DOWJONES

THE WALL STREET JOURNAL.

SEC Breaks Up Investment Company That Paid Off Big but Didn't Register

By Randall Smith
Staff Reporter of The Wall Street Journal
546 words
1 December 1992
The Wall Street Journal
PAGE C25
English

Two Florida accountants have returned $441 million to investors after regulators charged them with a huge sale of unregistered securities, their lawyer said.

The two accountants, **Frank** J. **Avellino** and **Michael** S. **Bienes** of Fort Lauderdale, promised, and apparently delivered, annual returns of 13.5% to 20% to their investors. Their main office is located in New York City.

However, in a complaint filed Nov. 17 in federal court in Manhattan, the Securities and Exchange Commission charged the two men with operating an unregistered investment company because they didn't register as securities the promissory notes they gave their investors.

The SEC complaint said the money collected from investors was turned over to an unnamed broker-dealer, who managed the accounts at his own discretion. One person familiar with the case said the broker put the money into listed stocks. The complaint said Messrs, **Avellino** and **Bienes** kept the difference between the fixed interest they paid to investors and the returns generated by the broker's investment decisions.

In an announcement, the law firm for the two accountants, Squadron, Ellenoff, Plesent & Lehrer, said the partnership of **Avellino** & **Bienes** is dissolving and had returned all principal and interest due its noteholders as of Nov. 16. Ira Lee Sorkin, a partner in the law firm, said the return was completed Nov. 24.

The SEC said the two men ended their 22-year-old accounting practice and began focusing exclusively on their more-profitable investing business in 1984. Although 13.5% to 20% rates of return are high by historical standards, they wouldn't have been impossible to attain. For example, from Jan. 1, 1984, to Oct. 31, 1992, the Vanguard Group stock index fund showed a 14.85% annual return, according to Morningstar Inc., a mutual fund data service.

As of Oct. 30, the SEC said the two men had nine different trading accounts with the broker-dealer with an equity value of $454 million. At the same time, they had issued notes totaling $441 million either through new sales to investors or the rollover of interest payments.

Martin Kuperberg, SEC senior associate regional administrator in New York, said, "The investing public must get the protection afforded by the federal securities laws, such as a propsectus, certified reports, and fidelity bonds." However, Mr. Sorkin said his clients didn't know they were subject to such requirements.

None of the officials involved in the case would disclose the name of the broker-dealer whose trading apparently produced results good enough to draw in such a large sum of money. However, Mr. Kuperberg said that the returns appeared to have been generated legitimately. "Right now, there's nothing to indicate fraud," he said.

Neither Mr. **Avellino** nor Mr. **Bienes**, both 56 years old, were available to comment, according to their New York office. Mr. Sorkin characterized the sales of unregistered securities as "technical violations".

The investors' money was ordered returned by federal judge Kenneth Conboy, who named New York attorney Lee Richards as trustee. Mr. Richards, in turn, has hired the accounting firm of Price Waterhouse & Co. to audit the partnership's financial records.

Document j000000020011107doc100u0u

