ADMINISTRATIVE PROCEEDING
FILE NO. 3-6380

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	)
	)
BLINDER, ROBINSON & CO., INC.	)
MEYER BLINDER	)
	)
(8-15727)	)
	)

SUPPLEMENTAL INITIAL DECISION

Washington, D.C.
April 27, 1990

Brenda P. Murray
Administrative Law Judge

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In the Matter of BLINDER, ROBINSON & CO., INC. MEYER BLINDER (8-15727)	SUPPLEMENTAL INITIAL DECISION

APPEARANCE: Thomas D. Carter and Thomas J. Amy of the Denver Regional Office for the Division of Enforcement, Securities and Exchange Commission.

Arthur F. Mathews, Andrew B. Weissman and Lee T. Lauridsen for Blinder, Robinson & Co., Inc.

Nathan Lewin and Cynthia A. Thomas for Mr. Meyer Blinder.

BEFORE: Brenda P. Murray, Administrative Law Judge.

BACKGROUND

On June 8, 1982, the United States District Court for the District of Colorado at the request of the Securities and Exchange Commission (Commission) permanently enjoined Blinder, Robinson & Co., Inc. (Blinder Robinson) and its president and principal shareholder, Mr. Meyer Blinder, from certain activities in connection with securities, including but not limited to the securities of America Leisure Corp. (American Leisure), based on findings that respondents violated provisions of federal law and Commission rules prohibiting fraud and manipulative or deceptive practices-- Section 17(a) of the Securities Act of 1933 (Securities Act), Sections 10(b) and 15(c) of the Securities Exchange Act of 1934 (Exchange Act), and Rules 10b-5, 10b-6, 10b-9, and 15c2-4 promulgated by the Commission pursuant to the Exchange Act. S.E.C. v. Blinder, Robinson & Co., Inc., Meyer Blinder; et al., 542 F. Supp. 468 (D. Colo. 1982), aff'd, [1983-1984 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶99,491 (10th Cir. 1983), cert denied, 469 U.S. 1108 (1985). I will refer to this decision as Judge Matsch's decision.

On June 27, 1984, the Commission instituted this administrative proceeding under Sections 15(b) and 19(h) of the Exchange Act to consider the injunction and the district court's findings of violations and to determine whether in these circumstances remedial action against respondents - censure, limitations on the activities, functions, or operations of, suspension for a period not exceeding twelve months, revocation of the broker-dealer registration or barring any person from being

associated with a broker or dealer - would be appropriate in the public interest.

On December 19, 1986, the Commission issued an opinion in which it found it appropriate in the public interest to suspend Blinder Robinson's broker-dealer registration for 45 days, to prohibit Blinder Robinson from participating as an underwriter in any securities offering for two years, and to bar Meyer Blinder from association with any broker or dealer, provided that he may apply for permission to become associated after two years. Blinder, Robinson & Co., Inc., Meyer Blinder, 48 S.E.C. 624 (1986) The Commission's decision came on an appeal by respondents and the Commission's Division of Enforcement (Division) from the Initial Decision of Administrative Law Judge David J. Markun issued August 30, 1985. Judge Markun presided at a twelve day hearing in this proceeding in October and November 1984.

In a decision issued on January 15, 1988, the United States Court of Appeals for the District of Columbia Circuit found that the Commission erred in excluding evidence which respondents sought to introduce with respect to Mr. Blinder's relationship with counsel. Blinder, Robinson & Co. v. SEC, 837 F.2d 1099 (D. C. Cir. 1988); cert. denied, 109 S. Ct. 177 (1988) The Court distinguished the issues before the district court in the injunctive action and before the Commission in this administrative action. It found that the issue before the district court was whether Meyer Blinder relied on counsel so as to establish a good-faith defense to liability, while this Commission faced the analytically distinct

matter of the circumstances surrounding the lawyer-client relationship and the impact of that relationship on the issue of whether sanctions should be imposed in the public interest. The court agreed with respondents that the Commission's "public interest" determination is separate from, and, in addition to, the Commission's determination as to the existence of the disqualifying conditions necessary for the imposition of sanctions, and that as to sanctions, the extent to which respondents sought the advice of counsel, the clarity of the advice, and respondents' reasons for following or disregarding it, in whole or in part, are highly relevant, even though the reliance on counsel may not have been sufficient to discharge respondents from the underlying liability for statutory violations.

The Court remanded the case to the Commission for further proceedings consistent with its opinion and the admonition (p. 1109):

> We are in no way suggesting that Meyer Blinder (and, through him, Blinder Robinson) is at liberty to relitigate the factual question as to whether there was reliance on counsel. That issue has been conclusively decided against him. As the district court expressly found, counsel advised Mr. Blinder to sticker the prospectus, and he chose to reject that advice.

Because the question before the Commission is how culpable was Mr. Blinder, the Court found that the Commission should have considered Blinder Robinson's (through Mr. Blinder) relationship with counsel. For example, why did respondents reject counsel's advice; which attorney's advice was rejected; the precise nature

of the various advice given, e.g., was it absolute and unequivocal, or somewhat flexible in nature, or something else.

As a result of the court remand, the Commission ordered evidentiary hearings on the issue of respondents' relationship with counsel and directed that the issue of sanctions be reassessed on the basis of the entire record. (Order Pursuant to Remand issued April 27, 1988 and Supplementary Order Pursuant to Remand issued November 8, 1988)

I held four days of hearings in Denver, Colorado in March 1989, at which respondents presented testimony from Mr. Blinder and attorneys Irwin Lampert, Bernard Feuerstein, Gerald Raskin, Wilford T. Friedman and Thomas S. Smith. In rebuttal, the Division presented testimony from Attorney Cathy Strickland Krendl. Counsel made oral arguments at the conclusion of the hearing. Both sides have submitted proposed findings of fact and conclusions of law and briefs.

FACTS

Blinder Robinson is a registered broker-dealer specializing in underwriting and making markets in low cost securities. According to counsel, Blinder Robinson, founded by Mr. Meyer Blinder in 1970, is the major underwriter of penny stocks in the country. In 1979 and 1980, Mr. Blinder, the company's principal shareholder, president, and chief executive officer, operated out of the firm's corporate headquarters in Englewood, Colorado. In 1980, Blinder Robinson had 13 offices located in California, Colorado, Nevada, New Mexico, and New York, approximately 250 sales

people, and gross revenues of $30 million. By 1984 it had grown to 24 offices, approximately 700 sales representatives, and was licensed to do business in 20 states. For the year ended July 29, 1983, Blinder Robinson had gross revenues of $41 million and net revenues of a little over $3 million. (Hearing October 23, 1984, Tr. 49)

Blinder Robinson was the underwriter of the initial public offering of 10 million units of common stock and warrants issued by American Leisure. American Leisure's registration statement for this offering became effective on December 26, 1979. The offering was open for 90 days with the possibility of extension. For a unit price of $2.50, the purchaser received one share of common stock; one Class A Warrant (two of which entitled the holder to purchase one share of common stock for $3.50 on or before July 26, 1980); and one Class B Warrant (four of which entitled the holder to purchase one share of common stock for $7.00 on or before December 26, 1980).

The offering was on a best efforts, all or none basis. The underwriting agreement required termination of the offering and the refund of all monies received if 10 million units were not sold within 90 days from the effective date (by March 25, 1980), unless that date was extended an additional 90 days by mutual consent of the issuer and the underwriter. The prospectus provided that after the offering closed, the net proceeds, less the deduction of underwriting costs, discounts, commissions, and expenses would be placed in a second escrow account and that the escrow bank (Metro

National Bank of Denver, Colorado or Metro Bank) would hold the proceeds for a period not exceeding one year, as escrow agent, during which no more than $1 million could be released for certain limited purposes. Metro Bank was Blinder Robinson's main bank. Every month Blinder Robinson transferred money from its accounts in 40 different banks around the country to Metro Bank.

The prospectus described American Leisure as a speculative investment. The company intended to build and operate a gambling casino-hotel in Atlantic City, New Jersey. At the time of the offering, American Leisure only owned 1.72 acres of land in Atlantic City and this was insufficient for the planned development.

As a matter of common practice, Blinder Robinson's sales people told prospective customers that American Leisure securities would open at a premium in the after-market and some sales people suggested that the opening price would be $5.00 or more. It was an established practice for the sales people to suggest that Blinder Robinson had inside information about pending developments which would make the stock increase in price. Much of what the sales representatives said was generated at a salesmanagers' meeting held in Florida in January 1980 where Mr. Blinder addressed the group. Judge Matsch found Meyer Blinder had no basis for the representations he made to the group, and, in fact, Mr. Blinder knew at the time that there had been no positive developments during the distribution period, and that the offering was meeting with difficulty. Judge Matsch also found that Mr. Blinder and

Blinder Robinson (1) aggressively promoted American Leisure securities before the registration became effective, (2) followed the manipulative and deceptive practice of maintaining market interest by suggesting that the hotel-casino development would be assured because of deals that were being made, and (3) used sales presentations which followed a pattern of misstatements and omissions. Judge Matsch concluded that Mr. Blinder orchestrated Blinder Robinson's sales force as it deliberately practiced a program of deceptive misinformation. (Judge Matsch's decision, pp. 471, 474-5)

American Leisure sales were brisk in January and February but sales cooled in early March and cancellations began to occur. In a letter dated March 10, 1980, the General Counsel of Elkins and Co. (Elkins), a broker-dealer which had agreed to sell $2.5 million worth of American Leisure units, wrote and informed its customers that there were no agreements between American Leisure and a neighboring land owner in Atlantic City concerning the joint development of a casino. The letter stated that Elkins did not recommend the purchase of American Leisure units, and informed customers that they could cancel their purchases without obligation by contacting an Elkins sales representative. Elkins returned 50,000 unsold units to Blinder Robinson on March 10, 1980.

On or about this date, Mr. Blinder realized that sales to the public would not be sufficient and that Blinder Robinson would have to buy part of the offering if the closing was going to occur by the end of the 90 days. In response to Mr. Blinder's inquiry, Mr.

Bernard Feuerstein, special counsel to American Leisure for this particular offering, called and asked a Commission staff attorney whether there was an absolute restriction or a special rule prohibiting an underwriter from purchasing securities in a best efforts, all or none offering. Attorney Feuerstein advised Mr. Blinder that the answer to the inquiry was no. Judge Matsch found that Mr. Blinder did not fully disclose material facts to Attorney Feuerstein. He did not tell him that Blinder Robinson would buy American Leisure units for its trading account, that Blinder Robinson would sell the securities from its trading account to the public after March 25, 1980, that there was a possibility of accommodating loans made to sell American Leisure units to third parties, and that Blinder Robinson would draw its commissions from the proceeds of the offering, prior to the closing, to purchase American Leisure units. (Judge Matsch's decision, pp. 480-81)

Blinder Robinson set the closing for the American Leisure offering for Thursday, March 20, in Denver. Representatives of the issuer and the underwriter and their attorneys met at the Brown Palace Hotel on March 19, 20 and 21 and signed the closing documents. The question of whether Blinder Robinson's purchase of American Leisure units was a material development which should be disclosed by a supplement to the prospectus called a "sticker" was discussed by Mr. Blinder and the several attorneys present: Mr. Irwin Lampert, American Leisure's secretary and treasurer, Mr. Robert Shaftan, American Leisure's counsel, Mr. Gerald Raskin and Mr. Albert Brenman, counsel to the underwriter, and Mr. Bernard

Feuerstein. Mr. Greg Scott, Blinder Robinson's General Counsel, was not invited to attend these meetings. Judge Matsch found that (p. 472):

> While the evidence is conflicting, the more probable and credible testimony is that Bernard Feuerstein, Gerald Raskin of the Brenman firm, and Mr. Brenman as well, all concluded and advised both Blinder and Padgett [Blinder Robinson's Executive Vice-president] that such a sticker would be necessary.

It became obvious during these meetings that sales were not sufficient to meet the required minimum even with a purchase of up to 10 percent of the offering by Blinder Robinson. Mr. Lampert left Denver on March 19 and traveled to Florida to solicit additional sales. In Florida, Mr. Lampert dicussed the purchase of American Leisure units with Mr. Leon Joseph, the principal of Scope, Inc. (Scope). Scope had a good relationship with the Great American Bank of Dade County, Florida (Great American). Great American agreed to loan Scope $1.5 million to buy American Leisure units at an interest rate of 2 percent more than the bank would pay on a certificate of deposit to be issued to American Leisure. On March 21, Mr. Lampert agreed on behalf of American Leisure to buy two certificates of deposit from Great American; one was for $1.5 million at 10 percent and the other was for $1.5 million at 16 percent, the latter being the existing market rate. Great American loaned Scope $1.5 million at 12 percent. Scope then bought 600,000 American Leisure units for $1.5 million. Judge Matsch found it to be a fair inference that Great American would not have loaned the money to Scope without American Leisure's purchase of the

certificates of deposit.

Also on March 21, a Blinder Robinson sales representative assisted a customer obtain a $700,000 loan from the Metro Bank to purchase 400,000 American Leisure units. The customer's purchase of American Leisure units was effective on March 24.

The Metro Bank issued Blinder Robinson a cashier's check, dated March 24, 1980, for $2,371,987.50 for the purchase of 956,393 American Leisure units (9.56 percent of the offering) which had not been sold to the public. This loan was not secured and the bank did not record it on its records, contrary to its routine business practice. Blinder Robinson put these units into the firm's trading account and began trading American Leisure units with members of the public and other broker-dealers on March 25, 1980. From that date until July 18, 1980, Blinder Robertson sold 2,209,320 units and purchased 1,828,715 units.

On March 25, 1980, the Metro Bank credited Blinder Robinson's checking account at Metro Bank for $2,475,000, an amount representing Blinder Robinson's commissions for the sale of 10 million American Leisure units. This distribution of escrow funds and the $3 million check the Metro Bank sent to Great American to buy the certificates of deposit occurred prior to a formal closing of the American Leisure offering. Judge Matsch found that a closing never happened. Mr. Blinder acknowledges that the escrow account did not contain $25 million in cleared deposits on March 21 but he felt the closing occurred on that date because the closing documents were signed and in his mind the deal was done.

In a letter dated March 20, 1980, which was delivered on March 24, the Metro Bank falsely represented to the Colorado Securities Department that $25 million was on deposit in the American Leisure escrow account. This representation was false on March 24 because Metro Bank did not receive the check for $1.5 million from Great American for the purchase of units by Scope until March 25.

Judge Matsch concluded that the record disclosed material misstatements and omissions, and that respondents acted with knowing intent to deceive, manipulate, or defraud. He found (Judge Matsch's decision pp. 475-76, 478-79):

> Blinder and Blinder-Robinson did not disclose the frantic manipulations which resulted in the pretension that all of the issue had been sold by the March 25 deadline. The investors were not told that $3,000,000.00 of the proceeds of the public offering had been committed to be used as an accommodation for the loan necessary for the Scope purchase with half of that amount invested at 6 points below the market rate. They were not told that the Metro Bank was so anxious to assist its good customer, Blinder-Robinson, that it found it expedient to make a $700,000.00 loan to a person who had no prior banking connection there, and to loan Blinder-Robinson almost the full amount of its commission with the bank paying itself off from that commission in immediate distribution of the first escrow. They were not told that Blinder-Robinson would, itself, purchase 956,393 units, and place them in inventory to participate in after-market transactions. 1/

1/ The court finds without merit defendants' reasons for not attaching a sticker to the prospectus, despite counsel's advice. Their claim that a sticker would be useless since all the prospectuses were distributed already is not a valid excuse: 'If it was too late to disclose the change, the investors had a right to assume that the prospectus would be complied with, not changed.' A.J. White & Co., 556 F.2d at 623. Their fear of damage to Blinder Robinson's business reputation does not excuse their nondisclosure, but simply demonstrates the materiality of the omissions, as discussed infra at 476-477.

* * *

Moreover, in an 'all or none' offering of securities by a new company, whether all the securities have been sold to the public in bona fide transactions is of particular importance because the 'all or none' contingency is the investors' principal protection.

* * *

Perhaps most telling in all of the evidence presented at the trial of this case is the testimony of Mr. Padgett that he and Meyer Blinder decided to make a business decision contrary to the advice of their attorneys because to do otherwise would be very damaging to the company's reputation by letting it be known that it could not sell out this offering.

* * *

The Court finds that the last-minute transactions through which Blinder Robinson 'sold' almost 2 million units between March 21 and March 24, 1980, were not bona fide sales. (citations omitted)

In addition, the SEC established at trial that the $25 million due American Leisure was not received by the deadline of March 25, 1980. On March 24, 1980, the Metro Bank issued Blinder Robinson a cashier's check in the amount of $2,371,987.50 for the purchase by the firm of the 956,393 units which had not been sold to the public. Although Blinder-Robinson and the bank called this transaction a 'loan', the court is persuaded that it was in fact a distribution of commissions from the proceeds of the offering, prior to its completion. Because this payment occurred prior to March 25, on that date the escrow account was short of the requisite $25 million. Moreover, proceeds received from non-bona fide sales must be considered non-bona fide proceeds which, even though present in the account on March 25, cannot be counted as part of the $25 million specified in the offering prospectus.

FACTUAL AND LEGAL FINDINGS

I will consider first the reviewing court's inquiry as to Mr. Blinder's relationship with counsel. I will then consider respondents' claim that Judge Matsch's conclusion that Blinder Robinson could not lawfully purchase American Leisure securities to close the offering without first disclosing its purchase to investors was either central to or the sole basis for his findings that respondents violated Rules 10b-5, 10b-6, 10b-9, and 15c2-4.

Respondents contend that the force of Judge Matsch's findings is substantially vitiated because counsel favored the course of action that Judge Matsch ultimately ruled unlawful. (Brief in Support of Respondents' Joint Supplemental Proposed Findings of Fact and Conclusions of Law, p. 9)

The record shows that Mr. Blinder was in complete control of the offering, and that he was not misled by the advice or actions of any attorney to whom he made full disclosure and relied on for counsel. Judge Matsch has found (p. 480) that other than an inquiry about whether Blinder Robinson could buy part of the offering, Mr. Blinder did not inquire as to the legality of the other actions it took to complete the offering by the March 25, 1980 deadline. Mr. Blinder selected all the attorneys involved in the underwriting except Mr. Shaftan. All the attorneys answered to him. He did not disclose material facts surrounding the offering to any attorney with the possible exception of Mr. Lampert. Mr. Blinder did not confer with underwriter's counsel and request a written legal opinion as part of his decision-making process when it became obvious to him that sales to the public were not sufficient to close the offering within the 90-day period. He did not permit Blinder Robinson's in-house counsel to research the question of whether Blinder Robinson could purchase American Leisure securities when counsel's initial opinion was that the underwriter could not purchase part of a best efforts, all or none offering. He did not follow the unambiguous advice of several attorneys to sticker the prospectus to disclose Blinder Robinson's purchase of American

Leisure securities because it would damage Blinder Robinson's business reputation. I reach these conclusions because of the following facts.

Mr. Lampert began an attorney-client relationship with Mr. Blinder in 1972 and handled a number of underwritings for Blinder Robinson before American Leisure. In 1980 Attorney Lampert was a very close personal friend of Mr. Blinder's and was on a retainer from Blinder Robinson. (Lampert Deposition, November 18, 1980, pp. 7-8, 13) Mr. Blinder often asked Mr. Lampert for legal advice in 1980. (Hearing March 6, 1989, Tr. 51; Lampert Deposition, November 18, 1980, p.8) Mr. Lampert was president of Beef & Bison Breeders, Inc., (BBB). Blinder Robinson had underwritten BBB's public offering in the late 1970s. BBB was in the business of raising and selling meat from animals that were a cross between a buffalo and a cow. Mr. Blinder suffered a heart attack in 1976 and he thought there was a market for lean meat. BBB was not successful. Mr. Blinder and Mr. Lampert developed the Atlantic City gambling scenario which was the basis for the American Leisure offering. Mr. Blinder and Mr. Lampert working together, arranged for BBB to buy American Leisure and structure it as a wholly owned subsidiary of BBB. Mr. Blinder asked Mr. Lampert if Blinder Robinson could buy American Leisure units to close the offering. Mr. Lampert relayed the inquiry to Attorney Feuerstein. (Hearing March 6, 1989, Tr. 50, 102) Mr. Lampert carried out the Scope transaction which Judge Matsch found Mr. Blinder and Blinder Robinson either directed or knew about and approved.

The Denver law firm of Brenman, Epstein and Zerobnick, PC, had represented Blinder Robinson as underwriter's counsel on a number of offerings before American Leisure. It started off in this offering representing the issuer and then it was switched to represent the underwriter. Mr. Blinder and Blinder Robinson did not inform Attorneys Brenman and Raskin that Blinder Robinson intended to purchase units in the offering until shortly before the scheduled closing. Both attorneys firmly, unequivocally, and consistently advised Mr. Blinder and Mr. Padgett that if Blinder Robinson purchased American Leisure units it should sticker the prospectus to indicate that the offering had closed and that Blinder Robinson had purchased so many units, that it should not keep the units it purchased in inventory or any other place where they could be readily sold, and that it could not trade the units at prices greater than the public offering price. (Hearing March 1989, Tr. 261, 551, 571, 576-78, 584) Attorney Raskin did not know of Blinder Robinson's program of deliberately deceptive misinformation which Mr. Blinder orchestrated, or the non-bona fide transactions, including Blinder Robinson's use of escrow funds to purchase units, or that Blinder Robinson would immediately begin to trade the American Leisure securities it purchased when he did not object to closing the offering without first issuing a sticker to show the purchase of securities by Blinder Robinson. There is no evidence that Attorney Brenman, who attended meetings when Attorney Raskin was unavailable, knew more than Attorney Raskin, the firm's lead attorney on the project.

Meyer Blinder suggested that Attorney Bernard Feuerstein become special counsel to American Leisure when the issuer's counsel encountered delays in getting the registration statement through the Commission. Mr. Feuerstein continued to be involved in the offering after he accomplished his mission and the Commission declared the registration effective on December 26, 1979. According to Mr. Blinder, Mr. Feuerstein's role was to "get this deal done". (Hearing March 8, 1989, Tr. 591) From the conflicting evidence, Judge Matsch found the more probable and credible testimony to be that Attorney Feuerstein, Attorney Raskin, and Attorney Brenman advised Mr. Blinder and Mr. Padgett that it was necessary to sticker the prospectus, and that Mr. Blinder did not make a complete disclosure to Attorney Feuerstein when he requested an opinion from him as to whether Blinder Robinson could buy American Leisure units. (Judge Matsch's decision, pp. 472, 481) The evidence adduced at the hearing on remand is that Mr. Feuerstein advised Mr. Blinder that the prospectus had to be stickered but that he did not advise that the stickering had to occur before the closing as he says he did.

On March 17 or 18, after Blinder Robinson's Executive Vice-president, Mr. Padgett, heard the preliminary opinion of the company's General Counsel, Mr. Scott, that an underwriter could not purchase part of a best efforts, all or none offering, he did not request Mr. Scott to research the question further so as to give a definitive answer. (Injunctive action, United States District Court for the Western District of Colorado, July 8, 1981, Tr. 105-

111) Instead, he relegated Mr. Scott to a peripheral role where he would not be directly involved in the offering. (Hearing March 7, 1989, Tr. 252) Mr. Padgett lied to Mr. Scott when he told him other lawyers were working on the question. (Injunctive action, United States District Court for the Western District of Colorado, July 14, 1981, Tr. 62-64)

In response to the specific inquiries posed by the Court of Appeals, I find that respondents rejected the advice of attorneys Raskin, Brenman, Feuerstein, and Scott to sticker the prospectus because Mr. Blinder and Mr. Padgett, after considering various elements, decided not to sticker because stickering would have damaged Blinder Robinson's business reputation as it would have indicated an inability to complete the deal. At the hearing on remand, respondents attempted to demonstrate that Judge Matsch misconstrued Mr. Padgett's testimony as to why he and Mr. Blinder chose not to sticker the prospectus. However, Mr. Padgett after enumerating several other factors admitted once again:

> But, yes, it did come down to, after all those things being taken into consideration, being a business decision not to put a sticker on it.

(Judge Matsch's decision, p. 476; Hearing March 7, 1989, Tr. 295-96; Attorney Scott Deposition March 27, 1981, p. 60-61)

I find further that the advice of underwriter's counsel and its in-house counsel that respondents should act to sticker the prospectus to disclose Blinder Robinson's purchase of American Leisure securities was clear, consistent, absolute, and unequivocal. I reject as unpersuasive and non-mitigative,

respondents' various reasons for failing to place the securities in a location where they would not be readily sold and for trading them immediately after the purchase was accomplished, i. e., the firm did not have an investment account, Mr. Blinder's son who put the securities in the trading account made an error, and Mr. Blinder was tired and confused by counsel's advice about how to hold the securities. Mr. Blinder's testimony that the firm did not have an investment account in 1980 conflicts with his son's representation that it did. (Hearing March 8, 1989, Tr. 612-13; Larry Blinder Deposition February 20, 1981, p. 52)

I will next consider respondents' other arguments. It is necessary to keep in mind when considering these arguments that respondents acknowledge being bound by Judge Matsch's finding that counsel advised Mr. Blinder to sticker the prospectus, and Mr. Blinder rejected that advice. At the same time, respondents contend that the evidence adduced at the hearing on remand indicates that neither Attorney Feuerstein nor any other attorney advised Mr. Blinder that the prospectus had to be stickered before the closing and this is a mitigating factor. I disagree with respondents that in these circumstances the fact that underwriter's counsel, issuer's special counsel, and issuer's president advised respondents that an underwriter could purchase up to ten percent of the best efforts, all or none offering in order to reach the required sales level, and that it was not necessary to make a recision offer or to sticker the prospectus to reflect such a purchase before the offering closed should mitigate any sanction.

My reasons for this conclusion are as follows: First, respondents have focused on only one aspect of respondents' overall relationship with counsel. Respondents fail to mention that Mr. Blinder did not seek advice from counsel on the several other activities that Judge Matsch found illegal, as for example the manipulative and deceptive sales practices, the program of deliberately deceptive misinformation which Mr. Blinder orchestrated, the Scope transaction, and the Blinder Robinson's use of escrow funds to purchase part of the offering. (Judge Matsch's decision, p. 480) On the narrow issue on which respondents focus, I find that Mr. Blinder and Blinder Robinson did not undertake an objective, thorough search for a correct legal opinion on whether Blinder Robinson could purchase part of the offering shortly before the closing and proceed to close as scheduled. Respondents wanted to close the offering at the end of the 90-day effective period; they never seriously considered taking the necessary actions to extend the offering 90 days, and they acted or omitted to act so as to eliminate any legal opinion which would advise against such a course of action. I refer specifically to their failure to allow Mr. Scott to research the issue in light of his initial reaction that such a purchase was not permitted, and to the fact that they did not invite him to the meetings at the Brown Palace Hotel on March 19-21 where this issue was discussed. Also, Blinder Robinson failed to consult with underwriter's counsel in a timely fashion and did not request a written opinion from them on its proposed course of action. Underwriter's counsel found out that Blinder

Robinson might buy a portion of the offering on March 19 or 20, either the day the offering was scheduled to close or the day before. (Hearing March 8, 1989, Tr. 544-46; Brenman Deposition March 24, 1981, p. 17) Mr. Blinder acknowledges the importance of a written opinion because he now insists that any advice he receives from an attorney be in writing. (Hearing October 23, 1984, Tr. 108-109)

To put these events in the context that faced Mr. Blinder, this was the first time Blinder Robinson anticipated buying part of an offering it was underwriting, American Leisure was by far Blinder Robinson's largest underwriting ($25 million compared with $500,000 to $3 million), the offering was on a best efforts, all or none basis, and Mr. Blinder knew the Commission would be watching respondents' activities. Despite these circumstances, respondents did not act responsibly and request a written legal opinion from underwriter's counsel or anyone else on the legality of its purchase of American Leisure securities. (Hearing March 6, 1989, Tr. 244) Respondents did not work closely with underwriter's counsel. Instead, respondents relied primarily on the oral advice of the attorney brought in to expedite things and get the deal done. There is some evidence that Mr. Blinder also relied on advice from Mr. Lampert. (Meyer Blinder Deposition, October 21, 1980, Tr. 118-120; Injunctive action, United States District Court, Western District of Colorado, July 14, 1981, Tr. 175) Both Mr. Feuerstein and Mr. Lampert were close friends of Mr. Blinder's. (Judge Matsch's decision, p. 471; Hearing March 8, 1989, Tr. 590-91) There

is no evidence that he relied on underwriter's counsel and there is no evidence that underwriter's counsel were close friends of Mr. Blinder.

Second, respondents fail to note that respondents did not follow counsel's advice (Attorneys Feuerstein, Brenman, Raskin, and Scott) that if Blinder Robinson purchased American Leisure securities, it should take steps to sticker the prospectus. (Judge Matsch's decision, p. 472; Hearing March 6, 1989, pp. 223-24) Respondents ignored the specific advice of underwriter's counsel that the sticker should indicate the offering had closed and that Blinder Robinson had purchased a specific number of units, and not to keep the units in inventory or any other place where they could be readily sold. (Hearing March 8, 1989, Tr. 578, 580)

Third, despite counsel's representations, respondents had not advised the attorneys of all the relevant facts when the attorneys opined that the closing could proceed despite the Blinder Robinson purchase. Relevant evidence is evidence having any tendency to make the existence of any fact more probable or less probable. It is relevant to the question of whether the offering could close without a sticker indicating the Blinder Robinson purchase that Mr. Blinder and Blinder Robinson violated the securities laws and regulations in making sales, that the money Blinder Robinson used to purchase American Leisure securities came from the escrow funds disbursed before the closing, and that Blinder Robinson would immediately begin trading the securities it purchased. Attorney Feuerstein and Attorney Raskin did not know either about the

arrangements detailed in Judge Matsch's decision which made it appear that the requisite number of units had been sold by March 25, or that Blinder Robinson would begin trading the securities immediately after it purchased them. (Judge Matsch's decision, p. 481; Hearings March 7 and 8, 1989, Tr. 522, 580-83) Moreover, respondents are incorrect that because the attorneys knew that Mr. Blinder, the Blinder Robinson sales force, and Mr. Lampert were looking for large unit purchasers, they therefore knew about the arrangements surrounding the last-minute frantic manipulations described in Judge Matsch's decision. Attorneys Feuerstein and Raskin deny having such knowledge and there is no persuasive evidence that indicates otherwise.

I disagree that Judge Matsch's findings that respondents violated Rules 10b-5, 10b-6, and 10b-9 derive from his "core" conclusion that respondents should have stickered the prospectus to disclose the purchase by Blinder Robinson before the closing. Rule 10b-5 prohibits the making of any untrue statement of material fact or the omission to state a material fact necessary in order to make the statement made not misleading. Judge Matsch cited several actions and omissions by respondents that violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 in addition to his finding that respondents' reasons for not attaching a sticker to the prospectus, despite counsel's advice, had no merit. He found among other things that Blinder-Robinson's sales force used manipulative and deceptive practices, and that their presentations followed a pattern of misstatements

and omissions which were directly attributable to Mr. Blinder and through him to Blinder Robinson, that investors were not told that $3 million of the proceeds of the offering had been committed as an accommodation for the loan necessary for the Scope purchase of American Leisure units, and that $1.5 million was invested at six points below the market rate. In other words, setting aside the question of Blinder Robinson's purchase and its failure to give notice to the public of this fact, the closing could not have occurred legally on March 25 because of illegal actions by Blinder Robinson and Mr. Blinder. The findings that respondents violated Section 17(a), Section 10(b), and Rule 10b-5 did not rest on what respondents characterize as a single core conclusion.

I reject respondents' additional argument that any sanctions arising from Judge Matsch's findings of violations of Rules 10b-9 and 10b-5 by Blinder Robinson and Meyer Blinder with respect to the Scope purchase should be mitigated substantially because Attorney Lampert, Attorney Brenman, and Attorney Feuerstein knew of the arrangements and did not object.

In describing the Scope transactions, Judge Matsch found (p. 480):

> What is significant is that none of the above activities by third parties occurred in a vacuum. Rather, those activities were either at the direction of Blinder and Blinder-Robinson, or with their full knowledge and tacit approval; and the particular actions taken by the bank and others were simply component parts of the overall scheme which Blinder and Blinder-Robinson orchestrated to give the appearance of completing the offering by March 25, 1980.

I reject Mr. Blinder's claim that any sanction resulting from

the Scope transactions should be mitigated because respondents were only minimally involved and Attorney Lampert never indicated to Mr. Blinder that the activities were illegal. The claim that respondents were only minimally involved in the Scope transactions is directly contrary to Judge Matsch's finding quoted above. Moreover, the evidence is overwhelming that Mr. Blinder was the driving force to get the American Leisure offering done within the 90-day period, and that Attorney Lampert, his close personal friend who had been on retainer to Blinder Robinsoon for some years, did not do anything without having Mr. Blinder's approval. I reach this conclusion because it was Mr. Blinder who came up with the idea of structuring American Leisure around plans for setting up a gaming deal in New Jersey. Mr. Blinder found the people that owned land in Atlantic City which resulted in BBB acquiring American Leisure Co. Mr. Blinder decided the company should be headed by an experienced gaming operator. Mr. Blinder found Nathan Jacobson who had such experience and Mr. Jacobson became American Leisure's president. Mr. Blinder structured the underwriting and was the moving force in the American Leisure offering. The American Leisure underwriting was Mr. Blinder's pet project and he handled it directly. (Padgett Deposition, October 17, 1980, p. 34; Injunctive action, United States District Court, Western District of Colorado, July 14, 1981, Tr. 24 and Hearing March 6, 1989, Tr. 172, 245) The ticket for the sale of 600,000 units to Scope was written pursuant to Mr. Blinder's instructions. (Meyer Blinder Deposition June 22, 1981, p. 164-65) The evidence shows Mr. Blinder as the driving

force behind the illegal actions which Attorney Lampert helped accomplish.

There is no question but that Mr. Blinder knew or should have known that the activities which Judge Matsch found violated the securities statutes and regulations were illegal. The earnest naivety displayed by Mr. Blinder and his position that he was misled by the advice from the lawyers are contrary to (1) the evidence describing Mr. Blinder's direct participation in the fraudulent sales practices, (2) the evidence that Mr. Blinder personally formulated and executed the details of the alleged closing of the American Leisure offering in clear disregard of the statute and regulations, and (3) Judge Matsch's finding that Mr. Blinder orchestrated the overall scheme. (Judge Matsch's decision p. 480)

I find no support for respondents' contention that Attorney Lampert's advice and input and Attorney Feuerstein and Attorney Brenman's failure to object should mitigate any sanctions arising from the violations found to have occurred in connection with the purchase by Scope. Mr. Lampert's testimony which respondents rely on is unpersuasive that these attorneys were aware of the illegal actions which occurred before the alleged closing. Specifically, at one point Mr. Lampert was not 100 percent positive but he understood that he called the bank once and talked to Mr. Blinder about Scope; he thinks he used a speaker phone and that Attorney Feuerstein, the bankers, and the other attorneys were all in on the conversation, and they discussed the purchase of a large block of

stock and the use of funds after the closing to purchase certificates of deposit. (Hearing March 6, 1989, Tr. 76, 78-9, 118-20) At another point, Attorney Lampert thought he called the bank and talked to Mr. Blinder or Attorney Feuerstein and whoever it was took down the information required to open an account. (Lampert Deposition, November 18, 1980, Tr. 55) Mr. Blinder has a different recollection of his only conversation with Mr. Lampert about Scope. "The only conversation I had is, How is it going, Are we going to get the sale; that's all." (Hearing March 8, 1989, Tr. 622) Judge Matsch found that the funds were withdrawn from the American Leisure escrow account to accommodate the Scope transaction before the all or none contingency was satisfied.

Mr. Lampert's testimony does not describe the improper conduct involving Scope before the closing which Judge Matsch found occurred. Taken together with Mr. Blinder's recollection, the testimony cited by respondents does not establish that Attorney Feuerstein and Attorney Brenman participated in or overheard a phone conversation at which the illegal Scope arrangements were discussed. Attorney Feuerstein denies knowing about the arrangements surrounding the Scope purchase detailed in Judge Matsch's decision. (Hearing March 7, 1989, Tr. 405-06, 522) Attorney Brenman was not questioned on this point but he worked closely with Attorney Raskin, who handled most of the details. Attorney Raskin denied knowing anything about the Scope arrangements described in Judge Matsch's decision. (Hearing March 8, 1989, Tr. 580-82) Nothing in the cited investigative testimony

of the Metro Bank officer and the related cross-examination of Attorney Feuerstein is persuasive that these denials are erroneous.

Finally, taken as a whole the evidence is that Mr. Blinder did not rely on anyone's advice but did what he wanted to do. Mr. Blinder's testimony that he always followed his attorney's advice is contradicted by his actions in connection with American Leisure when he did not follow the advice of counsel and is contrary to the testimony of Blinder Robinson's General Counsel in 1980 who said it was a common occurrence for Mr. Blinder not to follow the legal advice he gave. (Scott Deposition, June 9, 1981, p. 100) In 1978 when Mr. Blinder was advising Mr. Lambert at the closing on BBB's land acquisition in Atlantic City, Mr. Blinder stated he did not need an attorney's advice. (Blinder Deposition October 21, 1980, Tr. 45; Injunctive action, United States District Court, Western District of Colorado, July 14, 1981, Tr. 105) Mr. Blinder boasts that he is the most aggressive businessman in the world. (Hearing October 24, 1984, p. 105) He believes that it is standard operating procedure for brokerage houses to receive disciplinary sanctions, that he can judge appropriate conduct better than this Commission or the National Association of Securities Dealers (NASD), and that those two entities are always sanctioning him for unfair reasons. (Hearing October 24, 1984, Tr. 57)

I reject respondents' third contention which is that any sanction associated with Judge Matsch's finding of an unlawful sales practice in violation of Rule 10b-5 should be mitigated because Attorney Feuerstein, Attorney Raskin, and Attorney Lampert

did not advise Blinder Robinson to deny rumors that American Leisure had agreed to develop a casino with an adjoining land owner.

Judge Matsch found that (Judge Matsch's decision, p. 475)

> Given the sales practices which had been followed, the Blinder-Robinson customers buying the American Leisure units should have been given this information [letter by Elkins and Co. to purchasers and prospective purchasers that no agreement existed between American Leisure and adjoining land owner] and the failure to provide it constitutes a fraudulent practice.
>
> These statements and omissions are directly attributable to Blinder and through him, to Blinder-Robinson. It is clear that the Blinder-Robinson sales force practiced a program of deliberately deceptive misinformation which Blinder orchestrated. (Footnote omitted)

As noted previously, Attorney Lampert was on retainer to Blinder Robinson, Attorney Feuerstein was special counsel to the issuer, and Attorney Raskin was underwriter's counsel. The evidence does not show that these attorneys were aware of Blinder Robinson sales practices, or that they were responsible for reviewing the activities of the Blinder Robinson sales force. In addition, respondents' position that a person is less culpable because an attorney did not tell her or him to stop performing actions which are clearly illegal is illogical. It follows from respondents' logic that a broker-dealer with an attorney on its payroll would be less culpable automatically than a broker-dealer who did not employ an attorney.

There is nothing in the remand record which puts Mr. Blinder's conduct in the American Leisure offering in a better light than existed before the additional evidence was received. I reach this

conclusion because based on my review of the evidence relating to respondents' relationship with counsel presented at the hearing on remand and my review of the entire record, I find nothing which merits lightening any sanction found to be in the public interest in view of the district court's findings almost eight years ago that respondents, acting with scienter, violated provisions of the securities laws and regulations and in view of the injunction issued against them because of these violations. S.E.C. v. Blinder, Robinson & Co., Inc., Meyer Blinder, et al, 542 F. Supp. 468 (D. Colo. 1982), aff'd., [1983-1984 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶99,491 (10th Cir. 1983), cert. denied, 469 U.S. 1108 (1985)

SANCTIONS

As pertinent to this proceeding, Section 15(b) of the Exchange Act directs the Commission to order a sanction if it finds the sanction to be in the public interest and the broker or dealer or person associated with the broker or dealer at the time of the misconduct has (¶ C) been enjoined by a court from engaging in conduct in connection with activities as an underwriter, broker or dealer, (¶ D) willfully violated any provision of the Securities Act or Exchange Act, or (¶ E) willfully aided or abetted in the violation of any provision of the Securities Act or Exchange Act. Judge Matsch's findings and the permanent injuction that resulted from those findings bring respondents within the scope of these paragraphs so that the question is what, if any, sanction is in the public interest.

In their briefs, respondents contend, citing Steadman v. S.E.C., 603 F.2d 1126 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981), that the Commission should not impose any sanction. Counsel argue that respondents had a low level of culpability in connection with the violations because (1) lawyers were substantially involved in the actions Judge Matsch found illegal, and (2) "several of the more peripheral aspects of Judge Matsch's findings, which now take on greater significance because his primary findings are so imbued with lawyer involvement, clearly involved conduct by respondents, if at all, only at the fringes." (Brief in Support of Respondents' Joint Supplemental Proposed Findings of Fact and Conclusions of Law, p. 21)

Respondents maintain that the harsh disciplinary sanctions sought by the Division cannot be squared with the sanctions traditionally and routinely imposed on New York Stock Exchange (NYSE) member firms and their executives for far more serious securities violations. Respondents renew their objection to my ruling disallowing evidence on this subject at the remand hearing. They cite several cases to support their claim that since 1980 the Commission-imposed sanction for serious fraud by NYSE member firms has been a censure and new compliance procedures, and in one instance a monetary contribution. Respondents claim that from 1980 to June 1989, the Commission in over 50 proceedings involving over 30 NYSE member firms did not suspend one firm's overall broker-dealer business nationwide for even one day, but only suspended one firm's total underwriting activities for two months and its

authority to underwrite contingent offerings for six months. See Rooney, Pace Inc., 48 S.E.C. 602 (1986).

In oral argument, Mr. Blinder's counsel draws a parallel between imposing capital punishment and permanently barring Mr. Blinder from association with a broker or dealer. Respondents' counsel contend that the Commission should not sanction respondents because the district court injunction is a sufficient remedial measure, 99 percent of the people who depend on Blinder Robinson for their livelihood were not employed by the firm in 1979-80, and Blinder Robinson has engaged in many underwritings since American Leisure where there have been no violations.

The Division recommends that the Commission revoke Blinder Robinson's broker-dealer registration and bar Mr. Meyer Blinder from association with any broker dealer. It proposes this substantial sanction because the violations are exceedingly serious and it maintains that lesser sanctions will not protect the public interest or avoid a repetition by respondents. The Division claims that firms which are not members of the NYSE are smaller and more numerous than member firms, and that because non-member firms are smaller their executives often personally direct their operations while executives of member firms are often many management layers away from those who commit the violations. According to the Division, these factors explain why it might be that the Commission more often imposes substantial sanctions on executives of non-member firms. The Division cites situations where the Commission has barred persons associated with NYSE member firms and persons

associated with non-member firms where they personally and directly engaged in serious fraud. (Division's Brief, pp. 45-48) The Division notes that in this situation the individual respondent is the chief executive officer, president, and controlling shareholder of the respondent broker-dealer and he either personally committed or directed the violations.

The Division points out that most of the cases respondents cite were resolved by settlement or consent orders. It maintains that very different considerations impact on sanctions in litigated cases as opposed to the considerations which impact on settled cases and the results of the two types of proceedings are not comparable. See S.E.C. v. Clifton, 700 F.2d 744 (D.C. Cir. 1983) The Division maintains that frequently, NYSE members who have been the subject of sanctions agree to have someone above the level of the principal violator come in, take charge, and "clean house", but respondent Meyer Blinder has never acknowledged responsibility for the American Leisure violations and he remains in control of the broker-dealer respondent.

Respondents are correct that Mr. Blinder's culpability is a key consideration, and that any sanction has to be in the nature of a remedial measure. I reject respondents' claim that Mr. Blinder bears a low level of culpability for the violations found by the district court because of the advice and involvement of legal counsel. This claim is directly contrary to my findings set out in the prior section of this decision. I reject the analogy between barring Mr. Blinder from association with a broker or dealer and

capital punishment since the term permanent bar in an administrative proceeding before this Commission means an indefinite bar as the Commission frequently exercises its power to modify orders barring persons from association with a broker-dealer or investment adviser. Steadman v. S.E.C., 603 F.2d 1126, at 1140 n. 17 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981).

I reject the argument that the Commission should not impose a severe sanction on Blinder Robinson because of the potential adverse impact on Blinder Robinson's employees. Any sanction against the firm will impact directly on those who control the manner in which the firm is operated, Mr. Blinder, the Chief Executive Officer and President, and his son Larry Blinder, the Vice-president, Secretary and Treasurer, who own about 92 percent of the firm. The possibility of an adverse impact on broker-dealer employees should not prevent action to remedy a situation which can adversely impact the investing public. Moreover, Blinder Robinson has already experienced a great deal of employee turnover; many employees left to join Stuart James in August 1983, and about 200 sales representatives left in 1984 for various reasons including a new requirement by Blinder Robinson that they sign an employment agreement making them independent agents. (Hearing October 29, 1984, Tr. 93-94)

Respondents argue that a mitigating factor to be considered is that American Leisure received the full amount of the offering after the deduction of costs. The erroneous implication is that no

harm was done. Respondents do not mention that investors who relied on the best efforts, all or none nature of the offering did not receive the refunds due them, and that Blinder Robinson received commissions for selling 10 million American Leisure units in bona fide sales which it did not accomplish.

Respondents have not shown either a systematic pattern of disparate treatment which results in disproportionately harsher sanctions on non-NYSE member firms or that the Commission cannot and should not impose a severe sanction on these respondents because it has ordered less severe sanctions in cases involving members of the NYSE.[2/] The questions posed are whether Blinder Robinson and Mr. Blinder are being treated more severely because the firm is not a member of the NYSE and the individual is not associated with a member firm.

Respondents' case citations fail to establish that the Commission is not suspending the registration of NYSE member broker-dealer firms in situations similar to this one because only two of the over 50 cases (35 NYSE member firms) cited by respondents involve direct violations by top firm management. (Brief in Support of Respondents' Joint Supplemental Proposed Findings of Fact and Conclusions of Law, Appendix A) The two cases

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2/ I affirm my ruling disallowing testimony on this issue. The basis for my ruling is that this evidence is beyond the scope of the Commission's orders as to the hearing on remand. Also counsel acknowledged, albeit reluctantly, that he did not attempt to introduce evidence on this point at the original hearing in this proceeding. (Supplementary Order Pursuant to Remand, November 8, 1988; Hearing March 9, 1989, Tr. 899-900)

are Rooney, Pace, Inc., 48 S.E.C. 602 (1986) and Parker/Hunter Inc., Exchange Act Release No. 19,009 (August 24, 1982), 25 S.E.C. Docket 1552. Both of these situations are distinguishable from the facts in this case where Mr. Blinder's direct involvement in major violations, unmitigated culpability, and control of the registrant are major factors in determining the appropriate sanction. Neither Rooney, Pace Inc., nor Parker/Hunter involved (1) district court findings that the broker-dealer president orchestrated a program of deliberately deceptive information by a sales force of about 250 people; that investors were not told that $3 million of the offering proceeds was committed to accommodate a loan necesary for the purchase of units and that $1.5 million was invested at below market rates; that the broker-dealer's bank lent $700,000 to a person with no banking connections so that he could purchase units and it lent the broker-dealer almost the full amount of its commissions and paid itself from the escrow account; and that the boker-dealer president knew the Commission would be watching his activities closely but he nonetheless acted with a knowing intent to deceive, manipulate, or defraud in a $25 million public offering, (2) a showing that the individual respondent omitted to tell counsel material facts and rejected counsel's advice because it would be bad for business, and (3) a broker-dealer respondent which was the the largest penny stock underwriter in the country. In Rooney, Pace the broker-dealer did not purchase securities and trade them before the distribution was complete in violation of Rule 10b-6, and the offering amount was $3 million or 12 percent

of the American Leisure underwriting. Further distinguishing features are that respondents' illegal conduct was far more pervasive and flagrant than in Rooney, Pace which involved four non-bona fide sales, three of which were ratified after the expiration date of the offering. The result in Parker/Hunter is not comparable because it was a settled proceeding. S.E.C. v. Clifton, 700 F.2d 744 (D.C. Cir. 1983); Haight & Company, Inc., 44 S.E.C. 481, 512-13 (1971), aff'd without opinion, (D.C. Cir., June 30, 1971), cert. denied, 404 U.S. 1058 (1972) Finally, it is difficult, if not impossible, to draw valid comparisons between sanctions assessed in different factual situations. See Butz v. Glover Livestock Commission Co., Inc., 411 U.S. 182, 186-88 (1973)

Respondents have not shown that Mr. Blinder is being treated differently because he is an individual associated with a non-member firm since the ten cases cited by the Division demonstrate that the Commission has barred both individuals associated with member firms 3/ and non-member firms 4/ when they have

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3/ Butcher & Singer, Inc., Exchange Act Release No. 23990 (January 13, 1987), 37 S.E.C. Docket 790, aff'd., 833 F.2d 303 (3rd Cir. 1987); Lester Kuznetz, Exchange Act Release No. 32525 (August 12, 1986), 36 S.E.C. Docket, 446, review denied, 828 F.2d 844 (D.C. Cir. 1987); Prudential-Bache Securities, Inc., Exchange Act Release No. 22755, 34 S.E.C. Docket 1456; Prudential-Bache Securities, Inc., Exchange Act Release No. 20380 (November 17, 1983), 29 S.E.C. Docket 240; Arthur Lipper Corp. Exchange Act Release No. 11773 (October 24, 1975), 8 S.E.C. Docket 273, modified in part, 547 F.2d 171 (2d Cir. 1976), cert. denied, 434 U.S. 1009 (1978).

4/ Pagel, Inc., Exchange Act Release No. 22280 (August 1, 1985), 33 S.E.C. Docket 1212, aff'd., 803 F.2d 942 (8th Cir. 1986); FAI Investment Analysts, Inc., Exchange Act Release No. 14288 (December 19, 1977), 13 S.E.C. Docket 1167; Midland Securities (continued...)

participated personally and directly in violations.

The public interest requires that Mr. Blinder and Blinder Robinson receive a severe sanction in this proceeding. I reach this conclusion from the record as a whole, including such compelling factors as Mr. Blinder's utter disdain for regulation as manifest in his words and actions; Mr. Blinder's tendency while under oath to give whatever answer appears convenient; Mr. Blinder's failure to acknowledge that he was directly responsible for all the flagrant, extensive, and grievous securities violations that occurred in connection with the American Leisure underwriting in 1979-80 even though the decision has been upheld by the higher courts; the fact that on July 1, 1986, the district court refused to lift the injunction principally because Mr. Blinder controls the firm and he is not fully aware of his own fault in connection with American Leisure; the lack of persuasive evidence that the conditions at Blinder Robinson have changed so that fraudulent and manipulative conduct is no longer highly probable by Mr. Blinder and through him the registered broker-dealer; respondents' prior disciplinary record which includes the fact that in 1982 this Commission affirmed NASD findings that two Blinder Robinson sales people, one of whom, Mr. Butch Gordon, was a firm Vice-president involved in the American Leisure offering, violated NASD's "free-riding and withholding" interpretation and that Mr. Meyer Blinder,

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4/(...continued)
Corp., Exchange Act Release No. 13139 (January 6, 1977), 11 S.E.C. Docket 1361; Richard C. Spangler, Inc., 46 S.E.C. 238 (1976); Gilbert F. Tuffli, Jr., 46 S.E.C. 401 (1976).

Mr. Larry Blinder and Mr. James Padgett, all of whom were involved in the American Leisure offering, failed to institute and enforce adequate supervisory procedures (Securities Exchange Act Release No. 19057 (September 17, 1982), 26 S.E.C. Docket 238); the 17 disciplinary proceedings in 16 states in which sanctions were issued against Blinder Robinson as of December 19, 1986 (48 S.E.C. 624, 633); and as a lesson to others who may be tempted to violate the laws that deal with the securities markets. I reach this conclusion fully cognizant of the court of appeals' statement that by this decision the Commission is doing more than regulating the securities markets; it is directly affecting the livelihood of one commercial enterprise and terminating (possibly forever) the professional career of the firm's founder. An analysis of the record demonstrates that, in this situation, it is necessary to do the latter to accomplish the former.

The evidence does not support counsel's representation that (Oral argument to the Commission, July 31, 1986, Tr.6):

> ...if there is anything that has been established, not by a mere preponderance, not by clear and convincing, not by beyond a reasonable doubt, but indeed, to a scientific certitude, it is that this institution since 1980, when it made its mistakes in the American Leisure underwriting, has made some of the most significent, extensive changes in its personnel, in its procedures, in its computer equipment, and in its commitment to attain law compliance than, I would submit, any case any of the commissioners will face while you have the pleasure of serving on the Commission.

The record does not show the rehabilitative actions which

counsel describes. 5/ Mr. Blinder has not accepted responsibility for the violations that occurred in connection with the American Leisure offering and has not committed to changing the firm's operations to prevent similar actions in the future. For example, Blinder Robinson did not take the initiative and strengthen its management structure in 1982 in response to the district court's findings. Personnel changes at Blinder Robinson have occurred in response to court orders and because in August 1983 several Blinder Robinson officers stripped the firm of personnel when they left to start a competitor, Stuart James. In August 1983, Mr. Blinder did not select a proven leader and a person with a record of achievement in the securities field to assume the position of

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5/ Respondents maintain that the evidence on this point is outdated and they renew their objection to the Commission's remand order which precludes more evidence at the hearing on remand as to their rehabilitative efforts. (Supplemental Order Pursuant to Remand, November 8, 1988) Inasmuch as no new evidence was allowed from respondents, I have not considered in reaching my decision that updating the official notice which the Commission took of respondent's amendments to its broker-dealer registration application reveals the folliwng (Blinder, Robinson & Co., Meyer Blinder, 48 S.E.C. 624, 63, n. 26):

YEAR	ACTION	STAT
1987	Cease and desist	Florida
	Registration suspended	Wisconsin
	Registration suspended	Delaware
1988	Prohibition	Delaware
	Censured and fined	NASD
	Cease and desist	Pennsylvania
	Denial	Ohio
	Order to show cause	Indiana
1989	Restitution ordered	Kentucky

Executive Vice-president in charge of day-to-day management of Blinder Robinson. Instead, he selected as the company's new second in command a person with an Associate in Arts degree earned in 1973 who had less than five years experience in the securities business. In addition, two years after Judge Matsch's decision, three or four of Blinder Robinson's high ranking officers had disciplinary records (Mr. Meyer Blinder, Mr. Larry Blinder, Mr. Butch Gordon, and Mr. Regis Dahl). Blinder Robinson has hired a new person to be Vice-president Legal and Compliance. This person is not an attorney. He has about twelve years experience as an investigator for the NASD, and he enjoys a good reputation in the compliance area. He was a Commission witness in a 1983 proceeding where the Commission unsuccessfully sought an injunction against Blinder Robinson. His starting salary at Blinder Robinson in February 1984 was $150,000, an amount almost three times his NASD salary. This person claims to have final authority in compliance matters at the firm including authority to overrule Mr. Blinder. This representation of ultimate compliance authority is suspect because (1) his employment contract does not specify this condition or provide that he will be paid if he leaves the firm because of a disagreement with Mr. Blinder about compliance matters, and (2) he acknowledges that Mr. Blinder, without a shadow of a doubt, could overrule the firm's computer program if it rejected a particular transaction as improper. (Hearing October 26, 1984, Tr. 170) Mr. Blinder is also the single exception to Blinder Robinson's policy, drawn up after problems with the Cable West offering in 1984, which

prohibits any employee or independent contractor from serving on the board of directors of a public company. The Vice-president Legal and Compliance removed a Blinder Robinson office manager from his managerial position because he was on the Board of Directors of Cable West where Blinder Robinson was the underwriter and principal market maker. Mr. Blinder, however, remains a director of American Midland Company, the successor to American Leisure.

In 1983 or 1984, Blinder Robinson instituted a new training program for its sales representatives most of whom are persons in their twenties with no background in the securities business. The trainees at the three week sessions spend several hours each day making phone calls following a three-step sales format using a script which Blinder Robinson prepared. The trainees receive commissions from the sales which result from these solicitations. The script provides for the sales representatives on the second call to state that "...our research department is working on something that looks very exciting and as soon as it is put together, I will be back to you." (Hearing October 24, 1984, Tr. 112-16) Blinder Robinson's procedures direct the sales person to call the person back a third time at a later date and recommend a stock or stocks. The sales representatives make the third call whether or not they receive materials from the research department. When they make the second call they already have the Blinder Robinson's list of recommended stocks that they use to recommend stocks to the customer on the third call. Mr Blinder denies that this is the case but those running the training program and the

sales representatives who testified acknowledge this fact. (Compare Hearing October 24, 1984, Tr. 114 with Hearing October 25, 1984, Tr. 111; Hearing October 29, 1984, Tr. 186-87; and Hearing November 2, 1984, beginning at Tr. 6)

Blinder Robinson's research department consists of one person who spends 90 percent of his time as research director and the rest on sales. He gathers prospectuses, financial statements, and news releases and prepares summaries called data sheets, research reports, and a monthly letter. He clears all releases with the issuers before he circulates them to the Blinder Robinson sales force. He does not exercise any independent judgment as to the validity of the information he circulates.

I find nothing rehabilitative or mitigative about Blinder Robinson's new training course. A broker-dealer is supposed to have knowledgeable employees so Blinder Robinson should not get extra credit for doing what is expected of it in the first instance. On the other hand, Blinder Robinson's sales representation that its research department is working on something exciting is false, misleading, and deceptive. Webster's II New Riverside University Dictionary, 1984, defines research as (1) scientific or scholarly investigation, and (2) close careful study. Blinder Robinson does neither. The term research department is a misnomer. The department is not doing research, it is doing public relations. The use of the term research department erroneously indicates that Blinder Robinson is looking critically at the securities it recommends. The timing of the phone calls indicates a strategy of deceiving people

into thinking that the sales representatives were recommending the purchase of securities based on new research information. The recommendations to buy were not based on research information and the sales representative already had the information when he made the second call.

Blinder Robinson's Vice-president Legal and Compliance agreed that representations that Blinder Robinson's research department will bring exciting new investments to the attention of the firm's customers implies that the department will inform customers when they should sell these investments. (Hearing October 29, 1984, Tr. 193) However, Blinder Robinson urged its sales force to recommend only that customers buy securities. The evidence is persuasive that Blinder Robinson has never advised its sales representatives to inform customers that selling securities might be an appropriate action.

In a submission to the Commission dated January 18, 1984, the firm represented that its new telephone system permits registered representatives to place calls only to states in which they are licensed to do business. The representation does not state that the system is operational only at Blinder Robinson's home office. (Hearing October 24, 1984, Tr. 63-66) The new Vice-president Legal and Compliance might have told regulatory authorities that the telephone system was in effect in all Blinder Robinson offices before he learned this was not so. It did not occur to him to correct this representation which he made to the Commission. (Hearing October 29, 1984, Tr. 142-44)

The firm's new computer software program will not process the transaction if Blinder Robinson, the security issue, or the sales representative are not registered to do business in the state where the customer's address is located. Unfortunately such a system would not have prevented the securities violations that occurred in American Leisure in 1979-80, it did not prevent the problems that occurred in the Cable West offering in 1984, and it has not changed Blinder Robinson's reputation for a low level of compliance with the applicable regulatory scheme. (Hearings October 29, 1984, Tr. 11-12, 18-22; October 31, 1984, Tr. 9-13) Blinder Robinson's new Executive Vice-president finds Mr. Blinder to be sincere and well-meaning, which is very different than Mr. Blinder's reputation on the street. (Hearing October 24, 1984, Tr. 188-89, 191-92)

My findings detailed above agree with the Commission's finding in its opinion in this proceeding issued December 19, 1986 that respondents' claim that they have reformed was unpersuasive. (48 S.E.C. 624 at 633-34)

Quoting SEC v. Blatt, 583 F.2d 1344, n. 29, Steadman specifies the factors relevant to issuance of a sanction (603 F.2d at 1140):

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

The factors set out in Steadman, are applicable to these facts as follows: respondents violated several important provisions of

the securities statutes including the anti-fraud and anti-manipulative provisions which are basic elements in the regulatory scheme; respondents' activities were not isolated or accidental, Judge Matsch found that Mr. Blinder and Blinder Robinson acted with a knowing intent to deceive, manipulate, or defraud, that Mr. Blinder and Blinder Robinson orchestrated an overall scheme to give the appearance of completing the offering by March 25, and that their actions began before the registration became effective on December 26, 1979, and continued beyond the 90-day effective period until August 28, 1980; respondents have not recognized the wrongful nature of their actions, Mr. Blinder blames everyone and everything but himself - Judge Matsch, the attorneys, his son, American Leisure, an inability to call the SEC and NASD and get advice from Colorado the way he did when he was located in New York, the failure of the Commission and judges to let him talk to them informally, etc.; based on Mr. Blinder's actions and words and the substantial financial benefit he enjoys from Blinder Robinson's operations, it is very likely that Mr. Blinder, and others hoping for similar financial gain, will violate the securities laws and regulations in the future.

I do not find the permanent bar requested by the Division appropriate. It is a close question and the Division makes a strong argument that respondents satisfy the Steadman criteria. According to Steadman, a permanent exclusion is not justified in fact unless the Commission articulates compelling reasons for issuing such a sanction, and articulates why a lesser sanction would not

sufficiently discourage others from engaging in the unlawful conduct it seeks to avoid. Examples of situations which the Steadman court found might justify disbarment include where the facts indicate a reasonable likelihood that a particular violator cannot ever operate in compliance with the law, or might be so egregious that even if further violations of the law are unlikely, the nature of the conduct mandates permanent disbarment as a deterrent to others in the industry.

It is impossible to know exactly what minimum sanction will achieve the desired result, i.e., behavior which does not violate the securities laws and regulations. The evidence in this record indicates a high probability that Mr. Blinder cannot ever operate in the securities industry in compliance with the law, and that a severe sanction is required in the public interest to achieve compliance with the securities statutes and regulations and to deter others from violations. Factors which caused me to reach this conclusion include the fact that Mr. Blinder committed the blatant securities violations in American Leisure, the biggest underwriting ever attempted by his firm, when he knew that the Commission would be looking closely at his conduct; Mr. Blinder is unrepentent and denies responsibility for the American Leisure violations even though the findings are final; outside of one person with no job guarantees (Vice-president Legal and Compliance), there is no persuasive evidence that the firm intends to function in compliance with the securities statutes and regulations; the disciplinary findings made against Blinder Robinson by the NASD and 16 states

for activities committed before and after Judge Matsch's decision; the fact that in 1986 the District Court in Colorado refused to vacate the injunction because Mr. Blinder still controlled the firm and he was not fully aware of his own fault in American Leisure, and Mr. Blinder's views expressed on this record.

I find it necessary and appropriate in the public interest to: (1) bar Mr. Meyer Blinder from association with any broker or dealer, provided that after two years he may apply to become become so associated, (2) suspend the broker dealer registration of Blinder Robinson for 45 days, and (3) prohibit Blinder Robinson from participating in any securities offering for a period of two years. The less severe sanction of a bar with an opportunity to reapply after two years, rather than a permanent bar, and the suspension of the broker-dealer registration and limitation on the registrant's underwriting function will serve as a deterrent by warning those who are considering securities violations that the Commission will not treat lightly actions which undermine the integrity of the marketplace and will give Mr. Blinder an opportunity for rehabilitation and an opportunity to seek reinstatement in a time specified.

ORDER

Based on the findings and conclusions made above, IT IS ORDERED that:

1. Blinder Robinson's registration as a broker-dealer is suspended for a period of 45 days; provided that during the suspension period Blinder Robinson may effect unsolicited retail

customer transactions and related inter-dealer transactions, complete outstanding transactions, and make deliveries and transfers of securities;

2. for a period of two years following the suspension, Blinder Robinson is prohibited from participating, directly or indirectly, in any securities offering as underwriter, selling group member, or in any other manner; and

3. Mr. Meyer Blinder is barred from being associated with any broker or dealer, provided that after two years he may apply to the appropriate self-regulatory organization for permission to become so associated.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice. Pursuant to this rule, this initial decision shall become the final decision of the Commission as to each party who has not filed a petition for review pursuant to Rule 17(b) within fifteen days after service of the initial decision upon him, unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to a party. If a party timely files a petition for review, or the Commission acts to review as to a party, the initial decision shall not become final as that party.

Brenda P. Murray

Brenda P. Murray
Administrative Law Judge

Washington, D.C.
April 27, 1990