

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**Investment Advisers Act of 1940**  
**Release No. 2079 / November 8, 2002**

**Investment Company Act of 1940**  
**Release No. 25798 / November 8, 2002**

**Securities Exchange Act of 1934**  
**Release No. 46798 / November 8, 2002**

**Administrative Proceeding**  
**File No. 3-10930**

**In the Matter of GINTEL ASSET MANAGEMENT, INC., GINTEL & CO. LLC, ROBERT M. GINTEL, and STEPHEN G. STAVRIDES, Respondents**

**ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, IMPOSING REMEDIAL SANCTIONS, AND ISSUING CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted (i) pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act") against Gintel Asset Management, Inc.; (ii) pursuant to Sections 9(b) and 9(f) of the Investment Company Act and Sections 15(b)(4) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Gintel & Co. LLC; (iii) pursuant to Sections 203(f) and 203(k) of the Advisers Act, Sections 9(b) and 9(f) of the Investment Company Act, and Sections 15(b)(6) and 21C of the Exchange Act against Robert M. Gintel; and (iv) pursuant to Sections 203(f) and 203(k) of the Advisers Act and Sections 9(b) and 9(f) of the Investment Company Act against Stephen G. Stavrides. (Gintel Asset Management, Inc.; Gintel & Co. LLC; Robert M. Gintel; and Stephen G. Stavrides hereinafter are referred to collectively as "Respondents.")

**II.**

In anticipation of the institution of these administrative proceedings, Respondents have submitted Offers of Settlement ("Offers") that the Commission has determined to accept. Solely for purposes 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 except as to jurisdiction of the Commission over them and over the subject matter of this proceeding, which are admitted, Respondents consent to the issuance of this Order Instituting Public Administrative and Cease-and-Desist Proceedings, Making Findings, Imposing Remedial Sanctions, and Issuing Cease-and-Desist Order ("Order"), as set forth below.

**III.**

On the basis of this Order and Respondents' Offers of Settlement, the Commission finds that:

**A. RESPONDENTS**

1. Gintel Asset Management, Inc., a Connecticut Corporation, has been registered with the Commission as an investment adviser pursuant to Section 203(c) of the Advisers Act (File No. 801-7692) since 1971.

Its principal place of business is Greenwich, Connecticut and at all relevant times it had branch offices in Memphis, Tennessee; Jackson, Mississippi; and Key Largo, Florida. At all relevant times, the firm has had approximately \$275 million in assets under management, including the Gintel Fund (the "Fund").

2. Gintel & Co. LLC, is a Connecticut limited liability company that has been a registered broker-dealer since 1969. Gintel & Co. is the underwriter for the Gintel Fund. The firm is based in Greenwich, Connecticut.

3. Robert Gintel, 74, founded Gintel Asset Management, Gintel & Co., and the Gintel Fund. He is the Chairman and Chief Executive Officer of both Gintel Asset Management and the Fund. Gintel is a trustee of the Gintel Fund and the Chief Executive Officer, senior member, and 75 percent owner of Gintel & Co. Gintel has been in the securities business with various firms for 47 years.

4. Stephen Stavrides, 55, is President and Treasurer of Gintel Asset Management and the Gintel Fund. He also is a trustee of the Gintel Fund and the Chief Operating Officer of Gintel & Co. Since 1984, and at all relevant times, Stavrides has been the compliance officer of both Gintel Asset Management and the Fund, reporting directly to Robert Gintel.

## **B. RELEVANT ENTITY**

The Gintel Fund is a Massachusetts Business Trust that began operating in 1981. It is a registered non-diversified open-end investment company. At all relevant times, the Fund has had approximately \$155 million in assets. Robert Gintel, who owns approximately 34 percent of the Fund, is the portfolio manager for the Fund.

## **C. FACTS**

### **1. Summary**

This matter involves multiple violations of the Advisers Act and Investment Company Act that arose primarily from cross trading between client accounts on a principal basis by Gintel Asset Management, Inc., a registered investment adviser. In the period 1997 to 1999, Robert Gintel, acting as Gintel Asset Management's portfolio manager, effected at least 40 cross trades on a principal basis between an investment company, the Gintel Fund, and accounts in which he had an ownership interest in violation of the Investment Company Act's provision prohibiting trades between a registered mutual fund and affiliated accounts unless such trades meet the criteria for an exemption, which these did not. Gintel Asset Management also engaged in principal transactions in violation of the Advisers Act by causing client portfolios not affiliated with Robert Gintel to trade with accounts in which Gintel held a substantial ownership stake, including the Fund. Gintel Asset Management's principal transactions also rendered false a number of statements to clients and prospective clients representing that the companies did not engage in any affiliated or principal transactions. Stephen Stavrides, the firm's president and compliance officer, prepared and signed the filings containing the false statements.

In addition to these prohibited cross transactions, Robert Gintel engaged in extensive personal trading in securities, frequently within seven days of trades in the same securities by the Fund and other clients, in violation of the Fund and Gintel Asset Management's Code of Ethics. Stavrides, the compliance officer for Gintel Asset Management and the Fund, failed to apply the Code of Ethics' black-out periods for personal trading to Robert Gintel. Gintel Asset Management and Gintel & Co., its affiliated broker-dealer, also failed to establish, maintain, and enforce procedures reasonably designed to ensure that material nonpublic information was not misused.

### **2. Prohibited Cross Trades**

A cross trade is a transaction between two accounts managed by the same investment adviser. Cross trades can be executed by an adviser on an agency or a principal basis. In a principal transaction, an adviser, acting for its own account, buys a security from, or sells a security to, the account of a client. In

an agency transaction, the adviser arranges a transaction between different advisory clients, or between a brokerage customer and an advisory client.

Sections 17(a)(1) and (2) of the Investment Company Act prohibit any affiliated person, or promoter of, or principal underwriter for a registered investment company, or any affiliated person of such affiliated person, promoter, or principal underwriter, acting as principal, from engaging in certain transactions with such registered investment company, unless the Commission grants an order under Section 17(b) of the Investment Company Act exempting the transaction from the provisions of Section 17(a).<sup>1</sup> Rule 17a-7 exempts from the prohibitions of Sections 17(a)(1) and (2) a purchase or sale transaction between (i) two registered investment companies, or (ii) a registered investment company and a person that is an affiliated person of such registered investment company (or affiliated person of such person) solely by reason of having a common investment adviser (or investment advisers) that are affiliated persons of each other, common directors, and/or common officers.<sup>2</sup> The exemption provided by the rule is subject to certain conditions, set forth in the rule, intended to ensure that the exempted transaction is fair to both parties.

The Gintel Fund had Rule 17a-7 procedures in place that had been adopted and approved by the Fund's Board of Trustees. However, Gintel Asset Management repeatedly violated Sections 17(a)(1) and (2) by effecting transactions between the Gintel Fund and accounts affiliated with Robert Gintel that were not eligible for the Rule 17a-7 exemption. These violations occurred in large part because Stavrides incorrectly believed that the prohibitions of Section 17(a) applied only to cross trades between investment companies and not to cross trades between an investment company client and a non-investment company account. Gintel Asset Management's improper cross trades caused the Fund to file with the Commission reports, including Forms N-SAR, that contained misstatements of material fact to the effect that the Fund did not engage in transactions with affiliated persons.

#### **a. The Gintel Fund's Tax-Driven Cross Trades**

In 1998 and 1999, Robert Gintel made over 40 improper cross trades on a principal basis in three different securities between the Fund and his personal account and other accounts in which he had a beneficial ownership interest.<sup>3</sup> The purpose of the trades was to generate capital losses from securities that had dropped in value to offset gains in the Fund and the other accounts, thereby realizing a tax benefit for the Fund and other accounts.<sup>4</sup> In each case, large blocks of stocks were crossed on a principal basis between the Fund and the other accounts at the current market price. The stock was held 31 days and then some or all of it returned to the original portfolio to satisfy the IRS's wash sale rules.<sup>5</sup>

The first set of prohibited cross trades took place at the end of 1998 and involved Milestone Scientific stock. On October 22, 1998, Robert Gintel caused the Fund to sell 620,000 shares of Milestone Scientific in cross transactions with eleven other accounts advised by Gintel Asset Management, including 581,500 shares to seven accounts in which Robert Gintel held a direct or indirect beneficial interest. The shares were sold at a price of \$1.00 per share. Thirty-one days later, on November 23, 1998, Robert Gintel caused the Fund to repurchase 543,200 Milestone shares from the Gintel-affiliated accounts at \$1.00 per share. The other two sets of cross trades, which were executed in a similar fashion, took place in late 1999 and involved large blocks of stock in Horizon Pharmacy and Checkpoint Systems.<sup>6</sup>

Gintel Asset Management, Robert Gintel, and Gintel & Co. directly violated Sections 17(a)(1) and (2) by buying securities from the Fund and by selling securities to the Fund, as principals, from affiliated proprietary accounts. Gintel, as an officer and director of the Fund, and Gintel Asset Management, as the Fund's adviser, were affiliated persons of the Fund, and Gintel & Co., in addition to being an affiliated person of an affiliated person (Gintel), was its principal underwriter. See Section 17(a)(1) and (2); See also *Smith Hayes Financial Services, Advisers Act Rel. No. 1465* (Feb. 2, 1995), (settled proceeding) (affiliated investment adviser and underwriter violated Section 17(a) by, as a principal, buying and selling securities to affiliated investment company). These transactions were not eligible for Rule 17a-7's exemption since the affiliations between the trading entities derived from reasons other than those specified in the Rule as eligible for the exemption. Furthermore, no person or entity obtained an exemptive order from the Commission exempting these transactions from the statutory provisions. There is no indication that any of these transactions resulted in economic harm to any third parties.

Accordingly, Gintel Asset Management, Gintel, and Gintel & Co. willfully violated Sections 17(a)(1) and (2) of the Investment Company Act.

#### **b. The Oneita Industries Cross Trade**

On June 20, 1997, Gintel bought for his personal account 600,000 shares of Oneita Industries stock from the Fund for \$262,500. The \$0.4375 per share price was the market price on the NYSE. On September 23, 1997, Gintel sold 600,000 shares of Oneita stock in the market at \$.4390 per share, for a total of \$900 more than he had paid the Fund for the 600,000 shares he purchased in June.

The purchase was not eligible for Rule 17a-7's exemption because of Gintel's affiliation with the Fund as an affiliated person of the adviser. By purchasing the Oneita stock from the Fund, Gintel willfully violated Section 17(a)(2) of the Investment Company Act.

#### **3. Improper Principal Transactions and False Statements to a Client**

The tax driven cross transactions that Robert Gintel effected between the Fund and accounts in which he did not have an ownership interest were also principal transactions under Section 206(3) of the Advisers Act because Gintel owned over 30 percent of the Fund. Under Section 206(3) it is unlawful for any investment adviser:

directly or indirectly . . . acting as principal for his own account, knowingly to sell any security to or purchase any security from a client . . . without disclosing to such client in writing before completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction.<sup>7</sup>

Gintel Asset Management never gave advance notice nor obtained consent from the clients for any of these transactions, which, as a result, violated Section 206(3) of the Advisers Act.

In addition to the tax driven trades involving the Fund, Robert Gintel effected improper principal transactions on two other occasions in 1999 between his affiliated accounts and a pension fund client of Gintel Asset Management. These pension fund trades were prohibited principal transactions between the adviser and a managed account under Section 206(3) of the Advisers Act. Gintel Asset Management never gave advance notice nor obtained consent from the pension fund to engage in these transactions and never disclosed to it that it had effected certain trades with accounts in which Robert Gintel had a personal ownership interest. Therefore, these trades violated Section 206(3) of the Advisers Act.

The principal transactions involving the pension fund, as well as agency transactions effected by Gintel Asset Management at the same time between the pension fund and another client account, were improper and in violation of Sections 206(1) and 206(2) of the Investment Advisers Act because they were effected for the purpose of concealing from the client the presence in the portfolio of Milestone Scientific and Horizon Pharmacy stock, after the pension fund client had complained about losses in some of the stocks held in the portfolio.<sup>8</sup> Gintel Asset Management sold the Milestone and Horizon stock from the pension fund account into other Gintel Asset Management accounts, including accounts owned by Robert Gintel, just before the end of the second and third quarters in 1999 so that those securities would not be listed as holdings in the quarterly reports sent to the client.<sup>9</sup> Gintel sold the stock back into the pension fund portfolio a day or two into the new quarter at the same price. As an officer who exercised substantial control over Gintel Asset Management, Gintel's state of mind is imputed to the firm. See *In re Sunbeam Securities Litigation*, 89 F. Supp. 2d 1326, 1340 (S.D. Fla. 1999).

Accordingly, Gintel Asset Management willfully violated Section 206(1), 206(2), and 206(3) of the Advisers Act. Gintel willfully aided and abetted and caused those violations. To establish aiding and abetting liability, the Commission must show (1) a primary or independent securities law violation that has been committed by some other party; (2) awareness or knowledge by the aider and abettor that his or her role was part of an overall activity that was improper; and (3) that the aider and abettor knowingly and substantially assisted the conduct that constitutes the violation. See *Investors Research v. SEC*, 628 F.2d 168, 178 (D.C. Cir.), cert. denied, 449 U.S. 919 (1980); *Woods v. Barnett Bank of Fort*

Lauderdale, 765 F.2d 1004, 1009 (11th Cir. 1985). A finding that a person aided and abetted a violation will also establish that the person caused the violation. Dominick & Dominick, Inc., Exchange Act Rel. No. 29243 (May 29, 1991), n.11 (settled proceeding). Each of the three elements are met in the present case. Gintel Asset Management committed underlying primary violations, Robert Gintel acted with scienter in attempting to deceive the client, and Gintel is the person who effected the transactions.

#### **4. Gintel's Personal Trading During Black-Out Periods in Violation of the Code of Ethics**

Robert Gintel and his firms' compliance deficiencies also carried over to Gintel's personal trading. Gintel engaged in multiple personal transactions that violated the Code of Ethics adopted by Gintel Asset Management, the Gintel Fund, and Gintel & Co., as well as Rule 17j-1 of the Investment Company Act.

Rule 17j-1(b)(1), as in effect at the time of Gintel's violative transactions, was promulgated pursuant to Section 17(j) of the Investment Company Act and required funds and their investment advisers to adopt a code of ethics to prevent "access persons" from directly or indirectly engaging in fraud on the fund in connection with the purchase or sale by such person of a security held or to be acquired by such fund.<sup>10</sup> The rule also required that a fund and its adviser use reasonable diligence to prevent violations of the code of ethics. The Fund and Gintel Asset Management shared a Code of Ethics that was in effect throughout the relevant period. The Code applied to "each employee, director and partner" of the Gintel entities. No one was excepted.

Robert Gintel violated the Code of Ethics by repeatedly effecting personal transactions during black-out periods imposed by the Code. Specifically, the Code prohibited access persons from executing a parallel transaction in a security on any day during which any advisory client had a pending buy or sell order in the same security until the order was executed or withdrawn.<sup>11</sup> It further prohibited "investment persons" from purchasing or selling a security within seven calendar days before or after a client of Gintel Asset Management traded in that security. "Investment persons" included all directors, partners, officers, and employees who had access to information concerning investment activities for Gintel Asset Management's client accounts. As a director, partner, officer and/or portfolio manager of Gintel Asset Management and the Fund, Robert Gintel was both an access person and an investment person. The Code's procedures specified disgorgement and other sanctions for violations of the seven-day restriction. Stavrides, as compliance officer, was responsible for monitoring employee trading and determining appropriate sanctions for violations of the Code.

During the period from 1997 to 1999, Robert Gintel engaged in 148 trades in accounts in which he had a direct or indirect beneficial interest within seven days of the Fund trading in the same security, including 54 instances of trades on the same day as the Fund. In a number of other instances, Gintel traded in his own accounts within seven days of other Gintel Asset Management clients trading in the same securities. Stavrides was aware of these trades. The Code of Ethics' seven-day restriction and prohibition on same day parallel trades were not applied to Gintel despite the clear language of the Code that it applied to all "employees," including officers, directors, and partners. There were no written exemptions in the Code for Robert Gintel. As compliance officer, Stavrides had the authority under the Code to shorten or lengthen the seven-day black-out period, depending on the circumstances in each case. However, Stavrides did not adequately document the shortening or lengthening of the seven-day period. Stavrides also had the authority to disapprove Gintel's trades but he never prohibited Gintel from trading in a security that had been purchased by a client account within seven days. Finally, Stavrides did not cause any sanctions to be imposed upon Gintel for these trades nor he did not report to the Fund's Board that there had been violations of the Code of Ethics.

Accordingly, Gintel Asset Management willfully violated Section 17(j) of the Investment Company Act and Rule 17j-1(b)(1) thereunder and Gintel and Stavrides willfully aided and abetted and caused those violations because they failed to use reasonable diligence, and institute procedures reasonably necessary, to prevent violations of the Code.

## **5. Failure to Have Adequate Procedures to Prevent the Misuse of Material, Nonpublic Information**

The Code of Ethics applicable to Gintel Asset Management, the Fund, and Gintel & Co. contained policies and procedures intended to prevent the misuse of material, nonpublic information, as did the Gintel & Co. operations manual. Despite the existence of these policies and procedures, during early November 1999, Robert Gintel purchased shares of Nobel Learning Communications, a thinly-traded stock, for two client accounts and the Gintel & Co. trading account shortly before Gintel Asset Management's sale of a large block of Nobel stock from client accounts became public. Gintel Asset Management sold the block to a company controlled by a very well known investor so the news of the sale was likely to be perceived by the market as favorable.

Section 204A of the Investment Adviser Act requires investment advisers to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the adviser's business, to prevent the misuse of material, nonpublic information by the adviser or any person affiliated with the adviser. Section 15(f) of the Exchange Act is a parallel provision to Section 204A of the Investment Adviser Act that requires broker-dealers to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the broker-dealer's business, to prevent the misuse of material, nonpublic information by the broker-dealer or any person affiliated with the broker-dealer. Robert Gintel's trading in Nobel stock before the block sale by Gintel Asset Management demonstrates that Gintel Asset Management and Gintel & Co. did not have adequate procedures to prevent the misuse of material, nonpublic information.

Gintel was the owner and chairman of Gintel Asset Management and he directed and actively participated in the firm's investment initiatives, some of which involved taking large positions in thinly traded public companies. He was the person most likely to be in a position to have material, nonpublic information about the firm's intentions in regard to trading particular stocks. Gintel also was the senior member of and 75 percent owner of Gintel & Co. Nevertheless, he was not subject to any procedures regarding the use of such information other than the firms' general requirements that were applicable to all employees. Those general procedures, contained in the Code of Ethics, required the employee to make a self-evaluation of whether information might be material and nonpublic and, if so, to report the matter to the compliance officer and refrain from trading. Given Gintel's central position in the firms and likely access to material, nonpublic information, these self-evaluation and self-reporting procedures were not reasonably designed to prevent the misuse of such information. *Guy P. Wyser-Pratte, Advisers Act Rel. No. 1943 (May 9, 2001), (settled proceeding); Gabelli & Company, Inc., Advisers Act Rel. No. 1457 (December 8, 1994), (settled proceeding).*

Accordingly, Gintel Asset Management willfully violated Section 204A of the Advisers Act, Gintel & Co. willfully violated Section 15(f) of the Exchange Act, and Gintel willfully aided and abetted and caused those violations.

## **6. False Statements in Filings**

The affiliated transactions involved in the cross trades with the Fund, the principal transactions and the failure to apply provisions of the Code of Ethics to Gintel resulted in inaccurate statements in Gintel Asset Management's Forms ADV and the Fund's Forms N-SAR (its semiannual report) during the relevant time period. As detailed below, this conduct caused violations of numerous provisions of the Advisers Act as well as violations of Section 34(b) of the Investment Company Act.

### **a. Violations of the Advisers Act**

Gintel Asset Management made misstatements regarding principal transactions and the application of its Code of Ethics in filings with the Commission in violation of the antifraud provisions of the Advisers Act. Specifically, Gintel Asset Management made false statements in its Form ADV when it affirmed that it "does not, as principal, sell portfolio securities to or buy securities from any investment advisory client" and represented that all members of its investment team followed the Code of Ethics. Stavrides signed and had responsibility for preparing the firm's Form ADV.

In making these false representations, Gintel Asset Management violated Section 206(2) of the Advisers Act. Section 206(2) makes it unlawful for any investment adviser to employ any device, scheme or artifice to defraud, or to engage in any act, transaction, practice, or course of business that operates as a fraud or deceit on any client or prospective client. Scienter is not an element of a claim under Section 206(2). See SEC v. Steadman, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992).

Gintel Asset Management's false statements that it did not engage in principal transactions and that the Ethics Code was applied to all employees also violated Section 207 of the Advisers Act. Section 207 prohibits any person from willfully making "any untrue statement of a material fact in any registration application or report filed with the Commission under Section 203 or 204, or willfully to omit to state in any such application or report any material fact which is required to be stated therein." Under Rule 204-1(c), a Form ADV is a "report" within the meaning of Section 207.

Based on the above, Gintel Asset Management willfully violated Sections 206(2), and 207 of the Advisers Act.

Stavrvides willfully violated Section 207 of the Advisers Act and willfully aided and abetted and caused Gintel Asset Management's violations of Section 206(2) of the Advisers Act. Stavrvides knew or had reason to know that the principal transactions had taken place at Gintel Asset Management. He also knew that the Ethics Code provisions were not applied to Gintel. As the person responsible for preparing and signing Gintel Asset Management's Form ADV, Stavrvides knew or had reason to know that the form contained false statements when it claimed that Gintel Asset Management did not engage in principal transactions and that the Ethics Code was applied to all employees.

#### **b. Violations of Section 34(b) of the Investment Company Act**

Section 34(b) of the Investment Company Act provides that it "shall be unlawful for any person to make any untrue statement of a material fact in any registration statement, application, report, account, record, or other document" that is required to be filed or maintained pursuant to the Investment Company Act. During the relevant time period, Stavrvides prepared and filed Forms N-SAR on behalf of the Fund that falsely stated that the Fund did not engage in affiliated transactions. In fact, the Fund engaged in multiple transactions with Gintel's affiliated accounts and Stavrvides was aware of those transactions. Therefore, Stavrvides willfully violated Section 34(b). See Strong/Corneliuson Capital Management, Investment Company Act Rel. No. 20394 (July 12, 1994), (settled proceeding) (finding liability under Section 34(b) for false statement in Form N-SAR claiming that fund did not engage in affiliated transactions).

#### **D. VIOLATIONS 12**

As a result of the conduct described above:

Gintel Asset Management willfully violated Sections 204A, 206(1), 206(2), 206(3), and 207 of the Advisers Act; and Sections 17(a)(1), 17(a)(2) and 17(j) of the Investment Company Act and Rule 17j-1(b) thereunder;

Gintel & Co. willfully violated Section 15(f) of the Exchange Act and Sections 17(a)(1) and 17(a)(2) of the Investment Company Act;

Robert Gintel willfully violated Sections 17(a)(1) and 17(a)(2) of the Investment Company Act and willfully aided and abetted and caused violations of Sections 204A, 206(1), 206(2), and 206(3) of the Advisers Act and Section 17(j) of the Investment Company Act and Rule 17j-1(b) thereunder, and Section 15(f) of the Exchange Act; and

Stavrvides willfully violated Section 207 of the Advisers Act and Section 34(b) of the Investment Company Act and willfully aided and abetted and caused violations of Section 206(2) of the Advisers Act and Section 17(j) of the Investment Company Act and Rule 17j-1(b) thereunder.

#### IV.

In determining to accept the Offers, the Commission considered remedial acts promptly undertaken by the Respondents and cooperation afforded the Commission staff.

#### V.

In view of the foregoing, the Commission deems it appropriate and in the public interest to accept the Offers submitted by Gintel Asset Management, Gintel & Co., Robert Gintel, and Stephen Stavrides and impose the sanctions and cease-and-desist order agreed to in the Offers.

Accordingly, IT IS HEREBY ORDERED that:

Pursuant to Section 9(f) of the Investment Company Act and Section 203(k) of the Advisers Act, Respondent Gintel Asset Management cease and desist from committing or causing any violation and any future violation of Sections 17(a)(1), 17(a)(2) and 17(j) of the Investment Company Act and Rule 17j-1(c)(2) thereunder and Sections 204A, 206(1), 206(2), 206(3) and 207 of the Advisers Act thereunder;

Pursuant to Section 9(f) of the Investment Company Act and Section 21C of the Exchange Act, Respondent Gintel & Co. cease and desist from committing or causing any violation and any future violation of Sections 17(a)(1) and 17(a)(2) of the Investment Company Act and Section 15(f) of the Exchange Act;

Pursuant to Section 9(f) of the Investment Company Act, Section 203(k) of the Advisers Act, and Section 21C of the Exchange Act, Respondent Robert Gintel cease and desist from committing or causing any violation and any future violation of Sections 17(a)(1), 17(a)(2) and 17(j) of the Investment Company Act and Rule 17j-1(c) thereunder; Sections 204A, 206(1), 206(2) and 206(3) of the Advisers Act; and Section 15(f) of the Exchange Act;

Pursuant to Sections 15(b)(6) of the Exchange Act, Section 203(f) of the Advisers Act, and Section 9(b) of the Investment Company Act, Respondent Robert Gintel be, and hereby is, suspended for a period of six months, effective on the second Monday following the issuance of this Order, from association with any broker, dealer or investment adviser and from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and

Pursuant to Section 9(f) of the Investment Company Act and Section 203(k) of the Advisers Act, Stephen Stavrides cease and desist from committing or causing any violation and any future violation of Sections 17(j) and 34(b) of the Investment Company Act and Rule 17j-1(c) thereunder and Sections 206(2) and 207 of the Advisers Act.

IT IS FURTHER ORDERED that Gintel Asset Management, Gintel & Co., Robert Gintel, and Stephen Stavrides be, and hereby are, censured.

IT IS FURTHER ORDERED:

- that Robert Gintel shall pay, within 14 days of the issuance of this Order, disgorgement and prejudgment interest in the total amount of \$658,858.91, which is based on (i) the differences between the prices Gintel received and clients received in certain trades he made within seven days of the clients in the same securities during the years 1997 through 1999 in violation of the Gintel Asset Management and Gintel Fund Code of Ethics, and (ii) the difference in the price he paid the Fund for 600,000 shares of Oneita stock and the price at which he sold the 600,000 shares in his next Oneita transaction. The disgorgement funds relating to the violation of the Code of Ethics shall be distributed to the clients or former clients of Gintel Asset Management who received lower prices when Gintel sold the same stock within seven days before a client and



paid higher prices when Gintel purchased the same stock within seven days before a client. In the event that all or any portion of these funds remain after disbursements of any funds, the remainder shall be disbursed to the United States Treasury. In no event shall any portion of these funds be returned to Gintel or his agents, successors, or assigns; and

- that within ten days of completing the distribution of the disgorgement funds, Robert Gintel shall execute and deliver to the staff of the Commission's Boston District Office an affidavit that he has completed the distribution of the disgorgement funds in accordance with this Order.

IT IS FURTHER ORDERED that, within ten days of the issuance of this Order, (i) Gintel Asset Management shall pay a civil money penalty in the amount of \$100,000; (ii) Stavrides shall pay a civil penalty in the amount of \$25,000; (iii) Gintel & Co. shall pay a civil money penalty in the amount of \$75,000; and (iv) Robert Gintel shall pay a civil money penalty in the amount of \$75,000, to the United States Treasury. Such payments shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, U.S. Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, VA 22312-0003; and (D) submitted under cover letter that identifies the payor as a Respondent in these proceedings, the file number of these proceedings, and the Commission's case number, a copy of which cover letter and money order or check shall be sent to Juan Marcel Marcelino, District Administrator, Securities and Exchange Commission, Boston District Office, 73 Tremont Street, Suite 600, Boston, Massachusetts, 02108.

IT IS FURTHER ORDERED that Gintel Asset Management shall be prohibited from, directly or indirectly, soliciting, marketing, or advertising for any new investment advisory clients for one year commencing from the date of issuance of this Order. In addition, Gintel Asset Management shall be prohibited from, directly or indirectly, contracting with, obtaining, or accepting any new investment advisory clients for one year commencing from the issuance of this Order. Within four months, seven months, ten months, and 13 months from the issuance of this Order, Gintel Asset Management shall execute and deliver to the staff of the Boston District Office an affidavit that it has complied with the prohibitions set forth above in accordance with the terms of this Order.

IT IS FURTHER ORDERED that Gintel Asset Management and Gintel & Co. shall comply with the following additional remedial undertakings contained in their Offers:

- Gintel Asset Management and Gintel & Co. shall retain, within 30 days of the issuance of this Order, at the companies' expense, an Independent Consultant or Consultants (the "Consultant") not unacceptable to the Commission staff to conduct a comprehensive review of the companies' policies, practices and procedures related to the matters described in Section III.C. above to determine the adequacy of such policies, practices and procedures to reasonably detect and prevent violations of the federal securities laws;
- Gintel Asset Management and Gintel & Co. shall provide to the Commission staff, within 30 days of retaining the Consultant, a copy of an engagement letter detailing the Consultant's responsibilities;
- Gintel Asset Management and Gintel & Co. shall cooperate fully with the Consultant, including providing the Consultant with access to their files, books, records, and personnel as reasonably requested for the above-mentioned review, and obtaining the cooperation of their employees or other persons under their control;
- Gintel Asset Management's and Gintel & Co.'s agreement with the Consultant shall require the Consultant to report to the Commission staff on his/her activities as the staff shall request;
- Gintel Asset Management's and Gintel and Co.'s agreement with the Consultant shall provide that the Consultant may engage such assistance, clerical, legal or expert, as necessary and at reasonable cost, to carry out his/her activities and the cost, if any, of such assistance shall be borne exclusively by Gintel Asset Management and Gintel & Co.;
- Gintel Asset Management's and Gintel & Co.'s agreement with the Consultant shall require the Consultant to provide training to relevant Gintel Asset Management and Gintel & Co. employees designed reasonably to effect the understanding of, and compliance with, the implemented policies and procedures;

- Gintel Asset Management's and Gintel & Co.'s agreement with the Consultant shall require the Consultant to prepare, within 90 days of the issuance of this Order, a written recommendation of policies, practices, and procedures, or amendments thereto, designed reasonably to prevent and detect, insofar as practicable and deemed necessary, future violations of the federal securities laws relating to the matters described in Section III.C. above, with a copy of such recommendation to be given simultaneously to the Commission's Boston District Office, Gintel Asset Management, and Gintel & Co.;
- Gintel Asset Management and Gintel & Co. shall adopt, implement, and maintain all policies, practices, and procedures recommended by the Consultant within 30 days of the receipt of the recommendation; provided, however, that as to any of the Consultant's recommendations that Gintel Asset Management and/or Gintel & Co. determines is, in whole or in part, unduly burdensome or impractical, Gintel Asset Management and/or Gintel & Co. may, within 30 days of receipt of the recommendation, suggest an alternative procedure designed to achieve the same objective or purpose as that of the recommendation of the Consultant. Gintel Asset Management and/or Gintel & Co. shall set forth in an affidavit to be submitted to the Consultant and the Commission staff such alternative procedure, and a description of how such alternative procedure achieves the same objective or purpose as the Consultant's original recommendation. The Consultant shall evaluate such alternative procedure. However, Gintel Asset Management and Gintel & Co. shall abide by the Consultant's final determination with regard thereto and adopt those recommendations that the Consultant ultimately determines are appropriate;
- Within 120 days of the issuance of this Order, Gintel Asset Management and Gintel & Co. shall each provide an affidavit via certified mail to Juan Marcel Marcelino, District Administrator, Securities and Exchange Commission, Boston District Office, 73 Tremont Street, Suite 600, Boston, Massachusetts 02108 setting forth the details of the companies' compliance with these undertakings and implementation of the Consultant's recommendations pursuant to paragraphs 1 through 8 above;
- Gintel Asset Management's and Gintel & Co.'s agreement with the Consultant shall require the Consultant, one year after the provision of the affidavits required in paragraph 9 above, to conduct a review of Gintel Asset Management's and Gintel & Co.'s policies, practices and procedures. The agreement shall require that as part of the review, the Consultant will examine whether there is continued compliance with the federal securities laws and continued compliance with this Order and the undertakings agreed to herein, including the adoption, implementation, and maintenance of all policies, practices, and procedures recommended by the Consultant as required by paragraph 8 above. As a result of such review, the Consultant may recommend additional policies, practices and procedures or revisions to existing policies, practices and procedures to achieve continued compliance with the objectives outlined in paragraphs 1 through 8 above. A report of the Consultant's findings of the review shall then be forwarded to the Commission's Boston District Office. The agreement with the Consultant shall require the Consultant's report to address whether there is continued compliance with the federal securities laws and continued compliance with this Order and the undertakings agreed to herein, including the adoption, implementation, and maintenance of all policies, practices, and procedures recommended by the Consultant as required by paragraph 8 above. With respect to any additional recommendations, Gintel Asset Management and/or Gintel & Co. may suggest alternative procedures designed to achieve the same objective or purpose as that of the recommendation of the Consultant. Gintel Asset Management and/or Gintel & Co. shall set forth in an affidavit to be submitted to the Consultant and the Boston District Office such alternative procedures, and a description of how such alternative procedures achieve the same objective or purpose as the Consultant's original recommendation. The Consultant shall evaluate the alternative procedures proposed by Gintel Asset Management and/or Gintel & Co. However, Gintel Asset Management and Gintel & Co. will abide by the Consultant's final determination with regard thereto and adopt those recommendations that the Consultant ultimately determines are appropriate;
- Gintel Asset Management and Gintel & Co. may apply to the Commission's staff for an extension of the deadlines described above before their expiration, and upon a showing of good cause by Gintel Asset Management and Gintel & Co., the Commission's staff may, in its sole discretion, grant such extensions for whatever time period it deems appropriate;
- To ensure the independence of the Consultant, Gintel Asset Management and Gintel & Co. shall not have the authority to terminate the Consultant without prior written approval of the

Commission's staff and shall compensate the Consultant and persons engaged to assist the consultant for services rendered pursuant to this Order at their reasonable and customary rates;

- Gintel Asset Management and Gintel & Co. shall require the Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Gintel Asset Management or Gintel & Co., or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Commission's staff enter into any employment, consultant, attorney-client, auditing or other professional relationship with Gintel Asset Management and Gintel & Co., or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

IT IS FURTHER ORDERED that Gintel Asset Management and Gintel & Co. shall comply with their Undertakings, contained in their Offers, to mail a copy of this Order, together with a cover letter in a form acceptable to the staff of the Commission, to all current clients by registered or certified mail, return receipt requested, within 30 days from the entry of this Order and Gintel & Co. shall continue, for a period of 12 months from the effective date of this Order to provide a copy of this Order to all prospective clients not less than 48 hours prior to executing any brokerage account opening documents. Within 13 months of the date of this Order, Gintel & Co shall execute and deliver to the staff of the Commission's Boston District Office an affidavit that it has provided this Order to its current and prospective clients in accordance with the terms of this Order and Gintel Asset Management shall provide to the staff an affidavit that it has provided this Order to its current clients in accordance with the terms of this Order. After the expiration of the one-year prohibition regarding new clients set forth above, and for one year thereafter, Gintel Asset Management shall provide a copy of this Order to all prospective advisory clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such advisory contract if the client has the right to terminate the contract without penalty within five business days after entering into the contract. Within 25 months of the date of this Order, Gintel Asset Management shall execute and deliver to the staff of the Commission's Boston District Office an affidavit that it has provided this Order to its prospective clients in accordance with the terms of this Order.

By the Commission.

Jonathan G. Katz  
Secretary

## Footnotes

1 Section 2(a)(3) of the Investment Company Act defines an affiliated person to include "(A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; [and] (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof . . . ." Section 2(a)(9) of the Investment Company Act defines "control" as the "power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company...Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 per centum of the voting securities of a company shall be presumed to control such company."

2 Rule 17a-7 also is available in other circumstances unrelated to this case.

3 These affiliated accounts included Robert Gintel and his wife's individual accounts, two accounts owned jointly by Gintel and his wife, Gintel Asset Management's proprietary account (Robert Gintel owns 100% of Gintel Asset Management), Gintel Partners Fund (Gintel owns over 80% of this hedge fund), and the Gintel & Co. trading account (Gintel owns 75% of Gintel & Co.).

4 In the same time period, Gintel also effected approximately 40 trades between the Fund and accounts not affiliated with Gintel. The trades did not fall within the coverage of Section 17(a). However, as discussed below, these were improper principal transactions under Section 206(3) of the Advisers Act because Gintel owned over 30 percent of the Fund and he failed to comply with the disclosure and consent requirements of Section 206(3).

5 If the stocks were held less than 31 days, losses from the sales may have been disallowed by the IRS as the trades would have been considered wash sales.

6 The Horizon trades, which took place in September and November of 1999, were transactions between the Fund and four accounts owned by Gintel. The CheckPoint trades occurred in November and December of 1999 and involved trades between the Fund and the Gintel Partners Fund, of which Gintel owns over 80%. As with all of these tax-driven cross trades, the transactions were executed at the current market price.

7 The trades involving the Fund were principal transactions because the Fund and Gintel Asset Management are under common control, as Gintel owns 34% and 100% of those entities, respectively. See *Concord Investment Company*, Advisers Act Rel. No. 1585 (Sept. 27, 1996), (settled proceeding) (adviser liable under Section 206(3) when broker-dealer under common control with adviser engaged in principal transactions with adviser's clients); *Credit Suisse Management*, Advisers Act Rel. No. 1452 (Nov. 16, 1994), (settled proceeding) (adviser liable under Section 206(3) when banks and broker-dealers under common ownership with adviser engaged in principal transactions with advisory clients).

8 Section 206(1) makes it unlawful to employ any device, scheme, or artifice to defraud any client or prospective client. Similarly, under Section 206(2), it is unlawful for any investment adviser to employ any device, scheme or artifice to defraud, or to engage in any act, transaction, practice, or course of business that operates as a fraud or deceit on any client or prospective client. Section 206(1) requires a showing of scienter, while Section 206(2) does not. See *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992).

9 However, Gintel Asset Management's clearing broker did send confirmations of the transactions, as well as monthly statements disclosing the transactions, to the client.

10 The rule defines "access persons" to include, among others, any director, officer, or general partner of a fund or the fund's investment adviser. Rule 17(j) was amended on October 29, 1999 to improve the regulation of personal trading activities of investment company personnel by, among other things, requiring fund boards to approve ethics codes and requiring additional reports and disclosures. None of the changes to Rule 17j-1 affect the analysis of the trading at issue in this case because these trades occurred before the Rule was amended. The same provisions requiring the adoption and enforcement of codes of ethics that were in Rule 17j-1(b)(1) are now contained in Rule 17j-1(c).

11 Gintel Asset Management's Form ADV disclosed that the firm and its related persons were permitted to trade in the same securities as those recommended to clients.

12 References herein to Rule 17j-1 are to the version of the Rule that predates its October 29, 1999 amendment.