

ADMINISTRATIVE PROCEEDING
FILE NO. 3-1511

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of
INVESTORS INSTITUTE, INC.
GEORGE W. BECK, III
(801-2858)

FILED
NOV 17 1969
SECURITIES & EXCHANGE COMMISSION

INITIAL DECISION
(Private Proceedings)

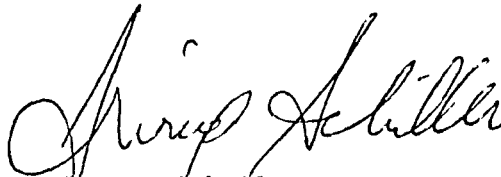
Washington, D. C.
November 14, 1969

Irving Schiller
Hearing Examiner

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(801-2858)	:
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	INITIAL DECISION
	ERRATA
	(Private Proceeding)

Page 39 line 5 - Change "Investment" to "Investors"


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April 13, 1970 ~

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(801-2858)	:	<u>(Private Proceedings)</u>

APPEARANCES: Ernest Steve Watson and Wilma B. Aston of the
Fort Worth Regional Office of the
Commission and Barry L. Haase for the
Division of Trading and Markets

George W. Beck III, for Investors Institute, Inc.
and pro se

BEFORE: Irving Schiller, Hearing Examiner

These are private proceedings instituted pursuant to Section 203(d) of the Investment Advisers Act of 1940 ("the Act") to determine whether Investors Institute, Inc. ("Registrant") willfully violated specified provisions of the Advisers Act and specific rules and regulations promulgated thereunder and whether George W. Beck III ("Beck") willfully aided and abetted violations of the said Act and the rules thereunder and whether any remedial act is appropriate in the public interest pursuant to the above-mentioned section of the Act.

The order for proceedings alleges in substance that during the period from January 8, 1965 to date registrant willfully violated and Beck willfully aided and abetted violations of Section 204 of the Act and Rule 204-1 and 2 thereunder in failing to promptly file amendments on Form ADV to correct and keep current the information contained in registrant's registration statement regarding changes in address, the investment advisory services being offered and the rates therefor, and the change in registrant's status as a corporation. The said order further alleges that during the period from March 21, 1962 to date registrant failed to make and keep current and accurate certain specified books and records relating to its business required to be maintained in accordance with Section 204 of the Act and Rule 204-2 thereunder. The order also alleges that during the period from January 8, 1965 registrant willfully violated and Beck willfully aided and abetted violations of Section 206(4) of the Act and Rule 206(4)-1 ("Rule 206") thereunder in that they directly and indirectly engaged in acts, practices and a course of business which

included the publishing, circulation and distribution of advertisements related to registrant's investment advisory service which contained (1) untrue statements and omissions of material facts and which were otherwise false and misleading concerning such matters as the future profitability of registrant's service and the limitations and uncertainties inherent in registrant's services; (2) direct and indirect references to registrant's past specific recommendations which were or would have been profitable to any person without setting out all recommendations made by registrant within the immediately preceding period of not less than one year and without stating the name of each such security recommended together with specified information required under Rule 206 and (3) direct and indirect representations that the graphs, charts, formulas and other devices being offered could in and of themselves be used to determine which securities to buy or sell, or when to buy or sell them; and which represented, directly and indirectly, that the graphs, charts, formulas and other devices being offered would assist any person in making his own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisements the limitations thereunder and the difficulties with respect to their use.

After appropriate notice, hearings were held before the undersigned hearing examiner. Proposed findings of fact and conclusions of law and briefs were filed by the Division of Trading and Markets and proposed findings of fact were filed by registrant and Beck.

The following findings and conclusions are based on the record,

the documents and exhibits therein and the hearing examiner's observation of the various witnesses.

Violations of Section 204 of
the Act and Rule 204-1 and 2

Registrant was incorporated in the State of Oklahoma in February of 1962 and became registered with the Commission as an investment adviser pursuant to Section 203(c) of the Act on March 21, 1962. The registration application states that Beck is president of registrant, his wife secretary and treasurer and that he, his wife and two children each own 125 shares of registrant's common stock. The record discloses that Beck resigned as president of registrant in 1964 or 1965, at which time he became registrant's secretary. Registrant presently has no president or vice president. The record further discloses that either in 1965 or 1966 Beck and his wife transferred equitable title to the 500 outstanding shares to their children and that the said stock is presently in the names of Beck and his wife in trust for their two children. An amendment on Form ADV to reflect the change in Beck's title and the change in the ownership of registrant's outstanding common stock was not filed until ^{1/} January 1968.

Registrant's application for registration on Form ADV states

1/ Though such changes are required to be filed in an amendment on Form ADV pursuant to Section 204 and Rule 204-1 thereunder no finding of violation is made since respondents are not charged with any failure to file such amendments.

that its principal place of business is located at 310 Robinson Building, 1st Avenue N. E., Miami, Oklahoma. Registrant and Beck admit that in approximately July of 1964 registrant moved its principal place of business to 57 F Street, N. E., Miami, Oklahoma where it is presently located. No amendment was filed on Form ADV to reflect such change of address until January of 1968. Respondents, at the hearing, urged as a defense that registrant was not in violation of the reporting requirements because in January 1965 when the Commission's investigator came to make an inspection of registrant he learned that registrant had moved its principal place of business and that since that time the Commission was on notice of the changed address. There is no merit to such argument. Moreover, the record discloses that by letter dated January 14, 1965 both respondents were advised by the Commission's Regional Administrator in Texas, among other things, that Rule 204-1(b) of the General Rules and Regulations under the Act requires the filing of an amendment on Form ADV to reflect registrant's change of address and to correct other information which had become inaccurate. Notwithstanding additional letters from the staff in February, April and May 1965 requesting the filing of an amendment no such amendment was filed. In 1967 registrant on at least two occasions mailed amended forms ADV which were returned by the regional office because they were deficient. In January 1968 an amended form was finally filed reflecting the correct address of registrant's place of business. The hearing examiner finds that from 1964 until January 1968 registrant willfully violated and Beck willfully aided and abetted

violation of Section 204 of the Act and Rule 204-1 thereunder in failing promptly to file an amendment on Form ADV correcting the address of registrant's principal place of business.

In its registration application registrant, in response to an item requesting information concerning the issuance of periodic publications on a subscription basis answered "yes" and in response to the item requesting the name of the publication and the subscription prices thereto, stated that it anticipated publishing a periodical within one or two years called "Investors Guide" at certain specified prices. Beck testified there never was a publication known as "Investors Guide" but that in the latter part of 1962 registrant commenced publication of a weekly pamphlet known as "Chart-of-the-Week." In January 1965 an investigator for the Commission made a routine examination of registrant's business operations and learned that there was no publication known as "Investors Guide" but that registrant was publishing "Chart-of-the-Week" which was being sold on a subscription basis and that the prices being charged for that publication did not conform to the prices as stated in the registration application. The investigator called Beck's attention to the requirement for filing an amendment to reflect the correct title of the publication and the subscription prices therefor. Beck said he would complete the necessary form given him by the investigator and file them. No such filing was made until January 1968. Letters requesting an appropriate amendment were sent by the regional office of the Commission to respondents in January, February, April and May 1965,

January 1966 and March 1967, none of which resulted in a proper amendment. Beck testified that while he was aware that his registration statement was not up to date he considered his failure promptly to file an amendment "not particularly grave," but merely "a routine matter," that there was not sufficient time to prepare such amendment since he considered that his primary duty was to his subscribers who were relying upon him "for guidance." None of those arguments furnish any basis for failure to comply with the Act and the Rules thereunder and a more willful violation is difficult to perceive. The hearing examiner finds that from the latter part of 1962 until January 1968 registrant willfully violated and Beck willfully aided and abetted violations of Section 204 of the Act and Rule 204-1 thereunder in failing promptly to file an amendment on Form ADV to reflect the investment advisory service being offered and the rates therefor.

The record discloses that on August 10, 1967 the Oklahoma Securities Commission issued a Cease and Desist Order against registrant and Beck finding they were acting as investment advisers as defined in the Oklahoma Securities Act without having been registered as such under that Act and prohibiting them from carrying on such activities until they registered in the State of Oklahoma. At the instant hearing Beck testified the Cease and Desist Order was illegal since it was issued without notice to him and he had no opportunity to offer any testimony or produce evidence. In their proposed findings respondents state that the "Oklahoma Securities Commission did not issue a Cease and Desist Order against registrant which is in the process of completing

a registration with this Commission and that this registration will be completed as quickly as possible." Beck's testimony and respondents' proposed findings are both rejected. The record contains a certified copy of the Cease and Desist Order dated August 10, 1967 issued by the Oklahoma Securities Commission. The order was sent by certified mail to respondents and the Post Office certified mail numbers appear beneath the State seal. The order specifically states that if Beck and registrant desire a hearing, a request therefor may be made in writing within fifteen (15) days from the date of the order. There is no evidence that such request was ever made. Hence, respondents' proposed finding that the Cease and Desist Order was not issued is not supported by the record. Moreover, there is no evidence that respondents ever "completed" their registration as investment advisers in Oklahoma. The hearing examiner finds that registrant willfully violated and Beck willfully aided and abetted violations of Section 204 and Rule 204-1 thereunder in failing promptly to file an amendment to Form ADV to disclose that on August 10, 1967 the Oklahoma Securities Commission issued a Cease and Desist Order against both respondents prohibiting them from carrying on activities as investment advisers until they registered as such.

Violations of Section 204
and Rule 204-2

Registrant is charged with failing to make and keep current certain specified books and records required to be maintained by investment advisers and Beck is charged with willfully aiding and

abetting such failure. The record discloses that on February 6, 1963 a securities investigator of the Commission made a routine inspection of registrant's books and records to ascertain whether registrant was complying with the record keeping requirements of the Act and the Rules. The only records maintained by registrant at the time were check books, bank statements, cancelled checks, deposit receipts and third copies of invoices. The investigator advised Beck that Rule 204-2 of the Commissions Rules requires an investment adviser to make and keep current certain books and records and, in fact, read Rule 204-2 in its entirety to Mr. Beck. The Rule specifically sets forth the particular books and records required to be maintained by every investment adviser registered with the Commission. Beck told the investigator he would "immediately contact his CPA and have him prepare the necessary records to comply with the rules." There is no evidence such action was ever taken. Subsequent inspection by a Commission investigator in January 1965 and December 1966 revealed that registrant maintained only the same kinds of records it had in 1963 and on each occasion Beck was advised by the investigator as to the necessity of maintaining proper books and records. Following each of the latter two inspections, letters were sent by the Texas Regional Administrator of the Commission to registrant and Beck pointing out that registrant was not in compliance with the Rule 204-2. The letter following the 1965 inspection specifically listed the books and records which registrant is required to maintain. On several occasions during 1967 letters were sent to respondents requesting, among other things,

that appropriate books and records be maintained. At the date of the hearing Beck produced registrant's books and records which were examined by a staff investigator who testified that except for the addition of receipt books and customer account ledgers the books and records being maintained were exactly as they were in 1963. The investigator further testified that since there were no ledgers reflecting assets, liabilities, reserves, capital, income and expense accounts and no trial balances or financial statements it was impossible to determine the financial condition of registrant. Beck testified that registrant's records are "abominable" and registrant does not, in fact, maintain all the books and records required under the Commission Rules. The reason for such failure, he further testified, was the lack of funds necessary to hire someone to do the accounting work coupled with a determination by Beck that he did not deem it advisable to attempt to increase registrant's advertising and sales of its publication solely to get sufficient funds to hire an accountant for fear the material (Chart-of-the-Week) "was going to fall into the hands of people without the proper background to use it." Beck also testified that until operations became profitable he could not undertake to maintain the required books and records. Beck's reasons are not sufficient to exculpate registrant for its failure to comply with the record keeping requirements for a period in excess of six years. The hearing examiner finds that from March 1962 to at least July 1968, registrant willfully violated Section 204 of the

Act and Rule 204-2 thereunder in failing to make and keep current and accurate the books and records relating to its business as specified in the said Rule and that Beck willfully aided and abetted such violations.

Violations of Section 206(4) of
the Act and Rule 206 thereunder

As noted above, respondents are charged with publishing, circulating and distributing advertising material relating to its investment advisory service which constituted a fraudulent, deceptive or manipulative act, practice or course of business within the meaning of Section 206(4) of the Act and Rule 206 thereunder. Commencing in the latter part of 1962 to at least to date of the hearing, registrant prepared and sold a publication known as "Chart-of-the-Week" which it mailed on subscribers throughout the country except in Oklahoma. Though originally published weekly it is currently issued on a bi-weekly basis. In addition, registrant prepared and mailed materials to persons, whose names he obtained from rented lists, which material Beck characterized as "prospecting" advertisements for subscription to Chart-of-the-Week. On occasion, Chart-of-the-Week was also mailed to potential subscribers to solicit new subscriptions to the said service. Some time during the summer of 1967 registrant began an advertising campaign for "an all-new stock market service" entitled "Investors' Profit Guide" and published other materials advertising the new service along with Chart-of-the-Week. Between 1962 and 1968 registrant had a maximum of 400 subscribers in a one-week period. As of the date of

the hearing the record discloses that registrant had between 50 and 60 subscribers.

Beck testified that throughout the years he prepared for registrant's use several prospecting type letters which were mailed to potential subscribers to stimulate subscriptions to Chart-of-the-Week. An analysis of these documents demonstrates that many of the brochures contained untrue statements and omissions of material facts and which were otherwise false and misleading concerning such matters as the profitability of registrant's services and the limitation and uncertainties inherent in such services. The material contained direct and indirect references to some of registrant's past specific recommendations which were or would have been profitable without setting forth the restrictive and cautionary statements required by the Commission's rules. In addition, some of such advertising material contained other representations that the graphs and charts could in and of themselves be used to determine which securities to buy or sell or when to buy or sell them or would assist any person in making his own decision when to buy and sell without prominently disclosing in such advertisements the limitations thereof and the difficulties with respect to their use.

The first co-called prospecting letter mailed by registrant to potential subscribers was entitled "This 'picture' cost \$1.33 -- It Netted \$25,565.09." The so-called picture is a square which purports to chart on graph paper the rise of a security with a caption underneath stating "Here Is The Actual, Completely -- True Success Story --

And, How You Can Use New, Modern Market Methods For Greater Markets Profits." On the third page of the four-page document the stock which is apparently charted in the picture is identified as Syntex. After stating that Chart-of-the-Week methods "uncovered" Syntex and there was no guarantee that future results will be as good, the brochure points out that a client who bought 100 shares of Syntex in 1963 and "acted on modern market methods" would have netted \$35,565.19. This is immediately followed by "This rate of profit is well over 250% per year. Wouldn't it be good business to risk \$1.33 for the chance to make hundreds or thousands of dollars." In describing its service the brochure states

"A study of all selections starting with the Introductory Chrysler issue and running for six months shows that 100 shares of each stock would have made you 70% on a per annum basis -- or 140% if you use margin. Without doubt, these results of all recommendations place Chart-of-the-Week in the top bracket for all services for this period. . . .

The first chart was Chrysler Corporation. The last Chrysler price on the chart was (adjusted for two subsequent 2 for 1 stock splits) 18-1/8. Chrysler subsequently rose to an unadjusted high of \$199.50."

While part of text indicated there was no assurance that a potential customer would duplicate the results depicted the flamboyant statements were misleading in presenting Chart-of-the-Week as providing extraordinary and reliable profit-producing advice without adequately describing the limitations and uncertainties inherent in registrant's services. Moreover, since registrant was referring to its past specific recommendations which were or would have been profitable the material

should have disclosed all recommendations made by registrant within the immediately preceding period of not less than one year and set forth the other information as required by Rule 206.

In January 1965 the foregoing matters were brought to Beck's attention by the staff with a request that the material be revised and that registrant comply with the foregoing rule. Beck testified that thereafter he started using another brochure, which is currently in use, entitled "The One, Essential Requirement for Capital Gains."

In describing registrant's services the advertising brochure mentioned above states in the opening paragraph:

"Now, by using new market techniques you can buy only those stocks which have a necessary and almost magic ingredient for capital gains - for investment success.,.,."

The so-called new market techniques are not further described or explained except in terms of their ability to produce profits. Page two of the brochure contains the following:

"But while the market doubles we can pile up profit almost without limit, perhaps 1000% or more during the coming decade if we keep our money in stocks which are in tune with the future. There are new market methods -- as new and as bright and shiny as the bright, shiny, new tomorrow in which we will soon be living -- to help you select the money-making market leading stocks and help you make more money than you ever made before."

In extolling the profit potential of registrant's service the brochure states that the record of Chart-of-the-Week for picking "profitable stocks" -

"Is so good. . .that we have publicly challenged any or all of the old fashioned fundamentalists type service to publish the performance record of the stock they featured side-by-side

with the Chart-of-the-Week record. To date none of the fundamentalist type service have accepted this challenge; and it still stands."

To illustrate the success of registrant's service the brochure goes on to state:

"Being more specific a study of 102 consecutive Chart-of-the-Week stocks running thru January 1966 may show why the other services remain silent. This study shows that the profit potential of each Chart-of-the-Week stock, was on the average \$2,400.00 per 100 shares purchased. Chart-of-the-Week raced ahead of the general market, and left it behind in a cloud of dust. Just how badly the market was beaten is revealed by another group of 102 commons selected at random and measured in precisely the same way. Chart-of-the-Week stocks beat the test group by 400%, and piled up four points for each point scored by the test group."

Again there is no identification of which stock constituted either of the groups referred to nor who made the so-called study, nor who selected the group of stocks nor the basis on which such selection was made, if any, nor whether the phrase "general market" refers to a particular securities exchange index or any of the recognized securities indices.

The so-called challenge to fundamentalist type services is repeated in more recent advertising brochures which Beck testified registrant is currently using. These latest brochures also contain other misleading representations which appear to assure that Chart-of-the-Week will return a profit to subscribers. Thus one such brochure describes the service as a revolutionary investment program in which the measurement of service is the performance of the very stocks recommended to the subscribers. The assurance of profit is stated as follows: "This means that for every dollar you pay for investment data about market leading stocks, Chart-of-the-Week will return a

minimum of \$35.81 in market profits assuming you stick with your profit investment program, of course, and assuming the \$2,500 or net cash profit is appropriate to your portfolio." And further in the material registrant attempts to demonstrate the success of its service and the profits which will have been made in the past by stating: "Chart-of-the-Week stocks earned four dollars for every one dollar earned by the average stock. Increasing your earning power by four to one is the same as increasing your capital from \$10,000 to \$40,000." The brochure then names stocks all of which it says were recommended for purchase, except one, by Chart-of-the-Week in the last half of 1966 claiming each of the stocks rose from a minimum of 1/4 point to as much as 54-1/4 points.

In the opinion of the hearing examiner the advertising brochures considered in their entirety are clearly deceptive. It appears from the above advertising material that registrant's technique in preparation of the literature was to create an over-all impression that certain, substantial and rapid profits would be realized by an investor if the methods described therein were utilized. The entire emphasis is one of profits and to bring this home to potential subscribers the advertising material recapitulated outstanding success stories of its various recommendations thereby giving an impression that registrant was able to reveal opportunities for profits far exceeding the ability of the investor himself or of any other type of advisory service. Beck inserted in the record one of his advertising circulars testifying it

was "for the purpose of showing the high standards that are maintained in Investors Institute material currently in use." One quotation from that material will suffice to demonstrate registrant's standards were not very high but designed to practically assure a potential subscriber of the profits he could expect: "The 400% extra profit potential Chart-of-the-Week stocks have ordinary stocks convinces hard-nosed professional investors they can make larger profits with Chart-of-the-Week stocks." When the staff attempted to explain to Beck the necessity of including a description of the difficulties inherent in the use of the charts Beck inserted the following: "registrant's charts, methods, devices or indicators in its publications are subject to "difficulties inherent in market analyses. . .i.e. there are no 'certainties' in the market." That and other caveats were worded in general terms usually preceded and followed by highly optimistic statements that offset any cautionary effect.* The above quoted caveat appears in a rectangular box outlined on the second page of the brochure along with mention of Rule 206(4)-1. However, such language was preceded and followed by highly optimistic statements that counteracted any possible cautionary effect. Thus, in a paragraph about seven lines preceding the box with the caveats the following sentence appears: "But, while the market doubles, we can pile up profits almost without limit, perhaps 1000% or more, . . ." and the caveat was countered immediately by a paragraph which talked about registrant's modern investment methods

* Cf. Spear & Staff, Incorporated, Investment Advisers Act Release No. 188 (1965)

the last sentence of which read "with proper safeguards (which are a basic part of modern-market-methods), we want to own the stocks which are on the move and which are piling up profits faster than others."

In the opinion of the hearing examiner the caveat stating that there are no certainties in the market, is not only uninformative to a potential subscriber but serves to obscure and misleadingly minimize the numerous uncertainties and improbability inherent in registrant's services.

The Commission pointed out in a recent case, Dow Theory Forecasts Inc., Investment Advisers Act Release No. 223 (July 22, 1968), that where advertisements implied in enthusiastic language that the service being offered would return immediate profits such as "from The Thousands Seeking Exceptional Profits in Dollar Stocks," the use of cautionary language is made ineffective. The Commission held

"The dramatic and suggestive form of these overly enthusiastic advertisements could be expected to have a strong impact upon unsophisticated investors desirous of making money quickly. Even an unqualified statement to the effect that no advisory service can assure a profit to its subscribers would not suffice to overcome the assurance of profit they conveyed. Indeed, the cautionary language used in some of the soliciting material served only to strengthen the impact of the message regarding registrant's expertise in selecting profitable stocks."

Similarly in the instant case the cautionary language in the box served only to strengthen the assurance that profits would be realized by subscribers.

In addition to the separate 'prospecting' material, Chart-of-the-Week itself was used as advertising literature both to existing subscribers for renewal purposes ^{2/} and on occasion to potential subscribers

^{2/} The record discloses that one of the earliest copies of registrant's Chart-of-the-Week dated June 2, 1965 states "As is customary, present subscribers are offered the last opportunity to review (See blank enclosed) at present rates. . . ."

who requested a copy. Between 1965 and 1967 the Chart-of-the-Week contained direct and indirect references to some of its past specific recommendations which were profitable without setting forth all recommendations made within the immediately preceding 12 months as required by Rule 206. At a conference between Beck and the Commission's staff in June 1967 concerning, among other things, registrant's failure to comply with the requirements for setting forth all recommendations made within the immediately preceding 12 months when past specific recommendations are stated, registrant, in an attempt to comply, included in its advertising material an offer to make available, upon request, recommendations for the prior year. The record discloses, however, that while such a list was prepared as at the end of 1967 and was used until May 1968 such list is not systematically revised so as to contain all the recommendations within the immediately preceding 12 months. In that connection Beck testified ". . . I revise it when I get time to do it. I try to do it once every three months, but I don't get at it quite that often."

The hearing examiner finds that between 1965 and 1967 registrant willfully violated and Beck willfully aided and abetted violation of Rule 206(4)-1(a)(2) in that registrant published Chart-of-the-Week, which contained references directly and indirectly to past specific recommendations of registrant which were or would have been profitable without setting out or offering to furnish upon request a list of all its recommendations within the immediately preceding period of not less than year containing the information required by the above rule

and that from 1967 to date, although registrant offered to furnish a list of past recommendations, it nevertheless continued to violate Rule 206 and Beck continued to aid and abet such violations by reason of the failure of registrant to furnish, upon request, a complete list of its recommendations within the immediately preceding period of not less than one year.

In addition to requiring a registered investment adviser who publishes advertisements containing references past specific recommendations to set out an offer to furnish, as noted above, a list of all recommendations together with certain specific information concerning such securities, Rule 206 requires additionally that such advertisement and such list if furnished contain the following cautionary legend on the front page thereof in print or type as large as the largest print or type used in the body or text thereof: "It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list." Commencing with the issue of Chart-of-the-Week dated November 8, 1967 registrant offered to furnish a list of all stock featured during the past year. The offer itself is in fine print at the bottom of the first page but does not contain the cautionary legend referred by Rule 206. The hearing examiner finds that registrant willfully violated Rule 206 and Beck aided and abetted such violations in publishing Chart-of-the-Week containing references to past specific recommendations which were or would have been profitable and offered to furnish a list of all recommendations during the past year without including the type of cautionary legend required by the said rule.

The record reflects that in the summer of 1967 registrant commenced advertising another type of service which it calls "Investor's Profit Guide." Like the advertising material with respect to Chart-of-the-Week the circulars relating to the new service is also deceptive and misleading and violative of the Act's anti-fraud provisions and Rule 206 thereunder. The so-called new service is described as a superb companion service to Chart-of-the-Week but holds out hope for even greater and more assured profits. Thus one circular states "Since 'Investors' Profit Guide' has been designed to bring the new, modern-market methods, practical approach to larger investment profits to investors with somewhat less experience than the average "Chart-of-the-Week" client, the price of 'Investors' Profit Guide' is low." After pointing out that the 'Chart-of-the-Week stock which has made the highest gain advanced 505.6% following publication" the circular points out later that "the new Investors' Profit Guide, on the other hand, is all advice about making more money with market leading stocks" and that the service "is tailored to the investors' personal position." To emphasize the manner in which the new service will benefit a subscriber one circular, used to seek subscriptions to Investors' Profit Guide, states it "will offer continuous supervision from initial listing to final close-out. . . This is, to the best of our knowledge, the first time a service designed for wide distribution has been able to tailor advice to fit a client's personal needs." How utterly false and misleading these statements are can be determined from Beck's own testimony in which he admitted that not only does registrant have no

knowledge of a client's personal needs but that, in fact, no effort is made to determine the personal needs of any subscriber. It is also clear from the record that advertising material is mailed to persons whose names are obtained from rented mailing lists and that none of the advertising material mailed to these unknown persons requests any information concerning a prospective subscriber's income, expenses, the type of investment program desired or in fact any of such subscribers' needs or requirements. What is held out in misleading terms is that large profits may be made from the new service.

Registrant also publishes a 70-page brochure called "Make More Money in Stocks" in which it undertakes to explain the new and unique service offered by Investors' Profit Guide and which contains some of the most flamboyant statements concerning the profit possibilities of such service. Each page bears the title 'The Investors' Profit Guide', practical approach to larger investment profits." Illustrative of the technique used to create the impression that profits can be achieved by using the Service are such statements as "Investors' Profit Guide is designed to do for investors about what the experienced guide does for the hunter and the fisherman. . . So Investors' Profit Guide will take you to the pool where the big ones lurk. . . So, Page one of Investors' Profit Guide will show you where to fish for the possibility of larger profits. . . the other three pages give specific advice about the bait and technique for each of the varieties in the select group." Further in the brochure under a heading "How to Profit with "Investors' Profit Guide," the opening paragraph reads "Using 'Investors' Profit

Guide' is very, very simple. About all you need do is give your broker the purchase or sell orders which meet your approval, check subsequent issues of Investors' Profit Guide for changes in stop order prices, and add up the results. . . This section tells how to go after the profits, and hold the risk to reasonable levels. . .; our objective is to manufacture, to methodically produce stock market profits. . ."

Toward the end of the brochure the assurance of profit is emphasized by the following "As originally promised, you see yourself that the formula for accumulating wealth from stock is simple." It is thus apparent from the entire presentation is one which gives a highly optimistic picture of the profits that would accrue to subscribers. While the brochure contains a section in which risk is mentioned, the manner in which this is explained is to give the impression that profits will increase because of the risk control feature of the Service. The so-called risk control appears to be nothing more than giving the broker a stop loss order. The index to the brochure is perhaps most indicative of the emphasis that profits are assured. The index states that one section deals with "Profit Assurance: Risk Control" and the subtitles thereunder reflects that the text deals with the following subjects:

"Increase profits with risk control"

"Increase your profit ratio with relative size of
profits with direct risk control"

"The profit building power of direct risk control,
illustrated"

"More benefits from direct risk control"

The impact of the brochure is to whet the speculative appetite of unsophisticated investors and then induce them to subscribe. The hearing examiner finds that in publishing and circulating the advertising material relating to Investors' Profit Guide registrant willfully violated and Beck willfully aided and abetted violations of Section 206 of the Act and Rule 206 thereunder.

Registrant and Beck urge in their defense that a new entity known as Investors' Institute Incorporated, which they claim was incorporated in Oklahoma in March 1966, became registered with the Commission as an investment adviser as a result of an amendment to its registration application dated January 18, 1967 reflecting, among other things, a change in its corporate name and that the predecessor company "ceased to do business and was voluntarily discontinued. . . ." The asserted defense is sham and frivolous, not supported by the record and is rejected. The record discloses that a purported amendment on Form ADV dated January 18, 1967 was sent to the Commission's Regional Office in Fort Worth, Texas and was returned, to both respondents together with a letter from the Regional Administrator dated January 27, 1967 explaining the reasons it was unacceptable and suggesting that the necessary revisions be made and the form resubmitted. Respondents resubmitted an amended Form ADV on February 1 which was again returned to registrant on March 7, 1967 together with a letter from the Regional Administrator explaining the deficiencies in the form as submitted. On June 6, 1967 under a covering letter on registrant's stationary another purported amendment was sent to the regional office which again was

apparently not acceptable for filing and registrant so advised on June 22, 1967. Again by letter dated November 17, 1967, addressed to registrant, another set of deficient forms of a purported amendment was returned with an explanation of the reasons therefor. When, on January 16, 1968, an acceptable amendment was filed it appears that registrant's name was stated as Investors' Institute Incorporated. Respondent Beck and his wife were still named as owners of the common stock "in trust for" their two children and the form was signed by respondent Beck as secretary. The record shows that an entity called Investory Institute Incorporated was, in fact, granted a charter in Oklahoma on March 24, 1966 and that such charter was in fact suspended on June 13, 1967 by order of the Oklahoma Tax Commission for failure by the corporation to pay its franchise tax. If, as is contended by registrant and Beck, that the name of registrant is Investors Institute Incorporated the hearing examiner would be required to find that registrant willfully violated and Beck willfully aided and abetted violation of Section 204 of the Act and Rule 204-1 thereunder in failing to report that the corporate charter of Investors Institute Incorporated had been and presently is suspended.

However, the record clearly shows that at all times since March 1966, when the purported new entity came into existence, neither registrant nor Beck considered such entity as the registered investment advisor. Since March 1966 all of the issues of Chart-of-the-Week and the so-called new service Investors Profit Guide were published under the name of the registrant and all of the advertising literature

referred to above was published under registrant's name. Between July and November 1967 registrant sent at least nine (9) separate letters to the Fort Worth Regional Office of the Commission enclosing material proposed to be used as advertising material by registrant, all of which letters were on stationery of registrant and each was signed by Beck on behalf of registrant. Between March and November 1967 the regional office forwarded at least eleven letters all of which were addressed to both Beck and registrant, some of which commented on advertising material, others advising of failure to comply with one or more provisions of the Act and Rules thereunder and others refusing to furnish comments on advertising material because such material was so materially deficient and not in compliance with the standards set by the Act and Rules that comment would involve rewriting and editing the entire material. In all of this exchange of correspondence never once did Beck refer to or inform the staff of the Commission of the existence of any entity known as Investors Institute Incorporated. Moreover, notwithstanding that the amendment on Form ADV filed January 16, 1968 purportedly bore the name, Investors Institute Incorporated, Beck, who signed the amendment, stated in response to item 10(d) in the said Form which requests information as to whether the named registrant issues periodic publications relating to securities on a subscription that it did so and attached a schedule of each publication, the subscription price and period covered by the subscription price. The schedule lists both Chart-of-the-Week and Investors Profit Guide and on the bottom of the first page of the schedule appears the following

"Investors Institute, Inc." It is thus clear that prospective subscribers and subscribers who are importuned to renew their subscriptions are informed that registrant publishes both services and they have no information or knowledge of the existence of any entity other than registrant. Finally, the record is abundantly clear and Beck admits that he completely controls registrant and is solely responsible for the preparation of all of its publications and advertising material. The hearing examiner finds that Beck at all times intended that registrant and not Investors Institute Incorporated be registered as an investment advisor and that the defense by Beck that any violations committed prior to March 1966 were by a predecessor of Investors Institute, Incorporated and that the real registrant in the latter entity is without substance.

Respondents further contend that the Chart-of-the-Week is not advertising material and is itself not an investment advisory service, apparently because the said publication was "in no way designed to fill the functions of an advisory service" that it always was limited to the publication of chartered data for use by investors having adequate experience and background to permit them to use the data furnished and plan their own strategy for profit" and that its "readers were advised to disregard approaches inconsistent with their own thinking." None of the arguments advanced are supported by the record, are not sufficient to establish either that Chart-of-the-Week is not advertising material or that it does not fall into the category of an investment advisory service and they are rejected. The record not only

fails to support the contention that Chart-of-the-Week was limited for use by investors with adequate experience and background to permit them to use the data furnished but, on the contrary, establishes that Beck does not know anything about his subscribers nor did he make any attempt to ascertain the experience or background or, in fact, any information about potential or actual subscribers. As noted earlier registrant's primary sources of potential subscribers came from mailing lists which it rented. Registrant, because it publishes Chart-of-the-Week, is an "investment adviser" as that term is defined in Section 202(11) of the Act ^{3/} and is registered as such under the Act. Registrant's description of the services offered by Chart-of-the-Week is stated as follows: "The scope of Chart-of-the-Week is the presentation of analyses of a security which we believe will be a market leader." In addition, as noted above, the record reflects that registrant in its amended Form ADV filed January 16, 1968, in response to item 10(d) states it issues periodic publications relating to securities on a subscription basis and attached a schedule naming Chart-of-the-Week and Investors Profit Guide as such publications.

The argument that Chart-of-the-Week is not used as advertising material is not supported by the record. A perusal of the material in

^{3/} "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities;. . . ."

question clearly indicates that each issue contains either an analysis or a report of a named security and which a subscriber may use in making a determination as to when to buy or sell such security. In addition, each issue contains a graph to be used in making a determination as to when to buy or sell the named security. Beck testified that on occasion, at the request of a potential subscriber, he would mail out a copy of the publication as a sample of what such subscriber would receive. In addition, copies of Chart-of-the-Week contain requests to current subscribers to renew their subscriptions. Thus, one such issue states ". . .present subscribers are offered the last opportunity to renew (See blank enclosed) at present rates. . .". The enclosed blank sets forth the subscription rates then in effect. The hearing examiner finds that Chart-of-the-Week falls within the purview of the definition of advertisement as set forth in Rule 206 which, as pertinent here, defines an advertisement to include any circular which offers an analysis or report concerning securities or which is to be used in making any determination as to when to buy or sell any security or any graph or chart to be used in making the aforesaid determination.

Respondents also contend that no one on the Commission staff would furnish Beck with a set of guidelines to aid him in the preparation of advertising material, that the staff failed to keep its promise to assist Beck in the development and refinement of advertising material and there was never any intent or deliberate scheme to mislead investors. These alleged defenses are not supported by the record, are insufficient to relieve respondents of their responsibility

to refrain from publishing advertising material which is deceptive and misleading and such defenses are rejected. Commencing at least in January 1965 the staff of the Commission informed respondents, in writing, of the necessity for advertising material to comply with the requirements of Rule 206 and furnished specific comments regarding several pieces of such material which were then being used. In June 1967 Beck conferred with the staff in the Fort Worth regional office where he received an explanation of the importance and necessity of compliance with the Act and the rules. By letter dated July 2, 1967 Beck forwarded to the staff proposed advertising material for Investors Profit Guide and requested comments thereon. After reviewing the advertising the staff informed Beck by letter dated August 3, 1967 the material was materially deficient, that it did not adhere to the requirements of the Act and the rules thereunder and Commission decisions relating to advertisements and that for the staff to recommend changes necessary to bring such advertisement in compliance would involve rewriting the entire material which the staff could not do. Copies of two Commission decisions, one rendered in March 1965, the other January 1967 were enclosed in the staff's letter. On September 5, 1967 and on September 14, 1967 Beck requested the staff to reconsider its refusal to furnish comments and that he was "at a complete loss to understand" the position of the staff. By letter dated October 2, 1967 the staff responded to the above-mentioned September letters from Beck, telling him that they repeatedly pointed out numerous deficiencies both in writing and

personal conversations that they had furnished him with copies of the Commission's decisions which discussed "deceptive advertisements" and reiterated that the staff could not undertake to rewrite and edit the entire material and pointed out that responsibility for compliance rests with the registrant. It is thus clear from the record that in January 1965 and continuing through the end of July 1967 the staff continually furnished comments to respondents with respect to advertising material being used or proposed to be used and that from August 1967 respondents were advised that no further comments would be forthcoming because the material submitted was so materially deficient that any attempt to provide comments would amount to rewriting the entire material. Moreover, on several occasions the staff reviewed advertising material and furnished comments, in writing, to Beck. Though some of these comments were accepted and the material revised, the record indicates that most of them were either ignored or the subject of further communication either in writing or by telephone in which Beck constantly took the position that he did not believe the material misleading.

The record is equally clear that Beck was furnished with guidelines in the form of Commission Opinions with respect to the types of advertisement considered misleading and that such information was supplemented by at least one conference in June 1967 in which the staff tried to explain and make Beck aware of the rules governing advertising. The record also shows that on several occasions staff investigators visited registrant's office and spoke to Beck concerning

the advertising material he was then using. The hearing examiner finds that, contrary to Beck's assertions, the record discloses that the staff cooperated with him by furnishing comments with respect to advertising literature being used or proposed to be used that the staff's refusal to furnish comments beginning in August 1967 was due to the failure of the material to comply with the advertising requirements as set forth in the Act and rules thereunder.

Respondent's contention that there was never any intent or deliberate scheme to mislead investors is also rejected. Both the Commission and the Courts have clearly stated that a finding of willfulness within the meaning of the securities laws does not require a showing of knowledge by a respondent that his action is unlawful; it is sufficient to show he intended to do the act which constitutes the violation. Securities Forecaster Co., Inc., 39 S.E.C. 188 (1959); Hughes v. S.E.C. 85 U.S. App D.C. 56, 174 F. 2d 969 (1949); Gilligan v. S.E.C. 267 F. 2d 461, 468 cert. denied 36 U.S. 896. See also Tager v. S.E.C. 344 F. 2d 5 (C.A. 2, 1965).

The sole remaining question is what, if any, sanctions appropriate in the public interest pursuant to Section 203(d) of the Act. The hearing examiner has previously found that registrant willfully violated and Beck aided and abetted violations of Section 204 and 206 of the Act and rules thereunder. These violations fall into three categories, namely,

(1) A failure promptly to file amendments on Form ADV correcting and keeping current information in registrant's

registration statement regarding the change of address, the investment advisory services being offered and the rates therefor;

(2) Failing to make and keep current and accurate books and records relating to registrant's business required to be maintained under the appropriate rules; and

(3) Registrant directly and indirectly engaged in acts and practices and a course of business which included the publication, circulation and distribution of advertisements about its investment advisory statements which contained untrue statements of material facts and which were otherwise false and misleading.

From 1962 until 1964 or 1965 Beck and his wife owned all of the outstanding stock of the registrant. And since 1964 or 1965 such stock is being held in their names in trust for their children. Beck testified that since the inception of registrant he has managed the company, he has written all of the bulletins, he is responsible for the preparation of the advertising literature and responsible for the research in connection with the investment advisory services offered by registrant and in general was primarily responsible for all of registrant's operations. With respect to registrant's failure promptly to file amendments to its registration application to keep current the information relating to its address and investment advisory services Beck testified that he considered that his failure to file such amendments "not particularly grave." He further testified that he was aware of the fact that between 1962 and January 18, 1968 registrant's registration statement was not up to date.

He admitted that he received numerous requests from the Fort Worth Regional Office of the Commission, both orally and in writing, to file appropriate amendments to registrant's registration statement but that he considered these were merely routine matters that he owed a greater duty to his customers and that he just did not have sufficient time to prepare the necessary papers to file with the Commission. The Commission has consistently held that the registration application of an investment advisor is a basic and vital part of its administration of the Act, and it is essential in the public interest that the information required by that application form be supplied completely and accurately. (Justin Federman Stone, d/b/a Justin Stone & Associates, 41 S.E.C. 715, 723 (1963)). The Commission has further held that the failure to amend registration forms or cause inordinate delay in the filing of amendments to such forms is "inconsistent with the duty to keep the filings corrected." In the Matter of Marketlines, Inc., et al., Investment Advisors Act Release No. 206 (January 20, 1967) 384 F. 2d 264 (C.A. 2, 1967) cert. denied 390 U. S. 547 (1967). It is evident from Beck's testimony that he does not feel there is any urgency or necessity for keeping current the information required to be maintained in the registration statement of an investment adviser.

With respect to the second category of violations found, namely, failure to maintain and keep current books and records as required under Section 204 of the Act and Rule 204-2 thereunder Beck testified that since registrant's inception he has been unable to prepare the books and records required to be maintained by investment advisers.

Here again, Beck has taken the position that it was more important for him to take care of his subscribers and maintain services for them than to comply with bookkeeping requirements under the Act. At the hearing Beck would give no assurance as to when, if ever, he would be able to prepare books and records required under the Act maintaining stoically that until such time as sufficient profits were produced to permit him to hire an accountant to set up the books such matters would have to be held in abeyance.

With respect to the third category of violations, namely, the advertising material required to comply with Rule 206 Beck testified that he did not consider the material misleading, that there are no standards set forth in the Act or the rules by which he could determine what constitutes misleading material, that in response to his request no guidelines for the preparation of any advertising material was furnished to him and that the staff has failed to cooperate with him in revising such advertising material. The misleading nature of the advertising material previously and currently being used by registrant has been detailed above and needs no repetition here. Commencing in February of 1963 when one of the Commission's securities investors made an inspection of registrant Beck was constantly told that any advertising material would have to conform to Rule 206. Other inspections were made by a staff investigator early in 1965 and in December of 1966. Communications were sent by the Fort Worth Regional Office to the respondent with respect to advertising literature in January, February, April and May of 1965, the latter of which was a

four-page letter outlining in detail the manner in which specific advertisements failed to comply with the foregoing rule. The record further shows that in March, June, August and October of 1967 the Fort Worth Regional Office forwarded comments to registrant and Beck detailing the manner in which advertisements being used or proposed to be used failed to comply with Rule 206. Moreover, on August 3, 1967 the Regional Office sent a letter to Beck informing him that the proposed advertisement for "Investor's Profit Guide" submitted on July 29, 1967 was so materially deficient with respect to compliance with the Act and rules thereunder that it would not undertake to recommend changes in the material since such procedure would involve rewriting the entire advertisement. In addition, the staff enclosed with the letter copies of the Commission's decisions in two cases, which decisions pointed out the types of advertisements by investment advisers which the Commission deemed to be deceptive and in violation of Rule 206.^{4/} On October 2, 1967 the regional office again wrote Beck that the advertising material he had submitted was so materially deficient that the regional office could not undertake to revise and edit such material. It again called attention to the previously mentioned Commission's decisions requesting that Beck guide himself

^{4/} The two cases which were sent to Beck were Marketlines, Inc.; Elizabeth Schreiber, d/b/a Commodity Trading Advisory Service, both of which were included under Investment Advisers Act Release No. 206 (January 20, 1967), and Spear & Staff, Incorporated, Investment Advisers Act Release No. 188 (March 25, 1965).

accordingly. While Beck undertook to make some changes in his advertising material he repeatedly took the position that he disagreed with the regional office's interpretation of what it considered deceptive or misleading advertisements and continued to prepare literature which failed to comply with the Commission's Rule 206.

The purpose in detailing the correspondence between the regional office and Beck concerning advertising material is to demonstrate that notwithstanding the efforts and patience of the regional office in attempting to bring registrant into compliance with the above-mentioned rule and the Commission's decisions which in essence set forth guidelines in the preparation of advertising material, Beck nevertheless continued to prepare and circulate advertising material in violation of both the rule and contrary to the Commission's decisions. Beck's plea that the regional office refused to cooperate with him is wholly without substance. What is manifested in Beck's attitude is either an inability to comprehend the type of advertising which is permissible for an investment adviser or an unwillingness to accept the Commission's decisions as setting forth guidelines. Thus, the record shows that after the regional office had succeeded in getting Beck to attempt to comply with Rule 206, which permits an investment adviser circulating an advertisement referring to past specific recommendations of such adviser which were or would have been profitable to any person to furnish a list of all the recommendations made within the immediately preceding period of not less than one year and contain other information as set forth in the rule, Beck failed to keep such lists current and testified that

time did not permit him to keep such a list on a current basis and that he would revise such lists if and when he found the opportunity to do so. Such an attitude permeated all of Beck's testimony with respect to compliance with the Act and the Commission's rules thereunder. Thus, he did not find it convenient or necessary promptly to file amendments to his registration statement to keep the information therein current or to prepare books and records of his operations in compliance with the Commission's rules with respect thereto. When asked at the hearing how soon he could give assurance of complying with the record keeping requirements he glibly stated that he could give no assurance as to time but that such matters would have to wait until he thought he could find the time and money to comply with the law. To permit a registrant to flout the requirements of the Act and the rules would make a mockery of the Act and the rules thereunder.

Rather than give assurances that registrant would make every effort to comply with the law and bring his advertising material within the appropriate guidelines set by the Commission's prior decisions Beck undertook, in his proposed findings of fact, an unwarranted attack upon the Commission's ability to understand the concept of public interest and that in adopting its rules and regulations they were "so carelessly written that they have a different meaning to everyone who reads them including SEC staff members. . ." In attempting to defend his actions Beck maintains that he has always placed the interest of his clients ahead of his personal interest and finds it necessary again to attack

the Commission in the following manner: "Before any impartial tribunal we will have no hesitancy to defend the proposition that the degree of professional responsibility displayed by Investors Institute, Inc. in relation to its duty compared to the responsibility of the SEC in relation to its duty will make the latter appear as competent as a bunch of school boys." The reason for selecting these completely uncalled for statements concerning the competence of the Commission and the staff which Beck has inserted in his proposed findings is to demonstrate that Beck's attitude towards compliance with the law is such that the hearing examiner is led to the conclusion that Beck is either unable to understand the manner in which compliance is required or is unwilling to do so. The Commission has consistently emphasized the high degree of care required to insure accurate and adequate representations concerning securities in printed advisory material distributed by a registered investment adviser who seeks clients on the basis of representations that he is competent to furnish expert and informed advice.

Paul K. Peers, Inc., Investment Advisers Act Release No. 187 (1965).

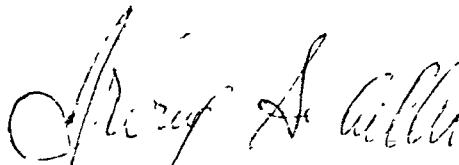
The opinion then reiterates the following from a prior Commission decision in Anne Caseley Robin, Investment Advisers Act Release No. 149, p. 3 (September 10, 1963).

"The dissemination of investment advice, prepared irresponsibly or recklessly in violation of this duty not only operates as a fraud on the clients of the investment adviser but, as pointed out in the Report of the Special Study of the Securities Markets, such investment advice can generate a chain reaction of market interest, resulting in severe losses for many investors."

The hearing examiner concludes that it is appropriate in the public interest to revoke the registration statement of the registrant. ^{5/} Accordingly,

IT IS ORDERED that the registration as an investment adviser of ^{Investors} Investment Institute, Inc. be, and it hereby is, revoked. 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(b) of the Commission's Rules of Practice a party may file a petition for Commission review of this initial decision within 15 days after service thereof on him. Pursuant to Rule 17(f) this initial decision shall become the final decision of the Commission as to each party unless he files a petition for review pursuant to Rule 17(b) or the Commission, pursuant to Rule 17(c) determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review or the Commission takes action to review as to a party, this initial decision shall not become final with respect to that party.



Irving Schiller
Hearing Examiner

Washington, D. C.
November 14, 1969

^{5/} To the extent proposed findings and conclusions submitted by the parties are in accordance with the views set forth here they are sustained and to the extent they are inconsistent therewith they are expressly overruled.