ADMINISTRATIVE PROCEEDING
FILE NO. 3-6238

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
DAVID R. WILLIAMS	:
(International Securities, Inc.)	:

INITIAL DECISION

Washington, D.C.
December 12, 1983

Ralph Hunter Tracy
Administrative Law Judge

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APPEARANCES: Robert M. Fusfeld and Patricia H. Feree, attorneys, Denver Regional Office, for the Division of Enforcement

Gregory D. Schetina and Jay S. Horowitz, attorneys, for David R. Williams

BEFORE: Ralph Hunter Tracy
Administrative Law Judge

On May 5, 1983 the Commission issued an 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 respondent David R. Williams (Williams), three other individual respondents, and one broker-dealer committed various violations of the Exchange 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.

Disposition has been determined for the three other individuals and the one dealer, all of whom submitted offers of settlement which were accepted by the Commission.[1/] Therefore, this initial decision is applicable only to Williams, although, in view of the nature of the charges and factual circumstances, it may be necessary to make findings concerning some or all of the other respondents.

1/ The Commission has accepted offers of settlement from Frederick C. Voelker, Jack L. Legg, and Richard D. Casper, Securities Exchange Act Release No. 20174/September 13, 1983; and International Securities, Inc. Securities Exchange Act Release No. 20119/August 26, 1983.

The Order, as applicable to Williams, alleges that International Securities, Inc. (ISI or registrant) wilfully violated and Williams wilfully aided and abetted violations of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder.

The evidentiary hearing was held at Denver, Colorado, on August 9, 1983. Williams was represented by counsel; proposed findings of fact, conclusions of law, and supporting briefs were filed by Williams and by the Division.

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

Respondent

Williams was born October 11, 1936 in Bremerton, Washington. He attended high school in Puyallup, Washington, and then served in the military service from 1954 to 1958. He attended Wichita State College, Wichita, Kansas, and the University of Southern Colorado, Pueblo, Colorado, where he received a B.S. degree

in business in 1973. Williams was employed by the Federal Aviation Administration as an air traffic controller from September 1961 to June 1974. From June 1974 until July 1981 he was employed as a registered representative with seven different brokerage firms: Bosworth, Sullivan & Co., E.D. Jones, E.F. Hutton, Dean Witter Reynolds, Smith Barney Harris Upham, Blinder Robinson & Co., and Investment Bankers, Inc. While at Blinder Robinson he became a principal and assistant office manager of a branch office. He joined ISI in July 1981 and remained there until it went into receivership in February 1982. Since then he has been with HMS Securities and Centennial State Securities.

Record Keeping Violations

The Order charges that during the period from August 1981 to February 1982 ISI, wilfully aided and abetted by Williams, wilfully violated Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder, by failing to accurately make and keep current certain of its books

and records.[2/]

Williams testified at the hearing that he caused ISI's books and records to reflect a Colorado address for five out-of-state investors so that they could purchase new issues which were not blue-skyed in their states of residence.[3/]

2/ Section 17(a)(1) of the Exchange Act, as applicable here, requires registered brokers and dealers to keep such books and records as the Commission by rule or regulation may prescribe as necessary or appropriate in the public interest or for the protection of investors. Rule 17a-3 specifies the books and records that must be maintained and kept current. Rule 17a-3(9) requires a record of each cash and margin account . . . containing the name and address of the beneficial owner of such account. Rule 17a-4 specifies that certain records be preserved.

3/ The term "blue sky" refers to state securities laws. It apparently originated in Kansas where the first state law was enacted in 1911 and where it was said that promoters of fraudulent enterprises would sell building lots in the blue sky ~~for a~~ IN fee simple. See Loss, I Securities Regulation 27 (1961); Hall v. Geiger-Jones Co., 242 U.S. 539, 550 (1916).

The investors resided in Texas, Indiana, and Illinois, states in which neither ISI nor Williams was licensed to do business. The Illinois and Indiana customers also had addresses in Florida. Williams, who lives in Parker, Colorado, near Denver, established Post Office Box 705, Parker, Colorado, as the address for each of the five investors. He testified that none of the investors ever resided in Colorado; that he applied for the box and had custody and control of it; and that he personally forwarded all correspondence from ISI, including checks, confirmations, and prospectuses to each of the five investors at their respective residence addresses in Illinois, Indiana, Texas, or Florida.

Williams does not deny that he changed addresses of customers on ISI records in order to enable them to purchase securities which were not blue-skyed, or approved, by their respective states. He states that he set up the post office box at the request of customers and saw nothing wrong with it. He takes the position that although records are required to be kept

they need not be kept accurately. He also offers the excuse that he does not recall ever receiving any written or oral instructions from supervisory personnel at ISI concerning SEC or NASD rules and regulations; and that in any event rules concerning books and records are directed to brokers and dealers rather than to individuals.

The former compliance officer at ISI testified that he prepared a supervisory procedure manual, dated April 1981, which was distributed to all registered representatives at ISI. The manual states that registered representatives are not to open accounts in jurisdictions in which the registered representative or ISI is not licensed to do business; that if the registered representative violates this provision he will be subject to a $100 fine for each account; and that transactions in such an account will be cancelled and any loss charged to him. The compliance officer testified that they had meetings when he would hand out the manual and ask people to read it. On occasion they would discuss certain things that were considered relevant at the time.

Williams could not recall having any interest in ISI or holding a position other than as a salesman. However, ISI minutes show that at a special shareholders meeting on December 1, 1981, he was promoted to sales manager, elected a director, and given 9,577 shares of ISI no par value common stock. Williams testified that he did not know that he was appointed sales manager as of December 1, 1981; that the stock was presented to him as a gift; and that he sold it within one or two weeks to a principal of the firm.

Williams was a reluctant witness whose testimony in many instances was "I don't recall," "not to the best of my knowledge," "not to my recollection." When he was shown the ISI Supervisory Procedures Manual, he said that to the best of his knowledge he had never received one. When shown a Form BD of ISI which shows him as a stockholder, he stated that he did not recall ever seeing it before.

The Commission has repeatedly stressed the importance in the regulatory scheme for strict compliance with the requirement that

books and records be kept current in proper form,[4/] and that such records be true and correct.[5/] Also, the Commission has held that false entries could hamper it in its investigatory functions.[6/] The instant case is a good example of an individual, by knowingly falsifying customers' addresses, caused, or at least contributed to, a serious violation by the brokerage firm.

The Order charges Williams with aiding and abetting the record keeping violations of ISI. In Securities and Exchange Commission v. Coffey,[7/] 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."

4/ Olds & Company, 37 SEC 23,26 (1956); Pennaluna & Company, Inc., 43 SEC 298, 312 (1967).

5/ Lowell Niebuhr & Co., Inc., 18 SEC 471,475 (1945).

6/ Haight & Company, Inc., et al., 44 SEC 481,507 (1971).

7/ 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 Exchange Act Release No. 17597/February 28, 1981. 22 SEC Docket 292,316.

The record discloses that Williams' conduct brought him squarely within the requirements for an aider and abettor. Accordingly, it is found that ISI, wilfully aided and abetted by Williams, made false entries on its records in wilfull violation of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder.[8/]

Although the Order also charges a violation of Rule 17a-4 it is concluded that the failure to preserve records, as required by that Rule, does not constitute a separate and additional infraction once a violation has been found based upon a failure to accurately prepare the same records, as required by Rule 17a-3.[9/]

8/ Except for the anti-fraud provisions of the securities laws, it is well established that a finding of wilfullness 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 344 F. 2d 5,8 (2d Cir. 1965); Hughes v. SEC, 174 F. 2d 969,977 (D.C. Cir 1949).

9/ Samuel H. Sloan, et al, 45 SEC 734,735, n.6 (1975); L.C. Fisher Company, Inc., et al., 45 SEC 300,301 (1973).

Public Interest

The remaining issue concerns the remedial action which is appropriate in the public interest with respect to the violation which Williams has been found to have aided and abetted. The Division urges that Williams be suspended from association with any broker-dealer, investment adviser, investment company, or municipal securities dealer for six months.

The respondent argues that any violation he is alleged to have committed is technical and limited in nature; that he has never previously been sanctioned by any authority; that he cooperated with the Division's investigation; and, finally, when contrasted with the sanctions imposed on the other respondents, the Division's request that Williams receive a six-month suspension is disproportionate to his conduct. He contends, further, that if he is found to have violated the Exchange Act, the sanction should be a minimal one, not in excess of that offered by the staff during settlement negotiations.

The appropriate remedial action as to a particular respondent depends on the facts and circumstances applicable to him and cannot be

measured precisely on the basis of action taken against other respondents,[10] particularly where, as here, the action respecting others is based on offers of settlement which the Commission deemed appropriate to accept.[11]

Williams' contention that any sanction should not be in excess of one offered in settlement negotiations is one which the Commission has repeatedly rejected. In Samuel H. Sloan, 45 SEC 734,739, n.24 (1975), the Commission said:

> "If respondents were assured that a trial could never result in a sanction more severe than one suggested by our staff in settlement discussions they would have little, if any, incentive to settle."

The regulation which respondent aided and abetted ISI in violating is neither technical nor trivial, but represents a significant duty imposed on those who wish to engage in the securities business.[12]

10/ Dlugash v. SEC, 373 F.2d 107,110 (2nd Cir. 1967).

11/ Cortlandt Investing Corporation, et al., 44 SEC 45,54 (1969); Haight & Company, Inc., 44 SEC 481, 512-13 (1971).

12/ First Philadelphia Corporation, 46 SEC 1153,1155 (1978).

The books and records provisions of the Exchange Act are the keystone of the surveillance system established to protect investors. The Commission has long held that:

> . . . full compliance with those requirements must be enforced, and registrants cannot be permitted to decide for themselves that in their own particular circumstances compliance with some or all is not necessary. 13/

Review of the record in this case brings clearly into focus a situation in which a registered representative failed to understand and discharge his professional responsibilities, with the result that the firm by which he was employed violated the Exchange Act and an important Rule thereunder. Williams has been in the securities business for ten years with ten different firms, four of them of national stature, and has been a manager and a director. He should be thoroughly familiar with the duties and obligations of a registered representative

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13/ Olds & Company, 37 SEC 23,27 (1956).

and the securities laws and regulations. Indeed, he admitted that he was aware of SEC regulations regarding books and records, but denied that his actions violated them. He nevertheless evaded ISI's own compliance procedures and contributed to the violation.

Upon consideration of all of the circumstances discussed herein, it is concluded that the the public interest will be served by a three month suspension from association with any broker-dealer.[14/]

ORDER

Accordingly, IT IS ORDERED that the respondent David R. Williams is suspended from association with any broker-dealer for a period of three months from the effective date of this order.

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),

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14/ Since these proceedings were not instituted pursuant to Section 15B(c)(4) of the Exchange Act; the Investment Advisers Act of 1940, or the Investment Company Act of 1940, there is no basis for suspending Williams from association with an investment adviser, investment company, or municipal securities dealer as requested by the Division.

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.[15/]

Ralph Hunter Tracy
Administrative Law Judge

Washington, D.C.
December 12, 1983

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