ADMINISTRATIVE PROCEEDING
FILE NO. 3-6324

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
BUTCHER & SINGER, INC.	:
SAMUEL J. BENNETT	
THOMAS A. GREY	:

INITIAL DECISION

January 29, 1985
Washington, D.C.

David J. Markun
Administrative Law Judge

ADMINISTRATIVE PROCEEDING
FILE NO. 3-6324

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:	
BUTCHER & SINGER, INC. SAMUEL J. BENNETT THOMAS A. GREY	:	INITIAL DECISION

APPEARANCES: Dennis R. Surprenant and Larry M. Keller, Esq. Philadelphia, PA, for the Division of Enforcement. Also appearing on the briefs: Paul F. Leonard, Regional Administrator, Washington Regional Office; Thomas H. Monahan, Assistant Regional Administrator, at Philadelphia Branch Office; Theodore S. Bloch.

Edward C. Mengel, Jr. Esq., White and Williams, Philadelphia, PA, for Respondents Butcher & Singer, Inc. and Thomas A. Grey. Also appearing on the brief: William O. Evans and Brent S. Gorey, Esqs. of White and Williams.

John A. Luchsinger, Esq., Luchsinger, Murphy and Noel, Media, PA, for Respondent Samuel J. Bennett.

BEFORE: David J. Markun
Administrative Law Judge

I. THE PROCEEDING

This public administrative proceeding was instituted by an order of the Commission dated January 13, 1984 (Order), pursuant to Sections 15(b) and 19(h) [1/] of the Securities Exchange Act of 1934 (Exchange Act) to determine whether: (1) Respondents Butcher & Singer, Inc., (Registrant, or Butcher & Singer), Samuel J. Bennett (Bennett), and Thomas A. Grey (Grey) wilfully violated and wilfully aided and abetted violations of Sections 5(a) and 5(c) [2/] of the Securities Act of 1933 (Securities Act); (2) Registrant wilfully violated Section 15(c) [3/] of the Exchange Act and Rule 15c2-11 [4/] thereunder; (3) Bennett wilfully violated Section 17(a)(1) [5/] of the Securities Act, Section 10(b) [6/] of the Exchange Act and Rule 10b-5 [7/] thereunder; (4) Bennett wilfully violated Sections 17(a)(2) and 17(a)(3) [8/] of the Securities Act; (5) Registrant failed reasonably to supervise,

---

1/ 15 U.S.C. §§78o(b), 78s(h).

2/ 15 U.S.C. §77e(a),(c).

3/ 15 U.S.C. §78o(c).

4/ 17 C.F.R. §240.15c2-11.

5/ 15 U.S.C. §77q(a)(1).

6/ 15 U.S.C. §78j(b).

7/ 17 C.F.R. §240.10b-5.

8/ 15 U.S.C. §77q(a)(2)(3).

within the meaning of Section 15(b)(4)(E) [9] of the Exchange Act, persons subject to its supervision and who committed any such violation(s); and (6) if any such violations of the registration or antifraud provisions of the securities laws or any such failure to supervise occurred, the remedial action, if any, that is appropriate in the public interest pursuant to Sections 15(b) and 19(h) of the Exchange Act.

The violations and supervisory failures are alleged to have occurred within the period from about August 1977 to about June 1981 (the "relevant period") in connection with the sale of common stock of I.G.E., Inc. (I.G.E.) that allegedly was not registered under the Securities Act and, for the most part, was not authorized or issued by I.G.E.

A nine-day evidentiary hearing was held in Philadelphia, Penn. and Providence, R.I. in April and May, 1984. [10] The parties have filed proposed findings of fact and conclusions of law and supporting briefs pursuant to the Commission's Rules of Practice. [11]

9/ 15 U.S.C. §78o(b)(4)(E).

10/ On May 29, 1984, the Division of Enforcement filed a motion containing 10 pages of proposed corrections to the transcript of the record. The parties have since stipulated to the proposed corrections with the exception of the proposal regarding transcript p. 1355, line 2. Accordingly, with the exception noted, the proposed corrections are hereby adopted as corrections to the transript.

11/ 17 C.F.R. §201.16.

The findings and conclusions herein are based upon the record and upon observation of the demeanor of the various witnesses. The standard of proof applied is that requiring proof by a preponderance of the evidence.[12/]

II. FINDINGS OF FACT AND LAW

A. The Respondents.

Respondent Butcher & Singer, a Pennsylvania corporation, became registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act on December 10, 1976, and is currently so registered. Its principal offices are in Philadelphia, Pennsylvania.

Respondent Bennett was associated with Butcher & Singer as a registered representative from May 1, 1975 to October 1, 1982, when he was fired by Registrant. From March 8, 1979 until September 10, 1979, Bennett held the title of assistant vice president of the Registrant and from September 11, 1980 to October 1, 1982 he was a vice president. Bennett was located in Registrant's Cherry Hill, Pennsylvania, office at the time of the alleged violations.

Respondent Grey was at all times during the relevant period a first vice president and trader of over-the-counter securities at Butcher & Singer. Grey operated as a trader in Registrant's Philadelphia office at 1500 Walnut Street.

12/ Steadman v. S.E.C., 450 U.S. 91, 101 S.Ct. 999 (1981).

B. I.G.E., Inc. (I.G.E.).

I.G.E., Inc. (I.G.E.), transactions in whose stock are the basis for the allegations of securities law violations reflected in the Order, was formed in 1971, as a Massachusetts corporation, as the successor to the business of International Geophisical Explorations, Inc. (I.G.E.-Panama) and Pacific-Inland Oil Company (P.I.O.C.). The principal asset of I.G.E. from 1971 through August 1977 was a 1/64th overriding royalty interest in an off-shore oil and gas concession on the Atlantic Continental Shelf off Honduras. During that period I.G.E. had no revenue and was essentially a shell corporation. The evidence indicates that the interest in the off-shore Honduran concession had become valueless because of failure to meet certain concession requirements, but some Board members of I.G.E. evidently still entertained a fading hope that something might come of it. This hope, if it was genuine, appeared to be based more upon nostalgia than upon reality.

Elisha C. Mowry (Mowry) was an officer and director of I.G.E.'s predecessor companies and president and a director of I.G.E. from its inception until August 18, 1977.

James Mott Hallowell (Hallowell) was an officer and director of I.G.E.'s predecessor companies and clerk, treasurer, and a director of I.G.E. from its inception until August 18, 1977. Hallowell personally maintained

the stockholder records of I.G.E. during this period.

Bennett met Hallowell in 1969 at the latter's home, having been introduced to him by Axel B. Gravem (Gravem), a friend or acquaintance of both men, on an occasion when Bennett paid a visit to the area. Following that introduction, Bennett did not again meet or see Hallowell until 1977 and had only a couple of phone conversations with him in the intervening years. Bennett had never met Mowry prior to 1977. Bennett's contacts with Gravem, however, continued on a more extensive basis, including correspondence at least during 1969 and into 1971, and concerned, among other things, developments or potential developments regarding I.G.E.'s predecessor(s). Gravem was at one time a director of P.I.O.C., one of I.G.E.'s two predecessors.

C. Offers and Sales of Unregistered I.G.E. Stock by Respondents.

In 1977 Craig O. Moon (Moon) indicated to Bennett that he was interested in obtaining control of a public company to conduct real estate development and oil and gas drilling operations. Bennett suggested I.G.E. to Moon as a "clean shell", saying he knew some of the directors. Thereafter negotiations designed to make Moon president of I.G.E., with effective operating control, began.

Bennett was instrumental in arranging a meeting for Moon and himself with the board in Duxbury, Massachusetts, on July 26, 1977. 13/

Moon's proposal, in effect, was that if the I.G.E. Board would give him the presidency and effective operating control over I.G.E., he would infuse new life into the company by bringing in business ventures of one sort or another. For his efforts, Moon was to receive I.G.E. shares.

A part of Moon's proposal was that Bennett should receive 500,000 shares of I.G.E. for helping to develop and maintain a market in I.G.E. stock. In this connection, Bennett stated, or Moon stated in Bennett's presence, that Bennett "would help to get and maintain a solid, growing market for I.G.E. stock" and would enlist Respondent Butcher & Singer as a market maker in I.G.E. stock.

After considering the proposal outside the presence of Moon and Bennett, the board turned down Moon's proposal. It appeared that at that time both Mowry and Hallowell were opposed to the Moon proposal.

The following month, on August 18, 1977, Moon and Bennett attended another meeting of the I.G.E. board which

---

13/ It appears that Hallowell was among those contacted but that a more significant role in fostering negotiations may have been played by Tom Payne (Payne), a Texan who was a large shareholder in and a significant "creditor" of I.G.E., in that he had evidently contributed funds to keep I.G.E. or its predecessors going.

meeting, as had been the first, was arranged by Bennett. At this meeting some board members, including Hallowell, who continued to oppose Moon's proposal, resigned from the board. Thereafter, the remaining board members accepted Moon's proposal for gaining working control over I.G.E. with the condition that Moon would do nothing to jeopardize any interest in the offshore oil and gas drilling concession in Honduras that I.G.E. might still have. Moon was empowered to, and did cause to be elected, a whole new group of I.G.E. board members, with the exception of John W. McCaig, a member of the old board who continued as a member of the new I.G.E. board.

These changes in control were formalized and spelled out in an agreement of the same date, August 18, 1977, between Moon and the old board, represented by Mowry as president, and witnessed by McCaig.

Under the agreement of August 18, 1977, Moon was obligated, among other things, to ". . . enlist the services of a listed stock brokerage house for the purpose of creating and maintaining a strong healthy market for I.G.E. Inc. stock".

The agreement, besides providing for the transfer to Moon by the Directors of I.G.E. of 1 million I.G.E. shares, also provided that:

> "I.G.E. will make available to Moon's nominee 500,000 additional shares of stock to be used solely and exclusively for creating and maintaining a good market situation. The appli-

> cation of the above mentioned 500,000 shares is to be discretionary with Moon in the creating and maintaining a market."

Moon's "nominee", as all concerned understood would be the case, turned out to be Bennett. Instead of 500,000 shares, however, Bennett ultimately received 400,000 shares of I.G.E. stock and $3,000 in cash. It was understood by Moon and Bennett that this award in I.G.E. stock and in cash to Bennett was for his having brought Moon and the old board members of I.G.E. together and for Bennett's undertaking to enlist Butcher & Singer as a market maker in I.G.E. and to utilize the 400,000 I.G.E. shares for "creating and maintaining a good market situation" in I.G.E. stock. 14/

After the meeting on August 18, 1977, during which Moon obtained effective control of I.G.E., Moon and Bennett drove to Hallowell's home to pick up various I.G.E. records, including the official minutes book, stockholder ledgers, and blank stock certificates. Bennett and Moon loaded the I.G.E. records and documents into Moon's car. Thereafter Moon absented himself from the immediate area of the car and home while Hallowell, as he told Moon he would do, undertook to review with Bennett the I.G.E. stockholder ledgers. Bennett was more knowledgeable about such matters than Moon.

14/ Bennett was also supposed to attempt to interest other broker-dealers to make a market in I.G.E.

Bennett testified that during his time alone with Hallowell the latter handed him an envelope containing I.G.E. stock certificates M3001 through M3016, representing a total of 1,801,080 I.G.E. shares, in replacement of shares purportedly previously purchased by Bennett over a number of years that Bennett had lost. On the basis of facts found and discussed in a later section of this initial decision, it is concluded that this testimony of Bennett's is false. On the basis of the mentioned findings and discussion it is concluded, instead, that either during the mentioned absence of Moon, during which time the blank I.G.E. stock certificates were left unattended, or at some other time, Bennett improperly obtained possession of blank I.G.E. stock certificates M3001 through M3016 and thereafter forged, or caused to be forged, the purported signatures of Hallowell and Mowry on such blank certificates, as well as the certificate amounts and purported dates of issuance.

As the new president of I.G.E. Moon acted promptly to issue the market-making shares to Bennett. Bennett was issued 400,000 shares of I.G.E. stock in his name or the names of relatives [15/] of Bennett designated by him. The shares were issued in 21 separate certificates,

---

15/ Kathryn was Bennett's wife, Ida was his mother-in-law, and Charles was married to Ida.

all bearing the date 8-18-77, commencing with stock certificate No. M3017, except for the last, certificate No. M3087, which was dated 9-19-77. The market-making stock certificates given to Bennett broke down as follows:

Certicate No.	Name on Certificate	Shares	Date
M3017	Bennett, Samuel J.	35,000	8-18-77
M3018	"	35,000	"
M3019	"	25,000	"
M3020	"	15,000	"
M3022	"	10,000	"
M3023	"	5,000	"
M3024	"	5,000	"
M3025	"	15,000	"
M3026	"	1,000	"
M3027	"	1,000	"
M3028	"	1,000	"
M3029	"	3,000	"
M3031	"	7,000	"
M3032	"	65,000	"
M3033	Bennett, Kathryn	35,000	"
M3034	Bennett, Samuel J.	2,000	"
M3036	"	30,000	"
M3037	Bennett, Kathryn	25,000	"
M3038	Benghiat, Charles & Ida	27,000	"
M3040	Bennett, Samuel J.	40,000	"
M3087	Benghiat, Ida	18,000	9-17-77
	Total	400,000	

Moon also made Bennett a consultant to I.G.E. and in 1980, pursuant to the consulting arrangement, I.G.E. and Bennett entered into an agreement whereby Bennett was to receive 100,000 shares of I.G.E. stock for services rendered to the company. In 1980 and again in 1981 Bennett received 25,000 shares of I.G.E. for his services as a consultant.

After Bennett received his 400,000 market-making shares from I.G.E., he promptly called Respondent Grey, an over-the-

counter trader of securities at Registrant's Philadelphia office. Bennett told Grey he had a "good amount" of I.G.E. stock to sell and would have an interest in the stock. Grey told Bennett that Registrant would have to enter quotations in the pink sheets for I.G.E. in order to sell Bennett's stock. Grey was the trader designated to trade stocks such as I.G.E. and he had authority to commence making a market in I.G.E. on behalf of Registrant. It was his decision to trade the stock on behalf of Registrant.

From July 1, 1977 through August 21, 1977, no bid or ask quotations had been listed in the pink sheets for I.G.E. stock. On August 22, 1977, Registrant submitted bid and ask quotations in the pink sheets for I.G.E. stock at 1/8 and 3/8, respectively. When Registrant submitted these bid and ask quotes for I.G.E. on August 22, 1977 it had in its "due deligence" files no documents relating to I.G.E. or to the circumstances involved in the submission of the quotations.

Between August 23, 1977 and October 31, 1977, Bennett sold 50,650 shares of I.G.E. stock through Registrant for proceeds of $14,595.00.

On November 1, 1977, I.G.E. effected a 1 for 10 reverse stock split, thus reducing the number of each shareholder's shares by a factor of 10.

Bennett told Grey to inform him whenever it appeared

his I.G.E. stock could be sold. Grey called Bennett from time to time to inquire whether he wanted to sell additional I.G.E. stock. Grey had occasion to call Bennett more frequently as the volume of trading in I.G.E. stock increased.

During the period August 23, 1977 through June 23, 1981, Bennett, in accounts in his name and in the names of members of his family, sold 261,050 shares of I.G.E. stock through Registrant. This figure included 50,650 shares sold prior to the 1 for 10 reverse stock split on November 1, 1977, and the remainder, 210,400 shares (representing 2,104,000 pre-split shares), which were sold after the reverse stock split.

Also, within the stated period, Bennett sold an additional 9,500 post-split shares of I.G.E. directly to three individuals, i.e. without selling them through the Registrant.

Thus, within the stated period Bennett sold a total of 270,550 shares of I.G.E. stock for proceeds of $541,768.41. As already noted, all but 9,500 of these shares were sold through Butcher & Singer.

A breakdown of the foregoing sales of I.G.E. by Bennett by more precise time periods, showing sales and proceeds for each period, price ranges, as well as cumulative proceeds and total sales, indicates the following:

Date	Number of Shares Sold	Price Range	Proceeds	Cumulative Proceeds
1977				
8/23-10/31	50,650	$ .20 - .35	$14,595.00	$14,595.00
	November 1, 1977, 1 for 10 Reverse Stock Split			
1978				
1/1-12/31	31,900	$1.00 - 2.00	$43,996.51	$58,591.51
1979				
1/1-4/5	4,000	$ .75 - 1.19	$3,875.00	$62,466.51
4/6-6/5	41,900	$2.38 - 8.75	$207,184.38	$269,650.89
6/6-12/31	41,600	$1.00 - 7.38	$142,537.13	$412,188.02
1980				
1/1-12/31	96,000	$ .96 - 2.31	$125,740.79	$537,928.81
1981				
1/1-6/30	4,500	$ .75 - 1.75	$3,839.60	$541,768.41
	50,650 (pre-split)			
	219,900 (post-split) 16/			
Totals	270,550			$541,768.41

Included in the above overall sales of I.G.E. stock by Bennett within the stated period were the 21 stock certificates, totaling 400,000 pre-split shares, that Bennett received as market-making shares, which are listed at p. 11 above. Those certificates were mailed to I.G.E. for transfer and were transferred.

16/ These post-split shares were the equivalent of 2,199,000 pre-split shares.

Also included in Bennett's total sales were the shares represented by the forged stock certificates, M3001 through M3016, which have been alluded to briefly above and which will be the subject of further findings and discussion at later points herein. These certificates, too, representing a total of 1,801,080 pre-split shares, were mailed to I.G.E. for transfer by Bennett after August, 1977, and were transferred. The names of the purported owners, the numbers of shares (pre-reverse-split), and the dates on these certificates were as follows:

Certificate No.	Name on Certificate	Shares	Date
M3001	Bennett, Samuel J.	175,000	5/27/77
M3002	"	185,000	"
M3003	"	134,500	"
M3004	"	107,580	"
M3005	"	85,000	5/26/77
M3006	"	250,000	"
M3007	"	100,000	"
M3008	Bennett, Kathryn	67,000	6/14/77
M3009	Bennett, Samuel and Kathryn	150,000	6/7/77
M3010	Bennett, Samuel J.	92,000	5/19/77
M3011	"	96,000	6/15/77
M3012	"	74,000	"
M3013	"	65,000	"
M3014	"	90,000	6/14/77
M3015	"	85,000	"
M3016	Bennett,"Kathryn	45,000	"
	Total (pre-split)	1,801,080	

The record establishes and Respondents do not dispute that no registration statement has been filed with the Commission or is in effect pursuant to the Securities

Act with respect to any securities of I.G.E. [17/]

At the time Grey decided that Registrant would become a market maker in I.G.E. stock after Bennett had indicated to him that he (Bennett) had a "good amount" of I.G.E. to sell, Grey did not ask Bennett the number of I.G.E. shares he owned. Nor did he ask him that question at any time thereafter. Grey testified that that was "really none of my business." Grey did not ask Bennett the circumstances under which Bennett had acquired his stock. Even after the amount of I.G.E. stock sold by Bennett through Butcher & Singer reached very substantial proportions and after there had been a dramatic price rise in the stock, Grey never asked those questions of Bennett.

During the stated period (August 22, 1977 through June 30, 1981) Registrant's trading account for I.G.E. earned a profit of $81,900.78. Of this amount, Grey as trader earned 40%, or about $32,760, less a charge of $6 per "ticket".

On April 6, 1979, Grey purchased for his own account 1000 shares of I.G.E. and on April 19, 1979, sold 500 of those shares at a profit of $3,882.50. During 1979 Grey did not earn as much as $4000 on any other stock he purchased and sold for his own account, nor did he purchase and sell in his own account any stock he was also trading in the firm account other than the I.G.E. purchase and sale.

17/ The common stock of I.G.E. has been registered with the Commission pursuant to Section 12(g) of the Exchange Act since September 30, 1974.

On April 6, 1979, two other employees in Registrant's over-the-counter trading department also each purchased 1,000 shares of I.G.E., at $ .91 per share. On April 19, 1979, one of these employees sold his 1000 I.G.E. shares at $8 7/8, for a profit of $7,965, while the other employee sold half his shares on the same date at the same price for a profit of $3,882.50. These two employees sat in close proximity to Grey in the Butcher & Singer trading room. The order tickets for the sales of Grey's I.G.E. shares and those of the other two trading department employees were all stamped at the same time.

Registrant's compliance and procedures manual contains no specific procedures to be followed when a customer proposes to sell or does sell through his account(s) substantial amounts of a little-known security. In particular, it spells out no such procedures for situations where, as here, the customer selling the little-known security is a registered representative of the firm.

Registrant relies in part on a section in its compliance manual (Registrant's Exhibit D, pp. 26-28) prohibiting the sale of "restricted" or "control" securities except upon prior approval of its compliance department. Exhibit D states in part, at p. 27:

> "Under the rules of the regulatory bodies, representatives are required to "use due deligence to learn the essential facts relative to every customer, every order." Therefore, it is absolutely essential,

> not only to avoid a sale of securities in violation of the registration provisions of the securities act but a violation of the "Know Your Customer" rule, that representatives learn under what circumstances a customer acquired securities which he proposes to sell."

The quoted paragraph appears to place the burden of determining what is "restricted" or "control" stock upon the registered representative, offers only generalized definitions of those terms, and offers less-than-desirable guidance to the registered representative as to the specific inquiries that should be made by the registered representative to determine whether restricted or control stock may be involved. But, more importantly, as relevant here, it provides no procedures to be followed where the person offering the stock to be sold is himself a registered representative. Grey, the trader, said it was none of his business, and apparently nothing in the compliance manual specifies what inquiries a trader should make of the registered representative in the circumstances presented by this case, even though under applicable releases of the Commission and court decisions the trader, as a securities professional, was obligated to make the necessary inquiries both initially and as the trading pattern evolved.

As the ensuing findings will show, supervisory and compliance echelons other than the trader proved to be ineffectual and inadequate either for lack of established procedures or failures in properly carrying out procedures.

Nickolas Mekosh (Mekosh), branch manager of the Cherry Hill office where Bennett worked, was aware in 1977 that Bennett had sold I.G.E. stock through Registrant. Mekosh testified that he was not aware of the proceeds Bennett received for his I.G.E. stock sales in 1977 and 1978, even though it was the branch manager's obligation to review monthly customer statements (which presumably included Bennett's). In April, 1979, after I.G.E. had risen spectacularly in price, Mekosh purchased I.G.E. stock in his own account and sold it in the following month at a profit of some $8,000. At no time did Mekosh ask Bennett the total number of I.G.E. shares that he held or the precise circumstances under which he had acquired the stock.

In April, 1979, certain transactions by Bennett in I.G.E. stock came to the attention of Louis Iannucci (Iannucci), assistant to the compliance director of Registrant. Prior to this, Iannucci had not been aware that Bennett had a position in I.G.E. stock or that Bennett sold I.G.E. stock through Registrant. By April 1979, Bennett had sold 86,550 shares of I.G.E. stock through Registrant. Iannucci spoke to Branch Manager Mekosh in April 1979 and was told that Bennett was selling a large amount of I.G.E. stock. In fact, Iannucci became aware that in a relatively short period of time in April 1979 Bennett had sold 27,200 shares of I.G.E. stock while his customers were purchasing the stock.

Iannucci never asked Bennett the number of shares of stock he owned in I.G.E. or where he acquired the stock, nor did he direct Mekosh to make that inquiry of Bennett. Iannucci did not inquire as to the amount of I.G.E. stock Bennett had sold prior to April 1979 or as to his position in the stock. Iannucci did not call anyone at I.G.E. to inquire about Bennett's I.G.E. stock.

In April 1979, as already noted, the price of I.G.E. stock dramatically increased. Iannucci did not review the financial statement of I.G.E. or the due diligence file on I.G.E. at that time. He did not know the number of employees or the assets I.G.E. had, and made no inquiry as to what caused the sudden increase in price and volume in I.G.E. stock in April 1979. Iannucci was aware that five other employees of Registrant, including Grey and Mekosh, purchased I.G.E. stock in April 1979, but was not alerted by that fact.

In October 1979, Cheryl Kerr (Kerr), an analyst with Registrant's research department, prepared a memorandum relating to the investment merits of I.G.E. stock, which had been requested by Bennett and Mekosh to ascertain whether Registrant should put I.G.E. on its list of stocks that were suitable for recommendation to customers, and forwarded it to Iannucci. In her memorandum, she stated that "the possibility of out-and-out fraud looks enormous to me." No inquiry was initiated and no action was taken by Registrant as a result of this memorandum.

Francis Doyle (Doyle) is compliance director at Registrant. He was made aware that Bennett sold between 20,000 to 30,000 shares of I.G.E. stock in one week in April 1979. After becoming aware of this, Doyle made no inquiry concerning Bennett's I.G.E. stock sales. Doyle did not inquire as to the number of shares of I.G.E. stock that Bennett sold prior to April 1979, nor were these sales ever brought to his attention. He did not inquire as to the amount of I.G.E. stock Bennett owned. Neither Doyle nor anyone else at Butcher & Singer ever contacted I.G.E. to inquire concerning Bennett's I.G.E. stock. After April 1979, Registrant's compliance department was not made aware that Bennett was continuing to sell I.G.E. stock, even though Grey, the trader, and Mekosh, the branch manager, were necessarily aware of such continuing sales. Subsequent to April 1979, Bennett sold 150,300 shares of I.G.E. stock through his accounts at Butcher & Singer.

It is highly significant that no officer or employee of Registrant inquired of Bennett concerning the total number of shares of I.G.E. stock he owned or precisely how and when he had acquired the stock, though such questions should have been put to him before Butcher & Singer commenced making a market in I.G.E. and at a number of times thereafter.

Bennett's monthly account statements reflected large amounts of I.G.E. stock being positioned. In August 1977

alone, Bennett positioned 140,000 shares of I.G.E. stock in his account. Branch Manager Mekosh, who was supposed to review the monthly account statements, should have been alerted to make searching inquiry, or to refer the matter to the compliance department of Registrant, by this positioning in Bennett's account. Over the relevant period, Bennett positioned over 1.2 million shares of pre-split I.G.E. stock in his and his wife's accounts.

I.G.E. was not a widely-traded security in the OTC market, particularly at the inception of the revelvant period. In 1977, I.G.E. was an obscure penny stock that had experienced insignificant trading activity because of the company's having no assets or revenues. There were only two market makers in I.G.E. stock in 1977 at the time that Butcher & Singer commenced making a market in I.G.E. Indeed, as found above, one of the reasons Grey gave for Registrant's becoming a market maker in I.G.E. when Bennett indicated a desire to sell some I.G.E stock was the fact that there were so few other market makers. Large and recurring sales of a little known stock by Bennett should have prompted Registrant to make searching inquiry.

In April, 1979, Bennett presented to the appropriate officers at Butcher & Singer an underwriting proposal under which Registrant would have underwritten a public sale

of I.G.E. stock to permit I.G.E. to finance a proposed hotel/casino operation in Atlantic City. After Registrant received the documents, Moon was called by an officer of Butcher & Singer who stated the proposal would be reviewed at the request of Bennett but that it was doubtful that Registrant could assist I.G.E. Moon was contacted two days later by an officer of Registrant and told that the firm could not assist I.G.E. in the contemplated stock offering because of a conflict of interest, as it was underwriting the Caesar's World offering. This event, also, should have prompted Registrant, particularly when added to the other "red flags", to make careful inquiry concerning any special relationship of Bennett to I.G.E. and the circumstances under which Bennett acquired his stock.

Based upon the findings herein it is concluded that Bennett, Registrant, and Grey each wilfully violated Sections 5(a) and 5(c) of the Securities Act, and each wilfully aided and abetted violations of those Sections by the others, in that they directly or indirectly made use of the means and instrumentalities of transportation and communication in interstate commerce and of the mails to offer and to sell the common stock of I.G.E. when no registration statement was filed or in effect with the Commission with respect to those securities pursuant to the Securities Act.

All three respondents sold and offered to sell the unregistered I.G.E. stock.[18/] Each aided and abetted the violations by the others. No exemption from registration is claimed or established by the record. Section 4(1) of the Securities Act exempts "transactions of any person, other than an issuer, underwriter or dealer" from the registration requirements. This provision does not aid Bennett since, under the circumstances presented by this record, Bennett was a statutory underwriter within the meaning of Section 2(11) of the Securities Act, which defines an underwriter as "any person who purchased from an issuer with a view to . . . the distribution of any security." On the facts found herein, Bennett clearly obtained his 400,000 pre-split I.G.E. shares with a view to, and did in fact accomplish, their distribution. As to the I.G.E. shares represented by the forged certificates, no exemption is available for the simple reason that the statute does not exempt forged securities.

Registrant likewise was a statutory underwriter within the meaning of Section 2(11) of the Securities Act, which, as pertinent here, defines the term underwriter as including anyone who "participates or has a direct or indirect

---

18/ Because of the way Registrant and Grey shared profits in Registrant's trading account, Grey was an active participant in the violations. In addition, as found above, Grey purchased and sold I.G.E. shares for his own account.

participation in any such undertaking [for the distribution of any security purchased from an issuer with a view to its distribution], or participates or has a participation in the direct or indirect underwriting of such undertaking." Registrant clearly fell under both legs of this portion of the definition of an underwriter.

Grey likewise falls within the statutory definition of an underwriter discussed with respect to the Registrant.

Bennett acted knowingly (indeed, with scienter), and his violations of Sections 5(a) and 5(c) of the Securities Act were therefore clearly wilfull. Registrant's and Grey's violations of those Sections were also wilfull because each of them failed in their long-and-well-established duty to make the appropriate, searching inquiries that the circumstances found herein called for to ensure that they were not in violation of Section 5 of the Securities Act. As the United States Court of Appeals for the Second Circuit stated in Hanly v. Securities and Exchange Commission, 415 F.2d 589, 595-6 (2d Cir. 1969), brokers and salesmen are "under a duty to investigate; and their violation of that duty brings them within the term 'willful' in the Exchange Act." All that is required to support a finding of willfulness under the securities laws is proof that a respondent acted intentionally in the sense that he was aware of what he was doing and either consciously, or in careless disregard of his obligations, knowingly engaged

in the activities which are found to be illegal.[19/]

Registrant's and Grey's reliance upon Ernst & Ernst v. Hochfelder, 425 U.S. 185, 96 S. Ct. 1375 (1976) in connection with the wilfullness requirement is misplaced, since Hochfelder comes into play only where the violation involved is one that requires a showing of scienter, e.g. Section 10(b) (and Rule 10b-5 thereunder) of the Exchange Act. See Lipper, supra. Sections 5(a) and 5(c) of the Securities Act do not require a showing of scienter.

D. Registrant's Violation of Section 15(c) of the Exchange Act and Rule 15c2-11 thereunder.

Rule 15c2-11 under the Exchange Act requires a broker-dealer, before seeking to publish quotations of a security in a quotation medium, to have certain specified information concerning the security and issuer. The publishing of a quotation for a security when the broker-dealer lacks this information is deemed to be a fraudulent, manipulative practice within the meaning of Section 15(c)(2) of the Exchange Act. This rule was enacted to prevent broker-dealers from publishing quotations for a securities in the absence of information about the security or the issuer and

---

19/ Arthur Lipper Corp. v. S.E.C., 547 F.2d 171; 180 (2d Cir. 1976) cert. denied, 434 U.S. 1009 (1978); Hanly v. Securities and Exchange Commission, 415 F.2d 589, 595-6 (2d Cir. 1969); NEES v. Securities and Exchange Commission, 414 F.2d 211, 221 (9th Cir. 1969); Dlugash v. Securities and Exchange Commission, 373 F.2d 107, 109-10 (2d Cir. 1967); Tager v. Securities and Exchange Commission, 344 F.2d 5, 8 (2d Cir. 1965).

before the public is afforded the opportunity to acquire such information and make a sound investment decision. Proposal to Adopt Rule 15c2-11 Under the Securities Exchange Act of 1934, Securities Exchange Act Release No. 8909 (1970). As stated in the release, "[i]n many cases this practice has resulted in an irresponsible 'numbers' game which, apart from having the effect of foisting unseasoned securities on the investing public, is not only disruptive of the market but fraught with manipulative potential".

Pursuant to Rule 15c2-11, insofar as pertinent here, and with exceptions not here pertinent, quotations for a security may not be submitted unless, under subpargraph (a)(3) of the Rule, the issuer is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act and the broker-dealer has the most recent annual and interim reports in his possession or, under subparagraph (a)(4) of the Rule, the broker-dealer has other pertinent information concerning the issuer, including:

(1) name and address of issuer;

(2) state of incorporation;

(3) the number of shares outstanding;

(4) the nature of the issuer's business; and

(5) whether the quotation is being furnished or submitted on behalf of any person who is the beneficial owner of more than 10 percent of any securities of the issuer.

On August 22, 1977, as earlier found above, Registrant published bid and ask prices (at 1/8 and 3/8) for the common stock of I.G.E. in the pink sheets. Registrant had none of the above-mentioned information at the time the quotation was published. This is evidenced in part by the fact that in Registrant's due deligence file on I.G.E. the earliest document that appears is I.G.E.'s 1978 Annual Report. Respondent Grey's testimony that he had the necessary materials in hand when he submitted the quotation, and that they "must have [included] the annual report, whatever financial statements they have in the company", is not credited, based upon observation of demeanor and upon the entire record concerning the circumstances under which Registrant commenced making a market in I.G.E.

Registrant's violation of Rule 15(c)2-11 was wilfull. 20/

E. Registrant's Failure Reasonably to Supervise Bennett and Grey with a view to Preventing their Violative Conduct.

The Division contends (as reflected in the allegations in the Order) that Registrant failed reasonably to supervise Bennett and Grey with a view to preventing and detecting Bennett's and Grey's violations, found herein, of the registration provisions of Section 5 of the Securities Act and Bennett's violations of various antifraud provisions, found at a later point herein, which antifraud violations also involved Bennett's sale of unregistered and in large part unauthorized and unissued

---

20/ See footnote 19 above.

shares of I.G.E. common stock, as already found herein in connection with the findings of violations of said Section 5.

Section 15(b)(4)(E) of the Exchange Act provides in pertinent part as follows respecting the supervision requirements:

> (4) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any broker or dealer if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated --
>
> * * *
>
> (E) . . . has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations [the statutes, rules, and regulations here referred to are earlier specified in paragraph (E) and include the Securities Act and the Exchange Act and rules and regulations promulgated thereunder], another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this subparagraph (E) no person shall be deemed to have failed reasonably to supervise any other person, if --
>
> (i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and
>
> (ii) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.

As evident from its terms, Section 15(b)(4)(E) provides a basis for imposition of sanctions on a broker-dealer for its failure reasonably to supervise persons subject to its supervision who commit specified violations. There is no requirement in the statute that the failure to supervise be shown to have been wilfull. 21/

While the term "failed reasonably to supervise" is not expressly defined in the statute, the Congress has given significant indication of its purpose and intent by way of prescribing the "safe harbor" provisions set forth in subparagraphs (i) and (ii) of paragraph (E). As a practical matter, if Registrant could have shown that it (i) had in place established procedures and a system for applying such procedures which would reasonably have been expected to prevent and detect, insofar as practicable, Bennett's and Grey's violations, and (ii) reasonably discharged the duties and obligations incumbent upon it by reason of its procedures and system without reasonable cause for believing that the procedures and system were not being complied with, there could be no finding against it of a failure reasonably to supervise Bennett and Grey. Conversely, if the record shows that Registrant lacked established procedures or a system for applying them

---

21/ Charles Schwab & Co., Inc., A.P. 3-6222, Initial Decision, December 28, 1983, declared final by Commission's Exchange Act Release 20595, January 26, 1984, 29 SEC DOCKET 1070, Feb. 7, 1984.

designed insofar as practicable to prevent and detect the violations or failed reasonably to discharge the duties and obligations incumbent upon it under any procedures and system it may have had, or a combination of such alleged inadequacies and failures, and shows also that such alleged failures and inadequacies made the violations possible or caused them to go undetected during the relevant period, the Division's contention that Registrant failed reasonably to supervise must be sustained.

As respects the Section 5 Securities Act violations found herein, Registrant's obligations under the statute, Commission releases thereunder, Rule 15c2-11, and applicable case law, to take reasonable, appropriate steps to preclude violations of Section 5 through the sale of unregistered securities rather closely parallels Registrant's supervisory obligations under Section 15(b)(4)(E) of the Exchange Act with regard to Section 5 violations, at least as respects the facts presented by this record. For that reason, the factual findings made herein that support the findings of violations of Section 5 by all three Respondents also support a finding, and I so find and conclude, that Registrant failed reasonably to supervise Bennett and Grey with a view to preventing and detecting their violations of Section 5, contrary to the requirements of Section 14(b)(4)(E). It would be needlessly repetitious to here

repeat the findings already made herein respecting Registrant's failure to have in place certain established procedures and a system for applying such procedures that would reasonably have been expected to prevent and detect, insofar as practicable, Bennett's and Grey's Section 5 violations and Registrant's numerous failures reasonably to discharge the duties and obligations incumbent upon it when under its own procedures numerous "red flags" were raised upon a number of occasions indicating the need for searching inquiry that Registrant failed to carry out with respect to such violations.

As regards the antifraud violations of various securities laws found at a later point herein to have been committed by Bennett, it is quite evident that such violations would not have occurred, at least insofar as they were carried out through use of the facilities of the Registrant, except for the Registrant's failure to carry out its supervisory responsibilities with respect to the Section 5 violations. In short, if Registrant had through proper supervision detected and prevented the Section 5 violations, Bennett's related and associated antifraud violations would not have come to fruition. These related antifraud violatins were foreseeable consequences of the Registrant's failure reasonably to supervise so as to detect and prevent the Section 5 violations.

F. Bennett's Violations of the Antifraud Provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder.

The record herein establishes that Bennett committed an egregious fraud on the market during the relevant period by injecting into the market I.G.E. shares that were transferred by the issuer on the basis of forged I.G.E. stock certificates M3001-M3016. These forged certificates, with Bennett and family members shown as purported owners, and with purported numbers of shares and dates of issuance, are listed at p. 15 above. The certificates represent a total of 1,801,080 pre-reverse-split I.G.E. shares. These stock certificates were never authorized or issued by I.G.E. to Bennett or to anyone.

The Division's expert witness, a trained and experienced document examiner for the F.B.I., testified that the purported signatures of both Hallowell and Mowry on stock certificates M3001-M3016 are forgeries (accomplished by either tracing or by simulation) based upon the number of pen lifts, breaks, tremors in the line, the absence of fluidity in the writing, and other factors.

Bennett's expert witness on the question of authenticity of the signatures is a practitioner of graphology, an art that undertakes, inter alia, to determine the qualities and attributes of human personality and even character on the basis of a person's handwriting. Her testimony, based in part upon a comparison of genuine signatures of Bennett,

Hallowell, and Mowry, was that the Mowry name was forged on the questioned certificates, that the Hallowell "signatures" on the questioned documents were genuine, and that it would have been impossible for Bennett to have authored the forged "signatures". The Division's witness countered with testimony, based upon his own experience and training and upon the writings of acknowledged experts, that while it is possible to ascertain whether a questioned signature is genuine or forged, it is not possible to ascertain whether a forged signature was forged by a given suspect based upon an analysis of the suspect's handwriting.

Based upon the relative qualifications of the expert witnesses, the logic of their respective testimony, and the corroborative effect of other relevant findings made herein, the expert testimony of the Division's expert is credited and that of Bennett's expert is not credited, to the extent that the latter's is in disagreement with the former's.

There is abundant additional evidence to support the Division's contention that Bennett forged, or caused to be forged, the signatures of Hallowell and Mowry on certificates M3001-M3016.

As already noted (see pp. 9-10 above) Bennett on August 18, 1977, had access to blank I.G.E. certificates when I.G.E. records were being transferrd to Moon. Bennett's

uncorroborated testimony that on that date Hallowell handed him an envelope containing I.G.E. stock certificates M3001-M3016, representing a total of 1,801,080 pre-split shares, in replacement of shares purportedly previously purchased by Bennett over a number of years and that Bennett had purportedly lost, is not credited, for numerous reasons besides the fact that the Hallowell and Mowry purported signatures on the certificates are forgeries.

Bennett testified under oath three times concerning his acquisition of I.G.E. stock and each time told a different story. He testified first on February 18, 1982, during the investigation that preceeded the initiation of the instant proceeding. At that time he testified that in 1969 he purchased 300,000 shares of I.G.E. stock from Hallowell at $ .01 per share and that subsequent to that purchase he had spoken to Hallowell only twice, once in 1969 and once in 1977.

When he testified a second time during the investigative phase, on June 29, 1982, after the Division had learned that certificates M3001-M3016 had never been authorized or issued by I.G.E., Bennett altered his testimony to say that he had made various purchases of I.G.E. or predecessor-company stock through Hallowell between 1970 and 1977 and that some certificates were in his name and others were in nominee names. He also testified at that time that he hadn't known that he owned over 1.8 million shares of I.G.E.

In testifying a third time, this time at the hearings herein, Bennett again changed his story. He now testified that he made several purchases of I.G.E. stock through Hallowell up until 1973 and that all or substantially all of the certificates were in nominee names. These contradictory versions by Bennett render his entire testimony on the point highly suspect.

The I.G.E. stockholder records, and those of its predecessors, contain no indication that Bennett or his relatives owned any I.G.E. stock prior to August 18, 1977. Nor do such records contain any indication that the purported I.G.E. stock certificates M3001-M3016 were ever issued to the purported owners and on the purported dates of issuance. Additionally, the purported stock certificates were not issued in chronological sequence in accordance with the pre-printed numbers contained on the certificates. (See p. 15 above).

Respondent Bennett seeks to "explain" the failure of the I.G.E. books to reflect any sales of I.G.E. stock to him by insinuating that Hallowell personally pocketed the proceeds of such sales and therefore did not enter the sales in the I.G.E. books. This is a shameful and unwarranted effort to besmirch the reputation of a man now dead for which there is no credible support in the record.

Bennett's lack of credibility on the point at issue is further demonstrated by his 1977, 1978 and 1979 federal income tax returns. Although Bennett had previously been trained

as an IRS auditor, he filed false, inaccurate and imcomplete tax returns in those years. In 1977 and 1978, Bennett sold 50,650 shares of I.G.E. stock for proceeds of $14,595.00, and 31,900 shares for proceeds of $43,996.51, respectively. His tax returns for those two years did not include any of these sales. In 1979, his income tax return listed I.G.E. stock sales totaling $160,000; however, his actual proceeds that year from I.G.E. sales were $353,596.51. He listed the cost of his I.G.E. stock on his 1979 return as $53,000. At the hearing he first testified that he paid no more than $35,000 for his I.G.E. stock. He subsequently testified he paid "a little more" than the $53,000 listed on his 1979 tax return for his I.G.E. stock. However, from 1968 through 1974, Bennett earned gross income of only about $85,000 before taxes from his several positions and was unemployed for substantial periods of time. It is simply not credible that Bennett would have spent in excess of $53,000, or some 62% of his gross income for the period, in the purchase of I.G.E. stock.

On the basis of all of the evidence in the record relevant to the issue, it is concluded that Respondent Bennett forged I.G.E. stock certificates M-3001-M3016, or caused them to be forged, and thereafter injected shares of I.G.E stock derived from those certificates into the market place as part of a fraud on the market in violation of the antifraud provisions referred to above.

Additional violations of the antifraud provisions mentioned above were committed by Bennett through false and misleading representations and material omissions made by him to various customers of his respecting I.G.E. stock.

Bennett's most flagrant misrepresentations were to customer R.C., a truck driver who had a ninth grade education and no previous investment experience. He was clearly an unsophisticated customer. Based on Bennett's misrepresentations, R.C. invested approximately $24,000 in I.G.E. stock, which represented his entire life's savings, and was forced to borrow from a finance company on one occasion to meet what he believed was an obligation to Registrant. Bennett's misrepresentation to this customer included false and unfounded statements that the customer would (1) become a wealthy man through his investing in I.G.E. stock; (2) save commissions by purchasing I.G.E. stock through Bennett (when the sale was on a principal, not an agency, basis); (3) suffer tax ramifications if he were to sell his I.G.E. stock; and (4) "ruin" the market in I.G.E. stock if he sold his stock. In addition, Bennett told R.C. that I.G.E. would be obtaining a casino license in Atlantic City and that I.G.E. stock would rise to $22.00 per share based on I.G.E.'s interest in a hotel/casino project in Atlantic City, when Bennett had no reasonable basis for making such statements. In one of R.C.'s

purchases of I.G.E. stock, in December 1978, he was told by Bennett that the stock had been purchased on the open market, when, in reality, R.C. had been sold Bennett's own I.G.E. stock. To disguise the source of the purchase, Bennett sent the customer a receipt in the mail for this purchase on Registrant's stationery. Bennett also misrepresented the market price of I.G.E. stock to the customer at the time of that purchase, in representing that the market price was $2.00 per share when it had been trading at $1.00 per share. Such misrepresentations and omissions were clearly material.

Bennett also failed to disclose various material facts to his customers who bought I.G.E. stock from him. Firstly, he failed to inform his customers, who were purchasing the stock, that he was, at the same time, selling the stock. Secondly, on two occasions, he sold his I.G.E. stock directly to individuals and failed to disclose the source of the stock. The most egregious omissions involved Bennett's failure to disclose his relationship to I.G.E., his receipt of a finder's fee from I.G.E., and (as already noted) the selling of his I.G.E. stock.

All of the above omissions were clearly material and were used to advance his overall scheme, i.e., to sell his unregistered and in large part, unauthorized and unissued, I.G.E. stock.

In the course of violating the anti-fraud provisions of Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, as found herein, Bennett made use of the means and instrumentalities of communication and transportation in interstate commerce and of the mails.

Additional antifraud violations by Bennett in the course of his sales of I.G.E. stock occurred when, on two separate occasions Bennett, as an insider, sold I.G.E. stock for personal gain on the basis of material, non-public, inside information.

Bennett was an "insider" with respect to I.G.E. because, as already found above, after Bennett brought Moon and the "old" I.G.E. board of directors together, Moon continued to utilize Bennett as a consultant, and compensated him through issuance of I.G.E. stock. 22/ As already found and discussed above, Bennett was under an obligation to utilize his 400,000 pre-split I.G.E. shares in a way that would develop and maintain a strong market for I.G.E. shares. In that connection,

---

22/ "Under certain circumstances, such as where corporate information is revealed legitimately to an underwriter, accountant, lawyer, or consultant working for the corporation, . . . outsiders may become fiduciaries of the shareholders. The basis for recognizing this fiduciary duty is not simply that such persons acquired nonpublic corporate information, but rather that they have entered into a special confidential relationship in the conduct of the business of the enterprise and are given access to information solely for corporate purposes . . . ." Dirks v. S.E.C., 103 S.Ct. 3255, 3261, note 14, (1983).

Bennett got Registrant to make a market in I.G.E. stock and was supposed to, and apparently did attempt to, enlist other broker-dealers to make a market in the stock. As a consultant, Bennett in 1977 had several discussions with Moon concerning the need for and desired nature of a reverse stock split, between the time that Moon took over control of I.G.E. and the time the stock split was effected. Later, in 1979, when Moon was exploring the possibilities of a hotel-casino project in Atlantic City, New Jersey, Bennett, in his capacity as consultant to I.G.E., contacted and "screened" potential joint-venture partners of I.G.E. in the hotel-casino plan, attended meetings on behalf of I.G.E. relating to the hotel-casino project, and, as already found above, unsuccessfully attempted to get Registrant interested in a public offering of I.G.E. stock to finance the proposed hotel-casino development.

The first instance of Bennett's insider trading occurred in connection with his sales of I.G.E. stock prior to I.G.E.'s 1 for 10 reverse stock split on November 1, 1977. As already found, Bennett was well aware of the impending stock split and, as an experienced professional, was aware of the likely effect of a reverse stock split of such magnitude on a company with I.G.E.'s lack of a track record and minimal financial resources.

The information relating to the reverse split was "material" in that a reasonable investor would deem it important to know

that I.G.E. was planning a reverse stock split that would have the effect of reducing the number of shares owned by a factor of ten. TSC Industries v. Northway, 426 U.S. 438, 449 (1976).

This was especially true with respect to a stock such as I.G.E. Generally, when a reverse stock split is effected, the market price of the stock increases approximately proportionately to the split. However, with securities of low priced, unseasoned companies, it is highly unlikely that the market price will increase in an amount proportionate to the split. It was highly doubtful that, as a result of the reverse split, the price of I.G.E.'s stock would increase from, say, $1.00 to $10.00. Directly after the reverse split the stock actually dropped in price.[23/] See p. 14 above for longer-term price ranges before and after the reverse stock split. Such price ranges were, of course, affected by factors other than the split, as well. In any event, information concerning the reverse stock split was material information under Northway.

Bennett took advantage of his position as an "insider" of I.G.E. and, within approximately one month after learning of the impending stock split, sold 50,650 shares of I.G.E.

23/ Bennett testified that the pre-split price was $ .20 and the post-split price $ .07. The bid and ask quotations in the pink sheets on November 2, 1977 and December 30, 1977 were 1/16 - 1/4 and 1/4 - 1/2, respectively.

common stock for proceeds of $14,595, without disclosure, prior to the public announcement of the November 1, 1977 reverse stock split.

Bennett sold I.G.E. common stock a second time on the basis of material non-public information in connection with I.G.E.'s unsuccessful hotel/casino project. Bennett became aware of I.G.E.'s interest in land acquisition for a hotel/casino in Atlantic City at least as early as March 22, 1979, at which time he was requested by I.G.E. to screen responses to an advertisement that I.G.E. had published, anonymously, in the Wall Street Journal seeking joint venture partners for its project. None of the responses proved fruitful. Bennett attended several meetings with Moon relating to I.G.E.'s attempt to purchase the "Gateway" land site in Atlantic City for hotel/casino development. On April 17, 1979, he attended a meeting in Atlantic City with Moon and others at which time the proposed purchase of the Gateway site fell through. As already noted, Bennett assisted I.G.E. in its efforts to secure financing for the project by approaching Registrant on behalf of I.G.E. to interest it (without success) in doing a public underwriting to finance the project.

During April 1979, the price of I.G.E. stock dramatically increased, as earlier noted, reaching a high of 9 1/2 per share on April 19, 1979, while prior to this time the stock had experienced insignificant activity. This price increase was based on rumors of I.G.E.'s interest in land acquisition for

a hotel/casino in Atlantic City. Bennett was aware both of the fact that the price-increase and interest in I.G.E. had been fueled by non-public rumors regarding the hotel/casino project and of the developing status of I.G.E.'s interest in and prospects (or lack thereof) for successfully bringing about such a project.

No public announcement concerning the hotel/casino project was made by I.G.E. until June 6, 1979. From April 12 to June 1, 1979, i.e. prior to the public announcement and while in possession of material, non-public information, Bennett sold 41,900 shares of his I.G.E. stock for proceeds of $207,184.38, representing 38 percent of the total proceeds he received during his four-year distribution of I.G.E. stock.

In addition to Bennett's selling his I.G.E. stock on the basis of material non-public information, he also "tipped" such information to certain of his customers, thus further breaching his fiduciary duty to the shareholders of I.G.E.

Prior to the public announcement, Bennett disclosed I.G.E.'s hotel/casino plans to two of his customers, personally benefiting in each instance by the disclosures. He told E.P., a customer of his, of I.G.E.'s plans, and she subsequently purchased the stock based on that information. E.P. purchased 500 and 200 shares of I.G.E. stock on April 11 and 17, 1979, respectively, and on each transaction Bennett earned commissions. Bennett also told R.C., another customer of his, about the hotel/casino project. After learning this, and based in part on Bennett's other misre-

presentations, as found earlier above, R.C. refrained from selling his I.G.E. stock previously purchased, believing that when I.G.E. was granted a casino license, the price of the stock would rise even higher. As found earlier herein, Bennett discouraged R.C. from selling his I.G.E. stock because a sale by R.C. of a substantial amount of I.G.E. stock would "disrupt the market" for the stock.

Thus, both through his personal trading and his disclosures to customers, Bennett violated the insider-trading anti-fraud provisions of the federal securities laws.

In all of the antifraud violations found herein, Bennett acted with knowledge and intent to defraud and deceive, i.e. with scienter.

G. Conclusions of Law.

In general summary of the foregoing it is concluded that within the relevant period from about August 1977 to about June 1981: (1) Respondents Butcher & Singer, Inc. (Registrant), Samuel J. Bennett, and Thomas A. Grey wilfully violated and wilfully aided and abetted violations of the registration provisions of Sections 5(a) and 5(c) of the Securities Act of 1933 in connection with the offer and sale of the common stock of I.G.E., Inc.; (2) Registrant wilfully violated Section 15(c) of the Exchange Act and Rule 15c2-11 thereunder; (3) Bennett wilfully violated the anti-fraud provisions of Sections 17(a)(1), 17(a)(2), and 17(a)(3)

of the Securities Act and of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with sales of I.G.E. within the relevant period, and (4) Registrant failed reasonably to supervise, within the meaning of Section 15(b)(4)(E) of the Exchange Act, Respondents Bennett and Grey, who committed violations of the securities laws found herein, all as more particulary found above.

III. THE PUBLIC INTEREST

In determining what sanctions, if any, it is appropriate to apply in the public interest, it is necessary for the Commission, among other factors, to " . . . weigh the effect of . . . action or inaction on the welfare of investors as a class and on standards of conduct in the securities business generally." 24/

The violations found to have been committed by Bennett are on their face so egregious that there is no difficulty in reaching the conclusion that the permanent bar sought by the Division is clearly warranted. This conclusion is reached without taking into account the inside-trading violations found herein. I exclude those for sanctions purposes for the reason that those violations occurred against a background of

---

24/ Arthur Lipper Corporation, Securities Exchange Act Release No. 11773 (October 24, 1975) 8 SEC DOCKET 273, 281. Although the reviewing Court in Arthur Lipper Corp. v. S.E.C., 547 F.2d 171, 184-5 (2d Cir. 1976) reduced the Commission's sanctions on its view of the facts, it recognized that deterrence of others from violations is a legitimate purpose in the imposition of sanctions.

much broader, and very serious, violations that are in themselves more than sufficient to support an indefinite bar of Respondent Bennett.

The record indicates that Bennett was previously suspended by the New York Stock Exchange for a year for violating his then-employer's policy relating to the purchase of low-priced securities and for Regulation T violations. Again, even if Bennett's prior record were unblemished, the violations disclosed by this record are of so serious a character as to require a bar. His fraudulent and unlawful conduct extended over a four year period in a very deliberate and calculating way, and included the kinds of violations that strike directly and strongly at the credibility of the securities markets.

Registrant's violations, too, are very severe. Registrant unlawfully engaged in a massive distribution of unregistered securities over a four-year period. In addition, Registrant violated Section 15(c) and Rule 15c2-11 thereunder, which fact, as found above, was a contributing factor in Registrant's failure to detect and thus avoid its having participated in the prolonged distribution of unregistered stock. As found herein, Registrant's violations occurred because it failed to have in place proper procedures that would be reasonably calculated to avoid its becoming engaged in a distribution of unregistered securities and because its supervisory and compliance personnel failed on numerous

occasions to heed the obvious red flags that called for Registrant to make a searching inquiry instead of the superficial and perfunctory inquiries it did make. Under the facts in this case, the failures on the part of Registrant were closely interrelated with its failures reasonably to supervise Bennett and Grey with a view to preventing the violations found to have been committed by them.

Registrant has been previously sanctioned for misconduct that was similar to the present violation. In Butcher & Sherrerd, et al., Securities Exchange Act Release No. 8809 (January 29, 1970), Registrant was sanctioned on consent for engaging in a distribution that involved in excess of 500,000 shares of unregistered stock. Registrant was censured and its over-the-counter trading department was suspended for five business days on the basis of that violation. Registrant, judging from the instant findings, has failed to institute meaningful procedures reasonably calculated to prevent an unregistered distribution of stock. In a second violation prior to the instant proceeding, Registrant was charged with violations of the anti-fraud provisions of the Exchange Act and Investment Advisers Act of 1940, and was suspended on consent for fifteen business days from soliciting any institutional customers for purchase or sale of any equity security in the over-the-counter market.

The securities industry must continually be put on notice that such failure to live up to the responsibilities of a broker-dealer will not be tolerated. The Division recommends that Registrant be suspended for 60 calendar days from engaging in market making transactions as principal in all over-the-counter equity securities. While I consider that the recommended sanction would be fully warranted on the basis of the findings herein, it is concluded that such a suspension of 30 days will be adequate and appropriate in the public interest.

As to Respondent Grey, the Division recommends that he be suspended from association with any broker or dealer for a period of 180 calendar days. While Grey was guilty of violations, as found herein, and while his personal trading in the unregistered stock in 1979 does not enhance his position when considering sanctions, I conclude, nevertheless, that Registrant's failure expressly to place prescribed responsibilities for guarding against the trading of unregistered stock upon the initiating trader (or any other supervisory or compliance official of the Registrant) when the firm decides to make a market in a stock at the request of a registered representative is a factor that ought to be considered in Grey's favor in assessing sanctions. This in no way, however, is intended to minimize the responsibilities that Grey had as a registered professional in the securities industry under applicable statutes, Commision

releases, and pertinent judicial decisions and decisions of the Commission. Under all the circumstances, it is concluded that a 30 day suspension of Grey would be sufficient and appropriate in the public interest.

IV. ORDER

Accordingly, pursuant to Sections 15(b) and 19(h) of the Exchange Act, IT IS ORDERED as follows:

(a) Respondent Samuel J. Bennett is barred from association with any broker or dealer.

(b) Respondent Butcher and Singer, Inc. is suspended for 30 calendar days from engaging in market making transactions as principal in over-the-counter equity securities.

(c) Respondent Thomas A. Grey is suspended for a period of 30 calendar days from association with any broker or dealer.

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

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen (15) days after service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), unless the Commission pursuant to Rule 17(c) determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or

the Commission takes action to review as to a party, the initial decision shall become final with respect to that party. 25/

David J. Markun
Administrative Law Judge

Washington, D.C.
January 29, 1985

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