ADMINISTRATIVE PROCEEDING
FILE NO. 3-8037

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	)
	)
JONES & WARD SECURITIES, INC.,	)
IVAN D. JONES, JR.,	)
ROY P. AKERS, and	)
INVESTMENT/TIMING SYSTEMS, INC.	)
	)

INITIAL DECISION

Washington, D.C.
February 16, 1994

Warren E. Blair
Chief Administrative Law Judge

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APPEARANCES: Joseph L. Grant and Richard P. Murphy, of the Commission's Atlanta District Office, for the Division of Enforcement.

Mark C. Kirby and John T. Benjamin, Jr., of the Law Offices of Mark C. Kirby, for Jones & Ward Securities, Inc., Ivan D. Jones, Jr., and Investment/Timing Systems, Inc.

Peter J. Anderson and Sara Anne Ford, of Sutherland, Asbill & Brennan, for Roy P. Akers.

BEFORE: Warren E. Blair, Chief Administrative Law Judge

These public proceedings were instituted by an Order of the Commission dated May 6, 1993 issued pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b), 19(h), and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), and Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") to determine whether allegations made by the Division of Enforcement ("Division") against Jones & Ward Securities, Inc. ("JWS"), Ivan D. Jones, Jr. ("Jones"), Roy P. Akers ("Akers"), and Investment/Timing Systems, Inc. ("ITS"), collectively referred to as "the respondents," were true, what, if any, remedial action would be appropriate in the public interest, whether cease and desist orders against respondents should be entered, and whether civil penalties should be imposed on JWS and Jones.

In substance, the Division alleged that JWS, Jones, Akers, and ITS wilfully violated and Jones and Akers wilfully aided and abetted violations of the antifraud provisions of the Securities Act and of the Exchange Act and Rules 10b-5, 10b-9, and 15c2-4 under the Exchange Act. The Division also alleged that ITS wilfully violated and Jones wilfully aided and abetted violations of the antifraud provisions of the Advisers Act. The Division further alleged that JWS wilfully violated and Jones and Akers wilfully aided and abetted violations of the net capital provisions of Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder, of the books and records and reporting provisions under Section 17(a)(1) of the Exchange Act and certain rules thereunder, and of Section 15(b) of the Exchange Act and Rule 15b3-1 thereunder by

failing to file required amendments to the JWS broker-dealer registration on Form BD.

As part of the post-hearing procedures, successive filings of proposed findings, conclusions, and supporting briefs were specified. Timely filings were made by the parties.

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

RESPONDENTS

JWS is a broker-dealer located in Wilmington, North Carolina, which under its present and previous names has been registered with the Commission pursuant to Section 15(b) of the Exchange Act from on or about August 1, 1986. 1/

Jones was vice-president and a director of JWS from on or about April, 1989 to about July, 1990. Through the present he has been the president and a director of JWS. Jones has also been the president and a director of ITS since about March, 1986.

ITS, an investment adviser also located in Wilmington, North Carolina, has been registered with the Commission as an investment adviser since about April 25, 1986. ITS primarily provides a timing service for clients investing in mutual funds. During 1989 and 1990 ITS also recommended to advisory clients securities and partnership interests being offered by its affiliate JWS.

1/ From about April, 1989 through December, 1990 JWS operated under the name Akers and Jones Securities, Inc. About January, 1991 the firm assumed its present name.

Akers was the president and a director of JWS from about April, 1989 until about July 10, 1990 when Akers resigned as president. He remained on with JWS selling securities until December, 1990. Since January, 1991, Akers has been employed as a stock broker by Advest, Inc., a registered broker-dealer.

FRAUD VIOLATIONS

A. Sidbury Land Company Offering

Sidbury Land Company ("Sidbury"), a North Carolina corporation organized to raise money for the purchase of unimproved land just outside of Wilmington, North Carolina, offered and sold 38,400 shares of its common stock between April, 1989 and January, 1990 to 26 investors at a price of $10 per share. The offering was made pursuant to Regulation D under the Securities Act which provides an exemption from the registration provisions of the Securities Act. The offering, underwritten by JWS, was represented in the offering circular to be a "part or none" contingent offering. Under the terms of the offering circular the 38,400 shares were to be sold at $10 per share in units of 1,200 shares to not more than 32 purchasers with the proviso that if less than $192,000 were raised by August 10, 1989 at the latest, investors would receive their money back with interest. The offering circular also represented that "The first $192,000 of sales proceeds will be escrowed with United Carolina Bank of Wilmington, North Carolina. After $192,000 in stock has been sold, those escrowed funds will

be released to the company." 2/ The offering circular also instructed investors desiring to subscribe to complete the subscription agreement attached to the circular and forward it, together with their subscription payment, to: "Sidbury Land Company Escrow Account." 3/

In fact, the Sidbury offering was not made in accordance with the representations in the offering circular and the record clearly establishes that respondents offered and sold the Sidbury stock through use of false and misleading statements concerning material facts about the terms of the offering and the use of the proceeds received from purchasers of that stock. Persons who were solicited and who purchased Sidbury stock included many of the clients of ITS. Solicitations were made under letterheads of JWS and ITS as well as through oral presentations and printed materials.

Sales of $204,000 of Sidbury stock were made by August 10, 1989, but before that date JWS misappropriated $32,410 with the result that JWS did not have at least $192,000 on deposit by August 10, 1989. Under the terms of the offering JWS should have but did not return the monies received from purchases of the Sidbury stock. Moreover, respondents gave to some but not all of the persons offered Sidbury stock a guarantee that their shares would be repurchased at the original price if the investors so requested at any future date. The offering circular gave no information regarding the guarantees which were made in letters having

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2/ Div. Ex. 15, at 20-21.

3/ Id., at 22.

letterheads of JWS, ITS, and Trask, Hunt, Hunt, and Jones, Inc. ("THHJ"). 4/ Nor was any information included concerning the financial ability of the quarantors to honor the quarantees that were given.

Respondents failed to open a true escrow account and thereby misrepresented to investors that the first $192,000 of sale proceeds would be escrowed with United Carolina Bank of Wilmington, North Carolina (" UCB"). Instead, Jones opened a regular checking account at UCB into which he deposited the Sidbury proceeds. By doing so he retained control of those proceeds and gave himself access to the funds, part of which he siphoned off prior to August 10, 1989 and used for his own purposes. 5/

A further misrepresentation in the offering circular concerned the transfer of the property to be purchased by Sidbury from THHJ. The circular represented that the land being purchased by Sidbury would be deeded to it upon the closing of the offering but in fact the property was not conveyed to Sidbury until March 27, 1991.

4/ THHJ, during the relevant period herein, was a North Carolina corporation owned equally by Jones, Christian Trask, Neil Hunt and Skellie Hunt which was organized to acquire real estate for resale to corporations, partnerships, or limited partnerships.

5/ On July 10, 1989, Jones caused $13,460 to be withdrawn from the account, which then held $108,000, and paid to JWS commissions on the sale of Sidbury stock and on the same day caused another $13,460 to be withdrawn and paid to THHJ for various fees. On July 28, 1989 Jones caused $9,350 to be withdrawn for use as an interest payment on a loan that THHJ had obtained to finance its purchase of the 80 acres of undeveloped land Sidbury was to acquire.

Until the property was conveyed, it was subject to the liens of creditors of THHJ.

Additionally, respondents made false representations to purchasers by disregarding the termination date for offers and sales of Sidbury stock. Instead of honoring the limitations of a maximum of 120 days provided for in the circular which would expire on August 10, 1989, respondents continued to sell shares of Sidbury stock at least through January, 1990.

The record further establishes that the false and misleading statements and representations made by respondents in furtherance of the Sidbury stock offering were made with reckless disregard for the truth or accuracy of those false and misleading representations and statements. It is concluded that in offering and selling the Sidbury stock respondents wilfully violated Sections 17(a)(1),(2), and (3) of the Securities Act and that Jones and Akers wilfully aided and abetted those violations, that in connection with the offer and sale of Sidbury stock respondents wilfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and that Jones and Akers wilfully aided and abetted those violations. Respondents also wilfully violated and Jones and Akers wilfully aided and abetted violations of Section 10(b) and Rule 10b-9 thereunder in connection with the Sidbury offering by making representations that investors would receive the return of their monies if $192,000 were not raised by August 10, 1989 and failing to do so when less than $192,000 of Sidbury proceeds were on deposit by that date. Additionally, JWS wilfully violated and

Jones and Akers wilfully aided and abetted violations of Section 15(c)(2) of the Exchange Act and Rule 15c2-4 thereunder in connection with the Sidbury offering by representing that the offering was being made on a "part or none" basis and failing to transmit the proceeds from sales of that stock to a bank which had agreed in writing to hold all such funds in escrow for the persons having the beneficial interest in those funds.

By virtue of the same misconduct that established the noted wilful violations of the antifraud provisions of the Securities Act and Exchange Act in connection with the Sidbury offering, it is concluded that ITS, acting with scienter, wilfully violated and that Jones wilfully aided and abetted violations of the antifraud provisions of Section 206(1) and 206(2) of the Advisers Act which make it unlawful for any investment adviser by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly:

> (1) to employ any device, scheme, or artifice to defraud any client or prospective client;
> (2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

The contentions of JWS, Jones, and ITS that the Division has not established the element of scienter required to prove violations of Section 10(b) of the Exchange Act and Rules 10b-5 and 10b-9 thereunder and that "No evidence whatsoever was presented as to ITS" 6/ are without merit. The record contains ample evidence

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6/ Post-Trial Memorandum of Respondents JWS, Jones and ITS (Nov. 11, 1993), at 10.

that respondents acted with scienter in committing their various violations of Section 10(b) of the Exchange Act and rules thereunder. That is also true with respect to respondents' violations of Section 17(a) of the Securities Act and of Sections 206(1) and 206(2) of the Advisers Act. In its entirety, the record compels the conclusion that Jones, personally and acting as a principal and control person, was determined that he and JWS and ITS would carry out his plan to raise capital through the Sidbury offering so that Sidbury would be able to obtain the specified property and that what Jones considered to be obstacles or restraints in the applicable securities law would not be allowed to thwart that purpose.

Jones did consult Leslie McDaniel, an experienced securities lawyer, and assisted the lawyer in the preparation of the offering circular and the terms of the proposed offering. But he then ignored the lawyer's advice when it came to opening an escrow account with UCB which would have prevented Jones from using the proceeds of Sidbury stock sales until the terms of the "part or none" offering were met, or, in the alternative, assuring investors of the return of their monies if the offering did not succeed. Jones chose to ignore the time limits specified in the Sidbury circular, knowingly and recklessly creating recision rights for purchases of Sidbury stock, which rights were not disclosed. Jones knew from the advice of McDaniel that if a continuation of the Sidbury offering beyond August 10, 1989 were contemplated that the offering circular would have to be amended to disclose that change.

Jones chose to ignore that advice and to take the chance that investors would not learn of the extension of the offering and demand recision of their purchases. Similarly, in complete and deliberate disregard of the rights of some purchasers and contrary to the advice of McDaniel, 7/ Jones, JWS, and ITS made the Sidbury offering more appealing to some prospective investors concerned about the liquidity of an investment in Sidbury stock by offering and giving guarantees to repurchase their stock at the original price if the investors so desired at any future time.

As to their claim that no evidence was presented against ITS, the record is to the contrary. Jones offered and sold ITS clients shares of the Sidbury offering, testifying he did so ". . . as a way to diversify their portfolio." 8/ Inasmuch as a firm can act only through individuals, 9/ the acts of Jones, the president of ITS, are attributable to that firm. In consequence, ITS can be held liable for the violations which Jones committed within the scope of his authority and Jones can be found to have wilfully aided and abetted the ITS violations.

JWS, Jones, and ITS further argue that the Division has not proved its allegation that they violated Section 17(a)(1) of the Securities Act. The argument is premised upon their position that the Division failed to establish the element of scienter with

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7/ Tr., at 505-06.

8/ Tr., at 361.

9/ Stuart K. Patrick, Securities Exchange Act Release No. 32314 (May 17, 1993) at 4, SEC DKT. 232, 235; Shaw Hooker & Co., 46 S.E.C. 1361, 1366 (1977).

respect to their misconduct. For the same reasons that a finding of scienter was made in connection with their violations of Section 10(b) of the Exchange Act, it is concluded that JWS, Jones and ITS acted with scienter in violating Section 17(a)(1) of the Securities Act, and Sections 206(1) and 206(2) of the Advisers Act.

JWS, Jones, and ITS further contend that they have "clearly established a valid reliance on counsel defense." 10/ Not only does the record not sustain the respondents' argument that reliance on counsel was established, applicable law does not recognize reliance on counsel as a defense against violations for failure to fulfill disclosure obligations. "Compliance with federal securities laws cannot be avoided simply by retaining outside counsel to prepare required documents." 11/

Although Akers' active role in connection with the Sidbury offering was less than that of Jones, it is clear that he is also culpable with respect to the noted fraud violations of the Securities Act and Exchange Act committed in connection with the Sidbury offering.

Akers contends that his participation in the Sidbury offering consisted of three offers, two of them resulting in sales, and that at the time he used the offering circular no fraud had as yet occurred. He forgets or ignores the fact that during his tenure

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10/ Post-Trial Memorandum of Respondents JWS, Jones, and ITS, supra, at 22.

11/ S.E.C. v. Savoy Industries, Inc., 665 F.2d 1310, 1314, n. 28 (D.C. Cir. 1981).

as president 12/ the offering circular did misrepresent material facts concerning the terms of the offering and that JWS perpetrated the frauds complained of by the Division. The duties of the JWS president were specified in the by-laws adopted by JWS as follows:

> Section 6. President. The President shall be the principal executive officer of the corporation and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the corporation. He shall, when present, preside at all meetings of the shareholders. He shall sign, with the Secretary, an Assistant Secretary, or any other proper officer of the corporation thereunto authorized by the Board of Directors, certificates for shares of the corporation, any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these by-laws to some other officer or agent of the corporation, or shall be required by law to be otherwise signed or executed; and in general he shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time. 13/

As noted earlier, a firm can act only through individuals. 14/ In the case of JWS those individuals were Jones and Akers who, having the responsibility of making certain that JWS acted properly in making the Sidbury offering, must be held responsible for the frauds JWS committed. Having held himself out as president of JWS

12/ The effective commencement date of Akers' employment as President and Chief Operating Officer of JWS was March 1, 1989 and under the terms of the contract the employment was to continue for one year. Div. Ex., 2.

13/ Div. Ex. 3, at 13-14.

14/ Stuart K. Patrick, supra.

during the Sidbury offering period, Akers cannot be now heard to disclaim the responsibilities that accompanied that position.15/ It follows that he as well as Jones is properly called to account for the fraud in the Sidbury offering and for wilfully aiding and abetting the JWS wilful violations of the antifraud provisions of the securities laws during the course of the Sidbury offering.

B. One Virginia Partner

Partnership interests in One Virginia Partner ("OVP"), which the Division does not contend were securities, 16/ were offered and sold by ITS and Jones to investment advisory clients of ITS as well as other investors during the period from April, 1989 through April, 1990. The Division's position, however, is "that Section 206(1) and 206(2) were violated in connection with the OVP sales even though no securities were involved." 17/

OVP is a general partnership formed in April, 1989 to raise $490,000 from the sale of partnership interests. The money was to be used for the purchase of an office building in Wilmington, North Carolina, with the cost of the building estimated at approximately $425,000. Jones acted on behalf of ITS in connection with the OVP offering, making oral presentations and distributing offering materials to clients of ITS who said they wanted to look over the information or wanted to purchase an interest being offered. ITS

15/ Kirk Knapp, SEA Release No. 30391 (Feb. 21, 1992).

16/ Reply Brief of the Division, (November 20, 1993), at 22.

17/ Id.

was to receive 5% of the proceeds from the offering for advice in forming the partnership.

JWS was paid a commission of 10% for the sale of each partnership interest, which arrangement was not disclosed in the partnership agreement used in the sale of the partnership interests. Offering materials used by Jones and ITS represented that seven partnership interests in OVP would be sold at $70,000 each 18/ and that funds received from investors prior to April 28, 1989 would be held in an escrow account. 19/

In fact, no escrow account was opened. Proceeds from the sale of OVP interests were deposited directly into a checking account at UCB in the name of OVP. The OVP checking account was under the control of Jones who, instead of considering the proceeds to be in trust for the purchase of the building to be acquired by OVP, diverted monies from the proceeds for purposes wholly unrelated to the purposes stated in the OVP offering materials. Although the partnership agreement required the consent of two-thirds of the partners for all actions taken by the partnership, Jones never sought that consent before he made loans out of the OVP checking account funds to THHJ and Southeastern Car Care Center 1 ("Southeastern") in the respective amounts of $25,000 and $20,000. THHJ used the $25,000 loan to obtain an option to purchase a land development known as Parkshore Estates ("Parkshore"). The $20,000 loan to Southeastern was used to obtain a purchase option on a car

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18/ Div. Ex. 20, at 3.

19/ Div. Ex. 16, at 8.

care center. Shortly after Southeastern received its loan the company went into bankruptcy. The loan by OVP was never repaid by Southeastern but Jones personally repaid OVP the $20,000. Jones also personally paid the interest on the funds loaned by OVP to THHJ in connection with the Parkshore option. 20/

Besides improperly diverting OVP's monies to make loans to THHJ and Southeastern, Jones caused OVP to purchase 6,000 shares of Sidbury stock for $60,000 thereby enabling Sidbury to finally acquire the property that was described in its offering circular. 21/ In October and November, 1989 Jones also converted $20,000 of OVP proceeds which were then used in the operations of JWS. About July, 1990, JWS issued demand notes to OVP for the $20,000 which Jones had improperly caused to be given to JWS. The notes were not paid off by JWS until March, 1991. The OVP offering materials used to sell partnership interests were not amended to disclose the conversion of proceeds received from purchases of interests from the original purposes set forth in that offering

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20/ The $25,000 loan by OVP to THHJ was made on July 10, 1989 but the Parkshore purchase did not eventuate. The end result was that in March, 1990 Parkshore returned the $25,000 to THHJ. However, OVP did not receive repayment until the middle of March, 1991. Tr., at 293, 1594-1603.

21/ Jones asked Robert Singer, the attorney who prepared the OVP agreement, whether OVP could make investments in other real estate than that described in the OVP agreement. Singer advised Jones that "he thought it was not a good idea because the partnership hadn't been formed for that specific purpose, whatever it was other than buying real estate developments or whatever." Tr., at 1968.

material.

It is quite obvious from the record that Jones, acting with scienter, fraudulently took advantage of his control of ITS to lure its advisory clients into participating in the OVP offering and recklessly and knowingly caused ITS to employ devices, schemes, and practices and to engage in transactions, practices and a course of business in wilful violation of Sections 206(1) and 206(2) of the Advisers Act. Since ITS could act only through Jones the scienter with which Jones' fraud was committed is imputed to ITS. In consequence ITS must be called to account for its wilful violations and Jones also because of his role as an aider and abettor of the ITS wilful violations of the Advisers Act.

The contention of ITS and Jones that because OVP partnership interests are not securities the acts involved with the sale of OVP partnership interests "are beyond the scope of this proceeding since they did not involve the sale of securities" 22/ is without merit. Sections 206(1) and 206(2) are prohibition against actions of any investment adviser engaging in fraud or deceit upon any client or prospective client regardless of whether a security was involved in that fraud or deceit. 23/

22/ Post-Trial Memorandum of Respondents JWS, Jones, and ITS, supra, (Nov. 11, 1993), at 25.

23/ Abrahamson v. Fleschner, 568 F.2d 862, 877 (2d Cir. 1977), cert. denied 436 U.S. 913 (1978).

NET CAPITAL VIOLATIONS

Section 15(c)(3) of the Exchange Act prohibits securities transactions by a broker-dealer in contravention of Commission rules prescribed thereunder providing safeguards in the public interest or for the protection of investors with respect to the financial responsibility of brokers or dealers. Pursuant to that authority the Commission promulgated Rule 15c3-1 under the Exchange Act which, as in effect during 1989 through June, 1991, required brokers or dealers engaging in a general securities business to have and maintain at all times net capital of not less than $25,000. Rule 15c3-1 during that same period also provided that brokers who do not generally carry customers' accounts and carry on their business in accordance with certain restrictions specified under Rule 15c3-1 were required to have and maintain a net capital of not less than $5,000. 24/

According to the record, the actual net capital of JWS and deficiencies computed for that net capital at various dates during the relevant period were as follows: 25/

Date	Amount	Deficiency
April 30, 1989	$ 20,979	($ 4,021)
May 31, 1989	14,790	(10,210)
June 30, 1989	20,394	(4,606)
July 31, 1989	20,558	(4,442)
December 31, 1990	(58,747)	(63,747)
January 31, 1991	(39,214)	(44,743)

24/ 17 CFR 240.15c3-1.

25/ Div. Ex. 62, at 13; Div. Exs. 76-78, 81-87; Tr., at 942-61, 1170-87.

Date	Amount	Deficiency
February 28, 1991	(26,540)	(36,058)
March 7, 1991	(26,540)	(36,058)
April 30, 1991	$ (3,125)	(8,125)
May 31, 1991	(8,313)	(13,313)
June 30, 1991	(7,318)	(12,318)

Inasmuch as JWS conducted securities transactions during the noted periods in which JWS had net capital deficiencies, it is concluded that JWS wilfully violated Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder. It is also concluded that Akers wilfully aided and abetted the net capital violations by JWS occurring during the period from April, 1989 through July, 1989 and that Jones wilfully aided and abetted the net capital violations by JWS for the periods from April, 1989 through July, 1989 and those net capital violations occurring from December, 1990 through June, 1991.

Jones argues that JWS was not out of compliance with the net capital rule between April, 1989 and July, 1989 when JWS received proceeds from the Sidbury offering which were placed in a checking account denominated as an escrow account but which was actually under the control of Jones instead of an independent escrow agent. Jones predicates his argument on his view that the only way for JWS to have been made aware that the net capital rule required JWS to have net capital of $25,000 instead of $5,000 during that period would have been if McDaniel had so advised respondents of that requirement, which Jones claims McDaniel did not do. 26/ That

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26/ Post-Trial Memorandum of JWS, Jones, and ITS, supra, at 27.

position is wholly devoid of merit. JWS and its control persons assumed the obligation of complying with the rules and regulations governing the conduct of a broker-dealer when the decision was made to engage in the securities business, and the responsibilities cannot be evaded by claiming that their attorney did not properly advise them. Moreover, the record does not reflect that Jones sought advice from McDaniel regarding the net capital requirements for JWS arising out of his failure to have an independent escrow agent handle the proceeds of the Sidbury offering. Jones claims that it was Akers who was responsible for maintaining the net capital during the Sidbury offering period. The record establishes that both Akers and Jones were JWS control persons and that they did not assign specific responsibility regarding compliance with net capital requirements or other back-office procedures. Under the circumstances, each had responsibility for assuring JWS compliance with the net capital rule.

As for the period between December, 1990 and June, 1991, Jones claims that the failure to maintain proper net capital of $5,000 is attributable to his being left with a "mess" upon Akers leaving, and that any net capital deficiency was unintentional. Jones does not state why he continued to do business under the circumstances.

Akers contends that he did not aid or abet JWS' net capital violations "for the simple reason that he did not know that the Sidbury account had not been properly established." 27/ Having

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27/ Respondent Roy P. Akers' Brief in Response to the Division's Brief, (November 11, 1993), at 22.

assumed the position as president of JWS, Akers had the responsibility to assure JWS compliance with the rules and regulations governing the conduct of a broker-dealer, and having failed to properly discharge that responsibility, he can be called to account for JWS' net capital violations that occurred during his tenure as president of JWS. 28/ In short, the record makes abundantly clear that not long after he joined JWS Akers realized that Jones was retaining the dominant role in running JWS. Akers' options then were to resign or, in the alternative, to remain on as president without the authority to discharge his responsibilities. By selecting the latter course he cannot now be heard to disclaim involvement in the JWS violations.

VIOLATIONS OF BOOKKEEPING RULES AND REPORTING REQUIREMENTS

Rule 17a-3

Pursuant to Section 17(a)(1) of the Exchange Act, the Commission promulgated Rule 17a-3 requiring every registered broker or dealer to make and keep current certain books and records relating to his business.

During the period from April, 1989 through March 7, 1991 JWS was required by the provisions of Rule 17a-3(a)(1) to make and maintain accurate and current blotters itemizing a daily record of all purchases and sales of securities, receipts, and deliveries of securities, and receipts and disbursements of cash and all other debits and credits. In December, 1989 a National Association of

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28/ Shaw Hooker & Co., *supra.*

Securities Dealers ("NASD") field examiner visited its offices of JWS to examine the firm's books and records. At the outset, the examiner, Steven Bender ("Bender"), gave a list of records he requested to be produced to him. He was not given a purchase and sales blotter nor a securities receipt and delivery blotter which had been requested. Bender testified that the omission was the result of Jones and Akers not being aware of the requirement to keep those records. Nor could JWS produce a memorandum of checks received and delivered. JWS had only incomplete general journals covering three months during the period between July and October, 1989, and only a partial cash disbursement blotter limited to the month end July, 1989 to October, 1989. Those records should have been kept and maintained from the inception of JWS' operations beginning March, 1989. Similarly Bender was not given a complete record of cash receipts covering the period from March, 1989 through November, 1989 but did receive a general ledger. However, the general ledger was not accurate in that Bender could not tie the balance sheet figures he was given with supporting documentation.

The shortcomings of JWS' books and records are highlighted in a letter that was sent by JWS' auditor to the NASD in response to the latter's request for information concerning the auditor's review of internal accounting control in the December 31, 1989 audit of JWS. In that letter the auditor wrote that JWS' books had not been kept to accurately reflect assets, liabilities, and operating results of the company, and further that a well-planned

and implemented accounting system did not exist at that time. 29/ After finishing the 1989 audit the auditors met with Jones and Akers to discuss the problems encountered during the audit. Among other matters the auditors suggested that JWS should have a daily, ongoing computerized record-keeping system in place and that it would be helpful if they employed someone who had an understanding of accounting. 30/ Following the audit of JWS for 1990, the same auditor felt compelled to include reference to the material weakness in JWS procedures, stating the following: 31/

> Material Weakness
>
> Akers and Jones Securities, Inc. is a wholly-owned subsidiary that has approximately four other affiliated entities all under common control. Throughout the year, the Company paid numerous transactions out of the various companies checking accounts, without an accountant or bookkeeping system that could identify the transactions. This lack of an accounting system lead the Company in filing Focus reports to its regulators that were incorrect and to making business decisions that did have limited economic basis. After year-end, the records have been pieced together and the Company has hired a controller to keep up with the day-to-day bookkeeping and regulatory filings.

Under questioning about that statement the auditor agreed that there had not been a great deal of change between 1989 and 1990 despite the fact that Jones and Akers had been advised of the weaknesses after the completion of the 1989 audit. 32/

29/ Div. Ex. 74.

30/ Tr., at 1824-25.

31/ Div. Ex. 62, at 15.

32/ Tr., at 1828.

The record also establishes that to the extent that it existed, the JWS blotter, which should have reflected an itemized daily record of purchases and sales of securities and receipts and disbursements of cash, was continuously inaccurate and was not current. Liabilities to customers who purchased Sidbury common stock were never included, and liabilities to reflect the misappropriation from OVP in October and November, 1989, which were converted to notes payable in July, 1990, were not reflected on the books of JWS until March, 1990.

When JWS began handling mutual fund trades by wire transfer in 1990 it was required to show those trades as principal and to set up purchase and sale blotters because the clearing broker was not involved in JWS' mutual fund transactions. JWS failed to meet that requirement. Other failures by JWS were the incorrect posting in its records of the commissions payable to its salesmen and omissions or inaccuracies in the posting of other liabilities.

Rule 17a-3(a)(2)

Rule 17a-3(a)(2) under the Exchange Act requires brokers or dealers to maintain ledgers or other records reflecting all assets and liabilities, income and expense, and capital accounts. JWS failed to meet that requirement not only with respect to the shortcomings noted under Rule 17a-3(a)(1) but also regarding the

capital contributions by Beacon Investment Group, Inc. ("Beacon"). 33/

Rule 17a-3(a)(3)

Rule 17a-3(a)(3) under the Exchange Act requires broker-dealers to maintain ledger accounts itemizing separately for each customer and for itself all purchases, sales, receipts and delivery of securities for the account and all other debits and credits. Generally, a broker-dealer which clears through another broker-dealer does not have to maintain those ledger accounts if all transactions are put through the clearing broker.

Although JWS had a clearing broker, it was not used by JWS for the Sidbury transactions. Because JWS did not use its clearing broker and because Jones did not set up a true escrow arrangement for the Sidbury proceeds, JWS should have but did not set up customer ledgers relating to the Sidbury investors which would reflect the sales of the securities, receipt of funds from those investors, the liabilities owing to them, and the eventual delivery of the securities. Neither did JWS set up the appropriate ledgers when it began handling mutual fund trades for customers by wire transfer.

Rule 17a-3(a)(8)

Under Rule 17a-3(a)(8) a broker-dealer is required to keep copies of confirmations of all purchases and sales of securities.

33/ Jones caused Beacon to be organized in 1988 to act as a holding company for JWS and ITS. Beacon was owned by eleven individuals in addition to Jones and his wife. Jones was the majority shareholder of Beacon from mid-1990 and throughout 1991.

Ordinarily a clearing broker provides this service for an introducing broker but when JWS did not clear its mutual fund transactions by wire through its clearing broker JWS was required under this rule to confirm those transactions to its customers. This consequence flowed from the fact that JWS, and not the fund, had the primary obligation to deliver the fund shares to the JWS customers. But JWS did not send the required cofirmations to its customers and by failing to do so wilfully violated Rule 17a(3)(8).

Rule 17a-3(a)(11)

Broker-dealers are required by Rule 17a-3(a)(11) to prepare trial balances and net capital computations at least once a month. If there are problems with financial records or its capital, a broker-dealer should prepare trial balances and net capital computations more frequently.

From the time that JWS was acquired by Jones, difficulties were encountered in keeping and maintaining JWS' books and records. 34/ The record is clear and respondents do not dispute that records required to be kept by JWS were incomplete and inaccurate from April, 1989 through June 1991 nor that trial balances required to be prepared monthly during that same period were never accurate. In fact, the auditor engaged to audit JWS' financial statements

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34/ In January, 1989 Beacon bought 100% of the stock of a registered broker-dealer operating under the name of Channel Marker Securities ("CMS") from Joseph Daley ("Daley") for the purpose of having CMS operate as a wholly owned subsidiary of Beacon. CMS, through name changes, became JWS.

for the year ending December 31, 1989 decided that it was necessary to create a set of books to complete the engagement. 35/

Respondents do not dispute that the numerous violations of the Rule 17a-3 bookkeeping and record provisions as found above occurred. Akers contends, however, that he did not wilfully aid those violations, claiming that Jones was responsible for managing JWS on a day-to-day basis and for supervising its activities. Akers cannot so easily avoid his responsibility in this area of JWS' operations. He was president of JWS during the period that a portion of its books and records violations took place and in that position he was responsible for JWS' compliance with the Exchange Act rules governing the conduct of a broker-dealer. When Jones asserted control, Akers could not relegate himself to a passive management role and thereby escape accountability. Akers' option was to resign his position as president or in the alternative be held accountable for the Rule 17a-3 violations occurring during his tenure. 36/

Jones takes the position that although both he and Akers had substantial securities experience neither one had ever run a broker-dealer on a daily basis and that when they began operations they were not sure what books they were suppose to have. Jones asserts that they relied on Daley, the previous owner of CMS, to provide them with all the books and records he had used to run the

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35/ Tr., at 1815-17.

36/ James Michel Brown, SEA Release No. 31223 (Sept. 23, 1992), 52 SEC DKT 2257.

broker-dealer and upon McDaniel to do the due diligence to confirm the same. 37/

That argument is completely devoid of merit. James Lindsay ("Lindsay"), a supervisor of Examiners with the NASD, addressed a letter to Jones dated March 15, 1989 advising Jones "that Channel Marker Securities, Inc., is approved to resume business as of March 2, 1989, based on representations by both you and the firm's CPA that the firm is in net capital compliance and has accurately and currently posted its books and records." 38/ Called as a witness, Lindsay testified that he had spoken to Jones, to Tom Eilers, who was their outside accountant, and to Akers before writing to Jones, and that Jones by telephone had indicated that he had reviewed the books and records of the firm and that they were accurate and current at that time. 39/ In any event, Jones and Akers had the responsibility of assuring JWS' compliance with the books and records requirements of Rule 17a-3 and cannot shift that responsibility for that compliance to others who were not in control of JWS. 40/

In view of the findings that JWS did not keep and maintain books and records as required by Rule 17a-3, it is concluded that during the period from about April, 1989 through March, 1991 JWS

37/ Post-Trial Memorandum of Respondents JWS, Jones, and ITS, *supra*, at 29.

38/ Div. Ex. 40.

39/ Tr., at 835.

40/ *Cf*. Savoy Industries, *supra*.

wilfully violated Section 17(a) of the Exchange Act and Rules 17a-3(a)(1), 17a-3(a)(2), 17a-3(a)(3), 17a-3(a)(8), and 17a-3(a)(11) thereunder and that Jones wilfully aided and abetted those violations during that entire period, and that Akers wilfully aided and abetted those violations in the period from April, 1989 through July, 1989.

Rule 17a-5

Rule 17a-5, promulgated by the Commission pursuant to Section 17(a) of the Exchange Act, requires broker-dealers to file unaudited quarterly financial reports and an audited annual report on Form 17A-5.

JWS failed to file the required audited annual financial report for the year ended December 31, 1989 and the next year filed its audited annual report for the year ended December 30, 1990 on June 21, 1991, over three months after the date it was due to be filed with the Commission. With respect to quarterly reports, JWS filed none with the Commission for the quarters beginning April 1, 1989 and ending December 31, 1990.

The failures of JWS to comply with the provisions of Rule 17a-5 constitute wilful violations by JWS of Section 17(a) of the Exchange Act and Rule 17a-5 thereunder and it is concluded that Jones wilfully aided and abetted those violations occurring during 1989 and 1990 and that Akers wilfully aided and abetted the violations taking place in 1989.

Although respondents do not dispute the findings that required reports were either not filed or not filed timely, Jones argues

that Akers was solely responsible for violations of Rule 17a-5 during the time he was president and accepts responsibility for only those violations occurring after Akers left, but complains that upon Akers' departure, he was "left in an impossible position in July of 1990 when he had to try to run 4 companies and handle the books and records of the broker-dealer." 41/ On the other hand, Akers' position is that he "did not willfully aid and abet JWS' violation of Section 17(a)(1) of the Exchange Act and Rule 17a-5 thereunder by its failure to file with the Commission its quarterly and annual financial reports for 1989 in that he was not negligent in believing that the same had been filed in light of his lack of access and control over the financial and operational affairs of JWS which were solely within the control of Jones because he was aware that the requisite reports had been filed with other self-regulatory organizations, it was not unreasonable to believe they were being filed with the Commission as well." 42/

Neither Jones nor Akers offer an acceptable defense against the charges of wilfully abetting JWS' wilful violation of Rule 17a-5. Clearly Jones refused to give up to Akers the control of JWS' books and records which he claims Akers demanded, and refused Akers' suggestion that Jones replace Norm Efton, an outside accountant who was unfamiliar with the preparation of X-17A-5

41/ Post-Trial Memorandum of Respondents JWS, Jones, and ITS, supra, at 31.

42/ Respondent Roy P. Akers' Response to the Division's Proposed Findings of Fact and Conclusions of Law, (November 11, 1993), at 49.

reports but to whom Jones had given responsibility for filing those reports for JWS. But Akers nonetheless continued to be responsible as president for JWS' compliance with the reporting requirements of Rule 17a-5 and can be found to have wilfully aided and abetted the Rule 17a-5 violations of JWS while he retained that position. 43/

Rule 17a-11

Another of the rules adopted by the Commission pursuant to Section 17(a) of the Exchange Act for the protection of investors is Rule 17a-11(a) which requires a broker-dealer to give prompt telegraphic notice to the Commission and the designated examining authority whenever its net capital is less than the required amount. Rule 17a-11 also requires telegraphic notice to be given whenever a broker-dealer fails to make and keep current the books and records specified under Rule 17a-3.

As found earlier in this decision, JWS did not meet the net capital requirements of Rule 15c-3 from April through July, 1989 and therefore should have given the telegraphic notice specified under Rule 17a-11. In December, 1989, following an examination of JWS by the NASD which found that the firm's books and records were unsatisfactory and its net capital deficient, the NASD examiner conducted an "exit interview with Jones and Akers in which they were advised of the firm's inadequacies and told that the

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43/ A finding of wilfulness does not require an intention to violate the law. See, Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965); Gearhart & Otis, Inc., 42 S.E.C. 1, 28 (1964), aff'd 348 F.2d 798 (D.C. Cir. 1965).

telegraphic notice under Rule 17a-11 should be given. Jones and Akers disagreed with the examiner's findings of net capital deficiencies and did not give the required notice. Nor was telegraphic notice given by JWS with respect to the deficiencies in its books and records which were found to exist by the NASD examiner.

Violations of Rule 17a-11 persisted from December, 1990 through June, 1991 as evidenced by the lack of telegraphic notice other than one on March 7, 1991 disclosing the findings of JWS' auditor in the course of the 1990 audit that the JWS records were incomplete and that during the period from December, 1990 through June, 1991 JWS did not maintain adequate net capital.

The failures of JWS to give appropriate telegraphic notice of its net capital and books and records deficiencies constituted wilful violations by JWS of Section 17(a) of the Exchange Act and Rule 17a-11 thereunder and the failures of Jones and Akers to assure JWS' compliance constituted wilful aiding and abetting of those violations by Jones from April, 1989 through June, 1991, and by Akers from April, 1989 through June, 1990.

Violations of Section 15(b) of the Exchange Act and Rule 15b3-1 thereunder

Pursuant to Section 15(b) of the Exchange Act providing for registration of a broker or dealer with the Commission, Rule 15b3-1 was adopted to assure that a registered broker-dealer promptly files an amendment to its application for registration

correcting any information in that application which has become inaccurate for any reason.

The record reflects that when the application for registration of the broker-dealer now doing business under the name of JWS became inaccurate the registrant did not promptly file amendments to correct the inaccuracies relating to changes in the registrant's name and identities of its management.

JWS did not file an amendment with the Commission when it changed its name from CMS to Akers & Jones Securities Inc. ("Akers & Jones"), in April, 1989 and did not file an amendment when, in April, 1989 Akers became president of JWS and Jones resigned as president and became vice-president of JWS. When Akers resigned as president of Akers & Jones in July, 1990 and Jones assumed that position, JWS neglected to correct its application for registration by filing an amendment to it with the Commission disclosing the changes in its management and when the registrant's name was changed from Akers & Jones to JWS in December, 1990 no amendment was filed by JWS with the Commission to reflect that name change.

Because of the noted failures to meet the obligation to promptly file amendments to its application when it became inaccurate, it is concluded that JWS wilfully violated Section 15(b) of the Exchange Act and Rule 15b3-1 thereunder. It is further concluded that Jones wilfully aided and abetted those violations and that Akers wilfully aided and abetted those violations that occurred in 1989. The fact that the amendments referred to may have, as Akers suggests, been filed with other

regulatory authorities than the Commission does not affect the conclusions that the violations did occur.

PUBLIC INTEREST

Having found that respondents wilfully violated and wilfully aided and abetted violations of various regulatory and antifraud provisions of the Exchange Act, Securities Act, and Advisers Act, and of various rules thereunder, it is necessary to consider the remedial action appropriate in the public interest.

The Division argues that it is necessary in the public interest that JWS be censured and prohibited for two years from participating in any new offerings of securities or partnership interests, be ordered to cease and desist from the violations found to have been committed by JWS, and that a civil penalty in the amount of $10,000 be imposed against it.

The Division urges that Jones be suspended from association with any broker-dealer or investment adviser for twelve months and thereafter be barred from association with a broker-dealer or investment adviser in a proprietary or managerial capacity with a right to apply to become so associated after three years, that Jones be ordered to cease and desist violating or causing the violations he has been found to have committed, and that a civil penalty in the amount of $10,000 be imposed against him.

The Division deems it necessary in the public interest that Akers be suspended from association with any broker or dealer for a period of four months and thereafter be barred from association in a proprietary or managerial capacity with a right to apply to

become so associated after eighteen months, and that he be ordered to cease and desist violating or causing the violations he has been found to have committed.

The Division views it necessary and appropriate in the public interest that ITS be censured and limited for a period of two years to market-timing activities and be ordered to cease and desist violating the provisions of the securities laws it has been found to have committed.

In support of the suggested sanctions, the Division stresses that JWS, through Jones and Akers, committed wilful violations of the antifraud provisions of the securities laws over a long period of time as well as failing to abide by applicable rules and regulations under the Exchange Act regulating the conduct of a broker-dealer's operations. The Division does take into consideration the fact that JWS has other shareholders who were in no way responsible for the JWS violations and therefore believes that JWS should be given an opportunity to operate under management which recognizes the necessity to comply with regulatory rules and regulations.

Jones is referred to by the Division as the focal point for all the misconduct charged, with emphasis being placed upon his disregard for the safeguarding of Sidbury investors' funds by means of an appropriate escrow, the flouting of representations concerning the time period of the Sidbury offering, and of the "part or none" aspects of that offering, and of the improper conversion of Sidbury proceeds to the use of JWS. The Division

points to Jones' disregard of the purpose of the OVP sale of partnership interests and misuse of the proceeds from the sale of the OVP interests and to the fact that Jones showed total disregard for the net capital and bookkeeping and reporting provisions adopted to protect public investors in connection with the operations of a securities business.

Akers is viewed by the Division as less culpable than Jones because he was not involved in as many violations as Jones and, when involved in the same acts, did not have as much control over the entities as that exercised by Jones. Nonetheless the Division emphasizes that Akers, having assumed the responsibility of chief operating officer of JWS, deliberately or recklessly disregarded virtually all of his responsibilities. Although frustrated by Jones' refusal to accept his recommendations, Akers remained president until July, 1990 and regularly held himself out during his tenure to customers, the NASD, and others as the president, a man in control.

While pointing out that ITS has been charged with serious misconduct in view of its relationship with clients who reposed trust and confidence in ITS, the Division observes that the violations occurred in connection with JWS and new offerings of stock and interests in a partnership as opposed to the primary business of ITS, market-timing, and that ITS has apparently performed its market-timing functions in a manner satisfactory to its clients.

On behalf of himself, JWS, and ITS, Jones charges that "the Division has abused its discretion as this action is not predicated on any public purpose, but rather is designed to punish the respondents for acts that have long since occurred and have already been corrected." 44/ He argues that "the facts of this case make it clear that no public interest is being served by the present action. The respondents were already sanctioned for the acts that gave rise to the present action by the National Association of Securities Dealers." 45/ Jones points out that the punishment was severe and imposed great hardship on the respondents. 46/ Jones goes on to state that the evidence does not disclose that any of the alleged acts were intentional or likely to recur in the future and that no one was hurt by or complained of any of the alleged violations nor did any investor lose money as a result of the alleged violations. Jones notes that there has been almost a complete turnover of personnel at JWS and that new procedures have been instituted to safeguard the public. Jones refers to the fact that respondents relied on counsel at all times relevant to this proceeding, have hired new counsel, terminated association with Akers, and have not engaged in private placements of securities. Jones states he no longer has bookkeeping responsibilities. Jones adds as a mitigating factor that respondents have incurred as a

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44/ Post-Trial Memorandum of JWS, Jones, and ITS, supra, at 35.

45/ Id., at 35-36.

46/ Jones Ex. J-18, at 2; Jones Ex. J-58, at 3.

result of this and related proceedings a cost of approximately $365,000 "in addition to all the business which was been lost as a result of the Division tarnishing the Respondent's reputation." 47/

Jones misconceives and misapprehends the nature of these proceedings and the seriousness of respondents' misconduct. The Division did not institute these proceedings, the Commission did so after being apprised of the Division's allegations. As set forth in Section III of the Order Instituting Public Proceedings, the Commission deemed it necessary and appropriate in the public interest in view of the Division's allegations to determine whether the allegations were true and to afford respondents the opportunity to establish any defense to those allegations. There is no evidence whatsoever that the Division has abused its discretion in apprising the Commission of the alleged violations and, as established by the record, good reason to acquaint the Commission with information indicating misconduct on the part of respondents to a degree necessitating Commission consideration as to whether these proceedings should be instituted. That the NASD had taken action against respondents on similar charges and imposed sanctions on respondents does not negate the possibility that the Commission should consider instituting its own proceedings in discharge of its responsibilities to protect public investors.

47/ Post-Trial Memorandum of JWS, Jones, and ITS, *supra*, at 40.

The record belies Jones' assertion that respondents relied upon advice of counsel in taking actions that have been found improper. The record makes manifest that Jones did indeed consult counsel in connection with the Sidbury and OVP offerings but ignored that advice when it did not suit his purpose. McDaniel offered to accompany Jones to UCB if Jones engaged him to do so in connection with the opening of the Sidbury escrow account and Jones declined. Jones asked Singer, the attorney who prepared the OVP agreement, whether proceeds from sales of OVP partnership interests could be diverted in order to invest in real estate other than that described in the OVP offering material, and Jones promptly ignored the advice. Moreover, Jones offered no evidence in writing that covered the scope of the engagements of counsel or the factual circumstances upon which counsels' advice was predicated.

That no one lost money or complained, as Jones contends, and that he replaced the moneys misappropriated in the OVP offering tends to mitigate but cannot nullify or cure the misconduct alleged and proved by the Division. As stated by the Commission in Charles L. Campbell, "although the firm's customers may not have been harmed, Campbell's actions clearly subjected them to undue risk." 48/

Upon careful consideration of the record and the arguments and contentions of the Division, and of JWS, Jones, and ITS, and taking

48/ 49 S.E.C. 1047, 1052 (1989).

into account the strictures noted in Steadman v. SEC 49/ regarding imposition of appropriate remedial action, it is concluded that the sanctions recommended by the Division to be imposed against JWS, Jones, and ITS are appropriate in the public interest and are necessary to deter similar misconduct by other brokers and dealers, excepting from the Division's recommendations the imposition of civil penalties of $10,000 against JWS and against Jones which are not considered necessary in light of the costs claimed to have been incurred by those respondents in connection with this and related proceedings against them.

Akers responds to the Division's recommendation for sanctions against him and its reasoning in that regard by complaining about the severity of the recommended sanctions against him and asserts that the Division has made numerous misstatements regarding the extent of his violations. As an example, he disputes the Division's statement that he "was so interested in selling Sidbury stock, he quickly agreed to offer repurchase agreements . . ." 50/ But his testimony during the hearing tends to support the Division's characterization of his participation. 51/ Akers takes exception to the Division's view that he is unfit to own, operate, or manage a broker-dealer, and says that even if that were so it does not follow that he should be suspended from association with

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49/ 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd 450 U.S. 91 (1981).

50/ Respondent Roy P. Akers' Brief in Response to the Division;s Brief, supra, at 28.

51/ See, e.g. Tr. 72-74.

a broker or dealer for a period of four months or for any period of time. Citing Steadman, Akers contends that the requested sanction is unjustified and far too severe.

Akers' efforts to minimize his participation in the misconduct of JWS and his responsibilities relating to the Sidbury and OVP offerings are of no avail. While it is unnecessary under the Steadman guidelines to impose harsher sanctions than recommended by the Division, the more or less passive approval of Jones' direction of JWS' operations by continuing to hold himself out as president and in control of JWS and his negligent participation in advancing the wrongful sales of the stock of Sidbury and OVP partnership interests demand a stern response. Moreover, the considerable administrative burdens that he and Jones imposed upon the Commission and the NASD in their attempts to obtain his and Jones' cooperation in bringing JWS into compliance with regulatory requirements is a factor to be taken into account. In assessing the appropriate sanction, it is necessary and appropriate to impress respondents with the need for meticulous observance of the high standards of conduct required of those engaged in the securities business and to deter others from engaging in similar misconduct.

Upon most careful consideration of the record and the arguments and contentions of the Division and Akers, it is

concluded that the sanctions recommended by the Division should be imposed against Akers. 52/

ORDER

IT IS ORDERED that Jones & Ward Securities, Inc., is censured and that it is prohibited for two years from participating in any new offerings of securities or partnership interests;

FURTHER ORDERED that Ivan D. Jones, Jr., is suspended from association with any broker or dealer or investment adviser for twelve months and thereafter is barred from association with a broker or dealer or investment adviser in a proprietary, supervisory, or managerial capacity with a right to apply to become so associated after eighteen months;

FURTHER ORDERED that Roy P. Akers is suspended from association with any broker or dealer for a period of four months and thereafter is barred from association in a proprietary, supervisory, or managerial capacity with any broker or dealer with a right to apply to become so associated after eighteen months;

FURTHER ORDERED that Investment/Timing Systems, Inc., is censured and limited for a period of two years to market-timing activities;

52/ 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.

FURTHER ORDERED that Jones & Ward Securities, Inc., Ivan D. Jones, Jr., and Roy P. Akers, and each of them, is required to cease and desist from committing or causing any future violations of Section 17(a) of the Securities Act of 1933 or of Sections 10(b), 15(b), 15(c)(2), 15(c)(3), and 17(a) of the Securities Exchange Act of 1934 and Rules 10b-5, 10b-9, 15b3-1, 15c2-4(b)(2), 15c3-1, 17a-3(a)(1), 17a-3(a)(2), 17a-3(a)(3), 17a-3(a)(8), 17a-3(a)(11), 17a-5, 17a-11 thereunder; and

FURTHER ORDERED that Investment\Timing Systems, Inc., and Ivan D. Jones, Jr., and each of them, is required to cease and desist from committing or causing a violation and from committing or causing any future violation of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 or of Section 17(a) of the Securities Act of 1933, or of Section 10(b) of the Securities Exchange Act of 1934 and Rules 10b-5 and 10b-9 thereunder.

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

Pursuant to Rule 17(f) of the Rules of Practice, 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