



**B. ENTRY OF THE RESPONDENTS' CRIMINAL CONVICTIONS**

3. On August 26, 2005, Kozak pled guilty to charges of, among other things, conspiracy to commit securities fraud in violation of Title 18 United States Code, Section 371, and securities fraud in violation of Title 15 United States Code, Section 78j(b) before the United States District Court for the Eastern District of New York, in United States v. Robert Kozak, 04-CR-00455 (ADS). Kozak is awaiting sentencing.

4. On September 1, 2005, Flanagan pled guilty to charges of, among other things, conspiracy to commit securities fraud in violation of Title 18 United States Code, Section 371, and securities fraud in violation of Title 15 United States Code, Section 78j(b) before the United States District Court for the Eastern District of New York, in United States v. John Flanagan, 04-CR-00455 (ADS). Flanagan is awaiting sentencing.

5. The counts of the criminal indictment to which the Respondents pled guilty alleged, among other things, that while at Donald & Co., the Respondents willfully and knowingly defrauded investors by means of materially false and misleading statements and omissions, and that they used the United States mails to make materially false and misleading statements and omissions.

**III.**

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against the Respondents pursuant to Section 15(b)(6) of the Exchange Act.

**IV.**

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.200.

IT IS FURTHER ORDERED that the Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If the Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon the Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Nancy M. Morris  
Secretary