

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of :  
MARKETLINES, INC. (801-3091) :  
DAVID S. ROMANOFF :  
HAROLD SCHREIBER :  
----- : INITIAL DECISION  
In the Matter of :  
ELIZABETH SCHREIBER, d/b/a :  
COMMODITY TRADING ADVISORY :  
SERVICE (801-3066) :  
HAROLD SCHREIBER :  
----- :

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SECURITIES & EXCHANGE COMMISSION

James G. Ewell  
Hearing Examiner

Washington, D. C.  
March 16, 1966

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----- : INITIAL DECISION

In the Matter of

ELIZABETH SCHREIBER, d/b/a  
COMMODITY TRADING ADVISORY  
SERVICE (801-3066)  
HAROLD SCHREIBER

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BEFORE: James G. Ewell, Hearing Examiner

APPEARANCES: Sidney Lapidus, Esq., for the Division of Trading  
and Markets of the Commission.

Irwin L. Germaise, Esq. of 122 East 42nd Street,  
New York, New York, for Marketlines, Inc.  
and David S. Romanoff.<sup>1/</sup>

A. Alfred Schreiber, Esq. of 90 John Street,  
New York, New York for Elizabeth Schreiber,  
d/b/a Commodity Trading Advisory Service  
and Harold Schreiber

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<sup>1/</sup> On February 18, 1966, Emily Marx, an attorney with offices at 27 William Street, New York City, filed a brief in behalf of Marketlines and David S. Romanoff, and advised inter alia that she had been substituted as counsel for said respondents in the place and stead of Irwin R. Germaise mentioned above.

These are consolidated proceedings instituted by order of the Commission on July 15, 1965 pursuant to Section 203(d)<sup>1/</sup> of the Investment Advisers Act of 1940 (Advisers Act) to determine whether it is necessary and appropriate in the public interest to take remedial action pursuant to said Section of the Advisers Act against the parties named in the caption of the proceeding by reason of alleged willful violations of Sections 203(c), 204, 206 and 207 of said Act, together with Rules 204-1 and 206(4)-1 thereunder.

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- 1/ Section 203(d) of the Advisers Act as applicable here provides in substance that the Commission shall deny registration to, or suspend or revoke the registration of an investment adviser if it finds that such action is in the public interest and that such investment adviser or any partner, officer, director or controlling person thereof whether prior to or subsequent to becoming such,
- A. has willfully made or caused to be made in any application for registration filed with the Commission, any false or misleading statement or omission of a material fact; or
  - B. has been convicted within the previous 10 years of any felony or misdemeanor involving transactions in securities by a broker-dealer or investment adviser, including misappropriation of funds or securities; or
  - C. is permanently or temporarily enjoined by any court of competent jurisdiction from acting as an investment adviser, underwriter, broker or dealer; or from engaging, in transactions for the purchase or sale of any security, or
  - D. has willfully violated any provision of the Securities Act, the Securities Exchange Act, or the Adviser's Act or any rule or regulation thereunder; or
  - E. has aided or abetted such violation by any other person

The above-named order for proceedings (Order) alleges in  
1/  
substance:

A. That Marketlines, Inc. (Marketlines) will-  
fully violated Sections 203(c), 204 and 207 of the  
Advisers Act and Rule 204-1 of the General Rules and  
Regulations thereunder 2/  
and that David S. Romanoff  
(Romanoff) and Harold Schreiber (Schreiber), hereafter also

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1/ For convenient reference a copy of the order for proceedings is  
attached as an appendix.

2/ The above-mentioned provisions may be summarized as follows:

Section 203(c) of the Advisers Act sets forth the information  
required in an application for registration as an investment adviser  
including, in substance: form of organization; education and past  
business affiliations of the applicant; basis of compensation and  
disclosure of whether applicant or any of its principals, con-  
trolling or controlled persons, are subject to any disqualification  
which would be a basis for imposition of the sanctions provided in  
subparagraph (d) supra of said Section.

Rule 203-1 under this Section requires that an application for  
registration thereunder shall be filed on Form ADV in accordance  
with the instructions contained therein.

Section 204 of said Act states in substance that:

"Every investment adviser. . . shall make such reports as the  
Commission by its rules and regulations may prescribe as necessary  
or appropriate in the public interest or for the protection of  
investors."

Rule 204-1(b) under said Section provides that:

"If the information contained in any application for registra-  
tion filed on Form ADV or in any amendment filed on such Form. . .  
becomes inaccurate for any reason, the investment adviser shall  
promptly file an amendment. . . correcting such information."

Section 207 under said Act makes unlawful any statement or omis-  
sion of a material fact in any application or report filed under  
Sections 203 or 204, supra.

sometimes referred to as respondents, singly and in concert, willfully aided and abetted such violations in that they willfully omitted to state material facts required to be stated in the Marketlines application for registration on the Commission's Form ADV.

B. That during the period from on or about January 1, 1965 to the date of the Commission's order, Marketlines, aided and abetted by Romanoff and Schreiber, willfully violated Section 206 of the Advisers Act and Rule 206(4)-1 thereunder <sup>1/</sup> in that they published and distributed certain advertisements soliciting subscriptions to respondent's services and containing untrue statements and omissions of material facts as more particularly specified in said order.

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1/ Section 206 of the Advisers Act, as here applicable, makes it unlawful for an investment adviser to use the mails or instrumentalities of interstate commerce directly or indirectly to employ any device, scheme or artifice to defraud any client or prospective client.

Rule 206(4)-1(a) under this Section provides in part, as applicable here, that it shall constitute a fraudulent or deceptive practice for any investment adviser directly or indirectly to publish or distribute any advertisement which, in substance:

(3) represents that any graph, chart, formula or other device will assist any person in making his own decisions as to which securities to buy or sell, or when to do so, without prominently disclosing the limitations thereof;

(4) states that any report analysis or service will be furnished "free" or without charge unless such report or service actually will be furnished without any condition or obligation directly or indirectly.

(5) contains any untrue or misleading statement of a material fact or is otherwise misleading.

C. That Elizabeth Schreiber, d/b/a Commodity Trading Advisory Service (Commodity) willfully violated Sections 203(c), 204 and 207 of the Advisers Act and Rule 204-1 thereunder and that Harold Schreiber willfully aided and abetted such violations in that they, singly and in concert,

(1) failed to name Harold Schreiber as a person directly or indirectly exercising or having the power to exercise a controlling influence over the management or policies of Commodity;

(2) failed to name Elizabeth Schreiber and Harold Schreiber as having heretofore aided and abetted certain specified violations of the Exchange Act and of the Advisers Act.

The official files of the Commission disclose that all of the parties respondent filed answers <sup>1/</sup> which in substance constitute a general denial of the charges set forth in the above-mentioned Order.

After appropriate notice a hearing, at which all respondents were represented by counsel, was held before the undersigned in the New York Regional Office of the Commission. At the conclusion of the hearing the parties were afforded an opportunity to file proposed findings and supporting argument which documents were thereafter filed by the respective counsel for the parties, as noted herein.

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1/ The record shows that an answer on behalf of Elizabeth Schreiber, d/b/a Commodity Trading Advisory Service and Harold Schreiber was filed by one Harry H. Greis, Esq. of 639 Logan Avenue, Borough of the Bronx, New York City. However, at the opening of the hearing said Greis withdrew as Attorney for these respondents and A. Alfred Schreiber, mentioned above, was substituted in his stead and participated in the hearing thereafter.

On the basis of the entire record and from observation of the witnesses the undersigned makes the following findings:

BASIC FACTS

Marketlines

The evidence shows that this respondent, a New York corporation, filed an application in December 1962 on Form ADV for registration as an investment adviser which became effective on January 25, 1963. Romanoff has been at all times and still is president, treasurer, director and owner of all of the outstanding common stock of the company which will sometimes also be referred to as registrant. On June 10, 1963 Harold Schreiber was listed in an amendment to said application as vice president, secretary and a director of Marketlines and continued to hold these offices until January 11, 1965.

Romanoff testified that he purchased all of the stock of Marketlines from a previous owner for \$4,000, with an initial payment of \$1,000 in cash and a series of notes for the balance which was subsequently paid in full. Romanoff's testimony further shows that he had previously been engaged in the practice of law, but by reason of conviction in 1950, in the Court of General Sessions of New York County, of felonies consisting of conspiracy, forgery in the second degree, grand larceny in both the first and second degrees

and criminal concealment of stolen property, he had been disbarred by the Appellate Division of the Supreme Court, First Judicial Department on October 20, 1950 - approximately thirteen years prior to the filing of Marketlines' application for registration as an investment adviser. The record, however, does not disclose fully the nature of Romanoff's activities from the time of these convictions and disbarment until he embarked upon the business of an investment adviser and purchased the business of Marketlines, which was and is principally engaged in the publication of market letters entitled "Marketlines" and "The Penny Speculator."

Marketlines is offered to the public at the following subscription rates: annually at \$150; semiannually at \$90; quarterly at \$49.50; and a 6-week trial subscription at \$10. The subscription rates for the Penny Speculator are: annually \$75; semiannually \$45; quarterly \$25; and trial subscriptions at \$10 for 3 months and \$5 for 6 weeks. Publication of The Penny Speculator commenced in late December 1964 or early January 1965 and there were about 350 subscribers at the time of the hearing - not broken down according to subscription periods. During the time here pertinent the record shows that there were a total of approximately 800 subscribers to Marketlines, of whom about half were on an annual basis, with the remainder on the basis of the shorter terms mentioned. Additionally, it should be noted that besides publication of the market letters registrant also provided personal consultation service on an unlimited telephone or telegraphic basis at the rate of \$500 per year, payable quarterly.

Soon after purchasing Marketlines the testimony shows that Romanoff became associated with Harold Schreiber who had previously been an officer, director and stockholder of Market Values, Inc. (Market Values), also a registered investment adviser. On December 31, 1964 the registration of Market Values was revoked by the Commission in a decision in which the Commission found that Schreiber and Stanley Chandler, hereinabove named, had aided and abetted Market Values in willfully violating Sections 203(c) and 207 of the Advisers Act in that its application for registration as an investment adviser was false and misleading in material respects; also, that such application had been signed on behalf of Market Values by Chandler with Schreiber's knowledge and consent, but failed to state that Schreiber was an undisclosed owner of 50% of the registrant's stock and, in fact, exercised a controlling influence over its management and policies.

In said decision the Commission also found that the Market Values' application further failed to disclose that the office of president was being held open for Schreiber and that the activities and functions of Elizabeth Schreiber, his wife, in connection with the business of the company, were undertaken solely as a nominal officer and director thereof and were subject to Schreiber's supervision and direction. <sup>1/</sup> Moreover, and in the same decision, the

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<sup>1/</sup> See In the Matter of Market Values Inc., Investment Advisers Release No. 181, Securities Exchange Act Release No. 7498 dated December 31, 1964, which release is specifically referred to in the order for proceedings herein as the basis for the violations mentioned above.

Commission denied the application of Market Values which it had filed for registration also as a broker-dealer and found that Harold Schreiber and Elizabeth Schreiber had willfully aided and abetted violation by Market Values of Section 15(b) of the Exchange Act and Rule 15b-8 thereunder by making false and misleading statements and omissions of material facts in its broker-dealer application and that Harold and Elizabeth Schreiber, and each of them, were causes of the resulting denial of Market Values' said broker-dealer application.

Romanoff testified that he retained the services of Harold Schreiber because of his reputedly wide knowledge of the securities market, by reason of his experience as an employee for a number of years of several broker-dealer firms. Thus, Schreiber was placed in charge of preparing charts of price movements of various stocks and of analyzing the market behavior of such securities. Upon receipt of these analyses Romanoff prepared what is described as editorial comment which developed in each case the principal theme of the market letters, "Marketlines," and "The Penny Speculator." The latter were then published and mailed to subscribers on Thursday of each week.

Early in 1963 Romanoff organized Financial Outlook, Inc. (Financial) as a wholly owned subsidiary to provide mailing services for the registrant's publications at a charge of \$250 a month. According to the testimony Financial shares the offices of Marketlines but does not pay rent. Stanley Chandler is an employee of

Financial Outlook, has charge of the mailing of both of the market letters and performs various other ministerial functions in connection therewith at a salary of \$150 per week. He also received additional compensation from the registrant on a negotiated basis, i.e., about \$700 in 1964 and \$250 in 1965.

During the period here involved the employees of registrant consisted of Josephine Sano, typist, Jacqueline Eastman, secretary, and William Casper, office boy. Schreiber received a salary of \$100 a week from May 1963 until the fall of 1964, at which time his salary was increased to \$200 per week, plus \$50 a month for expenses. In January 1965 after he was named in the Market Values decision he resigned as an officer and director of registrant and his salary was reduced to \$150 per week plus \$50 per month for expenses.

Finally, it should be mentioned that the "Marketlines" letter was devoted principally to analyses of a relatively large number of stocks accompanied by recommendations for customer action. "The Penny Speculator," as the title suggests, appears to have devoted itself to expounding the opportunities for profit to be found in speculating in low-priced stocks.

Commodity Trading Advisory Service

The record shows that Commodity became registered as an investment adviser on October 28, 1948 and that Elizabeth Schreiber has at all times been listed as sole proprietor. In response to Item 7 of Commodity's latest Form ADV Supplement dated October 19,

1962 it is stated that Elizabeth Schreiber is president of Long Island Galleries, Inc, and the response to Item 9 reads in part, "Have been operating an antique gallery for the last eight months and have speculated in security and commodity markets over the last 20 years."

Although Elizabeth Schreiber did not testify at the hearing the record shows that she is the wife of Harold Schreiber and the mother of several children. The record further shows, and it is not disputed, that she heads Commodity as sole proprietor in name only and that all of her activities in connection therewith have been and are at the direction of her husband - with the result that Schreiber has at all times exercised a controlling influence over the management and policies of Commodity <sup>1/</sup> and therefore is a controlling person

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1/ The circumstances regarding Schreiber's control of Commodity are clearly indicated in a telephone conversation between Victor Saderholm (a representative of the Commission employed in its New York Regional Office), and Elizabeth Schreiber, which conversation took place in April 1965 in connection with Saderholm's investigation of the case. The testimony which is uncontroverted appears in pertinent part at pp. 315-316 of the transcript reading as follows:

Q. Could you tell us about that conversation, what you said and what Elizabeth Schreiber said?

A. Yes, I placed a call to Area Code 516 LY 9-1581, which was the home telephone number of Mr. Harold Schreiber.

A lady answered the phone, and I asked if this is Mrs. Elizabeth Schreiber, and she answered "Yes."

(Continued on following page.)

thereof within the meaning of Section 202(12) of the Advisers Act.<sup>1/</sup>

It should be further noted that during the course of the hearing counsel for Commodity stated that he had been authorized to make an offer on the record to withdraw the registration of Commodity as an investment adviser and also to state that Elizabeth Schreiber would agree never to seek registration as an investment adviser or act as such at any time in the future. However, since these proceedings had already been instituted before any such offer was made, such application under the provisions of Section 203(g) of the Advisers Act and Rule 203-2 thereunder would be permitted to become effective, if at all, only upon such terms as the Commission might impose as necessary

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(Continued from previous page.)

So I said, "Mrs. Elizabeth Schreiber, you are registered with the Securities and Exchange Commission as an investment adviser."

To which she responded, "Oh, that's my husband."

I asked, "Is the investment adviser 'Commodity Trading Advisory Service' active?"

She replied, "I imagine it is. If you want to know anything about it, you'll have to call my husband."

I asked her, "Is Harold Schreiber your husband?"

To which she answered, "Yes."

Then I asked, "Can you tell me anything about the service?"

She said, "No, you will have to speak to my husband. You will have to call him in the evening."

And I thanked her and that was the end of the conversation.

<sup>1/</sup> The term "control" is defined in the above-mentioned Section as "the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company."

and appropriate in the public interest. <sup>1/</sup> Said counsel was therefore advised to prepare and submit a memorandum setting forth the application to withdraw together with such pertinent information as might be appropriate for consideration in passing on the proposal. No further action was taken by said counsel however so that the question in its present posture will be dealt with hereinafter in connection with disposition of the ultimate issues and findings herein.

In light of the foregoing, the evidence of alleged violations will now be discussed.

Alleged Misleading Statements and Omissions by  
Marketlines in its Application for Registration

The record shows and it is not disputed that Harold Schreiber and Elizabeth Schreiber, his wife, were the principal stockholders of Market Values, Inc., an investment adviser which had become effectively registered with the Commission in or about October 1960. Subsequently, in its above-mentioned decision of December 31, 1964 involving that company [Investment Advisers Act Release No. 181, Securities Exchange Act Release No. 7498 supra],

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<sup>1/</sup> Subparagraph (g) of Section 203, supra, reads in pertinent part:  
"Any person registered under this Section may, upon such terms and conditions as the Commission finds necessary in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission."

Rule 203-2 under said section provides that such notice to withdraw shall not become effective except upon such terms and conditions as the Commission may determine to be in the public interest where, as here, a proceeding under Section 203(d) has been instituted prior to the filing of such notice.

the Commission, as previously alluded to, and at risk of some unavoidable repetition, ordered that the registration of Market Values as an investment adviser be revoked and, also, that its then pending application for registration as a broker-dealer be denied. As a basis for the action taken, the Commission found that Harold Schreiber and Stanley Chandler, hereinbefore mentioned, had aided and abetted Market Values in willfully violating Sections 203(c) and 207 of the Advisers Act by making materially false and misleading statements in Market Value's application for registration as an investment adviser, that Harold Schreiber and Elizabeth Schreiber, his wife, had also aided and abetted Market Values in willfully violating Section 15(b) of the Exchange Act and Rule 15b-8 thereunder by making materially false and misleading statements in its application for registration as a broker-dealer as aforesaid; and that said individuals, and each of them, were causes of the Commission's order denying Market Value's application for registration as a broker-dealer.

As previously noted, all applications for registration as an investment adviser are required to be made on the Commission's Form ADV, which, in Item 8, subparagraph (d) thereof, requires that the applicant state whether such applicant or registrant (if said form is being filed as an amendment to a previous application), or any partner, officer, director, controlling or controlled person thereof including employees has been found by the Commission or any court to have violated any provision of the Securities Act, the Exchange Act or the Advisers Act or any Rule or Regulation under any

of such Acts; or to have aided or abetted such violation. The response to this inquiry was left blank until approximately three months after the Market Values decision was published when an amended Form ADV was filed on March 24, 1965. Thus, notwithstanding Schreiber's close association with Romanoff as vice president and director of Marketlines for over 18 months, from May 1963 until January 11, 1965 the information as to Schreiber's activities in connection with Market Values and the resulting findings of the Commission were concealed. And since Schreiber was a principal of Marketlines as aforesaid, holding the offices mentioned, he was under an obligation to inform Romanoff of his involvement in the Market Values proceeding and likewise to review the application for registration of Marketlines and all amendments thereof to assure their accuracy. His failure to do so was therefore a willful violation of Section 203(c) of the Advisers Act, which, as previously noted, prohibits any false or misleading statement or omission of a material fact in an application for registration. The fact of Schreiber's involvement in the Market Values proceeding before the Commission was of course obviously material and should have been disclosed in Item 8(d) supra.

In addition to Schreiber's responsibility in this area, it should be pointed out that the official files of the Commission indicate that the Market Values proceeding was instituted by order

of the Commission on March 22, 1963, so that in view of Romanoff's close association with Schreiber during the period indicated above, it is a fair inference that he knew or could have learned by diligent inquiry <sup>1/</sup> of the pendency of the proceedings. Thus, his failure to reveal the facts regarding Schreiber's role in connection therewith until long after the Commission's decision came out (by the filing of an amendment in March 1965, as aforesaid) was likewise in willful violation of Sections 203(c) and 204 of the Advisers Act, together with Rule 204-1(b) <sup>2/</sup> requiring that such amendment be filed promptly. Needless to say Schreiber, of course, willfully aided and abetted registrant (Marketlines) and Romanoff in both of these violations.

Moreover, the testimony shows that Schreiber exercised a controlling influence over the management and policies of Marketlines not only because of his position as vice president and director from May 1963 to January 1965, when he resigned those offices, but also because Romanoff relied almost entirely upon Schreiber to prepare analyses of the various stocks which were to become the subject of comment in the market letters. In fact, Romanoff made a point of the fact several times during his testimony that he relied heavily upon Schreiber in view of his extensive prior experience with a

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1/ As the opinion in Market Values states, said proceeding had included a public hearing before a hearing examiner who filed a recommended decision. This also became public on October 11, 1963, about 6 months after Marketlines' registration became effective.

2/ Rule 204-1(b) provides that if any information in an application for registration on file becomes inaccurate the same shall be corrected promptly by amendment on Form ADV.

member firm of the New York Stock Exchange and his familiarity with, and apparent mastery of, market terminology. He therefore contented himself with preparing editorial comment, and exercising an overall review of the finished product prior to mailing. Additionally, the testimony of several witnesses shows that Schreiber participated in conferences with various advertising agents, and Romanoff in preparing and revising advertising copy for newspapers, circulars and the like.

Thus, although Schreiber resigned as an officer and director of Marketlines on January 11, 1965 - shortly after the publication of the Commission's decision in Market Values naming him as a cause of the sanctions imposed in that decision - the record shows that he continued to perform all of the functions which he had engaged in at Marketlines up to that time. His resignation from the official positions he had held, therefore, did not diminish in practice the nature and scope of his duties - from which circumstances his controlling influence is clearly evident.<sup>1/</sup>

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<sup>1/</sup> In any event, regardless of whether Schreiber in fact exercised a controlling influence over registrant, the same duties of disclosure are specifically required under Item 8 of Form ADV in respect of officers, directors, or others performing similar functions, including employees, so that the violations found above have at least one, if not two grounds - whereas one alone is of course sufficient. Respondent's vigorous contention in the brief, therefore, that Schreiber neither controlled nor in fact exercised a controlling influence over registrant's policies and management would have little weight even if it could be sustained, since, as noted above, he was an officer and director until after the Market Values decision was published and thereafter was listed as an employee.

In addition to Marketlines' failure to disclose required information regarding past activities of Schreiber the record shows, as previously noted, that Chandler was an employee of Marketlines and had been placed in charge of the mailing of the market letters published by registrant and in addition was assigned certain duties in connection with the preparation of the market letters and their subsequent distribution to subscribers. Thus, Chandler was clearly a "controlled person" of Marketlines and should have been named in response to Item 8(d) supra as a person in that category who had been found by the Commission to have aided and abetted violations of the Advisers Act and the Exchange Act as stated in the Commission's decision in Market Values, supra.

Subparagraph (b) of Item 8 of Form ADV additionally requires disclosure by the investment adviser of whether any of its principal officers, directors or employees are permanently or temporarily enjoined by any Court, inter alia, from acting as an investment adviser, broker or dealer or from engaging in any conduct or practice in connection with such activity or the purchase or sale of any security. In response to this item the registrant, aided and abetted by Romanoff and Schreiber, failed and omitted to disclose by amendment or otherwise up to the time of the hearing that Marketlines had been prohibited, on April 29, 1964, from acting as an investment adviser in the State of Illinois, except in compliance

with the Illinois Securities Law of 1953. The above-mentioned prohibition was initially made by an Order of the Illinois Secretary of State from which an appeal was taken by the registrant to the Circuit Court of Cook County Illinois which, on August 13, 1964, affirmed the findings and conclusions of the Secretary of State. Subsequently, and on October 4, 1965 the Order of the Circuit Court, aforesaid, was affirmed by the Appellate Court of Illinois in an Opinion which was placed in evidence as Division Exhibit 3(c).<sup>1/</sup>

No explanation was offered by any of the respondents for failure to supply the information specifically required by Item 8(b) of the application above referred to, except that an appeal to the highest court of the State of Illinois had been taken, which appeal was still pending at the time of the hearing. That this omission was highly material in this instance - besides being required by the Commission's Form ADV - is shown by the fact that the record shows that the order of prohibition by the Secretary of state was based chiefly upon Romanoff's failure to obtain a passing grade in the examination by that department regarding his experience and qualifications to act as an investment adviser. Moreover, although the pendency of an appeal to a higher court is cited as an

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<sup>1/</sup> The Division's Exhibits will hereafter be designated by "DX," and references to the transcript of testimony by "R" and the page number. Respondent's Exhibits will be designated by the name of the respondent followed by "X" and the exhibit number.

excuse for failing to disclose the disability affecting the registrant in the State of Illinois, the fact remains that the order of prohibition by the Secretary of State would, and does, retain its full force and effect until reversed - no stay of said order having been entered. Thus, the least these respondents should have done under the circumstances was to have filed an appropriate amendment disclosing the injunctive action taken and the status of the appeals.<sup>1/</sup>

On the basis of the foregoing, the undersigned accordingly is compelled to find that Marketlines, aided and abetted by Romanoff and Schreiber, willfully violated Sections 203(c) and 207 of the Advisers Act together with Section 204 and Rule 204-1 thereunder as charged in the order for proceedings.

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<sup>1/</sup> In this regard it should perhaps be noted that Item 8(b) supra speaks specifically of an injunction "order, judgment or decree" of a court whereas, here the initial order of prohibition was issued by the Illinois Secretary of State - twice affirmed by appellate courts. In these circumstances it will hardly be contended that the court orders of affirmance are not the full equivalent of an injunctive decree. They are therefore deemed to be clearly within the purview of the disclosure requirement noted.

Alleged Violation by Marketlines of the Commission's  
Rules under Section 206(4) of the Advisers Act

Rule 206(4)-1 under the heading "Advertisements by Investment Advisers" provides in paragraph (a), as applicable here, as follows:

"It shall constitute a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of Section 206(4) of the Act for any investment adviser, directly or indirectly, to publish, circulate or distribute any advertisement:

(5) which contains any untrue statement of a material fact, or which is otherwise false or misleading."

The record shows that Marketlines placed an ad in the New York Post on January 7, 1965 soliciting subscriptions to "The Penny Speculator" and containing the following statements which the Division of Trading and Markets (Division) alleges were materially false and misleading:

- (a) "At present public interest in LOW PRICED STOCKS is opening profit possibilities that will undoubtedly pave the way for many family fortunes in the years just ahead."
- (b) "Through several years of patient research, MARKETLINES, which sponsors 'The Penny Speculator', has developed a completely unique advisory service devoted exclusively to the interests of the small investor seeking the best employment of his surplus funds toward the goal of capital gain."
- (c) "Investors and traders who want to protect and enhance their capital during the crucial months ahead will recognize the tremendous value of 'PENNY SPECULATOR'S 15 Points TOWARD PROFIT': These points backed by the research and experience of MARKETLINES' financial scientists and chartists presents it [sic] findings frankly, honestly and simply: in accordance with forecasting methods we have found to be best over the years."  
[DX-4; underscore added]

Similarly, Marketlines caused to be published in the New York World Telegram on January 11 and 16, 1965 and in the New York Times on March 7 and 13, 1965, respectively, certain ads promoting the "Penny Speculator" and containing virtually identical language.

Taking up the above-quoted statements seriatim the statement in the New York Post ad, in paragraph (a) above, to the effect that the present public interest in low-priced stocks "will undoubtedly pave the way for many family fortunes" is, of course, a flamboyant exaggeration without any factual basis whatsoever. It is also obviously designed to whet the speculative appetite of the gullible unsophisticated investor; and since it contains no cautionary or qualifying language, is misleading and violative of the above-mentioned Rule. Indeed, the Commission clearly stated in Spear and Staff, Inc. (Investment Advisers Act Release No. 188, dated March 25, 1965) that:

"In appraising advertisements. . .we do not look only to the effect that they might have had on careful and analytical persons. We look also to their possible impact on those unskilled and unsophisticated in investment matters."

Regarding paragraph (b) above, the reference to the Penny Speculator "as a completely unique advisory service" together with the statement in paragraph (c) regarding the tremendous value of "Penny Speculator's 15 Points Toward Profit," is misleading in that there is no mention either in the quoted paragraphs or in any other portion of the ad,

of the inherent risks involved in securities transactions and the possibility of loss as well as gain. Likewise, there appears to be no factual support for the statement that the registrant has developed a "completely unique advisory service," that is to say, there is no basis for the claim that the service is unique which of course carries the connotation that there is no other similar service in existence. these statements, therefore, without appropriate qualification or caveat are, like that in paragraph (a), deemed unjustifiably flamboyant, without any reasonable basis and therefore misleading.

In addition to the foregoing the Division strongly contends that the reference in paragraph (c) above to the fact that "Penny Speculator's 15 Points Toward Profit" are backed by "the research and experience of Marketlines' financial scientists and chartists" is false and misleading due to the fact that the procedures and techniques for evaluating securities and their markets cannot be reduced to an exact science, and therefore such reference to "financial scientists" is misleading and deceptive. It is likewise calculated to appeal to the unsophisticated and unwary. In this regard, it also appears quite pertinent to note again that the principal ground upon which Marketlines was prohibited from acting as an investment adviser in Illinois was that Romanoff had failed to obtain a passing grade in the investment adviser examination hereinabove alluded to. Moreover, the reference to "the research

and experience of Marketlines' financial scientists and chartists" is also misleading since it carries with it the connotation that Marketlines employs a large staff of financial analysts, whereas in fact Schreiber and Chandler, with the editorial assistance of Romanoff, alone represented its staff of so-called "scientists and chartists."

On the basis of the foregoing the Examiner finds that the Marketlines advertisements discussed above contained flamboyant and unsupported statements and omissions of facts material to investors and were therefore misleading and deceptive in willful violation of Rule 206(4)-1 supra.

In addition to the statements discussed above, however, the Division also asserts that the reference in the World Telegram and New York Times ads to an article entitled "SPONSORSHIP the technical approach to STOCK MARKET PROFITS IN LOW PRICED STOCKS" is misleading in that it speaks only of profits and is not balanced by any reference to the uncertainties and risk inherent in investment and trading in securities. In this regard, since the quoted reference appears to represent merely the title of a proposed article in very broad terms dealing with a certain phase or technique for profitable trading in securities the Examiner is of the view that the mere recital of the title of an article without any detailed indication or specification of its content would not by itself be reasonably calculated to deceive or mislead even the unsophisticated. No adverse finding is therefore made regarding this allegation.

Alleged Violation of Rule 206(4)-1(a)(3)  
under Section 206, supra.

The above-mentioned Rule prohibits any advertisement,

"which represents, directly or indirectly, that any graph, chart, formula, or other device being offered can in an of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making his own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use." (Underscore added.)

The record shows that in several newspaper advertisements, particularly in the New York Post of January 7 and the New York Times of March 7 the ads, hereinabove referred to, promoting the Penny Speculator contained the statement in pertinent part that, "The Penny Speculator brings to its subscribers biweekly, such features as.... 9. Use of timing devices for maximum trading profits." (DX-4). Since this assertion appears without any qualification or explanation of the uncertainties, possible inaccuracies or other problems in connection with the use of such device particularly in the hands of the inexperienced, it clearly violates the above-mentioned Rule inasmuch as it lends itself to the interpretation that the device in and of itself might be used to determine which securities to buy or sell or when to buy or sell them - assertions that are expressly prohibited in absence of the explanatory qualifications indicated.

No such explanation was included however, and the finding therefore is that the ads are clearly in violation of said Rule.

Violation of Rule 206(4)-1(a)(4)

This Rule prohibits the use by an investment adviser of any advertisement which:

"contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless such report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly..."

The advertisements in the above-mentioned newspapers together with other newspaper and direct mail advertising used by the registrant - specification of which would be merely cumulative here - contain substantially the following subscriber solicitation:

"If you send your trial order promptly. . .we will send you Free our 20 Page Booklet 'The Technical Approach to Stock Market Profits.' You will also get, FREE, the name of 4 low-priced stocks with growth potential, special report on SEIC's, report on 6 low-priced electronic stocks, our special report on Real Estate Investment Companies, and our survey of outstanding opportunities on low-priced warrants. Don't miss out on this offer, it expires on. . . - so ACT TODAY. Send the coupon along with your \$5 - six weeks, or \$10 - 3 months Trial". (See DX-4 supra.)

It will be noted that the materials which the ad states will be supplied to the subscriber "FREE" are actually conditioned upon the purchase by the reader of a trial subscription costing \$5 or \$10

depending upon the term desired. Under such circumstances the offer of the "free" reports and other materials clearly could not be availed of by the reader without incurring the obligation to remit the subscription prices specified in the ad and are therefore in violation of the above-cited Rule.

Violation of Rule 206(4)-1(a)(5) by Marketlines  
in its Direct Mail Advertising

Early in 1965 Marketlines prepared and mailed approximately 100,000 copies of an advertising brochure promoting both "Marketlines" and "The Penny Speculator" including subscription blanks and a detailed explanation of the registrant's investment adviser services, consisting of several pages and containing statements which the Division alleges were false and misleading. Thus, the said advertising brochure includes:<sup>1/</sup>

- (a) A fold-out page bearing the title "Announcing the Most Revolutionary New Investment Service Concept to Come Along In Years".
- (b) An envelope with the following statement printed in bold type on the outside front and back:
  1. "An Invitation To Read An Extraordinary New Concept in Market Profits!"
  2. "Can You Strike it Rich?"
  3. "Marketlines - The Letter Professionals Read"

The first statement quoted in paragraph (a) above, which appears on the first or fold-out page of the brochure, as aforesaid, is

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<sup>1/</sup> See DX-2.

repeated on the first inside page thereof and is supplemented by the following: "Giving you an invaluable double opportunity for stock market profits." (Underscore added.) No basis is indicated for the statement that the service offered is new or revolutionary; nor, likewise, for the asserted "double opportunity for profits." Both statements are obviously mere bombast - shrewdly contrived to appeal to the unsophisticated and gullible and therefore are clearly in violation of Rule 206(4)-1(a)(5).<sup>1/</sup>

Similarly, the statements quoted in paragraphs (b) 1. and 2. above, that the registrant is offering "an extraordinary new concept in market profits," followed by "Can you strike it rich?" are equally without support or qualification or caveat indicating the inherent risks involved in securities transactions. Additionally, there is no factual basis for the bare and bold assertion in paragraph (b) 3. that Marketlines is read by "professionals." The result is that all of the statements in paragraphs (b) 1, 2 and 3 are also in violation of the above-mentioned Rule.<sup>2/</sup>

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<sup>1/</sup> Rule 206(4)-1(a)(5), as noted at p. 4, supra, prohibits the use of any advertisement which contains any material untrue statement or which is otherwise false or misleading.

<sup>2/</sup> In passing, it should be noted that the brochure also contains the same offer of "Free" reports and the like (conditioned however on a commitment for a trial subscription by the reader) as appeared in the newspaper ads already discussed and so reflects an additional violation of Rule 206(4)-1(a)(3), supra.

Since both Romanoff and Schreiber participated in, and were responsible for, the preparation and promulgation of the promotional literature discussed in the foregoing consisting of newspaper and direct mail advertising, the violations found above were clearly willful<sup>1/</sup> within the meaning of the Federal securities laws. The Examiner accordingly concludes that Marketlines aided and abetted by Romanoff and Schreiber willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-1 thereunder, as charged in the order for proceedings.<sup>2/</sup>

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<sup>1/</sup> The Commission and the courts have consistently held that in order to establish "willfulness" as that term is applied under the Federal securities acts, it is necessary only to prove that persons charged with a duty were aware of what they were doing and it is not essential for them to have been aware of the legal consequences of their acts. See Hughes v. S.E.C., 174 F. 2d 969, 977 (1949); Tager v. S.E.C., 344 F. 2d 5 (1965); Shuck v. S.E.C., 264 F. 2d 358 (1958); Thompson-Ross Securities, 6 S.E.C. 1111, 1122 (1940); Carl M. Loeb-Rhoades & Co., 38 S.E.C. 843, 854 (1959); The Whitehall Corporation, 38 S.E.C. 259, 270; Van Alstyne, Noel & Co., 22 S.E.C. 176 (1946).

<sup>2/</sup> See Spear & Staff, Incorporated. (Investment Advisers Act Release No. 188, dated March 25, 1965), a relatively recent case wherein the facts are in many respects on all fours with those in the instant proceeding - indeed, so much so that excerpts from the Commission's Opinion are deemed especially applicable here and are therefore set forth below. In that case, it will be noted that the investment adviser registrant, as here, engaged in a program of direct mail and newspaper advertising for the purpose of inducing members of the public to purchase subscriptions for its services. Commenting on the latter the Commission stated, in pertinent part (some footnotes omitted):

"The record includes a large number of advertisements which were used by registrant. . . Pervading and dominating this literature, which was couched in enthusiastic

(Continued on following page.)

Alleged False and Misleading Statements and Omissions  
by Commodity in Violation of Section 203(c), 204  
and 207 of the Advisers Act and Rule 204-1 thereunder

In Form ADV filed on November 6, 1962 by Elizabeth Schreiber, under the firm name and style of Commodity Advisory Service, a negative response is given to Item 6(a) requiring disclosure of whether any person other than herself as sole proprietor, exercised or had the power to exercise directly or indirectly a controlling influence over the management or policies of the registrant.

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(Continued from previous page.)

and dramatic language, was the insistent implication that registrant possessed the ability to select stocks that were certain to appreciate in price quickly and substantially, and that a certain road to riches was at hand for those who availed themselves of registrant's guidance. Caution and conservatism were scorned as attributes of people who 'are still thinking small.' 6/

\* \* \* \* \*

"Registrant's most extensively used advertisement dealt with 'special situation investing.' It defined a special situation as 'a security whose primary characteristic is its "built-in" capacity to bring extraordinarily large capital gains,' and it described special situation investing as 'A BRILLIANT AND PROFITABLE INVESTMENT CONCEPT. . . a proven, highly professional approach to making money in the stock market. . . that is both bold and simple, yet technically sound, intrinsically safe, and completely practical.' The advertisement stated that Wall Street experts had for years virtually monopolized that 'profit-making market approach, using it with remarkable success,' but that 'Now' the chance was open to the subscriber to add to his wealth through special situations and that they could bring him 'the greatest profit at the smallest risks.'"

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6/ All of the quotations from registrant's advertisements that appear in this opinion retain the original punctuation, underscoring, italics and capitalization.

(Continued on following page.)

In Item 7 of said Form, Elizabeth Schreiber is listed as president of Long Island Galleries, Inc. and the response to Item 11 states, as previously touched on, that applicant is presently engaged in operating an antique art gallery but that the principal business of applicant will be that of an investment adviser - "when the registrant commences operations."

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(Continued from previous page.)

"In our opinion, registrant's advertisements were calculated to arouse, in an excessive and unwarranted manner, illusory hopes of immediate and substantial profit, and were violative of the Act's anti-fraud provisions and of Rule 206(4)-1(a) thereunder. They were deceptive and misleading in their over-all effect even though it might be argued that when narrowly and literally read, no single statement of a material fact was false.<sup>8/</sup>

"By the securities acts Congress sought to protect 'those who do not know. . . from the overreachings of those who do.' To attain that objective, persons engaged in the securities business must be held to rigorous standards of full and fair disclosure in their dealings with investors. The rendition of investment advice is an integral part of the securities business, and the Act evidences Congressional recognition of that fact and of the need to protect those who seek such advice. In passing upon the propriety of securities selling techniques we have repeatedly held that lax merchandising standards epitomized by such terms as 'puffing' are anti-thetical to the anti-fraud provisions of the securities

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<sup>8/</sup> Fraud within the meaning of the Act can be established without proof of false statements. S.E.C. v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 185-195 (1963). And Rule 204(4)-1(a)(5) prohibits both advertisements that contain any untrue statement of material fact and those that are otherwise false and misleading.

(Continued on following page.)

It will be recalled that the Commission found in Market Values, supra, that Schreiber exercised a controlling influence over Market Values even though he held no office in the corporation. Elizabeth Schreiber, his wife, however, held the offices of secretary, treasurer and director of the company and the Commission further found that all functions in relation to these offices were performed by her under the supervision and direction of her husband who was not named as a controlling person in the Market Values Form ADV

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(Continued from previous page.)

statutes. Similarly high standards of truthfulness and disclosure must also govern the propriety and legality of investment advisers' efforts to induce others to purchase their services.<sup>12/</sup> They are particularly applicable to advertisements of the type involved here which by their tenor show that they were designed to appeal to people who were anxious to secure quick profits and were not especially sophisticated in security analysis. Many such persons are either unaware of or prone to overlook the limitations and the uncertainties necessarily inherent in any attempt to forecast stock prices. They tend to be unduly influenced by advertisements representing or implying that the advertiser can make profitable forecasts and to subscribe to the advertiser's advisory services in reliance on them."

#### Conclusions

Registrant's sensational advertisements featuring the get-rich-quick theme were incompatible with responsible methods of obtaining clients for investment advisory services. Advertisements of this kind have a substantial adverse effect on the public interest. Not only do they tend to mislead and deceive investors, they also tend to debase the standards of the investment advisory industry by creating a competitive environment that tempts advisers to vie with each other in making unsupportable claims to prophetic insight. Our Special Study of Securities Markets found that "The impact of such advertising is apparently considerable and thus a cause for concern."<sup>13</sup> (Emphasis added.)

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<sup>12/</sup> As noted, Section 206 of the Act bars conduct that defrauds or deceives "any client or prospective client," and we have held that the solicitation of clients is part of the activity of an investment adviser. Ralph Seward Seipel, 38 S.E.C. 256, 257 (1958).

which, as here, contained a negative and therefore false answer to Item 6(a).

It is true, of course, that such a finding by the Commission in another and different proceeding would not by any means be probative evidence of a similar situation here except to show the nature of the relationship between Schreiber and his wife generally, in matters of business - and in that particular case, more significantly, as an investment adviser. Thus, such circumstances - taken together with the fact that, as the responses to Items 7 and 11 noted above show - Elizabeth Schreiber was obviously engaged in a business far removed from anything that could qualify her to advise members of the public in the highly specialized and intricate field of analysis of securities and their markets.

Moreover, it will be remembered that Mrs. Schreiber stated in her telephone conversation with Saderholm that all matters involving Commodity would have to be taken up with her husband. Hence, there can be no serious question of Schreiber's controlling influence in the affairs of Commodity and the failure to so indicate was clearly a deliberate failure to comply with the requirements of Item 6(a) supra.

In addition to these omissions the Commodity application for registration fails to disclose in Item 8(d)[as required], by amendment or otherwise, that Elizabeth Schreiber herself had aided and abetted

violation by Market Values and others of certain provisions of the Exchange Act as found by the Commission in its decision in that case. Under such circumstances it is evident that this respondent willfully violated the Commission's disclosure and reporting requirements under the Advisers Act as indicated. See Justin Federman Stone (Investment Advisers Act Release No. 153, Nov. 26, 1963) wherein the Commission stated:

"The application for registration is a basic and vital part in our administration of the Act, and it is essential in the public interest that the information required by the application form be supplied completely and accurately. The application form obligates the applicant to verify that all statements contained in it are true, correct and complete to the best knowledge and belief of the person executing the form."

Similarly, said respondent further violated the provisions of subparagraph (b) of Rule 204-1, supra, requiring, as heretofore noted, that if information contained in an application for registration "becomes inaccurate for any reason the investment adviser shall promptly file an amendment on Form ADV correcting such information." Here, as already noted, Schreiber had been found by the Commission to have willfully violated provisions of both the Exchange Act and the Advisers Act in the Market Values case, and, notwithstanding this serious finding involving her husband Mrs. Schreiber failed to file at any time an amendment on Form ADV disclosing such information which is specifically required by Item 8(d) thereof. Such failure, of course, further demonstrates a willful disregard of the Commission's Rules and Regulations by Elizabeth Schreiber, sole proprietor of Commodity, as aided and abetted by Harold Schreiber, her husband.

Additionally, it should be noted that although Elizabeth Schreiber received adequate notice of the hearing and opportunity to present a defense she did not testify nor otherwise avail herself of that opportunity. Under such circumstances the Commission has consistently ruled that in administrative proceedings which are "non-criminal," the failure of one charged with violation of any provision of the Federal securities laws to testify in his or her own behalf, justifies the inference that such testimony if produced would have been adverse. See N. Sims Organ & Co., Inc., 40 S.E.C. 573 at 577 (1961) and authorities there cited.<sup>1/</sup>

Finally, although Elizabeth Schreiber appears to have acted merely as an alter ego for her husband, she is, nevertheless

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<sup>1/</sup> In the above regard it is also pertinent to note that, although Schreiber was personally present at the hearing, he did not testify nor present any other evidence regarding either Commodity or Marketlines.

chargeable with the duties and responsibilities which she assumed when she applied for registration as an investment adviser. Her failure to comply with the Commission's applicable rules and regulations as found herein therefore cannot be overlooked - particularly in view of her husband's admitted controlling influence in the affairs of Commodity, his fraudulent activities found by the Commission in Market Values and his active participation in the violations by Marketlines found herein.

Under all of the circumstances described, the examiner is compelled to find that Elizabeth Schreiber, trading as Commodity, willfully violated Sections 203(c), 204, and 207 of the Advisers Act together with Rule 204-1 thereunder as charged in the order for proceedings. <sup>1/</sup>

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<sup>1/</sup> On February 23, 1966 counsel for the Schreibers filed "proposed findings of fact and conclusions of law" in respect of the issues affecting Commodity and the same have been carefully considered and adopted insofar as they are in accord herewith.

Public Interest

Having found that all of the respondents have willfully violated certain provisions of the Investment Advisers Act the next question is what, if any, remedial action should be taken pursuant to Section 203(d) of said Act, namely, whether it is necessary or appropriate in the public interest to suspend for a period not exceeding twelve months or to revoke the registration as investment advisers of both Marketlines and Commodity, or either of them. In resolving this question it is necessary, of course, to deal with each respondent separately.

Thus, the record shows that the violations by Marketlines, aided and abetted by Romanoff and Schreiber, were not only willful but numerous and, for the greater part, reflect a deliberate flouting of the Commission's rules and regulations by their failure to disclose information that in certain instances would alone have been ground for disciplinary sanctions, e.g., failure to disclose the disqualification of Marketlines in the State of Illinois and the finding by the Commission that Schreiber had willfully violated certain provisions of both the Exchange Act and the Advisers Act in Market Values supra.<sup>1/</sup>

By way of mitigation, however, respondents Marketlines and Romanoff point to the fact that two of the offending phrases in the ads

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<sup>1/</sup> See subparagraphs A, C, D and E of Section 203(d) as noted at page 2 hereof.

described in the foregoing referring to Marketlines' staff of "financial scientists" and its offer of "free" reports and services, were immediately corrected upon receipt of advice from representatives of the Commission that said phrases were objectionable. Ordinarily, of course, such action would be entitled to some consideration as a mitigating factor, but in view of the numerous other willful and deliberate violations indicating a studied lack of candor and good faith in regard to compliance with the disclosure requirements of the Commission's application Form ADV, such belated corrective action, taken as here, only after discovery and complaint can hardly outweigh the other serious violations referred to. Moreover, the record shows that Romanoff stands convicted of serious crimes involving dishonesty and fraud which resulted in his disbarment as an attorney in the State of New York. While the latter circumstances are not required to be disclosed on Form ADV since they occurred more than ten years prior to the date of application for registration they are, nevertheless, relevant to the question of the public interest and registrant's fitness to act as an investment adviser.<sup>1/</sup>

On the other hand, of course, there can be no doubt that Romanoff has already suffered greatly by reason of his conviction and disbarment so that one is moved at once to considerations of sympathy and a search for some firm ground for lenience. But here no such factors

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<sup>1/</sup> See Irving Grubman, 40 S.E.C. 671 at 674 (1961), wherein it was held that prior convictions going back more than twenty years as well as numerous arrests (even without trial or conviction) are relevant to the question of the public interest in respect of the character and fitness of persons engaged in the securities business.

appear; for although there is no evidence in this record that Romanoff has been involved in any other violations of law, considerations of sympathy alone cannot overcome or outweigh the evidence presented here, reflecting as it does, so serious a deficiency in those attributes of honesty and truthfulness which the Commission has held requisite for those holding themselves out as advisers to members of the public regarding the disposition of monies, which all too often, represent the savings of a lifetime." (Spear & Staff Incorporated supra) Thus, because of these and the other circumstances discussed in the foregoing the lesser sanction of suspension of registration would not appear to be adequate since it would amount only to a temporary disqualification - terminating automatically upon the mere passage of time and without any showing of a change of conduct for the better by those who are responsible for the violations found here. The undersigned is therefore compelled to conclude that the public interest requires that the registration of Marketlines as an investment adviser be revoked.

Regarding Commodity, the record shows that Elizabeth Schreiber has willfully violated not only the disclosure provisions of the Advisers Act and the Commission's Rules and Regulations thereunder, but has also been found by the Commission to have willfully violated certain provisions of the Exchange Act in the Market Values case, a factor which, as already noted, might alone be sufficient ground for imposition of the sanctions provided in Section 203(d) supra.

Additionally, the record shows that Elizabeth Schreiber acted as a mere puppet for her husband in connection with Commodity; that she is a housewife with several children and is presently engaged in conducting an antique business - activities far removed from anything that would qualify her to act as an investment adviser to members of the general public. Moreover, the fact that neither she nor her husband testified, nor introduced any countervailing evidence regarding any matters involving Commodity, leaves the record completely barren of anything to mitigate the gravity of the deliberate omissions and concealment of material facts demonstrated by the evidence here.

Thus, in view of the serious and willful violations by Elizabeth Schreiber found above, the absence of mitigating circumstances and the evidence of deliberate and long-standing bad faith exhibited in those violations, the Examiner is compelled to find that the public interest requires that the registration of Elizabeth Schreiber doing business as Commodity Advisory Service likewise be revoked.

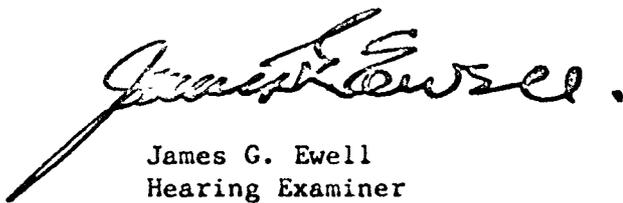
On the basis of the findings and conclusions hereinabove

set forth, it is accordingly

ORDERED that the request for withdrawal of registration of Elizabeth Schreiber doing business as Commodity Advisory Service be and the same hereby is denied; and

Effective as of the date that the Commission shall have entered an order pursuant to this initial decision as provided by Rule 17 of our Rules of Practice (17 CFR 203.17), and subject to the provisions for review of this decision afforded by that Rule,

IT IS FURTHER ORDERED that the registration of Marketlines, Inc. and of Elizabeth Schreiber, doing business as Commodity Trading Advisory Service, and each of them, as investment advisers be revoked.<sup>1/</sup>



James G. Ewell  
Hearing Examiner

Washington, D. C.  
March 16, 1966

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<sup>1/</sup> The proposed findings of fact and conclusions of law submitted by the parties have been carefully considered and are adopted insofar as they are consistent with the foregoing and are otherwise rejected.



an investment adviser be revoked and that its application for registration as a broker-dealer be denied. The Commission found that Harold Schreiber and Stanley Chandler had aided and abetted Market Values in willfully violating Sections 203(c) and 207 of the Advisers Act by making materially false and misleading statements in Market Values' application for registration as an investment adviser, and, that Harold Schreiber and Elizabeth Schreiber had aided and abetted Market Values in willfully violating Section 15(b) of the Securities Exchange Act of 1934 and Rule 17 CFF 240. 15b-8 thereunder, by making materially false and misleading statements in Market Values' application for registration as a broker-dealer, and that Harold Schreiber and Elizabeth Schreiber were causes of the denial of Market Values' registration as a broker and dealer.

F. Marketlines' Form ADV filed on January 21, 1965 omits the name of Harold Schreiber as an officer or director of Marketlines.

## II

As a result of an investigation, the Division of Trading and Markets has obtained information which tends to show and it alleges that:

A. Marketlines willfully violated Sections 203(c), 204 and 207 of the Advisers Act and Rule 204-1 thereunder and David S. Pomanoff and Harold Schreiber willfully aided and abetted such violations in that said persons, singly and in concert, willfully omitted to state material facts required to be stated in Marketlines' Form ADV, in that (1) Item 8(d) fails to name Harold Schreiber and Stanley Chandler, persons directly or indirectly controlling or controlled by Marketlines, as having aided and abetted violations of the Advisers Act and of the Securities Exchange Act, (2) Item 8(c) failed to name Harold Schreiber as a person having caused to be made materially false and misleading statements in registration applications filed with the Commission under the Advisers Act until an amended Form ADV was filed on March 24, 1965, (3) Stanley Chandler still is not named in response to Item 8(c) and (4) Item 8(b) fails to disclose that Marketlines is prohibited from acting as an investment adviser in the State of Illinois.

B. During the period from on or about March 1, 1965 to on or about the date hereof, Marketlines willfully violated Section 206 of the Investment Advisers Act and Rule 206(4)-1 thereunder and David S. Pomanoff and Harold Schreiber willfully aided and abetted such wilful violations in that they, directly and indirectly, engaged in transactions, practices and a course of business which were fraudulent, deceptive and manipulative. As part of the aforesaid conduct and activities, Marketlines, Pomanoff and Schreiber published, circulated and distributed advertisements:

- (1) which advertisements contain untrue statements of material facts and which were otherwise false and misleading concerning:
  - (a) the use of timing and other devices for obtaining profits from securities transactions;
  - (b) the failure to disclose the inherent risks involved in the purchase and sale of securities;
  - (c) the research facilities of Marketlines and the business experience and qualifications of its employees; and
  - (d) the cost of obtaining certain investment advisory materials from Marketlines.
- (2) which advertisements contain statements to the effect that certain of its advisory materials will be furnished free or without charge when, in fact, Marketlines charges for such materials and imposes certain conditions or obligations upon their receipt.

C. Elizabeth Schreiber d/b/a Commodity Trading Advisory Service willfully violated Sections 203(c) 204 and 207 of the Advisers Act and Rule 204-1 thereunder and Harold Schreiber willfully aided and abetted such violations in that said persons, singly and in concert, willfully omitted to state material facts required to be stated in registrant's Form ADV, in that (1) Item 6(a) fails to name Harold Schreiber as a person directly or indirectly exercising or having the power to exercise a controlling influence over the management or policies of registrant, (2) Item 8(d) fails to name Elizabeth Schreiber as having aided and abetted violations of the Exchange Act, and fails to name Harold Schreiber, a person directly or indirectly controlling registrant, as having aided and abetted violations of the Exchange Act and of the Advisers Act, (3) Item 8(c) fails to name Harold Schreiber, a person directly or indirectly controlling registrant, as having caused to be made materially false and misleading statements in registration applications filed with the Commission under the Advisers Act.

### III

In view of the allegations made by the Division of Trading and Markets, the Commission deems it necessary that public proceedings be instituted to determine:

- (1) whether the allegations set forth above are true and in connection therewith to afford respondents an opportunity to establish any defenses to such allegations; and
- (2) what, if any, remedial action is appropriate in the public interest pursuant to Section 203(d) of the Investment Advisers Act of 1940.

IV

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof be held at a time and place to be fixed, and before a hearing examiner to be designated by further order, as provided by Rule 6 of the Commission's Rules of Practice (17 CFF 201.6).

IT IS FURTHER ORDERED that registrants each file an answer to the allegations contained in this order for proceedings within 15 days after the service upon them of said order as provided in Rule 7 of the Commission's Rules of Practice. (17 CFF 201.7) It is further ordered that any other person named in this order for proceedings as a person against whom findings may be made or sanctions imposed file a notice of appearance within 15 days after service upon him of this order, pursuant to Rule 6(e) of the Commission's Rules of Practice. If any such person files such notice of appearance, he is further directed to file an answer within 15 days after filing such notice as provided by Rule 7 of the Commission's Rules of Practice. (For the purpose of this paragraph an answer shall constitute a notice of appearance.)

If registrants or any other person described above fails to file the directed answer or fails to appear at a hearing after being duly notified, such persons shall be deemed in default and the proceeding may be determined against such persons upon consideration of the order for proceedings, the allegations of which may be deemed to be true.

This order shall be served upon Marketlines, David S. Romanoff, Harold Schreiber and Elizabeth Schreiber personally or by certified mail forthwith.

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 proceedings will be permitted to participate or advise in the decision upon 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 4(c) of the Administrative Procedure Act, it is not deemed to be subject to the provisions of that section delaying the effective date of any final Commission action.

By the Commission.

Orval L. DuBois

Secretary By: Nellyo A. Thorsen  
Assistant Secretary

SERVICE LIST

Pule 23 of the Commission's Rules of Practice provides that all amendments to moving papers, all answers, all motions or applications made in the course of a proceeding (unless made orally during a hearing), all proposed findings and conclusions, all petitions for review of any intial decision, and all briefs shall be filed with the Commission and shall be served upon all other parties to the proceeding including the interested division of the Commission.

The attached Order for Proceedings has been sent to the following parties:

Marketlines, Inc.  
50 Broad Street  
New York, N.Y.

David S. Pomanoff  
50 Broad Street  
New York, N.Y.

Harold Schreiber  
50 Broad Street  
New York, N.Y.

Elizabeth Schreiber, d/b/a  
Commodity Trading Advisory Service  
65 Stuart Street  
Lynbrook, New York

Llewellyn P. Young, Regional Administrator  
Securities and Exchange Commission  
23rd Floor, 225 Broadway  
New York, N. Y. 10007