

SECURITIES ACT OF 1933

Release No. 7580 / September 16, 1998

SECURITIES EXCHANGE ACT OF 1934

Release No. 40444 / September 16, 1998

ADMINISTRATIVE PROCEEDING

File No. 3-9706

In the Matter of	:	ORDER INSTITUTING PUBLIC
	:	CEASE-AND-DESIST PROCEEDINGS,
	:	MAKING FINDINGS, AND IMPOSING
STANLEY BERK,	:	REMEDIAL RELIEF PURSUANT TO
BAY AREA MANAGEMENT,	:	SECTION 8A OF THE SECURITIES
ARMOR PENSION MANAGERS, and	:	ACT OF 1933 AND SECTION 21C
MARINE MIDLAND BANK	:	OF THE SECURITIES EXCHANGE ACT
Respondents.	:	OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C the Securities Exchange Act of 1934 ("Exchange Act"), against Stanley Berk ("Berk"), Bay Area Management ("Bay Area"), and Armor Pension Managers ("Armor") and, pursuant to Section 21C of the Exchange Act against Marine Midland Bank ("Marine Midland").

II.

In anticipation of the institution of these public cease-and-desist proceedings, Berk, Bay Area, Armor and Marine Midland have submitted offers of settlement ("Offers of Settlement") which the Commission has determined to accept. Solely for the purposes of these proceedings, and any other proceeding brought by or on behalf of the Commission, or in which the Commission

is a party, and without admitting or denying the findings contained in this Order Instituting Public Cease-And Desist Proceedings, Making Findings, And Imposing Remedial Relief Pursuant To Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934 ("Order"), Berk, Bay Area, Armor and Marine Midland consent to the entry of the Order, the findings and the remedial sanctions set forth below.

III.

Accordingly, IT IS ORDERED that public cease-and-desist proceedings pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act be, and hereby are, instituted against Berk, Bay Area, and Armor and, pursuant to Section 21C of the Exchange Act against Marine Midland.

IV.

On the basis of this Order and the Offers of Settlement submitted by Berk, Bay Area and Armor, the Commission finds that:

- A. Berk is an investor residing in Los Angeles, California. He is 46 years old and became a professional investor in or about 1977.
- B. Berk was the general partner of Bay Area from 1980 through 1993, and Armor from 1984 through 1993, two limited partnerships established for the purpose of engaging in securities transactions. At all relevant times, Bay Area's and Armor's operations were located in Los Angeles, California.
- C. Since 1990, Berk operated Bay Area and Armor using his own capital and that of several investors.
- D. During the period from at least October 1992 until May 1993 ("Relevant Period"), a significant amount of Berk's trading activity consisted of buying securities in initial public offerings and immediately reselling those securities, usually within hours or days.
- E. Berk purchased and sold these securities through over 100 brokerage accounts in his and Bay Area's and Armor's names maintained at more than 25 broker-dealers. These brokerage accounts were "cash" accounts as defined by Regulation T promulgated by the Federal Reserve Board. The securities transactions effected through these brokerage accounts were cleared through "DVP/RVP" accounts maintained at two banks.¹
- F. During the Relevant Period, Berk, Bay Area and Armor purchased securities through various broker-dealers without sufficient funds on deposit in the bank clearance accounts to pay for such transactions. For example:

¹ In a DVP/RVP account, the account holder purchases securities through a broker-dealer that gets paid after delivering the securities to the bank. When the account holder sells securities through the broker-dealer, the bank delivers the securities to the broker-dealer in return for cash payment.

1. On October 22, 1992, Bay Area had an opening credit balance of approximately \$92,000. On that day, Bay Area purchased through various broker-dealers securities worth approximately \$2,900,000. These securities consisted of Amgen Inc. common stock, Bandag Inc. common stock, 50-off Stores common stock, Sci Med Life Systems Inc. common stock, Pacificare Health Systems Class B stock, Unum Corp. common stock, Puget Sound Power & Light Co. common stock, MCN Corp., Nu-Kote Holding Inc. Class A stock, Citicorp common stock, Citicorp Dep shares preferred stock, Cryomedical Sciences Inc. common stock, Philip Morris Cos. Inc. common stock, and General Motors Corp. Class H stock; and
 2. On March 30, 1993, Armor had an opening credit balance of approximately \$560,000. On that day, Armor purchased through various broker-dealers securities worth approximately \$2,550,000. The securities consisted of Bear Stearns Preferred B stock, BRE Properties Inc. Class A stock, Citizens Corp. common stock, Creative Technology Ltd. common stock, First Data Corp. common stock, Foodmaker Inc. New common stock, General Motors Corp. common stock, Imco Recycling Inc. common stock, National Steel Corp. common stock, NC Mun Pwr Agency Notes, and the Ask Group Inc. common stock.
- G. In order to pay for the securities purchased during the Relevant Period, Berk, Bay Area and Armor caused the banks in many instances to extend credit in violation of Regulation U promulgated by the Federal Reserve Board.
- H. Berk, Bay Area and Armor in effect used the proceeds from the sale of the securities to pay for the purchase of those same securities by causing the bank to extend credit to pay the purchase price, and then used the sales proceeds to repay the credit.
- I. Although Berk, Bay Area and Armor took advantage of the policies and the procedures at the banks which permitted the purchase of securities in excess of the collateral in the bank accounts, Berk, Bay Area and Armor knew or were reckless in not knowing that the banks were extending credit beyond that permitted by Regulation U as promulgated by the Federal Reserve Board.
- J. Berk, Bay Area and Armor knew or were reckless in not knowing that they failed to disclose to the broker-dealers through which the securities transactions were effected that they did not have the ability to make cash payment for the securities purchases without using credit in excess of that permitted by Regulation U and that they intended to use the proceeds from the sales of the securities to pay for the purchases of the same securities.

- K. There were no losses to any of the broker-dealers or banks utilized by Berk, Bay Area and Armor as a result of the activities described above.
- L. As described in paragraphs IV.D. through IV.K. above, from in or about at least October 1992 to in or about at least May 1993, Berk, Bay Area and Armor, directly or indirectly, violated Section 7(f) of the Exchange Act and Regulation X promulgated by the Federal Reserve Board by causing the banks to extend credit in contravention of Regulation U promulgated by the Federal Reserve Board.
- M. As described in paragraphs IV.D. through IV.K. above, from in or about at least October 1992 to in or about at least May 1993, Berk, Bay Area and Armor, directly or indirectly, violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.
- N. Berk, Bay Area and Armor have submitted a sworn financial statement and other evidence and have asserted their financial inability to pay disgorgement plus interest. The Commission has reviewed the sworn financial statement and other evidence provided by Berk, Bay Area and Armor and has determined that Berk, Bay Area and Armor do not have the financial ability to pay disgorgement of \$1,663,978, plus prejudgment interest thereon from May 19, 1993 in the amount of \$834,613.99, for a total amount of \$2,498,591.99.

V.

On the basis of this Order and the Offer of Settlement submitted by Marine Midland, the Commission finds that:

- A. Marine Midland is a New York State chartered bank, with its principal offices in Buffalo, New York. At all relevant times, Marine Midland's Securities Services Department was located at 140 Broadway, New York, New York. Marine Midland ceased operating its Securities Services Department in July 1995.
- B. Berk, an investor residing in Los Angeles, California, was the general partner of Armor from 1984 through 1993, and Bay Area from 1980 through 1993, two limited partnerships established for the purpose of engaging in securities transactions.
- C. During the Relevant Period, Berk maintained "DVP/RVP" securities clearance accounts in the name of Armor at Marine Midland and in the name of Bay Area at another bank.

- D. During the Relevant Period, a significant amount of Berk's trading activity at Armor and Bay Area consisted of buying securities in initial public offerings and immediately reselling those securities, usually within hours or days.
- E. Berk purchased and sold these securities through over 100 brokerage accounts in his, Armor's and Bay Area's names maintained at more than 25 broker-dealers. These brokerage accounts were "cash" accounts as defined by Regulation T promulgated by the Federal Reserve Board. The securities transactions effected through these brokerage accounts as they related to Armor were cleared through the "DVP/RVP" accounts maintained at Marine Midland and another bank.
- F. During the Relevant Period, Berk and Armor purchased securities through various broker-dealers without sufficient funds on deposit in the Marine Midland clearance account to pay for such transactions. For example: On March 30, 1993, Armor had an opening credit balance of approximately \$560,000. On that day, Armor purchased through various broker-dealers securities worth approximately \$2,550,000. The securities consisted of Bear Stearns Preferred B stock, BRE Properties Inc. Class A stock, Citizens Corp. common stock, Creative Technology Ltd. common stock, First Data Corp. common stock, Foodmaker Inc. New common stock, General Motors Corp. common stock, Imco Recycling Inc. common stock, National Steel Corp. common stock, NC Mun Pwr Agency Notes, and the Ask Group Inc. common stock.
- G. In order to pay for the securities purchased during the Relevant Period, Berk and Armor caused Marine Midland to extend credit to them in violation of Regulation U promulgated by the Federal Reserve Board.
- H. Upon reselling the securities, Berk and Armor in effect used the proceeds from the sale of the securities to pay for the purchase of those same securities by causing Marine Midland to extend credit to pay the purchase price, and then used the sales proceeds to repay the credit.
- I. As described in paragraphs V.D. through V.H. above, during the Relevant Period, Marine Midland, directly or indirectly, violated Section 7(d) of the Exchange Act and Regulation U promulgated by the Federal Reserve Board, by extending credit in contravention of Regulation U promulgated by the Federal Reserve.
- J. As described in paragraphs V.D. through V.H. above, during the Relevant Period, Marine Midland, directly or indirectly, caused violations of Section 7(f) of the Exchange Act and Regulation X promulgated by the Federal Reserve Board, by extending credit in contravention of Regulation U promulgated by the Federal Reserve.

VI.

In view of the foregoing, the Commission finds that it is in the public interest to impose the sanctions specified in the Offers of Settlement submitted by Berk, Bay Area, Armor, and Marine Midland.

Accordingly, IT IS ORDERED that:

A. Berk, Bay Area and Armor:

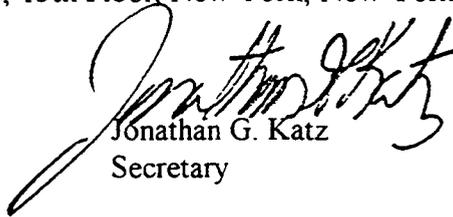
1. Cease and desist, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, from committing or causing any violation and any future violation of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;
2. Cease and desist, pursuant to Section 21C of the Exchange Act, from causing any violation and any future violation of Section 7(f) of the Exchange Act and Regulation X promulgated by the Federal Reserve Board; and
3. Pay, within three days of the entry of this Order, disgorgement in the amount of \$1,663,978, and reasonable interest thereon from May 1993, to the date of the Order in the amount of \$834,613, for a total amount of \$2,498,591, for which Berk, Bay Area and Armor are jointly and severally liable, but that payment by Berk, Bay Area and Armor of such amount be waived based upon Berk's, Bay Area's and Armor's demonstrated financial inability to pay and upon the condition that Berk's, Bay Area's and Armor's sworn financial statement and testimony regarding their financial condition fully and truthfully described their financial conditions. The Commission's Division of Enforcement ("Division") may, at any time following entry of the Order, petition the Commission to: 1) reopen this matter to consider whether Berk, Bay Area and Armor provided accurate and complete financial information at the time such representations were made, and 2) seek any additional remedies that the Commission would be authorized to impose in this proceeding if the Offers of Berk, Bay Area and Armor had not been accepted. No other issues shall be considered in connection with such a petition by the Division to the Commission other than whether the financial information provided by Berk, Bay Area and Armor was fraudulent, misleading, inaccurate or incomplete in any material respect and whether any additional remedies should be imposed. Berk, Bay Area and Armor may not, by way of defense to any such petition by the Division, contest the

findings in the Order or the Commission's authority to impose any additional remedies that were available in the original proceeding.

B. Marine Midland:

1. Cease and desist from committing any violation and any future violation of Section 7(d) of the Exchange Act and Regulation U promulgated by the Federal Reserve Board;
2. Cease and desist from causing any violation and any future violation of Section 7(f) of the Exchange Act and Regulation X promulgated by the Federal Reserve Board; and
3. Pay, within three days of the entry of this Order, disgorgement in the amount of \$20,353 and reasonable interest thereon from May 1993 to the date of the Order in the amount of \$9,536, for a total amount of \$29,889, to the United States Securities and Exchange Commission. Such payment shall be: (a) made by United States postal money order, certified check, bank cashier's check or bank money order; (b) made payable to the United States Securities and Exchange Commission; (c) delivered by certified mail to the Comptroller, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 0-3, Washington, D.C. 20549; and (d) submitted under cover letter which identifies Marine Midland as a respondent in this proceeding, the file number of this proceeding, and the Commission's case number (NY-6098), a copy of which cover letter and money order or check shall be sent to Henry Klehm III, Senior Associate Regional Director, Northeast Regional Office, Securities and Exchange Commission, 7 World Trade Center, 13th Floor, New York, New York 10048.

By the Commission.


Jonathan G. Katz
Secretary

[Release No. 34-40365A; File No. SR-
NASD-98-29]
63 FR 50272 09/21/98
**Self-Regulatory Organizations;
National Association of Securities
Dealers, Inc.; Order Approving
Proposed Rule Change and
Amendment No. 1 Thereto and Notice
of Filing and Order Granting
Accelerated Approval to Amendment
No. 2 to Proposed Rule Change
Relating to Standards for Individual
Correspondence**

September 15, 1998.

Correction

In FR Document No. 98-23769, beginning on page 47062 for Thursday, September 3, 1998, make the following correction. On page 47063, second column, the first full paragraph, revise the first sentence to read:

The NASDR proposes to define the word "correspondence" in new subparagraph (a)(3) to NASD Rule 2210 as " * * * [a]ny written or electronic communication prepared for delivery to a single current or prospective customer, and not for dissemination to multiple customers or the general public."

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-25130 Filed 9-18-98; 8:45 am]

BILLING CODE 8010-01-M