

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of :  
JOSEPH A. BUONGIORNO :  
JAB SECURITIES CO., INC. :  
(8-13252) :  
:

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RECORDED & INDEXED

INITIAL DECISION

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U.S. SECURITIES AND  
EXCHANGE COMMISSION

Washington, D.C.  
March 15, 1977

Irving Schiller  
Administrative Law Judge

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-4424

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APPEARANCES: Phil Gross and Charles L. Lerner for the  
Division of Enforcement.

Davis J. Stolzar for Respondents Joseph A.  
Buongiorno and JAB Securities Co., Inc.

BEFORE: Irving Schiller, Administrative Law Judge

This proceeding was instituted by an Order of the Commission dated January 30, 1974 ("Order") pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 ("Exchange Act").<sup>1/</sup> The Order alleges that twenty-seven named respondents wilfully violated certain specified provisions of the Exchange Act and the Rules thereunder and the Securities Act of 1933 ("Securities Act"). Seventeen of such respondents submitted offers of settlement which the Commission accepted and issued its findings and order imposing remedial sanctions.<sup>2/</sup> The Commission in a Memorandum Opinion discontinued the proceeding as to seven respondents.<sup>3/</sup> The Commission dismissed the proceeding as to one respondent.<sup>4/</sup> This initial decision pertains to the remaining two respondents, Joseph A. Buongiorno ("Buongiorno") and JAB Securities Co., Inc. ("JAB").<sup>5/</sup> (At times Buongiorno and JAB will be referred to collectively as "the

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1/ 15 U.S.C. §78o(b); 15 U.S.C. §78o-3 [15 U.S.C. §78s-3.]

2/ Exchange Act Release No. 10909 (July 9, 1974), 4 SEC Docket 559 (July 23, 1974); Exchange Act Release No. 11404 (May 7, 1975), 6 SEC Docket 857 (May 20, 1975); Exchange Act Release No. 10834 (May 30, 1974), 4 SEC Docket 354 (June 11, 1974); Exchange Act Release No. 11149 (December 23, 1974), 5 SEC Docket 775 (January 6, 1975).

3/ Exchange Act Release No. 12252 (March 23, 1976) 9 SEC Docket 261 (April 6, 1976).

4/ Exchange Act Release No. 10833 (May 30, 1974) 4 SEC Docket 353 (June 11, 1974).

5/ Though this initial decision will not consider the (continued)

respondents".)

Specifically, the Order charges that during the period from January 1, 1972 through July, 1972 (hereinafter referred to as "the subject period"), the respondents wilfully violated and wilfully aided and abetted violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in offering, selling, purchasing and effecting transactions in the securities of Knight Newspapers, Inc., ("Knight"), S.S. Kresge Co., ("Kresge"), Jewelcor, Inc., ("Jewelcor"), Johnson Products Co., Inc., ("Johnson"), Riblet Products Corporation ("Riblet"), and Sambo's Restaurants, Inc. ("Sambo's").<sup>6/</sup> The Order further charges that the conduct and activities of the respondents in effecting the transactions in the securities of these six issuers also constituted wilfull violations and wilfull aiding and abetting violations of Section 9(a)(2) and 10(a) of the Exchange Act and Rule 10a-1 thereunder; Section 17(a) of the Exchange Act and Rule 17a-3 thereunder; and aiding and abetting violations of Sections 7(c)(1) and 7(f)(1) of the Exchange Act and rules and regulations prescribed thereunder by the Board of Governors of the Federal Reserve System

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5/ (Continued)

allegations concerning the twenty-five respondents noted above, whose cases have been disposed of by the various Commission orders, (Footnotes 2, 3, and 4 supra), one or more of them may be referred to herein in light of the nature of the charges in the Order relating to the two respondents who are the subjects of this decision.

6/ The securities of these six issuers will, at times, be referred to hereinafter collectively as "the subject securities". Since no proof was introduced with respect to a seventh issuer, White Motor Corp., the charges of violations concerning transactions in White are dismissed as to the respondents.

("Federal Reserve System") particularly Regulations T and X.

After appropriate notice, hearings were held before the undersigned. Proposed findings of fact, conclusions of law and briefs were filed by counsel for the Division of Enforcement and the respondents.

The following findings and conclusions are based upon a preponderance of the evidence as determined by the record and upon an observation of the demeanor or the various witnesses.

#### The Respondents

In about April, 1946, Buongiorno founded and was the sole proprietor of JAB Securities Company which registered as a broker-dealer. In July 1967, JAB was incorporated as a New York corporation and succeeded to the broker-dealer registration of the former sole proprietorship. JAB at all times relevant to these proceedings was, and currently is, registered as a broker-dealer with the Commission pursuant to Section 15(b) of the Exchange Act. Buongiorno at all times relevant to this proceeding was, and currently is, president and treasurer of JAB and its sole stockholder. His father, Joseph N. Buongiorno was and is secretary and an employee of JAB.

During the relevant period JAB's operations were those of market maker in securities listed on the New York Stock Exchange ("NYSE"), the American Stock Exchange ("Amex"), and in securities traded in the over-the-counter market. In

1972, JAB primarily acted as principal in the purchase and sale of Amex listed securities which transactions were carried in the firm's trading account, and also acted as principal and agent in the purchase and sale of NYSE listed securities. In that same year, JAB had between 30 and 50 customers, all of whom had cash accounts. The firm had no margin accounts. Buongiorno supervised all operations of the firm, and in fact, did nearly all of the trading in 1972. He received all orders in listed securities, prepared virtually all order tickets, conveyed such orders for execution, kept and posted the firm's blotter, stock records, its receipt and disbursement records, it fails to receive and fails to deliver records, and its customers' ledgers. In addition, in 1972, JAB employed four persons; Robert P. Rowe, Jr. ("Rowe"), who started as a runner in 1967 and thereafter assisted with the back office work, assisted in maintaining some of JAB's books and records when Buongiorno was busy and ultimately traded some over-the-counter securities; a bookkeeper-secretary who typed the confirmation; Buongiorno's father, who assisted in posting to the blotter from order tickets prepared most often by Buongiorno and occasionally by Rowe and performed other clerical or bookkeeping duties and a person who functioned as a runner.

Genesis of the Short Selling and Covering Operation

All of the violations with which respondents are charged arise out of or result from a series of purchases and sales to or through JAB of the securities of the subject companies. Respondents do not deny that the transactions were effected. They deny the Division's contention that such transactions resulted in the violations as charged and assert that under the circumstances of this case, the alleged violations "cannot be found to be wilfull".

Briefly stated (the details of the complicated manner in which most of the transactions were effected will be amplified below) the charges of violation emanate from respondents' activities involving a course of conduct whereby respondents, in accordance with prior understandings and arrangements reached with one Vincent P. Naddeo ("Naddeo") made or caused to be made short sales of securities listed on the Amex and NYSE at a time when such securities were the subject of pending registered public offerings and the covering of such short positions with shares purchased from the registered offerings after they were declared effective by the Commission. To fully comprehend the circuitous manner in which these purchases and sales were made, it is essential at the outset to examine Buongiorno's relationship with Naddeo, the intentions of both individuals and the procedures adopted by them to accomplish their aims.

Buongiorno on behalf of JAB was an experienced broker-dealer. In 1971 as a part of his brokerage business Buongiorno on behalf of JAB placed indications of interest with one or more of the underwriters of the public offering for securities for which a registration statement was pending with the Commission and at or about the same time sold short the same securities. When the offering became effective he purchased shares in the offering to cover his prior short sales with the shares so purchased. In the latter part of December 1971 or the early part of January 1972, the staff of the National Association of Securities Dealers, Inc. ("NASD") inspected JAB's books and records and determined that the firm was, in fact, engaging in the short selling and covering practice as described above. The NASD informed Buongiorno that selling securities short during the pendency of a registration statement and covering with securities purchased in the public offering may be in violation of the securities laws. Buongiorno told the NASD he would not engage in that kind of activity in the future. Notwithstanding such promise, Buongiorno, in the latter part of January or early February 1972, met with Naddeo, a personal friend of approximately 15 years, and a registered broker-dealer during the relevant period<sup>7/</sup> and they discussed the procedures

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<sup>7/</sup> In November 1960, Naddeo formed V.F. Naddeo & Co. which company was registered as a broker-dealer. He operated the firm as sole owner for about 10 years. About February 13, 1970 the firm was placed in receivership. Naddeo was a respondent in a Commission administrative proceeding involving his firm and was named as a respondent in these proceedings, he consented to a settlement of such matters and was sanctioned by the Commission. At the time of the hearings, he was in the restaurant business.



and mechanics which could be utilized in selling short securities which were the subject of pending offerings and covering such short sales with shares acquired when such offerings became effective.

Naddeo at that time was associated with Dixon, Dolce & Co., Inc. ("Dixon Dolce") a registered broker-dealer and had an option to buy 57% of that firm's stock. After Naddeo joined the firm he was in charge of the trading room and was its principal trader. In the latter part of 1971 or early 1972 Naddeo formed and was the sole owner of a hedge fund V.F.N. Associates ("VFN"). VFN maintained its office in the same suite as Dixon Dolce. Naddeo's purpose in establishing the hedge fund was to use it as a vehicle for trading new issues and secondary offerings. Naddeo testified that after forming VFN, he talked daily with Buongiorno (on some days several times during the day) during which conversations they discussed the techniques of short selling during the pending of an offering and the covering of such short sales with shares purchased from the offering. Buongiorno testified he had traded secondary offerings long before Naddeo's "coming on the scene". Buongiorno, further testified that throughout the course of his talks with Naddeo they discussed current market conditions, the stocks that would be active in the future, the "calendar" which he and Naddeo received from

underwriters listing proposed public offerings, the dates such offerings were scheduled to become effective, the possible price of the stock at the time of the offering, the prospects of the offering, and which of the securities listed in the calendar Buongiorno and Naddeo would be interested in trading. Between five and ten such conversations took place in JAB's office. The others were telephone conversations between Naddeo and Buongiorno.

Both Buongiorno and Naddeo testified that during these discussions, the profits which could be made was considered since their avowed objective was to make a profit by selling securities short, after a registration statement for a public offering was filed, at a price higher than the price at which they expected or believed the offering would be made. They explored the mode of procedures which could best accomplish such objective. Both men were of the opinion and felt confident that if such an operation was carefully planned and properly timed profits were attainable. Buongiorno's confidence was, at the very least, premised on his apparently successful experience prior to the NASD's review of his activities and their warning of the possible violative nature of such activities. As both men continued to discuss the means best suited to attain their objectives, they were in substantial agreement that success depended upon two key factors. First, to establish

a position in a particular security by making a short sale at a price, or short sales at an average price, which would be higher than the price they expected would be the public offering price and second, to make arrangements to assure themselves they would acquire shares in the public offering at the public offering price from one or more of the brokers or dealers participating in the underwriting. They knew that this could be done only if one or more of such brokers or dealers allotted them a specific number of shares in a forthcoming public offering. Buongiorno testified he not only told Naddeo he would give him whatever assistance Naddeo needed in getting stock in an offering, but, in fact, introduced him to registered representatives of Lehman Brothers, CBWL-Hayden Stone, Reynolds and Company, Dean Witter, Fahnstock, Merrill Lynch, Eastman Dillon, Hemple Noyes and Walston so that Naddeo could get "circled"<sup>8/</sup> for stock they selected for trading and which would be publicly offered in due course by one or more of such firms. As will be noted below, one or more of such firms did in fact, circle VFN (Naddeo's hedge

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8/ Getting "circled" for a specific number of shares by an underwriter after a registration statement has been filed, was the expression used throughout the hearing to describe the procedure of making an offer to buy or placing an indication of interest with an underwriter to purchase shares after a registration statement became effective. The word "circle" (or a derivative) will be used hereafter to mean the giving of an indication of interest to a broker or dealer to purchase shares in a forthcoming public offering.

fund), and did, in fact, sell shares of the subject securities to VFN from the secondary offerings in which they participated as underwriters.

The record amply supports the finding that Buongiorno and Naddeo reached an understanding and agreed that when a particular secondary offering was one which was a good prospect for their trading pattern, they would sell short that secondary offering and cover such short sale with shares purchased in the offering. Rowe, JAB's employee, substantiated that understandings and agreements were reached between Buongiorno and Naddeo having overheard the talks held at JAB's office as well as listening to Buongiorno's frequent talks with Naddeo on the telephone. His testimony leaves no doubt as to the nature of these discussions <sup>9/</sup> He characterized the telephone

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<sup>9/</sup> Rowe's summary of the discussions which took place at the JAB's office is worth noting (the word "they" refers to Buongiorno and Naddeo).

THE WITNESS: A stock would be sold short upon receiving the news of a pending secondary and the appointed date.

A stock that they deemed a good prospect would be shorted, sold short in the street to various other houses, trading houses.

They would then go out to the firms that were involved in the secondary and indicate their interest, how much they wanted to be circled on, which indicated that they wanted that much when the deal was priced.

The thought being that the short sale would be higher than the covering price, the price that the deal would be priced at, which would be a profitable margin.

\* \* \*

(continued)

conversation as, ". . . the same general discussions as when Naddeo was there in person." He also testified that both in their office conversations and telephone talks, Buongiorno and Naddeo "indicated that they were both going to short the secondary."

The Modus Operandi

Having set the stage for a trading pattern Buongiorno and Naddeo proceeded to carry out the understandings they reached. The manner in which the short sales and covering purchases were executed by Naddeo and Buongiorno however was somewhat complicated. During their discussions, Buongiorno told Naddeo that JAB would not open an account in the name of Naddeo's hedge fund, because VFN would be selling short and he would have to treat VFN as any other customer effecting short sales insofar as cash deposits and deliveries were concerned. To avoid the appearance that JAB was directly purchasing VFN's short sales, Naddeo informed Buongiorno that VFN's short sales would be made by Dixon Dolce to or through JAB. As explained by Naddeo, "Dixon Dolce was the shorting agent." Naddeo who was in charge of the trading department at Dixon Dolce had no difficulty in directing Dixon Dolce to sell to JAB. The record amply supports the finding that Naddeo executed VFN's short sales by having Dixon Dolce sell the subject securities in its own name to JAB. The record clearly establishes that Buongiorno knew that the

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9/ (continued) THE WITNESS: How strong the deal would be, whether or not they could go and sell this stock, whether or not it looked like the stock would go down because of all of the short selling and then when the deal came , it would be priced lower than their short sales and they could cover the stock on the secondary offering.

sales to or through JAB, in the name of Dixon Dolce were in fact, short sales being made by VFN. Naddeo testified he also told the Dixon Dolce traders that VFN's sales to Dixon Dolce were short sales.

To accomplish Naddeo's and Buongiorno's purposes of buying the subject securities in the public offering at a price lower than the average of the short sale prices, Naddeo first made certain he was circled by one or more of the broker-dealers who were participating in the registered offering of the subject securities and then told Buongiorno the number of shares for which he was circled. Naddeo was thus assured of acquiring shares at the public offering price so he could cover his short sales. This was accomplished in the following manner. Next Buongiorno set about to effect the short sales with the intention of depressing the price of subject securities in the public offering.

At or about the same time JAB purchased the subject securities from Dixon Dolce, which as noted above, Buongiorno knew was the short sale by VFN to Dixon Dolce, Buongiorno sold, as principal, such stock on the Amex (if the subject security was listed on the Amex) through Dishy Easton & Co., ("Dishy Easton") acting as agent. JAB had a direct telephone line to Dishy Easton. The evidence shows that on each occasion Buongiorno placed a sell order with Dishy Easton's trader, he was asked if JAB was long in the stock and Buongiorno replied

affirmatively. Dishy Easton executed the sales on the Amex as long sales and so confirmed the transaction to JAB.<sup>10/</sup>

With respect to VFN's short sales of NYSE listed securities they were also made in the name of Dixon Dolce and sold through JAB acting as agent to Dishy Easton.<sup>11/</sup>

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10/ The details of the trades in the subject securities and the effect of these transactions on the price of the stock on the Amex will be discussed infra under the analysis of the particular subject security.

11/ As further evidence of respondents' intent to engage in the practice of selling short securities of issuers after the filing of a registration statement for a public offering of such securities and covering such short sales with securities purchased in the offering, the record discloses that Buongiorno discussed such a method of doing business with one Robert Mrozek ("Mrozek"), an account executive with Dean Witter & Co. Mrozek met with Buongiorno who explained the mechanics by which the short sale and covering transaction could be effected and told Mrozek there was a 95% chance of making a profit. Buongiorno suggested that Mrozek introduce "this method of operation" to a few of Mrozek's retail accounts. Mrozek testified that Buongiorno explained that since the Securities and Exchange Commission raised some question as to the legality of this method of business it would be best that Mrozek's accounts not be brokers or dealers subject to SEC jurisdiction. Mrozek also testified that as a result of his discussing the legality of the method of doing business as outlined by Buongiorno, he had no thought he would be violating the securities laws. As discussions progressed, Buongiorno further explained to Mrozek he could open an account for his customers both at Dean Witter and JAB. At Buongiorno's suggestions, Mrozek would circle JAB on particular issues, inform Buongiorno of the number of shares circled and Buongiorno would take care of the short sales. Three of Mrozek's customers opened accounts at JAB and at Dean Witter and Mrozek and Buongiorno carried out their previous discussed method of operation. These accounts engaged in transactions involving the short sale and covering from offerings in at least three of the subject securities. Since none of these transactions were charged in the Order as violations, no finding of violation as such is made. However, the understanding between Mrozek and Buongiorno, as outlined, is so similar to the understanding reached between Buongiorno and Naddeo that it supports and evidences respondents' intentions to engage in the short selling and covering method of doing business as as described herein.

Finally, the intent of the respondents to engage in the course of business with Naddeo and VFN outlined above, particularly as to Buongiorno's knowledge that VFN short sales of the subject securities, in the name of Dixon Dolce, to and through JAB acting as a conduit, would be covered by VFN's purchases in the registered public offerings, is abundantly demonstrated by the fact that such short sales were actually covered by the shares purchased by VFN in the respective registered public offerings of the subject securities and the fact that JAB always failed to receive the shares of the subject securities from Dixon Dolce until the brokers and dealers firms participating in the underwriting, which had circled VFN for specific amounts of shares, delivered the shares purchased in the public offering to VFN, which in turn, delivered them to Dixon Dolce which in turn delivered them to Dishy Easton.

Wilful Violation of Section 9(a)(2)

As noted earlier, respondents are charged with wilfully violating and wilfully aiding and abetting violations of Section 9(a)(2) of the Exchange Act. That Section in general, prohibits manipulation of security prices. As pertinent here, subsection (a)(2) of Section 9 makes it unlawful for any person:

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"to effect, along or with one or more persons a series of transactions in any security registered on a national securities exchange creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others."

The alleged violative conduct of the respondents relates to their activities in using the facilities of a national securities exchange to make or cause to be made short sales of the subject securities while registration statements for such securities were pending prior to the effective dates of such statements and covering such short sales with securities purchased in the public offering. To determine whether respondents' activities resulted in violations of the above quoted Section of the Exchange Act as well as violations of other provisions of the Securities Act it is essential to examine each of respondents' transactions in the subject securities since all the charges arise out of the same transactions.

However, before discussing respondents' actual transactions and the manner in which they were effected, it is necessary to determine whether the record establishes two fundamental factors common to all the alleged violations. First were the sales of the subject securities to and through JAB short sales. Second, does the record establish that respondents engaged in the short selling and covering activities in accordance with an understanding reached with Naddeo as set forth above.

The evidence clearly establishes respondents' interest to effect short sales. Prior to any of the purchases of the subject securities by JAB, Buongiorno and Naddeo in the course of their numerous talks discussed the advisability of trading the secondary offerings listed on a calendar of future public offerings and decided which particular offering was suitable for their purposes. Though neither Naddeo nor Buongiorno could recall the details of any conversation regarding the shorting of any one of the subject securities, Naddeo was certain that where the records disclosed that they had trades in any of the subject securities, he and Buongiorno discussed their intention to short those particular securities. Naddeo's unequivocal testimony in this regard is credited. <sup>13/</sup>

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12/ Naddeo's forthright testimony follows:

[Q] Now, having had conversations with respect to shorting secondary issues, can you recall in general whether in the course of those conversations the securities known as Sambo's Restaurants, Johnson, Kresge, Knight Newspapers, and Riblet Products was mentioned?

THE WITNESS: I have no specific recollection.

[Q] No, in general.

I know you cannot recall a specific conversation.

THE WITNESS: I'm sure that we had had conversations on all of those since we had trades with them.

[Q] Where you had trades, particular [sic] where you had trades in those seven securities, would it be a fair statement to say that you talked to Mr. Buongiorno about shorting those particular securities?

THE WITNESS: I would say yes.

Moreover, the record also establishes that the sales of the subject securities by Dixon Dolce which, as noted, were in reality sales by VFN, were short sales as defined in Rule 3b-3 under the Exchange Act. As relevant here, the term short sale is defined to mean:

"any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. A person shall be deemed to own a security if (1) he or his agent has title to it; or (2) he has purchased or has entered into an unconditional contract binding on both parties thereto, to purchase it but has not yet received it; . . ."

The record amply discloses that when JAB, as principal, purchased the subject securities from Dixon Dolce, Buongiorno knew as a result of his conversations with Naddeo that the sales by Dixon Dolce were by VFN and VFN did not, at the time, own such securities but had been circled by one or more of the broker-dealers participating in the public distribution and Naddeo expected to receive the shares of the subject securities in the public offering. Similarly, when JAB sold shares of the subject securities through Dishy Easton on the Amex, it neither had title to the stock nor within the meaning of clause (2) was there a good faith purchase or an unconditional contract to purchase the stock. There is no doubt that the understanding between Buongiorno and Naddeo was that a short sale would be made which would be covered from the public

offering and that when the shares became available from the public offering, they would be delivered to cover the prior short sale.

Respondents urge that its sales were from a long position, since they had purchased from Dixon Dolce, as principal, and they owned the securities by definition under Rule 3b-3 Subsection 2. Respondents also contend that when JAB sold the subject securities on the Amex they had a "firm contract made in the third market broker-to-broker and as principals." Respondents' arguments are not supported by the record. While it is true that on its face, JAB gave the appearance of having purchased the subject securities from Dixon Dolce, as principal, the evidence shows Buongiorno knew the transactions were intended to be short sales by VFN. The record discloses that Naddeo told Dixon Dolce that he was making short sales and told Buongiorno that VFN's sales were being made to JAB in the name of Dixon Dolce. VFN had no binding contract for the purchase of the subject securities at the time sales were made to JAB since it had merely been circled by one or more participants in the underwriting. Both VFN and the participants in the underwriting had the right to cancel, increase or reduce the number of shares for which VFN had been circled. No firm contract arose until after the offering became effective and priced. The reason for the circuitous transaction was to avoid the necessity for VFN and respondents to post collateral

in the form of cash or securities with a broker-dealer for the short sales of shares of the subject securities. In addition, the documentary evidence shows that at the time of the JAB sales through Dishy Easton on the Amex there were no securities in respondents' account to cover the sale. Finally, the record establishes that neither VFN, Dixon Dolce nor the respondents intended to pay for or deliver the shares of the subject securities on or prior to settlement date, but intended and, in fact, delivered the shares of the subject securities after the registration statement of the subject securities became effective and the participating underwriters delivered the shares for which VFN had been circled by VFN, which in turn delivered to Dixon Dolce, which delivered the shares to JAB, which ultimately delivered such shares to Dishy Easton. Under the circumstances, it is concluded that respondents' sales to the subject securities through Dishy Easton, as set forth below, were intended to be, and were, in fact, short sales within the meaning of Rule 3b-3.<sup>13/</sup>

Riblet

On March 7, 1972, Riblet filed a registration statement with the Commission for a proposed offering of 231,000 shares

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<sup>13/</sup> To avoid repetition in the examination and analyses of the specific transactions in the subject securities which begins with the next paragraph in the text, it should be continually recalled that prior to effecting transactions in each of the subject securities Buongiorno and Naddeo talked about the manner in which they would carry out the plan they devised.

of common stock. At the time of the filing and at all relevant times thereafter, Riblet's common stock was registered on and listed for trading on the Amex and there was a trading market for its common stock. The managing underwriter of the Riblet offering planned to sign an agreement among underwriters on May 9, 1972 and price the offering after the close on that date. Due to international events, it was determined on the evening of May 8, 1972 not to proceed with the offering.

On the morning of May 9, 1972, the managing underwriter informed members of the underwriting group by telephone of the postponement and immediately confirmed the postponement by telex. Such information was publicly available and was generally known in the investment community. It was also generally known that the Riblet proposed offering would be made on May 16. During the morning of that date the agreement among underwriters was signed. The offering was increased to 250,000 shares and the registration statement became effective at 12 noon on May 16, 1972. The shares were priced after the close on that date. The managing underwriter became aware of the fact that during the last 30 minutes of trading on May 16, there was a downward price action of Riblet and that the price of the stock declined 1 1/2 points from the close of the previous day. That type of price action (a decline of slightly less than 10%) had not occurred in Riblet

for some months and was a matter of concern to the underwriter.<sup>14/</sup>  
The underwriter determined nevertheless to proceed to price  
the stock as of the close of May 16.

Naddeo and Buongiorno began their short selling activities  
on May 8, 1972, believing that the offering would be made on  
May 9 as originally planned. Thus the evidence shows that on  
May 8, Dixon Dolce sold to JAB who purchased as principal 900  
shares of Riblet at \$19 15/16 per share. On the same date,  
May 8, JAB sold long through Dishy Easton acting as agent 900  
shares of Riblet. The settlement dates on all the foregoing  
transactions was May 15. JAB thus acted as a conduit for VFN's  
short sales. The following table depicts JAB's sales on the  
Amex.

<u>No. of Shares Sold Through Dishy Easton</u>	<u>Time of Sale</u>	<u>Price</u>	<u>Deviation From Previous Price</u>
100	11:54 A.M.	20 1/2	MINUS 1/4
800	11:54 A.M.	20 1/2	MINUS 1/4

Indicative of the careful planning between Naddeo and  
Buongiorno concerning the short selling and covering type of  
operations is amply demonstrated by the manner in which  
Buongiorno quickly covered his obviously short sale on May 8.  
On May 9 after Buongiorno learned the offering had been post-  
poned JAB purchased, as principal, through Dishy Easton, acting  
as agent, on the Amex 900 shares of Riblet at \$19 3/8 per

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<sup>14/</sup> The managing underwriter testified that he contacted the  
Amex about the decline which investigated the matter and  
"turned over their findings to the SEC."

per share, the order for such shares being entered at 12:03 P.M. On the same day JAB, as principal, sold to Dixon Dolce 900 shares at \$19 11/16 per share.

On May 16, 1972 (the effective date) Buongiorno and Naddeo again commenced their activities concerning Riblet. The following table depicts the JAB purchases of Riblet from Dixon Dolce and the sale by JAB long through Dishy Easton, acting as agent, on the Amex. The record clearly establishes JAB was acting as a conduit for VFN's short sales.

<u>No. of Shares Purchased by JAB</u>	<u>Price</u>	<u>No. of Shares Sold Thru Dishy Easton</u>	<u>Time of Sale</u>	<u>Price</u>	<u>Deviation From Previous Price</u>
		900	11:35 AM	\$21	MINUS 1/8
1000	\$ 20 5/8	100	11:51 AM	20 5/8	MINUS 1/8
1000	19 3/4	200	3:12 PM	20 1/8	MINUS 1/8
		300	3:16 PM	20 1/8	ZERO MINUS
		300	3:24 PM	20 1/8	MINUS 1/8
		200	3:24 PM	19 7/8	MINUS 1/4

In each instance in which JAB sold as long through Dishy Easton the sale was executed at a lower price than the preceding sale or the next preceding transaction and reduced the market price and the offering price for such securities. Stated in terms of market language each of JAB's long sales on the Amex was effected on either a minus tick (a price lower than the next previous sale) or zero-minus tick (the same price as the next preceding downward sale price).



The managing underwriter of the Riblet offerings testified that of the 6300 shares of Riblet on May 16 on the Amex, the sales by JAB amounting to 2000 shares were a significant amount of the total traded for that day. The 1000 shares traded in the last 18 minutes (between 3:12 and 3:30) of trading out of a total of 2300 shares traded during that period were a significant portion of the volume of the trading on the Amex during that period. He further testified that all of respondents' sale transactions on the Amex on May 16 contributed to causing a decline in the price of Riblet shares and that the respondents' sale in the last 18 minutes of trading had a detrimental effect on the market price of Riblet. He also testified that if respondents' sales transactions in Riblet had been properly marked and entered as short sales they could not have been executed under the Amex rules, since they were on minus or zero minus ticks. His testimony is credited.

The documentary evidence discloses that delivery of the Riblet stock to JAB from Dixon Dolce of the 900 share transactions on May 8 with a settlement date of May 15 was not made until May 24 when 300 shares were delivered. Such deliveries were 9 and 10 days late respectively.

The documentary evidence discloses that on May 17 (the date the public offering was made), VFN purchased 2000 shares of Riblet from the registered offering at a price of \$19 1/2 per share from 5 broker-dealers participating in the underwriting,<sup>15/</sup>

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<sup>15/</sup> See footnote 16 infra.

and on the same date VFN sold 2000 shares of Riblet to Dixon Dolce at the same price. The respective underwriters delivered the shares to VFN on May 24. VFN delivered the shares to Dixon Dolce, which, in turn, delivered 1100 Riblet shares to JAB on May 25, two days late and the balance of 900 shares on June 14, twenty-two days late. JAB delivered 1100 shares to Dishy Easton two days late and 900 shares twenty-two days late.

Jewelcor

On April 6, Jewelcor filed a registration statement with the Commission for an offering of 725,000 shares of its common stock. The Jewelcor common stock was listed on and registered for trading on the Amex. At the time of filing of the statement and thereafter there was a trading market in Jewelcor common stock. The registration statement was declared effective by the Commission at 1:30 P.M. EDST on May 1, 1972 at \$32.00 per share.

Buongiorno and Naddeo knew from the calendars they had listing the secondary offerings, of the April 6, 1972 filing by Jewelcor and knew that the registration statement was scheduled to become effective on May 1, 1972. The evidence disclosed that the short selling activities began on the morning of May 1. Commencing shortly after 10:00 A.M. and continuing until approximately noon, Dixon Dolce sold to JAB which purchased, as principal, a total of 2200 shares of Jewelcor in four separate transactions of which two transactions

were of 500 shares each and two of 600 shares each at prices ranged between \$32 5/8 to \$33 per share. The settlement date for such trades was May 8, 1972. Contemporaneously with its purchases, JAB sold as long through Dishy Easton, acting as agent, on the Amex, equal amounts of shares of Jewelcor. Thus, JAB acted as a conduit for VFN's short sales on the Amex.

The following table shows JAB's sales through Dishy Easton on the Amex on May 1, 1972, the effective date of the Jewelcor registration statement:

<u>No. of Shares Sold Through Dishy Easton</u>	<u>Time of Sale</u>	<u>Price</u>	<u>Deviation From Previous Price</u>
500	10:53 A.M.	\$35 1/8	MINUS 1/8
100	11:22 A.M.	34 3/4	MINUS 1/8
500	11:34 A.M.	33 5/8	MINUS 1/4
500	11:50 A.M.	33 1/2	ZERO MINUS
600	12:47 A.M.	33 1/4	MINUS 1/8

The specialist handling the Jewelcor trades on the floor of the Amex testified that all of the sales on a down tick contributed to the downward trend of the stock and that each of the foregoing sales through Dishy Easton not only contributed to the decline in price of the Jewelcor stock that day but contributed to the heavier downside volume later in the day. He further testified that if the foregoing transactions on the Amex had been properly marked as short sales they could not have been executed on minus ticks or zero minus ticks, since the Amex rules required that short sales be executed on plus tickets or zero plus ticks. The testimony of the specialist is not refuted and it is credited.

The Jewelcor public offering was made on May 3, 1972 and the record discloses that VFN purchased 3200 shares on that date from eight participating broker-dealers at the public offering price of \$32.00 per share.<sup>16/</sup> On the same date, May 3, 1972, Dixon Dolce purchased, as principal, from VFN 3200 shares of Jewelcor at a price of \$32 3/4 per share. The settlement date was May 10, 1972. On May 10, 1972, the respective underwriters delivered the 3200 shares of Jewelcor to VFN which delivered them to Dixon Dolce.

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<sup>16/</sup> Some of these broker-dealers were among the brokerage firms whose registered representatives were introduced to Naddeo by Buongiorno.

As noted, the settlement date, for the 2200 shares purchased by JAB from Dixon Dolce was May 8, 1972. The documentary evidence establishes that JAB received the 2200 Jewelcor shares from Dixon Dolce between May 10 and May 17, 1972 and that Dishy Easton received the said shares during the same period. Thus, all such deliveries were late for periods between two and nine days.

### Johnson

On May 11, 1972, Johnson filed a registration statement with the Commission for a public offering of 300,000 shares of its common stock. At the time of the filing, Johnson's common stock was registered on and listed for trading on the Amex and a trading market existed for such shares. The registration statement was declared effective by the Commission at 10:30 A.M., on June 1, 1972, at a price of \$35 per share. However, as will be noted below, the public offering was postponed to June 15 because the president of the issuer refused to sell at the closing price on June 1 (the pricing formula was related to the last sale on the Amex on the closing date of June 1) when he learned that the market price had dropped from the opening of \$35 1/2 to \$33 per share, a drop of 2 1/2 points. Respondents' transactions on the Amex that day, particularly in the last half hour of trading had a significant impact on the downward movement.

The record establishes that Buongiorno and Naddeo were aware that the Johnson offering was proposed to be made on June 1. They commenced their short selling activities on May 31 and continued on June 1, the date scheduled for the closing. Their trading pattern was similar to their earlier experiences, in Jewelcor and Riblet. On May 31, Dixon Dolce again acting for VFN, sold to JAB, which purchased as principal, 700 shares of Johnson at \$35 1/4 with the settlement date June 7. On the same date, respondents sold long through Dishy Easton acting as agent on the Amex, 700 shares of Johnson in 2 transactions. The first sale at 10:57 A.M. was for 500 shares at \$35 3/4 and the second for 200 shares at 11:05 A.M. at \$35 5/8. Each transaction was at a minus tick of 1/8. Both sales set new lows for Johnson in successive order and set the pattern for the day. The documentary shows that the price never went above the \$35 5/8 figure.

Of ever greater significance were respondents trades the following day, June 1. The following table depicts the pertinent facts relating to the purchases by JAB from Dixon Dolce, acting for VFN and the practically simultaneous sales by respondents through Dishy Easton, acting as agent on the Amex.

<u>No. of Shares Purchased by JAB</u>	<u>Price</u>	<u>No. of Shares Sold Through Dishy Easton</u>	<u>Time of Sale</u>	<u>Price</u>	<u>Deviation From Previous Price</u>
500	34	100	12:05 PM	35	MINUS 1/4
		400	12:28 PM	34 3/4	MINUS 1/4
1000	33 7/16	100	2:52 PM	34 3/8	MINUS 1/4
		400	3:05 PM	34	MINUS 1/4
		100	3:19 PM	34 3/4	MINUS 1/4
		400	3:19 PM	33 5/8	MINUS 1/8

Thus the documentary evidence amply demonstrates the manner in which respondents were able to implement the plan previously discussed between Buongiorno and Naddeo to sell the Johnson stock short at a higher price and cover with securities purchased at a lower price in the public offering. By carefully timing its sales on the Amex, respondents succeeded in driving down the market price of the Johnson stock shortly before the close of the market in the belief that the public offering price would be fixed on the basis of the last sale on June 1. Of the 2200 shares traded within the last 38 minutes of trading, respondents' sales of slightly less than half (1000 shares) the shares traded had a very disproportionate downward impact on the market price. An even greater disproportionate downward effect may be seen on comparing respondents' sales in the last 25 minutes (starting with 3:05 P.M.) when they sold 900 shares of a total of 2000 shares sold during that period. It is significant that respondents six trades on the Amex on June 1,

constituted 29% of the trades in Johnson stock that day. If respondents' trades had been properly entered as short sales, they could not have been executed on minus ticks on the Amex under its rules.<sup>17/</sup>

When the public offering was finally made on June 15, VFN purchased a total of 2200 shares of Johnson at a price of \$35 per share from 5 participating brokers and dealers in the underwriting<sup>18/</sup> and sold 1900 shares to Dixon Dolce which purchased as principal at \$34 5/8 per share. The participating broker-dealers delivered the 2200 shares to VFN on June 22, which delivered them to Dixon Dolce. Between June 14 and June 20, Dixon Dolce delivered the 700 shares sold to JAB on May 31, such deliveries being between 7 and 22 days late. Between June 23 and some time after June 30, Dixon Dolce delivered the 1500 shares sold to JAB on June 1, such deliveries being 15 and 22 days late. Between June 14 and June 23, JAB delivered to Dishy Easton the 2200 Johnson shares sold through it on the Amex on June 1, such deliveries being late from 7 to 22 days.

Sambo's

Sambo's filed a registration statement with the Commission on April 4, 1972 for a public offering of 1,000,000 shares of

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<sup>17/</sup> The evidence shows that on June 7, JAB purchased as principal, 300 shares of Johnson through Dishy Easton at \$33 1/8 per share and sold such shares to Dixon Dolce at \$33 9/16 per share. The settlement dates for such transaction was June 14.

<sup>18/</sup> See footnote 16 supra.



common stock. At the time of such filing, Sambo's common stock was registered on and listed for trading on the Amex and there was a trading market for its common stock. At the time of filing, the managing underwriter intended to make the public offering of Sambo's at the end of April or early May and so advised members of the underwriting group. Such information was publicly available. The evidence shows that on May 5, the managing underwriter informed the underwriting group that the agreement among underwriters would be signed on May 9. However, on May 8 the underwriting group was again informed that the signing of the underwriting agreements was being postponed subject to day-to-day review. On May 10, the same group was advised that the agreements would be signed at 9:30 A.M. on May 15, that the registration statement would become effective that day and the issue would be priced after the close on that day. All the foregoing information was publicly available and known in the investment community. The registration statement became effective on May 15 and the shares were priced on the basis of the closing price of the last sale on the Amex that day.

As will be seen from the chart below, respondents and Naddeo believing Sambo's would be publicly offered at the end of April began their short selling activities on April 26 and 27, continued them on May 8, 11, and on May 15. The pattern described earlier was followed with respect to Sambo's. Dixon

Dolce, acting for VFN sold to JAB, which purchased as principal and on the same respective dates JAB sold long through Dishy Easton acting as agent on the Amex. The following table depicts respondent's activities in Sambo's.

<u>Trade Date</u>	<u>No. of Shares Purchased By JAB</u>	<u>Price</u>	<u>No. of Shares Sold Thru Dishy Easton</u>	<u>Time of Sale</u>	<u>Price</u>	<u>Deviation From Previous Price</u>
4/26	700	\$35 1/8	100	1:06 p.m.	\$35 3/4	minus 1/8
			400	1:06 p.m.	35 1/2	minus 1/4
			200	1:16 p.m.	35 5/8	minus 1/4
4/27	500	35	100	12:00 Noon	35 5/8	minus 1/4
			400	12:10 p.m.	35 1/2	minus 1/8
5/8	1000	33 7/8	100	10:13 a.m.	34 1/2	minus 1/4
			200	10:16 a.m.	34 1/2	zero minus
			700	10:16 a.m.	34 1/4	minus 1/4
5/8	1000	32 3/4	100	11:52 a.m.	33 1/4	minus 1/4
			900	11:58 a.m.	33 1/8	minus 1/8
5/8	1000	33 13/16	100	1:45 p.m.	34 1/2	minus 1/4
			500	1:47 p.m.	34 1/4	minus 1/4
			400	1:53 p.m.	34 1/8	minus 1/8
5/11	1000	33 5/8	100	11:45 a.m.	34 1/8	minus 1/4
			900	11:51 a.m.	34	minus 1/8
5/15	1000	33 11/16	300	11:10 a.m.	34 1/4	zero minus
			200	11:10 a.m.	34 1/4	zero minus
			500	11:26 a.m.	34	minus 1/8
5/15	1500	33 7/16	100	3:22 p.m.	34	minus 1/4
			700	3:22 p.m.	33 3/4	minus 1/4
			200	3:27 p.m.	33 3/4	zero minus
			500	3:29 p.m.	33 3/4	minus 1/8

An analysis of the foregoing transactions makes it manifest that each of respondents' sales on the Amex in the five trading dates shown, reduced the price of Sambo's stock and each of such sales contributed to a decline of the market price of the said stock on the Amex. Respondents' transactions on the day the registration statement became effective and was to be priced, clearly demonstrates respondents' intentions and the efforts they made to drive the price of the stock down. In the last 8 minutes of trading, respondents effected 4 of the 5 transactions totalling 1500 of the 1700 shares traded in that period and constituted nearly 100% of the trading in the said period. Respondents' trades had a most significant effect on the downward movement of the price of the stock. Of utmost importance is the fact that since respondents' sale was the last trade of the day it had a very definite effect on the public offering price. In fact, it determined the offering price. Respondents sales on the Amex had the effect of reducing the proceeds of the offering to the selling shareholders and the issuer. If each of respondents' sales on the Amex on the five trading dates depicted in the table had been properly executed as short sales, they could not have been executed on the floor of the Amex on minus or zero minus ticks under the rules of the Amex.

The documentary evidence shows that VFN purchased from the Sambo's registered offering a total of 6800 shares at a price of \$33.75 from 8 broker-dealers participating in the underwriting.<sup>19/</sup>

The documentary evidence also reflects that the same certificates delivered by the underwriters to VFN were in turn delivered to Dixon Dolce and in turn delivered by Dixon Dolce to JAB and ultimately delivered by JAB to Dishy Easton. The documentary evidence also shows that Dishy Easton received the said securities between 3 and 20 days after the settlement dates of the respective transactions.

Kresge

Kresge filed a registration statement with the Commission on March 31, 1972 for a public offering of 2,200,000 shares of its common stock. On such date and thereafter Kresge's common stock was listed on and registered for trading on the NYSE and there was a trading market for such shares. The registration statement was declared effective by the Commission at 10:00 A.M. on April 25, 1972 at a price of \$106 1/4 per share. The public offering was made on that date based on the closing price of the NYSE on April 24, 1972. The following table depicts the sales by Dixon Dolce acting for VFN. Dixon Dolce sold through JAB, acting as agent, to Dishy Easton purchasing, as principal, the shares noted therein at the price stated. In each case JAB received a Commission.

<u>Date</u>	<u>No. of Shares Sold by Dixon Dolce Through JAB to Dishy Easton</u>	<u>Price</u>
4-19	200	\$ 116
4-20	200	115 7/8
	100	114 1/2
	200	113 3/8
4-24	200	106 1/2
	200	109 1/4

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<sup>19/</sup> See footnote 16 supra.

On April 25, 1972 VFN purchased from the registered offering a total of 2200 shares of Kresge at a price of \$106.25 per share from 5 broker-dealers participating in the underwriting<sup>20/</sup> and on the following day, April 26, VFN sold to Dixon Dolce 1700 shares at a price of \$108 3/8 per share. On May 3, the underwriter delivered the Kresge shares to VFN and on the same day VFN delivered the shares to Dixon Dolce. The documentary evidence shows that JAB failed to receive the Kresge shares from Dixon Dolce until May 5, 1972. Such deliveries were between 4 and 9 days late.

#### Knight

Knight filed a registration statement with the Commission on March 8, 1972 for a public offering of 870,000 shares of common stock. At that time and thereafter, Knight's stock was listed on and registered for trading on the NYSE and there was a trading market for its shares. The registration statement became effective on April 25 at a price of \$41 1/8 per share. On May 1, 1972, Knight common stock was split two shares for one. The offering was made to the public on April 26, 1972.

The following table depicts the sales by Dixon Dolce acting for VFN. Dixon Dolce sold through JAB, acting as agent,

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20/ See footnote 16 supra.

to Dishy Easton purchasing, as principal, the shares noted therein at the price stated.

<u>Date</u>	<u>No. of Shares Dold by Dixon Dolce Through JAB to Dishy Easton (pre-split)</u>	<u>Price</u>
4-19	200	\$ 91 3/8
4-20	100	87 1/4
	200	88 1/8
4-21	200	85 3/4
4-24	200	84 3/8
	200	84 5/8

On April 26, VFN purchased 2000 pre-split shares at \$41 1/8 per share from the Knight public offering from 4 broker-dealers participating in the underwriting<sup>21/</sup> and on the same date sold 3000 pre-split shares to Dixon Dolce at \$42 per share. The Knight shares were delivered to VFN on May 3. JAB failed to receive the Knight shares from Dixon Dolce until after May 3, 1972.

Inherent in the conduct proscribed by Section 9(a)(2) is the intent that a securities market, such as one maintained, a national securities exchange where purchases and sales of securities are effected, be a fair and honest market<sup>22/</sup> and

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21/ See footnote 16 supra.

22/ See Section 2 of the Exchange Act.

one in which the price of securities traded are determined by purchasers and sellers willing to buy and sell untrammelled by the interjection of artificial stimulants. An analysis of the sales of shares of Jewelcor Riblet, Johnson and Sambo's on the Amex through Dishy Easton, acting as agent, reveals that the factors necessary to be established for conduct to be found unlawful is evidenced in the instant record. During the relevant period respondents effected a series of transactions on the Amex.<sup>23/</sup> It is clear that in placing its sell orders with Dishy Easton Buongiorno knew that VFN and Naddeo had directed Dixon Dolce to sell the subject securities to JAB and that he would cause JAB to sell the same securities on the floor of the Amex in a manner which would accomplish the program discussed with Naddeo as described above. Thus respondents' sales created both actual and apparent active trading in the subject securities. Such conclusion is premised upon the fact that respondents' sales activities were not prompted by ordinary or normal trading considerations by an owner of securities who desires to sell but rather a clearly purposeful effort to lower the price of the subject securities to that Naddeo, who respondents knew had been circled by one or more of the broker-dealers participating in the underwriting, could

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<sup>23/</sup> As depicted in the table supra, respondents effected five sales in Jewelcor, eight in sales in Riblet, twenty-two in Sambo's and eight in Johnson.

buy the subject securities at such lower prices to cover prior short sales at higher prices.

Since the violative conduct under Section 9(a)(2) is stated in the disjunctive it may also occur where the transactions depress the price of the security. In analyzing respondents' sales on the Amex in the four securities noted above which were traded on that exchange, it was concluded that each of respondents' sales in each of the subject securities either caused or contributed to causing a decline in the price of such shares on the Exchange and they exerted a marked effect in reducing the offering price.

Perhaps the best demonstration of the depressant effect of respondents' sales on the Amex occurred with respect to the Johnson and Sambo's offerings. As noted in the table depicting respondents' sales of Johnson stock on the Amex, it clearly show that respondents' sales in the last 25 minutes of trading constituted slightly less than half the shares traded in that period and exerted a disproportionate downward effect on the price of the Johnson stock. The president of the issuer upon learning on June 1, 1972, the effective date of the registration statement, that the closing market had been depressed 2 1/2 points to \$33 per share, refused proceed with the offering which he anticipated would be made at \$35 per share. His expectation was based upon the market



price of the Johnson stock shortly prior to the effective date of the registration statement. There is no evidence in the record to indicate that prior to the effective date the market price was determined by factors other than supply and demand in a free competitive market. The evidence shows that in the five trading days prior to June 1, the market price of the Johnson stock ranged between \$35 and \$37 per share.<sup>24/</sup> The table depicting the Sambo's offering is equally revealing. The respondents' sales of 1,700 shares on the Amex in the last 8 minutes of trading constituted practically 100% of the shares traded in that period and since respondents' sale was the last one of the day it determined the offering price.

The final element to consider in determining whether respondents' selling activities were in violation of Section 9(a)(2) is whether its actions were for the purpose of inducing the purchase or sale of the subject securities by others. While there is no subjective evidence that respondents' purpose in manipulating the market price of the subject securities was to induce the purchase or sale by others such a finding may be, in indeed must be, inferred from the circumstances in this case. It has been found that they intended by their short sales to depress the price of the subject securities on the Amex so that when Naddeo purchased such securities

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<sup>24/</sup> The syndicate manager of the underwriting testified that when he told Mr. Johnson that the price of the stock was 33 Mr. Johnson "literally exploded" and said "I don't believe it. We've been had." The decision not to proceed with the offering was concurred in by the syndicate manager who testified that ". . . we had to scrub the deal for the time being."

in the public offering the purchase price would be lower than the price on the average of prices at which he made the short sales. The evidence discloses that in these conversations both Buongiorno and Naddeo were well aware that there was an existing market for the secondary offering of the subject companies and that other brokers and dealers were engaging in activities similar to theirs with respect to secondary offerings. The record also shows that both men were sufficiently experienced with trading markets to be aware of the fact that owners or prospective purchasers of the securities of subject companies would be influenced by the market price to either sell or buy.

If Buongiorno and Naddeo successfully depressed the price of the subject securities they knew or should have known that owners of the stock might be induced to sell by reason of the downward trend of the market price and conversely prospective purchasers would be induced to buy at the depressed prices. Moreover, Buongiorno and Naddeo knew or believed (as in the case of the Johnson and Sambo's securities) the the public offering of these subject securities was imminent. On the basis of their experience they had reason to believe that if the price of the securities involved was depressed it would be an inducement or a stimulant for prospective purchasers to buy at such lower prices. Such inducements were the natural consequences of respondents' activities; a consequence which the record demonstrates respondents and Naddeo knew or should have

known would follow from the short sale and covering activities. It is thus clear that in addition the expressed purpose to profit from their activities, another purpose in the techniques respondents utilized to aid their manipulative intent to depress the market price of the subject securities was to induce others to purchase or sell.

Respondents urge that the Division has not maintained the burden of proof as to Section 9(a)(2) since it failed to show the requisite manipulative intent. The argument has no merit and is not supported by the record. It is abundantly clear that one of the essential elements in respondents' activities was to depress the price of the subject securities on the Amex so that such securities could be acquired in the public offering at a price below their short sale price. Within the meaning of Section 9(a)(2) respondents' series of transactions were intended to be, and were in fact, manipulative. It is therefore concluded that under the circumstances here present that one of the purposes of respondents' manipulative intent was to induce others to buy or sell the subject securities. It is concluded that respondents wilfully violated and wilfully aided and abetted violations of Section 9(a)(2) of the Exchange Act.

Violations of the Anti-Fraud Provisions of the Securities Acts

The Order alleges that respondents wilfully violated

and wilfully aided and abetted violations of the anti-fraud provisions of the Securities Acts to wit, Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.<sup>25/</sup> The gravamen of the charges hereunder relates to the same activities and conduct of the respondents discussed earlier under Section 9(a)(2) of the Exchange Act. The formulation of the methodology by which they would accomplish their objectives has been fully explored and will not be repeated here. The conduct and activities will be considered in the light of the proscriptions embodied in the anti-fraud sections of the Securities Acts.

It is well settled that a scheme calculated to manipulate the market value of a stock is within the ambit of Section 10 and Rule 10b-5. Lapdy v. F.D.I.C., 486 F.2d 139, 161 (C.A. 3, 1973). In Mutual Fund Shares Corporation v. Genesco, Inc., 384 F.2d 540 (2d Cir. 1967) the Court in referring to Section 10 and Rule 10b-5 held that "Deceitful manipulation of the market price of publicly-owned stock is precisely one of the types of injury to investors at which the Act and the Rules was aimed." And in Puharich v. Borders Electronics Co., Inc., CCH Fed. Sec. L. Rep. ¶92,141 (S.D.N.Y. 1968) the Court

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<sup>25/</sup> The composite effect of these provisions, as pertinent here, is to make unlawful the use of the mails or interstate facilities in connection with the offer and sale of any security by means of a device to defraud, an untrue or misleading statement of material fact, or any act, practice or course of business which operates or would operate as a fraud or deceit upon a customer or by means of any other manipulative or fraudulent device.

refused to dismiss a complaint charging violations of the above Section and Rule which alleged ". . . a scheme to drive down the market price . . ." The Court stated "If the defendants are fraudulently and intentionally depressing the market price, the injury to shareholders is the same, no matter what their motive." Indeed the success of the plan here depended on depressing the price of the subject securities. An analysis of the tables depicting respondents' short sales of the subject securities clearly indicates that respondents in nearly every instance commenced their short sales on the Amex on the very day the registration statement became effective or the day it was expected the registration statement would become effective. The significance of respondents' timing of its sales on the Amex is apparent. Respondents determined that one of the effective ways to depress the price of a security in the market was to start selling shortly prior to the time they knew or believed the subject securities would be priced. By depressing the price Naddeo could obtain the shares from the public offering at a price lower than the price at which such securities were sold. As earlier noted each of respondents' sales on the Amex in the subject securities had a significant downward effect on the price of such securities and in several instances respondents' sales were extremely significant when compared with either the total number traded that

day or traded in the last thirty minutes or so of trading or both.<sup>26/</sup> This alone constituted a device to defraud.

Moreover respondents knew that its sales on the Amex were not ordinary market transactions but had a more devious purpose. They knew or should have known that they were interfering with the free and open market on the exchange. Respondents knew and should have known their sales interfered with the honesty and integrity of the market in the subject securities on the Amex. Respondents and Naddeo thus knowingly engaged in a series of acts, practices and activities which constituted a scheme or artifice to defraud. Such conduct also constituted a fraudulent and manipulative course of business which in essence was designed to operate as a fraud and deceit upon Dishy Easton, purchasers who bought from Dishy Easton, floor brokers and specialists on the floor of the Amex, persons induced to sell as a result of respondents' sales, the issuers and selling shareholders of the registered public offerings, and prospective purchasers or purchasers of the registered offerings.

The Order further alleges that respondents failed to disclose the purpose of the conduct and activities described above. There is no evidence in the record that respondents

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<sup>26/</sup> See tables depicting respondents' sales on the Amex in Johnson, Riblet, Jewelcor and Sambo's.

disclosed to Dishy Easton the understanding Buongiorno had with Naddeo concerning the short sale and covering activities and obviously no such disclosures could have been made to the specialist on the floor of the Exchange whose function is to make an orderly market, nor to purchasers on the Exchange to whom Dishy Easton sold the subject securities. Respondents also failed to disclose to Dishy Easton that its sales of the subject securities were short sales for VFN. No disclosures were made to Dishy Easton that deliveries of the subject securities would be made only after VFN received the subject securities from the public offering and delivered to them to Dixon Dolce who would in turn deliver them to JAB which would then deliver them to Dishy Easton. The necessity to disclose the nature of the fraudulent activities and conduct of respondents as indicated above was recently clearly stated by the Court of Appeals, Ninth District in United States v. Charnay, 537 F.2d 341 (1976) where the Court stated:

"As noted in SEC v. Texas Gulf Sulphur Co., 401 F.2d 833, 858-862 (2d Cir. 1968), cert. denied sub nom Coates v. S.E.C. 394 U.S. 976, 89 S. Ct. 1454, 22 L.Ed. 756 (1969), the duty to disclose is based upon a potential manipulator's duty to the investing public as a whole as well as to particular shareholders."

With specific reference to Rule 10b-5 the Court held:

". . . deception may take the place of non-verbal acts. Failure to disclose that market prices are being artificially depressed operates as a deceit on the market place and is an omission of a material fact."

So too in the instant case, respondents' failure to disclose the information relating to its manipulative conduct regarding its short sales and covering activities, including the intent to depress the price of the subject securities on the Amex constituted an omission to state material facts to the persons mentioned above.

In light of the foregoing it is concluded respondents employed a device and scheme to defraud and engaged in a course of business which operated as a fraud and deceit upon customers in wilful violation of Section 17(a) of the Securities Act, Section 10(b) and Rule 10b-5 thereunder.

Violations of Section 10(a) and Rule 10a-1

The gravamen of the charges that respondents wilfully violated Section 10(a) of the Exchange Act and Rule 10a-1 thereunder is that the sales they made of Jewelcor, Johnson Riblet and Sambo's through Dishy Easton on the Amex were marked as "long" sales when in fact the securities sold were not owned and deliverable by respondents and were, therefore short sales. Briefly stated Section 10(a) as pertinent here makes it unlawful to effect short sales of any security registered on a national securities exchange in contravention of Commission's rules and regulations. Rule 10a-1(a) in effect during the



relevant period,<sup>27/</sup> as relevant here, provided in essence that a short sale on such exchange may not be effected by any person for his own account or for the account of any other person (1) below the price at which the last sale thereof, regular way, was effected on the exchange or (2) at such price unless such price is above the next preceding different price at which a sale of such security, regular way, was effected on such exchange.

Earlier in this decision it was concluded that respondents' sales of the subject securities on the Amex through Dishy Easton were short sales within the meaning of Rule 3b-3. The evidence shows that when JAB sold shares of the subject securities through Dishy Easton on the Amex, Buongiorno placed the order with Dishy Easton's trader, he was asked if he was long in the stock and in each instance Buongiorno replied affirmatively. The documentary evidence relating to such sales reflects that each of such sales was entered as and marked "long".

The record clearly establishes that when Buongiorno placed the order to sell shares of the subject securities he knew, as a result of his discussions with Naddeo, that such transactions were being effected for the account of VFN which neither owned nor had title to such shares but had merely been circled for the

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<sup>27/</sup> Subsequent to the applicable period herein the rule was amended to implement the so-called consolidated transaction reporting system. (See Exchange Act Releases 11468 dated June 12, 1975, 7 SEC Docket 150; and 12384 dated April 28, 1976, 9 SEC Docket 495.

same number of shares in the public offering which it had sold to Dixon Dolce about the same time. JAB had purchased the same number of shares from Dixon Dolce knowing they were for VFN and that Naddeo had directed Dixon Dolce to sell such shares to JAB. As noted in the various tables above each of respondents' sales on the Amex in the subject securities were executed below the price at which the last sale regular way was executed and at prices which were not above the next preceding different price at which a sale of the security, regular way, was effected on the said exchange. Since each of such sales were on "down ticks" or "zero minus ticks" and, as found, were short sales as defined in Rule 3b-3 under the Exchange Act, it is concluded that all such transactions were in violation of Section 10(a) and Rule 10a-1<sup>28/</sup>(a). Thus, the record supports the finding that respondents wilfully violated and by acting as a conduct for VFN wilfully aided and abetted violations by Naddeo and VFN of the aforesaid Section and Rule thereunder.

Aiding and Abetting Violations of Section 7(c)(1) and 7(f)(1) Under the Exchange Act and Sections 3 and 4(c) of Regulation T and Section 2 of Regulation X Thereunder

The Order alleges respondents wilfully aided and abetted violations of Sections 7(c)(1) and 7(f)(1) of the Exchange Act

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<sup>28/</sup> In this connection the earlier finding should be noted to the effect that if the long sales had been properly entered as short sales they could not have been executed in accordance with the Amex rules.

and rules and regulations prescribed thereunder by the Federal Reserve System. The basis for these charges is that respondents aided and abetted Dixon Dolce's extension of credit to VFN by purchasing the shares of the subject companies sold by Dixon Dolce through JAB's inter-broker account with Dixon Dolce, when Buongiorno knew or should have known that such shares were being sold short by VFN and that at the time of such sale, VFN, did not own such shares but intended to purchase them from the registered offerings. The purpose of enacting Sections 7(c) and (f) of the Exchange Act <sup>29/</sup> was to prevent the excessive use of credit for the purchase or carrying of securities. The purpose of Regulations T and X prescribed by the Federal Reserve System, generally speaking, was to regulate the extension of credit to customers by brokers and dealers and to regulate the obtaining of credit by borrowers (customers) in connection with the purchasing and carrying securities. <sup>30/</sup>

It is evident from the discussions between Buongiorno and Naddeo, referred to earlier, that both were aware of the fact that if Naddeo caused VFN to make a short sale to JAB it would be necessary for VFN to meet the margin requirements. The mechanics devised to effect the sales as described above was intended by both men to avoid posting margin. Apart from

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<sup>29/</sup> Section 7(c) as here pertinent makes it unlawful for any broker or dealer, directly or indirectly, to extend or maintain credit or arrange to do so for any customer on any security in contravention of rules and regulations prescribed by the Federal Reserve Board.

<sup>30/</sup> 12 CFR 220; 12 CFR 224.

the obvious profit motive which prompted respondents and Naddeo to engage in the short selling and covering activities, it was part of the understanding between Buongiorno and Naddeo that the short sale would be made to Dixon Dolce which would sell the same security to JAB.<sup>31/</sup> Naddeo's testimony, which is credited was that he told Dixon Dolce and Buongiorno that his sales to Dixon Dolce were short sales. Ronald Dixon who was president of Dixon Dolce testified the firm's records reflect that the sales by VFN were short sales. The record discloses that all of the Dixon Dolce accounts, including the VFN accounts, were cash accounts and similarly all of JAB's accounts for its customers were cash accounts. VFN did not place any collateral in its account at Dixon Dolce, a fact which Buongiorno knew or could have easily ascertained or at the very least inquired of Naddeo with whom he was constantly talking whether Naddeo had posted collateral for his short sale. The record shows Buongiorno must have known that Naddeo was not putting up any margin for his short sales.

Buongiorno's testimony, that he had "no idea" whether the sales by Dixon Dolce to JAB were actually sales by VFN, is not credited. Furthermore, such testimony is contrary to other testimony by Buongiorno that he talked to Naddeo about the secondary offerings, the calendar, helping Naddeo to get circled

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<sup>31/</sup> Naddeo testified that Buongiorno told him he did not want to deal directly with VFN because the fund, as a customer, would have to post margin for its short sales.

on stock, the formation of VFN and Naddeo's desire to engage in the short selling and covering operation. Moreover, Buongiorno should have realized if he did not actually know, that the shares of the subject securities were constantly being delivered to JAB by Dixon Dolce after the offering date of the subject securities, a date which the record shows he did know. In light of the foregoing it is concluded that respondents wilfully aided and abetted violations by Dixon Dolce and Naddeo of Section 7(c) and Regulation T.

Respondents aided and abetted violations of Section 4(c)(1)(ii) of Regulation T.<sup>32/</sup> The evidence amply demonstrates that respondents knew, or became aware because of the constant fails to receive that Dixon Dolce did not own the subject securities and knew that VFN did not own such securities since Naddeo told him he expected to obtain the stock in the public offering. Upon the assumption that under the Section, VFN's sales were somehow deemed to be bona fide cash transactions which could be made in a cash account, they would still fail to comply with the instant provisions. There is no evidence in the record that VFN's sales of the subject securities to Dixon Dolce were in reliance upon any agreement accepted by Dixon

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<sup>32/</sup> That Section relates to bona fide cash transactions between a creditor and the customer and provides that a creditor may sell any security for, or purchase any security from, any customer, provided the security is held in the account or the creditor is informed that the customer or his principal owns the security and the purchase or sale is in reliance upon an agreement accepted by the creditor in good faith that the security is to be promptly deposited in the account. In 1939 the Federal Reserve System stated in its Bulletin that a short sale by a customer in a special cash account is forbidden [25 Federal Reserve Bulletin 406 (June 1939)]. Such sales may be effected only in a margin account.

in good faith that the subject securities would be promptly deposited with Dixon Dolce. The antithesis is supported by the record. Respondents knew that the sales by Naddeo (VFN) to Dixon Dolce were short sales, that VFN did not then own the securities and there is no evidence that Dixon Dolce's purchase were in reliance on any agreement in good faith that the subject securities would be promptly deposited in the Dixon Dolce account.

Upon the basis of the foregoing finding that respondents wilfully aided and abetted violations of Regulation T promulgated under Section 7(c)(1) it is concluded that respondents wilfully aided and abetted violations of Section 7(f)(1) and Regulation X <sup>33/</sup> thereunder. Section 2 of Regulation X (12 CFR 224.2(2)), as pertinent here, states that "Credit obtained from a broker-dealer shall conform to the provisions of [Regulation T] which is hereby incorporated in this part (Regulation X)." The Section also defines the term broker-dealer to mean ". . . a person who is a broker or dealer including every member of a national securities exchange . . . ." It is evident that VFN received and enjoined the beneficial use of credit extended by Dixon Dolce with respect to the sales of

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33/ The stated purpose of Regulation X (12 CFR 224.1), as pertinent here ". . . is to prevent the infusion of unregulated credit obtained both outside and within the United States into U.S. securities markets in circumvention of the provisions of the Board's margin regulation . . . ."

the subject securities. It is concluded that respondents having been found to have aided and abetted violations of Regulation T also aided and abetted violations of Regulation X.

Aiding and Abetting Violations of Section 17(a) of the Act and Rule 17a-3 Thereunder

The Order alleges respondents' wilfully violated and wilfully aided and abetted violations of certain bookkeeping requirements of the Exchange Act as set forth in Section 17(a) of that Act and Rule 17a-3 thereunder. Specifically the Order charges that respondents falsified the records of securities transactions effected by JAB for VFN, by causing VFN's short sales of securities to be recorded as sales by Dixon Dolce through its inter-broker accounts established with JAB. In general, Section 17(a) requires a registered broker-dealer and others enumerated therein to maintain records which the Commission by rule prescribes as necessary or appropriate in the public interest or for the protection of investors and Rule 17a-3 promulgated thereunder specifies the types of books and records required to be kept including, among others, blotters, memorandum of each brokerage order and purchase and sale of a security for the account of a customer, confirmations of all purchases and sales and a record in respect of each each and margin account with the broker-dealer. The rule further requires that in each of the appropriate records the accounts

for which orders were entered or transactions effected, the name of the customer for whom such orders were entered or effected shall be specified.

The understanding regarding the manner in which Buongiorno and Naddeo intended to engage in the short sales and covering activities has been detailed earlier and will not be repeated hereunder. Suffice it to say that considering that the evidence shows Buongiorno was told by Naddeo that the sales by Dixon Dolce were VFN's short sales, it is clear that when Buongiorno recorded those transactions in JAB's books as purchases from Dixon Dolce and not short sales by VFN, he wilfully falsified the records. Thus respondents' blotter, order tickets, and confirmations to the extent they reflect sales of the subject securities by Dixon Dolce to JAB, were improper in not reflecting such sales as short sales by VFN. Accordingly, respondents are found to have wilfully violated and wilfully aided and abetted violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder.

#### Respondents' Contention

Respondents in their brief contend that the evidence fails to show that they "wilfully" violated any provisions of the Acts. In support of their argument they urge that the charges are traceable back to and rests on the activities of Naddeo and VFN's alleged short sales of secondaries. They submit that even if VFN did make the alleged short sales of the subject



securities respondents did not know that Dixon Dolce's sales to or through JAB were short sales or that they were VFN sales. The argument is without substance and rejected. It is true that some of the charges are traceable, at least in part, upon Naddeo's activities. The record however clearly demonstrates that Naddeo took no action before he discussed each of the subject securities with Buongiorno. Buongiorno testified he had numerous conversations with Naddeo regarding the trading of secondary offerings. The calendar of forthcoming issues, the possible price of the offering, the circling of the stock by VFN and his own past experience in trading both long and short and the covering of any short sales with the secondary offerings. Respondents appear to be arguing that such conversations were nothing more than esoteric discussions of market activity or some sort of exercise in futility and that Buongiorno had no knowledge that Dixon Dolce's sales to or through JAB "were short" or "were originated by short sales by VFN to Dixon Dolce". The evidence belies the argument.

Respondents' reliance upon the Commission's decision in International Shareholders Services Corporation, 9 SEC Docket (1976) is misplaced. There the Commission found that although the broker-dealer sold unregistered securities in violation of the registration and prospectus requirements of the Securities Act, the Commission found that no fraud charges had been made in the order for proceedings and that violations were caused

solely by the actions of another person and the respondents in that case were unaware of those actions and had no control over them. The Commission concluded that under the circumstances the violations cannot be found to be wilful. The instant case is clearly inapposite. Here fraud is charged and it has been found that the respondents were not only aware of the acts which constituted the violation but their conduct and activities which have been detailed earlier demonstrates they had control over the acts which resulted in the violations and indeed participated actively in the commission of the fraudulent conduct. It strains credulity to believe respondents did not know that the sales of the subject securities by Dixon Dolce to or through JAB were the short sales by VFN or that respondents' well-timed sales on the Amex were not for the purpose of depressing the market price of the subject securities shortly prior to or on the day the registration statements of the subject securities became effective. Accordingly, it is concluded that respondents' violations were wilful. The Commission has consistently held that no showing of an intention to violate the law need to be made in order to support a finding of "wilfulness" in an administrative proceeding under the Exchange Act. <sup>34/</sup>

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<sup>34/</sup> A.J. White & Co., Exchange Act Release No. 10645 (February 15, 1974) 3 SEC Docket 550, 551 n. 5; Tager v. S.E.C., 344 F.2d 5, 8n, 16 (C.A. 2, 1965), affirming Commission decision in Sidney Tager, 42 S.E.C. 132 (1964).

Public Interest

Having concluded that respondents wilfully violated and wilfully aided and abetted violations of specific sections of the Securities Act and the Exchange Act and rules thereunder, there remains the question of what, if any, remedial action is appropriate in the public interest under Section 15(b) and 15A of the Exchange Act. In the instant case consideration must be given to respondents' history in the securities industry, the gravity of the violations and the weight to be given each of such factors in deciding whether sanctions are called for and, if so, the appropriateness of any such sanction.

Respondents do not dispute that on January 26, 1965 a predecessor company to JAB and Buongiorno were permanently enjoined by a Federal Court, upon consent, without admitting or denying the allegations in the complaint from further violations of Sections 15(c)(1) and (3), and 17(a) of the Exchange Act and Rules 15c1-2, 15c3-1 and 17a-3 thereunder. Respondents do not dispute that on April 27, 1970 the Commission suspended JAB, upon consent without admitting or denying the allegations, from retail trading in securities for 90 days and suspended Buongiorno, who upon consent without admitting or denying the allegations, for the same period, from association with any broker or dealer for violations of

Section 17(a) of the Securities Act and Section 10(b), 15(c)(1) and 17(a) of the Exchange Act and Rules 10b-5, 15c1-2 and 17a-3 thereunder. Respondents do not dispute that on November 28, 1975 the NASD District Business Conduct Committee for District No. 12 expelled JAB from membership in the NASD, permanently barred Buongiorno from being associated with any member broker-dealer in a managerial, supervisory or principal capacity, suspended Buongiorno from being associated with such member in the capacity of registered representative for a period of one year and fined him \$1,000 and costs of \$120.45 for violations of Section 1 of Article III of the NASD's Rules of Fair Practice in failing to comply with Section 4(c)(1)(i) and (ii) and Section 4(a)(2) and (3) of Regulation T and for violations of the above stated Section 1 of Article III of the NASD Rules in failing to comply with Rule 15c3-3 under Section 15(c) of the Exchange Act. When respondents filed their brief they made no mention of having paid the fine or costs.

Respondents request that consideration be given to the fact that the injunction was issued more than eleven years ago that the consents were given to the injunction and the 90-day suspension without admitting or denying the allegations and in both instances, and that the reason for such consents was to avoid the expense of protracted litigation. The existence of

these factors are not sufficient to overcome the serious nature of the violative conduct found in these proceedings. It must be recognized that respondents in each of the foregoing cases were charged with violations of one or more sections of the Securities Act and rules thereunder and in the NASD proceeding with also violating that organization's Rules of Fair Practice. Both the Commission and the NASD imposed sanctions. With respect to the injunction issued by the Court, the Commission has repeatedly held "The proof of entry of such an injunction whether based on the defendant's consent or otherwise, and whether the defendant has denied the allegation of the complaint or not, may in itself form a sufficient basis for a finding that revocation is in the public interest." Securities Distributor, Inc. 40 SEC 482, 485 (1961); In re Kimball Securities, Inc., 39 S.E.C. 921 (1960).

Respondents further urge that since 1962 when Buongiorno first entered the securities business, his alleged improprieties were early in his securities business career and "were limited in number and scope" and the remainder of "has been blemish-free". The argument in contrary to the facts are rejected. While the injunction was issued in 1965, the other "improprieties" occurred in 1970 and as recently as 1975.

In giving consideration to the nature of respondents' violations no useful purpose will be served to repeat the activities which caused their commission. Of significance, however, is the fact that in late 1971, Buongiorno after admitting being

informed by the NASD that the selling short and covering activities he engaged in posed legal problems and "may be in violation of securities laws", his promise as stated in his own words ". . . "I won't do it any more", nevertheless set up an elaborate scheme and continued to engage in the short selling and covering method of doing business.

Buongiorno tried to avoid detection by effecting transactions which gave the appearance of proper transactions.

Of considerable concern is the impact of respondents' activities on the securities market. Representatives of the underwriting firms for the public offering of the subject securities who testified as to the market reaction to respondents' sales on the Amex were unanimous in their opinions that respondents' sales on the Exchange, immediately prior to the pricing of the respective offerings, had the effect of depressing the price of the subject securities on the Amex and such transactions interfered with the free interplay of supply and demand in the market and created the false appearance of market activity. In addition, by entering his orders as long when, in fact, they were "short" misled not only Dishy Easton, but every person who has reason to rely and act upon what he believes to be a broker transaction.

In view of the gravity of the violations found it is concluded that the investing public and particularly the markets in which respondents effected transactions should not be exposed to the type of fraudulent conduct engaged in by these respondents. It is in the public interest to revoke the registration of JAB as a broker and dealer and Buongiorno should be barred from being associated with any broker or dealer. Accordingly,

IT IS ORDERED that the registration of JAB as a broker-dealer be revoked and Joseph A. Buongiorno be barred from association with a broker-dealer.<sup>35/</sup>

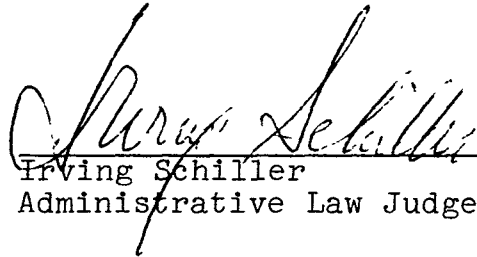
This order shall become effective in accordance with and subject to Rule 17(f) of the Commission's Rules of Practice.

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

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<sup>35/</sup> To the extent the proposed findings and conclusions submitted by the parties, and the arguments they make, are in accordance with the views herein, they are accepted; and to the extent they are inconsistent therewith, they are rejected.

review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.

  
Irving Schiller  
Administrative Law Judge

Washington, D.C.  
March 15, 1977