

ADMINISTRATIVE PROCEEDING
FILE NO. 3-10765

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
April 29, 2003

In the Matter of	:	
	:	
EDGAR B. ALACAN	:	ORDER DISCUSSING DIVISION'S
and MAYER DALLAL ¹	:	EXHIBITS 162 AND 163 AND
	:	RESPONDENT'S EXHIBIT 5


Based on a review of the parties' Joint Post-Hearing Exhibit List, the underlying exhibits, and the hearing transcript, two late-filed exhibits sponsored by the Division of Enforcement (Division) should now be added to the record. Division Exhibit 162, containing excerpts from Respondent Alacan's investigative testimony, was discussed at transcript pages 703-04 and 753. Division Exhibit 163, a copy of Respondent Dallal's income tax returns for 2002, was discussed at transcript page 375. IT IS ORDERED THAT both of these exhibits shall be added to the record.

The parties' Joint Post-Hearing Exhibit List did not include Respondent Alacan's Exhibit 5. That exhibit has two parts: first, a settlement agreement between Joseph Latimer, Jr., the Bankruptcy Trustee for Latimer's Estate, Respondent Alacan, and former Respondent Scarso, dated February 2, 2001; and second, a Stipulation of Dismissal Without Prejudice of all claims against Alacan and Scarso in NASD Arbitration #00-1470, dated February 7, 2001.

The hearing transcript does not show that Respondent's Exhibit 5 was ever discussed on the record, although exhibits of that type were discussed in general terms at transcript pages 24-25, 28-29, and 605, and the specifics of the Latimer settlement agreement were discussed at transcript pages 471 and 718-19. The court reporter nonetheless affixed an exhibit sticker to Respondent's Exhibit 5 and initialed it on the third day of the hearing, thereby signifying its admission into evidence. The court reporting service subsequently filed the original of Respondent's Exhibit 5 with the Office of the Secretary and it also provided me with a copy of Respondent's Exhibit 5. As indicated at transcript page 743, all of the exhibits offered by Respondent Alacan were accepted into evidence. It appears that Respondent Alacan's Exhibit 5 was marked, offered, and admitted while we were off the record. However, the parties should have an opportunity to be heard on this issue.

¹ The matter was initially captioned In the Matter of J.W. Barclay & Co., Inc., et al. However, four Respondents have settled and three have defaulted. Litigation continues only as to two of the original nine Respondents.

The parties will have seven days to show cause why Respondent Alacan's Exhibit 5 should not be considered as part of the record. If no objections are filed within that time, then the exhibit will be treated as accepted, without further Order. If objections are filed, I will address those objections in a separate Order.



James T. Kelly
Administrative Law Judge