WHAT WE LEARNED FROM TEN-YEARS OF

LITIGATION WITH THE SEC

With Appendix

'A man who has committed a mistake and doesn't correct it is committing another mistake.'
Confucius

PURPOSE OF ARTICLE:

To share with other professionals what it is like to run afoul of the regulatory system and the almost Herculean task of overturning agency hearings by an administrative law judge.

To assist us in coming to closure with our ten-year experience with the Division of Enforcement of the Securities and Exchange Commission.

INTRODUCTION

What we set forth herein is largely based upon our own experiences with the administrative system.* Additionally, you will find a brief description of the facts of the case and an abstract of the judicial findings in for further reading at Appendix

---

* Administrative Proceeding File No. 3-9041, United States of America, Before the Securities and Exchange Commission, Washington DC. In the Matter of IMS/CPAs & associates, Vernon T. Hall, Stanley E. Hargrave, and Jerome B. Vernazza

United States Court of Appeals for the Ninth Circuit. Jerome B. Vernazza v. Securities and Exchange Commission No. 01-71857, SEC No. 3-9042. IMS/CPAs & Associates; Vernon T. Hall; Stanley E. Hargrave v. Securities and Exchange Commission No. 02-00716, SEC No. 3-9042.

The lessons we learned are generally the same for all licensed professionals whether it be a lawyer not following the rules of professional conduct, a doctor

laggard at keeping charts according to standards of care, or an investment adviser (even we CPAs) not making disclosures in precision as was our case.

Regulatory agencies play a great and paramount role in determining your professional future because their role, when reduced to its essence, is to protect the public from unscrupulous practitioners and those of us who do not follow their rules. If you do not precisely follow their regulations, regardless of your interaction and success with clients or patients, it will be "form over substance," and you will pay the consequences. In many cases, such as ours, interpretive regulations are sparse and case law dominates in any litigation. Hence, the importance of retaining counsel in planning for any transactions where disclosure is required.

Keeping in mind the "protection of the public" duty of agencies, we provide our insight especially for small practitioners and for those currently involved in administrative proceedings in order to minimize their personal damages and understand what it is like going through the litigation process with the SEC. There is a big difference in the process and procedures between private parties in litigation as compared to between regulators and the regulated.

WHAT THE CASE WAS ABOUT

The case was about inadequate disclosure to clients and in public filings, concerning a loan for $60,000 from World Money Managers (World) which was used to pay the closing costs of the Tax-Planning Federal Tax Fund (Tax Fund), which loan was being paid off by fees from World, an investment adviser to a mutual fund family, where some of these fees were indirectly earned by investments in the mutual funds by some of our clients.

THE CASE – DIVISION OF ENFORCEMENT VIEW

The Division charged that Respondents engaged in a fraudulent scheme to discharge a debt by recommending that their clients invest in a fund which charged for services already being provided. The Division charges that Respondents repeatedly misrepresented to their clients, and in public filings, that they were not receiving any compensation for investment recommendations. This case is not factually complicated. The vast majority of facts were not in dispute.

THE CASE – RESPONDENTS VIEW

This case was about the adequacy of an investment adviser's disclosure to its clients concerning fees received under a shareholder servicing agreement. IMS/CPAs (IMS), Vernon T. Hall (Hall), Stanley E. Hargrave (Hargrave) and Jerome B. Vernazza (Vernazza), provided disclosure that may not have been perfect. However, the fact that conflicting disclosures exist is evidence of Respondents' lack of intent to mislead or deceive. Testimony by their clients stated that they were told of the fee arrangement and that they did receive a rebate of fees.

In late 1990 we formed the Tax Fund with the assistance of World Money Managers. By early 1992 it was apparent that the Tax Fund did not have enough assets to operate efficiently. A decision was made to close it down. We could either have the fund absorb the closing costs (reducing the NAV to shareholders) or we could pay the closing costs. We decided to pay the closing costs. Our position with the SEC was we were not bound to pay the close down fees in liquidating the Fund; we did so that our clients would not bear that burden. Had we not volunteered to pay the legal and accounting cost to close the fund there likely would not have been a contest.

About the same time we became Shareholder Servicing Agents for World in regards to the Permanent Portfolio Family of Funds. The work we provided was for many types of shareholder services, but the most significant time and effort was for marketing for World to non-clients through other CPAs, financial advisers and lawyers. Payments for the services provided for World were capped by a formula determined by the amount of money clients and non-clients were

invested in their funds. The $60,000 loan, closing of the Tax Fund, and signing of the Shareholders Servicing Agreement all occurred within days of each other in June 1992.

The majority of the facts were not in dispute. The major difference was the emphasis that the SEC placed on disclosure of how the note repayment was being made. We envisioned the "cap" formula on fees to be a working arrangement with World; the Enforcement Division viewed it as a referral or finder's fee. We did not disclose this as such. On the ADV filed after June 1992 we had not checked question 13A on the ADV which had to do with earning fees by having a sales or financial interest. They took the position that we "designed an elaborate fraudulent scheme to discharge a debt by recommending that our clients invest in a fund which charged for services [that were] already being provided."

THE DECISION

The Administrative Law Judge's decision, sustained by the SEC Commissioners and by the U.S. Court of Appeals, Ninth Circuit, was to suspend us from practicing as or with an investment adviser for six months and to disgorge fees earned plus interest (amounting to $118,234.44). This was based on the belief of our deliberate attempt to conceal the relationship with World to our clients and to the public, and because we acted with scienter because we knew or were reckless in not knowing that we failed to make this disclosure.

A TEN-YEAR PROCESS WITH THE SEC

The events of this case spanned thirteen years from when the Tax-Planning Federal Tax Fund was in formation in 1990 until our six-month suspension as a registered investment adviser ended in May 2004.

HISTORY OF THE CASE

December 1990	Formation of The Tax-Planning Federal Tax Fund
June 22, 1992	Shareholders Servicing Agreement Signed
July 11, 1996	SEC Order to Cease and Desist
Dec 2-4, 1996	SEC Administrative Hearing Los Angeles
Jan. 12, 1998	Initial Decision SEC Administrative Law Judge
July 26, 2001	SEC Hearing, Washington DC
Nov. 5, 2001	SEC Opinion
Feb. 5, 2003	U.S. Court of Appeals, 9th Circuit Argued and Submitted
April 24, 2003	U.S. Court of Appeals, 9th Circuit Opinion Filed
Nov 5, 2003	SEC Order Making Sanctions Effective Within 14 Days
Nov. 17, 2003	Disgorgement of $118,234.44 Made by Respondents
Nov. 17, 2003	Suspension as Registered Investment Adviser Starts
May 16, 2004	Suspension as Registered Investment Adviser Ends

Ten of these years were spent in depositions with the Department of Enforcement, an SEC Administrative Law Judge hearing, numerous briefs, appeals to the Commissioners in Washington DC, and a final appeal to the U.S. Court of Appeals, Ninth Circuit.

The regulatory process dragged on for years with long periods of time between hearings, decisions, appeal motions, etc. The courts would not allow this slow march of justice if the dispute had been between private parties.

The SEC legal staff is immense. Local offices also rely on the legal resources in Washington DC. Case law is exhaustively researched by staff and Respondents need to hire specialized lawyers in the private sector.

Our position was that we paid for closing down the Tax Fund instead of causing the shareholders the burden of the closing fees. The Division took the position we did this to protect our reputations and we "designed an elaborate fraudulent scheme." Looking back, it didn't really matter to the SEC whether we paid the closing fee or the shareholders' took a lower net asset value on liquidation; what did matter in either case was that it was properly disclosed in writing to our clients and in public filings, and it wasn't.

The whole matter would have been non-existent if we had only relied on the knowledge of an experienced securities lawyer right from the beginning of our negotiations with World. Such a lawyer would have guided us in the proper way to disclose in detail to our clients and in public filings the $60,000 loan, how it was being paid off, what we were getting paid, and what services we were providing for such pay. Instead we relied on our own judgment on what to disclose and how to disclose it. This was reckless in so far as we should have known to get professional advice separate from World's legal adviser. Additionally, we did not have a defense of having used our own counsel in determining what disclosure we did make. This was an enormous error on our part.

We should have invoiced World monthly or quarterly for the work we did. We erred in just writing them a letter stating we had earned much more than the cap we had agreed upon based on money invested. We should have been

making monthly payments on the $60,000 note regardless of when we actually received fees from World.

From the initial decision by the ALJ, through the SEC hearing decision, to the appeal decision, no mention was made by any of these tribunals of the testimony at the original hearing by two of Vernazza's clients that they were verbally told of fees being earned and that rebates were given back to them. Neither was mention made of their testimony that less money was invested in the World Funds than was transferred out of the Tax Planning Fund (in one case less by one-half and in another less by 90%). We steadfastly held to this defense never admitting to ourselves that, in fact, there was never proper written disclosure to the clients before the investments were made.

As fiduciaries we are required to put the client's interest first because our actions affect the welfare of others. Fiduciaries must realize that this also means that we must administer our practice in such a way that it satisfies the regulations of the Regulatory Agency in question. It doesn't matter that our clients did not lose money, that they received rebates or credits back from us for fees we received; it doesn't even matter that their portfolios performed well during difficult market times. What does matter is that we did not properly disclose in the eyes of the law our transactions and financial interest to our clients and the public.

We were ordered to disgorge the fees we had earned from World from both clients and non-clients, less amounts we had rebated back to clients, plus interest from August 1996. We did negotiate the method of disgorgement with the SEC so that the $118,234 was paid directly to our clients. For the first time the SEC allowed disgorgement to be paid directly from an attorney's trust account instead of to the Treasury. The fees we earned were from both clients and non-clients. The disgorgement amount, however, was only paid to our clients, since those were the ones that were considered by the courts to have been damaged. Fortunately these payments enriched our clients above any fees we made from their investments in World funds.

In retrospect, we relied on the facts that supported our reasoning and that defended our position. We ignored the facts brought out that represented the Divisions interpretation of what we did wrong. Had we taken time to consider their points we might have been more apt to settle the matter early. Later we refused to reconsider the obvious even when we were going nowhere with our appeal to the Commissioners of the SEC. We were too busy defending ourselves to be objective. We were in denial when we thought we would finally get our "day in court" through an appeal with the Ninth Circuit.

After all these years we ended up wasting many hours, spending much money on legal fees, tainting our professional reputations, and causing distress for our families.

CONCLUSION

Now that the SEC matter is over, we have made the disgorgement and we have sat-out for six months as investment advisers, we find ourselves realizing how permanent this legal process is and that we will always have these findings reflected against our reputations. Together, we have been CPAs for a combined period of eighty years. Both of us have had unblemished records until now. This has been a shameful experience. We feel remorse and guilt.

We have written this article to help other professionals, especially those with small practices and limited resources in their firms (Vernazza has worked home-in-office without employees since 1978; Hall has worked with two or three employees in his firm). We anticipate that you will learn that there comes a time when you need to obtain outside expertise to guide you to regulatory compliance.

We hope that those of you that may face or are facing regulatory oversight or enforcement have carefully reviewed the agency's position on possible

infractions. We trust that you quietly and consciously take the time to reflect on your lawyer's advice. Although you may have compelling reasons to believe your position, ask yourself: "Is it necessary to spend your time, resources, and the despair of your loved ones, to remain in a long-drawn-out process?"

We have written this article also for our benefit -- it has helped to make this incident part of our past. We take responsibility for our actions. We now look forward to working hard to restore our reputations. We are moving on to the next part of our lives. We have learned from our mistakes, and we are correcting our mistakes.

Appendix for further reading of a brief description of the facts of the case and an abstract of the judicial findings.

Vernon T. Hall CPA, CFP, has a accounting practice in Riverside California -- vernh@leonardllc.com
J. Ben Vernazza CPA, PFS, CrFA, TEP is founder of The Oversight Group LLC and is a Registered Investment Adviser in Aptos California – ben@oversight-group.com www.oversight-group.com

SEE APPENDIX STARTNG ON THE NEXT PAGE. . . . .

APPENDIX

FACTS OF THE CASE

IMS was an investment adviser that has been registered with the United States Securities and Exchange Commission ("SEC" or "Commission") since 1988, the same year it was founded. From 1988 to 1992, Hall and Hargrave were the principals of IMS. Hall has been practicing as a certified public accountant since 1967 without customer complaint or disciplinary history. Hargrave was a principal of IMS from inception through the time of the events relevant to this case, and has no prior disciplinary history.

Mr. Vernazza has been a Certified Public Accountant since 1961 without client complaint or disciplinary history with any regulatory agency. Vernazza owned the Aptos California office of IMS/CPA & Associates. The Aptos office was registered with the SEC separately as a sole proprietor.

Vernazza was also affiliated with and paid consulting fees by IMS/CPAs & Associates in Riverside California and other IMS/CPA offices in Arizona and Marin County California until June 1992. After December 31, 1991 Vernazza was a partner in Hall & Vernazza, CPAs only as it pertained to the Tax Planning Fund and the Shareholder Servicing Agreement.

In 1991, World Money Managers, Inc., an investment adviser ("World"), formed the Tax-Planning Federal Cash Fund with Respondents, a portfolio of the Qualified Investors Funds, Inc., an open-end mutual fund company registered as such with the Commission (the "Tax Fund"). The Tax Fund had become too small to operate efficiently. As a result, Respondents and World decided to close the Tax Fund in June of 1992.

If the costs related to the closing of the Tax Fund were absorbed by the Tax Fund, those of Respondents' clients that were Tax Fund shareholders would have directly borne the costs of closing the fund through a diminution of the net asset value of their Tax Fund. To avoid this, Respondents agreed to pay the estimated costs of closing the Tax Fund, though they were not legally obligated to do so.

World agreed to lend Respondents the estimated closing costs, and Terry Coxon, World's general partner instructed World's counsel, Richard Rolnick ("Rolnick"), to prepare a promissory note ("Note") whereby World lent Hall & Vernazza $60,000 to pay for the costs of closing the Tax Fund. Hall, Hargrave and Vernazza each individually guaranteed payment of the Note.

Respondents and World also contemplated the disposition of the shares of the Tax Fund with respect to how the shareholders of the Tax Fund would now invest their money. Mr. Coxon believed that "the investment that was most similar to what they already had was a portfolio in the Permanent Portfolio Family of Funds." World was and is the investment adviser to the Permanent Portfolio Family of Funds, Inc. ("Permanent Portfolio"). According to Mr. Coxon's testimony, the clients displaced by the closing of the Tax Fund needed service including an introduction to the Permanent Portfolio and subsequent shareholder servicing.

Rolnick suggested that Hall & Vernazza CPAs and World enter into a shareholder servicing agreement. A shareholder servicing agreement is an agreement whereby an investment adviser or mutual fund hires another adviser or consultant to provide services to both shareholders and non-shareholders. Services provided may include sales and marketing services (to obtain, additional fund investors) and services performed for existing shareholders. Respondents hoped the fees Hall & Vernazza earned under the Shareholder Servicing Agreement would pay off the Note, but they knew that if Hall & Vernazza didn't earn enough fees on the Note would still be due and payable. The purpose of the Shareholder Servicing Agreement was, as World's general partner testified, to provide services to the Permanent Portfolio.

The method of payment included in Schedule 1 to the Shareholder Servicing Agreement provided that Hall & Vernazza would be paid ". . for time, effort and complexity for services" in an amount not to exceed certain percentage of assets of "Agent Clients." "Agent Clients" are shareholders in the Permanent Portfolio that became shareholders as a result of the efforts of Respondents. This percentage of assets of "Agent Clients" became the cap on the maximum payment. This arrangement was designed to accommodate World's desire to have a cap on what World would have to pay Hall & Vernazza

Vernazza was in charge of doing the work related to the Shareholder Servicing Agreement. In addition to hours spent performing work under the agreement related to speaking with shareholders and potential shareholders, Vernazza operated a booth to market the fund at an AICPA conference, and obtained a listing of the Versatile Bond Portfolio of the Permanent Portfolio as an acceptable fund at Charles Schwab for trading purposes. Vernazza also provided Permanent Portfolio applications to other CPAs, attorneys, financial planners and other persons. This application was coded to indicate that the source of the investor was Hall & Vernazza. As such, Respondents would have been given credit for a "Client" in the

Shareholder Servicing Agreement, even though the individual investor was not an advisory client of IMS.

IMS submitted only one statement for services to World, because the statement submitted was for services that reached an amount far beyond the cap stated in the Shareholder Servicing Agreement. At the time the statement was generated, Vernazza had already devoted time to providing services under the Shareholder Servicing Agreement equal to approximately $60,000. Because that amount exceeded the cap in the Shareholder Servicing Agreement, he merely requested payment on the maximum amount under the cap.

Hall had not recommended that clients go into the Permanent Portfolio prior to June or July of 1992 because the Tax Fund had lower internal costs. Now that the Tax Fund was closing, clients in the Tax Fund needed an appropriate alternative, and the Permanent Portfolio was, according to Mr. Coxon, the "most similar to what they already had". Because of a decrease in interest rates at the time, Hall believed that the extended maturities of the securities held in the Versatile Bond Portfolio (a portfolio within the Permanent Portfolio) had the potential to enhance a client's investment return while still maintaining the tax related advantages of the closing Tax Fund. Hall only recommended the Permanent Portfolio to clients whose investment objectives or tax status were appropriate matches for the Permanent Portfolio.

Two of Hall's clients invested in the Permanent Portfolio close to the time Hall & Vernazza entered into the Shareholder Servicing Agreement. Hall did not recommend that these two clients invest all of their assets in the Permanent Portfolio. Hargrave recommended that ten or less of his investment advisory clients invest in the Tax Fund. Some of his clients' funds that were invested in Tax Fund subsequently became invested in the Permanent Portfolio. Vernazza had twenty-one advisory clients, eleven of which were investors in the Tax Fund and World Fund.

As noted by Counsel for the Commission in oral arguments before the Commission, no clients lost money as a result of the activities.

Vernazza rebated fees he received from World to his clients each year and prior to the Cease and Desist Order of July 1996. Copies of the fee rebate checks and the transmittal letter for the years 1993, 1994, and 1995 were presented into evidence. This was corroborated by testimony of two clients at the hearing. Additionally, the disgorgement order from the Initial Decision orders to "disgorge $75,032.78 minus the amount Mr. Vernazza has refunded to clients plus interest."

The appropriate place for a disclosure of this type of arrangement is in the Form ADV and disclosure statements given to clients. Respondents did not "check the box" indicating that they recommended securities to clients in which it directly or through a related person had a sales interest (Part I, Item 21 of Form ADV), financial interest (Part II, Item 9D of Form ADV) or received an economic benefit in connection with giving advice to clients (Part II, Item 13A of Form ADV). At the time Hargrave prepared the amendment to Form ADV dated 9/30/92, he understood the term "financial interest" to be an ownership interest. Unlike the term "related person", there is no definition of what a "financial interest" or a "sales interest" is found in the ADV form. At the time he prepared the amendment to Form ADV dated 9/30/92. Mr. Hargrave did not think the question's intent included the Shareholder Servicing Agreement. Hargrave understood that "applicant or a related person" in Part II, Question 13A of Form ADV would include IMS. However, he didn't think Question 13A included IMS' receipt of shareholder servicing fees because he thought IMS was being paid for time and effort, not for rendering investment advice to clients.

In their disclosure statement, Respondents stated that "Hall & Vernazza, CPAs of which Mr. Hall is a partner, is a Shareholder Services Agent to World Money Managers, the adviser to the Permanent Portfolio Family of Funds, Inc. Fees paid by World Money Managers to Hall & Vernazza or Hall and Hargrave are for advisory and administrative support services with respect to certain investors in any of the Permanent Portfolio Family of Funds". The above was repeated in an amendment to Form ADV dated 9/28/92 filed with the Commission with the following added language: "Such services include, but are not limited to, client tax planning concerns and questions about the portfolios including tax aspects of an investment in the portfolio. Investment Advisor shall pay Hall & Vernazza for the time, effort and complexity of services", the disclosure was repeated in an amendment to Form ADV dated 3/30/93.

Vernazza regarding his Aptos sole proprietorship, in form ADV dated August 28, 1992, stated; "On June 22, World Money Managers retained Hall & Vernazza CPAs, as its Shareholder Servicing Agent relative to the Permanent Portfolio Family of Funds. "Hall and Vernazza provide certain tax-planning and administrative support services with respect to investors and prospective investors in any Permanent Portfolio Fund. "World Money Managers pays Hall & Vernazza for their time, effort and complexity of services. The applicant is a partner in Hall & Vernazza CPAs." Vernazza amended his filing on March 19, 1993, by adding "Mr. Vernazza and Hall & Vernazza are not otherwise affiliated with any brokers, dealers or investment companies."

Respondents gave their disclosure statements annually to existing clients when the clients renewed their engagement with IMS and to new clients when they became new clients. One paragraph of the engagement letter said "IMS warrants that they have not and will not receive any commission or any payment from, nor do they have any financial interest in, any recommendations made." A separate paragraph of the engagement letter said "Hall & Vernazza, CPAs, of which Mr. (Hall, Hargrave, or Vernazza) is a partner (or principal), is a Shareholder Servicing Agent to World Money Managers, the adviser to the Permanent Portfolio Family of Funds, Inc. Fees paid by 'World Money Managers to Hall & Vernazza are for advisory and administrative support services with respect to investors in any of the Permanent Portfolio Family of Funds. "Mr. (Hall, Hargrave, or Vernazza) and Hall & Vernazza are not otherwise affiliated with any brokers, dealers or investment companies."

In addition to this written disclosure, clients were verbally advised of the Shareholder Servicing Agreement. One of Hall & Hargrave's clients was called as a witness by the Division of Enforcement. They stated they had received written disclosure from Respondents about the arrangement with World.

No Vernazza clients were called as witnesses by the Division of Enforcement. Two of Vernazza clients traveled from Northern California to testify for Mr. Vernazza. Both testified that Vernazza had told them of the fees regarding the World transactions. In addition, neither suggested that Vernazza had orchestrated a wholesale transfer of their accounts from the Tax Fund into World affiliated funds. One client testified she had $203,000 in the Tax Fund and only $98,000 was placed in World Funds. The other client testified that he had $250,000 in the Tax Fund and only $27,000, or about 10%, was placed in World funds. One client testified that Vernazza had always rebated to them when he received an outside fee.

After the 1996 hearing, Mr. Vernazza returned to Northern California on December 5, 1996 (the day after the hearing). He opened mail from a former client containing a copy of a letter and attachments which they transmitted to the Division of Enforcement, at the request of the Division, before the hearing in late November 1996. By immediate notice Vernazza requested to the ALJ the inclusion of the letter in the record. The ALJ rejected the motion.

The wording of the letter made it clear that it represented evidence exculpatory to Vernazza. Notification of receipt of the letter by the Division before the hearing would have prompted Vernazza to call for the inclusion of the letter as an Exhibit and the calling of the writer as a witness. However, the Division never notified Vernazza of the letter.

JUDICIAL FINDINGS

THE INITIAL DECISION BY THE SEC ADMINISTRATIVE LAW JUDGE

1. Violations Section 206(1) and 206(2) of Advisers Act

    A. These sections established a fiduciary duty for investment advisers to act for the benefit of their clients.

    B. Respondents violated these sections by representing that they received no fees, commissions or compensation from any sponsor, offering or selling any of the investments recommended.

    C. Hall and Vernazza never submitted invoices to World Money Managers detailing their efforts or showing the amount of time expended pursuant to the agreement.

    D. Failed to amend their ADV and engagement letters to reveal the true nature of IMS business dealings with World Money Managers.

    E. Found: Deliberate attempt to conceal the relationship with World Money Managers with their clients. High standards of truthfulness and disclosure must govern the propriety and legality of investment advisers' efforts to induce others to purchase their services.

    F. Found: The individual Respondents acted with scienter because they knew or were reckless in not knowing that IMS failed to disclose material information to its clients and the investing public.

2. Violation of Section 204 of Advisers Act and Rule 204-3 there under

    A. Section 204 requires that investment advisers keep records and file complete ADVs and send ADVs promptly to the commission if the information previously filed becomes inaccurate

    B. Rule 204-3 mandates a written disclosure statement be sent to their clients in conformance with Section 204.

3. Violation of Section 207 of the Advisers Act

A. Section 207 prohibits any person from willfully making an untrue statements or willfully omitting any material fact.

B. This section was willfully violated by IMS, Mr. Vernazza and Mr. Hargrave, the IMS partner responsible for preparing investment advisers filings.

4. Public Interest Section 203(3) of the Advisers Act

A. Section 203(a) authorizes the Commission to censure, place limitations on, suspend, or revoke the registration of an investment adviser where that has been a violation of the securities statute and where it is in the public interest.

B. Found: It is in the public interest to suspend the investment adviser's registrations of IMS and Mr. Vernazza for six months and to suspend Mr. Hall, Mr. Hargrave, and Mr. Vernazza from association with an investment adviser for the same period.

C. The public interest does not require an industry wide bar to these Respondents because they have not been found guilty of criminal conduct, there is no evidence of prior security law violations, they did not substantially enrich themselves by their activities, and they did not threaten judicial and regulatory officials who dealt with them.

5. Disgorgement Section 8A(3) of Securities Act, Section 21C(e) of the Exchange Act, and Section 203(k)(5) of the Advisers Act.

A. These sections all authorize the entry of an order requiring an accounting and disgorgement in a cease and desist proceeding.

B. Found: That IMS, Mr. Hall, Mr. Hargrave, and Mr. Vernazza jointly and severally, shall disgorge $75,032.78 minus the amount Mr. Vernazza refunded to clients, plus prejudgment interest from August 1, 1996.

6. Cease and Desist Section 8A(a) of Securities Act, Section 21C(a) of Exchange Act and Section 203(k) of the Advisers Act

A. Authorizes an entry of an order to cease and desist from committing or causing such violation and further violations.

B. Found: Cease and desist order is appropriate here because there is a high probability of future violations because Respondents have shown disdain, disinterest and insensitivity to the investment advisers rules and regulations.

SECURITIES AND EXCHANGE COMMISSION: Grounds for Remedial Action: Fraud, Material Misrepresentations, Reporting Violations. Registered investment adviser and its control persons misrepresented in public documents that they were not receiving any compensation for investment recommendations. Held, it is in the public interest to suspend the registration of IMS for six months; suspend Hall, Hargrave and Vernazza from being associated with an investment adviser for six months; order Respondents to cease and desist from committing or causing any violations and any future violations of the provisions they were found to have violated; and order Respondents jointly and severally to disgorge $75,032.78 minus the amount Vernazza refunded to clients, plus prejudgment interest from August 1, 1996. (Opinion of the Commission, November 5, 2001).

UNITED STATES COURT OF APPEALS, NINTH CIRCUIT OPINION: The Commission determined that the petitioners, who are investment advisers or persons associated with investment advisers, knowingly or recklessly made materially false statements and omissions to their clients and in their papers filed with the Commission. The Commission found that the petitioners falsely represented that they received no referral fees and had no financial interest in any of the recommendations they made to their clients. Because the Commission's finding are supported by substantial evidence, we deny the petition for review.