INITIAL DECISION RELEASE NO. 97

ADMINISTRATIVE PROCEEDING
FILE NO. 3-8832

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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| In the Matter of | : | |
| | : | INITIAL DECISION |
| GREG M. ANDERSON | : | SEPTEMBER 27, 1996 |
| RUSSELL G. KOCH | : | |

APPEARANCES: Thomas M. Melton and Lindsay McCarthy for the Division of Enforcement, Securities and Exchange Commission, Salt Lake District Office

Robert Kaye for Respondent Russell G. Koch

BEFORE: Carol Fox Foelak, Administrative Law Judge

The Securities and Exchange Commission (Commission) initiated this proceeding by an Order Instituting Proceedings (OIP) on September 26, 1995, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The OIP alleged that a Final Judgment of Permanent Injunction Against Russell G. Koch (Final Judgment) enjoined him from violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 (Securities Act), and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in SEC v. Unifirst Corp., Civil Action No. 93-C-867B (D. Utah Jan. 25, 1995) (SEC v. Unifirst). The OIP alleged that the injunction was based on violative activities of Respondent Koch as the owner and sole shareholder of Kochcapital, Inc. (Kochcapital), while acting as a market maker in the stock of Unifirst Corporation (Unifirst), a penny stock.

I held a hearing in Seattle, Washington on March 26, 1996.[1] Because an order of default had already been entered against Greg M. Anderson, the hearing concerned only Respondent Koch.[2] The Division of Enforcement (Division) called four witnesses from whom testimony was taken. The Respondent called one witness.[3] A number of exhibits were received into evidence.[4]

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[1] Prior to the hearing Respondent Koch filed a Motion for a More Definite Statement. I denied this motion both because of the substantive arguments made and because the motion was untimely under the Commission's Rule of Practice. Order Denying Motion for More Definite Statement (February 1, 1996).

[2] Greg M. Anderson and Russell G. Koch, Order Making Findings and Imposing Sanctions by Default, 61 SEC Docket 1113 (February 28, 1996).

[3] At the close of the Respondent's case I advised him that if a party in an administrative proceeding elects not to testify as to facts within in his or her knowledge, a negative inference could be drawn from that party's silence. Counsel for the Respondent acknowledged that he understood this.

[4] Citations to exhibits offered by the Division will be noted as "Div. Ex. __." Citations to the transcript of the hearing will be noted as "Tr. __."

Pursuant to the requirements of the Administrative Procedure Act,[5] I considered the following post hearing pleadings: (a) the Division's Proposed Findings of Fact, Conclusions of Law, and Brief in Support, dated May 24, 1996; (b) the Respondent's Response to Proposed Findings of Fact, Conclusions of Law, and Brief of SEC, dated July 5, 1996; and (c) the Division's Reply Brief, dated July 25, 1996.

The only remedy the Division is seeking is a penny stock bar.[6] The Respondent essentially disputes the Division on the law rather than the facts. He argues that this proceeding is barred by the injunction and that a penny stock bar cannot be imposed because it would be retroactive.

My findings and conclusions are based on the record and my observations of the witnesses' demeanor. I have applied preponderance of the evidence as the applicable standard of proof.[7]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Injunction as Basis for Current Action

The Final Judgment, entered on consent on January 25, 1995, enjoined Respondent Koch from the offer and sale of unregistered stock and from violations of the antifraud provisions of

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[5] See, specifically, 5 U.S.C. § 557(c).

[6] The Commission has already revoked the registration of Kochcapital and barred Respondent Koch from association with any broker, dealer, investment adviser, investment company or municipal securities dealer. See Div. Ex. 48 at 2, which is Kochcapital, Inc. and Russell G. Koch, Order Instituting Proceedings Pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 and Order Making Findings and Imposing Remedial Sanctions, 51 SEC Docket 1168 (May 27, 1992).

[7] I have considered and rejected all the arguments and proposed findings that are inconsistent with this decision.

the securities laws. Specifically, he was enjoined from violations of Sections 5(a), 5(c), and 17(a)(1), (2) or (3) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Division Exhibits 1 and 2 are copies of the complaint and the Final Judgment in that action.[8]

Respondent Koch engaged in his violations of the Securities Act and the Exchange Act in connection with the sale of stock in Unifirst. Div. Ex. 1. The stock was penny stock within the meaning of Exchange Act Rule 3a51-1(g).[9] Unifirst had net tangible assets of less than $2,000,000 and average revenue of less than $6,000,000 for the last three years of operation. Div. Ex. 29; Tr. 20-21. See also Div. Ex. 48, which indicates that Unifirst was a penny stock. Thus Respondent Koch participated in an offering of penny stock as defined in Section 15(b)(6)(C) with regard to Unifirst.

Collateral Estoppel

Respondent Koch claims that he did not admit any wrongful action in SEC v. Unifirst, that the issues of that action cannot be relitigated, and that the evidence of record regarding Unifirst should not be considered. The Respondent's arguments turn the doctrine of collateral estoppel on its head.

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[8] The Commission considers the allegations contained in a complaint which resulted in the entry of a judgment on consent, without admitting or denying the allegations of the complaint (and in which the judgment was unaccompanied by findings of fact) when determining the appropriate sanction in the public interest under Section 15(b) of the Exchange Act. See, e.g., Charles Phillip Elliott, 50 S.E.C. 1273, 1274 n.5, 1276 n.12 (September 17, 1992), aff'd sub nom. Elliott v. SEC, 36 F.3d 86 (11th Cir. 1994).

[9] Pursuant to Rule 3a51-1(g), an equity security is penny stock if: 1) net tangible assets of the issuer are $2,000,000 or less if the issuer has been in continuous operation for at least three years, or $5,000,000 or less if in continuous operation for less than three years, or 2) average revenues of the issuer are $6,000,000 or less for the last three years.

The doctrine of collateral estoppel as well as Commission case law preclude an attack by the Respondent on the validity of the permanent injunction issued against him in other proceedings. Blinder, Robinson & Co., 48 S.E.C. 624, 628-30 (1986), vacated and remanded, 837 F.2d 1099 (D.C. Cir. 1988), cert. denied, 488 U.S. 869 (1988); Kimball Securities, Inc., 39 S.E.C. 921, 924 n.4 (1960); J.D. Creger & Co., 39 S.E.C. 165 (1959); Kaye, Real & Co., 36 S.E.C. 373, 375 (1955); and James F. Morrissey, 25 S.E.C. 372, 381 (1947).

Sections 15(b)(4) and (b)(6) of the Exchange Act explicitly provide that a person such as Koch who participates in an offering of penny stock and who is enjoined by a court judgment from acting in connection with the purchase or sale of securities can be barred from participating in an offering of penny stock. Further, the Commission has a longstanding practice of basing administrative proceedings on injunctions. Shuck v. SEC, 264 F.2d 358 (D.C. Cir. 1958). The Commission has held that "[u]nder the terms of the Exchange Act a consent injunction . . . may furnish the sole basis for remedial action under Section 15(b) of the Exchange Act if such action is in the public interest." Cortlandt Investing Corp., 44 S.E.C. 45, 53 (1969) (footnote omitted).

The Respondent consented to the Final Judgment. His January 19, 1995, signed Consent states "[d]efendant Koch enters into this Consent voluntarily and . . . understands that nothing in this consent is a bar to or will estop any administrative proceeding brought by plaintiff based on either this injunction or on the matters alleged in the Complaint or any other matters." Div. Ex. 2 at 5-6. Respondent Koch now suggests that he consented to the injunction because he could not afford representation. Nonetheless, he did consent, and he is estopped from reopening the matter in this tribunal.

Application of Penny Stock Reform Act of 1990

The language authorizing a penny stock bar was added to the Exchange Act by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (Remedies Act). Respondent Koch asserts that the penny stock bar does not apply because his actions regarding Unifirst occurred before the effective date of the provision (the earlier of October 15, 1991, or issuance of the final implementing regulations). The basis for the penny stock bar, however, is the January 25, 1995, Final Judgment of Permanent Injunction in SEC v. Unifirst. The injunction was entered more than three years after the effective date of the Remedies Act, and Exchange Act Sections 15(b)(4) and (b)(6) expressly provide that a penny stock bar may be granted on the basis of such an injunction.[10] Accordingly, a penny stock bar is not precluded in this proceeding.

Statute of Limitations

Johnson v. SEC, 87 F.3d 484 (D.C. Cir. 1996), reh'g den. Aug. 28, 1996, was decided while this proceeding was pending. The court held that a Commission "proceeding resulting in a censure and a six-month disciplinary suspension of a securities industry supervisor was a proceeding 'for the enforcement of any civil fine, penalty or forfeiture, pecuniary or otherwise,' within the meaning of [28 U.S.C.] § 2462." Id. at 485. As a result, the court found that the section's five-year statute of limitations "does apply to [Commission] proceedings under Section 15(b) of the [Exchange Act] which seek to censure and suspend a securities supervisor." Id. at

[10] The Commission employed a similar analysis where the alleged fraudulent conduct occurred between June 1986 and September 1988, and the penny stock bar was based on a January 1992 criminal conviction. Benjamin G. Sprecher, Order Granting in Part and Denying in Part Motion to Dismiss, 58 SEC Docket 1375, 1375-76 (December 27, 1994).

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In applying the holding of Johnson to the facts of this case, the issue is whether the five-year statute of limitations of 28 U.S.C. § 2462, which is triggered "when the claim first accrued," prohibits the Commission from sanctioning a respondent based on an injunction issued within the five-year period when the injunction is based on actions which occurred more than five years before the Commission instituted the administrative proceeding. I find that it does not because a claim based on the existence of an injunction accrues when the injunction is issued. This is consistent with the court's ruling in Shuck v. SEC that in connection with the revocation of a broker-dealer registration, Section 15(b) sets out other grounds in addition to an injunction and "we can hardly impute to Congress the enactment of an unnecessary provision." 264 F.2d at 361 n.11, 362. Even though the Respondent's actions underlying the injunction, which occurred more than five years before the Commission instituted this proceeding, are not the basis for the Commission's authority to issue a sanction, they can be considered on the public interest issue. See Blinder, Robinson & Co. v. SEC, 837 F.2d 1099, 1110 (D.C. Cir. 1988), cert. denied, 488 U.S. 869 (1988).

Unifirst Corporation

Wayne Wood founded Unifirst Corporation in 1986 to finance real estate construction and development. Div. Ex. 29; Tr. 17-18. In 1989 he decided to expand into the child care business and enlisted the aid of Phil Conley, George Duke, and Greg Anderson who owned a partnership called Doctors University Research (DUR). Tr. 18. DUR merged Unifirst with a preexisting corporate shell, White Hall Properties. Tr. 19, 25; Div. Ex. 29. Then in March 1990, on Mr. Duke's recommendation, Respondent Koch and Kochcapital became a market

maker for Unifirst's penny stock.[11] Tr. 25, 30, 36; Div. Ex. 34.

DUR prepared 15c2-11 materials[12] that contained purportedly audited financial statements and an audit opinion letter prepared without proper investigation and not in accordance with GAAP or GAAS.[13] The materials indicated that Unifirst had an asset value of $40,000,000. Tr. 21-22, 31; Div. Ex. 1 at 14-15; Div. Ex. 29. This value included a $25,000,000 goodwill figure which had no basis in fact. Tr. 22; Div. Ex. 1 at 14; Div. Ex. 29. There was also a stock option subscription receivable of $19,500,000 which was arbitrarily derived by Mr. Duke and his accounting firm. Tr. 55-56; Div. Ex. 1 at 14; Div. Ex. 29. These bogus figures were among the material misrepresentations and omissions contained in the 15c2-11 materials that Kochcapital submitted to the National Quotation Bureau, Inc. (NQB)[14] in April 1990. Unifirst

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[11] Mr. Wood understood that Mr. Anderson, Mr. Duke, and the Respondent had done business together previously, and that Kochcapital had been a market maker for several of Mr. Duke's companies. Tr. 55.

[12] Exchange Act Rule 15c2-11 requires broker-dealers to review and maintain specific information and documents before they publish a quotation for securities traded in the over-the-counter market, but which are not listed on an exchange or quoted on the National Association of Securities Dealers Automated Quotation system (NASDAQ). See Securities Exchange Act Rel. No. 29094, 48 SEC Docket 1205, 1205 & 1205 n.5 (April 25, 1991) (Initiation or Resumption of Quotations Without Specified Information). The broker-dealer must have a reasonable basis under the circumstances to believe that the information is accurate in all material respects and obtained from reliable sources. Id. at 1205. Information regarding issuers of non-NASDAQ securities is generally not readily available to investors. Id. at 1205 n.5. The Commission amended the rule in 1991 because it had "become increasingly concerned about the instances of fraudulent and manipulative conduct involving transactions in low-priced securities, commonly referred to as 'penny stocks,' many of which are traded in the non-NASDAQ market." Id.

[13] These acronyms stand for Generally Accepted Accounting Principles and Generally Accepted Auditing Standards, respectively.

[14] The NQB publishes daily "pink sheets" that contain broker-dealer submitted bid and ask prices for, or indications of interest in, over-the-counter securities not listed on an exchange or on NASDAQ. General Bond & Share Co. v. SEC, 39 F.3d 1451, 1453 (10th Cir. 1994).

stock was listed in the pink sheets and began trading shortly thereafter. Tr. 22, 47, 55-56; Div. Ex. 1 at 13-15.

Mr. Wood believed that the tangible net asset value of Unifirst was about $360,000 just prior to the merger. Tr. 20. Respondent Koch brushed off his concerns about the inflated goodwill figure in the 15c2-11 materials.[15] Tr. 33.

Respondent Koch explained that the company would raise more capital if investors had to buy stock from him rather than from existing public investors. Mr. Wood assured him that he controlled 60-65% of Unifirst stock, and that Mr. Anderson and Mr. Duke held the remaining outstanding shares and had agreed to hold them off the market. Tr. 31-35. The 15c2-11 materials did not disclose this. Div. Ex. 1 at 15.

Respondent Koch directed Mr. Wood to set up accounts at other brokerage firms so that the Respondent could appear to buy Unifirst stock from firms other than his own. Tr. 38-40. He told Mr. Wood to use names other than his own because "it would be illegal for an officer to be setting up the accounts to sell the stock." Tr. 40. There were at least five or six nominee accounts through which the Respondent directed trading of Mr. Wood's Unifirst stock. Tr. 38-41, 47-48, 57-60, 84. The shares sold were not registered and opinion letters had been issued without examining documentation to remove restrictive legends from Unifirst stock. Div. Ex. 1 at 10, 18. Mr. Wood gave the Respondent shares from at least one of these accounts as compensation, which was not disclosed in the 15c2-11 materials. Div. Ex. 1 at 13. He also gave stock to what he thought were salespeople of the Respondent as an incentive to sell Unifirst

[15] Mr. Wood stated that the Respondent was very familiar with company operations. As an example, he pointed to the fact that Respondent Koch attended the grand opening of one of Unifirst's first daycare centers. Tr. 82-83.

stock. Tr. 45-46; Div. Ex. 35.

Trading ceased in July 1990. Tr. 50. Mr. Wood never received the corporate books and records from Mr. Anderson and Mr. Duke, and the merger between Unifirst and Whitehall Properties was rescinded. Id. Unifirst received minimal proceeds despite reports of significant sales of stock. Tr. 50-51, 83. In April or May 1990, Mr. Wood discovered that $1,300,000 in stock had been sold to the public, but that Unifirst had received only $160,000 in proceeds. Tr. 50-54. He believed that Kochcapital, Mr. Duke, and Mr. Anderson had the rest. Tr. 54. The three blamed each other when Mr. Wood questioned them. Id. Mr. Wood conceded he does not know whether the Respondent got the money; all he knows is that he did not get it. Tr. 81.

Disciplinary History of Respondent Koch and Kochcapital

Respondent Koch has an extensive disciplinary history related to penny stocks. He was the president and owner of Kochcapital, in Issaquah, Washington, which began business as a registered broker-dealer in June 1988; 80% of its trading was in penny stocks. Div. Ex. 4 at 3-4, which is Kochcapital, Inc., 51 S.E.C. 241, 243 (1992). On May 27, 1992, the Commission revoked its registration and barred Respondent Koch from association with any broker, dealer, investment adviser, investment company or municipal securities dealer. Div. Ex. 48 at 2. This action was based on an injunction, SEC v. Kochcapital, Inc., Civil Action No. CS91-547D (W.D. Wash. May 12, 1992), that permanently enjoined Kochcapital from violating and Respondent Koch from aiding and abetting violations of Exchange Act Section 15(c)(2) and Rule 15c2-6. Exchange Act Rule 15c2-6 is also known as the "cold call rule" or the "penny stock rule." Its purpose is to prevent abuse in the sale of low-priced securities by

brokers and dealers using high-pressure telephone sales tactics and engaging in "boiler room" operations. See Securities Exchange Act Rel. No. 27160, 44 SEC Docket 665, 666 (August 28, 1989) (Sales Practice Requirements for Certain Low-Priced Securities). The complaint in that case alleged violations of the cold call rule in transactions in several penny stocks, including Unifirst.

Additionally, Respondent Koch has an extensive disciplinary history for securities violations with the National Association of Securities Dealers (NASD) and at least nineteen states between 1987 and 1993. Div. Exs. 3-25, 49-56. The NASD has censured, fined, barred, continually monitored, assessed legal fees against, ordered rescission and restitution from, and awarded several arbitration awards against Respondent Koch, and expelled Kochcapital from membership in the NASD for various allegations involving securities fraud, misrepresentation and noncompliance. The NASD's final disciplinary action that, inter alia, expelled Kochcapital and barred Respondent Koch, was sustained by the Commission in 1992.[16] Div. Ex. 4.

Seventeen states revoked the securities licenses of Respondent Koch and/or Kochcapital, and cease and desist orders and/or a fine were issued by two other states. The Respondent frequently did not reply to requests for information and often did not appear for hearings in these proceedings.

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[16] In his July 5, 1996, Response to Proposed Findings of Fact, Conclusions of Law, and Brief of SEC (Response), the Respondent claims that he was not represented by counsel in the appeal of his NASD expulsion to the SEC and was "never informed of the date of the appeal hearing." Response at 10. The record, however, reflects that he was represented. Div. Ex. 4 at 241. Further, the Commission does not hold a hearing on an appeal from an NASD determination; it reviews the record. Id.; see also Rule 420, Comment and Revision Comment, 59 SEC Docket 1546, 1583-84 (June 23, 1995).

Continuing Activity

In its Congressional Statement of Findings regarding the need for the Remedies Act, Congress found that "[c]urrent practices do not adequately regulate the role of 'promoters' and 'consultants' in the penny stock market, and many professionals who have been banned from the securities markets have ended up in promoter and consultant roles, contributing substantially to fraudulent and abusive schemes." Historical and Statutory Notes, 15 U.S.C.A. § 78o. Respondent Koch has continued raising venture capital for start-up companies and offering to assist them in issuing penny stock. These companies include Greensoft Corporation; his involvement with Greensoft started in 1994 and continued through the date of the hearing. Tr. 95-120, 215-239; Div. Exs. 32, 37, 39, 40. He also raised capital for SDI, Inc. in 1993, Tr. 148-58, and Microprocessor Technology, Inc. (MTI), starting in July 1993. Tr. 177-214; Div. Ex. 42.

**PUBLIC INTEREST**

Imposition of administrative sanctions requires consideration of:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). The amount of a sanction depends on the facts of each case and the value of the sanction in preventing a recurrence. Berko v. SEC, 316 F.2d 137, 141 (2d Cir. 1963); Richard C. Spangler, Inc., 46 S.E.C. 238, 254 n.67 (1976); Leo Glassman, 46 S.E.C. 209, 211-12 (1975).

Mr. Koch's activities for which the injunction was entered were egregious. He fostered the misrepresentations and omissions which formed the basis for the Rule 15c2-11 allegations regarding Unifirst. He did not disclose the extent of control which he and Mr. Wood had over the ownership and trading of shares, and used nominee accounts to hide illegal schemes.

The violations were not isolated. The Respondent has an extensive disciplinary history of securities violations, several of which involve penny stocks. He repeatedly misrepresented material information to investors, brokers and securities regulators.

The Respondent acted with scienter, that is "a mental state embracing intent to deceive, manipulate, or defraud." Aaron v. SEC, 446 U.S. 680, 686 n.5 (1980); see also Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976). Scienter is found where a broker acts with "intent to defraud or with willful and reckless disregard for the [customer's] interest." Miley v. Oppenheimer & Co., 637 F.2d 318, 324 (5th Cir. 1981). For example, he knew that the Unifirst financial statements were grossly inaccurate. He directed Mr. Wood to set up nominee accounts at various broker-dealers to conceal the real party in interest in his trading of Unifirst. He controlled trading of Unifirst stock and prevented the free and fair trade of stock in the market.

The Respondent has not acknowledged the wrongfulness of his conduct. Joseph Bentzel, who had been associated with Greensoft, testified that Respondent Koch described his discipline with the Commission and the NASD as "a bunch of bureaucrats getting in the way of people

raising money for companies."[17] Tr. 107. Richard Jones of SDI testified that the Respondent explained his troubles with the Commission by saying that "they had taken a small, minor infraction and built it into [a] major case against him that he felt had no merit." Tr. 153. Similarly, he minimized his disciplinary history with Bruce Helberg of MTI. Tr. 195-96. In sum, Respondent Koch has not acknowledged the wrongfulness of his past conduct and has not given assurances against future violations. Indeed, he displays a lack of respect for the securities laws and regulators.

The Respondent's occupation presents opportunities for future violations. His activities with regard to Greensoft, SDI Partners, and MTI indicate that without a penny stock bar he will continue to act as a promoter in venture capital companies and to promise to take fledgling companies public through the penny stock market. This presents opportunities to commit fraud on investors and the market.

The Respondent has advanced several arguments in his defense. First, he argues that the Steadman factors should not apply in this case because no wrongdoing has formally been found. As noted, however, an injunction is a sufficient basis under Exchange Act Sections 15(b)(4) and (b)(6) to assess sanctions in the public interest.

The Respondent next argues that he should not be sanctioned because the Division failed

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[17] The Respondent argues that Mr. Bentzel's testimony should not be credited due to bias. The Respondent, however, declined to testify, and the facts and circumstances concerning this statement are particularly within his knowledge. This creates an adverse inference that to do so would have damaged his position. Strathmore Securities, Inc., 43 S.E.C. 575, 590 (1967), aff'd 407 F.2d 722 (D.C. Cir. 1969); see also Sterling-Harris Ford, Inc. v. Phelps, 315 F.2d 277, 279 (7th Cir. 1963), cert. denied, 375 U.S. 814 (1963); N. Sims Organ & Co., Inc. v. SEC, 293 F.2d 78, 80-81 (2nd Cir. 1961), cert. den., 368 U.S. 968 (1962). It can therefore be inferred from his silence that Mr. Bentzel's testimony about the Respondent's statement is true.

to allege any violations in the past four years or otherwise show that he is a present threat to public investors. This argument is without substance. The Commission has noted that "Congress, in writing Section 15(b) of the Exchange Act, viewed past misconduct as the basis for an inference that the risk of probable future misconduct was sufficient to require exclusion from the securities business." Arthur Lipper Corp., 46 S.E.C. 78, 101 (1975).

Finally, Respondent Koch argues that he has no intent or desire to be involved in activities similar to those in which he engaged with Unifirst. In spite of such statements, the Respondent is still legally free to participate in penny stock offerings, so it is necessary to take appropriate preventive action. Id. at 101 n.72. In sum, the Respondent's arguments against a penny stock bar are not persuasive.

By his unlawful conduct, the Respondent has demonstrated that he lacks the honesty required of individuals involved in penny stocks. A severe sanction is also warranted to deter others from similar activities.

For the above reasons, it is in the public interest that Respondent Koch be barred from participating in the offering of any penny stock, including acting as a promoter, finder, consultant, or other person who engages in actions with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

## CERTIFICATION OF RECORD

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. Section 201.351(b), I hereby certify that the record includes the items set forth in the record index issued by the Secretary of the Commission on June 10, 1996, as well as the Division Reply Brief dated

July 25, 1996.

**ORDER**

Based on the findings and conclusions set forth above, I ORDER that Respondent Koch be barred from participating in the offering of any penny stock, including acting as a promoter, finder, consultant, or other person who engages in actions with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

This order shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. Section 201.360 (1996). Pursuant to that rule, a petition for review of this initial decision may be filed within 21 days after service of the decision. It shall become the final decision of the Commission as to each party who has not filed a petition for review pursuant to Rule 360(d)(1) within 21 days after service of the initial decision upon him, unless the Commission, pursuant to Rule 360(b)(1), determines on its own initiative to review this initial decision as to any party. If a party timely files a petition for review, or the Commission acts to review as to a party, the initial decision shall not become final as to that party.

Carol Fox Foelak

Carol Fox Foelak
Administrative Law Judge

Washington, D.C.
September 27, 1996