

Accountant finds the new operating arrangements of the Washington, D.C. office, insofar as they would relate to King's involvement in such audit engagements, to be not unacceptable.

In the Matter of Lester Witte & Company and John P. Shea, ASR No. 285, issued Jan. 7, 1981

The Commission issued an Opinion and Order in administrative proceedings instituted pursuant to Rule 2(e) of its Rules of Practice against Lester Witte & Co., a partnership engaged in the practice of public accounting, and John P. Shea, a partner in the firm's New York City office.

The Commission concluded that the initial audit performed by Lester Witte on J.B. Lippincott Company's 1977 financial statements, was not conducted in accordance with generally accepted auditing standards. The Commission noted that Lester Witte failed to obtain sufficient competent, evidential matter to afford a reasonable basis for its opinion, failed to complete certain critical audit procedures, overlooked significant indicators that the financial statements contained possible misstatements, failed to properly plan and supervise the audit staff in the conduct of the engagement, and failed, in its "concurring partner" review, to discover the deficiencies in the audit. Further, the Commission concluded that Lester Witte's unqualified opinion on Lippincott's 1977 financial statements was misleading under the circumstances because it stated that: (1) the audit was conducted in accordance with generally accepted auditing standards; and (2) that in the firm's opinion, Lippincott's original 1977 financial statements were fairly presented in accordance with generally accepted accounting principles, without a reasonable basis for such opinion.

The Commission censured Lester Witte & Company and ordered the firm to adopt, implement and maintain additional quality control policies and procedures. The Commission also ordered that Lester Witte undergo a review within one year, of the manner in which the firm conducts its audit practices with respect to clients filing reports with the Commission. Shea was suspended from appearing or practicing before the Commission for one year.

In the Matter of Saul Glazer, ASR No. 282, issued Sept. 29, 1980

On September 29, 1980, the Commission instituted public administrative proceedings against Saul Glazer ("Glazer"), an accountant, pursuant to Rule 2(e) of the Commission's Rules of Practice based upon an audit and accountant's report issued by Glazer as to the financial statements of SNG as of and for the seven months ending March 31, 1980. The Commission concluded that the audit was not conducted in accordance with generally accepted auditing standards and that Glazer's unqualified opinion as to the financial statements, which was included in a filing with the Commission, was materially false and misleading.

Glazer submitted an offer of settlement and consented, without admitting or denying the findings or allegations set forth therein, to the issuance of the Commission's opinion and order. The opinion indicated that Glazer relied on a certification of the August 31, 1979 financial statements by the predecessor auditor to a great degree with respect to the existence and valuation of assets and liabilities, but took no steps to verify the professional standing or competency of the predecessor auditor, nor did he attempt to contact him at any time. Furthermore, at no time did Glazer examine any of the predecessor auditor's audit workpapers. The Commission stated that Glazer failed during his audit to obtain a written representation from management confirming oral representations made to him during his audit concerning among other things, satisfactory title to assets and existence of liabilities and contingencies, as required by Statement on Auditing Standards No. 19. The Commission's order suspended Glazer from appearing or practicing before the Commission for a nine month period.

In the Matter of Fidelity Financial Corporation and Fidelity Savings and Loan, Securities Exchange Act Release No. 34-18927 issued July 30, 1982

The Commission published a report of investigation, pursuant to Section 21(a) of the Exchange Act concerning apparent false and misleading statements made in connection with the offer and sale of securities in the form of retail repurchase agreements (retail repos) by a savings and loan association and in connection with the issuance of a press release by the publicly-held

ent of the savings and loan association, announcing year-end results. The parent organization, Fidelity Financial Corporation and its subsidiary Fidelity Savings and Loan Association are headquartered in Oakland, California. Until April 13, 1982, when it was placed in receivership by state and federal regulators, Fidelity was approximately the twentieth largest savings and loan association in the United States. The Commission published the report which discussed the application of the antifraud provisions of the securities laws in order "to emphasize its concern with respect to the disclosure issues raised in connection with the offering of retail repos" and "to emphasize that management should carefully review corporate press statements announcing year-end results."

The report criticized Fidelity's failure to provide to purchasers of its retail repos information concerning its poor financial condition. The report also discussed certain disclosure issues raised by the use of the terms "in trust" and "pledge" when the collateral underlying the retail repos were held in a custodial account and the security interest may not have been perfected. The report stated that the antifraud provisions of the securities laws require that information be provided to retail repo purchasers which is sufficient to enable them to understand the significant terms of the investments being offered and the attendant risks.

The report also discussed Fidelity's year-end press release which summarized its operating results for 1981 and gave the impression of business as usual. On January 29, 1982, when the release was issued, Fidelity was facing the exhaustion of its net worth in the pending fiscal year absent a dramatic and unforeseeable change in its financial condition. The Commission stated that management of publicly-owned corporations, when announcing results for the year, "should be particularly sensitive to the adverse impact that recent significant losses may have upon the company's operations and financial condition in the pending fiscal year." The antifraud provisions of the securities laws prohibit the publication of year-end releases which report operating results as if operations were continuing as usual when losses "raise substantial doubt of the near-term economic viability of the corporation."

In the Matter of National Telephone Company, Inc.,
Securities Exchange Act Release No. 34-14380 issued
June 16, 1978

The Commission published a report of investigation pursuant to Section 21(a) of the Exchange Act, concerning the activities of certain directors of National Telephone Co. Inc. ("National"). This report stated that certain directors were aware, during 1974 and 1975 of significant facts concerning National's troublesome financial condition. The directors were further aware of the optimistic nature of the company's public disclosures which were in direct contrast with the true state of the company's affairs. Under these circumstances, the report continued "the company's outside directors had an affirmative duty to see to it that proper disclosures were made." The report concluded: "In general, outside directors should be expected to maintain a general familiarity with their company's communications with the public. In this way, they can compare such communications with what they know to be the facts, and if the facts as they know them are inconsistent with those communications, they can see to it as stewards for the company, that appropriate revisions or additions be made."

Report of Investigation In the Matter of Stirling
Homex Corporation Relating to Activities of the Board
of the Board of Directors, Securities Exchange Act
Release No. 34-11516 issued July 2, 1975

The Commission published a report of investigation pursuant to Section 21(a) of the Exchange Act concerning the activities of Theodore Kheel ("Kheel") and John Castellucci ("Castellucci"), two members of the Board of Directors of Stirling Homex Corporation ("Stirling Homex").

The report stated that from 1970 to 1972, the Stirling Homex Board of Directors usually consisted of members of management of Stirling Homex; the board's meetings involved little discussion or real decision making; the board did not create any other committees to assist it; and it did not use written agenda or memoranda. Both Kheel and Castellucci were outside directors and were never given timely, accurate or

complete information with respect to the business operation's of Stirling Homex. They both signed a registration statement but were unaware of its false and misleading nature. They also were unaware of the false and misleading nature of press releases, annual and periodic reports due to the recardation of fictitious sales, earnings and assets.

The Commission, in its report, found that the defendants' performance as outside directors was not adequate in that they made no great effort to involve themselves with the affairs of Stirling Homex. They did not provide shareholders with any significant protection, nor did their presence on the Board have the impact upon the company's operations which shareholders and others might reasonably have expected.

CASES INVOLVING SELF-DEALING, PERQUISITES
AND OTHER RELATED PARTY TRANSACTIONS

SEC v. Mid Continent Systems, Inc. et al., Civil
Action No. 83-1533 (DDC May 31, 1983)

The Commission filed a civil injunctive action against Mid Continent Systems, Inc. ("MCS"), of West Memphis, Arkansas, and D. G. Seago, Jr. ("Seago"), chairman of the board and chief executive officer of MCS, alleging violations of the antifraud, reporting, beneficial ownership, proxy and accounting records and controls provisions of the federal securities laws. Without admitting or denying the allegations in the Complaint, MCS and Seago consented to the entry of final orders restraining and enjoining them from further violations of the provisions of the federal securities laws they were alleged to have violated, and providing for other equitable relief.

The Complaint alleges, among other things, that in 1979, Seago caused MCS to participate in fuel transactions between and among two private companies controlled by Seago and members of his family. As a result of these fuel transactions, the two private companies generated petroleum revenues of approximately \$47 million and \$39.5 million and gross profits of approximately \$5 million and \$1.5, respectively, as of September 30, 1979. In effecting these transactions, Seago, among other things, diverted sales and profits from MCS. In November 1979, when the scope of these fuel transactions was questioned by MCS' independent accountants and others, they were halted and MCS' board of directors directed counsel to conduct an inquiry. As a result of this inquiry, Seago rescinded these related party transactions and reimbursed MCS.

The Complaint further alleges that Seago caused another private company which he controlled, to lease equipment and signs to MCS and its affiliates, which business with MCS, for the years 1978 through 1982, approximated between \$100,000 and \$200,000 annually. The transactions between MCS and this company were not disclosed by MCS until 1981.

The Complaint further alleges that in 1981, Seago caused MCS to divert approximately \$103,000 to a company which he owned. This payment was recorded on the books of MCS as being made against an outstanding payable to a third party. In early 1982, the independent auditors for MCS, while performing an examination of the year-end financial statements of MCS, discovered this transaction. While the audit examination was in progress, Seago caused \$103,000 to be paid to the third party to whom the payable balance was still due. No disclosure has ever been made by MCS of this transaction in filings with the Commission.

Without admitting or denying the allegations in the Commission's Complaint, MCS and Seago have consented to the entry of final orders of the Court which enjoin them from violating the provisions of the securities laws they were alleged to have violated. MCS has also undertaken, among other things to: (1) maintain an independent audit committee with a newly appointed independent director as chairman thereof, which will pass on all future proposed related party transactions between MCS and Seago; and (2) correct its annual and periodic reports filed with the Commission since 1977 to reflect the matters set forth in the Commission's Complaint, and obtain and file with the Court and Commission, affidavits from all present officers and directors of MCS identifying and describing all related party transactions with MCS since 1977 for the purpose of assisting MCS in correcting its public filings. Seago had undertaken to file an affidavit with the Court describing all of his and his family's related party transactions with MCS from 1977 to present and use his best efforts to effectuate the terms of MCS undertaking.

SEC v. Numex Corporation, et al., Civil Action No. 83-0919, (DDC March 30, 1983)

The Commission filed a Complaint against Numex Corporation and certain of its officers and directors alleging, among other things, that customer payments were diverted to an "off-books" bank account and were ultimately transferred from the "off-books" account to the company by means of improperly booked transactions between Numex and its executive officers. The Complaint further alleged that these activities resulted in the understatement of the officers' indebtedness to the company and accordingly, constituted events of default under the company's financing agreement with

its lender. It was alleged that the defendants misrepresented and failed to disclose these matters in filings with the Commission and concealed the duration, extent and manner of the use of the off-book accounts from its auditors.

All of the defendants, without admitting or denying the allegations in the Complaint, consented to the entry of Final Judgments and Orders under which they are variously permanently enjoined from violating the anti-fraud, reporting and record-keeping provisions of the federal securities laws.

SEC v. Harry Scharf, et al., Civil Action No. 83-0891 (DDC March 29, 1983)

The Commission filed its complaint against Harry Scharf ("Scharf"), Stanley I. Miller ("Miller"), Marvin Koppelman ("Koppelman"), J.M. Home & Office Products ("J.M.") and Pentron Industries Inc. ("Pentron"), variously alleging violations of Sections 10(b), 13(a), 13(b)(2)(A) and 14(a) of the Securities Exchange Act of 1934 and Rules 10b-5, 12b-20, 13a-1, 13a-13, 13b2-1, 13b2-2, 14a-3 and 14a-9 thereunder.

The Complaint alleged, among other things, that Scharf, the former president of Pentron, Miller, a former sales manager of Pentron, Koppelman, an independent sales representative, and J.M. engaged in a scheme to divert funds from Pentron through several devices including: 1) issuing checks to Miller purportedly for sales promotion expenditures and 2) making payments to J.M. in the guise of commissions and reimbursements for expenses.

The Complaint further alleged that upon receipt of the diverted funds which amounted to approximately \$583,000, Miller, Koppelman, J.M. and Scharf divided the funds among themselves. The Complaint also alleged that as a result of these activities, Pentron's annual and quarterly reports and its proxy solicitation materials for the years in question were false and misleading in that they failed to disclose the effect of such activities on Pentron's income and expenses, the self-dealing by Scharf and Miller, and the benefits obtained by Scharf and Miller through related party transactions.

Concurrently with the filing of the Complaint, the United States District Court entered a Final Judgment of Permanent Injunction against Pentron, enjoining it from further violations of Sections 13(a), 13(b)(2)(A) and 14(a) of the Exchange Act and Rules 13a-1, 13a-13 and 14a-3 thereunder. Pentron consented to the entry of the Final Judgment without admitting or denying the allegations in the Commission's Complaint. The litigation is continuing with regard to the other defendants.

SEC v. Frederix P. DeVeau, et al., Civil Action No. SA-82-CA 411 (W.D. Tex., December 17, 1982

The Commission filed a Complaint against DeVeau alleging inter alia, violations of the anti-fraud, reporting, proxy and beneficial ownership provisions of the Exchange Act, and the rules thereunder. Specifically, the Complaint alleged that DeVeau acquired control of Electric Car Company and Jet Industries using the assets of each to fund his own private acquisitions. Moreover, it was alleged that DeVeau concealed his identity and background including a 1979 conviction for securities and mail fraud, conspiracy and racketeering in a number of Electric Car and Jet Industries Exchange Act reports and filings. Other allegations included proxy and beneficial ownership violations by DeVeau and Electric Car and the systematic looting of Jet Industries by DeVeau of millions of dollars of assets.

DeVeau consented to the entry of a Final Judgment of Permanent Injunction enjoining him from further violations of the aforementioned provisions of the Exchange Act, withwithout admitting or denying the allegations in the Complaint. In addition, the court ordered Deveau to disgorge \$1,513,000 and barred him from association as an officer, director, control person of or consultant to any publicly owned company until the disgorgement order is satisfied.

SEC v. Walco National Corp. & Frederick W. Richmond, Civil Action No. 82-3194 (DDC November 9, 1982)

The Commission filed a Complaint against Walco National Corp. and Frederick W. Richmond. The Complaint alleged violations of the anti-fraud, proxy, tender offer and certain reporting provisions of the Exchange Act by Walco and Richmond.

Among other things, the Complaint alleged that beginning in 1977, Walco and Richmond in Walco tender offer materials, proxy solicitation materials and annual reports, materially misrepresented Richmond's role in Walco. The filings, the Complaint alleged, failed to disclose that Walco: (1) paid 90% of the cost of Richmond's apartment; (2) supplied Richmond with an automobile and driver; (3) made charitable contributions designed to benefit Richmond; and (3) allowed Richmond and certain organizations with which he was affiliated or associated to use Walco facilities and equipment all to the benefit of Richmond.

Simultaneous with the filing of the Complaint, Walco and Richmond entered into a consent agreement whereby the District Court granted Final Judgments of Permanent Injunction which enjoined Walco and Richmond from further violations of the provisions of the Exchange Act. Richmond also agreed to pay to Walco the sum of \$425,000 (pursuant to arrangement) taking into account the resolution of two pending related private actions, and to release the company from all further payments pursuant to the company pension plan.

SEC v. Hotel Associates of Atlantic City, et al.,
Civil Action No. 82-721 (D.C. N.J. March 9, 1982)

The Commission filed a Complaint against Hotel Associates, a limited partnership organized for the purpose of constructing a hotel and casino, and three of its current and former general partners; Olshan, Cigolini and Marsh. The Complaint alleged that: (1) in connection with an \$800,000 public offering of limited partnership interests in Hotel Associates, the defendants stated that Cigolini and Marsh were the only general partners, when in fact Olshan, and several others were also undisclosed general partners; (2) the defendants omitted to state that Hotel Associates had yet to pay the City of Atlantic City for an 8 acre tract of land; and (3) stated that Hotel Associates had not identified a lessee for its proposed casino, when in fact, an agreement had been reached with a lessee for the property. In addition, the Complaint alleged that Olshan and Hotel Associates made false and misleading statements concerning the disproportionately large distributions to certain limited partners in a subsequently unregistered offering of limited partnership interests.

The District Court entered Judgments of Permanent Injunction against Hotel Associates, Cigolini and Marsh. Each of the defendants consented to the entry of the judgments under which they were permanently enjoined, without admitting or denying the allegations of the Complaint.

SEC v. WSC Group Inc. et al., Civil Action No. 81-2844 (S.D. Tex. November 19, 1981)

The Commission filed a Complaint against WSC Group Inc. ("WSC"), a publicly held company, certain of its officers and directors and a shell entity controlled by one of the officers, alleging that WSC failed to disclose in its periodic filings with the Commission and otherwise, agreements providing for the transfer of WSC's principal assets to the shell entity. The Complaint further alleged that WSC and the officers failed to disclose 1) unauthorized compensation paid by WSC to the officers and members of his family 2) unauthorized economic benefits received by the aforementioned shell entity controlled by the officer and 3) conflicts of interest by the officers occasioned by the officers serving as trustees of the shell entity and as officers and directors of WSC.

Orders, enjoining the defendants from further violations of the anti-fraud provisions of the Securities Act and the Exchange Act as well as the periodic reporting provision of the Exchange Act, were entered by the federal district court, by the consent of the defendants without admitting or denying the allegations contained in the Commission's Complaint. The Court ordered the engagement of an independent auditor to determine amounts owed WSC by other defendants and that the defendants disgorge those amounts. The defendants were ordered not to serve as officers or directors of a public company for one year.

SEC v. Catawba Corp., et al., Civil Action No. 81-2640 (DDC November 2, 1981)

The Commission filed a Complaint against Catawba; Canada Southern Petroleum, Ltd.; Coastal Caribbean Oils & Minerals, Ltd.; Magellan Petroleum Corp.; Pantepec International, Inc.; John W. Buckley, President of Pantepec, a Director of Canada Southern and Pencoastal,

Inc., formerly Chairman of the Board and President of Catawba, formerly Chairman of the Board and President of Canada Southern and United Canso Oil & Gas, Ltd., and formerly a Director of United Canso; Benjamin W. Heath ("Heath"), President of Magellan & Coastal and a director of Canada Southern; and C. Dean Reasoner, a Director of Coastal, Magellan and Pencoastal and formerly a Director of United Canso and counsel to a Director of Catawba. Catawba is a privately held company which provided management services to the other defendants. Most of the officers and directors of the public companies, it was alleged, were shareholders, officers and directors of Catawba or close associates of such persons.

The Commission's Complaint alleged that various of the aforementioned public companies' filings during the period 1969 through 1980, were materially inadequate and incomplete concerning transactions which accrued to the benefit of Catawba and its shareholders, which included inter alia; (1) transactions among the public companies which resulted in Catawba receiving fees and the repayment of cash companies; (3) royalty interests and royalty payments Catawba received from certain of the public companies; and (4) United Canso's payment to Catawba of \$3.1 million in settlement of a royalty interest Catawba shareholders asserted in properties sold by United Canso to a third party in 1975.

The District Court granted permanent injunctions against Buckley, Heath and Reasoner enjoining them from making untrue statements of material facts in connection with the purchase or sale of any security and against Canada Southern, Coastal, Magellan and Pantepec, enjoining them from violating the reporting and proxy provisions of the Exchange Act. The defendants consented to the injunctions without admitting or denying the allegations of the Complaint. In addition, the defendants agreed to certain equitable relief ordered by the Court which included inter alia: (1) Catawba agreed to pay \$175,000 in cash to several of the public corporations; (2) Catawba relinquished claims to royalty payments from United Canso and Canada Southern; (3) Heath and Reasoner agreed to pay \$27,500 to certain of the public companies; (4) Buckley, Heath and Reasoner undertook not to serve as officers and directors of Catawba; and (5) the public companies agreed to establish special committees of their boards of directors and give a report to the Commission.

SEC v. Herbert G. Paige et al., Civil Action No. 81-2066 (DDC September 2, 1981)

The Commission filed a Complaint against Crown Cork, Herbert G. Paige and General Cinema Corp. The Complaint alleged that the defendants violated the antifraud, periodic reporting and books and records provisions of the Exchange Act. Specifically, the Complaint alleged that Crown Cork, at the behest of Paige, an officer of General Cinema and controlling figure in Pasha Corporation, made payments and loans of \$5.9 million to Pasha that Crown Cork should have known were not for the use or benefit of Pasha or General Cinema. It was further alleged that Crown Cork was reckless in not knowing that such funds were being used for the personal benefit of Paige. The District Court entered Final Judgments of Permanent Injunction against the defendants which enjoined them from violating the foregoing provisions concerning such payments. The defendants consented to the judgments without admitting or denying the allegations of the Complaint. Disgorgement of \$880,000 was made.

SEC v. El Dorado International, Inc., et al. Civil Action No. 81-0532 (DDC March 5, 1981)

The Commission filed a Complaint against El Dorado, Deil O. Gustafson, Roger F. Newstrum, International, Inc., Hotel Conquistador and Consolidated Financial Corporation.

The Complaint in part alleged that: (1) from September 1978 to June 1979, the defendants engaged in a scheme pursuant to which International attempted to merge with El Dorado through the exchange of International stock for El Dorado stock, resulting in the control of El Dorado passing to Gustafson; (2) that Gustafson diverted \$1,960,000 of El Dorado's funds by causing an advance to himself, CFC, International and Conquistador for his benefit and the benefit of his related corporations; (3) that advances of certain funds from El Dorado to International and Conquistador and certain actions taken toward affecting the attempted merger of International and El Dorado occurred without prior approval from Nevada gaming authorities and in violation of Nevada gaming laws; and (3) that the defendants made or facilitated the making of numerous false and misleading representations and disclosures in filings with the Commission, to El Dorado's Board of Directors and shareholders, to the public, and others in furtherance of such scheme.

The defendants consented to the entry of the Final Judgments of Permanent Injunction without admitting or denying the allegations in the Complaint. In addition, the District Court granted certain ancillary relief which provided inter alia, that Gustafson and Newstrum not serve as officers, directors, or controlling shareholders of El Dorado for a period of 4 and 2 years respectively. The Court further ordered Conquistador, or Gustafson if Conquistador was unable, to pay El Dorado the sum of \$83,781 for reimbursement of expenses incurred by El Dorado in connection with matters alleged in the Complaint. This was in addition to the \$2,313,059 Gustafson had already paid to El Dorado in matters relating to the Complaint.

SEC v. James Robert Meek et al., Civil Action No. 81-227T (W.D. Okla. March 3, 1981)

The Commission's Complaint in this matter alleges that James Robert Meek ("Meek"), the president of Guaranty Trust Company ("Guaranty"), made material misrepresentations and omitted to state that, among other things, Guaranty's funds, bank accounts, brokerage accounts and credit were used for the benefit of Meeks and his wholly owned corporations. These misrepresentations and omissions were allegedly made when Guaranty sold its certificates of deposit and passbook accounts to the public, and when Guaranty purchased and sold, ostensibly for its own investment portfolio, certain government and other securities. Moreover, the Complaint alleges that Meek and certain of his relatives and associates sold certificates of deposit to Guaranty with knowledge of Guaranty's precarious financial condition, prior to the disclosure of such information to the trust company's other investors.

Orders were entered enjoining the defendants from further violations of the anti-fraud provisions of the Exchange Act by consent without admitting or denying the violations.

SEC v. Falstaff Brewing Corp. et al., 629 F.2d 62 (D.C. Cir. 1980)

The Commission filed a Complaint against Falstaff and its Chairman and controlling stockholder Paul Kalmanovitz. The District Court issued an Order of Permanent Injunction enjoining the defendants from

further violations of the proxy, reporting and anti-fraud provisions of the Exchange Act. The defendants appealed.

The Court found that Falstaff and Kalmanovitz, in a transaction whereby Kalmanovitz acquired the financially troubled Falstaff, failed to disclose or misrepresented in a Falstaff proxy statement, Kalmanovitz's prior dealings concerning his purchase of a Falstaff brewery and certain loans to Falstaff that Kalmanovitz had guaranteed. Further, the Court found that the proxy statement failed to disclose that certain sales of Falstaff stock to Kalmanovitz would give him effective control and would dilute the present shareholders control.

Although Kalmanovitz argued that he had no liability for the statements in this proxy statement because he had not yet become part of the management of Falstaff, the Court held that he had permitted the use of his name in the statement, thus subjecting himself to liability under §14(a) of the Exchange Act. The Court also found violations of the reporting and antifraud provisions of the Exchange Act.

The Injunction enjoining both Falstaff and Kalmanovitz from further violations and misconduct were upheld by the Court of Appeals.

SEC v. Cloyce K. Box and OKC Corp., Civil Action No. 3-80-12170 (N.D. Tex. September 15, 1980)

The Commission alleged in its Complaint that Cloyce K. Box ("Box"), the chief executive officer of OKC Corp. ("OKC"), caused OKC to purchase and sell substantial amounts of petroleum products through brokers who were his friends and business associates, pursuant to secret and undisclosed partnerships and business arrangements. It was also alleged that, at Box's direction, these friendly brokers received preferential price, product delivery and credit arrangements from OKC and, in turn resold these products at substantial markups. At least two of these "friendly brokers", according to the Complaint, then split their profits with Box. Pursuant to these arrangements, Box received in excess of \$5 million over a four year period. The Commission charged that none of these favorable financial arrangements was disclosed by OKC in its periodic, annual or other reports. Box also

used certain of the "friendly brokers" as parties in fictitious purchases and sales of petroleum products in which OKC purportedly engaged, resulting in the material falsification of OKC's interim and year-end financial statements.

On November 25, 1980, preliminary injunctions were entered against Box restraining him from further violations of the antifraud provisions of the Exchange Act and Box and OKC from further violation of the periodic reporting and proxy provisions of the Exchange Act. Box and OKC consented to the preliminary relief, without admitting or denying the allegations in the Commission's Complaint. An Order was also issued at the time of the preliminary injunction, providing for the review by a special corporate committee of every proposal for the sole liquidation or other transfer of OKC's assets to assure that they are made without undisclosed conflicts of interest.

On December 16, 1980, OKC consented to a permanent injunction enjoining it from violations of periodic, reporting and proxy provisions of the Exchange Act pursuant to a Consent, without admitting or denying the allegations of the Complaint.

On October 16, 1981, the Court entered an order against Box permanently enjoining him from violation of the reporting and proxy provisions of the Exchange Act. Box consented to the order without admitting or denying the allegations in the Commission's Complaint. The Court dismissed the allegations against Box with respect to the antifraud provisions of the Exchange Act. The Commission has appealed to the Fifth Circuit.

SEC v. Jack M. Catain, Jr. & Rusco Industries,
Civil Action No. 80-02947 (D.C. Cal. July 8, 1980)

The Commission filed a Complaint against Jack M. Catain and Rusco Industries. The Complaint alleged that Catain engaged in a course of conduct in which Rusco funds were used for the personal benefit of Catain and certain of his friends and associates.

Specifically, the Commission asserted that: (1) Catain caused Rusco to purchase the assets of a corporation principally owned by Catain, thereby satisfying the Corporation's obligations (Rusco had guaranteed

and returned a substantial portion of Catain's investment in the losing venture); (2) Catain caused Rusco to make substantial advances to distributorships owned by Catain's relatives and associates; and (3) and that Catain caused a Rusco subsidiary to enter into a substantial lease and financial guarantee agreement with a company in which Catain had an undisclosed interest. The Complaint alleged that full, accurate and/or timely disclosure of these activities was never made in Rusco's periodic or annual reports or proxy solicitation materials.

Without admitting or denying the allegations contained in the Complaint, both Catain and Rusco consented to the entry of permanent injunctions prohibiting future violations of the antifraud, reporting and proxy provisions of the Exchange Act. In addition, Catain agreed to resign from the Board of Directors.

SEC v. Rapid American Corporation, et al., Civil Action No. 79-2128 (DC August 16, 1979)

The Commission filed a Complaint alleging that Rapid American Corporation ("Rapid") and certain of its subsidiaries failed to disclose that they entered into agreements with and paid fees to persons who were either personal creditors of the Chairman of the Board of Rapid, Meshulam Riklis ("Riklis"), or persons who had a personal business relationship with Riklis. The alleged agreements and transactions were either negotiated or approved by Riklis at a time when he was in serious financial difficulty. The Complaint further alleged that Riklis was in a conflict of interest position in negotiating and approving transactions with whom he had personal business dealings and that these conflicts were not disclosed to the Boards of Directors of Rapid and its subsidiaries, or to the public.

Without admitting or denying the allegations in the Commission's Complaint, the defendants consented to the entry of final judgments of permanent injunction enjoining them variously from further violations of Sections 13(a), 13(d) and 14(a) of the Exchange Act and the rules thereunder. In addition to the injunctive relief, Rapid agreed to certain ancillary relief including the appointment of new unaffiliated directors, and the formation of a transaction review committee to assess possible conflicts of interest.

SEC v. Marlene Industries Corp., et al., 79 Civ.
1959 (SDNY April 26, 1979)

The Commission filed a Complaint against Marlene Industries Corp. ("Marlene") and its principal officers and directors Charles and Samuel Meltzer. The Complaint alleged that the defendants engaged in a scheme whereby Marlene paid or conferred sums of money, gifts and compensation to or in behalf of Charles and Samuel Meltzer and other members of the Meltzer family. This additional compensation, which was over and above any salary owed to the Meltzers, was effected through the creation of false and inaccurate cash allowance vouchers. Additionally, the defendants failed to disclose the acts and practices that allowed for the transfer of the undisclosed compensation. The Court entered Judgments of Permanent Injunction enjoining the defendants from further violations of the antifraud, reporting, proxy, recordkeeping and internal accounting controls provisions of the Exchange Act. The defendants consented to the Judgments without admitting or denying the allegations of the Complaint. In addition, the Court ordered the Meltzers to repay \$110,000 to Marlene and to furnish a written statement disclosing the substance of the Complaint and Judgment to any public company where they intended to be associated as an officer or director. Marlene agreed to nominate independent directors, establish an audit committee with certain functions to prevent the matters alleged in the Complaint and to review filings with the Commission.

SEC v. Steven G. Weil, et al., Civil Action No.
79-440T-H (M.D. Fla. April 10, 1979)

The Commission filed a Complaint against Steven G. Weil ("Weil"), Geneva Holding Company, Inc. ("Geneva"), Kapok Tree Inns Corp., June Gelbert and H. Gordon Brown. The Complaint alleges that Weil and Geneva engaged in a fraudulent scheme to secretly gain and retain control of Kapok, and thereafter, while in control, misappropriated and diverted Kapok's while assets. In furtherance of the scheme, it was alleged that a series of misrepresentations and omissions were employed by Weil and Geneva to induce Gelbart to enter into two agreements with Geneva. These agreements were designed to transfer control of Kapok to Weil. Moreover, it was alleged that Weil caused Kapok to enter into certain transactions whereby Weil misappropriated certain artwork belonging to Kapok. In the

process of these transactions, certain of Weil's books and records were falsified. Additionally, it was alleged that the defendants directly and indirectly variously failed and caused the failure to file various required reports and proxy material and filed and caused the filing of various required reports and proxy materials which were false and misleading.

Simultaneous with the filing of the Complaint three of the five defendants, without admitting or denying the allegations, consented to the entry of Final Judgments of Permanent Injunction enjoining them from further violations of the antifraud and proxy requirements of the Exchange Act. Weil and Geneva thereafter consented to a Final Judgment of Permanent Injunction and a Court Order requiring disgorgement. Brown agreed to voluntarily resign from practice before the Commission for a 30 month period.

SEC v. Fashion Two Twenty Inc. et al., Civil Action No. 79-448, (M.D. Ohio March 23, 1979)

The Commission filed a Complaint against Fashion Two Twenty and its chairman and largest shareholder Vernon G. Gochneaur. The Complaint alleged that the defendants violated the antifraud, reporting and proxy provisions of the Exchange Act by failing to disclose that hundreds of thousands of dollars of corporate funds and other corporate assets were diverted for the personal use of Gochneaur without adequate disclosure in registration and proxy statements or other filings. The Complaint included allegations of undisclosed compensation to Gochneaur concerning his personal use of a company owned yacht; maintenance of his personal residence, a private park, personal horses and stable; the use of corporate funds for Gochneaur's personal vacation; company credit card use by Gochneaur's wife; and other similar diversions of corporate funds.

The Court entered Judgments of Permanent Injunction against the defendants. Each of the defendants consented to the injunctions without admitting or denying the allegations in the Complaint. In addition, certain ancillary relief was ordered by the Court, which included the adoption, implementation and maintenance of internal control provisions designed to avoid the unauthorized or undisclosed use of corporate assets, appointment of new independent directors, and establishment of an audit committee.