IN THE MATTERS OF

D. H. BLAIR & CO. ET AL.*

File Nos. 3-329, 8-8239. Promulgated May 21, 1970

Securities Exchange Act of 1934—Sections 15(b) and 19(a)(3)

BROKER-DEALER PROCEEDINGS

Grounds for Remedial Action

Sale of Unregistered Securities

Manipulation

Improper Extension of Credit

Inadequate Supervision

Where salesman knew or should have known that sales of unregistered securities through account handled by him were being made for controlling person of issuer, and was instrumental in arrangements through which customers engaged in manipulative scheme involving transactions in and quotations of such securities at advancing prices by salesman's employer as well as by other, ostensibly independent, dealers, *held*, willful violations of registration and antifraud and antimanipulative provisions of securities acts, and in public interest to bar salesman from association with broker-dealer.

Where registered broker-dealer, by virtue of employees' acts, violated registration, antifraud and anti-manipulative provisions; its senior partners failed reasonably to supervise with view to preventing violations; and its trader participated in manipulative activities; where clearing broker-dealer failed reasonably to supervise with a view to preventing violations of registration provisions and unlawfully extended credit; and where another broker-dealer failed to exercise sufficiently comprehensive supervision over its trader who aided and abetted manipulation, *held*, in public interest to impose sanctions on respondents pursuant to offers of settlement.

* Robert W. Miller; Charles J. Miller; Ralph J. Trapani; Ronald Neumark; Seymour Katz; Loeb, Rhoades & Co., formerly Carl M. Loeb Rhoades & Co.; Goodbody & Co.; Richard V. Miller; Troster, Singer & Co.; Sidney Woolich.

APPEARANCES:

Joseph C. Daley, Roberta S. Karmel, Robert Berson, Howard Bernstein and *William Nortman*, for the Division of Trading and Markets of the Commission.

George Rosier and *Victor Brudney*, of Hellerstein, Rosier & Brudney, for D. H. Blair & Co. and Charles J. Miller.

Milton V. Freeman, Harry Huge and *Werner J. Kronstein*, of Arnold & Porter, for Robert W. Miller.

Bernard D. Cahn, for Ralph J. Trapani.

Mortimer Goodman and *Joseph Cosgrove*, of Grandefeld & Goodman, for Ronald Neumark.

Arthur Lawler, Peter Landau, Richard B. Rodman and *David H. Carlin*, of Lawler, Sterling & Kent, for Seymour Katz.

Alvin K. Hellerstein and *Richard Savitt*, of Stroock & Stroock & Lavan, and *Sam Harris* and *Arthur Fleischer, Jr.*, of Strasser, Spiegelberg, Fried & Frank, for Loeb, Rhoades & Co.

William F. Clare, Leonard B. Boehner and *Henry Poole*, of Clare & Whitehead, for Goodbody & Co. and Richard V. Miller.

George Adams and *J. F. Dwyer*, of Satterlee, Warfield & Stephens, for Troster, Singer & Co.

George A. Dean, Jr. and *Joseph A. Tracy*, for Sidney Woolwich.

FINDINGS AND OPINION OF THE COMMISSION

These were private proceedings pursuant to Sections 15(b), 15A and 19(a)(3) of the Securities Exchange Act of 1934 ("Exchange Act") with respect to D. H. Blair & Co., a registered broker-dealer, certain other registered broker-dealers, and various persons associated or formerly associated with them. Following extensive hearings, offers of settlement were submitted by Blair; Charles J. Miller, a partner of Blair; Robert W. Miller, who was a Blair partner during the period encompassed by the order for proceedings; Ralph J. Trapani, Blair's trader during that period; and Loeb, Rhoades & Co. ("Loeb") and Goodbody & Co., both registered broker-dealers.[1] They waived post-hearing procedures and, solely for the purpose of these proceedings, consented to our making certain findings and suspending Blair from the National Association of Securities Dealers, Inc. ("NASD") for up to 30 days, suspending Robert Miller and Trapani from association with a broker or dealer for a like period and censuring the other respondents.

The hearing examiner filed an initial decision with respect to the remaining respondents, in which he concluded that Seymour Katz, a salesman for Blair during the relevant period, should be barred from association with any broker or dealer;

[1] Blair, Loeb and Goodbody are also members of the New York Stock Exchange and other exchanges and of the National Association of Securities Dealers, Inc.

that Ronald Neumark, a salesman for and later partner of Blair, and Richard V. Miller and Sidney Woolwich, traders for Goodbody and Troster, Singer & Co. ("Troster"), respectively, should be suspended from such association for periods of 20, 10 and 5 business days, respectively; and that Troster should be censured. We granted a petition for review filed by Katz, and he and our Division of Trading and Markets filed briefs. Since neither the other respondents dealt with in the initial decision nor our Division of Trading and Markets sought review and we did not order review on our own initiative, the initial decision became final as to those respondents. However, we determined not to make that decision public at that time, and to defer the effective date of the sanctions ordered as to those respondents, until issuance of our decision as to the remaining respondents.

On the basis of an independent review of the record and the offers of settlement, which for reasons stated below we have determined to accept, and for the reasons set forth herein and in the initial decision, we make the following findings.

The issues in these proceedings relate to transactions in the common stock of American States Oil Company ("ASO") in an account maintained at Blair for one Larry Gulihur during the period between November 1960 and about July 1961. As further appears below, this account was used by Gulihur and his father-in-law, J. Tom Grimmett, in connection with distributions of unregistered ASO stock and a manipulation of the market in such stock.

ASO had been incorporated in 1952 to deal in real property and to develop and deal in oil, gas and minerals. ASO's operations were negligible. For the three fiscal years ended April 30, 1962, its total income was $3,147 and its taxable losses totalled $151,601. At the end of that period it had an earned surplus deficit of more than $1.2 million. Grimmett was president of the company from its inception until 1954, and again from 1959 until his death in 1964. In 1959, at a time when approximately 300,000 shares of ASO stock were outstanding, ASO issued 650,000 shares to a bank as escrow agent and trustee for Grimmett and, between October 1959 and January 1960, it issued an additional 550,000 shares to Mid-State Drilling Company as Grimmett's nominee. None of ASO's shares were registered under the Securities Act of 1933. Mid-State was a shell corporation which Grimmett had acquired from ASO in 1957 for $15,000 and which he employed as a vehicle for transactions in ASO stock. At the time he acquired Mid-State, Grimmett designated Gulihur as its president and gave him

and his wife 8,000 shares and his own wife 8,000 shares, out of a total of 20,000 outstanding shares. Gulihur performed office work for Grimmett and was paid by ASO, receiving no income from Mid-State. It is thus clear that, as found by the examiner, Grimmett at all pertinent times was a person in control of ASO and Mid-State.

SALE OF UNREGISTERED SECURITIES

Between November 10, 1960, when the Gulihur account was opened at Blair, and the end of April 1961, 93,567 shares of ASO stock were purchased for the account, at prices increasing from 1 1/2 to 5 3/8, and 60,805 shares were sold at prices ranging from 3 1/8 to 6. With the exception of 8 transactions in another security, these were the only transactions in the account. Of the ASO shares purchased, 21,500 were part of the 550,000 shares which had been issued by ASO to Mid-State. These shares were purchased in a single transaction in March 1961 from a broker-dealer which was in fact acting as agent for Grimmett and Mid-State, and they were resold out of the Gulihur account. The record further shows that between 1959 and 1961 Mid-State sold a total of 505,000 of the 550,000 shares as well as more than 100,000 shares bought in the open market.

We find that Blair and Katz, who was the salesman handling the Gulihur account, were "statutory underwriters" with respect to the sales of ASO stock for that account and willfully violated Sections 5(a) and 5(c) of the Securities Act of 1933. Section 2(11) of that Act defines an "underwriter" to include any person who offers or sells for an issuer in connection with the distribution of any security, or participates in any such undertaking. For purposes of Section 2(11), "issuer" is defined as including a person directly or indirectly controlling the issuer or under common control with the issuer. It is thus immaterial whether, as found by the examiner, Grimmett, Gulihur and Mid-State were in common control of ASO, or whether, as the record more clearly indicates, Grimmett controlled Gulihur as well as ASO and Mid-State. In either event, the sales of ASO stock were made for an "issuer." Nor is it material that part of the shares sold had been acquired in open-market purchases[2] or that Blair's sales were exclusively to other broker-dealers.[3]

[2] See *Gearhart & Otis, Inc.*, 42 S.E.C. 1, 27-28 (1964), *aff'd* 348 F.2d 798 (C.A. D.C., 1965).

[3] The record shows, however, that a substantial number of shares were subsequently resold to public investors.

Katz contends that the record does not show that he knew he was selling stock which should have been registered and that we cannot find that he willfully violated the registration provisions. He asserts that he was an "innocent pawn" of Grimmett and Gulihur, and that the only evidence to the effect that he was a "knowing participant" is Gulihur's testimony which, he argues, is unworthy of belief because Gulihur admitted giving false testimony and a false affidavit. The examiner considered that there was no basis for rejecting all of Gulihur's testimony, which attributed to Katz knowledge that the Gulihur account was merely a "front" for Grimmett and active collaboration in Grimmett's scheme, and he based certain of his findings on it. In our view, even if such testimony is disregarded to the extent it conflicts with Katz's testimony, the latter testimony and other evidence in the record amply support the examiner's findings that Katz knew or should have known that the ASO stock being sold for the Gulihur account was control stock and that he willfully violated the registration provisions.[4] Recently, in holding that violations of Section 5 of the Securities Act by certain salesmen were willful, we stated that "salesmen, no less than broker-dealers, should be aware of the requirements necessary to establish an exemption from the registration requirements of the Securities Act, and they should be reasonably certain such an exemption is available, particularly in circumstances where their activities depart from normal business practices . . ." [5] In the same case, we held that a salesman is required to make certain basic inquiries concerning the sellers and the source of their stock when he is asked by unknown persons to sell substantial amounts of little known securities; that the violations of a salesman who failed to make reasonable inquiry despite factors which should have alerted him to the need for such inquiry were willful; and that careless disregard of his responsibilities as a securities salesman constituted willfulness.[6] Here the record demonstrates that at the least Katz closed his eyes to circumstances which clearly indicated the ASO stock in question was control stock.

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[4] Willfulness within the meaning of Section 15(b) of the Exchange Act requires only an intention to commit the act which constitutes the violation and not an actual awareness of the violation. See, *e.g.*, *Hughes* v. *S.E.C.*, 174 F.2d 969 (C.A. D.C., 1949); *Gilligan, Will & Co.* v. *S.E.C.*, 267 F.2d 461, 468 (C.A. 2), *cert. denied* 361 U.S. 896 (1959); *Tager v. S.E.C.*, 344 F.2d 5, 8 (C.A. 2 1965).

[5] *Strathmore Securities, Inc.*, 43 S.E.C. 575, 582 (1967), *aff'd* 407 F.2d 722 (C.A. D.C., 1969)

[6] *Id.*, at pp. 583-86 of release. We do not consider that a finding in Katz's favor in this case is required by virtue of our action in *Lloyd, Miller & Company*, 42 S.E.C. 73 (1964), cited by Katz, where we held that salesmen had not been shown to have committed willful violations of the registration provisions where it did not appear that they knew or had reason to know that registration was required.

While employed by another firm prior to joining Blair on November 1, 1960, Katz had serviced an account in Gulihur's name and admittedly had become aware that Gulihur was the son-in-law of Grimmett and that the latter was president of ASO. Shortly after Katz became employed by Blair, he opened accounts for a number of his old customers, including Gulihur. According to Katz, Gulihur asked him, shortly before that account was opened, if Blair would enter quotations for ASO stock in the daily sheets of the National Quotation Bureau, Inc. ("sheets") for him. Trapani, Blair's trader, at first refused, apparently because his income was based on the firm's own trading profits and he was using the full number of listings in the sheets for which he had subscribed. However, he was instructed by a Blair partner to insert such quotations and did so beginning with the sheets dated November 10.

After the account was opened, Katz had daily conversations with Gulihur, in which the latter gave orders for the purchase or sale of ASO stock at specified prices, on the basis of which Trapani inserted the quotations. Katz was given discretion to buy or sell ASO stock, within specified limits as to amounts, at the indicated prices. Katz admitted that he also spoke frequently with Grimmett concerning the account and that the latter placed orders with him for the account. In late November 1960, Loeb, which cleared Blair's accounts, received checks drawn on Grimmett's bank account in payment for ASO stock purchased for the Gulihur account. At Loeb's request, Katz had Grimmett furnish Loeb written authorization to receive his checks. Trading in the Gulihur account was suspended for several days in January 1961 after a Grimmett check had failed to clear and during this period, Katz, pursuant to Loeb's request, asked Gulihur to submit an affidavit to Loeb concerning his relationship to ASO. Gulihur submitted an affidavit which stated that he was not an officer or director of ASO, and that he was sole owner of his shares and was trading for his own benefit. Trading in the account was again suspended on March 14, 1961, when shares sold for the account had not been delivered, and meetings were held at Blair and at Loeb, in which Katz, Gulihur, Grimmett and certain of the Blair and Loeb personnel variously participated. At that time Gulihur and Grimmett disclaimed any interest in the account by the latter. Resumption of trading was thereafter permitted and activity in the account, involving mostly purchases, increased until the trading ended on April 28, 1961, at which time there was a debit balance of about $145,000.

Katz's admitted knowledge regarding the relationship between Gulihur and Grimmett, the latter's position with ASO and the payments made with checks drawn on Grimmett's bank account, and Katz's frequent contacts with Grimmett regarding transactions in the account, combined with the unusual manner in which the account was carried on, at the least placed Katz on notice that a searching inquiry was called for as to whether the shares being sold represented control stock which could not be sold without registration. Yet Katz made no meaningful investigation.[7] He admitted that he had no knowledge concerning Gulihur's financial position, or how much ASO stock Gulihur owned, and had no information about ASO.

Katz asserts that he relied on the determinations of partners and attorneys of Blair and Loeb who permitted continuation of the Gulihur account with knowledge of the facts known to him. While as discussed below, the record shows that the Millers and Loeb were also on notice of irregularities, unlike Katz they were not aware of the active role played by Grimmett in running the account. Moreover, any such reliance, while it may be a pertinent factor in determining the appropriate sanction, cannot relieve Katz of his own responsibility.[8]

The examiner concluded that Neumark also willfully violated Sections 5(a) and 5(c) of the Securities Act. He found that Neumark shared commissions with Katz on the latter's business until Neumark became a partner of Blair on January 1, 1961, was "intimately knowledgeable" concerning the transactions in the Gulihur account and, particularly after he became a partner, exercised some authority over that account.

We further find, pursuant to their offers of settlement, that Robert and Charles Miller, the senior partners of Blair, failed reasonably to supervise, and that Loeb failed reasonably to supervise its margin and bookkeeping departments, with a view to preventing the violations of Section 5. The testimony regarding the knowledge which the Millers had regarding the Gulihur account and activities related to it, and that concerning the extent to which Blair personnel relied on Loeb for information and decisions, and vice versa, is conflicting in

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[7] A thorough investigation would have uncovered the facts that in 1956 Grimmett, on the basis of a complaint filed by this Commission, had been enjoined from further violations of Section 5 of the Securities Act in the sale of ASO stock, and we had issued an order temporarily suspending an exemption under Regulation A with respect to a proposed offering of ASO stock by Grimmett, on the grounds that, among other things, the notification which had been filed failed to disclose the sale by Grimmett of a substantial number of unregistered shares of ASO stock within the preceding year.

[8] *Mark E. O'Leary*, 43 S.E.C. 842, 848 (1968), *aff'd* 424 F.2d 908 (C.A. D.C., January 30, 1970).

many respects. And it may well be that the division of responsibility regarding Blair's accounts between Blair and Loeb contributed to the failure to terminate trading in the Gulihur account at an early stage. In our view, however, both the Millers and Loeb failed to carry out their responsibilities.

While the Millers denied having any awareness of the Gulihur account until mid-March 1961, just prior to the suspension of trading, there is considerable testimony which would indicate an earlier awareness.[9] Even accepting the Millers' testimony in this respect, however, it appears that there was a serious breakdown in supervision and that they should have been aware of the account almost from its inception. They testified that Neumark who had come to Blair with Katz from a common prior firm with the understanding that he would become a partner on January 1, 1961, and who, as noted, shared commissions with Katz on all their business up to that time, was given supervisory responsibilities over the salesmen, including Katz, as soon as he joined Blair on November 1, 1960.[10] It seems apparent that Neumark should not have been placed in a supervisory position over Katz with whom he shared commissions. Moreover, in view of his lack of prior supervisory experience, he should himself have been closely supervised by the senior partners. With proper supervision of the handling of customers' accounts, the unusual nature of the trading in the Gulihur account, involving a large turnover in a single obscure security and trades of substantial blocks with small firms, would have been noted and given rise to a careful inquiry. That both bid and ask quotations were being inserted in the sheets for the customer, in itself a highly unusual practice, was a further "red flag". However, Trapani was virtually unsupervised in his trading activities. By the middle of March, the Millers admittedly became aware of the account and at least Robert Miller was apprised of the relationship between Grimmett and Gulihur and the former's position with ASO. However, as noted, trading was permitted to resume after an interruption, without the thorough inquiry into the nature of the account which should have been made.

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[9] For example, Katz testified that Charles Miller authorized the insertion of quotations for the Gulihur account in the sheets, and this testimony is to some extent corroborated by Trapani's testimony that he was directed to insert quotations by a partner of the firm. According to the testimony of a Loeb partner with back-office responsibility, he discussed the Gulihur account with Robert Miller in January 1961 in connection with the short suspension of trading at that time.

[10] The partner who had primary responsibility for supervision of the salesmen at that time was preparing to leave Blair to form a new firm.

Under the clearing arrangement between Blair and Loeb, the latter firm in essence handled all aspects of over-the-counter transactions by Blair's customers once they were executed, including the preparation and mailing of confirmations and monthly statements, the receipt and delivery of securities and money, and the maintenance of appropriate records. It also obtained any payment extensions necessary under Regulation T. In addition, Loeb's research facilities were available to Blair, which had only a one-man research department.

In a statement which it has submitted to us concerning the responsibilities of clearing firms, Loeb urges that we should not impose on a clearing firm the obligation to exercise a general responsibility over the operations of its "correspondent" firm. It states that in its view such action would result in inhibiting clearing relationships contrary to the public interest. We do not undertake in this opinion to impose such a general obligation on a clearing firm. Arrangements between clearing and correspondent firms are a matter of contract between them, so long as the public customers' interests are not jeopardized. But where, as here, the record shows that personnel of the clearing firm were aware of serious irregularities in an account, it seems to us both reasonable and in the public interest to impose on that firm an independent obligation to make appropriate inquiry and take prompt steps to terminate any participation in activity violative of the securities laws.

As previously noted, from the outset of the account checks received by Loeb in payment for purchases were drawn on Grimmett's bank account. In November or December 1960, a partner with back-office responsibility was informed by the margin department of Grimmett's checks and payment problems and a credit report was obtained on Gulihur in December 1960 which stated, among other things, that Gulihur was the son-in-law of and employed by Grimmett, the "owner" and president of ASO; that he was president of Mid-State, and his wife and mother-in-law the other officers; that his estimated monthly income was $950; and that he was slow or delinquent in payments to various creditors. Although the partner testified that he relayed this information to Blair (either to one of the Millers or Neumark) and was told that Gulihur was trading for his own account, under the circumstances, Loeb was clearly on notice that the account was in fact a "front" for Grimmett.

MANIPULATIVE ACTIVITIES

We find, as did the examiner, that Katz participated in a manipulative scheme with respect to ASO stock, thereby willfully violating or willfully aiding and abetting violations of Section 17(a) of the Securities Act, Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b–5, 10b–6 and 15c1–2 thereunder. As previously stated, from the time the Gulihur account was opened on November 10, 1960, Trapani inserted quotations for ASO in the sheets pursuant to the orders which he received from Katz who in turn received them from Gulihur or Grimmett. Between November 10 and January 17, 1961, when Goodbody first inserted quotations for ASO, Blair's bids, which were generally the highest or equal to the highest in the sheets, increased from 1 3/4 to 3 1/2 and then declined to 3. During this period, ASO stock was purchased for the account at prices rising from 1 1/2 to 3 1/2 before going down to 3, and sales were effected at prices between 3 and 3 3/4. As found by the examiner, these prices and the quotations based on them were arbitrarily determined and dictated by Gulihur and Grimmett.

According to Katz's testimony, Gulihur had asked him to try to get other dealers into the sheets; he discussed the matter with Trapani; the latter subsequently advised him that Goodbody and Troster would go into the sheets if they would receive 1/8 of a point on each transaction; and Gulihur agreed to this arrangement. Goodbody and Troster began quoting ASO in the sheets on January 17 and February 8, 1961, respectively. The examiner found that Trapani had agreements or at least understandings with Richard Miller, a Goodbody trader, and Woolwich, a Troster trader, pursuant to which quotations for ASO would be inserted on behalf of Goodbody and Troster, respectively, and those firms would receive 1/8 of a point profit on their transactions in ASO stock with Blair. While the three traders denied the existence of any agreement, the examiner took into consideration among other things the fact that Trapani had discussed ASO with the other two before they entered quotations and had told them he had orders in that stock, the similarity of the increasing quotations of the three firms which were generally the highest or equal to the highest in the sheets, and the facts that most of the transactions in ASO effected by Goodbody and Troster were with Blair and that they received a profit of 1/8 on nearly all transactions with Blair.

Katz asserts that he had little experience in over-the-counter trading and did not know he was participating in a manipulation. He states that he relied on Trapani with respect to the propriety of getting other dealers into the sheets, and on the stature of the two other firms involved; and that, since the period was one of generally rising prices and Gulihur had advised him that the price of ASO had been depressed because of year-end tax selling, he had no reason to question the propriety of the increase in the prices given him by Gulihur. We cannot accept these claims. The record, including particularly Katz's own testimony and admissions, demonstrates that at the least he was clearly on notice that Gulihur and Grimmett were engaged in improper market activities and that he was their willing instrument. He admits that he regarded "the whole thing" as suspicious "right from the beginning", and was of the opinion that Gulihur and Grimmett were trying to move the price of the stock up.[11] Moreover, he must or at least should have been aware that the arrangements with Goodbody and Troster which he was instrumental in establishing would have the effect of creating a false appearance of activity in ASO stock and thereby facilitate the manipulation.[12]

We further find that Trapani also willfully violated or willfully aided and abetted violations of the antifraud provisions referred to above. While the record shows that he was directed to enter quotations for ASO in the sheets for the Gulihur account, this does not absolve him from responsibility for his actions. He was aware that it was an unusual practice to enter quotations in the sheets dictated by a customer and that the prices given to him showed a steady rise. Moreover, as noted above he was instrumental in making the arrangements with the Goodbody and Troster traders which he should have known would create the appearance of independent trading interest by those firms and would contribute to a distortion of the market.

The examiner also found that Neumark willfully violated or willfully aided and abetted violations of the antifraud provisions referred to above.

On the basis of the willful violations of its employees, we also

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[11] It is no defense to a manipulative program that it was undertaken in the *bona fide* belief that the security should be selling at a higher price. See *Gob Shops of America, Inc.*, 39 S.E.C. 92, 102 (1959).

[12] As we pointed out in *W. S. Wien & Co.*, 24 S.E.C. 4, 13-14 (1946), "it is improper for a dealer who is furnishing advancing quotations of his own to employ an ostensibly independent dealer to publish advancing quotation at the same time so as to raise prices and create an appearance of trading in order to induce purchases or sales of securities. The nature of such conduct is that it creates a false and misleading appearance of active trading . . ." (Footnotes omitted.)

find that Blair willfully violated the antifraud provisions designated above. And, for reasons previously stated, we find that Robert and Charles Miller failed reasonably to supervise with a view to preventing such violations.

The examiner also found that by their trading activities pursuant to the agreement or understanding with Trapani, Richard Miller and Woolwich willfully violated or willfully aided and abetted violations of the antifraud provisions referred to above.

Pursuant to Goodbody's offer of settlement, we find that it failed to exercise sufficiently comprehensive supervision over its trader Miller and that such failure permitted Miller to aid and abet violations of the antifraud provisions resulting from the illegal manipulation and distribution of ASO stock. The record shows that supervision of traders at Goodbody during the period in question was very limited and directed primarily to protection of the firm's capital. The manager of the trading department, who was required to give his approval before a security could be traded for the first time, generally gave such approval if there appeared to be sufficient activity in the stock and if other firms he considered reputable were also trading the stock. If a trading market already existed, there was no requirement to research the issuer or otherwise investigate the stock, and no such research or investigation was undertaken with respect to ASO. Following the commencement of trading, the traders had discretion as to quotations to be inserted. The manager reviewed trading transactions on a daily basis, but admittedly was concerned primarily with profits made and the extent of the firm's position. The partner in charge of the trading division daily reviewed the firm's position in each stock traded and periodically spot-checked particular transactions.

We have repeatedly stressed the duty of a broker-dealer to maintain and enforce adequate standards of supervision and have stated that this duty extends to every aspect of operations, including the trading of securities.[13] We find that here proper supervision would have alerted the firm to the unusual nature of the trading activity in ASO, including the concentration of transactions with Blair at an almost constant profit of 1/8, and caused it to undertake a diligent inquiry. In a brief filed by Goodbody prior to submission of its offer of settlement,

[13] See *F.S. Johns & Company, Inc.*, 43 S.E.C. 124 (1966), *aff'd sub nom. Dlugash* v. *S.E.C.*, 373 F.2d 107 (C.A. 2, 1967) and *Winkler* v. *S.E.C.*, 377 F.2d. 517 (C.A. 2, 1967).

it argued, among other things, that "numbers" trading, i.e., trading on the basis of supply and demand and without investigation of the issuer, was during the period in question and still is accepted industry practice, and that it serves a genuine economic function. We do not here express a view on those matters which are beside the point where as here the trading was not independent. At the least, when trading is conducted by the numbers and no basis exists for determining whether price movements have any relation to the investment value of the security, a particularly close supervision must be maintained with a view to detecting any sign of possible manipulation or other irregularity.

The examiner found that Troster failed adequately to supervise its trader Woolwich with a view to preventing the latter's violations in substantially the same manner as discussed above with respect to Goodbody.

VIOLATIONS OF CREDIT EXTENSION PROVISIONS

The examiner found that there were extensive violations of Section 7(c)(2) of the Exchange Act and Regulation T adopted thereunder by the Board of Governors of the Federal Reserve System, in that credit was extended to Gulihur in contravention of those provisions. In his discussion in this regard, he found that in a number of instances payment for purchases was received after the 7-day period specified by Section 4(c)(2) of Regulation T and extensions of such payment period granted by the New York Stock Exchange, when, under that Section, the transactions should have been promptly cancelled or otherwise liquidated. He further found that on a number of occasions, ASO stock purchased in the account was sold before it was paid for, thus restricting the account, under Section 4(c)(8) of Regulation T, for 90 days to purchases covered by funds already in the account, but that purchases not so covered were effected. Finally, he concluded that in view of the violations of Sections 4(c)(2) and 4(c)(8), the large number of extensions obtained and other factors, the transactions in the Gulihur account, at least from January 1961 on, were not *bona fide* cash transactions, as required by Section 4(c)(1), and were therefore disqualified from inclusion in a special cash account.[14]

[14] A special cash account permits a broker or dealer to effect bona fide cash transactions involving the purchase of a security by a customer in such account which does not have sufficient funds for the purpose only if he does so in reliance on an agreement accepted by him in good faith that the customer will promptly make full cash payment and does not contemplate selling the security prior to making such payment.

Our review of the record leads us to conclude that the examiner's findings are in substance supported by the record, and we find, as provided in Loeb's offer of settlement, that it willfully violated Section 7(c)(2) of the Exchange Act and Section 4(c) of Regulation T. The examiner's finding that Katz aided and abetted these violations is predicated primarily on Katz's involvement with the Gulihur account and the facts that requests for payment were communicated by Loeb to Gulihur through Katz and that the latter furnished Loeb with reasons for payment extension requests. We are not persuaded that the evidence establishes that Katz was aware or should have known that the credit provisions were actually violated. The pertinent facts relating to the receipt of funds and securities in the account appear to have been primarily in the domain of Loeb as the clearing firm performing the back office functions.[15]

OTHER MATTERS

Katz contends that the lapse of more than 4 years between the activities in question and the institution of these proceedings in October 1965 prejudiced him in presenting his defense and deprived him of a fair hearing. He argues that the case against him is based primarily on the testimony of Gulihur, and particularly on the latter's testimony regarding statements made by Grimmett, who because of his death in 1964 was not subject to cross-examination. However, our findings as to Katz's violations do not rely on Gulihur's testimony regarding statements made by Grimmett and, indeed, are not based on such testimony in any respects in which it was inconsistent with Katz's own testimony. Under the circumstances, even aside from the question whether the time interval was unreasonable in light of the complexity of the transactions and the number of firms and individuals involved,[16] it does not appear that it was prejudicial.[17]

PUBLIC INTEREST

Katz urges that a bar, which the examiner recommended as to him, would represent an excessive and discriminatory sanction. He asserts that other respondents who are to receive lesser sanctions had the same information regarding the Gulihur account and had more authority. Katz argues that pre-

[15] The evidence relating to violations of Regulation T was not offered against Trapani, and the allegation that he aided and abetted such violations is therefore dismissed.

[16] *Cf. Deering Milliken, Inc.* v. *Johnston*, 295 F.2d 856, 867 (C.A. 4, 1961).

[17] See *Costello* v. *United States*, 365 U.S. 265, 281–284 (1961).

sumably the examiner relied on disciplinary actions taken against him by the New York Stock Exchange on four occasions between 1962 and 1967, and that such action was based on relatively minor misconduct and was taken in nonjudicial proceedings in which he was not represented by counsel.

The remedial action which is appropriate in the public interest with respect to a particular respondent depends on the facts and circumstances applicable to him and cannot be measured precisely on the basis of action taken against other respondents.[18] The lesser sanction imposed by the examiner on Neumark, to which Katz points, is not before us[19] and as to the other respondents dealt with in this opinion we have deemed it appropriate to accept offers of settlement.[20] In any event, we consider that Katz's culpability is greater than that of the other respondents. He was the primary instrument through which Gulihur and Grimmett were enabled to carry out their illegal activities, and at least until March 1961 was the only one of the respondents who was familiar with and involved in every facet of the transactions centering about the Gulihur account other than the back office matters. Moreover, the various disciplinary actions taken against him by the New York Stock Exchange may properly be taken into consideration in determining an appropriate sanction.[21] Such actions include a six-month suspension in 1967 for failure to conform to Exchange rules relating to required diligence as to customers' accounts and to the opening of accounts for an employee of another member without his employer's consent, and for making misstatements to his own employer on new account cards.[22] Under all the circumstances, we conclude that it is in the public interest to bar Katz from association with any broker or dealer.[23] This does not mean that he may not at some future time be permitted to return to the securities business upon an appropriate showing.

With respect to the offers of settlement, we have, as noted above, determined to accept them, and we have further concluded that in each case the sanction should be the maximum

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[18] *Cortlandt Investing Corporation*, 44 S.E.C. 45, 54, (1969).

[19] See *Irving Friedman*, 43 S.E.C. 314, 323, (1967).

[20] See *Cortlandt Investing Corporation, supra*, at p. 54.

[21] *Cf. e.g., Reynolds & Co.*, 39 S.E.C. 902, 918, n. 31 (1960).

[22] In the other instances Katz was "severely" censured for failing to obtain sufficient information regarding and closely watch the Gulihur account, was admonished "very strongly" for failing to follow his employer's instructions concerning acceptance of orders in an account, and was admonished for borrowing money from a factor.

[23] The exceptions to the initial decision of the hearing examiner are overruled or sustained to the extent they are inconsistent or in accord with our decision.

provided for in the offer, i.e., 30-day suspensions of Blair from the NASD and of Robert Miller and Trapani from association with a broker-dealer, and censure of Charles Miller, Loeb and Goodbody. In determining to accept the offers, we considered the affirmative recommendations of our staff as well as various mitigating circumstances. Thus, it appears that transactions in ASO stock, which were with other broker-dealers only, represented a very minor part of the overall business of Blair, Loeb and Goodbody during the period in question. These considerations are also pertinent with respect to Robert and Charles Miller. In addition, it appears that the three firms have taken steps to improve their internal procedures so as to prevent a re-occurrence of the type of misconduct involved here. Moreover, Blair has been reconstituted so that Charles Miller is the only individual respondent now associated with it.[24] With respect to Trapani, we have taken into consideration among other things the facts that he has not been the subject of any prior proceedings in his more than 30 years in the securities business, that to some extent he acted pursuant to the specific directions of his superiors, and that he derived no income from the transactions in ASO stock.

An appropriate order will issue.

By the Commission (Chairman BUDGE and Commissioners OWENS, NEEDHAM and HERLONG), Commissioner SMITH concurring in part and dissenting in part.

Commissioner SMITH, concurring in part and dissenting in part:

In my view, the 30 calendar-day suspensions imposed by the majority on Blair, Robert Miller and Trapani should be conformed with the 20 business-day suspension imposed by the hearing examiner on Neumark.

[24] It appears that the firm has 19 general partners in addition to Miller. On the basis of a stipulation between our staff and Blair, Charles Miller and D. H. Blair Securities Corporation, a wholely-owned subsidiary of Blair whose broker-dealer registration was permitted to become effective during the pendency of the proceedings, we will suspend that subsidiary from NASD membership for the same 30-day period as its parent.