trade.

III.

Daroza requests that the Commission consider his good record in twelve years in the securities industry in ruling on this matter.[11] He also notes that he has admitted to wrongdoing in this case, and has voluntarily entered into an agreement with Wedbush to pay his debt of more than $26,000. Given the seriousness of his misconduct, however, the sanctions assessed by the NASD, which allow Daroza to remain in the securities industry, already reflect these factors. Accordingly, we have determined that no reduction in sanctions is warranted.

Net capital violations are serious offenses. The uniform net capital rule is designed to ensure that a broker-dealer will have sufficient liquid assets to satisfy its indebtedness, particularly the claims of customers.[12] Daroza's violations thwarted the purpose of this rule and put investors at risk. Daroza also engaged in a scheme to conceal a net capital violation, thereby attempting to deceive regulatory authorities.[13]

Daroza's deception of Wedbush to its detriment is also serious. Although ultimately Daroza signed a note to repay Wedbush, he initially attempted to saddle Wedbush with trading losses. By placing Wedbush in a position where [it was] subjected to a serious risk of loss, * * * respondents sorely abused the trust among brokers that is essential for the efficient operation of the securities markets."[14] Under these circumstances, we are unable to conclude that the sanctions assessed by the NASD are excessive or oppressive.

An appropriate order will issue.[15]

By the Commission (Commissioners SCHAPIRO, ROBERTS, and BEESE); Chairman BREEDEN not participating.

He has not been the subject of an NASD complaint prior to this.

Blaise D'Antoni v. SEC, 289 F.2d 276, 277 (5th Cir.), *cert. denied*, 368 U.S. 899 (1961).

See Walter B. Bull, Jr., 48 S.E.C. 113, 116 (1985); *Peter J. Kisch*, 47 S.E.C. 802, 809 (1982).

Michael Joseph Boylan, 47 S.E.C. 680, 690 (1981).

We have considered all the arguments advanced by applicant and the NASD. Their contentions are rejected or denied to the extent that they are inconsistent or in accord with the views expressed in this opinion.

IN THE MATTER OF

ROBERT A. DOMINGUES, C.P.A.

AND

REED N. BRIMHALL, C.P.A.

File No. 3-7806. Promulgated July 30, 1992

Securities Exchange Act of 1934

ORDER INSTITUTING PUBLIC PROCEEDINGS PURSUANT TO RULE 2(e) OF THE COMMISSION'S RULES OF PRACTICE AND OPINION AND ORDER IMPOSING SANCTIONS

I. ORDER INSTITUTING PROCEEDINGS

The United States Securities and Exchange Commission deems it appropriate and in the public interest to institute public administrative proceedings pursuant to Rule 2(e)(1)(ii) of the Commission's Rules of Practice (17 C.F.R. 201.2(e)(1)(ii)) against certified public accountants Robert A. Domingues and Reed N. Brimhall.[1]

Accordingly, IT IS HEREBY ORDERED that these proceedings are instituted.

In anticipation of the institution of these proceedings Domingues and Brimhall have each submitted an Offer of Settlement for the purpose of disposing of the issues raised in these proceedings. In the two Offers of Settlement, which the Commission has determined it is in the public interest to accept, Domingues and Brimhall each consent, solely for the purpose of this proceeding and any and all other proceedings brought by or on behalf of the Commission, or in which the Commission is a party, and without admitting or denying any of the findings set forth in this Order, to the institution of these proceedings prior to hearing, to the findings stated herein, and to the imposition of the sanctions set forth herein.

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[1] Rule 2(e)(1)(ii) of the Commission's Rules of Practice provides, in part:

> The Commission may deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice of and opportunity for hearing in the matter * * * (ii) * * * to have engaged in * * * improper professional conduct * * * 17 C.F.R. § 201.2(e)(1)(ii).

II. FINDINGS

As a basis of this Order the Commission finds as follows:

A. Introduction

This Order concerns the conduct of Robert A. Domingues and Reed N. Brimhall, certified public accountants. Domingues was a partner and Brimhall was a manager with the accounting firm of Touche Ross and Co. During 1985 and 1986, Domingues was the partner in charge of the Albuquerque, New Mexico, Office and was the engagement partner in charge of the 1985 audit of the financial statements of Fluid Corporation ("Fluid") and its two wholly-owned subsidiaries, Fluid Capital and Fluid Financial, for the fiscal year ended December 31, 1985.

As engagement partner, Domingues had overall responsibility for the audit report. He concurred with Fluid's proposed treatment for the accounting issues which arose during the audit which are discussed in this Order. He was responsible to see that due professional care was taken in the audit. Brimhall was the manager on the 1985 Fluid audit. Under Domingues's oversight and supervision, Brimhall supervised the staff on the audit. Domingues and Brimhall engaged in improper professional conduct during the 1985 audit in their examination of Fluid's evaluation of certain investments, in allowing Fluid to characterize certain investment losses as unrealized losses, and in failing to properly qualify the audit opinions that were filed with the Commission to reflect concerns about Fluid Capital's ability to continue as a going concern and the material impact such uncertainties might have on Fluid and Fluid Capital.

B. Background

Fluid is a publicly-held investment company headquartered in Albuquerque, New Mexico, whose primary activity in 1985 was to make venture capital investments in small, developing, and unseasoned companies, most of which were unaudited, unregistered, and not publicly held. From 1980 until September 1990, Fluid's securities were registered with the Commission and it filed periodic reports with the Commission under Section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a)). As of December 31, 1985, Fluid reported net assets of $844,112. In 1984 and 1985, trading in Fluid's common stock was limited and sporadic. No trading in Fluid's securities has occurred since the Commission entered a trading suspension on April 29, 1988.[2]

[2] Fluid Corporation was permanently enjoined on September 26, 1990 from engaging in acts or practices which constitute violations of Sections 10(b), 13(a), and 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b), 78m(a), and 78o(d)) and Rules 10b-5, 12b-20, 12b-25, 13a-1, 13a-11, 13a-13, 15d-1, 15d-11, and 15d-13 promulgated thereunder (17 C.F.R. 240.10b-5, 12b-20, 12b-25, 13a-1, 13a-11, 13a-13, 15d-1, 15d-11, and 15d-13), and Sections 34(b) and 56(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-33(b) and 80a-55(a)). On September 25, 1990, registration of Fluid's common stock was revoked pursuant to Section 12(j) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*(j) and Fluid's election to operate as a business development company was revoked pursuant to Section 54(c) of the Investment Company Act (15 U.S.C. 80a-53(c)), by order of the Commission. Respondents were not parties in any of these actions and were not charged with the violations involved in these actions.

Since at least 1982, Fluid has had two wholly-owned subsidiaries, Fluid Capital and Fluid Financial, which were consolidated with Fluid for purposes of preparing financial statements and filing Federal and State income tax returns. The two subsidiaries were licensed by the United States Small Business Administration (SBA) as small business investment companies in 1981 and 1983, respectively. Since then the two subsidiaries have been subject to SBA regulations (13 C.F.R. Part 107) implementing the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*), including the capital impairment regulations (13 C.F.R. 107.203(d)) and the requirement to file annually SBA Form 468 containing audited financial statements and management information (13 C.F.R. 107.1002(e)). The securities of the two Fluid subsidiaries were registered under Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*(g)) in the early 1980's but were never publicly traded. Despite electing to become business development companies subject to the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), they remained subject to the usual reporting and other provisions applicable to companies with securities registered with the Commission. The two subsidiaries depended on the SBA to guarantee their indebtedness and the parent, Fluid depended on the subsidiaries to carry on most of the investment activity of the companies.[3] The SBA placed both Fluid Capital and Fluid Financial in receivership in 1988. They remain subject to SBA receivership. The SBA receiver is attempting to gather assets and pay liabilities.

C. Summary

During the 1985 audit of the financial statements of Fluid and its subsidiaries, Domingues and Brimhall improperly accepted management's valuation of certain investments without adequate support, including accepting the reporting of substantial appreciation in value for certain investments and limiting the amount of diminution in value of others. Respondents provided to Fluid Capital an audit report with an opinion that was qualified due to an uncertainty about Fluid Capital's ability to continue as a going concern. The financial statements accompanying this qualified report included a note (note H) that outlined the capital deterioration of Fluid Capital, uncertainties concerning the possible default on its guaranteed debentures, and the material impact on future operations that such a default might have. This audit report, with a going concern qualification, was filed by Fluid Capital with the SBA without the express approval of Domingues and Brimhall. Subsequently, Domingues and

[3] As of December 31, 1985, the SBA guaranteed $5,374,637 worth of Fluid Capital and Fluid Financial debentures, and held $500,000 worth of Fluid Financial preferred stock, comprising approximately 76% of Fluid's consolidated liabilities. In addition, over 88% of Fluid's consolidated investments were held by the two subsidiaries and over 80% of Fluid's consolidated income and over 70% of its consolidated assets were due to the two subsidiaries.

Brimhall prepared and provided to Fluid's management a revised audit report for the same year that was filed with the Commission but which did not contain a going concern qualification. The Fluid Capital financial statements filed with the Commission also did not include the note, outlining the capital deterioration of Fluid Capital and its possible material impact on future operations, that was included with the financial statements filed with the SBA. A going concern qualification was required due to capital impairment and the possible default on Fluid Capital's debentures caused by the impairment of its resources.

The Commission believes to properly value the investments held by Fluid Capital and Fluid Financial at December 31, 1985, the full amount of the losses should have been properly recognized and the unsubstantiated gains reversed. Additionally, the investment losses should have been properly characterized as realized losses rather than as unrealized losses. If the investments had been properly valued and the unrealized losses and gains had been properly reported, Fluid Capital would have been in default under the SBA's capital impairment regulations (13 C.F.R. 107.203(d)), allowing the SBA to immediately declare Fluid Capital's guaranteed debentures in the amount of $4,374,637 to be due and payable. Since at the end of 1985 Fluid and its consolidated subsidiaries together only had $1,616,315 in current assets, such a default would have made Fluid's ability to continue as a going concern doubtful. Therefore, a going concern qualification was required due to capital impairment and the likely default on debentures. In fact, on March 21, 1988, Fluid Capital and Fluid Financial were placed in receivership due partially to their capital impairment, but only after they suffered further losses and further capital deterioration.

D. Failure to Adequately Examine the Procedures and Bases for the Valuation of Fluid's Investments

Almost 80% of the assets of Fluid and Fluid Capital in 1985 were investment portfolio securities in small, nonpublic, unaudited, and nonregistered businesses. The investments consisted primarily of long-term loans and assets acquired in liquidation. Most of these investments had no public market and no published price quotations. Therefore, the Board of Directors for Fluid had the responsibility for valuing the investment "in good faith" taking into account all appropriate factors relevant to the valuation. The Fluid board of directors was required to establish a method to arrive at a fair value, and to review continuously the appropriateness of the method used. Accounting Series Release (ASR) No. 118 (Dec. 23, 1970), as codified at Financial Reporting Codification (CCH) § 404.03. The Fluid Board of Directors was required to do more than simply rely on management to value the investments.

The fair value of investments determined by a board of directors generally should be the amount the owner might reasonably expect to receive for them upon their current sale when both buyer and seller have no compulsion to buy or sell and both parties have reasonable knowledge of all relevant facts. ASR No. 118 (Oct. 21, 1969), as codified at Financial Reporting Codification (CCH) § 404.04. As specified in ASR No. 118, some of the general factors which should be considered by the board of directors include: 1) the fundamental analytical data relating to the investment; 2) the nature and duration of restrictions on disposition of the securities; and 3) an evaluation of the forces which influence the market in which these securities are purchased and sold. Among the factors ASR 118 specifies are to be considered by the board, are: (1) the type of investment; (2) financial statements of the investee; (3) the cost of the investment at date of purchase; (4) the size of holding by the investor; (5) the discount from market value of unrestricted investment of the same class at the time of purchase; (6) special reports prepared by analysts; (7) information as to any transactions or offers with respect to the investment; (8) existence of merger proposals or tender offers affecting the investment; and (9) price and extent of public trading in similar investments of comparable companies. Among the valuation criteria stated in the SBA Policy and Procedural Release 2006[4] are: (a) the nature and history of the investee from its inception, including its assets, capital structure, industry, product analysis, management capability, sales records and budgets; (b) the economic outlook of the industry; (c) financial forecasts for the investee; (d) the earnings capacity of the investee; and (e) other relevant information.

The independent accountant's responsibility is to review all information considered by the board of directors or by analysts reporting to the board, to read the relevant minutes of directors' meetings at which valuations are made, to ascertain the valuation method and procedures used by the board, to determine whether in the circumstances the procedures used by the board are appropriate and reasonable, to examine the underlying documentation considered by the board, and to ascertain whether the underlying documentation is adequate and appropriate. ASR No. 118 and SBA Policy and Procedural Release No. 2006. When, as in this action, collateral is an important factor in considering the collectibility of the investment, the independent accountant should obtain satisfaction regarding the existence and transferability of collateral and should obtain sufficient competent evidential matter as to its value (such as market quotations, documentation of underlying net assets, or appraisals), Statement on Auditing Standards (SAS) No. 1, AU § 332. In addition, the independent accountant is required to consider the effect such regulations

[4] SBA Valuation Guide, Policy and Procedural Release 2006 (Nov. 1975) is referenced in the American Institute of Certified Public Accountants (AICPA) Industry Audit Guide, *Audits of Investment Companies* (1977), App. E, and 13 CFR Part 107, App. I, Audit Guide for SBICs (Small Business Investment Companies) and Preparation of the Annual Report.

as the SBA capital impairment regulations may have on the reported value of investments. If the restrictions imposed by such regulations are met by a narrow margin and the value of the investments determine whether the regulations are met, the independent accountant may need to exercise extra care to obtain satisfaction that the valuations were not biased to meet the regulatory requirements. ASR No. 118.

During the 1985 Fluid audit, Domingues and Brimhall failed to gather sufficient competent evidential matter and failed to exercise sufficient professional skepticism with respect to the valuation of several of Fluid's investments, in that they accepted management's improper: (1) valuation of inventory and equipment acquired in liquidation from a diesel engine fabricator which was based solely on a two-year-old book value listing of inventory, without confirming the existence or value of the inventory; (2) valuation of stock in a single-family housing development at over fourteen times the original cost, evidenced by the fact that the stock was sold before the date of the 1985 audit report for approximately $78,000 less than the reported value; (3) valuation of the collateral on a loan made to an operator of a restaurant (the value of the collateral actually was less than half the amount of the loan). Fluid did not obtain, and the respondents did not see, any confirmation of the value of the collateral; (4) estimate of an $85,000 appreciation over cost in the value of its investment in an automobile part fabricator. Respondents had available contradictory evidence in the form of unaudited monthly income statements that showed either insignificant amounts of income or losses. Furthermore, the fabricator had filed for Chapter 7 bankruptcy in 1985, prior to the 1985 audit; and (5) estimate of appreciation in the value of a loan made to a beer distributor. In fact, the distributor had been in default since 1984 and had filed for Chapter 11 bankruptcy before the issuance of the 1985 audit report. As respondents knew, management only had documentation to justify a collateral value equal to 14% of the amount of the original loan.

In addition, the respondents failed to adequately ascertain whether Fluid's Board of Directors had established or followed any procedures for valuing the investment portfolio, whether the board of directors had inspected any underlying documentation in valuing the investments, or whether the Board of Directors made any independent valuations other than accepting the valuation stated by Fluid's Board chairman and chief executive officer, George Slaughter. In fact, respondents did not contact members of Fluid's Board of Directors, other than Slaughter, and did not attempt to discover what, if any, documentation was considered by the Board.

In conducting the 1985 audit of the Fluid companies, respondents failed to adequately plan and perform the examination to search for errors and irregularities in the procedures and documentation used by Fluid for valuing investments. They did not exercise due professional care in examining both the procedures and documentation for these valuations and in questioning the amounts of the valuations. They neglected to plan the audit

to obtain reasonable assurance of detecting misstatements in the representations and documentation on which the values were based. They did not obtain adequate management representations of the procedures and basis for valuing the investment portfolios. They relied on the inaccurate representations from Slaughter as to the value of several investments, the characterization of several investment losses as unrealized, the procedures used in arriving at the values, and the underlying documentation supporting the values, without questioning the representations and reviewing the basis for the representations. The audit failures in the examination of the procedures, documentation, and bases for the asserted valuations of certain investments were violations of generally accepted auditing standards (GAAS) and constituted improper professional conduct.

E. Acceptance of Management's Improper Characterization of the Depreciation of Investments

It is the responsibility of the independent accountant in applying GAAS to companies with long-term investments to ascertain whether long-term investments are accounted for in conformity with GAAP by examining sufficient competent evidential matter supporting the existence, ownership, cost and carrying amount of investments, income and losses attributable to such investments, and any related financial statement disclosures. Unless adequate evidence exists to support a realizable value equal to or greater than the carrying value of the investment, a write-down of the investment should be made. Declines in market value may be temporary or may reflect conditions that are more persistent. If there is evidence of a decline in market value of the investment below cost as of the balance sheet date attributable to general economic conditions that persist for any other than temporary time or relate to a specific adverse condition, the decline should be accounted for as a realized loss. The factors which may be considered in determining whether a decline in value should be accounted for as a realized loss include: (1) the length of time and extent to which the market value has varied from cost; (2) the financial condition and near-term prospects of the investee, including specific events that may influence the operations of the investee such as changes that may impair the earning potential of the investment or may affect future earnings potential; and (3) the intent and ability of the investor to retain the investment for a period of time sufficient to allow for anticipated recovery in market value.

Domingues and Brimhall failed to gather sufficient competent evidence and failed to exercise sufficient professional skepticism in accepting management's characterization of several investment losses as unrealized.

Fluid reported as an unrealized loss the remaining balance of a 1982 loan to a vending machine company. This was improper because, as Fluid and the respondents knew, the president and personal guarantor of the loan had gone into bankruptcy, the company had ceased operation, and judgment had been entered in 1983 against the company and guarantor

foreclosing on the company's real estate. As respondents also knew, most of the loan amount had been reported as realized losses in 1983 and 1984. Furthermore, the requested confirmation of the amount of the loan from the president and guarantor was returned to the auditors as not deliverable.

In a second instance, Fluid improperly reported as unrealized a loss of $103,150 in stock of a financial institution. Reporting this amount as an unrealized loss was improper since in 1985 the institution had filed for Chapter 11 bankruptcy and its stock was removed from the National Association of Securities Dealers Automated Quotation System (NASDAQ). Moreover, the market price of the stock had fallen from Fluid's cost in 1983 of $7.35 per share to an asking price of 25 cents on December 31, 1985 and an asking price of 18.75 cents by the date of the audit report.

With respect to one of the instances previously described, Fluid improperly reported a reduction in the carrying amount of inventory and equipment acquired in liquidation from a diesel engine fabricator as an unrealized loss. Respondents had evidence that the loss should have been reported as a realized loss since Fluid stated that its purpose in making the reduction was to recognize a persistent and long-term decline and to report current market value in anticipation of selling the assets. Respondents knew that the business had ceased to function and knew, or should have known, that the business had ceased to pay any taxes. Respondents also knew that the company had net losses in 1984 and 1985 which were considerably larger than the assets available.

Respondents failed to adequately plan and perform the audit examination with an attitude of professional skepticism to search for errors and irregularities in reporting realized investment losses as unrealized losses. They failed to exercise due professional care in the performance of the audit and in the preparation of the audit report by not requiring and examining sufficient competent evidence to support the reporting of investment losses as temporary or unrealized losses.

Each of the identified audit failures had a material impact on Fluid's, Fluid Capital's, and Fluid Financial's financial statements. Each loss reported as unrealized and each purported gain unjustifiably improved the ratio used by the SBA to determine whether Fluid Capital was capitally impaired (13 C.F.R. 107.203(d)).[5] If any one of these reported unrealized investment losses had been reported as realized losses, or any one of the identified gains had not been reported, Fluid Capital would have been capitally impaired by more than 50% of its private capital and would have been in default on its debentures, allowing the SBA to immediately require the debentures to be due and payable in full.

[5] The SBA could have declared Fluid Capital immediately in default on its guaranteed debentures, making the debentures immediately due and payable, if its capital impairment deficit, or undistributed net realized earnings deficit, exceeded 50% of its private capital (13 C.F.R. 107.203(b)). Undistributed realized earnings represents the cumulative balance of periodic net investment gain or loss. Unrealized depreciation is included in the deficit calculation only if the unrealized depreciation exceeds unrealized appreciation. Therefore, to keep investment losses from impacting on capital impairment and causing Fluid Capital to be in default with respect to its guaranteed debentures, Fluid Capital needed to report investment losses as unrealized rather than realized and needed to report sufficient unrealized gains to offset its unrealized losses.

F. Failure to Ensure That An Audit Opinion Containing a Going Concern Qualification Was Filed By Fluid and Fluid Capital With the Commission

Respondents prepared and provided to Fluid Capital an audit report dated March 27, 1986, which contained an opinion qualified because of uncertainty whether, due to capital deterioration, Fluid Capital could avoid the capital impairment regulations, and thereby avoid default on its guaranteed debentures. The opinion stated that such a default could have a material impact on the future operations of the company and might cause Fluid Capital to be unable to continue in existence as a going concern. Included with this original audit report were Fluid Capital's financial statements and notes to the financial statements. Note H to Fluid Capital's financial statements disclosed the uncertainty relating to Fluid Capital's ability to avoid default and the material impact such default would have on Fluid Capital's ability to continue in existence as a going concern. This audit report and accompanying financial statements were filed by Fluid with the SBA, but not with the Commission.

After the auditors sent the original qualified audit report to Fluid Capital in mid-April 1986, Slaughter sought to have the respondents revise the audit opinion. Based on conversations with Slaughter and a superficial review of expected and projected financial figures prepared by Slaughter, respondents revised the audit report to delete the going concern qualification. Also deleted was the note to the financial statements relating to Fluid Capital's possible default. The revised report, without the going concern qualification, and the financial statements without the footnote, were filed by Fluid Capital with the Commission in June 1986.

In fact, the 1985 audit opinions for the Fluid companies should have been qualified due to the uncertainty that Fluid Capital would be able to meet the capital impairment regulations and whether it would be in default on its debentures. Respondents were aware that the 1984 audit had found Fluid Capital's impairment ratio (also called "net undistributed realized earnings deficit") to be 45.7% of private capital, meeting the requirement that the deficit be below 50% of private capital by a narrow margin. Respondents also were aware that the SBA had examined Fluid Capital during 1985 and had found that, as of July 31, 1985, Fluid Capital was capitally impaired because its impairment ratio had risen to 50.7% of private capital. Respondents were aware that this fact could be considered an event of default on Fluid Capital's debentures, giving the SBA the right to call the debentures immediately and make them due and payable.

Respondents did not find that Fluid Capital was capitally impaired as of December 31, 1985 because of the audit failures previously identified. They found Fluid Capital's impairment ratio on that date to be 49.4% of private capital, barely below the required 50%. Proper recording of any one of the examples of improper valuation or characterization would have caused Fluid Capital to have an impairment ratio over 50% and to have been in default on its debentures. If the default had been reported and the debentures called, Fluid Capital would have faced a need to pay immediately $4,374,637, when it had only $1,097,094 in current assets. Since Fluid Capital alone held over 66% of the investments for Fluid and its consolidated subsidiaries and since Fluid only had total current assets of $1,616,315, including the current assets of its subsidiaries, Fluid Capital's default and capital impairment should have raised questions regarding Fluid's ability to continue as a going concern as well.

Respondents at first recognized the need to qualify the 1985 audit report on Fluid Capital due to its capital deterioration and the questions regarding its ability to continue as a going concern. Respondents failed to exercise due professional care in not adequately evaluating the information they had available when the revised audit report was approved and signed. They failed to fully consider the contrary information they received as to Fluid's and Fluid Capital's ability to continue in existence and failed to test sufficiently for Fluid's and Fluid Capital's ability to continue in existence as going concerns. They did not adequately consider the need for disclosure of the capital impairment conditions in the 1985 audit report filed with the Commission. They did not take due care to ensure that conflicting audit reports were not filed with the two Federal regulatory bodies requiring such reports. Domingues, as engagement partner, was responsible for the two differing audit reports and the lack of a going concern qualification in the reports filed with the Commission. The Commission believes that such audit failures constitute violations of GAAS and improper professional conduct.

OPINION

Based on the foregoing, the Commission concludes that Domingues and Brimhall engaged in improper professional conduct within the meaning of Rule 2(e) of the Commission's Rules of Practice by failing:

(1) to gather and evaluate sufficient competent evidential matter and to exercise sufficient professional skepticism with respect to valuation of Fluid's investments and the characterization of the investment losses as unrealized, by, among other things, failing: to adequately ascertain and document the procedures of the Fluid Board of Directors for valuing the investments; to determine whether the procedures were followed in the valuations; to sufficiently inspect Fluid's underlying documentation for the valuation to ensure that the procedures were adequate and reasonable; and to adequately support the existence, ownership, cost, and carrying amount of investments, income, and losses (SAS No. 31, AU § 326, and SAS No. 1 § 332; AICPA Industry Audit Gulde, *Audits of Investment Companies*, at 35–37 (1977) (then in effect), and ASR No. 118);

(2) to adequately plan and perform the audit examination with an attitude of professional skepticism in order to search for errors and irregularities in the valuation of investments and in the determination that certain investment losses were unrealized and to detect material misstatements in the financial statements (SAS No. 16, AU § 327 (then in effect) and SAS Nos. 22, 47, and 48, AU §§ 311 and 312);

(3) to exercise due professional care in the performance of the audit and preparation of the report both in the valuation of investments and the characterization of the losses and in the respondents' issuance and the filing by Fluid of materially different audit reports with different government agencies for the same fiscal year (SAS No. 1 § 230 and No. 41, AU § 230);

(4) to obtain adequate management representations, and unjustifiably relying on the inadequate representations received, without applying the audit procedures necessary to afford a reasonable basis for the audit opinion (SAS No. 19, AU § 333 and SAS No. 12, AU § 337B); and

(5) to sufficiently test for, and to consider the significance of information relating to, the ability of Fluid and Fluid Capital to continue to exist; failing to adequately discuss with management information related to the ability of Fluid and Fluid Capital to continue to exist; failing to adequately consider the need for, and adequacy of, disclosure of the principal conditions that raised a question about the ability of Fluid and Fluid Capital to continue to exist and the possible effects of the conditions; and failing to adequately consider the need to qualify the audit opinion relating to the capital impairment of Fluid and Fluid Capital and its likely inability to continue to exist (SAS No. 34, AU § 340 (then in effect)).

OFFERS OF SETTLEMENT AND ORDER IMPOSING SANCTIONS

Domingues and Brimhall have each submitted an Offer of Settlement to the Commission in which each of them neither admits nor denies any of the factual assertions, findings, or conclusions set forth herein, except that they each admit the jurisdiction of the Commission over them and over the subject matter of this proceeding, and they each consent to the issuance of the Opinion and Order Imposing Sanctions. The Commission has determined to accept the Offers of Settlement.

Accordingly, IT IS HEREBY ORDERED, that:

(1) Domingues and Brimhall are censured;

(2) Domingues is denied the privilege of appearing or practicing before the Commission as an independent accountant, except that he can resume appearing or practicing before the Commission as an independent accountant any time after ten (10) months from the date of the entry of the order, provided that:

(a) he submits an application to the Office of the Chief Accountant containing a showing satisfactory to the Commission that Domingues, or any firm with which he is or becomes associated with in any capacity, is a member of the SEC Practice Section of the American Institute of Certified Public Accounts' (AICPA) Division for CPA Firms, and he or the firm has received an unqualified report relating to his or its most recent peer review conducted in accordance with the guidelines adopted by the SEC Practice Section; and

(b) there are no other matters adversely reflecting upon Domingues' qualifications to appear or practice before the Commission as an independent accountant;

(3) Domingues is denied the privilege of appearing or practicing before the Commission as a preparer or reviewer of financial statements for a period of ten (10) months from the date of the entry of the Order;

(4) Domingues and Brimhall will each practice with a firm that is, or will individually become, a member of the SEC Practice Section of the AICPA's Division for CPA Firms, as long as they appear or practice before the Commission as independent accountants; and

(5) Domingues and Brimhall will comply with all applicable SEC Practice Section requirements, including all such requirements for periodic peer reviews and continuing professional education, as long as they appear or practice before the Commission as independent accountants.

By the Commission.

IN THE MATTER OF

JEFFREY R. LEACH

File No. 3-7811. Promulgated August 6, 1992

Securities Exchange Act of 1934

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTIONS 15(b), 19(h) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING SANCTIONS

I.

The Commission deems it appropriate and in the public interest that public administrative proceedings be instituted as to Jeffrey R. Leach ("Leach") pursuant to Sections 15(b), 19(h) and 21C of the Securities Exchange Act of 1934 ("Exchange Act").

II.

In anticipation of the institution of these administrative proceedings, Leach has submitted an Offer of Settlement which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission or to which the Commission is a party, and without admitting or denying the findings herein, Leach consents to the entry of the findings and imposition of the sanctions set forth below.

III.

The Commission finds:

A. Respondent

Jeffrey R. Leach, age 30, from at least June 1990 until September 1990, was a registered representative in the Morristown, New Jersey branch office of Jesup, Josephthal & Co., Inc. ("Jesup").