ADMINISTRATIVE PROCEEDING
FILE NO. 3-6074

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of :

PAINE WEBBER JACKSON & CURTIS, :
INCORPORATED
:
(BD 8-016267)
:

INITIAL DECISION

December 30, 1982
Washington, D.C.

David J. Markun
Administrative Law Judge

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APPEARANCES:

Anthony W. Djinis, special counsel, and Jerry A. Isenberg and Irving Einhorn, attorneys, Washington, D.C., for the Division of Enforcement. Also appearing on the briefs, Theodore A. Levine, Gary G. Lynch, Paul A. Fischer, William R. McLucas, and Thomas J. Lykos, Jr., Esqs.

Edward H. Fleischman, Martin P. Unger, and Eva H. Posman, Esqs., of Gaston Snow Beekman & Bogue, New York, New York, for the Respondent.

BEFORE:

David J. Markun
Administrative Law Judge

I.

THE PROCEEDING

This public proceeding was instituted by an order of the Commission dated November 18, 1981 ("Order"), pursuant to Section 15(b) [1/] of the Securities Exchange Act of 1934 ("Exchange Act") to determine whether Respondent Paine Webber Jackson & Curtis, Incorporation ("Respondent, or "Paine Webber"), as alleged by the Division of Enforcement ("Division") in Section II of the Order, wilfully violated and wilfully aided and abetted a violation of Section 14(d) of the Exchange Act, [2/] and the remedial action, if any, that might be appropriate in the public interest. In substance, the Division contends the Respondent committed the alleged violations of Section 14(d) during the period June 6, 1980 through June 23, 1980, by purchasing on behalf of a client some 9.9% of the shares of the common stock of Diamond International Corporation ("Diamond") on the Pacific Stock Exchange on June 12, 1980 under what was allegedly in reality a tender offer without there having been compliance with the tender offer requirements of Section 14(d) and regulations thereunder.

The evidentiary hearing was held in New York, New York, and for the convenience of various witnesses, in Los Angeles, California, and Washington, D.C. A pre-hearing conference was held in New York, New York and oral argument following the hearing was held in Washington, D.C.

1/ 15 U.S.C. §78o(b).

2/ 15 U.S.C. §78n(d).

The parties have filed proposed findings of fact and conclusions of law and supporting briefs pursuant to the Commission's Rules of Practice. 3/

The findings and conclusions herein are based upon the record and upon observation of the demeanor of the various witnesses. The standard of proof applied is that requiring proof by a preponderance of the evidence. 4/

II.

FINDINGS OF FACT AND LAW

A. The Respondent, its "associated persons", and their principally-involved officers, employees, and attorneys.

Respondent Paine Webber Jackson & Curtis, Incorporated ("Respondent", or "Paine Webber") is a Delaware corporation with its principal place of business located at 140 Broadway, New York, New York. Respondent is registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act and is a member of the New York ("NYSE"), American, Pacific ("PSE") and other national stock exchanges. Paine Webber is the parent of and controls, among others, two wholly-owned broker-dealer subsidiaries, Blyth Eastman Paine Webber, Inc. ("BEPW") and Paine Webber Mitchell Hutchins, Inc. ("PWMH"), each of which is also registered as a broker dealer with the Commission.

Paine Webber, in turn, along with other entities, is a wholly owned subsidiary of Paine Webber Incorporated ("PWI"), a publicly-held holding company registered with the Commission pursuant to

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3/ 17 CFR §201.16.

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

Section 12(b) [5/] of the Exchange Act.

Through its subsidiaries, principally Respondent Paine Webber and its wholly-owned subsidiaries BEPW and PWMH, PWI is engaged in one line of business, that of a securities and commodities broker-dealer, which is comprised of several classes of service, such as agency transactions, principal transactions, and investment banking. Each class of service utilizes essentially the same or overlapping marketing, operations, service, and administrative personnel and facilities. Due to the integration of the classes of service and the common usage of personnel and facilities, it is not practicable to identify or make meaningful estimates of the expenses applicable to each class of service.

In computing the net capital of Respondent Paine Webber, the assets and liabilities of Päine Webber, PWMH and BEPW are consolidated. PWMH introduces and clears all transactions for its customers on a fully disclosed basis with Paine Webber. BEPW introduces and clears all underwriting transactions through Paine Webber. Respondent Paine Webber carries all such accounts and maintains and preserves books and records pertaining thereto that are required under the Exchange Act.

PWMH, BEPW, and PWI are each a "person associated with a broker-dealer", i.e. with Respondent Paine Webber, within the meaning of such term as defined in Section 3(a)(18) [6/] of the

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5/ 15 U.S.C. §78l(b).

6/ 15 U.S.C. §78c(a)(18).

Exchange Act. Therefore, a sanction against Respondent Paine Webber under Section 15(b)(4) D, E of the Exchange Act could be predicted not only upon a wilful violation or a wilful aiding and abetting of a violation by the Respondent, but also upon a finding that such a violation or such an aiding and abetting had been committed by one or more of the persons associated with Paine Webber. 7/

James W. Miller ("Miller") was, in June, 1980, employed by BEPW in its Corporate Finance Department. A senior person in that firm, he held the title of Advisory Director. From approximately 1967 through 1970, Miller had been president of Blyth & Co., a predecessor of BEPW. He also serves and had served as a member of the boards of directors of several public companies. Miller was considered to have expertise in the forest products area.

Raleigh Chaffee ("Chaffee") was, in June, 1980, an employee of BEPW working as Executive Assistant to Miller, a position she had held for approximately ten years. She was also a registered representative, with particular interests in companies producing forest products and in municipal bonds.

Henry J. Mullholland ("Mullholland") was, in June, 1980 employed as a senior trader by PWMH in the firm's listed block trading department. As of that time he had had some ten year's experience in block trading.

7/ In this connection it should be noted that the instant proceeding is brought under Section 15(b) of the Exchange Act, which expressly provides for sanctions against a broker or dealer predicated upon the misdeeds of a "person associated" with him. In addition, Section II of the Order charges that Paine Webber's alleged violations were committed "directly and indirectly", and Section II specifies in some detail conduct of personnel of BEPW and PWMH as well as of the Respondent as constituting elements of the alleged violations.

John J. McFeeley ("McFeeley") was, in June, 1980, a Senior Vice President of PWMH, in charge of block positioning. In that capacity, he determined when and how much of the firm's own capital would be committed to facilitate block trades. In addition, as one of the senior people on the block trading desk, he performed any functions necessary in the firm's institutional trading department.

Francis X. McElroy ("McElroy") was, in June, 1980, a floor broker employed by Respondent Paine Webber on the NYSE. He specialized in institutional business. He had been employed by Paine Webber as a floor broker since 1971.

Sam Scott Miller ("S.S. Miller") was, in June, 1980, Vice President, Secretary, and General Counsel of PWI and was General Counsel to all of the Paine Webber companies or "entities", including Paine Webber, PWMH, and BEPW.

Samuel C. Butler ("Butler") was, in June, 1980, an attorney and senior partner in the firm of Cravath Swaine & Moore, outside counsel to BEPW. He furnished legal advice to all of the Paine Webber companies mentioned herein and billed one or another "depending on where the work comes from."

B. The prologue to the acquisition of 9.9% of the common stock of Diamond Corporation in a single transaction on the Pacific Stock Exchange on June 12, 1980.

It is undisputed by the parties that on June 12, 1980, Paine Webber, acting as agent for Simpson Paper Company ("Simpson"), purchased, in a single transaction on the Pacific Stock Exchange ("PSE"), 1,282,700 shares of the common stock of Diamond International Corporation ("Diamond") from a variety of sellers. It is further undisputed that this acquisition constituted 9.9% or more, but less than 10%, of the then outstanding common stock of Diamond. It is likewise undisputed that Simpson did not file a Schedule 14D-1 tender offer statement in connection with such purchase of shares under 17 C.F.R. §240.14d-100, promulgated by the Commission pursuant to Section 14(d)(1) 8/ of the Exchange Act, or otherwise comply with the provisions of Section 14(d) of the Exchange Act or Regulation 14D thereunder. Instead, the acquisition of these Diamond shares was treated as being subject to Section 13(d) of the Exchange Act, 9/ requiring only post-acquisition notification when an acquirer's holdings in the voting stock of a company come to exceed 5%. The Division contends that Simpson's acquisition of 9.9% of the Diamond Common stock was accomplished through an (unconventional) tender offer in wilful violation of Section 14(d) and the regulations thereunder and that Paine Webber and its above-mentioned "associated persons" wilfully participated in such violations and wilfully aided and abetted such violations.

Before turning to the events of June 12, 1980 that culminated in the mentioned purchase of some 1.3 million shares of Diamond International common stock, it is necessary to set forth in some detail the relevant antecedent background of facts, events and circumstances against which that transaction occurred.

Diamond International Corporation ("Diamond"), a Delaware corporation with its principal offices in New York, New York, is

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8/ 15 U.S.C. §78n(d)(1).

9/ 15 U.S.C. §78m(d).

engaged primarily in the manufacture and sale of lumber and wood products, including pulp, paper, packaging and matches. Its common stock is registered with the Commission pursuant to Section 12(b) 10/ of the Exchange Act and is listed for trading on the NYSE, the PSE, and other stock exchanges. William J. Koslo ("Koslo") was president and chief executive officer of Diamond during the relevant period. The parties stipulated that as of June 12, 1980, approximately 13 million shares of Diamond common were issued and outstanding. 11/

Cavenham (UK) is an English company engaged in the retail food business that is owned and controlled by Sir James Goldsmith ("Goldsmith") and by Generale Occidentale, a holding company whose shares are traded on the Paris Bourse. On July 18, 1979 affiliates of Cavenham (UK) filed an initial report on Schedule 13D reporting that they had become owners of about 5.8% of Diamond's common stock. These affiliates are hereinafter referred to collectively as "Cavenham."

In December, 1979, Diamond publicly announced that it had agreed in principle to acquire Brooks-Scanlon, Inc. ("Brooks-Scanlon"), an Oregon forest-products company, in a transaction involving the acquisition of Brooks-Scanlon through a combination of cash and Diamond's common stock.

10/ 15 U.S.C. §78l(b).

11/ In a Cavenham tender-offer filing, (which offer is discussed further below), the outstanding Diamond common shares were reflected as 12,883,029 as of March 31, 1980.

Cavenham was strongly opposed to the acquisition of Brooks-Scanlon by Diamond. From January to mid-May of 1980 Cavenham and Diamond fought each other tooth and nail over the proposed Brooks-Scanlon acquisition, using as weapons public pronouncements in the newspapers, proxy fights, suit and countersuit, and a May 10th pronouncement reported in the New York Times by Goldsmith that one of his companies would pay $45 per share for a thirty-five percent interest in Diamond but only if the Brooks-Scanlon proposed acquisition was rejected or postponed.

Ultimately, on May 14, 1980, the same day on which Diamond shareholders were meeting to consider and vote upon the proposed merger with Brooks-Scanlon, Cavenham commenced a tender offer for 4.5 million shares of the common stock of Diamond by filing with the Commission a Tender Offer Statement pursuant to Section 14(d)(1) of the Exchange Act on Schedule 14D-1. Under the terms of the offer Cavenham offered to pay Diamond shareholders $45 in cash per share if (a) the Diamond shareholders disapproved the proposed Brooks-Scanlon merger or (b) the vote on the proposed Brooks-Scanlon merger was postponed until after Cavenham made its purchases under its tender offer, but only $40 per share cash if the merger with Brooks-Scanlon was approved. The tender offer was conditioned upon the valid tender of at least 4,500,000 shares of Diamond stock and was scheduled to expire on June 12, 1980, unless extended. Cavenham further provided that it would not be required to purchase any shares tendered in the event that any person or group acquired or filed with the Commission a Schedule 13D indicating an intention to acquire beneficial ownership of 5% or more of Diamond's common stock.

During the latter half of May, Koslo, on behalf of Diamond management, made announcements reported in the Wall Street Journal that the Diamond Directors considered the tender offer price grossly inadequate, that consummation of the merger with Brooks-Scanlon could involve the issuance by Diamond of 2.5 million additional common shares (the effect, of course, would be to dilute Cavenham's holdings in Diamond), and that Diamond management appeared to have won handily its battle with Cavenham/Goldsmith over the Brooks-Scanlon proposed merger, but that because of certain contingencies and a delay in counting the votes the final tally would not be announced until June 5.

On or shortly before June 6, 1980, Ivan F. Boesky ("Boesky"), an arbitrageur, contacted Miller at BEPW. Although Miller knew that Boesky was an arbitrageur, he had not met Boesky, knew very little about his firm, and had had no prior business dealings with him. Boesky informed Miller that he controlled over 300,000 shares of Diamond's common stock, that he and numerous other arbitrageurs were unhappy with the terms of the pending Cavenham tender offer, and that he and the others would support a competing tender offer from another bidder.

Miller had already been familiar with the Cavenham tender offer. Although he had not monitored the situation for any particular client, the forest products industry was one in which he had a great deal of interest and substantial expertise, and Miller had read everything about the tender offer that had been reported in the press.

At that time Miller was a director of the Louisiana Pacific Corp. ("Louisiana Pacific"), a broad-based forest products company. Following Boesky's call, Miller contacted Louisiana Pacific in an effort to interest the company in making a competing tender offer for Diamond, but Louisiana Pacific was not interested in the proposal.

On June 6, 1980, after Louisiana Pacific had turned down Miller's suggestion, Miller contacted Furman C. Moseley ("Moseley"), Chairman of the Board of Directors of Simpson Paper Company and Executive Vice President of Simpson Timber Company. Simpson Paper Company ("Paper") is a Washington corporation whose principal business address and registered office is in Seattle, Washington, and whose principal office is in San Francisco, California. Paper is the wholly-owned subsidiary of Simpson Timber Company ("Timber"), also a Washington corporation, whose principal business office and registered office is in Seattle, Washington. (Paper and Timber will hereinafter be collectively referred to as "Simpson"). Simpson's principal business is the manufacture and sale of pulp and paper. Ninety-five percent of the issued and outstanding voting common stock of Timber is owned by Kamilche Company, a Washington corporation. William G. Reed, William G. Reed, Jr., Eleanor H. Reed, Susan R. Moseley, and Mary R. Zeeb and their lineal descendants, directly or as beneficiaries of trusts, own all of the outstanding stock of Kamilche Company.

Miller had had a longstanding business relationship with Simpson, first while Miller was with Blythe & Co. and later while associated with BEPW. Miller informed Moseley about what Boesky had told him and suggested that in view of Diamond's resistance to Cavenham, Simpson should consider purchasing "control of Diamond" for approximately the same amount of money Simpson had previously bid, unsuccessfully, on timber property in northern California. Moseley told Miller that it was an interesting idea, that Simpson would consider it, and that Moseley would respond in the early part of the following week.

On June 7 and 8, Simpson's senior management met to consider whether the company should attempt to acquire control of Diamond. Simpson asked its outside auditors and financial consultants to prepare projections of financial statements on a pro forma basis of a combination of Diamond and Simpson at different Simpson ownership levels, i.e., 51%, 80% and 100% and at different prices in the range $45 per share to $50 per share. After Simpson's management reviewed the pro formas and decided that they would pursue further Miller's suggestion to acquire control of Diamond, they proceeded to line up sufficient financing to enable the company to acquire at least 51% of Diamond's common stock.

On Monday, June 9, 1980, after Simpson determined that it could finance its acquisition plan, the company decided to pursue the possibility of purchasing at least 51% of Diamond's common stock if the transaction could be done on a "friendly basis." Simpson decided to seek to acquire 51% of Diamond's common stock initially as opposed to 80% or 100% of the stock because of what Simpson perceived to be "the risk" involved in acquiring more than 51%, because of the amount of money involved in purchasing more than that amount, and because it could see no substantial financial benefits to it in the early years of the acquisition were Simpson to acquire 80% rather than 51% of Diamond's common stock. Simpson also took into consideration the fact that if it were successful in achieving a 51% ownership interest in Diamond's common stock it was highly likely that it would increase its ownership in time to 80% and possibly 100%.

On June 9, 1980, after Simpson decided to pursue the possibility of acquiring at least 51% of Diamond's common stock, Moseley called Miller and informed him of Simpson's decision. Moseley told Miller that Simpson wanted to acquire at least 51% of Diamond's common stock if it could be done on a friendly basis and asked Miller to meet with Koslo on Simpson's behalf to determine whether Diamond would welcome Simpson's proposal. Moseley told Miller that 51% would likely only be an initial step and that after Simpson made this purchase the company would eventually consider how to acquire the balance of Diamond's shares. Moseley and Miller also discussed the per share price which Simpson would have to pay for the Diamond stock. Moseley knew that the price would have to be more than $45 per share and that Simpson did not want to pay more than $50 per share and he asked Miller for his (Miller's) opinion. Miller stated that Simpson would have to pay more than the price Cavenham was offering, and he stated that he felt that it could be purchased for $50 or less.

Meanwhile, on June 6, 1980, the Wall Street Journal had reported that Diamond had disclosed in a news release on June 5 that, among several possible courses of action, it was involved in discussions with Cavenham for a "standstill agreement." According to the article such an agreement, by customary practice, amounts to a "non-aggression" pact under which one company agrees, usually for a period of years, that it will not try to increase its interest in or control over a target company. According to the article, Koslo, at the reconvened shareholders meeting on June 5, announced another delay in reporting the final tally of the shareholders vote on the Brooks-Scanlon merger proposal until June 12, 1980.

On June 9, 1980, the Wall Street Journal reported that Cavenham and Diamond had reached a preliminary agreement on a standstill agreement, the terms of which were announced on June 6. Accordingy to the article, under the tentative agreement, Cavenham's stake in Diamond would be limited to 40% for a period of five years; Cavenham would increase the $40 per share figure of its tender offer to $42; the $45 per share figure to be paid if the Brooks-Scanlon merger with Diamond were defeated remained the same; and Cavenham would commit itself to purchasing at least 2 million shares if that many were tendered (the original offer had been conditioned on the tender of 4.5 million shares.) The article further reported that market speculators, hoping for a higher Cavenham offer, or for a "white knight" bidder to surface, were "hit hard by news of the peace treaty", and that the New York Stock Exchange composite tape on June 6 for Diamond had plummeted $11.125 to close at $38.825, on volume of 245,300 shares.

After his conversation with Moseley on June 9, Miller met with Koslo. Miller told Koslo that Simpson had asked him to come and speak with Diamond regarding the possibility of Simpson's making a competing tender offer on a friendly basis for at least 51% of Diamond's common stock. Koslo told Miller that he admired the Simpson people, that he had no objection to them and in fact would not mind having them as a partner with a non-controlling interest, but that Diamond was not interested in encouraging Simpson to acquire a 51% interest and that Diamond would resist such an attempt.

After his meeting with Koslo, Miller called Moseley to advise him of the results of the meeting. Miller reported to Moseley that his meeting with Koslo was productive in that Koslo welcomed Simpson's interest and, in Miller's opinion, would prefer Simpson to Cavenham as a holder of 40% of Diamond's common stock, but that Diamond would not support a tender offer by Simpson for 51% of its common stock. Miller advised Moseley that if Simpson's interest in the acquisition was as active as Miller believed, Moseley should talk directly to Koslo and be prepared to come to New York to meet with him.

During the morning of June 10, 1980, Moseley called Koslo. Diamond's corporate counsel also participated in the telephone conversation. Moseley reviewed with these Diamond representatives the points that he had asked Miller to make and listened to Diamond's response to make certain that there had been no communication breakdown. Moseley told Koslo that Simpson was interested in acquiring "control" of Diamond; that Simpson felt strongly that it would rely on the existing Diamond management; and that Simpson ultimately would increase its ownership in Diamond. Miller further asked Koslo whether Simpson would get Diamond's support if Simpson were to make an offer for at least 51% of Diamond's common stock at $50 per share. Diamond's corporate counsel asked how Simpson would finance the acquisition. Moseley responded that Simpson had already arranged for the financing. Koslo told Moseley that Simpson's interest in Diamond was an important enough issue to take up with his Board of Directors. Koslo then told Moseley that he (Koslo) would not take any action with Cavenham that would frustrate Simpson's interest until such time as he knew whether Simpson's and Diamond's interests would be pursued.

On June 10, 1980, the Wall Street Journal reported that according to figures released by Diamond late on June 9, the preliminary vote count indicated that Diamond won the proxy battle with Cavenham and that the Brooks-Scanlon merger was approved. The article pointed out that either side could still challenge the preliminary count but that if it remained unchanged, Diamond would be free to conclude the Brooks-Scanlon merger, the terms of which called for the issuance of up to 2.6 million new shares of Diamond's common stock. As reported, this dilution would reduce Cavenham's ownership interest in the company and Diamond shareholders who planned to tender their stock to Cavenham would get $42 a share instead of the $45 they were offered if the Brooks-Scanlon proposal failed to win approval.

As he had indicated to Miller in the telephone conversation on June 10, 1980, Koslo contacted each of Diamond's directors regarding Simpson's interest in Diamond. Koslo called Moseley on June 11, 1980, and reported the results of his telephone poll of the Diamond directors. Koslo told Moseley that the board declined to support Simpson's bid for 51% of Diamond's common stock but invited Simpson to consider purchasing 40% of the company's common stock on terms similar to those being negotiated at that time with Cavenham. Moseley told Koslo that the purchase by Simpson of only 40% of Diamond's common stock was not acceptable because that would involve borrowing too much money with the issue of "absolute control" still open.

Later on June 11, 1980, Moseley called Koslo to seek clarification of Diamond's response to Simpson's proposal. In this conversation Moseley asked Koslo to meet with Miller again and Koslo agreed. Thereafter, Moseley contacted Miller, advised him of Diamond's response and asked Miller to meet with Koslo again.

On June 11, 1980, Diamond and Cavenham entered into a definitive standstill agreement which, among other things, (i) required Cavenham to increase the per share price to be paid pursuant to its offer from $40 to $42 and to reduce from 4.5 million to 2 million the minimum number of shares which, if tendered, Cavenham would purchase pursuant to the offer; (ii) limited the investment by Cavenham to approximately 40% of Diamond's common stock during the five year term of the agreement; and (iii) provided for the termination of all litigation brought by the parties relating to the tender offer.

On June 12, 1980, Cavenham amended the terms of its tender offer for the common stock of Diamond by filing with the Commission Amendment No. 5 to its Schedule 14D-1. This amendment changed the offering price to $42 per share, reduced to two million the minimum number of shares that Cavenham committed itself to purchase, and extended the expiration date of the offer from June 12 until June 26, 1980.

Miller again met with Koslo early during the morning of June 12, 1980. After the meeting, Miller contacted Moseley and informed him that Koslo had advised him (Miller) that Diamond had already signed the standstill agreement with Cavenham and that there was no basis for Diamond management to support Simpson's bid for 51% of Diamond's common stock. Miller further asked whether Simpson would reconsider replacing Cavenham under the terms of the standstill agreement; Moseley said he would not reconsider, and the conversation terminated.

C. The acquisition by Simpson on June 12, 1980, of 9.9% of Diamond's common stock in a single transaction on the PSE involving numerous sellers.

Shortly after Miller's call indicating that a "friendly" takeover of 51% of Simpson was not possible, Moseley consulted with William G. Reed, Jr., who was the Chairman of Timber's board of directors, regarding the situation. They decided that Simpson would acquire immediately a 9.9% position in Diamond's common stock and would later determine what further action, if any, to take. This position (under 10%), they believed, was the maximum percentage of Diamond shares that Simpson could purchase under the Hart-Scott-Rodino Antitrust Improvement Act of 1976 without having to make a pre-acquisition filing and without having to wait the statutory period until it could make the acquisition. 12/

Prior to the opening of trading on the NYSE on June 12, 1980, Moseley called Miller, advised him of Simpson's decision to acquire just less than 10% of the shares of Diamond's common stock outstanding, and asked Miller whether such a purchase was possible. Moseley told Miller that Simpson wanted the acquisition accomplished that day if possible. Moseley also asked Miller for his opinion as to the price that Simpson should put on its offer. After considering the $42 per share price of the Cavenham tender offer, the current market price of Diamond common stock on the NYSE ($39.50 per share), and Simpson's objective of acquiring slightly less than 10% of Diamond's common stock that very day, Miller responded that such a transaction was in his view possible if Simpson offered $42.50 per share. The two agreed to go ahead at that price. On that basis Moseley authorized Miller to make the acquisition in the following manner:

> (a) Proceed with the acquisition of exactly 9.9% of the outstanding shares of Diamond's common stock but do not purchase any shares unless the entire amount could be purchased. (In this conversation Moseley did not state a precise number of shares that he wanted Paine Webber to purchase. He told Miller

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12/ Section 7A of the Clayton Act, 15 U.S.C. 18a, as amended by Sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, requires, among other things, that persons contemplating certain mergers or acquisitions of securities (including cash tender offers) give the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice advance notice and wait a designated period of time before consummation of such plans. See also Release by Federal Trade Commission Announcing Promulgation of Final Rules RE: Premerger Notification; Reporting and Waiting Requirements (July 31, 1978).

that he wanted Paine Webber to calculate the exact number and he would have Simpson people calculate the exact number to make certain that Simpson and Paine Webber were in agreement.)

(b) $42.50 was to be offered uniformly to everyone. Miller understood that he was not free to offer an amount other than $42.50 per share.

(c) Simpson's identity or any information which might indicate Simpson's identity was not to be disclosed to potential sellers.

(d) Miller was not to buy bits and pieces of the stock, but rather acquire the entire amount in a single transaction; and

(e) The acquisition was to be done that day. Miller understood it to be a "day order" and so treated it.

During this conversation Moseley also advised Miller of Simpson's intention to purchase additional shares of Diamond's common stock once Simpson could determine the full extent of the dilution to the intended 9.9% position that would result from the completion of the Brooks-Scanlon merger and the issuance by Diamond of additional shares of its common stock.

Miller and Simpson eventually determined [13/] that 1,282,700 shares of Diamond's common stock constituted 9.9% of the Diamond common stock outstanding and that this amount was the number of shares to be acquired.

Miller worked on this acquisition the remainder of the day on June 12, 1980. He spent most of his time until about 2:30 soliciting

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13/ Outside-counsel Butler (whom Miller consulted, as further discussed at a later point herein) was instrumental in arriving at this figure. Butler exchanged several phone calls during the day with Miller's assistant, Chaffee, on this specific point. Butler utilized Cavenham tender offer filings in arriving at his conclusion. Simpson people made their own determinations from their end and concurred.

potential sellers. From approximately 10:00 a.m. until 5:30 p.m., Miller was constantly speaking to potential sellers of Diamond, both making and receiving telephone calls, or making or receiving "liason" calls from Moseley, Mullholland, or others involved. Miller was so busy that it was necessary for Chaffee, his executive assistant, to assist him, and she too was on the telephone virtually the entire time speaking with potential sellers of Diamond and others involved in the transaction. Mullholland and McFeely at PWMH also had discussions with potential sellers about the terms of the offer from about 2 or 2:30 p.m. on. During the course of the day, Miller/Chaffee and Mullholland/McFeeley spoke with representatives of at least fifteen broker-dealers about the terms of the offer.

In each conversation with a potential seller of Diamond's common stock regarding the terms of the offer, Miller and Mullholland (as well as Chaffee and McFeeley, to the lesser extent that they were involved) conveyed essentially the same information. Potential sellers were told that: Paine Webber represented a purchaser of Diamond's common stock; Paine Webber was not free to identify the purchaser; and the purchaser was interested in acquiring a substantial amount of stock at $42.50 per share on an all-or-none basis. They impressed upon the potential sellers that time was of the essence, that the purchaser wanted to do the trade that day and that Paine Webber needed to know as soon as possible whether the potential seller wanted to participate and, if so, the number of shares that the potential seller wanted to sell.

No restrictions were imposed upon or requested of the persons directly solicited concerning further dissemination of information about the offer. Indeed, Miller contacted people precisely in order to get word out about the offer so that the acquisition could be accomplished.

The first person Miller contacted after the call from Moseley was Boesky. Miller told Boesky that he (Miller) represented a client, whom he was not free to identify, who wanted to purchase a substantial amount of Diamond's common stock. Miller advised Boesky that his client did not want to acquire the entire company but a sufficient amount of stock "to take out Boesky and a lot of other people as well." Miller told Boesky that Paine Webber would pay $42.50 per share and he asked Boesky whether Boesky was still interested in selling any of his Diamond common stock, and if so how many shares. Boesky responded that he would sell 340,300 shares. Miller then told Boesky that time was important, that the purchaser wanted to complete the acquisition that day, but that no shares offered by sellers would be purchased unless Paine Webber could purchase the entire amount.

Miller knew that, as a result of Cavenham's ongoing tender offer, a substantial percentage of Diamond's common stock was held by broker-dealers engaged in risk arbitrage. Miller requested that Boesky contact other broker-dealers who might be potential sellers of Diamond's common stock and to let it be known that Paine Webber was accepting offers to sell the stock. However, Miller imposed no restrictions on Boesky as to whom he could contact, the number of potential sellers that he could contact, or the method to be used by Boesky to contact potential sellers.

Boesky indicated to Miller that Morgan Stanley, First Boston, Bear Stearns, Dean Witter, and Salomon Brothers were among the firms that might have significant amounts of Diamond shares to offer.

Later in the day Boesky called Miller back to indicate he had spoken to people at various firms about Diamond and that he (Miller) would be hearing from them.

After Miller's first conversation by phone with Boesky on June 12, he called outside-counsel Butler, since he (Miller) was a "little rusty on the rules", at about 11:00 a.m. After discussing the matter, Butler advised Miller that the matter of tender offers represented an area of the law as to which there was considerable doubt. Butler told him, however, that he was confident that in view of the pending Cavenham tender offer a sufficient amount of Diamond stock would have been accumulated by the arbitrage community so that Miller could make his acquisition by talking to not more than 10 arbitrageurs. Butler did not go into detail with Miller on the legal aspects because Miller "is not a detail man", but he did advise him to limit his contacts to 10 arbitrageurs and to restrict the offerings to the arbitraguers' current holdings. If the transaction could not be put together under those guidelines, Butler wanted to talk to Miller again.

At Miller's request, Butler gave him specific names of people to call at various firms. Butler knew these people because they were with firms that were clients of Butler's law firm. These included Ivan Boesky, Morgan Stanley, First Boston, and Salomon Brothers. Butler also suggested Goldman Sachs and Bear Stearns to call, though he had no names to suggest, because he knew these firms to have large arbitrage departments.

Following his solicitation of Boesky and his conversation with Butler, Miller immediately began soliciting various broker-dealers to determine whether they would be interested in selling shares of Diamond's common stock to Paine Webber. In his contacts, Miller made it clear he was only interested in large quantities of stock but he gave no indication that the offerings were to be limited to the broker-dealer firm's principal account or to their current holdings therein. Nor did Miller advise potential sellers to keep the information regarding his client's invitation confidential. From approximately 10:00 a.m. until 1:45 p.m. on June 12, 1980, Miller directly contacted representatives of Morgan Stanley, First Boston, Bear Stearns, Wertheim, Goldman Sachs, Salomon Brothers, First Manhattan, Donaldson Lufkin & Jenrette, A.G. Becker, Oppenheimer, Lafer Amster and others regarding the offer. During this same period of time, Boesky also contacted potential sellers and referred them to Paine Webber.

In addition to Boesky's solicitations, several of the broker-dealers that Miller had contacted began to solicit other potential sellers of Diamond's common stock. Bear Stearns used its national inter-office communications system to alert its registered representatives about the offer so that customers of the firm could participate in the transaction. As a result, more than forty-six (46) Bear Stearns customers placed orders to sell with the firm, totalling approximately 375,000 shares of Diamond's common stock.

Wertheim contacted one of its institutional clients about the offer, as well as one of the firm's registered representatives whose customers held Diamond's common stock. Thereafter, Wertheim offered to sell to Paine Webber 70,000 shares of Diamond's common stock from accounts of at least twelve (12) of its customers.

In addition to the solicitations which resulted from Paine Webber's direct contacts, word of the offer began to spread in other ways. Independent floor brokers on the NYSE, known as $2 brokers, upon hearing rumors of the offer, contacted their broker-dealer customers in order to solicit their brokerage business. Among those so solicited were Dean Witter, Allen & Co., Wertheim and even the Paine Webber Arbitrage and the Paine Webber International Departments. Moreover, Paine Webber's International Department, after hearing of the offer in this manner, solicited and obtained sell orders from ten (10) of its institutional and retail customers.

Indeed, the news of the offer became so widespread that First Manhattan, which was originally solicited by both Miller and Boesky, was subsequently also informed of the offer by Lehman Brothers and by Jefferies & Co., two broker-dealers who contacted First Manhattan to solicit its brokerage business. In addition, First Manhattan was also informed of the offer by one of the firm's institutional customers who had heard about it from several other broker-dealers and who then called First Manhattan, hoping to participate in the offer.

As a result of Miller's efforts and the resulting dissemination of the "Paine Webber offer", at some point between 2:00-2:30 p.m., Miller and Chaffee were literally flooded with telephone calls from sellers who were offering substantial amounts of Diamond's common stock. For this and perhaps other reasons Miller decided to turn the entire matter over to Mullholland of PWMH's institutional trading department. Miller called Mullholland, gave him an order to buy 1,282,700 shares of Diamond's common stock at $42.50 per share, and read off the names of the selling firms with the amounts of stock that each had offered to sell to Paine Webber. Miller then instructed Mullholland to "pick up from there."

At this point the total number of shares that Miller had assembled was less than the amount Paine Webber wanted to acquire. However, even after Miller referred the matter to Mullholland, Miller/Chaffee and Mullholland/McFeeley continued to receive numerous calls from persons whom Miller had previously solicited who were offering more stock for sale, as well as calls from people that Miller had not initially contacted. This latter group of persons were generally seeking to verify that Paine Webber had an offer to purchase Diamond's common stock, and, upon receiving an affirmative response, the persons offered to sell their Diamond common stock to Paine Webber.

Individuals from both Paine Webber's Arbitrage and International Departments, as well as Dean Witter, were among those who contacted Paine Webber in an effort to participate in the offer after hearing about it from the floor of the NYSE. Meanwhile, Mullholland (assisted by McFeeley) had been keeping a list of the names of the selling firms and the number of shares that each had offered to sell to Paine Webber. After he accounted for a total of 1,282,700 shares 14/ of Diamond's common stock, Mullholland told potential sellers who called that Paine Webber would not accept any more offers to sell stock. Mullholland then informed the sellers whose shares Paine Webber had agreed to purchase that the transaction was ready to be executed on the floor of the NYSE and that the floor brokers of the selling firms should immediately meet Paine Webber's floor broker at the Diamond specialist's post on the NYSE to execute the trade.

After an initial flurry of activity during the first hour of trading on the NYSE on June 12, 1980, trading in Diamond's common stock was relatively quiet until mid-afternoon, given the circumstances of the ongoing Cavenham tender offer. Between 10:00 a.m. and 2:30 p.m., approximately 51,000 shares of Diamond's common stock were traded at prices ranging from $38.875 to $39.50.

At approximately 2:45 p.m., Mullholland instructed McElroy, a Paine Webber floor broker, to go to the Diamond post on the floor of the NYSE and to determine whether Paine Webber could execute a transaction involving 1,282,700 shares of Diamond's

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14/ It is not wholly clear whether at this point Mullholland had assembled on the sell side as much as his purchaser desired to acquire or whether he stopped accepting offers to sell somewhat short of that figure in the expectation that the balance of shares would be obtained from the floor of the Exchange. I am inclined to accept the former view as supported by the preponderance of the evidence. In any event, even if the latter view is accepted, it is clear that by the time the acquisition activities shifted to the PSE Mullholland had assembled more than enough shares on the buy side to supply what the buyer desired to purchase. By that time the selling firms and their offerings (totaling 1,304,668 shares) were as follows: First Manhattan, 165,868; Bear Stearns, 281,100; Paine Webber, 25,500; Dean Witter, 25,500; Ivan F. Boesky, 340,300; First Boston, 50,000; Donaldson Lufkin, 128,400; Morgan Stanley, 150,000; Wertheim, 70,000; and Lafer Amster, 68,000.

common stock at $42.50 per share. 15/ When McElroy went to the Diamond post he first checked with the Diamond specialist and was then confronted in the crowd with a group of between twenty to thirty (20 to 30) representatives of NYSE member firms representing sellers of Diamond's common stock. This was an extremely large crowd at the Diamond post. 16/ Most, if not all of the firms in the crowd, had either previously been solicited by Paine Webber or represented sellers who had heard, in one manner or another, about the Paine Webber offer due to the chain of events that Paine Webber set in motion earlier that day.

McElroy approached the Diamond specialist on the floor and informed the specialist that he wanted to execute a transaction of more than one million shares of Diamond's common stock at a premium above the market. McElroy asked the specialist for a price quote and the size of the market in Diamond's common stock and whether the transaction could be executed. The specialist advised McElroy of the amount of Diamond's common stock for sale on his book and that he could not speak for the sellers in the crowd. McElroy then turned to the crowd and announced that he wanted to execute a transaction of over one million shares of Diamond's common stock.

15/ However, Mullholland did not give McElroy an actual order to buy the stock.

16/ Between 2:30 and 2:59 p.m., the trading activity in Diamond's common stock increased substantially. During this period 55,600 shares of Diamond's common stock traded on the floor, with the market price increasing from $39.125 to $40.50 per share.

The crowd reacted immediately. Confusion and "chaos" resulted as the sellers in the crowd shouted out to McElroy the amounts of their sell orders. McElroy, confronted with this confusion and what he regarded as a "mob scene", reported back by phone to Mullholland. He indicated to Mullholland that the situation on the floor was a "mob scene", that there was "a lot of confusion at the post" and that, given the number of sellers in the crowd, it was not likely that he could execute the transaction pursuant to the instructions given him.

Mullholland then told McElroy to check back at the Diamond post and ascertain the total number of shares being offered on the specialist's book and in the crowd. McElroy attempted to do this by making inquiries of the specialist and of the brokers in the crowd. By this time McElroy observed that the situation was deteriorating; orders to sell continued to flow in and the amount of stock for sale increased. McElroy then reported to Mullholland that the total amount of stock for sale on the NYSE floor was approximately two million shares, substantially more than the 1,282,700 shares of Diamond's common stock that Paine Webber's client wanted to purchase.

After Mullholland and Miller learned that there was substantially more stock for sale than Paine Webber's client wanted to acquire, Mullholland/McFeeley requested the sellers who had been solicited directly to reduce the number of shares offered for sale. They called these sellers and advised them that if they wanted to sell any shares of Diamond's common stock, the total amount offered would have to be reduced. Then McElroy, acting pursuant to instructions from Mullholland, returned to the Diamond post, told the crowd that he would purchase only a portion of the shares being offered for sale, and asked the brokers to reduce the number of shares in their sell orders. The crowd collectively refused to reduce their sell orders.

While McElroy was hurrying into and out of the crowd, unable to execute the transaction pursuant to Mullholland's instructions, trading in the stock had continued at a strong pace. Between 3:01 and 3:36 p.m., 29,000 shares of Diamond's common stock traded, with the price increasing from 40 1/2 to 41. At or about 3:36 p.m. the Diamond specialist determined that he could no longer maintain an orderly market in Diamond's common stock. The specialist contacted a Floor Governor of the NYSE and explained the situation to him. Based upon the sell order imbalance, the NYSE then halted trading in Diamond's common stock at 3:52 p.m.

After the NYSE halted trading in Diamond's common stock, Mullholland and Miller decided to attempt to execute the Diamond transaction on the PSE --the only exchange still open at that time where Diamond was traded. 17/ By this time, personnel of the Paine Webber entities were aware that there was a significant

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17/ Before embarking upon this course, Mullholland obtained legal clearance of a sort from S.S. Miller, general counsel for the Paine Webber entities. Mullholland posed the question whether the fact that the NYSE had halted trading in Diamond would preclude doing the trade on the PSE and was told it would not. Although Butler had earlier in the day advised S.S. Miller of the legal guidance he had given Miller regarding Simpson's proposed purchase of just under 10% of Diamond common, the record does not indicate that Mullholland and S.S. Miller discussed the question whether the solicitation was going on in accordance with that advice. Nor does it appear that

(FOOTNOTE CONTINUED)

amount of Diamond's common stock available for sale in excess of what the customer desired to buy. After the NYSE had halted trading in Diamond's common stock, many of the firms which had previously placed sell orders on the NYSE entered their sell orders on the PSE. When personnel of Paine Webber entities decided to execute the transaction on the PSE, Mullholland hoped to purchase stock only from those sellers who had been originally solicited and to execute the transaction as a "clean cross". However, as set forth in more detail below, when Mullholland realized that Paine Webber was required to purchase the shares offered on the floor of the PSE, Paine Webber determined to induce certain of these sellers to reduce the amount of stock they offered for sale. With respect to the sell orders which had been given directly to Paine Webber, it was determined to reduce unilaterally, although unequally, those offers to sell.

After the NYSE halted trading in Diamond's common stock, Mullholland contacted each of the sellers who had previously offered to sell Diamond's common stock and from whom Paine Webber had previously agreed to purchase Diamond's common stock, and informed them that Paine Webber intended to execute the trade on the PSE. Mullholland requested that these firms deposit their sell orders with Paine Webber, which the firms did.

At or about 4:15 p.m. (Eastern Standard Time) Mullholland contacted William Lupien ("Lupien"), a floor broker on the PSE,

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17/ (FOOTNOTE CONTINUED)

S.S. Miller inquired or was informed in any detail as to the reasons why trading in Diamond common was halted, or that S.S. Miller considered the implications of such reasons on the question whether the proposed Diamond acquisition was legally permissible.

and asked Lupien to act as Paine Webber's agent in connection with this transaction. 18/ Mullholland advised Lupien that Paine Webber wanted to execute a transaction involving 1,282,700 shares of Diamond at $42.50 per share, and he instructed Lupien to find out whether the trade could be executed as a "clean cross." 19/

The PSE had halted trading in Diamond's common stock following the halt on the NYSE. Subsequent to the trading halt on the NYSE, many of the sellers who had been represented on the NYSE floor entered their sell orders on the PSE. Lupien, after checking with Bryce Pally ("Pally"), the PSE specialist in Diamond's common stock, reported to Mullholland that the PSE had halted trading 20/ in Diamond's common stock, and that there was a preponderance of sell orders on the Diamond specialist's book. Lupien advised Mullholland that the trade could not be executed, when trading resumed, as a "clean cross", indicating that Paine Webber would have to purchase the shares represented on the floor of the

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18/ Lupien was utilized to act as agent for Paine Webber because the regular Paine Webber floor broker on the PSE was not available that day. Mullholland and McFeeley had previously dealt with Lupien.

19/ Lupien understood this to mean that he was to represent both the buyer and the seller in the transaction but was not to purchase any stock offered from the crowd or in the specialist's book. Mullholland neglected to advise Lupien of Paine Webber's previous unsuccessful effort to execute the trade on the NYSE or that the NYSE had previously halted trading in Diamond's common stock due to the sell order imbalance resulting from Paine Webber's attempt earlier that day to execute the same purchase order.

20/ To re-open trading in a suspended stock it was necessary to first send out an "indication" on the tape which would show the spread at which the stock should re-open. The purpose of the indication was to attract orders to the specialist's book which could be matched to orders already given, thus allowing the specialist to determine whether trading can be resumed. The indication was required to be out for at least 15 minutes prior to the resumption of trading; the indication was put out at about 4:30 p.m. E.S.T.

PSE if it wanted to execute the transaction. Mullholland instructed Lupien to determine as accurately as possible the total number of shares of Diamond's common stock for sale on the floor of the PSE.

In accordance with Mullholland's instructions, Lupien had several conversations with the specialist in Diamond's common stock concerning how much stock was for sale. Lupien ascertained that the situation on the floor of the PSE with respect to Diamond's common stock was constantly changing. Sell orders continued to flow in and to change continuously in terms of price and quantity and, as a result, the specialist was having a difficult time arriving at an accurate count of the amount of shares for sale. Lupien reported the situation to Mullholland and informed him that there were in excess of 300,000 shares of Diamond's common stock for sale on the PSE. 21/

After being told about the situation at the PSE, Mullholland realized that Paine Webber was encountering the same problem on the PSE that it had previously encountered on the NYSE -- there was substantially more stock for sale than Paine Webber's client wanted to acquire and there were sellers on the PSE who had not previously been contacted directly. Since time was running out, Mullholland decided to resolve this problem by inducing the major Diamond sellers whose orders had been entered on the PSE floor to reduce the number of shares which they were offering to sell

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21/ At one point the number of shares of Diamond's common stock for sale on the specialist's book at, or lower than, $42.50 per share rose to approximately 451,600.

and by "prorating" the sellers who had given their sell orders to Paine Webber directly.

In order to achieve a reduction in the amount of Diamond's common stock being offered for sale on the PSE, Mullholland first had to determine who the sellers were and how much stock they were offering. Mullholland instructed Lupien to ascertain the identity of the sellers who had placed their sell orders with the PSE specialist, along with the number of shares that each seller offered to sell.

After Lupien received these instructions he contacted Richard Czapleski ("Czapleski"), a Floor Governor on the PSE's San Francisco floor. 22/ Czapleski told Lupien the identity of each selling firm, the number of shares that each firm was offering to sell and the name of the PSE floor broker representing each selling firm with respect to each of the sell orders on the specialist's book.

Lupien, in turn, communicated these facts to Mullholland, who instructed him to contact the sellers on the floor of the PSE and to request them to reduce their sell orders so that the transaction could be executed. Thereafter, PSE sellers of major size were approached either by Lupien or by someone acting at Lupien's direction, and were asked to reduce by approximately 40% the amount of stock each was offering to sell. The PSE sellers were advised further that unless such a reduction was made the transaction might not be executed.

22/ Lupien had earlier pursuaded Czapleski to "assist" specialist Pally in attempting to reopen trading in Diamond and, in practical effect, Czapleski took over active direction of the matter.

Lupien advised Mullholland that some of the firms contacted would reduce their sell orders, but that others had refused, and that based on the extent of the cutbacks from the PSE sellers up to that point in time, the trade still could not be done in accordance with Paine Webber's instructions.

Mullholland contacted the firms whose sell orders had been given directly to Paine Webber [23/] and informed each that they would not be able to sell the entire amount of shares of Diamond's common stock that they had originally offered. Mullholland then unilaterally determined to reduce the total amount of stock it would purchase from this group of sellers by approximately 27%, so that only 930,800 of the 1,282,700 shares being bought would be purchased from this group. Mullholland then told Lupien that, unless the total number of shares of Diamond's common stock being offered for sale through orders on the specialist's book was significantly reduced, Paine Webber would be unable to execute the transaction.

Lupien returned to the PSE floor brokers and again asked them if they could either reduce their sell orders further, or, in the event their customers had previously refused to cut back, to ask them again. By the time Lupien contacted the last floor

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23/ Mullholland also contacted at least one firm whose sell order had been entered on the floor of the PSE in an effort to induce the firm to reduce the number of shares offered. For example, after he found out from Lupien that Goldman Sachs refused to cut back, Mullholland contacted Bruce Mayer at Goldman Sachs. Mullholland told Mayer that he knew Goldman Sachs had entered an order on the PSE to sell a substantial amount of Diamond's common stock and requested Mayer to reduce the number of shares which Goldman Sachs had offered for sale. Mullholland told Mayer that all of the other sellers were cutting back their sell orders and that if Goldman Sachs would reduce its order as well, Paine Webber would have a much better chance of executing the transaction. Mayer refused.

broker, a Bear Stearns representative, 24/ there was less than one minute remaining before the close of the market on the PSE. Lupien told the Bear Stearns floor broker that he had no one else from whom to request a reduction in the sell orders and that Paine Webber could execute the transaction only if Bear Stearns reduced its sell orders by 50,000 shares. Lupien then stood at the floor broker's booth on the PSE waiting for the floor broker to call Bear Stearns and inform the firm about the situation. Bear Stearns agreed to the reduction of its sell order by 50,000 shares.

At this time, however, trading in Diamond's common stock on the PSE was still halted. Lupien immediately contacted Czapleski and, notwithstanding some concerns of Pally, the PSE specialist in Diamond's common stock, at 5:29:30 p.m. (Eastern Standard Time) on June 12, 1980, trading in Diamond's common stock was re-opened for one trade: the purchase by Paine Webber of 1,282,700 shares (about 9.9% of the outstanding shares) at $42.50 per share, from more than twenty-five different broker-dealers representing some 256 sellers. 25/

Following the transaction, Lupien reported to Paine Webber that of the 1,282,700 shares purchased, 366,900 shares of Diamond's common stock were purchased from the PSE specialist's book and the

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24/ The floor broker at the time was holding sell orders totalling approximately 130,800 shares from customers of Bear Stearns.

25/ See Appendix A to this decision, being Exhibit 1 in the hearings, a stipulation among counsel showing the sellers, the numbers of shares they sold, and the broker-dealers who represented them. Of the some 256 sellers, 90 sold 300 shares or less, 159 sold 1000 shares or less, 227 sold 6000 shares or less, and only 29 sold in excess of 6,000 shares.

balance of the shares, 915,800, were purchased from the sellers who had given their sell orders directly to Paine Webber for execution.

When Mullholland learned that the trade was executed, he then reduced those sell orders which Paine Webber had represented, from the 1,282,700 shares originally offered, to the 930,800 [26/] shares purchased (allowing for the balance which was purchased on the floor). Although the total number of shares purchased by Paine Webber from this group of sellers was reduced by approximately 27%, Paine Webber did not apply this percentage equally to each of the sellers or to the number of shares they offered to sell.

The sell orders placed by Paine Webber's arbitrage and institutional departments were not reduced at all -- those shares were purchased in the full amount of the orders placed. Boesky's order was reduced by only 11%, while the orders of Donaldson Lufkin & Jenrette, Lafer Amster, Morgan Stanley and First Boston were reduced by 25%. Wertheim's order was reduced by 22% and First

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26/ Paine Webber through Mullholland failed to purchase all of the shares that had been entered with the PSE specialist. The next day, during the clearing process, Mullholland reduced further the amount purchased from the PSE specialist's book by 15,000 shares (and correspondingly increased by 15,000 the amount of shares it purchased from persons who had given their sell orders directly to Paine Webber for execution). This erroneous change was made because Paine Webber representatives erroneously concluded that separate 15,000 share sell orders of Bear Stearns placed through a PSE floor broker in San Francisco and their floor broker in Los Angeles were duplications, when in fact they were not.

See Appendix B to this decision, being Exhibit 9 in the hearings. Schedule 1 shows the broker dealers represented in the "cross" by Paine Webber and Schedule 2 shows those represented on the floor of the PSE by other broker dealers.

Manhattan's sell order was reduced 33%. Bear Stearns and Dean Witter fared the worst. Paine Webber reduced their sell orders by 52% and 60%, respectively. All of these reductions were unilaterally determined by Mullholland.

The balance of the sellers -- those who had entered sell orders on the floor of the PSE -- had their orders cut back as a group by approximately 23%. Within this group, Paine Webber did not reduce the sell orders by the same percentage. Bear Stearns' sell order on the floor totalled 145,800 shares but Paine Webber purchased only 80,800 of these shares, a reduction of 45%. Prescott Ball & Turbin had offered 14,700 shares for sale but sold only 9,500, a 36% reduction. Cowen & Co., which had placed a sell order through Smith Brothers of 10,000 shares, had its order reduced to 6,500 shares, a 35% reduction. L.F. Rothschild was cut back 31%, while Goldman Sachs, the firm that had refused to take a cutback, sold its entire 65,000 shares.

The commission that Paine Webber became entitled to for representing Simpson in the purchase of some 1.3 million shares of Diamond common on June 12, 1980, was negotiated after the event by Miller and Moseley at 15¢ per share. The commission was allocated between BEPW and PWMH on the basis of the scope-of-effort involved in putting the transaction together. Miller's earlier approaches to Diamond were a consideration in fixing the amount of the commission.

D. Simpson's acquisition of 9.9% of Diamond Corp. common stock on June 12, 1980, was accomplished by means of a tender offer.

The Williams Act in 1968 added five new provisions to the Exchange Act of which two, sections 14(d) 27/ and 14(e) 28/ deal specifically with tender offers. The other three provisions added to the Exchange Act are section 13(d) 29/, which requires the disclosure of specified information within 10 days after a party acquires beneficial ownership of more than 5% of any class of registered equity securities, and sections 13(e) and 14(f). 30/

Section 14(d)(1) requires any party making a tender offer which would result in the party's ownership of more than 5% 31/ of a class of equity securities registered under the Exchange Act to disclose concurrently certain specified information. The information the offeror must disclose is the same as that specified as required for post-acquisition disclosure under section 13(d)(1), and includes the offeror's identity and background, the source and amount of funds that will be used to pay for tendered securities, any plans or proposals to make major changes in the issuer if takeover is the purpose of the offer, the number of shares the offeror presently owns, the details of any arrangements with other parties concerning the shares to be acquired,

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27/ 15 U.S.C. §78n(d).

28/ 15 U.S.C. §78n(e).

29/ 15 U.S.C. §78m(d).

30/ Sections 13(e) and 14(f) relate to matters not directly pertinent to this proceeding.

31/ The Williams Act provided a 10% cut off level but a 1970 amendment dropped it to 5%.

and any other information the Commission finds "necessary or appropriate in the public interest or for the protection of investors."

In addition to the contemporaneous disclosure requirement of section 14(d)(1), section 14 contains three other major protections or advantages for shareholders. Section 14(d)(5) permits shareholders to withdraw shares tendered during the first 7 days of an offer or after 60 days if the offeror has not purchased or returned the shares by then. Section 14(d)(6) requires the offeror to purchase on a pro rata basis shares tendered during the first 10 days of the tender offer if more shares than specified for purchase have been offered during that period, thus eliminating to this extent the first-come-first-served provision that was formerely commonplace in tender offers and that Congress viewed as placing unwarranted and undesirable pressure on shareholders. Section 14(d)(7) requires that any increase in the purchase price in a tender offer be paid to all tendering shareholders, including those who tendered in response to the lower price, the Congressional purpose being to ensure equal treatment for all tendering shareholders.

Section 14(e) is a broadly worded anti-fraud provision, not having any particular relevance to this proceeding.

Not all tender offers were made subject to Section 14(d). The 5% ownership level needed to trigger section 14(d)(1) and the limitation of the section's applicability to equity securities are indications that the Congressional purpose was to apply the tender offer requirements to situations where control or the capacity to influence control were involved. This is strongly confirmed by the language of section 14(d)(8)(C), which gives the Commission specific authority to exempt from section 14(d) tender offers that would otherwise be subject to it ". . . as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of this subsection." (emphasis supplied).

The Congressional purposes in enacting the Williams Act tender offer legislation were essentially twofold. Firstly, Congress wanted to rectify the situation existing prior to enactment of this remedial legislation when a conventional tender offer was capable of pressuring shareholders into tendering hastily, because of the combined effect of a premium price, a time limit, a specified number of shares to be bought, and a first-come-first-served purchase policy. 32/ Secondly, Congress wanted to establish a fair and equitable balance between the tender offeror and the issuer's management or any other group that might desire to oppose or force modification of the terms of its tender offer. 33/

32/ Note, The Developing Meaning of "Tender Offer" Under the Securities Exchange Act of 1934, 86 Harv. L. Rev. 1250, 1259 (1973). Before enactment of the Williams Act, cash tender offers were virtually unregulated. Edgar v. Mite Corp., 102 S.Ct. 2629, 2635-7, 50 U.S.L.W. 4767, 4768-9 (June 23, 1982).

33/ Edgar v. Mite Corp., supra, footnote 32, 102 S.Ct. at pp. 2635-7.

Before the Senate Committee considering the Williams Act bill, then Commission Chairman Cohen testified:

"Often takeover bids are made under circumstances which place undue pressure on shareholders . . . to accept before management or any other group has an

(FOOTNOTE CONTINUED)

As already noted above, the Williams Act provided that not all acquisitions resulting in a person's holding more than 5% of the equity stock of an issuer would be subject to the tender offer requirements of Section 14(d) and regulations thereunder; under Section 13(d), certain acquisitions having that effect would be subject only to the post-acquisition (within 10 days) disclosure requirements therein prescribed. The types of acquisitions covered by section 13(d) are not identified but the legislative history indicates that the Congress had in mind, at least primarily, substantial open market and privately negotiated transactions. 34/

33/ (CONTINUED)

opportunity to present opposing arguments or competing offers. On occasion because of management's advice to its shareholders that their stock was worth more than the amount offered, or as a result of competing offers, tender prices have been substantially increased." Hearings on S.510 before the Subcomm. on Securities of the Senate Comm. on Banking and Currency, 90th Cong. 1st Sess. 21 (1967) (emphasis added).

The House Report stated in part as follows:

"The bill avoids tipping the balance of regulation either in favor of management or in favor of the person making the takeover bid. It is designed to require full and fair disclosure for the benefit of investors while at the same time providing the offeror and management equal opportunity to fairly present their case." H.R. Rep. 1711, 90th Cong., 2d Sess. 4 (1967) (emphasis added).

34/

Senator Williams remarked on the Senate floor:

"Substantial open market or privately negotiated purchases of shares may preceed or accompany a tender offer or may otherwise relate to shifts in control of which investors should be aware. While some people may say that this information should be filed before the securities are acquired, disclosure after the transaction avoids upsetting the free and open auction market where buyer and seller normally do not disclose the extent of their interest and avoid prematurely disclosing the terms of privately negotiated transactions". 113 Cong. Rec. 8956 (1967).

The Williams Act drafters either chose or neglected to define the term "tender offer." 35/ The Commission has not defined the term by rule or regulation, preferring to allow definitions to emerge on the basis of case-by-case determinations by the courts and the Commission. From the outset, however, it was apparent that both the Commission and most courts would and did construe the term as embracing acquisitions other than the traditional or conventional tender offers, looking to the language and the legislative purposes of the Act as they did so.

Over the years, the Commission and a variety of Courts and commentators have identified a number of characteristics, some or all of which are generally present in a tender offer deemed to be subject to Section 14(d). While differing factual situations will prompt particular ones of the following characteristics to be stressed, the Commission has pretty consistently urged the following characteristics as ones that need to be looked for in making determinations as to what constitutes an unconventional tender offer subject to Section 14(d):

1. The offer involves an active and widespread solicitation for shares of the issuer;
2. The solicitation is made for a substantial percentage of the issuer's stock;

35/ The Fifth Circuit Court of Appeals concluded in Smallwood v. Pearl Brewing Company, 489 F.2d 579 (5th Cir.), cert. denied 419 U.S. 873 (1974):

". . . the failure of Congress and the SEC to define 'tender offer' was not inadvertent. On the contrary, it appears that the full meaning of the term was intentionally left to be developed on a case-by-case basis." 489 F.2d at 598 (emphasis added).

3. The offer to purchase is made at a premium over the prevailing market price;

4. The terms of the offer are firm rather than negotiable;

5. The offer is contingent on the tender of a fixed minimum number of shares and often subject to a ceiling of a fixed maximum number of shares to be purchased;

6. The offer is open for only a limited period of time;

7. The offerees are subjected to pressure to sell their stock; and

8. Public announcements of an acquisition program precede or accompany the accumulation of stock.

The findings herein demonstrate unmistakeably the presence of characteristics 1 through 7 and the non-applicability of factor 8 to the facts at hand:

1. Active and widespread solicitation

Solicitation for the Paine Webber offer was indeed "active and widespread." Miller, Butler, and Mullholland knew, understood, and expected that, given the terms and structure of its intended acquisition, especially in light of the pendency of the Cavenham tender offer, news of the Paine Webber offer would rapidly spread through Wall Street. Samuel Butler, outside counsel for BEPW, described the inevitable consequences of Miller's and Mullholland's actions at various points in his testimony as follows:

> ". . . the mere matter of calling up 5 or 6 or 10 arbitrageurs would automatically make all the other smaller players, lesser known arbitraguers, amateur arbitraguers and smaller brokerage firms, institutional holders -- aware that [Paine Webber was] talking about a transaction at a higher price than the other company was offering for immediate dollars as opposed to

> delayed dollars and that would engender a lot of interest on the street immediately...."
>
> * * *
>
> "I would say with the extremely heightened level of interest and knowledge and concern about a contested takeover -- in the context of the contested takeover -- that there was absolutely no chance at all of [Paine Webber's offer] being kept confidential . . . It just wasn't possible. The arbitrageurs are too knowledgeable and they check with each other and [news about Paine Webber's offer] is the kind of information that they want to have."
>
> * * *
>
> ". . . those people wouldn't keep it confidential under any circumstances -- . . . ."

And Miller testified:

> "And as you know, on the street, these things do get around, people say something to one person and they'll say, 'Well, there's a buyer for Diamond,' and people start calling up to inquire and then they find out that Mr. Mullholland is involved in the thing and they call him. These things get around very, very fast."
>
> ". . . traders on Wall Street are the greatest eager beavers in the world to pass on information that comes to them. They relish it. It goes around very, very fast."

As found herein, actions to put together the Paine Webber acquisition guaranteed that the offer would receive widespread circulation. The solicitation process was launched when Miller solicited Boesky and informed him that the purchase would not be made pursuant to the offer unless the total amount sought could be purchased. Miller then got Boesky to call and refer to Miller other broker-dealers interested in selling Diamond's common stock.

Thereafter, Miller solicited representatives of at least nine broker-dealers, including, among others, Dean Witter, Bear Stearns, and Wertheim. Miller did not place any restrictions upon the persons directly solicited concerning further dissemination of information about the offer. Miller did not even request the broker-dealers to refrain from disseminating news of the offer to others or provide any indication that they should consider the matter confidential. Nor did he request that the broker-dealers limit their offerings to current holdings of the firm as principal, which Butler had advised should be done. Miller knew that, particularly unless cautioned not to, the broker-dealers were likely to contact others about the offer. Miller's solicitation and his failure to caution the broker-dealers from further disseminating information about the offer resulted in Paine Webber's acceptance of offers to sell from firms that Miller had not originally contacted.

As was foreseeable and foreseen by Miller and Butler, Paine Webber's initial solicitation resulted in further solicitations. Boesky contacted some sellers and referred them to Miller. In addition, Bear Stearns flashed news of Paine Webber's offer through its in-house intercom system to the firm's retail brokers and over its national interoffice communication system to the firm's branch offices throughout the country. Wertheim contacted one of its institutional clients.

In addition, independent floor brokers on the NYSE, the "$2 brokers", upon hearing rumors of the Paine Webber offer, contacted their broker-dealer customers in order to solicit their brokerage business. Among those so solicited were Dean Witter, Allen &

Co., Goldman Sachs, Wertheim and even Paine Webber's arbitrage and international departments. As the news of the offer spread, other broker-dealers attempted to participate in the offer through the sale of their shares or through the solicitation of sales from others.

Paine Webber's NYSE floor broker announced the terms of Paine Webber's offer to the large crowd that had gathered at the Diamond post 36/ when Paine Webber attempted to complete the acquisition of the Diamond common stock. Subsequently, Paine Webber's floor broker told the crowd that he would only purchase a portion of the stock they were offering, and that the trade could only be executed if there was a reduction in the number of shares offered. Afer this announcement, virtually everyone on the floor who represented a client with an interest in Diamond's common stock had heard about Paine Webber's offer.

Within some six hours after Miller initiated Paine Webber's active and widespread solicitation, the NYSE was flooded with sell orders representing in excess of two million shares of Diamond's common stock, some 15% of the shares outstanding. The flood of sell orders and the chaos which ensued on the floor of the NYSE forced the NYSE to halt trading in Diamond's common stock. After the NYSE halted trading, a similar situation developed on the PSE, to which much of the selling interest generated

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36/ The $2 broker representing Boesky's large sell order thereupon had his clerk solicit the business of some 17-20 other firms. He was successful in getting sell orders from four such firms, bringing the total shares he represented on the sell side, including Boesky's, to over 700,000.

in New York was transferred. Paine Webber's efforts on the PSE to consummate the offer, including its attempt to force sellers to reduce the number of shares they were tendering, contributed further to the spread of information about the offer. Ultimately, Paine Webber acquired 1,282,700 shares of Diamond's common stock from at least twenty-five broker-dealers representing some 256 customer accounts.

These 256 ultimate sellers were in a very real sense "solicited" as a result of the Paine Webber offer. Those who purchased from the floor of the PSE, i.e. through entering their orders in the specialist's book, were just as surely solicited by Paine Webber as were those who constituted the sellers that had been assembled off the floor ("upstairs") in hopes of facilitating a clean cross. The former would not have been there had the Paine Webber solicitation not been conducted in the manner in which it was. And, of course, as found herein, additional persons who chose not to sell their Diamond stock for one reason or another were solicited, directly or indirectly, in the total solicitation process.

2. Substantial Percentage of Issuer's Stock

Paine Webber's offer for 9.9% of Diamond's outstanding common stock was an offer for a "substantial percentage" of Diamond's common stock. The offer was for nearly twice the 5% of outstanding shares that triggers applicability of Section 14(b) to tender offers.

Moreover, 9.9% of the voting shares would clearly be enough to come within the "changing or influencing the control of the issuer" language contained in Section 14(d)(8)(c) of the Exchange

Act, which language, as discussed above, indicates what Congress was driving at in enacting the tender offer legislation.

Well reasonned court decisions support the conclusion that an offer for 9.9% of a company's stock is considered "substantial" for the purposes of the Williams Act. In Cattleman's Investment Co. v. Fears the court found an acquisition program to be a tender offer in which the offeror, through the tender offer, acquired approximately 7% of the target company's outstanding shares. 37/ More recently, in Mid-Continent Bancshares Inc., v. O'Brien 38/ the Court concluded that the acquisition of approximately 9% of the target company's stock was a tender offer.

It is extremely rare that a unitary transaction of the magnitude of Paine Webber's acquisition occurs on the NYSE. The rarity of such a transaction is indicative of the substantial nature of the acquisition. During the past ten years in more than 650,000 transactions executed on the NYSE involving 10,000 shares or more, only four have approached the Paine Webber acquisition in terms of number of shares and dollar amount involved and percentage of outstanding shares purchased.

The acquisition of 9.9% of Diamond's common stock takes on even greater significance in terms of its capacity to influence control in that Diamond was already involved in a takeover battle with Cavenham; the decisive factor in determining control of Diamond could have rested with the shares acquired by Paine Webber's

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37/ 343 F.Supp. 1248 (W.D. Okla.) vacated per stipulation, Civil No. 72-152 (W.D. Okla.) May 8, 1972. In addition, the offeror already held 4.86%.

38/ No. 81-1395C(C) (E.D. Mo. Dec. 11, 1981).

client. 39/ On the other hand, since the Paine Webber offer was for more than half as many shares as the minimum amount sought in the Cavenham tender offer, the acquisition of 9.9% in the Paine Webber offer could have adversely affected the likelihood that the Cavenham offer would be successful.

3. Premium Over Prevailing Market Price

The price offered by Paine Webber's client was at a premium over the prevailing market price of Diamond. At the opening of trading in Diamond on the NYSE on June 12, the stock traded at \$38.875 and ranged from that price to \$39.50 between 10:00 a.m. and 2:30 p.m. (the previous day's close was \$39.50). 40/ Consequently, Paine Webber's offer for Diamond's common stock was set at approximately \$3.00 to \$3.62 per share (or about 7.6 to 9%) above the prevailing market price and was \$.50 higher than the operative price term 41/ of Cavenham's tender offer. Although Paine Webber offered a premium, the actual effect or impact of this premium in the circumstances at hand is relatively small in that the true premium involved in the Paine Webber offer was the

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39/ The Cavenham offer for approximately 40% of Diamond's common stock outstanding, when coupled with the 9.9% sought by Paine Webber, would have virtually placed absolute control of Diamond in hands other than Diamond's present management.

40/ These prices are the relevant ones to consider because they indicate the current market price of Diamond unaffected by the commencement of Paine Webber's offer and subsequent efforts to execute the acquisition.

41/ By June 12, 1980, the marketplace already was aware that the Brooks-Scanlon merger proposal had been approved at the May 14, 1980, Diamond shareholders meeting. Consequently, the operative price term of Cavenham's offer was \$42 per share as opposed to \$45 per share, which would have applied if the merger proposal had been defeated.

50¢ premium over the Cavenham offer [42/] coupled with the fact that Paine Webber offered immediate payment at a premium as compared to uncertain future payment under the Cavenham offer that was subject to failure and, if successful, might require the pro rating of shares offered for sale. The "premium" involved in the Paine Webber offer was more than adequate to achieve the desired results in the circumstances, as has been seen above.

4. Firm Rather Than Negotiable Terms

The terms of Paine Webber's offer were firm and could not be negotiated. Paine Webber understood at the outset that the acquisition could not have been accomplished had sellers been permitted to negotiate the terms of the offer. Indeed, it was clear that the structure of the offer totally precluded negotiation -- (1) the acquisition was to be executed in a single transaction (not a series of purchases that would have left room for negotiation); (2) at one price; (3) for a precise quantity; and (4) accomplished that day.

No negotiation took place during Paine Webber's offer. As Miller testified:

> "I never offered a price other than $42.50. In the first place -- let's make it clear -- I said that our objective was to do this trade and that $42.50 was the target price that we were attempting to do the trade at -- not 41 or 39 1/2 or 43. It was 42 1/2."

42/ The $.50 premium over Cavenham's tender offer enabled Paine Webber to "piggy-back" on Cavenham's offer and "pick-off" the stock held by arbitraguers and other shareholders. Mostly, these sellers had acquired positions in Diamond's common stock after the public announcement of Cavenham's tender offer from Diamond's public shareholders with the intent to tender to Cavenham or sell to a higher bidder.

5. Contingent On Tender Of Fixed Number of Shares

It is uncontested that Paine Webber's offer to purchase Diamond common stock was contingent upon the purchase of a fixed minimum number of shares. It is also uncontested that Paine Webber's offer was subject to the ceiling of a fixed maximum number of shares to be purchased. Shareholders solicited by Paine Webber were advised of these facts.

6. Open For Only Limited Period of Time

It is undisputed that Paine Webber's offer was open for only a limited period of time -- the offer was open to prospective sellers for one day or until Paine Webber received offers to sell for a sufficient number of shares to execute the trade, whichever occurred first. The urgency of the transaction is illustrated by Miller's own testimony:

> ". . . the commitment that I had [from Simpson] was to do [the] trade that day. Otherwise I couldn't be sure that there'd be anything to discuss after that.
>
> "In other words, I told him [the examiner on direct] 'This [was] not something to be putting up and spending several days doing. The instructions [were] to do [the] trade today'."
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> * * *
>
> "I didn't ask them for an instant decision. I told [prospective sellers] what the circumstances were and told them that time was of the essence and I'd like to have a response either affirmative or negative as quickly as possible." (emphasis added)

The fact that Miller and Mullholland quickly moved the transaction to the PSE after the NYSE stopped trading in Diamond is a further indication that they regarded the acquisition as one that needed to be accomplished that day.

7. Offerees Subjected to Pressure

The record demonstrates that the solicitees were subjected to pressure in connection with the Paine Webber offer. This pressure was far greater than that typically present in conventional tender offers. The pressure was attributable to the structure of the transaction, the lack of information provided to the offerees, and the tactics and methods employed by Paine Webber.

Paine Webber's offer was structured to pressure solicitees to respond quickly and affirmatively. The fact that the acquisition was for a limited number of shares, that the offering price was at a premium over the prevailing market price, that no shares would be purchased unless shareholders representing 9.9% of Diamond's common stock agreed to sell, and that the offer was only open until the order was filled (there is no indication that anyone had reason to expect the buy offer would be open after the 12th), all contributed to the creation of a highly pressurized environment.

Pressure on the shareholders of Diamond's common stock was also generated by the commencement of Paine Webber's acquisition in the midst of the pending Cavenham tender offer, which was conditioned upon the receipt of a minimum number of shares. The solicitees knew that the success of the Cavenham tender offer could hinge upon the number of Diamond's shareholders who tendered their shares to Paine Webber. On the other hand, shareholders considering the Paine Webber offer in the short time available had to weigh the possibility that if the Cavenham offer were ultimately "oversubscribed" they would be subject to being pro rated if they didn't offer to Paine Webber.

The incomplete and inadequate information that was available regarding the terms of Paine Webber's offer also pressured the Diamond shareholders into a decision. Paine Webber was unable to identify the purchaser and left most sellers speculating as to the purchaser's plans for Diamond. The sellers were not provided with information concerning, among other things, the purchaser's intention respecting acquisition of additional shares of Diamond common stock in the near future or the buyer's purpose in making the acquisition. In light of the investment decision that sellers had to make with respect to the Cavenham offer, Paine Webber's offer served to compound the uncertainty and created pressure for a quick divestment decision.

Finally, Paine Webber applied overt and direct pressure to Diamond shareholders. As noted above, Miller told solicitees that "time was of the essence" and that an affirmative or negative response to the offer was desired "as quickly as possible."

8. Widespread Public Announcements

The "widespread public announcement" test is in effect a substitute or an alternative to the "active and widespread solicitation" test. Under this test, an acquisition constitutes a tender offer where the acquiror publicly announces his intention to make a substantial purchase or purchases (generally involving open-market purchases, either alone or in combination with privately negotiated transactions) of the target company stock. Such an acquisition constitutes a tender offer because the spread of information about the offer results in widespread public knowledge of the purchaser's intention which in turn creates the potential harms and pressures on the tendering shareholders that the Williams Act was intended to alleviate. In this proceeding, however, it is clear that the direct and indirect solicitation efforts employed resulted in widespread dissemination of the Paine Webber offer just as a public announcement would have. Thus, the public announcement test utilized in certain cases is simply not relevant to the facts and circumstances presented by this record.

The foregoing demonstrates that Paine Webber's acquisition program had the essential characteristics of a tender offer and that it was fraught with and resulted in the very harms the Williams Act was designed to prevent.

Apart from meeting the seven indicia of a tender offer consistently urged by the Commission over a number of years and adopted in whole or in part by a number of courts and commentators, the circumstance that the Paine Webber offer occurred in the context of the outstanding (conventional) Cavenham tender offer presents an additional and separate reason for concluding that the Paine Webber offer was a tender offer subject to Section 14(d) of the Exchange Act. 42a/

As noted above (see footnote 33 and related text) one of the two main purposes the Congress had in enacting the Williams Act tender offer provisions was to avoid tipping the regulatory balance either in favor of existing management or in favor of the person making a tender offer.

42a/ See M. Lipton, Book Review, 72 Michigan L. Rev. 358, 367 (1973).

Unless a competing tender offeror such as Paine Webber's client here is required to play by the same rules as the outstanding Cavenham offeror was required to play by, the delicate balance sought to be established by Congress and the whole regulatory framework governing tender offers can be subverted.

So far as appears from the record, Cavenham was unaware of the Paine Webber offer and thus unable to counteract it by meeting or bettering the offer or by urging its non acceptance. There is an inherent element of unfairness in a procedure that would allow a second tender offeror to skim off in a lightning strike shares of the "target" company that have come together into the hands of arbitrageurs and others as a result of the initial tender offer in the manner that was here pursued under these particular factual circumstances without giving the initial tender offeror a fair chance to fight under the same rules. As has been found above concerning a different point, the success of the Cavenham tender offer was definitely placed at risk by the Simpson acquisition [43/], and that is a threat to the balance Congress wanted to achieve.

Pertinent to this question of balance, the Commission's Rule 10b-13, promulgated under Section 10(b) of the Exchange Act, 17 C.F.R. §240.10b-13, would have prevented Cavenham from directly competing with Paine Webber by purchasing securities in the open

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43/ The fact that everything may eventually have turned out "all right" for Cavenham in its efforts to gain control of Diamond is irrelevant to a consideration of the principles under discussion.

market. Rule 10b-13 prohibits a tender offeror from purchasing securities of the subject company other than pursuant to the tender offer, once the offer is publicly announced or made known to shareholders until the expiration of the offer.

What is said here does not mean to rule out the possibility of an acquisition of the magnitude of Simpson's by means of legitimate privately negotiated transactions.

The violation of Section 14(d) of the Exchange Act by Simpson was wilful. "Wilful" in the context of Section 14(d) means intentionally committing the act which constituted the violation. There is no requirement that the actor also have evil motive or intent to violate the law, or knowledge that the law was being violated. 44/

E. Respondent Paine Webber and BEPW and PWMH, both "person[s] associated with" Respondent, wilfully aided and abetted Simpson's willful violation of Section 14(d).

Aiding and abetting violations of the securities laws occurs if the following elements are present:

(1) the existence of an independent securities law violation committed by another party;

(2) action taken by the aider and abettor that renders substantial assistance to the violative activity by the primary party; and

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44/ Tager v. S.E.C., 344 F.2d 5, 8 (2d Cir. 1965); Gearhart & Otis, Inc. v. S.E.C., 348 F.2d 798, 803 (D.C. Cir. 1965); Nees v. S.E.C., 414 F.2d 211, 221 (9th Cir. 1969); Hinckle Northwest, Inc. v. S.E.C., 641 F.2d 1304, 1307 (9th Cir. 1981); Securities Forecaster Co., Inc., 39 S.E.C. 188, 191 (1959); Lamb Brothers, Inc., Securities Exchange Act Release No. 14017 (October 3, 1977), 13 SEC DOCKET 265, 270, n. 25. See also Arthur Lipper Corp. v. Securities and Exchange Commission, 547 F.2d 171, 180 (2d Cir.), reh'g. denied 551 F.2d 915 (2d Cir. 1976), cert. denied 434 U.S. 1009 (1978).

(3) awareness or knowledge by the aider and abettor that his role was part of an activity that was improper or illegal. 45/

As already found above, the Simpson acquisition of 9.9% of the common stock of Diamond was a tender offer not conducted in accordance with Section 14(d) of the Exchange Act and therefore willfully violated the Section.

As to the second element necessary to a finding of aiding and abetting, the record establishes clearly that Paine Webber, BEPW, and PWMH, both individually and collectively, rendered substantial assistance in the violative activity, i.e., the acquisition that constituted Simpson's violation.

Thus, Miller (BEPW) first brought the opportunity to the attention of Simpson by inviting a competing tender offer to the outstanding Cavenham offer. Thereafter, Miller advised Simpson that the 9.9% acquisition Simpson desired was capable of being accomplished that day and undertook to carry it out as agent. Miller, Chaffee (BEPW) and Butler (Paine Webber, BEPW, PWMH) helped calculate the number of shares that could be purchased without triggering the provisions of the Hart Scott Rodino Act. Butler also advised Miller as to how to solicit sellers without triggering Williams Act tender offer provisions and consulted with the Simpson people as to what the legal requirements were for post-acquisition filing under

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45/ Investors Research v. S.E.C., 628 F.2d 168, 178 (1980); Rolf v. Blyth, Eastman Dillon & Co., Inc., 570 F.2d 38, 47-48 (2d Cir.), cert. denied 439 U.S. 1039 (1978); In Re Carter and Johnson, Securities Exchange Act Release No. 17597 (Feb. 28, 1981), 22 SEC DOCKET 292, 315-6 (1981).

Section 13(d) of the Exchange Act. Miller initiated the solicitation process and thereafter he and Mullholland (PWMH) assisted, respectively, by Chaffee and McFeeley, continued the hours-long process of conducting all contacts with sellers and potential and would-be sellers of Diamond common. Miller and Mullholland assembled more than enough sellers of Diamond to take care of the sell side of the transaction, and they made the decision to go ahead with the transaction on the PSE notwithstanding the "chaos" and obvious necessity for "cut backs" that their effort to execute the transaction on the NYSE had caused. The activities of Paine Webber's floor broker on the N.Y.S.E. had the effect of widening the solicitation of sellers of Diamond common, as he successively went into the crowd a number of times at the Diamond trading post and announced his desire to purchase and, later, his desire for cutbacks. Paine Webber's "acting" floor broker on the PSE was indispensable in putting the roughly 1.3 million share transaction through since it was he who got influential help in getting the halted Diamond to trade again on the PSE for this one transaction, and since it was he who got persons offering stock on the PSE to "cut back" their offerings in order to make the whole transaction possible, including the last-minute cutback by Bear Stearns. And, of course, it was Paine Webber that carried the Simpson account and it was Paine Webber that represented Simpson as buyer on the PSE.

Butler, as outside counsel, and S.S. Miller, general counsel for the Paine Webber companies, both of whom were consulted on various legal and/or practical aspects of the impending transaction, and knew that it was going on, in practical effect represented Paine Webber, BEPW and PWMH (as well as the holding company PWI).

Thus, it is entirely clear that Paine Webber, BEPW, and PWMH each rendered substantial assistance to the violative activity that constituted the violation by Simpson, the "primary violator". Indeed, the participation by each of the three PW entities in such violative activity as found herein was indispensable to execution of the 1.3 million share transaction in Diamond.

The third element needed to find aiding and abetting is an awareness of wrongdoing on the part of the aider and abettor.

The participants representing the three Paine Webber companies in the subject transaction were all experienced professionals who knew or should have known that the transaction in Diamond as carried out constituted an illegal tender offer. Miller recognized that he was "rusty on the rules" and therefore sought out the legal advice of Butler. Butler gave Miller "conservative" advice as to the extent and scope of solicitation that, if followed, would not have resulted in the violation that occurred. The problem was that Miller promptly ignored that advice. He, and later, Mullholland, extended their range of contacts in the solicitation process well beyond what Miller had indicated. Nor did they limit themselves to the kinds of shares or shareholders suggested by Butler. Further, Miller and Butler were both aware of the speed with which news of the Paine Webber offer would spread through the street and on the floor of the Exchange unless it were very carefully confined.

In any event, long after unfolding events made it obvious to participants representing each of the three Paine Webber companies here involved that large numbers of sellers must have been drawn in by the widespread solicitation that had occurred, none of these participants made any effort to hold up on, or to abort, the transaction until it could be determined what kinds of sellers the solicitation processes had generated. S.S. Miller was aware of what Butler's advice to Miller had been, yet he approved going to the PSE with the transaction, knowing that trading had been halted on the NYSE in Diamond due to a surfeit of sellers, without checking to ascertain whether Butler's advice regarding solicitations had in fact been followed.

The participants representing the three Paine Webber companies had or should have had an awareness that their activities were a part of a transaction that was unlawful. They were aware of the nature and scope of the widespread solicitation yet they heedlessly and recklessly carried out the transaction to completion in the face of red flags crying out that they were in all probability violating the law. They also all knew that this transaction was being carried out against the background of the outstanding Cavenham tender offer with the implications that circumstance carried, as found herein.

As stated by the Court in Investors Research v. S.E.C., 608 F.2d at 177, [46/]

46/ *Supra*, footnote 45.

> ". . . The awareness of wrongdoing requirement for aiding and abetting liability is designed to ensure that innocent, incidental participants in transactions later found to be illegal are not subjected to harsh civil, criminal, or administrative penalties [footnote citation omitted] . . . ."

Here, as found herein, the situation is quite different. Paine Webber and the two Paine Webber companies that are "person[s] associated" with it, were not "innocent, incidental participants" in the transaction that resulted in the violation. Indeed, it is only because from a legal standpoint Simpson was the purchaser of the Diamond common stock and therefore Simpson was legally obligated to make the Section 14(d) mandated filings that Paine Webber and its two "associated persons" are not liable as principals. Realistically viewed, it is clear from the findings herein that Paine Webber and its two "associated" companies were at the very core of the violative conduct. It is clear from the record that Simpson relied upon the expertise in those matters that the Paine Webber companies had, including the advice of their legal counsel, to ensure that the acquisition would be carried out in accordance with all legal requirements including those of the Commission and the Exchanges. And, as the findings herein demonstrate, it is clear that the Paine Webber companies devised the means and carried out the process that resulted in Simpson's acquisition of 9.9% of the outstanding common stock of Diamond on June 12, 1980, and that they advised Simpson it could be done by complying with Section 13(d) of the Exchange Act rather than Section 14(d). In these circumstances it can hardly be concluded that the involvement of Paine Webber and its associated companies was "incidental".

In any event, as found herein, it is abundantly clear that Paine Webber and its two associated companies here involved had the requisite awareness of wrongdoing to meet that element of the aiding and abetting requirements.

The aiding and abetting activities of the three Paine Webber entities here involved were conducted wilfully. 47/

F. Respondent's contentions

Respondent urges strenuously that the tender offer provisions of Section 14(d) apply only to "takeover" or "control" situations and that here Simpson made its 9.9% acquisition for "investment" purposes and that, moreover, because of the Cavenham tender offer and the existing Diamond holdings of Cavenham, actual control by Simpson was out of the question.

However, as has been concluded hereinabove, although Congress may have enacted the Williams Act out of general concern about takeover situations, its actual reach in enacting the legislation was to embrace all tender offers that would result in 5% ownership of a company's equity securities. 47a/ This is the level at which the Congress considered that there was a potential for changing <u>or influencing</u> the control of a company. See discussion of Section 14(d)(8)(C) under part II D above.

Moreover, as found above, the Simpson acquisition had a potential effect on the success or failure of the Cavenham tender offer, and thus had a potential for influencing the control of Diamond.

47/ See footnote 44 above and related text.

47a/ With the exception of transactions properly coming under Section 13(d), as discussed hereinabove.

As already noted above, whether or not a given acquisition is subject to Section 14(d) cannot be dependent upon how things actually turn out months or years later -- it must turn upon the potential the acquisition has for exerting control or for influencing control at the time it occurs.

Respondent also urges strongly that the 1.3 million share acquisition here involved was not a tender offer because Miller solicited not more than 10 arbitrageurs or arbitrage departments of large broker-dealer firms and that it should not be held accountable for the fact that news of the Paine Webber offer spread like wildfire on the street and on the Exchanges since it had a reasonable basis for supposing that the arbitrage departments would keep news of the Paine Webber offer confidential.

There are a host of flaws in this argument. Firstly, as found herein, Miller and Mullholland solicited substantially more than 10 broker dealer firms. In this connection, it makes no difference who initiated the call if in calls initiated by others Miller or Mullholland thereafter went on to solicit the shares of the caller in the same manner they would have done had Miller or Mullholland initiated the calls. This is particularly so where Boesky had been requested to contact possible sellers and refer them to Miller.

Secondly, Miller and Butler were well aware, as they testified, that once news of the Paine Webber offer got out there was no way of keeping it confidential on the street or on the Exchange floors. This was particularly true where Miller and Mullholland made no effort to even request people contacted by them or who called them and were informed of the Paine Webber offer to keep the matter confidential.

The record does not establish that there is any custom or convention on the part of arbitrageurs to keep information concerning an offer such as Paine Webber's confidential. The findings as to how news of the offer circulated both in the street and on the Exchange floors defeats Respondent's claim.

Lastly on this point, unless a party like Paine Webber is to be held responsible for making at least reasonable efforts to ensure that its solicitation is in fact confined in a way that will protect against widespread dissemination of the offer, too much potential for subversion of the tender offer legislation would result.

Another argument made by Respondent is that its involvement was only peripheral, i.e. that it only carried the Simpson account and ministerially acted as the buying broker on the PSE for Simpson. This is a technical argument under which Paine Webber seeks to divorce itself from the activities of its subsidiaries and "associated persons", BEPW and PWMH.

Given the way PWI chooses to conduct its securities business through Paine Webber, BEPW, and PWMH, as found above, this is an outrageous argument.

In any event, the argument has no validity since, as found above, Paine Webber may be sanctioned on the basis of derelictions by BEPW and PWMH, persons associated with Paine Webber, and all three of the associated persons are found herein to have contributed in a substantial way to the aiding and abetting violations found to have been committed by them.

Paine Webber also contends that the Simpson acquisition of 9.9% of Diamond's common stock was exempt from Section 14(d) as a privately negotiated purchase or as open-market purchases.

Treating the latter point first, the transaction that here occurred did not really involve open-market purchases in the conventional sense in which such purchases have been involved in the case law or in commentaries thereon. Here the floor purchases were made only to satisfy a requirement of the PSE that all stock offered for sale meeting price requirements had to be taken up before shares assembled "upstairs" for execution on the Exchange could be accommodated. The sellers on the PSE who placed their stock for sale with the floor specialist and who participated in the transaction were essentially all drawn there by the widespread solicitation and dissemination incident to the Paine Webber offer.

Next, the transaction does not qualify as a privately negotiated transaction under established criteria because it reached and involved too many sellers, did not involve any negotiation or opportunity for meaningful negotiation, led to divestment pressures on sellers of the kinds the Williams Act meant to eliminate, and otherwise did not meet established criteria.

All other contentions and arguments of Respondent, and its proposed findings and conclusions, have been carefully considered and, except as incorporated in the findings and conclusions herein, are found to be lacking in merit or not supported by the record.

G. Conclusions of law.

In general summary of the foregoing it is concluded that Respondent Paine Webber during the period June 6, 1980, through June 23, 1980, directly and indirectly, by use of the mails and means and instrumentalities of interstate commerce and the facilities of national securities exchanges, wilfully aided and abetted Simpson's wilful violation of Section 14(d) of the Exchange Act.

It is further concluded that Blythe Eastman Paine Webber and Paine Webber Mitchell Hutchins likewise wilfully aided and abetted Simpson's wilful violation of said Section 14(d). Since BEPW and PWHM are each a "person associated with a broker-dealer", i.e. with Paine Webber, within the meaning of such term as defined in Section 3(a)(18) of the Exchange Act, the violations by BEPW and PWMH establish an additional basis for imposition of a sanction against Respondent Paine Webber under Section 15(b)(4)(E) of the Exchange Act.

III

THE PUBLIC INTEREST

In determining what sanctions, if any, it is appropriate to apply in the public interest, it is necessary for the Commission, among other factors, to " . . . weigh the effect of . . . action or inaction on the welfare of investors as a class and on standards of conduct in the securities business generally." 48/

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

The Division urges that Respondent be censured, barred for a three month period from participating as a dealer-manager in any tender offer, and compelled to adopt and maintain procedures designed to ensure its full compliance with the Williams Act in the future.

The Division points to a number of securities regulation violations by Respondent in the past. However, these do not appear to be remarkable either in type or in number given the size of, and number of branches involved in, Respondent's operations. Nor are they the types of violations that are at all similar to the violation found herein.

I conclude that there is no likelihood that Respondent will repeat this type of violation. I further conclude that given the extent of publicity that will attend a Commission finding of a willful aiding and abetting violation by Respondent and its associated persons the public interest in terms of deterrence of others will be adequately served by a finding of such violation without imposition of a sanction.

IV

ORDER

Accordingly, IT IS ORDERED as follows:

While Respondent Paine Webber and its "associated persons", Blythe Eastman Paine Webber and Paine Webber Mitchell Hutchins, willfully aided and abetted Simpson's violation of the tender offer provisions of Section 14(d) of the Exchange Act as charged, the imposition of a sanction against Respondent Paine Webber is not found to be necessary or appropriate in the public interest.

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

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen (15) days after service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), unless the Commission pursuant to Rule 17(c) determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party. 49/

David J. Markun

David J. Markun
Administrative Law Judge

Washington, D.C.
December 30, 1982

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

APPENDIX A

Administrative Proceeding
File No. 3-6074

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of: PAINE WEBBER JACKSON & CURTIS, INCORPORATED (BD 8-16267)	STIPULATION OF FACTS

RECEIVED
OFFICE OF THE SECRETAR
OCT 19 1982

The parties to this proceeding, by their undersigned representatives, do hereby stipulate */ and agree that:

In connection with the purchase of 1,282,700 shares of the common stock of Diamond International Corporation, by Simpson Paper Company, on June 12, 1980, at $42.50 per share on the Pacific Stock Exchange

1. Paine Webber Jackson & Curtis, Inc. ("Paine Webber") sold 25,500 shares of Diamond common. In connection with this transaction Paine Webber acted as broker, principal, clearing broker and/or otherwise for the following firms and individuals in the share amounts indicated:

Paine Webber Overnight Arbitrage Trading Account	3,300
Paine Webber Arbitrage Investment	13,000
Mr. Hanns W. Salzer Levi and Mr. Herbert S. Levi	2,500

*/ Nothing herein is to be construed as knowledge by the respondent as to the identities of any sellers other than certain of the selling broker-dealers listed herein. Even though Paine Webber has agreed to this stipulation, the respondent expressly denies that it was aware of any sellers other than certain of the selling broker-dealers listed herein. Moreover, although the information contained in this stipulation, which results from the parties best efforts to reconstruct this transaction, is as accurate as possible based upon the available information, certain of the numbers contained herein are approximations and are not necessarily exact.

Div ex i
3/22/82
1 P.

Mr. Robert Simon and Mrs. Renee Simon	300
Inficosa	2,000
Spinning Establishment Mr. Ernesto Fischl	300
Mr. Robert V. Polley and Mrs. Patsy M. Polley	500
Mr. Dirk Lysen and Mrs. Josefa M. Lysen	500
Toyota Investment S.A.	500
Robert Lesser	400
Montes Trust II	2,000
Joseph Idy, Trustee for Leon Jaquet Trust - B	200

2. Oppenheimer & Co., Inc. ("Oppenheimer") sold 40,400 shares of Diamond common. In connection with this transaction Oppenheimer acted as broker, principal, clearing broker and/or otherwise for the following firms and individuals in the share amounts indicated:

Investment Arbitrage Oppenheimer & Co. Firm Account	22,400
Midland Investment Co. Arbitrage San Antonio, Texas	4,500
Risk Arbitrage Associate	918
Perlmeter Inv. Ltd. Omaha, Nebraska	930

3. Bear, Stearns & Co. ("Bear Stearns") sold 215,800 shares of Diamond common. In connection with this transaction Bear Stearns acted as broker, principal, clearing broker and/or otherwise for the following firms and individuals in the share amounts indicated:

See Exhibit A

4. Cowen & Co. ("Cowen") sold 15,600 shares of Diamond common. In connection with this transaction Cowen acted as broker, principal, clearing broker and/or otherwise for the following firms and individuals in the share amounts indicated:

Ben Roisman	6,500
Cowen & Co. Arbitrage	9,100

5. L.F. Rothschild, Unterberg, Towbin ("L.F. Rothschild") sold 42,800 shares of Diamond common. In connection with this transaction L.F. Rothschild acted as broker, principal, clearing broker and/or otherwise for the following firms and individuals in the share amounts indicated:

L.F. Rothschild Firm Account	26,500
Carl B. Flaxman Dallas, Texas	200
Greenman Partners Fort Worth, Texas	700
Maria Marron Carlino Palm Beach, Florida	7,000
Oscar Gruss and Son	8,400

6. Wagner, Stott & Co. ("Wagner Stott") sold 66,000 shares of Diamond common. In connection with the transaction Wagner Stott acted as broker, principal, clearing broker and/or otherwise for the following firms and individuals in the share amounts indicated:

Lafer Amster & Co.	51,000
Wagner, Stott & Co.	15,000

7. A.G. Becker, Incorporated ("A.G. Becker") sold 2,500 shares of Diamond common. In connection with this transaction A.G. Becker acted as broker, principal, clearing broker and/or otherwise for the following firms and individuals in the share amounts indicated:

Easton & Co.	2,000

8. Ivan F. Boesky & Co. ("Boesky") sold 303,000 shares of Diamond common. In connection with this transaction Boesky acted as broker, principal, clearing broker and/or otherwise for the following firms and individuals in the share amounts indicated:

I.F. Boesky & Co.	303,000

9. The First Boston Corporation ("First Boston") sold 37,500 shares of Diamond common. In connection with this transaction First Boston acted as broker, principal, clearing broker and/or otherwise for the following firms and individuals:

First Boston Arbitrage Department	37,500

10. Morgan Stanley & Co., Inc. ("Morgan") sold 112,500 shares of Diamond common. In connection with this transaction Morgan acted as broker, principal, clearing broker and/or otherwise for the following firms and individuals in the share amounts indicated:

Risk Arb Investment Tenders Cash Long Morgan Stanley & Co.	112,500

11. Goldman, Sachs & Co. ("Goldman Sachs") sold 65,000 shares of Diamond common. In connection with this transaction Goldman Sachs acted as broker, principal, clearing broker and/or otherwise for the following firms and individuals in the share amounts indicated:

Ann R. Carmel	2,000
Neuberger & Berman	3,000
Account Number 744-158155 Goldman Sachs & Co. firm trading account	60,000

12. Neuberger and Berman sold 4,000 shares of Diamond common. In connection with this transaction Neuberger and Berman acted as broker, principal, clearing broker and/or otherwise for the following firms and individuals in the share amounts indicated:

BDN Partners	4,000

13. Prescott, Ball & Turben ("PBT") sold 9,500 shares of Diamond common. In connection with this transaction PBT acted as broker, principal, clearing broker and/or otherwise for the following firms and individuals in the share amounts indicated:

Prescott, Ball & Turben Firm Arbitrage	9,500

14. Lewco Securities Corp. ("Lewco") sold 68,300 shares of Diamond common. In connection with this transaction Lewco acted as broker, principal, clearing broker and/or otherwise for the following firms and individuals:

A. Wertheim & Co., Inc. ("Wertheim") sold 55,000 shares of Diamond common. In connection with this transaction Wertheim acted as broker, principal, clearing broker and/or otherwise for the following firms and individuals in the share amounts indicated:

Charter Oak Associates	22,300
Arbitrage No. 2 Wertheim & Co., Inc.	26,500
Dr. Maurits I. Boas	600
Dr. Viola W. Bernard	660

Mr. J. P. Elzas	220
Mr. Carlos & Mrs. Ellen Gimbel	770
Mrs. Mabel Grant	440
Hampton Investment S.A.	220
Institute of Scrap Iron & Steel	880
Milton Kline, Inc.	440
MIPSCO Profit Sharing Plan	770
Morton B. Plant	330
Mrs. Eloise Spaeth	650

B. Lehman Bros. Inc. ("Lehman") sold 13,300 shares of Diamond common. In connection with this transaction Lehman acted as broker, principal, clearing broker and/or otherwise for the following firms and individuals in the share amounts indicated:

American Securities Corp.	278
Mrs. Nina Rosenwald	172
Mrs. Alice Sigelman	538
Mrs. Elizabeth R. Varet Custodian for Joseph Varet	466
Mergers Investment Account LBI Accounting Department	300
Mrs. Elizabeth R. Varet Custodian for Sareh Varet	46
Tender & Liquidations Inv. A/C LBI Accounting Department	11,500

15. First Manhattan Co. ("FMC") sold 121,400 shares of Diamond common. In connection with this transaction FMC acted as broker, principal, clearing broker and/or otherwise for the following firms and individuals in the share amounts indicated:

See Exhibit B

16. Bruns, Nordeman, Rea & Co. ("BNR") sold 4,400 shares of Diamond common. In connection with this transaction BNR acted as broker, principal, clearing broker and/or otherwise for the following firms and individuals in the share amounts indicated:

Basle Securities Corp.	1,401
Cambio Valoren Bank Zurich, Switzerland	3,000

17. Quincy Cass & Co. ("Quincy") sold 3,000 shares of Diamond common. In connection with this transaction Quincy acted as broker, principal, clearing broker and/or otherwise for the following firms and individuals:

Mabon Nugent & Co.	3,000

18. Coast Options sold 1,000 shares of Diamond common.

19. Donaldson, Lufkin & Jenrette Securities Corporation ("DLJ") sold */ 96,000 shares of Diamond common. In connection with this transaction DLJ acted as broker, principal, clearing broker and/or otherwise for the following firms and individuals in the share amounts indicated:

Robert Stein	400
Glenhaven Ltd. #2 A/C	1,900
Dresner Sibling Associates	500
George A. Kellner	6,000
Service Lumber Sales, Inc. Dewar Associates	2,200 500
Robert Krieble	6,000
416 Investment	3,600
Robert A. Akos (Pension Plan and Trust)	1,500
Robert A. Akos	500
Yolanthe Nanasi	2,500
Charles I. Petschek Agent	3,500
Robert Sherman Fogarty Jr.	1,000
Dr. A.K. Solomon	2,800

*/ DLJ cleared this transaction through Pershing & Co.

Belaco Inc.	1,800
SMSA Corp.	3,500
Edward A. Merkle	800
Ray Stark	5,000
Margaret W. St. John	400
Pimlico Associates	3,600
Account No. 503	1,200
Crescent Diversified Ltd.	3,600
Samuel Stayman and Alfred Rand as Agents for Star Investors	3,500
Wendy Jesser Stone	1,200
Carl B. Menges Arbitrage	2,000
Polytechnic Organisation Ltd.	3,000
Nat Miller Associates	700
Mrs. Elizabeth B. Mott	900
Robert Winthrop Arbitrage Account (Wood Struthers & Winthrop)	4,200
Elmer G. St. John M.D. & Margaret W. St. John	1,800
Michael Pelkay	4,500
Clara E. Kellner	3,500
Merger Arbitrage	20,000

20. E.F. Hutton & Company, Inc. ("EF Hutton") sold 2,600 shares of Diamond common. In connection with this transaction EF Hutton acted as broker, principal, clearing broker and/or otherwise for the following firms and individuals in the share amounts indicated:

Rober Fleming, Inc.	2,600

21. Wedbush, Nobel, Cooke, Inc. ("Wedbush") sold 100 shares of Diamond common. In connection with this transaction Wedbush acted as broker, principal, clearing broker and/or otherwise for the following firms and individuals in the share amounts indicated:

Post 56 Specialist Wedbush, Nobel, Cooke Inc.	100

22. Jefferies & Company, Inc. ("Jefferies") sold 1,500 shares of Diamond common. In connection with this transaction Jefferies acted as broker, principal, clearing broker and/or otherwise for the following firms and individuals in the share amounts indicated:

Richard Kreitler Haily, Idaho	1,500

23. Dean Witter Reynolds, Inc. ("Dean Witter") sold 44,300 shares of Diamond common. In connection with this transaction Dean Witter acted as broker, principal, clearing broker and/or otherwise for the following firms and individuals in the share amounts indicated:

Allen and Co.	28,000
970-84065 Dean Witter Risk Arbitrage Department	16,300

The Division of Enforcement

DATE: 3-11-82

By: Anthony W. Djinis

Anthony W. Djinis
Special Counsel
Division of Enforcement
Securities and Exchange
Commission
500 North Capitol Street
Washington, D.C. 20549

Gaston, Snow, Beekman & Bogue

DATE:

By: Martin P. Unger

Martin P. Unger
14 Wall Street
New York, New York 10005

Attorneys for Respondent
Paine Webber Jackson &
Curtis, Incorporated

EXHIBIT A

Bear, Stearns & Co
55 Water Street
New York, N Y 10041
(212) 952-5000

BEAR STEARNS

WRITER'S DIRECT DIAL NUMBER
(212)8208723

March 4, 1981

The Pacific Stock Exchange Inc.
301 Pine Street
San Franscico, CA. 94104
Att: Charles A. Rogers
Market Surveillance

RE: Diamond International Corp.

Dear Mr. Rogers:

Enclosed herewith are the order tickets requested for all the sales that took place on June 12, 1980 on the Pacific Stock Exchange.

Also enclosed is a schedule of all the trades with our account number and our customers names.

If you have any further questions do not hesitate to call the undersigned.

Very truly yours,

BEAR STEARNS & CO.

Phyllis Hirsh

Phyllis Hirsh
Legal & Compliance Dept.

Diamond Int'l Corp - Sells 6/12/80

Trade Date	Settle Date	BOT	Sold	Price	Customer	Broker	Solicit or Unsol.	Ord tkt
6/12/80	6/19/80	•	1200	42 1/2	01-00206 Mercury Securities Co.			✓
		•	18500	42 1/2	01-18036 Arbitrage Dept			✓
		•	300	42 1/2	35-19224 Kaplan family			✓
		•	300	42 1/2	38-38682 William Feldman			✓
		•	6000	42 1/2	39-78523 Martin Gruss			✓
		•	200	42 1/2	39-80911 Kings Point Ind Inc.			✓
		•	300	42 1/2	40-18900 David M. Hauben			✓
		•	9500	42 1/2	40-34241 Herzog Heine & Co Inc.			✓
		•	1500	42 1/2	40-67060 Intermarket Fd I			✓
		•	60	42 1/2	41-20552 Irving Kas Special Account			✓
		•	300	42 1/2	42-00430 Labco			✓
		•	360	42 1/2	42-38810 Mr. Abner Levine			✓
		•	180	42 1/2	43-10972 Mandelbaum & Co.			✓
		•	200	42 1/2	43-45954 Elizabeth Melamid			✓
		•	180	42 1/2	46-17266 Harvey G. Scherzer & Helen			✓
		•	160	42 1/2	47-04413 Brook Tarbel			✓
		•	140	42 1/2	47-22005 Howard & Barbara Tuckman			✓
		•	200	42 1/2	47-61740 Zev Wolfson			✓

SECURITY

Trade Date	Settle Date	BOT	Sold	Price	Customer	R.R	order tks
5/12		•	600	42 1/2	48 = 00785 Mrs. Jo H. Brookshire		✓
		•	60	42 1/2	48 = 02731 Patricia Kaplan		✓
		•	600	42 1/2	48 = 17100 Shumor S- Lonoce		✓
		•	900	42 1/2	50 - 01622 AS Abell Co Master Tr.		✓
		•	3000	42 1/2	50 - 46391 Invesco Bechtel Equity		✓
		•	240	42 1/2	53 - 42550 J & T Corp S.A.		✓
		•	160	42 1/2	53 - 66711 Union Bank of Switzerland		✓
		•	300	42 1/2	53 - 71516 Warwick Int'l Ltd		✓
		•	900	42 1/2	55 - 08420 Basle Securities Corp.		✓
		•	6000	42 1/2	55 - 27170 Ermar Oil Corp.		✓
		•	28,900	42 1/2	55 = 39890 Gruss & CO.		✓
		•	28,200	42 1/2	55 - 60975 Mutual Shares Corp		✓
		•	1200	42 1/2	55 - 63536 Neuberger Berman		✓
		•	2400	42 1/2	55 - 76209 Rothchild Bank AG		✓
		•	39,900	42 1/2	63 - 22590 Great West Life Assurance		✓
		•	7500	42 1/2	63 - 45510 Weiss Peck & Greer		✓
		•	500	42 1/2	72 - 03130 588 Account		✓
		•	100	42 1/2	72 - 86601 Vigero Inc Special Account		✓

SECURITY (3)

Trade Date	Settle Date	BOT	Sold	Price	Customer	Broker	Solicit or Unsol.	Order tks
6/12			29,000	42½	74-02148 John Mulheren & Co.			✓
			1500	42½	74-02152 John Mulheren & Co. Capital A/C			✓
			1000	42½	74-02170 Israel Englander & Co.			✓
			10,000	42½	74-02201 S.B Lewis & Co.			✓
			5000	42½	74-02201 S. B. Lewis & Co.			✓
			6000	42½	220-00182 Lewis M. Schott.			✓
			166	42½	613-00725 N.B. Special Arbitrage Acct.			✓
			500	42½	613-99990 Charincross Foundation			✓
			600	42½	613-00716 Arthur Murray			✓
			1000	42½	613-01000 Alan W Steinberg Partnership A/C 2			✓

FIRST
MANHATTAN
CO.

EXHIBIT B

MEMBERS NEW YORK STOCK EXCHANGE 380 MADISON AVENUE NEW YORK, N Y 10017

TELEPHONE
(212) 949-8000

WRITER'S DIRECT
TELEPHONE NUMBER
949 8046

Charles A. Rogers
Vice President Market Surveillance
The Pacific Stock Exchange, Inc.
301 Pine St.
San Francisco, CA 94104

March 26, 1981

RE: Diamond Intl.

Dear Mr. Rogers:

Pursuant to the request contained in your letter of March 23, 1981 enclosed please find a copy of the front of each order ticket for trades in Diamond International on June 12, 1980. The back of all our order tickets are blank. Also, enclosed is a breakdown of each ticket by number of shares, account number, and name and address of each client for whom we acted as agent. All trades, except those marked by an asterisk, were effected by the Paine Webber floor broker.

If you need any additional information, please contact the undersigned.

Very truly yours,

Daniel B. Dineen
Vice President Compliance

enclosure

Diamond International
Trade Date 6/12/80 ---Settle 6/19/80
All trades done on the Pacific Stock Exchange at 42 1/2
Time of execution 5:29.5 P.M. EDST

Number of Shares	Account Number	Name & Address
✓500	033-21200	Dr. Myron Coler 200 Park Avenue Suite 303 East New York, N.Y. 10017
✓500	033-44921	Deb Kligler 56 Midchester Avenue White Plains, N.Y. 10606
✓2,310	045-89616	Faye & Joseph Tanenbaum 1051 Tapscott Road Scarborough, Ontario, Canada
✓4,400	045-74000	Joseph Tanenbaum 1051 Tapscott Road Scarborough, Ontario, Canada
✓ 110	033-55110	Fred Margulies 16206 Morrison St. Encino, Calif. 91436
✓ 165	033-57502	Marilyn Metzger 5 Little John Place White Plains, N.Y. 10605
✓ 220	033-78681	Larry Schwartzenberg 80 Beverly Road White Plains, N.Y. 10605
✓ 220	033-33000	Dr. Robert Sloane 1 East 69th Street New York, N.Y. 10021
✓100	033-03141	Mary Bakalian 147 Washington Avenue Apt C Rutherford, NJ 07070
✓250	033-03790	Eileen Basker 80 Ralph Avenue White Plains, N.Y. 10606
✓385	033-33710	Sophie Greenfield 1179 The Strand Teaneck, NJ 07666
✓220	033-39997	Sander & Francine Hirth 1030 East 10th Street Brooklyn, N.Y. 11230
✓ 88	033-42810	David & Judith Koffsky 25 Prescott Avenue White Plains, N.Y. 10606
✓300	030-55555	Rose Marks 16 Paradise Park McAllen, TX 78501

* Shares sold through APD Securities

Diamond International
Trade Date 6/12/80 ---Settle 6/19/80
All trades done on the Pacific Stock Exchange at 42 1/2
Time of execution 5:29.5 P.M. EDST

Number of Shares	Account Number	Name & Address
✓ 140	030-63250	Anne & Hymie Pasternak 29 Derby Avenue Cedarhurst, N.Y. 11516
✓ 100	030-65950	Plymouth Home Nat'l Bank 34 School St. Brockton, MA 02403
✓ 455	030-74604	Shirley Saland 6 Birchwood Road White Plains, N.Y. 10605
✓ 300	030-81871	Muriel Shookhoff 5500 Fieldston Road Bronx, N.Y. 10471
✓ 275	030-82357	Stanley Siegel 27 Bonnyview Drive Livingston, NJ 07039
✓ 253	030-27205	Vera Frankel 44 Avondale Road White Plains, N.Y. 10605
✓ 330	030-28843	V.H. Garfunkel & Co. 14 E. 60th Street New York, N.Y. 10022
✓ 209	030-37474	Irving Harrison 159 Soundview Avenue White Plains, N.Y. 10606
✓ 215	030-40297	Mendy Hirth 35 Ascension St. Apt 12 Passaic, NJ 07055
✓ 200	030-47651	Benjamin Kwitman 130 5th Avenue New York, N.Y. 10011
✓ 350	030-55277	Charlotte Mark c/o Larry Mark 75 Central Park West New York, N.Y. 10023
✓ 550	030-15910	Shirley Cherenson 18 Wayside Lane Scarsdale, N.Y. 10583
✓ 25	030-23225	Dorothy Dunay 551 Forest Avenue New Rochelle, N.Y. 10804

* Shares sold through [illegible] Securities

Diamond International
Trade Date 6/12/80 ---Settle 6/19/80
All trades done on the Pacific Stock Exchange at 42 1/2
Time of execution 5:29.5 P.M. EDST

Number of Shares	Account Number	Name & Address
✓2500	45-24000	Deutsche Bank Konigsallee 45/47 Dusseldorf, Germany
✓5000	045-94700	S.G.Warburg & Co. 30 Gresham St. ✓ London EC2, England
✓2200	045-67783	Pierson, Heldring & Pierson Heren Gracht 214 Amsterdam, Holland
✓2000	045-73300	N.M.Rothschild & Sons New Court ✓ St Swithins Lane London EC4, England
✓3000	045-22305	Creditanstalt Bankverein Schottengasse 6 1010 Vienna, Austria
✓6000	045-01250	Algemene Bank Nederland 32 Vijzelstraat Amsterdam, Holland
✓550 *	030-78752	Mrs. Beatrice Schultes 48 Feather Lane Old Tappan, N.J. 07675
✓500 *	030-78753	Mr. Max Schultes 48 Feather Lane Old Tappan, N.J. 07675
✓200 *	030-40840	Mrs. Golda Housman 207 West 86th Street New York, N.Y. 10024
✓220 *	030-52348	Mrs Anne E. Low 203 Shore Rd. Old Greenwich, Ct. 06870
1000	033-81620	Steven W. Sherman C/O Shree Ragneesh Ashram 17 Koregan Park, Poona, India
✓2500	030-64850	Perlmeter Investments Ltd. Washington Heights 410 North 117th Court ✓ Omaha, Nebraska 68154
✓500	030-67300	Prudent Investors ✓ 826 Bethlynn Court East Meadow, New York 11554

* Shares sold through ABD Securities

Diamond International
Trade Date 6/12/80 ---Settle 6/19/80
All trades done on the Pacific Stock Exchange at 42 1/2
Time of execution 5:29.5 P.M. EDST

Number of Shares	Account Number	Name & Address
220	030-71297	Mrs. Anthony Robbin 423 Broome Street New York, New York 10013
110	030-46325	David Kogel TT for Robert M. Kogel 467 Great Neck Road Great Neck, New York 11021
110	030-46346	Mrs. Ruth Kogel P.O. Box 1089 Great Neck, New York 11021
100	030-46348	Jacob James Kogel 467 Great Neck Road Great Neck, New York 11021
220	030-07125	John Bergman 225 Broadway New York, New York 10007
100	030-13371	Frans & Marie Buschman 35 Park Avenue New York, New York 10016
550	030-15842	Chemstat Corporation 467 Great Neck Road New York, New York 11021
3500	043-84840	Special Trust Co. c/o Bearfall S.A. 9 Rue Bory-Lipteig 1204 Geneva, Switzerland
165	033-50901	Richard A. Lipsey U/A DTD FBO E. Lips 904 Pierson St. Alexandria, LA. 71301
165	033-50902	Richard A. Lipsey TTEE U/A DTD. FBO Joseph Lipsey III 904 Pierson St. Alexandria, LA 71301
165	033-50903	Richard A. Lipsey TTEE U/A DTD FBO Tami Leigh Lipsey 904 Pierson St. Alexandria, LA 71301
165	033-56700	Mr. Richard Collins McNamara c/o Di Salvo Via Sangemini 75 00135 Rome, Italy
110	033-91782	Miss Maxine Usdan 3440 S. Ocean Blvd. Apt. 503 North Palm Beach, FLA. 33480

* [illegible] sold through [illegible] Securities

Diamond International
Trade Date 6/12/80 ---Settle 6/19/80
All trades done on the Pacific Stock Exchange at 42 1/2
Time of execution 5:29.5 P.M. EDST

Number of Shares	Account Number	Name & Address
✓ 1100	033-91830	Mr. Nathaniel Usdan 190 Curtis Road Woodmere, NY 11598
✓ 220	033-11980	Mr. Leon J. Breton 11113 Wood Elves Way Columbia, MD 21044
✓ 220	033-44923	Mr. Peter David Kazaras Executor u/w of Hilda Kazaras 444 W. 20th St. New York, New York 10011
✓ 330	033-50900	Mrs. Betty Fay Lipsey 904 Pierson St. Alexandria, LA 71301
✓ 220	030-77800	Mr. Sidney L. Shienker 1967 Trust c/o Mr. Asa Blankenship Houston Nat'l Bank Box 299009 Houston, Texas 77299
✓ 110	030-04930	Mrs. Myrna F. Baskin 26 Old Orchard Road North Haven, CT. 06473
✓ 330	030-06800	Mrs. Emily Ann Stein Benjamin 7900 Nelson St. New Orleans, LA 70125
✓ 220	030-06806	Mr. Jack C. Benjamin 1718 Nat'l Bank of Commerce Building New Orleans, LA. 70112
✓ 200	045-65023	Messrs. Pictet & Cie Ordinary Account 29 Boulevard Georges Favon Case Portale 436 CH 1211 Geneva, Switzerland
✓ 200	045-65023	Messrs Pictet & Cie Ordinary Account 29 Boulevard Georges Favon Case Portale 436 CH 1211 Geneva, Switzerland
✓ 400	045-65023	Messrs. Pictet & Cie Ordinary Account 29 Boulevard Georges Favon Case Portale 436 CH 1211 Geneva, Switzerland

[illegible] Securities

Diamond International
Trade Date 6/12/80 ---Settle 6/19/80
All trades done on the Pacific Stock Exchange at 42 1/2
Time of execution 5:29.5 P.M. EDST

Number of Shares	Account Number	Name & Address
✓ 600	045-65023	Messrs Pictet & CIe Ordinary Account 29 Boulevard Georges Favon Case Portale 436 CH 1211 Geneva, Switzerland
✓ 500	045-67789	Patimoine de Universite De Liege Att. Mrs. Melen Service Finc'l Place du 20 Aout Liege 4000 Belgium
✓ 700	045-67794	Pictet Bank & Trust LTD Charlotte House P.O. Box 4837 Nassau, Bahamas
✓ 200	045-25210	Ferrier Lullin & Cie SA Case Postale 104 CH-1211 Geneva 11 Switzerland
✓ 100	045-65023	Messrs. Pictet & Cie Ordinary Account 29 Boulevard Georges Favon Case Postale 436 CH-1211 Geneva Switzerland
✓ 300	043-04200	Bank Julius Baer & Co. SUB Account 6A Bahnhofstrasse 36 CH 8001 Zurich, Switzerland
✓ 400	043-51000	La Constantine SA c/o Mr. Dassin Paris Londres SA Apartado Postal 19150 Mexico 19 DF Mexico
✓ 200	030-92600	Mr. Michael J. Van Itallie 675 West End Ave. APt. 9B NY, NY 10025
✓ 200	030-03360	Mrs. Ruth Bachrach 175 Riverside Drive New York, New York 10024
✓ 400	030-24585	Miss Christine Falke P.O. Box 5091 Franklin Roosevelt Sta. New York, New York 10150

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* Shares sold through [illegible] Securities

Diamond International
Trade Date 6/12/80 ---Settle 6/19/80
All trades done on the Pacific Stock Exchange at 42 1/2
Time of execution 5:29.5 P.M. EDST

Number of Shares	Account Number	Name & Address
1600	045-89622	Messrs Taroy Baezner & Cie Case Postale 107 1211 Geneve 4 Switzerland
100	030-20714	Mr. Gerard de Gunzberg c/o Sogid 29 Rue de Beri 75008 Paris, France
1000	045-24501	Mr. Henri Dequenne 13 Rue A.Javeau B. 4920 Embourg Belgium
3500	045-29212	Geyser SA Rue Brederode 2/BTE 6 B-100 Bruxelles, Belgium
1500	045-51173	LA Constantina S/A Spl Account c/o Mr. Max Dassin Paris Londres SA Apartado Postal 19150 M xico, 19 , DF Mexico
1000	043-84850	Baron Frederic Speth Stoopstraat 1 B-2000 Antwerp, Belgium
2000	045-03072	Bank Julius Baer & Co., LTD P.O. Box 8022 CH 8011 Zurich Switzerland
1000	045-17201	Compagnie de Banque Et De Credit S.A. Account B. Case Postale 644 CH 1022 Lausanne Switzerland

* [illegible] sold through APD Securities

Diamond International
Trade Date 6/12/80 ---Settle 6/19/80
All trades done on the Pacific Stock Exchange at 42 1/2
Time of execution 5:29.5 P.M. EDST

Number of Shares	Account Number	Name & Address
500	045-89795	J. Todhunter Woolnorth Tasmania, Australia
10,000	045-67901	Possfund Trustees Ltd. 47-51 King William Street London EC4R 900, England
5,500	045-81050	Singer & Friedlander 20 Cannon Street London EC4, England
2,500	045-29228	Girozentrale und Bank Schubertring 5 A-1011 Vienna, Austria
500	045-29211	Genossenschaftliche Herrengasse 1 A-1011 Vienna, Austria
1,000	045-57550	L. Messel & Co. Winchester House 100 Old Broad Street London ECZ, England
1,000	045-02310	Aralonco N.V. c/o Curacao Intl Trust Co. Handelskade 8 Curacao, Netherlands, Antilles
750	045-06161	Barcel Corp. c/o Omanco/Edificio Amonco Apartado 4297/Panama 5 Republica De Panama
1,000	045-06901	Berenberg Bank Neuer Jungfernstiegzo 2000 Hamburg 36, Germany
4,300	045-14625	Canadian Stock Holders 1018 Sun Life Building 1155 Metcalfe Street Montreal, Quebec, Canada
3,500	030-21425	Deltec Securities Corp. 1 Battery Park Plaza New York, New York 10004

* Shares sold through APD Securities

Diamond International
Trade Date 6/12/80 ---Settle 6/19/80
All trades done on the Pacific Stock Exchange at 42 1/2
Time of execution 5:29.5 P.M. EDST

Number of Shares	Account Number	Name & Address
✓200	045-65023	Pictet Geneva 29 Boulevard G. Favon
✓200	045-65023	"
✓100	043-89800	Tommasini c/o Biochemische Therapeutische 8 via Stetta Boggia Lugeno Paradeso, Switzerland
✓500	045-06189	Takla c/o Cartner Invest S/A 595 Madison Avenue New York, New York 10022
✓100	043-02000	P. Allain 20 Av de Breteiul Paris, France
✓300	043-10000	P. Boavisla Brazil - Account closed
✓100	043-24650	L. De Castro 721 Rua Mundo Novo Botafogo 2251 Rio de Janeiro, Brazil
✓500	043-24700	Cuzon de Garcia c/o Mr. Max Dassin Paris Londres S/A Apartado Postale 19150 Mexico 19 DF Mexico
✓100	043-24701	"
✓100	043-24702	"
✓200	043-31510	C. Gutzau Rue General Patton 56 Brussels, Belgium 1050
✓100	043-69000	P. Roux Representation Pemanente De La Belcique Aupres DE C'O CDE 14 Rue Octave Fevillet 75-016 PAris France
200	033-23500	J. Drist 33 Southfield Road Mount Vernon, NY 10552

Diamond International
Trade Date 6/12/80 ---Settle 6/19/80
All trades done on the Pacific Stock Exchange at 42 1/2
Time of execution 5:29.5 P.M. EDST

Number of Shares	Account Number	Name & Address
√100	030-42100	A. Jacques 876 Park Avenue New York, NY 10021
√100	030-43293	K. Johl 83-38 Penelope Ave. Rego Park, NY 11379
√100	030-12101	D. Brittis 18 Shounerd Place Yonkers, NY 10703
√300	033-28540	B. Galton 1140 Fifth Avenue New York, New York 10028
√100	030-92120	A. Van de Maele Suite 3555 120 Broadway New York, New York 10005

* [illegible] was sold through [illegible] Securities

Trade Date 6/12/80 ---Settle 6/19/80
All trades done on the Pacific Stock Exchange at 42 1/2
Time of execution 5:29.5 P.M. EDST

Number of Shares	Account Number	Name & Address
✓1000	040-67793	Pictet Bank & Trust LTD Nassau Bahamas Charlotte House P.O. Box 4837 Nassau, Bahamas
✓1500	045-03151	Bank Landau Kimche Talstrasse 62 Zurich, Switzerland
✓150	038-12151	Buhler, Nelson Jay P.O. Box 7809 San Diego, Cal. 92107
✓15000 *	037-03954	Arizona State Retirement Systems Inves. Co. #1 P.O. Box 33910 Phoenix Arizona 85067
✓6000	037-03954	"

* Shares sold through [illegible] Securities

APPENDIX B

Schedule # 1

Paine, Webber, Jackson & Curtis, Inc. Purchase of 1,282,700 DN on 6/12/80
(cross portion of transaction)

	Sellers Represented by PWJ	Executing Broker	Number of Shares	Comparison Number	Ticket Type	Reference Number *
1.	First Manhattan	PWJ	105,000	68751	Broker	2, 3
2.	Bear Stearns	PWJ	135,000	68752	Broker	1, 3
3.	Paine Webber	PWJ	25,500	20326	Broker	10, 3
4.	Dean Witter	PWJ	10,300	68754	Broker	4, 3
5.	Ivan Boesky	PWJ	303,000	68755	Broker	9, 3
6.	First Boston	PWJ	37,500	68756	Broker	11, 3
7.	Donaldson Lufkin	PWJ	96,000	68757	Broker	8, 3
8.	Morgan Stanley	PWJ	112,500	68758	Broker	5, 3
9.	Lewco (Wertheim)	PWJ	55,000	68759	Broker	6, 3
10.	Wagner Stott (Later Amster)	PWJ	51,000	68760	Broker	7
		Subtotal	930,800			

* Number of ticket photocopy

Schedule #2

Paine, Webber, Jackson & Curtis, Inc. Purchase of 1,282,700 DN on 6/12/80
(portion comprising sellers on PSE)

	SELLERS REPRESENTED BY OTHER BROKERS	Executing Broker	Number of Shares	Broker Total	Comparison Number	Ticket Type	Reference Number
1.	Bear Stearns	Kirchner & Co.	15,000		79593	Spec.	16
	" "	Southern Amer.	12;500		24336	Broker, Spec.	33,60
	" "	" "	1,400	80,800	24337	" "	31,42
	" "	" "	1,000		24334	" "	32,48
	" "	" "	11,000		24335	" "	34,43
	" "	" "	39,900		24333	" "	35,44
2.	Goldman Sachs	Kirchner & Co.	60,000	65,000	79589	Broker	17
		" "	5,000		72534	"	25
3.	LENCO (Weathers)	Leopold	13,300	13,300	87639	Spec.	18,52,56,57
4.	L.F. Rothschild	Leopold	34,900		87638	Spec.	50
	" "	Wedbush	7,000	42,800	26146	Broker, Spec.	13,54
	" "	Leopold	900		87641	Spec.	40
5.	Neuberger & Berman	K.J. Keeley	4,000	4,000	84568	Broker	19
6.	Jefferies & Co.	Quincy Cass	1,500	1,500	85839	Broker	20
7.	First Manhattan	ABD Sec.	15,000	16,400	93131	Broker, Spec.	36,61
	" "	" "	1,400		93132	" "	37,55
8.	Bruns Nordeman	ABD Sec.	3000	4,400	93136	Broker, Spec.	38,53
	" "	" "	1,400		93134	" "	39,46
9.	E.F. Hutton	E.F. Hutton	2,600	2,600	83370	Broker, Spec.	21,49
10.	Prescott, Ball	Leopold	9,500	9,500	87637	Spec.	58
11.	Oppenheimer	Wedbush	40,900	40,900	18219	Broker, Spec.	15,59
12.	Dean Witter	Wedbush	34,000	34,000	18220	Broker, Spec.	14,51
13.	Cowen & Co.	Smith Bros.	6,500		25560	Spec.	41,47
	" "	Coast Options	4,500	15,600	97133	Broker	28
	" "	" "	4,600		97134	"	29
14.	A.G. Becker	Coast Options	2,000	2,500	97102	Broker	27
	" "	Leopold	500		87640	Spec.	45
15.	Coast Options	Coast Options	1,000	1,000	97131	Broker	30
16.	Wagner Stott	Swiss Amer.	5,000		30251	Broker	22
	" "	" "	5,000	15,000	30252	"	23
	" "	" "	5,000		30253	"	24
17.	Wedbush Noble (Specialist - Post 56)	P56	100	100	65016	Spec.	26
18.	Quincy Cass	Quincy Cass	3,000	3,000	30050	Spec.	12

Subtotal 351,900

Grand Total 1,282,700

Division's Ex.
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4/20/82
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