ADMINISTRATIVE PROCEEDING
FILE NO. 3-6793

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
MICHAEL DAVID MARANT d/b/a LIGHT INVESTMENT COMPANY	:
(801-28711)	:
	:

INITIAL DECISION

Washington, D.C.
March 9, 1987

Warren E. Blair
Chief Administrative Law Judge

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APPEARANCES: Lillian H. Filegar and John J. Kelly, Jr., of the Denver Regional Office of the Commission, for the Division of Enforcement.

Michael David Marant, pro se.

BEFORE: Warren E. Blair, Chief Administrative Law Judge

These public proceedings were instituted pursuant to Section 203(c)(2) of the Investment Advisers Act of 1940 ("Advisers Act") by order of the Commission dated February 5, 1987 ("Order"). The Order directed that a determination be made whether an application for registration as an investment adviser filed pursuant to the Advisers Act by Michael David Marant d/b/a Light Investment Company ("Applicant") on December 22, 1986 was incomplete and inaccurate as alleged by the Division of Enforcement ("Division") and whether, pursuant to Section 203(c)(2) of the Advisers Act, Applicant's registration as an investment adviser should be denied. In substance, the Division alleged that the application was incomplete and inaccurate with respect to (1) the address of Michael David Marant ("Marant"); (2) the title and description of any criminal convictions; (3) the disclosures concerning Marant's business activities and background, and (4) names other than Michael David Marant that had been used by Marant. The Division further alleged that Applicant wilfully violated Section 207 of the Advisers Act by making untrue, false, and misleading statements of material facts in the applications for registration filed with the Commission.

An answer was filed by Applicant asking that the allegations be dismissed as unfounded and that registration as an investment adviser be granted. At the outset

of the hearing held and closed on February 24, 1987 Marant was advised of his right to counsel and chose to represent Applicant in these proceedings. He was then advised of certain procedural rights, including, among others, his rights to cross-examine witnesses called by the Division, to object to the admission into the record of oral and documentary evidence, and to present evidence on his own behalf.

As part of the post-hearing procedures, simultaneous filings of proposed findings, conclusions, and briefs were ordered. Timely initial filings were made by the parties, but reply briefs were not received.

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

RESPONDENT

Applicant, a sole proprietorship, is an outgrowth of Marant's growing interest over the last five years in the operations of securities markets and opportunities for profitable securities trading. Since November, 1982, Marant has been incarcerated in the Colorado Territorial Correctional Facility ("CTCF") located in Canon City, Colorado serving concurrent sentences of life imprisonment for first degree murder and 12 years for conspiracy

to commit murder.[1/]

Underlying the murder and conspiracy charges was a court battle between Marant and his ex-wife over custody of their daughter. After judgment granting custody of the child to the mother, Marant conspired with an acquaintance to murder his former wife, and the co-conspirator thereafter beat her to death.

VIOLATIONS OF SECTION 207 OF THE ADVISERS ACT[2/]

Under the provisions of Section 207 of the Advisers Act it is unlawful for any person wilfully to make any untrue statement of a material fact in any registration application or report filed with the Commission under Section 203 or wilfully to omit to state in any such application or report any material fact which is required to be stated therein. The Division alleged and the record reflects that the Form ADV filed by Applicant on December 22, 1986 was incomplete and inaccurate, and that the application for registration contained untrue, false and misleading statements of material facts and omitted to state material facts required to be stated.

In responding to Item 8 of Part 1 and to Item 3 of

1/ Marant's crimes were committed on January 28, 1981 and judgment of conviction and sentences imposed on November 4, 1982. State of Colorado v. Herbert David Marant, No. 81CR0096 (Boulder County Ct., Colo. Nov. 4, 1982) (Judgment of Conviction: Sentence: and Order to Sheriff (Mittimus)).

2/ 15 U.S.C. 80b-7.

Schedule D of Form ADV, both of which required Applicant to state the residence of the individual, Marant gave his address as 3141 South Santa Fe Drive #2, Englewood, Colorado 80110. That address was false and concealed the fact of his present incarceration and residence in the CTCF. Marant's present address is Territorial Correctional Facility, Unit No. 4, P.O. Box 1010, Canon City, Colorado 81212.

Applicant failed to list under Item 4, Schedule D of Form ADV all names Marant used or has used other than Michael David Marant. In fact, Marant's conviction for murder was under the name of Herbert David Marant. The failure to list the latter name was an omission of a material fact that made Applicant's Form ADV false and misleading.

Under Item 8, Schedule D of Form ADV, Applicant was required to disclose the title and date of the actions resulting in his murder conviction and give a description of that action. Applicant's response that "[o]n 2/9/81, this applicant was charged and convicted of murder by Boulder County Court, Colorado;" failed to state the title of the case which resulted in Marant's conviction, failed to disclose his conviction for conspiracy to commit murder, and failed to disclose his sentences. These were omissions of material facts which made Applicant's response to Item 8, Schedule D of Form ADV false and misleading.

As an additional response to Item 1.A, Part II of Form ADV concerning Applicant's advisory services, a statement was included on Schedule F of Form ADV that "Applicant provides a weekly newsletter entitled 'Light Weekly Investment News'." According to the record, a draft of a newsletter which has never been sent out has been the only preliminary step taken by Applicant in connection with the publication of a newsletter. Further, Applicant did not have the equipment to print a newsletter and Marant did not want to invest in that equipment unless Applicant became registered.

In addition to the false statement regarding the newsletter, Applicant's response was false and misleading in omitting to disclose the severe strictures upon Marant's ability to publish a newsletter or furnish investment advice. As an inmate subject to a strict Code of Penal Discipline promulgated by the Colorado Department of Corrections ("DOC"), Marant's ability to engage or continue to engage in business as an investment adviser would be dependent upon meticulous obedience to the DOC Code, infractions of which could lead to withdrawal of privileges granted to an inmate. The limitations upon Marant's activities and the chances of disciplinary action against him are not those common to investment advisers and are material facts that Applicant should have disclosed to make the

response concerning Applicant's investment advice accurate and acceptable.

In view of the false and misleading statements and omissions of material facts in Applicant's Form ADV Application, it is concluded that Marant, who was directly responsible for the responses entered in Applicant's Form ADV, wilfully violated Section 207 of the Advisers Act.[3/] It is further concluded that if the Applicant were registered as an investment adviser, its registration would be subject to suspension or revocation under Section 203(e) of the Advisers Act by reason of Marant's wilful making of the noted false and misleading statements and omissions of material facts in the application for registration.

Applicant argues that the address given in the Form ADV was not wilfully misrepresented because Marant understood the address being requested was the individual's address of record. That argument is rejected as failing to take into account the fact that the address was not Marant's address of residence as required by the Form ADV nor an "address of record" for Applicant but instead the home address of Bonnie Zimmerle, who Marant employed to

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3/ "Wilfulness," for purposes of these proceedings, does not require that a person know that he was breaking the law but only that there be an intent to perform the acts that resulted in the violation. Tager v. S.E.C., 344 F.2d 5 (2d Cir. 1965).

do clerical work outside the prison and to place conference telephone calls for him. Moreover, as admitted by Marant in his testimony at the hearing, [4/] he did not change the address in the application because he "did not want to muddy the waters any more," and "[t]here isn't a street and number to the DOC."

Marant also contends that he did not wilfully fail to disclose "Other Names Used" because he has not used and does not wish to use or does not wish to be known at this time by any name other than "Michael David Marant." This contention cannot be accepted, not only because Marant's present wishes are irrelevant to the issue but also because the denial that he has not used other names is in direct conflict with the record. Marant's testimony on this score during the hearing was that at birth he was given the name "Herbert David Marant," that his mother called him "Herb" most of his life, and that he was known by the name "Herbert David Marant" while serving in the United States Air Force and received an honorable discharge under that name. [5/] His testimony and his felony convictions under the name "Herbert David Marant" indisputably establish that Marant used names other than the one shown in Applicant's Form ADV.

4/ Tr. 180

5/ Tr. 166-67.

Applicant claims that no wilful failure to disclose details of his felony convictions occurred because Marant, "not being learned in legal terminology," did not realize what was being requested, and because the Commission staff did not advise him of the shortcomings. There is no merit to Applicant's position. Form ADV is not so complex as to require legal expertise in order to understand what information is being requested of an applicant. In any event, there is no acceptable excuse found in the record for a failure to include Marant's conviction for conspiracy to commit murder in view of the fact that he was obviously aware that Item 8, Schedule D required disclosure of his felony convictions. If Marant did not understand the requirements he should have asked the Commission staff for clarification. As to Marant's complaint that the Commission staff did not advise him that his response with respect to his felony convictions was deficient, the short answer is simply that an applicant has the burden of compliance and that burden cannot be shifted to the Commission staff. 6/

Applicant's further argument that Marant's dealings with the DOC concerning the running of a business is

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6/ See, Jesse Rosenblum, Investment Advisers Act Release No. 913 (May 17, 1984), 30 SEC Docket 857, 863 and the authorities therein cited, aff'd without opinion (3d Cir., March 25, 1985).

irrelevant to the issuance of registration as an investment adviser is patently erroneous. The completed Form ADV is a public document on file with the Commission and available to individuals interested in the background and qualifications of a registrant. 7/ Where, as here, the Form ADV is false and misleading as to material facts regarding Applicant's background and ability to carry on his business in a normal fashion without threat of interruption by prison authorities, the need for Applicant to disclose his dependency upon continued approval of his business by the DOC is not only relevant but vital to the granting of registration.

Furthermore, the false and misleading responses in all of the aspects recounted seriously impede discharge of the Commission's regulatory responsibilities under the Advisers Act. As the Commission has emphasized in the past: "The application for registration is a basic and vital aspect of our administration of the Exchange Act [Securities Exchange Act of 1934] and the Advisers Act. In order to perform our functions under those Acts, it is essential that the information required by the application forms be supplied completely and accurately." 8/

7/ See, Wendell Maro Weston, 30 S.E.C. 296, 311-12 (1949).

8/ Market Values, Inc., 42 S.E.C. 486, 489 (1964).

PUBLIC INTEREST

Section 203(c)(2)(B) of the Advisers Act provides that the Commission shall deny registration as an investment adviser if it finds that if the applicant were so registered, the registration would be subject to suspension or revocation under Section 203(e) of the Advisers Act. The latter provision, inter alia, authorizes the Commission to suspend or revoke the registration of an investment adviser if it finds that such action is in the public interest and that the investment adviser has wilfully made or caused to be made in any application for registration under the Advisers Act any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application any material fact which is required to be stated therein.

Inasmuch as the application in question contains wilful false and misleading statements of material facts and omissions of material facts, Applicant, if registered, would be subject to having the registration suspended or revoked. Consideration must therefore be given to whether such action would be in the public interest.

The record clearly establishes that were Applicant a registered investment adviser the public interest would

require his registration to be suspended or revoked because of the nature and extent of the false and misleading statements and omissions in the application, the apparent indifference Marant has shown toward compliance with regulatory requirements under the Advisers Act, and the abhorrent nature of the crimes for which he was convicted.[9/] Accordingly, it is concluded that Applicant's application for registration as an investment adviser should be denied.

While not unmindful of Marant's desire to build a future for himself while still in prison and that he has had commendations for his behavior as an inmate, the major concern is whether the record reflects that Marant can be trusted to adhere to the high standards of conduct required of an investment adviser.[10/] "An investment adviser is a fiduciary in whom clients must be able to put their

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9/ Neither a conviction for murder in the first degree nor a conviction for conspiracy to commit murder in the first degree is a statutory basis for suspension or revocation of an investment adviser's registration, but both crimes may be properly considered in connection with the public interest.

10/ Marant's present intention appears to be limited to the publication of an investment adviser's letter but he testified that he has been asked by his family and fellow inmates to invest funds for them; that if registered and he were able to invest funds for others, he would do so; and that in some instances, he would have control of their money and funds at securities firms. See, Tr. 180-86.

trust," [11] and is "an occupation which can cause havoc unless engaged in by those with appropriate background and standards." [12] Marant's conduct in connection with the completion and filing of the Form ADV's filed with the Commission and the enormity of the offenses that resulted in his imprisonment for life leave grave doubt that his performance as an investment adviser would meet those standards.

Applicant has not made the strong showing necessary to overcome the adverse impact of Marant's criminal convictions and the deceptive responses in the application. Such showing is a prerequisite for a finding that Applicant would not pose a threat to the investing public if registration as an investment adviser were granted to Applicant. [13]

11/ Joseph P. D'Angelo, 11 SEC Docket 1263, 1264 (1976); affm'd without opinion, 559 F.2d 1202 (2d Cir. 1977).

12/ Marketlines, Inc. v. S.E.C., 384 F.2d 264, 267 (2d Cir. 1967), cert denied, 390 U.S. 947 (1968).

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

ORDER

IT IS ORDERED that the application of Michael David Marant d/b/a Light Investment Company be, and hereby is, denied.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Rules of Practice.

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

Warren E. Blair
Chief Administrative Law Judge

Washington, D.C.
March 9, 1987