ADMINISTRATIVE PROCEEDING
FILE NO. 3-6803

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

WILLIAM L. KICKLIGHTER, JR.
ROBERT Q. BROWN
TERRY G. EURICH

(HERETH, ORR & JONES, INC.
FILE NO. 8-19296)

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U.S. SECURITIES AND
EXCHANGE COMMISSION

# INITIAL DECISION

Washington, D.C.
February 21, 1989

Jerome K. Soffer
Administrative Law

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**APPEARANCES:** Joseph L. Grant, William, C. Woodward, Jr. and Carolyn R. Bregman, of the Atlanta Regional Office, for the Division of Enforcement.

Joel S. Forman (Fishman, Forman & Langer), counsel for William L. Kicklighter, Jr.

Candler Crim (Crim & Bassler) counsel for Robert Q. Brown

Terry G. Eurich, _pro se_.

**BEFORE:** Jerome K. Soffer, Administrative Law Judge

On March 12, 1987, the Commission issued an order instituting public proceedings pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"), naming as respondents Hereth, Orr & Jones, Inc. ("Registrant"), Jack R. Hereth, David May, Alan R. Holman, William L. Kicklighter, Jr., Wallace M. Slatinsky, Robert Q. Brown, Larry A. Rupe, and Terry G. Eurich.

The Order alleges that between May 18 and November 18, 1983, the Registrant and respondents Kicklighter, Slatinsky, Brown, Rupe and Eurich willfully violated and willfully aided and abetted violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") as well as Section 10(b) of the Exchange Act and Rule 10(b)-5 promulgated thereunder, in the offer and sale of Polk County Industrial Development Authority First Mortgage Health Care Facilities Revenue Bonds ("Polk County Bonds").

The Order further charges that during the same period respondents Hereth, May and Holman failed reasonably to supervise the activities of Kicklighter, Slatinsky, Brown, Rupe and Eurich.

The Order directed that a public hearing be held before an administrative law judge to determine the truth of the allegations set forth and what, if any, remedial action is appropriate in the public interest for the protection of investors. The hearing was commenced on August 17, 1987 and concluded on August 21, 1987 in Atlanta, Georgia. At the hearing, respondents

Kicklighter and Brown were represented by counsel; respondent Eurich appeared _pro se_. Respondents Slatinsky and Rupe failed to appear.

Pursuant to respective offers of settlement by Registrant, Hereth, May and Holman, the Commission issued an order dated March 16,1987 making findings and imposing remedial sanctions against those respondents, who neither admitted nor denied the findings made. Thereafter, by respective orders adopted January 20, 1988 (SEA Release Nos. 25274 and 25275) the Commission found respondents Slatinsky and Rupe in default for failure to appear at the hearing and made findings and imposed remedial sanctions against them. The findings contained in all of these orders, as stated therein, are not binding upon any other respondents in this proceeding. Only Kicklighter, Brown and Eurich remain as respondents.

Following the close of the hearing, the parties filed successive proposed findings of fact and conclusions of law together with supporting briefs. The Division of Enforcement also served a reply brief.

The findings and conclusions herein are based upon the evidence as determined from the record and from observing the demeanor of the witnesess. The preponderance of the evidence is the standard of proof that has been applied. [1/]

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1/ See _Steadman_ v. _S.E.C._, 450 U.S. 91 (1981).

INTRODUCTION

Hereth, Orr & Jones, Inc., became a registered broker-dealer pursuant to Section 15(b) of the Exchange Act effective March 1, 1976. This registration was revoked on March 16, 1987, in the settlement order heretofore mentioned. It maintained its principal office in Atlanta, Georgia, with branch offices in Ohio, California, Kentucky and Florida. It specialized in the financing of nursing homes and life-care facilities and the underwriting of industrial revenue bonds. From 1980 through 1983, registrant's sales force grew from approximately 8 to about 120 salespersons. In 1981, registrant underwrote 15 new issues of securities. Between 1982 and 1983 registrant underwrote approximately 50 new issues. During that period it was considered the leader in health care facility underwriting. In addition to underwriting, it also traded in the secondary market, both in rated and unrated bonds. It was a large advertiser in the Wall Street Journal and other financial periodicals, focusing on the offer of high-yield, tax-free income bonds. Registrant proclaimed itself an "emerging giant".

Of the total issues handled, only seven involved life-care offerings, six of which ultimately went into default, the exception being "Lynbrook Square" in Atlanta. Registrant ceased doing business in December, 1983.

Of the named respondents, Hereth was president, May was senior vice-president in charge of retail sales, Holman was vice-president of sales and training and the remaining five

respondents were all registered representatives of the registrant during their entire periods of employment with it.

Respondent Kicklighter is 29 years of age and has completed 2-1/2 years of college. He entered the securities industry in 1980 with registrant and remained there until it went out of business.

Respondent Brown is 43 years of age and holds a bachelor of science degree in business administration. Between 1972 and 1982, he was employed by other broker-dealers as a securities salesman. In February 1982, Brown became associated with registrant as a sales representative, primarily of municipal bonds, and continued as such until it went out of business.

Eurich is 40 years of age and has attended one year of college. He became associated with the registrant as a securities salesman from October 1980 until it went of of business in December of 1983.

All three respondents are currently associated with respective broker-dealers in Atlanta, Georgia, as registered representatives (Brown as a vice-president in charge of sales)

## The Underwriting

On October 1, 1982, the Polk County (State of Florida) Industrial Development Authority ("Issuer") issued $53,170,000 worth of First Mortgage Health Care Facilities Revenue Bonds (Royal Regency of Winter Haven, Inc. Project) Series 1982 which was underwritten by registrant. The bonds were offered in $5,000

units with yields ranging between 13.5 and 15.25 percent. The entire offering was sold within a day or so after its issue.[2/]

Royal Regency of Winter Haven, Inc. ("Royal Regency"), a Florida not-for-profit corporation organized on February 25, 1981, borrowed the proceeds from the sale of the bonds to acquire and convert into residential units for the elderly an existing 460-unit apartment complex, and to construct an adjoining recreational and nursing care facility ("the project"). Only about $30 million of the proceeds of the offering was to be used to acquire the property and construct the addition. The remainder of the proceeds was to be used for the payment of commissions ($5,000,000) and initial interest on the bonds ($16,500,000). Royal Regency engaged Royal Care Communities, Ltd. ("RCC"), a Georgia Limited Partnership, to develop and market the project. It also retained registrant as managing underwriter for the bond issue.

Royal Regency obligated itself to provide "continuing care" to the residents of the project. The concept of continuing care involves an agreement whereby the residents acquire a non-transferable limited right to life-time occupancy in a residential environment, which includes health care and support services, in return for an entrance fee ranging from $42,000 to

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2/ During the initial public offering, Kicklighter sold approximately $600,000 to $700,000 face amount of the bonds, and Brown sold about $750,000 face amount. Eurich also sold bonds during the offering, the amount of which is not shown in this record.

$97,000, monthly service fees ranging from $480 to $1,135 and certain additional charges.

Because of various problems the project was declared in default on or about December 12, 1983, as reflected in a notice to bondholders by Bank of the South, the indenture trustee for the project. Registrant ceased brokerage operations on December 19, 1983, when it began the process of self-liquidation supervised by the NASD and completed without customer account losses. Subsequent to the default of Royal Regency, Bank of the South commenced liquidation of the project and to date has returned to investors approximately $27 million or about one-half of the total bonds sold. No further distribution is contemplated.

## The Prospectus

Each of the respondents indicates that he had read the Official Statement dated October 18, 1982 prepared in connection with the initial offering of the Polk County Bonds and was aware of its contents, specifically the "risk factors" outlined herein.

Among the risk factors set forth are the following:

(1) The bonds involved "substantial risk" and were "highly speculative in nature".

(2) The bonds would not be general obligations of the issuer Polk County nor constitute an indebtedness of any level of government in the State of Florida, but would be payable solely from the operating revenues and receipts in connection with the project.

(3) Royal Regency had no appreciable assets other than its interest in the project. Financial obligations had to be met from entrance fees derived from the successful marketing

of continuing care agreements, monthly service fees, investment income and rentals from existing tenants.

(4) The single-most important factor to affect the financial feasibility of the project was the ability of the developer to market continuing care agreements, and significantly, the prospectus states that "if the developer fails to obtain continuing care agreements for 95% of the project's residential units, the company's [Royal Regency's] revenues will be insufficient to pay debt service on the bonds". (underling added).

(5) Because of its limited resources, the ability of Royal Regency to complete facilities, to meet unexpected cost overruns and to avoid a default, would likewise depend upon revenues from the sale of continuing care units and the achievement of the 95 percent of occupancy stated.

## The After-Market

Following the sale of the entire initial offering on or about October 1, 1982, the registrant commenced maintaining an active secondary market for the bonds continuing until it ceased operations in December 1983. During this period, the respondent-salesmen continued to sell the Polk County Bonds to their customers.

It is noted that early on, from around May through August of 1983, the bonds were being sold at a premium above par reaching as high as a price of $109. Commencing with the early part of September until sales were discontinued in December, the bonds were sold at declining prices reaching around $94.

In the Spring of 1983 rumors were circulating in registrant's offices concerning problems at the project, that sales of life-care units were lagging, and that certain salesmen

were advising their clients to sell their holdings of Polk County Bonds.[3/]

In order to allay these rumors, Hereth called a meeting on May 18, 1983, which was attended by all sales personnel including respondents, lasting some forty minutes. At this meeting, the fact of lagging sales of the life-care units was disclosed and discussed. Hereth attempted to allay the concerns of the salesmen by offering an upbeat presentation in which he asserted that he was on top of the situation and that even though there had been problems with lagging sales, there was ample time to market the units since there were funds set aside and available to pay bond interest for the next two-and-a-half years. He cautioned the salesmen against advising their customers to sell out as this might precipitate a collapse in the marketing of these bonds to the detriment of those customers (as well as registrant) holding them.

This meeting was followed by two written memoranda or "updates" from registrant's research department to its salesmen on June 15 and again on August 15, and one "Research Report"

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3/ On May 17, 1983, Holman, the vice-president in charge of sales wrote a "confidential" memorandum to Hereth, the president, in which he expressed a concern that the rumors could precipitate a stampede of sell orders for the Polk County bonds. Holman was concerned because he personally had sold some $800,000 (face value) of these bonds and was confused as to what advice to give his clients, or whether he should remain silent. Holman's memorandum also pointed out that brokers were "pestering" registrant's research department, the developer, Royal Regency and others for information.

dated September 1, 1983, all of which were issued by registrant to comply with requests of the sales personnel seeking information as to the current status of the project. 4/

**The June 15, 1983 Update**

This first update dealt with the lagging marketing program and the status of project and construction development. It pointed out that the marketing agreement had required the developer, RCC, to have no less than 40 residential units sold by the end of April, 1983, with an additional 40 units to be occupied at the end of each of the next ten quarterly periods. As of the time of the update, only four units had been sold and occupied, and deposits received for 30 units (of which five had requested cancellation). Two successive marketing agents already had been hired and terminated by the developer. Several reasons were cited for the lagging sales, among them the fact that some of the facilities and exterior alterations had not as yet been completed,and that prospective life-care residents objected to living adjacent to existing renters occupying unrenovated units.

The report further stated that Royal Regency had alleged that the developer RCC was in default under the development agreement and was threatening to terminate the agreement if the

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4/ Brown and Eurich admit receiving these updates. Kicklighter does not specifically recall receiving the ones dated June 15, and August 15. However, since distribution would have been made to him in the usual course, and he does not deny receiving them, it is assumed that he did.

alledged defaults were not cured. 5/

Additionally, the update asserted that Royal Regency was negotiating revisions to the development agreement, including a loan by the developer of $1,500,000 to the project and the meeting of certain occupancy requirements on a monthly basis. It alleged that construction remained on schedule and that, despite lagging sales, monies were available to make interest payments to bondholders for the next 30 months.

This update was followed by an "urgent" memorandum dated June 16, from Timothy McNally, in charge of trading at registrant, which was sent to all sales personnel. In it, he refers to the "latest report from Research" (the June 15 update?) as setting off "another wave of anxiety over the above issue". McNally reported that there was no retail or wholesale market for the bonds which prevented the maintaining of a bid side market and that "simply put, there is plenty of supply and no demand for Polk County (Winter Haven) bonds".

## The August 15, 1983 Update

This update, marked "for internal use only" stated that there were eight move-ins as of that date, 25 reservations and

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5/ The alleged "default" did not pertain to the performance of the project itself. None of the respondents related this allegation of a failure by the developer to any of their clients, although the Official Statement had stated that the loss of RCC's services would have a material adverse impact on the prospects of the project.

two applications. It shows hardly any improvement over the sales figures given in the June 15, 1983 update except for two additional move-ins. Revised sales goals were set up calling for the sale of 20 units per month through January of 1983 (as compared with a total of 8 since sales had first begun).

The update also alleged that the developer hired new management for the project, that additional directors were added to the board, that construction was on schedule, that the project had been visited by Hereth who was satisfied with its status, and would continue to review the developer's performance.

The update ends with a positive outlook, stating that registrant had believed and continued to believe that the project was "viable". It also held out the prospect for a possible re-financing the following May, 1984 of the short term bonds if the sales schedules were not met.

<u>The September 1, 1983 "Research Report"</u>

This report was prepared by registrant and made available for distribution to customers of the sales force. It basically restated most of the information found in the August 15 update. However, it set forth a different sale schedule requiring much fewer monthly sales (10 in September) until the end of 1983 and a far greater schedule for January through April of 1984 (193 in April). It showed a decline in the number of deposits 22 and an increase of only one unit in the number of move-ins. The report asserted that an expanded sales effort was going to be made, that construction was continuing on schedule, and that the developer

had agreed to loan $1,500,000 to the project. The report asserted that "despite lagging sales" monies were available in the funded interest account to make payments to bondholders for another 28 months and if the sales schedules were not met, additional capital would be generated by the refinancing of the short-term bonds. Registrant again affirmed its belief in the viability of the project.

The November 4, 1983 Sales Meeting

Because of the continuing rumors concerning problems at the Polk County Project, management of the registrant called another meeting of its sales personnel, including the three respondents herein, designed to dispell the rumors and to encourage the salespersons to continue selling the bonds. 6/

At the meeting, Hereth, registrant's president, announced that the original developer of the project had been released for

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6/ This meeting was videotaped at the time it was held and respondents Kicklighter and Brown jointly offered the tape as an Exhibit. I indicated that I would receive a written transcript of the meeting as an Exhibit supplemented by the videotape. Such a transcript has been made by these respondents but counsel for the Division objects to its admittance on the grounds that it was inaccurate and incomplete. It is recognized that preparing an accurate transcript from the videotape of the meeting attended by a substantial number of people presents certain difficulties. However, the transcript as presented together with the testimony given at the hearing permits determination generally of the information that was being passed out by management. Viewing the tape itself discloses the over-all upbeat attitude generated by management intended to overcome the rumors of problems at the project. Hence, the transcript offered by the respondents, even though flawed to some extent, together with the original tape will be received in evidence as Exhibit "K-G".

failure to perform, particularly in meeting sales schedules, which already had twice been revised downward. He described the situation that only 12 residents had bought and moved in, instead of the 40 required, that the failure to complete the community and nursing home facilities as scheduled contributed to the lack of sales. As Hereth stated (page 5 of the meeting transcript):

> In all, * * * the project is behind. It's still behind in time. The 12 units - there are 12 residents moved in, rather than the 40 that are supposed to be on the new program and there are 23 ten percent depositors. All right? With no community building and a nursing home there, they had not been able to maintain a presale. They say, what do you have to sell? We have no food, we have no community building, we have no activities building. All we have is our units. There is nothing for us to move into.

Registrant and management's attitude at the meeting was decidedly upbeat, emphasizing again what it considered the favorable aspects of the project, such as the replacement of the developer with one Jack Clark, who enjoyed a good reputation for having successfully developed another life-care project, "Lynbrook Square", after encountering problems of a similar nature.

Registrant's most optimistic projection was based on the allegations that there was some $14 million remaining from the original underwriting which would be available to pay bond interest for the next 2 years, thereby providing more than enough time to complete the community and other buildings, to have the renters moved out, and to sell an appropriate number of life-care units. It also claimed to be considering selling limited partnerships to bond holders to raise additional capital.

The salesmen present at this meeting were urged to continue selling the Polk County bonds, to disregard rumors of impending disaster and to ignore pessimistic articles in various publications concerning municipal bonds issued to finance nursing care facilities. Registrant took pains to reassure those at the meeting that things would be turned around, emphasizing its continuous belief in the viability of the project. Above all, the salespersons were advised again to ignore those among them who were counselling their customers to liquidate their positions.

Several of registrant's former employees testified in substantial agreement as to the general knowledge among the salespersons that the Polk County project had been experiencing difficulties including lagging sales, and to the confident and exuberant mood generated by respondent's management at the two sales meetings and in the written updates. These witnesses included the firm's trader, Timothy McNally, the sales manager, Alan R. Holman, and a number of salespersons including five whose testimony was excluded as being cumulative.

Suspension of Trading

Some time in the Summer of 1983, the market for Polk County bonds had so deteriorated that McNally, as the firm's trader, undertook to stop trading in them. When Hereth heard of this, he ordered McNally to reinstate trading immediately, which he did. The total period of suspension lasted about one day.

As seen, the continuation of trading was necessary to protect registrant's long position in these bonds. This, in turn, explains why its management had to reassure its salespersons as to the viability of the project and to convince them to continue their sales efforts.

The fact of suspension of trading by McNally was not made known generally to the staff, except to those sales persons who may have come to him during that day to ask for a bid. [7/]

Holman, the sales chief, learned in late November of 1983 that the trustee was withholding funds for the Polk County Project. He made an investigation among people involved with the project and found that the entire venture was "a total shambles", that marketing was in a mess, that the developer was fighting with everybody and that the construction phase was in a bad state. As a result of this investigation, he felt that he had been deceived by registrant's management.

According to Holman, the sales staff would not have been allowed access to the files maintained by the trading department nor by the underwriting department. The only information available to them would be that emanating from the research department in the various updates and other memoranda issued. McNally, on the other hand, asserts that the sales personnel were free to see the trading files maintained on securities for which

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7/ Nor was it disclosed to the salespersons that prior to the initial underwriting, several members of registrant's financial committee had opposed the handling of the Polk County issue as being undesirable both in size and nature.

registrant was making a market. Such a file would include up-to-date financial statements, the original prospectus, and similar material.

## Sales by Respondents

All three respondents had participated in the original underwriting sales of Polk County bonds, and had read the prospectus issued in connection with the offering. They all were aware of the risk factors set forth in the prospectus and as outlined hereinbefore, particularly the importance of selling 95 percent of the life-care units without which the project would fail.[8/]

Respondents had also learned, during the Spring and Summer of 1983, of rumors relating to problems with the marketing of life-care units and that sales were behind schedule. They all attended the meetings called by registrant's management on May 18 and November 4, 1983, where the problems were disclosed and discussed. They were advised that the developer was being replaced, and that there were difficulties with existing renters still on the premises. They also had received the two written "updates" on June 15 and August 15, and the September 1 research report which restated the problems involved.

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8/ Both Eurich and Kicklighter point out that there was no time limit specified in the prospectus by which the units had to be sold. Since more than a year had elapsed between completion of the underwriting and the events leading up to the default, more than a reasonable time had passed for substantial sales to have been made.

However, these respondents were impressed by management's assurances that efforts were being made to turn things around and particularly by the statements that there were sufficient funds on hand to pay bond interest for the next 2 to 2-1/2 years which would afford adequate time to put the project on its feet, that the new developer had a history of successful projects of a similar nature, and that the problems with renters and completion of facilities were being corrected. Respondents continued their selling of the bonds in reliance upon these assurances.

William L. Kicklighter, Jr.

Between May 10 and November 18, 1983, Kicklighter sold approximately $1,270,000 face amount of Polk County bonds in some 72 transactions to 22 of his customers. However, after deducting for cancellations, his net sales totaled about $550,000 face value or 110 bonds. His gross commissions for these sales approximated $25,000 of which he received a net of less than $12,000.[9/] Four of Kicklighter's customers in the Polk County bonds testified concerning these transactions.

1. Peter Murad became a client of the registrant some time between 1980 and 1982 when he answered an advertisement offering high-yield tax exempt securities. He claims to have advised Kicklighter, who became his salesman, that he was investing retirement funds and therefore desired minimal risk. He is an

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9/ In the year 1983, Kicklighter's sales earned gross commissions of $440,000 of which he received 45% or approximately $198,000.

engineer employed in a defense-oriented industry. Murad had been in the securities market for the past 30 years, having invested in convertible bonds, rated and unrated municipal bonds, stocks, commodities, and in so-called "penny stocks". He claims that in his trading he does not study the market or prospectuses but relies principally on his broker's advice.

Previously, Kicklighter had recommended and Murad had purchased several health-care non-rated municipal bonds, one of which was successful and another which ultimately defaulted.

In October of 1983, Kicklighter had solicited Murad to purchase Polk County bonds, assuring that they were "good", "solid" bonds, of the same quality of previous purchases by him. They discussed price, the amount of discount and the fact that the bonds would mature in 4 years thereby offering a greater rate of return. Murad claims that he was assured by Kicklighter that the fact that the bonds were not rated did not necessarily make them a more hazardous investment than rated bonds providing a lesser return.

As a result of this solicitation, Murad purchased a total of $20,000 (face value) of Polk Bonds on November 9 and November 18, 1983 at a discounted price of $94. He does not recall receiving any written material concerning the bonds, which he would have ignored anyway.

2. Harvey Rose, an aeronautical engineer, called Kicklighter in October of 1983 upon the recommendation of his friend, Murad, to discuss the desirability of investing in municipal bonds. He

claims he told Kicklighter that he was interested in "very safe" or "low risk" bonds. Kicklighter recommended to him the purchase of the Polk County bonds as a safe and secure investment, that even though non-rated, they were better than AAA rated bonds, and were solid "like the Rock of Gibraltar". He was further told that there were monies set aside for the payment of interest and it was Rose's "impression" that the bonds were secured by sufficient real estate. He stated that Kicklighter did not discuss any risks involved, mentioning only "positive things".

As a result of this conversation, from which he concluded these were a low-risk investment, Rose purchased two Polk County bonds at a discounted rate of 94.5% on October 26, 1983. He contends that had he known there were risks involved he would not have made the purchase. Although he understood that there is a correlation between degree of risk and interest rate, he did not feel that the 13-1/2% rate, even at a discounted price, indicated the existence of a significant risk factor.

Rose had purchased bonds but once before in his life-time, having made very few securities purchases. However, he had been a managing or general partner in a number of private offering real estate limited partnerships.[10/]

3. Cyrus A. Alley, III, semi-retired businessman, whose investment experience had been in purchasing over-the-counter securities, had been purchasing a number of non-rated health

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10/ Murad and Rose have brought a civil action against registrant and Kicklighter, an action which has been dormant since it was instituted in 1985.

facility bonds from Kicklighter, with a total face amount of as much as $500,000. He was aware of the tax exempt and high-yield features of these bonds.

Kicklighter solicited the purchase by him of the Polk County Bonds and represented that they were a good, sound investment involving an elegant health facility with strong financial backing and sound management. He recalls nothing that Kicklighter mentioned which would be considered detrimental or negative about the bonds. He had some hesitancy in purchasing them because they were non-rated, but was assured by Kicklighter that many small issuers did not want to go to the expense of getting a rating and that unrated bonds could be as good as AA or AAA rated. He did not receive any sort of written or descriptive information concerning the Polk County bonds.

As a result of this solicitation, Alley purchased some $50,000 face value of the Polk County bonds in July and August of 1983 all bonds being purchased at par. He claims that had Kicklighter mentioned anything detrimental about the bonds he would not have bought them.

4. Walter N. Zelten, presently retired from employment, has been engaged in the purchase of corporate bonds and common stocks since about 1970. He has and still maintains accounts with two other broker-dealers. Since some time in 1981, he had been solicited by Kicklighter for the purchase of municipal bonds and in October, 1981, he purchased an AAA rated bond of a health care

facility. He told Kicklighter that his investment objectives were high income, preservation of capital and growth. He subsequently bought some non-rated health care bonds.

On May 10, 1983, Zelten bought a single $5,000 Polk County bond at a premium price of $104. He claims to have been induced to make the purchase by Kicklighter's representation that it was a "good bond". He does not recall whether there was a discussion concerning negative information about the bond or the risk. However, the sale was made prior to the sales meetings and written updates calling attention to the rumors of problems at the project, and there is no proof that Kicklighter was aware of them at the time.

Kicklighter continued selling the Polk County bonds, with the heaviest sales occurring during the months of July and August of 1983. He denies telling customer Alley that non-rated bonds were just as good as AAA rated and, in fact, Alley knew the difference having bought both types of bonds from him previously. In contrast to Alley's testimony, Kickligher claims to have disclosed to him the fact that there was a question of lagging sales and that the project was behind in its projections, but at the same time advising of management's proposed steps to overcome these factors. Kicklighter offered no testimony to dispute that of Alley that he was solicited to buy the Polk County bonds as being a "good" and "sound" investment.

Kicklighter claims to have discussed with Murad the fact that there were lagging sales which were being taken care of by

the project management. Murad had previously purchased both rated and non-rated bonds from Kicklighter and therefore knew the difference between the two.

Kicklighter denies ever having told Rose (or any other customer) that the Polk County bonds were sounder than the "Rock of Gibraltar" or that the bonds were better than AAA rated bonds. In contradiction of Rose's testimony, he claims to have discussed with Rose the question of lagging sales of the life-units and other problems despite which he believed the bonds to be a good investment, and that monies had been set aside for the payment of bond interest.

Kicklighter continued to sell Polk County Bonds even after the November 4, 1983 sales meeting, including those to Murad. He concedes that the fact of lagging sales was important information that should have been and was conveyed to customers.

Robert O. Brown

During the relevant period herein respondent Brown sold a net total of $65,000 face amount of Polk County bonds to some nine customers from which he allegedly earned about $1,000 in commissions. Two of Brown's customers testified concerning their transactions with him, one of whom bought two bonds and the other one bond.

1. James Storck, a civil engineer residing in North Carolina, had been an investor in securities since 1978 including stock options, oil and gas tax shelters, real estate tax

shelters, options and margin accounts, and was willing to take some risk in investing.

Between October 5 and November 11, 1983, Storck had purchased through Brown some 5 or 6 tax-free, high-yielding municipal bonds involving nursing homes, including two Polk County bonds, one on October 12 at a price of $98 and the second on November 11 at a price of $94.

According to Storck, Brown had recommended the purchase of the Polk County bonds as a good investment, stating that the nursing home was being developed and managed by experienced individuals. Brown thus overcame Storck's reluctance to purchase the second bond. He asserts that Brown told him nothing else concerning the bonds, did not advise him of risks associated with the bonds nor of the status of the marketing of units at the project. He further states that if anything derogatory had been mentioned he would not have made either purchase.

Storck recognized the fact that non-rated bonds present a greater risk but with greater yields over rated bonds. Nor did he find cause for concern that the bonds were being sold below par because he recognized that rising interest rates have an effect on bond prices.

2. In September 1983, Dr. Nabajyoti Kakati, having previously purchased nursing home bonds from Brown, asked him to recommend a similar bond having high yield and tax exempt features. Brown recommended the purchase of Polk County bonds as being "good" bonds. On the basis of this recommendation, on

September 20, 1983 he made a single purchase of a bond at a price of 96.6. Brown did not say much else about the bonds. Kakati did not ask for any details nor did he get any in return. He claims that he had been advised of any risks with respect to the bonds he would not have invested in them.

Brown disputes Storck's assertion that he received no written materials, contending that he had received a copy of the September 1, 1983 research report as well as a copy of the original prospectus at the time of the public offering.

According to Brown, Kakati was basically looking for high-yield tax-free bonds because of his tax bracket. Prior to the purchase of the Polk County bond, he had bought other bonds of a similar nature. Brown claims to have told Kakati and Storck about the lagging sales at the project and the other problems that had to be overcome, but that since there were over two years of funded interest on deposit, there was enough time to get the project through these rough spots.

Brown states he was unaware that trading of the bonds had been suspended for a day, that his group manager had liquidated his clients' Polk County bonds or that any default was being alleged against the developer. He points out that these bonds represented but a small percentage of his total sales of $3 million worth of bonds during the 7-month relevant period. As far as getting information about bonds being offered for sale the salesmen relied principally upon the research department of registrant, although not always successfully. However, it does

not appear that Brown ever asked for information or made other efforts to investigate the matter. He claims he told Storck about lagging sales at the project, but that there were sufficient funds to assure payment of interest for another 2 years.

Terry G. Eurich

During the year 1983, Eurich handled 350 different securities transactions, 23 of which involved Polk County bonds. During the 3-year period of his employment, registrant had underwritten approximately 180 non-rated high-yielding health care and life care issues in which he had been involved.

Between May 11 and November 9, 1983, Eurich sold Polk County bonds with a face value of $270,000 to some 16 of his customers. Two of them, each of whom made a single purchase of a $5,000 bond at a discount price, testified concerning their dealings with him.

1. William Gish responded to an advertisement by registrant in the Wall Street Journal offering tax-exempt high-interest bonds and was assigned Eurich as his representative. His prior securities investment experience began in 1971, particularly in corporate bonds. He also has invested in real estate limited partnerships. He has maintained accounts in 3 brokerage houses.

In response to his inquiry, Eurich explained to him generally the nature of health care facility bonds and perhaps some of the normal risk factors involved, although he cannot specifically recall which ones. He was aware of the nature of

non-rated bonds. Gish made 2 or 3 bond purchases through Eurich.

Eurich then recommended the Polk County bonds, deeming them to be a good investment paying a high interest rate and in reliance on the recommendation he purchased a single $5,000 bond on October 19, 1983 at a price of $98. Gish claims Eurich had told him that the unit sales at the development were going along as projected. He was not advised of any risk other than those normal to this type of bond. He asserts that had he been told of any negative factors with respect to the status of the Polk County project he would not have invested in the bond.

2. Robert J. Ayer, an officer in a petroleum company, had been purchasing bonds for some 40 to 50 years usually when they were issued rather than in the secondary market. He bought as many as 100 issues. He was contacted by Eurich with respect to the purchase of Polk bonds in September 1983.[11/] He claims to have advised Eurich that because of his age his objective was safety rather than speculation.

Eurich told Ayer that the Polk County bonds represented a good investment and that sales of the health care units were moving along nicely. Ayer thought that being non-rated made the bond a poor investment, but Eurich convinced him otherwise. As a

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11/ Although Ayer claims that this was his first transaction with registrant, confirmations of prior purchases of similar type bonds show that his involvement with registrant goes back several years. Moreover, notes of a commission investigator made during an interview with Ayer indicate he had made the original solicitation to Eurich, rather than the other way around.

result of this conversation he agreed to purchase a single bond at a price of $94 on October 3, 1983. Ayer claims he was not advised by Eurich of any risks associated with the bonds and specifically with respect to lagging unit sales, and that had he been so advised of this or of any other risk, he would not have invested in the bond.

Eurich claims to have been unaware of the rumor that some of the salesmen were liquidating their clients' position in the Polk County bonds, although this was mentioned at the sales meeting in May. He asserts that he passed on to his customers any information that was available to him, good and bad, concerning the Polk County bonds even to updating existing holders of the bonds with current information. On the positive side, he states that he advised customers of the possible refinancing, of the putting of new management in place, of additional funds being put into the project, of additional advertising, and of the engagement of new marketing people. On the negative side, he claims to have informed all prospective purchasers of the problems with low occupancy and others. He points out that subsequent to the November 4 meeting he made only one further sale of Polk County bonds having a face value of $25,000 at a price of $94.5, to a client who had already bought bonds on the initial offering, had received a prospectus, and who wanted to buy more of the bonds, even though he was advised by Eurich of the problems at the project. Finally, Eurich claims that it was his practice always to inform a client of risk factors, particularly when selling

non-rated bonds including the Polk County bonds. He agrees that the ability of the developer to have marketed continuing care agreements was the single most important factor affecting the financial feasibility of the project, and something customers should have been made aware.

Eurich denies he told Gish that the Polk County bonds were a good investment and that they were going along nicely. He denies telling Ayer that the Polk County bonds were safe and that sales of the facilities were moving right along. He disputes Ayer's testimony that he told Eurich he wanted nothing but safe-rated bonds, pointing to the fact that Ayer had bought four different non-rated bond issues during the two years that he had an account with registrant.

Respondent Eurich offered the testimony of five witnesses as to his good character and reputation. These witnesses included two officers of registrant, one of whom as vice-president for retail sales administration was in a supervisory capacity, the other being registrant's director of compliance, two were registered representatives who worked with Eurich at registrant, and the fifth was a supervisor of Eurich during previous (non-securities) employment. These witnesses knew Eurich for periods varying from several to as many as 17 years. Those who knew him from the securities business testified that there never were any disciplinary problems with respect to his conduct. They further attest to his integrity, honesty and consideration for others. All agree that he had a good reputation for fair dealing.

Discussion and Conclusions

The Order for Proceedings charges respondents, in connection with the sales of the Polk County Bonds, with violating the anti-fraud provisions of the securities laws both in the making of untrue statements of material facts and in omitting to state material facts. 12/

The order alleges that the following affirmative misrepresentations by respondents:

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12/ Section 17(a) of the Securities Act makes it unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce, or by the use of the mails, directly or indirectly -- to do any of the following:

"(1) to employ any device, scheme or artifice to defraud, or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading, or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser."

Section 10(b) of the Exchange Act makes it unlawful, in connection with the purchase or sale of any security to use or employ "any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors."

Rule 10b-5 promulgated thereunder, extends, in effect and with a few language changes, the provisions of 17(a) relating to the sales of securities to both the purchase or sale thereof.

1) That Royal Regency was a functioning life-care with high occupancy.

2) That the project was going strong and that everything was occurring as scheduled.

3) That the developer of the project had a good track record.

4) That the bonds were better than AAA rated bonds; or were as safe as the Rock of Gibraltar; or that the real property was more than enough collateral to cover the amount of indebtedness.

The making of these mispresentations was charged by customer-witnesses against respondent Kicklighter only. He, in turn, denies ever having made them. One of respondent Eurich's customers avers he was told that unit sales were going along nicely. Otherwise, the sole affirmative misrepresentation asserted against all respondents (but not specificaly alleged in the Order) is that they recommended Polk County bonds as being a good investment.

The single allegation in the Order of violations based upon the omission to state material facts is the failure by all respondents to disclose to purchasers of the Polk County bonds that the underlying project, Royal Regency, was far behind its projected sales of its life-care units. This charge goes to the very core of the issues herein.13/ From the very beginning,

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13/ The hearing record contains additional "omissions", not alleged in the Order such as the failure to disclose that investment in Polk County bonds entailed substantial risk and was highly speculative, to disclose the risk factors enumerated in the prospectus, to advise that the developer was alleged to be in default of its agreement, or to send customers written materials, such as the original prospectus and the updates. All of these were within the knowledge of, or readily ascertainable by, respondents.

starting with the prospectus, it was stressed that without the sale of 95 percent of these units, the project was doomed to failure. All of the other events - the failure to complete the facilities buildings, the inability to oust the tenants, the lack of landscaping and other amenities, etc., are only of importance as they adversely affected the sales of life-care units.

The respondents herein knew that the successful sale of life-care units was, as described in the prospectus, "the single most important risk factor . . . affecting the financial feasibility of the project." As such, omissions or misrepresentations with respect to these sales become material factors in the sale of these bonds. [14/]

It is clear from the record that respondents had, from the very beginning and through the relevant period, recommended the sale of Polk County bonds with the knowledge they derived from company meetings and the written updates, of virtually a total breakdown in the most important risk factor - the sales of continuing care contracts. Thus, they were duty-bound to disclose to their clients their knowledge of lagging sales. It has long been held that when a salesman recommends securities, he is under a duty to insure that his representation has a reasonable basis and to disclose material adverse information

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14/ A fact is "material" if there is a substantial likelihood that a reasonable investor would consider these misrepresentation or omissions important in making their investment decisions. TSC Industries, Inc. v. Northway, Inc., 426 U.S. 837 (1976).

which is known or readily ascertainable. Matter of Kuznetz, 48 S.E.C. 551, 554 (1986).

As stated in the oft-quoted decision by the Second Circuit in Hanly v. S.E.C., 415 F.2d 589, 595-7 (1969):

> " In summary, the standards . . . are strict. [a salesman] cannot recommend a security unless there is an adequate and reasonable basis for such recommendation. He must disclose facts which he knows and those which are reasonably ascertainable. By his recommendation he implies that a reasonable investigation has been made and that his recommendation rests on the conclusions based on such investigation. Where the salesmen lacks essential information about a security, he should disclose this as well as the risks which arise from his lack of information".

This having been said, there next follows for resolution the question of whether respondents did, in fact, disclose to their customers the adverse information concerning lagging unit sales and the status of conditions at the project affecting these sales. The customer-witnesses insist that they were not so informed, nor of any of the other risk factors. They contend that if they were so advised, they would not have made the purchase.

Respondents, on the other hand, assert that they did relate to their respective customers the fact of lagging sales and other problems with the project, but also explained to them the actions being taken by management, as they learned at the sales meetings and from the updates, to overcome these difficulties and especially including the existence of cash reserves sufficient to pay bond interest for the ensuing period of 2 to 2 and 1/2 years. They contend that after such explanations, the customers, being sophisticated investors, were still interested

in the high yielding tax-exempt features of the Polk County bonds despite the derogatory information concerning lagging sales of life-care units.

In determining where the truth lies between these opposite positions, resort has been had not only to the observed demeanor of the witnesses, but to the circumstances surrounding these sales. While it is true that the customer-witnesses had some degree of knowledge and sophistication concerning securities investment, it cannot be said from my observation of them, that they would have willingly purchased the Polk County bonds in the face of the derogatory information known to respondents if they had been so informed. These salesmen had available for sale other less risky high-yield, tax-exempt bonds both rated and unrated, to satisfy their customers' requests for such debt securities, instead of promoting the Polk County Bonds. [15/]

Whatever discussions were had between respondents and their customers concerning the safety of Polk County bonds were no doubt related to such general topics as non-rated versus rated bonds, yields, maturities and other similar subjects of a general

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15/ There might be the question of why did the respondents not sell such bonds rather than the Polk County ones. The answer might lie with the inventory then held by registrant which could have sustained severe losses if panic selling had resulted from dissemination of the derogatory information. This, in turn, would account for the strong measures taken by registrant to encourage their salespersons to sell Polk County bonds and to ignore the "rumors" of problems at the project. Or, by promoting sales of these bonds, also protected the individual customers of respondents holding the bonds.

nature concerning municipal bonds, rather than the lagging sales of life-care units. Hence, in weighing the respective positions taken by the customer-witnesses vis-a-vis the respondents, it is found that the latter failed to inform the former of material information (i.e., lagging sales) required to be disclosed by virtue of the fiduciary nature of the relationship between them.

Respondents argue that their customers were sophisticated investors, who understood the nature of industrial versus general obligation bonds, and who contacted the salesmen as a result of discussions with other persons or on their own.[16/] However, these facts do not give the salesmen a license to make fraudulent representations (in this case to omit material information). Nor is it necessary to establish that customers relied on such representations in order to establish violations of the anti-fraud provisions. See Matter of Kuznetz, supra, p. 554.

It is further urged that respondents relied upon information furnished to them by their employer, the registrant, in making recommendations to their customers. In fact, respondents say, it was they who were defrauded - by the registrant. However, salesmen may not blindly rely on an issuer's self-serving statements; nor are statements made by a salesman's superiors an adequate basis for recommendations made to investors. Matter of Brainard, 47 S.E.C. 991, 996-7 (1983); and Matter of First

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16/ In those instances wherein customers made the initial contact it was not for the purpose of placing an order for Polk County bonds, but to seek out a recommendation from the salespersons.

Pittsburgh Securities Corp., 47 S.E.C. 299, 302 (1980). This is especially true of debt securities. Matter of Willard G. Berge, 46 S.E.C. 690, 694 (1976).

Respondents argue that they were prevented from investigating the situation relating to Royal Regency, by the lack of permissible access to the registrant's records. However, McNally, the firm's trader, testified that the sales personnel were free to see the trading files maintained on securities for which registrant was making a market. Holman, the sales chief, was able to find out through a few telephone calls, that the entire venture was a "total shambles". It is clear that these respondents made little or no investigation of their own as they were required to do before recommending the Polk County bonds to their customers. Knowing what was happening at the project, particularly the failure to live up to the repeatedly stretched out schedules for the sales of continuing care contracts makes mere reliance upon management's assurances an insufficient basis for recommending the bonds.

Scienter

Respondents urge that they did not act with "scienter", and hence, cannot have violated the anti-fraud provisions. One of the elements required to be established to show a violations of Rule 10(b)-5 and the first subsection of Section 17(a) is that respondents acted with "scienter", defined as "a mental state embracing intent to deceive, manipulate, or defraud". Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193, n. 12 (1976). Scienter

is established by knowing or intentional conduct. Aaron v. SEC, 446 U.S. 680, 690, (1980). It may also be established by reckless conduct. Nelson v. Serwold, 576 F.2d 1332, 1337-8, (9th Cir.), cert. den., 439. U.S. 970 (1978). Courts recognize that absent an admission by defendant, scienter may be inferred from circumstantial evidence which "can be more than sufficient". Herman & Mclean v. Huddleston, 459 U.S. 375, 390 n. 30 (1983).

While it is found that respondents acted with the requisite scienter, or at least were guilty of reckless conduct, it is noted that scienter is not necessary to establish violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, and all of the findings of fraud herein are made under both these sections, as well as Section 17(a)(1) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Under all of the circumstances, it is concluded that respondents have wilfully 17/ violated the anti-fraud sections of the securities laws cited above.

Miscellaneous

In his brief, respondent Kicklighter renews his objection to the conditions imposed by my ruling concerning the payment of expenses to comply with his subpoenas duces tecum addressed to registrant, Hereth, Orr and Jones, Inc., and its president, Jack

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17/ It is well established that a finding of willfulness does not require an intent to violate the law; it is sufficient that the one charged with the duty consciously performs the acts constituting the violation. See Tager v. S.E.C., 344 F.2d 5, 8, (C.A. 2, 1965); and Arthur Lipper & Co. v. S.E.C., 547 F.2d 171, 180 (1976).

Hereth, both of whom are no longer respondents in this proceeding. The subpoenas sought production of all the minutes of all boards of directors and committee meetings of registrant and of Royal Regency, as well as all internal memoranda and reports prepared by these corporations respecting the Polk County Bonds, for the period July 1, 1982 through December 31, 1983.[18/] The subpoenaed persons moved to quash the subpoenas, which motion was initially denied and they were required to comply with its terms.

Thereafter, the movants renewed their motion to quash, offering proof that the records of registrant were storaged in a warehouse in some 100 boxes of totally unorganized and unindexed documents, that a search for the requested papers would entail a monumental task consuming many hours and requiring expenditures of between $4,000 and $8,000, and that registrant was out of business and devoid of assets. I then modified my ruling in the interests of fairness and in the exercise of my discretion [See (Rule 14(b)(1) of the Commission's Rules of Practice, 17 C.F.R. 201.14(b)(1)] by upholding the subpoenas but requiring the expenses of the search to be borne by the respondents seeking the records and documents called for.

Respondent has offered no authority or any other valid reason justifying a change in my ruling. It would be totally unfair to require a non-party individual and a totally bankrupt

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18/ The respondents originally sought a far broader range of documents over a longer time frame which the judge refused to approve, unless narrowed to the extent shown above.

corporation to bear the large expense required to comply with this shotgun search. See SEC v. Blinder, Robinson & Co., [1987-1988 Transfer Binder, Fed. Sec. L.Rep. (CCH) Par. 93,538, at page 97,415, U.S.D.C., D.C. (1987)].

Respondents have also been charged with "aiding and abetting" the violations of the securities laws. Since they have been found herein to be primary violators, it would be redundant and superfluous to make "aiding and abetting" findings as well.

Public Interest

The Division urges that as a result of respondents' violations of the anti-fraud laws and regulation, the following sanctions should be imposed: 1) that Kicklighter be barred from association with any broker or dealer, and 2) that Brown and Eurich be suspended from association with any broker or dealer for a period of one year and that they be barred from association with any broker or dealer in a supervisory or proprietary capacity.

The Division argues that each of the respondents deliberately made false statements of, and omitted to disclose, material facts in connection with the offer and sale of the Polk County bonds. It accuses respondents with concealing known risks, creating false stories about the project, and engaging in deliberate and knowing misconduct beyond mere negligence or recklessness. Finally, it points out that the respondents are

still employed in the securities industry and in a position to repeat the violations they have committed heretofore.

Respondent Kicklighter, on the other hand, points to his youth and limited experience in the securities field (having been employed only by registrant) and the fact that he relied on management to provide him with accurate information concerning the Polk County project, and that liability, if any, must rest with registrant.

Respondent Brown, in resisting any sanction, denies that he knowingly and deliberately made material false statements or omitted to state, material facts. He asserts that he really believed the Polk County bonds to be a good investment, and had he known the true situation he would not have sought investors for them. Brown states that the violations, if any, were isolated involving but three sales transactions to two sets of investors.[19/]

Eurich points to the fact that the two customer-witnesses testifying against him exhibited poor recollection (after more than four years had elapsed), that they were primarily interested in high-yield low-priced bonds and claims to have told prospective clients everything he knew bad and good, about the

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19/ Respondent Brown relies on the notes of a Commission investigator based on a conversation with another investor (Beverly Liscow) that she told him she had been provided information by Brown of the negative factors in the Polk County bonds. However, Ms. Liscow was not called as a witness and the notes of the purported conversation with her are unreliable and of little probative value.

Polk County project. However, being primarily interested in high-yield, low-priced bonds, they bought anyway.

Finally, Eurich asserts that he has suffered defamation of his character, his livelihood has been placed in serious jeopardy, he has suffered loss of an unspecified amount of income, and has sustained mental anguish and trauma, in addition to the expenses of defending himself.

In assessing a sanction, due regard must be given to the facts and circumstances of each particular case, since sanctions are not intended to punish a respondent but to protect the public interest from future harm. See Berko v. S.E.C., 316 F.2d, 137, 141 (2d Cir. 1963); Leo Glassman, 46 S.E.C. 209, 211 (1975); Robert F. Lynch, 46 S.E.C. 5, 10 n.17 (1975); and Collins Securities Corp., 46 S.E.C. 20, 42 (1975). Sanctions should also serve as a deterrent to others. Richard C. Spangler, Inc., 46 SEC, 238, 254 n.67 (1976).

As noted heretofore, respondents have been found to have violated the anti-fraud statutes in a serious manner, particularly in their omissions to disclose to their prospective customers the increasing difficulties with the Polk County project especially the lagging life-care units. Whether they have acted knowingly and deliberately in the face of this knowledge, the least that can be said is that they were reckless and negligent in recommending the sale of the Polk County bonds in reliance solely on the information given to them by their superiors.

It matters not that their customers may have been sophisticated investors who may have understood the risks involved in acquiring non-rated high-yield industrial revenue bonds, and were willing to assume the added risks in return for the better yield. Even high-flying investors are entitled not to be defrauded.

Despite the assurances of registrant's officials and of the project management to respondents that the bad situation with respect to lagging unit sales would get better, the information given repeatedly between May and November 1983 to respondents both at the sales meetings and in the written updates pointed to a continuous worsening situation. It had to be clear to respondents that the sales of the life-care units had bogged down completely after the May meeting and that a pitiful few sales were effected during the 7-month period that followed. The fact of lagging sales was critical. Such information should have been disclosed to the customers fully. Under the circumstances known to them, there was no basis for respondents recommending the Polk County bonds as being a good or sound investment.

In assessing the sanctions hereinafter imposed consideration has been given to the fact that none of the respondents has been cited for any violation of rules or regulations heretofore and that they all recognize that information concerning the lagging sales should have been made available to customers. Nor has the testimony of the five character witnesses produced by respondent Eurich been overlooked.

The suggestion by the Division that Kicklighter should be assessed a greater sanction than imposed on the other two respondents is well taken. He made by far the most sales of the Polk County bonds during the relevant period and he continued making them even after the November 4 meeting when it surely must have become clear that sales of the life-care units were hopelessly behind. It also noted that he made alone the affirmative misrepresentations alleged in the Order for Proceedings. He appears to have acted with more vigor and recklessness in soliciting sales of the bonds among his customers.

Respondent Brown, who made the fewest sales, also made on after November 4 and had assured his customers affirmatively that the bonds constituted a good investment.

Respondent Eurich made sales in excess of those made by Brown during the relevant period. He was confronted with only two customer-witnesses each of whom had bought but a single Polk County bond. They assert that they were not informed of the specific risk factors, but were told these bonds were a good investment. It is difficult to believe, as Eurich claims, that he told customers generally of all the known risk factors surrounding the Polk County bonds.

It is also clear that none of these respondents made any efforts on their own to verify the information that they had been receiving and the likelihood of the project ever getting back on its feet, especially in view of the long periods of time wherein

they had known that very little sales activity of the life-care units took place.

Based upon all these factors stated above, it is concluded that the sanctions hereinafter recommended comport with the degree of involvement of each respondent and with requirements that a sanction should not be a punishment, should tend to insure that the respondents will not repeat such conduct, and will serve as a deterrent to others in the industry who may be inclined to act in a similar fashion.

## ORDER

Under all of the circumstances herein,

**IT IS ORDERED** that the respondent William L. Kicklighter, Jr., be suspended from association with any broker or dealer for a period of 120 days following the effective date of this Order; and

**IT IS FURTHER ORDERED** that respondents Robert O. Brown and Terry G. Eurich each be suspended from association with any broker or dealer for a period of 45 days following 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 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.[20/]

Jerome K. Soffer
Administrative Law Judge

February 21, 1989
Washington, D.C.

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20/ In their briefs and arguments, the parties have requested the Administrative Law Judge to make findings of fact and have advanced arguments in support of their respective positions other than those heretofore set forth. All such arguments have been fully considered and the Judge concludes that they are without merit, or that further discussion is unnecessary in view of the findings herein.