SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 1396/ December 23, 1993

ADMINISTRATIVE PROCEEDING
File No. 3-7446

In the Matter of: KINGSLEY, JENNISON, MCNULTY & MORSE INC. and RICHARD KINGSLEY

OPINION OF THE COMMISSION

Grounds for Remedial Action

Fraud

Failure to Comply with Reporting and Recordkeeping Requirements

Where registered investment adviser used brokerage commissions generated from clients' transactions to pay for non-brokerage services without adequately disclosing this practice, held, in the public interest to censure investment adviser, and to dismiss proceeding as to principal.

Gerald E. Boltz and Carol Goodman, of Bryan Cave, for Respondents.

Robert D. LaFramenta and Karen Matteson, of the Commission's Pacific Regional Office, for the Division of Enforcement.

I.

Kingsley, Jennison, McNulty & Morse, Inc. ("KJMM"), a registered investment adviser, and Richard Kingsley, one of its principals,[1] appeal from the decision of an administrative law judge. The law judge found that, during 1985, KJMM, aided and abetted by Kingsley, improperly used brokerage commissions generated from clients' transactions to pay for non-brokerage services (a practice known as using "soft dollars"), and thereby willfully violated antifraud, reporting, and disclosure provisions of the Investment Advisers Act of 1940 (the "Advisers Act" or the "Act").[2] The law judge censured both respondents. Our findings are based on an independent review of the record, except with respect to those findings not challenged on appeal.

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1 During 1985, Kingsley was chairman of the board, chief executive officer, and a part owner of KJMM. He is no longer affiliated with KJMM.

2 KJMM was found to have violated Sections 204, 206(1) and (2), and 207 of the Act and Rules 204-1 and 204-3 thereunder. Kingsley was held to have violated Section 207 and aided and abetted KJMM's violations of Section 204, 206(1) and Rules 204-1 and 204-3.

II.

A. Background

KJMM managed the growth stock portions of large, diversified pension funds. After experiencing rapid growth during 1983-84, KJMM retained a consultant who advised KJMM that it needed to improve its client communication. As part of its implementation of this recommendation, KJMM created a new position, director of client services, in early 1985.

B. KJMM's Soft Dollar Arrangements with FSS

KJMM's owners interviewed Philip W. Jonckheer, who had no prior experience in the investment management field, for the new position. KJMM asked James Blair, owner of Financial Selected Services, Inc. ("FSS"), to assess Jonckheer as a candidate.[3] FN[FN3] In February 1985, Blair traveled to Louisville, Kentucky, to meet with Jonckheer and spent two days interviewing and evaluating Jonckheer for this position. He also gave Jonckheer training about investment management and KJMM's position in the industry. Blair's favorable recommendation was contained in a short, oral report to KJMM.

In addition to running FSS, Blair was a part-time registered representative with Goodrich Securities, Inc., a broker-dealer that cleared through Bear Stearns. KJMM arranged to pay FSS by placing clients' brokerage transactions with Bear Stearns for the credit of Goodrich, and ultimately Blair, a payment practice known as a "soft dollar arrangement." KJMM paid Blair for his services with respect to Jonckheer, as well as his expenses, with $12,200 in soft dollars.[4]

After KJMM hired Jonckheer, KJMM employed Blair to help train Jonckheer.[5] In June 1985, FSS provided Jonckheer with an individualized one-week training program. Blair provided Jonckheer with a general description of the investment management industry and an in-depth discussion of KJMM's investment philosophy and style. Blair also assisted Jonckheer in developing a description, or "story," which Jonckheer described as a "comprehensive marketing and client service package." As part of this training, Jonckheer gave a mock presentation of the KJMM "story," which Blair evaluated. KJMM paid FSS $18,000 in soft dollars for this training.

In December 1985, Jonckheer attended a three-day FSS seminar, entitled "Marketing Strategies for Sales Success." Basically, the seminar afforded Jonckheer an opportunity to give his presentations before a critical audience. KJMM directed $1,960 in soft dollars to FSS for this program.

KJMM directed a total of $31,960 in soft dollar commissions from its clients' transactions in some 35 customer accounts to Bear Stearns for the credit of Goodrich, of which Blair received

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3 FSS was a registered investment adviser engaged in producing professional development seminars, marketing consultations, and professional training programs for clients in the investment industry. As the law judge observed, FSS was in essence Blair's creature, and references to FSS and Blair are used interchangeably.

4 KJMM actually prepaid $2,480 of Blair's fee in soft dollars in anticipation of his interviewing Jonckheer. According to the agreement between KJMM and Blair, Blair was entitled to receive $12,000 irrespective of whether Jonckheer was hired.

5 Jonckheer's primary responsibilities at KJMM were to coordinate client service and marketing activities, and achieve consistency in the periodic reports to portfolio managers and prospective clients.

$19,176. Had FSS' services been purchased with cash, KJMM would have had to pay half of the soft dollar amount, or $15,980.[6]

C. Disclosure

On the investment adviser registration form, Form ADV, an adviser is required, when applicable, to describe how it selects brokers and evaluates commission rates. In addition, the adviser is required to indicate if the receipt of research services from a broker is a factor in the adviser's selection of brokers, and to describe any other services that the adviser receives from a broker that do not involve brokerage or research. Rule 204-3 under the Advisers Act (the "Brochure Rule") generally requires an investment adviser to furnish a disclosure statement to prospective clients before entering into an advisory contract.[7] Pursuant to the Brochure Rule, KJMM delivered a copy of Part II of its then-current Form ADV to clients at the outset of the advisory relationship, but did not send any additional material about its soft dollar relationships.

In its February 1985 amendment to Form ADV, KJMM stated, among other things, that receipt of research and other services would be a factor in its broker selections, as well as "other services provided by such brokers ... which are also expected to enhance the general portfolio management capabilities of" KJMM. KJMM asserted that its clients were aware that KJMM might be unable "to demonstrate that such factors were of a direct benefit to" the clients' accounts. It also noted that a certain percentage of soft dollars would be "used to obtain computer related equipment, research and information for the benefit of our clients." When KJMM filed an amended Form ADV in March 1986, it made the same disclosure regarding brokerage allocations as set forth above, merely substituting the year 1986 for 1985.

III.

Respondents dispute the law judge's finding that, by entering into the soft dollar arrangement, KJMM created a conflict violating the antifraud provisions[8] and requiring specific disclosure.[9] As the Supreme Court has stated, the Act was designed "to eliminate, or at least to expose, all conflicts of interest that might incline an investment adviser-consciously or unconsciously-to

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6 Commissions for trades placed with Bear Stearns for the credit of Goodrich were divided among Bear Stearns (25%), Goodrich (15%), and FSS (60%). There is no explanation in the record for the basis on which Blair received 60% (rather than 50%) of the commissions.
KJMM did not "pay up," that is, it did not pay Bear Stearns more than the lowest available commission rate in connection with this soft dollar arrangement.

7 The rule also requires advisers annually to deliver or to offer to deliver a written statement meeting the requirements of the Brochure Rule. In its release accompanying adoption of the Brochure Rule, the Commission stated that the rule does not specifically require an adviser to furnish a revised document to each client every time a material change occurs. The obligation to inform clients of major changes in the advisory relationship is within the adviser's general fiduciary duty to his clients. Investment Advisers Act Release No. 664 (January 30, 1979), 16 SEC Docket 901, 906.

8 Section 206 of the Advisers Act makes it unlawful for an investment adviser (1) to employ any device, scheme, or artifice to defraud any client or prospective client; or (2) to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.

9 Section 207 of the Advisers Act makes it unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report, or willfully to omit to state in any such application or report any material fact which is required to be stated therein.

render advice that is not disinterested."[10] Thus, for example, where an adviser (such as KJMM) has discretion to select a broker to effect transactions for the client, and the client's funds are used to pay the broker's fee, the selection must not be tainted by the adviser's own obligations to a particular broker. Moreover, the adviser may not use its client's assets for its own benefit without prior consent, even if it costs the client nothing extra. Respondents argue that they did nothing wrong because KJMM did not engage in "paying up", that is, in fulfilling KJMM's soft dollar obligation to FSS, the firm did not pay commissions at a rate higher than the lowest available commission rate.[11] However, KJMM had an undisclosed conflict of interest with its client. It is not enough that the transactions generating payments for FSS' services were apparently executed at the same commission rate at which they otherwise would have been executed and the trades were not generated by the need for soft dollars. If KJMM failed to place these trades in the manner it used, it would have been required to pay for FSS' services with its own money, instead of soft dollars.[12]

Respondents claim that at least some of the services they provided were entitled to the safe harbor provided by Section 28(e) of the Exchange Act. Section 28(e) provides that a person who exercises investment discretion with respect to an account (as KJMM did with respect to its clients' accounts) shall not be deemed to have acted unlawfully or to have breached any fiduciary duty under Federal or state law solely by causing the account to pay more than the lowest available commission, if such person determines in good faith that the amount of the commission is reasonable in relation to the value of the "brokerage and research services" provided.[13] Section 28(e) thus provides a limited exception from fiduciary standards for the use of client commissions to obtain brokerage and research services. It does not protect an adviser that uses a client's commissions to pay for any other kind of services it receives.[14]

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[10] SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 191-92 (1963). Contrary to respondents' contention, the Advisers Act is "directed not only at dishonor, but also at conduct that tempts dishonor." 375 U.S. at 200. Respondents thus err in their claim that, because the Act includes certain specific provisions dealing with conflicts of interest and principal transactions, a broad reading of Section 206 to prohibit breaches of fiduciary duty "would distort the statutory scheme." There is also no merit to respondents' claim that breach of fiduciary duty is solely a state matter beyond the reach of the Advisers Act.

[11] Section 28(e) of the Securities Exchange Act of 1934 provides a safe harbor for the payment of more than the lowest available commission if the adviser determines in good faith that the additional amount of commission is reasonable in relation to the value of the brokerage and research services provided by the broker-dealer, viewed either in terms of the particular transaction or the adviser's overall responsibilities for the accounts over which it exercises discretion. See note 13, infra.

[12] Despite KJMM's asserted "stringent procedures" to ensure that its selection of brokers was unaffected by any soft dollars concerns, there is testimony that KJMM's principals may in fact have acted to channel commissions to FSS. For example, John Morse, then president of KJMM, sent a note to the trader advising her of the firm's obligation to FSS and instructing that she "meet this obligation through Goodrich Securities, when convenient on a two-to-one basis." He added, "try to do it by yr [sic] end."

[13] Section 28(e)(3) defines the types of services that fall within the phrase, "brokerage and research services." In applicable part, Section 28(e)(3) specifies that a person provides "brokerage and research services" insofar as he "(A) furnishes advice, either directly or through publications or writings, as to the value of securities, the advisability of investing in, purchasing, or selling securities, and the availability of securities or purchasers or sellers of securities" or "(B) furnishes analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts...."

[14] Section 28(e) also does not insulate any person who engages in conduct that violates the antifraud provisions of the securities laws. Nor does it eliminate whatever disclosure obligations might arise under other provisions of the securities laws.

KJMM did not receive research services from FSS. We have previously stated that "the controlling principle ... to determine whether something is research is whether it provides lawful and appropriate assistance to the money manager in the performance of [its] investment decision-making responsibilities."[15] The hiring and training of Jonckheer were clearly costs attributable to KJMM's operations. Respondents claim that Jonckheer's training ultimately resulted in their delivery of better, more informative reports to KJMM's clients. However, even if any resulting improvement to KJMM's reports were relevant, the soft dollars at issue were used in this instance for recruitment and training of an employee, not for the reports or for information contained in those reports.

Moreover, even if each of the services provided by FSS to KJMM could properly be deemed brokerage or research services, none of these transactions satisfies the requirements of Section 28(e). Section 28(e) provides a safe harbor for services "provided by" a broker. While a broker may properly contract with a third party to perform research services, the broker may not act merely as a conduit to pay an obligation incurred directly by the adviser that is owing to the third party.[16] Here, KJMM contracted with FSS, the adviser, which provided all the services. Goodrich had no role in the provision of FSS' services.[17]

We further agree with the law judge's conclusion that KJMM's use of soft dollars was a material fact requiring disclosure. A fact is material when there is a substantial likelihood that a reasonable investor would consider that fact important in making an investment decision.[18] An adviser has a duty to render disinterested advice to his client and to disclose information that would expose any conflicts of interest.[19] Indeed, disclosure is required even where there is only a potential conflict.

The purpose of the disclosure required in Form ADV regarding brokerage discretion is to provide clients with information about the adviser's brokerage allocation policies and practices.[20] This information is designed to assist clients in determining whether to hire an adviser or continue a contract with an adviser, and permit them to evaluate any conflicts of interest inherent in the adviser's arrangements for allocating brokerage.[21]

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15 Securities Exchange Act Release No. 23170 (April 23, 1986), 35 SEC Docket 905, 907.

16 See, e.g., Report of Investigation in the Matter of Investment Information, Inc., Relating to the Activities of Certain Investment Advisers, Banks and Broker-Dealers, Exchange Act Rel. No. 16679 (March 19, 1980), 19 SEC Docket 926, 931, 932.

17 Goodrich and its president agreed, without admitting or denying, to the entry of an order instituting administrative proceedings for their failure to adequately to supervise FSS and Blair's solicitation and receipt of commissions derived from soft dollar arrangements. Goodrich Securities, Inc., Exchange Act Release No. 28141 (June 25, 1990), 46 SEC Docket 975.

18 Basic, Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

19 Respondents cannot claim that clients impliedly consented to their use of soft dollars. In fact, certain of KJMM's accounts had refused to authorize the use of soft dollars by KJMM. It is not clear from the record whether trades for only those accounts that consented to the use of soft dollars were used to satisfy KJMM's obligations to FSS. In any event, we do not agree with Respondents that the contractual language cited by Respondents authorized soft dollar expenditures for recruitment and training.

20 In 1979, Form ADV was revised specifically to require narrative disclosure of information relating to brokerage placement practices. Investment Advisers Act Release No. 664, (January 30, 1979), 16 SEC Docket 901.

21 Securities Exchange Act Release No. 23170 (April 23, 1986), 35 SEC Docket at 909. Nondisclosure of even a potential conflict of interest has been held to violate Section 206 of the Advisers Act. Steadman v. SEC, 603 F.2d 1126, 1130 (5th Cir.1978), aff'd 450 U.S. 91 (1981).

Respondents claim that additional disclosure was not required because the amount of commissions used to satisfy KJMM's soft dollar obligations was not "quantitatively" material. Respondents assert that these soft dollar commissions constituted less than 1% of total commissions generated by the customer accounts in 1985.[22] However, because of the fiduciary relationship between an adviser and its client, the percentage or absolute amount of commissions involved is not the sole test of materiality in a transaction between them. A reasonable investor, if it had knowledge of these transactions, could have questioned the amounts that KJMM paid for a job interview and sales training, or whether it wanted to permit KJMM to use its commissions to satisfy such corporate obligations.[23]

As noted above, KJMM stated in its February 1985 amendment to its Form ADV that, among the factors considered in negotiating brokerage commissions, were the broker's execution capabilities and research, as well as other services. KJMM noted that these services would not only be provided directly to client portfolios but were "expected to enhance [KJMM's] general portfolio management capabilities." KJMM has asserted that its clients were aware that it is not always possible to demonstrate that such factors are of a direct benefit to their accounts.

It is clear that KJMM did not fulfill its obligation to disclose its arrangement with FSS.[24] KJMM's disclosure gave no indication of its arrangement with FSS.[25] The disclosure completely overlooked Form ADV's particular requirement to describe any services that the adviser receives from a broker that do not involve brokerage or research instructions. It gave no hint of the FSS arrangement. In this case, the arrangements, as the law judge correctly found, were "unusual," and the Form ADV did not adequately disclose these arrangements to clients. Having failed to disclose its arrangements properly, KJMM violated the antifraud provisions of Section 206(2) of the Advisers Act.[26]

KJMM also violated Section 207, which prohibits the making of an untrue statement of a material fact in any registration application or report, or omitting in any such application or report any material fact that is required to be stated therein, as well as the Act's reporting

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To impose upon the ... Commission the burden of showing deliberate dishonesty as a condition precedent to protecting investors through the prophylaxis of disclosure would effectively nullify the protective purpose of the statute.SEC v. Capital Gains Research Bureau, Inc., supra, 375 U.S. at 200.

22 KJMM paid total brokerage commissions of about $4.1 million in 1985, and placed over $58 million in orders with Bear Stearns, for which it paid an aggregate of $154,000 in commissions.

23 FN23 See Securities Exchange Act Release No. 23170 (April 23, 1986), 35 SEC Docket at 908-909, citing Securities Act Release No. 6019 (January 30, 1979) 16 SEC Docket 837, 838, where we emphasized that "brokerage placement practices of investment managers may take into consideration research and brokerage services, provided, however, that such practices are disclosed to investors."

24 We have previously cautioned that the Form ADV disclosure requirements and the Brochure Rule represent mandatory disclosure standards. More detailed or additional information and explanatory material could and should be provided where necessary, because of circumstances in particular cases, to ensure that all material information regarding brokerage placement practices and policies will be disclosed to investors.Securities Exchange Act Release No. 23170 (April 23, 1986), 35 SEC Docket at 909.

25 Contrary to Respondents' contention, the disclosure that certain services as "are expected to enhance general portfolio management capabilities"-does not reveal that KJMM would use soft dollars to recruit and train an employee.

26 The Supreme Court in Capital Gains held that scienter was not required to violate Section 206(2).

provisions.[27] We therefore sustain the law judge's findings that KJMM willfully violated Sections 206(2), 204, and 207 of the Advisers Act and Rules 204-1 and 204-3 thereunder.[28]

IV.

Respondents contend that the staff was estopped from bringing this proceeding because Respondents relied on Commission regulations and interpretations in effect in 1985. Basic elements of any estoppel are misrepresentations of fact and reasonable reliance thereon by the party claiming the estoppel.[29] Respondents' estoppel claim rests not on reasonable reliance on misrepresentations of fact, but on their asserted confusion as to this Commission's views as to which directed commission practices fell within the safe harbor of Section 28(e). We agree with the law judge, who concluded that respondents' argument does not support a claim of estoppel, but rather leads to the conclusion that respondents should not have proceeded without seeking the advice of counsel.

Respondents' argument that we were barred by laches from maintaining this proceeding lacks merit.[30] We agree with the law judge's assessment that the delay (from 1985 until 1991, when the proceedings were begun) "though unfortunate and undesirable, has not prejudiced respondents' legal rights." Respondents cite their inability to examine Blair, who died in the summer of 1986, as evidence of prejudice.[31] However, both Kingsley and Jonckheer testified at the hearing, and it is on their testimony that our findings are based. In addition, we have refrained, as did the law judge, from relying on any investigative testimony of Blair.

Respondents contend that the law judge improperly admitted voluntary investigative testimony given by Kingsley and Jonckheer that was given in the absence of counsel. They argue that,

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[27] Section 204 of the Advisers Act requires investment advisers to make records, furnish copies thereof and make reports, as prescribed by the Commission. Rule 204-1 under the Act, as here pertinent, requires prompt amendment of the Form ADV if specified information therein becomes inaccurate in a material way.

[28] Willfulness does not require that a respondent have a specific intent to violate the law or an awareness that the law is being violated. See Frank W. Humphreys, 48 S.E.C. 161, 164 (1985); Tager v. SEC, 344 F.2d 5, 8 (2d Cir.1965).
With respect to Section 206(1), which requires an element of scienter, the law judge found that Kingsley, the officer on whose conduct the liability of KJMM rests, believed that KJMM was within the law regarding the arrangements and their disclosure and that the services KJMM received benefited its clients. Findings of the law judge favorable to a respondent that are not appealed by the staff are adopted. See Rule 17(b) of the Commission's Rules of Practice. 17 C.F.R. 201.17(b). Trenton H. Parker & Associates, Inc., 48 S.E.C. 92, 93 n. 1 (1985). These findings of good faith preclude a finding of scienter necessary to hold that KJMM violated Section 206(1) or that Kingsley aided and abetted KJMM's various violations.

[29] As a general matter, a party asserting estoppel against the government must not only satisfy the traditional elements of estoppel, but must also carry a heavy burden to outweigh the strong, countervailing interest in obedience to the law. Heckler v. Community Health Services, 467 U.S. 51, 59 (1984); United States v. McGaughey, 977 F.2d 1067, 1073-74 (7th Cir.1992).

[30] Utah Power & Light Co. v. United States, 243 U.S. 389, 409 (1917) (laches or neglect of duty on the part of officers of the government is not a defense to a suit by it to enforce a public right or protect a public interest); Richard N. Cea, 44 S.E.C. 8, 21 (1969).

[31] Respondents, noting that Blair's partner had died in 1990 before the proceedings began, speculated that had the partner been alive he could have shed light on FSS's program in Blair's absence. Respondents introduced the partner's investigative testimony into the record seeking to demonstrate that the Division knew that the partner was dying. There is no support in this record for respondents' contention that the Division intentionally delayed bringing the proceeding until after the partner died.

because these witnesses had not been told that they or KJMM were targets of a Commission investigation, their waiver of their right to be represented by counsel was uninformed.

We disagree. Respondents concede that our rules do not require that "target notice" be given. Rather, they argue that such notice should be required. Here, however, when Kingsley and Jonckheer appeared voluntarily, they knew that KJMM's soft dollar arrangements with FSS were under investigation. At the outset of their testimony, Kingsley and Jonckheer were each notified both orally and in writing of their right to be accompanied, represented, and advised by counsel of their choice. They each received a form indicating that they could invoke the Fifth Amendment privilege against self-incrimination and that since they were there voluntarily, they could refuse to answer any question and leave whenever they wished. Both witnesses nonetheless expressly waived their right to representation.[32]

V.

We agree with the law judge that a censure of KJMM is appropriate in the public interest. Although KJMM's use of soft dollars was improper, there was no paying up, the number of transactions was limited, and the violations occurred a number of years ago.

With respect to Kingsley, who had an otherwise unblemished record after thirty years, the law judge noted that Kingsley is suffering from a progressive, terminal disease and is no longer in the securities business. We have determined to dismiss these proceedings as to him.

An appropriate order will issue.[33]

By the Commission (Chairman LEVITT and Commissioners SCHAPIRO and ROBERTS); Commissioner BEESE dissenting.

Jonathan G. Katz
Secretary

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Commissioner BEESE, dissenting:

While I agree with the majority's decision to dismiss all of the proceedings against Kingsley, and to dismiss the scienter based proceedings against KJMM, I believe the Commission should take the final step and reverse the censure imposed on KJMM.

Based on the specific facts and circumstances that exist in this case, I believe it is appropriate to exercise our discretion to dismiss these proceedings in their entirety. In making this determination, I believe it is particularly important to view this case, and the conduct of the

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[32] See North Carolina v. Butler, 441 U.S. 369, 373 (1979) (an express written or oral statement of waiver is strong proof of the validity of that waiver); Johnson v. Zerbst, 304 U.S. 458, 464 (1938) (the background, experience and conduct of witness must be considered in deciding if a waiver of counsel was intelligently made).

[33] All of the contentions made by the parties have been considered. They are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed in this opinion.

individuals involved, in context. The events at issue in this "soft dollars" case occurred in 1985. At that time, the state of the law with regard to permissible soft dollar practices was very unsettled. In fact, the law judge noted in his decision that "[t]here was uncertainty in 1985 as to the law in the soft dollar area, and it is my conclusion, based on Kingsley's testimony and his demeanor, that he believed KJMM was within the law...."

In my view, the law judge made the correct determination. Recognizing the substantial grey area that existed at the time, the question we should ask is whether Kingsley and KJMM made a good faith effort to comply with what market participants perceived to be the appropriate standards. I believe the answer to this question is yes. This is not a case where KJMM made no disclosure of their soft dollar practices. In fact, KJMM made extensive disclosures in their Form ADV filings. The problem with KJMM's disclosure, in the view of the law judge, was that the disclosure was overly broad and generic. Judging KJMM's disclosure by 1993 standards, I would probably agree. Judging by 1985 standards, however, it is a much closer question.

The second item that points to Kingsley's good faith attempt at compliance was his belief that he was acting under the advice of counsel. While there is some question as to whether the reliance on advice of counsel defense would apply under the facts of this case, the fact that Kingsley sought out the advice of respected securities counsel does evidence good faith.

Based on the foregoing, I would dismiss all proceedings against Kingsley and KJMM.

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ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's Opinion issued this day, it is ORDERED that Kingsley, Jennison, McNulty & Morse, Inc. be, and it hereby is, censured; it is further

ORDERED that the proceedings against Richard Kingsley be, and they hereby are, dismissed.

By the Commission.

Jonathan G. Katz
Secretary