RECENT CIVIL AND CRIMINAL PROSECUTIONS OF INSIDER TRADING VIOLATIONS

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January 1987

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I. Introduction

The capital formation process depends on investor confidence in the fairness and integrity of our securities markets. The investing public has a legitimate expectation that the prices of actively traded securities reflect publicly available information about the issuers of such securities. Insider trading, commonly defined as the trading of securities while in the possession of material nonpublic information in violation of a duty of trust or confidence, threatens our securities markets by decreasing the public's confidence in the fairness and integrity of the markets.

The Securities and Exchange Commission has aggressively pursued insider trading violations under the general antifraud provisions of the federal securities laws. "Insider trading", however, is a term not found or defined in the federal securities laws. Congress, in passing the Insider Trading Sanctions Act of 1984 ("ITSA"), determined, after public and congressional discussion and debate, to continue not to define legislatively "insider trading."

Since adoption of the Securities Exchange Act of 1934 ("Exchange Act") and the promulgation of Rule 10b-5 thereunder in 1942, the Commission has utilized these provisions to remedy unlawful trading and tipping by persons in a variety of positions of trust and confidence who have illegally transmitted or used material nonpublic information. In some cases, Section 17(a) of the Securities Act of 1933 ("Securities Act"), and more recently Section 14(e) of the Exchange Act and Rule 14e-3 thereunder, have been used as well. In addition, ITSA authorizes the Commission to seek a civil penalty of up to three times the profit gained or the loss avoided against either persons who unlawfully trade while in possession of material nonpublic information or who unlawfully communicate material nonpublic information to others who then trade. The Commission has brought 143 actions alleging insider trading since the beginning of the 1980 fiscal year. The Justice Department, and particularly the U.S. Attorney's Office for the Southern District of New York, has joined the Commission in attempting to curtail insider trading by expanding its criminal enforcement of insider trading violations.

This outline, which assumes the reader's familiarity with the development of the law relating to insider trading, will very briefly review several of the recent cases setting the parameters of conduct which contravenes the proscriptions against insider trading. The outline will then turn to its primary objective of listing and briefly describing recent civil enforcement actions brought by the Commission and recent criminal prosecutions for insider trading violations.

II. The Development of Insider Trading Under Rule 10b-5

A. The Disclose or Abstain Rule

The prohibition against insider trading has roots in the common law. In Strong v. Repide, 213 U.S. 419 (1909), the Supreme Court held that a director who purchased securities of an issuer through an agent without disclosing his identity or the company's intention to sell certain assets violated a duty to disclose such information to the selling shareholder.

The "disclose or abstain" rule was applied by the Commission in its decision In re Cady, Roberts & Co., 40 S.E.C. 907 (1961). In Cady, Roberts, a partner of a director of a public company traded securities after receiving material nonpublic information from the director. It is interesting to note, in light of the Dirks opinion, that the Commission accepted the contention of the director that he thought the information was public at the time he transmitted it to his partner in a brokerage firm. Thus, there was no conscious violation of a duty to the public company by the director, nor was there evidence that the director expected to receive any benefit by virtue of the communication to his partner. The Commission held, however, that by virtue of the relationship between the director and the partner, the partner was under an obligation, as was the director, to disclose such information or else abstain from trading. 40 S.E.C. at 911.

The "disclose or abstain" rule was approved by the Second Circuit in the seminal case of Securities and Exchange Commission v. Texas Gulf Sulphur, 401 F.2d 833 (2d Cir. 1968) (en banc), cert. denied, 394 U.S. 976 (1969). The court articulated a broad "disclose or abstain" rule commenting that "Rule (10b-5) is based in policy on the justifiable expectation of the securities marketplace that all investors trading on impersonal exchanges have relatively equal access to material information...." 401 F.2d at 848.

In the years immediately following Texas Gulf Sulphur, the broad "disclose or abstain" rule continued to be the dominant approach to insider trading. Recently, however, in recognition of two important Supreme Court decisions where the Supreme Court rejected the theories of liability supported by the Commission, the Commission's theories propounded in insider trading cases have become more focused.

B. Chiarella, Dirks and Newman

1. Chiarella v. United States, 445 U.S. 222 (1980).

In Chiarella v. United States, the Supreme Court considered whether a person with no prior relationship to the sellers of securities had a duty to disclose to them material nonpublic

information concerning those securities. Chiarella was a mark-up man for a financial printer who purchased securities while in the possession of material nonpublic information derived from his employment. A jury of the District Court for the Southern District of New York found Chiarella criminally liable under Rule 10b-5 for his actions and the Court of Appeals for the Second Circuit affirmed the conviction.

The Supreme Court reversed the judgment of the Second Circuit. The Court interpreted the district court's instructions to the jury as, in effect, charging that the petitioner had a duty to everyone in the market, and specifically, a duty to the persons who sold securities to him. In finding that there was no duty to disclose in this particular case, the Court specifically and narrowly held that a duty to disclose under Section 10(b) and Rule 10b-5 does not arise from the mere possession of material nonpublic information, and that Chiarella had no duty to disclose his information to the sellers of the securities. The Court discussed several theories of liability for insider trading under Section 10(b) and Rule 10b-5, including the theory that Chiarella's conduct breached his duty to his employer and its clients by misappropriating information for his own use, but the majority refused to consider these other theories since they were not included in the jury instructions.

2. Dirks v. Securities and Exchange Commission, 103 S.Ct. 3255 (1983).

Dirks was an investment analyst with a registered broker-dealer who received information of a massive fraud concerning an issuer (Equity Funding of America) and transmitted the information to certain of his clients who sold the issuer's securities before the information was publicly disclosed. The Commission entered an order censuring Dirks, finding that he aided and abetted violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. 21 S.E.C. Docket 1401 (1981).

The Court of Appeals for the District of Columbia affirmed the Commission's censure. The court stated that "the obligations of corporate fiduciaries pass to all those to whom they disclose their information before it has been disseminated to the public at large." Dirks v. Securities and Exchange Commission, 681 F.2d 824, 834 (D.C. Cir. 1982).

The Supreme Court reversed the District of Columbia Circuit and held that Dirks' conduct had not violated the federal securities laws. First, with regard to Dirk's liability as a tippee, the Court stated that a tippee of an insider assumes a fiduciary duty to the shareholders only when the insider has breached his fiduciary duty to the shareholders and the tippee knows or should

know that there has been a breach. Second, the Court stated that an insider breaches a duty by disclosing nonpublic information only when the tipper has an improper purpose in communicating the information. In this case, the insider who informed Dirks of the Equity Funding fraud did not breach any duty to the shareholders of Equity Funding because he was motivated by a desire to expose the ongoing fraud and received no monetary or personal benefit for revealing the nonpublic information. However, the Court, in an important footnote, stated that "[u]nder certain circumstances, such as where corporate information is revealed legitimately to an underwriter, accountant, lawyer or consultant working for the corporation, these outsiders may become fiduciaries of the shareholders." 103 S. Ct. at 3261, n.14.

3. United States v. Newman, 664 F.2d 12 (2d Cir. 1981), cert. denied 104 S. Ct. 193 (1983).

A form of the misappropriation theory as discussed in Chief Justice Burger's dissent in Chiarella was applied by the Second Circuit in Newman. In that case, the court reversed a lower court dismissal of an indictment charging Newman, a securities trader, and employees of Morgan Stanley & Co., Inc. and Lehman Brothers Kuhn Loeb, Inc. with conspiracy to purchase the securities of several companies while in possession of material nonpublic information. The nonpublic information had been furnished to Lehman Brothers Kuhn Loeb and Morgan Stanley by their corporate clients.

The Newman court ruled that a misappropriation of confidential, proprietary information from an investment banking firm by an individual in a position of trust and confidence may constitute a fraud and deceit and provide a basis for liability under Section 10(b) and Rule 10b-5 when it occurs in connection with the purchase or sale of securities. The alleged conduct of the defendants in Newman was found to be the type of conduct which Chief Justice Burger, in his dissent in Chiarella, articulated as violative of Section 10(b). The Newman court observed that:

> "[b]y sullying the reputations of [their] employees as safe repositories of client confidences, appellee and his cohorts defrauded those employers as surely as if they took their money." 664 F.2d at 17.

III. Recent Cases

Following Chiarella, Dirks and Newman, the Commission has continued to aggressively pursue insider trading cases within the analytical framework established by these opinions. The types of respondents in insider trading cases are varied and include not only traditional insiders and their friends and relatives, but attorneys, law firm employees, accountants,

bank officers, brokers, a psychiatrist and a financial reporter. The following are some of the significant insider trading cases recently brought by the Commission and the Department of Justice:

A. Litigated Commission Actions

1. S.E.C. v. Joseph Fox, David Ball, Patricia Randall and Carl Fleece, Civil Action No. CA5-84-172 (N.D. Tex. filed October 1, 1984)

The Commission's complaint alleged that the defendants, all current or former executives of Texas Instruments, Inc., violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder when they breached a fiduciary duty to their employer by misappropriating material nonpublic information concerning the company and trading on the basis of such information. The complaint sought a permanent injunction against future violations of Section 10(b) and Rule 10b-5, and disgorgement of all illegal profits.

The complaint alleged that the four defendants purchased put options for Texas Instruments stock on June 9 and 10, 1983 just prior to the company announcing decreasing home computer sales and other related problems on June 10, 1983. Texas Instruments stock fell $38 3/4 on the first day of trading following the public announcement. The defendants were alleged to have realized illegal profits of at least $750,000.

On October 14, 1986, the district court dismissed the action against all of the defendants. The court found that the defendants were not "insiders" and did not purchase put options for Texas Instruments securities based on material information. The court further found that the defendants did not act with an intent to deceive or defraud investors.

2. S.E.C. v. Richard L. Sharp, C.A. No. 85-0553-R (E.D. Va. 1985)

The Commission's complaint, filed on June 12, 1985, accused Sharp, President of Circuit City Stores, of violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by purchasing Circuit City stock on June 21, 1983 (then known as Wards Company) while in possession of material nonpublic information regarding a substantial increase in quarterly sales and earnings. The complaint sought a permanent injunction and disgorgement of $18,875 of illegally obtained profits.

On March 12, 1986, the district court dismissed the action against Sharp finding that the information in Sharp's possession was not material.

3. S.E.C. v. Gaspar, et al., [1985] FED. SEC. L. REP. § 92,004 (S.D.N.Y.)

The Commission's complaint alleged that Gaspar, an investment broker, leaked information concerning acquisition talks between one of his clients, Dyson-Kissner-Moran Corporation ("DKM"), and Clark Oil and Refining Corporation ("Clark") to a brokerage firm manager, who purchased Clark stock and also recommended the the purchase of Clark stock to salesmen in his office. The salesmen then solicited customers to purchase Clark stock.

In finding that Gaspar violated Sections 10(b) and 14(e) of the Exchange Act and Rule 10b-5 thereunder, the Court noted that Gasper breached his duties not only to his employer, but to DKM as well. The court, citing Dirks, found Gaspar to be a temporary insider of DKM. Although Gaspar did not profit monetarily from trading in Clark stock, the Court found that Gaspar obtained a "reputational" benefit in tipping the material nonpublic information.

4. S.E.C. v. Switzer, et al., [1984] Fed. Sec. L. Rep. ¶91,589 (W.D. Okla. 1984)

The Commission brought suit against the football coach of the University of Oklahoma and others, alleging violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder based on the purchase of shares of Phoenix Resources Corp. The Commission alleged that Switzer and others received information concerning a proposal to liquidate Phoenix, which would result in a value per share in excess of its then current market price, from a director of Phoenix prior to any public announcement.

In dismissing the action, the court found that Switzer had inadvertently overheard the information of the proposal to liquidate Phoenix at a high school track meet. The court found that since the director had not breached any fiduciary duties owed to Phoenix shareholders by transmitting the information to Switzer, then Switzer had neither acquired nor assumed derivative fiduciary duties. Therefore, the court concluded, there were no violations of Section 10(b) or Rule 10b-5.

5. S.E.C. v. Musella, et al., 578 F. Supp. 425 (S.D.N.Y. 1984)
In the Matter of James L. Covello and Daniel V. Covello, Exchange Act Rel. No. 20826 (Apr. 5, 1984)

The Newman analysis of the misappropriation theory was also applied in S.E.C. v. Musella, a case involving trading on the basis of material nonpublic information improperly obtained

from Sullivan & Cromwell, a New York City law firm. In this particular portion of the case, in which the Commission was seeking the entry of preliminary injunctions against two bond traders, Daniel and James Covello, the court held that an employee of a law firm owed a fiduciary duty of silence to the law firm and its corporate clients. In entering preliminary injuctions against the Covello brothers, the court found that Covellos inherited the law firm employee's duty not to trade on the basis of misappropriated market information when they received information from the law firm employee. The court relied on Dirks in stating that outsiders may become "temporary insiders" when they are given access to information solely for corporate purposes.

Since the filing of the complaint, ten defendants, including the Covellos, have consented to the entry of permanent injunctions against future violations of Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder. The court also ordered certain of the defendants to disgorge their illegal profits. The case against five other defendants is currently pending.

In a related administrative matter, the Commission barred the Covello brothers from associating with any broker, dealer, municipal securities dealer or investment company.

6. S.E.C. v. Materia,
Docket No. 84-6043(2d Cir. October 1, 1984)

The misappropriation theory as articulated in Newman was also applied in Materia. The defendants were alleged to have traded while in possession of misappropriated material non-public information obtained from Materia's employer, the New York financial printing concern of Bowne. The Second Circuit, in affirming the district court's finding that Materia had violated Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder, cited Newman for the proposition that a violation of Section 10(b) of the Exchange Act and Rule 10b-5 can be found even absent a duty or relationship between purchasers and sellers of stock. The court found a breach of duty by Materia to his employer by virtue of his misappropriation and improper use of the material nonpublic information obtained from his employer.

7. S.E.C. v. Lund,
No. 81-371-MML (C.D. Cal., Judgment entered September 19, 1983).

In Lund, Horowitz, an officer of P&F Industries, informed Lund, an officer of Verit Industries, of discussions of a joint venture between P&F and another company. Prior to the public

disclosure of the joint venture, Lund purchased P&F securities for his own account. Following the announcement, the price of P&F securities doubled at which point Lund sold the P&F securities and profited by $12,500.

The District Court found that Horowitz did not breach his fiduciary duty to P&F or its shareholders by disclosing the information to Lund. Consequently, the action against Lund could not be based upon a tippee theory. Instead, the court found that the relationship between Horowitz and Lund, which existed prior to the communication, when coupled with the communication, made Lund a "temporary insider" of P&F. The court cited footnote 14 of Dirks in reaching this determination. As a "temporary insider", the court found Lund liable under Section 10(b) and Rule 10b-5 thereunder for trading while in possession of material nonpublic information received in the context of his relationship with Horowitz.

B. Settled Commission Actions

1. S.E.C. v. Alfred Elliott, 86 Civ. 10184 (N.D. Ill. filed December 30, 1986)

The Commission's complaint alleged that Elliott, a former partner of the Chicago law firm of Schiff, Hardin & Waite, engaged in six transactions while in possession of material nonpublic information that was misappropriated from clients of the firm between March 1984 and February 1986.

Without admitting or denying any of the substantive allegations of the complaint, Elliott consented to a permanent injunction against future violations of the antifraud provisions of the Exchange Act. In addition, Elliott disgorged $271,312 in illegal profits and was ordered to pay a civil fine on the transactions occurring post-ITSA of $228,688.

2. S.E.C. v. Anthony A. DePalma, 86 Civ. 3541 (D.D.C. filed December 30, 1986)

The Commission's complaint alleged that DePalma, the former chief operating officer of Diasonics, Inc., a California corporation, sold Diasonics stock while in possession of material nonpublic information concerning a negative earnings report for Diasonics for the third quarter of 1983.

Without admitting or denying any of the substantive allegations of the complaint, DePalma consented to the issuance of a permanent injunction and also disgorged $71,125 in losses avoided.

3. S.E.C. v. Melvin N. Pomerantz, 86 Civ. 9499 (PNL) (S.D.N.Y. filed December 11, 1986)

The Commission's complaint alleged that Pomerantz, a San Antonio, Texas businessman, bought 3,000 shares of SFN Companies stock on August 22, 1984, just one day before the announcement of an investor buyout of SFN. The complaint further alleged that Pomerantz misappropriated this information from a person involved in the buyout and also passed along the information to his mother-in-law. Pomerantz's mother-in-law wasn't charged in the complaint.

Without admitting or denying the substantive allegations of the complaint, Pomerantz consented to the issuance of a permanent injunction, disgorged both his and his mother-in-law's combined profits of $39,925, and agreed to pay a penalty under ITSA of $79,850.

4. S.E.C. v. Michael David, 86 Civ. 9462 (DNE) (S.D.N.Y. filed December 8, 1986)

David, a former attorney with the New York law firm of Paul, Weiss, Rifkind, Wharton & Garrison, admitted to disclosing material nonpublic information from his law firm about corporate transactions to others. David consented to the issuance of an injunction against future violations of the antifraud provisions of the securities laws and agreed to pay, over 11 years, $50,000 representing profits he was to have received, and a separate civil penalty of as much as $100,000, depending on his income over that period of time. (See related criminal action, infra.)

5. S.E.C. v. Ivan F. Boesky, 86 Civ. 8767 (S.D.N.Y. filed November 14, 1986)

In the Matter of Ivan F. Boesky, Exchange Act Rel. No. 6753 (November 14, 1986)

The Commission's complaint alleged that Boesky violated Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder by trading in securities while in possession of material nonpublic information obtained from Dennis Levine, a former investment banker. The complaint further alleged that Levine disclosed to Boesky from in or about February 1985 material nonpublic information concerning tender offers, mergers, other business combinations, and extraordinary corporate transactions, and that Boesky agreed to pay Levine approximately $2.4 million for this information. However, Levine was sued by the Commission before any payments were made.

Without admitting or denying any of the substantive allegations of the complaint, Boesky consented to the issuance of a permanent injunction and agreed to disgorge $50 million in illegal profits and pay a civil fine under ITSA of $50 million. Both the disgorgement and the fine were paid in cash and other assets.

In a related administrative proceeding, the Commission barred Boesky from association with any broker, dealer, investment adviser, investment company or municipal securities dealer. However, the bar was stayed until April 1, 1988 or at such earlier time as the Commission shall prescribe, solely to preserve the assets of Boesky's present businesses and avoid a default under any instrument or security pertaining to any of those businesses. (See related civil and criminal matters, infra.)

6. S.E.C. v. Alfred E. Kopfmann II and Amie E. Mosher, 86 Civ. 6114 (N.D. Calif. filed October 28, 1986)

The Commission's complaint alleged that Kopfmann, and his sister-in-law Mosher, traded in February 1984 in the securities of Tymshare, Inc. while in possession of material nonpublic information that Tymshare was to be acquired by McDonnell Douglas Corp. The complaint further alleged that Kopfman received the information through his father-in-law, who was a director, legal counsel and secretary of Tymshare and was deeply involved in the negotiations with McDonnell.

Without admitting or denying any of the substantive allegations of the complaint, both Kopfmann and Mosher consented to the issuance of permanent injunctions. In addition, Kopfman disgorged $302,517.61 and Mosher disgorged $340.00 in illegal profits.

7. S.E.C. v. James F. Flaherty, Jr., 86 Civ. 2896-Y (D. Mass. filed October 8, 1986)

The Commission's complaint alleged that Flaherty, a vice president of Gulfstream Aerospace Corp., purchased 9,000 shares of Gulfstream stock on May 30, 1985 while in possession of material nonpublic information concerning merger negotiations between Gulfstream and Chrysler Corp. The merger was announced on May 31, 1985.

Without admitting or denying any of the substantive allegations in the complaint, Flaherty consented to the issuance of a permanent injunction against future violations of the antifraud provisions of the Exchange Act. In addition, Flaherty disgorged $26,015 in illegal profits and was ordered to pay a fine under ITSA of $26,015.

8. S.E.C. v. Thomas M. Hartnett, 86 Civ. 6894 (S.D.N.Y. filed September 8, 1986)

The Commission's complaint alleged that Hartnett, a former employee of General Electric, purchased stock in RCA Corporation on December 6, 1985 while in possession of material nonpublic information concerning General Electric's acquisition of RCA. The complaint further alleged that Hartnett learned of this information when he reviewed a photocopy of another employee's binder on the proposed transaction.

Without admitting or denying any of the substantive allegations of the complaint, Hartnett consented to the issuance of a permanent injunction against future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Hartnett also disgorged his illegal profits of $8,472 and agreed to pay a civil fine under ITSA of $8,472.

9. S.E.C. v. Anthony M. Franco, 86 Civ. 2382 (D.D.C. filed August 26, 1986)

The Commission's complaint alleged that Franco, a Detroit, Michigan publicist, purchased 3,000 shares of Crowley, Milner and Company common stock while in possession of material nonpublic information concerning a proposed acquisition of Crowley by the Oakland Holding Company. Franco acquired the information by virtue of his position as Crowley's public relations consultant. The complaint further alleged that Franco rescinded the trade after Crowley and the American Stock Exchange learned of his purchase.

Without admitting or denying any of the substantive allegations of the complaint, Franco consented to a permanent injunction against future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

10. S.E.C. v. Robert A. Wahl, 86 Civ. 0568 (D. Neb. filed August 20, 1986)

The Commission's complaint alleged that Wahl, the former president and CEO of Valmont Industries, sold shares of Valmont stock while in possession of material nonpublic information relating to an upcoming negative earnings announcement and the consequent reduction in force of Valmont employees.

Without admitting or denying any of the substantive allegations of the complaint, Wahl consented to the issuance of a permanent injunction against future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Wahl also disgorged $25,250 in illegal profits and agreed to pay a civil fine under ITSA of $25,250.

11. S.E.C. v. Harvey Katz, Marcel Katz, Elie Mordo and Fred Aizen, 86 Civ. 8088 (S.D.N.Y. filed August 7, 1986)

In the Matter of Marcel Katz, Exchange Act Rel. No. 23520 (August 7, 1986)
In the Matter of Fred Aizen, Exchange Act Rel. No. 23519 (August 7, 1986)

The Commission's complaint alleged that Marcel Katz, a former employee of Lazard Freres & Co., disclosed to his father, Harvey Katz, a Houston, Texas businessman, material nonpublic information concerning General Electric's acquisition of RCA prior to the announcement, and also tipped off Mordo, his father-in-law, and Aizen, his stockbroker, both of whom purchased RCA stock.

Without admitting or denying the substantive allegations of the complaint, all four defendants consented to the issuance of permanent injunctions. In addition, Harvey Katz disgorged $1,035,425 in illegal profits and agreed to pay a civil fine under ITSA of $2,111,168. Mordo disgorged $1,087,532 in illegal profits, while Aizen disgorged $60,000 in illegal profits and agreed to pay a civil fine under ITSA of $20,000. Although Marcel Katz was not accused of buying any stocks directly, he was fined $173,981 under ITSA.

In related administrative proceedings, the Commission barred Katz and Aizen from association with any broker, dealer, investment adviser, investment company or municipal securities dealer, and gave Aizen the right to reapply after three years.

A significant aspect of this matter was the use for the first time of an agreement between Switzerland and the United States, called a Memorandum of Understanding, to obtain evidence in the investigation and freeze assets.

12. S.E.C. v. William Weksel and Albert Bromberg, 86 Civ. 6063 (CSH) (S.D.N.Y. filed August 6, 1986)

The Commission's complaint alleged that, among other things, Weksel and Bromberg, former directors and officers of Information Displays, Inc. ("IDI"), sold IDI stock while in possession of material nonpublic information. The material nonpublic information related to financial disclosure deficiencies and reporting problems that Weksel and Bromberg knew or should have known inflated IDI's reported earnings.

Without admitting or denying any of the substantive allegations of the complaint, Weksel and Bromberg consented to the issuance of permanent injunctions and disgorged $208,000 and $103,000 respectively.

13. S.E.C. v. Martin M. Lewis, Genevieve K. Lewis and Louis F. Roth, 86 Civ. 2116 (D.D.C. filed August 5, 1986)

Martin Lewis, a director of First National Supermarkets, Inc., disclosed through his wife Genevieve material nonpublic information to Roth, a long-time friend, concerning a leveraged buyout of First National. Roth, a Louisville, Kentucky certified public accountant, purchased 3,000 shares of stock for himself and 6,000 shares for the Lewis' children, and realized a total profit of $56,980.

Without admitting or denying any of the substantive allegations of the Commission's complaint, the Lewises and Roth consented to the issuance of permanent injunctions against future violations of Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder. In addition, the Lewises disgorged $39,498 in illegal profits and agreed to pay a fine under ITSA of $56,980. Roth disgorged $17,482 in illegal profits and agreed to pay a fine under ITSA of $56,980.

14. S.E.C. v. David J. Henderson and Edward R. Henderson, Civil Action No. 86-2002-N (D. Mass. filed July 7, 1986)

The Commission's complaint alleged that David Henderson, a certified public accountant formerly with the firm of Arthur Young & Co., disclosed to his brother Edward Henderson, a stock-broker, information concerning the tentative takeover of Posi-Seal International, Inc. by Fisher Controls International, Inc. Edward Henderson purchased 500 shares of Posi-Seal common stock on September 6, 1984 and, after his brother agreed to lend him $5,000, purchased 500 shares on September 11, 1984 and 3,000 shares on September 12, 1984. David Henderson learned of the impending acquisition in connection with his employment with Arthur Young & Co.

Without admitting or denying any of the substantive allegations of the Commission's complaint, the Henderson brothers agreed to be permanently enjoined from violating the antifraud provisions of the Exchange Act. In addition, both David and Edward Henderson disgorged $3,343.75 in trading profits and each payed a fine of $3,343.75 under the Insider Trading Sanctions Act. (See also, S.E.C. v. Morgan F. Moore, infra).

15. S.E.C. v. Richard J. Bastien, Civil Action No. 86-1774 (D.D.C. filed June 25, 1986)

Bastien, an executive with a Charter Co. unit, was charged with selling 5,000 shares of Charter Co. stock on April 11, 1984, while in possession of information that Charter Co.

faced a liquidity crisis resulting from the severe loss of trade credit from its crude oil suppliers. Charter Co. did not announce its liquidity problems until April 15, 1984 and filed for bankruptcy law protection on April 20, 1984.

Without admitting or denying any of the substantive allegations of the Commission's complaint, Bastien consented to the entry of a permanent injunction against future violations of the antifraud provisions of the Exchange Act. Bastien also agreed to disgorge $11,785, which represented his losses avoided.

16. S.E.C. v. John S. Newton, 86 Civ. 0553-A (N.D. Va. filed May 14, 1986)

The Commission's complaint alleged that Newton, a former director of Intercole, Inc., gave family and friends material nonpublic information concerning a proposed acquisition of Intercole. Certain members of Newton's family and two of his neighbors in Glen Ellyn, Illinois traded while in possession of this information, although neither the family members nor the neighbors were named as defendants in the Commission's suit.

Without admitting or denying the substantive allegations of the Commission's complaint, Newton consented to a permanent injunction and disgorged $22,175 in illegal profits. Newton also agreed to pay a civil penalty under ITSA of $22,175.

17. S.E.C. v. Dennis B. Levine, a/k/a Mr. Diamond, International Gold, Inc., Diamond Holdings, S.A. and Bernhard Meier, 86 Civ. 3726 (RO) (S.D.N.Y. filed May 12, 1986)
S.E.C. v. Robert M. Wilkis, Rupearl Ltd. and Middleside, Ltd., 86 Civ. 5182 (S.D.N.Y. filed July 1, 1986)
S.E.C. v. Ira B. Sokolow, 86 Civ. 5193 (S.D.N.Y. filed July 1, 1986)
S.E.C. v. David S. Brown, 86 Civ. 7774 (S.D.N.Y. filed October 9, 1986)
S.E.C. v. Ilan K. Reich, 86 Civ. 7775 (S.D.N.Y. filed October 9, 1986)
S.E.C. v. Randall D. Cecola, 86 Civ. 9735 (S.D.N.Y. filed December 22, 1986)
In the Matter of Robert M. Wilkis, Exchange Act Rel. No. 23385 (July 1, 1986)
In the Matter of Ira B. Sokolow, Exchange Act Rel. No. 23386 (July 1, 1986)
In the Matter of David S. Brown, Exchange Act Rel. No. 23698 (October 9, 1986)
In the Matter of Randall D. Cecola, Exchange Act Rel. No. 23919 (December 22, 1986)

The Commission's initial complaint alleged that Levine, a former managing director of Drexel Burnham Lambert, Inc., secretly purchased and sold securities of 54 companies over a period of five years through a Bahamian bank while in possession of material nonpublic information misappropriated from clients and others. Levine made over $12.6 million in illicit profits as a result of the scheme. The initial complaint also alleged that Meier, Levine's broker, copied some of Levine's trades and profited by $184,181, and that Levine also attempted to conceal the scheme.

After entering a temporary restraining order and issuing an order freezing assets on May 12, 1986, the United States District Court for the Southern District of New York entered a preliminary injunction against all four defendants on May 22, 1986. On June 5, 1986, Levine and the entities that he controlled consented to the issuance of permanent injunctions against future violations of Sections 10(b) and 14(e) of the Exchange Act and rules thereunder. Levine also agreed to disgorge $11.6 million in illegal profits.

On July 1, 1986, a final judgment of permanent injunction was entered against Meier by default, enjoining him from further violations of the antifraud provisions of the Exchange Act and ordering that he disgorge $184,181 in illegal profits and pay a fine on the post-ITSA trades of $288,627.

In related matters, the Commission filed complaints against Wilkis, Sokolow, Brown, Reich and Cecola alleging that they exchanged material nonpublic information with Levine. Wilkis, formerly an investment banker with Lazard Freres & Co., and later a first vice president in mergers and acquisitions at E.F. Hutton & Co., opened trading accounts at three Caribbean banks and traded while in possession of information he misappropriated from Lazard Freres or received from Levine. Wilkis traded in the securities of more than 50 companies and made approximately $3 million in profits. Sokolow, formerly a vice president in mergers and acquisitions at Shearson Lehman Brothers, Inc., leaked material nonpublic information about transactions involving Shearson Lehman clients to Levine. The complaint alleged that Sokolow received approximately $120,000 for the information. Cecola, a former analyst with Lazard Freres, shared nonpublic material information with Wilkis, and also traded while in possession of such information. Brown, a former investment banker at Goldman, Sachs & Co. was alleged to have disclosed material nonpublic information to Sokolow, who then transmitted the information to Levine. Sokolow paid Brown $30,000 for this information and Brown also traded on certain material nonpublic information provided by Sokolow. Reich, a former partner with the New York law firm of Wachtell, Lipton, Rosen & Katz, was alleged to have disclosed material nonpublic information obtained by virtue of his employment to Levine, who traded on this information and also passed along this information to Wilkis.

Without admitting or denying the substantive allegations of the complaints, Wilkis, Sokolow, Brown, Reich and Cecola consented to the issuance of permanent injunctions. In addition, Wilkis disgorged his illegal profits of approximately $3 million and was fined approximately $300,000 under ITSA. Sokolow disgorged the $120,000 payment and was fined approximately $90,000. Cecola disgorged his illegal profits of approximately $21,800. Brown disgorged assets worth approximately $145,790 and Reich paid a civil fine under ITSA of assets worth approximately $485,000.

In related administrative proceedings, the Commission barred Levine, Wilkis, Sokolow, Cecola and Brown from association with any broker, dealer, investment adviser, investment company or municipal securities dealer. (See discussion of related criminal proceeding, infra).

18. S.E.C. v. The First Boston Corporation, 86 Civ. 3524 (PNL)(S.D.N.Y. filed May 5, 1986)

The Commission's complaint alleged that The First Boston Corporation ("First Boston"), a registered broker-dealer, traded common stock and options of its client, the CIGNA Corporation, while in possession of material nonpublic information provided by CIGNA concerning a forthcoming announcement of a $1.2 billion write-off. First Boston's corporate finance department received the information in its role as financial adviser to CIGNA, and passed the information to First Boston's equity trading department.

Without admitting or denying the substantive allegations of the complaint, First Boston consented to the entry of a permanent injunction and also agreed to disgorge illegal profits of $132,138. First Boston was also fined $264,276 under the Insider Trading Sanctions Act and agreed to review, and modify if appropriate, the firm's "Chinese wall" procedures.

19. S.E.C. v. Ronald R. Walker, et al., 86 Civ. 0523-W-6 (W.D. Mo. filed April 22, 1986)

The Commission's complaint alleged, among other things, that Walker, the president of the Midwestern Companies, and Tierney, the general counsel, sold shares of Midwestern stock while in possession of material nonpublic information concerning the deteriorating financial condition of Midwestern.

Without admitting or denying the substantive allegations of the Commission's complaint, Walker and Tierney consented to the issuance of permanent injunctions. In addition, Tierney disgorged $165,000 in losses avoided.

20. S.E.C. v. Carlyle W. Higgins, John B. Vaughan, T. George Vaughan, John Colin Campbell and John W. Parsons, 86 Civ. 8204 (S.D. Fla. filed April 14, 1986)

The Commission's complaint alleged that Higgins, a former director of Northwestern Financial Corporation ("NWFC"), passed along material nonpublic information concerning NWFC's proposed merger with First Union Corp., a regional bank holding company based in Charlotte, North Carolina, to the other four defendants, who purchased a total of 13,000 shares of NWFC stock prior to the announcement.

Without admitting or denying the substantive allegations of the Commission's complaint, the five defendants consented to the issuance of permanent injunctions against future violations of the antifraud provisions of the Exchange Act. In addition, Higgins, who did not trade, agreed to pay a civil penalty of $45,000 under the Insider Trading Sanctions Act, John B. Vaughan disgorged illegal profits of $92,884 and agreed to pay a civil penalty of $80,769, T. George Vaughan and Parsons each disgorged illegal profits of $8,846 and agreed to pay a civil penalty of $7,692, and Campbell disgorged illegal profits of $4,423 and agreed to pay a civil penalty of $3,846.

21. S.E.C. v. Jack R. Morris, Jack R. Morris & Associates and William A. Prior, Civ. Action No. 86-201-R (M.D.N.C. filed March 10, 1986)

The Commission's complaint alleged that from March 1983 through April 1984, Morris, Jack R. Morris & Associates and Prior purchased common stock of First Colony Savings & Loan Association, Inc. while in possession of material nonpublic information about the current financial condition of First Colony and about a tender offer to be made for First Colony. Morris was a former director of First Colony and its largest shareholder.

On March 26, 1986, Morris and Jack R. Morris & Associates, without admitting or denying the substantive allegations of the Commission's complaint, consented to the issuance of a permanent injunction against future violations of Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder. Morris and Jack R. Morris & Associates also disgorged illegal profits of $3,069 and $18,608.70 respectively. The case against Prior was dismissed.

22. S.E.C. v. Morgan F. Moore, Civil Action No. N-86-88-PCD (D. Conn. filed March 3, 1986)

Moore, a psychiatrist from New Canaan, Connecticut, purchased shares of Posi-Seal International, Inc. stock before the public announcement of its acquisition by a unit of Monsanto Co. Moore learned of the proposed merger in August 1984 while treating the spouse of a Posi-Seal official. Moore purchased 9,000 shares of Posi-Seal stock between September 4, 1984 and September 13, 1984 and made $26,933.74 in illegal profits.

Without admitting or denying any of the allegations of the Commission's complaint, Moore consented to the issuance of a permanent injunction against future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Moore also disgorged his illegal profits of $26,933.74 and payed a civil fine under the Insider Trading Sanctions Act of $26,933.74.

23. S.E.C. v. Charles Offer, 86 Civ. 0584 (D.D.C. filed February 14, 1986)
S.E.C. v. John J. Borer, Jr., 86 Civ. 1204 (C.D. Cal. filed February 25, 1986)
S.E.C. v. Frank M. Rummonds, 86 Civ. 0337 (E.D. Cal. filed March 24, 1986)

Offer, a former director and president of Financial Corporation of America ("FCA"), was accused by the Commission of insider trading in First Charter Financial Corp. ("First Charter") stock in 1982 and FCA stock in 1985. The Commission's complaint alleged that Offer bought 1,000 shares of First Charter common stock on December 15, 1982 while in possession of material nonpublic information regarding FCA's plans to acquire First Charter. Offer tendered his First Charter stock to FCA on August 11, 1983, earning $3,625 on the transaction.

The complaint also alleged that Offer sold, between February 27 and March 1, 1985, 29,000 shares of FCA common stock while in possession of material nonpublic information concerning the announcement of FCA's projected loss in 1984. Offer canceled the stock sale after the general counsel of FCA questioned the propriety of the transaction.

Without admitting or denying the substantive allegations of the complaint, Offer consented to the issuance of a permanent injunction against future violations of the antifraud provisions of the securities laws. Offer further disgorged $3,625 in profits from the First Charter transaction, but did not disgorge with respect to the FCA trading due to the fact that Offer canceled his sale of FCA stock prior to receipt of the proceeds from the sale.

In related matters, Borer, a former director of the principal operating subsidiary of FCA, was accused of selling 39,795 shares of FCA common stock while in possession of material nonpublic information concerning the announcement of FCA's projected loss in 1984. Borer avoided $57,535.18 in losses as a result of the sales.

Without admitting or denying the substantive allegations of the complaint, Borer consented to the entry of a permanent injunction against future violations of the antifraud provisions of the securities laws. Borer also disgorged $57,535.18 in losses avoided and payed a fine under the Insider Trading Sanctions Act of $57,535.18.

Rummonds, a former senior vice-president and treasurer of the principal operating subsidiary of FCA, sold 6,750 shares of FCA stock between February 11, 1985 through February 20, 1985 while in possession of material nonpublic information concerning the announcement of FCA's projected loss in 1984. As a result of the sales of FCA stock, Rummonds avoided losses of $20,066.72.

Without admitting or denying any of the substantive allegations of the Commission's complaint, Rummonds consented to the issuance of a permanent injunction against future violations of the antifraud provisions of the securities laws. In addition, Rummonds was ordered to disgorge $20,066.72 in losses avoided and was fined $20,066.72 under the Insider Trading Sanctions Act.

24. S.E.C. v. Joseph G. Cremonese, 86 Civ. 553 (TPG)(S.D.N.Y. filed January 17, 1986)

The Commission's complaint alleged that Cremonese, a former officer of a subsidiary of Allied Corporation, was assigned to study the possibility of acquiring Instrumentation Laboratory, Inc. Between January 4, 1983 and January 28, 1983, Cremonese purchased 1,000 shares of Instrumentation Laboratory, Inc. stock in seven transactions. After Allied's public announcement of its tender offer for Instrumentation Laboratory on January 29, 1983, Cremonese sold his shares at a profit of $11,886.

Without admitting or denying any of the substantive allegations of the complaint, Cremonese consented to the issuance of a permanent injunction against future violations of the antifraud provisions of the Exchange Act and disgorged $11,861 in illegal profits and interest.

25. S.E.C. v. Ronald Hengen, Jack Erlanger, Howard Harlow, Samuel Rubenstein and Andrew Rosen, 86 Civ. 306 (MP)(S.D.N.Y. filed January 9, 1986)

The Commission's complaint alleged, among other charges, that between September 6 and October 5, 1983, Hengen, in the course of performing public relations services for Puritan Fashions Corp., learned that Puritan's publicly issued financial and marketing forecasts for 1983 were overly optimistic, and tipped this information to Erlanger, a registered representative, who then tipped Harlow, another registered representative. Harlow then sold or caused to be sold approximately $2,082,845 worth of Puritan stock. Rubenstein, the former chief financial officer of Puritan, caused the Puritan Pension Trust Fund to sell its holdings of Puritan stock, avoiding a loss of approximately $177,000.

Without admitting or denying the substantive allegations of the Commission's complaint, Erlanger consented to the issuance of a permanent injunction against future violations of the antifraud provisions of the securities laws. Erlanger also agreed to pay $50,000, representing not only his personal profits but also a portion of customers' avoided losses.

In addition, Harlow and Rubenstein, without admitting or denying the substantive allegations of the complaint, consented to the issuance of permanent injunctions and disgorged their profits and losses avoided. The case against Hengen was dismissed at the Commission's request.

26. S.E.C. v. Ronald V. Aprahamian, James M. Hildreth, David S. Nellen and Stephen F. Saine, 85 Civ. 3996 (D.D.C. filed December 19, 1985)

Aprahamian, chairman of the board and chief executive officer of Compucare, Inc., improperly communicated information concerning a proposed acquisition of Compucare by Baxter Travenol Laboratories, Inc. to Hildreth, Nellen and Saine, three of his friends. Hildreth, Nellen and Saine all purchased Compucare common stock within the week prior to the public announcement of the acquisition of Compucare by Baxter.

Without admitting or denying the substantive allegations of the complaint, the four defendants consented to an injunction barring them from future violations of the antifraud provisions of the securities laws. In addition, Aprahamian, who did not trade, agreed to pay a civil fine under the Insider Trading Sanctions Act of $33,000. Nellen disgorged trading profits of $13,889, Hildreth disgorged trading profits of $4,875 and Saine

disgorged trading profits of $5,462. In addition, each of the three defendants who traded agreed to pay a civil fine under the Insider Trading Sanctions Act equal to the sum of his profits.

27. S.E.C. v. Dwight C. Moorhead, 85 Civ. 2007 (D. Colo. filed December 2, 1985)

The Commission's complaint alleged that Moorhead, co-founder and former vice-chairman of the board of Petro-Lewis Corp., sold more than 41,000 shares of the company's stock between December 1983 and January 1984, just weeks before Petro-Lewis disclosed financial troubles. Moorhead sold the stock between $11.25 and $12 per share. After the company disclosed its financial troubles, the stock price dropped to $5.25 per share.

Without admitting or denying the substantive allegations of the Commission's complaint, Moorhead consented to the issuance of a permanent injunction against future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Under the settlement, Moorhead didn't disgorge any potential savings from the sales because his liabilities exceeded his assets by almost $800,000.

28. S.E.C. v. Malcolm Widenor, Walter Lipkin, Arthur Freilich, Eduardo Delgado, Emera Bailey, Bruce Berk and John Berk, 85 Civ. 3145 (D.D.C. filed October 3, 1985)

The Commission's complaint alleged that Widenor and Lipkin, executives with North Atlantic Industries, Inc. ("North Atlantic") tipped off relatives concerning the award to North Atlantic of a material contract with the Navy. The relatives then purchased North Atlantic stock prior to the public announcement. In addition, the complaint alleged that Freilich and Delgado, who were also executives with North Atlantic, traded while in possession of this material nonpublic information.

Without admitting or denying any of the allegations of the complaint, the seven defendants consented to the issuance of permanent injunctions against future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Also, the five defendants who traded (Freilich, Delgado, Bailey, B. Berk and J. Berk), agreed to disgorge their illegal profits of approximately $29,000 plus interest.

29. S.E.C. v. Earl W. Brauninger and Paul J. Williams, C85-2626Y (N.D. Ohio filed September 12, 1985)

The Commission's complaint alleged that Brauninger, the president of Union National Bank of Youngstown, Ohio, purchased through nominees 3,240 shares of Union Bank stock while in possession of material nonpublic information concerning a proposed merger between Union and Banc One Corporation, a multi-bank holding company. The complaint further alleged that Brauninger disclosed the information concerning the impending merger to Williams, a registered representative, who acted as a nominee for one of Brauninger's accounts and also purchased 300 shares for his own benefit.

Without admitting or denying the substantive allegations of the Commission's complaint, Brauninger and Williams consented to the issuance of permanent injunctions against future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. In addition, Brauninger was ordered to disgorge $81,000 and Williams was ordered to disgorge $7,500 in illegal profits. Brauninger was further ordered to pay $15,750 for the services of a special master to distribute the funds to the appropriate persons.

30. S.E.C. v. John M. Nugent, Jr. and Thomas A. Peacock, 85 Civ. 2783 (D.D.C. filed August 2, 1985)

The Commission's complaint alleged that Nugent, an employee of a public relations firm hired by Santa Fe International Corp. in connection with its pending acquisition by the Kuwait Petroleum Company, provided Peacock, a business associate and friend, with this material nonpublic information. Peacock then purchased $2,500 worth of call options for the common stock of Santa Fe and sold them shortly after the public announcement of the acqusition on October 5, 1981 for approximately $250,000.

Simultaneously with the filing of the complaint, Nugent and Peacock, without admitting or denying any of the allegations contained in the complaint, consented to the entry of permanent injunctions against future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. In addition, Peacock was ordered to disgorge his illegal profits of approximately $247,000.

Both Nugent and Peacock had previously pled guilty to related criminal charges in 1983. Nugent was fined $10,000 and ordered to perform 300 hours of community service, and Peacock was sentenced to two years probation, fined $5,000 and ordered to perform 200 hours of community service.

31. S.E.C. v. Nathaniel L. Orme, 85 Civ. 1993 (D.D.C. filed June 20, 1985)

Orme, the great grandson of the founder of Woodward & Lothrop, Inc., a department store chain, purchased 2,000 shares of Woodward & Lothrop stock while in possession of material nonpublic information concerning the proposed acquisition of Woodward & Lothrop by the Taubman Company. The Commission's complaint alleged that Orme obtained this information from his mother, who at the time was the largest shareholder of Woodward & Lothrop stock.

Without admitting or denying the substantive allegations of the Commission's complaint, Orme consented to the issuance of a permanent injunction against future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. In addition, Orme was ordered to disgorge $24,125, representing the difference between the purchase price and the quoted asked price of the stock during the week following the announcement, plus interest.

32. S.E.C. v. Maryann Sarzynski, Charles Sarzynski, Ralph Anderson, James Crocicchia, Gary Frost, Donald Grady, Paul Smith and Anthony Dicerto, 85 Civ. 3864 (S.D.N.Y. filed May 22, 1985)

The Commission's complaint alleged that the defendants violated the antifraud provisions of the Exchange Act by effecting transactions in common stock and options for common stock of certain publicly traded companies while in possession of material nonpublic information concerning the forthcoming recommendations in publications of Value Line, Inc., an investment adviser registered with the Commission. The complaint alleged that during the period from at least October 1982 through December 1983, the defendants traded in the securities of 56 issuers, resulting in net profits of $157,243.75.

Simultaneously with the filing of the complaint, the defendants, without admitting or denying the allegations of the complaint, consented to the entry of Final Judgments restraining and enjoining them from violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. As part of the Final Judgments, the defendants also disgorged their illegal profits.

33. S.E.C. v. Joseph Gaffney, James Moran and Guy Speciale, Civil Action No. 85-2967 (S.D.N.Y. filed April 18, 1985)

The Commission's complaint, filed on April 18, 1985, accused defendants Moran and Speciale of trading in the securities of Louisville Cement Company while in possession of material

nonpublic information relating to merger discussions between Louisville Cement and Coplay Cement Company. The complaint alleged that Moran and Speciale obtained the information from a friend, defendant Gaffney, who was an officer of Coplay Cement. As a result of the trading, Moran and Speciale profited by $57,253.87 and $81,510.81 respectively.

The defendants, without admitting or denying the allegations in the Complaint, consented to the entry of Final Judgments restraining and enjoining them from violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. In addition, defendants Moran and Speciale were ordered to disgorge profits of $57,253.87 and $81,510.81, respectively, and to pay penalties under the Insider Trading Sanctions Act of 1984 in the amount of $35,000 and $38,755.30, respectively. Even though defendant Gaffney did not purchase the securities of Louisville Cement, he was ordered to pay a civil penalty of $15,000 under the Insider Trading Sanctions Act of 1984.

34. S.E.C. v. William D. Stuart, Jr., Odom Sherman, Jr. and William D. Stuart, Sr., CA3-85-0117G (N.D. Tex. filed January 17, 1985)

The Commission's complaint, filed on January 17, 1985, alleged that defendant Sherman, an employee of Texas Instruments, breached his fiduciary duty to his employer by misappropriating material nonpublic information concerning a large loss resulting from a change in Texas Instrument's home computer business, and disclosing this information to defendant Stuart, Sr., his brother-in-law and a registered representative with a brokerage firm, and defendant Stuart, Jr. The complaint further alleged that defendants Stuart, Sr. and Stuart, Jr., while in possession of this material nonpublic information, then purchased options contracts for the sale of Texas Instruments common stock. The defendants then sold their options contracts after the news became public.

The defendants, without admitting or denying the allegations contained in the complaint, consented to the entry of Final Judgments enjoining them from violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. As part of the Final Judgments, Stuart, Jr. and Stuart, Sr. were ordered to disgorge their illegal profits of $53,198 and $19,697, respectively. Additionally, in a related administrative matter, the Commission suspended Stuart, Sr. for a period of thirty days from association with any broker, dealer, investment adviser, investment company or municipal securities dealer.

35. S.E.C. v. Kenneth D. Morgan, 84 Civ. 8895 (S.D.N.Y. filed December 12, 1984).

Morgan, a former vice-president of a McGraw-Hill, Inc. subsidiary, was accused of buying Monchik-Weber Corporation stock while in possession of material nonpublic information concerning McGraw-Hill's planned acquisition of Monchik-Weber. The Commission's complaint alleged that Morgan violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by obtaining information concerning the McGraw-Hill acquisition of Monchik-Weber prior to its public disclosure and purchasing 9,000 shares of Monchik-Weber stock based on this information.

Morgan rescinded his purchase of Monchik-Weber stock prior to the settlement date of the purchase and thus did not realize any profits on the transaction. Morgan consented to the issuance of a permanent injunction against future violations of Section 10(b) and Rule 10b-5.

36. S.E.C. v. James D. Huff, 84 Civ. 3709 (D.D.C. filed December 6, 1984)

The Commission's complaint accused Huff, an executive with Applied Data Research Inc., with trading Applied Data stock while in possession of material nonpublic information concerning corporate developments of Applied Data. The complaint alleged that Huff sold Applied Data stock on July 13, 1983 prior to a negative earnings announcement and then purchased Applied Data stock in early October, 1983 prior to an announcement of two major army contracts.

Simultaneously with the filing of the complaint, Huff consented, without admitting or denying any of the Commission's allegations, to a permanent injunction barring him from future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Huff also agreed to disgorge illegally obtained profits of approximately $25,000.

37. S.E.C. v. Federico Ablan and Cesar K. Duque, et al., 84 Civ. 8532 (LBS) (S.D.N.Y. filed November 28, 1984)

In the first case seeking a civil money penalty under the Insider Trading Sanctions Act of 1984, the Commission accused Ablan, Duque and two companies controlled by Ablan of violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by purchasing Monchik-Weber Corporation stock while in possession of material nonpublic information about McGraw-Hill, Inc.'s plan to acquire Monchik-Weber. The Commission alleged that

Ablan and Duque received this material non-public information in their capacities as agents and advisers to a director of Monchik-Weber.

Shortly after the complaint was filed, the court issued a temporary restraining order and froze the defendants' assets. On July 23, 1985, all defendants consented to the issuance of permanent injunctions. In addition, Ablan was ordered to disgorge $138,889, the alleged illegal profits from the defendants' transactions, and to pay a civil penalty of $69,737, which represented the amount of the illegal profits made from the trades effected after the enactment of the Insider Trading Sanctions Act.

38. S.E.C. v. Laurence M. Gibney, 84 Civ. 829 (D. Ore. filed August 7, 1984)

The Commission's complaint accused Gibney, president of the Oregon brokerage firm of Omega Northwest, Inc., of violating various provisions of the securities laws including Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Among other things, the complaint alleges that Gibney sold shares of Commodore Resources Corp.("Commodore") stock from his personal and other accounts while in possession of material nonpublic information concerning Commodore's financial problems, which he obtained from Commodore's president.

On December 10, 1984, Gibney consented, without admitting or denying any of the Commission's allegations, to the issuance of a permanent injunction against future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and disgorged $4,675.

39. S.E.C. v. Martin E. Stein, Sr., CA No. 84-730-CIV-J-12 (M.D. Fla. filed August 3, 1984)

The Commission's complaint alleged that Stein violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with his purchases of stock in the Florida Companies while in the possession of material nonpublic information. The complaint alleged that Stein, a member of the board of directors and of the executive committee of a bank that authorized a loan involving The Florida Companies, misappropriated this information for his personal benefit by purchasing stock while in possession of this information.

Without admitting or denying the allegations of the complaint, Stein consented to the issuance of a permanent injunction and agreed to disgorge his illegal profits of $191,379.

40. S.E.C. v. David Spiker, William Peterson and Norm Brock, 84-429-RJM (W.D. Wa. filed June 18, 1984) In the Matter of William E. Peterson and David Spiker, Exchange Act Rel. No. 21113 (July 2, 1984)

Spiker and Peterson, brokers with the Spokane, Washington firm of Dillon Securities, and Brock, an officer, director and outside counsel of Fourth of July Silver, Inc. ("Fourth"), were alleged to have violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by trading while in the possession of material nonpublic information. The Commission's complaint alleged that the defendants breached certain fiduciary duties by misappropriating information and trading on such information concerning the exchange of Fourth's stock for real estate.

On June 19, 1984, the defendants consented to the issuance of permanent injunctions. Further, the defendants agreed to disgorge $96,400 in illegally obtained profits.

In a related administrative matter, defendants Spiker and Peterson were suspended from associating with any broker or dealer for a period of four months.

41. S.E.C. v. Thomas F. Brett, Sr., 84 Civ. 1539 (E.D.Pa. filed March 30, 1984)

The Commission's complaint alleged that Brett purchased shares of stock while in possession of material nonpublic information concerning merger negotiations. It was alleged that Brett received the information from his son, who was an attorney involved in the merger negotiations.

The complaint alleged that Brett violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder using a misappropriation theory analysis. Brett consented to the entry of a permanent injunction without admitting or denying any of the allegations. The court also ordered Brett to disgorge all profits received.

42. S.E.C. v. E. Jacques Courtois, Jr., 84 Civ. 0593 (CSH) (S.D.N.Y. filed January 26, 1984)

Courtois, a Canadian national, was formerly a vice-president in the Mergers and Acquisitions department of the investment banking firm of Morgan Stanley & Co. The Commission's complaint charged Courtois with violations of Section 10(b) and Rule 10b-5, alleging that Courtois misappropriated material nonpublic information about impending corporate takeovers. Courtois then disclosed this information to others who traded on the information. This case evolved from an investigation of a scheme involving other Morgan Stanley employees that resulted in previous actions, including U.S. v. Newman, infra.

On February 6, 1984, Courtois consented, without admitting or denying any of the allegations in the complaint, to the issuance of a permanent injunction. As part of his plea agreement in a related criminal proceeding (see discussion of criminal case, infra), Courtois agreed to disgorge $150,000 into a fund to provide partial recompense to defrauded investors.

43. S.E.C. v. Karanzalis, et al., 84 Civ. 2070 (CLB) (S.D.N.Y. 1984)

The Commission's complaint alleged that the defendants violated Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder by engaging in a scheme to misappropriate material nonpublic information from the New York law firm of Skadden, Arps, Slate, Meagher and Flom concerning proposed tender offers and business combinations. The defendants, some of whom were employees of the firm, traded securities while in possession of the misappropriated information.

All seven defendants consented to the issuance of permanent injunctions against future violations of Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder and agreed to disgorge all illegal profits.

C. Pending Commission Actions

1. S.E.C. v. Samuel Aksler, et al., 86 Civ. 9811(RO) (S.D.N.Y. filed December 23, 1986)

The Commission's complaint alleged that Aksler, a former librarian with the New York law firm of Skadden, Arps, Slate, Meagher & Flom, misappropriated material nonpublic information about transactions involving the firm's clients and transmitted it to eight of his relatives. Between August 1982 and July 1984, Aksler leaked information to his relatives concerning seven tender offers, a contemplated takeover bid and another corporate transaction. Although Aksler did not trade himself, the complaint alleged that his relatives profited by more than $414,000. The case is currently pending.

2. S.E.C. v. Roger A. Saevig, et al., 86 Civ. 1498 (C.D. Cal. filed March 10, 1986)

The Commission's complaint alleged that Saevig, a former director of Heritage Bancorp of Anaheim, California, sold Heritage stock prior to full details concerning the bank's deteriorating financial condition became public, and avoided losses of $23,575. The insider trading allegation was in addition to other allegations in the complaint against five former officials of Heritage, including Saevig, for manipulation of Heritage's stock. The action against Saevig is currently pending.

3. S.E.C. v. Peter N. Brant, R. Foster Winans, Kenneth P. Felis, David W.C. Clark and David J. Carpenter, 84 Civ. 3470 (CBM)(S.D.N.Y. filed May 17, 1984).
In the Matter of Peter N. Brant, Exchange Act Rel. No. 21136 (July 12, 1984)
In the Matter of Kenneth P. Felis, Exchange Act Rel. No. 22289 (Aug. 5, 1985)

The Commission's complaint alleged that Brant, a former broker with Kidder, Peabody & Co., and four others, including former Wall Street Journal reporter R. Foster Winans, violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by trading while in the possession of material nonpublic information. The information was the date of publication and content of articles to be published by the Wall Street Journal, primarily in the Journal's "Heard on the Street" column.

The Commission's complaint further alleged that Winans misappropriated information and breached his duty to the Wall Street Journal and its parent company Dow Jones & Co. by engaging in a scheme whereby he disclosed the contents and publication dates of articles to appear in the Wall Street Journal to Brant. In addition, the complaint also alleged that this conduct caused Winans to breach his duty owed to the readers of the Wall Street Journal. As a result of the scheme, the defendants profited by over $900,000.

On May 18, 1984, a temporary restraining order was entered against all five defendants as well as an asset freeze against three of the defendants. On June 11, 1984, Brant and defendant Kenneth Felis, a former Kidder, Peabody broker, consented to the issuance of preliminary injunctions. On July 12, 1984, Brant, without admitting or denying any of the Commission's allegations, consented to the issuance of a permanent injunction and disgorged $454,437.19, which represented his share of the trading profits. In a related administrative matter, the Commission, also on July 12, 1984, permanently barred Brant from association with any broker, dealer, investment adviser or investment company.

On August 5, 1985, Felis, without admitting or denying any of the Commission's allegations, consented to the issuance of a permanent injunction and disgorged $159,813.93, which represented his share of the trading profits. Also on August 5, 1985, the Commission permanently barred Felis from association with any broker, dealer, investment adviser or investment company.

Winans and Carpenter, without admitting or denying any of the allegations of the complaint, consented to the issuance of permanent injunctions on October 22, 1985. Winans also was ordered to disgorge $4,502.84, which represented the profits from trading in a joint account that Winans maintained with Carpenter. The case against David W.C. Clark, the remaining defendant, is pending. (See discussion of criminal case, infra.)

4. S.E.C. v. W. Paul Thayer, et al., CA-3-84-0471-R (N.D. Tex. 1984). In the Matter of Billy Bob Harris, Exchange Act Rel. No. 23243 (May 29, 1986)

The Commission filed a complaint against Thayer, former deputy secretary of the Department of Defense and former chairman of the LTV Corporation, and eight others alleging violations of Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder based on trading of securities while in possession of material nonpublic information. The complaint alleged that Thayer improperly disclosed information to certain of the other defendants relating to proposed takeovers and other material corporate events. The complaint also sought disgorgement from the defendants of their illegal profits of approximately $1,900,000.

On May 7, 1985, defendants Thayer, Billy Bob Harris and Gayle L. Schroder consented to the entry of permanent injunctions against future violations of the antifraud provisions of the Exchange Act, without admitting or denying any of the allegations of the complaint. In addition, Thayer, Harris and Schroder were ordered to disgorge $555,000, $275,000 and $176,383 respectively. On that same day, the Commission sought dismissals against defendants Sandra K. Ryno, Dr. Doyle L. Sharp, Juli Williams and Julia D. Rooker. The case against remaining defendants William H. Mathis and Malcolm B. Davis is pending. (See discussion of criminal case, infra.)

In a related administrative proceeding, the Commission barred Harris from acting as, or being associated with, any broker, dealer, investment adviser, investment company or municipal securities dealer.

D. The following cases are those not described above which were brought in the Commission's fiscal years 1982 and 1983.

1. In the Matter of Frank Joseph Bauer, Exchange Act Rel. No. 20099 (August 18, 1983).

2. S.E.C. v. Carmichael, et al., Civil Action No. 83-5958 (S.D.N.Y. filed August 16, 1983).

3. S.E.C. v. Clements, et al., Civil Action No. 82-3604 (D.D.C. filed December 20, 1982).

4. S.E.C. v. James DeYoung, Civil Action No. 83-2234 (D.D.C. filed August 4, 1983).

5. S.E.C. v. G. Heileman Brewing Company, Civil Action No. 83-834 (E.D. Wis. filed June 29, 1983).

6. S.E.C. v. Griffith, et al., Civil Action No. 83-1316A (N.D. Ga. filed June 23, 1983).

7. S.E.C. v. Dennis Dale Groth, Civil Action No. 83-4534 (N.D. Ca. filed September 26, 1983).

8. S.E.C. v. Joseph E. Hall, Civil Action No. 83-6904 (S.D.N.Y. filed September 21, 1983).

9. S.E.C. v. Robert E. Johnson, Civil Action No. 3-83-0257G (N.D. Tex. filed February 11, 1983).

10. S.E.C. v. Kapachunes, et al., Civil Action No. 83-5368 (S.D.N.Y. filed July 21, 1983).

11. S.E.C. v. Raymond Edward Kassar, Civil Action No. 83-20267 (N.D. Ca. filed September 26, 1983).

12. S.E.C. v. James D. Lewis, Civil Action No. 2-83-228 (E.D. Tenn. filed August 11, 1983).

13. S.E.C. v. Madan, et al., Civil Action No. 83-5053 (S.D.N.Y. filed July 7, 1983).

14. S.E.C. v. John C. Maurer, Civil Action No. 83-2412 (D.D.C. filed August 18, 1983).

15. S.E.C. v. Sam B. Montgomery, Civil Action No. 82-6728 (S.D.N.Y. filed October 12, 1982).

16. S.E.C. v. Peter Muth, Civil Action No. 82-7317 (S.D.N.Y. filed November 4, 1982).

17. S.E.C. v. Olzman, et al., Civil Action No. 83-2489 (D.D.C. filed August 24, 1983).

18. S.E.C. v. Pierre J. Petrou, Civil Action No. 82-3413 (D.D.C. filed December 2, 1982).

19. S.E.C. v. Smith, et al., Civil Action No. 83-733 (D.C. Mass. filed March 18, 1983).

20. In the Matter of Everett J. Wadler, Exchange Act Release No. 20109 (August 24, 1983).

21. S.E.C. v. Wattenbarger, et al., Civil Action No. 83-2867 (D.D.C. filed September 29, 1983).

22. S.E.C. v. Andes, et al., Civil Action No. 82-1659 (E.D. Pa. filed April 14, 1982).

23. S.E.C. v. Baranowicz, et al., Civil Action No. 82-3082 (C.D. Cal. filed June 21, 1982).

24. S.E.C. v. Aaron M. Binder, Civil Action No. 81-5209 (C.D. Cal. filed October 8, 1981).

25. S.E.C. v. Certain Unknown Purchasers, Civil Action No. 81-6553 (S.D.N.Y. filed October 26, 1981).

26. S.E.C. v. Christoph Securities Inc., et al., Civil Action No. 82-2216 (N.D. Ill. filed April 12, 1982).

27. S.E.C. v. Cooper, et al., Civil Action No. 82-3462 (C.D. Cal. filed July 15, 1982).

28. S.E.C. v. Guy O. Dove, III, Civil Action No. 82-1522 (D.D.C. filed June 3, 1982).

29. S.E.C. v. Fabregas, et al., Civil Action No. 82-3440 (C.D. Cal. filed July 14, 1982).

30. S.E.C. v. Feole, et al., Civil Action No. 82-5018 (C.D. Cal. filed September 28, 1982).

31. S.E.C. v. Martin, et al., Civil Action No. 82-381 (W.D. Wa. filed April 7, 1982).

32. S.E.C. v. Randolph, et al., Civil Action No. 82-5343 (N.D. Cal. filed September 30, 1982).

33. S.E.C. v. Reed, et al., Civil Action No. 81-7984 (S.D.N.Y. filed December 23, 1981).

34. S.E.C. v. Rubinstein, et al., Civil Action No. 82-4043 (S.D.N.Y. filed June 21, 1982).

35. S.E.C. v. Mark C. Saunders, Civil Action No. 82-0354 (E.D. Va. filed April 19, 1982).

36. S.E.C. v. Thomas W. Schafer, Civil Action No. 81-6225 (S.D.N.Y. filed November 25, 1981).

37. S.E.C. v. Schwartz, et al., Civil Action No. 82-0457 (N.D. Cal. filed January 25, 1982).

38. Sharon Steel Corporation (Investigative Report Pursuant to Section 21(a) of the Exchange Act), Exchange Act Release No. 18271 (November 19, 1981).

39. S.E.C. v. Voigt, et al., Civil Action No. 82-344 (S.D. Ind. filed March 12, 1982).

40. In the Matter of Wulff Hansen & Co., et al., Exchange Release No. 19080 (September 27, 1982).

E. Recent Criminal Prosecutions

1. U.S. v. Michael M. David, Andrew D. Solomon, Robert Salsbury, Morton Shapiro and Daniel J. Silverman, 86 Cr. 454(GLG)(S.D.N.Y. 1986)

David, formerly an associate with the New York law firm of Paul, Weiss, Rifkind, Wharton & Garrison, was charged with stealing material nonpublic information from his firm concerning upcoming takeovers, and then passing the information to the other defendants. Solomon was formerly an arbitrage analyst at Marcus Schloss & Company, while Salsbury was formerly an arbitrage analyst at Drexel Burnham Lambert, Inc. Shapiro was formerly a stockbroker at Moseley, Hallgarten, Estabrook & Weeden, Inc. and Silverman was his client who had a trading account in which he, Shapiro and David shared the profits.

On June 5, 1986, Salsbury, Solomon, Shapiro and Silverman pled guilty. Salsbury, who pled guilty to conspiracy to commit mail fraud and of obstruction of justice, was sentenced to three years probation and community service. Solomon, who pled guilty to conspiracy to commit securities fraud, was sentenced to one year probation, fined $10,000 and ordered to perform 250 hours of community service. Shapiro, who pled guilty to conspiracy to commit mail fraud and of perjury, and Silverman, who pled guilty to conspiracy to commit securities fraud, are awaiting sentencing. David pled guilty on November 26, 1986 to one count each of conspiracy to commit securities fraud, mail fraud, securities fraud and obstruction of justice. David, who faces a maximum penalty of up to 20 years in jail and a $1 million fine, is awaiting sentencing. (See related civil action, infra.)

2. U.S. v. Dennis B. Levine, 86 Cr. 519(GLG) (S.D.N.Y. 1986)
U.S. v. David S. Brown, 86 Cr. 761 (JFK) (S.D.N.Y. 1986)
U.S. v. Ira B. Sokolow, 86 Cr. 762 (JFK) (S.D.N.Y. 1986)
U.S. v. Robert M. Wilkis, 86 Cr. 1112 (S.D.N.Y. 1986)
U.S. v. Randall D. Cecola, 86 Cr. 1113 (S.D.N.Y. 1986)
U.S. v. Ilan Reich, 86 Cr. 863 (S.D.N.Y. 1986)

On May 13, 1986, Levine, a former managing director of Drexel Burnham Lambert, Inc., was arrested and charged with obstructing justice. The charge stemmed from Levine's attempt to block a Securities and Exchange Commission investigation concerning Levine's trading of securities while in possession of material nonpublic information. The government alleged that Levine ordered the destruction of certain trading records and told certain people associated with a Bahamian bank through which Levine traded to lie about his activities.

On June 5, 1986, Levine pled guilty to one count of securities fraud, two counts of income tax evasion and one count of perjury. The counts together carry maximum penalties of 20 years imprisonment and $610,000 in fines.

In related matters, Sokolow, a former vice president at Shearson Lehman Brothers, Inc., and Brown, a lawyer and former employee of Goldman, Sachs & Co., each pled guilty to one count of tax evasion and Brown also pled guilty to one count of mail fraud. Both admitted to passing material nonpublic information to Levine. Reich, a former partner of the New York law firm of Wachtell, Lipton, Rosen & Katz, pled guilty to one count of securities fraud and one count of mail fraud. Reich admitted to passing material nonpublic information to Levine on at least 12 occasions and to having a beneficial interest in the profits Levine earned from those trades. Wilkis and Cecola, former employees of Lazard Freres & Co., pled guilty to securities fraud, mail fraud, tax evasion and failing to report a cash transaction, and to two counts of filing false tax returns, respectively. Cecola admitted to tipping Wilkis, who in turn tipped Levine with material nonpublic information misappropriated from Lazard Freres. Cecola also traded while in possession of the material nonpublic information. Sokolow was sentenced to a year and a day imprisonment and placed on three years probation. Brown was sentenced to 30 days imprisonment, fined $10,000, ordered to perform 300 hours of community service and placed on three years probation. Reich was sentenced to a year and a day imprisonment and placed on probation for five years. Wilkis faces a maximum of 20 years imprisonment and fines of $850,000. Cecola faces a maximum of 6 years imprisonment and $500,000 in

fines. Levine, Wilkis and Cecola are awaiting sentencing. (See related civil actions, infra).

3. U.S. v. Manohar L. Madan, 85 Cr. 1076(WK) (S.D.N.Y. 1985)
U.S. v. Krishman Taneja, 86 Cr. 202(RJW) (S.D.N.Y. 1986)

Madan, a former typist for the New York law firm of Wachtell, Lipton, Rosen & Katz, pled guilty on November 25, 1985 to charges of securities fraud and committing perjury before the Securities and Exchange Commission. Madan admitted that he leaked to four friends, including Taneja, material nonpublic information about at least eight transactions involving clients of the law firm. Taneja, a civil engineer employed by the Manhattan borough president's office, pled guilty on March 10, 1986 to charges of securities fraud. Taneja admitted that he paid Madan $15,000 for the material nonpublic information and made about $1,060,000 in profit on trades for his own account and the account of a relative, plus $100,000 in profit trading on behalf of Madan. Taneja was sentenced to six months imprisonment. Madan was sentenced to six months imprisonment and placed on three years probation.

4. U.S. v. Darius N. Keaton, 86 Cr. 50 (WK) (S.D.N.Y. indictment returned January 16, 1986)

U.S. v. Constandi N. Nasser, 86 Cr. 639 (S.D.N.Y. indictment returned July 29, 1986)

Keaton, a former director of Santa Fe International Corporation, was alleged to have disclosed information concerning merger discussions between Santa Fe and Kuwait Petroleum Corporation to Nasser, a business associate, who disclosed the information to others. Keaton also purchased 10,000 shares of Santa Fe common stock through a Swiss bank account which he maintained under the name of Nadir Katir Mabrouk. Nasser was accused of making $4.6 million in illegal profits and also of lying to the Commission.

In related civil actions, Keaton consented to the issuance of a permanent injunction of the antifraud provisions of the Exchange Act on September 30, 1982, and disgorged over $300,000 in illegal profits. Nasser, and seven others, disgorged $7.8 million in February 1986.

5. U.S. v. W. Paul Thayer and Billy Bob Harris, Crim. Action 85-00066 (D.D.C.)

On March 4, 1985, a criminal information was filed against Thayer, a former deputy secretary of the Department of Defense, and Harris, a former stockbroker, charging them with obstruction of justice in connection with their giving false testimony to

the Commission during the Commission's investigation of insider trading by Thayer, Harris and others in 1982. After pleading guilty to the information, Thayer and Harris were each sentenced to four years imprisonment and were each fined $5,000. (See discussion of civil case, infra).

6. U.S. v. Thomas C. Reed, 84 Cr. 618 (RFW) (S.D.N.Y., indictment returned August 30, 1984)

Reed, former Secretary of the Air Force and former staff member of the National Security Council, was indicted on August 30, 1984 on charges that he violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by purchasing options in Amax, Inc. The indictment alleged that Reed traded while in possession of material nonpublic information about a possible acquisition of Amax that he obtained from his father, a director of the company. Reed filed a motion to dismiss the indictment claiming, among other things, that there was no confidential relationship between Reed and his father and thus, no duty could be breached.

The United States District Court for the Southern District of New York denied Reed's motion to dismiss the securities fraud counts. The court found that a confidential relationship could exist between Reed and his father and that the Government must prove at trial that the confidential relationship did exist and that it had been breached. 601 F. Supp. 685 (S.D.N.Y. 1985). Reed had previously disgorged his illegal profits in a civil action brought by the Commission. See, S.E.C. v. Thomas C. Reed, 81 Civ. 7984 (S.D.N.Y. 1981).

On December 16, 1985, a jury acquitted Reed of the charges after a two week trial.

7. U.S. v. Michael Musella, John Musella, Alan Ihne, James Stivaletti, Eugene Chiaramonte, Anthony Brunetti and Albert De Angelis, 84 Cr. 686 (JFK) (S.D.N.Y. indictment returned September 19, 1984)
U.S. v. David Rapaport, 84 Cr. 686 (JFK) (S.D.N.Y. indictment returned December 5, 1984)
U.S. v. James L. Covello, 84 Cr. 204 (MEL) (S.D.N.Y. 1984)
U.S. v. Joseph Palomba, 84 Cr. 673 (LBS) (S.D.N.Y. 1984)
U.S. v. Christopher Moffatt and Leonard DiRusso, 85 Cr. 1113 (LBS) (S.D.N.Y. 1985)

The above actions are the result of a scheme to trade securities while in possession of material nonpublic information misappropriated from the New York City law firm of Sullivan &

Cromwell. Covello, a former bond trader with the firm of Gintel & Co., pled guilty on April 5, 1984 to a two count information which charged him with conspiracy and v'olation of the antifraud provisions of the federal securities laws and was sentenced to 3 years probation and ordered to perform 630 hours of community service. Palomba, who is unemployed, pled guilty to a three count information on September 13, 1984 and was sentenced to three years probation.

On May 8, 1985, Ihne, Stivaletti, Chiaramonte and Rapaport pled guilty. Ihne, who pled guilty to seven counts of conspiracy, securities fraud, tender offer violations and tax evasion was sentenced to 3-1/2 years imprisonment and placed on 5 years probation. Stivaletti, who pled guilty to seven felony counts, was sentenced to 2-1/2 years imprisonment, ordered to pay a $10,000 fine and placed on 5 years probation. Chiaramonte and Rapaport, who pled guilty to tax evasion, were sentenced to 18 months and 6 months imprisonment, respectively, and each was ordered to pay a $10,000 fine. Moffatt and DiRusso, who pled guilty on December 3, 1985 to charges of conspiracy, securities fraud and tax evasion, were each sentenced to 3 years probation and ordered to perform 300 hours of community service. The securities charges against Michael Musella, De Angelis and Brunetti were dropped, while Michael and John Musella were convicted for tax evasion and placed on probation. (See discussion of civil case, infra).

8. U.S. v. Peter N. Brant, 84 Cr. 470 (ADS) (S.D.N.Y. 1984)
U.S. v. R. Foster Winans, Kenneth P. Felis and David J. Carpenter, 84 Cr. 605 (CES) (S.D.N.Y. 1984)
U.S. v. David W.C. Clark, 87 Cr. ___ (S.D.N.Y. indictment returned Jan. 21, 1987)

The above actions resulted from a scheme in which trading in securities was effected while in possession of information misappropriated from the Wall Street Journal. (See discussion of S.E.C. v. Brant, et al., supra). On July 12, 1984, Brant pled guilty to one count of conspiracy to commit mail, wire and securities fraud and obstruction of justice and two counts of fraud in connection with the purchase and sale of securities. Brant, awaiting sentencing, faces a maximum sentence of 15 years imprisonment and $30,000 in fines.

On June 24, 1985, Winans, Felis and Carpenter were found guilty of numerous counts of the indictment. Winans was found guilty of 59 counts including conspiracy to commit securities fraud and to obstruct justice, securities fraud, wire fraud and mail fraud. Felis was found guilty of 41 counts, including

conspiracy to commit securities fraud and to obstruct justice, securities fraud, wire fraud and mail fraud. Carpenter was found guilty of 12 counts including securities fraud, wire fraud and mail fraud.

Winans was sentenced to 18 months imprisonment, ordered to pay a $5,000 fine, ordered to perform 400 hours of community service and placed on probation for five years. Felis was sentenced to 6 months imprisonment, to be served on weekends, ordered to pay a $25,000 fine, ordered to perform 500 hours of community service and placed on probation for 5 years. Carpenter was sentenced to three years probation, ordered to perform 200 hours of community service and fined $1,000. The date for Brant's sentencing has not been set.

On May 27, 1986, the United States Court of Appeals for the Second Circuit upheld the decision of the District Court. The Second Circuit held that Section 10(b) of the Exchange Act and Rule 10b-5 thereunder proscribe an employee's unlawful misappropriation from his employer of material nonpublic information in the form of the Wall Street Journal's forthcoming publication schedule, in connection with a scheme to purchase or sell securities. A dissenting opinion disagreed with the holding that the publication schedule of the Wall Street Journal was material nonpublic information. On December 15, 1986, the Supreme Court agreed to hear the appeal.

On January 21, 1987, a federal grand jury indicted Clark on 55 counts, including 38 counts of securities fraud, 10 counts of mail fraud and wire fraud regarding embezzlement from his law clients, conspiracy, false statements to a bank in connection with a loan application, false statements to federal officials, perjury before the S.E.C. and income tax evasion. Clark faces a maximum of 270 years in prison and $262,000 in fines.

9. U.S. v. Steven Matthews Crow, 84 Cr. 239 (WK) (S.D.N.Y. information filed April 19, 1984)
U.S. v. Kenneth Petricig, 84 Cr. 256 (WK) (S.D.N.Y. information filed April 26, 1984)
U.S. v. Alfred Salvatore, 84 Cr. 260 (WK) (S.D.N.Y. information filed April 26, 1984)
U.S. v. Aaron Lerman, 84 Cr. 283 (CLB) (S.D.N.Y. information filed May 10, 1984)
U.S. v. Stephen L. Wallis and Sharon Willey, 84 Cr. 342 (WCC)(S.D.N.Y. indictment returned June 5, 1984)

The above actions resulted from an insider trading scheme involving the misappropriation of material nonpublic information from the New York City law firm of Skadden, Arps, Slate, Meagher & Flom. (See discussion of S.E.C. v. Karanzalis, et al., infra).

Certain of the defendants traded in securities based on the misappropriated nonpublic information regarding potential tender offers and business combinations of the firm's clients.

The disposition of the above actions was as follows:

a. Crow - a former word processor supervisor at Skadden Arps, pled guilty on April 19, 1984 to one count of conspiracy to violate Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder and one count of mail fraud. Crow was sentenced to 3 years probation and ordered to perform 450 hours of community service.

b. Petricig - a former word processor operator and proofreader at Skadden, Arps, pled guilty on April 26, 1984 to one count of conspiracy to commit mail fraud and to violate Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder and one count of mail fraud. On October 4, 1984, Petricig was sentenced to 3 years probation and ordered to perform 450 hours of community service.

c. Salvatore - a former proofreader at Skadden Arps, pled guilty on April 26, 1984 to one count of conspiracy to commit mail fraud, one count of conspiracy to violate Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder and one count of mail fraud. On October 4, 1984, Salvatore was sentenced to 3 years probation and ordered to perform 450 hours of community service.

d. Lerman - a former broker with Prudential - Bache, pled guilty on May 10, 1984 to one count of conspiracy to commit mail fraud, one count of conspiracy to violate Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder and one count of mail fraud. Lerman was sentenced to 6 months imprisonment, placed on 4 years probation and ordered to perform 200 hours of community service.

e. Wallis - a New York City taxicab driver, pled guilty on June 21, 1984 to one count of conspiracy to violate Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder, one count of violating Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder and one count of mail fraud. On September 18, 1984, Wallis was sentenced to weekends in prison for 18 months, 5 years probation and ordered to pay restitution of $49,000.

f. Willey - a friend of Wallis, pled guilty on June 21, 1984 to one count of conspiracy to violate Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder. On September 18, 1984, Willey was sentenced to 5 years probation and ordered to pay restitution of $34,000.

10. U.S. v. James Pondiccio, Jr., 84 Cr. 009 (CSH) (S.D.N.Y. 1984)
U.S. v. Giuseppe Tome, 84 Cr. 534 (SWK) (S.D.N.Y. 1984)

Pondiccio, the former assistant head trader at Lazard Freres & Co., was charged with trading on inside information in connection with the tender offer by Joseph E. Seagram & Sons, Inc. for St. Joe Minerals Corporation in March of 1981. Pondiccio received this information through his employment at Lazard Freres and made a profit of approximately $40,000.

After pleading guilty to one count of violating the mail fraud statute, Pondiccio was sentenced on March 9, 1984 to 200 hours of community service and 5 years probation. Tome, a former consultant to Seagram and friend of Seagram's chairman, was indicted on the basis of his trading on inside information misappropriated from Seagram. Tome is currently a fugitive in Europe.

11. U.S. v. Materia, 84 Cr. 985 (S.D.N.Y. 1984)
U.S. v. Rossman, 84 Cr. 707 (CES) (S.D.N.Y. 1984)
U.S. v. R. D'Elia, 84 Cr. 707 (CES) (S.D.N.Y. 1984)
U.S. v. A. D'Elia, 84 Cr. 707 (CES) (S.D.N.Y. 1984)
U.S. v. Abramson, 84 Cr. 487 (ADS) (S.D.N.Y. 1984)
U.S. v. Garber, 84 Cr. 541 (WK) (S.D.N.Y. 1984)

The above actions arose from a scheme to trade in securities while in the possession of material nonpublic information misappropriated from the financial printing concern of Bowne of New York City. The participants in the scheme invested over $1,500,000 and obtained illegal profits in excess of $500,000. The following is the disposition of the actions:

a. Materia - a former proofreader at Bowne, was indicted on December 18, 1984 on nine counts of securities fraud, nine counts of fraud in connection with tender offers and three counts of mail fraud. Materia pled guilty to two counts of violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and one count of violating Section 14(e) of the Exchange Act and Rule 14e-3 thereunder, and was sentenced on June 21, 1985 to 5 months imprisonment, 4 years probation and 400 hours of community service.

b. Rossman - a former broker with Prudential - Bache, pled guilty on September 20, 1984 to one count of criminal conspiracy, one count of fraud in the purchase of securities and one count of fraud in connection with tender offers. Rossman was placed on 3 years probation and ordered to perform 400 hours of community service.

c. R. D'Elia - a former broker with Prudential-Bache, pled guilty on September 20, 1984 to one count of criminal conspiracy, one count of fraud in the purchase of securities and one count of fraud in connection with tender offers. R. D'Elia was placed on 3 years probation, fined $30,000 and ordered to perform 1,000 hours of community service.

d. A. D'Elia - R. D'Elia's father, pled guilty on September 20, 1984 to one count of conspiracy. A. D'Elia was placed on 3 years probation and fined $10,000.

e. Abramson - a former Bowne employee, pled guilty on July 19, 1984 to one count of conspiracy to commit securities fraud. Abramson was placed on 3 years probation and ordered to perform 300 hours of community service.

f. Garber - a former Bowne employee, was indicted on August 16, 1984. On October 31, 1984, Garber pled guilty to multiple felony charges and was sentenced to three years probation and 300 hours of community service.

(See discussion of civil case, infra).

12. U.S. v. Nugent, 83 Cr. 115 (D.D.C. information filed September 30, 1983)
U.S. v. Tatusko, 83 Cr. 230 (D.D.C. information filed September 30, 1983)
U.S. v. Peacock, 83 Cr. 275 (D.D.C. information filed September 30, 1983)

The information filed against the above - named defendants resulted from an investigation of insider trading of Santa Fe International Corporation securities immediately prior to the public announcement of a merger between Santa Fe and Kuwait Petroleum Corporation. Nugent, an officer of the Washington consulting firm of Timmons & Co., pled guilty to a one count information charging him with aiding and abetting violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with the purchase of call options for the common stock of Santa Fe. Nugent was sentenced to 300 hours of community service and was fined $10,000.

Peacock, a vice-president of a subsidiary of Wheelabrator-Frye, Inc., and Tatusko, a broker with the Washington, D.C. firm of Bellamah, Neuhauser and Barrett, Inc., pled guilty to a one count information charging them with obstruction of justice in connection with the Commission's investigation of this action. Peacock was sentenced to two years probation, 200 hours of community service and was fined $5,000. Tatusko was sentenced to three years probation, 300 hours of community service and was fined $5,000. (See discussion of related criminal action, infra).

13. U.S. v. Hutchinson, 83 Cr. 613 (C.D. Calif. 1983)
U.S. v. Fabregas, 83 Cr. 614 (C.D. Calif. 1983)
U.S. v. Chadwick, 83 Cr. 615 (C.D. Calif. 1983)
U.S. v. Cooper, 83 Cr. 616 (C.D. Calif. 1983)

The above actions arose from insider trading in Brunswick Corporation securities immediately prior to the announcement of a tender offer for Brunswick securities by Whittaker Corporation on January 25, 1982. Cooper, a vice-president of Bankers Trust, and Fabregas, a vice-president of Credit Suisse, were contacted by the Whittaker Corporation in connection with Whittaker's request for additional capital needed for the proposed takeover of Brunswick. Cooper tipped Chadwick, an attorney in Los Angeles and another person, who in turn tipped Hutchinson.

The defendants were accused of violating Section 14(e) of the Exchange Act and Rule 14e-3 promulgated thereunder. All four defendants pled guilty to one count of violating Section 14(e) and Rule 14e-3 and each received a fine of $10,000.

14. U.S. v. Newman, Courtois, Carniol and Spyropoulus, 82 Cr. 166 (CSH) (S.D.N.Y. indictment returned March 1, 1982).

The indictment charged the four defendants with violating the antifraud provisions of the federal securities laws by misappropriating material nonpublic information from Morgan Stanley & Co., Inc. and Lehman Brothers Kuhn Loeb, Inc. concerning corporate takeovers managed by the firms. The information illegally misappropriated was the basis for purchases of securities in target companies. See, U.S. v. Newman, 664 F.2d 12(2d Cir. 1981), cert. denied 193 S. Ct. 1045 (1983).

The disposition of the above-referenced action, and of a related case, U.S. v. Antoniu, 80 Cr. 742 (CES)(S.D.N.Y. 1980) was as follows:

a. Antoniu - pled guilty to a two count information on November 13, 1980; sentenced to three months imprisonment, three years probation and fined $5,000;

b. Newman - found guilty by a jury on May 21, 1982 on 15 counts of securities fraud, conspiracy to commit securities fraud and mail fraud; sentenced to one year and a day in jail, three years probation and fined $10,000;

c. Spyropoulos - pled guilty to conspiracy to commit securities fraud on January 31, 1983; sentenced to three years probation and fined $10,000;

d. Courtois - pled guilty to one count of criminal conspiracy and three counts of securities fraud on December 7, 1983; sentenced to six months imprisonment and fined $10,000 on February 13, 1984; and

e. Carniol - left the country and now living in Belgium; extradition sought.

In addition, the following actions were related to the above:

f. U.S. v. Nussbaum, 81 Cr. 672(JMC) (S.D.N.Y. 1981)

Nussbaum, a dentist, was a tippee in the Morgan Stanley - Lehman Brothers Kuhn Loeb scheme described infra. On December 8, 1981, Nussbaum pled guilty to a one count information charging him with conspiracy to misappropriate material nonpublic information about impending corporate mergers. At the time of his plea, Nussbaum also acknowledged that he committed perjury in the Commission's investigation.

Nussbaum was sentenced to five years probation, 350 hours of community service and fined $10,000; and

g. U.S. v. Paul, 83 Cr. 14 (RJW) (S.D.N.Y. indictment returned January 12, 1983).

Paul, a stockbroker, was charged with five counts of perjury in a Commission deposition, five counts of making false statements to federal officers and one count of obstruction of a Commission proceeding. The charges resulted from false statements Paul made during the Commission's investigation of the scheme to misappropriate information from Morgan Stanley & Co. and Lehman Brothers Kuhn Loeb.

On March 16, 1983, Paul pled guilty to two counts of filing false tax returns after two days of trial. On May 4, 1983, Paul was sentenced to three years probation, 250 hours of community service and fined $10,000.