

**UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION**

July 7, 2004

**ADMINISTRATIVE PROCEEDING
File No. 3-11537**

In the Matter of

**Richard S. Kern, Donald R.
Kern, and Charles Wilkins,**

Respondents.

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**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Richard S. Kern (“R. Kern”), Donald R. Kern (“D. Kern” and, together with R. Kern, the “Kerns”), and Charles Wilkins (“Wilkins”) (collectively “Respondents”).

II.

As a result of an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. R. Kern, age 49, resides in Fort Lauderdale, Florida. R. Kern has been involved in a number of small business ventures with his brother D. Kern, Wilkins, and others.
2. D. Kern, age 51, resides in Fort Lauderdale, Florida, and is the brother of R. Kern. D. Kern retired from the United States Air Force in June 1995 and since then has assisted R. Kern in their joint business ventures.
3. Wilkins, age 68, resides in Scottsdale, Arizona. Wilkins has claimed to be retired and to receive income from buying and selling cars and from securities

transactions through his small, closely-held corporations. Wilkins also was in the business of assisting small corporations and shell corporations in becoming listed on the NASD OTC Bulletin Board system.

B. THE UNDERLYING ACTION AND THE INJUNCTIONS

1. On February 24, 2000, the Commission filed a civil injunctive action in the United States District Court for the Southern District of New York against the Kerns and Wilkins, among others. In its complaint, the Commission alleged that the Kerns and Wilkins violated Section 5 of the Securities Act of 1933 (“Securities Act”) and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. As part of the action, the Commission requested ancillary relief in the form of an asset freeze, disgorgement, prejudgment interest, an accounting, and civil penalties.

2. The Commission's complaint alleged that, from April 1998 through January 1999, Respondents succeeded in listing the securities of three shell corporations for trading on the public over-the-counter bulletin board market operated by the NASD for the specific purpose of attempting to merge the shell corporations with other corporations. The Respondents prepared to sell stock of the shell corporations by distributing the corporations' stock to family and friends, who held the securities for a two-year period prior to the Respondents' public listings of the shell corporations, and then re-gathering the stock from their family and friends. Using accounts in the names of certain entities owned or controlled by them, the Respondents effected public sales of the securities of the shell corporations to entities owned or controlled by the Respondents' co-defendant, Peter C. Lybrand (“Lybrand”), without registering their transactions with the Commission. Indeed, Respondents aided and abetted a market manipulation by Lybrand in that they engaged in matched orders whereby they determined the amount, price and timing of their sell orders in consultation with Lybrand. Respondents also transferred to Lybrand millions of shares of the shell corporations' securities through the corporations' transfer agent, without registering their transactions with the Commission. Finally, in January 1999, Respondents sold into the public market thousands of shares of the shell corporations without registering their transactions with the Commission. Respondents participated in offerings of the stock of the shell corporations, which were penny stocks. In all, Respondents realized profits of \$5,972,525 as a result of their sales of the shell corporations' securities.

3. On October 6, 2003, the United States District Court for the Southern District of New York, per the Honorable Sidney H. Stein, entered a final judgment against the Kerns and Wilkins, among others, permanently enjoining them from violating Sections 5(a) and 5(c) of the Securities Act, and ordering them (jointly and severally) to pay disgorgement and prejudgment interest of \$7,765,173, and ordering respondent R. Kern to pay a civil penalty of \$400,000, respondent D. Kern to pay a civil penalty of \$400,000, and respondent Wilkins to pay a civil penalty of \$300,000.

4. On June 28, 2004, the United States District Court for the Southern District of New York entered final judgments of consent against the Kerns and Wilkins

on the third claim of the Commission's complaint, permanently enjoining them from violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it appropriate and 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 Kerns and Wilkins an opportunity to establish any defenses to such allegations; and

B. Whether a penny stock bar is appropriate and in the public interest against the Kerns and Wilkins pursuant to Section 15(b) 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 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 200 of the Commission's Rules of Practice, 17 C.F.R. § 201.200.

IT IS FURTHER ORDERED that R. Kern, D. Kern, and Wilkins shall file Answers 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 any Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, he may be deemed in default and the proceeding may be determined against him 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 R. Kern, D. Kern, and Wilkins personally or by certified mail, or by any other means permitted by Rule 141 of the Commission's Rules of Practice [17 C.F.R. § 201.141].

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 [17 C.F.R. § 201.360(a)(2)].

In the absence of the 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 upon this matter, except as a 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 to be subject to the provisions of Section 553 delaying the effective date of any final Commission action.

For the Commission, by its Secretary, pursuant to delegated authority.

Jonathan G. Katz
Secretary