corporate Respondents and by failing to notify the Commission where such books would be maintained after the corporate Respondents ceased business operations, [5/] and the remedial action, if any, that might be appropriate in the public interest.

1/ 15 U.S.C. §80b—3(e), (f).

2/ 15 U.S.C. §80b—6(1), (2), (4).

3/ 15 U.S.C. §§80b—3, 80b—4.

4/ 15 U.S.C. §§80b—3, 80b—4.

5/ The charge respecting books and records was added by amendment to the Order, on motion of the Division, by the Administrative Law Judge's order of November 15, 1973.

The evidentiary hearing was held in New York, New York. All parties have been represented by counsel throughout the proceeding.

The parties have filed proposed findings of fact, conclusions of law, and supporting briefs pursuant to the Commission's Rules of Practice, 17 CFR §201.16.

The findings and conclusions herein are based upon the record and upon observation of the demeanor of the various witnesses. Preponderance of the evidence is the standard of proof applied.

FINDINGS OF FACT AND LAW

The Respondents

Respondent Intersearch Technology, Inc. ("Inter-Tech"), a Delaware corporation [6/] whose principal place of business during times material to this proceeding was 39 Broadway, New York, New York, has been registered as an investment adviser pursuant to Section 203(c) [7/] of the Advisers Act since December 28, 1969, and is still so registered although it has been dormant since about January 7, 1971, at which time it ceased doing business.

Respondent Intersearch Publications, Inc. ("Inter-Pub"), a New York corporation whose principal place of business during times material to this proceeding was 39 Broadway, New York, New York, has been registered as an investment adviser pursuant to Section 203(c) of the Advisers Act since September 11, 1968, and is still so registered althougn

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6/ Initially Inter-Tech was organized as a New York corporation and remained such from April 3, 1969, to November 26, 1969, on which latter date it was reorganized as a Delaware corporation.

7/ 15 U.S.C. §80b—3(c).

it has been dormant since about January 7, 1971, at which time it stopped doing business.

Respondent Jesse B. Reid ("Reid") is the president, a director, and chief executive of Inter-Tech and of Inter-Pub; he is the largest, and a controlling, stockholder of Inter-Tech which, in turn, is the sole owner of Inter-Pub and two other subsidiaries that are mentioned later herein.

At present [8/] Reid is unemployed and has no business address.

Reid was first employed in the securities industry in 1955 as a registered representative with Burnham and Co. and, except for two interruptions, [9/] continued to work in the industry until August 1973. During this period as a registered representative, Reid worked primarily for the brokerage firm of Coggeshal and Hicks of London, England, and, beginning in 1964, he concurrently became a principal in Dinpam Publications, Ltd., which published an investment advisory service called "the UHV [Unusually High Volume] Report". [10/]

UHV was a technical chart service premised on the theory that corporate insiders have knowledge about a company that the general public does not have and that when they act on such non-public information an unusual picture in the volume pattern in the company's stock trading is created. The UHV chart service was supposed to disclose

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8/ References to the "present" refer to the time of the hearing — August, 1973 — unless the text or the context indicates otherwise.

9/ In 1957 Reid was suspended for 60 days by the New York Stock Exchange for failing to disclose that his wife had a brokerage account with a member firm other than Reid's employer; for 18 months during 1959 to 1961 he left the securities business while taking care of his ex-wife's estate.

10/ UHV was published in England primarily for distribution to American investors. Its publisher was registered as an investment adviser with the Commission during the time of publication.

the unusual volume pattern so that UHV clients could follow the "smart money."

Reid remained active in the publication of UHV until he returned to the United States in 1967, and retained an ownership interest in it until some time in 1968. Meanwhile, Reid continued his employment as a registered representative with Coggeshal and Hicks, in the United States, until sometime in 1968 when he and two "partners" (one then and one formerly employed by Coggeshal and Hicks) organized three corporations, loosely referred to as the "Intersearch Group," which included Inter-Pub, Intersearch Management ("Inter-Management"), and Intersearch Limited ("Inter-Ltd."), all New York corporations. In the overall plan, Inter-Pub was to publish and sell to subscribers investment advisory publications, Inter-Management was to manage securities portfolios for individual investors, and Inter-Ltd. was to serve as an "administrative service corporation," performing all the office and administrative functions of the two affiliated companies, as a way of allocating expenses and costs, since all of the companies forming the "Intersearch Group" were to be operated by essentially the same personnel.

It took Reid about 8 or 9 months to ready for publication the Reid Report, which Inter-Pub commenced publishing in early 1969.[11/] The Reid Report reflected the theory upon which UHV was premised as well as concepts contained in Reid's book Buy High Sell Higher.

11/ Meanwhile, the personnel of the Intersearch Group of companies were engaged principally in managing securities portfolios for individual investors, through Inter-Management.

Reid's two partners left the Inter-Group enterprises by the Spring of 1969 because of a disagreement between them and also because they were about to be indicted for alleged violations of Regulation T of the Federal Reserve Board concerning transactions unrelated to and not involving any Respondent in this proceeding. Incident to the departure of the two partners, and their yielding up their ownership-interests, Reid personally assumed the $100,000 debt owed by the Inter-Group companies to one of the partners, who had been the main source of operating capital for the Inter-Group companies.

Respondents' Business Operations and Financial Condition

With the departure of Reid's erstwhile partners the Inter-Group corporations sorely needed working capital, since operations had not been profitable to date and publication costs for the Reid Report were high. Reid's solution to the operating-capital problem was to organize Inter-Tech as a vehicle for seeking capital through a public offering of its securities. Inter-Tech acquired the securities of the Inter-Group corporations by exchanging shares of its own stock therefor, and the three Inter-Group companies thus became wholly-owned subsidiaries of Inter-Tech.

Inter-Tech filed a registration statement with the Commission in November 1969, with Willard Securities as underwriter, and thereafter obtained a loan from the Chemical Bank of New York in the amount of $70,000, which loan was guaranteed by the members of Inter-Tech's accounting firm, Berlin and Kalin, to help provide working capital pending completion of the contemplated public offering. The size of the loan

was based upon estimates that Inter-Tech [12/] would lose approximately $20,000 per month prior to going public, that the process of going public would take about seven months, and that about half of the deficits incurred meanwhile would be "carried" through credit extended by trade customers.

Inter-Tech failed to get its registration statement effective within the contemplated seven months, and for this and other reasons it ran out of money. Inter-Tech had lost a substantial number of its Reid Report subscribers, was in the midst of the 1970 bear market, had Willard Securities withdraw as underwriter because it could not sell the issue, and then acquired a new underwriter only to have that underwriter go out of business shortly thereafter. Thus, by the end of August 1970 Inter-Tech had a working capital deficit of approximately $370,000, obligations past due of approximately $155,000, and in Reid's words was "in a very desperate plight." [13/]

12/ In referring to business operations, financial condition, and the like, subsequent to the time that Inter-Tech acquired the Inter-Group companies as wholly-owned subsidiaries, Inter-Tech and its subsidiaries are generally treated as if they were a single entity.

13/ In addition, Inter-Tech's subsidiary Inter-Pub had failed to register as an investment adviser under the laws of some 30 states in which it had subscribers. Contingent liabilities for failure to register together with registration fees were estimated by Respondents' attorneys at $163,000, and resulted in the rendering of a qualified opinion by Respondents' accountants. Moreover, additional costs incident to registration would be incurred in those states requiring a $10,000 bond as a condition of registration. Denial or subsequent revocation of registration would require refunds to subscribers in those states in which registration could not be effected and maintained.

Early in 1970 Reid had begun planning and programming a new chart service, to be called Interscan, which was to furnish subscription clients weekly with 2,000 graphically-reproduced charts showing the stock price and the cumulative net tick volume ("CNTV") of the 2,000 most active stocks for the previous week on the New York and American stock exchanges. This service was premised on the belief that the activity of the "smart money" could be ascertained by observing the divergence between the price movements of a stock as plotted on a graph and its corresponding CNTV line. In the Spring of 1970 when it became apparent that Inter-Tech would not go public within the contemplated seven months or even soon thereafter, Reid in some haste put Interscan together and in May 1970 solicited subscriptions to the service 14/ in an effort to meet payroll and other critical expenses 15/ after the $70,000 bank loan had been exhausted. However, the necessary computer programming for Intersearch was not completed until about the first of July 1970.

In July or August of 1970 Inter-Tech's attorney, Robert Cohen ("Cohen"), contacted Marsha Goldstein ("Goldstein"), a principal of EMC Securities ("EMC") about becoming Inter-Tech's underwriter. Goldstein told Reid that EMC had little or no ability to sell the issue

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14/ The Interscan chart service was based on the same theory that Muller & Co. had developed and furnished to its institutional clients as early as 1966-7. Indeed, the early Interscan advertisements contained photocopies of Muller & Co. charts with the Muller name omitted.

15/ Advertising expenses and computer costs represented some of Inter-Pub's largest expense items.

but would undertake to sell as much as it possibly could after Reid represented to her that he was in the securities business, that he had created interest in the services of Inter-Tech, that he had former associates in Europe who were interested in the offering as well as the services, that he had friends or associates in the United States who were interested in the offering, and that through these contacts he could arrange for placing a substantial enough portion of the shares to make the offering successful.

Inter-Tech's registration statement ultimately became effective on November 6, 1970. 16/ The day before, Chemical Bank had called its $70,000 loan to Inter-Tech.

The Inter-Tech offering could not be closed promptly upon its going effective because EMC found, upon contacting the people Reid had said would purchase, that many would not buy. But Reid expressed confidence that at least the minimum required number of 80,000 shares of the 100,000 share offering could be sold. During the 60-day period after November 6, 1970 there were frequent meetings between EMC and Reid concerning closing the public offering. By early December Reid and EMC had commitments for about 50,000 shares, and EMC was becoming increasingly doubtful that the issue would close. During November and early December Reid had gone from broker to broker, contacting numerous brokers he had not previously known, in an effort to get the offering sold. In December Reid went to Europe in the hope of increasing

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16/ Substantial delay was occasioned by the Commission's concern whether Inter-Tech's accountants could justify certifying Inter-Tech's financial statement on a going-concern basis.

the 35,000 share total indications of interest there but, to his dismay, discovered not only that he could not increase that figure but that the prior purchasing interest had dwindled from 35,000 shares to 27,000 shares.

After returning from Europe just before Christmas of 1970, Reid contacted numerous broker-dealers introduced to him by an officer of Chemical Bank and others in an unsuccessful effort to obtain commitments to purchase additional shares. However, in late December Reid was contacted by Dover Securities, a broker-dealer, on behalf of a client, a printer named Henry J. Becker ("Becker"), and on January 5 or 6 of 1971 Dover Securities and Reid worked out an arrangement under which Becker would purchase 25,000 shares of the Inter-Tech offering on condition that Inter-Tech would pay Becker $200,000 in advance for future printing services to be rendered to Inter-Tech or its subsidiaries.

Reid informed Goldstein that Dover Securities would take 25,000 shares and asked her to proceed with the closing, which was held on the afternoon and early evening of January 6, 1971. In order to close, even with Becker's 25,000 share arrangement, it was necessary to convert more debt into equity than the 4,000 shares contemplated in the prospectus. Two creditors, Enquire Printing and Case Press, had to purchase 6,250 shares and EMC had to take its commission in stock. During the closing various creditors, including Reid's lawyer, Cohen, presented their overdue bills and were paid in full or in part. This outflow of the proceeds of the offering to creditors planted in Reid's mind the first seeds of his decision to abort the closing.

During the night of January 6, 1971 the principals of EMC decided to abort the offering, independently of any consultation with Reid, evidently because of doubt as to whether the arrangement with Becker was consistent with the offering prospectus.

Early on the morning of January 7, after asking for and failing to get from his attorney, Cohen, a written opinion that the arrangement for share purchase by Becker was in all respects legal and proper, Reid also decided to abort the offering, having concluded that -- apart from the questionable propriety of the Becker arrangement -- there wouldn't be enough funds left from the proceeds of the offering after paying the overdue bills to trade creditors and others and the advance printing payment to Becker to enable Inter-Tech and its subsidiaries to function as a viable enterprise. Accordingly, on January 7, 1971 EMC and Reid returned checks to those who had purchased stock and stopped payment on the checks earlier given to creditors. The failure of the public offering of shares caused Inter-Tech and its subsidiaries, as already noted, to cease operations.[17/]

17/ On February 5, 1971, the Chemical Bank closed out Respondents' bank accounts by issuing checks in the amounts of $1,475.90, $44.55 and $26.70 to Reid, which Reid has not cashed. Presumably these funds would have been available to Reid to provide proper storage for the corporate Respondents' books and records, but Reid made no effort by this means or otherwise to preserve the records and was unable to account for their whereabouts at the time of the hearing.

False and Misleading Advertising

The record establishes, as alleged in the Order, numerous violations by Respondents of the anti-fraud provisions of Section 206(4) of the Advisers Act and Rule 206(4)—1 thereunder (17 CFR §275.206(4)—1)[18/] in the advertising of Interscan through various methods, i.e. in the Reid Report, by direct mail solicitations to a list of potential subscribers, by mail solicitations of trial subscribers, and by advertisements in the financial publication BARRON'S.

18/ 15 U.S.C. §80b—6(4). Section 206(4) and 17 CFR §275.206(4)—1 provide in pertinent part as follows:

PROHIBITED TRANSACTIONS BY INVESTMENT ADVISERS

Sec. 206. It shall be unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly —

* * * *

(4) to engage in any act, practice, or course of business which is fraudulent, deceptive or manipulative. The Commission shall, for the purposes of this paragraph (4) by rules and regulations define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.

§275.206(4)—1 Advertisements by Investment Advisers.

(a) It shall constitute a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of Section 206(4) of the Act, for any investment adviser, directly or indirectly, to publish, circulate or distribute any advertisement:

* * * *

(2) Which refers, directly or indirectly, to past specific recommendations of such investment adviser which were or would have been profitable to any person: Provided, however, That this shall not prohibit an advertisement which sets out or offers to furnish a list of all recommendations made by such investment adviser within the immediately preceding period of not less than one year if such advertisement, and such list if it is furnished separately: (i) State the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date, and (ii) contain the following cautionary legend on the first page thereof in print or type as large as the largest

(cont'd)

As an investment advisory service, Interscan had a number of limitations and difficulties in connection with its use, among which were the following:

(a) The Interscan charts did not indicate or signal when an investor should buy or sell a stock;

(b) The Interscan charts were not designed to be, and could not be, used as a sole predicate for an investor's investment decision;

18/ (cont'd)
print or type used in the body or text thereof: "it should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list; or

(3) Which represents, directly or indirectly that any graph, chart, formula or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making his own decisions as to which securities to buy, sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use; or

* * * *

(5) Which contains any untrue statement of a material fact, or which is otherwise false or misleading.

(b) For the purposes of this section the term "advertisement" shall include any notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication or by radio or television, which offers (1) any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security or which security to buy or sell, or (2) any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell, or (3) any other investment advisory service with regard to securities.

(c) The Interscan charts merely showed whether a stock's price movements and its CNTV movements followed a similar pattern or a dissimilar (divergent) pattern, and gave no information as to why the pattern was either similar or showed divergence;

(d) The Interscan charts could not be used by themselves without the aid of a "users manual";

(e) The charts did not disclose the numbers of buyers or sellers included in the total CNTV, with the result that a potential investor would be unaware whether stock movements had been generated by numerous purchasers/sellers or by a few major purchasers/sellers.

(f) The CNTV reflected in the charts included short selling;

(g) The Interscan charts excluded cross trades that were not on the stock exchange ticker tapes;

(h) The charts did not reflect corrections of errors on stock exchange ticker tapes;

(i) The Interscan charts on occasion contained a distortion factor that at times was so severe as to make the chart unusable;

(j) In cases showing divergence between a stock's CNTV line and its stock-price line, at times, in defiance of the chart-service's basic theory that the stock price would follow the CNTV, the CNTV line would change direction instead and follow the stock-price line.

(k) The Interscan charts did not take into account the fundamentals of a company whose stock was charted; and

(l) The chart service presupposed prior experience in the use of chart services on the part of clients.

For the most part, as more particularly found below, these limitations on and difficulties in the use of Interscan were not disclosed at all, let alone "prominently" disclosed, in the advertisements and solicitations for subscriptions to the service. In general, the subscriber's first inkling of the limitations came when he received, read, and hopefully understood, the users manual.[19/] In the few respects in which the ads or solicitations themselves hinted at limitations, such cautionary language was more than offset by language, often flamboyant, implying or suggesting a contrary conclusion. Failure to disclose these limitations was in wilful[20/] violation of 17 CFR §275.206(4)—1(a)(3),(5) and Section 206(4) of the Advisers Act.

Respondents first began advertising Interscan by describing it to the Reid Report subscribers during the early part of 1970. The Reid Report of May 8, 1970 stated in the lead column of its first page:

> Some months ago, ..., we began to speak of Interscan. Now . . . within the next thirty days we plan to begin

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19/ A few subscribers, of course, knew on the basis of prior experience with chart or similar services that, e.g., an investor could not use the chart as the sole predicate for an investment decision.

20/ All that is required to support a finding of wilfulness is proof that a respondent acted intentionally in the sense that he was aware of what he was doing and either consciously, or in careless disregard of his obligations, knowingly engaged in the activities which are found to be illegal. Hanly v. Securities and Exchange Commission, 415 F.2d 589, 595-6 (C.A. 2d. 1969); Nees v. Securities and Exchange Commission, 414 F.2d 211, 221 (C.A. 2d. 1969); Dlugash v. Securities and Exchange Commission, 373 F.2d 107, 109-10 (C.A. 2d. 1967); Tager v. Securities and Exchange Commission, 344 F.2d 5, 8 (C.A. 2d. 1965).

offering Interscan to the general public.

> This week we sent a special letter to each of our domestic readers. . . making a special offer to you to acquire Interscan at substantial savings. Now we would like to demonstrate anew how we believe Interscan can assist investors in the future.
>
> Our research has demonstrated to us that CUMULATIVE NET TICK VOLUME when in DIVERGENCE with price movement oftentimes is a signal for a major move in price — opposite to its current direction. In other words CNTV usually LEADS price change. This singular phenomenon could very well induce you to select your future investments based upon divergence in CNTV and price.
>
> . . . we felt that a few additional demonstrations of CNTV and divergence — from the past — would aid you in deciding whether or not to accept . . . . Thus, we are going to show you three additional situations from the 1965-67 era where CNTV acted as a major market bell-weather. [sic]

The May 8, 1970 Reid Report included CNTV charts prepared by Muller & Co. during 1965, 1966, and 1967 concerning the stocks of General Motors, Revlon, and Gillette. The comment accompanying the General Motors chart stated in part:

> One of the happy circumstances with Interscan charts is the fact that anyone can read them and easily understand them. Unlike most other charts we have seen, Interscan will not permit 2 opinions on the same picture. With Interscan there either IS divergence or there is NO divergence.
>
> In the chart of General Motors . . . divergence stands out quite clearly . . . . At no time during all of 1965 should [it] have been bought . . . . Consider how beneficial it would have been to have been able to see this chart in 1965.

Concerning the Revlon chart the accompanying comment read in part

as follows:

> . . . it might be more beneficial if we showed you how CNTV can pick big winners DURING A DECLINE.
>
> . . . . If you look at CNTV during that period you will see that it held fairly steady throughout the price decline. This is divergence, and it was saying that smart money was buying the stock all through the decline . . . . Revlon went on to a high of 85 in 1967, and if that isn't a recovery then what is? As seen in this chart CNTV signaled the turnaround all the way.

The text accompanying the chart on Gillette's stock included the following paragraph:

> As these few charts show, along with those we mailed to you earlier this week, CNTV has a great facility for showing us, in graphic form, what is going on under the surface. While the market was dropping steadily in 1966 there were enough signals being given by CNTV to make any investor rich. The same holds true in this market and the same will hold true in the forthcoming bull market. CNTV has demonstrated that it can foretell both uptrends and downtrends. Within a few weeks a limited number of investors will be able to have this service. We urge our readers to get their reservations to us immediately.

In the Reid Report for May 15, 1970, on page 1, the Respondents included the following comment:

> . . . . Because the market still suggests a wait and see attitude we are going to show you a few more Interscan charts of old. In these you will again see how divergence played an important role in determining future price movement.

The charts selected for comment were reproductions of charts prepared by Muller & Co. during 1965, 1966, and 1967 respecting the stocks of Collins Radio, Control Data, Pan American World Airways, and Xerox, which Respondents presented without attribution, thus leaving the reader with an impression that such charts were the work product of Respondents and that they were unique. The tone and the content of

the comments concerning the four stocks were comparable to those employed in the May 8 Reid Report — the power of CNTV, with its concept of the significance of divergence, as a pathway to substantial profits in the securities markets was greatly overstated and the advertisements also again failed to state the limitations and difficulties involved in use of the Interscan charts. As an example, the lead sentence in the comment respecting the Collins Radio chart states flatly, without the necessary qualifications:

> This chart demonstrates how profitable it can be to have CNTV charts available.

Reid personally authored the Reid Report issues of May 8 and May 15, 1970.

During May of 1970 Respondents also sought subscriptions to Interscan through a "Dear Investor" solicitation letter directed to domestic subscribers of the Reid Report, to some 3,000 former Reid Report subscribers, and to a number of institutional investors.

The solicitation letter contained, among other things, the following language:

> . . . — INTERSCAN —-designed to Zero you in on tomorrow's big winners in the market. Unlike all previous chart services, Interscan has been researched to show you what has really been going on "beneath the surface." Through our exhaustive analysis of TICK VOLUME we have come up with a new chart to show you this "under the surface" action. Now at long last you will be able to see with your own two eyes where the "force" of past buying and selling has been taking place.
>
> Our tick analysis tells us - on a trade by trade basis - what volume occurs on upticks and what volume occurs on downticks. After each day's activity we arrive at a NET TICK VOLUME figure for every listed security. To get a long term view of what is happening we accumulate these daily findings and come up with what we call CUMULATIVE NET TICK VOLUME (CNTV). It is this CNTV line, shown in graphic form, which we believe will be so startling and so profitable for investors in common stocks.

. . . . Spotting divergence NOW may be the singularly most profitable piece of analysis you have done in years.

The May 1970 solicitation letter contained and discussed CNTV charts prepared by Muller & Co. during 1966 and 1967 for Itek, Teledyne, and Continental Airlines, without disclosing Muller & Co.'s authorship of the charts. The letter falsely or misleadingly represented or implied that the computer operation to produce Interscan had been in operation for some time and that Respondents had the then-existing capacity to fulfill all subscriptions solicited; that the charts represented were Respondents' charts and that the service and charts were unique; and that a three-month subscription was the shortest subscription period available.[21/] None of the limitations of or difficulties attending the use of Intersearch were set forth in the solicitation letter. In addition, Respondents used the questionable practice of luring subscribers by offering a "one-time only" saving in postage charges to persons who subscribed within two weeks[22/] after receiving the letter.

Respondents also solicited the general public to subscribe to Interscan through advertisements placed in BARRON'S National Business & Financial Weekly ("BARRON'S") on June 22, July 6, July 20, and August 3 of 1970. The June and July ads in BARRON'S offered the general public

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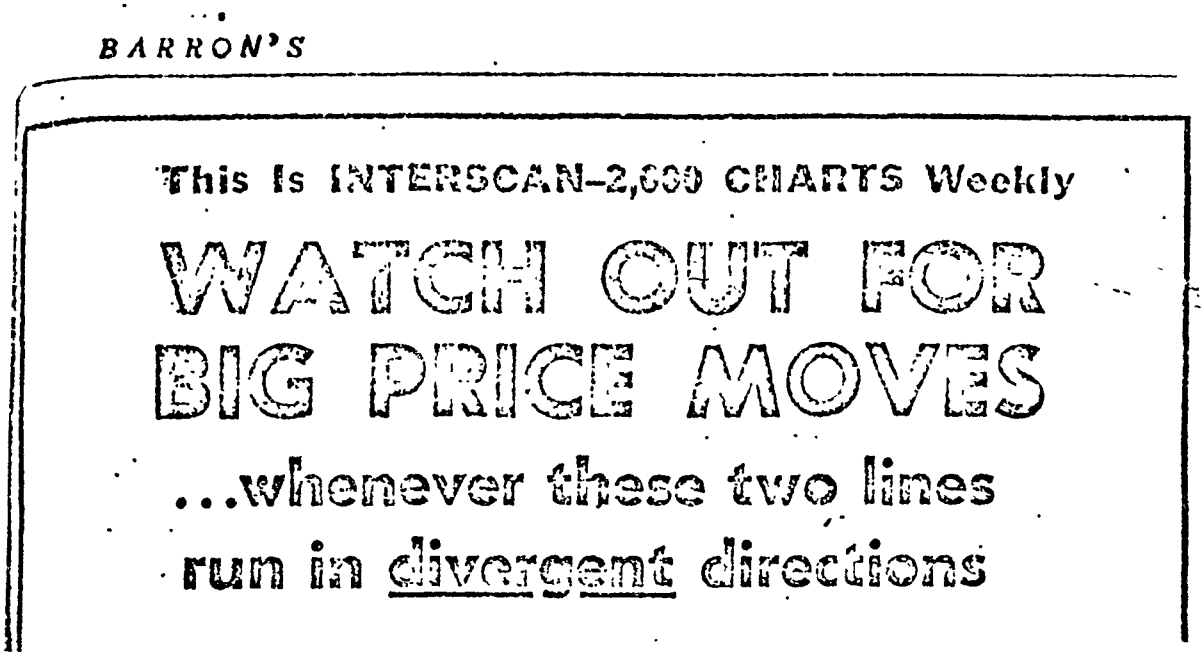
21/ The May 1970 letter offered an annual subscription of 52 issues for $350.00, a six-month subscription of 26 issues for $200.00, and a three-month subscription of 13 issues for $112.50, but did not offer the trial subscription of two issues offered in other advertisements. The letter generated 143 subscriptions to Intersearch, of which 23 were annual, 22 six-month, and 98 three-month.

22/ The two-week limitation was in fact not genuine — Respondents accorded the reduced-mail rate to subscribers as late as July 26, 1970.

three subscription options: an annual subscription of 52 issues for $350.00, a three-month subscription of 13 issues for $112.00, and a trial subscription of two issues for $15. The June and July ads were substantially alike except that different charts were described and varying statements were made concerning the number of subscriptions that remained available. The August 3 ad was similar to the June and July ads.

The June and July ads in BARRON'S contained statements and representations generally similar to those found above to have been used in the May 1970 solicitation letter and the May 8 and May 15, 1970 issues of the Reid Report, in terms of describing, characterizing, and touting Interscan. The June and July ads in BARRON'S were introduced by "banner" headlines reading as follows (the June ad did not contain the language "2,000 CHARTS Weekly"):



While the ads formally disclaimed "infallibility" for Interscan, they did so in terms that suggested that the degree of unreliability was so small as to be unimportant or non-existent:

> We certainly make no claims of infallibility for the divergence signals so clearly revealed by INTERSCAN charts, but time after time after time we have seen such divergence faithfully anticipate major price adjustments. And one thing is certain: a stock's price line and its CNTV line cannot indefinitely follow independent courses.

The June and July ads in BARRON'S also attempted to pressure potential subscribers by warning that Respondents could accept only [June 22] 900, [July 6] 800, and [July 20] 800 additional subscribers, respectively, between the time of the ads and the Fall of 1970. In reality, there was never any reasonable basis for believing that 900 or 800 subscribers would be obtained, nor does the record contain satisfactory proof that the service could not have been expanded to service more than 900 subscribers had the subscriptions been forthcoming. 23/

The June, July, and August 1970 advertisements for Interscan in BARRON'S did not set forth the limitations of the service or the difficulties in using it that have been found herein to exist.

These advertisements produced 418 trial subscriptions, 21 three-month subscriptions, and 13 annual subscriptions.

23/ The Division further urges that the June and July ads in BARRON'S demonstrated and described sale recommendations of various stocks without offering to make available all other recommendations of the previous year, in violation of 17 CFR §275.206(4)-1(a)(2). It is concluded, however, that such ads did not contain reference to "past specific recommendations . . . which were or would have been profitable . . . ." Indeed, the ads specifically stated that the charts shown therein were for illustrative purposes only and did not constitute recommendations. It was left for the reader to decide whether he could have turned the chart to his advantage had he had it.

Respondents sent to trial subscribers of Interscan a series of three undated letters (exhibits 13,14,15) [24/] in efforts to get the trial subscribers to subscribe to Interscan for a longer period. Exhibit 13 was sent to trial subscribers at the time they subscribed, along with a copy of the users manual. Exhibit 14 was sent after the first issue of the trial subscription had been sent and exhibit 15 was sent to trial subscribers after the second, and last, issue of the trial subscription had been sent out, assuming the trial subscriber had not re-subscribed.

The three undated letters to trial subscribers did not describe the limitations of Interscan or set forth any difficulties involved in its use.

Respondents received 20 annual, 22 six-month, and 26 three-month subscriptions in response to these solicitations of the trial subscribers to Interscan.

In a letter of September 4, 1970, to subscribers Respondents, among other things, advised that, effective October 1, 1970, there would be a substantial rise in the cost of Interscan, and invited the addressees to re-subscribe at the old, lower rates. The representation as to the cut-off date was apparently an advertising ploy since in fact Respondents continued to give the old, lower rates as late as December 5, 1970. [25/]

24/ The Division's exhibits are numbered; those of the Respondents are lettered. Exhibits 1-5, 7-32, and 34-36 were received by stipulation of the parties ("stipulation"). Concerning exhibits 13,14, and 15, see paragraphs 17,18, and 19 of the stipulation.

25/ The Division contends that this letter to subscribers as well as other communications, including a letter of September 18, 1970, to them falsely stated the reasons for various short-term interruptions in the publication of Interscan, urging that the true reason for interrupted service was the lack of funds and the refusal of printers to print until overdue bills had been paid. It is concluded that the record fails adequately to establish the cause of the interruptions, partly because Respondents' records were unavailable, having been abandoned by Reid, a matter treated elsewhere in this decision.

The September 4, 1970 letter did not describe the limitations of Interscan or the difficulties in using it.

On October 5, 1970 Respondents again solicited the general public to subscribe to Interscan through an advertisement in BARRON'S. While the ad reflected the new, higher rates that were to be charged, and limited subscriptions to 600,[26/] the ad was in the same vein as previous advertisements. It contained no mention of Interscan's limitations or of any difficulties attendant upon its use by an investor. This was so even though Reid had been warned in September, orally and in writing, by Commission personnel that his earlier ads violated Section 206 of the Advisers Act and Rule 206(4)(a)(3) thereunder, and Reid, by signing and returning a copy of a letter to him of September 8, 1970, had acknowledged receipt of the warning letter and given assurance that Respondents would commit no further such violations.

A further advertisement for Interscan in BARRON'S on October 12, 1970, was subject to the same deficiencies as the October 5, 1970 ad, and its tone and general content were similar.

The ads and solicitations used by Respondents to obtain subscriptions to Interscan failed to comply with standards enunciated by the Commission in various decisions, e.g., Spear & Staff, Incorporated, 42 S.E.C. 549 (1965); Dow Theory Forecasts, Inc., 43 S.E.C. 821 (1968). In the Dow decision the Commission stated in part, at p. 831, omitting footnote citations:

> ". . . . 'In appraising advertisements . . . we do not look only to the effect that they might have had on careful and analytical persons. We look also to their possible impact on

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26/ This, again, was an advertising ploy, since Reid himself testified that he had no expectation of getting more subscribers than he could accommodate.

> those unskilled and unsophisticated in investment matters.' Investment advisers hold themselves out as professionals who occupy a relationship of trust and confidence with their clients, and because of the expertise which they claim and the service they offer, statements made in their advertisements have a significant appeal especially for persons inexperienced in securities. Such advertisements should fairly present the services that are being offered and should not be couched in terms that appeal to the investor's quest for instant riches or fear of impoverishment. Registrant's advertisements . . . were obviously of a character to whet the appetite of the gullible and the unsophisticated and disregarded the restraint and qualification that the intricate and complicated nature of securities requires . . . ."

Respondents contend that the advertisements and solicitations were submitted to and cleared by their attorney, Cohen. While there is evidence in the record that during the early part of Cohen's representation of the Respondents he or an associate reviewed and passed upon the advertising material "with some regularity," the record falls short of establishing that Cohen or his associates reviewed and approved all advertisements and solicitations. In any event, even if they had, Respondents would not have been entitled to rely upon such advice of counsel as a defense to their wrongful conduct.[27/]

Failure to Disclose Insolvency

Section IIB of the Order alleges that from about May 1970 until the date of the Order Respondents wilfuly violated or wilfuly aided

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27/ See footnote 44 below.

and abetted violations of Section 206(1)(2) and (4) [28/] of the Advisers Act by engaging in acts, practices, and a course of business that acted as a fraud and deceit upon clients and prospective clients of Respondents, i.e. upon subscribers and potential subscribers to Interscan and the Reid Report, by advertising and soliciting subscriptions to such advisory services without disclosing the insolvent condition of the corporate Respondents and the possibility that Respondents might as a result be unable to fulfill their contracts to furnish such advisory services throughout the subscription periods.

The record establishes, as found above, that from May to October, 1970, Respondents advertised and solicited subscriptions to Interscan extensively through a variety of means and on numerous occasions. The record further establishes that Respondents advertised and solicited subscriptions to

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28/ 15 U.S.C. §80b-6(1),(2),(4). Section 206 provides in pertinent part as follows:

PROHIBITED TRANSACTIONS BY INVESTMENT ADVISERS

Sec. 206. It shall be unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly —

(1) to employ any device, scheme, or artifice to defraud any client or prospective client;

(2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client;

* * *

(4) to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. The Commission shall, for the purposes of this paragraph (4) by rules and regulations define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive or manipulative.

See also footnote 18 above for text of the relevant Commission Rule — 17 CFR §275.206(4)-1(a)(5), (b) — promulgated under the authority of §206(4).

both Interscan and the Reid Report during November and December, 1970, and that they accepted any renewals of subscriptions that might have come in during January 1971.

It is uncontroverted that not one of the advertisements or solicitations referred to above informed the subscriber or potential subscriber that the corporate Respondents were insolvent; that the ability of the corporate Respondents to stay in business and fulfill the investment-adviser contracts during the subscription pericds was contingent upon a successful public offering of Inter-Tech's stock; that Inter-Tech did not make its public offering during the seven-month period initially contemplated; that Inter-Tech's first underwriter withdrew because it could not sell the offering and that a second underwriter failed to do so because it went out of business; that the corporate Respondents' creditors at times refused to perform work essential to the publication of the advisory services because of nonpayment of overdue bills; that Respondents failed to pay the note to Chemical Bank when it fell due on October 16, 1970, because of lack of funds; that Chemical Bank called its $70,000 loan on November 5, 1970, the day before Inter-Tech began its public offering of stock; that there was not enough interest in the offering at any time after November 6, 1970 to support any reasonable belief that a closing would be likely; or that by around Christmas of 1970 it was evident that the offering would not be successful.

Reid defends Respondents' failure to disclose their insolvency and other facts bearing upon their precarious financial condition on the ground

that his attorney, Cohen, advised him not to tell subscribers of potential subscribers to Interscan or the Reid Report about the Inter-Tech public offering of shares. The record establishes that Cohen told Reid not to solicit subscribers or potential subscribers as purchasers of shares in Inter-Tech's public offering. Whether this advice was given out of concern that mentioning the public offering of Inter-Tech stock to subscribers or potential subscribers to Interscan or the Reid Report without benefit of a prospectus or without doing so through the underwriter might be construed as an improper offering of the securities or whether it was felt that mentioning such public offering would simply kill any hope of receiving subscriptions or re-subscriptions and thus immediately destroy any hope of keeping the enterprise viable, is not clear from the record.[29/]

In any event, what is clear is that Respondents had no defensible basis for failing to disclose their insolvency and precarious financial condition generally, as detailed above, to subscribers and potential subscribers of Interscan and the Reid Report. The conditions of insolvency and precarious financial condition of the corporate Respondents were clearly "material" facts -- i.e. facts to which a reasonable man would attach importance under the circumstances.[30/]

29/ Reliance upon mistaken advice of counsel would not constitute a defense. See footnote 44 below.

30/ For cases defining "material" facts within the meaning of the Securities laws see: Affiliated Ute Citizens v. U.S., 406 U.S. 128, 154 (1972); Mills v. Electric Auto-Lite Co., 396 U.S. 375, 385 (1970); Chasins v. Smith Barney & Co., 438 F.2d 1167, 1171 (C.A. 2d. 1971); Gilbert v. Nixon, 429 F.2d. 348, 356 (C.A. 10, 1970); Securities and Exchange Commission v. Great American Industries, Inc., 407 F.2d 453, 459-60 (C.A. 2d. 1968) (en banc), certiorari denied, 395 U.S. 920 (1969); Securities and Exchange Commission v. Texas Gulf Sulphur Co., 401 F.2d 833, 849 (C.A. 2d. en banc, 1968).

The Commission has consistently held that a failure by broker-dealers to disclose the material fact of insolvency or inability to meet obligations as they became due constitutes fraud.[31/]

In the instant proceeding the duty of Respondents to make full disclosure was heightened by the fiduciary relationship that has been held to exist between investment advisers and their clients both by the Courts and the Commission.[32/] In this connection, it is significant that Sections 205 and 206[33/] of the Advisers Act both contain prohibitions against self-dealing on the part of investment advisers at the expense of their clients that are characteristic of a trust relationship.

Respondents urge that they were under no greater obligation to disclose to subscribers and prospective subscribers their insolvency or precarious financial condition than would an ordinary publisher of a magazine or other publication not involving the giving of investment advice. This argument lacks validity (whatever the responsibilities of a non-fiduciary publisher may be) because it is mistakenly premised on the assumption that advertising for and soliciting subscriptions to an investment advisory service by an investment adviser, including all activity directed towards that end, do not come within the ambit of activity subject to

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31/ Weston and Company, Inc., Exchange Act Release No. 9312, August 30, 1971, at p. 2; Herman M. Solomon, Exchange Act Release No. 9643, June 21, 1972, at pp. 2-3.

32/ SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180 at 194 (1963); Brown v. Bullock, 194 F. Supp. 207, 229 (S.D.N.Y. 1961), aff'd. 294 F.2d 415 (C.A. 2d 1961); Consumer-Investor Planning Corp., et al., 43 S.E.C. 1096, 1100 (1969); Kidder, Peabody & Co., Inc., 43 S.E.C. 911, 915 (1968); Dow Theory Forecasts Inc., 43 S.E.C. 821, 831 (1968); Roman S. Gorski, 43 S.E.C. 618, 620 (1967); Edward J. Moschetti, 41 S.E.C. 942, 943 (1964); 2 Loss, Securities Regulation, 2d Ed., 1412.

33/ 15 U.S.C. §§80b—5, 80b—6.

fiduciary duties. The contrary is readily apparent from the fact that the Commission, acting under authority conferred by Section 206(4) of the Advisers Act to promulgate rules and regulations reasonably designed to prevent any act, practice, or course of business by an investment adviser that is fraudulent, deceptive, or manipulative, has promulgated Rule 206(4)—1, Advertisements by Investment Advisers, which comprehensively treats the subject of fraudulent or deceptive advertising. Particularly pertinent is subparagraph (a)(5), which forbids publication, circulation or distribution of any advertisement "which contains any untrue statement of a material fact, or which is otherwise false or misleading."

Likewise, the language of paragraphs (1) and (2) of Section 206 of the Advisers Act, which forbid the defrauding by an investment adviser of any "client or prospective client", gives clear indication that the fiduciary relationship legislated by the Advisers Act extends to the whole process whereby a potencial client becomes a client.

Moreover, the Commission, noting that Section 206 of the Advisers Act bars conduct that defrauds or deceives "any client or prospective client," has expressly held that solicitation of clients is part of the activity of an investment adviser.

In the context of this proceeding, therefore, clients and potential clients of the Respondents had just as much right to trust and expect

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34/ See footnote 28 above for text of the Section.

35/ See footnote 18 above for citation to and partial text of the Rule.

36/ Ralph Seward Seipel, 38 S.E.C. 256, 257 (1958); Spear & Staff, Incorporated, 42 S.E.C. 553-4, footnote 12.

that Respondents would not mislead them as to Respondents' financial capability of carrying out their publishing commitments over the term of the subscription period as they had a right to trust that the quality of the investment advisory service would be as represented.

The distinction between the duties of a fiduciary and one not subject to such responsibilities was well stated by Chief Judge (later Justice of the U.S. Supreme Court) Cardozo in Meinhard v. Salmon:[37/]

> "Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the 'disintegrating erosion' of particular exceptions. . . . Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd."

Accordingly, it is concluded that Respondents, as charged, wilfuly violated or wilfuly aided and abetted violations of Sections 206(1)(2) and (4)[38/] of the Advisers Act by failing to advise subscribers and potential subscribers to Interscan and the Reid Report, as found above, of the insolvency and precarious financial condition of the corporate Respondents in connection with the advertisements and solicitations for subscribers.

Failure to File Promptly Form ADV Amendments

Sections 203 and 204[39/] of the Advisers Act together with implementing Rule 204-1(b)[40/] provide that if the information contained in any application

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37/ 164 N.E. 545, 546, 249 N.Y. 458, 464 (1928).

38/ See footnote 28 above for text of the Sections.

39/ 15 U.S.C. §§80b—3, 80b—4.

40/ 17 CFR §275.204—1(b).

for registration as an investment adviser, or in any amendment thereto, becomes inaccurate for any reason, the investment adviser shall promptly file an amendment on Form ADV correcting such information.

Inter-Tech borrowed $70,000 from the Chemical Bank on or about November 1969, which loan was guaranteed by Inter-Tech's accountants; this caused George Landsman, a partner in the accounting firm, to become a controlling person of Inter-Tech.

Inter-Tech and Inter-Pub began soliciting subscriptions to Interscan in May 1970 and Inter-Pub began publishing the service in July 1970.

There was no amendment to Inter-Tech's or Inter-Pub's Form ADV to show these changes until after a Commission investigator on 9-21-70 told Reid that the Forms needed amending. The amendments concerning Interscan were inaccurate when made because they failed to reflect new subscription rates that had been announced on 9-4-70. The Forms ADV of Inter-Tech and Inter-Pub were not subsequently amended to reflect the fact that Inter-Pub ceased publishing Interscan and the Reid Report early in 1971.

The foregoing failures promptly to amend the ADV forms or to do so accurately constituted wilful violations of the Sections and Rule cited above.

Failure to Preserve Records

Sections 203 and 204 [41/] of the Advisers Act together with implementing Rule 204-2(a)(e) and (f) thereunder [42/] require that an investment

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41/ 15 U.S.C. §§80b—3, 80b—4.

42/ 17 CFR §275.204—2.

adviser keep true, accurate and current certain specified books relating to his investment advisory business; require that these records be preserved for a period of not less than five years, and provide that before ceasing to do business arrangements be made for preservation of the books and records for the remainder of the time required and that notice be given the Commission in writing as to where such records will be kept.

Respondents wilfuly violated these requirements inasmuch as Reid abandoned the books and records of Inter-Tech and Inter-Pub when they went out of business in January 1971 even though, as found above, a small amount of money was available to arrange safekeeping.

Conclusions

In general summary of the foregoing, it is concluded that during the respective relevant periods, some commencing about May 1970 and some running until the date of the Order, the indicated Respondents committed violations of the following provisions of law or regulation as a result of the following acts or omissions, practices, or failures to disclose, all as more particularly found above:

(1) During the period from about May 1970 until October 1970 Respondent Inter-Pub wilfuly violated the anti-fraud provisions of Section 206(4) of the Advisers Act and Rule 206(4)—1 thereunder by falsely and misleadingly advertising and soliciting subscriptions to the investment-advisory publication Interscan and Respondents Inter-Tech and Reid wilfuly aided and abetted such violations.

(2) During the period from about May 1970 through about January 1971 Respondent Inter-Pub wilfuly violated, and Respondents Inter-Tech and

Reid wilfuly aided and abetted violations of, the anti-fraud provisions of Sections 206(1)(2) and (4) of the Advisers Act by soliciting and by entering into investment-adviser contracts with subscribers or potential subscribers to Interscan and the Reid Report without disclosing to subscribers or potential subscribers the insolvent or precarious financial condition of the corporate Respondents or the very real possibility that because of such condition Respondent Inter-Pub would be unable to complete its obligations during the terms of the subscriptions.

(3) During the period from about November 1969 until the date of the Order (April 27, 1971) Respondent Inter-Tech wilfuly violated, and Respondent Reid wilfuly aided and abetted violations of, Sections 203 and 204 of the Advisers Act and Rule 204-1(b) thereunder in that they failed promptly to file with the Commission amendments to Inter-Tech's FORM ADV reflecting the publication of Interscan when that was commenced, or the correct subscription prices for Interscan, when the fact of its publication was ultimately disclosed by amendment.

(4) From on or about January 1, 1970 until the date of the Order Respondents Inter-Tech and Inter-Pub wilfuly violated, and Reid wilfuly aided and abetted violations of, Sections 203 and 204 of the Advisers Act and Rule 204-2(a), (e) and (f) thereunder by (1) failing to preserve required records of the corporate Respondents for prescribed periods after January 1971 when Respondents ceased doing business and at which time Reid abandoned the mentioned records and by (2) failing to notify tne Commission in writing of the address where such books and records would be maintained for the prescribed period.

(5) the violations summarized in paragraphs (1) through (4) above involved use of the United States mails within the meaning of the jurisdictional statutory provisions. 42a/

PUBLIC INTEREST

The violations found herein were numerous, serious, and persisted over substantial periods of time. Various subscribers to Interscan and the Reid Report suffered financial losses when Inter-Pub abruptly ceased publication after Inter-Tech's ill-fated public offering had to be aborted. The record contains no evidence that Reid made any effort to make good these losses either personally, by seriously seeking other suitable employment, or by approaching the other shareholders of Inter-Tech.

Neither the proposed deal with Becker in a desperate effort to make the public offering come off nor Reid's abandonment of the books and records of the corporate Respondents when they ceased publication does Reid any credit.

The violations herein are the more serious in that they involved a breach of the fiduciary duty that the Congress has legislated for investment advisers.

Respondents urge a number of things in mitigation, none of which holds up very strongly upon examination.

Firstly, they make the point that Reid voluntarily went to representatives of the Commission for advice "when his business faltered." But this was after the public offering had failed, corporate Respondents were broke, and the violations herein found had already occurred. In short, Reid went to see Commission personnel after the damage had been done.

42a/ Under Section 203(d) of the Advisers Act a finding of use of jurisdictional means is not required where respondents are investment advisers registered under Section 203 or persons acting on their behalf.

Secondly, Respondents contend that Reid acted on advice of counsel in failing to disclose the insolvency or precarious financial condition of the corporate Respondents while advertising, and soliciting subscribers to, Interscan. As found above,[43/] that was not counsel's advice, but even if it had been, reliance upon advice of counsel would not serve to excuse the violations.[44/] Likewise, Reid would not have been entitled to rely on counsel's oral assurances that it was all right to go ahead with the public offering of Inter-Tech stock on the basis of the deal with Becker. Realistically, however, a man of Reid's experience did not need an attorney to tell him whether the deal with Becker was, in his terminology, "kosher". It very clearly was not, yet Reid was willing to gamble on it until the onslaught of creditors made it apparent to him that the public offering, even if carried out, would leave Inter-Tech in the posture of a patient of whom it is said: "The surgical procedure was a great success, but the patient died."

Lastly, Respondents urge that Reid sincerely would like to reimburse subscribers for the losses they suffered but is prevented from obtaining employment in the securities business while the cloud of the present proceeding hangs over him. As already noted earlier, the record is void of any evidence of Reid's bona fides in this respect.

In light of the number and seriousness of the violations found herein, involving as they do serious breaches of fiduciary responsibilities, and after consideration of factors urged in mitigation, including the absence

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43/ See discussion at pp. 25-26.

44/ Gearhart & Otis, Inc., 42 S.E.C. 1, 28 (1964) aff'd 348 F.2d 798 (C.A.D.C. 1965); Dow Theory Forecasts, Inc., et al., 43 S.E.C. 821, 831-2 (1968).

of major prior violations by Respondents,[45/] it is concluded that the sanctions ordered below are required in the public interest, not only to impress on Respondents the gravity of their violations and to prevent a recurrence, but to serve as a deterrent to others who might be tempted to commit similar violations.

ORDER

Accordingly, IT IS ORDERED as follows:

(1) The registration of Respondent Intersearch Technology, Inc. as an investment adviser is hereby revoked pursuant to Section 203(e) of the Investment Advisers Act;

(2) The registration of Respondent Intersearch Publications, Incorporated as an investment adviser is hereby revoked pursuant to Section 203(e) of the Investment Advisers Act; and

(3) Respondent Jesse B. Reid is hereby barred[46/] from being associated with an investment adviser, pursuant to Section 203(f) of the Investment Advisers Act.

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

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen (15) days after service of this initial decision upon him, filed

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45/ See footnote 9 above concerning a 60-day suspension of Reid in 1957 by the NYSE.

46/ It should be noted that a bar order does not preclude the person barred from making such application to the Commission in the future as may be warranted by the then-existing facts. See Fink v. S.E.C. (C.A. 2, 1969), 417 F.2d 1058, 1060; Vanasco v. S.E.C. (C.A. 2d, 1968) 395 F.2d. 349, 353.

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. 47/

David J. Markun
Administrative Law Judge

Washington, D.C.
February 28, 1975

47/ To the extent that the proposed findings and conclusions submitted by the parties, and the arguments made by them, are in accordance with the views herein they are accepted, and to the extent they are inconsistent therewith they are rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the issues presented. To the extent that the testimony of Respondent Reid is not in accord with the findings herein it is not credited.