ADMINISTRATIVE PROCEEDING
FILE NO. 3-6119

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
WALL STREET WEST, INC. (8-22329)	:
GENERAL BOND & SHARE CO. (8-7303)	:
THEODORE V. ABBRUZZESE	:
JOHN L. BROWN	:
WALTER G. ASMUS	:
KENNETH W. SANDBERG	:
SAM C. PANDOLFO	:

INITIAL DECISION

WASHINGTON, D.C.
February 7, 1983

RALPH HUNTER TRACY
Administrative Law Judge

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SAM C. PANDOLFO	:	

APPEARANCES: Robert M. Fusfeld, Patricia H. Ferree, Kathleen U. Radinsky, attorneys, Denver Regional Office, for the Division of Enforcement

Marc N. Geman and Peter E. Gadkowski of Fishman, Geman, Gersh & Bursiek for Wall Street West, Inc., Theodore V. Abbruzzese, John L. Brown, Walter G. Asmus and Kenneth W. Sandberg.

Patrick J. Russell of Cogswell & Wehrle for General Bond & Share Co. and Sam C. Pandolfo

BEFORE: Ralph Hunter Tracy, Administrative Law Judge

This is a public proceeding instituted by Commission Order (Order) dated April 21, 1982, pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 (Exchange Act), to determine whether the above named respondents committed various charged violations of the Exchange Act and the Securities Act of 1933 (Securities Act), and regulations thereunder, as alleged by the Division of Enforcement (Division) and the remedial action, if any, that might be appropriate in the public interest.

The Order alleges, in substance, that Wall Street West, Inc.(WSW), General Bond & Share Co. (GBS), Theodore V. Abbruzzese(Abbruzzese), Walter G. Asmus (Asmus), Kenneth W. Sandberg (Sandberg) and Sam C. Pandolfo (Pandolfo) wilfully violated Sections 17(a)(1)(2) and (3) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; and, in addition, that WSW, Abbruzzese, Asmus and Sandberg wilfully violated Section 10(b) of the Exchange Act and Rule 10b-6 thereunder. The Order charges, also, that WSW willfully violated and Sandberg and Asmus wilfully aided and abetted violations of Section 15(c) of the Exchange Act and Rule 15c1-8 thereunder; that WSW wilfully violated and Asmus wilfully aided and abetted violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder. The Order charges, further, that WSW, Abbruzzese and John L. Brown (Brown) failed reasonably to supervise persons under their supervision with a view to preventing the alleged violations.

The evidentiary hearing was held at Denver, Colorado from July 12 through July 16, 1982. All of the respondents were represented by counsel and proposed findings of fact and conclusions of law, and supporting briefs were filed by the respondents and the Division.

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

FINDINGS OF FACT AND LAW

Respondents

Wall Street West, Inc. (WSW) is a Colorado corporation which has been registered with the Commission as a broker-dealer since December 27, 1977. WSW is also a member of the National Association of Securities Dealers (NASD).

General Bond & Share Co., Inc. (GBS) is a Colorado corporation which has been registered with the Commission as a broker-dealer since May 7, 1959. GBS is also a member of the NASD.

Theodore V. Abbruzzese (Abbruzzese) was born at Detroit, Michigan on August 11, 1935. He attended the University of Detroit, receiving a BME degree in engineering in 1957 and an MBA degree in business administration in 1963. He has been in the securities business since 1968 and co-founded WSW in 1977. He owns 35% of WSW's outstanding stock and has been president, chief executive officer and a director of WSW since December 27, 1977. He is a chartered financial analyst.

John L. Brown (Brown) was born at Albia, Iowa on January 16, 1937. He attended the local schools, graduating from high school in 1955. He attended the National College of Business in Denver in 1976. He was with Bosworth Sullivan & Co. (now Dain Bosworth) from June 1967 to June 1978. He has been a vice president and director of WSW since about January 1, 1978 and is the financial principal of WSW and was during the pertinent period herein. Brown prepared the compliance manual for WSW and is a member of the business conduct committee of District 3 of the NASD.

Walter G. Asmus (Asmus) was born at Denver on April 28, 1932. He received a degree in economics and political science from the University of Denver in 1955. He is a registered representative and has been in the securities business since 1955. He has been associated with Walston & Co., Bache and Co., and J. Daniel Bell & Company, Inc. and had his own firm, Aloha Securities in Hawaii. He also operated Walt Asmus & Associates, a broker-dealer, in Denver in 1969-70. At one time he was a registered principal and has been a trader for his own firm. He joined WSW as a registered representative in January 1979, but during the pertinent period herein he was, also, the trader for WSW.

Kenneth W. Sandberg (Sandberg) was born on September 2, 1941 at Minneapolis, Minnesota. He received a B.A. degree from the University of Minnesota in 1968. In February 1969 he joined IBM and was there until early 1972 when he went to Dupont & Co., where he was a trainee and became a registered representative. He later

worked as a registered representative with Dean Witter, Craig-Hallum in Minneapolis, and the Milwaukee Company in St. Paul. In October 1978 he came to Denver and joined WSW.

Sam C. Pandolfo (Pandolfo) was born on February 2, 1931 at Denver, Colorado. In 1953 he received a degree in business administration from the University of Denver. He organized GBS as a broker-dealer with a brother who is listed as president but takes no part in the operation of the firm. Pandolfo is listed as secretary-treasurer of GBS and has owned between 50% and 75% of its outstanding stock. He is a registered principal and the only salesman for GBS. Pandolfo runs GBS from his home and specializes in "orphan stocks."

Background

All of the respondents in this proceeding, except Brown, are charged with manipulation of the price of Lake City Mines (LCM) stock from its offering price of $.25 per share to an aftermarket price of $1 or better per share. Brown is charged only with failure to supervise.

Wall Street West (WSW) was the underwriter for the LCM offering and during the time period involved here, November 1979 to March 1980, it maintained its principal office at Englewood, Colorado, known as the Greenwood Plaza Office. All of the WSW employees named as respondents herein were employed in that office. In addition, WSW had 3 branch offices and 4 satellite, or one-man, offices in Colorado, employing a

total of 39 sales representatives. Currently, WSW has over 200 sales representatives.

Lake City Mines, Inc.,is a Colorado corporation which was incorporated on August 5, 1977. LCM entered into an underwriting agreement with WSW as its exclusive agent to offer to the public a maximum of 6,000,000 shares of LCM no par value stock at a price of $0.25 per share. The offering was made pursuant to Regulation A and was on a "best effort-all or none" basis for the first 5,000,000 shares with a minimum purchase of 2,000 shares. If the 5,000,000 shares were not sold within a designated period of 90 days, then the funds would be returned to the investors. All funds received by the underwriter were to be deposited immediately with the University National Bank, Denver, Colorado, as escrow agent, and stock certificates would be issued to purchasers only when the purchase price for the minimum number of shares was released to the Company. Until such time as the funds had been released from escrow and the shares delivered to the purchasers thereof, such purchasers would be deemed subscribers and not stockholders.

The offering became effective on December 31, 1979, the closing took place on January 28, 1980, and aftermarket trading began on January 29, 1980. WSW allocated 1,004,000 shares to 13 other brokers, including GBS, which received 40,000 shares, and retained the balance, or 4,996,000 shares, which it sold to its own customers.

Anti-Fraud Provisions

The Order alleges that during the period from about November 1979 until about March 1980, the respondents, WSW ,Abbruzzese, Sandberg, Asmus, GBS and Pandolfo wilfully violated Sections 17(a)(1), (2) and (3) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with the offer, sale and purchase of LCM common stock by employing directly and indirectly devices, schemes and artifices to defraud; specifically by engaging in a manipulative scheme to affect the aftermarket price of LCM stock.[1/]

As part of the aforesaid conduct the respondents, among other things, would and did:

1. Prior to the opening of aftermarket trading on January 29, 1980:
(a) WSW, Abbbruzzese, and Asmus entered into an agreement with GBS and Pandolfo whereby GBS and Pandolfo would enter the initial aftermarket quotation for LCM stock at an arbitrary price dictated by Asmus and WSW;

(b) GBS and Pandolfo agreed with WSW that during the initial days of aftermarket trading in LCM stock, GBS would become a market maker and trade virtually exclusively with WSW;

1/ Section 10(b) as here pertinent makes it unlawful for any person to use or employ in connection with the purchase or sale of a security any manipulative device or contrivance in contravention of rules and regulations of the Commission prescribed thereunder. Rule 10b-5 defines manipulative or deceptive devices by making it unlawful for any person in such connection: "(1) to employ any device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading or (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person . . . " Section 17(a) contains analogous anti-fraud provisions.

(c) WSW, Abbruzzese, Asmus, and Sandberg established the arbitrary aftermarket price of LCM stock at $1 or more prior to the completion of the public offering;

(d) WSW, Abbruzzese, and Asmus caused and induced Sandberg and other WSW sales representatives to solicit orders for aftermarket purchases and sales of LCM stock at $1 or more per share (pre-solicited orders) before WSW had completed its participation in the public offering.

2. When aftermarket trading began in LCM stock on January 29,1980 and until February 4, 1980, when WSW became a declared market maker:

(a) GBS and Pandolfo entered a quotation for LCM stock with the National Quotation Bureau at a price dictated by Asmus and WSW;

(b) WSW, Abbruzzese, Asmus, and Sandberg primed, artificially established, maintained and manipulated the market price of LCM stock by executing the pre-solicited and other purchase and sale orders, purportedly on an agency basis;

(c) GBS and Pandolfo traded LCM stock virtually exclusively with WSW and matched buy and sell orders of WSW customers; and

(d) WSW, Abbruzzese, and Asmus isolated its customer transactions from the interdealer market by interpositioning GBS between customer purchase and sell orders.

3. By the above-described acts and practices, WSW, Abbruzzese, Asmus, and Sandberg created the illusion of an active independent market for LCM stock and controlled and supported the price of LCM stock at artificial levels from on or about January 29, 1980 through on or about February 4, 1980.

4. In furtherance of and concurrently with the above-described scheme to artificially manipulate the price of LCM stock, WSW, Abbruzzese, Sandberg and Asmus made false statements of material facts, misrepresented material facts and omitted to state facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, including, among other things:

(a) the solicitation of aftermarket orders for LCM stock at or about $1 per share, prior to the completion of the public offering and based upon the assertion that no stock was available at the public offering price of $.25 per share when in fact the offering was still continuing.

(b) representations to customers and potential customers that the aftermarket price of LCM stock was determined by

market demand when in fact WSW had arbitrarily set the market price of LCM stock at about $1 per share and there was no market for LCM stock other than that made, created or controlled by WSW and GBS.

(c) representations to customers during the aftermarket trading that WSW was executing trades in LCM stock as agent when in fact WSW was interpositioning GBS between certain of its customers' buy and sell transactions.

5. In furtherance of the above-described scheme to manipulate the price of LCM common stock WSW, Abbruzzese, Sandberg, Asmus, GBS and Pandolfo omitted to state material facts necessary in order to make the statements made in the LCM prospectus, in light of the circumstances under which they were made, not misleading, namely, the acts, practices and scheme described in paragraphs (1) through (4) above.

The Offering

Lake City Mines, Inc. (LCM) was incorporated in Colorado on August 5, 1977 for the purpose of developing two mining properties it had acquired in the vicinity of Lake City, Colorado, 57 miles southwest of Gunnison, Colorado. These properties were the Golden Wonder, a gold mine which had been worked intermittently since its discovery in 1880, and the Ute-Ule, a silver, lead and zinc mine. In April 1978 mining operations were discontinued in order to comply with revised mine safety laws. Since that time the main thrust of LCM's activities has been to secure additional capital to continue the exploration of its properties.

During 1979 the price of gold rose to an all time high and LCM began exploring the possibilities of a public offering in order to secure the necessary funds to reopen its mines. In January 1979 LCM considered a proposed offering pursuant to Regulation A of 1,500,000 shares at $1 a share with the New York Stock Exchange member firm of Hanifen, Imhoff & Samford, Inc. (Hanifen) as underwriter.

In April 1979 LCM executed a letter of intent with WSW whereby WSW was to be the underwriter for a Regulation A offering of 6,000,000 shares at $.25 a share. The offering price of $.25 a share

was determined by Abbruzzese and LCM executives. The offering circular stated that this was a speculative issue with a high degree of risk, and LCM estimated that it would be able to operate only 8 months on proceeds from the offering and would then need additional funds. The net tangible book value before the offering was $.002 a share and $.1073 a share after the offering.

The offering became effective on December 31, 1979 and the closing took place on January 28, 1980 and aftermarket trading began on January 29, 1980. The net proceeds received by LCM were $1,310,000.

Abbruzzese held a due diligence meeting on December 19, 1979 at which a large number of broker-dealers were present. Brokers throughout the country had been calling WSW about the LCM offering and it soon became apparent that it was going to be a "hot issue." Abruzzese made all of the decisions concerning the LCM underwriting and syndication and determined which brokers would participate in the selling group. Abbruzzese was unable to allocate stock to all brokers who requested it and restricted the selling group to 14 firms, including WSW and GBS which had been recommended by Asmus. WSW retained 83% of the LCM shares offered to the public, or 4,996,000 shares, and allocated the balance of 1,004,000 shares to 13 other brokers, including GBS, which received 40,000 shares.

Prior to September 1, 1979, WSW did not have a trader. On that date, Asmus, who was a sales representative in the Cherry Creek Branch Office, was made the trader by Abbruzzese and thereafter

worked out of the main office at Greenwood Plaza. Asmus became the trader in Benedict Nuclear Pharmaceuticals, Inc.(Benedict) just before aftermarket trading in that offering began. Benedict was WSW's first underwriting and LCM was its second. Benedict was offered to the public at $.50 a share. GBS also participated in the Benedict selling group with an allotment of 50,000 shares, and became a market maker when aftermarket trading commenced.

Following his appointment as trader and prior to December 14, 1980, Asmus had several discussions with Pandolfo concerning the forthcoming LCM offering. Asmus told Pandolfo, in essence, that WSW had experienced problems with the Benedict underwriting, which included having to "go outside of the shop" in order to "take care of" its customers and had to "give up" stock to the street. Asmus said that upon advice of counsel WSW had executed only agency trades during the first several days of the Benedict aftermarket and, therefore, had not been a significant factor in the aftermarket.

Asmus told Pandolfo that in the LCM offering, WSW, again on the advice of counsel, would be executing only agency trades during the first days of aftermarket trading and that there would be heavy trading volume during that period. Therefore, in an effort to avoid some of the problems encountered in the Benedict offering, Asmus asked Pandolfo to assist WSW with the LCM underwriting and the aftermarket. Pandolfo agreed to become a market maker in LCM stock and to enter a quotation in the National Quotation Bureau (NQB)

Pink Sheets on behalf of WSW. Inasmuch as WSW would not be a market maker during the initial days of aftermaket trading, GBS would be doing indirectly what WSW could not do directly.

On December 14, 1979, apparently in anticipation of a trading volume which GBS, as a one man firm, was not equipped to handle, Pandolfo entered into a clearing agreement with Hanifen. Pandolfo testified that he intended to clear only LCM trades through Hanifen and to limit such trading so that he would not be more than $10,000 long or short in LCM stock at the end of each day. This clearing agreement was terminated in March 1980.

WSW had a clearing agreement with Securities Settlement Corporation (SSC), a New York Stock Exchange firm, to effect all clearing operations for WSW, including accounting for all transactions and printing confirmations for LCM. All of WSW's customer order tickets were sent to SSC in New York where they were inputted into SSC's computer system and the confirmations generated and mailed to WSW's customers.

LCM was indeed a "hot issue" and, according to respondents, the entire offering of 6,000,000 shares had been sold by January 17, 1980. Sales in the offering were made by respondents herein as follows: Abbruzzese 367,000 shares, Asmus 258,000, Sandberg 168,000, Pandolfo 40,000. Although Asmus was made a trader in September 1979, he continued to sell as a registered representative to his customers.

Because of the demand for LCM, customers could not obtain all they wanted in the original issue. Accordingly, aftermarket orders many of them solicited, were taken by WSW representatives between

January 18 and 28, 1980, and delivered to the trading department to be executed at the opening of trading on January 29, 1980. This was done on instructions by Asmus.

Five investor witnesses who testified at the hearing concerning their placing of aftermarket orders between January 18 and 28, 1980 were in general agreement as to the representations made to them which induced them to place such orders. All who testified had dealt with Sandberg and he had told them that this $.25 stock would open at $1 or better and go as high as $3 within 6 months.

Mr. B., a student who worked part time in a tailor shop, purchased 2,000 shares in the underwriting as that was all Sandberg would give him. On January 23, 1980, Sandberg visited B at work and discussed the LCM offering. Sandberg told B that LCM would open at $1 in the aftermarket and he could get some at that price if he placed an order then, January 23, 1980. Sandberg further said it would go to $3 within a year. Based on Sandberg's projections B placed an order for 1,500 shares at $1 or better. Although B's order ticket for this transaction is marked "unsolicited," the order was clearly solicited by Sandberg.

Mr. H., an office manager, asked Sandberg to buy LCM at the underwriting. Sandberg said that no stock was available and if he wanted LCM stock he would have to purchase it in the aftermarket. On or about January 25 H again talked with Sandberg who told him that LCM would open at $1 to $1.25 when aftermarket trading began.

Based on Sandberg's representations H placed an aftermarket order for $5,000 worth of LCM. H testified that he expectd to get 5,000 shares. On the same day, shortly after he had placed the order, H received a call from Sandberg who told him that as a result of his good faith in placing the $5,000 aftermarket order he was now able to give him 2,000 shares of the underwriting stock which had not been paid for by the original purchaser. However, in order to take advantage of this offer H had to deliver a check in payment that same day. Later that day, H delivered his check for $500 to Sandberg in payment for 2,000 shares of LCM stock at $.25 per share. H also received 5,000 shares of LCM for his aftermarket order but says he thinks the price was more than $1 a share; as he recalls it cost him closer to $6,000 than the $5,000 originally agreed on. He said he was annoyed by this price increase.

JW, a real estate broker, testified that Sandberg began calling him in December 1979 to interest him in LCM. Sandberg told him that LCM was one of the "hottest stocks around" and would open at $1 a share, that demand was very high, but that he, Sandberg, would see how much he could get him in the underwriting. JW and his brothers, BW and DW, wished to make a joint purchase; originally Sandberg said he could get them 8,000 shares but later found another 4,000 shares. JW testified that Sandberg repeatedly told him that LCM would open at $1 a share. Based on Sandberg's representations they purchased 12,000 shares of LCM at at $.25 a share in the underwriting and would have purchased more if it had been available. Sandberg said that because of the large demand for LCM shares in the underwriting it would continue to be a "hot" stock in the aftermarket.

Another brother, BW, also testified that Sandberg told him that LCM would open at $1 and go to $3 within a year. Based on Sandberg's representations and because they could not get more than 12,000 shares in the underwriting, the W brothers placed an aftermarket order on January 23, 1980 through Sandberg for 15,000 shares of LCM at $1 a share.

Mr. B learned about LCM from a friend and in December 1979 or January 1980 called WSW and was assigned to Sandberg. B asked about LCM and was told that no more was available, that the underwriting was sold out, and that he would have to wait until the aftermarket trading began. Sandberg sent B an offering circular. After receiving the offering circular B called Sandberg to discuss LCM. During this discussion Sandberg told him that LCM would open at 2 to 3 times the offering price of $.25 per share. Based on Sandberg's representations B placed an aftermarket order on January 23, 1980, for $3,000 of LCM at a price of no more than $1 per share. B testified that he expected to get at least 3,000 shares and was unhappy when Sandberg told him that his order had been executed for 3,000 shares at $1.25 per share for a total price of $3,986.86. The order was executed on February 5, 1980 as of January 29, 1980. After B complained, Sandberg adjusted the trade so that B purchased 2,300 shares at $1.25 per share. Sandberg told B that to make up for the error he could purchase stock in another new issue.

Sandberg testified that he had no specific recollection about conversations with customers concerning aftermarket purchases of LCM but admitted discussing both the immediate aftermarket price and the long term price of LCM with customers. Sandberg testified that he told customers that in his opinion LCM might go up to as much as $3 in a six-month period. He limited the amount of LCM underwriting stock that he would give to any single customer. He solicited virtually all of the aftermarket orders although many of the order tickets are marked unsolicited.

Prior to the first day of aftermarket trading Sandberg had solicited 51 orders for aftermarket purchases of 144,200 shares of LCM at premium prices. This constituted 71.2% of the predated orders for aftermarket purchases obtained by WSW representatives.

In accordance with his understanding, or oral agreement, with Asmus, Pandolfo filed a listing form with NQB on January 24, 1980, showing GBS as a market maker in LCM. On January 29, 1980, after talking with Asmus, Pandolfo telephoned NQB and entered a quote of 3/8 - 5/8 for LCM stock.

The Aftermarket

As previously noted, Asmus requested all WSW's sales representatives to write up aftermarket orders and turn them into the trading room before the first day of aftermarket trading. Before aftermarket trading began on January 29, 1980, Asmus had received

99 order tickets for aftermarket purchases and sales bearing dates from January 18, 1980 through January 28, 1980. Of these 99 tickets 77 were for the purchase of 243,350 shares of LCM and 22 were for the sale of 63,500 shares of LCM. Predated order tickets for 202,400 shares of the purchases were executed on January 29, 1980, the first day of aftermarket trading at prices ranging from $1 to $1.25 a share. These purchases represented 38% of the total retail purchases by all brokers on that date. The 22 orders for sales of 63,500 shares of LCM were all executed on January 29, 1980 at $1 a share. In addition, 35,950 shares of LCM were sold on January 30, 1980 and 5,200 shares were sold on January 31, 1980. All of these sales were executed at $1 to $1.25 a share.

Trading in LCM stock opened at 9:30 a.m. on Tuesday, January 29, 1980, with a short sale of 10,000 shares by M.S. Wien (Wien), a broker-dealer, to another broker-dealer at 7/8. Except for WSW, Wien was the largest market participant on January 29, 1980. Wien sold another 5,000 shares short at 7/8 to another broker at 9:39 a.m. Wien then covered its short position with a purchase at 9:39 a.m. of 26,500 shares at $1 from WSW. This purchase order was filled, in part, by Asmus with 7 of the pre-dated sales orders by WSW customers. Asmus executed all of the pre-dated sales orders for aftermarket sales at $1 per share on January 29, 1980 the first day of aftermarket trading. These pre-dated sell orders effectively

established the minimum sales price for LCM at $1 per share. Purchase orders executed by WSW accounted for 57% of the total retail purchase volume on January 29, 86% on January 30 and 59% on January 31, 1980. On January 29, 1980, 16% of trades by other brokers were at prices below $1.

Although GBS was ostensibly a market maker it dealt almost exclusively with WSW, as shown in the following table:

GBS TRADING ACTIVITY IN LCM*

Date	Purchases From WSW	Other Brokers	%	To WSW	Sales to Other Brokers	%
1/29/80	50,100	0	100	50,500	2,000	96.3
1/30/80	105,000	2,000	98	98,175	0	100
1/31/80	40,000	0	100	30,300	0	100
2/1/80	15,100	0	100	4,650	5,000	48
Totals	210,200	2,000	99.06	185,625	7,000	96.37

All of the above purchases and sales between WSW and GBS were executed on a principal basis.

It is apparent that GBS was acting as WSW's alter ego during the first four days of aftermarket trading. GBS ceased any pretense of market making activities after February 4, 1980 when WSW began making a market. During the period from January 29, 1980 through at least February 20, 1980 GBS executed trades with WSW only through Hanifen with whom it had a clearing agreement for that purpose. Pandolfo testified

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* This Table was prepared from Division's Exhibits 122a and 122b.

that because his is a small firm, he is generally eliminated from most groups participating in new issue offerings, especially the good ones. However, he was a member of the selling group in Benedict and LCM, both underwritten by WSW. He also became a market maker in both instances when aftermarket trading began. It should be noted that while GBS made a commission of $700 on its offering sales of the 40,000 shares it was allocated, it realized a profit of $22,095.79 in its transactions with WSW during the first four days of aftermarket trading acting as market maker for WSW.

The WSW respondents, Abbruzzese, Sandberg, Asmus and WSW, deny any effort on their part to manipulate the aftermarket price of LCM. They state that the demand for the new issue stock exceeded the supply and that, accordingly, aftermarket orders were taken by representatives at all WSW offices and delivered to the trading department for execution at the opening. They admit that in conjunction with Sandberg's opinion that the stock would open as high as $1 a share, many orders were entered to purchase at $1 or better on the opening.

Abbruzzese testified that counsel had advised WSW to be prudent and not to be a market maker at the opening but to wait until the market had settled prior to executing any transactions as a principal. This was to avoid the possibility that WSW would be considered to be dominating or controlling the market in LCM stock because of the large percentage of the issue in the

hands of WSW customers. Accordingly, Asmus was instructed to execute orders on an agency basis with other market makers in the stock.

While respondents admit that Abbruzzese and Pandolfo have known each other for many years and that Asmus had discussed the situation with Pandolfo which resulted in GBS entering the initial quote in the "pink sheet" and in becoming a market maker, it is argued that there was no further agreement or understanding between them, or GBS and WSW, regarding the aftermarket activity of LCM.

It is pointed out that WSW requested that an employee of the NASD be present at the opening to help supervise the trading department which was literally swamped with orders for LCM. However, the NASD felt that WSW was already aware of the potential dangers of a hot new issue and declined to be present.

Respondents assert that while Sandberg solicited some of his customers to purchase LCM stock he did not solicit all of them and, in any event, the solicitations were for aftermarket purchases and not for purchases during the initial offering and that such conduct, by itself, does not constitute an intentional act for the purpose of defrauding investors; that aftermarket orders did not have a manipulative effect on the price of LCM; and that it was not a part of a scheme to distribute the new issue because it was already sold. Further, Sandberg's price projections were based on his belief that the stock was in demand and that the price of gold, which reached an all-time high during this period, would continue

to create a demand for the stock.

The WSW respondents contend that the fact that GBS entered one quote in the "pink sheets" on the first day of aftermarket trading does not warrant the conclusion that there was an agreement between WSW and GBS to manipulate the market in LCM stock. They state that it is an "interesting fact" that GBS bought and sold LCM almost exclusively with GBS but that the reverse was not the case. Respondents concur that it is unlikely that any written evidence of an agreement to manipulate the market would exist, but neither, they contend, can it be reasonably inferred that such an agreement existed as there is no evidence of collusion between Asmus and Pandolfo, or among Pandolfo and WSW, Abbruzzese, or Brown.

Respondents state that the Division asserts that no evidence came forward as to how the word "unsolicited" came to be placed on most of the pre-dated aftermarket order tickets even though Sandberg testified that many of his orders were solicited. Respondents say that Asmus, Brown and Sandberg all testified that they did not write it on the tickets. Moreover, they speculated that perhaps someone in the trading room or the wire operator did so, but that there was no attempt on the part of respondents to withhold evidence. Respondents indicate that the Division should have conducted further investigation to determine why and how the word "unsolicited" was written on the order tickets.

Respondents GBS and Pandolfo submit that the violations alleged against them have not been proved and established by a preponderance of the evidence. The inferences from the record herein indicate that GBS and Pandolfo participated in the aftermarket trading of LCM stock, a "hot" issue because of premium prices generally expeperienced in new issues underwritten in the Denver, Colorado over-the-counter market, the rapid increase then occurring in the price of gold and silver, and the stockprices of companies engaged in gold and silver related activities.

Pandolfo asserts that while the Hanifen clearing arrangement was utilized solely for trades with WSW in LCM stock, such exclusive trading was a "fortuitous" event only. Furthermore, after the termination of the Hanifen arrangement (March 1980), Pandolfo and GBS entered into a similar clearing arrangement with Columbine Securities, Inc. (5/13/80). Therefore, any inference to be drawn from GBS's conduct pertaining to its clearing arrangements supports the conclusion that the Hanifen clearing arrangement was not established for purposes of manipulating LCM stock. Pandolfo denies any agreement although Asmus testified that he asked Pandolfo to place a bid in the "pink" sheets on January 29, 1980. Pandolfo denied this in his testimony at the hearing, saying he arrived at the opening bid by his own personal judgement. Overall, Pandolfo's testimony was contradictory and evasive and not credible.

Respondents state that alleged violations occurred during a period

evidenced by (a) aftermarket premium prices being paid for new issues in the Denver, Colorado over-the-counter market and (b) a period of rapidly increasing gold prices, factors which directly affected trading in LCM stock but were beyond the control of GBS and Pandolfo.

Respondents do not seriously dispute any of the facts presented herein. Their principal argument is that the Division has not proved its allegations and that the cases cited to support the evidence adduced in this proceeding can all be distinguished as not applicable. On the other hand, respondents do not offer any affirmative defense of their activities, but argue that they have been misinterpreted.

From the respondents' own description of the over-the-counter market in Denver during the period herein, it is apparent that the climate was right for an offering of the type represented by LCM. The gold fever then existing and the premium prices being extracted for over-the-counter stocks provided an irresistible attraction for a gold stock priced at $.25 a share.

This was only the second underwriting by WSW and its success was essential to WSW's continued participation in underwritings. It has since had 12 or more, and has grown from a two-man firm in 1978 to one with some 200 employees and 7 offices at the present time. Accordingly, the manipulative scheme engaged in by WSW, Abbruzzese, Sandberg, Asmus, GBS and Pandolfo was instrumental in guaranteeing the success of the LCM offering and aftermarket acceptance. In this con-

nection the Commission has stated in Bruns, Nordeman & Company, 40 S.E.C. 652,660 n. 11:

> A person contemplating or making a distribution has an obvious incentive to artificially influence the market price of the securities in order to facilitate the distribution or to increase its profitability. We have accordingly held that where a person who has a substantial interest in the success of a distribution takes active steps to increase the price of the security, a prima facie case of manipulative purpose exists. The Federal Corporation, 25 S.E.C. 227,230 (1947). See also Halsey Stuart & Co., Inc., 30 S.E.C. 106,124(1950).

The representations made by Sandberg and others, as illustrated by the pre-dated orders at $1 a share, to assure that LCM would open at a $1 a share or more, were false and misleading. Further, they could not have been made under the circumstances, without the knowledge of Abruzzese and Asmus. In fact Asmus testified that he directed the pre-dated orders be sent to the trading room, so he must have known the price at which they were to be offered. Asmus testified, also, that Brown and Abbruzzese were both aware that he had orders for aftermarket purchases at premium prices in the trading room prior to the first day of trading. Abbruzzese, on the other hand, testified that he was not aware that Asmus had LCM order tickets at prices of $1 or more in the trading room prior to January 29, 1980; and that if Asmus testified that he, Abbruzzese, was aware of it then Asmus would be mistaken. Abbruzzese further testified that he did not learn that all of the pre-dated tickets Asmus had were not executed on January 29, 1980, until the week of the hearing, July 12, 1982. The testimony of Abbruzzese

throughout was argumentive and in this instance simply not credible.

Sandberg's protestations that he was merely stating an opinion when he said that LCM would open at a $1 and go to $3 within 6 months and that, therefore, it did not further the manipulation, is rejected. In Armstrong, Jones and Co., et al, 43 S.E.C. 888, (1968), aff'd 421 F.2d 349 (6th Cir. 1970), cert. denied, 398 U.S. 958 (1970) the Commission stated, at 895 and 896:

> Respondents contend that the alleged price predictions were not fraudulent because they were couched in terms of opinion and customers were informed that the stock was speculative, * * * The predictions of specific and substantial increases in the price of this speculative security were inherently fraudulent, and it is irrelevant that such predictions were couched in terms of opinion and the customer was advised that the security was speculative, or that the purchaser was a friend or former customer of the salesman or initiated the transaction. See, also, R. Baruch and Company, 43 S.E.C. 13,18 (1966); Securities and Exchange Commission v Allison, (1981-1982 Transfer Binder Fed Sec L Rptr). (CCH) ¶98, 427, p 92,548 n.3

As the record discloses, WSW with its retention of 83% of the offering, the agreement with GBS to act as market maker, the solicitation of pre-aftermarket purchases at premium prices, and its projections of higher prices dominated the market for LCM stock. Accordingly, the offering circular was materially misleading in failing to disclose WSW's domination of the market and manipulative activities. Therefore, the use in the sale of LCM stock of an offering circular which did not contain such disclosure constituted a violation of the anti-fraud provisions of the securities laws.[2/]

2/ Charles Hughes & Co., v Securities and Exchange Commission, 139 F.2d 434,437 (2d Cir. 1943); Securities and Exchange Commission v Cooper, 402 F. supp. 516,524 (S.D.N.Y. 1975).

False representations, or representations that are false and misleading because necessary qualifications or explanations are omitted, have long been held in a number of cases, by the courts and the Commission, to constitute activity violative of the anti-fraud provisions of the securities acts. Charles Hughes & Co., v Securities and Exchange Commission 139 F.2d 434,437 (2d Cir. 1943); Norris & Hirshberg v Securities and Exchange Commission, 177 F.2d 228,233 (D.C. Cir. 1949); Charles E. Bailey & Co., 35 S.E.C. 33,43 (1953); Harris Clare & Co., Inc., et al., 43 S.E.C. 198,201 (1966).

It is fundamental that a misrepresentation or omission must be material to serve as a basis for a finding that a violation of the anti-fraud provisions of the federal securities laws has occurred. The concept of materiality has been described as the cornerstone of the disclosure system established by the federal securities laws. The basic test adopted by the courts for determining materiality is whether "a reasonable man would attach importance . . . (to those facts) in determining his choice of action in the transaction in question." Securities and Exchange Commission v Texas Gulf Sulphur Co. 401 F.2d 833,849 (2d Cir. 1968), cert. denied sub nom Coates v Securities & Exchange Commission, 394 U.S. 976 (1969). Positive proof of reliance is not necessary. All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered them important in the making of his decision.[3/] Likewise,

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3/ Affiliated Ute Citizens of Utah, et al. v United States, 406 U.S. 128,153 (1972).

an omitted fact is material if "disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available."[4/]

Finally, respondents contend that the evidence does not support a finding they acted with scienter. On the contrary, the record fully supports a finding of awareness on the part of each respondent, or at the very least, that they were recklessly indifferent to the consequences of their actions.[5/] Accordingly, it is found that respondents acted with the requisite scienter.[6/]

It is found that respondents WSW, Abbruzzese, Asmus, Sandberg, GBS and Pandolfo, wilfully violated Sections 17()(1)(2) and (3) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Rule 10b-6

The Order alleges that from about November 1979 until about March 1980, WSW, Abbruzzese, Sandberg and Asmus wilfully violated

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4/ TCS Industries, Inc. v Northway, Inc., 426 U.S. 438,449 (1976).

5/ Recklessness has been held sufficient to satisfy the scienter requirement. See, e.g. Mansbach v. Prescott, Ball & Turben, 598 F.2d 1017,1023-25 (6th Cir. 1979); Edward J. Mawod & Co. v SEC 591 F.2d 588,595-597 (10th Cir. 1979); First Virginia Bankshares v Benson,559 F.2d 1307,1314 (5th Cir. 1977) cert. denied, 435 U.S. 952 (1978).

6/ It is noted, however, that scienter is not necessary to establish violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, and the findings of fraud herein are made under both those sections. Findings that respondents also violated 17(a)(1) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder are merely cumulative.

Section 10(b) of the Exchange Act and Rule 10b-6 thereunder while participating in the distribution of the stock of LCM.[7/]

In order to prove a Rule 10b-6 violation it is necessary to establish that alleged violators were (1) engaged in a distribution of securities and (2) bid for or purchased or attempted to induce or induced others to purchase those securities.

There is no doubt that the above-named respondents were engaged in a distribution of LCM stock. They all participated in the underwriting which has been described previously, the results of which were reported by the issuer, LCM, on a Form 2-A Report filed pursuant to Rule 260 of Regulation A. This report states that the offering commenced on December 31, 1979 and was completed on January 31, 1980. Moreover, the closing actually occurred on January 28, 1980, with checks dated January 29, 1980, being issued to LCM for $1,310,000 and to WSW for $190,000. Under normal conditions it would appear that the distribution was likewise completed on January 28, 1980, with

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7/ Rule 10b-6 (17 CFR 240 10b-6) provides, in pertinent part, that:
It shall constitute a "manipulative or deceptive device or contrivance" as used in Section 10(b) of the (Exchange Act) for any person

(1) who is an underwriter or prospective underwriter in a particular distribution of securities, or . . .

(3) who is a broker,or other person who has agreed to participate or is participating in such a distribution, directly or indirectly. . . either alone or with one or more other persons, to bid for or purchase for any account in which he has a beneficial interest , any security which is the subject to such distribution . . . or to attempt to induce any person to purchase any such security . . . until after he has completed his participation in such distribution . . .

the aftermarket beginning on January 29, 1980. However, the respondents have persisted that the distribution actuallly terminated on January 17, 1980, at which time, they state, WSW's allocation of 4,996,000 shares had all been sold. WSW picked an arbitrary billing date of January 10, 1980 with settlement on January 17, 1980. Thus, they argue, the distribution was completed on January 17, 1980 and, therefore, the transactions engaged in between January 18 and 29, 1980, were not violative of 10b-6 as they were no longer participating in a distribution during that period.

In support of their argument respondents rely on an account statement from Securities Settlement Corp.(SSC) for the WSW account, for the period ending January 31, 1980, which shows that 4,989,800 shares had been billed as of January 17, 1980. The billing date appears to be synonymous with trade date so that the settlement date for a January 17 trade would have been January 24, 1980. This would mean that all sales were not completed before January 24, 1980, based on the respondent's own records.

The Division takes the position that the distribution was completed only when the last investor dollars were deposited in escrow on January 29, 1980. See Securities and Exchange Commission v Rega, 1975-76 Transfer Binder Red. Sec. L Rptr. (CCH) 95,999 at p. 98,147 (S.D.N.Y. 1975).

The Division urges, also, that another ground for finding that a distribution was not completed is the fact that 22 customers of WSW who had earlier placed purchase orders with WSW,

placed sell orders by January 28 for 63,500 shares at $1 a share. Thus, these customers placed both buy and sell orders for LCM stock before the offering closed and, in effect, served merely as conduits through which the LCM shares passed to the "real" distributees of the new issue-the customers who purchased at premium prices. 8/ Therefore, their purchases were not bona fide as the shares involved were not finally distributed, or had not ultimately come to rest in the hands of the investing public until January 29 or later. 9/

Rule 10b-6 does not expressly define the term "distribution." Nevertheless, judicial and administrative cases have held that the primary indicia of a distribution for purposes of the rule are the magnitude of the offering or the types of selling efforts and selling methods utilized by the seller or its agents. The Commission has said:

> The term "distribution" as used in Rule 10b-6 is to be interpreted in the light of the rule's purposes as covering offerings of such a nature or magnitude as to require restrictions upon open market purchases by participants in order to prevent manipulative practices. For these purposes a distribution is to be distinguished from ordinary trading transactions and other normal conduct of a securities business upon the basis of the magnitude of the offering and particularly upon the basis of the selling efforts and selling methods utilized. 10/

While employing these factors to determine the existence of a distribution, the Commission historically has declined to adopt an explicit definition of the term, preferring instead to determine on a case-by-case basis whether a particular transaction or series of transactions

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8 / See Report of Special Study of Securities Markets, Part 1, p. 556 (1965).

9 / Lewisohn Copper Corp., 38 S.E.C. 226,234 (1958).

10/ Bruns, Nordeman & Company, 40 S.E.C. 652,660 (1961).

constitutes a distribution for purposes of Rule 10b-6.[11]

The record fully supports a finding that the LCM offering distribution was not completed prior to January 29, 1980. The respondents were on notice that many purchases at the offering price of $.25 were immediately targeted for resale at the manipulated aftermarket price of $1. At least 63,500 shares were effectively "parked," a practice which the Commission has found violative of the securities acts.[12] Under the circumstance the respondents did not discharge their responsibilities as underwriters to maintain an orderly market.[13]

It is found that WSW, Abbruzzese, Sandberg and Asmus wilfully violated Section 10(b) of the Exchange Act and Rule 10b-6 thereunder.

Section 15(c)(1) and Rule 15c1-8

The Order charges that from about November 1979 until about March 1980, WSW wilfully violated and Sandberg and Asmus wilfully aided and abetted violations of Section 15(c)(1) of the Exchange Act and Rule 15c1-8 thereunder[14]

11/ Securities Exchange Act Release No. 18528/March 3, 1982, 24 S.E.C. Docket 1422; Collins Securities Corp. 46 S.E.C. 20 (1975), rev'd on other grounds, 562 F. 2d 820 (D.C. Cir. 1977); F.S. Johns & Company, Inc., et al, 43 S.E.C. 124 (1966); Theodore A. Landau, 40 S.E.C. 1119 (1962).

12/ Securities and Exchange Commission v Coven, 581 F.2d 1020,1029 (2d Cir. 1978), cert. denied 440 U.S. 950 (1979), rehearing denied 441 U.S. 928 (1979). Securities and Exchange Commission v Manor Nursing Centers, Inc., 458 F.2d 1082,1095 (2d Cir. 1972); Securities and Exchange Commission v Blinder, Robinson, 542 F. Supp 468 (DC Colo. 1982).

13/ General Investing Corporation, et al, 41 S.E.C. 952,958 (1964).

14/ Section 15(c)(1) in pertinent part prohibits "manipulative, deceptive or other fraudulent device(s) or contrivance(s)" by broker-dealers. Rule 15c1-8 defines "manipulative, deceptive or other fraudulent device or contrivance" to include any representation, made to a customer by a broker or dealer participating in a distribution, that securities are offered "at the market" if the market is "made, created or controlled" by the broker or dealer.

Having found that the aftermarket price of LCM stock was manipulated, it follows that such activity should have been disclosed to customers pursuant to Rule 15c1-8. The Commission has held that failure to disclose is fraudulent. In Halsey, Stuart & Co., Inc., 30 S.E.C. 106 at 112 (1949) the Commission stated:

> A manipulation may be accomplished without wash sales, matched orders, or other fictitious devices. Actual buying with the design to create activity, prevent price falls, or raise prices for the purpose of inducing others to buy is to distort the character of the market as a reflection of the combined judgements of buyers and sellers, and to make it a stage-managed performance . . . . the manipulator's design in raising prices is to create the appearance that a free market is supplying demand whereas the demand in fact comes from his planned purpose to stimulate buyers' interest. It is of utmost materiality to a buyer under such circumstances to know that he may not assume that the prices he pays were reached in a free market; and the manipulator cannot make sales not accompanied by disclosure of his activities without committing fraud. 15/

The failure of WSW to make disclosure of the manipulative activity constituted a violation of Section 15(c)(1) of the Exchange Act and Rule 15c1-8. Sandberg and Asmus are charged with aiding and abetting such violations. In SEC v Coffey, 493 F.2d 1304,1316 (6th Cir. 1974), cert. denied, 420 U.S. 908 (1975) the court said:

> ". . . we find that a person may be held as an aider and abettor only if some other party has committed a securities law violation, if the accused party

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15/ See, also, Rickard Raimore Gold Mines, Ltd., 2 S.E.C. 377,385 (1937); Duker & Duker, 6 S.E.C. 386,388 (1939); Gob Shops of America Inc., 39 S.E.C. 92,105 (1959); Edward J. Mawod & Co. 46 S.E.C. 865,871, n. 28 (1977), aff'd 591 F.2d 588 (10th Cir. 1979).

had general awareness that his role was part of an overall activity that is improper, and if the accused aider-abettor knowingly and substantially assisted the violation." See, also Woodward v Metro Bank of Dallas, 522 F.2d 84,97 (5th Cir. 1975); In the Matter of Carter and Johnson, Securities Exchange Act Rel. No. 17597/February 28, 1981. 22 SEC Docket 292,316.

The record clearly discloses that the conduct of Sandberg and Asmus brought them squarely within the requirements for an aider and abettor. They were fully aware of their part in the overall activity. (See p. 15, supra, et seq.)

Accordingly, it is found that WSW wilfully violated and Sandberg and Asmus wilfully aided and abetted violations of Section 15(c)(1) of the Exchange Act and Rule 15c1-8 thereunder. 16/

Section 17(a)(1) and Rule 17a-3

The Order charges that from about November 1979 until about March 1980, WSW wilfully violated and Asmus wilfully aided and abetted violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder in that WSW failed to accurately make current certain of its books and records, including order tickets for purchases and sales of LCM stock containing a date and time stamp reflecting time of receipt

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16/ In this context it is well established that a finding of wilfullness does not require an intent to violate the law; it is sufficient that the person charged with the duty knows what he is doing. Billings Associates, Inc., 43 S.E.C. 641,649 (1967); Tager v S.E.C. 344 F.2d 5,8, (1965); Hughes v S.E.C., 174 F.2d 969,977 (1949).

and time of execution of the order.[17]

A Division witness, William Thompson, a NASD investigator,[18] testified that he examined all of the trading tickets he could obtain in the LCM offering and aftermarket transactions. He said that Brown provided the WSW underwriting order tickets but that they did not show any date of receipt or execution. In fact, they did not not have any date stamps on them at all. As to the WSW order tickets for aftermarket trades there was usually just one date stamp. Thompson could not determine by looking at the ticket whether that date stamp represented receipt of the order or execution of the order.

Asmus testified that the pre-dated order tickets which bore time stamps prior to January 29, 1980 were time stamped at the time of receipt in the trading room. What is not clear is what the time stamp on the order tickets received after initiation of aftermarket trading represents. Asmus testified that he executed over 180 orders during the first day of aftermarket trading. Respondents contend that because of the volume of business it was not feasible to stamp the orders with time of execution.

Asmus testified that he sorted the pre-dated tickets by date and put them in piles, or batches, so he could exercise priority execution. On January 29 at the opening of the market he had a

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17/ Section 17(a)(1) of the Exchange Act, as applicable here, requires registered brokers and dealers to keep such books and records as the Commission by rule or regulation may prescribe as necessary or appropriate in the public interest or for the protection of investors. Rule 17a-3 specifies the books and records that must be maintained and kept current. Rule 17a-3(6) requires the preparation of a memorandum of each brokerage order which shall show the time of entry, the price at which executed and, to the extent feasible, the time of execution or cancellation.

18/ Thompson was a member of the joint SEC-NASD Task Force which investigated this matter.

couple of hundred tickets, buys and sells. When the market opened he started working against the piles of orders he had. He did not try to execute one ticket at a time but just bought stock against some of the buy orders and sold stock against the stack of sell tickets he had. He made notations and then fitted his buy tickets to the corresponding contra-broker. However, many of the tickets did not get stamped when executed.

As a result of the failure to properly time stamp order tickets, both during the offering and the aftermaket trading, it is impossible to reconstruct the precise trading activity in the aftermarket or to determine the effect which such activity had on the price of LCM stock. Thus, in addition to violating Rule 17a-3, the failure to properly maintain records with respect to the time of sales and purchases contributed to the manipulation or, at least, served to prevent its detection. In addition, the false marking of order tickets as "unsolicited" when they were in fact solicited contributed to the violations.[19/] (See, supra, p.20). The Commission has repeatedly stressed the importance in the regulatory scheme for strict compliance with the requirement that records be kept accurately and in proper form.[20/]

Accordingly, it is found that WSW wilfully violated and Asmus wilfully aided and abetted violations of Section 17(a)(1) and Rule 17a-3.

19/ See Haight & Company, Inc. et al 44 S.E.C. 481(1971) where at 507 the Commission said: ". . . we think it is clear that the use of the term 'unsolicited' where the order was in fact solicited constituted a false entry which could hamper this Commission in its investigatory functions."

20/ "It is obvious that full compliance with those requirements must be enforced and registrants cannot be permitted to decide for themselves that in their own particular circumstances compliance with all or some is not necessary." Olds & Company, Inc., 43 S.E.C. 298,312 (1967).

Supervision

The Order also charges that several of the respondents failed reasonably to supervise persons subject to their supervision with a view toward preventing the violations alleged in the Order.[21/] It is charged that for the period from about November 1979 until about March 1980, Brown failed reasonably to supervise Asmus; WSW and Abruzzese failed reasonably to supervise Sandberg and Asmus; and WSW failed reasonably to supervise Abbruzzese.

Failure to supervise connotes an inattention to supervisory responsibilities and a failure to learn of improprieties when diligent application of supervisory procedures would have uncovered them. However, having found that WSW and Abbruzzese wilfully violated the anti-fraud provisions of the securities laws and the rules thereunder, it is inappropriate and inconsistent to find them responsible for a failure of supervision with respect to the same misconduct. See In the Matter of Anthony J. Amato, 45 S.E.C. 282 (1973); Adolph D. Silverman, 45 S.E.C. 328 (1973); Fox Securities Company, Inc., 45 S.E.C. 377 (1973).

Brown has been with WSW since January 1, 1978, and is a vice-president, director and 15% shareholder. He is a NASD financial principal, compliance director and operations manager. He was responsible for the trading functions at WSW and was the

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21/ Section 15(b)(4)(E) provides for the imposition of a sanction against a broker or dealer or a person associated with a broker or dealer who ". . . has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules and regulations, another person who commits such a violation, if such other person is subject to his supervision."

one to whom Asmus reported when he moved from the Cherry Creek office to the Greenwood office to become the WSW trader. Brown was in charge of the back office and supervised Asmus and the trading activities. His supervision consisted primarily of reviewing the trading ledger and blotter. He visited the trading room several times a day and would ask Asmus for trading positions.

Brown testified that during the first 4 days of aftermarket trading in LCM he attempted to review the blotter on a daily basis but does not recall if he did so. He reviewed the blotter primarily, not the order tickets. He did not take any specific steps to supervise Asmus' activity during the LCM offering or aftermarket. Brown was aware that Asmus was executing aftermarket orders at a premium. He was also aware that Asmus was unable to execute all order tickets on January 29 and 30, 1980, and that caused him some concern. Brown testified that Abbruzzese shared the responsibility of trading functions with him. However, at the time of the Benedict underwriting when Asmus was made the trader for WSW, a memorandum agreement was executed which spelled out Asmus' duties, particularly with respect to market making activities. The memorandum says in part:

> Walt Asmus shall perform these duties to the best of his abilities and shall perform them solely under the supervision of John Brown, Vice President of Wall Street West, Inc. Mr. Brown will report the results of such Benedict market making activities to the Board of Directors to the degree and extent deemed appropriate by Mr. Brown.

Brown was on notice that Asmus warranted close supervision as he had been the subject of 2 serious disciplinary actions by the NASD. In Complaint, No. D-430, dated February 22, 1979, it is stated that:

First Cause of Complaint

> During the period from at least September 12, 1978 to at least October 23, 1978, Respondent Walter G. Asmus failed and neglected to comply with the definition, requirements and prohibitions of the S.E.C. Sections 3(a)(4) and 15(b) of the Exchange Act and Rules 15c1-2, 15c1-3, 15c1-5,15c2-8, and 10b-5 among others, in that while registered as a representative of J. Daniel Bell & Company, Inc., Respondent Asmus misrepresented himself and/or Adfast Systems, Inc., as a registered broker-dealer in connection with the sale, or purported sale, of 5,000 shares of Denelcor, Inc., while such security was in distribution, at a price in excess of the public offering price, without a prospectus being delivered to such customer, and further delivered to such customer, a false and misleading confirmation of trade indicating trade date of September 8, 1978 and settlement date of September 13, 1978 respectively, when in fact no such securities were purchased, and in connection therewith, Respondent Asmus, acting for Adfast Systems, Inc., received and deposited into its own account $5,250 on September 12, 1978 and September 15, 1978, respectively, thereby converting such funds to its own use and purposes until October 23, 1978, when a refund was made to the customer after Respondent Asmus refused to sell subject shares as directed by the customer on October 17, 1978.

Second Cause of Complaint

> During the period from about January 11, 1979 to date, Respondent Walter G. Asmus has failed to comply with various requests for information and records in connection with the transactions as described in the First Cause of Complaint, as required pursuant to the provisions of Article IV Section 5 of the Association's Rules of Fair Practice.

Following an appeal by Asmus the NASD modified the original sanctions and imposed a 30-day suspension as a registered representative, a 2-year suspension as a principal, a fine of $750 and a censure.[22/] He was also discharged by J. Daniel Bell & Company, Inc.

In Complaint No. D-443, dated June 2, 1980, Asmus was sanctioned for

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22/ The original sanction was a bar from association in any capacity with a member of the NASD

violation of free-riding and withholding provisions of the NASD Rules of Fair Practice. This offense occurred during August 1977. Asmus submitted an offer of settlement on November 23, 1979 which the NASD accepted on June 2, 1980. The penalty imposed was a censure and a fine of $500.

Based on the violations described above, which were known to WSW and Brown, Asmus should have been more closely supervised, particularly in light of his activities in Complaint No. D-430, which closely parallel those herein.

Brown testified that he prepared the WSW Compliance Manual. This manual contains detailed instructions of the conduct of public offerings and a section on trading and order room operations. However, Asmus testified that he was not familiar with the manual.

Abbruzzese testified that all of WSW's representatives were independent contractors; that when Asmus was working out of the Cherry Creek office as a registered representative he was an independent contractor and not an employee of WSW. When he came to the Greenwood office as the trader, it is possible that he was an employee functioning as a trader. Abbruzzese said that WSW did not need a trader prior to becoming involved in the investment banking functions of a broker-dealer.

Sometime in April 1980 Brown discharged Asmus as the trader and Asmus returned to the Cherry Creek office as a salesman. Some of the reasons that Brown gave for his release of Asmus were that: (1) Asmus was continuing to be a registered representative while acting as trader, which may have been a conflict of interest; (2) entries on the trading

blotter were incorrectly recorded; (3) when Brown reconciled the blotter he learned that Asmus was not complying with the requirement to time stamp order tickets on both receipt and execution; and (4) in anticipation of more underwritings it was necessary to revise and strengthen the trading department.

The WSW trading department is now under the direction of a full time manager who was formerly with the NASD and Bosworth Sullivan. He joined WSW in April 1980, when Asmus was removed. He has 4 people in the trading department under his supervision, 2 traders and 2 clerks to keep the records. On January 1, 1981, WSW installed an IBM computer system to facilitate its trading activities. Brown concedes that at the time of the LCM offering the trading facilities at WSW were inadequate. However, he points out that under his direction the steps described above have been taken to correct that situation.

The Commission has repeatedly stressed the duty of a broker-dealer to maintain and enforce adequate standards of supervision and has stated that this duty extends to every aspect of operations, including the trading of securities.[23/]

The record herein supports a finding that during the period from about November 1979 until about March 1980, Brown, as compliance director of WSW, failed reasonably to supervise Asmus with a view to preventing the violations found to have been committed by him.

23/ D.H. Blair & Co. 44 S.E.C. 320,331 (1970). See, also, Paine, Webber, Jackson & Curtis, 43 S.E.C. 1042,1050 (1969) Shearson, Hammill & Co., et al, 42 S.E.C. 811,838 (1965).

Public Interest

The remaining issue concerns the remedial action which is appropriate in the public interest with respect to the respondents who have been found to have committed certain violations as alleged in the Order. The Division urges that Abbruzzese, Sandberg, Asmus and Pandolfo be barred from association with any broker or dealer; that WSW and GBS have their broker-dealer registrations revoked and that Brown be suspended for 6 months from association with any broker or dealer and suspended for one year from acting in a supervisory capacity.

The appropriate remedial action as to a particular respondent depends on the facts and circumstances applicable to him, or it, and cannot be measured precisely on the basis of action taken against other respondents.[24/]

WSW, Abbruzzese, Sandberg, Asmus and Brown reiterate their position that the Division did not prove that any violations occurred and submit that any sanction in this matter is not in the public interest. GBS and Pandolfo state that should it be detemined that they are liable for any direct securities law violations the proper sanctions would be a suspension for a brief period of time.

All of the respondents herein, except Brown, have previously been sanctioned by some securities authority or organization.

On October 21, 1976, Sandberg was suspended by the Chicago Board Options Exchange (CBOE)for one year for improperly exercising discretionary authority with respect to transactions in call options. He consented to the findings without admitting or denying the charges. At that time he was a registered representative with Craig-Hallum, Inc. St. Paul, Minnesota.

24/ See Dlugash v. S.E.C. 373 F.2d 107,110 (2nd Cir. 1967).

The sanctions of Asmus by the NASD have previously been discussed at some length at page 37, supra. In addition he received a reprimand from the Secretary of State of Wyoming, for selling securities in the state without being registered in Wyoming. The Notice of Reprimand is dated May 22, 1981, but does not state the period covered.

WSW and Abbruzzese were fined $1,000 jointly and severally by the NASD in Complaint No. D-427, dated January 23, 1980. This was for failure to properly supervise a branch manager of WSW during that period from September 1978, when the branch opened, until about the end of January 1979. WSW and Abbruzzese appealed the NASD findings to the Commission, which however affirmed them on December 9, 1981 (Exchange Act Release No. 18320). The Commission's decision was appealed to the U.S. 10th Circuit Court of Appeals, where it is now pending. In addition, WSW was also reprimanded by the State of Wyoming in the same notice naming Asmus.

GBS and Pandolfo were the subjects of a remedial sanction imposed by the Commission in Exchange Act Release No. 12616, dated July 12, 1976. GBS and Pandolfo were found to have wilfully aided and abetted violations of Section 5(a) and 5(c) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. GBS had its registration as a broker-dealer suspended for 2 weeks and Pandolfo was suspended from being associated with any broker-dealer for 2 weeks.

Brown has not been sanctioned previously and is now a member of the NASD District Business Conduct Committee. According to his testimony he was responsible for reorganizing the WSW trading department after the violations found herein occurred. However, his failure to adequately supervise Asmus and the trading department during the pertinent period herein was a significant factor in the manipulation.

In light of the evidence in the record supporting the egregious violations found herein, and in the absence of any truly mitigating factors, it is concluded that the sanctions ordered below are appropriate and essential in the public interest.

As the court said in Arthur Lipper Corp., v S.E.C., 547 F.2d 171,184 (2d Cir. 1976), cert. denied, 434 U.S. 1009:

> "The purpose of such severe sanctions must be to demonstrate not only to petitioners but to others that the Commission will deal harshly with egregious cases."

In Steadman v Securities and Exchange Commission, 603 F.2d 1126 (5th Cir. 1979), affirmed, 450 U.S. 91 (1981), the court said that when the Commission imposes severe sanctions it "should articulate why a lesser sanction would not sufficiently discourage others from engaging in the unlawful conduct it seeks to avoid."

Broker-dealers and registered representatives engaging in the type of conduct practiced by respondents impose a social burden on the community which must be considered. Both their present and past conduct has required the SEC, the NASD, the CBOE and the State of Wyoming to devote a great deal of their resources to police their activities and to protect the public from the fraud and deception practiced by respondents. Broker-dealers, registered representatives and the securities industry must be put on notice that such conduct will not be tolerated. Accordingly, it is believed that any sanctions less than those imposed would be ineffectual.

ORDER

IT IS ORDERED that:

(1) The registration as a broker-dealer of Wall Street West, Inc. is revoked, and the firm is expelled from membership in the National Association of Securities Dealers.

(2) The registration as a broker-dealer of General Bond & Share Co. is revoked, and the firm is expelled form membership in the National Association of Securities Dealers.

(3) Theodore V. Abbruzzese, Walter G. Asmus, Kenneth W. Sandberg, Sam C. Pandolfo, and each of them, is barred from association with any broker-dealer.[25/]

(4) John L. Brown is suspended from association with any broker-dealer for nine months.

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

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 days after service of this initial decision upon him, filed a petition for review pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(d), 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.[26/]

Ralph Hunter Tracy
Administrative Law Judge

Washington, D.C.
February 7, 1983

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

26/ All proposed findings, conclusions, and contentions have been considered. They are accepted to the extent that they are consistent with this decision.