ADMINISTRATIVE PROCEEDING
FILE NO. 3-382

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	
BILLINGS ASSOCIATES, INC. (8-11330) PEARNE BILLINGS JUDSON DOCKSTADER WILLIAM J. IRVING ARTHUR E. LAUDENSLAGER HEDLEY MOORE MITCHEL STEKLOF MORRIS COHEN	

INITIAL DECISION

Warren E. Blair
Hearing Examiner

Washington, D.C.
October 17, 1966

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Before: Warren E. Blair, Hearing Examiner

Appearances: Bert L. Gusrae and
Richard L. Zorn, of the New York Regional Office of the Commission, for the Division of Trading and Markets

Egbert L. Wildman, Jr., for Billings Associates, Inc. and Pearne Billings

David C. Fielding, of Jaeckle, Fleischmann, Kelly, Swart & Augspurger, for Judson Dockstader and Arthur E. Laudenslager

L. Robert Leisner, for William J. Irving

Hedley Moore, pro se

These proceedings were instituted by an order of the Commission dated November 15, 1965 pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 ("Exchange Act") to determine whether the respondents wilfully violated and wilfully aided and abetted violations of the Securities Act of 1933 ("Securities Act") and the Exchange Act as alleged by the Division of Trading and Markets ("Division"), and whether remedial action pursuant to Sections 15(b) and 15A of the Exchange Act is necessary.

The Division alleged, in substance, that in offering and selling and effecting transactions in the common stock of Consolidated Mogador Mines, Ltd. ("Mogador") during the period from June, 1964 to approximately December, 1964, the respondents wilfully violated and wilfully aided and abetted violations of Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder by certain conduct and by making untrue statements and omitting statements of material facts concerning Mogador and its stock. Allegedly, respondents purchased Mogador stock for accounts in which they had beneficial interests while they were engaged in a distribution of that stock; accepted orders for Mogador stock from respondents Mitchel Steklof and Morris Cohen when Steklof and Cohen were not employed as salesmen of Billings Associates, Inc. ("registrant"); sent confirmations to customers who had not ordered Mogador stock, and attempted to induce such customers to accept the unordered securities; and recorded fictitious sales in registrant's books and records. The alleged misrepresentations and omissions concerned a prospective increase in the market price of Mogador

stock and the listing of that stock on the Toronto Stock Exchange, the ownership of Mogador stock by celebrities, and the extent and results of Mogador's mining operation. The Division also charged that registrant, Pearne Billings, Judson Dockstader, William J. Irving, Hedley Moore, and Arthur E. Laudenslager violated Section 10(b) of the Exchange Act and Rule 10b-6 thereunder by the previously alleged purchase of Mogador stock for accounts in which they had a beneficial interest while engaged in a distribution of that stock. Registrant is also charged with wilful violation and Billings, Dockstader, Steklof and Cohen with wilfully aiding and abetting violation of Section 17(a) of the Exchange Act and Rule 17a-3 ("Bookkeeping Rule") thereunder by failing to make and keep current and by making fictitious entries in registrant's books and records. A further charge is that registrant, Billings, and Dockstader again violated Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder by effecting transactions with customers without disclosing that registrant was not keeping current books and records and that neither the financial condition of registrant nor its ability to meet its current obligations could be ascertained. At the commencement of the hearing, the Division broadened its charges through an amendment to the order for proceedings alleging that registrant, wilfully aided and abetted by Billings and Dockstader, violated Section 7(c)(2) of the Exchange Act and Regulation T promulgated thereunder by the Board of Governors of the Federal Reserve System.

General denials of the alleged conduct or assertions of lack of sufficient information to admit or deny those allegations were filed

on behalf of registrant, Billings, Dockstader, Irving, Laudenslager, and Moore, except that registrant and Billings admitted that registrant was not keeping current books and records and that its books and records were so deficient that neither the financial condition of registrant nor its ability to meet current obligations could be determined. Steklof and Cohen failed to file answers within the time provided and are, pursuant to Rule 7(e) of the Rules of Practice, 17 CFR 201.7(e), deemed in default.

All respondents other than Moore, Steklof and Cohen appeared throughout the hearing and were represented by counsel. Moore, appearing pro se, participated during the presentation of the Division's case, but was mostly absent thereafter. Although informed of his rights to call witnesses or testify on his own behalf, Moore chose to submit an unsworn statement which has been made part of the record. Steklof and Cohen failed to appear as respondents at the hearing. Steklof, however, appeared pursuant to subpoena as a witness called by the Hearing Examiner, but, invoking the privilege against self-incrimination afforded by the Fifth Amendment to the United States Constitution, refused to testify.

As part of the post-hearing procedures, successive filings of proposed findings, conclusions, and supporting briefs were specified. Timely filings thereof were made by the Division and by respondents other than Moore, Steklof and Cohen.

The findings and conclusions herein are based upon the record and upon observation of the various witnesses.

Respondents

Registrant, a New York corporation with its principal office in Syracuse, New York, was formed in January, 1963 and had branch offices in Buffalo, New York and Chicago, Illinois. It has been registered as a broker-dealer under the Exchange Act since February 20, 1963. Registrant is a member of the National Association of Securities Dealers, Inc. ("NASD"), and between June 1, 1964 and September 22, 1964 was a member of the Philadelphia-Baltimore-Washington Stock Exchange. Billings is president, director, and a controlling stockholder of registrant.

During the period in question, Dockstader was vice-president and a director of registrant as well as manager of the registrant's Buffalo office. Irving, Laudenslager and Moore were registrant's salesmen under Dockstader's immediate supervision. Neither Steklof nor Cohen was an employee of registrant. Steklof, at the time in question, was a salesman for another securities firm in Rochester, New York; Cohen, as president of Exterior Aluminum Company, operated a home improvement business in the same city.

Canadian Relationships

In the beginning, Billings did not intend to have registrant deal in Canadian securities, and it was not until June, 1964 that registrant became interested in that aspect of the securities business at the suggestion of Joseph Romano, a person theretofore unknown to Billings. According to Billings' testimony, Romano simply walked into registrant's Syracuse office one day in May, 1964 and introduced himself to Billings.

Romano stated that through a mutual friend he had learned of Billings' interest in Texas Gulf Sulphur, which had made the well-publicized find of a rich ore deposit in Canada, and that he had a special Canadian situation that might be of interest to Billings. The ultimate outcome of the conversation was that Billings accepted Romano's invitation to travel to Toronto, Canada to meet Earl Glick, owner of Canadian mining properties.

The next month Billings and Dockstader, accompanied by Romano and Seymour Lippman, a public relations man in Glick's employ, met Glick in Toronto. From there Billings and Dockstader were flown to Timmins, Ontario where they were taken by heliocopter to look at properties in which Glick's companies, among which were National Exploration, Consolidated Negus, Norgold Mines, Gulf Lead, and Kirkland Mines held interests. Upon their return to Timmins, Lippman arranged a meeting with Kenneth Darke, a geologist who had been in the news in connection with the Texas Gulf Sulphur ore strike and who had become an associate of Glick. Darke told Billings and Dockstader that National Exploration's property was so located with respect to that of Texas Gulf Sulphur, it had "as good a chance as anybody to find something valuable." Billings and Dockstader then returned to Toronto,where Billings agreed at Glick's request to have registrant undertake the sale of stocks of Glick's various mining companies. At that time Billings and Dockstader were also introduced to the principals of Jenkin Evans & Company Ltd., a Canadian securities firm. A month or so later, a direct three-way wire was installed which tied registrant's Syracuse and Buffalo offices into that of Jenkin

Evans. Before leaving Canada, Billings also gave Glick an indication of his interest in from 10,000 to 30,000 shares of National Exploration stock, and a few days later bought 30,000 shares for registrant's trading account.

In June and July, 1964, registrant sold about 300,000 shares of National Exploration stock, 200,000 shares of Consolidated Negus, 25,000 shares of Norgold Mines, and 20,000 or 25,000 shares of Gulf Lead Mines. However, the sales commissions generated in connection with sales of these Canadian stocks were much less than realized on American securities because registrant, not being a member of the Toronto Stock Exchange on which the stocks of Glick's companies were traded, was forced to pay a commission to a Canadian member firm. Although registrant passed on that commission cost by charging its customers a commission equal to the Canadian charge plus a 100% "add-on," the net profit to registrant and the salesmen was about 50% of what was enjoyed on a comparable amount of sales of American stock. Citing the low commissions about which registrant's salesmen were complaining and the additional expenses encountered by registrant in handling the Glick companies' stocks, Billings asked Glick for compensation. In response, Glick gave Billings stock of National Exploration and Consolidated Negus.[1/]

1/ Billings insists that he received only 10,000 shares of each stock, that the 10,000 shares of National Exploration were then sold and the proceeds pro-rated among the salesmen and Dockstader on the basis of their sales of Canadian securities, and that proceeds from the sale of the 10,000 Consolidated Negus shares were retained by registrant to defray its expenses. Registrant's books and records, which are considered credible in this respect, indicate that 20,000 shares of each stock were received by Billings and that 10,000 shares of each were retained by him for his personal benefit.

On July 30, 1964 Billings attended a cocktail party in New York City which was given by Irving Kott, a person until then unknown to Billings but known to Romano, who invited Billings to the party. Also attending the party were Kott, Lippman, who was then working for Kott as a public relations man, Romano, and Harvey Segal, then or later said by Kott to be a purchaser of Mogador stock. During the course of the party, Kott briefly referred to Mogador as a "very interesting speculation," and invited Billings to meet with him in the office of L. H. Forget & Co., Ltd., a securities firm in Montreal, Canada.

The next week Billings, accompanied by Romano, went to Montreal and was introduced by Kott to Farrell Vincent, president of Forget & Co. During that meeting, Billings learned that Kott held options on Mogador stock and spoke to Kott and Vincent about the possibility of becoming a member of the Canadian Stock Exchange on which Mogador was listed. On August 10, 1964 Billings, having been told by Vincent that an American could not buy a seat on the Canadian Stock Exchange but that a Canadian corporation could, returned to Montreal to discuss the details of that matter with Kott and Vincent. Kott then offered to turn over a Canadian company "that had money in it" which would serve as a vehicle for Billings' Canadian business in exchange for Billings' agreement to handle Mogador stock. Vincent and Billings also had a discussion concerning their firms engaging in reciprocal business, which resulted in Forget & Co. being connected to registrant's Telex wire. As part of the understanding reached between Billings and Vincent, the cost of an additional girl in registrant's back office as well as a portion of the expense of the Telex was to be

borne by Forget & Co.

Before leaving Montreal, Billings, acting on an offer by Kott to speak to registrant's salesmen about Mogador, telephoned Dockstader to arrange for a luncheon meeting in Buffalo the next day, August 11, 1964. After the meeting, which took place as scheduled, Kott returned to Montreal and registrant's salesmen commenced their Mogador sales campaign. During the next week or so Billings kept Kott advised on registrant's sales of Mogador stock, and Dockstader did the same for Lippman.

Commencing in August, 1964 Billings began to use a third broker-dealer, E. H. Pooler & Co. Limited of Toronto, Canada to effect trades in registrant's trading account and in his personal account. After sales of stock in those accounts, Billings would give instructions to Pooler & Co. to deliver out the stock sold to Jenkin Evans or to Forget & Co. Between August 12 and August 25, 1964 registrant, using the mails, confirmed to customers other than respondents over 960,000 shares of Mogador stock. Registrant purchased the shares for its customers through Jenkin Evans, Forget & Co., and Pooler & Co., and for its own account bought and sold 44,500 and 39,500 shares, respectively.

Consolidated Mogador Mines, Ltd.

Mogador, a Canadian mining company chartered by Quebec in 1946, had approximately 1,600,000 shares of stock outstanding in 1964. Mogador stock was listed and traded on the Canadian Stock Exchange during 1964,

reaching a high for that year of 90¢ per share on August 25.

In 1964 Mogador owned or had interests in three properties located adjacent to each other in the northwestern part of Quebec. None of these properties, referred to as the "Vendome Project," the "Copper-Nickle Project" and the "Boulder Project," had an operating mine during the period in question. In fact, other than core drillings, no work had been done on these projects in the preceding seven years, and no work of any kind had been performed in those years on the Vendome project. Twelve core drillings had been completed on the Copper-Nickle Project in 1964, of which the first eight showed nothing of economic interest. The last four disclosed mineralization of greater interest because of its grade and thickness but were inadequate to establish the existence of any ore reserves. No further drilling was undertaken on the Copper-Nickle Project after September, 1964 because of lack of money, but some drilling took place on the Boulder Project.[2/] The uncontradicted opinion of the Commission's mining engineer who testified as an expert in these proceedings was that Mogador, as of November 1964, had no commercially mineable ore reserves, and that there would be no basis in fact for a representation made on or about August 14, 1964 that Mogador had a strike of silver, copper or nickel or was drilling near a successful mine.

2/ Canadian Mines Handbook, a generally recognized authoritative reference book on Canadian mining companies available to respondents in registrant's offices, reported in its 1964 edition that as of December 31, 1963 Mogador had $878 cash as against current liabilities of $22,664.

Violations By Steklof and Cohen

In speaking to Dockstader in June, 1964 Lippman broached the possibility of referring friends and relatives to Dockstader as customers, and also mentioned that a friend, Charles Brigham, 3/ would probably want to do the same. About the end of June, Lippman introduced Brigham to Dockstader over the telephone; on July 1, Brigham placed his first series of orders for shares of National Exploration stock with Dockstader. These initial orders were followed by additional orders that Brigham placed with Dockstader during July for stock of National Exploration, Consolidated Negus, and Base Metals Mining Corp., another Canadian mining company. At the end of July, Brigham, at Steklof's suggestion, discontinued the practice of calling Dockstader and instead gave his orders to Steklof to relay to Dockstader. At or about that time Steklof and Cohen, both of whom assumed the guise of Brigham, commenced telephoning Dockstader to place orders with him or his secretary. During August, 1964, Dockstader accepted orders for Mogador stock from Steklof and Cohen, at first believing the orders were being given by Brigham, later knowing at least that Cohen was doing so. These orders, purportedly for over thirty customers, totaled nearly 650,000 shares of Mogador stock. In September, 1964, while unsuccessfully attempting to collect payment for over 550,000 of those shares, Dockstader learned that Steklof, as well as Cohen, was responsible

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3/ Actually, Brigham, a wholesale hardware salesman and part-time mutual fund salesman, was a long-time acquaintance of Steklof and had not known Lippman for more than a few days at that time.

for placing those orders. The record establishes that at least nine of the Mogador orders which went unpaid were transmitted by Steklof and Cohen and were not authorized by the persons in whose names the orders were placed and for whose accounts the orders were executed. Obviously, Steklof and Cohen did not intend to make payment for the Mogador shares that they ordered in the names of other purported customers; their undoubted intention was to raise the market price of Mogador stock.

It is also clear that Steklof and Cohen induced various persons of their acquaintance to purchase Mogador stock by extravagent representations of a rapid rise in its market price[4/] and of an ore strike by Mogador,[5/] and that Steklof further represented that certain celebrities in the world of sports and entertainment had purchased "hundreds of thousands" of Mogador shares.[6/] These representations, which had no

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4/ Steklof represented to V.N. that the price would double in two weeks and rise to possibly $2.00 per share from its then price of 75¢; to E.B. that the price would rise in six or seven weeks from 60¢ to $2.00. Cohen represented to A.S. that he was "getting in on the ground floor" and could expect a price rise shortly when news of Mogador's ore strike was announced.

5/ Made by Steklof to V.N. and H.L. and by Cohen to A.S.

6/ To V.N.

basis in fact nor any justification for being made, were gross misrepresentations of material facts constituting fraudulent conduct by Steklof and Cohen in the offer and sale of Mogador stock.[7/]

The Division insists that the unlawful activities of Steklof and Cohen are also attributable to the other respondents because all respondents were shown to have been participants in an "overall scheme to defraud" which was employed in the offer and sale of Mogador stock. The Division argument sounds in conspiracy, as apparently it recognizes by citing criminal conspiracy cases to support its views; essential elements of proof in order to carry that argument are the showing of an unlawful understanding or agreement between at least two of the respondents in the first instance,[8/] and of a joining, albeit even slightly, to the principal scheme by those respondents who were not participants at the outset.[9/]

The record does not support the Division's theory that a conspiracy existed in which all respondents participated, nor for that matter, the existence of conspiracy other than one in which Steklof and Cohen participated and, which, as it turned out, victimized the registrant. With respect to the offer and sale of Mogador stock, Steklof

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7/ See Albion Securities Company, Inc., Securities Exchange Act Release No. 7561, p. 3, (March 24, 1965); Alexander Reid & Co., Inc., 40 S.E.C. 986, 990 (1962).

8/ See Isaacs v. U.S., 301 F. 2d 706, 725 (8th Cir. 1962).

9/ See Gradsky v. U.S., 342 F. 2d 147, 154 (5th Cir. 1965).

and Cohen were placing orders with registrant, not accepting those orders on behalf of registrant. Steklof and Cohen were free at any time to place their orders with any broker, and appear to have chosen registrant simply because they knew that Billings had caused registrant to concentrate on selling Mogador stock. The fact that Steklof and Cohen solicited and induced purchases of Mogador stock through registrant during a period when the other respondents were also interested in soliciting and inducing similar purchases does not, in and of itself or in context with all other relevant evidence indicative of an "overall scheme to defraud," suffice to show an unlawful common undertaking participated in by all respondents.

In view of the defaults in answering the Division's allegations and in appearing at the hearing on those allegations, the allegations against Steklof and Cohen may be deemed to be true. 10/ However, resort to those defaults is unnecessary to the conclusion that Steklof and Cohen, singly and in concert with each other, wilfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Violations By Other Respondents

Misrepresentations in the Offer and Sale of Mogador Stock

(William J. Irving)

Although the active sales campaign of registrant's salesmen did not begin until after the luncheon at which Kott spoke on August 11,

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10/ Rules of Practice 6(e) and 7(e), 17 CFR 201.6(e), 201.7(e).

1964, comparatively isolated sales had been effected by registrant before then. On August 6, 1964 Irving sold 1,000 shares of Mogador stock to each of two customers, S.M. and D.P. At that time Irving had no information concerning Mogador, merely a rumor passed on to him by Dockstader to the effect that Mogador was going "to do some kind of drilling." The purchases by S.M. and D.P. were induced by Irving's repeating that rumor and his statement that the stock had speculative interest.

During the week following the August 11 luncheon at which Kott spoke, Irving sold 19,000 Mogador shares to seventeen customers, including 2,500 additional shares to S.M. and 1,000 more to D.P. In selling the additional shares to D.P., Irving expressed the opinion that if ore was found, Mogador stock would rise by September, 1964 to $1.50 per share from the then approximate price of around 75¢ per share. Other representations made to D.P. were that the drilling program continued to look favorable, that the market price was reflecting the favorable outlook, and that Mogador stock might be listed on the Toronto Stock Exchange.

In selling 5,000 shares of Mogador stock to Mrs. J. G. on August 14, 1964 Irving used similar representations. Mrs. J. G., who appears to have relied entirely upon Irving's advice in connection with her purchases and sales of securities, was advised to sell Norgold, Consolidated Negus and National Exploration stocks on which a loss would be taken and to buy Mogador at 75¢ per share, with a view to

selling out at $1.25 in one or two weeks as a means of making up the loss. Irving stated that Mogador definitely had an ore strike but that it was not to be announced until Billings' clients could buy before the price of the stock jumped. He further expressed the opinion that upon complete disclosure to the public regarding Mogador's strike, the stock would go to $2.25 to $2.50 per share, and indicated his plan was to have her repurchase Mogador stock after the initial profit was taken. In addition, Irving represented that Mrs. J. G. would be able to follow the market actions of Mogador stock in the Buffalo newspapers because it was to be listed on the Toronto Stock Exchange. Irving also embellished his sales talk with a reference to the fact that Frank Sinatra and Jack Benny had made heavy Mogador stock purchases.

Four other customers, Dr. F. G., Mrs. C.K., C.F., and J.D., were solicited and induced to purchase Mogador stock by Irving's use of optimistic opinions and representations concerning the company's drilling program and anticipated results, a quick increase in the price of Mogador stock, and the possible listing of Mogador stock on the Toronto Stock Exchange. Dr. F. G. was told that the stock was likely to rise to $1.50 within about three weeks upon release of news that the company had made an ore strike. Mrs. C. K. made her purchase after Irving said that he thought Mogador stock would go to $3 or $4 in a short time and that if it doubled,the stock should be sold without waiting for the higher prices. Mogador was also represented to her as drilling

in an area close to a successful mine. C.F. testified that Irving represented that Mogador was drilling in the general area of the Canadian holdings of Texas Gulf Sulphur, that Mogador stock had a "good chance to double" to $1.50 on a quick rise, and that the stock would be listed on the Toronto Stock Exchange. J.D., who had relied upon Irving in making previous purchases of Canadian stocks, was advised that Mogador had made an ore strike and that its stock was a good buy. Irving also told J.D. that in 3 or 4 days the stock would increase to 80¢ or $1 per share, representing a rise of between 11¢ and 31¢ on the price paid by J.D. for his 500 shares, and that J.D. would make a better profit by selling his National Exploration stock and buying Mogador.

(Arthur E. Laudenslager)

In addition to 14,500 shares of Mogador stock purchased by 17 customers in the ten days following the August 11 luncheon meeting, Laudenslager sold 1,000 shares of that stock on August 7 to S.S., a customer who asked Laudenslager for the names of two Canadian securities for speculation. Upon Laudenslager's giving him the names of Mogador and Base Metals, which Dockstader had said looked like good situations, S.S. purchased the Mogador stock and also 1,000 shares of Base Metals.

In soliciting a purchase by E.F., who bought 1,000 shares, Laudenslager represented that E.F. would be getting in on the "ground

floor," that Mogador had an ore assay showing high quality ore, that when news of this became public the stock would rise to possibly $1 or $1.25 per share, and that the stock was expected to be listed on the Toronto Stock Exchange. L.P. was told that a good assay report had been received on ore samples taken from Mogador's drill hole, that Mogador had a big vein or "strike" of ore, and that "big money" was coming in from the West that should cause the price of Mogador stock to increase.

In connection with a sale of 1,000 shares of Mogador to D.C., a long-time friend, Laudenslager stated that his office had an interesting item that he was excited about, that drilling indicated richer ore further down, that the assay report which would become public in a day or so would start the stock to move, and that the price "could go to $2.00 or $3.00 or $4.00." A fourth customer, Mrs. G.A., who purchased 500 shares, was informed by Laudenslager that Mogador was just about to reach the copper ore that it had sought for some years, and that the stock would probably triple within a few weeks when the copper vein was reached. During the course of several conversations while having coffee with A.M.C. and others, Laudenslager told A.M.C., a friend of his father, that Mogador was doing exploratory drilling for copper or nickel ore, that drill samples had assayed "rather well," that an increase in the price of the stock was hoped for in the "not too distant future," and that Frank Sinatra would be buying into Mogador. As a result of those conversations, A.M.C. purchased 1,000 shares of Mogador stock on August 14 through Laudenslager.

(Hedley Moore)

Eighteen customers purchased 22,000 shares of Mogador stock through Moore between August 13 and August 18, 1964, inclusive. Three of them, Miss J.M., Dr. S.V., and Dr. R.L.T., testified concerning the representations made by Moore to induce their purchases.

Moore assured Miss J.M., who purchased 500 shares, that Mogador was a "sure thing," that its price would rise from 69¢ to $1.25 within one week as a result of investments of $1,000,000 to be made the following Monday by "Hollywood stars including Frank Sinatra," that the stock would thereafter rise to $6 or $7 per share, and that she couldn't lose. In selling Mogador to Dr. S.V., Moore stated that a "vein or digging" had been found that "looked very good," that the stock was due to rise about "20 points," and that Mogador stock was better than that of Consolidated Negus and National Exploration which Dr. S.V. had earlier purchased from Moore. Induced by those representations, Dr. S.V. sold those other two stocks and purchased 500 shares of Mogador. In attempting to sell 1,000 shares to Dr. R.L.T., Moore represented that a "West Coast syndicate headed by Frank Sinatra and Rocky Marciano" was to invest heavily in Mogador, and expressed an opinion that the stock would rise in a few days to $1.50 to $2. Dr. R.L.T. refused 1,000 shares, but purchased 500 shares at 74¢ per share.

(Judson Dockstader)

In addition to the orders for Mogador stock which he accepted from Brigham, Steklof, or Cohen, Dockstader personally sold 29,000 shares

to 35 customers, with 25,000 of those shares being purchased by 31 customers on August 13 and 14, 1964. Three of his customers were F.D., R.M., and Mrs. C.P.

The credible testimony establishes that Dockstader sold 500 shares of Mogador to F.D. by telling him that the company had made a big copper strike, and that the stock which was then selling at 70¢ would rise to at least $1.50 within a week. Dockstader further stated that "we control it," that persons who had sold Mogador short would have to pay $1.50 per share to cover their short position, and that he intended to sell out his own Mogador holdings at $1.50 to $1.75. Similar representations concerning a prospective price increase in Mogador stock and Dockstader's intention to dispose of his Mogador stock at $1.50 to $1.75 were made to R.M. and Mrs. C.P. Additionally, Dockstader informed Mrs. C.P., who bought 2,000 shares, that Mogador was anticipating a copper strike in a short time, and that the stock would soon be listed on the Toronto Stock Exchange.

Although, as noted before, the evidence does not establish the existence of a scheme or conspiracy in which the other respondents participated with Steklof and Cohen, it is clear that on September 11, 1964 Dockstader and Billings made Steklof registrant's agent for the purpose of offering Mogador stock to H.L., in whose name Steklof had placed unauthorized orders in August. This occurred in the course of a meeting Steklof had with Billings and Dockstader in which he offered as a means of easing registrant's financial distress to try to interest

H.L. in buying Mogador stock. Billings told him to call H.L., and Steklof succeeded in making an appointment with H.L. for that afternoon. At Billings' suggestion, Dockstader accompanied Steklof for the purpose of offering to sell stock in registrant in the event H.L. was not interested in Mogador. At the afternoon meeting, H.L. was told that the results of Mogador's drilling looked fabulous and that the stock should move to much higher ground, about $4, as soon as the assay report was made public within three or four days. H.L. was asked to buy $20,000 to $30,000 of Mogador stock at the market price with the understanding that if he did so he would also be given an option to buy an equal dollar amount at 70¢ a share regardless of how high the market went. When H.L. refused this proposition, Dockstader asked whether he would be interested in purchasing stock of the registrant; again H.L.'s reply was in the negative.

The noted representations used by registrant's salesmen and Dockstader, and by Steklof as agent for registrant in the offer of Mogador stock to H.L. were false, fraudulent and misleading. While the record does not support the Division's contention that registrant was operating a "boiler-room," the false and misleading statements used by respondents are akin to those which have been found to be favored by "boiler-room" salesmen.[11/] There was no justification for expressions of any opinion

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11/ Hamilton Waters & Co., Inc., Securities Exchange Act Release No. 7725 (October 18, 1965); Albion Securities Company, Inc., supra.

to the effect that Mogador stock would double or triple within a week, two weeks, or any period of time. Mogador was known by respondents to have engaged in unsuccessful exploratory work for seventeen years and to be without commercial operations. It is manifest that the extravagant predictions of price rise by Dockstader and the salesmen were predicated entirely upon a belief in the first instance that they would receive, and, a day or so later, that they had received in advance of the public, highly favorable information on the results of Mogador's drilling.

Neither the belief engendered at the luncheon meeting by Kott nor the purported information later received can be accepted as a sufficient basis for respondents' optimistic opinions. The Commission has emphasized repeatedly that "predictions of specific and substantial increases in the price of a speculative security are inherently fraudulent."[12/] There is no question that respondents knew that Mogador stock was speculative; in fact, Billings at the luncheon meeting characterized it as such and compared it to a "crap-game."

References to an "ore strike," "copper strike," or words of like effect indicating Mogador's drilling results were favorable were misleading even if it is assumed that purchasers understood that respondents were referring only to the results of exploratory drilling. Without

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12/ Floyd Earl O'Gorman, Securities Exchange Act Release No. 7959, p. 3 (September 22, 1966); Crow, Brourman & Chatkin, Inc., Securities Exchange Act Release No. 7839, p. 6 (March 15, 1966).

further information disclosing the facts and problems involved in confirming the existence of mineralization sufficient to warrant extraction and in commencing a profitable mining operation, purchasers could not be expected to reach an informed judgment on whether the drilling results were as favorable as respondents' ascription. From the standpoint that purchasers were entitled to infer from respondents' statements, especially in view of predictions of a rapid price rise in Mogador stock, that commercial ore had been found, the representations relating to Mogador's having made an "ore strike" were wholly false.

No valid basis existed for the representation that Mogador stock would soon be listed on the Toronto Stock Exchange. The uncontradicted testimony is that Mogador stock had never been listed on the Toronto Stock Exchange and that no application for listing of Mogador shares had been received by the exchange in the last ten years. The representations concerning investments in Mogador by Frank Sinatra and Jack Benny were equally baseless. The rumor of such interest, apparently originating with Lippman or Romano, appears to have been without any foundation in fact.

Respondents' arguments that the testimony of the investor-witnesses is not credible are rejected with respect to so much of that testimony as is consistent with the findings herein. The pattern of the noted representations to which they testified is too consistent to leave room for substantial doubt as to the credibility of the witnesses. Moreover, the teletype that Dockstader sent on August 13 to registrant's

Chicago office concerning the Mogador "deal," the presence of commercial ore, and the prospective price rise in the stock is consistent in character with the testimony in question, and indicates the likelihood that representations of similar nature were used by Dockstader and the salesmen under his supervision in inducing their customers to buy.

Respondents further argue that because investors were told or knew Mogador stock was a sheer speculation, the omissions of facts concerning Mogador's operations and earnings would not be misleading. Even if respondents had limited their solicitation to a representation of that type, which they did not, the argument would fall because of respondents' failure to disclose adverse information such as Mogador's previous fruitless search for ore and its lack of funds for operations or, if it were the case, the fact that no information regarding the company and its condition was known.[13/] However, the record is clear that in addition to being told that the stock was a speculation, investors were told that Mogador had favorable drilling results and that a price rise in its stock could be anticipated. In the light of those optimistic statements, all other considerations aside, the failure to disclose the negative factors about the company was misleading.

The conclusion follows that Irving, Laudenslager, Moore, Dockstader and Billings wilfully violated Section 17(a) of the Securities Act and

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13/ See Floyd Earl O'Gorman, supra; Sutro Bros. & Co., Securities Exchange Act Release No. 7053, p. 9 (April 10, 1963).

Section 10(b) and Rule 10b-5 thereunder and, since registrant can act only through its employees and agents,[14/] wilfully aided and abetted wilful violations by registrant of Section 17(a) of the Securities Act and of Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder. As to Billings and Dockstader, the conclusion is based upon their responsibility for Steklof's misrepresentations to H.L., upon their active encouragement to registrant's salesmen to offer and sell Mogador stock on the basis of rumors and unverified information, and upon Dockstader's misrepresentations to his own customers. By reason of the wilful violations of its agents and employees, registrant is also found to have wilfully violated Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder.[15/]

Violations of Rule 10b-6[16/]

During the period from August 12 through August 26, 1964 when registrant was actively engaged in soliciting its customers to purchase Mogador stock, registrant bought 64,500 and sold 39,500 shares of Mogador for its own account; Billings purchased 12,000 and sold 14,000 shares for his own account; and Dockstader, Irving and Laudenslager, respectively, purchased 3,000 shares, 2,000 shares, and 500 shares for their personal

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14/ Sutro Bros. & Co., supra.

15/ Ibid.

16/ Subject to various exceptions, Rule 10b-6, 17 CFR 240.10b-6, one of the anti-manipulative rules, prohibits a broker-dealer or other persons making or participating in a distribution of securities from bidding for or purchasing securities of the same class and series.

accounts.

The Division contends that the respondents who purchased Mogador stock were participating in a distribution of Mogador stock at the time of their purchases, arguing that the intensive campaign by respondents to sell Mogador which resulted in orders being accepted for nearly 950,000 shares amounts to a "major selling effort" within the meaning of "distribution" under Rule 10b-6. Respondents urge that because registrant effected its sales to customers on an agency basis and purchased Mogador stock from another broker-dealer at the market, no distribution within the meaning of Rule 10b-6 took place, and that the cases cited by the Division are inapposite because in each case principal rather than agency transactions were involved in the distributions which were found to have been made.

If the record supported the position that registrant did nothing more than act as an ordinary broker soliciting its customers to buy Mogador and acting as their agent in purchasing that stock for them on the market, respondents' argument would have merit, for Rule 10b-6 was designed to preclude certain manipulative techniques and not to prohibit a broker or its salesmen from purchasing for their own accounts securities which they are also aggressively recommending for purchase by their customers. Here, however, the situation of the respondents is entirely different from that necesssary for their argument to prevail.

It is evident that registrant's interest in Mogador was the consideration to be received by Kott for helping Billings become a

member of the Canadian Stock Exchange.[17] Billings also knew when he agreed to have registrant sell Mogador that Kott had options covering thousands, possibly hundreds of thousands, of Mogador shares. In view of these facts, and Kott's eagerness to have Mogador sold in the United States, it is inconceivable that Billings was not aware that sales of Mogador by registrant would probably involve sales of shares that Kott or the company would funnel into the market. In any event, the number of Mogador shares available for purchase by or through registrant over 1,000,000 of 1,600,000 outstanding in the period in question, when taken in combination with the relationship with Kott, warrants an inference that a distribution by Kott and his associates, or other Canadian principals was taking place. Furthermore, registrant's sales during an eight day period of 39,500 shares for its own account, a sales volume equal to nearly 2.5% of Mogador's outstanding stock, may well be considered, under all of the circumstances, a major selling effort amounting to a distribution under Rule 10b-6.[18]

Registrant's purchases of Mogador stock for its own account during a period when it was participating in a distribution of that stock constituted a wilful violation of Section 10(b) of the Exchange Act and Rule 10b-6 thereunder, and Billings, who directed the activity in the

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17/ As noted before, the assistance was to include a Canadian 'company that had money in it."

18/ See S.E.C. v. Scott Taylor & Company, Inc., 183 F. Supp. 904 (S.D.N.Y.); J. H. Goddard & Co., Inc., Securities Exchange Act Release No. 7321, p. 4 (May 22, 1964).

trading account, and Dockstader, who became accountable for registrant's violations in his position of vice-president and director, [19/] wilfully aided and abetted those violations of registrant. Billings and Dockstader, both of whom knew or should have known that they were participating in a distribution of Mogador stock at the time they made purchases of that stock for their own accounts also wilfully violated Section 10(b) of the Exchange Act and Rule 10b-6. It does not appear that Irving, Laudenslager or Moore participated in a scheme to violate Rule 10b-6, nor that Irving or Laudenslager knew or had sufficient reason to believe that a distribution of Mogador was in process at the time that they bought that stock for themselves. Accordingly, they are not found to be responsible for violations of Rule 10b-6.

Inability to Determine Registrant's Financial Condition and Violations of Bookkeeping Rules [20/]

Registrant, Billings, and Dockstader admitted in their answers to
to the Division's charges that on or about September 14, 1964 registrant's books and records were deficient to the extent that neither registrant's financial condition nor its ability to meet its obligations as they arose could be ascertained. These respondents also stipulated that in connection with 33 transactions effected by registrant during the period of September 1 through September 14, 1964 the customers were not informed that registrant was not keeping current books and records nor that registrant's

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19/ Aldrich, Scott & Co., Inc., 40 S.E.C. 775, 778 (1961).

20/ Rule 17a-3, 17 CFR 240.17a-3.

books and records were so deficient that respondents could not ascertain registrant's financial condition or ability to meet its obligations as they arose. In addition, the testimony of the person supervising registrant's books and the stipulated testimony of the Division's securities investigator establish that material bookkeeping deficiencies dated from June, 1964; that registrant's financial condition could not be determined during August nor during September, 1964, when transactions were being effected for customers; and that commencing in August, registrant stopped paying its bills because of lack of funds.

By engaging in the securities business, registrant made an implied representation to the public and to its customers that it was ready and able to meet its obligations in the ordinary course of business.[21/] The representation is misleading, when the broker-dealer is unable to ascertain its financial condition and does not affirmatively disclose that inability to customers before accepting their funds or securities. It is only by adequate disclosure of the unusual situation besetting the broker-dealer that a customer can judge for himself, as he is entitled to do, whether to assume the additional risk of relying upon an assurance of financial responsibility that is not founded upon books and records kept in the ordinary course of business in compliance with regulatory requirements. That the risk in doing business with a broker-dealer whose financial condition cannot be ascertained is considerably increased is well illustrated by the experience of registrant's customers who were refused

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21/ Ferris & Co., 39 S.E.C. 116, 119 (1959).

payments of their credit balances and who found registrant's doors temporarily closed.

Respondents' arguments that any violations arising out of the failure to make and keep current registrant's books and records and the failure to disclose the inability to determine registrant's financial condition cannot be considered to be "wilful" are rejected. Wilfulness for purposes of Section 15(b) of the Exchange Act does not require that a person know that he is breaking the law, but only that he intended to do the act that resulted in the violation.[22/] Measured by that standard, there is no question that respondents' violations were wilful. As officers and directors, Billings and Dockstader bear the responsibility for registrant's misconduct in continuing to do business without compliance with the bookkeeping rules under the Exchange Act and for its misrepresentation, as well as their own, as to registrant's solvency and ability to pay its obligations.[23/] Dockstader's failure to exercise any control or supervision over the activities in registrant's principal office cannot be excused on the offered basis that he was in Buffalo and without access to registrant's books and records. When the position of vice-president and director of registrant was accepted, he assumed the duty to keep himself informed and to make certain that registrant's operations were being conducted in compliance with the Exchange Act.[24/]

22/ Hughes v. S.E.C., 174 F 2d 969, 977 (D.C.Cir. 1949); Churchill Securities Corp., 38 S.E.C. 856, 859 (1959).

23/ Aldrich, Scott & Co., Inc., supra.

24/ Ibid.

It is concluded that registrant, Billings and Dockstader wilfully violated and wilfully aided and abetted violations of Sections 10(b), 15(c)(1) and 17(a) of the Exchange Act and Rules 10b-5 and 15c1-2 and 17a-3 thereunder. The wilful violations of the bookkeeping rules are limited to the failure to comply with the requirement that registrant's books and records be kept current. The record does not support the allegations that fictitious entries were made in those books and records.

Improper Extension of Credit

From June 5, 1964 through September 4, 1964, registrant failed to promptly cancel or liquidate 183 transactions in the special cash accounts of 73 customers who did not make full payment within seven business days as required by Regulation T promulgated by the Board of Governors of the Federal Reserve System. Many of these accounts were delinquent in payment for two to three weeks and a number of them for five to ten weeks. The extension of credit by registrant to those accounts for whom the unpaid for transactions were effected was a wilful violation of Section 7 of the Exchange Act and Section 4(c)(2) of Regulation T. Billings and Dockstader, by reason of their positions as officers and directors and the concommitant responsibilities of those positions, [25/] are found to have wilfully aided and abetted that violation.

Public Interest

Respondents' wilful violations of the Securities Act and Exchange Act require consideration of the sanctions which are necessary in the

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25/ Ibid.

public interest. In this connection, the various mitigating factors submitted by respondents, their backgrounds, and their records in the securities business have been carefully weighed.

The actions of Steklof and Cohen constituted a deliberate and calculated attempt to profit at the expense of the investing public or registrant. The callous disregard of the public interest displayed in the conception and execution of their scheme as well as during the aftermath of its failure clearly show a need to bar each of them from further association with any broker or dealer.

Billings and Dockstader, and registrant through them, also displayed complete lack of concern for the interests towards their customers. Although victimized by Steklof and Cohen, they were, in fact, victims of their own cupidity, to which Kott appealed in Billings and to which Dockstader succumbed as a result of Lippman's overtures. Accordingly, neither the financial losses suffered nor the problems still remaining as a consequence of the misconduct of Steklof and Cohen are viewed as mitigating considerations. However, because it appears that no previous disciplinary action by any regulatory agency has been required against Billings or Dockstader, and because it does not appear that the investing public would be endangered if they were permitted to engage in the securities business under adequate supervision, an appropriate sanction for each would be a bar from association with any broker or dealer with a right, after one year, to apply for permission to re-enter the securities business under proper supervision. The

misconduct attributable to registrant is of such aggravated character as to warrant revocation of its registration as a broker-dealer and expulsion from membership in the NASD.

Although the violations committed by Irving, Laudenslager and Moore are serious, these respondents did not participate in "boiler-room" activities and sold only a comparatively modest amount of Mogador stock. In addition, they apparently have not had any difficulties with regulatory authorities heretofore. However, during the hearing Irving displayed a lack of candor in testifying, and, as indicated by the termination letter written to him by the securities firm which next employed him after registrant, an absence of appreciation for the standards of conduct expected of him in the securities business. Under all of the circumstances, it appears that a suspension from being associated with a broker or dealer for four months should be imposed against Irving, and for three months against Laudenslager and Moore.[26/]

Accordingly, IT IS ORDERED that the registration as a broker and dealer of Billings Associates, Inc. is revoked and the company expelled from the National Association of Securities Dealers, Inc.; and that Pearne Billings, Judson Dockstader, Mitchel Steklof, and Morris Cohen are barred from association with a broker or dealer, except that either Pearne Billings or Judson Dockstader may, after a period of one year from the effective

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26/ 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.

date of this order, become associated with a registered broker-dealer in a non-supervisory capacity upon an appropriate showing to the staff of the Commission that he will be adequately supervised.

IT IS FURTHER ORDERED that William J. Irving is suspended from association with a broker or dealer for a period of four months from the effective date of this order, and that Arthur E. Laudenslager and Hedley Moore are each suspended from association with a broker or 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 Rules of Practice.

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

Warren E. Blair
Hearing Examiner

Washington, D. C.
October 17, 1966