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TELECOPY MEMORANDUM

TO: former New York Enforcement Staff Attorney #2 TELECOPIER NO. 212-748-8045  
FROM: DORI ANN HANSWIRTH SENDER'S DIRECT DIAL NO. Personal Privacy  
SUBJECT: \_\_\_\_\_ DATE: MAY 4, 1993  
TOTAL PAGES (INCLUDING THIS PAGE): 18  
MESSAGE:

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Attorneys for Defendants

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	
SECURITIES AND EXCHANGE COMMISSION,	:
Plaintiff,	:
- against -	:
AVELLINO & BIENES, FRANK J. AVELLINO, and MICHAEL S. BIENES,	:
Defendants.	:
-----X	:

92 Civ. 8314 (JES)  
DEFENDANTS' RESPONSE TO  
PLAINTIFF'S FIRST SET OF  
INTERROGATORIES AND  
REQUESTS FOR DOCUMENTS

Defendants, Avellino & Bienes ("A&B"), Frank J. Avellino ("Avellino") and Michael S. Bienes ("Bienes"), pursuant to Rules 26, 33 and 34 of the Federal Rules of Civil Procedure and Rule 46 of the Civil Rules of the United States District Court for the Southern District of New York, submit the following response to Plaintiff's First Set of Interrogatories and Requests for Documents:

INTERROGATORIES

Interrogatory No. 1

For the period 1962 to the present, state for each person who has been a partner of A&B:

- a. full name and address;
- b. period during which they were a partner;

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- c. whether general or limited partner;
- d. percentage ownership of A&B;
- e. if such partner is or was a corporation, state for each such corporation:
  - (1) the date and place of incorporation,
  - (2) address, and
  - (3) the current officers and directors;
- f. if any such partner is or was a partnership, state for each such partnership ("member partnership"):
  - (1) the date of formation,
  - (2) the date and place of registration,
  - (3) the address of the member partnership,
  - (4) the name and address of each person who is or was a partner of the member partnership during the period 1962 to the present, and
  - (5) whether each such partner is or was a limited or general partner.

Answer to Interrogatory No. 1

a. **Frank J. Avellino**

Personal Privacy  
[Redacted]

**Michael S. Bienes**

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[Redacted]

**Dianne K. Bienes**

Personal Privacy  
[Redacted]

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- b. Avellino: from inception to the present
- M. Bienes: from inception to the present
- D. Bienes: 1988 to the present
- c. All partners are general partners.
- d. Frank J. Avellino has a 50 percent interest in A&B; Mr. and Mrs. Bienes each have a 25 percent interest.
- e. Not applicable.
- f. Not applicable.

Interrogatory No. 2

For the period 1962 to the present, state for all individuals or entities that have invested money in A&B:

- a. name and address;
- b. initial amount invested;
- c. date and amount of any additional monies invested; and
- d. period of investment.

Answer to Interrogatory No. 2

Defendants object to this Interrogatory on the grounds that it is unduly burdensome, inconvenient and expensive in that it requires defendants to review thousands of pages of documentation in order to answer this Interrogatory. Defendants further object to this Interrogatory pursuant to Rule 46 of the Civil Rules of the United States District Court for the Southern District of New York ("Rule 46") because it is not a more practical method of obtaining the information sought than a request for production. The documentation needed to answer this Interrogatory has already been made available to plaintiff and plaintiff has had ample opportunity to obtain this

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information. Moreover, the documentation will again be made available to plaintiff in response to plaintiff's document request served herewith.

Interrogatory No. 3

With respect to paragraph 11 of the Answer, state the name and address of the registered broker-dealer who managed the discretionary trading accounts, the name and account number of each discretionary account, the name of the account in which each investor's monies was held, and the individual at the broker-dealer who managed or directed the trading or investment of the monies in those accounts.

Answer to Interrogatory No. 3

Defendants object to this Interrogatory on the grounds that it is unduly burdensome, inconvenient and expensive in that it requires defendants to review thousands of pages of documentation in order to answer this Interrogatory. Defendants further object to this Interrogatory pursuant to Rule 46 because it is not a more practical method of obtaining the information sought than a request for production or deposition. The documentation needed to answer this Interrogatory has already been made available to plaintiff and plaintiff has had ample opportunity to obtain this information. Moreover, the documentation will again be made available to plaintiff in response to plaintiff's document request served herewith. Defendants further object to this Interrogatory on the ground that it is duplicative because the individual defendants have already identified the name and address of the broker in sworn testimony provided to plaintiff on July 7, 1992.

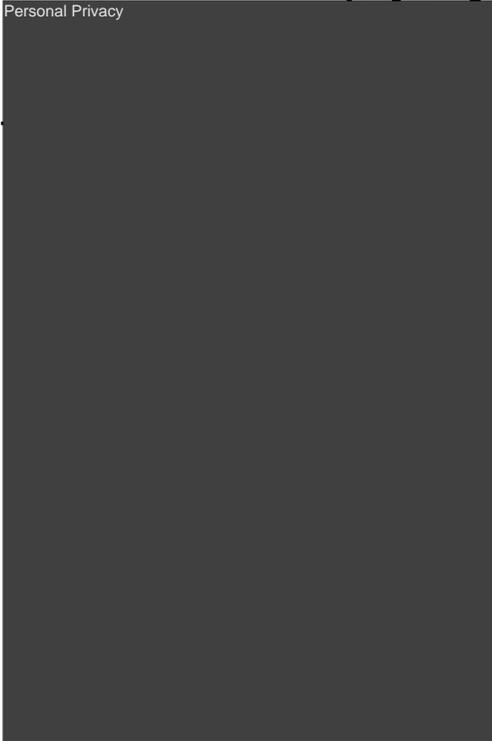
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Interrogatory No. 4

For the period 1962 to the present, state the name, address, and position or title of each person A&B employed or currently employs.

Answer to Interrogatory No. 4

Defendants object to this Interrogatory on the ground that it is unduly burdensome in that it seeks information dating back over thirty years and such information is not necessarily within the possession or knowledge of the defendants. Without waiving said objection, defendants state that the following persons were employed by A&B:



Interrogatory No. 5

For the period 1962 to the present, state the name and address of each bank or financial institution with which A&B maintains or maintained an account, the name in which each account was held, and each account's number.

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Answer to Interrogatory No. 5

Defendants object to this Interrogatory on the grounds that it is unduly burdensome, inconvenient and expensive in that it requires defendants to review thousands of pages of documentation in order to answer this Interrogatory. Defendants further object to this Interrogatory pursuant to Rule 46 because it is not a more practical method of obtaining the information sought than a request for production. The documentation needed to answer this Interrogatory has already been made available to plaintiff and plaintiff has had ample opportunity to obtain this information. Moreover, the documentation will again be made available to plaintiff in response to plaintiff's document request served herewith.

Interrogatory No. 6

For the period 1962 to the present, identify all Attorneys the defendants consulted regarding A&B or A&B's business. For each oral communication between an attorney and A&B or any of the defendants, state:

- a. all persons present while the communication was made;
- b. the relationship of each person present to the person making the communication;
- c. the date and place of the communication;
- d. the subject matter of the communication. For each written communication between an attorney and A&B or any of the defendants, state:
  - e. the type of document;
  - f. the date of the document;
  - g. the author;
  - h. the addressee;

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1. the relationship between the author and the addressee.

Answer to Interrogatory No. 6

Defendants object to this interrogatory on the grounds that the information requested therein is protected from disclosure by the attorney-client privilege. Defendants further object to this Interrogatory pursuant to Rule 46 because it is not a more practical method of obtaining the information sought than a request for production or deposition. Defendants further object to this Interrogatory on the ground that it is overly broad insofar as it seeks information beyond the scope of this litigation. Without waiving any of the foregoing objections, defendants state that the first time they consulted an attorney regarding the federal securities laws was in June 1992. The attorneys consulted at that time were Ira Lee Sorkin and Dorl Ann Hanswirth of the law firm of Squadron, Ellenoff, Plesent, Sheinfeld & Sorkin (the "SEPS&S firm").

a. Defendants specifically object to this subpart of this Interrogatory pursuant to Rule 46 because it is not a more practical method of obtaining the information sought than a request for production or deposition. Defendants further object to this subpart of this Interrogatory on the ground that it seeks information not necessarily within the defendants' knowledge or possession. Defendants have had numerous oral communications with their attorneys and cannot recount each and every one. Without waiving such objections, defendants state that, when they have engaged in oral communications with attorneys from the SEPS&S firm, that no one but themselves and their attorneys have been present.

b. Defendants specifically object to this subpart of this Interrogatory pursuant to Rule 46 because it is not a more practical method of obtaining the information sought than a request for production or

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deposition. Defendants further object to this subpart of this Interrogatory on the ground that it seeks information not necessarily within the defendants' knowledge or possession. Defendants have had numerous oral communications with their attorneys and cannot recount each and every one. Without waiving such objections, defendants state that, when they have engaged in oral communications with attorneys from the SEPS&S firm, the relationship of each person to the person making the communication was that of either client or attorney.

c. Defendants specifically object to this subpart of this Interrogatory pursuant to Rule 46 because it is not a more practical method of obtaining the information sought than a request for production or deposition. Defendants further object to this subpart of this Interrogatory on the ground that it seeks information not necessarily within the defendants' knowledge or possession. Defendants have had numerous oral communications with their attorneys and cannot recount each and every one. Without waiving such objections, defendants state that they have had oral communications with their attorneys from SEPS&S consistently and continuously from June 1992 to the present. Some of those communications have occurred at SEPS&S' office and some have occurred over the telephone.

d. Defendants specifically object to this subpart of this Interrogatory on the ground that the information requested therein is protected from disclosure by the attorney-client privilege. Defendants further object to this subpart of this Interrogatory pursuant to Rule 46 because it is not a more practical method of obtaining the information sought than a request for production or deposition. Defendants further object to this subpart of this Interrogatory on the ground that it seeks information not necessarily within the defendants' knowledge or possession. Defendants

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have had numerous oral communications with their attorneys and cannot recount each and every one. Without waiving such objections, defendants state that the communications concerned the plaintiff's informal inquiry into the defendants' business, the plaintiff's legal action against the defendants, the activities undertaken pursuant to the Consent Order entered in this action and related matters.

e., f., g., h. and i. Defendants specifically object to these subparts of this Interrogatory on the ground that the information requested therein is protected from disclosure by the attorney-client privilege. Defendants further object to this subpart of this Interrogatory pursuant to Rule 46 because it is not a more practical method of obtaining the information sought than a request for production or deposition. Without waiving such objections, defendants submit the following list of written communications between themselves and counsel:

<u>Type</u>	<u>Date</u>	<u>Author</u>	<u>Addressee</u>
Retainer Letter	6-19-92	Sorkin <sup>1</sup>	A&B and Avellino
Letter	8-3-92	Avellino	Hanswirth
Letter	9-23-92	Sorkin	Avellino
Memo	10-29-92	Butowsky	Avellino, Bienes
Memo	11-10-92	Pasquariello	Avellino, Bienes
Memo	12-1-92	Avellino	Sorkin, Hanswirth
Letter	12-23-92	Avellino	Hanswirth

<sup>1</sup> "Sorkin" refers to Ira Lee Sorkin; "Hanswirth" refers to Dori Ann Hanswirth; "Butowsky" refers to Michael R. Butowsky and "Pasquariello" refers to Vincent J. Pasquariello. All of these individuals are attorneys with the SEPS&S firm.

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Letter	1-5-93	Avellino	Hanswirth
Letter	1-5-93	Hanswirth	Avellino
Letter	1-5-93	Hanswirth	Bienes
Memo	1-27-93	Bienes	Hanswirth
Letter	1-27-93	Avellino	Sorkin, Hanswirth
Letter	1-29-93	Avellino	Hanswirth
Memo	2-17-93	Hanswirth	Avellino
Memo	2-19-93	Hanswirth	Avellino
Letter	2-19-93	Hanswirth	Avellino
Memo	2-22-93	Avellino	Hanswirth
Memo	3-8-93	Avellino	Hanswirth
Letter	3-18-93	Hanswirth	Avellino
Memo	3-22-93	Avellino	Hanswirth
Letter	4-6-93	Hanswirth	Avellino

Interrogatory No. 7

For the period 1962 to the present, identify all accountants and accounting firms the defendants have consulted or hired.

Answer to Interrogatory No. 7

None.

Interrogatory No. 8

For the period 1962 to the present, identify all computer system or computer assistance firms or persons the defendants have consulted or hired.

Answer to Interrogatory No. 8

Optus Financial Services, Inc.

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Interrogatory No. 9

For the period 1962 to the present, identify any independent contractor not previously named in response to interrogatories 6, 7 and 8 that the defendants have consulted or hired.

Answer to Interrogatory No. 9

Defendants object to this Interrogatory pursuant to Rule 46 because it is not a more practical method of obtaining the information sought than a request for production or deposition. Defendants further object to this Interrogatory in that it is overbroad and seeks information about the defendants personally which has nothing to do with the claims asserted in this litigation. Without waiving such objections, defendants state that they are not aware of any other independent contractors that they have consulted or hired with respect to A&B's business.

Interrogatory No. 10

To the extent that any document requested in Plaintiff's First Request for Documents has been lost, destroyed, or has otherwise ceased to exist, for each such item state:

- a. a description of the document;
- b. the date it was lost or ceased to exist;
- c. the name, address and job title of each person who has knowledge of the manner or circumstances under which the document was lost or ceased to exist;
- d. the name, address and job title of each person who has knowledge concerning its nature or contents;
- e. whether there has been any attempt to reproduce, duplicate or find the document.

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Answer to Interrogatory No. 10

Defendants object to this Interrogatory pursuant to Rule 46 because it is not a more practical method of obtaining the information sought than a request for production or deposition. Defendants further object to this Interrogatory on the ground that it is duplicative of information already given in sworn testimony to the Trustee in this action.

DOCUMENT REQUESTSRequest No. 1

All documents referred to in preparing Defendants' Answer to the Complaint.

Response to Request No. 1

Defendants object to this request on the ground that it seeks information protected from disclosure by the attorney-client and attorney work product privileges. Moreover, defendants do not know precisely which documents its attorneys referred to in preparing Defendants' Answer to the Complaint.

Request No. 2

All books and records created by or maintained by A&B for the period 1962 to the present, including, but not limited to, balance sheets, general ledgers, cash receipts and disbursements logs, check registers, noteholder ledgers, trial balances, financial statements and audits.

Response to Request No. 2

The documents responsive to this request currently within the custody or control of defendants are available to plaintiff for copying and inspection in Fort Lauderdale, Florida.

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Request No. 3

For the period 1962 to the present, all documents and correspondence between Defendants and the investors, including, but not limited to, all investor confirmation and account statements.

Response to Request No. 3

The documents responsive to this request currently within the custody or control of defendants are available to plaintiff for copying and inspection in Fort Lauderdale, Florida.

Request No. 4

All documents relating to Optus Information Systems, Inc.

Response to Request No. 4

The documents responsive to this request currently within the custody or control of defendants are available to plaintiff for copying and inspection in Fort Lauderdale, Florida.

Request No. 5

All documents relating to the broker-dealer.

Response to Request No. 5

The documents responsive to this request currently within the custody or control of defendants are available to plaintiff for copying and inspection in Fort Lauderdale, Florida.

Request No. 6

All documents prepared by or received from Optus Information Systems, Inc., including, but not limited to, transaction files, agreements, and account statements.

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Response to Request No. 6

The documents responsive to this request currently within the custody or control of defendants are available to plaintiff for copying and inspection in Fort Lauderdale, Florida.

Request No. 7

All income tax returns filed for every A&B partner, including, but not limited to, all former and current partners, for each year through the present that the partner has been a partner in A&B or has otherwise received income from A&B.

Response to Request No. 7

The documents responsive to this request currently within the custody or control of defendants are available to plaintiff for copying and inspection in Fort Lauderdale, Florida.

Request No. 9

All financial statements prepared for A&B, including, but not limited to, those prepared by the defendants, during the period 1962 to the present, inclusive.

Response to Request No. 9

Defendants have no documents responsive to this request.

Request No. 10

All financial statements prepared for every current and former partner of A&B, including, but not limited to, those prepared by the defendants, for any period during the years 1962 to the present, inclusive.

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Response to Request No. 10

Defendants have no documents responsive to this request.

Request No. 11

All audits prepared for A&B, whether by the defendants or not, for the years 1962 to the present, inclusive.

Response to Request No. 11

Other than the reports issued by Price Waterhouse in this action, defendants have no documents responsive to this request.

Request No. 12

All balance sheets prepared for A&B, whether by the defendants or not, for the years 1962 to the present, inclusive.

Response to Request No. 12

The documents responsive to this request currently within the custody or control of defendants are available to plaintiff for copying and inspection in Fort Lauderdale, Florida.

Request No. 13

All documents relating to investors who loaned money to A&B during the period 1962 to the present.

Response to Request No. 13

The documents responsive to this request currently within the custody or control of defendants are available to plaintiff for copying and inspection in Fort Lauderdale, Florida.

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Request No. 14

All documents provided to A&B from the broker-dealer for the years 1962 to the present, inclusive.

Response to Request No. 14

The documents responsive to this request currently within the custody or control of defendants are available to plaintiff for copying and inspection in Fort Lauderdale, Florida.

Request No. 15

All opinions of counsel prepared for the defendants.

Response to Request No. 15

Defendants have no documents responsive to this request.

Dated: New York, New York  
May 3, 1993

VERIFICATION

STATE OF FLORIDA }  
COUNTY OF BROWARD } ss.:

FRANK J. AVELLINO, being duly sworn, deposes and says: I am a partner of defendant Avellino & Bienes and am an individual defendant herein; I have read the foregoing Defendants' Response to Plaintiff's First Set of Interrogatories and Requests for Documents and knows the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

  
FRANK J. AVELLINO

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of April, 1993, by FRANK J. AVELLINO, who is personally known to me and who did not take an oath. Who produced a valid Florida Drivers License

  
NOTARY PUBLIC, STATE OF FLORIDA  
AT LARGE

Print Name: Edith A Davlin  
Commission No.: ZZ961926  
My Commission Expires: \_\_\_\_\_

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP. AUG. 19, 1993  
BONDED THRU GENERAL INS. USD.

AS TO OBJECTIONS:

  
DORI ANN HANSWIRTH (OH: 9728)  
SQUADRON, ELLENOFF, PLESANT,  
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05/04/93

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ACTIVITY REPORT

RECEPTION OK

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