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ADMINISTRATIVE PROCEEDING
FILE NO. 3-5148

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of :

HINKLE NORTHWEST, INC., et al. :

(8-6561 & 801-8941) :

:

Filed 12-15-77

# INITIAL DECISION

Washington, D.C.
December 12, 1977

Edward B. Wagner
Administrative Law Judge

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APPEARANCES: Gary A. Swenson and Felice P. Congalton, 3040 Federal Building, 915 Second Avenue, Seattle, Washington 98174; appearing on behalf of the Division of Enforcement, Securities and Exchange Commission.

Norman J. Wiener and R. Alan Wight, Miller Anderson, Nash, Yerke & Wiener, 900 S.W. 5th, Portland, Oregon 97204; appearing on behalf of Hinkle Northwest, Inc., Ernest F. Hinkle, Kenneth LaMear, Dennis Reiter, Bernard Molinari, and Fred Hogg, Respondents.

Donald W. McEwen, Hardy, Buttler, McEwen, Weiss & Newman, Standard Plaza, Portland, Oregon 97204; appearing on behalf of Jack M. Wied Respondent.

Michael J. Esler, Keane, Haessler, Harper, Pearlman & Copeland, 1300 S.W. 5th, Portland, Oregon 97201; appearing on behalf of Patrick McGinnis, Respondent.

BEFORE: Edward B. Wagner, Administrative Law Judge

## THE PROCEEDING

This public proceeding was instituted by the Commission on January 17, 1977 pursuant to sections of the Investment Advisers Act of 1940 and of the Securities Exchange Act of 1934 (Exchange Act) against respondents Hinkle Northwest, Inc. (registrant or Hinkle Northwest), a Portland, Oregon broker-dealer, Ernest F. Hinkle (Hinkle), Kenneth T. LaMear (LaMear), Dennis B. Reiter (Reiter), Bernard G. Molinari (Molinari), Fred Hogg (Hogg), and Patrick McGinnis (McGinnis), variously officers and employees of the broker-dealer, and Jack M. Wied (Wied), formerly an officer of Ben Franklin Savings and Loan Association (Ben Franklin) of Portland, Oregon.

The main charges contained in the Order revolve around two transactions in U.S. Government securities. These transactions are an alleged purchase by registrant in March and sale in June, 1975 of $25,000,000 par value U.S. Treasury notes and an alleged purchase by registrant in August and sale in September, 1975 of $100,000,000 par value U.S. Treasury bills. The purchases and sales are contended to have been made on registrant's behalf by Wied in his capacity as an officer of Ben Franklin.

Registrant, Hinkle, LaMear and Reiter are charged with violations of the bookkeeping requirements of Section 17(a) of the Exchange Act and Rule 17a-3 in having failed to make appropriate entries to reflect these transactions. Registrant and

the same individuals are charged with violations of the net capital requirements of Section 15(c)(3) of the Exchange Act and Rule 15c3-1 in connection with the first transaction (i.e., the $25,000,000 transaction in U.S. Treasury notes) and are charged with failure in violation of Section 17(a) of the Exchange Act and Rule 17a-11 to notify the Commission and file appropriate reports concerning the condition of the registrant's records mentioned above and the effect of the first transaction upon registrant's net capital. They are further charged with violating Section 17(a) of the Exchange Act and Rule 17a-5 in failing to report account balances relating to the first transaction.

Registrant and Reiter are charged with having filed a false X-17A-5 report for the period ending May 31, 1975 in that it did not include any account balances relating to the first transaction.

In connection with both transactions, registrant, Hinkle, LaMear, Reiter, Molinari and Wied are charged with violations of the antifraud provisions[1/] in defrauding Ben Franklin of its credit and of profits of around $120,000.

In activity unrelated to the government securities transactions, registrant, Hinkle, LaMear, Molinari and Hogg are variously charged with violations of the provisions of Section

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1/ All these respondents are charged with violations of Section 10(b) and Rules 10b-5; only the brokerage respondents are charged with 15(c) and Rule 15c1-2 violations.

5(b)(1) of the Securities Act of 1933 in transmitting prospectuses of certain companies which did not meet the requirements of Section 10 of that Act.

Registrant, LaMear and McGinnis are charged with violations of Section 12(k) of the Exchange Act in that purchases of stock of Presley Companies were induced by McGinnis during a period in which trading in those securities had been suspended by the Commission.

Finally, registrant, Hinkle and LaMear are charged with failure to supervise in connection with the prospectus and suspended security violations.[2/]

A four-day hearing was held in Portland, Oregon in the latter part of May 1977. Wied had previously been indicted in connection with the two government securities transactions for misapplying savings and loan assets of Ben Franklin, personally benefiting from Ben Franklin transactions and making false entries in its records. A bench trial was had before United States District Court Judge Otto Skopil in February and March, 1977. U.S. v. John M. Wied, CR 76-233 (D. Ore.). Large portions of the transcript of the criminal trial were received in evidence in this proceeding pursuant to stipulation of the parties.

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2/ Additional charges in Paragraph N of the Order of violations of anti-fraud provisions in purchasing registrant's securities from members of the public without disclosing material facts concerning registrant's financial condition were dropped by the Division (Tr. 242).

In accordance with a schedule set at the conclusion of the hearing, the Division and the parties made post-hearing filings. Shortly after the last such filing, Judge Skopil on October 12, 1977, filed an opinion and order in which he found Wied guilty as charged on all counts.

On motion by the Division which was not opposed, the evidentiary record in this proceeding was reopened to receive Judge Skopil's opinion and order in evidence.[3/]

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

Background

Hinkle Northwest, Inc., an Oregon corporation, became registered with the Commission as a broker-dealer on May 31, 1958 and as an investment adviser on November 9, 1972. Registrant is a member of the National Association of Securities Dealers, Inc. (NASD), a national securities association registered with the Commission. Registrant's principal place of business since 1958 has been in Portland, Oregon. Registrant has approximately 25 registered representatives and has branch offices in Salem and Eugene, Oregon. Approximately 80% of registrant's outstanding shares are owned by insiders.

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3/ The Division asserted that the opinion and order were relevant and material to proper characterization of the government securities transactions, to certain contentions by respondents of res judicata and collateral estoppel and to the sanctions which should be imposed.

Respondent Ernest F. Hinkle has been chairman of registrant's board of directors since 1958 and owns 60% of registrant's outstanding shares. Hinkle supervises registrant's officers and salesmen.

Respondent Kenneth T. LaMear has been president and director of registrant since 1972. He was vice-president of registrant from 1964 to 1972 and owns approximately 20% of registrant's outstanding shares. LaMear also supervises registrant's officers and salesmen.

Respondent Dennis B. Reiter since January 1975, has been secretary-treasurer, a director, and shareholder of registrant. Reiter's responsibilities in 1975 included preparing registrant's financial statements, bank account reconciliations, cash flow statements, and net capital computations.

Respondents Bernard G. Molinari, and Freg Hogg, from dates prior to January 1, 1975 to the present, have been salesmen at registrant's Portland, office and are registered with the NASD as registered representatives.

Respondent Patrick McGinnis, from a date prior to January 1, 1975 to August 1976, was a salesman at registrant's Portland office and registered with the NASD as a registered representative. Since August 1976 McGinnis had been a salesman for another registered broker-dealer located in Portland.

Since a date prior to January 1, 1975, Benjamin Franklin Savings and Loan Association has been a federally chartered savings and loan association maintaining its principal place of business in Portland. From January 1975 to June 1976, respondent Jack M. Wied of Portland, Oregon, was a vice-president of Ben Franklin and its treasurer. Since June 1976, Wied has been seeking to become associated with a broker-dealer and/or investment adviser. In 1975, Wied's duties at Ben Franklin included managing the association's investment and trading portfolio. In this capacity he had authority to determine what securities to buy and to sell and at what prices.

Government Securities Transactions

In many cases Wied made investments for Ben Franklin in U.S. Government securities. One financing device in connection with the purchase of such securities is known in the industry as a "reverse repurchase agreement" or "reverse repo." A transaction constitutinga "reverse repurchase agreement" from the standpoint of the seller or lender would be a "repurchase agreement" from the standpoint of the person on the other side, the buyer and borrower.

The reverse repo concept was employed by the two broker-dealer sellers in the two government securities transactions under consideration here. The mechanics of reverse repurchase agreements are very clearly explained by Judge Skopil in his

opinion in U.S. v. Wied as follows:

"Reverse Repurchase Agreements

Under the reverse repo concept, a seller in effect loans to a buyer the money necessary to purchase a security from seller. Seller retains a possessory security interest or pledge in the security pending repayment of the loan.

More specifically, the process works as shown in the following example. Seller (generally a broker-dealer) sells buyer a security at a market price of, say, one million dollars. Buyer immediately resells the security to seller at the same price. At the same time, buyer agrees to pay interest, accruing on a daily basis, on the purchase price. The rate of interest can be either a set rate or one which varies with the market on an agreed-upon basis. Further, buyer agrees to again buy back the security at a later time, paying the same price as when originally purchased, plus accrued interest. Seller/broker-dealer later sells the security on the open market on behalf of buyer. This 'unwinding' of the transaction can occur either at a previously agreed-upon time or on notice by a party, depending upon the arrangement made when the transaction is entered into. When the reverse repo is to continue to an unspecified date, subject to being 'unwound' at any time upon notice, it is referred to as an 'open' reverse repo.

At the time of unwinding, seller and buyer settle. If the market price of the security has increased to such an extent that it exceeds the principal (original price) plus accrued interest, seller pays the excess to buyer, who realizes a gain in that amount. If, however, the security has decreased in value or if any increase is less than the accrued interest, then buyer is liable to seller for the resulting deficiency."

In further explanation, the immediate resale by the buyer to seller at the same price and reflected in a second confirmation[4/] establishes the security interest which Judge Skopil mentions. This interest is possessory because the

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4/ The first confirmation, of course, reflects the sale by seller to buyer.

government securities are physically retained by the seller throughout the transaction.

The First Pennco and Blyth Transactions

In early 1975 an account for Ben Franklin was established by Wied at registrant in which Ben Franklin dealt in municipal bonds, and registrant gave valuable advice to Ben Franklin concerning municipal securities.

Prior to the establishment of that account, Wied and Molinari had been acquainted in late 1974 on a social basis and informally discussed the government securities markets. Wied discussed with Molinari the procedures for buying government securities and the mechanics of borrowing funds against those securities.

In early March 1975, Wied recommended to Molinari that a transaction could at that time be entered into with a good rate of return. Wied stated that the government securities market was in a position where a two-year note could be purchased advantageously because of the favorable differential between the price and the current rate for borrowing.

Molinari related the foregoing matters to LaMear, as an officer and one of the directors of Hinkle Northwest. LaMear in turn discussed Wied's proposal by telephone with Hinkle, who was then on vacation in Hawaii. Hinkle gave his authorization to go ahead with the transaction, and Molinari so informed Wied. Wied then proceeded through Ben Franklin

to enter an order with First Pennco Securities, Inc. (First Pennco), for the purchase of $25,000,000 of United States Treasury 6 1/2% notes, due 3-31-77. The purchase was made on March 27, 1975. The purchase and market price was $24,921,875.

The purchase price was financed by First Pennco through a reverse repurchase agreement. Thus, an order was entered at about the same time as the purchase order that Ben Franklin had sold to First Pennco the $25 million in United States notes. This order established First Pennco's security interest. At the same time, Ben Franklin agreed to repurchase the securities from First Pennco at an unspecified future date at the purchase price. Ben Franklin was also to pay First Pennco for the use of $24,921,875 for the period during which the transaction was outstanding at a rate of interest 1/8th percent above First Pennco's varying cost of funds. The transaction could be called on 24-hour notice by either party.

In the course of conversations between Wied and John Eckstein, Vice President of First Pennco, Wied told Eckstein that the transaction was for a customer, Hinkle Northwest. Wied told Eckstein that a reason for doing this was Hinkle Northwest had assisted him the municipal bond market (Tr. 116). This type of transaction is known as an "accommodation transaction." Eckstein made the notation "for acct. Hinkle

Northwest" on an order ticket. Whether the conversations occurred at the time the transaction was entered into or shortly afterwards is unclear. Such notations are not regarded by the parties as effecting liability and are merely for the bookkeeping convenience of the other party to the transaction, in this case Ben Franklin. In any event, the confirmations which were prepared and sent contemporaneously with the transaction bore the name Ben Franklin with no reference to Hinkle Northwest and were mailed by First Pennco only to Ben Franklin.

Shortly after the transaction was entered into, a meeting was held between Hinkle, LaMear, Molinari and Wied at Wied's office at Ben Franklin. Wied discussed with them the yield curve and the prospect for gain on the transaction, and mentioned the rate of interest First Pennco was charging. Molinari knew which issue of Treasury notes had been purchased and understood the proposed buyer of the securities in the First Pennco transaction to be registrant through Ben Franklin. Molinari told LaMear which issue of Treasury notes had been purchased and LaMear understood the transaction to be a purchase of notes through Wied at Ben Franklin. Molinari told Hinkle which issue of Treasury notes had been purchased. Hinkle understood the transaction to be a purchase of securities for registrant's account.

In March 1975, LaMear told Reiter that registrant through Wied had made a purchase of government securities and that the

firm was entitled to the gain and responsible for the risk, which was stated to be approximately $25,000. This was the amount of risk Wied had said was involved. Molinari informed Reiter which issue of Treasury notes had been purchased. Reiter indicated to LaMear and Hinkle that it was his opinion that, if the company made the purchase, they were not in a position to record that size transaction on registrant's books and records.

Periodically, Hinkle checked with Wied on the progress of the transaction. In a discussion between Wied and Molinari, Molinari expressed the firm's concern that the market had declined. Wied advised him that the transaction should be held open for a time.

On June 8, 1975 Wied discussed with Molinari closing out the transaction and taking the profit. Wied recommended at least a partial close-out of the transaction to Molinari and received a telephone call back from Molinari directing him to close out the entire transaction (Tr. 19, 143-45).

After Molinari's telephone conversation with Wied, confirmations indicate that the First Pennco transaction was "unwound" on June 10, 1975. Since the market value of the securities at that time was $25,237,107.24, whereas the original purchase price plus accrued interest was $25,192,887.98, a profit of $44,219.26 was realized on a sale by First Pennco on behalf of the purchaser. A check in this amount was made

out and sent to Ben Franklin. Wied endorsed the check to registrant and hand delivered it and the original First Pennco confirmations to Hinkle and Molinari.

The First Pennco transaction was not recorded on Ben Franklin's books by Wied, nor did Wied report the transaction to his superiors.

Hinkle gave the $44,219.26 check and First Pennco confirmations to Reiter and they discussed recording receipt of the check. Hinkle said the check was to be deposited to the firm's account. Reiter gave the check to the firm's bookkeeper and instructed him to credit the sum to the miscellaneous income account. It was so credited.

Later in June, Hinkle mentioned to Wied that he would like to reward him for arranging the First Pennco transaction. Wied said that this was unnecessary. Hinkle and LaMear had decided that $5,000 be paid to him. Accordingly, Hinkle directed the purchase for Wied of 500 shares of Weeden & Co. stock, which was worth approximately that amount. To effect payment Hinkle directed that a check be issued to Wied for the purchase price. Wied endorsed the check which was then credited to his account with registrant. Wied accepted and retained the payment.

Reiter discussed with Hinkle and LaMear the payment of a commission to Molinari for arranging the First Pennco transaction. $2,000 was then paid to Molinari.

In July or August 1975 Wied and Molinari talked about a second transaction involving U.S. Treasury bills. Molinari again understood that registrant would receive the profit and bear the loss. Molinari told Hinkle, LaMear and Reiter about the proposed transaction.

In a meeting with Molinari, Hinkle and LaMear, Wied explained that a larger transaction would be necessary in connection with treasury bills, and Hinkle then authorized the purchase by Wied of $100,000,000 in U.S. Treasury bills. Hinkle and Molinari understood the transaction would be handled in the same manner as that with First Pennco.

Wied then told representatives of Blyth Eastman Dillon Capital Markets, Inc. of his desire to enter into a transaction for $100,000,000 in U.S. Treasury bills. He told them that the transaction would be for an unidentified party but that Ben Franklin would stand behind the trade. Wied in testimony acknowledged that there was a risk to Ben Franklin if the situation developed into a loss. As he stated, Blyth was looking to Ben Franklin, and Ben Franklin was looking to registrant. Blyth demanded additional collateral in connection with the transaction, and a $1,000,000 Treasury bill owned by Ben Franklin was pledged.

On August 14, 1975, a transaction for $100,000,000 in U.S. Treasury bills was entered into between Blyth and Ben Franklin involving, as in the First Pennco transaction an agreement to pay interest on a loan of the purchase price,

a repurchase agreement by Ben Franklin and a reverse repurchase agreement on the part of Blyth. The Blyth records, including confirmations sent by Blyth to Ben Franklin, all refer to Ben Franklin as the purchaser. No reference was made in these records to Hinkle Northwest. The agreement was that either party could terminate the transaction on 24-hour notice.

The Blyth transaction was closed out in late September 1975, and a letter was mailed by Blyth to Wied summarizing the transaction which resulted in a profit to the buyer of $76,870.03. Wied mailed a copy of the Blyth letter to Hinkle Northwest, Inc. He then instructed Blyth to wire the profit to him and stated that he would wire the amount received to the proper party.

The funds wired to Ben Franklin were recorded as a debit to Ben Franklin's cash account and credited to the audit suspense account. The funds were then wired from Ben Franklin's account to registrant's account and recorded as a debit to Ben Franklin's suspense account. No disclosure was made by Wied to his superiors that the profit on the Blyth transaction had been channeled through Ben Franklin to registrant.

When the $76,870.03 profit from the Blyth transaction was wired to registrant in September 1975, Reiter instructed the bookkeeper to record the income in the same account as the receipt from the First Pennco transaction. Hinkle had

so instructed Reiter. No further entries were made in registrant's books and records to reflect the Blyth transaction.

Shortly after the profit from the Blyth transaction was received by registrant, Molinari told Wied in a telephone conversation that the firm wanted to compensate him for arranging the transaction. Wied told Molinari to put the money into his bank account, and Molinari obtained his account number. Hinkle, LaMear and Reiter discussed the amount to be paid to Wied. Reiter instructed the bookkeeper to prepare a check in the amount of $10,200, which was negotiated to Wied's account. For arranging the transaction with Wied, Molinari was paid $7,300, which was added by Reiter to Molinari's monthly commission check. Hinkle received a bonus of $15,000 at the same time.

Wied did have general authority from Ben Franklin to enter into accommodation transactions for third parties but had no authority to enter into the type of transactions under examination here involving a third party of limited resources and liability for Ben Franklin over extended periods.

On December 5, 1975, two compliance examiners for the Commission's Seattle Regional Office after having examined registrant's books and records had a discussion in registrant's office with Hinkle and Reiter. Hinkle was asked the source of the two entries to the miscellaneous income account, sums of approximately $44,000 and $76,000 respectively. Hinkle

replied that the sums represented compensation for investment advice given to Ben Franklin in connection with Ben Franklin's transactions in certain U.S. Government securities. Prior to the conference with the two examiners, Hinkle and Reiter had discussed the pending meeting and Hinkle had advised Reiter, if asked, to describe the miscellaneous account entries as payments for investment advice. Reiter told the examiners that the income credits were investment advisory fees received in regard to U.S. Government securities. At that time, Hinkle understood the sums to represent the profit received on the transactions with First Pennco and Blyth. Reiter presumed that part of the sum in the miscellaneous income account was derived from profits in the U.S. Government securities transactions.

It was not until January 1976, after learning of the interest of the SEC staff in the transaction that Wied requested "corrected" confirmations from both First Pennco and Blyth to show an interest in the transactions on the part of Hinkle Northwest. It is clear that neither broker would have entered into the transaction if it had been dealing solely with Hinkle Northwest. In January, 1976 and as a result of inquiries pursuant to the SEC investigation, counsel for Ben Franklin was assured by Wied that these were ordinary accommodation transactions and was further not told by him about the payments he had received. Counsel for Hinkle Northwest was told at that time by Wied that what was involved "was a typical accommodation transaction, that his people at the company knew about it, that they approved it, . . . ." (Tr. 792)

After obtaining in June 1976 full information concerning these transactions, Ben Franklin terminated Wied's employment.

In June, 1976, registrant received a letter from counsel for Ben Franklin demanding a return of the profits received on the Blyth and Pennco transactions on the basis that Ben Franklin's "credit and credibility in the market place" had been utilized and that Ben Franklin "has never had the legal right or authority to engage in the business of a broker-dealer." (Div. Exhibit T 22). An agreement was executed on June 15, 1976 stating that the credit of Ben Franklin was used to make purchases of U.S. Government securities and that registrant would remit to Ben Franklin $112,691 before July 15, 1976. Such payment was made. The $120,000 profit that registrant received was thus reduced by about $8,000 on the basis of an argument of counsel for registrant that it was Wied, a Ben Franklin employee, who had "led us down the path and was now causing us a great deal of worry in legal fees, and the like" (Tr. 795).

## Bookkeeping Violations

The Division charges that Section 17(a) and Rule 17a-3 have been violated in connection with the two government securities transactions. The Division contention is that registrant effected purchases and sales of securities and

incurred indebtedness and these events should have been, but were not, recorded upon its books and records, Under this theory, Wied, acting as agent for registrant and employing Ben Franklin's credit and facilities, effected the transactions on registrant's behalf.

The Hinkle respondents argue in opposition (1) that the relationship of agency was not present, since the essential element of control by the principal over the agent was lacking;[5/] (2) that, unless First Pennco and Blyth could have sued registrant directly as a result of Wied's representation, registrant made no purchases and sales (see Hinkle Respondent's Post-trial Memorandum, p. 11); and (3) that to regard registrant as a principal in these transactions is inconsistent with the contentions of the Justice Department and the decision of Judge Skopil in the criminal case and therefore precluded under the doctrines of res judicata and collateral estoppel.

Contrary to the "lack of control" argument, Registrant exerted the same type of control that a customer purchasing and selling securities usually exerts. That Wied possessed superior skills and knowledge concerning the transactions, does not mean that he could not have acted as an agent any more than such factors would disqualify an ordinary stock broker

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5/ Citing the Restatement of Agency 2d (1958) §§'s 1, 12,220.

from acting as an agent for his customer. In many respects the relationship resembles that of a stock broker and his customer, and it is significant that the Ben Franklin demand upon Hinkle is premised upon the realization that its facilities and credit had been employed improperly in a brokerage capacity.

The second contention, that a legal relationship of direct liability must have existed between the two brokers (First Pennco and Blyth) as against registrant and did not, is in my opinion irrelevant. The record is clear that both brokers relied only upon the Ben Franklin credit and had no interest in the identity of the firm for whom Wied was acting. That some rule of law may or may not have made registrant directly, rather than indirectly, liable to them should have no bearing upon its obligation to record these transactions. In fact, registrant may well have been directly responsible as a matter of law in the First Pennco transaction, depending upon when Wied informed Eckstein that he was acting for registrant.[6/] However, such considerations are clearly outside what should be the proper focus of inquiry.

The focus should be on whether registrant had the rights and obligations of a principal and purchaser of these securities. In the First Pennco transaction it is clear that registrant authorized the purchase, followed

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6/ It is unclear whether Wied informed Eckstein in the First Pennco transaction that he was acting for registrant before or after the transaction was entered into. Assuming that such notice was first given after the contract was made, registrant would have truly been an undisclosed principal. Restatement of Agency 2d §4 (1958). An undisclosed (CONTINUED)

its progress, made the decision to sell and at all times was at risk on the transaction—in all respects in the same fashion as an ordinary principal and purchaser. The Blyth transaction was understood to be handled in the same fashion as First Pennco. Registrant was no less a principal and purchaser because its liabilities were to Ben Franklin rather than directly to the two broker-dealers.

As to the third contention above, there is no inconsistency between the position taken here and the Justice Department's position and Judge Skopil's decision. In the face of an argument by defendant Wied that Hinkle Northwest was the directly responsible principal in the transactions with the two broker-dealers and not Ben Franklin, Judge Skopil held that Ben Franklin was at risk, as the Justice Department contended. This is in agreement with the position taken here.

The Hinkle respondents also contend that they were not well enough informed about the transactions and did not have the necessary documentation to record them. However, they correctly understood the transactions to be purchases, and as the Division points out, it is inconceivable that after 30 years in the business they should not be aware that purchases of securities required bookkeeping entries. Their misrepresentations to Commission inspectors also indicate that the Hinkle

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6/ (Continued)
principal would have been directly liable since under conventional agency law after the identity of an undisclosed principal is made known, the third party has an option to hold either the agent or the principal liable on the contract, Id. at §186.

Conversely, even in the situtation where a full-fledged, disclosed principal is involved, the agent and the third party may agree that the contract is only that of the agent. Id. at §145.

respondents knew that the transactions had been improperly treated.[7/]

Accordingly, I conclude that registrant wilfully[8/] violated Section 17(a) of the Exchange Act and Rule 17a-3 and Hinkle, LaMear and Reiter wilfully aided and abetted such violations in failing properly to record the First Pennco and Blyth transactions.

Net Capital and Rule 17a-11 Violations

The record clearly shows that during the period within which net capital violations are charged registrant was engaged in a general securities business which made use of the mails.

During that period and on the dates of April 4, 11, 18, 25, and 30, 1975 and even when interest payable by registrant is disregarded, the First Pennco transaction reflected unrealized losses ranging from over $277,000 to over $330,000. These losses resulted from the fact that the price which could have been realized for the notes plus accrued interest to the purchaser was exceeded by registrant's basic indebtedness

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7/ The Hinkle respondents contend that no misrepresentations were made, since they regarded the profits on the two transactions as payments for prior investment advice on municipal bonds. Even assuming that Hinkle and Reiter did not refer to U.S. Government securities as Commission investigators recall, a misrepresentation occurred in view of their failure to disclose the underlying facts concerning such payments when such facts were so clearly relevant to the Commission inquiry.

8/ As the Division points out at p. 34 of its Brief, a finding of wilfulness within the meaning of Section 15(b) of the Exchange Act does not require intent to violate the law. Samuel H. Sloan, Securities Exchange Act Rel. 11376 (April 28, 1975), 6 SEC Docket 772, n. 14; Haight & Co., Inc., 44 SEC 481, 507 (1971). It is enough to show that the act which constituted the violation was intentionally committed and that it was registrant's responsibility to prevent its happening. Joseph Elkind, SEA Rel. 12485 (May 26, 1976), 9 SEC Docket 736, 737.

thereon. It was this type of potential loss which was the subject of Molinari's conversations with Wied during the period the transaction was open.

If these unrealized losses had been given appropriate effect on the registrant's books and records on the dates stated, registrant would have needed additional capital to achieve compliance with the Net Capital Rule in amounts ranging from over $80,000 to over $174,000.

As the Division points out, it is the exposure of customers to such risks that the Net Capital Rule is designed to prevent. M.V. Gray Investments, Inc., 44 S.E.C. 567, 573 (1971); Blaise D'Antoni & Associates, Inc. v. S.E.C., 289 F.2d 276, 277 (5th Cir. 1961).

Accordingly, I conclude that registrant was in wilful violation of Section 15(c)(3) of the Exchange Act and Rule 15c3-1. As the Division further contends Hinkle, LaMear and Reiter, by causing registrant to fail properly to compute net capital, wilfully aided and abetted such violations.

Section 17(a) and the Exchange Act and Rule 17a-11 require that broker-dealers whose net capital at any time is less than the minimum, give telegraphic notice of such deficiency and, within 24 hours of such notice, file a

report of financial condition. No such notices or filings were made here.

I conclude that registrant wilfully violated Section 17(a) of the Exchange Act and Rule 17a-11 and that Hinkle, LaMear and Reiter were wilful aiders and abettors.

X-17A-5

The registrant's X-17A-5 Report filed July 28, 1975 and speaking as May 31, 1975 did not disclose the First Pennco repurchase transaction. The report was sworn to by Reiter. Hinkle, LaMear and Reiter, as registrant's principals, were aware of the underlying facts. An authoritative work on broker-dealer accounting clearly stated that repurchase arrangements were to be reported.[9/]

I conclude that registrant wilfully violated Section 17(a) and Rule 17a-5 in filing a false report which did not disclose the account balances relating to the outstanding First Pennco transaction and that Hinkle, LaMear and Reiter wilfully aided and abetted such violation.

I further conclude upon the same facts that a basis for sanction exists under Section 15(b)(4)(A) of the Exchange Act

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9/ Audits of Brokers and Dealers in Securities prepared by the Committee on Stockbrokerage Auditing, American Institute of Certified Public Accountants, (1973) stated at p. 57 with respect to the X-17A-5 Report:

> "Securities sold by the brokerage concerns under repurchase agreements are required to be set forth in questions 3 and 10 of Answers to Financial Questionnaire. These securities should be reported with trading and investment accounts, at market value, in the statement of financial condition with the repurchase cost reflected as a liability."

in that registrant wilfully made and Reiter caused registrant to file a false X-17A-5 report.

Antifraud Violations

In connection with the two government securities transactions, the Division has charged registrant, Hinkle, LaMear, Reiter, Molinari and Wied with wilful violations of the antifraud provisions. The Division claims that there was a common scheme on the part of the above respondents to defraud Ben Franklin.

The Division relies upon the fact that Ben Franklin facilities were utilized without its knowledge and that Wied and other alleged schemers received compensation. As the Division states, "In essence, Franklin had no knowledge of the transaction engaged in for registrant's benefit, yet risked its credit on the transactions" (Division Brief pp. 46-47). The Division contends that the fact that its credit was used is demonstrably material, because as soon as Ben Franklin found out the facts it demanded the return of the profits.

In opposition, Wied argues (as he did in the criminal case) that the transactions were not those of Ben Franklin but were accommodation transactions for Hinkle Northwest which he had full authority to effect. Wied's testimony that Ben Franklin was not at risk in the two transactions is contrary to the testimony of the First Pennco and Blyth witnesses, to the documentation

for these transactions, both original and corrected, and to common sense. The record is also clear that Wied had no authority to effect accommodation transactions of the duration involved here for small broker-dealers such as registrant. Wied's testimony in both these respects is specifically not credited.

The Hinkle respondents 10/ argue generally in connection with the fraud charges that scienter, in the sense of specific intent to defraud, must be shown under the Supreme Court decision in Ernst & Ernst v. Hochfelder, 425 U.S. 185 (1976), and that proof of these charges must be "clear and convincing" in accordance with Collins Corp. v. S.E.C., CCH Fed. Sec. L. Rep. §96,122 (D.C. Cir. Aug. 13, 1977).

The Commission has indicated that scienter need not be proven in administrative proceedings. Steadman Security Corporation, 12 SEC Docket 1041, 1043, 1050-1051 (June 29, 1977).

However, the "clear and convincing" standard of the Collins case is applicable to this proceeding insofar as the fraud charges are concerned. Unless and until that standard is reversed by the Supreme Court, it must be regarded as controlling, since all disciplinary proceedings under the

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10/ The term "Hinkle respondents" here includes only registrant, Hinkle, LaMear, Reiter and Molinari.

Advisers Act and Exchange Act may be appealed from the Commission to the D.C. Circuit Court of Appeals.

While the meaning of the new standard is not entirely free from doubt, it obviously requires a greater degree of certainty than the previous standard, "preponderance of the evidence." 11/ A leading comment contends the new standard means "highly probably true" and this meaning is adopted here. 12/

As the Commission has stated with respect to the elements of a scheme to defraud:

> "No express 'agreement' is necessary to establish the existence of a scheme to defraud. It is enough that each of the individual respondents knowingly joined or participated in a common undertaking that he knew or should have known was fraudulent. Haight & Company, 44 S.E.C. 481, 497 (1971); see also Atlantic Equities Company, 43 S.E.C. 354, 360 (1967); Kamen & Company, 43 S.E.C. 97, 108 (1966). 13/

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11/ 30 Am. Jur., Evidence 2d §1168.

12/ McBaine, Burden of Proof: Degrees of Belief, 32 Calif. L. Rev. 242, 246, 253-254 (1944) states as to the "clear and convincing " formula:

> "The most that can be done in these cases . . . is to adopt a rule that the litigant who bears the burden must induce belief in the minds of the judge or jury that the facts which he asserts are not merely probably true, but that they are highly probably true, yet not require him to discharge the greater burden of persuading them that they are almost certainly true, true beyond a reasonable doubt, or are certainly true."

13/ There is considerable parallel authority with respect to implied rights of action in cases prior to Hochfelder that conduct which is neither deliberate nor negligent does not violate Rule 10b-5. Bromberg, Securities Law: Fraud, SEC Rule 10b-5 §8.4 (630).

I have concluded under the Collins standard that Wied wilfully violated the antifraud provisions with which he is charged. Despite his denials, it is clear that Wied not only should have known but, in fact, knew that the transactions in which he pledged Ben Franklin's credit were beyond his authority and improper. He attempted to conceal both transactions by not entering them on Ben Franklin's records, and he concealed his compensation by the Hinkle respondents even in the face of an inquiry by his superiors as a result of the Staff investigation in January, 1976. There can be no doubt that Wied knowingly and deliberately engaged in a scheme to defraud Ben Franklin.

In applying the Collins standard to the Hinkle respondents, more difficult questions arise. As the Division contends, the essence of the scheme was to use Ben Franklin's credit and facilities without its knowledge for the benefit of others. The Division argues that the fact that the Hinkle respondents knew or should have known they were participating in a fraudulent scheme may be inferred from the circumstances, namely, that they knew Wied was using Ben Franklin's credit and facilities, that they deceived Commission investigators concerning the payments they received and that they compensated Wied for arranging the transactions. It is further argued that in returning the profits on the two transactions to Ben Franklin the Hinkle respondents have admitted that their actions were wrongful.

The point is made that if they had "no intent to conceal a fraud, they would have been forthright" (Division Brief p. 48) in replying to Staff inquiries. However, it does not necessarily follow that their misrepresentation was to conceal fraud. It may be inferred with almost equal force that they tried to create a false impression solely to conceal the bookkeeping, net capital and other violations.

Ben Franklin had been benefited by advice obtained by Wied from Hinkle personnel in early 1975 concerning municipal bonds, so that it would not have seemed inappropriate to the Hinkle respondents for Wied to suggest reciprocating or "accommodation" transactions to be effected through Ben Franklin to benefit registrant. It is clear that the transactions were initiated by Wied. It might further be added that Wied was a corporate officer, vice president and treasurer, of Ben Franklin and an acknowledged expert in the area of government bond transactions. It will be recalled that as late as January 1976 and after the Staff investigation was in progress Wied had been able to convince counsel for registrant that the transactions were typical ones and that his superiors knew about them and approved them. At the same time he had convinced counsel for Ben Franklin that nothing out of the ordinary had occurred. That he may have so persuaded the Hinkle respondents in early 1975 does not seem an unreasonable conclusion. It does not appear that the Hinkle respondents had any contact with any Ben Franklin

personnel other than Wied at any time.

The Hinkle respondents claim that they did not know that the transactions were not recorded in Ben Franklin's books and records, nor that Wied did not inform his superiors concerning the transactions. There is nothing in the record to indicate they did know, and in view of the above factors it does not appear to have been established that they should have known. That they returned the profits is not a concession that they were guilty of fraud.

While the payments to Wied were certainly improper in that they created a conflict of interest for him,[14/] it does not follow from the fact of the payments that the Hinkle respondents knew or should have known that Wied had no authority to enter into accommodation transactions of extended duration for smaller broker-dealers.

Under all the circumstances, I do not believe that it has been clearly and convincingly established that the Hinkle respondents knew or should have known that Ben Franklin's credit and facilities were being used without its knowledge or authorization.

Accordingly, while I conclude that Wied wilfully violated Section 10(b) of the Exchange Act and Rule 10b-5, I further conclude that the Hinkle respondents did not wilfully violate the antifraud provisions with which they are charged, Sections

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14/ No other objects of his bounty were compensating him (Tr. 216-17).

10(b) and 15(c) of the Exchange Act and Rules 10b-5 and 15c1-2. These charges against the Hinkle respondents are therefore dismissed.

Section 5(b)(1) of the Securities Act

The Division has charged that mailings made by Hinkle, LaMear, Molinari and Hogg constitute violations of Section 5(b)(1). As the Division states, that section makes it unlawful to mail a prospectus relating to any security with respect to which a registration statement has been filed unless the prospectus meets the requirements of Section 10 of the Securities Act. A "prospectus" is defined by Section 2(10) of the Securities Act as any letter or communication which offers any security for sale. Section 2(e) of that Act defines an offer to include "every attempt or offer to dispose of, or solicitation of an offer to buy, a security. . . for value." Section 10 requires that a prospectus contain the information contained in a registration statement with specified exceptions.

The Hinkle respondents do not dispute the proposed findings of the Division relating to these charges. These agreed findings are as follows: Hogg, a salesman for registrant, holds periodic investment seminars for members of the public. He invites attendance at the seminars by mailing invitations and advertising in the local Portland newspapers a week in advance of the presentation.

On August 1, 1975, Pacific Power & Light Company, an Oregon corporation, filed a registration statement on Form S-1 with the Commission, pursuant to the Securities Act, covering 3,000,000 shares of its common stock. Such registration statement, as amended, became effective on September 4, 1975. Prior to September 4, 1975, Hogg caused his secretary to mail to approximately 500 persons on a mailing list an invitation which he drafted regarding an investment seminar on September 9, 1975. The invitation was reviewed by LaMear before mailing. The invitation states with respect to Pacific Power and Light Company,"My advice - Buy top quality stocks that are yielding better than bank interest. Call and reserve some Pacific Power & light. Prospectuses are available." (Div. T 31)

On November 5, 1975, SuperValu Stores, Inc., a Minnesota Corporation, filed a registration statement on Form S-1 with the Commission, pursuant to the Securities Act, covering 600,000 shares of its common stock. Such registration statement as amended became effective on November 25, 1975. On or about November 1, 1975 Hogg caused his secretary to mail an invitation which he drafted regarding an investment seminar on November 6, 1975 to approximately 500 persons on a mailing list. The invitation states with respect to SuperValu Stores, Inc.,"An underwriting is coming this month. Don't pass it up." (Div. T. 32)

On August 26, 1975, R.L. Burns Corporation (Burns), a

Delaware corporation, filed a registration statement on Form S-1 with the Commission, pursuant to the Securities Act of 1933 covering 450,000 shares of its common stock. Such registration statement became effective on September 25, 1975.

On or about September 12, 1975, LaMear, Hinkle and Molinari mailed identical letters except for the signatures concerning Burns. LaMear caused a Burns letter bearing his signature to be mailed to a mailing list of approximately 200 persons. Molinari saw the letter LaMear had prepared and asked if he could send the same letter. Molinari then directed his secretary to send the letter bearing his signature to a mailing list of 25 to 50 persons. Hinkle mailed the same letter bearing his signature to approximately 200 persons on a mailing list.

The letter sent by LaMear, Hinkle and Molinari (Div. T. 20, 24, 29) states, in part:

> "If you are interested in participating in the underwriting, please call your indications of interest to me as soon as possible. The underwriting is scheduled for September 24 and, as always, the early orders get the stock on all successful offerings."

It should be noted that each of the three communications, which are quoted from, also contains a "hard sell" type of "sales pitch" for the particular security. Further, LaMear testified that he knew that these types of communications were improper.

The Hinkle respondents contend that "offers to sell" are not involved. In view of the broad definition in the statute, this argument must be rejected. Franklin, Meyer & Barnett, 37 S.E.C. 46, 49, 52 (1956); Bankers Securities Co., Inc., 6 S.E.C. 631, 634-35 (1940); G.J. Mitchell, Jr., Co., 40 S.E.C. 409, 414 (1960).

Accordingly, I conclude that registrant Hinkle, LaMear and Molinari wilfully violated Section 5(b)(1) of the Securities Act in respect to the Burns letter. I further conclude that registrant, LaMear and Hogg wilfully violated that section with respect to the Pacific Power communication. The SuperValu mailing occurred prior to the filing of the registration statement and therefore is not technically a Section 5(b)(1) violation. This charge is dismissed.

Inducing Purchases of Presley Stock

McGinnis and LaMear are charged with aiding and abetting a violation of Section 12(k) of the Exchange Act. Registrant is charged with a direct violation. Section 12(k) provides in pertinent part:

> "No . . . broker . . . shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in which trading is . . . suspended."

The essential facts with respect to these charges are found to be as the Division has proposed and are as follows:

On March 25, 1976, the Commission suspended exchange and over-the-counter trading in the securities of Presley Companies (Presley), a California corporation, for a ten-day period ending on April 3, 1976. Thereafter, the suspension was continued by successive 10-day "renewal" or "roll-over" suspensions until May 23, 1976.

In March or early April 1976, McGinnis asked LaMear's permission to mail an article appearing in California Business and a Standard & Poor's sheet on Presley. LaMear told McGinnis that his opinion of the Presley stock was that it was a piece of junk. However, McGinnis told LaMear that he had a clearance letter from the NASD, and LaMear relented. LaMear and McGinnis knew or should have known that trading of Presley stock had been suspended.

On or about April 4, 1976, McGinnis caused his secretary to mail copies of the Presley articles along with his business card to approximately 800 persons to generate business. Subsequent to the mailing, McGinnis contacted 8 or 10 clients

regarding Presley. In early April, McGinnis received telephone calls from approximately six persons with orders to buy Presley stock. McGinnis then wrote order tickets for these persons for quantities of Presley stock, with the intention of executing the order when the suspension was lifted.

On April 8, 1976, LaMear spoke with counsel for registrant who advised him to refrain from activity in Presley stock because of SEC concern. LaMear then told McGinnis he could not engage in trading Presley even when the suspension was lifted. After speaking to LaMear, McGinnis destroyed the order tickets he had written.

Counsel for McGinnis contends that both that the facts and the law do not support the Division's theory of violation.

As to the facts, counsel first argues that the "order tickets" which were written were in blank with no customers' names or amounts. McGinnis did so testify, but this testimony is not credited, both because it is inherently incredible and because it is contrary to other credited testimony. His statements are contradicted on the record by two staff members who testified concerning conversations with McGinnis during the investigation. He told them both that he had taken 5 or 6 orders after having received telephone calls. One staff member recalled that McGinnis stated he had written up "order tickets" (Tr. 610) for 800 shares and that, after he had been advised that he was involved in a possible violation of the statute, he called up

these clients and told them be couldn't accept any orders and had torn up the tickets and thrown them away.

Counsel for McGinnis also argues on a factual score that the record shows that orders were not taken, since the investigator's notes of the conversation with McGinnis contains the statement "<u>not orders</u>, <u>indications of interest</u> . . . ." (Resp. H, Ex. 3). However, the record is clear that this note referred to some 8 or 10 calls which were initiated by McGinnis -- not to the 5 or 6 orders which were written up after calls to McGinnis by customers.

Counsel contends as a legal argument that, assuming customers placed orders and that order tickets were written up for these customers for specific quantities which were to be implemented when the suspension was lifted, no violation has been shown because this does not constitute inducing the purchase of any security. The argument is that no violation for inducing occurs, unless a purchase take place as a result. The short answer is that a "purchase" in the sense of a "contract to . . . purchase." [15/] did occur when McGinnis received a commitment to buy from his customers which was reflected in the order tickets he prepared. Moreover, it is clear that the perceived purpose of the statutory provision -- to prevent trading in suspended securities (where frequently essential investor information is lacking) -- is contravened

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15/ The Exchange Act in Section 3 provides:

"When used in this title, unless the context otherwise requires— . . . (13) the term 'buy' and 'purchase' each include any contract to buy, purchase or otherwise acquire."

by the successful persuasive activities of McGinnis.

Wilful violations did in my view occur if a valid suspension order by the Commission is assumed. However, as counsel points out, such an assumption may not be justified. The alleged violations took place not during the original 10-day period, but during a renewal or "roll-over" period. Sloan v. S.E.C., 547 F.2d 152 (2d Cir. 1976), has declared such roll-over suspensions "plainly" beyond the Commission's authority and has directed it "to discontinue forthwith its adoption and use of successive ten-day suspension orders to order the suspension of trading of a security for an extended period, i.e., in excess of ten days." Id. at 158. The Commission has been abiding by that judgment and will continue to do so unless and until the Supreme Court reverses the Second Circuit and validates the "roll-over" suspension. S.E.C. v. Sloan, No. 76-1607, U.S. Supreme Court, On Petition for Certiorari, Reply Memorandum for the Commission, p. 2.

The question of the validity of renewal suspensions is is now pending before the Supreme Court since it granted certiorari in the Sloan case.[16/] Under these circumstances, I agree with counsel's statement that "any attempt to discipline McGinnis for such activities is clearly inappropriate . . . ." (McGinnis Brief, p. 11) -- at least at this time.

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16/ 38 CCH S.Ct. Bull. p. B90 (Oct. 17, 1977).

I believe that McGinnis' conduct would justify a three-day suspension, but that it should only be imposed if and when the Sloan case validates "roll-over" suspensions. Accordingly, my order will so provide.[17/] Of course, if no such action occurs in the disposition of the Sloan case by the Supreme Court, the charges with respect to McGinnis should be dismissed.

Failure to Supervise

The Order charges Hinkle with failure reasonably to supervise in connection with the Pacific Power prospectus violation. It is not disputed that Hinkle as Chairman of the Board of Directors had supervisory responsibilities, and that the Hogg seminars were a frequent event. It is clear that supervision was lax.

Accordingly, I conclude that Hinkle failed reasonably to supervise in connection with the Pacific Power matter.

Preponderance of the evidence was the standard of proof applied to charges other than those involving fraud. Application of the clear and convincing standard, however, would not have changed the result.

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17/ This charge also directly involves registrant and LaMear and indirectly involves registrant, Hinkle, and LaMear through an alleged failure of supervision. To be consistent, sanctions imposed upon persons other than McGinnis insofar as they are based upon this conduct should likewise be contingent upon the Supreme Court's decision in the Sloan case. However, insofar as these other persons are concerned, this activity is merely cumulative and would have no effect upon the sanctions. Therefore, no such provision has been made.

Public Interest

The Division has proposed the following sanctions: that registrant be suspended from engaging in under- writings for 30 days; that Hinkle, LaMear and Wied be barred from association with a broker-dealer for 12 months and thereafter permitted to apply to the Commission for association in a non-supervisory capacity, that Reiter be suspended for 6 months, Molinari for 3 months, and Hogg and McGinnis for 10 days each.

Respondents argue that the proposed sanctions are far too harsh. Counsel for Wied objects that Wied's sanction is disproportionate because he has not been involved in and has no experience in the securities industry and he was not charged with many of the violations which the other respondents are alleged to have committed.

Counsel for the Hinkle respondents argue that this is a first offense, that the transactions involved here were very complicated and never adequately understood by them, that no third persons were injured, and that registrant has operated as a responsible local brokerage house for 20 years and each of the respondents depends for his livelihood upon working in this business.

Prior disciplinary action against respondents may, as the Staff contends, be considered in imposing sanctions.

R. H. Johnson & Co. v. S.E.C., 198 690, 697 (2d Cir. 1952); Transmittal Securities Corp., 44 S.E.C. 805, 808 (1972). In two fairly recent instances Hinkle respondents have been sanctioned by the NASD. 18/ In May 1974, registrant was censured and fined $500 for recordkeeping and rule violations. In January 1976, registrant, LaMear and Reiter were censured and fined $2,000 jointly and severally in connection with charges of recordkeeping violations and failure to make timely reports. While these are serious matters, they do not involve fraudulent conduct.

As recommended by the Division and in view of registrant's public shareholders, a suspension of registrant's underwriting activities business for a period of 30 days appears appropriate and will be ordered. 19/

The Commission has stated that in imposing sanctions when fraud violations are involved we are required "to be mindful of the fact that the securities business is one in which opportunities for dishonesty recur constantly. . . ."

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18/ In addition, in 1960 registrant's predecessor company was censured and fined $1,200 by the NASD in connection with a number of matters.

19/ Such activities constitute about 15 percent of its business.

Richard C. Spangler, Inc., Securities Exchange Act Release 12104 (February 12, 1976), 8 SEC Docket 1257, 1266.[20] Insofar as Wied is concerned, it is not a mitigating factor that he has had no experience in the securities business. It was hardly necessary for one to be well-versed in the securities laws to know that the kind of conduct involved here was improper. In fact, as Judge Skopil held, his activity also violated criminal statutes applicable to the savings and loan association business in which he was engaged. In view of his conviction and the fact that Wied clearly was the architect and perpetrator of an illegal scheme, I believe that a two-year bar with a right to become associated thereafter only in a supervised capacity will best serve the regulatory purpose.

Hinkle, LaMear, Reiter, and Molinari have not been found to have wilfully violated the antifraud provisions. All other violations under review, except the matter of the improper prospectuses, involve the two U.S. Government securities transactions. Counsel stresses the complicated nature of these transactions as an excuse for failure to observe regulatory requirements, but it is clear that Hinkle, LaMear and Reiter understood these transactions to be purchases by registrant with borrowed funds. Had they been genuinely

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20/ Remanded on other other grounds, Nassar and Company, Inc., CCH Current Vol. ¶96,185 (Oct. 3, 1977 D.C. Cir.)

perplexed as to their effect, it would have been logical for them to consult firm counsel or their accountant. They have not shown any such inquiry.

The conclusion is unavoidable that the prospect of easy profit blinded them to regulatory requirements which would have presented obstacles. Nevertheless, the government securities transactions, which are the most serious violations established, were more in the nature of "momentary lapse[s] from grace" 21/ than continuing and pervasive illegal activity. Hinkle with LaMear's assistance has built registrant over a period of many years into a reasonably successful business employing around 38 persons. Under all the circumstances, I believe that to foreclose them from entrepreneural activity after a 12-month bar has expired would be unduly harsh and not necessary to achieve the regulatory purpose. I have concluded that 12-month suspensions for Hinkle and LaMear would be appropriate. I do not believe it necessary to require Hinkle and LaMear to dispose of their stock interests in registrant during the 12-month period and will so provide in my order. 22/

Reiter was actively involved in the bookkeeping, net capital and false reporting violations although, as the

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21/ Richard C. Spangler, Inc., 8 SEC Docket 1257, 1267 (1976).

22/ See Glenn Woo, SEA Release No. 13982 (September 22, 1977), 13 SEC Docket 147, 150.

Division points out, his conduct is tempered by the fact that he acted for the most part at the direction of others. It is determined that a 3-month suspension is appropriate. Reiter will likewise not be required to dispose of his shares in registrant.

The fraud charges against Molinari have been dismissed. The only other violation involves the unlawful prospectus in the R. L. Burns offering. Under all the circumstances, I believe 5-day suspensions for both Molinari and Hogg are appropriate.

The 3-day deferred suspension for McGinnis has already been discussed.

Accordingly, IT IS ORDERED as follows:

(1) Registrant is suspended from underwriting activities for a period of thirty days;

(2) Wied is barred from association with any broker or dealer, except that after two years from the effective date of this order he may become associated with a broker-dealer in a non-supervisory, non-proprietary capacity upon a satisfactory showing to the Commission that he will be adequately supervised;

(3) Hinkle and LaMear are each suspended from association with any broker or dealer for twelve months;

(4) Reiter is suspended from association with any broker or dealer for three months;

[During the applicable periods Hinkle, LaMear and Reiter may retain their stock in registrant and collect any dividends therefrom but may not collect any salary or bonus from registrant nor participate in any way (managerial or non-managerial) in the activities of registrant.]

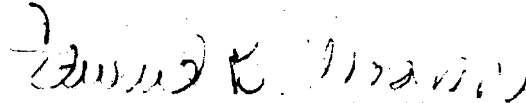
(5) Molinari and Hogg are each suspended from association with any broker or dealer for five days;

(6) McGinnis is suspended from association with any broker or dealer for three days, provided that such suspension shall not take effect unless and until the United States Supreme Court has validated "roll-over" suspensions in Sloan v. S.E.C. (Supreme Court 76-1607) currently pending before it. In the event the Supreme Court does not take such action, the charges against McGinnis are dismissed and this order suspending him rescinded.

These orders 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 of this initial decision pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition for

review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.[24/]



Edward B. Wagner
Administrative Law Judge

Washington, D.C.
December 12, 1977

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24/ All proposed findings and conclusions submitted by the parties have been considered, as have their contentions. To the extent such proposals and contentions are consistent with this initial decision, they are accepted.