

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of :  
:  
RICHARD W. SUTER and :  
RICHARD W. SUTER d/b/a :  
NATIONAL INVESTMENT :  
PUBLISHING COMPANY :

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INITIAL DECISION

David J. Markun  
Administrative Law Judge

Washington, D.C.  
August 27, 1982

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APPEARANCES:

Dolores H. Dohm and Barbara A. Schmidt,  
attorneys, Chicago Regional Office,  
for the Division of Enforcement.

Richard W. Suter, pro se, for  
Respondents.

BEFORE:

David J. Markun, Administrative  
Law Judge.

## THE PROCEEDING

This public proceeding was instituted by an order of the Commission dated July 9, 1981, <sup>1/</sup> under Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") <sup>2/</sup> to determine whether Respondents Richard W. Suter ("Suter") and Richard W. Suter d/b/a National Investment Publishing Company ("National"), a sole proprietorship wholly owned and operated by Suter that is registered as an investment adviser under the Advisers Act, wilfully violated or wilfully aided and abetted violations of various securities laws and regulations thereunder, and the remedial action, if any, that may be appropriate in the public interest.

The evidentiary hearing was held in Chicago, Illinois, from March 16 through March 19, 1982, the Respondents appearing pro se. The parties have filed proposed findings of fact, conclusions of law, and supporting briefs.

The findings and conclusions herein are based upon the record and upon observation of the witnesses. Preponderance of the evidence is the standard of proof applied. Steadman v. S.E.C., 450 U.S. 91, 101 S.Ct. 999 (1981).

### FINDINGS OF FACT AND LAW

#### The Respondents

Respondent Richard W. Suter d/b/a National Investment Publishing Co. ("National"), a registered investment adviser with the Commission since February 28, 1969, publishes for compensation, among other

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<sup>1/</sup> On December 1, 1981, the Commission entered an amended order ("Order") that included additional allegations of violations against the Respondents.

<sup>2/</sup> 15 U.S.C. §80b-3(e),(f).

publications, two newsletters, the National Portfolio Reporter ("NPR") and the National Hard Assets Reporter ("NHAR"). The NPR is a newsletter that deals with the stock market and makes specific recommendations regarding the purchase of securities. The NHAR deals with various commodities such as gold, silver, and other rare metals and with foreign currency and interest rate futures and makes specific trading recommendations regarding them.

Respondent Richard W. Suter ("Suter") wholly owns and operates National. Suter receives all profits from the business of National. Respondents' place of business is at 6545 West Addison, Chicago, Illinois, Suter's residence; however, the business of National is handled in considerable part through a post office mail box address.

The violations alleged in the Order <sup>3/</sup> are alleged to have occurred at various specified periods between September, 1979, to December 1, 1981, the date of the Order. During such periods Respondents solicited by mail subscriptions to the NPR and the NHAR, <sup>4/</sup> and subscribers received their publications by mail.

The advertising materials seeking subscriptions to the NPR and the NHAR were authored by Suter. The materials were mailed out in the same envelope to potential customers. During 1981 National mailed out approximately 600,000 advertisements. Also enclosed with the advertising materials was an order card with the addressee's

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<sup>3/</sup> See footnote 1 above.

<sup>4/</sup> Respondents also issued other publications but these are not involved in the charges contained in the Order.

name and address sticker attached by which a potential customer, by checking the appropriate spaces, could subscribe to the NPR, the NHAR, or both. <sup>5/</sup> The subscriber could elect to pay by enclosing a check or by furnishing his Visa or MasterCard credit card number and authorizing a charge thereto.

Subscription prices varied over the charging periods involved depending upon the publications(s) ordered, the length of the subscription, e.g. 3 months, 6 months, or one year, whether a renewal was involved, and with various price changes that took place.

During 1980 Respondents had about 500 subscribers to the NPR and about 800 to 900 at the time of the hearing. For the 12-month period ending December 31, 1979, National had received about \$55,790 in total subscription income for the NPR and the NHAR.

Respondents generally had no more than one or two employees assisting them. At the time of the hearing Suter had one part-time "independent contractor" assisting him in the business.

#### Advertising and Related Violations

The record establishes, as charged by the Division in the Order, that within the period from approximately September 1979 to December 1, 1981, Respondents, although they solicited and received subscriptions to the NPR on the promise of a 100% refund if the customers were dissatisfied for any reason and

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<sup>5/</sup> See footnote 4 above.

wanted a refund, failed to honor such money-back guarantee in numerous instances.

From about September 1, 1979 to December 31, 1980, the advertising materials used by National to solicit subscriptions to the NPR stated:

GUARANTEE

"If you're not completely satisfied with your NATIONAL PORTFOLIO REPORTER subscription (and I can't imagine that ..... but if you're not satisfied) you may cancel your subscription after the 1st, 2nd, or 3rd issue and receive a 100% refund -- no questions asked.

"I'm willing to stick my neck out on such a refund offer because I'm sure that none of you will ever cancel your NATIONAL PORTFOLIO REPORTER subscription."

During the period January 1981 to December, 1981, the advertising materials used by National to solicit subscriptions to the NPR stated:

GUARANTEE

"If you're not completely satisfied with your NATIONAL PORTFOLIO REPORTER subscription (and I can't imagine that....but even if you're not) you may cancel your subscription after the first or second issue and receive a 100% refund -- no questions asked. I'm willing to stick my neck out on such a refund offer because I'm sure you'll never ever consider cancelling your NATIONAL PORTFOLIO REPORTER subscription."

Eight (8) <sup>6/</sup> witnesses testified that they made demands for refunds under the money-back guarantee within the allowable time frames and were either totally ignored or only given partial refunds that wrongly purported to be "full" refunds.

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6/ M.C., C.D., C.R., P.B.C., L.W., D.H., R.L., and B.B. H.

Thus, one witness, due \$59 for a one-year subscription cancellation, received a \$20 "refund," the amount applicable to a 3-month "trial" subscription. Another, charged \$219, received a "full" refund of \$20, and later, after the Commission had been alerted, an additional refund of \$169, which still did not amount to a full refund. The cancellation requests of various other of the eight witnesses were simply ignored, some after repeated inquiries. Although refunds were not forthcoming, the subscriptions did stop coming, indicating the cancellations were received by Respondents. In light of these failures of National and Suter to honor these refund requests, and in light of the attitude of mind on the part of Suter evidenced by numerous other violations found herein, it is clear that the money-back guarantee was false while it was being made, that it was a device to induce subscription to NPR, and that there was no intention to honor it in the "no-questions-asked" spirit -- rather, the intention was to honor it not at all, or only partially, or only when severely and repeatedly pressed by the subscriber. In any event, there is no dispute that in numerous instances the money-back guarantee was not honored, or, if honored at all, only partially.

The record also establishes, as charged in the Order, that Respondents wrongfully referred to past recommendations made by National in materials used to solicit subscribers to the NPR without providing or offering to provide a list of all

recommendations made by National within the year preceeding the advertisement.

Thus, during the period from approximately September 1979 to November 1979, National, in subscription advertising materials for the NPR, stated in bold face type:

"DURING 1979 OUR STOCK RECOMMENDATION  
INCREASED \$1935."

During the period from approximately November 1979 to January 1981, National, in subscription advertising materials for the NPR stated:

"During 1977 and 1978, the Dow Jones  
Industrial Average went down 201 points.

"During the same period, my stock market  
recommendations went up (appreciated) \$5,913."

During the period from at least January 1, 1981 to December 1, 1981, the date of the Order (and even to the date of the hearings) National, in the subscription solicitation materials for the NPR distributed through the mails, stated:

"(the) NATIONAL PORTFOLIO REPORTER and the  
MONETARY MOMENTUM INDEX have a solid, profit-  
making record of investment advice . . . if  
you prefer to read the advice of a proven  
winner, instead of promises, I urge you to  
subscribe today".

In none of these mentioned advertising materials did Suter and National provide or offer to provide a list of all recommendations made by Suter or National within the past year preceding the date of the advertisement. This failure to so offer or provide such a list was a clear violation of the express provisions of Commission Rule 17 CFR §275.206(4)-1(a)(2). In addition, the described misconduct violated another Commission



Rule and various provisions of the Advisers Act, as is found herein at a later point.

Additionally, the record establishes, as charged in the Order, that Respondents misrepresented in NPR advertising materials mailed to clients and prospective clients the number of subscribers to the NPR.

Thus, during the period from at least November 1, 1979 to March, 1982, National, in subscriptions advertising materials for the NPR distributed through the mails, stated:

"I [Suter] have many loyal subscribers; often there are more orders than I can easily process. My staff and I often have to work overtime to handle the flood."

The materials further stated:

"Shouldn't you find out why I [Suter] get such a volume of orders, whether the stock market is going up or down."

Suter and National knowingly misrepresented the number and loyalty of subscribers and the volume of orders, in that Suter knew at the time he authored and distributed these advertisements that:

- (1) National generally had only one employee who typically worked a four-hour day;
- (2) National had only some 500 NPR subscribers during 1980;
- (3) National had no method of keeping track of the number of orders received for the NPR over any given period of time; and
- (4) Suter did not have "any idea" how many orders for the NPR were received over any given period of time.

The representations relating to the number and loyalty of subscribers and the volume of orders constituted misrepresentations of material facts under established criteria for determining materiality; they could well influence the decisions of clients or potential clients to subscribe or reorder. The language "My staff and I" and "such a volume of orders" (emphasis added) was certainly such as to give the impression that Suter had many more NPR subscribers and a much larger operation than he in fact had. The further allegation in the Order that Respondents misrepresented the number of renewals in its advertising solicitations does not appear to be borne out by the record.

The record herein also establishes, as alleged in the Order, that although Suter's registration with the Commodity Futures Trading Commission ("CFTC") had been revoked by order of an Administrative Law Judge dated September 19, 1980, National, during the period October 1980 through April 1, 1981, in subscription advertising materials for the NPR, continued to represent that National was a "Registered Investment Adviser, Commodities Futures Trading Commission." Suter was aware of the revocation order as indicated in his Answer, and, also, on the basis of the fact that he appealed the order. The representations with respect to the CFTC registration constituted misrepresentations of material facts under the established criteria for determining materiality.

The Division further alleges in the Order that during the period September 1980 to December 1, 1981, Respondents utilized

Suter's d/b/a National registration with the Commission to solicit subscriptions to the NHAR, a publication dealing solely with commodities, thereby creating the false and misleading impression that the Commission regulates commodities. In its proposed findings and supporting brief the Division narrows this contention to the period October 1980 to April 1981, a time when Respondents continued to publish and distribute the NHAR even though they should have ceased doing so in light of the mentioned CFTC revocation order.

It is concluded that this allegation is not substantiated. Firstly, there is no indication in the record that clients or prospective clients were in fact misled to believe that the Commission regulates commodities or publication of the NHAR. This circumstance would of course not be conclusive on the issue if there were something inherently misleading in telling NHAR subscribers or potential subscribers that National was registered with the Commission. But there is not. It is not uncommon for a person or an entity to be registered with more than one regulatory body, and, indeed, registration with multiple regulatory agencies may enhance the actual and perceived qualifications of the registrant, as already noted above in connection with finding National's purported registration with the CFTC material to representations to subscribers and potential subscribers of NPR, a publication subject to the Commission's jurisdiction. Lastly, it would seem that alleged misrepresentations to subscribers and potential subscribers of the NHAR are, jurisdictionally, a matter for the CFTC rather than the Commission.

The Division also alleges in the Order that Respondents deceived or mislead subscribers or potential subscribers of NPR by representing during the period January 1981 to December 1981 that Suter had over 20 years' experience with the stock market without disclosing his current age, 34.

The record establishes that within the relevant period Suter and National, in advertising materials soliciting subscriptions to the NPR, distributed through the mails, stated:

"This letter (NPR) is about the most exciting stock market indicator I've (Suter) ever developed in more than two decades of watching the stock market" and "I first analyze the stock market using my MONETARY MOMENTUM INDEX and other indicators I've developed over the past 20 years." (emphasis added.)

Some witnesses testified they were misled into believing that Suter was in fact an older, more experienced man, based on these representations. Without stating Suter's age, or the age at which he commenced to "watch" the stock market or develop his indicators for analyzing the stock market (he would have been 13 or 14 at the time), the representation of over 20 years' experience was inherently misleading. And it related, of course, to a clearly material fact, i.e. his experience in the area in which he sought to advise and make recommendations to clients.

A further allegation of deceptive and misleading advertising is the allegation in the Order that Respondents represented that a certain graph <sup>7/</sup> utilized during the period

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<sup>7/</sup> The Commission's Rule 17 CFR §275.206(4)-1(a)(3) defines as fraudulent and deceptive any advertisement:

(Continued on next page)

January 1981 to December 1981 in solicitation materials seeking subscriptions to the NPR would assist persons in making investment decisions, without disclosing the limitations and difficulties with respect to its use.

The record establishes that within the relevant period Suter and National, in advertising materials soliciting subscriptions to the NPR, illustrated a graph entitled the "Monetary Momentum Index" and stated in part:

"The ending 1980 index is reprinted on your right; its signals would have permitted you to participate in every up market of the 1970s and kept you out of every down market as well . . . "The MONETARY MOMENTUM INDEX is updated in every semi-monthly issue of the NATIONAL PORTFOLIO REPORTER, my newsletter about the stock market and how you can profit by trading stock and options."

The advertisement did not disclose any limitations or difficulties with respect to the use of the graph entitled the Monetary Momentum Index. This failure to disclose the limitations and difficulties with respect to the graph c o n s t i t u t e d an omission of material facts and a clear violation of the express requirements of Commission Rule 206(4)-1(a)(3), quoted above (see footnote 7), as well as of other provisions of law and Rule, as found at a later point herein.

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7/ (Continued from page 10)

" (3) Which represents, directly or indirectly, that any graph, chart, formula or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making his own decisions as to which securities to buy, sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use; or "

The misleading, deceptive, and fraudulent advertising and related acts, practices, and courses of conduct found above to have occurred during the relevant periods in the course of Respondents' soliciting and honoring subscriptions to the NPR were in violation, as alleged in the Order, of Sections 206(1), 206(2), and 206(4) of the Advisers Act and of Commission Rule 206(4)-1(a)(5); the improper use of past recommendations and of the MONETARY MOMENTUM INDEX graph were also violative of specific Commission Rules governing such matters, as found above.<sup>8/</sup>

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<sup>8/</sup> Section 206 of the Advisers Act, 15 U.S.C. 80b-6, provides in pertinent part:

"It shall be unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly —

- (1) to employ any device, scheme or artifice to defraud any client or prospective client;
- (2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client;

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- (4) to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. The Commission shall, for the purposes of this paragraph (4) by rules and regulations define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative."

Rule 206(4)-1 promulgated by the Commission thereunder, 17 CFR 275.206(4)-1, defines certain advertising practices as constituting fraudulent, deceptive or manipulative acts, practices or courses of business within the meaning of Section 206(4) of the Advisers Act. The advertising practices so defined that are relevant to this proceeding are the circulation or distribution of any advertisement which:

(Continued on next page)

Fraudulent Multiple Charging of Credit-Card  
Subscriber-Clients

Perhaps the most serious fraud charges made in the Order by the Division against Respondents are the allegations that during the period from about April 1981 to at least September 1981 Respondents:

- a. made and submitted invoices for unauthorized charges to credit card accounts of subscribers; and
- b. falsified order cards where subscribers paid for a subscription through a credit card account.

In May 1981, Suter caused National to open, and National opened, a "merchant account" at the Sears Bank and Trust Co. in Chicago ("Sears Bank"). Through this merchant account, National was authorized to accept Visa and MasterCard sales drafts (credit card invoices) for mail order sales to National's customers of subscriptions to the NPR and/or the NHAR. The

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8/ (Continued from page 12)

- (i) contains any untrue statement of a material fact, or which is otherwise false or misleading (17 CFR 275.206(4)-1(a)(5));
- (ii) directly or indirectly refers to past specific recommendations of the investment adviser which were or would have been profitable to any person, unless the advertisement also sets forth, in the manner specified in the rule, a list of all recommendations made during the immediately preceding period of not less than one year (17 CFR 275.206(4)-1(a)(2)); or
- (iii) represents that any graph, chart, formula or other device can assist any person in making his own investment decisions without prominently disclosing the limitations with respect to their use (17 CFR 275.206(4)-1(a)(3)). (See footnote 7 above).

credit card invoices would be deposited into National's merchant account and Suter could then draw checks against the deposits in the same manner as if he had deposited cash into his account.

The Sears Bank supplied National with the Visa and MasterCard imprinter, invoices, and deposit tickets. Suter maintained the imprinter, invoices, and deposit tickets at National's place of business, i.e. Suter's home (see p. 2 above). Only Suter, National or their employees had access to the imprinter, invoices and deposit tickets.

During the period from May 1981 through at least September 1981, Suter caused National to accept, and National accepted, Visa and MasterCard credit cards for payment of subscriptions to the NPR and NHAR. Suter made and submitted and caused National to make and submit, for deposit to National's merchant account at the Sears Bank, credit card invoices, representing that the credit cardholder had authorized the amounts on the invoices be charged to credit card accounts of the cardholders. National and Suter had only to present to the Sears Bank such invoices in order for their merchant account to be credited; they did not have to present the cardholder's subscription order or a copy thereof.

During the period May 1981 to August 1981, Suter could draw checks, and did draw checks, against the merchant



account into which he deposited or caused to be deposited credit card invoices for sales of the NPR and NHAR. Suter was the only individual authorized to withdraw funds from National's merchant account at the Sears Bank.

The invoices submitted by National and/or Suter to the Sears Bank were processed through the Visa or MasterCard system by the Sears Bank. As a result of the processing, the amount of the credit card invoice submitted by National and/or Suter was reflected on the customer's monthly Visa or MasterCard bill.

During the period July 1981 through September 1981, the Sears Bank debited or "charged-back" to National's merchant account the amount of certain credit card invoices which Suter had earlier caused to be deposited to National's merchant account. Under the arrangement between National and the Sears Bank the bank was entitled to "charge-back" the National merchant account whenever a cardholder disputed a charge, and the balance in National's merchant account was reduced accordingly. <sup>9/</sup>

During the relevant period the Sears Bank debited National's merchant account for "chargebacks" amounting to \$8,911.02. Some of these "chargebacks" represented unauthorized

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9/ To get an automatic "credit" for the disputed item the cardholder generally had to dispute the charge within a prescribed time, and of course, if the "dispute" were ultimately resolved against the cardholder, his account would be redebited.

billings of individual subscribers for two, three, or even four times the amount of the NPR and/or NHAR subscription price.

During the period June 1981 to August 1981, Suter knowingly made and submitted and caused National to make and submit over 120 unauthorized credit card invoices amounting to \$8,911.02 in overbillings to the credit card accounts of National's customers. Some 79 subscribers were involved, of whom 27 subscribed to NPR or NPR and NHAR.

Suter withdrew and used funds from National's merchant account at the Sears Bank between May and August 1981. The source of \$8,911.02 of those funds was the unauthorized credit card charges made by National and Suter.

These chargebacks caused National's merchant account to become overdrawn and that fact, together with Sears Bank officials' view that the number and volume of National's chargebacks was wholly disproportionate to the volume of National's charge card transactions, prompted the Sears Bank to freeze National's account on August 14, 1981. While some adjustments were made after that date in attempts to resolve the overdraft problem, the account was no longer open for the ordinary transactions it had been set up to handle. A Sears Bank official testified he had so much apprehension about the matter that when he visited Suter's home office to look into the matter he had concern as to whether National was in fact

putting out the investment adviser newsletter to which the charges related.

Suter and National had previously, during the summer of 1980 and in early 1981, made and submitted a number of other unauthorized billings to customers' credit card accounts causing customers to be overbilled in the amount of two or three times the subscription price to the NPR, at a time when National's arrangements for credit card subscriptions were with a different bank.

Suter knew that he was submitting and causing National to submit credit card invoices that were not authorized by the credit card customer. His was a deliberate scheme to obtain the immediate use of funds as credits were posted to National's merchant account and, should the subscriber not notice or for any other reason fail to dispute the multiple billing, or to pursue a dispute, Respondents would retain the subscriber's funds.

How many instances may have occurred in which a subscribing credit card holder was multiple billed for a single purchase and unwittingly paid the multiple charges cannot be ascertained from the record, but it is not unreasonable to conclude there were some. The multiple billings sometimes appeared on successive monthly credit card bills, sometimes on the same monthly bill (depending upon when Respondents

submitted the invoices and how long the "processing" of the invoices through the banks took) and at times on bills that were several months apart.

Suter's testimony that multiple billings of subscribers resulted because potential clients' names appeared on two or three rented mailing lists that he utilized in soliciting subscribers, and that the subscribers sent in multiple order forms, forgetting that they had previously ordered, is preposterous. It is certainly conceivable that an occasional individual might have double subscribed by credit card but that so many should have done so within so short a time span and, moreover, that some should have ordered not only twice but three or four times makes Suter's contention ludicrous. Complaints from subscriber-clients about multiple billings came often enough that Suter developed a form-letter response to use, when he bothered to respond at all. The form letter was to the effect that it was not uncommon for subscribers to send in more than one order form and that the subscriber's subscription was simply being extended for the period of the additional subscription. Suter also testified that if multiple subscription orders came in, even though not followed by a complaint when the double billing occurred, he automatically extended the subscriber's subscription without even notifying the subscriber. I do not credit his testimony in this regard,

and the record does not otherwise establish the contention of automatic extensions. If extensions had been made automatically as claimed, i.e. in cases where there was no complaint or inquiry from the credit card holder, the practice of doing so without notice to the client would certainly have constituted a fraudulent practice or course of business. This would be particularly true of 3 or 6 month subscriptions, which were more expensive on a time basis than 12-month subscriptions. Suter produced no proof from his records that automatic extensions were made. Moreover, when a cardholder disputed the multiple billing by going directly to his Visa or MasterCard bank and obtaining credit in his account, Suter did not contest the matter with the cardholder/subscriber/client. <sup>10/</sup>

In addition, the numerous complaint letters in the files of the Sears Bank and some that came to the Commission's offices, as well as the testimony of numerous witnesses, refutes Suter's testimony that these multiple billings, amounting to nearly \$9,000 over only some 15 weeks, and involving some 79 or 80 client subscribers, were the result

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<sup>10/</sup> As developed below, Suter did at one point present to the Sears Bank various order cards, at least some of them forged, in an attempt to persuade Sears Bank to reinstate National's merchant account or to resolve their dispute.

of forgetfulness or inattention on the part of the subscribers.

As found above, Respondents' scheme of multiple billing subscribers involved a substantial number of investment adviser clients who subscribed to the NPR newsletter, though there were more NHAR subscribers involved than NPR subscribers. The NHAR multiple billings are, however, relevant to the charges concerning multiple billing of NPR clients since the practices regarding NHAR were part of an integrated scheme to defraud and go to establish Suter's intent and the overall scheme.

Further evidence that the multiple billings by National and Suter were part of a deliberate, fraudulent scheme is found in the fact that in an effort to avoid confirmation of the scheme and its consequences, Suter falsified and forged signatures on a substantial number of what purported to be subscribers' original Order Cards.

During the relevant period various subscribers authorized National to charge their Visa and/or MasterCard accounts by executing the Order Card provided with National's advertising materials. Customers would fill out the Order Card with their Visa or MasterCard account number and the type of subscription to be purchased, and sign the Order Card to authorize the charge to their Visa or MasterCard account. The Order Cards were the client's authorization to charge the

client's credit card account for the amount indicated on the Order Card.

As already noted, the Sears Bank notified Suter on August 14, 1981, that it was freezing National's merchant account because of an overdraft due to the excessive "chargebacks". In August or early September 1981, in response to the Sears Bank action, Suter produced to his attorney and through him to the Sears Bank various "original" Order Cards purporting to authorize National to charge its clients' credit card accounts for two or three subscriptions to the NPR or NHAR. This was done in an effort to justify the multiple submission of invoices for numerous customers by National and Suter to the Sears Bank.

Exhibit 29-1 through 29-39 contains purportedly original Order Cards with multiple orders from 16 individuals (2 or 3 Order Cards each) and single Order Cards purportedly submitted by three other individuals. I conclude, on the bases of my examination of complaint letters of multiple billings in the records from persons for whom Suter submitted the multiple purported Order Cards, the inherent improbability that 16 persons would inadvertently have submitted multiple Order Cards in so short a time period, and upon the record as a whole, including extensive testimony by Suter, that one or more of the Order Cards purportedly submitted by each of the 16 persons who purportedly submitted multiple Order Cards were falsified and the purported signatures forged by Suter.

When Suter was first asked whether he had falsified the purported Order Cards reflected in Exhibit 29, he testified he "did not recall." (Tr. 276) As the Division rightly contends, a reasonable man, innocent of such egregious wrongdoing, would have responded with indignation and a strong and quick denial of such an accusation; only when pressed for an unequivocal answer did he ultimately deny having forged and falsified the purported Order Cards. For the reasons indicated above, and his demeanor while testifying, I do not credit Suter's denial.

The scheme for the multiple charging of credit-card subscribers to NPR and NHAR devised, practiced, and conducted by National and Suter was in clear violation, as charged in the Order, of Subsections 206(1), 206(2) and 206(4) of the Advisers Act. I conclude, however, that it was not in violation of Commission Rule 206(4)-1(a)(5), inasmuch as that rule deals only with advertising, <sup>11/</sup> which is not involved in the multiple billing scheme.

Failure to Allow Complete Inspection of Records and Failure to Make and Keep Accurate Books and Records

The record further establishes, as alleged in the Order, that in March of 1981 Respondents refused to allow Commission personnel full access to books and records they were required

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11/ See footnote 8 above.



to produce for inspection.

Section 204 of the Advisers Act, 15 U.S.C. §80b-4, provides in relevant part:

"All records . . . of such investment advisers are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors."

The books and records to be kept true, accurate, and current, and that are subject to inspection pursuant to Section 204, are defined in Commission Rule 17 CFR §275.204-2(a).

Suter admitted in his Answer to the Order for Proceedings that March 3, 1981 was the date set by prior agreement for examination by the Commission staff of his books and records. Nevertheless, Respondents refused to allow a complete inspection of their books and records on that date. They only showed the staff a balance sheet dated 12/31/79, a limited amount of correspondence, the current NPR advertising material, one page of a cash receipt ledger and a few, but not all, canceled checks. Respondents refused to produce the cash receipt and disbursement records, the general ledger, checkbooks, bank statements, all of the canceled checks, cash reconciliations, bills relating to the business and written communications with his customers. (emphasis added). Suter testified that he refused to allow the inspection on advice of counsel. This does not excuse Suter's refusal. Cf. the Commission's holding in Hammon Capital Management Corporation, 21 S.E.C. Docket 1304, 1305-6 (1981):

respondent's "desire to confer with counsel in order to determine his rights" is not sufficient reason to withhold inspection; "An advisory firm is not entitled to delay a reasonable inspection by our staff during regular business hours."

Refusal to produce all of the records they were required to produce in the course of this inspection was a clear violation of §204 by Respondents.

Moreover, Suter admitted that he did not keep (i.e. retain) documents relating to the receipt or disbursement of funds respecting Respondent's investment advisory business. Suter admitted that, as a normal practice, he discarded all customer order cards and National's copy of credit card invoices submitted to the Bank shortly after they had served his immediate purposes. Suter also discarded client correspondence as evidenced by the fact that Suter produced, (at the hearing), pursuant to subpoena, only seven letters, none of which corresponded to the numerous letters produced by the witnesses who testified that they wrote Suter. This misconduct violated Rule 204-2(a)(7), as alleged.

In addition to discarding records required to be kept pursuant to Rule 204-2(a)(7), Respondents falsified customer subscription orders and submitted unauthorized invoices to the Sears Bank, as found above. Respondents' conduct in intentionally discarding and falsifying records of the investment advisory business was in clear violation of Section 204 and Rule 204-2(a)(7) As the Commission stated in Hammon, supra, at p. 1306:

"We have repeatedly stressed the importance to the regulatory scheme of the requirement that books and records be kept current and in proper form. [footnote omitted] That requirement is a keystone of the investment adviser surveillance with which we are charged in order to protect the investing public."  
[footnote omitted]

Sale of Unregistered Securities (Investment Contracts)

The record establishes, as the Order alleges, that within the period from about December 1980 to February 1981 Respondents violated Subsections 5(a)(1) and 5(c) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§77e(a)(1), 77e(c), by offering to sell and by selling certain unregistered securities, namely investment contracts structured as investment units in subscription solicitations to newsletters published by National.

In December 1980 Suter and National, hoping to raise about \$500,000 in capital from the public, offered through the mails a one-page advertisement soliciting investments in a "Special Tax Shelter Opportunity" ("Tax Shelter"). This Tax Shelter advertisement was mailed to between 4,000 and 5,000 individuals.

About 50 to 100 people responded to the Tax Shelter advertisement, to get "[f]ull details." Respondents sent these persons a 3 or 4 page form "letter" in the mails describing how the Tax Shelter investment opportunity, offered in units of \$6,750 or multiples thereof, would work. The "letter" stated in part:

\* \* \*

"What we're offering is the opportunity to mail out subscription solicitations for our family of investment newsletters. This is profitable, and we've been doing it consistently since 1971. The tax law permits all expenses to be deducted currently, but income is reported only as earned.

\* \* \*

"Here's the deal. Each investment unit of \$6,750 will pay for mailing 25,000 advertisements to known buyers of investment and financial newsletters. When the orders come in, we will fill the orders for 15 percent of the gross receipts and use all the remaining money for additional mailings, through the end of 1981. The buyers from your mailings will be specially coded and all future renewal income from your names will be sent directly to you monthly, less our 15 percent charge for fulfilling the subscription. "

\* \* \*

As a result of these efforts five people invested a total of \$54,000 in the Tax Shelters. As evidence of their investments each investor was mailed by Respondents a one page "TAX SHELTER/SUBSCRIPTION INCOME CONTRACT" signed by the investor and signed by Suter as "accepted" by National.

Suter authored the Tax Shelter advertisement, the 3 or 4 page descriptive form "letters" that were in effect the "offering materials", and the Tax Shelter/Subscription Income Contract. These three items contained the only material made available to investors in the Tax Shelter.

Investments in the Tax Shelter were investment contracts, and thus securities, since the investors would profit or not solely on the efforts and success of Respondents<sup>12/</sup>. Thus, if the quality of National's publications and its business practices in general were of a nature that would prompt heavy renewals of subscriptions, investors might gain. If not, they would stand to lose.

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<sup>12/</sup> SEC v. Howey Co., 328 U.S. 293 (1946).

Suter and National knew that the Tax Shelter investment contracts were not registered under the Securities Act. Suter purported to believe that an exemption to registration was available, but the record fails to establish either any basis for an exemption or any reasonable basis for a belief on Suter's part that an exemption was available. See pp. 34-35 below.

Misrepresentation and Fraud in the Offer and  
Sale of Investment Contracts

The record also establishes, as alleged in the Order, that in offering and in selling the Tax Shelter investment contracts discussed above Respondents violated the antifraud provisions of Subsections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §77q(a), and of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §78j and of Rule 10b-5, 17 CFR §240.10b-5, thereunder.

Under the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder, "material facts" relating to an offering of securities must be disclosed. The appropriate test for determining materiality of an omitted fact is whether there is a substantial likelihood that a reasonable investor would consider the fact important in making an investment decision. TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438 (1976); Lewelling v. First California Co., 564 F.2d 1277 (9th Cir. 1977).

Information regarding the financial condition, solvency and profitability of the issuer is always material. S.E.C. v. Murphy, 626 F.2d 633, 653 (9th Cir. 1980).

The offering materials provided by Respondents were not only insufficient but also contained untrue statements and omitted to state material facts regarding the investment in numerous particulars, of which only the most salient need be detailed here. The four page letter provided to investors did not provide any meaningful facts about the investment. The offering materials contained mostly exaggerated claims as to how the investor would profit. These claims were without reasonable basis.

Respondents' materials claimed that if an individual invested \$6,750 in 1981, that investor would receive cash in 1981 of \$5,367. According to Suter's own documents, not one of the individuals who invested in the Tax Shelter opportunity received cash in anything approaching that amount. What Respondents' document reveal is that individuals received as little as \$42.84 through November 1981 and that only one-half of their initial investment remained intact. For instance, R.B. invested \$13,500 in February 1981; by November 1981, he had received total cash from Suter of \$493.83 and had a remaining balance in his account of \$4,989.53. Clearly, Suter's cash projections were not met.

More importantly, Suter had no reasonable basis for his

cash projections. He testified that these projections were based principally on the NHAR because this newsletter had the largest circulation. At the time of the offering, Suter did not disclose that his registration with the CFTC had been revoked and that as a result of that revocation Suter could no longer lawfully distribute the NHAR by mail.

Suter claimed in the offering materials that "about 40 percent of all new subscribers renew their subscriptions year after year." This statement was also without any reasonable basis in that, as was clear from his testimony, Suter had no idea as to how many subscribers renewed. Suter testified that National had no method of determining which clients may have renewed their subscriptions because of the way National kept its books and records and computer entries. Suter failed to disclose this highly material fact to the Tax Shelter investors.

In addition, Suter represented that "a publisher of our size nets substantially more than \$100,000 a year from mailing list rentals"; but Suter failed to disclose that in 1979 National in fact earned only \$7,500 and in 1980 earned "maybe" \$45,000 from its mailing list rentals.

Of great importance, Suter failed utterly to disclose National's financial statements or its financial condition, even though the investors were totally dependent on National for their profits.

Furthermore, Suter did not disclose any risks associated

with the investment and the costs associated with the investment.

Lastly, Respondents materials expressly claimed that their investment units were not securities when, in fact, as found above, they were.

These were all highly material facts to which the investors were entitled. Respondents clearly violated Sections 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

Scienter; Wilfulness

In Steadman v. S.E.C., 603 F.2d 1126, 1134 (C.A. 5, 1979); affirmed on a different issue, 450 U.S. 91, 101 S.Ct. 999 (1981), the Fifth Circuit held that scienter was required to establish violations of Section 206(1) of the Advisers Act. In Aaron v. S.E.C., 446 U.S. 680 (1980), the Supreme Court held that findings of violations of Subsection 17(a)(1) of the Securities Act and Section 10(b) of the Exchange Act must be supported by scienter. The scienter requirement is established by a showing of reckless misconduct. See Sanders v. John Nuveen & Co., Inc., 554 F.2d 270, 792-93 (7th Cir. 1977), cert. denied, 101 S.Ct 350 (1980); Sundstrand Corp. v. Sun Chemical, 553 F.2d 1033, 1044-1045 (7th Cir. 1977), cert. denied, 434 U.S. 875 (1977).



The scheme for the multiple charging of credit-card subscriber-clients by Suter and National was clearly an intentional effort by Suter to cheat both National's subscriber-clients and the Sears Bank; the resulting violations of various statutes thus clearly involved scienter.

The advertising and related violations found above were effected by Suter and National either with direct intent to mislead or deceive or with a completely reckless disregard for the consequences of their misconduct or for their responsibilities as an investment adviser having fiduciary obligations. These violations therefore meet, at a minimum, the recklessness test for establishing scienter.

The violations of Subsection 17(a)(1) of the Securities Act in connection with the offer and sale of Tax Shelter investment contracts meet, at a minimum, the recklessness standard for establishing scienter. Suter made no serious effort to ascertain whether what he was distributing was a "security" or not, or to comply with the antifraud provisions governing the offer or sale of a security. Since Suter is a registered investment adviser holding himself out as expertly qualified to advise the public on the purchase and sale of securities, it is incomprehensible that he should not have recognized the Tax Shelter as an investment contract and thereafter complied with the anti-fraud requirements governing the offer and sale of securities. That he did not indicates that Suter's actions were deliberate;

at the very least they were in reckless disregard of consequences and of his obligations, and therefore establish the requisite scienter.

The violation of any securities law or rule or regulation thereunder, if it is to form a basis for the imposition of a sanction under Subsection 203(e) or (f) of the Advisers Act, must be shown to have been done "wilfully." "Wilfully" in the context of the securities statutes and Rules here involved means intentionally committing the act which constituted the violation. There is no requirement that the actor also have evil motive or intent to violate the law, or knowledge that the law was being violated. Tager v. S.E.C., 344 F.2d 5, 8 (2d Cir. 1965); Gearhart & Otis, Inc. v. S.E.C., 348 F.2d 798, 803 (D.C. Cir. 1965); Nees v. S.E.C., 414 F.2d 211, 221 (9th Cir. 1969); Hinckle Northwest, Inc. v. S.E.C., 641 F.2d 1304, 1307 (9th Cir. 1981); Securities Forecaster Co., Inc., 39 S.E.C. 188, 191 (1959); Lamb Brothers, Inc., Securities Exchange Act Release No. 14017 (October 3, 1977), 13 SEC DOCKET 265, 270, n. 25.

Each of the violations of securities laws and rules found herein was committed wilfully under the above standard.

#### Respondents' Contentions

Respondents contend, among other things, that they are not subject to regulation under the Advisers Act for two reasons:

(1) such regulation is prohibited by the First Amendment to the Constitution and (2) their activities fall within the bona fide newspaper exception under §202(a)(11) of the Act, 15 U.S.C. §80b-2(a)(11).

As to the First Amendment claim, the fact that Respondents chose to register under the Act and to remain so registered would seem to preclude their being able to challenge its constitutionality. S.E.C. v. C.R. Richmond & Co., 565 F.2d 1101, 1107 (9th Cir.1977). In any event, this contention by Respondents brings into play the legal principle that the Commission does not rule upon the constitutionality of laws it is charged with administering, i.e. it assumes their constitutionality unless the Courts should rule otherwise. Todd v. S.E.C., 137 F.2d 475, 478 (6th Cir.1943); Milton J. Wallace, 6 SEC DOCKET 300, 301 (1975); Samuel H. Sloan, d/b/a Samuel H. Sloan & Co., 6 SEC DOCKET 772, 775, footnote 23 (1975).

As to the second part of this contention of the Respondents, it is abundantly clear that the bona fide newspaper exemption does not apply. The NPR is precisely the type of publication Congress intended be regulated under the Advisers Act.

Securities and Exchange Commission v. Wall Street Transcript Corp., 422 F.2d 1371 (2d Cir. 1970), discussed the criteria to establish the bona fide newspaper exception under Section 201(a)(11)(D), 15 U.S.C. § 80b-2(a)(11). The Court held at p. 1377 that a determination of whether or not a publication falls within

the "bona fide" exception depended on whether its practices deviated "from customary newspaper activities to such an extent that there is a likelihood that the wrongdoing which the [Investment Advisers] Act was designed to prevent had occurred."

Moreover, in Interpretive Release No. IA-563 (Jan. 10, 1977) 42 F.R. 2953, 17 CFR 276.563, the Commission staff clarified the applicability of Section 202(a)(11) to publications. That release stated that the "bona fide newspaper" exception is applicable only where, "based on the content, advertising material, readership and other relevant factors a publication is not primarily a vehicle for distributing investment advice."

The NPR is not a bona fide newspaper. Suter markets the NPR to an audience that he feels is receptive to investment advice. His whole advertising campaign is to make potential clients believe that his advice as to when to buy and sell securities will make a profit for them. Clearly this is exactly the type of newsletter which must be regulated to prevent the wrongdoing the Act seeks to prevent or to curtail.

Respondents also contend that if the Tax Shelter is found to be a security, it is exempt from registration under Commission Rule 240, 17 CFR §230.240. The evidence establishes that Respondents did not meet the requirements of Rule 240. Respondents offered the Tax Shelter through a nationwide mailing to over 4,000 persons who were subscribers to their "family of investment newsletters." In the offering material sent in this

mailing, Suter briefly described the investment, briefly described the projected cash return, the tax aspects, and stated that the investment deadline was January 31, 1981. Such a mailing constituted an offer within the meaning of Section 2(e) of the Securities Act. Moreover, the mailing constituted general advertising and general solicitation for the sale of the securities. No exemption from registration under Rule 240 is available if the securities are "offered, offered for sale or sold . . . . by any means of general advertising or general solicitation." Thus these investment contract securities do not qualify for the exemption under Rule 240. In addition, Suter sent his letter further describing the offering (in his inaccurate characterization, giving "full details") to approximately 50 persons who had requested additional information. This also constituted a public offering. <sup>13/</sup>

Another of Respondents' contentions, i.e. that their due process rights were violated by a purported failure to allow them adequate opportunity to retain counsel of their choosing, is fully refuted by the record. The original Order for Proceedings in this case was entered on July 21, 1981, approximately eight months

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<sup>13/</sup> Respondents also argue that under Rule 240 they had no obligation to disclose to the offerees any facts or information. Rule 240 is not a license to defraud. As stated in its Preliminary Note 1: "Rule 240 ... does not provide an exemption from the antifraud provisions of the federal securities laws...." As found herein, Respondents made numerous false and misleading statements and omissions to state material facts in connection with their securities offering.

before the hearing commenced. The amended Order for Proceedings was entered on December 2, 1981, over three months before the hearing commenced. Clearly, Respondents had adequate time to retain counsel of their own choosing.

In fact, the record reflects that Suter, by his own admission, had retained three firms and spoken with numerous other attorneys about representing him. Motions for continuance were granted in this proceeding on August 12, 1981, September 17, 1981, October 22, 1981, November 24, 1981, January 11, 1982, and February 12, 1982. The October 22, 1981 and the February 12, 1981 postponements were granted based on Suter's motions that he needed additional time in order to engage new counsel. The January 11, 1982 postponement was granted mostly on the basis that Suter had recently retained new counsel who needed additional time to prepare for the hearing. In my February 12, 1982 Order Postponing the Hearing and Extending the Time in Which to Answer until March 16, 1982, I wrote in part:

"I stated [in the course of a preceeding conference call among the parties] that I was reluctant to give a further postponement because of the need to move administrative proceedings to expeditious conclusions and because of the inconveniences caused to witnesses and others by postponements but that, because of the importance of representation by counsel, I would postpone the hearing one last time subject to certain understandings and to certain undertakings by Mr. Suter, namely:

\* \* \*

3) Mr. Suter will engage only counsel who will be fully prepared to proceed with the hearing on the newly-scheduled hearing date, i.e. counsel who can familiarize themselves with the case in the intervening time and who will not have conflicting schedules.

4) No further postponement will be given absent circumstances of the utmost exigency."

On February 22, 1982, Suter moved for yet another continuance of the hearing, again based on his stated inability to retain counsel. I noted in my March 2, 1982 Order denying Suter's motion, that he had been given the previous postponement with the express understanding that "no further postponement would be granted 'absent circumstances of the utmost exigency,' and that Suter in the available time would have to obtain counsel who would be free and able to commence on March 16 or resolve to represent himself."

I conclude that Respondents had ample time to obtain counsel to represent them in this proceeding.

All of the other various contentions of the Respondents have been considered carefully and, to the extent not embodied or reflected herein, they are found to be without merit.

### Conclusions

In general summary of the foregoing, it is concluded that within the described relevant periods and by use of jurisdictional means Registrant National wilfully committed violations of the following laws and regulations and that Respondent Suter wilfully

violated, and/or wilfully aided and abetted National's violations of, each of such laws and regulations, all as more particularly found above and specified below:

(1) Suter individually and National wilfully violated and Suter wilfully aided and abetted violations of Subsections 206(1), 206(2) and 206(4) of the Advisers Act and of Rules 206(4)-1(a)(5), 206(4)-1(a)(2) and 206(4)-1(a)(3) promulgated thereunder by their various false and fraudulent advertising and related practices in advertising NPR to clients and prospective clients.

(2) Suter individually and National wilfully violated and Suter wilfully aided and abetted violations of Subsections 206(1), 206(2) and 206(4) of the Advisers Act through their acts, practices and scheme for fraudulent multiple billing of credit-card subscribers to NPR.

(3) Suter individually and National wilfully violated and Suter wilfully aided and abetted violations of Section 204 of the Advisers Act in that they refused to make available for inspection by Commission staff of certain records required by law to be kept and made available for inspection that related to the investment adviser business of Respondents.

(4) Suter individually and National wilfully violated and Suter wilfully aided and abetted violations of Section 204 of the Advisers Act and Rule 204-2(a)(7) promulgated thereunder in connection with their submission of falsified invoices for credit-card subscribers to NPR and the falsification of order



cards with respect to such clients.

(5) Suter and National wilfully violated Subsections 5(a)(1) and 5(e) of the Securities Act in that they wrongfully offered to sell and sold securities, i.e. investment contracts called Tax Shelters, when no registration statement was filed with the Commission or in effect with respect to such securities.

(6) Suter and National wilfully violated Subsections 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, by selling and offering to sell certain securities namely investment contracts known as Tax Shelter by fraudulent, deceptive, and manipulative means.

#### PUBLIC INTEREST

It is well established that an investment adviser is a fiduciary whose actions must be governed by the highest standards of conduct. <sup>14/</sup> The host of violations found herein, ranging in gravity from serious to egregious, <sup>15/</sup> demonstrate all too clearly Suter's callous disregard for those standards.

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<sup>14/</sup> See S.E.C. v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 191-192 (1963); Rosenfeld v. Black, 445 F.2d 1337, 1342-1344 (2d Cir. 1971); Joseph P. D'Angelo, Investment Advisers Act Release No. 562 (December 16, 1976), 11 SEC DOCKET 1263, 1264, aff'd without opinion, 559 F.2d 1202 (2d Cir. 1977).

<sup>15/</sup> As found above, a number of the statutes and rules violated required a finding of scienter.

Thus, Suter obtained client-subscribers by practicing a broad range of deceptive, misleading, and fraudulent advertising practices. He cheated certain of his client-subscribers by refusing to honor his money-back no-questions-asked guarantee entirely or by making only a partial refund, professing that the partial refund was in fact a full refund. He defrauded numerous client-subscribers of moneys aggregating a substantial sum by a fraudulent scheme for multiple-billing of persons who subscribed to Suter's newsletters by authorizing charges to their credit cards and, when the scheme was put in question by the Sears Bank, Suter tried to cover up the fraud by forging purported client signatures to multiple order cards filled out by Suter. <sup>16/</sup> Suter fraudulently got clients or potential clients to in effect invest in his investment adviser business through purchase of the investment contract "Tax Shelters" without ever disclosing his financial condition or numerous other material facts. And, lastly, he refused to allow a full inspection of National's books and records.

In addition to the violations found herein, the record contains other evidence relevant to sanctions.

Over the last seven years, the Commission has received a number of complaints from the public regarding Respondents

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<sup>16/</sup> The record herein shows very poignantly the aggravation suffered by subscribers who were fraudulently billed two, three, or even four times for a subscription.

failure to make refunds and their flamboyant advertising claims. The staff of the Commission has regularly advised Suter of these complaints. The staff over the years has sent Respondents numerous deficiency letters advising them that their conduct violated the Advisers Act and Rules promulgated thereunder. Suter, for the most part failed to respond to the staff's letters. None of these prior warnings served to forestall the violations found herein.

Over the years, the Commission staff has received little cooperation from Respondents concerning inspections of their books and records. In 1976, a lawsuit had to be filed against Suter in order to obtain access to his books and records because Suter refused to allow the staff to conduct an examination [S.E.C. v. Suter, 76 C 35 (N.D. Ill. 1976)]. In that case Suter filed an affidavit that he would thereafter make National's books and records available. Suter again flagrantly violated the provisions of the Advisers Act and the terms of his sworn affidavit by once again refusing to allow the staff fully to inspect his books and records, as found herein.

Lastly, the manner in which Suter keeps the records generally is such that his books and records can not possibly approach the current, true and accurate standard required by Rule 204-2(a).

Suter's actions and attitude clearly demonstrate his

lack of fitness to remain in "an occupation which can cause havoc unless engaged in by those with appropriate background and standards."<sup>17/</sup> Although I recognize the serious effect of a revocation of registration and a bar from association, I am fully convinced that a lesser remedy will not suffice to protect the public from future harm at his hands or to deter others from similar misconduct.

ORDER

Accordingly, IT IS ORDERED as follows:

(1) The registration as an investment adviser of Registrant Richard W. Suter d/b/a National Investment Publishing Company is hereby revoked.

(2) Richard W. Suter is hereby barred from association with any investment adviser.

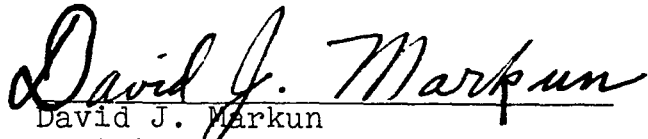
This order shall become effective in accordance with and subject to Rule 17(f) of the Commission's Rules of Practice, 17 CFR §201.17(f).

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 (15) 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.

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<sup>17/</sup> See Marketlines, Inc. v. S.E.C., 384 F.2d 264, 267 (2d Cir. 1967), cert. denied, 390 U.S. 947.

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.<sup>18/</sup>

  
David J. Markun  
Administrative Law Judge

Washington, D.C.  
August 27, 1982

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<sup>18/</sup> All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties, and the arguments made by them, are in accordance with the findings, conclusions and views stated herein they have been accepted, and to the extent they are inconsistent therewith they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues presented.