

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

FILE COPY

In the Matter of :
:
F. S. JOHNS & CO., INC. :
1994 Morris Avenue :
Union, New Jersey :
:
File No. 8-8759 :
:
GLOBAL PLANNING CORP. :
20 Branford Place :
Newark 2, New Jersey :
:
File No. 8-10629 :
:
REGINA DLUGASH, :
doing business as :
DOUGLAS ENTERPRISES :
8856 - 18th Avenue :
Brooklyn, New York :
File No. 8-5148 :
:
ELIOT, ROBERTS & CO., INC. :
11 Commerce Street :
Newark 2, New Jersey :
:
File No. 8-5497 :
:
REUBEN ROSE & CO., INC. :
115 Broadway :
New York 6, New York :
:
File No. 8-10217 :
:
WINKLER, CHASE COMPANY :
11 Broadway :
New York 4, New York :
:
File No. 8-3909 :

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SECURITIES & EXCHANGE COMMISSION

RECOMMENDED DECISION

Washington, D.C.
May 5, 1965

Samuel Binder
Hearing Examiner

BEFORE: Samuel Binder, Hearing Examiner

APPEARANCES: Donald J. Robinson, Esq.,
Miles Coon, Esq.,
Robert Kleinberg, Esq.,

on behalf of the Division of Trading and Markets,
Securities and Exchange Commission.

Messrs. Putney, Twombly, Hall & Skidmore,
Attorneys for Reuben Rose & Co., and Paul Rosenthal,
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New York, New York

By: Howard Ordman and Harold Hoffman, Esqs., of counsel.

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By: George Zolotar, Esq., of counsel.

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Attorney for Lucas D. Casarella,
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Kenvil, New Jersey

Arthur H. Beyer, Esq.
Attorney for Joseph Winkler and Louis Chazan, co-partners,
doing business under the firm name and style of
Winkler Chase & Co.,
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New York 6, New York

Robert R. Blasi, Esq.
Attorney for F. S. Johns and Co., Inc. and Global
Planning Corp.
Newark, New Jersey

Frank Metro, Esq.
Attorney for F. S. Johns & Co., Diversified Funding, Inc.,
Global Planning, John A. Tricoli, Jr., Lawrence Tricoli and
Silver Springs, Inc.,
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Newark, New Jersey

Irwin L. Germaise, Esq.
Attorney for Regina Dlugash, a/b/a
Douglas Enterprises, and Jack Dlugash
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New York, New York

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Attorneys for Marvin Abel,
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Attorneys for William Rosenthal,
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By: Jordan R. Metzger and Gerald P. Rosenberg, Esqs.,
of counsel.

George A. Rein, pro se
37 W. 72nd Street
New York 23, New York

John A. Tricoli, Jr., pro se
20 Branford Place
Newark, New Jersey

These are consolidated public proceedings held pursuant to Section 15(b), 15A and 19(a)(3) of the Securities Exchange Act of 1934 ("Exchange Act") to determine, among other things, whether it is necessary or appropriate in the public interest or for the protection of investors (1) to revoke the broker-dealer registration of F. S. Johns & Co., Inc. ("F. S. Johns"), or Global Planning Corporation ("Global"), or Regina Dlugash d/b/a Douglas Enterprises ("Douglas"), or Eliot, Roberts & Co., Inc. ("Eliot Roberts"), or Reuben Rose & Co., Inc. ("Reuben Rose") or Winkler, Chase Company ("Winkler Chase"), hereinafter referred to as registrants; (2) to suspend the broker-dealer registration of any of the registrants pending final determination of the question of revocation; (3) to suspend for a period not exceeding twelve months or to expel F. S. Johns, Douglas or Reuben Rose & Co., Inc. from membership in the National Association of Securities Dealers; (4) to suspend for a period not exceeding twelve months, or to expel Reuben Rose & Co., Inc. from membership in the New York and American Stock Exchanges; and (5) whether, within the meaning of Section 15A(b)(4) of the Exchange Act the Commission should find that John A. Tricoli, Jr. ("John Tricoli"), John Silvestri ("Silvestri"), Anthony Grausso ("Grausso"), Salvatore Facciponti, a/k/a Sal Ponti ("Ponti"), E. Ronald Lappe ("Lappe"), Aaron Lichenstein, a/k/a Aaron Lang ("Lang"), George Rein ("Rein"), Harry Rower ("Rower"), Lucas E. Casarella ("Casarella"), Joseph Tricoli, Lawrence Tricoli, Harry Weintraub, a/k/a Harry Winters ("Weintraub"), Jack Dlugash,

Marvin Abel ("Abel"), Edward McNamara ("McNamara"), Robert Shafarman ("Shafarman"), Paul Rosenthal, William Rosenthal, Joseph Winkler ("Winkler"), and Louis Chazan ("Chazan"), or any of them, are causes of any order of revocation, suspension or expulsion which may be entered herein.

On July 15, 1963, the Commission issued an order instituting proceedings under the anti-fraud provisions of the Securities Acts wherein it alleged that during the period from about January 24, 1961 to about June 20, 1962, the broker-dealers registered under the Exchange Act (Registrants), John Tricoli, Silvestri, Grausso, Ponti, Lappe, Lang, Rein, Rower, Casarella, Joseph Tricoli, Weintraub, Lawrence Tricoli, Jack Dlugash, Abel, McNamara, Paul Rosenthal, William Rosenthal, Winkler, Chazan, Shafarman, hereinafter sometimes collectively referred to as respondents, singly and in concert, wilfully violated and aided, abetted and assisted wilful violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 17 CFR 240.10b-5 and 17 CFR 240.15c1-2 thereunder (referred to hereinafter as Rules 10b-5 and 15c-2; that during the period from approximately October 12, 1961 to approximately March 26, 1962, respondents, singly and in concert, wilfully violated Section 10(b) of the Exchange Act and Rule 17 CFR 240.10b-6 thereunder (referred to hereinafter as Rule 10b-6); that during the period from October 12, 1961 to approximately March 26, 1962, F. S. Johns

and Douglas wilfully violated Section 15(c)(1) of the Exchange Act and Rule 17 CFR 240.15c1-8 thereunder (referred to hereinafter as Rule 15c1-8), and John Tricoli, Silvestri, Grausso, Ponti, Lappe, Lang, Rein, Rower, Casarella, Lawrence Tricoli, Jack Dlugash, Abel, and McNamara aided and abetted such violations; that F. S. Johns and Global wilfully violated Section 15(b) of the Exchange Act and Rule 17 CFR 240.15b-2 thereunder (referred to hereinafter as Rule 15b-2), and John Tricoli, Silvestri, Grausso, and Lawrence Tricoli, singly and in concert, aided and abetted such wilful violations; F. S. Johns wilfully violated Section 15(b) of the Exchange Act and Rule 15b-2 thereunder, and John Tricoli, Silvestri and Grausso, singly and in concert, aided such violations; and that Eliot Roberts wilfully violated Section 15(b) of the Exchange Act and Rule 15b-2 thereunder, and Shafarman aided and abetted such violations.

A public hearing of the issues was held between January 7, 1964 and March 18, 1964, before the undersigned hearing examiner.

All registrants appeared except Eliot Roberts. With respect to the other respondents, the following appeared and participated; John A. Tricoli, Jr., Lawrence Tricoli, Joseph Tricoli, Ponti, Casarella, Jack Dlugash, McNamara, Paul Rosenthal, William Rosenthal, Joseph Winkler,

Marvin Abel,^{1/} Louis Chazan, and George Rein.^{2/}

On January 31, 1964, counsel for the Division of Trading and Markets ("Division"), pursuant to Rule 6(d) of the Commission's Rules of Practice, moved to amend the order for proceedings in this matter so that subparagraph J of Part I of the order would read as follows:

"Eliot Roberts and R. Shafarman are preliminarily enjoined by an order of the United States District Court for the District of New Jersey, entered on November 14, 1962, from further violating Sections 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-1 and 17a-3 thereunder, and the final judgment of permanent injunction was filed on January 18, 1964 permanently enjoining Eliot Roberts & Company, Inc. and Robert E. Shafarman from violating Sections 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-1 and 17a-3 thereunder;"

and so that sub-paragraph L of Part II of the order would read as follows:

"Eliot Roberts wilfully violated Section 15(b) of the Exchange Act and Rule 17 CFR 240.15b-2 thereunder and R. Shafarman aided and abetted such wilful violation in that said persons, singly and in concert, represented in Eliot Roberts' application for registration and in documents supplemental thereto that neither Eliot Roberts nor any person associated with it is preliminarily or permanently enjoined from engaging in or continuing any conduct of practice in connection with the purchase or

1/ Counsel for Abel filed a notice of appearance on July 25, 1963 but on January 2, 1964 such counsel withdrew their notice of appearance. However, Abel testified during the course of these proceedings. McNamara, another alleged "cause", also testified in these proceedings.

2/ George Rein's "appearance" was in the form of a letter which he wrote to the Commission dated July 26, 1963 stating that he worked for F. S. Johns, sold the stock of Diversified, and told the customers only what he "saw in printed material that was given to [him] by F. S. Johns Co." He added that he would like to be kept informed on this matter and also would like to be a witness if deemed necessary by the Commission. Rein, however, did not appear at the formal hearing which was held in this matter.

sale of any security, which representation became inaccurate when Eliot Roberts and R. Shafarman were enjoined as described in paragraphs J, as amended, and K of Section I, and Eliot Roberts and R. Shafarman have failed to promptly file an amendment on Form BD to Eliot Roberts' application for registration to disclose such injunctions and to correct the information contained in said application for registration and documents supplemental thereto."

The hearing examiner granted this motion.

On February 10, 1964, counsel for the Division, pursuant to Rule 6(d) of the Commission's Rules of Practice, moved to amend the order for proceedings in this matter to include a sub-paragraph M in Part II of the order which reads as follows:

"During the period from January 24, 1961 to September 27, 1961, J. Tricoli, F. S. Johns, Silvestri, Grausso, Joseph Tricoli, L. Tricoli, singly and in concert, in connection with the purchase and sale of Diversified common and preferred stock, willfully violated Section 10(b) of the Exchange Act and Rule 10b-6 thereunder, in that said respondents, directly and indirectly, by the use of means and instrumentalities of interstate commerce and of the mails, and while engaged in participating in the distribution of Diversified common and preferred stock, bid for and purchased said securities for accounts in which said persons had a beneficial interest."

The hearing examiner granted this motion.

Proposed findings of fact and conclusions of law and briefs in support thereof were filed by the Division, Reuben Rose & Co., Inc., Paul Rosenthal, Lucas Cassarella, and Winkler, Chase Company, in accordance with the Commission's Rules of Practice. No proposed findings or briefs were filed by F. S. Johns & Co., Inc., or by the officers,

employees or registered representatives of such registrant, except Casarella, or Global Planning Corp., or any of its officers or employees, or Regina Dlugash, doing business as Douglas Enterprises, or any of her officers or employees, or Eliot Roberts & Co., Inc. or any of its employees, or any of the other respondents.

The following findings, conclusions and recommendations of the Hearing Examiner are based upon the record in these proceedings, including the testimony of the witnesses and the exhibits introduced during the hearing. The Hearing Examiner has fully considered all the proposed findings of fact and conclusions of law and the supporting briefs which have been filed in this proceeding.

The Principal Issues and the Respondents

1. The principal issues in these proceedings stem from the fraudulent activities of F. S. Johns and its officers and employees in the sale and purchase of the common and preferred stocks of Diversified Funding, Inc. (Diversified) and from the activities of the registrants and their employees in that they singly and in concert participated in and aided and abetted F. S. Johns and its officers and registered representatives in their "boiler room" operations by placing

^{3/} The Commission on July 11, 1962 in the matter of Mac Robbins & Co., Inc. (Exchange Act Release No. 6846) pointed out that:

"The influx of new and inexperienced investors into the securities market during the 1950's has spawned a disturbing growth in the use of selling methods which represent the antithesis of fair dealing. Commonly characterized as "boiler-room" procedures, they

/ (Continued from p. 6)

involve a concerted, high-pressure effort - typically by telephone - to sell a large volume of one or several promotional or speculative low-priced securities to unknown persons without any concern for the suitability of such securities in the light of the customers' investment needs or objectives and by the use of false and deceptive means. The sales techniques used are by their very nature not conducive to an unhurried, informed and careful consideration of the investment factors applicable to the securities involved. The securities are frequently of a newly established company in an industry enjoying an active period of expansion which has attracted wide public attention.^{17/}

"These boiler-room operations, relying for the most part on oral representation, subject the requirements of fair dealing to their greatest test and the enforcement of the statutory prohibitions against fraud to grave difficulties. The assault on the investors' dollars is frequently initiated by sales brochures artfully contrived to avoid express falsehood; instead, nuances and implications are used in presenting information of a general nature to create an optimistic picture and to obscure, conceal or distort essential or material information concerning the specific security offered. This is soon followed by telephone solicitations by skilled salesmen recruited solely for their ability to execute effectively a "hard sell" campaign. The optimistic picture presented by the brochures is heightened by oral projections of specific per share earnings, predictions of market price rises and other happy prospects wholly lacking an adequate basis. At no time is disclosure made of any known or reasonably ascertainable adverse information. Nor is any word of caution given as to the risks involved. When the conversation is completed and the transaction effected, the customer is left with rosy expectations of gain without risk deliberately and dishonestly created by these high-pressure selling techniques. ^{18/}"

^{17/} N. Pinsker & Co., Securities Exchange Act Release No. 6401 (October 21, 1960) (drugs); Barnett & Co., Inc., supra (electronics); W. T. Anderson Co., Inc., Securities Exchange Act Release No. 6177 (February 9, 1960) (uranium); Keith Richards Securities Corporation, Securities Exchange Act Release No. 5988 (June 17, 1959) (plastics); Leonard Burton Corporation, Securities Exchange Act Release No. 5978 (June 4, 1959) (oil).

^{18/} See Best Securities, Inc., Securities Exchange Act Release No. 6282, p. 3 (June 3, 1960). See also Gibney, The Operators (1960) 89-120; Cormier, Wall Street's Shady Side (1962) Ch. 12."

fictitious quotations for Diversified stock at rapidly increasing prices in the Eastern Edition of the National Daily Quotations Service published by the National Quotation Bureau, Inc. ("pink sheets") during the time that F. S. Johns was distributing Diversified stock. These quotations were placed in the pink sheets by each one of the registrants and their employees during the period of F. S. Johns' distribution of Diversified stock. They were placed in such pink sheets pursuant to the requests of and at the levels suggested by John Tricoli, the controlling person of F. S. Johns. In addition, the registrants purchased securities of Diversified from time to time on the assurance or the well grounded expectation that such securities would be picked up by F. S. Johns at a profit to them. The quotations which were placed in the pink sheets in accordance with F. S. Johns' suggestions and directions were placed therein at rapidly ascending prices. The purpose in having these rapidly ascending quotations placed in the pink sheets by the registrants in accordance with the behest of John Tricoli was to stimulate demand artificially for Diversified stock and to demonstrate to gullible investors that F. S. Johns' unwarranted predictions that there would be spectacular rises in the prices for Diversified stock were not just optimistic puffing but that these predictions were well justified by the substantial number of dealers manifesting an interest in the stock and by the actual fact that they were quoting the stock at rapidly increasing prices. The representations of F. S. Johns registered representatives to numerous

investors that there would be a rapid rise in the over-the-counter price for Diversified and the placing of quotations by the registrants in the pink sheets at rising prices were an integral part of and materially aided and abetted F. S. Johns' distribution of Diversified stock.

The excellent description contained in the Commission's Opinion in the Mac Robbins^{4/} case of a "boiler room" and the selling methods employed in such an establishment is as applicable to F. S. Johns and its registered representatives in this case as it was to Mac Robbins and its employees.

In connection with F. S. Johns boiler room tactics in this case, it is noted that three of F. S. Johns' most important registered representatives, Rower, Rein and Lang, who are alleged causes in this proceeding, had previously been employed as registered representatives by Albion Securities Company, another "boiler room" operation. (See Exchange Act Release No. 7561, March 24, 1965). These registered representatives left Albion's "boiler room" to enlist their experience on behalf of F. S. Johns in the sale of Diversified stock. A fourth registered representative (Harry Weintraub) of F. S. Johns as well as his broker-dealer firm, Harwyn Securities, Inc., had been permanently enjoined by the United States District Court for the Southern District of New York from committing further violations of the anti-fraud and anti-manipulative provisions of the Securities Acts (Official File

4/ Ibid.

No. 8-8648), and was also permanently enjoined by the Supreme Court of the State of New York from engaging in the business of a broker-dealer in the State of New York (Div. Ex. 21B).

2. F. S. Johns & Co., Inc. ("F. S. Johns"), a New Jersey corporation was registered with this Commission as a broker-dealer on August 21, 1960; and is a member of the National Association of Securities Dealers ("NASD"), a national securities association registered pursuant to Section 15A of the Exchange Act.

3. John A. Tricoli, Jr. ("John Tricoli") is president and a director and owner of more than 10% of the stock of F. S. Johns, and is a registered representative of such firm and is its dominant figure.^{5/}

4. John Silvestri, a close friend of John Tricoli, initially contributed \$7500 to F. S. Johns, and then made subsequent contributions to F. S. Johns amounting to approximately \$15,000; and is vice president, director, and owner of more than 10% of the common stock of F. S. Johns. He never supervised any of F. S. Johns' operations, and had no knowledge of F. S. Johns' activities other than what John Tricoli told him.

5. Anthony Grausso, a close friend of John Tricoli, became secretary-treasurer and a director of F. S. Johns shortly after its incorporation, and owns more than 10% of the outstanding stock of F. S. Johns and received \$500 from the company on June 15, 1962.

^{5/} John A. Tricoli, Jr. was initially represented by Frank Metro, Esq., during the earlier phases of this hearing but later appeared pro se.

6. Salvatore Facciponti, also known as Sal Ponti, is a graduate of a beautician's school and had been employed as a construction helper. He was employed by F. S. Johns as a registered representative from January 15, 1961 until June 1962. He had had no prior experience in the securities industry but after 1-1/2 months' training by John Tricoli began selling securities, particularly those of Diversified Funding, Inc. ("Diversified"),^{6/} over the telephone for F. S. Johns and from July 7, 1961 through December 29, 1961 Ponti received \$4129 from F. S. Johns and in 1962 through June 8 he received a net amount of at least \$975.

7. E. Ronald Lappe was a registered representative for F. S. Johns from November 1960 through January 1962; and was a promoter and at its inception was secretary-treasurer and a director of Diversified but resigned as secretary-treasurer in the first week of January 1962 and from the board of directors in May 1962. Lappe is a former policeman whose only prior experience in the industry was as a registered representative for about a year with Julian Grunberg & Co., a mutual fund house. Lappe received \$5,693.75 from F. S. Johns in 1961, received \$275 from F. S. Johns in January 1962 and \$150 on June 11, 1962.

8. Aaron Lichtenstein, also known as Aaron Lang, was employed by F. S. Johns as a registered representative from approximately March through June, 1962 and received at least \$3,030 from F. S. Johns in this period. He had previously been employed as a registered

^{6/} John Tricoli was under 30 years of age and had very little experience in the securities industry.

representative at Albion Securities Company, Inc., ^{7/} M. J. Reiter & Co., J. P. Howell & Co., Ralph Mineo and York Securities.

9. Harry Rower was a registered representative for F. S. Johns for slightly over a year commencing in August 1961 and also hired sales personnel for the company. He had been employed by six other registered broker dealers including Albion ^{8/} prior to becoming a registered representative for F. S. Johns. ^{9/} Rower received \$8,740 from F. S. Johns in 1961, and by April 19, 1962 he was paid an additional amount of \$7,011.

^{7/} The registration of Albion Securities Company, Inc. (Albion), was revoked by a Commission order issued March 24, 1965 and Aaron Lang, also known as Aaron Lichtenstein, was found to be a cause of such order. In this connection, the Commission found that Albion and its salesmen, including Lang and George A. Rein (referred to hereinafter in the text of this decision) "engaged in boiler room" tactics in effecting "sales of securities"; and that "In the course of the sales campaign, they made numerous extravagant, false and misleading representations principally through intensive telephone and mail solicitation of persons whose names were obtained from mailing lists purchased by registrant and whose financial needs, objectives and circumstances were unknown to them. Predictions of specific and spectacular price rises in the stock within relatively short periods of time or of substantial unspecified price rises were made by Lang and Rein and others. Essentially it is conduct of the same character with regard to the securities of Diversified by Lang, Rein, and the other named "causes" employed by F. S. Johns which is a major part of the allegations contained in the Commission's order instituting the instant proceedings. (Exchange Act Release No. 7561).

^{8/} See footnote 7.

^{9/} Rower's application for registration, which John Tricoli signed, reflected that Rower either had been convicted of a felony or misdemeanor involving the purchase or sale of a security or arising out of his conduct as a broker-dealer, or had been convicted of a felony or misdemeanor involving embezzlement, fraudulent conversion, misappropriation of funds or abuse or misuse of a fiduciary relationship. (Div. Ex. 58B, answer to Q. 18).

10. George Rein was a registered representative for F. S. Johns from approximately March 23, 1962 through May 1962 and received at least \$1400. He had previously been employed by five other registered broker-dealers including Albion.^{10/}

11. Lucas D. Casarella was a registered representative for F. S. Johns from approximately April through May 1962, earned \$270 in the first three weeks of May 1962, and had previously been employed as a registered representative at Ellis Securities for four months.

12. Harry Weintraub, also known as Harry Winters, was a registered representative for F. S. Johns in February and March 1962 and earned at least \$1100. He had previously been employed as a registered representative at six other registered broker-dealer firms including Scott Taylor Company.^{11/}

13. Weintraub had previously been president of Harwyn Securities, Inc. (Official File No. 8-8648). Weintraub, Harwyn Securities, Inc. and other defendants were permanently enjoined by an order of the United States District Court for the Southern District of New York

^{10/} See footnote 7.

^{11/} See S.E.C. v. Scott Taylor & Co., Inc., 183 F. Supp. 904; Landau Company and Scott Taylor & Co., Inc., 40 S.E.C. 1119.

entered on February 8, 1961 from committing further violations of Section 17(a) of the Exchange Act and Rules 10b-6, 15c3-1 and 17a-3 thereunder, in connection with the offer and sale of the common stock of Chevy Savings and Loan Association.^{12/}

14. Weintraub, Harwyn Securities, Inc. and other defendants were permanently enjoined from engaging in the business of a broker-dealer in the State of New York, Special Term, Part II, entered on March 13, 1962.

15. Harwyn Securities, Inc.'s registration as a broker-dealer was revoked by order of the Commission on October 4, 1963. Weintraub was found a cause in that proceeding. (Official File No. 8-8648).

16. Joseph Tricoli, an older brother of John Tricoli, who had no previous experience in the securities industry and had previously been employed as a carpenter and television technician, was employed as a registered representative by F. S. Johns in May 1961 and supervised the clerical work and acted as the bookkeeper for F. S. Johns from the latter part of June 1961 through June 1962. He received at least \$5,277.44 from F. S. Johns during 1961 and by June 22, 1962 he received an additional \$4,054.73 from F. S. Johns.

17. Lawrence Tricoli, another older brother of John Tricoli, who had no prior experience in the securities industry, was "trained"

^{12/} John Tricoli knew of the injunctions against Weintraub (Div. Exhs. 21A, 21B) on January 30, 1962 when he signed Weintraub's application for registration as a registered representative (Div. Ex. 58E).

by John Tricoli as a registered representative and was so employed by F. S. Johns from January 1961 through July 1962, and was in charge of sales and promotion for F. S. Johns. He was also secretary of Global during this period.

18. Lawrence Tricoli earned at least \$10,505.90 at F. S. Johns in 1961. By June 15, 1962, Lawrence Tricoli received from F. S. Johns at least an additional \$5,275.

19. Lawrence Tricoli was a promoter and a director of Diversified and was its president from its inception through July 2, 1962.

20. On March 25, 1964 the United States District Court for the District of New Jersey issued a judgment of permanent injunction in an action instituted by the Securities and Exchange Commission against F. S. Johns & Co., Inc., Diversified Funding, Inc., Silver Springs Acres, Inc., John Tricoli, Jr., Lawrence Tricoli, and Joseph Edward Onello. (Securities and Exchange Commission v. F. S. Johns & Co., et al, 62 Civil Action File No. 509).

This judgment permanently enjoined these defendants, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them in the offers and sales of the common and preferred stock of Diversified Funding, Inc. by use of the means of interstate commerce or communication or by the use of the mails from, directly or indirectly, employing any device, scheme, or artifice to defraud or obtaining money or property by means of any untrue statements of material fact concerning, among other things, (a) projected price increase of Diversified; (b) the earnings of Diversified;

(c) the payment of dividends by Diversified; (d) the possibility of a stock split of Diversified; (e) the nature of the operations of Diversified; (f) the financial condition of Diversified; and the registrar and transfer agent. The judgment also enjoined these defendants and their employees and agents from omitting to state material facts necessary to make their representations concerning Diversified not misleading concerning, among other things, that

(a) Diversified has never effected any interim securities or equity financing for any industrial plants or other companies; (b) Diversified operated at a deficit for the year 1961 and for the quarter ending March 31, 1962; (c) when the asset item of "Negotiable Marketable Securities (at cost) - \$36,060.28 was set forth in the Balance Sheet of the First Quarter, 1962 Report of Diversified, the fact that the market value of the securities was less than \$29,862.50; (d) when the asset item of "Land (at cost) - \$125,000" was set forth in the aforesaid Balance Sheet, the fact that this represented a figure arbitrarily set by Onello and John Tricoli, whereas Onello had purchased the land for \$66,000; (e) that no member of management actually has had prior experience in this field and Diversified has not and does not employ any full time employee; (f) while and at a time when the stock of Diversified was being sold to the public by the defendant F. S. Johns at prices of approximately \$4.25 to \$5.25 per share, the fact that on March 6, 1962 defendant Onello received payment of one cent per share for 70,000 shares sold to John Tricoli, or engaging in transactions,

practices, or a course of business which operates or would operate as a fraud or deceit upon purchasers of the common and preferred stock of Diversified, or any other act or practice of similar purport or object.

21. Douglas Enterprises (Douglas), a sole proprietorship, became registered as a broker-dealer on June 22, 1956 (Official File No. 8-5148), and Regina Dlugash has been the sole proprietor of Douglas since its inception. She had no experience in the securities business prior to becoming registered as a broker-dealer and her only experience with the securities business prior to becoming a broker-dealer consisted of discussions with her husband relating to the mutual fund business. Douglas' place of business was in Brooklyn, New York, and it is a member of the NASD.

22. Jack Dlugash is the husband of Regina Dlugash, is a certified public accountant, was Douglas' bookkeeper and has been employed as a part time registered representative of Douglas since 1956. Regina Dlugash sought his advice daily and she relied on her husband's opinions in managerial matters. Jack Dlugash together with Regina Dlugash exercised the power to hire and fire. He and his wife reviewed each day's trading and selected the securities that Douglas would trade. Jack Dlugash directed the management and policies of Douglas. Jack Dlugash was a controlling person of Douglas.

^{13/} See Reiter Foster Oil Corporation, 6 S.E.C. 1029, 1044 (1940); Manchester Gas Co., 7 S.E.C. 57, 62 (1940).

23. Marvin Abel, who had no previous experience in the securities industry became a part-time registered representative for Douglas in March 1961. In July 1961 Abel became a full-time registered representative, sales manager, and trader for Douglas. In March 1962 he left Douglas.

24. Between July and August 1961, pursuant to arrangements made with Regina and Jack Dlugash, Douglas paid Abel 50% of the total commissions on his own over-the-counter sales and 3 or 4 per cent on his own mutual fund sales. In addition, as sales manager of Douglas, Abel received a 10% override on commissions paid to the salesmen. On all sales made on stocks taken into position, Abel, as trader, received 50% of the total profits made, up to \$25 on 100 shares. He also received 5% of the total commissions received by Douglas.

25. Edward McNamara, who had no previous experience in the securities industry, became a mutual funds salesman for Douglas in July 1961. In September 1961 McNamara became a full time registered representative for Douglas. In late March and April 1962 McNamara was the trader for Douglas and then left Douglas to become associated with Global Planning Corp., (Global).

26. Global, a New York Corporation, became effectively registered with the Commission as a broker-dealer on May 2, 1962. (Official File No. 8-10629). Global's registration application indicated that its principal place of business was to be 26 Broadway, New York, N.Y., but it subsequently changed its address to 298 Rhode Island Ave., East Orange,

N.J., c/o Joseph Tricoli. On August 22, 1962 Global amended its application to show its principal place of business as 20 Branford Place, Newark, N.J.

27. During March 1962 and for some time thereafter when Bernard Coven, Esq., ("Coven"), was acting as attorney for F. S. Johns, John Tricoli and his brothers, Diversified, and Joseph Onello, he was asked to prepare papers for incorporation for Global and received a check for such service from F. S. Johns signed by John Tricoli. Coven also prepared Global's application for registration as a broker-dealer. Coven paid Constitution Realty Corporation, 26 Broadway, New York, N.Y., \$650 security and \$325 for the first month's rent on behalf of Global. Coven received these funds from F. S. Johns in the form of a \$1,225.00 check dated March 23, 1962 signed by John Tricoli.

28. At a meeting between McNamara, John Tricoli, Lawrence Tricoli, and Joseph Onello held during the second week of April 1962, McNamara was informed by John Tricoli that Global was opening an office in Manhattan; that Global would be an over-the-counter firm with a wholesale and retail department, a mutual fund department, and a trading department. McNamara was offered the job of running the trading department at Global, and left Douglas to accept the job and worked for Global for three weeks.

29. During the first week McNamara worked for Global he attended a meeting in the offices of F. S. Johns, which was attended by the principal officers of F. S. Johns and a number of customers' men from

other firms at which the principals of F. S. John said " . . . they were opening new firms and they would like these men to come in and work with them." They also discussed Diversified Funding stock. John Tricoli "told them the type of operation, we were going to have a retail, a wholesale and a trading department". John Tricoli also "gave them a resume of the type of operation we were going to have over there."

30. Joseph Allen, formerly employed at Douglas, became mutual funds manager for Global.

31. John Tricoli came to the offices of Global at least twice while McNamara was employed there and expressed his annoyance because McNamara had been there almost two weeks and had not sold any Diversified stock. McNamara told John Tricoli that he "had no intention of selling Diversified because at that time they had a bad name on the street. None of the brokers wanted to handle it." John Tricoli told McNamara to sell something if not Diversified, but McNamara did not want to do any trading because Global was not registered as a broker-dealer.

32. Al Sharp, listed as president and director of Global had "sold quite a few clients Diversified" while employed by another broker-dealer.

33. In the beginning of May 1962 John Tricoli called McNamara at Global and asked him if he knew any brokers who would put quotations in the pink sheets for F. S. Johns. McNamara called Frank Gormally, a friend of his at Investment Planning Group, asked Gormally to go into

the pink sheets with quotations for Diversified and do the trading for Global since Global was not registered as a broker-dealer. McNamara told Gormally to deliver any Diversified stock that he bought to F. S. Johns and they would pay him his purchase price plus a sixteenth of a point. Gormally called McNamara back the next day and said that he didn't want to pick up the stock any more. He said he "just heard something around the Street," and "he doesn't want to get involved in it. And the shares that he did pick up he delivered to F. S. Johns. And that was the end of the transaction. He wouldn't do any more."

34. John Tricoli and F. S. Johns' control of Global was not disclosed on Global's application for registration or amendments thereto. (Official File No. 8-10629).

35. Winkler Chase Company, a partnership, became effectively registered with the Commission as a broker-dealer on January 14, 1955.

36. Joseph Winkler and Louis Chazan have been general partners of Winkler Chase from the date of the formation of the firm.

37. Reuben Rose & Co., Inc. was incorporated under the laws of New York on October 13, 1961, and became effectively registered with this Commission as a broker-dealer on December 21, 1961. (File No. 8-10217).

38. Reuben Rose & Co., Inc. is the successor to Reuben Rose & Co., a partnership which had become effectively registered with the Commission as a broker-dealer on or about July 14, 1958. The partnership was dissolved on October 26, 1961.

39. Reuben Rose & Co., Inc. is a member of the National Association of Securities Dealers.

40. Reuben Rose & Co., Inc. is a member of the New York Stock Exchange and the American Stock Exchange.

41. Reuben Rose & Co., Inc. has five branch offices, employs 97 persons, and during January-March 1962 it had three branches and employed approximately 80 persons.

42. By far the largest portion of the business of Reuben Rose & Co., Inc. and its predecessor partnership has been and is in commissions from transactions listed on national securities exchanges.

43. William Rosenthal was employed by Reuben Rose & Co., the predecessor partnership, as a registered representative on June 20, 1961 and acted as trader for such firm in over-the-counter securities.

44. William Rosenthal had previously been employed as a registered representative and trader by Phillips, Rosen & Appel, a member firm of the New York Stock Exchange which then cleared its transactions through Reuben Rose & Co. and shared office space with Reuben Rose & Co.

45. William Rosenthal acted as the sole trader for Reuben Rose & Co. and its successor, Reuben Rose & Co., Inc. until the end of May 1962, and remained with the firm as a registered representative until August 8, 1962.

46. When Reuben Rose & Co., Inc. was incorporated in October 1961, Paul Rosenthal was named assistant treasurer to facilitate back office activities in which a signature of an officer was required. In May 1962 he became treasurer of Reuben Rose & Co., Inc. and during the

summer of 1963 also became a vice president. He has been in charge of the back office throughout his employment by Reuben Rose & Co., Inc.

47. Prior to July 1959 Paul Rosenthal was not engaged in the securities business and did not have securities experience.

48. Paul Rosenthal and William Rosenthal are not relatives.

49. Eliot Roberts and Co., Inc., a New Jersey corporation, was originally incorporated under the name of United Planning Corporation ("United Planning"). United Planning, now Eliot Roberts, became effectively registered with the Commission as a broker-dealer on December 21, 1956. Eliot Roberts is not currently conducting business.

50. Robert Shafarman is the president of Eliot Roberts, Inc., is the sole owner of its stock, and was the sole owner of the stock of United Planning, a predecessor company.

51. Eliot Roberts and Shafarman were preliminarily enjoined by an order of the United States District Court for the District of New Jersey on November 14, 1962, from further violating Sections 15(c) and 17(a) of the Exchange Act and Rules 15c3-1 and 17a-3 thereunder.^{14/} An order of permanent injunction involving the same violations was entered on January 23, 1964, upon the consents of Eliot Roberts and Shafarman.^{15/}

52. Eliot Roberts and Shafarman are permanently enjoined by an order of the United States District Court for the District of

^{14/} Div. Ex. 21C.

^{15/} Div. Ex. 21D.

New Jersey entered on April 15, 1963, from further violating Sections 5(a), 5(c) and 17(a) of the Securities Act in connection with the offer and sale of the Class A common stock of Lord Adam/Lady Eve Products, ^{16/} Inc.

53. None of these injunctions are disclosed in Eliot Roberts application for registration as a broker-dealer or amendments thereto. (Official File No. 8-5497).

The Background of Diversified and its
Distribution of Securities to the Public

54. In about December 1961 John Tricoli, Donald Miloscia, Richard Rigenye and E. Ronald Lappe had a meeting at which they decided to organize Diversified Funding, Inc., a New Jersey corporation. This company was incorporated as a New Jersey corporation on January 24, 1961.

55. Diversified's certificate of incorporation provided for two classes of stock - common and preferred - and there was no provision in such certificate authorizing the conversion of preferred into common stock. Dividends on both classes of stock were payable only out of Diversified's earned surplus, when and if declared by the board of directors. There was never any meeting of the board of directors authorizing the conversion of preferred stock into common stock.

56. On January 24, 1961, as promoters of Diversified, John Tricoli was issued 30,000 shares of common stock, Lawrence Tricoli was issued 10,000 shares of common stock, Rigenye was issued 2,500 shares

^{16/} Div. Ex. 21E.

of common stock, Miloscia was issued 2,500 shares of common stock, and Lappe was issued 5,000 shares of common stock.

57. At the time Diversified was incorporated each one of the promoters was a registered representative of F. S. Johns, and John Tricoli offered them the Diversified stock which they received.

58. Each of the promoters paid 10¢ per share for such Diversified common stock except Lappe who paid 20¢ per share.

59. Upon the incorporation of Diversified on January 24, 1961, Lawrence Tricoli became president, Miloscia became vice president, Lappe became secretary-treasurer, and John Tricoli became chairman of the board, and they all became members of the board of directors of Diversified.

60. Rigenye left the board of directors in the first or second quarter of 1961, Miloscia resigned as a director in July, 1961, and Lappe resigned as a director in May, 1962.

61. Although Lappe had been elected secretary-treasurer, he performed none of the duties of his office, maintained no books or records for Diversified, and never participated or prepared and has never seen any minutes of meetings of the board of directors. During 1961 there were no books and records of Diversified other than a checkbook and certificate book. Lappe signed Diversified stock certificates which were also signed by Lawrence Tricoli. However, Lappe did not have access to Diversified's checkbook and John Tricoli had the sole power to sign checks for Diversified.

62. F. S. Johns began selling 25,000 units of Diversified securities to the public on January 24, 1961 pursuant to an underwriting agreement which it had with Diversified. According to a prospectus issued by Diversified dated January 24, 1961 the offering to the public was to consist of 75,000 shares of preferred stock - 10¢ par value, price \$1.00 per share - annual dividend of 8% of issuing price (\$1.00) and 50,000 shares of common stock. The common stock had the sole voting power, each share being entitled to one vote. The prospectus stated that dividends were available to common stockholders only after the 8% dividend to preferred stockholders. The prospectus stated that "as a purely intrastate offering, these securities are for sale only to residents of New Jersey who certify that they purchased with the intention of not transferring to, or creating a beneficial interest for residents of other states." Each unit was to consist of three shares of Diversified preferred stock and two shares of common stock and were initially offered to the public at \$5 per unit.^{17/} Under "Use of Proceeds" the prospectus stated that

"The net proceeds from the sale of the 75,000 shares of Preferred stock and 50,000 shares of Common stock being offered in this Prospectus for the Company, after deduction of the estimated expenses of the offering are estimated to be \$100,000.^{18/}

^{17/} Div. Ex. 14B.

^{18/} The prospectus states that "The Company sold 25,000 warrants to the Underwriter at a price of one cent (\$.01) per warrant for the total sum of \$250. Each warrant entitles the holder thereof the right to purchase one share of Common stock of the Company at \$1.00 per share on or before January 24, 1970.

"The Company intends to use approximately all of the monies realized from this offering to finance, manage and promote the expansion of industrial plants in order to earn the profits considered by management to be commensurate with the risks involved. No arrangements have been made for the return of funds to subscribers in the event that all of the securities offered are not sold."

63. Between January 24, 1961 and September 27, 1961, F. S. Johns as Diversified's underwriter, sold 36,720 shares of Diversified preferred stock and 24,480 shares of Diversified's common stock which amounted to 12,240 units.

64. The books of F. S. Johns indicate a closing of the underwriting and a settlement date of September 27, 1961.

The Use of the Underwriting Proceeds

65. As a result of the underwriting F. S. Johns received approximately \$62,000 from the public and turned over to Diversified a total of \$48,198. This was less than half of the net amount which Diversified sought to raise from its securities offering.

66. The proceeds of this offering were never used by Diversified for the purposes set forth in its prospectus or for the purposes proclaimed in other advertising literature ^{19/} employed thereafter by Diversified. Diversified employed the proceeds it had received from the public for the first time on September 27, 1961 when it expended \$21,762.50 to acquire various over-the-counter securities held in a long position in the trading account of F. S. Johns. ^{20/}

^{19/} The prospectus and other selling literature employed in the sale of Diversified will be discussed hereinafter.

^{20/} The securities acquired by Diversified were 200 shares of General Utilities at \$7 per share; 100 shares of Gyrodine at \$16.50 per share; 1500 shares of Kingsford Chemical Corp. stock at \$2.25 per share; 100 shares of Lanolin Plus at \$14.75 per share; 500 shares of Metropolis Bowling at \$5 per share; and 1000 shares of Seven Arts at \$11.25 per share.

67. By December 19, 1961 Diversified had paid out \$43,550 to F. S. Johns in the purchase of the common stock of several companies held in F. S. Johns' trading account.^{21/} An additional \$3,000 was spent as operating costs for Diversified up to the latter date. During the same period of time, however, Diversified sold some of the shares of stock which it had purchased from F. S. Johns for almost \$23,000.^{22/}

68. In April 1962 John Tricoli negotiated a loan on behalf of Diversified to Lou Mayo who was the owner of Mayo & Co., Inc., a registered broker-dealer which had been operating a "boiler room" in Philadelphia, Pennsylvania.^{23/} In return for a loan of \$4,000 Mayo gave

21/ In addition to the securities referred to in the above footnote, Diversified bought shares of Valve Corp., Packers Supermarket, Movie Star, Metropolitan Telecommunications, General Utilities, Groh Corporation, and additional shares of Gyrodine.

22/ These included shares of Lanolin Plus, Valve Corp., Seven Arts, Packers Supermarket, Movie Star, Metropolis Bowling, Gyrodine, and Kingsford Chemical.

23/ Mayo & Co., Incorporated's registration as a broker-dealer was revoked by order of the Commission on May 8, 1964. The Commission found that Mayo participated in his company's "boiler room" activities and was a "cause" of the revocation order. The bases for the order were violations of the anti-fraud and anti-manipulation provisions of the Securities laws with respect to the offer and sale of the common stock of National Industries, Inc. The stock of National Industries had been distributed by Mayo & Co., Inc. and Lou Mayo between November 1961 and January 1962 by employing "boiler room" sales techniques including high pressure telephone solicitations of unknown persons by means of false and misleading statements and such persons had been placed by Mayo & Co., Inc. in a position where they were asked to make hasty decisions to buy National stock upon the basis of unsubstantiated representations and without having disclosed to them material facts concerning the true nature and worth of such securities. (In the Matter of Mayo & Co., Incorporated, Exchange Act Release No. 7310).

Diversified a note for \$5,000 due in 30 days. John Tricoli claimed that 2,000 shares of National Industries' stock had been received by Diversified as collateral for the loan. The books and records of Diversified do not reflect the receipt of any collateral for the loan. John Tricoli never ascertained the purpose for which Mayo borrowed the money. The note was not paid when due and thereafter when Mayo delivered his check to Diversified in payment of his obligation it was returned to Diversified for insufficient funds. When asked whether any action was taken to recover the money loaned by Diversified to Mayo, John Tricoli replied that he had no recollection of taking any steps to recover the money.

69. As a result of F. S. Johns' unsuccessful underwriting and by reason of Diversified's improper use of a major part of the proceeds in buying securities from F. S. Johns the remaining funds available to Diversified to "finance, manage and promote the expansion of industrial plants . . .", the principal purpose for which the company was organized, and towards which the funds obtained from the public investors were to be employed, was effectively frustrated.

70. As of September 30, 1961 there were 74,480 shares of Diversified common stock outstanding; 24,480 were owned by the public and 50,000 shares were owned by management. Diversified was controlled by F. S. Johns and John Tricoli.

71. As of September 30, 1961 there were 36,720 shares of Diversified preferred stock, which had no voting rights, outstanding, all owned by the public.

72. Subsequent to September 27, 1961, F. S. Johns commenced a distribution of Diversified stock within the meaning of Rule 10b-6^{24/} under the Exchange Act and this distribution was made by employing false and misleading statements and extensive high-pressure use of the telephone and by the wide use of false and misleading advertising literature which was mailed to persons to whom the stock was being offered. The telephone solicitations were made of persons whose names were taken from the telephone book and who were unknown to F. S. Johns, and F. S. Johns sold such Diversified securities at substantially higher prices per share during this distribution than the prices which it had obtained from the public during the underwriting period between January and

^{24/} Former Commissioner Jack M. Whitney II, in an article entitled "Rule 10b-6: The Special Study's Rediscovered Rule" appearing in the Michigan Law Review Vol. 62, No. 4, p. 566 (February, 1964), pointed out that "The Commission has characterized the word "distribution" as it appears in Rule 10b-6 in terms of a major selling effort on behalf of a broker or dealer and has identified as two basic factors to be considered, in distinguishing a distribution from ordinary trading transactions 'the magnitude of the offering, and particularly . . . the selling effort and selling methods utilized.'" (Footnotes omitted). As to what was meant by "the magnitude of the offering" former Commissioner Whitney in a footnote called attention to SEC Electronics Security Corp., 217 F. Supp. 831, (D. Miss. 1963). That case involved a publicly owned broker-dealer which engaged in purchasing for its own account 5,185 shares of its own stock at \$2.00 to \$2.50 per share while selling 6,692 shares, which it had acquired at \$1.15 per share from the wife of a controlling stockholder, in 67 transactions at \$2.00 to \$3.00 per share. In addition, he pointed to the Commission's determination in C. A. Benson & Co. (Securities Exchange Act Release No. 7044, March 26, 1963), where the Commission held that a disposition of 860,000 shares out of a total of 10,000,000 'penny' shares outstanding, constituted a distribution for Rule 10b-6 purposes." See also Gob Shops of America, 39 S.E.C. 92 (1959); Bruns, Nordman & Co., 40 S.E.C. 652 (1961); C. A. Benson & Co., Exchange Act Release No. 7044, March 26, 1963; S.E.C. v. Electronics Security Corp., 217 F. Supp. 831 (D. Minn. 1963).

September, 1961.^{25/} In October 1961 alone F. S. Johns sold 31,210 shares of common stock to the public and during the period from October 1, 1961 through June 20, 1962 F. S. Johns sold 105,695 shares of common stock to the public.^{26/} These shares were sold at prices which rose rapidly from \$1.00 to \$5.25 per common share.^{27/} Of course, the increased prices for Diversified stock obtained in this distribution added not a penny to the small amount of funds which Diversified had obtained as a result of the underwriting but served only to enrich F. S. Johns and John Tricoli. This distribution also generated a small amount of profits either through agency or principal transactions to the registrants and it generated commissions paid to the registered representatives of F. S. Johns as they participated in this distribution.

73. These additional shares sold to the public were obtained by F. S. Johns and John Tricoli in a number of different ways. In this connection, it will be recalled that John Tricoli had obtained 30,000 shares of Diversified common stock as a promoter at 10 cents per share on January 24, 1961. On October 13, 1961 John Tricoli sold 25,000 of these shares to F. S. Johns at \$1.20 per share for a total of \$30,000. Between April 12, 1961 and August 29, 1961 F. S. Johns repurchased 1200 units of

^{25/} The securities of Diversified distributed to the public thereafter included substantial quantities of Diversified's preferred stock which were unlawfully converted into common stock by John Tricoli and F. S. Johns, the broker-dealer, which he controlled.

^{26/} This includes substantial quantities of Diversified's preferred stock which were unlawfully converted into common stock under the direction of John Tricoli.

^{27/} The fraudulent means employed to cause this price increase will be discussed hereinafter.

Diversified shares from three persons to whom it had sold such securities.^{28/}

Further, between October 26, 1961 and March 9, 1962, while it was engaged in a high pressure campaign selling the stock of Diversified, F. S.

Johns purchased 19,451 shares of Diversified preferred stock from the public. These shares were converted into Diversified common stock by John Tricoli without amending Diversified's certificate of incorporation as required by New Jersey law.^{29/} One hundred eighty one thousand two

hundred (181,200) additional shares of Diversified common stock were issued by Diversified on March 6, 1962. These shares were issued to Joseph Onello and members of his family in exchange for the 4000 outstanding common shares of a company called Silver Springs Acres, Inc. ("Silver Springs"). These 4000 shares were held by Joseph Onello and his family.

Silver Springs owned 640 acres of land in Florida. Silver Springs' land in Florida was held subject to a first mortgage of \$20,140, a second mortgage of \$24,860 and a third mortgage of \$40,000, the latter being held by Evelyn Onello, Joseph Onello's wife.^{30/} On March 6, 1962, the same

^{28/} It may also be noted that during the first week of January, 1962 Lappe sold the 5,000 shares of Diversified common stock which he had obtained as a promoter at 20 cents per share to John Tricoli at 4 cents per share for a total of \$200 and resigned as a secretary-treasurer of Diversified. On January 3, 1962 F. S. Johns was quoting Diversified in the pink sheets at 1-3/4 bid and 2-1/4 asked (See Div. Ex. 49A).

^{29/} See Title XIV of the New Jersey Statutes, Chapter 8, Articles 1 and 4.

^{30/} On March 6, 1962 Joseph and Evelyn Onello became members of Diversified's board of directors and secretary and treasurer of Diversified, respectively. The other two members of the board at that time were Lawrence Tricoli, president, and John Tricoli, vice president. Joseph and Evelyn Onello resigned from the board shortly after June 22, 1962.

day that Joseph Onello and his family ^{31/} were issued 181,200 shares of Diversified common stock, Certificate No. C 338 representing 70,000 shares of the shares transferred to Joseph Onello ^{32/} was broken down into the following denominations and issued to the following people:

30,000 shares to F. S. Johns & Company
28,000 shares to John Tricoli
5,000 shares to John Silvestri
5,000 shares to Anthony and Joseph Grausso
2,000 shares to Frank and Lottie Wojciak

These 70,000 shares of Diversified were paid for in part by John Tricoli. The total amount paid to Onello for the common shares of Diversified was approximately 21¢ per share. ^{33/}

These were the principal sources through which F. S. Johns acquired large amounts of Diversified stock which it offered for sale largely through "boiler room" methods and by rigging the over-the-counter market with the assistance of the other registrants named in the Commission's Order who placed fictitious quotations in the pink sheets at rapidly ascending levels during F. S. Johns'

31/ Ibid.

32/ Div. Ex. 470.

33/ On the same day that F. S. Johns and John Tricoli were paying 21¢ per share to Onello, F. S. Johns and Douglas were quoting Diversified's common stock in the pink sheets at 3-3/4 bid, 4-1/4 asked (See Div. Ex. 49A).

distribution of Diversified at the behest of John Tricoli.^{34/}

74. The volume of the net purchases and net sales of Diversified's common stock between October 1, 1961 and June 20, 1962 may be summarized^{35/} as follows:

<u>Year</u>	<u>Month</u>	<u>Net Purchases</u>	<u>Net Sales</u>
1961	October	27,165	31,210
1961	November	4,656	2,335
1961	December	2,133	2,300
1962	January	1,060	2,635
1962	February	19,020	21,650
1962	March	31,169*	23,500
1962	April	1,310	6,910
1962	May	4,665	8,330
1962	June	<u>1,200</u>	<u>6,825</u>
	TOTALS	<u>92,378</u>	<u>105,695</u>

*Includes conversion of 19,451 shares of Diversified Preferred into an equal number of shares of common stock which were added to F. S. Johns position in Diversified common stock.

^{34/} It has been pointed out by former Commissioner Whitney that "Although the National Daily Quotation Sheets are circulated almost solely among brokers and dealers, they serve to provide a supporting basis for retail prices. The Special Study states, 'The insertion of quotations may also be used to qualify a security for retail quotation on one of the NASD lists and to provide a basis for a fictitious retail price to be used in a selling campaign' Special Study, Pt. 2 at 608-609. See also S.E.C. v. Scott Taylor, 183 F. Supp. 907, (S.D.N.Y., 1959); Landau Co., 40 S.E.C. 1119, 1123-27 (1962); Gob Shops of America; 39 S.E.C. 92, 101-02 (1959); Halsey Stuart & Co., 30 S.E.C. 106, 126-28 (1949)." See Whitney, Rule 10b-6, Michigan Law Review, V. 62, No. 4, 567, fn. 67, at p. 583.

^{35/} See Div. Ex. 56A.

75. The purchase prices ranged from 95¢ to \$4-5/8 per share and sales prices ranged from \$1 to \$5-1/4 per share.

36/
F. S. Johns Sales Campaign

76. An analysis of the sales literature employed by F. S. Johns in its distribution of Diversified stock will make clear its highly fraudulent character and will shed light on the general nature of the sales campaign in which F. S. Johns and its registered representatives engaged, and will also serve to place in context the oral misrepresentations made to investors by F. S. Johns and its registered representatives.

The Hearing Examiner proposes to discuss first the literature circulated to investors by F. S. Johns and to follow that with a discussion of the oral misrepresentations made to purchasers of Diversified by F. S. Johns' representatives.

The Sales Literature

77. F. S. Johns employed at least 10 different pieces of sales literature during its distribution of Diversified stock. At least 1000 copies of each piece of sales literature was printed and in the first week of April 1962 when Diversified was approaching its highest price, as quoted in the pink sheets, and when the number of shareholders had reached nearly 500, John Tricoli had 5000 copies of Diversified's 1962 Quarter Annual Report printed, and these reports were used extensively by F. S.

36/ At least 100 copies of Diversified's 1962 Quarterly Report was delivered to Douglas, and Abel, its trader, who delivered copies of this document to his customers in retailing the stock of Diversified.

Johns' and Douglas'^{37/} salesmen in pushing sales of Diversified stock.

78. The sales literature employed by F. S. Johns included the following documents: (1) Offering Circular;^{38/} (2) Prospectus;^{39/} (3) June 1961 letter to stockholders from Diversified;^{40/} (4) News Release dated August 21, 1961;^{41/} (5) an undated News Release;^{42/} (6) Special

37/ In retailing Diversified stock to the public, it is charged that F. S. Johns, its officers and employees, singly and in concert, wilfully violated and aided and abetted and assisted wilful violations of Section 17(a) of the Securities Act, Sections 10(b) and 15(c) of the Exchange Act, and Rules 10b-5 and 15c-2 thereunder in that said persons participated in and contributed to the acts, practices and course of business pursued by F. S. Johns.

The effect of these provisions, as applicable to this case, is to make unlawful the use of the mails or means of interstate commerce in the purchase and sale of any security by the use of a device to defraud, and untrue or misleading statement of a material fact, or any act, practice or course of business which operates or would operate as a fraud or deceit upon a customer, or by the use of any other manipulative, deceptive or fraudulent device.

In this connection, the Supreme Court recently pointed out that Congress intended securities anti-fraud legislation to be construed "not technically and restrictively, but rather flexibly to effectuate its remedial purposes."

38/ Div. Ex. 29F.

39/ Div. Exs. 14B, 29C.

40/ Div. Exs. 17C, 27G, 32B.

41/ Div. Exs. 9M, 14G, 27H, 29E, 32D, 44D.

42/ Div. Exs. 9N, 14F, 27I, 32C, 44E.

Research Report - Price at \$1.50; ^{43/} (7) Formula for Success Bulletin; ^{44/}
(8) Special Research Report - Price at \$4.00 per share; ^{45/} (9) Diversified's
1962 Quarterly Report; ^{46/} and (10) Special Notice from Diversified. ^{47/}

These pieces of sales literature will be discussed seriatim. In addition, investors and prospective investors were mailed copies of advertising literature containing highly colored descriptions of the land owned by Silver Springs in Florida and urging them to buy lots.

79. The Offering Circular is dated January 23, 1961, and was prepared by John Tricoli, Miloscia, Lappe, and Rigenye, all of whom were officers, directors, or employees of F. S. Johns. This document was given to at least one investor, ^{48/} who bought Diversified stock.

43/ Div. Exs. 5B, 28B.

44/ Div. Exs. 5A, 31C.

45/ Div. Ex. 20C.

46/ Div. Exs. 4A, 11F, 13E, 18A, 25A, 26A, 27N, 29G, 29K, 31D, 37A, 41A, 43P, 44G.

47/ Div. Ex. 3C.

48/ John Tricoli gave this document to Henry C. Slack, an investor in Diversified stock in March, 1961, and told him that "they" were not going to use it since there was something wrong with it, and it was going to be reprinted. Slack also received the News Release dated August 21, 1961, Diversified's 1962 Quarterly Annual Report, in the mail and two brochures concerning Silver Springs. Shortly thereafter Slack received a copy of the prospectus, which is the second piece of sales literature which will be discussed herein. Slack wrote the words "not used" which appear in pencil on the face of the Offering Circular. (Division Ex. 29F).

80. Many of the misrepresentations contained in the Offering Circular are also contained in the Prospectus. The Prospectus was much more widely used in selling Diversified than the Offering Circular and the Prospectus repeats many of the statements contained in the Offering Circular. Accordingly, more space will be devoted herein to a discussion of the Prospectus than to the Offering Circular.

81. There was at least one important difference between the Offering Circular (Div. Ex. 29F) and the Prospectus (Division Ex. 14B). This difference is that the Offering Circular contained a balance sheet of Diversified while the Prospectus omitted it. The financial facts in Diversified's balance sheet are such that they would be material to any investor in reaching an informed judgment concerning the company and the security it was offering. The balance sheet of Diversified showed that all Diversified had in the way of tangible assets was \$5,250 and that as against this asset it owed \$1,300. The omission was not accidental but was a result of considered judgment. In this connection, the uncontradicted testimony of Lappe, one of the draftsmen of both the Offering Circular and the Prospectus, is that the promoters of Diversified "agreed that the balance sheet did not look healthy enough to be sent out to the public." For this reason Diversified's management determined not to use the Offering Circular and prepared the Prospectus for general use in selling Diversified stock with the unhealthy balance sheet of Diversified omitted from the latter document. This omission of Diversified's balance sheet in the Prospectus is also important when considered in context with the other statements made by Diversified, not only in the

Prospectus but in the other selling literature, and it is also important when considered in context with the fraudulent representations made by F. S. Johns' salesmen in selling Diversified to Investors.

82. In the light of the fact that the Offering Circular and the Prospectus represented that Diversified was organized to finance, manage, and promote the expansion of industrial plants in order to earn profits", and in view of the further fact that none of the promoters and no one in the management of Diversified had any experience whatever in the management of any industrial enterprise, the deliberate omission of Diversified's balance sheet because it "did not look healthy enough to be sent out to the public" constituted an omission to state a material fact necessary in order to make the other statements made in the Offering Circular and the Prospectus not misleading in the light of the circumstances in which such statements were made.

83. Both the Offering Circular and the Prospectus represented that

"These securities are for sale only to residents of New Jersey who certify that they purchased with the intention of not transferring to, or creating a beneficial interest for residents of other states."

No such certification or other assurance from investors was requested or obtained from any person to whom Diversified stock was offered or sold but instead most persons to whom the security was offered or sold were assured by F. S. Johns' salesmen that Diversified would make and was making large profits, and was successful in its operations and in this connection, F. S. Johns and its salesmen urged upon investors the

pleasant prospect of large and quick profits because the stock was due for a spectacular rise. The oral representations were such that it was made clear to investors that they could make a profit by selling the stock to others in a short time, and other than this statement there was no hint or suggestion in the literature distributed to investors that there would be any hindrance to their selling the stock to any one without regard to the latter's state of residence.^{49/} In fact the representations were to the contrary, and trading began shortly after the closing of the underwriting in September 1961, which also reflected the fact that the stock was being sold outside New Jersey. This representation is misleading.

^{49/} Apparently Diversified was relying upon Section 3(a)(11) of the Securities Act of 1933 for an exemption from registration. While the burden of establishing an exemption from registration is upon the person who claims it and the evidence indicates considerable doubt that the offering as made, ever contemplated a period when the securities would "actually come to rest solely in the hands of resident investors - persons purchasing for investment and not with a view to further distribution or for purposes of resale" (see Securities Act Release 1459), or that the securities would be purchased by "persons without a view to further distribution or resale to non-residents". (see Securities Act Release 4434) there also remained a problem of determining whether there were transgressions of the exemptive provisions of Section 4(1) of the Securities Act. The latter problem appeared to have arisen because of the "difficulty in discerning the thin line between distribution and trading" for purposes of Section 4(1) of the Securities Act. (See Sosin, Intrastate Exemption, Western Reserve Law Review, V. 16, No. 1, p. 110, 120). In any event, the Commission's order does not charge the respondents with any violation of Section 5 of the Act.

84. The Prospectus stated that the stock offers an opportunity of earning (1) 8% per annum on 60% of the total monies invested, and (2) growth on the remaining 40% of the total monies invested.

The reference to "8% per annum on 60% of the total monies invested" was an obvious reference to the three shares of preferred stock, and the reference to "growth" was made concerning the two shares of common stock in the five share unit being offered by Diversified.

The facts are that there was no reasonable basis for the representations made as to the high yield on the Preferred Stock, nor was there any basis for the reference to growth with regard to the Common Stock. These representations are belied not only by the fact that neither the company nor its management had any history or prospects to support the representations, but also by the fact that the very first act of Diversified was to "bail out" F. S. Johns from its long position in the various over-the-counter securities as detailed hereinabove and there was no good ground to believe that the securities acquired by Diversified from F. S. Johns could enable the company to earn 8% on the 60% of the unit sold by Diversified representing preferred shares. Moreover, neither the promoters nor the management had at the time the representations were made, or thereafter, any proposal for financing or promotion or management, and the small net amount received by Diversified in net proceeds from the underwriting effectively precluded the company from engaging in the business for which the company claimed to have been organized. Furthermore, at the time the stock was being

offered Diversified did not know how much money it could raise by its securities offering. The fact is that Diversified never invested any money received from the investors in any enterprise for the purposes announced in the prospectus or for any other purpose. ^{50/}

85. The prospectus contained the following statements:

"The activities of the Company will be financing, managing and promoting the expansion of other companies that may not in most instances be able to obtain the necessary assistance from conventional lending institutions. For furnishing the necessary funds and services the company should be in the position to realize substantial returns."

"The Company will be engaged principally in the business of financing, managing and promoting the expansion of small qualifying industrial plants."

"The Company plans to employ the appropriate advertising and promotional mediums to develop associations (sic) with the desired clientele."

"For the financing and services required and for the risk involved the Company should be in the position to realize a substantial return on its capital and facilities."

"The Company intends to use approximately all of the monies realized from this offering to finance, manage and promote the expansion of industrial plants in order to earn the profits considered by management to be commensurate with the risks involved."

86. The Prospectus also contained a list of names labeled "Advisory Board". This Advisory Board never met and did not receive

^{50/} Some two years after its initial offering was completed Diversified exchanged shares of its stock for shares of Silver Springs Acres, Inc., but Diversified's shares issued at that time were newly authorized and issued stock and this issue had no relation to the representations made in the offering of Diversified stock which commenced in January 1961.

any fees, and its inclusion in the prospectus as an Advisory Board was misleading.

86a. The third document employed by Diversified was a letter to stockholders dated June 1961. The body of the letter related to a company called Shield Chemical Company of Verona, New Jersey, and included the following statements:

"At the present time our attorneys, accountants, and consultants are considering investing in a company which we feel has great growth potential."

"The company . . . has several exclusive patents and its products are highly marketable."

"Our sizable investment will be the impetus it needs to help the company realize its possibilities."

"In return for our investment, Diversified Funding, Inc. will receive a percentage of the inside voting stock of the company."

"The stockholders of Diversified Funding will, of course, share in the profits realized from this investment."

"In addition, the shareholders of Diversified Funding, Inc. may more directly share in the profits by buying capital stock of the company before it is offered to the general public. These shares may be purchased through the brokerage firm of F. S. Johns & Co., Inc."

87. All of these statements were false. At the time the document was prepared and circulated to investors, Diversified had no accountants or consultants considering Shield as an investment. In addition, Shield had no patents and never claimed to have had any. Furthermore, Diversified had no funds to make a sizable investment in Shield or any other company. There was no basis whatever

for representing, nor was there ever any arrangement whereby Diversified was to receive a percentage of the inside voting stock of Shields. There was no basis for saying that Diversified's stockholders would share in the profits realized from an investment in Shields. In fact, Shields had sustained operating losses in 1958 and 1959 and had sustained a loss of \$7,000 in 1960. Since Diversified stock was being offered to the general public in June, 1961 there was no basis for representing that shareholders may more directly share in the profits by buying capital stock of the company before it is offered to the public.

The only truthful statement in the document is that shares may be purchased from Johns.

88. The fourth piece of literature employed by F. S. Johns in the distribution of Diversified was a news release dated August 21, 1961 bearing Lappe's signature. ^{51/} Lappe claimed, however, not to know who wrote it. John Tricoli was one of the authors of this news release. This news release contained a statement indicating that shareholders

51/ Div. Exs. 9M, 14G, 29E, 27H, 32D, 44D.

of Diversified's preferred stock had the right to convert their preferred shares into an equal number of common shares when and if the common stock reached a level of \$2 bid when, in fact, the preferred stock never was convertible. As a matter of fact, when the common stock was quoted in the National Daily Quotation Sheets above \$2 bid, 13,040 shares of Diversified preferred were sold by stockholders to F. S. Johns at prices ranging from \$3/4 to \$1 per share. Moreover, the release indicated that Diversified had a Legal Department when, in fact, it had no Legal Department.

89. The fifth piece of literature was an undated "News Release".^{52/} One thousand copies of this News Release were prepared shortly before the underwriting was terminated. The first paragraph of this News Release stated that Diversified Funding had "entered negotiations with Electronic Wave Corporation . . ." The second paragraph stated that "negotiations are still in progress for Diversified Funding, Inc. to purchase 30% of Shield Chemical Corporation." The third paragraph stated "that Mandell Industries has offered a fine proposal to our company . . ."

All of these statements were false. In fact, during the underwriting period, when these representations were made, the management of Diversified had found no suitable investment in any of the corporations referred to or in any other companies. There was no basis for indicating that Diversified had any arrangements which would lead

to an investment in any of these companies. In particular, there was no negotiation relating to the purchase of 30% of Shield nor was there any proposal from Mandell.

Furthermore, the News Release stated that "once again we would like to thank you for bearing with us through this registration period . . ." In fact, Diversified was never registered and purported to be making an intrastate offering. This statement was also wholly false and fraudulent.

90. The sixth piece of selling literature was a document labeled "Special Research Report - price at \$1.50 per share." This document ^{53/} represented, among other things, that

"Diversified Funding, Inc. is a fast-moving, well managed lending and promoting company and in our established opinion offers tremendous potential for future growth. This company offers to the far-sighted investor exceptional capital gain potential."

The first sentence insofar as it describes the business of Diversified was completely false. Diversified never lent any one any money except for Mayo and never engaged in promotion. There was no basis for the opinions expressed.

The document stated that:

"The Company is engaged principally in the lending and promoting field. It lends money to qualified industrial concerns mainly in the chemical and electronic industry. The company determines which applicant it terms qualified for promotional arrangements by examination of its financial structure, product, production potential, and its managerial ability."

This statement is wholly false.

The document also represented that:

"As of October 1st, 1961: The company was engaged with three companies for the purpose of lending and promoting"

The statement is false.

Diversified also claimed that:

"Over the past two years there have been several small business loan companies created in the state of New Jersey. Diversified Funding is among the first few. Although Diversified Funding does not come under the S.B.I.C. rules and regulations, it operates basically on the same premises."

This statement is false. If the statement represents opinion it is without basis.

The Company further stated that:

"Based on several projects now in negotiation, nearing completion, we should put our full capital to use, and make it possible to project earnings of between 45 cents and 50 cents a share over the next six months."

The statement is false and was made without any basis whatever.

The Special Research Report further stated that:

"Additional income should also be available from the stock and stock options we are obtaining which may mature rather rapidly during the next six months,"

"Strong profits are expected to be realized from these small business loan companies, and it is our opinion DIVERSIFIED FUNDING will be one of the more outstanding."

The first paragraph on page three of the report under the heading "Recommendation" predicts dividends and cash within six to twelve months, a stock split within the next six months, and recapitalization for the well-managed company.

Under the heading "Capitalization" the report states that the 36,720 shares of preferred stock are convertible into the common stock at \$2.00 per share.

The last paragraph states:

"With young aggressive and proven management heading a progressive company in a growth and profitable segment of the electronic & chemical industry. Diversified Funding is a buy for short term (under six months) or long term capital appreciation."

All these statements were false and misleading. There was not the slightest basis for making any of these statements.

The report closes with "Investment Research Dept., F.S. Johns & Company, Incorporated."

There was no Investment Research Department and the statement is false.

91. The seventh piece of selling literature employed by F. S. Johns was entitled "Formula for Success Bulletin"^{54/} and was distributed between December 1961 and March 1962.

As part of the heading it carried the caption "Income, Stability, Growth." There was no income and no growth, and Diversified's stability was highly questionable. The caption was false and misleading.

The formula for success set forth in this bulletin is "Buy the stock of the company where a vigorous growth in earnings is combined with a small number of shares outstanding." This document was distributed between December 1961 and March 1962. The fact is that instead of having a vigorous growth in earnings Diversified

suffered a loss for the calendar year 1961 of \$1,786.92. This document sets forth what purports to be the capitalization of Diversified Funding, Inc. and indicated, among other things, that Diversified had 36,720 "8% (NC) convertible Pfd (1)" shares outstanding which were convertible into common at \$2 per share.

The fact is that the preferred stock was not convertible at all.

The bulletin also contains the following statements:

"BUSINESS . . . The Company's revenues accrue from profits and capital gains realized on the sale of corporate equities, acquired at book value from companies that have been extended interim financing by DIVERSIFIED FUNDING, INC., and from dividends and/or gains realized on equities acquired in the open market.

"NATURE OF OPERATIONS . . . Revenues are virtually free of operating costs, with pre-tax profit margins projected at 80% of gross revenues. In the opinion of the company, significant tax savings may be effected, from time to time, through a distribution of earnings to shareholders, before plowback.

"CURRENT POSITION . . . Highly profitable results are projected for this calendar year."

All of these alleged factual statements were false and where opinion was expressed there was no reasonable basis for making any such statements.

These false and misleading statements were followed by a paragraph describing what is alleged to be "Diversified's major holding." This includes the statement about sales for the six months ended December 1961 amounting to over \$8,000,000, together with statements showing dramatic improvements in earnings over a 5-year period.

Finally, the bulletin closes with the following statements:

"CONCLUSION . . . DIVERSIFIED FUNDING, INC., projects the exciting prospects for capital gains to its stockholders this year. Vigorous growth in earnings can be expected, based on the unusually high profit margins involved, even if revenues are moderate. With the small number of shares outstanding there are factors inherent in computing net earnings that are very bullish for the stock."

The references to Diversified's major holding and the statements relating to it appear to be intended to mislead an unsophisticated investor into associating some company, not named, with Diversified. The balance of the statement was made without any reasonable basis. The bulletin closed with the title "Research Department". There was no Research Department at F. S. Johns and the title was false and intended to mislead readers into believing there was such a department.

92. The eighth piece of false and misleading sales literature employed by F. S. Johns and its salesmen in distributing Diversified stock is labeled "Special Research Report - price at \$4 per share".^{55/}

93. The only difference between the Special Research Report - Price at \$1.50 per share and this report is the increased price of Diversified stock which appears on the first page. This increase in the price of Diversified reflected the fictitious quotations placed in the pink sheets by the registrants pursuant to John Tricoli's suggestions and requests.

94. The ninth piece of selling literature was Diversified's Quarterly Report for 1962 for the period ended March 31, 1962. Since at least 5,000 copies of this document were printed for use during F. S. Johns' selling campaign and since this was the most widely used, expensive, and elaborate document ^{56/} employed by F. S. Johns in its selling campaign, it will be described in some detail. This document was printed in the first week of April 1962 when Diversified had about 500 stockholders and had enjoyed the benefits of the rising and fictitious quotations inserted in the pink sheets by the registrants and some other broker-dealers.

Of the 44 investor witnesses who testified in these proceedings 12 testified that they received a copy of Diversified's Quarterly Report for 1962. Most of these witnesses testified that they received this document in the mail. The testimony of these witnesses is that they received this document after one of F. S. Johns' salesmen had recommended they purchase Diversified stock and usually after a telephone conversation initiated by the salesman. These investor

^{56/}John Tricoli's testimony is that "We spent over three weeks and over \$2,000 producing this piece of literature to show stockholders, brokers, and any additional broker that we intended to have retail the stock. Sure I wanted assistance from other brokers on the stock. This was a legitimate company." At another point John Tricoli testified that "As I have previously testified, the report was printed to portray Diversified to the public. Now the public is anybody outside of our office. They could be brokers, they could be individual stock buyers, or they could be present stockholders." It was obvious that F. S. Johns was not engaging solely in trading transactions, it was engaging in a distribution within the meaning of Rule 10b-6.

witnesses included Kraiss, Gawdun, Maley, Hanus, Harris, Rekemeier, Motyka, Galle, Huysman, Pitchersky, Koester, and Malo. The salesmen, who urged the purchase of Diversified with whom these witnesses talked, included Lang, Ponte, Casarella, Rein, Benner,^{57/} Lappe, Rower and John Tricoli, all employed by F. S. Johns.

95. This Quarter Annual Report consisted of 11 pages (including the frontpiece and the back page) printed on heavy paper, was prepared by John Tricoli, Joseph Onello,^{58/} Albert Onello^{59/} and Bernard Coven^{60/} and is entitled "First Quarter 1962 Report to Stockholders".

96. The most important section of the Quarter Annual Report was its balance sheet, to which particular attention was drawn in the opening sentences of a communication addressed to the stockholders

57/ Benner was a registered representative for F. S. Johns but was not named as a "cause" in the Commission's order. The testimony in this case is that there was considerable turnover at the F. S. Johns and salesmen came and went. Benner was the author of the "Formula for Success Bulletin," a false and misleading sales document described hereinabove.

58/ Joseph Onello has been referred to hereinbefore, and he and his family exchanged stock of Silver Springs Acres, Inc. for stock of Diversified.

59/ Albert Onello is a brother of Joseph Onello, and acted as a bookkeeper for Silver Springs Acres during 1961.

60/ Coven is a practicing attorney admitted to the bar of New York State, and was general counsel and legal agent for Fidelity Registrar and Transfer Corporation.

over the signature of Lawrence Tricoli, president of Diversified.^{61/}

The background facts in addition to those already recounted leading to the preparation of this report may be described as follows:

Albert Onello, a brother of Joseph Onello, maintained the books and records of Silver Springs Acres as a bookkeeper during 1961 under the direction of a certified public accountant. Up to early 1962 the only "book" of account, if it may be termed such, maintained by Diversified was a check book. At that time John Tricoli requested Albert Onello to set up records for Diversified. Using the check book Albert Onello prepared the entries appearing in Diversified's books through March 31, 1962. Albert Onello stopped working for Diversified near the end of April, 1962.

Between February and April 1962 John Tricoli and Joseph Onello asked Albert Onello to indicate to them the financial condition of Diversified,^{62/} and Albert Onello then drew up trial balances for Diversified and Silver Spring but never prepared any financial statements nor was

^{61/} There were other false and highly misleading statements in this document which will also be described hereinafter.

^{62/} Albert Onello, at one point, testified that "Actually I never kept the books and records. I was never employed as an accountant for these people. I was more or less attempting to assist them as a bookkeeper."

he informed of the purposes for which such trial balances were to be employed. The financial statements contained in the Quarterly Report were derived from the trial balances prepared by Albert Onello.

97. The balance sheet contained in the Quarter Annual Report is false and misleading in the following respects:

(a) The first heading under Assets is "Current" and sets forth under "Cash" two items. The first item under the latter heading is \$10,256.60 as Demand Deposits with Bank, and the second item under "Cash" is in the amount of \$15,011.00 and is called "In transit." Note 1 to the balance sheet states that "In Transit income is due from contracts signed and checks due at time of report."

The fact is that as of March 31, 1962 Diversified and Silver Springs on a consolidated basis, had cash deposits totaling only \$9,456.60 and the "Demand Deposits with Bank" are overstated by \$800.00. Furthermore, neither Diversified nor Silver Springs had \$15,011.00 or any other "cash in transit" on March 31, 1962 and no such account or item is reflected in the books and records of Diversified or Silver Springs. Further Albert Onello never indicated any amount representing this item in his trial balance furnished the management. The item is fictitious.

(b) Under "Receivables" Diversified states as an asset "Installments Contract Receivable", in an amount of \$106,136.43.

On March 31, 1962 Silver Springs and Diversified had installment contracts receivable in the amount of \$89,046.43 which were payable over periods from 5 to 7 years, and a major part of the smaller amount referred to would not be payable in the first Quarter of 1962. The \$106,136.43 set forth in the balance sheet includes \$17,090 in cancellations which was not subtracted from the higher figure reported in the balance sheet.

(c) There are two items under the heading "Deferred Charges," one labeled "Unamortized Organization Expense" in the amount of \$4,787.00, and the other labeled "Negotiable Market Securities."

In contrast to these figures in the balance sheet the evidence discloses that the unamortized organization expenses for Diversified and Silver Springs as of March 31, 1962 totaled \$1,865.00. The figure reported on the balance sheet is more than double the amount expended. Albert Onello did not know how the amount appearing in the balance sheet was derived.

As to the amount of \$36,060.28 for "Negotiable Marketable Securities," the facts are that the negotiable securities owned by Diversified on March 31, 1962 were bought by Diversified from F. S. Johns at a cost to Diversified of \$35,261.91, i.e. \$798.37 less than reported in the Quarterly Report, and they were a current asset, incorrectly described in the balance sheet as a "deferred

charge." More importantly, however, is that the use of a "cost valuation" in this financial statement was misleading since these securities had a market valuation as of March 31, 1962 of \$31,025.00, approximately \$5,000 below the amount set forth in the balance sheet, and that is a fact which the stockholders and prospective investors, to whom the document was distributed, had a right to know.

(d) Under the heading "Real Estate" there appeared two items the first being a figure of \$125,000 for "Land (at cost)" and the second being a figure of \$25,000 purporting to represent "Improvements." The actual cost of the land to Silver Springs whose stock was acquired by Diversified from the Onello family was never disclosed. However, the evidence developed during the hearing showed that Silver Springs' acreage was held subject to three mortgages, the first in the amount of \$20,140 held by Gibbs, the second in the amount of \$24,860 held by Klendenning and the third mortgage held by Evelyn Onello, Joseph Onello's wife, in the amount of \$40,000, for a total of \$85,000.00. The \$125,000 valuation given to the land on Silver Springs' books represented these mortgage debts plus a credit or value of \$40,000 given by Diversified and Silver Springs to 181,200 shares of original issue of Diversified stock received by Joseph Onello and his family in exchange for their 4,000 shares

of Silver Springs. In connection with the value given to the shares of Diversified stock, it will be recalled that 70,000 of such 181,200 shares were transferred on March 6, 1962 by Joseph Onello to John Tricoli and persons associated with him for a price of approximately 21¢ per share. There was no basis for the \$40,000 figure above the \$85,000 in mortgages contained in the \$125,000 figure set for the cost of land, nor is there any other reasonable basis for stating that the cost to Silver Springs or Diversified was \$125,000 for the land held by Silver Springs. In connection with the land, the liabilities section of the balance sheet includes a figure of \$78,280.00 as a liability to "Institutional Lenders (secured by mortgage liens on Real Property)". However, indebtedness was not to any institutional lender but to the three above-named individuals.

Further, by stating a liability of \$78,280 as against a figure of \$125,000 representing the alleged "cost" of Silver Springs' land, Diversified presented a greatly exaggerated picture in its balance sheet of the equity which in fact existed in regard to Silver Springs' real estate and the net amount of Diversified's assets.

^{63/} Other figures in the balance sheet derived from the figure of \$125,000 including an amount of \$112,056.45 for remaining unsold land are equally false and misleading.

The second item under the heading "Real Estate" is labeled "Improvement" and carries a figure of \$25,000. The testimony is that the improvements to the land owned by Silver Springs were \$3,152.00. Accordingly this figure is overstated by \$21,848.00.

98. The figure of \$284,307.76 for "Total Assets" is in the circumstances highly exaggerated and is false and misleading.

99. Under the "Liabilities" section of the balance sheet there appears an item labeled "Accounts Payable (development, expenses, material, equipment)" in the amount of \$5,813.26. In fact, however, the obligation was not for the purposes represented in the balance sheet but instead represented the balance due on an obligation owed to Joseph Onello who paid part of Silver Springs' debt to the holder of the first mortgage on the land.

The liabilities section of the balance sheet states the "Accrued Interest in Mortgages" at \$2,280 when in fact the accrued interest payable on the three mortgages amounted to \$4,190.50 as of March 31, 1962, and the accrued interest was understated by \$1,910.50.

100. The figure of \$108,865.88 under total liabilities is false and misleading.

101. The balance sheet sets forth a figure of \$29,240 as "Total Contributed Capital" when in fact neither Diversified nor Silver Springs had any contributed capital as of March 31, 1962. This section of the balance sheet states the total capital surplus at

\$72,715.88 when, in fact, the total capital surplus for Diversified and Silver Spring on March 31, 1962 was \$39,825.

102. Diversified's balance sheet was false and misleading as a whole as it materially overstated the assets and understated the liabilities.

103. The Consolidated Statement of Earnings appearing in Diversified's Quarterly Report is false and misleading in the following respects:

(a) Real estate sales are stated at \$78,165 when in fact such sales for the quarter ended March 31, 1962 were \$45,927.45. The sales are overstated by \$32,237.55.

(b) Under "Cost of Sales" there appears an item labeled "Unrealized Consolidated Income (Note 4)". Note #4 reads "Federal income tax liability on the unrealized profits has not been recorded due to the expectation of reporting on the installment basis."

The fact is that neither Diversified nor Silver Springs had any unrealized consolidated income for the first quarter of 1962. The statement is false.

(c) The "Earnings" per share (estimated prior to taxes) are stated at 17 cents.

As has been pointed out above, both the statement of income and the statement of expenses on which earnings per share depended were highly false and misleading and consequently the earnings

figure of 17 cents is also false. It may also be noted that Diversified's prospectus provided that "dividends are only available to common stock shareholders after the payment of eight per cent (8%) dividend to preferred stockholders," and the Quarterly Report purports to reflect earnings which would be available to pay dividends on its common stock.

104. The tenth page of Diversified's financial statement states, among other things, that "The information herein set forth has been obtained from the books and records of your corporation, which we believe to be reliable and up to date."

The statement is false and misleading.

105. The back page of the Quarter Annual Report consists of a picture of an impressive looking building befitting a corporation with the impressive title of Diversified Funding. However, this picture could only serve to mislead gullible investors as to the character of Diversified Funding.

106. In addition, the Quarter Annual Report was false and misleading in many other respects. For example, the report represents that the Company's registrar and transfer agent was Fidelity Registrar and Transfer Corporation when in fact the latter never acted in such capacity and in fact had informed John Tricoli that Diversified did not meet the requirements to obtain its services.

The report also set forth the name of Union Center Bank, Union, New Jersey under Financial References when in fact Diversified had never had any connection with such bank. The Quarter Annual Report stated that "Sale of these lots owned by Silver Spring Acres⁷ indicate on preliminary survey approximately \$630,000.00 in gross revenues from which should be deducted the expenses of development sales and taxes. Management estimates net profit from this venture of approximately \$250,000.00."

The statement was written by Joseph Onello, with the assistance of John Tricoli and was without any basis in fact.

107. There are other false and misleading statements in this document but it appears to the Hearing Examiner that the evidence considered and discussed hereinabove is sufficient to show the general character of the Quarterly Report and to show that it was permeated with highly false and misleading statements.

108. The tenth false and misleading piece of literature which will be dealt with here is an undated "Special Notice," headed "Stockholders Approve Board of Directors Dividend and Acquisition Recommendation" which related to "Rights on Diversified Funding Inc. Dividend."^{64/}

^{64/} John Tricoli and Lang used this Special Notice in selling Diversified in the latter part of May 1962 to Paul Capitella, who was a witness in this proceeding.

The first paragraph stated that "A 10% Stock Dividend will be paid to the holders of the Common Stock as of June 20, 1962. This means to get the dividend you must own stock on or before this date."

The fact is that no such dividend was ever discussed, or authorized by the board of directors or paid by Diversified and the statement is without any foundation.

The second paragraph quoted Diversified common at \$2 per share but the notice is misleading in not disclosing that this figure was arbitrarily fixed by F. S. Johns and John Tricoli and this price was controlled by and solely dependent on John Tricoli's support.

The fourth paragraph states that "The Rights will start trading around June 15, 1962. The option starts the day the Rights start to trade."

The statement is false because there were no rights and no options and none was ever authorized by the board of Diversified.

The fifth paragraph states that "The money from the Rights goes directly to Diversified Funding, Inc." This statement is also false and misleading and for the same reasons as apply to the prior paragraph of the notice.

109. Diversified's selling literature contained materially false and misleading statement concerning its management, operations,

profits, assets, liabilities and capital, earnings, dividends, the stability of the company, rights offerings, registrar and transfer agent, financial references and the return on investment. Such literature also contained unwarranted predictions of price rises which were without foundation (except in the sense of price rises resulting from an unlawful manipulation of the over-the-counter market (through the employment of fictitious quotations in the pink sheets) about which no disclosure was made.

ORAL REPRESENTATIONS BY THE ALLEGED "CAUSES" EMPLOYED
BY F. S. JOHNS

110. The evidence adduced by the Division in this hearing establishes that, in addition to mailing or causing the mailing of the above described false and misleading sales literature to persons to whom they sold Diversified securities, the salesmen employed by F. S. Johns made oral false and misleading statements and omitted to state material facts during the period from January 24, 1961 to June 20, 1962 about Diversified's operations, dividends, earnings, assets liabilities and capital, management, listing on the "Big Board" and on the American Stock Exchange, stock splitting, registrar and transfer agent, and financial references. In addition they made false and misleading statements to the effect that Diversified might take over or run a bank in Nassau, and that a hotel or motel was being developed by Diversified in Ocala, Florida, and that

Diversified had an interest in a shopping center in Florida. In addition the most persistent and frequent misrepresentation made by F. S. Johns' salesmen was that there would be a spectacular increase in the price of Diversified stock in a short time. There was no basis for making such a representation and it was false and misleading.

111. Forty three witnesses testified that they were sold Diversified stock by 13 different salesmen employed by F. S. Johns, (eight of whom are alleged to be causes in this proceeding) by means of false and misleading oral representations. Another witness bought Diversified stock from Poulos, a salesman employed by Ellis Securities. All forty-four purchasers of Diversified securities testified in these proceedings ^{65/} concerning the matters set forth in paragraph 110 herein. These witnesses were not contradicted by any testimony offered by any of the respondents or by any other

65/ These witnesses were Henry Slack, Paul Capitella, Antoinette Malo, Michael Stiso, Harry L. Hoffman, Jr., Hans Koester, Georgine Hadjisavas, Siegfried Krahforst, Mildred Motyka, Charles Hanus, Jack Hughes, Charles McLaughlin, Mrs. Charles Furlong, Martin Munnich, Bert Lottman, Henry Geiser, Alex Galle, Robert Hildreth, William Domenico, James R. Summers, Richard Fleischer, Henry DeMatteis, John Gawdun, John Hein, Roland Roedler, Robert Harris, John L. Huysman, Daniel Covine, Joyce Covine, Robert Kraus, John Benedict, Anny Benedict, Chester Czyzewski, Harold Dentsman, Norbert Bartell, William Kvietkus, Agnes Walmsley, Nicholas Juliano, Ernest Galaida, Harry Rekemeier, Meyer Pitchersky, Margaret Siebert, Harry Sylvester, George Maley. The testimony of all these witnesses is fully credited.

The fourteen salesmen who sold Diversified to the above named individuals were John Tricoli, Lawrence Tricoli, Harry Rower, Aaron Lichtenstein, also known as Aaron Lang, Salvatore Faciponti, also known as Sal Ponti, E. Ronald Lappe, Lucas D. Casarella, George Rein, all of whom are alleged "causes," Ash, Benner, Laskowitz, Hocklin, and Pulnick, who were also F. S. Johns' salesmen made false and misleading statements regarding Diversified in selling Diversified stock to Mrs. Charles Furlong, Galle, Harris, Kvietkus, Daniel

(Cont'd.)

testimony in this record.

112. Many of the witnesses who purchased Diversified had received in the mail and sometimes in person one or more pieces of false and misleading sales literature distributed by F. S. Johns during its distribution of Diversified. This literature together with the oral misrepresentations and the false and misleading quotations in the pink sheets were all part of an integrated campaign to part gullible investors from their money by selling them Diversified stock. The record shows that at least 25 purchasers, or more than half received one or more of the fraudulent pieces of literature described hereinabove. Stack received the Offering Circular, the Prospectus, News Release dated August 21, 1961, and the Quarter Annual Report. Capitella received the undated Special Notice. Malo received the Quarterly Report and two brochures relating to Silver Springs Acres. Hoffman received the June 1961 letter. Koester received the Quarterly Report and literature on Silver Springs Acres. Hadjisavas received the Special Report. Krahforst received the prospectus. Motyka received the June 1961 letter and the August 21, 1961 News Release. Hanus

65/ (Continuation from prev. page)

and Joyce Covine, Bartell, and Juliano. Poulos, who was employed by Ellis Securities sold Diversified to Hadjisavas but these six salesmen are not alleged nor is it requested that they be found to be "causes."

received the Prospectus, the Special Research Report \$1.50, the News Release of August 21, 1961 and a 4 page brochure and a 1 page flyer purporting to describe Silver Springs Acres. Munnich received the Formula for Success Bulletin. Galle received the Quarterly Report, and the 4 page brochure and 1 page flyer purporting to describe Silver Springs. Summers received the Quarterly Report and the prospectus. Gawdun received the Quarterly Report. Harris received the Quarterly Report and 2 brochures describing Silver Springs. Huysman received the Quarterly Report. Kraiss received the Quarterly Report. John Benedict received the Prospectus. Anne Benedict received the undated News Release and the New Release dated August 21, 1961. Czyzewski received a Prospectus. Dentsman received a Prospectus, and the Quarterly Report. Galaida received the News Release dated August 21, 1961 and the undated News Release. Rekemeier received the Quarterly Report. Pitchersky received the Quarterly Report. Juliano received literature relating to Diversified from F. S. Johns but could not recall the literature which he received.

113. This sales literature was received by the above named purchasers during a period when F. S. Johns' salesmen were making oral false and misleading statements to them. In many cases false and misleading representations were made to customers by more than one salesman. Frequently after one salesman had effected a sale of Diversified stock, he or another salesman would approach

the same customer and sell him additional shares of Diversified.

(a) John A. Tricoli, Jr.

114. John A. Tricoli, Jr. in offers and sales of Diversified made false and misleading statements to Slack, Capitella, Malo, Stiso, Hoffman, Koester, Krahforst, Motyka, Mrs. Charles Furlong, Munnich, Geiser, Hildreth, Summers, Hein, Roedler, Joyce Covine, McLaughlin, Dentsman and Sylvester. While John Tricoli testified under subpoena served upon him by the Division, he did not contradict the testimony of any of these witnesses who testified as to the false and misleading statements which he had made to them.

115. John Tricoli represented to Malo that the price of Diversified was expected to go up 10 points in 3 or 4 months; represented to Motyka that if she held Diversified for 2 or 3 years it was going to double or triple; represented to Munnich and Roedler that the stock would go to \$6 in a very short time; and represented to Mrs. Charles Furlong shortly before October 9, 1961 that Diversified "will go to \$5 before the end of the year." John Tricoli also falsely represented to Malo, Motyka, Furlong Hildreth, and Dentsman that the Diversified Stock he was offering them was priced at the market without disclosing that the market price was raised to an artificially high level in major part through a manipulative effort in which F. S. Johns was a principal participant. At a meeting of Diversified's stockholders in January or February 1962 John Tricoli was asked by

one of the stockholders how a certain figure was arrived at in selling a stock, and how the market was kept at that level if only one brokerage house handled the security. John Tricoli answered that he had representatives all over. He also said that if one of his representatives went into a brokerage firm down South indicating a desire to sell 1000 units and asked for a quotation, that brokerage firm would have to call F. S. Johns for a quotation because F. S. Johns was the only one making the market. Since F. S. Johns knew who the person inquiring was by the large amount involved, and since F. S. Johns knew that the transaction would never take place, F. S. Johns gave that brokerage firm a higher quotation than the price actually being paid for the stock. John Tricoli said this sort of thing would keep the market high and also interest the brokerage firm who wants to get into it. This explanation of how F. S. Johns kept the price of Diversified at a fictitious or an artificially high level, while far from complete was reflective of F. S. Johns' purpose and served to appeal to the cupidity of a group of unsophisticated investors.

Further in about June 1962 John Tricoli, at another Diversified stockholders' meeting, said that a hotel or motel was being developed in the Ocala, Florida area which Diversified was going to be part of, that a bank in Nassau may be taken over or run by Diversified, and a two cent dividend might be paid to stockholders at this time. There was no basis for any of these representations and they were all false and misleading.

116. John Tricoli had no reasonable basis for making the predictions of spectacular increases in the price of Diversified which he did make or for making the representations referred to hereinabove and such predictions and representations were false and misleading.

117. In addition to these misrepresentations John Tricoli made false and misleading statements to Slack relating to Diversified's investments in other companies and the dividends to be expected by investors from Diversified; to Malo in representing that Diversified would be underwriting other companies; to Motyka in representing that Diversified would show a profit in no time at all and in further representing to her that one of Diversified's companies was a car rental firm and that Standard Oil was one of the companies that used their cars ^{66/}; to Munnich in representing that Diversified might be or could be listed on the American Stock Exchange and about the dividends that Diversified was going to pay; to Stiso in representing that Diversified was going to purchase a controlling interest in three companies which were doing business and had contracts with the government, that F. S. Johns couldn't disclose the names of the

66/ Motyka replied that if Diversified was good enough for Standard Oil it was good enough for her.

companies because if Diversified's competitors heard about it, they would get a controlling interest first; and that once the stock is sold and Diversified takes this controlling interest, there's no telling where the stock will go; to Capitella in representing that Diversified would pay a 10% dividend and to Krahforst in representing that Diversified might merge with King Cola Corporation. There was no reasonable basis for making any of these representations and they were false and misleading.

(b) Lawrence Tricoli

118. Lawrence Tricoli in offers and sales of Diversified made false and misleading statements to Krahforst, Hughes, Lottman, Geiser, Domenico, Galaida, and Daniel Covine.

119. Lawrence Tricoli made false and misleading statements to Galaida in that he represented to him that if he bought Diversified stock he could double his money, that Diversified was a better investment than any other security he had, and that Diversified would pay dividends; in that he represented to Domenico that Diversified was going to increase in value and the price was going up; in that he represented to Daniel Covine that Diversified was a sound business, that the price would go up, and you could make some money, in that he represented to Geiser that if he bought Diversified he could not go wrong, it was a good stock, and you could make a little money on it; in that he represented to Krahforst that Diversified stock

was doing very well, that Diversified was merging with Silver Springs Acres which was building houses on two acre lots or better; that there were a few shares of common stock left, he could sell only a certain amount per customer and could sell Krahforst only 100 shares; by the turn of the year the stock would be openly traded and should break then; and it would be the last chance to invest more money in Diversified; in that at a meeting of stockholders in January or February 1962 which Hughes attended Lawrence Tricoli presided as president of Diversified and stated that the outlook for Diversified was magnificent and that Diversified had done much better than anyone had anticipated. Lawrence Tricoli also falsely represented to Lottman that he was offering Diversified at the market without disclosing that the market price was raised to an artificially high level in major part through a manipulative effort in which F. S. Johns was a principal participant.

Although Lawrence Tricoli appeared in these proceedings no evidence was presented in contradiction of the testimony or exhibits received in evidence.

(c) Rower

120. The uncontradicted testimony is that in offering and selling stock of Diversified Rower made false and misleading statements to Capitella, Koester, Hughes, Munnich, Lottman, Geiser, Fleischer, Roedler, Walmsley and Seibert, all of whose testimony

was uncontradicted and is credited.

121. Rower represented to Koester that the price of Diversified would go to \$21; to Hughes that the latter could, without a doubt, anticipate a return of 100, perhaps 200 percent on his original dollar of investment by the end of the year, that Diversified would double or perhaps triple in price, that Hughes would get 350 or 400 percent return on his investment, and that within a month or two months Hughes would double or triple his investment; to Munnich that Diversified had potential and would reach \$6 per share by May, 1962 and would be worth between \$10 and \$15 within a year or a year and a half. Rower in urging Geiser to buy additional shares of Diversified represented that he could get a bigger price for the stock in 6 or 7 months, that it would go up to 5, 6, 7, 8 or 9 dollars in a reasonable time and that he should make a lot of money by buying more Diversified stock. Rower represented to Fleischer that Diversified was going up and would be a hot item soon. Rower told Roedler in the fall of 1961 that if he bought Diversified and if he could see his way to hold on to the stock for a couple of months past Christmas it would probably hit \$6 per share. Rower told Walmsley in November 1961 that while Diversified was then selling at \$2.50 per share it had every prospect of going up to \$10 per share within a few months. The following month Rower told Walmsley that Diversified was going from \$2-1/2 to \$3-1/2 within a couple of weeks and then it would go up fast to \$8 or \$10 per share, and that Diversified was going up all the time.

There was no reasonable basis for these representations, and they were all false and misleading.

122. Rower made many other false and misleading statements in selling Diversified stock including the following statements made to Koester.

123. One day after Koester had bought various securities for \$6,362.50 ^{67/} through F. S. Johns in accordance with the suggestions of Lappe, one of its registered representatives, Rower told Koester to buy different securities than those he bought through Lappe and Koester would "make \$1500 before the year is over." Among the securities recommended by Rower was Diversified. Koester sold the securities bought from Lappe and received slightly less than he paid for them and on October 11, 1961 purchased 1100 shares of Diversified at \$2 per share. Rower told Koester the market price for Diversified was \$2 per share. Shortly after being assured by Rower that the price had already gone up to 2-3/8 and would go up more Koester bought 100 more shares of Diversified at 2-3/8 on December 8, 1961. Shortly thereafter Rower told Koester to sell the other stocks he owned and buy more shares of Diversified because it was a very good stock and would go up to 21. On March 27, 1962 Koester purchased 300 Diversified at 5-1/4.

67/ Koester, a factory worker came to F. S. Johns' to buy telephone stock. Lappe told him in October 1961 that telephone stocks were no good today and purchased on his behalf 100 Lanolin Plus, 100 Botany Industries, 100 General Utilities and 100 Elizabethtown Water.

In April 1962 Rower told Koester that Diversified wanted to buy a supermarket in Florida, and Diversified would do pretty good. Rower told Koester that the market price on April 13, 1962 for Diversified was 4-1/4 and Koester bought 200 shares at that price. Later, Koester exchanged some of his Diversified stock for lots in Florida.

124. Rower's statements as to the price and the market price of Diversified were false and misleading in that he made such statements without disclosing that such prices were arbitrarily fixed by F. S. Johns, and that such market as existed, was one which was at artificially high levels in major part through a manipulative effort in which F. S. Johns was a principal participant. In addition all the other representations made to Koester by Rower were false and misleading.

125. Hughes had originally made a purchase of 100 units of Diversified through Lappe on March 13, 1961. Beginning in the summer, 1961 through February 1962 Rower telephoned Hughes 25 or 30 times. In addition to the false and misleading statements about a spectacular increase in the price of Diversified made by Rower and recounted hereinabove, Rower also told Hughes that Diversified was going along very well, better than anticipated, that there were more requests for the stock than was available at prices of \$5 to \$6 to \$7 per share and that due to the fact that he was one of the initial purchasers of Diversified he might be given an opportunity to purchase at a special price below that which was being asked. Towards the end of 1961 Rower mentioned that the stock of Diversified might split. All of Rower's representations

were false and misleading.

126. In addition to Rower's false and misleading statements concerning a spectacular rise in the price of Diversified he also told Munnich in March 1962 that Diversified's earnings statement was coming out and it showed Diversified was in a pretty good position, that the stock had potential, would go up in price and Munnich and his wife should buy more shares. A few days later Rower told Munnich that Diversified's earnings report was favorable and earnings were a lot better than in previous years. Later Rower told Munnich that due to acquisitions which had already been made, the earnings would be fantastic. As a result of these statements Munnich bought additional shares of Diversified. There was no basis for these statements and they were all false and misleading.

127. In March or April 1962 Lottman asked Rower "What have you got that's good, that you think I can make some money on." Rower recommended Diversified and sold 500 shares of Diversified common to him at 2-3/8 per share, and received a confirmation from Johns in the mail. Lottman was not told what F. S. Johns was paying for Diversified at that time or how it had "rigged" the over-the-counter market in the stock. Thereafter Lawrence Tricoli made additional false and misleading statements to Lottman and sold him additional shares of Diversified.

128. Rower told Geiser in the summer of 1961 that Diversified was a good investment, that if he kept it a little while he would make a little money on it later, and that within six or seven months he would get a bigger price for the stock. As a result, Geiser bought 100 units of Diversified at \$5.00 per unit on July 3, 1961. A few days later Rower called Geiser and told him to buy more stock now when it is low and it will go up a few points in a reasonable time. As a result Geiser bought 200 more units at \$5 per unit on July 7, 1961.

129. The representations were without basis and were false and misleading.

130. Rower called Fleischer on the telephone approximately six times towards the end of 1961. Rower told Fleischer at that time that Diversified was to be a hot item soon, would be listed very shortly, that all stock goes up when it is listed, and that Diversified was investing in other firms. As a result Fleischer purchased 40 units of Diversified at \$5 per unit. All of these representations were false and misleading.

131. Rower continued to telephone Fleischer on a monthly basis. In the course of these telephone conversations Rower said that Diversified was expected to pay a 6% dividend, it was a good stock, it was going to be listed and it was going up. Fleischer bought additional shares of Diversified.

132. There was no basis in fact for Rower's representations, and they were all false and misleading.

133. Roedler was originally John Tricoli's customer. Subsequently Rower told Roedler he was taking over several of Tricoli's accounts. Rower first suggested that Roedler purchase Packer Supermarket since it would go from eight to twelve. Roedler sold his Packer Supermarket at twelve and left all the proceeds in his account with F. S. Johns. About the middle of October, 1961 Rower called Roedler and told him that he had another good stock called Diversified, that Diversified was a small business investment corporation, that the money accumulated by Diversified would be used to help other companies with financial problems, that Diversified had a couple of investments that looked very good, that it had great growth potential, that Roedler would be very impressed when he heard who else was involved in this stock and that he would give him a Christmas present of one point. Roedler told Rower that he was involved in the purchase of a new home and he would need his money by the end of December and Rower said he could get his money out in a few days. Rower also said that if Roedler could see his way clear to hold on to the stock for a couple of months past Christmas, it would probably hit six. Rower also told Roedler that the market for Diversified at the time of his purchase was \$2-1/4. Rower never told Roedler that Diversified had no earnings.

134. There was no basis in fact for the representations made by Rower and they were all false and misleading. In addition, Rower's statement as to the market price was false and misleading in that he failed to disclose that such market price was arbitrarily fixed by F. S. Johns and was set at an artificially high level in major part through a manipulative effort in which F. S. Johns was a principal participant.

135. During December 1961 Roedler spoke to Rower and told him he needed money and wanted to sell his stock and Rower told him there was no market for the stock and he couldn't sell it.

136. Rower telephoned Walmsley in November 1961 and told her he had been with F. S. Johns for many years and would like to sell her a very good stock called Diversified, that it would be a very good money making prospect and she should buy as much as she could, that he could get it for her at \$2-1/2 per share and it had every prospect of going up to \$10 per share within a few months.

137. All of Rower's representations were without foundation and were false and misleading.

138. Walmsley ordered 500 shares at \$2-1/2 per share. On December 14, 1961 Rower told her to send him a check for \$1800 which she did. Thereafter she received a confirmation in the mail for 450 shares at 2-3/8 for a total of \$1,068.75.

139. Two weeks thereafter Rower telephoned Walmsley at her office to tell her that Diversified was going from \$2-1/2 to \$3-1/2 within a couple of weeks, that Diversified was a terrific company and a good investment, that it would go up fast to \$8 or \$10, and it was going on the Big Board.

140. There was no basis in fact for any of these statements and they were all false and misleading.

141. As a result Walmsley mailed a check dated January 1, 1962 for \$787 to F. S. Johns and received a confirmation from F. S. Johns for 250 shares of Diversified at \$3-1/2 per share. Rower told her that the best price he could get on Diversified was \$3-1/2 per share since it had gone up from \$2-1/2. A week later Walmsley called Rower and asked how Diversified was doing and Rower said it was going up all the time. Walmsley asked Rower how many shares of Diversified she would get and he said 1,000 shares. She had received confirmations for only 700 shares and certificates for only 450 shares and those were received in the summer of 1962.

142. Walmsley called Lawrence Tricoli but he told her he could not do anything about the shares owed to her since the books had been taken by the S.E.C.

143. During the first two weeks of November, 1961 Rower telephoned Mrs. Siebert four or five times. Rower told her that he had a good stock in Diversified, that F. S. Johns was selling it to its select customers, and he wanted her to be in on it. Except for the assertion that he wanted Mrs. Siebert in on it, Rower's statements were without foundation and were false and misleading.

144. Mrs. Siebert told Rower that she had a little money that she had inherited from her father and was keeping it to send her son to college.

145. Rower told her Diversified was just the thing for her, that he could guarantee that she would double or triple her money, and she would only have to keep it a few months, and she could sell it and get her money back. He also told her on his word of honor and his Mother's honor she couldn't lose her money.

146. These statements were all without foundation and were false and misleading.

147. Rower also told Mrs. Siebert that F. S. Johns was having a contest over the Christmas holidays and he had five children and the money would come in handy.

148. As a result, Mrs. Siebert purchased 400 shares of Diversified at 2-3/8 on December 7, 1961, and received confirmation in the mail but did not receive her certificates until March or April 1962 after several demands made upon F. S. Johns by her husband and herself.

149. In May 1963 John Tricoli asked Mrs. Siebert if she had received a questionnaire from the S.E.C. She told him she had received such questionnaire and had told the truth. John Tricoli then said, "You're not making it very good for us by filling it out that way."

150. (d) Lichtenstein, also known as Lang

In early May 1962, some eight months after Rower had sent Capitella a confirmation for 200 shares of Diversified which Capitella