

**In the Matter of M&I INVESTMENT MANAGEMENT CORPORATION Respondent**

**Admin. Proc. File No. 3-7784**

**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISORS ACT OF 1940, Release No. 1318**

**June 30, 1992**

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

**I.**

The Securities and Exchange Commission (Commission) deems it appropriate that public proceedings be instituted pursuant to Section 203(e) of the Investment Advisers Act of 1940 (Advisers Act) against M&I Investment Management Corporation (IMC). In anticipation of these proceedings, IMC has submitted an Offer of Settlement which the Commission has determined to accept. Solely for the purpose of this proceeding and any other proceeding brought by or on behalf of the Commission, or to which the Commission is a party, IMC, by its Offer of Settlement, without admitting or denying the Commission's findings, except as to the findings contained in Paragraphs III.1 through III.4, consents to the entry of this Order Instituting Public Proceedings, Making Findings and Imposing Remedial Sanctions (Order).

**II.**

Accordingly, IT IS ORDERED that proceedings pursuant to Section 203(e) of the Advisers Act be, and they hereby are, instituted.

**III.**

On the basis of this Order and the Offer of Settlement submitted by IMC, the Commission finds that:

1. IMC is an investment adviser located in Milwaukee, Wisconsin, which has been registered with the Commission since March 1, 1973. IMC is a wholly owned subsidiary of the Marshall & Ilsley Corporation, a bank holding company.
2. William Gumerman (Gumerman) has been the President of IMC since 1983.
3. M&I Employee Benefit Stock Fund (EBSF) is a collective trust fund, the assets of which are managed by IMC, which has been retained by the Trustee of the Fund, Marshall & Ilsley Trust Company, also a subsidiary of the Marshall & Ilsley Corporation.
4. M&I Capital Appreciation Fund (CAF) is a common trust fund, for which the Marshall & Ilsley Trust Company serves as Trustee. IMC has also been retained by the Trustee to manage the assets of this Fund.
5. On October 11, 1990, the portfolio manager for twelve other accounts managed by IMC placed a "buy" order for 22,900 shares of Sara Lee stock. However, IMC's trader erroneously requested that the broker sell 22,900 shares of Sara Lee stock at a price of \$25.75. The error was discovered by the trader on October 12, 1990, who promptly informed Gumerman of the problem. On October 12, 1990, Gumerman decided to settle the trade by delivering 20,000 shares of Sara Lee stock from the EBSF and 2,900 shares of Sara Lee stock from the CAF, also at a price of \$25.75. The stock was actually delivered out of the two accounts on the settlement date.

6. Prior to the decision being made on October 12, 1990 by Gumerman to deliver the Sara Lee shares out of the EBSF and the CAF, no decision had been made by the portfolio managers of either Fund to sell any Sara Lee shares on that date.

7. On October 12, 1990, the price of Sara Lee stock ranged from a low of \$25.75 to a high of \$26.75, averaging at \$26.18.

8. On October 19, 1990, the EBSF purchased 10,000 shares of Sara Lee stock, at a price of 27.958, representing half of the stock that had been sold out of the EBSF on October 12, 1990. No Sara Lee shares were purchased for the CAF. Subsequent to the Commission's initial inquiry, IMC offered to make payments to the EBSF and the CAF in the amounts of \$24,085.90 and \$276.19, respectively, and has made such payments.

9. Based on the foregoing, Gumerman willfully aided and abetted the violation of Section 206(1) and (2) of the Advisers Act.

10. Based on the foregoing, IMC failed to reasonably supervise Gumerman with a view to preventing his violation of the Advisers Act within the meaning of Section 203(e)(5) of the Advisers Act. IMC had no procedure in place to direct that trading errors be handled in a particular, and proper, manner or that disclosure of the nature and extent of the error and of the proposed method of rectifying it be made to any particular person or entity. The handling of the trading error was totally within Gumerman's discretion and there was no policy or procedure to prevent the violation from occurring.

#### **IV.**

In view of the foregoing, it is in the public interest to impose the sanctions specified in the Offer of Settlement.

Accordingly, IT IS ORDERED THAT:

A. IMC is hereby censured.

B. IMC undertakes:

a. To review its own policies and procedures and to retain, within 90 days of the issuance of the Commission's Order, at its own expense, Arthur Anderson & Co., certified public accountants, to review its existing policies and procedures with respect to the handling of trading errors and to make such recommendations as the accounting firm sees fit regarding same;

b. To adopt and implement such additional policies and procedures, including, but not limited to, the policies and procedures recommended by Arthur Anderson, as will ensure that IMC's policies and procedures are reasonably designed to prevent the recurrence of the violation alleged in Paragraphs III(5) through (7) hereof;

c. To provide training to relevant employees designed reasonably to effect understanding of, and compliance with, the newly implemented policies and procedures;

d. To provide an affidavit to the staff of the Commission, within six months of the issuance of the Commission's Order, confirming that the reviews have been performed, that the recommended procedures have been implemented and that the relevant staff has been trained with respect thereto.

By the Commission.