



**Lee Richards, Esq.**

**Trustee for Avellino & Bienes**

**Re: SEC v. Avellino & Bienes et al.**

**January 21, 1993**

## *Price Waterhouse*



January 21, 1993

Lee Richards, Esq.  
Trustee for Avellino & Bienes  
% Richards, Spears, Kibbe & Orbe  
140 Broadway  
New York, NY 10005

Dear Mr. Richards:

At your request and pursuant to The Order of Preliminary Injunction and Other Equitable Relief on Consent in the case entitled SEC v. Avellino & Bienes, et al., dated November 17, 1992 ("Order"), we were engaged to (1) conduct an audit of Avellino & Bienes' ("A&B," or the "Partnership") financial statements from January 1, 1984 through November 16, 1992; (2) express an opinion confirming the identity of all noteholders in A&B notes and the amount of principal and accrued interest owed to each such noteholder as of November 16, 1992, and as of the date of distribution of principal and accrued interest to each such noteholder; and (3) perform such other duties and functions as you may request. The Order requires us to issue a report on the work we performed, which report we are required to file with the court by January 26, 1993. This letter constitutes our report.

### **Absence of Financial Statements to Audit**

Generally accepted auditing standards state that the preparation of Partnership financial statements is the responsibility of the Partners. Upon commencement of our audit work, Mr. Frank Avellino communicated to us that Partnership financial statements in accordance with generally accepted accounting principles had not been prepared for any period of time covered by the Order. Our requests to have Mr. Avellino prepare the financial statements were ultimately denied.

### *Period Prior to January 1, 1989*

It was our understanding when we accepted the engagement that there would be books and records available for each of the years required to be audited under the Order.

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However, shortly after our engagement, Mr. Avellino represented that A&B discarded all of the underlying accounting records relating to the period January 1, 1984 through December 31, 1988.

Since financial statements in accordance with generally accepted accounting principles had not been prepared and the underlying accounting records of A&B for the period January 1, 1984 through December 31, 1988 were not available, we could not perform an audit or render an opinion relating to this period.

*Period Subsequent to December 31, 1988*

Certain accounting records (primarily those relating to cash receipt and cash disbursement transactions) were available for the period January 1, 1989 through November 16, 1992. Other records critical to the performance of an audit which one would expect a company that invested and borrowed over \$400 million to have (such as, security ledgers, security purchases and sales journals, monthly reconciliations of securities brokerage transactions and positions and investor/noteholder balances to Partnership records) were not maintained. Such security records would normally include information on each security showing number of shares, unit and aggregate price for each purchase or sale, commission paid, trade and settlement dates, dividends and interest received and investment receivables and payables.

The underlying accounting records of A&B for the period January 1, 1989 through November 16, 1992 are incomplete and do not provide sufficient evidence supporting the entity's operations to permit the preparation of financial statements. Because of the absence of financial statements and adequate accounting records, we were not able to apply adequate auditing procedures of a scope sufficient to enable us to render an opinion on this period.

During December 1992 we commenced discussions with you and representatives of the Securities and Exchange Commission to discuss the status of our work. After explaining in detail the problems we were encountering, including the absence of financial statements and adequate accounting records, it was agreed that we would attempt to audit financial statements, *to be prepared on an income tax basis (or other comprehensive basis of accounting instead of in accordance with generally accepted accounting principles)*, for the period January 1, 1989 through November 16, 1992. We performed substantial procedures relating to this project and have made requests for certain additional documentation from Mr. Avellino. Many of these requests remain outstanding; therefore, we are unable to render an opinion for the period January 1, 1989 through November 16, 1992.

### Identification of Noteholders

After consulting with representatives of the Securities and Exchange Commission and the Trustee regarding the nature of our engagement, our assignment was to use the seven days up to the court-ordered date of distribution (November 24, 1992) to do whatever was practical to test the listing of balances payable (principal and accrued interest) to noteholders as of November 16, 1992 provided by Mr. Avellino pursuant to the Order. The procedures performed, which were approved in advance by the Trustee, primarily consisted of:

- Inquiring of A&B personnel to familiarize ourselves with the operating policies and procedures of the Partnership.
- Obtaining a listing of noteholders as of November 16, 1992 from Optus Information Systems, Inc. ("Optus"), the outside service bureau which apparently was utilized by A&B since 1989 to maintain its noteholder's ledger, and
  - Selecting a sample of noteholders and reviewing underlying individual noteholder files maintained by A&B. We compared supporting documentation contained in the selected files for certain cash receipt and cash disbursement activity and agreed it with underlying cash records.
- Meeting with a representative of Optus to obtain an understanding of certain processing tasks, reports and check preparation procedures, and
  - Testing the listing of noteholder balances at November 16, 1992 supplied by Optus for mathematical accuracy.
  - Recalculating the amount of interest payable to noteholders for the period October 1, 1992 through November 16, 1992.
- Planning, staffing, supervising and controlling the entire process of distributing the payments to noteholders which included a confirmation request, based on balances obtained from Optus, for the noteholder to sign acknowledging his or her agreement with the balance due and paid.

Pursuant to the Order, these procedures were performed during the period from November 18, 1992 through November 24, 1992, prior to the disbursement of any funds to the noteholders. See Exhibit A for additional information on work performed.

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Subsequent to the distributions of payments to noteholders, we performed the following additional procedures:

- Accumulating and summarizing the results of our circularization of noteholder balances at November 16, 1992 including follow up of differences identified in the confirmation procedures
- Distributing to all current and past noteholders, included in the A&B records maintained by Optus, a notice which requested any individuals or entities who provided funds to, and believe they have a claim against A&B, to notify the Trustee. That notice was also published in the *Wall Street Journal* on December 24, 1992.

In connection with the procedures performed, no matters came to our attention that caused us to believe that the listing of balances payable to noteholders might require adjustment except:

- (1) The manual general ledger balance of amounts owing to noteholders differs at December 31, 1991 from that reflected on the Optus system. We have been advised by Mr. Avellino that it is incorrect because it includes certain monies that at one time belonged to relatives of the partners; we have not been supplied with sufficient records to substantiate this assertion, for example a reconciliation between Optus and the general ledger. We have not yet been able to complete our work in reconstructing balances derived from the Optus system, therefore we cannot quantify the above mentioned differences.
- (2) As of January 21, 1993 we have not received replies or satisfactory replies from 99 noteholders with balances approximating \$41 million at November 16, 1992.
- (3) Financial statements as of December 31, 1986 supplied to us by Chemical Bank for A&B showed no liability payable to noteholders. The copy of the A&B federal tax return supplied to us by Mr. Avellino for the year ended December 31, 1986 showed a liability payable to noteholders approximating \$43 million. An official of Chemical Bank advised us that they had no financial statements subsequent to December 31, 1986.

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- (4) We did not perform tests of the accrued interest payable to each noteholder for the period from November 17 through November 24, 1992 as the calculation of interest which was to be provided by A&B to the Trustee by December 1, 1992 pursuant to the Order was not received by the Trustee until January 15, 1993 and by us until January 20, 1993.
- (5) See Exhibit B for a listing of information we requested but have not yet received and other unresolved matters.

Had financial statements and adequate accounting records been available to permit an audit in accordance with generally accepted auditing standards, or had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This letter is solely for the information and use of the Trustee for Avellino & Bienes, The Honorable John E. Sprizzo, the Securities and Exchange Commission, and Counsel for Avellino & Bienes and should not be used for any other purpose.

*Price Waterhouse*

cc:

The Honorable John E. Sprizzo

Mr. Richard H. Walker, (Regional Administrator, Securities and Exchange Commission)

Ira Lee Sorkin, Esq. (Counsel to Avellino & Bienes and Messrs. Avellino & Bienes)

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Our appointment began on November 18, 1992 and our work has been comprised of three distinct stages: first, from November 18 to November 24, we carried out procedures to check distributions totalling \$329,194,998 to noteholders, investigated in that time period (which was established by the Order) whether the distributions were being made to actual noteholders and in the amounts shown on the records of A&B, and inquired whether the distribution by A&B of approximately \$113 million made prior to the Order was to actual noteholders and in the amounts reflected in the records of A&B; second, we commenced an audit of financial statements of A&B; and third, we assisted the Trustee in various other capacities including office administration and related matters.

A. The Distribution of Over \$329 Million to Noteholders

Procedures carried out on loan noteholder accounts

1. Verifying The Distribution. A substantial portion of work related to checking the distribution of \$329,194,998. After receiving notice of our engagement on November 17, we met with the representatives of the SEC, legal counsel for A&B, and the Trustee. Our assignment was to use the seven days up to the Court-ordered date of distribution to provide some assurance that the \$329 million borrowed by A&B would be disbursed to the proper persons in the proper amounts.

2. Taking Control Of The Avellino & Bienes Office. On November 18, we accompanied the Trustee to Avellino & Bienes and took control of their New York office at 70 East 55 Street, New York (which included arranging for and supervising the changing of the lock). We met Mr. Avellino and Mr. Bienes,



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partners of A&B. Mr. Avellino discussed with us, among other matters, their operations and their plans for paying back the remaining funds to the lenders. Using three members of our staff, we began our inventory of and inquiry into the nature of A&B's records. Because there were no written procedural or other manuals documenting the available books and systems, we learned A&B's procedures through a series of discussions with Mr. Avellino and the A&B staff.

3. Review of approximately 150 Noteholder Files. Mr. Avellino provided us with a list of noteholders as of November 16, 1992 indicating the amounts of principal and interest owed each noteholder, which we checked for accuracy by conducting certain procedures. Specifically, A&B maintained separate file folders for each noteholder; those folders (which were our principal source for determining what each noteholder was owed) contained differing amounts of information in each noteholder file. It was obviously impossible in seven days to review all 3200 folders; therefore, we reviewed folders for all noteholders purportedly owed over \$1 million according to the listing supplied by A&B and a sample of other noteholders selected on a judgmental basis from that same listing and from the noteholder files. Our procedures included reviewing the files, and checking the amount of certain transactions against bank deposit slips (which in a separate test were traced to cash receipt records or, for disbursements to returned checks), reviewing authorized file signatories and reviewing address information. These procedures required significant



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interaction with the A&B staff, who clarified and explained any problems and answered other questions.

4. Inquiry at Optus Information Systems. Mr. Avellino advised us that since 1989 the noteholders ledger was maintained by an outside computer service bureau, Optus Information Systems ("Optus"). Therefore, on November 20, [Personal Privacy] [REDACTED] a Price Waterhouse partner and a senior Price Waterhouse consultant specializing in computerized information systems visited the Optus offices in Somerset, New Jersey. There they met with [Personal Privacy] [REDACTED] who told us that he was a principal in Optus and that he performed all of the processing tasks and prepared reports and checks for A&B. The objective of the meeting was to obtain an understanding from him of the manner in which information and records flowed between A&B and Optus, and to discuss the procedures to be followed in preparing the checks to be sent to noteholders pursuant to the Order. This process took place in the four days prior to the distribution and involved numerous follow up discussions with [Personal Privacy] [REDACTED] to try to establish if the data that we received from Optus was in agreement with the data Mr. Avellino gave us on November 18. We also arranged to obtain from Optus balance and computer transaction files for A&B for the period January 1 to November 16, 1992, as well as the checks that were to be prepared to liquidate the amounts owed the noteholders as of November 16, 1992. In addition, we coordinated with Optus, the Trustee, legal counsel for A&B, and representatives



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of the SEC and designed a confirmation request to send to noteholders with the checks.

5. Recalculation of Interest Owed. After receiving the computer files from Optus, our information technology specialists recalculated the interest due to be paid to noteholders for the period October 1 to November 16, 1992 and checked whether the balances reflected on all the files supplied to us added up and agreed with the balances that were previously tested. Our tests did not reveal any errors in the above mentioned interest calculations.

Planning, preparation and control over mailing of checks to Noteholders

6. Confirmation of Noteholder Addresses. We planned, staffed, supervised, controlled and carried out the distribution of approximately 2500 checks and the sending of ten wires to liquidate the known noteholder balances as of November 16, 1992.<sup>1</sup> In order to verify whether each check was sent to the most recent address, we tested whether the address listed on the Optus computer system was consistent with addresses reflected in the Noteholder files in A&B's office. Our testing included all "care of" addresses.

7. Arrangements for Distribution of Funds By Federal Express And Wire.  
After meeting with Mr. Avellino and A&B's counsel, the Trustee decided that for

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<sup>1</sup> We did not send out 3,200 checks or wires because a number of accounts were combined and covered by a single wire or check.



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security reasons, distributions in excess of \$200,000 should be made by Federal Express and the remainder by regular mail. Ten accounts were distributed by federal wire, those being the accounts where transactions had been regularly undertaken by wire. In order to achieve this in the short time frame allowed in the Order, over the weekend of November 21-22, and on November 23, our representative carefully controlled the printing of the checks (late Saturday evening and early Sunday morning) at Optus' New Jersey offices, and brought the 2,500 checks to our New York office. There, mailing labels and Federal Express envelopes were prepared to distribute the funds. This task also involved obtaining in excess of three hundred Federal Express envelopes, developing and running of a computer program that printed labels for all noteholders with amounts due in excess of \$200,000, obtaining approximately 2,500 double window envelopes from Personal Privacy of Optus, making approximately 2,500 copies of the explanatory letter to accompany the distribution, and making two copies of the confirmations and checks (the first as a copy for control purposes, and the second in readiness for a second confirmation request). We supervised the signing of approximately 2,500 checks by Mr. Avellino, Mr. Bienes or Mr. Joseph Avellino at the offices of Avellino & Bienes on November 22, 1992. In addition, we coordinated the wire transfers with Mr. Avellino, the Trustee and Chemical Bank. This involved extracting transfer information from client files, verifying its authenticity, and providing this information (which included bank account numbers and Routing/ABA numbers) to Personal Privacy at Optus who



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prepared the wire release details. We then contacted Chemical Bank with the Trustee, who gave the authority to release the funds. The actual mailing took place on November 24 and included a cover letter and postage-paid reply envelope seeking confirmation from noteholders of the balance (principal and accrued interest) due at November 16, 1992.

Tasks assigned to us by the Trustee

8. Coordination of Activities With Others. In all our efforts to carry out the activities discussed above, we coordinated closely with the Trustee, the SEC, Chemical Bank, Optus, Mr. Avellino, the A&B staff, and counsel for A&B when appropriate. In particular, Frederick Werblow and [Personal Privacy] partners on the engagement, met and conferred with the Trustee on a regular basis; [Personal Privacy], an audit manager, met with and conferred with the Trustee and his staff on a daily basis.

9. Provided Information and Assistance To The Trustee. We used our Information Center to obtain background information on the defendants and other entities with which they did business. We also assisted the Trustee with two depositions of Mr. Avellino. We prepared and discussed questions with the Trustee, prepared exhibits, and attended one of the depositions.



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10. Obtained Documents In Florida. We arranged for a member of our Miami staff to meet with Mr. Bienes to obtain certain additional A&B books and records which existed in Florida (for example, the general ledger and tax returns for the partnership for 1991).

11. Secured The Frozen Funds. We ensured that checks relating to accounts that had been frozen, numbering fourteen in total, were removed from those to be sent and held separately. We participated in several conference calls with the Trustee, the SEC and counsel for A&B, relating to the freezing of the Telfran Ltd. principals' accounts and subsequently organized with the Trustee's staff the transfer of all frozen monies to an escrow account in the Telfran Trustee's name.

12. Worked With Chemical Bank. We had several discussions with Chemical Bank regarding check authorization procedures and provided them with a copy of the register of all checks sent out.

13. Reviewed 1991 Tax Returns in the Absence of Financial Statements. A Price Waterhouse manager specializing in investment partnership taxation performed a preliminary review of the 1991 tax returns of both the Florida and New York partnerships of Avellino & Bienes, and the individual tax returns of the three partners -- Frank Avellino, Michael Bienes and Diane Bienes. This review was undertaken to gather information normally contained in financial statements and to better understand the status of the partnerships, as well as to ascertain whether there was any unrecorded liability for federal, state or local income taxes.



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14. Discussions With The Media. We also discussed with the Trustee and the SEC how to respond to media inquiry, and subsequently had several conversations with the press.

B. Commencement of audit work

15. Absence of Records To Audit. Immediately after the November 24 distribution, we completed our planning for and tried to carry out the audit of the financial statements. The Order requires us to "conduct an audit of A&B's financial statements from 1984 to the present." To comply with this Order, we previously had met with Mr. Avellino to seek to obtain the financial statements and any existing audit reports for the years 1984 through 1991 and to obtain the underlying accounting and other records, including the partnership agreement. We were surprised to learn from Mr. Avellino that the partnership had no financial statements prepared in accordance with generally accepted accounting principles or any audit report for any period of time covered by the Order. Also, Mr. Avellino told us that all accounting records prepared for periods up to and including 1988 had been discarded. Furthermore, Mr. Avellino advised us that there was no written partnership agreement.

16. Lack Of Investment Records. We discovered there was no investment ledger or security purchases and sales journals, despite the fact that the partnership had more than \$400,000,000 of assets and liabilities, comprised of investments in



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securities and loans from noteholders. Mr. Avellino told us that A&B did not maintain detailed investment records and, in order to compute the tax results each year, he apparently analyzed monthly statements supplied by Bernard L. Madoff.

17. Obstacles Which Caused Delay. In attempting to carry out the audit, we ran across several obstacles, in addition to the matters described above, that caused considerable delay and made our work much more difficult:

(i) Missing Documents. Mr. Avellino advised us that he kept his books and records solely to enable him to prepare the income tax returns of the Florida and New York partnerships. He also informed us that in doing so he exercised his legal right to retain only records for the most recent three years. Thus, for the fiscal years 1984 to 1988 inclusive, he represented that none of the accounting records existed. Accounting records existed for only fiscal years 1989 through 1991. The records for 1992 have not yet been prepared; Mr. Avellino explained to us that he does not write up a significant portion of the books and records until the end of the year. In addition, significant portions of the records for the fiscal years 1989 through 1992 did not exist in a form that facilitated easy review: for example, there was no hard copy documentation from the Optus System, and other items we regard as essential, such as a written reconciliation between the Optus System balances and the manual general ledger and an investment ledger, do not exist.

(ii) Attempts To Obtain Documents From A&B Principals. In an attempt to obtain the necessary missing documents from the partners, we wrote Mr. Avellino



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three letters and Personal Privacy of Optus two letters (copied to Mr. Avellino) seeking these documents. (Attached as Exhibit C are our letters of December 8, 16, 28, and 29, 1992 and January 11, 1993 referring to specific information requests. Exhibit D contains the letters we received from Mr. Avellino.)

18. Mr. Avellino's Direction Not To Question Optus. In addition, by letter dated January 12, 1993 Mr. Avellino said we should "not direct any further questions to Personal Privacy (of Optus)." This is unfortunate because we still have significant unsolved problems with information we have downloaded from Optus. It is also inconsistent with the Order, which requires the defendants to cooperate fully and is a limitation of the scope of our audit.

19. Mr. Avellino's Refusal To Prepare Financial Statements. In order to keep our charges down, we suggested (and we understand Mr. Avellino initially agreed) that Mr. Avellino would prepare the financial statements. However, subsequently in a letter dated January 5, 1993, Mr. Avellino stated that he was "prone not to attempt this task at this time. My experience has taught me to not commit any figures to scrutiny when, as in this case, it can be construed as (bible) and subject to criticism" i.e., to prepare a balance sheet as at November 16, 1992 and income statement for the period January 1, 1992 to November 16, 1992. Based upon Mr. Avellino's responses to date it appears that initially we were not provided with all of the documentation and records. For example, the 1991 extended trial balance was not provided nor various invoices for payments made by the joint



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venture until December 28, 1992. In addition, we had to obtain brokerage statements from Bernard L. Madoff (whom we were told invested essentially all the partnership funds on a fully discretionary basis). His firm has produced records for the A&B accounts only for the period from January 1, 1988 onwards.

20. Impact Of Absence Of Records On Audit Plan. It was obviously necessary to amend and extend our audit procedures because A&B did not maintain records in a form appropriate for facilitating expedient examination. The following examples illustrate the problem: the legibility of cash receipts and payments journals, the making of adjustments to records without updating subtotals, the absence of narrative explanation for certain transactions, the keeping of manually-prepared records that required more complete testing for arithmetical errors than computer-prepared information, the loan noteholder status reports from Optus that do not display the date of the balance inquiry, the posting of transactions to inappropriate accounts, which we were informed by Mr. Avellino, was done for expediency. We were told, for example, that the 1992 records will not be reclassified with the necessary supporting analysis until a balance sheet and income statement are prepared for the tax returns. Another significant problem we encountered was the practice of recording negative amounts in red in the cash receipts and payments journal. The red ink did not appear on the copies we were using, and we were given insufficient time to identify such items on the photocopies



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because Messrs. Avellino and Bienes took these journals back to Florida. As a result, many apparent arithmetical errors required investigation.

21. Audit Procedures Undertaken. Notwithstanding the problems listed above, we commenced the procedures outlined below as part of our audit testing first for the period from January 1, 1992 to November 16, 1992 and subsequently for the year ended December 31, 1991.

22. We checked the arithmetic of all monthly totals for cash receipts and cash payments journals and resolved any apparent footing errors (as discussed above). We then checked these monthly totals against the general ledger account to which they had been posted. In this way we were able to see if the monthly postings of cash receipts and payments had been made as stated. We also reconciled the opening cash book balance to the closing cash book balance. For 1991 we subsequently reconciled the totals in the general ledger account to the balance sheet and income statement presented in the federal income tax return after requesting the extended trial balance that had initially not been provided. An equivalent exercise cannot yet be undertaken for 1992 because Mr. Avellino has neither completed his postings to the general ledger nor prepared an extended trial balance.

23. To test the authenticity of cash receipts and disbursements and the propriety of classifications, we selected a sample of each type of transaction. Cash receipts primarily comprise monies received from Bernard L. Madoff, A&B's broker,



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and deposits from loan noteholders, whereas cash payments are mainly interest and principal payments to loan noteholders, and payments to the broker.

24. For amounts over \$1 million we traced these receipts and payments to the bank statement. Additionally, for all cash transactions selected involving the broker, Bernard L. Madoff, we traced amounts and detail to the broker statements. To do this, it was necessary to obtain broker statements from Mr. Madoff for the period January 1, 1991 to present because A&B was unable to provide broker statements other than for the month ending December 31, 1991. For transactions involving loan noteholders' principal, our computer information systems senior consultant produced transaction histories from the files supplied to us by Optus. We encountered problems in obtaining a report of complete transactions for many accounts and are still awaiting responses from Personal Privacy of Optus. We were able to check selected quarterly interest payments against the interest check registers. For the remainder of selected receipts and payments (other than partners' capital transactions), we sought third party documentation from Mr. Avellino. We are still awaiting the documentation for a number of these transactions.

25. In all cases we considered the propriety of the classifications used in those records which do exist, based on our testing. In the case of testing cash receipts it was necessary to refer to deposit slips to establish the audit trail. In addition, we performed a review of Bernard L. Madoff broker statements to test a sample of cash transactions to see if such transactions involving the broker account



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had been recorded. Other procedures included reconciliation of accounting fees paid by the joint venture to the accounting fees recovered by the A&B (New York Partnership), testing of bank reconciliations at period end (1991 only) and the attempted reconciliation of the loan noteholders balance per the general ledger to the total per the Optus System (1991 only). These tests have raised many questions, and we have not received a response from Mr. Avellino on those questions.

26. Problems Due To Lack Of Key Audit Documents. Difficulties also arose because A&B did not maintain certain key documents needed for the audit. As a representative (though not a comprehensive) list of examples, we would normally expect that the following records be maintained for a company that invests over \$400 million in securities: prime books of entry such as an investment ledger showing open positions and cost at regular periods of time (at least monthly), reports/ledgers of loan noteholder balances, and reconciliations of such ledgers to the general ledger generally on a monthly basis. Mr. Avellino has advised us that A&B does not maintain such records, and consequently we have not been provided with records supporting investments at cost, short sales and loan noteholder balances at year ends. It has been necessary for us to obtain downloads of computer data files supporting loan noteholder balances for the period from January 1, 1989 to present, from which we have attempted to learn about loan noteholder transactions. Additionally, schedules of loan noteholder balances comprising the "Avellino Family Group" and "Bienes Family Group" have not been provided, making reconciliation between



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the general ledger and the balances recorded on the Optus System virtually impossible. Important third party documentation such as all the broker statements from Bernard L. Madoff for 1991 and 1992 and third party documentation for miscellaneous receipts and payments were initially not provided to us. This has resulted in additional delays.

27. Requests Made Of Mr. Avellino. Consequently, to save the cost and time of Price Waterhouse's preparation of A&B's financial statements for 1992, we asked Mr. Avellino to prepare a balance sheet as at November 16, 1992 and an income statement for the period from January 1, 1992 to November 16, 1992 upon which we could base our audit. Additionally, for 1992 we requested schedules of: investments sold and realized gains in the period, dividend income and charges, margin interest paid to broker, short sales, the details of certain balance sheet items, other income, securities at cost prior to liquidation, and activity in the partners' capital account during the period. We have not yet received those items. Furthermore, for the years 1984 to 1991 inclusive, detailed analyses of dividend income and dividend charges, interest income, other income, margin interest paid, loans exchanges and other assets, securities at cost and short sales have not been provided.

C. Other Tasks and Assistance Provided

Follow-up procedures undertaken in relation to the  
distribution of monies to the loan noteholders



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28. Confirmations And Noteholder Claims. In addition, we undertook various procedures relating to the distributions to loan noteholders. Subsequent to the mailing of the confirmation requests to loan noteholders, we collected and monitored confirmation replies as they were returned. We received approximately 30 potential claims or requests for further information from the loan noteholders. The Trustee asked us to investigate such inquiries, and we did so. After our investigations, we prepared suggested responses to Noteholder inquiries for the Trustee, including presentation of interest calculations supporting amounts paid to loan noteholders, and verification of deposits from and payments to loan noteholders, review of relevant loan noteholder files for propriety of address and account numbers and other relevant information.

29. Problems Noteholders Had With Checks. We received several requests, forwarded by the Trustee, from noteholders who had not received checks in the final distribution. We also received checks returned as undeliverable by the U.S. Post Office and Federal Express. In these instances, we contacted the account officer for A&B at Chemical Bank to request that stop payment be placed on each of these checks. We reviewed each relevant noteholder file, discussed the matter with A&B employees, and, where necessary, contacted the noteholder to verify the mailing address. After receipt and review of the stop payment advice from Chemical Bank, we notified the Trustee that a manual replacement check could be issued. We subsequently mailed, or sent by federal express where requested, the replacement



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check with a confirmation request and reply postage paid envelope. To the best of our knowledge these noteholders have now satisfactorily received their funds.

30. Second Confirmation Requests. On December 18, 1992 we mailed approximately 550 second confirmation requests. We prepared an explanatory letter, approved by the Trustee, to accompany the second confirmation request.

31. Mailing Of Notice. The Trustee and SEC Staff asked us to organize the mailing of the "Notice to Loan Noteholders" to all loan noteholders who had accounts from the earliest use of Optus to November 16, 1992. That notice also appeared in the December 24, 1992 edition of The Wall Street Journal. We identified and printed labels for approximately 3,600 accounts in total (including former accounts). We coordinated with our mailing department and photocopied approximately 3,600 notices.

Attendance At Meetings And Other Work

32. Meetings About The Audit. Frederick Werblow, Personal Privacy

Personal Privacy

met frequently with the Trustee and his staff primarily to discuss the status of the audit and the lack of certain books and records and to review our requests for additional information from Mr. Avellino. In addition, Personal Privacy

Personal Privacy

met with the Trustee and his staff and representatives of the SEC on December 17, 1992 to discuss the status of the audits and problems encountered.



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33. The \$317,654 Telfran Claim. In that claim the Telfran Trustee seeks the difference between the interest paid to the Telfran #2 account for the period October 1, 1992 to November 16, 1992 at a rate of 15% instead of 19%, the previous rate. Our work included, but was not limited to, recalculation of interest for this period at 15%, review of the A&B loan noteholder file to identify any evidence to support either payment of interest at 15% or 19%, and performance of a review of the 1992 cash book and quarterly interest check registers for evidence that, among other things, amounts have been paid out or rolled over based on the higher rate. Our investigation into this matter is incomplete as we have not received all of the requested records and information.

34. Determination Of Balance Of Assets Not Paid To Noteholders. Pursuant to an agreement between the SEC and defendants, we undertook to prepare a "Statement of Net Surplus" held in the bank accounts of the Florida and New York Partnerships. The purpose of this was to determine the amounts from those accounts which were to be wired from the Florida and New York Partnerships' accounts to Messrs. Avellino and Bienes at the end of 1992. To accomplish this task, we first reviewed and adjusted the entries recorded in A&B's cash receipts and payments journals. Additionally, we compiled a list of December checks written based upon Mr. Avellino's correspondence with the Trustee in which he submitted checks for approval to pay A&B's normal business expenses. We also prepared a bank reconciliation at November 15 for the Florida Partnership bank account to establish



**Summary of Work Performed by Price Waterhouse  
Pursuant to the Order In Connection With  
The Avellino & Bienes Partnership**

Page 19

the amount of unpresented checks. We performed a review of the partnership bank reconciliation at November 30 as well as Chemical bank statements and transaction reports for that time period for both accounts. Transactions recorded in the cash book were matched to those displayed on the Chemical Bank reports. The purpose of these procedures was to identify any receipts and disbursements not recorded or not otherwise known to us.

35. Bank Reconciliation December 28, 1992. As a further check, we reconciled cash balances calculated by us at December 28, 1992 to the balances recorded by Chemical Bank and quantified checks written but not as yet presented. We discussed our findings on several occasions with the A&B account officer and other officials at Chemical Bank.

36. Requests For Additional Information. We met with Mr. Avellino on December 22, 1992 to discuss the audit testing and information required and, following that meeting, drafted a formal request letter. We subsequently reviewed responses from Mr. Avellino and had several telephone conversations with him.

37. Control of A&B Offices. Staff from our office working on the audit of the financial statements also undertook other daily chores at the request of the Trustee, such as opening and closing the New York office of A&B and discussing the ongoing running expenses of A&B with the Trustee.

January 21, 1993  
New York, New York



**Listing of Information Requested by Price Waterhouse  
But Not Yet Received and Other Unresolved Items**

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- \* (a) A balance sheet and general ledger as of November 16, 1992 and income statement for the period from January 1, 1992 to November 16, 1992, including all supporting schedules for the New York and Florida Partnership:<sup>1</sup>
  - (i) the schedule of specific investments sold during 1992 showing sale proceeds and date of sale, original purchase cost and date, gain or loss on sale
  - (ii) the schedule of dividend income and dividend charges
  - (iii) the schedule of margin interest paid
  - (iv) schedule of short sales
  - (v) schedules giving details of other balance sheet items e.g. loans and exchanges
  - (vi) schedule of other income
  - (vii) schedule of securities at cost (prior to liquidation)
  - (viii) schedule of changes in partnership capital and details of such changes;
  
- \* (b) Detailed breakdowns of the following items as set out in the tax returns for the years 1984 to 1991 inclusive:
  - (i) dividend income and dividend charges
  - (ii) interest income
  - (iii) other income
  - (iv) margin interest paid
  - (v) loans and exchanges (part of other assets)
  - (vi) securities at cost
  - (vii) short sales
  - (viii) schedule of changes in partnership capital and details of such changes;
  
- \* (c) An analysis of the 1992 journal entry to transfer the loan balances of the Avellino Family Group and Bienes Family Group in general ledger account 40 "Loans Payable" to accounts 50 and 51 "Capital Drawings";

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<sup>1</sup> We were advised that there are two Partnerships that conducted the activities referred to in the Order. Avellino & Bienes is referred to in this report by that name as well as the "New York Partnership." Avellino & Bienes Joint Venture is referred to in this report by that name as well as the "Florida Partnership" and "Joint Venture."



**Listing of Information Requested by Price Waterhouse  
But Not Yet Received and Other Unresolved Items**

- \* (d) The purpose of interest rate fields "Comm-1" and "Comm-2" on the Optus system and the use of these fields in quarterly interest calculations and the circumstances in which these fields are assigned a value other than zero;
- \* (e) A reconciliation of the information in the financial statements supplied by Chemical Bank and that reflected in the Florida Partnership tax returns for 1984 through 1986;
- \* (f) A reconciliation of the amounts recorded in the general ledger accounts 50 and 51 from the closing balance for 1989 to the opening balance for 1990 and the closing balance of 1990 to the opening balance of 1991;
- \* (g) Reconciliation of closing partners capital in the extended trial balance to the amount recorded on the tax return for 1990 for the Florida Partnership;
- \* (h) Explanation for the fact that Schedule M of the federal income tax return for Avellino & Bienes Florida Partnership states a capital account deficit at the end of 1987 of \$22,043,358 whereas the capital account at the beginning of 1988 is recorded at a deficit of \$34,471,564;
- \* (i) Quarterly check registers showing interest paid and interest rolled over for all directories of loan noteholders for the quarters ended December 31, 1988; March 31, June 30, September 30, December 31, 1989; March 31, June 30, September 30 and December 31, 1990;
- \* (j) A complete file of interest transactions from Optus relating to loan noteholders included in the "FM" directory for the period January 1, 1989 to November 16, 1992; and
- \* (k) Database from Optus containing all of the changes in Tax Identification Numbers ("TIN") for the period January 1, 1989 to November 16, 1992, including the following fields:
  - Original TIN
  - Revised TIN
  - Date of Change to TIN;



**Listing of Information Requested by Price Waterhouse  
But Not Yet Received and Other Unresolved Items**

\* (l) Documentation supporting all receipts and payments other than those with Bernard L. Madoff (the brokerage firm used by Avellino & Bienes Joint Venture) and noteholders for the period January 1, 1984 through November 16, 1992.

\* (m) New York State and City Tax Returns for the New York Partnership for the years 1984 to 1990 inclusive and Florida intangibles tax returns for the Florida Partnership for the years 1984 to 1991 inclusive;

\* (n) Documentation for the income and expenses relating to "The Favorite Fund" for the period January 1, 1984 through November 16, 1992;

(o) A complete list in writing of documents relating to both the Florida and New York Partnerships held in either the houses or offices of the partners in Florida;

(p) An explanation for the difference in accounting for "Avellino and Bienes Special Fees"; specifically why in 1989 these "fees" were posted to general ledger account 200 "Bank charges etc." whereas in 1990 they were posted to general ledger account 205 "A&B Special Fees";

(q) Any records or correspondence with or relating to investments by Personal Privacy

[REDACTED]

(r) The loan noteholder file for Personal Privacy including his Tax Identification Number;

(s) Loan noteholders files for the Estate of Personal Privacy and the Estate of Personal Privacy;

(t) The "advice of credit" for the deposit relating to Personal Privacy of \$200,000 on June 22, 1989;

(u) Deposit slips relating to Chemical Bank account number Personal Privacy (F&M Associates) from the opening of the account to 8/31/89 and account number

Personal Privacy from the opening of the account to 12/31/89;





- a. Account 007033419 – Statements and returned checks from December 31, 1983 to and including December 31, 1986.
- b. Account 007102658 – Statements and returned checks from December 31, 1983 to and including December 31, 1985.

**3. Other bank accounts**

We understand that other bank accounts have in the past been used, among other purposes, to pay interest to the loan noteholders.

We have noted the following accounts:

	Period of use
(i) F&M Associates DBA D&B Associates	1981 - 1987
(ii) D&B Associates DBA F&M Associates	1987 - 1992
(iii) Alpern, Avellino & Bienes	1981 - 1989

In respect of the above entities we would appreciate that you supply details of the following:

- (a) Information as to why these accounts were used and how they relate to the business of Avellino & Bienes (either the Joint Venture or New York Partnership);
- (b) Tax returns and, if available, financial statements for the above entities for the years 1984 to 1991 inclusive;
- (c) If applicable, signed copies of agreements (including partnership agreements) for the above entities to provide services to Avellino & Bienes.

If there are other accounts, or entities which we have not mentioned above but which have been involved with or provided services to Avellino & Bienes or to the loan noteholders, please provide details to us including the following:



- Type of relationship service provided, period provided and details of any bank accounts used.

**4. Bernard L. Madoff**

We understand that you have requested copies of all statements from Bernard L. Madoff which are not in your possession to be sent directly to us. Please forward a copy of this letter to us. If you have not yet formalized your request in a letter, please do so and give us a copy. We would expect that you have requested statements between December 31, 1983 and November 16, 1992 for the following accounts:

<b>Account #</b>	<b>Account Name</b>
a. 1-A0046-3-0	A&B (Pension Plan)
b. 1-B0018-3-0	Diane K. Bienes
c. 1-A0053-4-0	A&B #5 % Frank Avellino
d. 1-A0000-3-0	A&B Interim A C
e. 1-A0053-3-0	A&B #5 % Frank Avellino
f. 1-A0051-3-0	Frank J. Avellino Trustee
g. 1-A0050-3-0	A&B # 4 % Frank Avellino
h. 1-A0019-3-0	A&B # 3 % Frank Avellino
i. 1-A0018-3-0	A&B #2 % Frank Avellino
j. 1-A0017-3-0	A&B Special % Frank Avellino
k. 1-A0015-3-0	A&B % Frank Avellino

If there are other accounts not listed above which have been used by A&B during this period, then they should also be requested.

**5. General ledger/cash receipts and disbursements**

A general ledger and details of cash receipts and disbursements will need to be prepared for each of the years from 1984 to 1988 inclusive for both Avellino & Bienes (Joint Venture and New York partnership) and the general ledger for the New York partnership covering the period January 1, 1992 to November 16, 1992.



**6. Partnership agreements**

We require a copy of the signed partnership agreements for both Avellino & Bienes Joint Venture (Florida) and Avellino & Bienes (New York) partnerships, including any subsequent amendments to those agreements.

**7. Operating expenses**

We require access to:

- a. Agreement(s) with Optus Software.
- b. Lease Agreements with various landlords for rental of office space.
- c. Payroll summary Forms W-2 for the years 1984 to 1991 inclusive.
- d. Invoices, statements or other applicable support for expenses or any other charges, disbursements or expenditures for the period January 1, 1984 to November 16, 1992.

**8. Revenue**

Please supply all documents in support of any revenue or other receipts received by the partnership for the period January 1, 1984 through and including November 16, 1992

**9. Forms 1099 for interest paid to loan noteholders**

We require access to copies of Forms 1099 for the years 1984 to 1986 inclusive. We understand that copies of Forms 1099 for 1987 to 1991 are kept in your New York office. If this is not the case, please obtain access to them for us to review.

**10. Manual ledger**

We require a copy of the manual client ledgers kept prior to the utilization of the Optus system between January 1, 1984 and June 30, 1987. We understand that manual client ledgers exist in the New York office for the period June 30, 1987 - June 30, 1990.



## 11. Financial Statements

You have previously advised that except for the preparation of Financial Statements in connection with a loan from Chemical Bank some years ago, no such statements were prepared or exist. Please request Chemical Bank to supply us with copies of the above mentioned statements. Rather than have us try to reconstruct these from whatever can be found you have agreed to do this and our role will be to audit them. Accordingly, we understand that you will prepare the draft financial statements for each of the years 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991 and for the period January 1, 1992 to November 16, 1992. In this respect we have established a timetable set out below for their production and suggest that you commence with 1992 and work backwards. We have planned our work to receive financial statements by the following dates:

Period	Due by
1991 and 1992 (to November 16, 1992)	December 11, 1992
1989 and 1990	December 15, 1992
1987 and 1988	December 18, 1992
1984 to 1986	December 21, 1992

As the SEC Order dated November 18, 1992 requires that we audit the financial statements of the partnership from January 1, 1984 through November 16, 1992 by December 30, 1992, it is therefore essential that you produce or obtain the above information as soon as possible. If any information needs to be requested from third parties, please instruct them to send all information directly to Personal Privacy at the above address.

December 8, 1992  
Mr. Frank J. Avellino  
Page 6



We would appreciate if, after you have a chance to read this letter, you would call either <sup>Personal Privacy</sup> [REDACTED] or Fred Werblow at (212) 527-8630 in order to answer any questions you might have or expedite the resolution of the matters described above.

Yours very truly,

*Eric Waterhouse*

PRICE WATERHOUSE

cc:

Lee Richards (Richards, Spears, Kibbe & Orbe)

former Enforcement Assistant Regional  
Director

Dori Hanswirth (Squadron, Ellenoff, Plesent, & Lehrer)



## Avellino & Bienes

## Appendix A

- With respect to Frank Avellino and Michael Bienes' individual income tax returns for 1991, respectively, from what activity did the \$34,657,673 and \$26,294,144 in operating loss carryovers arise?
- For all years in which Avellino & Bienes Joint Venture ("A&B") borrowed from lenders, did A&B file information returns for interest paid?
- On what technical authority has A&B relied to support its "trader" filing status?
- Has Avellino & Bienes New York ("A&B NY") filed New York State partnership and/or New York City unincorporated business tax returns?
- What has A&B's position been with respect to straddles: does it consider index options and long stock positions as offsetting for purposes of the straddle rules? Has A&B made a mixed straddle election in the past or in 1991?
- Has A&B filed Florida intangibles tax returns? Have Frank Avellino and/or Bienes as individuals filed Florida intangibles tax returns?
- Which state and local tax returns has Avellino and Bienes filed (partnership/individual)?
- Does any "dividend charge" incurred by A&B relate to a short sale which closed on or before the 45th day after the original trade?
- Does any "dividend charge" incurred by A&B relate to an "in lieu of" extraordinary dividend? If so, was the short sale closed on or before one year since the day of the short sale?
- Regarding A&B's detailed Schedule D for 1991, please explain the notation in the activity of A&B?
- Why were gains and losses from A&B reported by the partners as ordinary income as opposed to capital gains and losses? Does A&B consider itself a "dealer" in securities?
- With respect to the A&B NY accounting partnership, how did the \$854,561 payable to A&B arise?



## Avellino & Bienes

## Appendix A

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- Please explain the nature of the service A&B receives for paying accounting fees of \$650,000. Is there an agreement between A&B and A&B NY?
- Does A&B incur brokerage commissions, and if so, where are these commissions reported? With respect to brokerage commissions for securities purchases, has A&B included these commissions in the basis of the underlying securities?
- Are any of the debt holders foreigners? If so, was withholding on interest payments considered?
- Please explain why on A&B's 1991 partnership tax return, \$16,337,175 in gains from S&P 100s were not reported as 60/40 in accordance with Section 1256 treatment.

# *Price Waterhouse*



December 16, 1992

Mr. Frank J. Avellino  
4750 Northeast 23rd Avenue  
Fort Lauderdale, Florida 33308-4721

Dear Frank,

While we are progressing with our examination of the books and records of Avellino & Bienes, we are reaching the stage where your assistance is vital for us to continue to work at our current pace. In particular, we have several questions relating to the structure of the general ledger and the cash receipts and disbursements records, as well as further information requests.

I feel that it would be most practical and efficient to meet with you as soon as possible in New York. It would be helpful for you to again bring your original general ledger, cash receipts and cash disbursement records for 1992 and 1991 as these may assist in resolving several of our questions.

I would appreciate if you could contact me on Personal Privacy as soon as possible to arrange a suitable time.

Sincerely yours,

Personal Privacy

# Price Waterhouse



December 28, 1992

Mr. Frank J. Avellino  
4750 Northeast 23rd Avenue  
Fort Lauderdale, Florida 33308-4721

Dear Mr. Avellino:

Following your meeting with [Personal Privacy] and myself on December 22 I am, as discussed with you, providing you with an updated list of documents and information that we still require in order to assist us in completing the undertaking of our audit as required by the order dated November 18, 1992.

1. Extended trial balances for fiscal years

Avellino & Bienes joint venture (Florida) ( "the Joint Venture" ) - 1991  
Avellino & Bienes partnership (New York) ( "the Partnership" ) - 1989, 1990 and 1991

2. General Ledger

Avellino & Bienes joint venture (Florida) - November 1992  
including an analysis of the 1992 journal entries transferring loan balances in the AFG and BFG directory from general ledger account number 40 to general ledger account numbers 50 and 51 "Capital drawings" and a breakdown of disbursements to loan noteholders between principal repaid and interest repaid.

3. Bank reconciliations at November 30, 1992

Avellino & Bienes joint venture (Florida) - a/c no. [Personal Privacy]  
Avellino & Bienes partnership (New York) - a/c no. [Personal Privacy]

4. Form "1099's" for Avellino & Bienes joint venture from Bernard L. Madoff and from Chemical Bank for 1984 through 1991.

5. Check register relating to the interest payments to loan note holders for the three months ended December 31, 1991.



6. Schedule of Partners Capital accounts showing the movement from the balance recorded in the December 31, 1991's tax return to the balance recorded in the general ledger at November 16, 1992 (or November 30 1992 if this a more convenient date), identifying capital additions, capital withdrawals, profits / losses for the 11 month period and any other significant items.
7. Documentation for income and expenses relating to "The Favorite Fund" for the period January 1, 1984 through November 16, 1992.
8. Third party documentation for randomly selected receipts and payments:

Page Number	Date	Check Number	Amount
CD661	02/06/92	1325	\$ 32,517
CD674	04/05/92	1395	115,493
CD690	07/24/92	1537	216
CD694	08/28/92	1567	371
CD694	08/31/92	2197	3,188
CD703	10/01/92	1606	3,711
CD706	10/31/92	1642	3,711
CD615	06/05/91	4897	2,859
CD645	10/04/91	5129	10,570
CR483	01/10/91		1601

9. Details of the Florida partnership's equity share of Optus software, including monies which are classified as "other assets" in the balance sheet of the partnership tax return.
10. Please obtain deposit slips relating to Chemical Bank account number 007-033427 (F&M Associates) from the opening of the account to 8/31/89 and account number 007-033419 from the opening of the account to 12/31/89.
11. In order for us to be able to perform further audit work for 1992 it will be necessary for you to prepare a balance sheet as at November 16 1992 and income statement for the period January 1 1992 to November 16 1992 on a tax basis consistent with prior years . As you have done for previous tax years it will be necessary for you to also prepare the following information in a format comparable to that accompanying the 1991 Joint Venture tax return:



- (i) the schedule of specific investments sold during 1992 showing sale proceeds and date of sale, original purchase cost and date, gain or loss on sale
  - (ii) the schedule of dividend income and dividend charges
  - (iii) the schedule of margin interest paid
  - (iv) schedule of short sales
  - (v) schedules giving details of other balance sheet items eg. loans
  - (vi) schedule of other income
  - (vii) schedule of securities at cost (prior to liquidation)
12. Please supply detailed breakdowns of the following items as set out in the tax returns for the years 1984 to 1991 inclusive:
- (i) dividend income and dividend charges
  - (ii) interest income
  - (iii) other income
  - (iv) margin interest paid
  - (v) loans and exchanges (part of other assets)
  - (vi) securities at cost
  - (vii) short sales
13. As originally requested at our meeting of November 18, 1992 please provide a list of the documents relating to both the Florida and the New York partnerships that you hold both in your home and office in Florida.
14. Rental agreement(s) for space occupied prior to 70 East 55 street, New York.
15. Please supply New York State tax returns and Florida intangibles tax returns for the years 1984 to 1991 inclusive.
- Could you also please confirm to us in writing our understanding of the following matters which we discussed on December 22, 1992 :
- (i) Cash receipts and disbursements , general ledgers, extended trial balances ("the Records") and all of your supporting records for Avellino and Bienes joint venture and the New York partnership do not exist for any years up to and including December 31, 1988.

December 28, 1992  
Mr. Frank J. Avellino  
Page 4



- (ii) It is both possible and practicable for you to reconstruct the cash receipts and disbursements, the general ledger and the extended trial balance for the year ended December 31, 1988.
- (iii) There are no written partnership agreements for Avellino & Bienes joint venture (Florida) or Avellino & Bienes partnership (New York).
- (iv) Loan noteholder statements as at December 31 1989, 1990 and 1991 have not been retained.
- (v) No reconciliations to general ledgers accounts exist (for example between the general ledger and Bernard.L. Madoff statements or Optus Software statement of noteholder balances) for any month end except bank reconciliations for the Joint Venture and the New York Partnership.

With reference to matters raised in our letter of December 8, 1992 please would you clarify the following points :

- (i) Have you requested Chemical Bank to supply copies to us of any financial statements of the joint venture that they may have.
- (ii) F&M/D&B Associates and Alpern, Avellino & Bienes ("AA&B")

Please can you explain why F&M/D&B Associates and AA&B were used instead of the Joint Venture to pay interest to those that made loans to the Joint Venture during certain periods.

- (iii) Please supply the tax returns for F&M Associates. Please could you let me know whether any financial statements or partnership agreements exist for these entities; if so, please supply a copy.
- (iv) Do you have copies of any manual noteholder ledgers (used prior to the introduction of the Optus system) prior to June 30 1987. If so, please supply a copy.

I would also emphasize that we have not as yet completed our work on the information that you sent us on December 8, 1992 and thus there may be additional matters arising from this review.

December 28, 1992  
Mr. Frank J. Avellino  
Page 5



As discussed with you, due to the slow response times that we have been experiencing from Personal Privacy at Optus Software, if we have further questions arising from the audits for him we will forward those to you to minimize the time taken to achieve a response.

I would appreciate it if you could provide the information requested as soon as possible. It would be helpful if in your response you could address each matter separately. If you have any questions, please do not hesitate to contact either Personal Privacy or myself so as to expedite the resolution of the matters described above.

Yours very truly,

Personal Privacy

cc:

Lee Richards (Richards, Spears, Kibbe & Orbe)

former Enforcement Assistant  
Regional Director (SEC)

Dori Ann Hanswirth (Squadron, Ellenoff, Plesent & Lehrer)

# Price Waterhouse



December 29, 1992

Personal Privacy [Redacted]

**Optus Information Systems, Inc.**  
**100 Davidson Avenue**  
**Somerset, New Jersey 08873**

Dear **Personal Privacy** [Redacted]:

Could you please provide a database file of changes to tax identification numbers ("TIN") for the period January 1, 1989 to November, 16, 1992. Please include the following fields:

- Original TIN
- Revised TIN
- Date of Change to TIN

In addition could you please provide explanations for the following:

1. We noted a balance at December 31, 1990, yet no transaction activity subsequent to that date, for following accounts:

Directory	TIN Number	TIN Number	Balance at 12/30/90
-----------	------------	------------	------------------------

FM  
FM  
FM  
FM

FM  
FM  
FM  
FM  
FM  
FM  
FM

Personal Privacy [Redacted]

December 29, 1992  
Mr. Joseph Licht  
Page 2



2. We noted the following accounts that we were unable to locate on the loan database which you supplied to us.

Directory	Name	TIN Number
FM	Associate Rigging	113094082
FM	Pedro Laos	5153478390
FM	Emma Vitiello	Not Known

If you have any questions, please call Personal Privacy  
Personal Privacy or myself at Personal Privacy

Very truly yours, Personal Privacy

Personal Privacy

cc:  
Frank Avellino

# Price Waterhouse



January 11, 1993

Personal Privacy

Optus Information Systems, Inc.  
100 Davidson Avenue  
Somerset, New Jersey 08873

Dear

Personal Privacy

**Avellino & Bienes**

I would appreciate if you could assist in providing details of the rate fields "Comm-1" and "Comm-2" and the use of these fields in quarterly interest calculations. In particular, could you please explain whether quarterly amounts are paid out based on these fields and on which data file supplied to us these rates are maintained.

1. We have noted during our testing the following differences between rates on the Optus "Participant Maintenance" reports held in New York and that paid to loan notchholders. Could you please provide explanations for the these items:

Tin Number	Account Name	Rates Per Optus Systems Reports Held at A&B			Amount Paid To To Loan Notchholder	Difference
		Interest Rate	"Comm" Rate	"Combined Rate"		
		16.0%	2.0%	18.0%	16.0%	2.0%
		16.0%	2.0%	18.0%	16.0%	2.0%

2. We also observed that, for the following accounts, interest for the period 10/1/92 to 11/16/92 was paid based on the interest rate and not the Combined Rate as calculated above. However, we observed that related deposit confirmations stated that annual interest would be calculated on the Combined Rate:



Tin Number	Account Name	Rates		
		Per Optus Systems Reports Filed at A&B	"Comm" Rate	Combined Rate Per Deposit Confirmation
1416492530	Marv Marv Ltd.	15%	5%	20%
6501370091	Telfran Assoc. Ltd.	15%	4%	19%
0992641980	Robert N. Getz	15%	5%	20%
0992641981	Robert N. Getz	15%	5%	20%

3. Could you also please explain the unusual interest rates used to calculate interest included in the PFABMAIN (master) database provided to us for the following accounts on the "FM" directory:

Tin Number	Account Name	Interest Rates per PFABMAIN Database	
		Rate 1	Rate 2
0523824570	Gaba, Aisenberg, Suzanne.	1.75%	0.00%
5862304600	Gaba, Doral., Trust.	1.85%	17.00%
0523824560	Gaba, Michael M.	1.75%	0.00%
1142455410	Gaba, R. & B.	1.75%	0.00%
0671297860	Longstreet, Mildred	1.75%	0.00%
9429538883	Merlin & Associates Ltd. Acct. #2	1.95%	0.00%
1131244290	Namm, Chanette, Living Trust Ltd.	1.75%	1.75%
116687150	Petruzzo, Susan & Michael	1.65%	0.00%

In relation to the above accounts could you provide the actual interest rate (if different) used to calculate interest payable for the period 10/1/92 to 11/16/92 for these accounts.

If you have any questions, please do not hesitate to call me at

Personal Privacy

Personal Privacy

Yours very truly,

Personal Privacy

cc:  
 Frank Avellino

**Letters Received by Price Waterhouse  
From Frank Avellino**

---



FRANK J. AVELLINO  
4750 NORTHEAST 23RD AVENUE  
FORT LAUDERDALE, FLORIDA 33308-4721

November 30, 1992

Personal Privacy

Price Waterhouse  
153 East 53rd Street  
New York, New York 10022

Dear

Personal Privacy

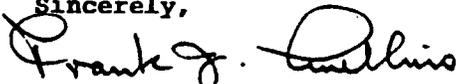
As per your request please find the following books and records herewith enclosed:

General Ledgers for Avellino & Bienes - 1989 & 1990  
General Ledgers for Avellino & Bienes Joint Venture  
for 1989 & 1990  
Cash receipts and disbursements for Avellino & Bienes  
for 1989 & 1990  
Cash receipts and disbursements for Avellino Joint Venture  
for 1989 & 1990  
U.S partnership tax returns for Avellino & Bienes Joint  
Venture for 1986 through 1990  
U.S. partnership tax returns for Avellino & Bienes  
for 1986 through 1990  
Individual income tax returns for Frank Avellino  
for 1989 & 1990  
Individual income tax returns for Michael Bienes  
for 1989 & 1990  
Open position statements for the securities held  
as of 12/31/91 showing costs and date of purchases

You already have books and records for the year 1991 and partial 1992.

Please return the original books and records at your earliest convenience.

Sincerely,

  
Frank J. Avellino

FRANK AVELLINO

November 30, 1992.

Dear Personal Privacy

Enclosed please find copies of the cash receipts and disbursements since November 16, 1992.

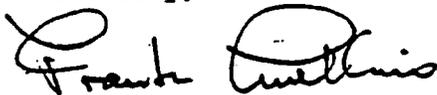
The numbers speak for themselves. According to my calculations the balance in the account after all items are taken into consideration is \$1,952,739.88.

Please let me know what the loan amounts and interest amounts are starting with the RAI line of \$2,749,647 so that I may enter them in my books for income tax purposes.

Please verify my balance of \$1,952,739.88 so that I can draw on it. As you recall the balance should be free and clear of all encumbrances.

Thank you for your kind cooperation. Should you need any further information please call me.

Sincerely,





**Avellino & Bienes**

**Heron Tower  
70 East 55th Street  
New York, N.Y. 10022**

**Telephone (212) 688-6677  
Telecopier (212) 826-8113**

**December 9, 1992**

Personal Privacy

**Chemical Bank  
640 Fifth Avenue  
New York, New York 10019**

**Re: Avellino & Bienes Acct. No. 007-03349  
Avellino & Bienes - Special Acct. No. 007-102658**

**Dear** Personal Privacy

In order to complete the audit Price Waterhouse has requested that you provide them with copies of the bank statements for the Avellino & Bienes account number Personal Privacy for the periods from 12/31/83 to 12/31/86 and with copies of the bank statements for the Avellino & Bienes account number Personal Privacy for the periods from 12/31/83 to 12/31/85.

Please send the copies to the above office as soon as possible. Should you have any difficulty with this request please feel free to discuss it with Personal Privacy of Price Waterhouse at Personal Privacy.

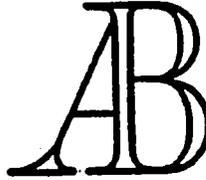
Thank you for your kind cooperation in this matter.

Sincerely,

*Frank J. Avellino*  
Frank J. Avellino

**FAX LETTER**

**original mailed to** Personal Privacy



**Avellino & Bienes**

**Heron Tower  
70 East 55th Street  
New York, N.Y. 10022**

**Telephone (212) 688-6677  
Telecopier (212) 826-8113**

**December 9, 1992**

**Bernard L. Madoff  
885 Third Avenue  
New York, New York 10022**

**Dear Bernie,**

Price Waterhouse has requested that you send them copies of the monthly brokerage statements for all of the Avellino & Bienes brokerage accounts from December 31, 1983 to-date. They need the copies for my personal, Frank J. Avellino, Trustee account and Dianne K. Bienes account for the same period.

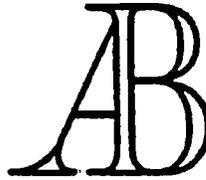
It is important that you send the statements as soon as possible so that they can complete their audit.

Please send all statement copies to Price Waterhouse, Attention of [REDACTED], at 153 East 53rd Street, New York, New York 10022.

Personal Privacy

Thank you for your kind cooperation.

Sincerely,  
  
Frank Avellino



**Avellino & Bienes**

*Heron Tower  
70 East 55th Street  
New York, N.Y. 10022*

*Telephone (212) 688-6677  
Telecopier (212) 826-8113*

December 14, 1992

Personal Privacy

**Chemical Bank  
640 Fifth Avenue  
New York, New York 10019**

Dear Ms. Kerns,

I do hereby authorize you and Chemical Bank to send any and all bank statements for any bank accounts appearing in the name of F&M Associates and Alpern, Avellino & Bienes for the years 1984 to 1987 and 1984 to 1989 respectively to Personal Privacy at Price Waterhouse, 153 East 53rd Street, New York, New York 10022.

Please send the statements as soon as possible so that they may complete their audit of our books and records.

Kindly send a copy of whatever is being sent to Price Waterhouse to me at my home address of Frank Avellino, 4750 Northeast 23rd Avenue, Fort Lauderdale, Florida 33308.

Thank you for your kind cooperation in this matter.

Sincerely,

Frank J. Avellino



**Avellino & Bienes**

*Heron Tower  
70 East 55th Street  
New York, N.Y. 10022*

*Telephone (212) 688-6677  
Telecopier (212) 826-8113*

December 14, 1992

Personal Privacy

**Optus Information Systems, Inc.  
100 Davidson Avenue  
Somerset, New Jersey 08873**

Dear **Personal Privacy**,

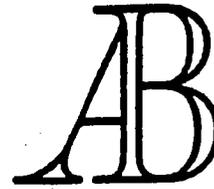
Please send to **Personal Privacy** at Price Waterhouse, 153 East 53rd Street, New York, NY 10022, the magnetic tapes of the 1099-INT forms that were reported to the Internal Revenue Service for the years of 1987 to 1991 inclusively. Please send them as soon as possible so that they can complete the audit they are currently conducting of Avellino & Bienes.

Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Frank J. Avellino".

Frank J. Avellino



**Avellino & Bienes**

Heron Tower  
70 East 55th Street  
New York, N.Y. 10022

Telephone (212) 688-6677  
Telecopier (212) 826-8113

December 14, 1992

Personal Privacy

**Price Waterhouse**  
153 East 53rd Street  
New York, New York 10022

Dear Personal Privacy

I am herewith sending you, via Federal Express, the following documents:

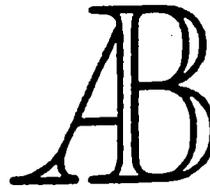
- 1) Copies of Partnership Tax Returns for Avellino & Bienes Joint Venture - 1983, 1984 and 1985.
- 2) Copies of Partnership Tax Returns for Avellino & Bienes- 1983, 1984 and 1985.
- 3) Copies of Partnership Tax Returns for D&B Associates - 1983, 1984, 1985, 1986, 1987 and 1988.
- 4) Copies of Partnership Tax Returns for Alpern, Avellino & Bienes - 1984, 1985, 1986, 1987 and 1988.
- 5) Copies of Forms W-2 and W-3 from 1984 to 1991.
- 6) Income Tax Returns for Michael and Dianne Bienes for the years 1983 to 1988.
- 7) Copies of rental leases for the office premises at 70 East 55th Street, New York City, NY and 6550 North Federal Highway, Fort Lauderdale, Florida.
- 8) Copy of letter to Chemical Bank dated 12/9/92.
- 9) Copy of letter to Bernard L. Madoff dated 12/9/92.
- 10) Copy of letter to Optus Information Systems, Inc., dated 12/14/92.
- 11) Copy of letter to Chemical Bank dated 12/14/92.

Please acknowledge receipt of these items by calling my office in New York.

Sincerely,

Frank J. Avellino

cc: Dori Hanswirth (Squadron, Ellenhoff, Plesent & Lehrer)  
Lee S. Richards, Trustee (Richards, Spears, Kibbe & Orbe)



**Avellino & Bienes**

Heron Tower  
70 East 55th Street  
New York, N.Y. 10022

Telephone (212) 688-6677  
Telecopier (212) 826-8113

December 28, 1992

Personal Privacy

**Price Waterhouse**  
153 East 53rd Street  
New York, New York 10022

Dear Personal Privacy,

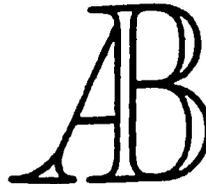
Enclosed please find a reconciliation that I prepared which shows the amount that is to be wired to the Frank J. Avellino, Trustee and Personal Privacy and Michael Bienes bank accounts respectively.

Please check the amounts and inform Personal Privacy of same so that he can authorize the transfers. I am enclosing a copy of a letter sent to Personal Privacy on December 23, 1992 explaining this matter. Please note the date of December 30, 1992.

Thank you for your kind cooperation in this matter. Should you have any questions please call me.

Sincerely,

*Frank*



**Avellino & Bienes**

Heron Tower  
70 East 55th Street  
New York, N.Y. 10022

Telephone (212) 688-6677  
Telecopier (212) 826-8113

December 28, 1992

Personal Privacy

**Price Waterhouse**  
153 East 53rd Street  
New York, New York 10022

Dear Personal Privacy,

Enclosed please find the following:

- 1) Trial balance for Avellino & Bienes (partnership) 12/31/91
- 2) Trial balance for Avellino & Bienes Joint Venture 12/31/91
- 3) Check register for 12/31/91
- 4) Cash receipts and disbursements for Avellino & Bienes account number 007-102658 (Dec. 1992)
- 5) Cash receipts and disbursements for Avellino & Bienes account number 611-120211 (Nov. & Dec. 1992)
- 6) General Ledger for Avellino & Bienes, Joint Venture as of Nov. 30, 1992.

I am continuing to obtain other items you had requested when we last met in New York and I will send them to you as I obtain them.

Sincerely,

P.S. Enclosed please find an envelope for Personal Privacy regarding the cash balances that pertain to the funds to be wired on 12/30/92.



**Avellino & Bienes**

*Heron Tower  
70 East 55th Street  
New York, N.Y. 10022*

*Telephone (212) 688-6677  
Telecopier (212) 826-8113*

December 30, 1992

Personal Privacy

Price Waterhouse  
153 East 53rd Street  
New York, New York 10022

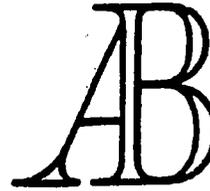
Dear Personal Privacy,

Enclosed please find copies of the invoices you requested.

Copies of the Schedule D and Form 6781, with the accompanying schedule of the "Gains and Losses" of the transactions of the "puts" and "calls" as they were presented on the Avellino & Bienes Joint Venture partnership tax return for 1991, are also enclosed.

I believe this completes my giving you all the items that you had requested when we last met on December 22, 1992.

Sincerely,



**Avellino & Bienes**

Heron Tower  
70 East 55th Street  
New York, N.Y. 10022

Telephone (212) 688-6677  
Telecopier (212) 826-8113

January 5, 1993

Personal Privacy

Price Waterhouse  
153 East 53rd Street  
New York, New York 10022

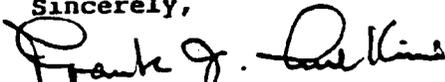
Dear Personal Privacy

As per your letter dated December 28, 1992, enclosed please find certain information you had requested.

- 1) Bank reconciliation for Avellino & Bienes ( Special Account ) account number 007-102658 for November 30, 1992.
- 2) Bank reconciliation for Avellino & Bienes account number 611-120216. I prepared this reconciliation from the statement given me by your staff on December 22, 1992. I did not have the benefit of the cancelled checks which is in their possession.
- 3) Extended trial balances for Avellino & Bienes (NY) for the years ending 12/31/89 and 12/31/90.
- 4) Copies of the Forms "1099" for Avellino & Bienes for 1991 that were received from Bernard L. Madoff. These should appear on the partnership tax returns.
- 5) Copies of the New York State and New York City partnership tax returns for 1991, as filed.

I have prepared a response letter to you answering your letter of December 28, 1992. I sent the original to Personal Privacy for her review and comments. It will be sent to you after her review.

Sincerely,

  
Frank J. Avellino



**Avellino & Bienes**

Heron Tower  
70 East 55th Street  
New York, N.Y. 10022

Telephone (212) 688-6677  
Telecopier (212) 826-8113

January 5, 1993

Personal Privacy

**Price Waterhouse**  
153 East 53rd Street  
New York, New York 10022

Dear Personal Privacy,

In response to your letter dated December 28, 1992, I noticed that many of the documents and information and answers you request have already been supplied. There appears to be repetition from previous meetings I have had with you and Personal Privacy. Though I can appreciate the difficulty there may be in communication, I am confused at the repetition. I have already, stated for the record that some data you request is not available and some items may be beyond my control. However, in the spirit of cooperation I do my best to obtain information you need. In response I will try to answer herewith in the order of your letter.

Item 1) The trial balances for Avellino & Bienes Joint Venture for 1991 and for Avellino & Bienes ( the partnership, as you call it ) were previously sent via Federal Express to your office on 12/28/92. 1989 and 1990 to follow.

Item 2) The entry in the general ledger adjusting the loan account (page 40) to the capital account is a long time practice. It has been the practice of Avellino & Bienes to adjust the two accounts by journalizing the balances that are proven from the weekly and monthly loan balances inter-office postings. This was explained previously. As you have discovered, in the examination of the cash receipts and disbursements books, the checks that are drawn on behalf of the partners are extended to the loans column. To spend any time at this critical point of time, with deadlines facing everyone, would be wasteful and redundant.

Item 3) The bank reconciliations for both checking accounts as of November 30, 1992 is being sent.

Item 4) The 1099's from Bernard L Madoff for 1991 are being sent. There are no 1099's from Chemical Bank that I am aware of.

Item 5) The check register for December 31, 1991 was previously sent, via Federal Express on 12/28/92, to your office.

Item 6) Explained in item 2 above.

Item 7) Already explained to Personal Privacy on December 22, 1992 and are in his notes.

Item 8) Documentation sent to your office, via Federal Express, on 12/28/92.

Item 9) As explained previously, Optus Software is a company that is partially owned by Mr. Bienes and myself. It has nothing to do with Avellino & Bienes in any way whatsoever. The only reason it appears in the general ledger is to keep track of the disbursements made since the inception of the corporation. The total amount will eventually be charged to the respective capital accounts.

Optus Software, Inc. is not to be confused with Optus Information Systems, Inc., of which neither Mr. Bienes nor I have an interest. The latter is the company that is engaged in doing the computer work for A&B.

Item 10) I believe this has already been done. I will check to see when the request was made. If it wasn't I will do so.

Item 11) I spent a long time explaining to Personal Privacy that this task is a long and tedious one from a point of accuracy. In the past I spent a long time of labor to accomplish this preparation of income and expenses for income tax purposes. With not all of the information available, for the checks and balances to prepare a true and accurate statement, I am prone to not attempt this task at this time. My experience has taught me to not commit any figures to scrutiny when, as in this case, it can be construed as "bible" and subject to criticism. In this present instance quite severely. I explained how the profit and loss can be computed from the records you now hold in your possession that Bernard L. Madoff and I supplied.

Item 12) The breakdowns of the items (i) to (vii) are found in the brokerage statements that were supplied you by Bernard L. Madoff.

Item 13) Already explained and should be in your notes from previous discussions.

Item 14) Sent to your office, via Federal Express, on 12/28/92.

Item 15) The New York State partnership tax returns will be sent.  
As for items (i) through (v), I will confer with my counsel. I believe these items have been answered and are part of the record.

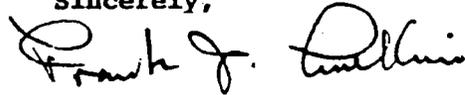
In reference to the letters to Chemical Bank requesting certain information, I believe it has already been done.

As for F&M and D&B and AAB, I believe this was already answered and should be in your files.

As for noteholders ledgers prior to Optus Information Systems, Inc., I had previously informed you that any ledgers currently available should be in the New York office and have been made available to your staff by asking my secretaries.

Please be advised that I am sending this letter to my attorney so that they can be made aware of my responses. After their examination they will forward same to you, if they so wish.

Sincerely,

A handwritten signature in cursive script that reads "Frank J. Avellino". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

Frank J. Avellino



**Avellino & Bienes**

Heron Tower  
70 East 55th Street  
New York, N.Y. 10022

Telephone (212) 688-6677  
Telecopier (212) 826-8113

January 12, 1993

Personal Privacy

Price Waterhouse  
153 East 53rd Street  
New York, New York 10022

Dear Personal Privacy

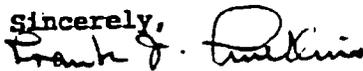
In response to your letter, dated December 29, 1992, to Personal Privacy of Optus Information Systems, Inc., I have inquired of Personal Privacy regarding your request of the first paragraph namely, providing your office with the database file changes to tax identification numbers (TIN) for the period January 1, 1989 to November 16, 1992. He informed me that he has supplied you with everything he has in his possession that belongs to Avellino & Bienes. To clear matters up, you should find in your files, records that explain the procedure that was used in making certain changes to the computer records. If you cannot locate them I will herewith give you a brief explanation of what took place in making the changes to the computer files.

Changes were directed to Optus by the staff at the New York office of Avellino & Bienes. Weekly, if not more frequently, Optus would receive notice of certain changes to the computer files. Some changes pertained to the "TIN", some to addresses and some to correct errors found in the normal course of doing business. Upon notification of the changes Optus merely "modified" the record. That was it. The only way for your staff to check the change may be to examine the individual file folder located for each loan account, in the New York office. The file should contain some form of instruction requesting the change. At times the change may have been directed by a telephone call to the New York office.

As for Item No. 1. of your letter, I checked the list of lenders for November 16, 1992 and have found each and every name listed in your inquiry for the names that appeared on the December 31, 1990 list. I am confused as to what you are referring to.

Item No. 2. of your letter lists three names. The first two appear on the November 16, 1992 list also. Again, I am confused about your inquiry. Regarding the name Personal Privacy questioned me about her on December 22, 1992, when we last met. He should find in his notes that Personal Privacy and that I sent her periodic checks which were charged to my personal capital account, consistently.

If I can be of any further assistance in this matter please feel free to call. Please do not direct any further questions to Personal Privacy

Sincerely,  
  
Frank J. Avellino