ADMINISTRATIVE PROCEEDING
FILE NO. 3-4733

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
AMSWISS INTERNATIONAL CORP.	:
(8-14349)	:
GLENN WOO	:
	:

INITIAL DECISION

Washington, D.C.
September 8, 1976

Jerome K. Soffer
Administrative Law Judge

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APPEARANCES: Stuart Perlmutter, Douglas Jacobs, Jeffrey H. Tucker, Ralph Pernick and Andrew E. Goldstein, of the New York Regional Office of the Commission, for the Division of Enforcement.

David J. Levenson and John F. McCarthy, of Phillips, Nizer, Benjamin, Krim & Ballon, for Respondents.

BEFORE: Jerome K. Soffer, Administrative Law Judge

On September 16, 1975, the Commission issued an Order for Public Proceedings (Order) pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 (Exchange Act), naming as respondents Amswiss International Corp. (Amswiss) and Glenn Woo (Woo).

The Order alleges that respondents have been enjoined from violating the registration requirements and anti-fraud provisions of the securities laws, and that they had wilfully violated and aided and abetted violations of such laws.

Amswiss is a registered broker-dealer pursuant to Section 15(b) of the Exchange Act and has been so registered since January 12, 1969. It is a member of the National Association of Securities Dealers, Inc. Its principal place of business is at One Exchange Place, Jersey City, New Jersey.

The Order directed that a public hearing be held before an Administrative Law Judge to determine the truth of the allegations set forth and what, if any, remedial action is appropriate in the public interest and for the protection of investors. On November 7, 1975, the respondents filed their answer to the Order for Proceedings containing general denials as to the principal allegations thereof and pleading various affirmative defenses.

Public hearings were held before the undersigned Administrative Law Judge on December 15,16,17,18, 1975, and on January 20,21,22, 1976 in New York City.

On the eve of the first hearing, specifically, on December 12, 1975, respondents served an amended answer to the order admitting each of the allegations contained therein. At the opening of the hearing, counsel for

respondents indicated that as a result of these admissions, the sole remaining question to be determined was what sanctions, if any, would be appropriate in the "public interest". It was on this basis that the subsequent hearings proceeded. Following their close, proposed findings of fact, conclusions of law, and supporting briefs were filed respectively by counsel for the Division of Enforcement and for the respondents, including a reply brief filed by the Division. Thereafter, pursuant to motion of the respondents, oral argument was had on June 14, 1976. The findings and conclusions herein are based upon a preponderance of the evidence as determined from the record and upon observation of the demeanor of the witnesses.

FINDINGS OF FACT

As a result of the amended answer served by respondents, and the position taken at the hearing, the following allegations in the Order stand admitted and constitute the findings herein:

1. That on August 15, 1975, final judgments of permanent injunction were entered against respondents in the United States District Court for the Southern District of New York enjoining them from further violating and aiding and abetting 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. (S.E.C. v. Leonard Cooper, et al., 73 Civil 2508.[1/]

2. That between March 22 and July 21, 1971, respondents wilfully violated and wilfully aided and abetted violations of Sections 5(a) and

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1/ CCH Fed. Sec. L. Rep. (1975-1976 Transfer Binder), §95,268.

5(c) of the Securities Act in that they, directly and indirectly, made use of the means and instruments of transportation and communication in interstate commerce and of the mails to offer to sell, sell and deliver after sale shares of the common stock of Meridian Fast Food Services, Inc. (Meridian) when no registration statement was filed or in effect as to said securities pursuant to the Securities Act.

3. That between March 22, 1971 and February 14, 1972, respondents wilfully violated and wilfully 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, in that they, by use of the means and instrumentalities of interstate commerce and the mails, in offering, selling, purchasing and effecting transactions in securities, namely common stock of Meridian, directly and indirectly, obtained money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and engaged in transactions, acts, practices and a course of business which would and did operate as a fraud and deceit upon purchasers and prospective purchasers of such securities. As part of the aforesaid conduct and activities, the respondents, among other things:

a. Acquired on behalf of others most of the trading float of Meridian common stock.

b. Effected transactions in said Meridian common stock at prices which were totally arbitrary and bore no relationship to either the intrinsic worth of the stock or supply and demand therefor.

c. Caused selective purchasing of said stock to be made in order to raise its price artificially.

d. Effected and caused others to effect transactions in Meridian common stock for the purpose of inducing the purchase and sale of said stock by others

e. Dominated and controlled the market in said stock.

f. Induced others to act as market makers in Meridian common stock in order to create actual or apparent trading in such security for the purpose of inducing the purchase or sale of said stock by others.

g. Failed to disclose to the purchasers and sellers of Meridian common stock the fact that the quoted prices in the securities in the inter-dealer quotation medium ("pink sheets") where Meridian was traded and the prices at which the stock was being bought and sold by them were unrelated to its fair and reasonable market price.

h. Failed to disclose to the purchasers and sellers of Meridian common stock, the manner in which trading therein was being conducted and, specifically, the fact that the trading market in Meridian was not governed by laws of supply and demand but was manipulated as a consequence of the course of conduct described in paragraphs A through G above.

THE PUBLIC INTEREST

With all of the allegations of the Order having been admitted, and the violations having been found accordingly, the sole remaining issue litigated is the determination, in the "public interest", whether any sanctions should be imposed against respondents, and if so, the extent thereof.

The general position of the Division is that respondents, having admitted to engaging in aiding and abetting a stock manipulation during the relevant period, and having been enjoined not only with respect thereto but also in another comparable securities situation, should be subjected to the severest sanction, namely, a complete bar from the securities business. Respondents, on the other hand, urge that because of circumstances occurring since the relevant period, the public interest would best be served by the imposition of such lesser sanctions as would permit both Amswiss and Woo to continue in the securities business.

With a view towards giving due consideration to the unique and special circumstances to be found in this proceeding, 2/ the Administrative Law Judge, has, over the objection of the respondents, permitted the Division to show the specific details involved in the subject transactions, and correspondingly, has, over the objections of the Division, permitted respondents to offer proof with respect to what has transpired in the intervening period thereafter.

Background of the Parties

Following his graduation from college in 1967, Woo became employed by a New York brokerage firm as a trainee. At the same time he attended the Baruch College of Business, a division of the City University of New York, where he was awarded a Masters of Business Administration Degree in 1968. It was at the Baruch College that he met Mr. Barry Finkelstein. In January 1968 both Woo and Finkelstein started as salesman at A.T. Brod and Company, a New York broker-dealer. Several months thereafter, Ramon D'Onofrio joined the

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2/ Compare Robert F. Lynch, SEA Rel. No. 11737, (October 15, 1975), 8 SEC Docket 75, 78, n. 17.

firm to head a new underwriting department. As will be seen D'Onofrio became the prime mover behind the securities manipulations involving Woo and Amswiss.

D'Onofrio introduced some profitable "hot issues" at A.T. Brod, and Woo claims to have developed personal esteem for his business acumen. The two men became close business associates and between the summer of 1968 and the spring of 1969 they were involved in several business ventures. These included the purchase of a chain of chicken dinner restaurants in Puerto Rico (which eventually failed and went bankrupt), the purchase of control in Computrav, Inc., a travel agency (eventually sold at a loss), and a joint involvement in Academic Development Corp. (a company which later became embraced in an enforcement action brought by the Commission)[3/]

In connection with the Puerto Rico venture, there were several thousands of dollars of expense money which were not utilized. These were placed by D'Onofrio in an account in a Swiss bank opened in the name and with the consent of Woo. The latter professes no knowledge as to why this was done nor what use was made of this account.

In addition to the foregoing relationships, Woo performed two personal favors for D'Onofrio. These had to do with defaulted obligations of and judgments against D'Onofrio for which Woo agreed to "front" by obligating himself to satisfy as a nominee party with the promise of funds and reimbursement from D'Onofrio. At that point, Woo claims he would have done anything, any kind of favor that D'Onofrio might have asked of him. Eventually, D'Onofrio was indicted for bankruptcy fraud arising out of the underlying transactions to the above judgments and obligations, and, upon his plea of guilty, was

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3/ S.E.C. v. Harwyn Industries Corp., 326 F. Supp. 843 (D.C. N.Y., 1971).

sentenced on July 22, 1971 to a three-year suspended sentence.

Organization of Amswiss

Woo left the employ of A.T. Brod on December 5, 1968 to organize Amswiss, using his own funds, but with the greatest part of its capital derived from seven preferred stockholders. He was the only active principal. Shortly after Amswiss's formation, however, others joined the firm including one Richard Kirschbaum, its secretary from March to May 1969. Kirschbaum left the firm and later became a partner of D'Onofrio in a consulting firm from at least March 1971 to February 1972. Also in 1969, R. Scott Barter, son of D'Onofrio's common-law wife, became an officer of Amswiss for a short period.

In February 1971 Finkelstein purchased his 50% interest from Woo. Finkelstein's functions were and continue to be primarily in trading. Woo primarily ran and continues to run all back office activities.

Capital for Amswiss was also obtained through subordinated loans. One of the subordinated lenders, who included Kirschbaum, was a Mr. Hyman Temkin who had had a long-standing business and personal relationship with D'Onofrio going back to 1967. Temkin's son, Michael, was one of the original preferred stockholders.

Further D'Onofrio Dealings

In addition to the Woo-D'Onofrio business transactions described above, occurring between the summer of 1968 and the spring of 1969, D'Onofrio sent Woo and Amswiss for consideration during a period after July 1969 some 10 or 15 prospective underwritings. D'Onofrio had indicated that he would generate or direct any kind of brokerage business to Amswiss whenever

he was in a position to do so. Moreover, D'Onofrio had power of attorney over several accounts at Amswiss, namely Dr. Harvey Labenow (a friend), Mauriel Barter (his common-law wife), Dorothy Gerbe (his mother), Joanne Daly (his sister), Robert Harper (his brother) and Marilyn Herzfeld (another friend).

One account which figures prominently in the pertinent transactions herein, and which D'Onofrio was instrumental in introducing to Amswiss is the Bank Vom Linthgebeit (the Swiss Bank), a Swiss chartered bank located in Rapperswil, Switzerland. Amswiss commenced doing business with the Swiss Bank in 1970 and the Bank effected, through Amswiss, numerous transactions.

In July 1969, Woo was called to testify before the staff of the New York Regional Office of the Commission, which was then investigating the activities of D'Onofrio, from which it appeared to Woo that D'Onofrio was suspected of an involvement in illegal pursuits. Woo asserts that, as a result of this investigation, he had decided at that time, not to embark on any new endeavors with D'Onofrio.[4/] However, it was after July, 1969 and during the relevant period herein that D'Onofrio not only continued to enter orders in the various accounts at Amswiss over which he held power, and suggested some 10 to 15 underwritings to Amswiss, but, as hereinafter detailed, engaged in the admitted Meridian manipulation, the "Galco" manipulation plus a number of other suspicious transactions involving Amswiss.

4/ In a written statement dated July 11, 1972, Woo wanted the Commission to believe that "Woo's consistent attempt to sever existing business relationships with D'Onofrio, and his refusal to enter new relationships, once he became apprised of D'Onofrio's problems with regulatory agencies demonstrate his desire to operate Amswiss in a fully legal and ethical manner." (Exh. 5, p. 26).

The Meridian Common Stock Offering

The transactions involving Meridian had a beginning in late 1968 or early 1969, when its president and controlling shareholder, Leonard Cooper, asked Woo to underwrite a public offering of its stock. In fact, on or about May 13, 1969, Woo consented in writing that Amswiss be named as an underwriter in a notification and offering circular to be filed with the Commission by Meridian pursuant to Regulation A, 5/ in connection with the proposed offering of 60,000 shares of Meridian common stock to the public. Meridian, a Delaware corporation engaged in the operation of "drive-through" retail dairy store, was in very poor financial circumstances, showing substantial operating losses for several years, capital deficits, and an extremely unfavorable working capital (ratio of current assets to current liabilities) position.

Subsequently, Woo rejected the underwriting because of Meridian's terrible financial condition, and because Amswiss was doing poorly with another similar offering. Cooper with the assistance of Kirschbaum (D'Onofrio's business associate), obtained the agreement of Norbert Associates, Inc., a broker-dealer, to be the underwriter. On March 22, 1971 Meridian offered 60,000 shares of its common stock to the public at a price of $5.00 per share, pursuant to a claimed Regulation A exemption. Under the terms of the underwriting, 22,000 of the offered shares had to be sold in 90 days (or by June 22) else the underwriting would be withdrawn and all funds returned to subscribers.

5/ Regulation A (17 CFR 230.251-230.263) exempts under specified circumstances some security issues from the registration requirements of the Securities Acts.

The initial offering was unsuccessful. As of June 11, 1971,with less than 2 weeks remaining to fulfill its terms, not one share had been sold to the public. At that point Cooper sought and obtained the assistance of Woo to successfully complete the offering. Through Woo's efforts, a selling group consisting of Amswiss and seven other dealers was formed.

Between June 11 and 22, Cooper referred a number of his friends, relatives, and business acquaintances to Amswiss as purchasers of the Meridian offering. Amswiss sold a total of 6,300 shares at the offering price to 24 such purchasers, and referred six other purchasers for 1,200 shares to other members of the selling group. Additionally, some friends and relatives of D'Onofrio bought some 600 shares through Amswiss and another thousand shares through two selling group members.

There still being insufficient total sales to complete the offering, Cooper prevailed upon one Richard Hartman, a friend and business associate (and experienced investor), to purchase 13,500 Meridian shares through Amswiss. Woo had some doubts about the propriety of such a sale at that point and consulted with his counsel, resulting in Hartman executing a writing that he was acquiring the Meridian stock for the purpose of investment and had no present intention of disposing of the same. Thus, by June 22, 1971, a total of 22,600 shares had been sold to 38 persons, all of whom, with but one exception, were persons either known to or related to Cooper or D'Onofrio. After completion of the offering and the payment of underwriting fees, together with some indebtedness, Meridian netted only $38,363, and was still insolvent. The record herein does not satisfactorily explain why, since Cooper and D'Onofrio were primarily responsible for

obtaining the purchasers needed to fulfill the offering requirements, and no members of the investing public showed any interest in the stock, they had to turn to Woo and Amswiss rather than look to Norbert, the original underwriter, to execute these transactions.

In any event, with all of the public float winding up in the hands of Cooper's friends, relatives, and business associates, Woo then proceeded with efforts to create an aftermarket in the Meridian stock, which in his opinion was not worth anywhere near its offering price of $5.00 per share, which had attracted no outside interest at that price, and was issued by an insolvent corporation showing continuing operating losses. As a result of Woo's efforts, the price rose to a high of $20.00 per share between June, 1971 and February 14, 1972, when the Commission suspended trading in the stock. By the admissions of the respondents, this rise resulted from a manipulation engineered by D'Onofrio in which they aided and abetted.

The Meridian Aftermarket

After the completion of the original offering, Woo contacted several brokers urging them to make a market in Meridian. Two of them, Ferkauf and Custodian Securities, agreed to do so and proceeded to enter quotations for Meridian in the "pink sheets". Amswiss subsequently appeared in the pink sheets as correspondent for Custodian. Thereafter, between July 30 and August 30, 1971, all of Cooper's friends, relatives and acquaintances who had purchased the Meridian stock in the initial offering (except Hartman) disposed of their holdings at between $4 7/8 and $5 3/4 per share, which were sold to either the Swiss Bank, to friends and associates of D'Onofrio,

or to the two market maker brokers. In almost all instances Amswiss executed the transactions.

Towards the end of the above period, Hartman supposedly advised Woo that he wanted to sell his 13,500 shares of Meridian at $6.50 per share. Approximately a week later on August 30, the Swiss Bank advised Amswiss that it was in the market to buy Meridian in lots of at least 1,000 shares for $6.50. Amswiss did not promptly cross these two orders and transfer Hartman's holdings to the Bank in a block transaction. Rather, the sale of the Hartman shares was accomplished over a ten-day period by a series of nine in-house crosses at Amswiss starting at a price of $6.50 per share on August 31 and increasing gradually to a price of $7.00 per share on September 10.

The Swiss Bank purchased 11,900 of the shares and the remaining 1,600 were picked up by Custodian. As a result of these and several transactions thereafter, by September 17 all but 100 shares of the total float of 22,600 shares of Meridian were hold by the Swiss Bank (18,000 shares) and by relatives, friends, and business associates of D'Onofrio and in the accounts at Amswiss over which he had control. The last sale on September 17 was at a price of $8.25. By the breaking up by Amswiss of the block of Hartman stock into numerous transactions, and by other means such as Amswiss's executing a sale at a price higher than the offering price by Hartman and the bid price by the Bank, it is quite clear that the increase from $5.00 to $8.25 was artificially brought about.

Thereafter, there followed a series of transactions in small lot sizes of 100 and 200 shares involving transactions among the Swiss Bank,

the market maker brokers, and the individual accounts of D'Onofrio's friends, relatives and associates which eventually resulted in the price of Meridian reaching $20.00 per share on February 16, 1972. As an example of the type of manipulation engaged in, on November 16 the Bank sold 500 shares of Meridian to Custodian for $15.00 and on the same day bought 200 shares back for $17.50. All of these transactions were executed by Amswiss, Ferkauf, or Custodian either on behalf of the buyer or seller, or both. During the entire period commencing with August 11, 1971, the first day Amswiss engaged in an aftermarket transaction, to February 9, 1972, the last day it so engaged, there were approximately 105 transactions in Meridian and substantially all of them involved a friend, relative, account or other relationship with D'Onofrio. In 100 of these transactions the executing broker-dealer on either side was Amswiss, Ferkauf, or Custodian. In no case, with possibly one exception, was there any outside party or customer involved in the Meridian transactions. At the time the Commission suspended trading in Meridian, the 22,600 shares in the float, owned by the Swiss Bank and the friends, etc. of D'Onofrio, had a total market value, at $20.00 per share, of $452,000.

During the foregoing period, there were other deals with respect to Meridian involving respondents and D'Onofrio. Thus, in the latter part of July 1971, Woo became instrumental in attempting to effectuate a merger involving Meridian and a company known as Laboratory For Chromatography, Inc. (LFC), which, if it had been consummated, would have resulted in Amswiss receiving 210,000 shares of the merged company as a finder's fee. For

some unexplained reason, Woo had kept D'Onofrio advised of the progress of these negotiations. However, the deal fell through. In a later transaction, on or about December 20, 1971, Meridian issued some 238,000 shares of its stock to International Fund for Mergers and Acquisitions, a company with which D'Onofrio had associated. Thereafter, on February 1, 1972, Meridian issued 2,340,000 shares of stock in a merger-acquisition to a company known as Radiation Service Associates, out of which almost 150,000 shares were issued to D'Onofrio and his business associates. There is nothing in the record as to what, if any, effect the manipulated trading in the Meridian float had on these transactions, or the ultimate goal, overall, the parties had intended to achieve.

Respondents' Participation

Woo now recognizes that the transactions involving Meridian did in fact embrace a manipulation of the price in a practically worthless security accomplished by D'Onofrio, and admits that he and Amswiss were aiders and abetters therein. Respondents, however, insists that their only part, actually, was to execute orders as given by others, and that although Woo had some suspicions concerning them, he really did not know what was taking place or that D'Onofrio was the manipulator. Woo felt that he and Amswiss were in no way involved so long as he looked the other way and did not ask questions. In order to evaluate this position of innocent participation, particularly in arriving at the "public interest" issues remaining in this proceeding, examination of the role of D'Onofrio with respect to Meridian, and of the relationship existing between him and Woo, is in order.

As seen, it was D'Onofrio who had encouraged Cooper to go public with the Meridian offering and it was through the effort of the former's partner, Kirschbaum, that Norbert agreed to become an underwriter. Later, D'Onofrio's relatives and associates bought shares in the original offering to assist the underwriting. It is not disputed that D'Onofrio was the manipulator in the aftermarket. His partner in Switzerland, Herbert, was an officer, director, or stockholder of the Swiss Bank and was instrumental in getting the Bank to open an account in Amswiss in 1970. D'Onofrio made inquiries of Woo as to the Bank's purchases of Meridian shares, and demonstrated an interest in the merger transactions involving LFC. Eventually, D'Onofrio and his associates received a large number of Meridian shares as a result of the merger with Radiation Services Associates.

Woo was aware of the foregoing. He also became suspicious of the interest shown by the Swiss Bank in the Meridian stock to the point where he inquired of D'Onofrio what was occurring. He claims to have been put off with the admonition that so long as he was getting a little stock business here and there, he should be grateful about it, and not ask any questions. (This testimony by Woo is in line with the position he now takes that by closing his eyes to what was going on, he could not be responsible therefor). However, his other relationships with D'Onofrio should have caused him to be aware that something other than a little stock business was going on, and that D'Onofrio was behind the unusual price increase in an otherwise worthless security.

Woo's business dealings with D'Onofrio, at least in the early days of Amswiss, have heretofore been stated. Woo was aware as early as 1969

that D'Onofrio had become involved in an investigation by this Commission and that prior to the aftermarket trading he was indicted for and eventually pled guilty to bankruptcy fraud arising out of the judgments that Woo helped to settle. Yet, there is more.

Of particular relevance to the public interest issue herein is the fact that an injunction has been entered against Woo and Amswiss, among others (including D'Onofrio), on December 23, 1975, in SEC v. D'Onofrio, U.S.D.C., S.D.N.Y., No. 72 Civil 3507,[6/] arising out of a manipulation of the price, and the unregistered distribution, of the common stock of Galco Leasing Systems, Inc. (Galco).[7/]

Galco was a company with virtually no assets or earnings whose stock is characterized by Woo as "garbage stock". The security was the subject of a manipulation by D'Onofrio during a period several months prior to the Meridian offering, February through April 1971, and involved transfers of shares among friends of D'Onofrio and the same Swiss Bank involved in Meridian, including D'Onofrio associates with accounts at Amswiss. The District Court, in its decision dated June 3, 1975, included a finding that, in buying and selling Galco stock for D'Onofrio's account at the Swiss Bank, Amswiss and Woo participated in a scheme with D'Onofrio to manipulate upward the price of an essentially worthless security. The court further found that Amswiss and Woo knew that D'Onofrio

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6/ CCH Fed. Sec. L. Rep. (1975-1976 Transfer Binder), ¶95,201.

7/ That findings of commission of other violations of the securities laws may be considered "in the public interest", see Armstrong, Jones and Co., et al., 43 SEC 888, 903, and Richard J. Buck & Co., et al., 43 SEC 998, 1011.

was the silent holder of the account at the Swiss Bank and that they participated in the distribution of unregistered Galco shares through transactions carefully executed to give the appearance that they were between disinterested persons.

Without adopting the conclusions of the District Court in the above case to this proceeding, they nevertheless represent another situation wherein Woo, although suspicious that the circumstances somehow involved D'Onofrio, claims to have felt that, if he closed his eyes, and executed the orders presented to him without asking questions, he would somehow not be involved in what was going on.[8/]

The respondents were involved in other similar type situations embracing activities by D'Onofrio, the Swiss Bank, and "garbage stocks". The stock of Sensory Systems, Inc., a company in which D'Onofrio was affiliated, was a security which Woo had known to have been manipulated on various occasions. Between May and July of 1971 Woo and Amswiss executed a number of transactions on behalf of D'Onofrio's friends and relatives and the Swiss Bank at prices ranging between $1.00 and $8.00 per share. The nature of the transactions and the manner in which they occurred were such as to have aroused Woo's suspicions that something in the nature of a manipulation was going on. He again, assertedly, did not ask questions nor advise anyone of his suspicions, feeling that by turning his back on them and merely executing trades that he was not involved.

8/ D'Onofrio was not only enjoined in SEC v. Cooper and SEC v. D'Onofrio, in late 1974 he pled guilty to conspiracy to violating the federal securities laws and sentenced to serve an 18-month prison term.

Other securities in which transactions occurred prior to the Meridian manipulations which in the suspicion of Woo involved D'Onofrio and the Swiss Bank include: "Investment Property Builders," with which Mr. D'Onofrio had a relationship and about which there was a Commission investigation; "Hair Extension", which D'Onofrio was accused of a manipulating by the Commission, and "Nationwide Marketing" about which he was also accused of manipulating. These securities were traded through Amswiss by the Swiss Bank all prior to the Meridian manipulation. In fact, on August 23, 1971, counsel for Amswiss, following a request of the Commission, submitted a record of all of the Swiss Bank's transactions in connection with an investigation of another security. Thus, just one week prior to the unloading of the Hartman Meridian shares to the Bank, Amswiss was aware of the Commission's interest in the Bank.

Woo admits to having a suspicion that D'Onofrio was somehow mixed up with the Swiss Bank and its trading practices. His attitude towards these suspicions is aptly set forth in the following testimony (transcript, pages 1268-1270):

By Mr. Perlmutter:

Q Sir, did it come to your attention in September of 1970 when the Bank Von Linthgebeit purchased Galco that D'Onofrio lucked (sic) in the background in those transactions?

A He may have, I don't know.

Q Well, did you ask Mr. D'Onofrio in September, 1970, Ray, are you behind the purchases of Bank Von Linthgebeit securities transactions through Amswiss?

A No.

Q Was there any reason why you didn't ask Mr. D'Onofrio that?

A I didn't want to know.
I didn't want to know any answers.

Q Is the reason you didn't want to know any answers because you knew the answers?

A. I may have felt that way, but I felt that if I didn't know and no one told me that I would be isolated from the problem, that was my belief.

JUDGE SOFFER: What problem?

THE WITNESS: If anything was ever questioned I felt my role that I was not aware of anything and I didn't have an obligation to be aware of anything.

JUDGE SOFFER: What made you think there was a problem?

THE WITNESS: When you see stocks trading at different prices and you see stocks that fundamentally I don't think they are worth what they are trading even though it is my judgment, I go under the assumption somewhere, some place there is going to be a possible investigation.

JUDGE SOFFER: Is this a fair summary:

By September, 1970 you had some indication that the trades executed on behalf of Bank Von Linthgebeit somehow involved Mr. D'Onofrio, that there were things about them to your mind were questionable, but that if all you did was execute the trades and said nothing and did nothing, that you would be isolated from any of these problems?

THE WITNESS: That's a pretty fair statement.

* * * *

JUDGE SOFFER: You wouldn't ask anything even though you had suspicions and you knew he was involved?

THE WITNESS: I knew he was connected because the bank had come through us through a friend of his. 9/

By Mr. Perlmutter:

Q And that friend was Mr. Herbert?

A Yes.

Q And he was his business partner in Switzerland, is that correct, Mr. Herbert?

A That's correct.

9/ Underscoring added.

Respondents' Post-Meridian Activities

Respondents Woo and Amswiss have offered proof to demonstrate that since their involvement in the Meridian manipulation some five years ago, they have changed their ways, demonstrated a willingness to comply fully with the law, regulations and good business practices, have become a significant factor in the securities industry, and their continued operation therein is required in the public interest.

A.

In the first place, Amswiss has, since the Meridian transactions, terminated virtually all retail accounts, has ended all business activities with Swiss banks, and has discontinued any underwriting activities or participation in selling groups. Instead, its activities are devoted exclusively to trading. More particularly, about 85% (and increasing) of its business is involved in the trading of "third market" 10/ securities, with the remainder of its trading activities equally divided among over-the-counter securities, through the NASDAQ system, and corporate, municipal and government bonds. Amswiss trades for its own account, except for a minute percentage of total business handled for retail customers on an accommodation basis. In 1975, it handled approximately $100,000,000 worth of securities. It executes from 100 to 250 transactions per day. Amswiss's total assets are approximately $1,250,000 and its capital fluctuates between $500,000 and $600,000. Amswiss presently employs some 20 workers in both the trading room and back office. It is a member of the National Association

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10/ The so-called "third market" comprises over-the-counter trading in listed securities away from the floor of the exchanges on which they are listed.

of Securities Dealers, the National Clearing Corporation and of the Boston Stock Exchange. Amswiss is registered with this Commission as a market-maker in approximately 90% of the more than 3,000 stocks that are listed on the New York and American Stock Exchanges. Finkelstein, the partner not involved in any way with the Meridian or other manipulations, is now in charge of all Amswiss trading activities.

B.

Amswiss has been accepted as a member of the three self-regulatory agencies named above, following careful investigation by these bodies as to the background and fitness of Amswiss and its ~~principles~~ principal and despite knowledge by these agencies concerning the Galco and Meridian proceedings before the Commission and the courts.[11/] The firm has continued as a member in good standing in these organizations and no evidence of any violations either of their respective rules and regulations or of the securities law has been found during routine examinations, nor have any complaints been lodged. This state of facts is attested to by the testimony of Mr. James E. Dowd, President of the Boston Stock Exchange,[12/] Mr. Kevin F. Cuddihy, a Senior Examiner employed by the National Association of Securities Dealers, and Mr. John R. Carrera, an official of the National Clearing Corporation.

From the evidence thus presented, it can be concluded that respondents

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11/ However, because of the pendency of these proceedings, Amswiss had difficulty in obtaining membership in the Pacific Stock Exchange.

12/ The nature of the Amswiss membership in the Boston Stock Exchange is a "market-maker membership". As such, it is permitted to execute orders which are tendered first to the floor specialist, thence to the alternate specialist and ultimately to the market-maker member. In other words, Amswiss gets the last opportunity to fill an order.

since the Meridian manipulations have affirmatively complied with, and have not committed any violations of the securities laws.

C.

Additionally, respondents introduced proof in the nature of character evidence attesting to their general reputation for fair dealing, honesty, dependability, and financial reliability. These witnesses include those in the securities field, those in the financial community, and those relating to the personal reputation of Woo.

The witnesses in the first group (securities business) include Mr. Jeffrey A. Schultz, a financial consultant and faculty member at Case Western Reserve University School of Management; Mr. Samuel Weiss, President of Samuel Weiss & Co., a New York Stock Exchange member firm executing large orders for other brokers, and who is also a college instructor; Mr. Alan P. Goldberg, President of Hawthorne Securities, a member of the New York, Boston and Midwest Stock Exchanges and associate member of other exchanges, whose primary function is the execution of orders on an agency basis for other brokers, and who is also an official of the Boston Stock Exchange; Mr. Joseph S. Gratton, an officer of First Mortgage Investors Company a large real estate investment trust; Mr. Warren Schwartz, a floor-broker on the New York Mercantile Exchange and a registered option trader on the American Stock Exchange; Mr. John Kavanewsky, a partner in DeCordova, Cooper and Kavanewsky, a firm which is a member of and a specialist on the floor of the New York Stock Exchange; Mr. James Carey Hall, a floor-representative for Shaw, Hooker & Co., a member firm of the Pacific Stock Exchange, dealing principally with retail customers; Mr. Michael Metrinko, employed as a

floor broker for A. G. Edwards, of St. Louis, Mo., a member of the New York Stock Exchange; Mr. Alan E. Feitell, a partner in F. Lowitz & Co., a brokerage firm belonging to the New York Stock Exchange, dealing in retail accounts; Mr. Willard Bransky, President of Eldon-Emor & Co., a small broker in Hammond, Indiana, a non-exchange member serving small local retail customers in listed securities primarily traded in the third market; and Mr. Jack Lippman, an officer of Dis-Com Securities, an over-the-counter broker in Hallandale, Fla.

These individuals and their firms have been doing business on varying scales with Amswiss and its principals during the period since the Meridian transactions. It is their opinion, based upon their own business dealings directly and their knowledge of the reputation enjoyed in the securities field, that Amswiss, Woo and Finkelstein engage in honest business practices, are prompt in rendering payments of monies and deliveries of stock, are reliable in completing their undertakings, have extensive knowledge of the securities business and the third market, and have not been involved with any complaints or other expressions of dissatisfaction.

Some of these witnesses have been aware of the involvement of Amswiss and Woo in the injunctive proceedings involving Galco and Meridian and others have not. However, all express the view that, irrespective of the manipulations engaged in or of the injunctions issued against Amswiss and Woo, they would nevertheless continue in their business relationship as heretofore without any fear of adverse consequences to themselves or their firms.

D.

Two bank officials support the fact that Amswiss and Woo enjoy a good reputation in the financial community. Mr. Alfred Acampora, presently a supervisor of broker's loans for the Bank of Montreal, performed a similar function for the Franklin National Bank between 1966 and 1974. Since 1969, the Franklin National Bank had been lending funds to Amswiss and over a period of time the line of credit increased to approximately $3.5 million. Such funds are not loaned without a careful examination of the capabilities and resources of the broker-borrower and in this case, the witness was completely satisfied with the reliability and capability of Mr. Woo in running the back office. The credits were extended despite knowledge of the bank that there were two injunction proceedings pending against Woo and Amswiss.

Mr. Marcell Stambach is an official of the Bank Leumi Trust Company of New York where Amswiss, Woo and Finkelstein have been maintaining their respective checking and savings accounts. In 1974, the bank extended a line of credit to Amswiss amounting to several hundreds of thousands of dollars. Prior to making such loans, a careful investigation was made in the financial and brokerage communities on the basis of which the bank believed that Amswiss was reliable and responsible financially. The witness would continue to recommend that loans be made to respondents, even with knowledge of the two injunctions that have been issued against them.

E.

Two character witnesses testified as to the fine personal reputation enjoyed by Woo in his community. Eugene Bauer, a twenty-three year veteran of

the New York City Police Department, whose last eight years have been involved in the Community Affairs Division, particularly in the Youth Aid Division, of the Department, has known Mr. Woo for approximately 10 years. Woo, during this period, has worked in various aspects of the youth football program as a volunteer coach. His reputation in the community wherein he resides, for honesty and for one who is socially involved in community and youth affairs, is excellent.

Father John Cornelius Blommestein is a retired Catholic priest. Prior to his retirement, he was an Associate Professor of Economics at the University of Notre Dame, as well as a lecturer at other places on economic and financial subjects. For about thirty years, he managed the funds of his Order, aggregating some $1,000,000 and as such engaged in the purchase and sale of various securities. He has known Woo personally and professionally since 1963. Woo had always made himself available on any securities matter and offered his advice and service, including those of Amswiss, without charge. The witness is of the opinion that Woo observes and possesses the highest standards of honesty, integrity, and truthfulness, and this despite the two injunctions that have been issued against him in the cases cited heretofore.

F.

In mitigation of the sanctions called for as a result of their admitted violations of the securities laws, respondents rely strongly on the contentions that Amswiss has, since those violations were committed, established for itself a significant and unique position as a third market trader in the securities business and that, consequently, barring it from continuing

therein would be adverse to the public interest. It is further urged that because of Woo's knowledge and capabilities in handling the back-office for Amswiss, his continued relationship with the firm is also required in the public interest.

For the quarter ending September 30, 1975, there were approximately 30 firms registered as market makers in the third market with the Commission. Most of them trade actively in a narrow range of securities, either in particular industries or for the well-known and heavily-traded securities. Only a few such firms are broadly based and Amswiss is said to be the only one that presently makes a market in almost every listed stock on the New York and American Stock Exchanges, as well as in many unlisted shares. This, would include many securities that are infrequently traded (i.e., "illiquid"). Thus, rather than concentrating on high volume issues, Amswiss handles a light volume and a great number of stocks. For that reason, it has different marketing and capital needs, and requires a wide expertise. To this end, it maintains a library of current information on approximately 3,000 securities in which it trades for which Woo expends a great deal of time and effort.

The witnesses called by respondents attest to the relative importance and uniqueness of Amswiss in the securities field in this respect. They urge that the existence of the third market benefits individual investors who are able to shop for the best possible price and execution for their transactions rather than be compelled to execute orders solely on the floor of the exchange. The more market-makers that exist the more there is competition resulting in cheaper cost to investors. Regional exchanges such as in Boston and on the Pacific Coast also benefit in competing with the major exchanges for business.

Moreover, the proposed rescission by the New York Stock Exchange of its present Rule 394 [13/] would create an increased need for the third market makers.

However, the respondents experts point out that the number of third market makers has actually been declining in recent years and that the loss of Amswiss by revocation of its registration would have the undesirable effect of reducing the number even more. A decrease in the number of market makers would have a consequent lessening of liquidity in many securities, and of competition for price and execution.

The expert witnesses offered by respondents agree that Amswiss is a market maker in the largest number of securities in third market transactions than any other similar firm. They contend that it not only competes with other market makers in the more popular securities, but it is the only market maker in the many so-called "illiquid" securities, such as real estate investment trusts and regional stocks. To this extent, it serves an important function in the market place performed by no one else. Hence, its loss of registration would be especially felt. Some of the firms represented by these witnesses do a significant volume of business with Amswiss and others relate specific instances where they or one of their customers have been able to effect particular transactions through Amswiss. Mention is made of its market making in R.E.I.T. securities being helpful to holders thereof, especially during recent periods of financial difficulties for such companies. A third market maker must have sufficient capital and trading

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13/ This is a rule limiting member firms to execute their trades on the floor of the Exchange only.

expertise in order to stay in business. In this regard, Woo is important to Amswiss's activities. He has extensive knowledge and Amswiss extensive information concerning the many securities in which they trade.

The Position of the Division Concerning Sanctions

The Division of Enforcement urges that both Woo and Amswiss be barred from the securities business. The respondents have admittedly aided and abetted D'Onofrio's manipulation of Meridian stock in a manner which the Division deems blatant and deliberate. Not only have these respondents been enjoined for the Meridian transactions but for the Galco ones as well. The Division charges that the inherent vice of a price manipulation is not overcome by proof of later good behavior, that no one individual or firm is indispensable to the securities business, and that the only way the public interest will be upheld would be by imposing the strongest sanctions.

The Position of the Respondents

Respondents recognize that by virtue of their admitted wilful violations of the securities laws, as well as by the entry of a final judgment of permanent injunction against them, the Commission may proceed to impose sanctions against them. However, they urge that lesser sanctions than those requested by the Division would better serve the public interest, and take the unusual step of proposing maximum sanctions they deem appropriate under the circumstances, as follows:

1. That Amswiss be censured.

2. That Woo be suspended for a total period of one year, with the

suspension spread out so that it occurs for one month out of every quarter until the total of twelve months of suspension has been accumulated. Commensurate reductions would be made in his earnings during the suspension periods, with the earnings so removed to be turned over to the Securities Investors Protection Corporation, or a charitable organization.

3. That for a period of twelve months Amswiss' activities be circumscribed and limited primarily to the trading activities in which it is now engaged. Thus, it could not engage in any underwritings, retail business, investment adviser activities, etc.

4. Amswiss shall establish a so-called "Special Review Committee" of three independent individuals, subject to the Commission's approval, to inquire into, examine and review at least once each quarter the books, records, documents and activities of Amswiss and to report to the Commission the results thus obtained together with any evidence of non-compliance with the securities laws, etc. This Committee shall function over the entire 3-year suspension period embraced in paragraph "2" above.

The suggested maximum sanctions are admittedly and obviously intended to allow Amswiss and Woo to continue to operate in the securities business, while at the same time suffering the effect of some form of sanction coupled with an overview of their activities to insure against the recurrence of violations.

The respondents urge that lesser sanctions are called for because: unlike his attitude back in 1971 and 1972 Woo now recognizes his obligation

to be vigilant in preventing the occurrence of frauds and manipulations; since those years Amswiss and Woo have scrupulously obeyed and complied with all securities laws and regulations; Amswiss has since changed its operations so that it is no longer engaged in underwritings or retail operations; in the intervening period Amswiss and Woo have come to enjoy an excellent reputation in the brokerage community; and, the public interest requires that they continue to perform their important and unique functions of being a third market maker in a wide number of liquid and illiquid securities.

In other words, respondents say that the passage of time has served to demonstrate that the public is no longer threatened by their activities in the securities industry, and that, actually, the public needs their continued service. As added assurance of continued good conduct, they point to the fact that they are now now subject to two outstanding federal court injunctions, the continued vigilance of the Commission and the supervision of the self-regulatory bodies to which they belong. If their proposed sanctions be adopted, there would also be the proposed overview by the Special Review Committee.

Respondents also urge that, because of the relationship of Woo to the trading activities of Amswiss, the fortunes of one are bound up with those of the other, and that the type of sanctions imposed against one must necessarily be imposed against the other.

DISCUSSION AND CONCLUSIONS

In determining whether sanctions should be imposed against respondents for their admitted wilful violations as outlined above, and, if so, the

extent of such sanctions, certain basic principles have become well established.

In the first place, the imposition of sanctions is remedial only, and intended to protect the public interest from harm at the hands of wilful wilful violators and not to punish them. See Berko v. S.E.C., 316 F.2d 137, 141 (C.A. 2, 1963), and Leo Glassman, SEA Release No. 11929 (December 16, 1975), 8 SEC Docket 735, 737. In fact, the prospect of their future honesty is said to be the crucial factor in cases of this type. Richard C. Spangler, Inc., SEA Release No. 12104 (February 12, 1976), note 71, citing Foelber-Patterson, Inc., 12 S.E.C. 330, 336 (1942).

Moreover, in order to preserve the remedial aspect of these proceedings, sanctions imposed must have a deterrent affect on others in the business "who may otherwise be tempted to succumb to the lethal admixture of mindless enthusiasm and overweening greed that so often brings fraud and deceit in its wake." See Richard C. Spangler, Inc., supra, note 67; and compare Arthur Lipper Corporation, SEA Release No. 11773 (October 24, 1975), 8 SEC Docket 273, 281.

It was observed by the Commission 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. Having been directed by the Act to draw that inference whenever our discretion leads us to consider it appropriate, we must do so if the legislative aim is to be attained." When the past misconduct involves fraud, fidelity to the public interest requires us to be mindful of the fact that the securities business is one in which opportunities for dishonesty recur constantly and that this

necessitates specialized legal treatment (Arthur Lipper Corporation, supra, page 281 and note 71).

A.

The first observation in this proceeding, with relation to the principles cited, is that the admitted acts of aiding and abetting alone would justify the imposition of the severest sanctions, since manipulation of security prices strikes at the very integrity of the pricing process upon which all investors rely and runs counter to the basic objectives of the securities laws. See Collins Securities Corporation, et al., SEA Release No. 11766 (October 23, 1975), 8 SEC Docket 250, 258.[14/]

However, sanctions cannot be assessed mechanistically. Due regard must be given to the facts and circumstances of each particular case and to find those that differentiate one man's case from another's. See Robert F. Lynch, SEA Release No. 11737 (October 15, 1975), 8 SEC Docket 75, 78; and Leo Glassman, supra, at page 736. It is for this reason that, despite the respective objections from both sides in the proceeding, the Division was allowed to show the facts inherent in and surrounding the manipulation already admitted to, and respondents were permitted to show their conduct and activity thereafter. Compare Ross Securities, Inc. (1936) 41 S.E.C. 509, footnote 10.

B.

Rsspondent Woo asserts that at the time of the Meridian manipulation, he felt that so long as he avoided investigating his suspicions and looked

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14/ The Collins case refers, in turn, to the report of the Senate Committee on the Exchange Act stating that the purpose of the Act is to purge the securities exchanges of those practices which have prevented them from fulfilling their primary function of furnishing open markets for securities where supply and demand may freely meet at prices uninfluenced by manipulation or control.

the other way, he somehow was not involved therein. But,he continues, as a result of the decision of the District Court on August 7, 1975 in S.E.C. v. Cooper, supra, he has now come to the realization that he was in fact legally responsible for aiding and abetting the manipulation by D'Onofrio, that his prior attitute was wrong, and that he must henceforth be ever more vigliant in detecting and reporting his suspicions that the law is being violated in transactions handled by him.

However, it is difficult to accept these contentions of quasi-innocence with respect to what was taking place in the Meridian dealings. Taking into account Woo's initial relationship with D'Onofrio in the various business transactions heretofore described, plus Woo's knowledge of D'Onofrio's involvement in bankruptcy fraud, in Commission's investigations, in transactions in a number of "garbage" stocks including the Galco manipulation, and a close relationship with the Swiss Bank, it is clear that Woo must have had more than a mere suspicion that something was amiss in the Meridian aftermarket. He knew of the strenuous last minute efforts to get the Meridian underwriting to succeed, that Meridian was a hopelessly insolvent company whose stock was essentially worthless, that there was no interest whatsoever generated on the part of the investing public in the stock, that the only ones purchasing the security were the Swiss Bank and the friends, relatives, and acquaintances of D'Onofrio, that this group controlled virtually the entire float, and that the prices paid for this worthless stock increased to $20 a share through a series of small-size transactions for many of which Amswiss was responsible. In addition to "merely" executing the transactions, Woo influenced two

other broker-dealers to enter quotation in the "pink sheets", had Amswiss act as correspondent for one of them and caused Amswiss to spread the Hartman-Bank block sales over a ten-day period at ever increasing prices. Woo was interested in attempting to merge Meridian with LFC an action of which he kept D'Onofrio apprised.

When considering all of these facts and circumstances from the time Woo first met D'Onofrio until the suspension of trading in the Meridian aftermarket, the position that Woo has adopted of one merely playing the role of "innocent bystander" who was only suspicious of what was going on is patently incredible. The more likely conclusion is that he not only aided and abetted the manipulation wilfully, as that word is understood in securities laws,[15/] but that he did so consciously and deliberately as those words are commonly understood.[16/]

15/ A finding of wilfullness under the Securities Act does not require an intent to violate the law; it is sufficient that the person charged with the duty consciously perform the acts constituting the violation. Billings Associates, Inc., 43 S.E.C. 641, 649 (1967), and Hughes v. S.E.C., 174 F.2d, 969, 977 (C.A.D.C., 1949).

16/ As a matter of fact, Woo has taken different positions at various times depending upon expediency and circumstances. Thus, in a memorandum submitted to the Commission on July 11, 1972, when he thought it was suspected that D'Onofrio was somehow financially or otherwise interested in Amswiss, he stated that as a result of being called to testify in July, 1969 in an investigation of D'Onofrio's involvement in illegal activities, he had embarked on no new endeavors with D'Onofrio. As seen, however, there were a number of transactions between them between July, 1969 and July 11, 1972, including the Galco and Meridian manipulations. Later, at the trial of the injunction action involving these manipulations. Woo took the position that he was innocent of all wrongdoings. Not having succeeded (and, in fact, having been found to be unworthy of belief by the respective presiding district court judges),he approached this proceeding with the theory that he would admit to having engaged in wrongdoing, a revelation that came to him as a result of the decision in August, 1975 in S.E.C. v. Cooper, supra, but would rely on mitigation proof. Woo is an intelligent and perceptive man with a great deal of knowledge in the securities business. Assuming he did not know, it should not have taken him that long to find out the extent of his involvement in the Meridian manipulation.

It should be noted that the record is silent as to what Woo and Amswiss hoped to gain from this manipulation, other than the small amount of commissions generated from the transactions. For that matter, we do not know D'Onofrio's ultimate goal. It is also noted that no members of the public or other dealers apparently suffered any losses as a result of the manipulation; the only apparent losers were either D'Onofrio or the Swiss Bank. What might have happened had not the Commission suspended trading in Meridian can only be conjectured.

In weighing and evaluating the nature of the violations admitted, together with Woo's participation therein and the findings drawn therefrom, together with the injunction entered against him relating to the Galco manipulation, it is concluded that, for the protection of the public interest from future manipulations of the type found herein, and in order to deter others who might be inclined to so violate the securities laws, Woo be barred from all segments of the securities industry.

However, consideration must be given to the proof offered in mitigation of the sanctions herein. Such evidence is persuasive of the conclusion that such a bar of Woo need not be forever. There has been a significant change in business operations away from the kind involved in the Galco and Meridian affairs. It has been demonstrated that Woo has complied with appropriate securities laws and regulations. There is undisputed testimony from numerous sources of his good conduct and reputation, particularly for reliability and trustworthiness and as to his comprehension of the securities business. At the time of the Meridian manipulation, he was a relatively young man. There has been a five-year period of opportunity to observe him. Woo apparently possesses a great deal of ability, knowledge

and industry. Consequently, the reasons for the bar will have been suitably served with the added proviso that, after 18 months, Woo may apply for leave to return to the securities business, with such return limited to a position involving back office functions only, and not in a position directly or indirectly connected with trading activities.

In assessing the sanctions to be imposed against respondent Amswiss, the following will be taken into consideration:

(a) That the company is one half owned by Mr. Barry Finkelstein, against whom no charges have been made and who, as far as this record shows, was totally unaware of what was transpiring in the Meridian and other manipulations. He is apparently a man of good character and high ability, and has shown no inclination towards unethical or unlawful conduct.

(b) That the extent of Amswiss's involvement is directly related to Woo's activities and conduct and if he will be barred from association with Amswiss, the record shows no likelihood that the company will again be involved in fraudulent conduct.

(c) That Amswiss has become an important factor in the securities field by virtue of its described functions as a third market maker.

(d) That Amswiss enjoys a good reputation and is apparently financially and otherwise responsible.

(e) That it is the policy of the Commission, 17/ that "in all aspects of our regulatory activities, we regard competitive considerations to be important elements in determining how the public interest can best be served." Amswiss, without Woo, could continue as an active and viable competitor in the over-the-counter trading of listed securities.

17/ As expressed in a letter to President Ford dated January 8, 1976 from Commission Chairman Hills concerning implementation of regulatory reform programs.

It cannot be overlooked that Amswiss was the vehicle and instrument whereby the Meridian manipulation was effected, and the firm has been enjoined in S.E.C. v. Cooper, supra, as well as in S.E.C. v. D'Onofrio, supra, as a result of its participation in the Meridian and the Galco manipulation. Some sanction is therefore in order, not only by reason thereof but as a deterrent to other registered broker-dealers who might become inclined to engage in similar activities. Consequently, it is found that the public interest requires that the registration of Amswiss as a broker and dealer be suspended for a period of 60 days.[18/]

In its reply brief, the Division, for the first time, seeks as a sanction to bar respondent Woo not only from associating with any broker or dealer but also with any investment company or municipal securities dealer. The Order for Public Proceedings herein proceeds only under Sections 15(b) and 19(h) of the Exchange Act. Section 15(B) of said Act, which provides for the registration of municipal securities dealers, permits sanctions to be imposed -- paragraph (c)(4) -- against any person associated or seeking to become associated with a municipal securities dealer "on the record after notice and opportunity for hearing". Since respondent Woo in this proceeding has not been given adequate notice that an attempt would be made to bar him from associating with any municipal securities dealer, the request for such a sanction is inappropriate. Additionally, there would

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18/ The Administrative Law Judge is not unmindful of the fact that he is imposing a sanction of barring Woo while only suspending Amswiss and that these respondents have taken the position that the fortunes that befall one should, because of the importance of Woo's functions, be equal to that imposed on the other. However, the sanctions ordered herein are those deemed to be required by the public interest. Whether Amswiss can continue in operation without the services of Woo is a decision that it must make for itself.

be no need to bar him from association with an investment company since under Section 9(a)(2) of the Investment Company Act of 1940, it would be unlawful for him to become associated in that capacity by virtue of the injunctions against him in S.E.C. v. D'Onofrio and S.E.C. v. Cooper, supra, 19/

ORDER

Under all the circumstances herein, IT IS ORDERED:

1. That Glenn Woo be, and he hereby is, barred from association with any broker or dealer.

2. That after eighteen months following the effective date of this order, Glenn Woo may apply to the Commission for leave to become associated with a broker or dealer in the performance of back-office operations only.

3. That the registration of Amswiss International Corp. as a broker and dealer be, and it hereby is, suspended for a period of sixty (60) days following the effective date of this order.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice.

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen days after service of this initial decision upon him, filed a

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19/ In their proposed findings and conclusions, briefs and oral argument, the parties have requested the Administrative Law Judge to make findings of fact and have advanced arguments in support of their respective positions other than those heretofore set forth. All such requested findings of fact, conclusions, and arguments not specifically discussed herein have been fully considered and the Judge concludes that they are without merit or that further discussion is unnecessary in view of the findings herein.

petition for review of this initial decision pursuant to Rule 17(b), unless the Commission pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.

Jerome K. Soffer
Administrative Law Judge

Washington, D.C.
September 8, 1976