ADMINISTRATIVE PROCEEDING
FILE NO. 3-5810

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
TRANSAMERICAN SECURITIES, INC.	:
(8-21839)	:
TRANSAMERICAN INVESTMENT COMPANY, LTD.	:
CARL E. BLYSKAL and ROLFE H. McCOLLISTER	:
	:

INITIAL DECISION

June 9, 1980
Washington, D.C.

Edward B. Wagner
Administrative Law Judge

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ROLFE H. McCOLLISTER	:	

APPEARANCES: Steven J. Gard and James E. Long, Suite 788, 1375 Peachtree Street, N.E., Atlanta, Georgia 30309 on behalf of the Division of Enforcement, Securities and Exchange Commission.

Marion Smith, II, and John Latham, Smith, Cohen, Ringel, Kohler & Martin, 2400 First National Bank Tower, Atlanta, Georgia 30303, appearing on behalf of Rolfe H. McCollister and Carl E. Blyskal.

C. Thomas Cates, Burch & Johnson, 130 North Court Avenue, Memphis, Tennessee 38103, appearing on behalf of TransAmerican Securities, Ltd. and TransAmerican Investment Company, Ltd.

BEFORE: Edward B. Wagner, Administrative Law Judge

The Proceeding

This public proceeding was instituted by the Commission on September 4, 1979 pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act) against respondents TransAmerican Securities, Inc. (Registrant),[1/] TransAmerican Investment Company, Ltd. (TIC), Rolfe H. McCollister (McCollister) and Carl E. Blyskal (Blyskal).[2/] The order charged these companies and persons with wilful violations, and wilful aiding and abetting of violations, of the antifraud provisions of the Securities Act of 1933 (Securities Act) and of the Securities Exchange Act (Exchange Act)[3/] in the offer and sale and in connection with the purchase and the sale of various government securities from February 1978 to date.

Conduct asserted to be in violation of the fraud provisions included conducting business with customers when TransAmerican Government Securities, Inc. (TAGS),[4/] an unregistered broker-dealer, was insolvent, failing to disclose the financial condition of TAGS, using funds of TAGS' customers for their own benefit and to pay other customers and creditors of Registrant, falsely representing that customers of TAGS were dealing with a member of SIPC (Security

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1/ A broker-dealer registered with the Commission.

2/ Also charged were respondents Vache B. Cammack, III, Joseph W. Torti, Robert L. Shropshire, Perry Shropshire, and Robert Galvin. Offers of settlement from these respondents were accepted by the Commission on the basis of their neither admitting nor denying the charges against them. SEA Rel. No. 16,367 (11-27-79); 18 SEC Docket 1115. Any findings and conclusions reached in this proceeding concerning the activities of certain of these respondents would, of course, not be binding as to them.

3/ Section 17(a) of the Securities Act; Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

4/ TAGS and Registrant are both wholly-owned subsidiaries of TIC.

Investor Protection Corporation) and of the NASD (National Association of Securities Dealers), failing to disclose that prices at which government securities were offered and sold were not reasonably related to current market prices, falsely representing to TAGS customers that there would be no loss on securities transactions, failing to disclose the prices at which government securities were being sold to TAGS' customers, and failing to disclose the prices at which government securities were being purchased from TAGS' customers. 5/

Registrant is charged from April 1978 to date with violations of the bookkeeping provisions — Section 17(a) and Rule 17a-3 of the Exchange Act — in respect to a number of books and records; namely blotters, ledgers, ledger accounts, memoranda of purchase and sale, and confirmations.

Pursuant to my order on respondents' motion for more definite statement, the Division filed a statement prior to the trial further particularizing its case. Thus, the fraud charges against Blyskal and McCollister were confined to the period after December 1, 1978 when the former, allegedly acting pursuant to McCollister's instructions, began his employment at Registrant. Further, the two individual respondents were not charged with false representations that TAGS customers were dealing with a member of SIPC and the NASD. The bookkeeping violations were stated to involve irregularities stemming from "adjusted trading," so-called "margin money" deposited

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5/ Failing to disclose purchase prices was only asserted as a violation of Section 10(b) and Rule 10b-5. The Section 17(a) charge was that a fraud was committed upon "purchasers of said securities" whereas the Section 10(b) and Rule 10b-5 charge state that the fraud was committed upon "customers of Registrant and TAGS', the customers' depositors, and the customers' shareholders."

by the customers to cover previous losses in such trading, failure to reflect accurately the transfer of Registrant's customers to TAGS occurring around August, 1978 and from a payment by McCollister of $60,000 to Registrant.

A hearing was held in Atlanta, Georgia in late November, 1979. Pursuant to a motion by Blyskal and McCollister, the hearing was adjourned to Memphis, Tennessee to hear their defensive case. The hearing was closed on December 4, 1979.

In accordance with an agreed schedule, the Division and the parties made post-hearing findings.

The findings and conclusions herein are based upon the evidence as determined from the record and upon observation of witnesses. The "clear and convincing" standard of proof was applied to the fraud charges while the preponderance standard was otherwise applied. Collins Securities Corp. v. SEC, 562 F.2d 820 (D.C. Cir. 1977). However, application of either standard throughout would not have changed the result.

Respondents

TransAmerican Securities, Inc. (Registrant) was incorporated on April 15, 1977 as a Louisiana corporation with its principal place of business at 5350 Poplar Avenue, Suite 210, Memphis, Tennessee. Registrant has been registered as a broker-dealer pursuant to Section 15(b) of the Exchange Act since August 19, 1977 and is a member of the National Association of Securities Dealers, Inc. (NASD).

TransAmerican Investment Company, Ltd. (TIC), incorporated on June 6, 1977, is a Louisiana corporation with its office located

in Baton Rouge, Louisiana. TIC is the parent company of two wholly-owned subsidiaries, one being Registrant and the other being TAGS. TIC is solely a holding company for the two subsidiaries and has no income except from them. It provided financing for Registrant.

McCollister is an attorney practicing law in Baton Rouge, Louisiana with the law firm of McCollister, Belcher, McCleary. Fazio, Mixon, Holliday and Jones. McCollister and his law associate, Karl E. Rodriguez, were the two promoters of Registrant and TIC. McCollister owned 90% of the stock of the parent corporation, TIC, and thus had the power to control TIC and both of its wholly-owned subsidiaries, Registrant and TAGS.

Blyskal began work at Registrant on December 1, 1978 as Vice President for Administration and Finance. Although not technically an officer of TAGS, his responsibilities and authority included that company as well. He became Chief Executive Officer of Registrant on January 29, 1979.

Vache B. Cammack III (Cammack) was, prior to his resignation on January 29, 1979, president of Registrant, TAGS, and TIC. Cammack had been president of Registrant and a member of its board of directors since June 16, 1977. He was director of TIC from December 1977 and president from July 18, 1978. He was also president and director of TAGS from April, 1978. He resigned from all positions as of January 29, 1979. Prior to his association with Registrant, he had been an officer of G. Weeks and Company (Weeks), another registered broker-dealer.

Joseph W. Torti (Torti) was the financial principal of both Registrant and TAGS. He held the title of Assistant Vice President and was responsible for maintaining the books and records of both firms.

Robert Shropshire (Shropshire) was associated with Registrant and TAGS as a sales Vice President and securities salesman.

Ralph McCollister, the twin brother of Rolfe H. McCollister, made examinations and studies of Registrant at the latter's request.

Karl E. Rodriguez (Rodriguez) was named Registrant's secretary and treasurer by its board of directors at its first meeting on April 15, 1977 and holds 10% of the stock of TIC. Rodriguez is an attorney and was associated with McCollister's law firm.

Frederick A. Kroenke, Jr. (Kroenke), a member of McCollister's law firm, was a Director of Registrant, TIC and TAGS.

Sanford K. Young (Young) was Treasurer and General Manager of the Gary Sheet and Tin Employees Federal Credit Union (Gary Credit Union).

Background

McCollister heads a law firm with some 14 attorneys in Baton Rouge. He served in the Louisiana legislature from 1958 to 1962 and later as attorney for the governor. McCollister, who is a wealthy man, is a major stockholder in and a director of a Baton Rouge bank, and owns a printing business, a cemetery, and a newspaper there. He also is Vice Chairman of the United

Guaranty Corporation in Greensboro, North Carolina, and has invested in and is developing the Arlington Industrial Park in Memphis, Tennessee.

Close business associates persuaded McCollister, who was interested in making an investment, to meet Cammack then under contract with Weeks, but seeking new employment. These associates and others gave very favorable references to Cammack, and McCollister determined to form and invest in a broker-dealer firm. The thinking was that this firm would be organized and run by Cammack. Cammack was to take over the operation as soon as he could leave Weeks. Cammack recommended a capitalization of around $1,000,000. It was provided through the mechanism of the holding company, TIC. TIC sold debentures bearing interest at 10% annually in the amount of $700,000 mainly to persons associated with McCollister. An unsecured loan in the amount of $200,000 also bore interest at 10%. A note secured by letters of credit was contributed by McCollister. The total investment was $1,200,000, and these funds and assets were contributed by TIC to capitalize registrant.

Initially TIC had Registrant pay it a monthly "management fee" of $13,500 which was designed in part to meet the interest payments noted above. Registrant reflected these payments as expenses. Later, when Registrant's financial position deteriorated, the payments were reflected as a loan to TIC, thereby enabling Registrant to carry the payments as an asset. 6/

6/ In early 1978 when TAGS was incorporated as a wholly-owned subsidiary of TIC, the payments were shifted from registrant to TAGS. They continued to be booked as a receivable from TIC.

Although Registrant was incorporated in April, 1977, it did not open for business on a continuous basis until September 1, 1977. Prior thereto, it had been the subject of an administrative proceeding instituted by the Commission on August 5, 1977 on allegations that it offered and sold municipal securities prior to becoming registered with the Commission and that its Form BD contained false and misleading statements relating to its financial condition. This administrative proceeding was resolved by settlement, and the Commission ordered a 10-day suspension of the firm's registration beginning August 19, 1977. As a result of this proceeding, Registrant changed its certified public accountant and its law firm.

Cammack joined the firm some weeks after it was formed. Registrant, Cammack, McCollister, Rodriguez and others, were defendants in a 1977 lawsuit brought by Weeks for breach of Cammack's employment agreement which charged that Weeks had been raided of its employees. In fact, a large proportion of Registrant's personnel came from that firm. A trial in October 1978 resulted in a judgment of $684,000 against Cammack. No appeal was taken, and Cammack was forced into bankruptcy. The case against the other defendants was dismissed.

Between April 1977 and September 1977 as a result of having held up operations, Registrant incurred losses of from $400,000 to $450,000. From September through May 1978, Registrant continued to suffer operating losses ranging from over $100,000 per month to $5,000.

In early 1978, it was decided to incorporate TAGS, to be an unregistered government securities affiliate. TAGS was incorporated in April 1978 and became licensed with the State of Tennessee as a dealer in government securities as of August 2, 1978. It was capitalized with $100,000 from its parent, TIC. This amount was the minimum net capital required under Tennessee law for a broker-dealer handling only government securities. The reason for forming TAGS was that Registrant was having difficulty meeting the Commission's Net Capital Rule while doing business in government securities. TAGS, as an unregistered entity, did not have to comply with that rule. After it began operations around 90% of the total business was done by TAGS.

Losses for the combined operations continued. As of December 31, 1978, TAGS had a net capital deficit of $636,352, and on January 19, 1979 consented to an order by the Tennessee Commissioner of Insurance suspending "all activities involving the purchase and sale of securities . . . provided . . . that . . . [TAGS] shall use its best efforts to close out all previously contracted transactions in such manner as it may deem best suited to earning of reasonable profits."(R. Ex. 19).

As a result of a Commission injunctive action, brought on March 9, 1979, TAGS was placed in receivership. TAGS is currently in bankruptcy.

In respect to the fraud allegations the order for proceedings takes the position that Registrant operated TAGS and is as responsible for the latter's activities as it is for its own. This position is

borne out by the record. Registrant and TAGS were operated as one firm. They had the same telephones, the same salesmen, the same management, the same offices, and in general the same customers. Respondents make no attempt to argue that Registrant was not responsible for actions taken on behalf of TAGS. Accordingly, insofar as these proceedings are concerned, Registrant is viewed as bearing responibility for the actions of TAGS.

Adjusted Trading

Beginning in May 1978 and continuing through the year Registrant and TAGS engaged in adjusted trading in government securities with a number of large customers, including Gary Sheet and Tin Employees Federal Credit Union, Maintenance Division Federal Credit Union, Gary Tube Federal Credit Union, Portland Savings and Loan Association, and Illinois State Police Federal Credit Union.

Adjusted trading typically occurred at Registrant and TAGS as follows:

An institutional customer had agreed to purchase government securities in large amounts for delivery at a later date. 7/ The firm had simultaneously committed itself to purchase the securities on the customer's behalf. When the time came for acquisition and delivery the market price for the securities in question had declined due to higher interest rates on more recent-issue government securities, and the customer either could not — because of a lack

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7/ The securities involved could not be acquired on any other basis.

of available funds — or did not wish to consummate the purchase. Rather than have the firm sell out the securities on its behalf, in which event the customer would have had to recognize and report a loss,[8/] a second transaction was entered into at inflated or "adjusted" prices. In this transaction the firm purchased the original government securities back from the customer at the latter's book value, which was the price the customer had originally agreed to pay, on condition that the customer agree to purchase other government securities for future delivery at a price sufficiently above their market value to reimburse the firm for the loss the firm was sustaining in reselling the original government securities at market, plus a profit on the customer's subsequent purchase.

Deposits of funds were required of many customers in amounts roughly equal to the losses involved in the original transaction. Such deposits were termed "margin money." At the delivery date of the securities purchased in the second transaction this "margin money" was to be returned to the customer if he paid in full, or credited to the purchase price if he did not.

Frequently, the customer's original investment was "rolled over", as it was referred to, time and time again. As a result, the customer's purchase was never consummated and its ever-increasing unrealized losses and ever-increasing commitment were pushed further and further into the future.

Such trades were arranged by several of Registrant's and TAGS'

8/ The difference between the price it agreed to pay (the customer's book value) and current market value.

salesmen, and Cammack, a Director and President of both firms, was well aware of and approved the practice. Adjusted trades were referred to by one of the salesmen as the "life's blood" of the business (Tr. 201). Such trading was acknowledged by Blyskal at an early point in his association with the securities firm to be "the only game in town" (Tr. 194). Rumors on the street that one of the firm's salesmen, Shropshire, from adjusted trades alone had in just one month earned commissions of $80,000, payments for use of a Cadillac car for a year and a $1,200 golf cart are what caused the Commission staff to investigate. The rumors proved to be true.

The corporate respondents argue that the firm should not be held accountable for adjusted trading since the firm manual specifically prohibited it. But the practice was so pervasive at Registrant and TAGS that the provision in the manual has to be viewed as mere window-dressing. Adjusted trades were regularly approved by management, and Registrant must accept responsibility. Under the compensation system in effect at the firm such transactions were encouraged, because Cammack's pay and salesman's commissions were computed from mere booked transactions appearing on the blotter long before they were to be consummated.

As a result of adjusted trading, the Gary Sheet and Tin Credit Union had an ongoing commitment to purchase over $17,000,000 in government securities and had increased its original margin deposit ~~in~~ $65,000 to over $500,000.

Mark-ups on such transactions — to cover prior losses and provide new profits — often were as much as 7 to 8 points over contemporaneous cost.

The motive of the purchasing agents was generally avoidance of recognition of losses on their books in connection with commitments for government securities which they could not pick up and did not want to pick up. They gambled that by pushing their obligations off into the future they could avoid losses through a reduction in prevailing interest rates and a corresponding increase in the market price of securities. They hoped that such favorable developments would result in increased deposits in the financial institution which they represented and that these new funds would enable them to complete their commitments at a later date.

As the Division points out in its brief:

> "The insidious nature . . . of adjusted trading is apparent from the facts . . . What often began as a transaction designed to avoid recognition of modest losses . . . soon snowballed into ever-bigger amounts . . . ."
>
> "Once hooked on adjusted trading the managers of the various financial institutions were unable to turn away from the practice; betting even larger amounts of their members' funds that a market turn around in interest rates would occur and that their tactic of 'doubling up to cover-up' would be effective." (Division's Br. p. 37).

The practice clearly facilitated the falsification of the records of the financial institution and resulted, as charged, in a failure to disclose that prices at which the second and later sales were to be consummated were not reasonably related to current market price. The fraud was not upon the purchasing agents, who were actively involved in concealing their losses, but upon the true "purchaser" and "customer", the financial institution, and upon its depositors in the case of a credit union and its shareholders in the case of a savings and loan association.[9/] Because of the manner

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9/ There appear to be no contested cases directly in point with respect to this proposition. UMIC, Inc. SEA Rel. No. 34-16110, 18 SEC Docket 103 (1979), a settlement decision, does note that adjusted trades were effected "under circumstances in which the customer's board of directors was unaware of the practice."

(Continued on next page)

in which these transactions were structured, the records of the financial institutions did not disclose the huge deferred losses involved here. The only possibility of avoiding such losses was the unlikely prospect of a drastic reduction in interest rates.

As practiced here, adjusted trading constituted a wilful[10/] violation by Registrant, as charged, of both Sections 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act. The transactions were knowingly framed by all involved to accomplish the desired objective — concealment of and postponement[11/] of losses. Scienter has thus been clearly established.

Bucketing

The Division's charges of use by Registrant of TAGS customers' funds and securities for improper purposes revolve around certain

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9/ (Continued from previous page)
SEC v. Charles A. Morris & Assoc., 386 F. Supp. 1327 (W.D. Tenn. 1973), a contested case cited by the Division, involves a situation where the fraud and overreaching were practiced directly upon the persons with whom the brokerage firm dealt. The corporate respondents argue that the illegality of adjusted trading was far from clear. To the extent that there was little explicit case law, as indicated above, this is true, but counsel for Registrant themselves had advised Registrant that the fundamental flaw in adjusted trading was that it facilitated the falsification of customer records (Tr. 721, 740-41).

10/ It is noted that for purposes of administrative proceedings a long line of cases has established that wilfulness means no more than intentionally committing the act which constitutes the violation. See Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965).

11/ In Aaron v. SEC, No. 79-66 (June 2, 1980), the U.S. Supreme Court has held that a finding of scienter is required in Commission injunction actions insofar as §10(b) and Rule 10b-5 of the Exchange Act and §17(a)(1) of the Securities Act are concerned. It would appear that such a finding is a fortiori required in administrative proceedings.

"reverse repurchase" agreements entered into with the Town of Palm Beach, Florida. These transactions were carried on between Palm Beach and Registrant until TAGS was formed. From then on they were carried on the books of the latter.

The reverse repurchase transactions were designed to effect loans by Palm Beach of its excess funds on a short-term basis, usually 30 days, to the broker-dealer firm. The firm agreed to pay interest on the loan upon its repayment of the principal and was to pledge government-guaranteed securities it purchased for that purpose (or possibly already owned) as collateral for the loan. The transaction took the form of a sale of these securities by the firm to Palm Beach with a simultaneous repurchase of the same securities by the firm with a later settlement date. The securities purchased and pledged were to provide income to cover the interest paid to Palm Beach (Tr. 745). The sale and purchase transactions were reflected in simultaneous confirmations issued by the firm.

The problem here was that during the period of TAGS' operations collateral was frequently not provided. Palm Beach was advised through confirmations that securities had been obtained and were being held as collateral when, in fact, they were not. The funds which should have been used to purchase the collateral were improperly diverted to day-to-day operations of the broker-dealer. This type of activity is known in the trade as "bucketing."

Shropshire, the salesman who handled these transactions, estimated that between $1,000,000 and $2,000,000 was uncollateralized for this one client. The "bucketing" was to have disastrous results

as will be described later.

Respondents argue that neither TIC nor Registrant can be held liable for Shropshire's "bucketing" because he acted outside the scope of his employment. They contend it was done not for the benefit of Registrant but to further Shropshire's interest "so that TAGS would have enough money for him to continue to roll over the commitments and losses of his customers that were engaged in adjusted trading" (Corp. Resp. Br. p. 10). This contention is purely speculative; there is no direct evidence to support it.

In any event, Registrant cannot dissociate itself from this conduct when its President and Director, Cammack, specifically approved and directed that confirmations for wholly imaginary securities be sent. As the firm's securities cashier testified, Cammack told her:

> "[I]t was all right that they were just going to put something on the ticket, that it really didn't make any difference as long as the securities looked pretty legitimate, in other words, if they were loaning us $200,000 and I could make up a ticket for $200,000 Ginnie Maes, and it would look as though the securities were the right — approximately, the right value for that money."(Tr. 576).

The Division argues that such practices clearly violate the antifraud provisions, citing cases which hold that diverting customer's funds intended for the purchase of securities or customers' securities to the firm's purposes violate these provisions. D.S. Waddy & Co., 30 S.E.C. 367 (1949). Thompson & Sloan, Inc., 40 S.E.C. 451, 454 (1961).

The corporate respondents, however, argue:

> "The use of securities as collateral does not make a loan transaction the sale of securities. The securities were intended solely as collateral. At no time were these securities
> (continued on next page)

> physically transferred to the Town of Palm Beach, and neither party intended to actually purchase or sell these securities. (Howley Tr. 209). The Division's error is that it has exalted form over substance and has not considered the economic realities of these loans. See generally, United Housing Foundation Inc. v. Forman, 421 U.S. 837 (1975). In light of the economic realities of these transactions, it is clear that there was no violation of §17(a),§10(b) or Rule 10b-5 as the alleged bucketing did not involve the purchase or sale of a security." (Corp. Resp. Br. pp. 8-9).

It would be an anomaly indeed, if the type of brokerage-firm activity described above did not violate the antifraud provisions of the securities laws.

Respondents' arguments are rejected for several reasons. Mechanically, purchases and sales of securities were clearly involved. The recognition by the parties that a loan and repayment were being effected was more a layman's understanding of what had been accomplished by the various maneuvers — if everything proceeded according to plan — than an intention to enter into a particular legal relationship. 12/ Further, insofar as the Rule 10b-5 language, "in connection with purchase or sale of any security" is concerned, purchases of securities by the firm were at the heart of the transactions These securities were, as previously stated, to provide the income to pay the interest to Palm Beach. Moreover, even if the corporate respondents' characterization is accepted, the transactions involve pledges of collateral by the firm as part of the agreed exchange for the loans by Palm Beach. The more convincing authority, which is accepted here, has held that pledges of securities are sales for purposes of the antifraud

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12/ The Commission has regarded reverse repurchase transactions in another context as involving purchases and sales. Hinkle Northwest, Inc., 16 SEC Docket 173 (1978), Appeal pending File No. 79-7005 (9th Cir.)

provisions of both the Exchange Act and the Securities Act.[13/] SEC v. Guild Films Co., 279 F.2d 485 (2d Cir. 1960), cert. den. 364 U.S. 819 (1960); United States v. Gentile, 530 F.2d 461 (2d Cir. 1976) cert. den. 426 U.S. 936 (1976); Mallis v. FDIC, 568 F.2d 824 (2d Cir. 1977). Contra: National Bank of Commerce v. All American Assurance Co., 583 F.2d 1295 (5th Cir. 1978); Lincoln National Bank v. Herber, 604 F.2d 1038 (7th Cir. 1979).

Accordingly, it is held that the "bucketing" described above constitutes wilful violation by Registrant of the antifraud provisions of both acts as charged. Scienter is again clearly present.

The U.S. Supreme Court has recently granted certiorari concerning the question whether a pledge of stock as collateral for a bank loan comes within the Securities Act definition. Rubin v. United States, No. 79-1013, certiorari granted April 14, 1980.

Switching Customers' Accounts

In the summer of 1978 numerous accounts in which adjusted trading occurred were switched over from Registrant's books to the books of TAGS. The change involved a significant lessening of the protections afforded such customers. Unlike Registrant, TAGS was not an NASD member, did not have to comply with the Commission's Net Capital Rule and was not a member of the Securities Investor Protection Corporation (SIPC).

13/ The Securities Act definition of "sale" in §2(3) seems clearly to cover pledges such as those involved here. It includes the "disposition of a security, or interest in a security, for value."

Representatives of two major institutional customers have indicated that they were not informed of these differences or even that two separate firms were involved.

Registrant is a fiduciary and is obligated to deal fairly with its customers. See United Securities Corp., 15 S.E.C. 719, 727 (1944); E.H. Rollin & Sons, Inc., 18 S.E.C. 347, 362 (1945). It clearly did not do so here in failing to inform its customers of this change and of its consequences.

Although negligence was involved here, no scienter in the sense of intent to deceive, manipulate or defraud was present. I conclude that by failing adequately to inform its customers of the switch Registrant wilfully violated Sections 17(a)(2) and 17(a)(3) of the Securities Act. Charges involving this conduct under Section 10(b) and Rule 10b-5 of the Exchange Act and Section 17(a)(1) of the Securities Act are dismissed. See Aaron v. SEC, No. 76-66 (June 2, 1980, U.S. Sup. Ct.)

Bookkeeping Violations

The Division asserts that the practice of adjusted trading resulted in irregularities in Registrant's basic books and records.[14/] In fact, these records, which showed the inflated or adjusted prices in these transactions, were false in that there was no indication that the adjusted purchase price in the first leg of an adjusted trade was conditioned upon a later sale at a further inflated or adjusted price, and vice versa. Economic reality was ignored;

14/ Purchase and Sales Blotter, General Ledger, Ledger Accounts of Customers, Memorandum of Purchase and Sales and Order Tickets and Confirmations.

profits and losses were continually exaggerated and assets and liabilities continually misstated. Entries with respect to "margin money" in adjusted trades were false because the terms and conditions under which the customer had been required to make such deposits were not disclosed.

A $60,000 payment received by Registrant from McCollister was booked in the General Ledger as additional paid-in capital when it was actually a loan payable.

After the transfer of the government securities businesss from Registrant to TAGS, customers were carelessly sent confirmations and acknowledgement letters indicating they were still doing business with Registrant.

Registrant admits these violations, urging merely that those falling in the "margin money" and "transfer of business" categories were of a limited nature. It also pointed out that there is no evidence of intent to deceive customers.

As the Division argues, the bookkeeping provisions are of great importance to effective enforcement of the securities laws. Midas Management Corporation, 40 S.E.C. 707, 709 (1961); Billings Associates, Inc., 43 S.E.C. 641, 649 (1967). The violations shown here which stem from adjusted trading were numerous and involved large amounts.

I conclude that Registrant wilfully violated the bookkeeping provisions as charged.

Fraud Charges Against Registrant and Individuals

The remaining fraud charges are not only against the corporate respondents but also against the individual respondents, McCollister and Blyskal. They are charged with participating in and the aiding and abetting of wilful antifraud violations in the period from December 1, 1978 on. These violations specifically involve operation of TAGS while allegedly insolvent and alleged misrepresentations and omissions of material facts in connection with the close-out of adjusted trades through so-called "swap" or exchange transactions. In order to assess the charges against the individual respondents it is necessary first to determine the relationship of these persons to Registrant.

McCollister and Blyskal

As previously indicated, McCollister has many other activities besides his 90% ownership interest in TIC. He served as a member of the Board of Directors of TIC and Registrant until March, 1978. At that time he resigned from all offices stating that he had insufficient time to do justice to these positions.

McCollister made occasional personal visits to the firm, and an inter-office telecopier was maintained between the brokerage firm and the McCollister law firm. Members of that law firm served on the Board of Directors of the brokerage firms. It is clear, however, that McCollister had no experience in the brokerage business and relied to a very great extent upon Cammack, who served as the chief executive officer and as a director of the three companies.

Periodic financial reports on the brokerage operations were received at the law firm.

In May of 1978 McCollister decided to find out if the brokerage operation was progressing as planned. He requested that his twin brother, Ralph McCollister (Ralph), review the brokerage operation. Ralph, who is retired, has extensive university training in financial management and has served as chief executive officer of large business operations. He had no experience in the securities business.

Ralph spent two weeks at the brokerage office. Based mainly upon information received from Cammack and Torti he prepared an extensive report. This report was concerned with how the enterprise could achieve greater financial success and contained future profit projections.

In September 1978 Ralph returned to the brokerage firm because projected profits were not being realized. Cammack explained that certain transactions were not closed for a period of 3 months — that while the profits were reflected on the blotter, the firm's cash method accounting did not reflect the profit on the income statement. Ralph instituted a new form of weekly report designed to show not only advance commitments but also when such business was to be consummated. The first such report was prepared on October 16, 1978.

Two weeks later two members of the Registrant's Executive Committee [15/] approached Karl Rodriguez, a director of Registrant,

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15/ The Executive Committee had been progressively excluded from the affairs of the company by Cammack.

to advise him that the future commitments would not be settled and that Cammack's style of life was beyond his income.[16/] Rodriguez informed McCollister of this meeting, and the latter asked Ralph to go to Memphis on a full-time basis to straighten matters out. Ralph declined for personal reasons.

McCollister then got in touch with Carl Blyskal, whom he had met earlier in connection with an unrelated business proposal. Blyskal had a strong background in management, organization, finance, and accounting. He had had no experience in the securities business. He met with the two McCollisters on November 17, 1978 and by December 1, 1978 had terminated his business affairs in Louisville, Kentucky and had reported to work at Registrant as Vice President of Finance and Administration. Blyskal worked at the TransAmerican companies from December 1 through December 20. He then returned to Louisville for Christmas and to complete the moving of his family and effects to Memphis. Blyskal resumed his duties on January 2, 1979. On January 19 TAGS entered into a consent order with the State of Tennessee arising from the fact that it did not meet the state minimum net worth requirement of $100,000. Under the Tennessee order, TAGS was not to transact any new business but was ordered to close-out transactions previously entered into. No dispute exists concerning TAGS compliance with the above order. TAGS did no new business after January 19, 1979.

On January 31, 1979 Cammack resigned from all companies and Blyskal succeeded him as Chief Executive Officer of Registrant.

16/ Although the brokerage firms were experiencing losses, Cammack appeared to be doing extremely well. It was later discovered that many of his personal expenses were being paid by the firms.

The Division and the respondents dispute the scope of Blyskal's authority and responsibilities. Respondents contend that his role was a limited one confined to finance and administration with no responsibility for customer contact or compliance with the antifraud provisions. The Division takes the position that Blyskal was running the show from the time he arrived (Div. Reply Br. p. 26). I take an intermediate position. The Division has pointed out that Blyskal in his "Wells Submission" described his role as follows:

> "My function was to analyze any and all problems affecting the company and recommend, as well as see that corrective action was taken. This responsibility, as described to me when I was hired, was purposely very broad because neither the Board members nor Rolfe McCollister really knew the condition of TransAmerican and were very confused and concerned because of it. They had relied upon and trusted Vache Cammack in the past." (Div. Ex. 76).

McCollister described Blyskal as his "man up here full time." (Div. Ex. 55 A, p. 258). Blyskal was, in effect, an executive vice-president with a roving commission to check into all problems and to take needed action. That he had such a commission and powers is borne out not only by his own statement above and by the circumstances of his appointment but by his later actions. Among other things, he altered the firm's course completely on January 2, 1979 by determining to abandon its largest business segment—adjusted trading. He conceived and involved himself in the implementation of massive exchange transactions with the firm's largest customers to close-out adjusted trades pending on TAGS books.

Blyskal's authority as to those matters he involved himself in must be regarded as paramount. He cannot conceive, direct and

participate in massive transactions while ignoring the securities acts ramifications of what he is bringing about.[17/] Blyskal's conduct in this regard will be dealt with in more detail in the section discussing the failure to disclose "bucketing."

There was minimal contact between McCollister and Blyskal during the relevant period beginning December 1. McCollister was not aware of Blyskal's decision to abandon adjusted trading, was not shown to have involved in any way in determinations with respect to the swap transactions, was not involved in operating registrant and TAGS during the priod of TAGS' alleged insolvency and held no corporate office in any of the companies during these periods. In short, McCollister's position was that of a concerned owner. Concerned ownership does not constitute a violation of the securities laws nor the aiding abetting thereof. Accordingly, I am dismissing all charges against McCollister. I similarly find no basis for regarding the holding company, TIC, as involved in any alleged violations and am dismissing all charges against it.

General

In summary, fraud charges made against both Registrant and Blyskal include:

(1) the following alleged material omissions in connection with the close-out or "swap" transactions:

17/ As the Commission stated recently in connection with the activities of the President and Vice President of a brokerage firm "[they] . . . cannot divest themselves of responsibility for the activity they had authorized and set in motion." Apex Financial Corporation, SEA Rel. No. 16749 (April 16, 1980) p. 4 (Review of NASD Disciplinary Action)

(A) Failure to disclose to the Gary Credit Union that TAGS had previously bucketed securities;

(B) Failure to disclose to the Gary Credit Union that its loss on the transaction would be $2,900,000;

(C) Failure to include the margin money on the Bill of Sale form (Applicable to 3 customers);

(D) Failure to disclose to the Gary Credit Union the price charged by TAGS for the securities transferred to it; and

(2) Operation of TAGS while insolvent.

1(A) Failure to Disclose Bucketing

The individual respondents' main defense to this charge is that Blyskal [18/] "absent some duty or some special relationship, . . . cannot be found responsible for the omission of other individuals" (Resp. Br. p. 49). Respondents rely upon the recent United States Supreme Court decision in Chiarella v. United States, 48 U.S.L.W. 4250 (No. 78-1202, 1980), involving a financial printer, and SEC v. Coffey, 493 F.2d 1304 (6th Cir. 1974), involving a financial vice president. However, the principles set forth in these cases are viewed as inapplicable here. Blyskal was no mere financial vice president. He was, in fact,as previously stated, an executive vice-president with plenary authority. The close-out transactions were unique. They were his creation. He had first called a meeting on January 2, 1979 and ordered the TAGS trader and sales manager not to enter into

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18/ Respondents, of course, make the same contentions as to McCollister.

any further adjusted trades. He had met, along with the sales manager, with each of the 5 salesmen involved to ascertain when "roll-over" customers could be expected to settle their commitments. When advised by Shropshire that the Gary Credit Union could not settle, he first considered a suggestion by the TAGS' trader that the credit union deliver a bond with a market value of $1,200,000 to satisfy market losses. Around January 9, 1979 Blyskal listened in, without disclosing his presence, on a speaker-phone in which Young acknowledged his $1,200,000 loss [19/] and stated that he would not deliver the proposed bond to TransAmerican.

On January 10 Blyskal was informed by the firm bookkeeper about the bucketing by Shropshire in connection with transactions for Palm Beach and on the next day ordered him to wire back $440,000 representing funds which were improperly uncollateralized. At this same time, since he did not know the extent of any further bucketing, he ordered Torti to get the information and report to him.

It was at this point that Blyskal conceived the "swap" or close-out transactions. His suggestion was that the customer could deliver to TAGS bonds from its portfolio, valued at market price, in exchange for bonds of equal value, less the customer's losses. The purchasing agents apparently were willing to go along with the proposal because it permitted them to continue the misrepresentation of the customer's financial status (Tr. 751) [20/] He got in touch with Kroenke, and a form of Contract and Bill of Sale for these transactions was drafted and approved by TransAmerican's

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19/ This figure included losses to be incurred through April, 1979 (Div. Ex. 25, p. 2).

20/ The Division does not, however, contend that the close-out transactions are fraudulent for this reason.

attorneys. Blyskal overruled Cammack and Shropshire who wanted an additional profit added in on the swap transactions, and no such profit was included.

On January 12, the TransAmerican bookkeeper was dispatched by Shropshire with Blyskal's knowledge, if not also at his direction, to the Gary Credit Union to check the customer's bond inventory preparatory to the "swap" (Tr. 578). The written contract with the credit union was executed by Shropshire on January 14 and by Young on January 25. It provided for delivery on January 22 of around $14,400,000 worth of bonds of the credit union in exchange for $13,200,000 of new bonds TAGS was to provide. The credit union bonds were delivered on January 17. The day before, officials from the State of Tennessee had appeared at the firm's offices requesting financial information. On January 19 TAGS entered into the Consent Order with the State of Tennessee. The order was footnoted as to TAGS' financial status to indicate potential irregularities because Torti had not yet completed his examination of the bucketing. This was done because Blyskal insisted upon it.

Blyskal at all times intended that once the "swap" was completed the Gary credit union would receive back its margin deposit of in excess of $500,000. When the credit union securities in the "swap" were sold on Monday, January 22, TAGS received its payment of $1,200,000 and could have refunded the deposit. However, the extent of uncollateralized transactions with Palm Beach had been discovered over the preceding weekend. Cammack was concerned over possible personal liability and, despite the fact that Blyskal had opposed such a move and told Torti

that McCollister should be consulted before anything was to be done, personally wired in excess of $2,800,000 to Palm Beach. Approximately one half of these funds represented transactions which were improperly collateralized and all of it represented transactions which were misstated as to the type of securities being sold and repurchased (Div. Ex. 25, p. 3).

Funds realized from the Gary Credit Union transactions were thus sent to Palm Beach, and the credit union was told on February 5 that TAGS could not pay the margin deposit in excess of $500,000 nor some $66,000 due on the swap transaction. TAGS is now in bankruptcy, and the credit union has never received these funds.

During the crucial period in January, 1979 when the swap transaction with the Gary Credit Union was being negotiated, implemented and executed, the credit union was not told that TAGS had engaged in bucketing transactions, the extent of which was not yet determined. This placed the credit union's margin deposit in possible jeopardy, and was obviously material to the proposed swap transactions. Had it known, the credit union could have protected itself by insisting that the margin deposit be deducted beforehand from its side of the exchange transaction. In fact, Blyskal — in view of his information about the bucketing — could and should have structured the transaction in this fashion to protect the margin deposit of the credit union. The same impulse which caused him to alert the Tennessee authorities to the potential problem caused by the fact that bucketing had occurred and that its extent was unknown should have caused him to fulfill the firm's fiduciary responsibility to its customers. See Hughes v. SEC,

174 F.2d 969 (D.C. Cir. 1949).

Responsibility for these transactions was clearly Blyskal's. I believe Cammack's statement in response to a question whether he had anything to do with these trades that he wouldn't even know how to do one (Tr. 286-87). The contention that Cammack and Shropshire were being relied upon for appropriate disclosure to customers (Resp. Br. p. 49) has a hollow ring. Blyskal knew after January 10 that Cammack and Shropshire had over a long period approved and profited from improper adjusted trading and that Shropshire had participated in flagrant bucketing of customer's securities. Reliance upon these persons at this juncture for appropriate disclosure cannot be justified.

The point is that Blyskal knew facts of vital interest and concern to the credit union. The facts were not disclosed to them,[21/] nor was the transaction structured by Blyskal to protect the customer's interests.

While rejected implicitly in the foregoing discussion, Respondents make two additional arguments that warrant separate discussion.

Respondents first contend that the customers who participated in the close-out transactions were "debtors" of TAGS and that the

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21/ Respondents argue that the Division has not established that the Gary Credit Union was not apprised of the bucketing. I believe this is an unduly restrictive reading of the evidence. Young testified that in the first call on January 5 from Shropshire concerning this matter Shropshire did not "give him any information about the weak financial condition of TAGS" (Tr. 485). He then described the next conversation on January 9 with Shropshire in which the swap transaction was proposed. Young then testified about a call from Shropshire on January 11 and about the bookkeeper's visit on January 12. He stated that neither Shropshire nor the bookkeeper had on any of the occasions given him "any information about the weak financial condition of TAGS", and that he had'nt even found out what they sold his securities for (January 22) until he talked with an official of the State of Tennessee (Tr. 487). Particularly under the circumstances present here, the improper use of customers funds in very substantial

(Continued on next page)

transactions should be governed by the provisions of the Uniform Commercial Code rather than the federal securities laws. They argue that there was no duty to make the disclosures in question and that such disclosures were not material in view of the debtor-creditor relationship. Respondents cite such cases as Berry v. Souza, 564 F.2d 1347 (9th Cir. 1977), and Bell v. J.D. Winer & Co., Inc., 392 F. Supp. 646 (S.D.N.Y. 1975) involving forced liquidations and St. Louis Trust Co. v. Merrill, Lynch, Pierce, Fenner & Smith, Inc., 562 F.2d 1040 (8th Cir. 1977), involving transactions pursuant to a pre-existing contract.

The error in these contentions is, as the Division points out, that the swap transactions were not forced liquidations by a creditor effected to collect a debt nor transactions required by pre-existing contracts, but were rather new transactions voluntarily entered into by both sides. Registrant and TAGS could have resorted to self-help, when their customers indicated inability to complete their transactions, by selling out the adjusted trades as they became due. Any deficiency would have constituted a claim against the customer. They did not sell their customers out. Instead, they persuaded them to enter into elaborate "bill of sale" transactions which closed out not only transactions which were presently due but also adjusted trades which were not yet due. The idea was to wipe out all adjusted trades, recoup all built-in profits immediately

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21/ (Continued from previous page)
amounts for day-to-day operations and the fact that they were unaware of the extent to which this had gone on and were having a report prepared to find out clearly constitute information concerning the weak financial position of TAGS.

and prevent probable further market losses from occurring. These transactions benefited both broker aand customer. The benefit to the broker was that practices which they had been advised by counsel were improper, were quickly terminated. Further, profits were immediately realized which were not due the firm until later dates.

Second, Respondents assert that the close-out transactions were not of an investment nature and therefore not encompassed by the securities laws.[22/] The basic premise of this argument is again that the transactions were merely an effort of a creditor to collect an acknowledged debt. This premise has already been rejected.

It is further quite clear as the Division points out, that exchanges of securities — even in connection with corporate mergers — involve the purchase and sale of securities and are subject to the antifraud provisions. SEC v. National Securities, Inc., 393 U.S. 453 (1969); Mader v. Armel, 402 F.2d 158 (6th Cir. 1968).

As pointed out by the Division in its Reply Brief (p. 4), scienter is not required for a finding of violation of §17(a)(2) and §17(a)(3) of the Securities Act,[23/] and these provisions are directly applicable here. In respect to the non-disclosure of bucketing, there was no scienter, in the sense of an intent to deceive, manipulate, or defraud on the part of either Registrant or Blyskal.

22/ Respondents cite United Sport Fishers v. Buffo, 396 F. Supp. 310, 312 (S.D. Cal. 1975), and United Housing Foundation, Inc. v. Forman, 421 U.S. 837 (1975).

23/ Steadman v. SEC, 603 F.2d 1126 (5th Cir. 1979). Certiorari has been granted by the U.S. Supreme Court as to the appropriate standard of proof for administrative proceedings, Docket No. 79-1266 (4-28-80). See also Aaron v. SEC, No. 79-66 (June 2, 1980, U.S. Sup. Ct.).

I conclude that Registrant and Blyskal wilfully violated the antifraud provisions of Sections 17(a)(2) and 17(a)(3) of the Securities Act as charged by not making appropriate disclosure as to the bucketing either directly or through other TAGS employees.[24/] Charges involving this conduct under Section 10(b) and Rule 10b-5 of the Exchange Act and Section 17(a)(1) of the Securities Act are dismissed.

1(B) Failure to Disclose Loss

The Division alleges as a material omission failure to disclose to Gary Sheet and Tube Credit Union a loss of $2,900,000.

Respondents contend that the credit union incurred losses of only $1,200,000 and that this loss was disclosed to Young, the credit union's purchasing agent. I agree. As the Respondents state:

> "Mr. Young's assertion of a $2,900,000 loss is predicated upon the decrease in face amount of the securities GS&T received in the swap. The securities received by GS&T, however, carried a much higher interest rate than the exchange securities and, therefore, had a higher market value relative to the face amount. The market differential between the exchange securities was in fact $1,200,000 as disclosed, and market value is the appropriate standard to measure a loss. Had GS&T been advised by TAGS that it would lose $2,900,000, there would have been a material misrepresentation." (Br. p. 45).

Accordingly, insofar as they are based upon this contention the charges are dismissed.

1(C) Omission of Margin Money

The Division argues that failure to include the amount of margin money in the Bill of Sale contract was a material omission because it was a fact that the customer needed to know to determine ultimate gain or loss. However, as the respondents point out, the existence and amount of the margin money was known to all 3 customers in question and had already been communicated to them. Under these

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24/ See R. Bruce & Co., 43 S.E.C. 777 (1968), Reh. denied, 43 S.E.C. 969, affirmed sub nom. Fink v. SEC, 417 F.2d 1058 (2d Cir. 1969). For additional appeals in the same case, Gross v. SEC, 418 F.2d 103 (2d Cir. 1969) and Hiller v. SEC, 429 F.2d 856 (2d Cir. 1969).

circumstances I do not believe that inclusion of such information was required, and this charge is dismissed.

1(D) Omission of Price

The Division charges that a material omission occurred in the close out transaction with the Gary Sheet and Tin Credit Union in that the price being charged by TAGS for the securities which were transferred to the credit union was not disclosed.[25/] The transaction, as indicated, was designed to pay off moneys owing to TAGS for losses on past transactions and for losses reflected in outstanding commitments, a total of some $1,200,000. Mechanically, the swap transactions involved taking securities from the portfolio of an investor, liquidating them and using proceeds from their sale to pay for the new securities on the other side (Tr. 441-42).

In an analytical sense, the securities which the credit union transferred constituted the price it paid. These securities were, of course, listed on the contract. The list was a material fact bearing on the investment decision. TSC Industries v. Northway, 426 U.S. 438 (1976).

The amount achieved on the liquidation of the credit union's securities, as well as the fact that the same amount, minus the losses, was devoted to purchasing the securities the credit union received in the exchange, is of interest in ascertaining whether the spirit and purpose of the Bill of Sale contract were adhered to, but has nothing to do with the investment decision which was already made.

25/ At the time of execution by TAGS (January 14, 1978) the bill of sale form could not have included market price information because the exchange was not to be made until January 22, 1978.

Accordingly, this aspect of the charge is dismissed.

Operation While Insolvent

The cases cited by the Division establish that, absent disclosure to customers, for a broker-dealer to continue to conduct business when it is aware that it is insolvent constitutes wilful violation of the antifraud provisions. See e.g. Morrison Bond Co., Ltd. 11 S.E.C. 125, 133 (1942); Gill-Harkness & Co., 38 S.E.C. 646 (1958).

The Division argues that TAGS' insolvency was apparent from at least November 30, 1978 until it ceased operations.[26/] It bases its argument on TAGS' monthly cash basis balance sheets which show liabilities exceeding assets by $446,000 on November 30 and by $636,000 on December 31.

Respondents, however, contend that the income statements and reports on future profits must also be taken into account. In fact, under an accrual method of accounting with appropriate recognition being given to future profits, TAGS had a substantial positive net worth on both dates. The Division ridicules these future profits as "futuristic profits," but there is no contention that the roll-over transactions were unenforceable nor evidence that any of the large customers involved could not have paid these profits through sell-outs. Torti has testified that TAGS at all times during the relevant period paid its debts as they matured.

I agree with the contention of the respondents that accrual accounting generally represents a more realistic picture of financial

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26/ Actually, operations after January 19, 1979 are insulated from the Divisions's charge because they were required by lawful order issued by the State of Tennessee. United States v. United Mine Workers of America, 330 U.S. 258, 293 (1947). As previously stated, the order required respondents to close-out transactions already entered into, and no new business was entered into after this date.

status. I conclude that the Division has not established that Registrant and Blyskal were aware that TAGS was insolvent during the period from November 30 through January 19, 1979, nor that it was, in fact, insolvent during that period.

The charges insofar as they are based upon insolvency are dismissed.

Public Interest

The Division urges that Registrant's registration be revoked. In opposition it is asserted that the firm has been dormant for nearly a year and has no plans to renew operations in the securities business, and that, accordingly, sanctions would not further any public interest.

Registrant's conduct here involved flagrant fraud and over-reaching. It was pervasive and continued over a substantial period. The respondents themselves point out that as a result of these activities Cammack, a firm director and its president, was barred for life from associating with any NASD member and fined $50,000, one of the heaviest fines ever imposed by the NASD.

As a Court of Appeals has recently stated:

> "The purpose of . . . sanctions must be to demonstrate not only to petitioners but to others that the Commission will deal harshly with egregious cases." Arthur Lipper Corporation v. SEC, 547 F.2d 171, 184 (2d Cir. 1976), certiorari denied 343 U.S. 1009 (1978).

There is no guarantee that Registrant will remain dormant, and its operations were a disgrace.

It has been determined that revocation of registration is warranted.

The Division urges Blyskal be barred from association with any broker or dealer with any future association being in a non-supervisory and non-proprietary capacity and being conditioned upon a showing that he will be properly supervised. The respondents ask that if Blyskal is found to have violated, the unusual circumstances involved and the harsh effect that any sanction might have upon his fine reputation be taken into account. They note that he has recently been exonerated by the NASD and urge that no public interest is served by imposition of a sanction upon a man who did everything he could to resolve a difficult situation not of his own making.

There is much to be said for Blyskal. He spent only a brief period at the firm, and he did terminate the adjusted trading program. Blyskal made an excellent impression as a witness; he appears to be a very competent and industrious business executive. He obviously had no intent to defraud anyone. His failure to disclose the firm's bucketing to the Gary credit union may be attributed to his complete lack of securities experience. His last non-consulting employment prior to joining Registrant had been as president of a chain of restaurants in Louisville.

A sanction of censure is imposed upon Blyskal merely to impress upon him and others similarly situated that they must at least learn the ground rules before becoming involved as managers in a business that does not operate on the caveat emptor principle.

Accordingly, IT IS ORDERED as follows:

(1) The registration of TransAmerican Securities, Inc. as a broker-dealer is revoked;

(2) The charges against TransAmerican Investment Company, Ltd. and Rolfe H. McCollister contained in the Commission's Order for Public Proceedings, dated September 4, 1979, are dismissed;

(3) Carl E. Blyskal is censured.

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

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen (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. 27/

Edward B. Wagner
Administrative Law Judge

June 9, 1980
Washington, D.C.

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