ADMINISTRATIVE PROCEEDING
FILE NO. 3-6346

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of :

C.E. CARLSON, INC. :

(8-25891) :

CHARLES E. CARLSON :

:

INITIAL DECISION

FILED
DEC 21 1984
SECURITIES & EXCHANGE COMMISSION

December 20, 1984
Washington, D.C.

Ralph Hunter Tracy
Administrative Law Judge

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(8-25891) :	INITIAL DECISION
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APPEARANCES: Kathleen U. Radinsky and Robert Fusfeld for the Division of Enforcement.

Richard F. Thurston for C.E. Carlson, Inc.
Charles E. Carlson, *pro se*.

BEFORE: Ralph Hunter Tracy, Administrative Law Judge

On April 4, 1984 the Securities and Exchange Commission issued an Order (Order) pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 (Exchange Act) instituting a public proceeding to determine whether C.E. Carlson, Inc. (Carlson, Inc., or registrant) and Charles E. Carlson (Carlson) committed violations of the Exchange Act and the Securities Act of 1933 (Securities Act), and regulations thereunder, as alleged by the Division of Enforcement (Division), and the remedial action, if any, that might be appropriate in the public interest.

The proceeding has been determined as to one other respondent who submitted an offer of settlement which was accepted by the Commission. 1/ Therefore, this initial decision is applicable only to the remaining respondents, Carlson and registrant, although, in view of the nature of the charges and the factual circumstances, it may, also, involve findings with respect to the other respondent.

The Order alleges, in substance, that registrant and Carlson willfully violated Sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities Act, and 10(b) of the Exchange Act and Rules 10b-5 and 10b-9 thereunder; and that registrant willfully violated and Carlson willfully aided and abetted violations of Section 11(d)(1) and 15(c)(2) of the Exchange

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1/ The Commission has accepted an offer of settlement from Paul G. Oerter, Securities Exchange Act Release No. 21286/September 4, 1984.

Act and Rule 15c2-4 thereunder.

The evidentiary hearing was held in Denver, Colorado, from August 6 to 8, 1984. The registrant was represented by counsel but Carlson appeared *pro se*; proposed findings of fact, conclusions of law, and supporting briefs were filed on behalf of all parties.

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

Carlson was born on March 27, 1936 in Canton, South Dakota. He graduated from Canton High School in 1954 and then attended South Dakota State College, Southern Illinois University, and the University of Minnesota without obtaining a degree. He has been in the securities business for approximately 20 years and has been a registered representative and a branch manager with the brokerage firms of Goodbody & Co., Dominick & Dominick, and Rauscher Pierce, all in the Denver area. He has been a NASD registered principal since 1968. In 1970 he formed C.E. Carlson & Co. and changed it to C.E. Carlson, Inc. in 1980. The firm has been registered with the Commission since 1975 and is a member of the National Association of Securities Dealers (NASD). Carlson is president, director, and principal owner of registrant.

Background

Registrant was the underwriter for an offering of the no-par value

common stock of Saratoga Mines, Inc. (Saratoga). The offering was a minimum-maximum best efforts offering which began on December 24, 1981 and concluded on May 6, 1982. The terms of the offering required that a minimum of 20,000,000 shares were to be sold on an all-or-none basis and a maximum of 30,000,000 shares at ten cents a share. During the selling period the underwriter was to deposit investors' funds in an escrow account. Escrow was not to be broken until the minimum of 20,000,000 shares had been sold and $2,000,000 deposited in the account. If the minimum of 20,000,000 shares could not be sold during the underwriting period, the offering was to be cancelled and the purchasers' money refunded. The minimum of 20,000,000 shares was not sold during the initial offering period of 90 days, and it was necessary to extend the selling period until June 22, 1982. However, although all shares had not been sold, Carlson decided to close the offering on May 6, 1982.

Saratoga was incorporated on May 14, 1981 for the purpose of exploration, development, and mining of mineral properties which it acquired on June 11, 1981. The president of Saratoga is a geologist, Arden L. Larson (Larson), and Carlson is vice-president, treasurer, and a director. Saratoga acquired its mining properties from Saratoga, Ltd., AUCO, and Front Range Royalties, Ltd. (Front Range), all of them entities in which Larson and Carlson, as

organizers, have been actively involved. Carlson is the managing partner of Front Range, AUCO, and Frontenac Mining Ltd., (Frontenac), another affiliate of Saratoga.

Another purpose of the offering was to reimburse members of the partnerships for the money they had already invested in the mining properties and operations. AUCO, a general partnership, was a predecessor in the mining business which Saratoga was slated to continue. Carlson, Larson, Paul Oerter (Oerter) a registered representative with Carlson, Inc.,[2] and Robert Pfuetze (Pfuetze) were the four general partners of AUCO at the time of the underwriting, each of whom owned 25 percent.

The Saratoga prospectus discloses that at the time of the offering Saragota had contracted to pay AUCO $15 an hour while operating the Boodle Mill, one of the AUCO properties. Saratoga, Ltd., one of the limited partnerships involved in the mining activities that were later operated by Saratoga, owned 50.2 percent of Saratoga. Oerter also had a substantial interest in Saratoga, Ltd. Front Range was another limited partnership involved in the Saratoga mining operations, and Carlson and Larson were the general partners

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2/ Oerter was the respondent in this proceeding who settled. See footnote 1, *supra*.

in Front Range. Saratoga was to pay Front Range approximately $300,000 from the proceeds of the offering pursuant to a contract by which Front Range was to sell property and equipment to Saratoga. Frontenac was a limited partnership affiliated with Saratoga and owned the Frontenac Mine. The general partner of Frontenac was Front Range, and Larson and Carlson had ownership interests in Frontenac through their interests in Front Range. Saragota was to pay Frontenac approximately $550,000 from the proceeds of the offering to buy a limited partnership interest in Frontenac.

Anti-Fraud Provisions

The Order alleges that during the period from on or about December 24, 1981 to on or about May 21, 1982, registrant and Carlson willfully violated Sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities Act and Section 10(b)(5) of the Exchange Act and Rules 10b-5 and 10b-9 thereunder in connection with the offer, sale, and purchase of the common stock of Saratoga by employing directly and indirectly devices, schemes, and artifices to defraud, and by means of untrue statements of material facts and omissions to state material facts in order to make the statements made, in light of the circumstances under which they were

made, not misleading. 3/

As part of the aforesaid conduct, registrant and Carlson caused Front Range, Frontenac, and Carlson to purchase 2,405,000 shares of Saratoga stock in order to reach the 20,000,000 share all-or-none minimum promised in the prospectus; caused Oerter and other affiliates to lend funds to Front Range and Frontenac for the purpose of purchasing the aforesaid shares in the underwriting; caused Front Range and Frontenac to repay the loans with funds paid to them from proceeds of the offering; distributed to investors and prospective investors a prospectus that failed to disclose

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3/ Section 10(b) as here pertinent makes it unlawful for any person to use or employ in connection with the purchase or sale of a security any manipulative device or contrivance in contravention of rules and regulations of the Commission prescribed thereunder. Rule 10b-5 defines manipulative or deceptive devices by making it unlawful for any person in such connection: "(1) to employ any device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading or (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person . . ." Section 17(a) contains analogous anti-fraud provisions.

Rule 10b-9, in pertinent part, makes it a deceptive device for any person to represent that a security is being offered on an "all-or-none" or "part-or-none" basis unless the offering is made on condition that the consideration paid will be promptly refunded to the purchaser in the event that all of the securities or a specified number of them are not sold at a specified price within a stated time, or the seller does not receive the total amount due him by a specified date.

the above facts; created the false appearance that the minimum number of shares had been sold in bona fide sales to the public; and caused the Saratoga offering to close on May 6, 1982.

The Saratoga offering began on December 24, 1981 and the stock proved difficult to sell. Accordingly, on March 23, at the end of the first 90-day period specified in the prospectus, Carlson extended the selling period for another 90 days or until June 22, 1982. However, during March and the first 20 days of April, sales amounted to only $177,245, boosting the balance in the escrow account to $1,587,029 or a little over 75 percent of the minimum. Oerter testified that he, Carlson, and Larson were concerned that "possibly the offering was not going to be sold out by the deadline."

Although the Saratoga minimum offering period had been extended until June 22, 1982, Carlson decided in late April to close the offering on or about May 6, 1982. Because of concern that the minimum had not been met, Carlson and Oerter contacted several members of the partnerships affiliated with Saratoga (Frontenac, Front Range, Saratoga, Ltd., and AUCO), all of whom had previously indicated that they intended to buy Saratoga stock but wanted to wait until the last minute. On April 29 and 30 these investors purchased 450,000 shares. As of May 4 the offering was still

approximately 3,145,000 shares short of the minimum. On May 4 Triad Investment, Inc. (Triad), an investment business owned and controlled by Oerter, purchased 400,000 shares; Oerter's wife, Jane Oerter, purchased 100,000 shares; Colorado Stock Association, an Oerter firm, purchased 220,000 shares; and Robert Pfuetze purchased 20,000 shares. These purchases, totalling 740,000 shares, still left the offering 2,405,000 shares short.

In order to close the offering Carlson caused the following purchases to be made on May 4 with settlement on May 5:

Purchaser	No. of Shares	Amount
Front Range	700,000	$ 70,000
Frontenac	1,500,000	150,000
Carlson	205,000	20,500
	2,405,000	$240,500

Neither Front Range nor Frontenac had sufficient funds to make the stock purchases, so Carlson arranged loans for that purpose. Carlson approached Oerter and asked him to loan money to Front Range and Frontenac so that they could buy Saratoga stock in the underwriting. Oerter caused Triad, which he controlled, to loan $150,000 to Frontenac and $20,000 to Front Range on May 5, 1982. Carlson prepared and signed 30-day promissory notes for the respective amounts. However, Front Range was still $50,000 short of the $70,000 needed to make its purchase of 700,000 shares.

In order to raise the remaining $50,000 Carlson requested the assistance of Mrs. Sally Alberts (Alberts). She was business administrator for a number of doctors comprising Rocky Mountain Radiologists Professional Corp. She was also secretary of Saratoga. She and some of the doctors had previously invested in various mining ventures sponsored by Carlson. She had purchased 200,000 shares of Saratoga stock in a private offering prior to the public offering. She had loaned $15,000 to Saratoga on a note which was due on May 18, 1982. Alberts was also a limited partner in Front Range, Frontenac, and Saratoga, Ltd.

At Carlson's request Alberts asked Drs. John P. Witwer and George C. Babcock to make loans to Front Range and Carlson, Inc. Dr. Witwer loaned $25,000 to Front Range and $10,000 to Carlson, Inc. and Dr. Babcock loaned $25,000 to Front Range. These loans were made on May 5, 1982, and both doctors obtained the money on their lines of credit at the Colorado National Bank, Denver, Colorado. Carlson prepared and signed 30-day promissory notes for these loans.

After securing the loans Carlson caused Frontenac and Front Range to make the purchases shown on the summary on page 8. He also borrowed $20,500 from Carlson, Inc. This loan included the $10,000 just borrowed from Dr. Witwer. He then bought 205,000 shares of Saratoga stock in his own name. Carlson's purchase was made through Carlson, Inc.; the

confirmation shows a typed order for 250,000 shares for $25,000 which had been crossed out and 205,000 shares for $20,500 written in by hand. Carlson testified that when he learned that he could close the offering with a smaller purchase he changed the order because he did not want to spend more than necessary to close the offering.

The offering was closed on the morning of May 6, 1982 at the United Bank of Skyline in Denver. On May 6, 1982, $358,500 was received into the escrow account, including the $240,500 for the purchases by Front Range, Frontenac, and Carlson. This brought the total in the escrow account to $2,004,829. Immediately upon closing, the Bank issued two cashier's checks to Saratoga in the amounts of $1,800,000 and $200,000. The $200,000 check was endorsed over to Carlson, Inc. by Larson in payment of the underwriter's commission. The $1,800,000 check was in turn converted into four cashier's checks, payable as follows: $328,272.87 to Front Range; $421,727.13 to Saratoga; $250,000 to Frontenac; and $800,000 to United Bank for a certificate of deposit for Saratoga.

The Front Range and Frontenac checks were given to Carlson and deposited by him in their respective bank accounts. He then repaid the loans which had been made to buy the Saratoga stock. The Front Range share of the proceeds was used to make a $25,000 loan to Larson; and to repay the $20,000 borrowed from Triad and the $25,000 each borrowed from Drs. Witwer and Babcock. Frontenac's check was used to repay its loan of $150,000 to Triad.

Carlson's decision to close the offering on May 6, 1982 instead of June 22 was obviously based on his realization that public investors were no longer interested and the fact that both Saratoga and its president, Larson, were urgently in need of money. Saratoga had depleted its financial resources and was at least $180,000 in debt. This included two $15,000 notes to officers and directors which were due on May 18, 1982 and an obligation to Larson who had not received a salary for six months. In addition, Larson testified that in April 1982 he learned that a $20,000 balloon payment on his home mortgage was due on May 7, 1982 and he asked Carlson for help. Larson received a $25,000 loan from Front Range on May 7, 1982.

Respondents do not dispute the material facts herein. In denying that any violations were committed they rely on two principal arguments: (1) the fact that affiliates of Saratoga might purchase shares was fully disclosed in the prospectus; and (2) they had relied on advice of counsel.

As to the first argument, respondents assert that Front Range, Frontenac, and Carlson were due cash from the amounts raised by the offering as a result of pre-existing contracts with Saratoga which were disclosed in the prospectus. Although the prospectus disclosed that Saratoga was to pay certain sums to Front Range and Frontenac, it was not for the purchase of Saratoga stock but for a specified purpose. (See p. 5 *supra*.)

In their brief respondents state:

> The last date for the Saratoga offering to be closed was June 22, 1982. The offering was closed on May 6, 1982, some six weeks prior to the last possible time. The closing of the offering was made possible on May 6, 1982, by the decision of Front Range, Frontenac, Carlson, and other related and unrelated purchasers to purchase shares of the offering. The fact that affiliates of Saratoga might purchase shares was fully disclosed in the prospectus. On page 40, the following was set forth (Ex. 1, p. 40):
>
> > "Management of the company may provide the Underwriter with a list of persons who management believes may be interested in purchasing Common Stock in the offering. The Underwriter may sell a portion of the Common Stock to such persons if they reside in a state where the Common stock can be sold and where the Underwriter can sell the Common Stock. The total number of shares of the Common Stock that may be sold to such persons will not exceed 3,000,000 shares. The Underwriter is not obligated to sell any shares to any such person and will do so only to the extent such sales would not be inconsistent with a public distribution of the Common Stock. Officers, directors and affiliates of the Company may be sold some of such shares."
>
> The purchase of the shares were fully disclosed to all concerned. The attorney for Saratoga and the underwriter approved the purchase of the shares.

As the Division points out, the list referred to, known as a "friends of the company list" or a "directed stock list," is

usually used with "hot issues," where demand for the issue exceeds supply and the issuer reserves stock for particular investors. In other words, such a list would be provided to Carlson by Saratoga and a portion of the maximum 30,000,000 shares would be reserved for and sold to such investors. However, no such list was ever provided to the underwriter by Saratoga's management during the offering, nor was any stock reserved for friends of the company. Moreover, the issue was not "hot," but proved difficult to sell. Under the circumstances the "directed stock list" paragraph does not apply to any of the events that took place in the Saratoga offering.

Counsel for the issuer, Saratoga, was John G. Lewis, who testified that he prepared much of the prospectus. Concerning the language in the prospectus quoted above, Lewis testified as follows:

> Q. Did you believe that the purchases of stock by Frontenac Mining, Ltd. and Front Range Royalties, Ltd. was disclosed and the purchase of stock by Mr. Carlson was disclosed by the paragraph on page 40 that we just discussed?
>
> A. No.

It is clear that the method of "closing" the Saratoga offering was in contravention of the plain language of Rule 10b-9. (See p. 6 n. 3, supra.) Moreover, the Commission has stated: "...it is clearly contrary to the intent and purpose of (Rule 10b-9) to declare an offering sold for the purpose of the 'all-or-none' or 'part-or-none' condition . . . on the

basis of sales that were not bona fide and were designed to create the appearance of a successful completion of the offering." [4/]

Carlson asserts that after full disclosure to counsel of all material and relevant facts, he relied on advice of counsel in the closing of the Saragota offering. However, underwriter's counsel, Bruce Ducker, testified that he did not know that the Carlson, Frontenac, and Front Range purchases were made with borrowed funds arranged by Carlson in his various capacities. Ducker testified as follows:

> Q. Mr. Ducker, if you had known that Mr. Carlson would make his purchase in his own name with money from C.E. Carlson, Inc., that Front Range and Frontenac would borrow the money for their purchases, that the loans would be arranged by Carlson, that they would be affiliates of the underwriter and issuer, that the partnerships' loans would be repaid by them with money they received from the offering, would you have advised Mr. Carlson against closing the offering in this manner?
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> A. Well, I think I would not have advised until I had all of the facts, number one. And I don't know that I can assume that you've given me all the facts. I would certainly have wanted to research the question, and I would have advised that the closing not go forward until that question could be researched.

Lewis also testified as follows:

> Q. If you had been told that the purchases by Front Royal, Frontenac, and Carlson were to be made with loans, that the loans were to be arranged by the underwriter, and that the loans would be made to affiliates of the underwriter and issuer, and that the loans would be repaid with money from the proceeds of the offering, what would you have done?

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4 / Securities Exchange Act Release No. 11532/July 11, 1975, 7 S.E.C. Docket 403.

A. I'd like to think that I would have determined that there was a violation of the securities laws and would not have approved the closing.

The gravamen of this case is that respondents participated in a course of conduct whereby public investors were fraudulently induced to part with their money in the expectation that Saratoga and Carlson, Inc. would return the money if all Saratoga shares were not sold publicly and all proceeds from the sale were not received by the deadline. It is undisputed that as of May 6, 1982 Saratoga had not sold all of the 20,000,000 shares to public investors and that all expected proceeds from the sale had not been received. Moreover, it is clear that respondents were fully aware that the conditions specified for the completion of the offering had not been satisfied. Nevertheless, instead of complying with the terms of the offering by returning the funds of public investors, respondents arranged to retain those funds for their own financial benefit. This misappropriation of the proceeds of the Saratoga offering constituted a fraud on public investors and violated the anti-fraud provisions of the federal securities laws. 5/

Accordingly, it is found that registrant and Carlson willfully violated Sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities Act and Section 10(b)(5) of the Exchange Act, and Rules 10b-5 and 10b-9 thereunder and that the record

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5/ SEC v. Manor Nursing Centers, Inc., 458 F.2d 1082, 1094 (2d Cir. 1972). See, Superintendent of Insurance of the State of New York v. Bankers Life & Casualty Co., 404 U.S. 6, 10, n. 7 (1971).

fully supports a finding of awareness on the part of Carlson, 6/ or at the very least, that he was recklessly indifferent to the consequences of his actions. 7/ Thus, it is found that he acted with the requisite scienter. 8/

Section 15(c)(2) and Rule 15c2-4

The Order charges that from about December 24, 1981 to about May 21, 1982, registrant, aided and abetted by Carlson, willfully violated Section 15(c)(2) of the Exchange Act and Rule 15c2-4 thereunder. 9/

6/ Aaron v. SEC, 446 U.S. 680, 690 (1980).

7/ Recklessness has been held sufficient to satisfy the scienter requirement. See, e.g., Mansbach v. Prescott, Ball & Turban, 598 F.2d 1017, 1023-25 (6th Cir. 1979); Edward J. Mawod & Co. v. SEC, 592 F.2d 588, 595-97 (10th Cir. 1979); First Virginia Bankshares v. Benson, 559 F.2d 1307, 1314 (5th Cir. 1977) cert. denied, 435 U.S. 962 (1978).

8/ It is noted, however, that scienter is not necessary to establish violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act and the findings of fraud herein are made under both of those sections. Findings that respondents also violated Section 17(a)(1) of the Securities Act and Section 10(b) of the Exchange Act and Rules 10b-5 and 10b-9 thereunder are merely cumulative.

9/ Section 15(c)(2) of the Act makes it unlawful for a broker or dealer to effect or induce a transaction in a non-exempt security otherwise than on a national securities exchange in connection with which he engages in any fraudulent, deceptive, or manipulative act or practice; and it provides that the Commission shall, by rules and regulations, define and prescribe means reasonably designed to prevent such acts and practices. Rule 15c2-4 is designed to prevent this by requiring that the payment received by the underwriter and any other broker-dealer participating in a distribution other than a firm-commitment underwriting be promptly transmitted or, in the event that it is not to be transmitted until some further event occurs (e.g., all the securities have been sold), that the funds be properly segregated in a separate trust or agency account, or be deposited with an escrow, until the contingency occurs, so that thereafter it can be properly transmitted or returned to the persons entitled to it.

The activities of respondents, explored and discussed in the preceding anti-fraud section, are equally applicable here. Although investors' funds were deposited in an escrow account, they were removed before the contingency occurred, i.e., that all the shares in the offering had been sold. This was clearly in violation of Rule 15c2-4 and Section 15(c)(2) of the Exchange Act.

Section 11(d)(1)

The Order alleges that from on or about December 24, 1981 to on or about May 21, 1982, registrant, aided and abetted by Carlson, willfully violated Section 11(d)(1) of the Exchange Act.

Section 11(d)(1) of the Exchange Act prohibits broker-dealers who are participating in the sale of a new issue from extending or arranging for credit to a customer in connection with a transaction in that security. 10/

Carlson, as principal of registrant, the underwriter of the Saratoga offering, arranged for all of the loans necessary

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10/ Section 11(d) provides in pertinent part as follows: "It shall be unlawful for a member . . . who is both a dealer and a broker . . . to effect . . . (1) any transaction in connection with which, directly or indirectly, he extends or maintains or arranges for the extension or maintenance of credit to or for a customer on any security (other than an exempted security) which was part of a new issue in the distribution of which he participated as a member of a selling syndicate or group within thirty days prior to such transaction."

to purchase the 2,405,000 shares of Saratoga stock required to close the offering. (See pp. 8 and 9, supra.) In their brief, respondents contend that Front Range and Frontenac should be treated as broker-dealers and, therefore, exempted from the provisions of Section 11(d)(1) because of Rule 11d-1. 11/ However, Carlson testified that Front Range and Frontenac were not in the brokerage business nor registered as broker-dealers and did not engage in the regular business of buying and selling securities for their own accounts. Furthermore, whereas Front Range and Frontenac may be affiliates of registrant, they are certainly not broker-dealers as defined in the Exchange Act. 12/

11/ Rule 11d-1 provides: "A security shall be exempt from the provisions of Section 11(d)(1) with respect to any transaction by a broker and dealer who, directly or indirectly, extends or maintains or arranges for the extension or maintenance of credit on the security to or for a customer if (c) the customer is a broker or dealer or a bank."

12/ Section 3(a)(4) "The term 'broker' means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank."

Section 3(a)(5) "The term 'dealer' means any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business."

Carlson is charged with aiding and abetting registrant's violations of the Act and Rule just cited. In Securities and Exchange Commission v. Coffey, 13/ the court said:

> . . . we find that a person may be held as an aider and abettor only if some other party has committed a securities law violation, if the accused party had general awareness that his role was part of an overall activity that is improper, and if the accused aider-abettor knowingly and substantially assisted the violation.

The record discloses that Carlson's conduct brought him squarely within the requirements for an aider and abettor. Accordingly it is found that registrant, willfully aided and abetted by Carlson, willfully violated Section 15(c)(2) and 11(d)(1) of the Exchange Act and Rule 15c2-4 thereunder. 14/

Public Interest

The remaining issue concerns the remedial action which is appropriate in the public interest with respect to the violations found herein. The Division proposes that registrant's registration be suspended for two months and that it not act as,

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13/ SEC v. Coffey, 493 F.2d 1304, 1316 (6th Cir. 1974), cert. denied, 420 U.S. 908 (1975). See also, Woodward v. Metro Bank of Dallas, 522 F.2d 84, 97 (5th Cir. 1975); In the Matter of Carter and Johnson, Securities Act Release No. 17597/February 28, 1981. 22 SEC Docket 292, 316.

14/ It is well established that a finding of willfullness does not require an intent to violate the law; it is sufficient that the person charged with the duty knows what he is doing. Billings, Associates, Inc., 43 SEC 641, 649 (1967); Tager v. SEC, 334 F.2d 5, 8 (2d Cir. 1965); Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949).

or participate with, an underwriter in connection with any securities offering for a period of twelve months; and that Carlson be suspended from association with any broker or dealer in any capacity for eight months and that he not act as, or in association with, an underwriter in connection with any securities offerings for twelve months. The respondents assert that if violations are found they involved only underwritings and that a short period of prohibition from engaging in underwritings would be appropriate.

On July 15, 1981, the NASD, in a consent decree, ordered that registrant and Carlson be censured and fined $500 jointly and severally. The NASD found that at various times during the period from approximately September 22, 1978 through November 15, 1978, registrant, acting through its representative, Carlson, circumvented the provisions of SEC Rule 15c2-4 by failing to properly protect investors' funds while participating in a limited partnership offering. The respondents also failed to insure that such funds were placed in an escrow account and that the minimum investment required for such offering had been attained before customer funds were forwarded to the issuer.

Specifically, the NASD found that on October 9, 1978, respondents caused the disbursement of $72,210 to the general partner contrary to the representation found in the private placement memorandum which had stated that the offering plan of distribution would be to sell the interests to the public on

a "best efforts, all or none" basis, and that all proceeds from the sale of the first 160 units ($80,000) were to be held by the underwriter and would not be available for use of the partnership until 200 units ($100,000) or more had been sold. Thus, the NASD sanctions were for precisely the same type of violations found herein.

As the Commission has said, strict compliance with its rules relating to "best efforts" offerings is required by those who undertake to sell them. 15/ Respondents disregarded those rules and thus exposed customers to possible substantial risks. Such violations are serious and critical in terms of public jeopardy. Hence the sanctions must be of sufficient severity to impress upon respondents and others that the kind of violative conduct engaged in cannot be tolerated. Therefore in the absence of any truly mitigating factors and in the light of all of the circumstances, it is concluded that the sanctions recommended by the Division be concurred in.

Accordingly, IT IS ORDERED that the registration of C. E. Carlson, Inc. is hereby suspended for two months; that Charles E. Carlson is suspended from association with any broker or dealer for eight months; that both C.E. Carlson, Inc. and Charles E. Carlson are prohibited

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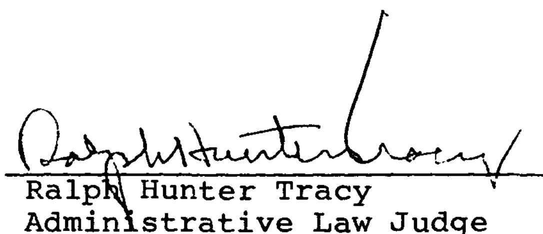
15/ FAI Investments Analysts, Inc. Securities Exchange Act Rel. No. 14288/December 19, 1977, 13 SEC Docket 1167.

from engaging in any securities offering for a period of twelve months.

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

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen days after service of the initial decision upon him, filed a petition for review pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party. 16/



Ralph Hunter Tracy
Administrative Law Judge

Washington, D.C.
December 20, 1984

16/ All proposed findings, conclusions, and contentions have been considered. They are accepted to the extent that they are consistent with this decision.