In the Matter of EDGEMONT ASSET MANAGEMENT CORP. and BOWLING GREEN SECURITIES, INC.

Admin. Proc. File No. 3-7507

SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISORS ACT OF 1940, Release No. 1280;
INVESTMENT COMPANY ACT OF 1940, Release No. 18207;
SECURITIES EXCHANGE ACT OF 1934, Release No. 29326;
SECURITIES ACT OF 1933, Release No. 6901

June 18, 1991

TEXT: ORDER INSTITUTING PROCEEDINGS, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be instituted pursuant to Section 203(e) of the Investment Advisers Act of 1940, as amended ("Advisers Act"), Section 15(b)(4) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), and Section 9(b) of the Investment Company Act of 1940, as amended ("Investment Company Act"), with respect to Edgemont Asset Management Corp. ("Adviser"), an investment adviser registered with the Commission since January 1986, and Bowling Green Securities, Inc. ("Broker"), a broker-dealer registered with the Commission since June 1957.

II.

In anticipation of these proceedings, the Adviser and the Broker have submitted Offers of Settlement ("Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings, and any other proceedings brought by or on behalf of the Commission or in which the Commission is a party, and without admitting or denying the findings contained herein, but admitting paragraphs IV. A through C below, the Adviser and the Broker consent to the Findings and Order Imposing Remedial Sanctions set forth below.

III.

Accordingly, IT IS ORDERED that proceedings pursuant to Section 203(e) of the Advisers Act, Section 15(b)(4) of the Exchange Act and Section 9(b) of the Investment Company Act, be, and they hereby are, instituted.

IV.

On the basis of this Order and the Offers submitted by the Adviser and the Broker, the Commission finds that:

A. The Adviser is located in New York City and has been registered with the Commission as an investment adviser since October 1984. Since January 1986, the Adviser's sole client has been The Kaufmann Fund, Inc. ("Fund").

B. The Broker is a broker-dealer that has been registered with the Commission since June 1957. The Broker is an affiliated person of the Adviser, under Section 2(a)(3)(C) of the Investment Company Act, by virtue of the control that the sole shareholder of the Broker and 50% shareholder of the Adviser exercises over both entities.

C. The Fund is an open-end, non-diversified, management investment company that has been registered with the Commission since January 1968. At the time of the staff's examination, April 1990, the Fund had approximately 4,700 shareholders and a net asset value of approximately $ 36 million; currently, it has approximately 5,300 shareholders and a net asset value of approximately $ 50 million. The Fund pays an annual advisory fee to the Adviser of 1.5% of the Fund's average net assets.

D. At all relevant times, the Adviser was responsible for ensuring the Fund's compliance with the Investment Company Act, including Sections 18(f)(1) and 17(g) and Rule 17g-1(d) promulgated thereunder.

E. Interpositioning is the practice whereby an investment company, at the direction of an investment adviser, uses a broker to effect a transaction as its agent, instead of dealing directly with a market maker on a principal basis, to purchase or sell a security. See Report of Special Study of Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess., Pt. 2, at 620 (1963). The Commission held in Delaware Management Company, 43 S.E.C. 392 (1967), that interpositioning violates the anti-fraud provisions of the securities laws when it results in an investment company incurring unnecessary brokerage charges.

F. From in or about January 1986, up to and including in or about December 1989, the Adviser willfully n21 violated: Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder by employing devices, schemes, or artifices to defraud, making untrue statements of material fact or omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading and engaging in acts, practices, or courses of business which operated or would have operated as a fraud upon persons, in connection with the purchase or sale of a security; Section 17(a) of the Securities Act of 1933, as amended ("Securities Act"), by employing devices, schemes, or artifices to defraud, obtaining money or property by means of untrue statements of material fact, or omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading and engaging in transactions, practices, or courses of business which operated or would have operated as a fraud upon purchasers; and Section 206(1) and (2) of the Advisers Act by employing devices, schemes, or artifices to defraud and engaging in transactions, practices, or courses of business which operated as a fraud upon clients. The violative conduct consisted of interpositioning the Broker between the Fund and dealers making primary markets in over-the-counter securities that the Fund purchased, thereby causing the Fund to incur unnecessary expenses, i.e., the commissions that the Broker charged the Fund for these securities transactions.

n21 Willfully as used in this Order means intentionally committing the act which constitutes the violation. There is no requirement that the actor also be aware that he is violating the federal securities laws or the rules and regulations promulgated thereunder. See Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965).

G. From in or about January 1986, up to and including in or about December 1989, the Broker willfully aided and abetted the Adviser's willful violations of: Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder by employing devices, schemes, or artifices to defraud, making untrue statements of material fact or omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading and engaging in acts, practices, or courses of business which operated or would have operated as a fraud upon persons, in connection with the purchase or sale of a security; Section 17(a) of the Securities Act by employing devices, schemes, or artifices to defraud, obtaining money or property by means of untrue statements of material fact, or omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading

and engaging in transactions, practices, or courses of business which operated or would have operated as a fraud upon purchasers; and Sections 206(1) and (2) of the Advisers Act by employing devices, schemes, or artifices to defraud and engaging in transactions, practices, or courses of business which operated as a fraud upon clients. The violative conduct consisted of willfully aiding and abetting the conduct described in paragraph F above, and thereby failing to obtain best price and execution for its client, the Fund.

H. A short sale involves the creation of a senior security, n22 and that, therefore, such sales may only be made in compliance with the guidelines of Investment Company Act Release No. 10666. From in or about January 1989, up to and including in or about January 1990, the Adviser willfully aided and abetted the Fund's willful violation of Section 18(f)(1) of the Investment Company Act by causing the Fund to engage in short sale transactions without maintaining, in segregated accounts (not at the broker where the transaction occurred), an amount of cash, U.S. government securities or other appropriate high grade debt obligations equal to the difference between the market value of the securities sold short and any cash, U.S. government securities or other appropriate high grade debt obligations required to be deposited as collateral with the broker in connection with the short sale and exclusive of any proceeds from the short sale.

n22 See Investment Company Act Release No. 10666, 5 Fed. Sec. L. Rep. (CCH) P48,525 (April 18, 1979). This type of transaction, in economic reality, is a loan; in the absence of sufficient segregated collateral, the assets of the Fund are jeopardized as collateral for the loan. See Investment Company Release No. 13005, 5 Fed. Sec. L. Rep. (CCH) P48,528 (February 2, 1983).

I. From in or about December 1989, up to and including in or about February 1990, the Adviser willfully aided and abetted the Fund's willful violation of Section 17(g) of the Investment Company Act and Rule 17g-1(d) promulgated thereunder by failing to ensure that the amount of the Fund's fidelity bond was at least equal to an amount computed in accordance with the schedule contained in the Rule. The violative conduct consisted of failing to increase the Fund's fidelity bond coverage to $ 350,000 when the Fund's gross assets reached $ 35 million, as required by the schedule.

J. In connection with the foregoing activities, the Adviser and the Broker, directly or indirectly, made use of the mails or means or instruments of transportation and communication in interstate commerce or of the means and instrumentalities of interstate commerce.

V.

In view of the foregoing, the Commission deems it appropriate and in the public interest to accept the Offers and impose the sanctions specified therein. In accepting the Offers, the Commission has considered the Adviser's representation that in January 1990 it voluntarily ceased executing portfolio transactions through the Broker and caused the Fund to adopt a policy of executing such transactions directly with dealers who make primary markets in over-the-counter securities; and that it has returned to the shareholders of the Fund $ 256,648 -- $ 175,000 on December 31, 1990, and $ 81,648 on April 15, 1991 -- representing the commissions that the Broker improperly charged the Fund for agency transactions in over-the-counter securities, plus prejudgment interest accruing at an annual rate of 9% from January 1, 1986, through the date of each payment.

Accordingly, IT IS HEREBY ORDERED that the Adviser be, and it hereby is, censured.

IT IS FURTHER ORDERED that the registration of the Broker be, and it hereby is, suspended for one year, effective on the second Monday following the date of this Order.

IT IS FURTHER ORDERED that the Adviser comply with the following undertakings:

A. The Adviser shall, within 60 days of the issuance of this Order, review the policies and procedures utilized by the Adviser for purchasing over-the-counter securities on behalf of the Fund to determine if those policies and procedures comply with Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, Section 17(a) of the Securities Act and Sections 206(1) and (2) of the Advisers Act;

B. The Adviser shall disseminate to all relevant personnel, within 120 days of the issuance of this Order, written policies and procedures concerning the Adviser's purchasing of over-the-counter securities on behalf of the Fund, which policies and procedures shall be updated from time to time as necessary to ensure their compliance with Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, Section 17(a) of the Securities Act and Sections 206(1) and (2) of the Advisers Act; and

C. The Adviser shall cause an independent outside consultant, not unacceptable to the Commission's New York Regional Office: 1) to conduct a review of the Adviser's purchasing of over-the-counter securities on behalf of the Fund to ascertain whether the Adviser has complied with the above undertakings, which review shall cover the period ending six months after the issuance of this Order; and 2) to file with the Commission's New York Regional Office, within 60 days of the end of the six month period under review, a report setting forth the findings of its review and certifying the Adviser's compliance with the policies and procedures referred to in paragraphs A and B above.

IT IS FURTHER ORDERED that, if the staff shall allege that there has been a breach of any of the terms, conditions or undertakings set forth in the Offers, then a hearing may be convened in accordance with the Commission's Rules of Practice, in order to determine whether such a breach has occurred and, if so, whether any additional remedial action is appropriate in the public interest against the Adviser or the Broker. For the purpose of any such proceedings, the Adviser and the Broker: (1) consent to the Commission's retention of jurisdiction; (2) will not contest the findings of violations alleged in this Order; and (3) will have the rights provided in the Commission's Rules of Practice.

By the Commission.