(Securities Exchange Act Release No. 7972)

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C.
October 10, 1966

In the Matters of	
F. S. JOHNS & COMPANY, INC. 1994 Morris Avenue Union, New Jersey File No. 8-8759	
GLOBAL PLANNING CORP. 20 Branford Place Newark, New Jersey File No. 8-10629	
REGINA DLUGASH doing business as DOUGLAS ENTERPRISES 2109-86th Street Brooklyn, New York File No. 8-5148	FINDINGS AND OPINION OF THE COMMISSION
ELIOT, ROBERTS & CO., INC. 11 Commerce Street Newark, New Jersey File No. 8-5497	
REUBEN ROSE & CO., INC. 2 Broadway New York, New York File No. 8-10217	
WINKLER, CHASE COMPANY 11 Broadway New York, New York File No. 8-3909	
Securities Exchange Act of 1934 - Sections 15(b), 15A and 19(a)(3)	

BROKER-DEALER PROCEEDINGS

False and Misleading Representations in Sale of Securities

Sales of Securities at Unfair Prices

Manipulation of Market

Bids for and Purchases of Stock During Distribution

Where registered broker-dealer sold speculative security by means of high-pressure sales techniques and material misrepresentations; charged unfair prices; manipulated market by entering and causing ostensibly independent dealers to enter quotations at rapidly ascending levels to facilitate retail distributions at inflated prices; and bid for and purchased security during distributions thereof, held, willful violations of anti-fraud and anti-manipulative provisions of the securities acts.

Where ostensibly independent dealers entered rapidly advancing quotations for security in sheets at request of, and at prices fixed by, another dealer entering quotations for same security, held, willful violations of anti-fraud and anti-manipulative provisions of securities acts.

Public Interest

Where both partners in broker-dealer firm participated in manipulative scheme by entering fictitious quotations, held, in public interest to revoke firm's registration, but in view of fact that violations did not involve wrongdoing in dealings with firm's customers and neither firm nor partners had previously been charged with misconduct in twelve years of firm's existence, revocation would be without prejudice to employment of partners in securities business in non-managerial capacity upon showing of adequate supervision.

Where trader in broker-dealer firm participated in manipulative scheme by entering fictitious quotations, held, in public interest to suspend firm from membership in national securities association where, among other things, trader's conduct was without knowledge of others in firm, trader and officer who supervised him had left firm and firm's supervision over trading activities had been strengthened.

APPEARANCES:

Donald J. Robinson, Miles A. Coon, Robert I. Kleinberg, David B. Weyler, Donald L. Roth and Howard A. Bernstein, of the New York Regional Office of the Commission, for the Division of Trading and Markets.

Frank Metro, for F. S. Johns & Company, Inc., Global Planning Corp. and Lawrence Tricoli.

Robert R. Blasi, for F. S. Johns & Company, Inc. and Global Planning Corp.

Irwin L. Germaise and Barry Silverman, for Regina Dlugash, doing business as Douglas Enterprises, Jack Dlugash, and Edward McNamara.

Arthur H. Beyer, for Winkler, Chase Company, Joseph Winkler and Louis Chazan.

Howard F. Ordman and Harold M. Hoffman, of Putney, Twombly, Hall & Skidmore, and George Zolotar and Ellis B. Levine, of Rembar & Zolotar, for Reuben Rose & Co., Inc. and Paul Rosenthal.

Bruce H. Goldstone, for Lucas D. Casarella.

Jordan R. Metzger and Gerald P. Rosenberg, of Metzger, Rosenberg & Goldfinger, for William Rosenthal.

John A. Tricoli, Jr. and George Rein, pro se.

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The issues presented in these proceedings pursuant to Sections 15(b), 15A and 19(a)(3) of the Securities Exchange Act of 1934 ("Exchange Act") are whether the broker-dealer registrations of F. S. Johns & Company, Inc. ("F. S. Johns"), Global Planning Corp. ("Global"), Regina Dlugash, doing business as Douglas Enterprises ("Douglas"), Eliot, Roberts & Co., Inc. ("Eliot"), Reuben Rose & Co., Inc. ("Reuben Rose") and Winkler, Chase Company ("Winkler Chase") should be revoked, whether Douglas and Reuben Rose should be suspended or expelled from membership in the National Association of Securities Dealers, Inc. ("NASD"), 1/ whether Reuben Rose should be suspended or expelled from membership in the New York and American Stock Exchanges, and whether various persons associated with the above-named firms should be found causes of any sanctions ordered.

Following hearings, the hearing examiner recommended that each broker-dealer's registration be revoked, that Douglas and Reuben Rose be expelled from the NASD and the latter from the two exchanges, and that each of the named individual respondents with the exception of Paul Rosenthal, a vice-president of Reuben Rose, be found a cause of any sanctions imposed. Exceptions were filed by Douglas, by Lucas D. Casarella and Jack Dlugash, who were associated with F. S. Johns and Douglas, respectively, and by Reuben Rose, Winkler Chase and Joseph Winkler and Louis Chazan, partners of the latter firm. Reuben Rose, and Winkler Chase and its partners also filed supporting briefs, our Division of Trading and Markets filed a reply brief, and we heard oral argument. On the basis of an independent review of the record and for the reasons set forth herein and in the hearing examiner's recommended decision, we make the following findings.

The order for proceedings alleges principally, and the examiner found, that during the period January 1961 to June 1962, the respondents engaged in fraudulent and manipulative practices in connection with the offer, sale and purchase of securities of Diversified Funding, Inc. ("Diversified"). Diversified, a New Jersey corporation, was organized in January 1961 by John A. Tricoli, Jr., president of F. S. Johns, and certain of that firm's salesmen. Tricoli became board chairman, Lawrence Tricoli, his brother and an F. S. Johns salesman, president, and Ronald Lappe, another salesman, secretary-treasurer. Immediately upon Diversified's incorporation, F. S. Johns, as underwriter, commenced a public intrastate offering of 25,000 units of Diversified stock at $5 per unit, each unit consisting of three shares of preferred stock and two shares of common stock. According to a prospectus used in the offering, Diversified would be engaged principally in the business of "financing, managing and promoting the expansion of small qualifying industrial plants." The underwriting was closed on September 27, 1961, following the sale of 12,240 units from which Diversified received $48,168, less than half of the net amount which it sought to raise from its securities offering. The proceeds from this offering were never used by Diversified for the purposes set forth in its prospectus. After the close of the offering, F. S. Johns engaged in extensive over-the-counter trading in Diversified stock. During the period from October 13, 1961 through June 21, 1962, the firm sold about 100,000 shares of

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1/ The further issue raised in the order for proceedings of whether F. S. Johns should be suspended or expelled from NASD membership became moot when the NASD expelled F. S. Johns subsequent to the institution of these proceedings.

Diversified common stock to the public at prices ranging from $1 to $5.25 per share. 2/

Sales of Diversified Stock by F. S. Johns

False and Misleading Statements

As the examiner found, F. S. Johns and its sales personnel engaged in a high pressure "boiler-room" sales campaign, both during and after the underwriting period, to sell Diversified stock to the public, chiefly over the telephone and to unknown persons. Prospective customers were not asked about their financial position or investment needs and were induced to make hasty decisions to purchase such stock. In the course of the sales effort, numerous material misrepresentations were made, both through a series of sales circulars and orally, concerning, among other things, Diversified's operations, prospects, and the future market price of its stock. These misrepresentations are set forth in detail in the recommended decision, to which no exceptions have been filed by F. S. Johns or by any of the persons associated with it and named as respondents other than Casarella, who however did not specify the nature of his objections. 3/ For present purposes a recital of some of the misrepresentations will suffice to show the nature of the operation.

One of the items of sales literature used was a "Special Research Report," which was prepared by John Tricoli and was used by F. S. Johns in late 1961 and again in early 1962. After noting that "the investor" must be prepared to take full advantage of profitable opportunities for investment in small, new and growing enterprises, the Report referred to Diversified as a "fast-moving, well-managed Lending & Promoting Company" which "in our established opinion offers tremendous potential for future growth." The Report further represented that Diversified "lends money to qualified industrial concerns mainly in the Chemical and Electronic industry," and, as of October 1, 1961, "was engaged with three companies for the purpose of lending and promoting." It described the three companies and the respective interests in them for which Diversified was negotiating. In addition, the Report projected earnings by Diversified of between 45 and 50 cents a share over the next six months and predicted a stock split and "stock dividends and cash" within 6 to 12 months. It concluded with the statement that with "young aggressive and proven management heading a progressive company in a growth and profitable segment of the Electronic & Chemical industry," Diversified "is a buy for short term . . . or long term Capital appreciation."

The Report was grossly false and misleading. It conveyed the impression that Diversified was already engaged in the business of lending money to and promoting industrial concerns and on the verge of further very favorable investments of that nature. In fact, while Diversified made some attempts to invest in or lend funds to companies of the nature described, with one possible exception they never even came near fruition. There was no basis whatsoever for the projections of earnings, dividends and capital appreciation.

2/ Following the close of the underwriting, the firm sold no further shares of preferred stock.

3/ Casarella also did not file a brief in support of his exceptions. Under our Rules of Practice as applicable to these proceedings, any objections to a recommended decision not saved by exceptions are deemed to have been abandoned and may be disregarded, and any exceptions not briefed may be regarded as waived.

Diversified's sole business transactions until March 1962 consisted of effecting some purchases and sales of over-the-counter securities, almost exclusively with F. S. Johns. For the year 1961, Diversified sustained a loss of $1,787. In March 1962, Diversified issued 181,200 shares of common stock in return for the outstanding stock of Silver Springs Acres, Inc. ("Silver Springs"), which owned about 640 acres of land in Florida. As of March 31, 1962, Silver Springs' only assets of substance were the land which was carried at $125,000 and was subject to mortgages totalling $85,000, and accounts receivable of about $89,000 arising from installment contracts for the sale of that land and payable over periods of from five to seven years.

Numerous investors testified regarding the statements made to them by John Tricoli and the salesmen of F. S. Johns in the offer and sale of Diversified stock. Their testimony discloses a pattern of misrepresentations, typified by predictions of spectacular and specific increases in the price of Diversified stock. John Tricoli represented to a customer that he expected Diversified stock to go up about 10 points in three or four months and that it would double or triple in a few years. Lawrence Tricoli stated to a customer that the latter could double his money and receive dividends and to another that if he bought Diversified stock he could not "go wrong". Lappe told a customer that he was "pretty sure" that within a year the customer "would double or triple" his investment. He represented to another customer that since Diversified was backed by F. S. Johns, she "couldn't lose money on it" and dissuaded her from selling her shares in December 1961 by representing that Diversified would pay a dividend in the following month. Salvatore Facciponti, also known as Sal Ponti, represented to customers that the price of Diversified stock would multiply two or three times in a very short period of time, that Diversified had acquired an interest in a company which had patented a new technique for manufacturing terrazzo wall tile, that the stock would be listed on the "Big Board" and that an 8% dividend was being or would be paid on the Diversified preferred stock. Aaron Lichtenstein, also known as Aaron Lang, represented to a customer who had told him that he was not interested in securities on which no dividends were paid that Diversified paid a 10% dividend, that the price of the stock would double in six to eight months, and that the stock was not a gamble. He told another customer, who had purchased Diversified stock through Casarella a few days before, that Diversified would declare a 10% stock dividend within two weeks and urged him to borrow money from "any place" to enable him to purchase additional shares. George Rein represented that Diversified was "a sure thing" and that the stock "should be worth three times as much" in six months to a year.

Harry Rower told one customer who bought stock at 5¼ that the price might go as high as 21 in two or three months. He also forecast a 350% or 400% return on an investment in Diversified, and told another customer he would guarantee that she could double or triple her money in four or five months by investing it in Diversified stock and "on his word of honor, on his mother's honor" she could not lose her money. Casarella represented to a customer that the price of the stock would go up, and that Diversified was "bound to make money." He stated to another customer, who had told Casarella that he could not afford to gamble, that Diversified was "a sure thing" and that he would not sell the customer anything that he would lose money on.

In light of the facts regarding Diversified already referred to, and the additional circumstances that Diversified never acquired an interest in the company referred to by Facciponti which had developed but never patented a terrazzo tile, never declared a dividend, and never considered listing its stock on the New York Stock Exchange, these

extravagant statements and predictions were false or had no reasonable basis in fact. It is clear that their use constituted a fraudulent course of conduct 4/ and we conclude, as did the hearing examiner, that in the offer and sale of Diversified stock during the period in question, F. S. Johns, together with or aided and abetted by John and Lawrence Tricoli, Lappe, Facciponti, Lichtenstein, Rein, Rower and Casarella, willfully violated the anti-fraud provisions of Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 17 CFR 240.10b-5 and 15c1-2 thereunder.

We further find that John Silvestri and Anthony Grausso, who were vice-president and secretary-treasurer, respectively, and directors of F. S. Johns, and owners of more than 10% each of its common stock, were also responsible for the above-stated violations. While these men were "silent partners" who never actively participated in the business of F. S. Johns, they had a duty, as principal officers, directors and stockholders, to take appropriate steps to prevent or guard against such a pervasively fraudulent operation as existed here. 5/ This duty they ignored. We make no adverse findings, however, as to Joseph Tricoli, a brother of John and Lawrence, who was F. S. Johns' bookkeeper and cashier and who, as far as the record shows, performed only clerical functions. 6/

Excessive Mark-Ups

During the period January 30 to March 26, 1962, F. S. Johns in 18 retail sales of Diversified stock charged mark-ups ranging from 10.3% to 66.7% over the prices paid by the firm in same-day purchases. We find that these transactions were effected at prices which were not reasonably

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4/ Representations without a reasonable basis, couched in terms of either opinion or fact and designed to induce purchases, are contrary to the basic obligation of fair dealing of those who sell securities to the public. See, e.g., Mac Robbins & Co., Inc., Securities Exchange Act Release No. 6846, p. 4 (July 11, 1962) aff'd sub nom. Berko v. S.E.C., 316 F.2d 137 (C.A. 2, 1963); J. A. Winston & Co., Inc., Securities Exchange Act Release No. 7337, p. 6 (June 8, 1964). And, as we have repeatedly pointed out, predictions of specific and substantial increases in the price of a promotional and speculative security within a relatively short period of time are inherently fraudulent and cannot be justified. See Underhill Securities Corporation, Securities Exchange Act Release No. 7668, p. 4 (August 3, 1965) and cases cited in note 5.

5/ Cf. Armstrong & Co., Inc., Securities Exchange Act Release No. 7399, p. 7 (August 20, 1964), rehearing denied Securities Exchange Act Release No. 7424 (September 28, 1964), aff'd sub nom. Lasher v. S.E.C., 343 F.2d 468 (C.A. 2, 1965); Aldrich, Scott & Co., Inc., 40 S.E.C. 775 (1961); Thompson & Sloan, Inc., 40 S.E.C. 451 (1961); Wright, Myers & Bessell, Inc., Securities Exchange Act Release No. 7415, p. 6 (September 8, 1964).

6/ Cf. Wright, Myers & Bessell, Inc., supra, pp. 6-7; Finchley Investors Corporation, Securities Exchange Act Release No. 7416, p. 3 (September 8, 1964).

related to the current market price and were unfair and that F. S. Johns, together with or aided and abetted by John Tricoli, who determined the sale prices, thereby willfully violated the anti-fraud provisions cited above.

Sales of Diversified Stock by Douglas

Between February 15 and April 18, 1962, Douglas sold about 3,000 shares of Diversified common stock, purchased entirely or for the most part from F. S. Johns, to the investing public. F. S. Johns initially communicated with Douglas through Harry Weintraub, also known as Winters, who was employed by F. S. Johns as a "contact man" during the early months of 1962. In January 1962, Weintraub sent Marvin Abel, the securities manager and trader of Douglas, literature regarding Diversified, including the Special Research Report, which he discussed with Abel, and told him that Diversified "was going to be a good little company" with "growth possibility," and that "if a good retail job was done on the security there might be benefits" to him. Abel in turn discussed the Report with Regina Dlugash, Douglas' proprietress, and her husband Jack who managed the firm together with her.

According to R. Dlugash's testimony, which was credited by the examiner, she and her husband knew that Diversified's financial condition did not look favorable, although they were under the impression that the company had good potential. In February 1962, after Douglas had purchased 2,500 shares of Diversified stock from F. S. Johns, Douglas' salesmen were told by the Dlugashes that they could begin selling the stock and that it was a "good speculation" in "a fairly good company." Abel, describing the stock as a "nice speculation," personally sold about 1,000 shares of Diversified stock, and he and the firm's salesmen sent the Special Research Report to their customers.

As previously indicated, it is violative of the anti-fraud provisions of the securities acts to make representations to prospective purchasers without a reasonable basis. Such information as the Dlugashes and Abel obtained regarding Diversified prior to distributing the Special Research Report emanated from F. S. Johns. The record indicates that no attempt was made to investigate through other sources the veracity of the information contained in the Report. 7/ Considering its highly flamboyant nature, it is apparent that such verification was required before the Report could be loosed upon the investing public. Indeed, the mild characterizations of Diversified and its securities to which the Dlugashes and Abel indicate they limited themselves in their oral statements, and the admitted awareness by the Dlugashes of the company's less than favorable financial condition, should have caused them to refrain from using the Report which projected earnings and dividends as near-certainties and contained an unrestrained recommendation of immediate purchase of the stock. We therefore conclude that Douglas, together with or aided and abetted by J. Dlugash and Abel, willfully violated the above-cited anti-fraud provisions. Moreover, F. S. Johns must be held accountable for the dissemination of false and misleading statements to Douglas' customers which it made possible and induced by sending copies of the Report to Douglas, 8/ and we find that F. S. Johns,

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7/ In fact, there is no indication that any effort was made by Abel or the Dlugashes to obtain even from F. S. Johns a substantiation of the representations in the Report.

8/ See Gearhart & Otis, Inc., Securities Exchange Act Release No. 7329, pp. 22-24 (June 2, 1964), aff'd 348 F.2d 798 (C.A.D.C., 1965).

together with or aided and abetted by John Tricoli and Weintraub, 9/ also is responsible for those violations.

Manipulation of Market

The order for proceedings alleges that the respondents, in willful violation of the anti-fraud provisions referred to above, entered and caused the entry of quotations for Diversified stock in the sheets published by the National Quotation Bureau, Inc. ("sheets") at continually increasing prices for the purpose of creating the appearance of an independent, active market for such stock, when in fact the market was dominated and controlled by the respondents and there was no reasonable basis for any increase in the quoted prices.

The record shows that from October 9, 1961, when the first quotations for Diversified stock appeared in the sheets, until May 10, 1962, F. S. Johns appeared in the sheets almost every day, for the first three days with OW-BW quotations, and then with numerical quotations. Prior to January 30, 1962, these quotations rose from 1-3/8 bid and 1-7/8 asked to 1-7/8 - 2-3/8. Eliot, which was then operating under the name United Planning Corporation, appeared in the sheets almost daily from October 12 through December 13, generally with the same quotations as F. S. Johns, and one other firm appeared on 13 days in November and early December 1961. As of January 30, 1962, F. S. Johns had thus been alone in the sheets for well over a month. On that day, five other dealers, including Eliot and Douglas, appeared in the sheets. Winkler Chase made its first appearance on January 31 and Reuben Rose began entering quotations on February 5. The named firms continued to insert quotations throughout most or all of February, and Douglas for some time thereafter. During February the quotations reached a high of 3-3/4 - 4¼ and in March F. S. Johns' quotations attained a high of 4-5/8 - 5-1/8. We turn to an examination of the circumstances under which these quotations came to be entered.

In early October 1961, Robert E. Shafarman, president and sole stockholder of Eliot, agreed with John Tricoli that Eliot would enter quotations for Diversified in the sheets at levels dictated by Tricoli. The latter obligated F. S. Johns to purchase any shares which Eliot would be required to buy and to supply any stock which Eliot was called upon to sell, and to pay Eliot 1/16 or 1/8 per share compensation on each transaction. 10/ Shafarman considered the Diversified stock to be unpromising and without marketability, and he testified that he entered into the arrangements with Tricoli so as to facilitate the sale of shares held by some customers who had acquired them when they had been customers of F. S. Johns. As previously noted, Eliot inserted quotations for Diversified in the sheets on almost every business day between October 12 and December 13, 1961. Tricoli called Shafarman to give him the quotations to be inserted; on those days when Tricoli did not call, Shafarman inserted the same quotations as on the previous day.

9/ Cf. S.E.C. v. Chamberlain Associates, S.D. N.Y. No. 61 Civ. 2150, CCH Fed. Sec. L. Rep. §91,228 (May 16, 1963).

10/ On one occasion additional compensation to Eliot was provided in the form of a matched purchase and sale of Diversified stock. In October 1961, pursuant to Tricoli's instructions to Shafarman, Eliot purchased 1,000 shares of Diversified from Tricoli and his wife and immediately resold them to F. S. Johns at 1/32 per share higher.

Eliot discontinued its Diversified quotations as of December 14, 1961, but reappeared in the sheets on January 30, 1962 following a call from Tricoli to Shafarman re-establishing the previous arrangement. 11/ It continued to place quotations in the sheets until February 23, 1962, and during this period such quotations rose from 1½ - 2 to 3½ - 4. Shafarman was aware that F. S. Johns was engaged in a retail sales campaign in Diversified stock. Although the prices he was told to quote rose sharply, he saw very little demand for the stock. He never attempted to sell any Diversified stock purchased by Eliot to dealers other than F. S. Johns. Shafarman testified that Eliot dropped out of the sheets in February because the firm's clients had no more Diversified stock to sell.

Winkler Chase is a firm consisting of its two partners, Winkler and Chazan, and has no employees. In January 1962, F. S. Johns' employee Weintraub told Winkler and Chazan that Diversified was a "good issue" and John Tricoli stated that if Winkler Chase would enter quotations for Diversified in the sheets at levels specified by him, F. S. Johns would guarantee a profit of 1/16 per share on any shares purchased or sold, up to 100 or 200 shares at a time. Winkler Chase agreed, and between January 31 and February 26, 1962, it entered quotations as suggested by Tricoli, such quotations rising from 1-5/8 - 2-1/8 to 3½ - 4. At this point, Winkler and Chazan decided that they were not making enough money because of the small volume of trading in the stock, and terminated their arrangement with Tricoli. In March 1962, Tricoli offered to increase the guaranteed profit to 1/8 of a point per share, and Winkler and Chazan agreed to resume the arrangement on that basis. On March 16 and 19, Winkler Chase quoted Diversified in the sheets at 4½ - 5, but then dropped out again. Chazan testified that the reasons for this action were that the firm was not making any money on Diversified and that he was disturbed by the rise in quotations despite an absence of demand and the possibility that F. S. Johns would renege on its guarantee and leave Winkler Chase with a position in Diversified stock. He also stated that he assumed F. S. Johns was retailing the stock. Between February 8 and March 20, Winkler Chase purchased a total of 484 shares of Diversified from other broker-dealers, all of which it immediately resold to F. S. Johns, generally at 1/16 or 1/8 above its bid quotations. It made no sales to anyone other than F. S. Johns.

In January 1962, Weintraub suggested to Abel, the trader for Douglas, that Douglas test the market for Diversified by entering quotations in the sheets at prices specified by F. S. Johns. Weintraub stated that F. S. Johns would buy any Diversified stock that Douglas purchased at a profit of 1/16 to Douglas, that initially F. S. Johns' bid would be higher with the result that no stock would be offered to Douglas, and that other brokers would be entering the sheets with quotations for Diversified stock. Jack and Regina Dlugash agreed to the proposed arrangement, and Douglas, from January 30 through March 16, 1962, entered quotations for Diversified in the sheets which rose from 1½ - 2 to 4-3/8 - 4-7/8. 12/ Douglas' purchase on February 2, 1962 of 2,500 shares of Diversified stock from F. S. Johns, to which we have referred above, was at a price of 1-5/8 per share and was effected at a time when F. S. Johns and Douglas were quoting 1-7/8 - 2-3/8 in the sheets.

11/ Tricoli had told Shafarman that this time other brokers would be appearing in the sheets with quotations. Shafarman never contacted any of these other brokers.

12/ In April 1962 Douglas also entered a number of OW-BW quotations and on one day numerical quotations specified by John Tricoli.

In or about late January 1962, John Tricoli spoke to William Rosenthal, who was in charge of the trading department at Reuben Rose, about trading Diversified, which Tricoli characterized as an active stock. Tricoli told Rosenthal that other brokers would appear in the sheets with quotations for Diversified, and asked him if he would also enter quotations. On February 5, 1962, Reuben Rose through Rosenthal purchased 500 shares of Diversified from F. S. Johns at 1-7/8, F. S. Johns' last quoted bid price in the sheets. Rosenthal did not check the sheets or with other dealers before making this purchase, and made no investigation of Diversified. On the same day, Reuben Rose began entering quotations in the sheets for Diversified, and continued to enter such quotations through February 28, 1962. During this time its quotations rose from 1-3/4 - 2¼ to 3-3/4 - 4¼. According to Rosenthal these quotations were "suggested" by John Tricoli, who called Rosenthal almost daily, and he "usually went according to what he [Tricoli] suggested."

On February 8, 1962, Reuben Rose through Rosenthal purchased 300 shares of Diversified from another broker-dealer at 2-1/8, and on February 12, it purchased another 200 shares from the same dealer at 2, thus giving it a total long position of 1,000 shares. It sold 500 of these shares to F. S. Johns on February 21 at a price of 2-3/4. On that day the quotations in the sheets by Reuben Rose and the other respondents were 3½ - 4. F. S. Johns did not appear in the sheets on February 21, but its quotations for February 20 were also 3½ -4. On February 27, Reuben Rose sold its remaining 500 shares to F. S. Johns, also at 2-3/4. On that date, F. S. Johns, Reuben Rose and Douglas were quoting Diversified in the sheets at 3-3/4 - 4¼. In addition to the above principal transactions, Reuben Rose, on February 26 and 27, purchased a total of 800 shares of Diversified stock from other dealers as agent for F. S. Johns at prices ranging from 2-7/8 to 3½, which were closer to F. S. Johns' bid and higher than the price at which Reuben Rose sold its own shares to F. S. Johns, taking commissions of 1/16 or 1/8 for its services. Rosenthal testified that he dropped out of the sheets because he had sold his position, because of the lack of activity, and because of the rise in the quotations.

Global was organized by John and Lawrence Tricoli and another individual in 1962 and its registration as a broker-dealer became effective on May 2, 1962. Edward McNamara, who had previously been employed by Douglas where he had inserted quotations for Diversified stock at levels fixed by John Tricoli, was hired to be the trader for Global. Acting on Tricoli's instructions, he induced another broker-dealer to enter quotations for Diversified in the sheets on Global's behalf under an arrangement with F. S. Johns similar to those we have already described.

There can be no question from the facts in the record that F. S. Johns, in order to create the appearance of a broad and active market and to facilitate the retail distribution at artificially inflated prices of substantial blocks of Diversified stock which it held or expected to acquire, induced other dealers to place ostensibly independent, but in reality fictitious, quotations in the sheets at continually increasing levels, in willful violation of the anti-fraud provisions. 13/ One

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13/ See M. S. Wien & Co., 24 S.E.C. 4, 13-14 (1946); Masland, Fernon & Anderson, 9 S.E.C. 338, 346 (1941). See also Gob Shops of America, Inc., 39 S.E.C. 92, 101 (1959); Sidney Tager, Securities Exchange Act Release No. 7368, p. 6 (July 14, 1964), aff'd 344 F.2d 5 (C.A. 2, 1965).

(Continued)

block of 25,000 shares was acquired by F. S. Johns from John Tricoli at $1.20 per share on October 31, 1961, one day after Eliot first appeared in the sheets, and was promptly resold to public investors, generally at $2 per share. A second block, of 30,000 shares, was obtained in March 1962 at a cost of about 21¢ per share when the Silver Springs purchase, negotiations as to which had commenced in late 1961, was consummated. At about the same time, F. S. Johns acquired a third block of 19,451 shares, as a result of its exchange of an equal number of shares of preferred stock purchased from public investors beginning in October 1961 at prices ranging from 50¢ to $1 per share. Substantial portions of the second and third blocks were resold to the public through June 1962.

It seems equally clear to us from the facts presented that the other dealers who went into the sheets at F. S. Johns' request were participants in a fraudulent and manipulative scheme. Those dealers must have or at least should have realized that they were cogs in such a scheme. They were obviously aware that the quotations were advancing substantially and rapidly despite the absence of any demand for Diversified stock. This situation was readily recognizable as a typical feature of a market manipulation. 14/ It could not, under the circumstances, reasonably be interpreted as reflective of an effort by F. S. Johns to accumulate an inventory for legitimate selling purposes at the lowest price obtainable.

Winkler Chase and its partners, in urging that they had no reason to suspect that they were furthering a manipulative scheme, point to the fact that before agreeing to the proposed arrangement and entering quotations beginning on January 31, 1962, they checked the sheets and assertedly found a representative list of dealers quoting Diversified.

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13 contd./

As we pointed out in M. S. Wien & Co., supra, "It is improper for a dealer who is furnishing advancing quotations of his own to employ an ostensibly independent dealer to publish advancing quotations at the same time so as to raise prices and create an appearance of trading in order to induce purchases or sales of securities. The nature of such conduct is that it creates a false and misleading appearance of active trading . . ."

In Bruns, Nordeman & Company, 40 S.E.C. 652, 660, n. 11 (1961), we pointed out that "A person contemplating . . . a distribution has an obvious incentive to artificially influence the market price of the securities in order to facilitate the distribution or to increase its profitability. We have accordingly held that where a person who has a substantial interest in the success of a distribution takes active steps to increase the price of the security, a prima facie case of manipulative purpose exists. The Federal Corporation, 25 S.E.C. 227, 230 (1947). See also Halsey Stuart & Co., Inc., 30 S.E.C. 106, 124 (1950)."

14/ "The insertion of increasingly higher bids in the sheets is the most universally employed device to create a false appearance of activity in the over-the-counter market, and tends to support the price [of a stock] at its inflated level." Gob Shops of America, Inc., 39 S.E.C. 92, 101 (1959), and cases there cited.

What the sheets showed, however, was that on January 30, after F. S. Johns had been alone in the sheets for over a month, five other dealers suddenly appeared. Although this was a circumstance strongly suggestive of the existence of similar arrangements between F. S. Johns and those dealers, no inquiry into the facts was made. These respondents further argue that the record contains no evidence that the quotations were shown to members of the public to induce purchases at the quoted prices. However, the record shows that Winkler Chase effected transactions with other broker-dealers pursuant to its quotations, and such transactions in themselves are sufficient to establish violations of the anti-fraud provisions. Moreover, there was a clear correlation between the prices at which retail transactions in Diversified stock were effected by F. S. Johns and the quotations in the sheets, and it is reasonable to infer that such quotations contributed to the inducement of retail purchases at those prices. We also find no merit in respondents' additional arguments that they regarded Tricoli's offer to pay a profit of 1/16 on stock purchased or sold at his suggested quotations simply as an offer to buy and sell stock like that received from "other retail customers," and that during the period Winkler Chase entered quotations many securities had greater price increases than Diversified. The arrangement proposed by Tricoli was obviously unlike an offer received from a retail customer and respondents could not reasonably have regarded it as of the same nature. And the fact that other securities also rose in price is irrelevant. 15/

Reuben Rose contends that Rosenthal engaged in normal trading activity, and that there was no pre-arrangement between him and F. S. Johns or Tricoli comparable to that entered into by the other respondent firms with respect to the insertion of quotations and the repurchase by F. S. Johns of shares acquired as a result of such quotations. Among other things, it points to the facts that Rosenthal entered the sheets only after he had purchased 500 shares from F. S. Johns for Reuben Rose's trading account, that those shares together with the additional 500 shares thereafter purchased were sold at prices having no fixed relationship to the purchase price only after Rosenthal had assertedly determined to liquidate his position, and that Rosenthal withdrew from trading after a brief period and testified that one reason for such withdrawal was the rise in the quotations.

We agree with the hearing examiner's finding that Rosenthal entered into an arrangement with John Tricoli to place quotations in the sheets pursuant to Tricoli's instructions and thereby assist the latter in the creation of an artificial market. As noted, Tricoli advised Rosenthal that other dealers would also appear in the sheets. Rosenthal was thus alerted that such dealers would in all probability be entering the sheets on behalf of Tricoli and the fact that he never made inquiry of any of them reflects his awareness that their quotations were not independent. Despite his long position and the absence of demand for Diversified stock, Rosenthal inserted quotations at rapidly ascending levels as specified by Tricoli. In one period of eight business days those quotations were raised five times although during that period Reuben Rose's only transactions in Diversified stock were the two purchases totalling 500 shares to which we have previously referred. Moreover, the sales to F. S. Johns of the 1,000 shares which Rosenthal had

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15/ Cf. Gob Shops of America, Inc., 39 S.E.C. 92, 101 (1959); Masland, Fernon & Anderson, 9 S.E.C. 338, 344 (1941).

The additional assertion by Winkler Chase and its partners that no showing has been made that any sales were made to the public during the period Winkler Chase entered quotations is contrary to the record, which shows a large number of sales by F. S. Johns as well as by Douglas during that period.

purchased were made on February 21 and 27 at prices substantially below the bid quotations of F. S. Johns and Reuben Rose. In view of these facts and Rosenthal's admission that he did not speak to any of the other dealers who were quoting bids in the same price range, we cannot credit his testimony that he had no prior agreement to resell any Diversified shares acquired to F. S. Johns. Even after the February 21 sale he continued to insert bid quotations at about the same level as before the sale, and on February 26 and 27 effected purchases as agent for F. S. Johns at or close to the quoted bids, while at the same time selling Reuben Rose's remaining shares at a substantially lower price. 16/

Reuben Rose urges that it should not be held responsible for any violations Rosenthal may have committed because the supervision he received was in accord with that prevailing in the industry. We recognize that, as pointed out in the Report of the Special Study of Securities Markets, supervision over traders was "usually limited and general in nature." 17/ However, we have repeatedly stressed the duty of brokers and dealers to maintain and enforce adequate standards of supervision, 18/ and no aspect of a securities firm's operations is exempt from that requirement. That others may be deficient in providing adequate supervision in this area cannot excuse Reuben Rose. 19/ The record before us shows that the firm exercised no supervision whatever over the day-to-day activities of its trader, and the firm's own arguments stressing the lack of knowledge of its executive personnel regarding Rosenthal's activities underline this conclusion. The controls which were assertedly maintained were directed toward protection of the firm's capital rather than to protection of investors. Under the circumstances the firm's failure of supervision made it a participant in Rosenthal's misconduct. 20/

16/ Contrary to Reuben Rose's assertion, the mails and instrumentalities of interstate commerce were used in connection with Rosenthal's transactions in Diversified. Among other things, there were frequent telephone calls between Tricoli in New Jersey and Rosenthal in New York, and Rosenthal, as previously discussed, placed quotations in the sheets, which are disseminated in interstate commerce.

17/ H. Doc. No. 95, Pt. 2, 88th Cong., 1st Sess. 557 (1963).

18/ See Reynolds & Co., 39 S.E.C. 902, 916-917 (1960) and cases cited in n. 26.

19/ Cf. C. A. Benson & Co., Inc., Securities Exchange Act Release No. 7346, p. 6 (June 15, 1964).

20/ Reynolds & Co., supra, at 917. The order for proceedings raised the issue whether Paul Rosenthal was a cause of any sanctions ordered. The record shows that during the period involved in these proceedings Paul Rosenthal was assistant treasurer of the firm and supervisor of its "back office" and that he had no supervisory responsibilities with respect to trading operations. Accordingly, we shall dismiss the proceedings as to him.

We accordingly conclude that in the foregoing respects F. S. Johns, together with or aided and abetted by John Tricoli, Weintraub, Silvestri and Grausso; Eliot, together with or aided and abetted by Shafarman; Winkler Chase, together with or aided and abetted by Winkler and Chazan; Douglas, together with or aided and abetted by Jack Dlugash and Abel; Reuben Rose, together with or aided and abetted by William Rosenthal; and Global, together with or aided and abetted by John Tricoli and McNamara, willfully violated the cited anti-fraud provisions.

Bids for and Purchases and Representations as to Market Price of Diversified Stock During Distribution

Rule 10b-6 (17 CFR 240.10b-6) under the Exchange Act provides that it is a manipulative or deceptive device for an underwriter in a distribution of securities, or a broker-dealer or other person participating in such distribution, to bid for or purchase such securities until he has completed his participation in the distribution. The examiner concluded that, in view of the large number of shares sold and the high-pressure methods employed, F. S. Johns was engaged in a distribution during the period from about October 12, 1961 to about March 26, 1962. 21/ We find that distributions were effected at least with respect to the three sizeable blocks which as previously noted were acquired and resold by F. S. Johns. The sales of those blocks of shares purchased from controlling persons or the issuer, respectively, constituted distributions within the meaning of Rule 10b-6. 22/ Throughout the time of the above distributions, F. S. Johns bid for and purchased Diversified common stock. Moreover, in April and August 1961, prior to the close of the underwriting, F. S. Johns, through Lawrence Tricoli and another salesman, repurchased a total of 200 units of Diversified stock from two customers. 23/

During February 1962, Douglas purchased 3,500 shares of Diversified stock from F. S. Johns, most of which it resold to public investors between February and April 1962. Since both F. S. Johns and Diversified were under the control of John Tricoli, Douglas was an underwriter with respect to the above shares and its sales constituted a distribution within the meaning of Rule 10(b)(6). 24/ During the period of the distribution, Douglas bid for and purchased Diversified stock.

We therefore find that F. S. Johns, aided and abetted by John and Lawrence Tricoli, Silvestri and Grausso, and Douglas, aided and abetted by Jack Dlugash and Abel, willfully violated Section 10(b) of the Exchange Act and Rule 10b-6 thereunder.

21/ Approximately 82,000 shares were sold during this period.

22/ See J. H. Goddard & Co., Inc., Securities Exchange Act Release No. 7618, p. 4 (June 4, 1965) and cases cited in n. 8. As to the stock acquired through exchange of the preferred stock, see Gilligan, Will & Co., 38 S.E.C. 388, 394, n. 9 (1958) aff'd 267 F. 2d 461 (C.A. 2, 1959), cert. denied 361 U. S. 896.

23/ By amendment to the order for proceedings, violations of Rule 10b-6 during the underwriting period were also alleged.

24/ See J. H. Goddard & Co., Inc., supra.

We also agree with the examiner's conclusion that the respondent firms which inserted quotations for Diversified stock during the periods of F. S. Johns' distributions aided and abetted that firm's violations of Section 10(b) and Rule 10b-6. The steps taken by Tricoli through those firms to increase the price of Diversified stock and to give the appearance of active trading should have indicated to them, if they did not know, that it was highly probable that F. S. Johns was engaged in a distribution. Accordingly, we find that Eliot, Shafarman, Winkler Chase, Winkler, Chazan, Douglas, Jack Dlugash and Abel aided and abetted F. S. Johns' willful violations of Section 10(b) and Rule 10b-6.

The record shows that while F. S. Johns was engaged in distributions of Diversified stock, representations were made to customers that such stock was being offered to them at the market price or a price related to the market price when in fact the market was made, created and controlled by F. S. Johns. We find, as did the examiner, that by this conduct F. S. Johns, aided and abetted by John Tricoli, willfully violated Section 15(c)(1) of the Exchange Act and Rule 17 CFR 240.15c1-8 thereunder.

Other Violations

F. S. Johns and Global, aided and abetted by John Tricoli, and Eliot, aided and abetted by Shafarman, willfully violated Section 15(b) of the Exchange Act and Rule 17 CFR 240.15b-2 thereunder. F. S. Johns failed promptly to amend its application for broker-dealer registration after Weintraub was employed to disclose that the latter was subject to a permanent injunction entered by the United States District Court for the Southern District of New York on February 8, 1961, 25/ enjoining him from violating the anti-fraud and other provisions of the securities acts. Global failed to disclose in its application for broker-dealer registration that John Tricoli was a controlling person, and failed promptly thereafter to amend its application to disclose such information. Eliot failed promptly to amend its registration application to disclose that certain injunctions had been entered against it and Shafarman enjoining them from engaging in various acts and practices in connection with the purchase and sale of securities. 26/

Procedural Matters

We find no merit in the claims made by Reuben Rose that it was prejudiced by various procedural rulings of the hearing examiner. At the commencement of the hearings, it requested a list of the witnesses and exhibits which the Division intended to present. The Division offered to furnish on a daily basis the names of witnesses who would testify on the following day, but otherwise declined to comply with the request, and the examiner refused to order it to do so. In our opinion, the requested information was in the nature of evidence, which we have consistently held need not be disclosed to a respondent in advance of

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25/ S.E.C. v. Harwyn Securities, Inc., et al., Civil Action File No. 61 Civ. 163.

26/ S.E.C. v. Eliot, Roberts & Co., Inc., Civil Action File No. 908-62 (D.N.J., November 14, 1962, January 23, 1964); S.E.C. v. Cosmetics Investments, et al., Civil Action File No. 229-63 (D.N.J., April 15, 1963).

its introduction at the appropriate time during the course of the hearings. 27/ Moreover, no showing has been made that, as claimed, respondent was unable to prepare its defense properly as a result of the denial of the requested information.

Equally without substance is Reuben Rose's objection to the fact that pre-hearing statements made to our staff by Division witnesses were not furnished to Reuben Rose until after the direct testimony of such witnesses had been completed. The so-called Jencks statute, 28/ which we have followed in administrative proceedings, specifically provides for the production of such statements only after witnesses have testified on direct examination. Moreover, it appears, and Reuben Rose has not claimed the contrary, that adequate time was afforded its counsel to read the statements prior to cross-examination. Nor can we find that the examiner erred, as is contended, in refusing to direct the Division to show the examiner certain notes, which according to John Tricoli's testimony were taken by staff members during his pre-hearing interrogation, so that the examiner might determine whether the notes had to be made available to Reuben Rose by analogy to the Jencks statute. The examiner's ruling was made following representations by Division counsel that no "substantially verbatim" notes had been taken 29/ and that any notes which had been taken were no longer in existence, and in any event no showing has been made that Reuben Rose was prejudiced by the ruling. 30/

In the course of the hearings, Division counsel, for the purpose of refreshing the recollection of certain witnesses, read portions of their pre-hearing statements into the record. Reuben Rose contends that such statements should have been stricken and asserts its belief that the examiner has in part relied on them in making his findings. There is no basis for assuming that the examiner viewed these statements as evidence in the case, however, and no showing has been made that any of his findings are based on them. 31/ Moreover, on our own independent review of the record we have disregarded such statements. Accordingly, the claim of prejudice in this respect is without foundation.

Finally, Reuben Rose objects because the Division was permitted to interrupt John Tricoli's direct testimony by calling other witnesses with the result that when Tricoli's pre-hearing statements were made available following completion of his direct testimony, such witnesses

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27/ See Morris J. Reiter, 39 S.E.C. 484 (1959) and cases cited at 486, n. 1.

28/ 18 U.S.C. 3500 (1957).

29/ Under the Jencks statute a prior "statement" of a government witness need be turned over to the defendant only if it is written and signed or otherwise adopted or approved by him or is a substantially verbatim recital of an oral statement made by him to an agent of the Government and recorded contemporaneously. See U. S. v. Aviles, 337 F.2d 552 (C.A. 2, 1964), cert. denied 380 U.S. 906, 918.

30/ It should be noted in this connection thar our findings with respect to William Rosenthal and Reuben Rose are not based on the testimony of Tricoli.

31/ Cf. Clinton Engines Corporation, Securities Act Release No. 4585, p. 3 (March 4, 1963).

were assertedly no longer available for cross-examination. The order of reception of evidence was a matter within the sound discretion of the examiner, 32/ and we can find no abuse of that discretion. Moreover, the record does not indicate that any attempt was made to recall any witness for further cross-examination and no showing has been made that the cross-examination which was conducted was prejudiced by the unavailability of Tricoli's prior statements.

Public Interest

As previously noted, the hearing examiner recommended that the registrations of the broker-dealer respondents be revoked and that Douglas and Reuben Rose be expelled from the NASD and the latter firm from the New York and American Stock Exchanges. Winkler Chase and its partners and Reuben Rose contend that the public interest does not require the imposition of any sanctions against them.

Winkler Chase, Winkler and Chazan, in addition to arguing that they had no knowledge of or reason to suspect a manipulative scheme, a contention we have already rejected, point out that the firm was in the sheets on only 20 days and realized a gross profit of only about $91 on its transactions in Diversified stock, and that it effected no sales to public investors. The violations which these respondents committed were of a very serious character, however, and the fact that their participation in the manipulative scheme extended over a relatively short period of time and did not result in large profits to them does not detract from the seriousness of their misconduct. Considering the direct involvement of Winkler and Chazan, the firm's only partners, in such misconduct, we think that revocation of the firm's registration, and cause findings as to the partners, are appropriate in the public interest. In view of the fact that their violations did not involve any wrongdoing in dealings with their customers and appear to be the only misconduct with which they have been charged in the 12 years that the firm has been in existence, our action shall be without prejudice to the employment of Winkler and Chazan by a broker-dealer in a non-managerial capacity upon a showing that they will be adequately supervised.

Reuben Rose asserts that Rosenthal was the only person out of its approximately 100 employees who participated in or had knowledge of activities relating to Diversified stock, and stresses that both he and the officer who was in charge of supervising him left the firm in 1963, that none of Rosenthal's transactions were with members of the public, and that the firm has always been primarily engaged in a commission business in listed securities. It also states that the firm's supervision over trading activities has been strengthened, principally through adoption of a requirement that the supervising vice-president approve any request to enter quotations in the sheets for a security not previously quoted by the firm. Despite these factors, we are of the opinion that a sanction is required in view of the total lack of supervision we have found here, although we do not believe the public interest requires imposition of the maximum sanctions recommended by the examiner. Under all the circumstances, we conclude that it is appropriate in the public interest to suspend Reuben Rose from membership in the NASD for a period of 60 days. With respect to Rosenthal, the willful violations we have found disqualify him from being an associated person of any registered broker-dealer without our permission.

32/ See United States v. Manton, 107 F.2d 834, 844 (C.A. 2, 1938), cert. denied 309 U.S. 664; Flintkote Company v. Lysfjord, 246 F.2d 368, 378 (C.A. 9, 1957), cert. denied 355 U.S. 835.

With respect to all other respondents as to whom we have found violations, we conclude that, in view of the nature and extent of the willful violations and the injunctions outstanding against certain of them, 33/ it is in the public interest to impose the sanctions recommended by the hearing examiner.

We have considered the recommended decision of the hearing examiner and the exceptions thereto, and to whatever extent such exceptions involve issues which are relevant and material to the decision of this case, we have by our Findings and Opinion herein ruled upon them. We hereby expressly sustain such exceptions to the extent that they are in accord with the views set forth herein, and we expressly overrule them to the extent that they are inconsistent with such views.

An appropriate order will issue.

By the Commission (Chairman COHEN and Commissioners WOODSIDE, OWENS and WHEAT), Commissioner BUDGE dissenting in part.

Orval L. DuBois
Secretary

33/ Reference has already been made to the injunctions against Eliot, Shafarman and Weintraub. We also note the existence of an injunction against F. S. Johns, John and Lawrence Tricoli, and others, enjoining them against fraudulent conduct in the offer and sale of Diversified stock. S.E.C. v. F. S. Johns & Co., Inc., et al., 62 Civil Action File No. 509 (D.N.J., March 25, 1964). Both Lichtenstein and Rein were named causes of our revocation of the broker-dealer registration of Albion Securities Company, Inc., Securities Exchange Act Release No. 7561 (March 24, 1965), and Weintraub was found a cause of the revocation of the broker-dealer registration of Harwyn Securities, Inc., Securities Exchange Act Release No. 7153 (October 4, 1963).

Commissioner BUDGE, dissenting in part:

I concur in the foregoing except as it relates to the firm of Winkler, Chase Company and to Winkler and Chazan as individuals. It appears to me from the record that the transactions of the two firms were as follows:

Reuben Rose was in the sheets on sixteen days and executed five transactions totaling $3,775 and involving 1,300 shares. It acted as principal on 1,000 shares and made a profit of $775. It completed transactions as agent on 300 shares and received a commission of about $25. Winkler, Chase was in the sheets on eighteen days and executed five transactions totaling $1,775 and involving 484 shares. It acted as principal, and its profit was $92.

The opinion of the majority reduces the sanction against Reuben Rose from removal from the securities business to a 60-day suspension from the NASD. Since that firm is essentially engaged in doing listed business, it is questionable just how meaningful the sanction is either as to the firm or as to the individual who controls it and who controlled it at the times here involved. On the other hand, the opinion of the majority effectively dissolves the firm of Winkler, Chase and then grants its two partners the dubious privilege of reentering the securities business upon a showing that they will be "adequately supervised" employees. The treatment accorded the two firms and their owners seems to me to be entirely disproportionate, particularly when the majority finds as to Reuben Rose

> ". . . we have repeatedly stressed the duty of brokers and dealers to maintain and enforce adequate standards of supervision, and no aspect of a securities firm's operations is exempt from that requirement. That others may be deficient in providing adequate supervision in this area cannot excuse Reuben Rose. The record before us shows that the firm exercised no supervision whatever over the day-to-day activities of its trader, and the firm's own arguments stressing the lack of knowledge of its executive personnel regarding Rosenthal's activities underline this conclusion. The controls which were assertedly maintained were directed toward protection of the firm's capital rather than to protection of investors. Under the circumstances, the firm's failure of supervision made it a participant in Rosenthal's misconduct."

and where the Commission has on several occasions reaffirmed the language in Reynolds and Company, 39 S.E.C. 902 (1960), where the Commission stated

> "We have repeatedly held that brokers and dealers are under a duty to supervise the actions of employees and that in large organizations it is especially imperative that the system of internal control be adequate and effective and that those in authority exercise the utmost vigilance whenever even a remote indication of irregularity reaches their attention. As the Court said in R. H. Johnson & Company v. S.E.C., 198 F.2d 690 (C.A. 2, 1952), in affirming our action sustaining a decision of the NASD in a similar situation, a contrary rule 'would encourage ethical irresponsibility by those who should be primarily responsible.'"

* * *

". . . we are of the opinion that, where the failure of a securities firm and its responsible personnel to maintain and diligently enforce a proper system of supervision and internal control results in the perpetration of fraud upon customers or in other misconduct in willful violation of the Securities Act or the Exchange Act, for purposes of applying the sanctions provided under the securities laws such failure constitutes participation in such misconduct, and willful violations are committed not only by the person who performed the misconduct but also by those who did not properly perform their duty to prevent it."

Since Winkler, Chase is not a member of a stock exchange and is an over-the-counter house, a suspension from registration with this Commission would be meaningful as to it and its owners. A suspension is all that is warranted here, particularly in light of the questionable sanction against Reuben Rose.

It should also be noted that as to the Winkler, Chase firm, it has been in the brokerage business for some twelve years without having disciplinary problems.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
October 10, 1966

In the Matters of	
F. S. JOHNS & COMPANY, INC. 1994 Morris Avenue Union, New Jersey	
File No. 8-8759	
GLOBAL PLANNING CORP. 20 Branford Place Newark, New Jersey	
File No. 8-10629	
REGINA DLUGASH doing business as DOUGLAS ENTERPRISES 2109-86th Street Brooklyn, New York	
File No. 8-5148	
ELIOT, ROBERTS & CO., INC. 11 Commerce Street Newark, New Jersey	
File No. 8-5497	
REUBEN ROSE & CO., INC. 2 Broadway New York, New York	
File No. 8-10217	
WINKLER, CHASE COMPANY 11 Broadway New York, New York	
File No. 8-3909	
Securities Exchange Act of 1934 - Sections 15(b), 15A and 19(a)(3)	ORDER REVOKING BROKER-DEALER REGISTRATIONS, AND EXPELLING AND SUSPENDING FROM REGISTERED SECURITIES ASSOCIATION

Proceedings having been instituted pursuant to Sections 15(b), 15A and 19(a)(3) of the Securities Exchange Act of 1934 to determine whether to revoke the registrations as brokers and dealers of F. S. Johns & Company, Inc., Global Planning Corp., Regina Dlugash, doing business as Douglas Enterprises, Eliot, Roberts & Co., Inc., Reuben Rose & Co., Inc. and Winkler, Chase Company; whether Regina Dlugash, doing business as Douglas Enterprises, and Reuben Rose & Co., Inc. should be suspended or expelled from membership in the National Association of Securities Dealers, Inc.; whether Reuben Rose & Co., Inc. should be suspended or expelled from membership in the New York and American Stock Exchanges; and whether various persons associated with those firms should be found causes of any sanctions ordered;

Hearings having been held after appropriate notice, the hearing examiner having filed a recommended decision, exceptions thereto and briefs having been filed, and the Commission having heard oral argument;

The Commission having this day issued its Findings and Opinion; on the basis of said Findings and Opinion

IT IS ORDERED that the registrations as brokers and dealers of F. S. Johns & Company, Inc., Global Planning Corp., Regina Dlugash, doing business as Douglas Enterprises, Eliot, Roberts & Co., Inc. and Winkler, Chase Company be, and they hereby are, revoked, and that Regina Dlugash, doing business as Douglas Enterprises, be, and she hereby is, expelled from membership in the National Association of Securities Dealers, Inc.; and it is found that John A. Tricoli, Jr., Lawrence Tricoli, John Silvestri, Anthony Grausso, Salvatore Facciponti, also known as Sal Ponti, Ronald Lappe, Aaron Lichtenstein, also known as Aaron Lang, George Rein, Harry Rower, Lucas D. Casarella, Harry Weintraub, also known as Harry Winters, Jack L. Dlugash, Marvin Abel, Edward McNamara, Robert E. Shafarman, Joseph Winkler and Louis Chazan are each a cause of the order entered against the firm or firms with which he was associated while participating in the violations found herein.

IT IS FURTHER ORDERED that Reuben Rose & Co., Inc. be, and it hereby is, suspended from membership in the National Association of Securities Dealers, Inc. for a period of 60 days effective at the opening of business on October 24, 1966, and it is found that William Rosenthal is a cause of the order of suspension and, on the basis of the findings of willful violations made against him, is disqualified from continuing in or re-entering the securities business as an associated person of any registered broker-dealer without permission of the Commission.

IT IS FURTHER ORDERED that the proceedings with respect to Paul Rosenthal and Joseph Tricoli be, and they hereby are, dismissed.

By the Commission.

Orval L. DuBois
Secretary