

SECURITIES EXCHANGE ACT OF 1934
Release No. 34-26005/August 17, 1988

INVESTMENT COMPANY ACT OF 1940
Release No. IC-16527/August 17, 1988

Administrative Proceeding
File No. 3-7040

In the Matter of THE GABELLI GROUP, INC., GABELLI-ROSENTHAL & PARTNERS, L.P., G&R PARTNERS, GABELLI FUNDS, INC., GAMCO INVESTORS, INC., AND MARIO J. GABELLI

Order Instituting Proceedings Pursuant to Section 15(c)(4) of the Securities Exchange Act of 1934 and Section 9(b)(2) of the Investment Company Act of 1940 and Findings, Opinion and Order of the Commission

I. INTRODUCTION

The Commission deems it appropriate and in the public interest that proceedings be, and they hereby are, instituted with respect to The Gabelli Group, Inc., Gabelli-Rosenthal & Partners, L.P., G&R Partners, Gabelli Funds, Inc., GAMCO Investors, Inc., and Mario J. Gabelli ("Respondents") pursuant to Section 15(c)(4) of the Securities Exchange Act of 1934 ("the Exchange Act")² to determine whether the Respondents failed to comply with Section 13(d) of the Exchange Act and Rule 13d-1 thereunder and whether Mario J. Gabelli was a cause of the other Respondents' failure to comply with Section 13(d) and Rule 13d-1.

The Commission also deems it appropriate and in the public interest that proceedings be, and they hereby are, instituted with respect to The Gabelli Group, Inc., Gabelli-Rosenthal & Partners, L.P., G&R Partners, Gabelli Funds, Inc., and GAMCO Investors, Inc., pursuant to Section 9(b)(2) of the Investment Company Act of 1940 ("the Investment Company Act")³ to determine whether these Entities willfully violated Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder.

Simultaneously with the institution of these proceedings, Respondents have submitted Offers of Settlement for the purpose of disposing of the issues raised in these proceedings. Under the terms of the Offers of Settlement, Respondents, solely for the purpose of these proceedings or any other proceeding brought by or on behalf of the Commission, or in which the Commission is a party, without hearing and prior to the adjudication of any issue of fact or law, and without admitting or denying any of the following, consent to the issuance by the Commission of this Order Instituting Proceedings Pursuant to Section 15(c)(4) of the Exchange Act and Section 9(b)(2) of the Investment Company Act and Findings, Opinion and Order of the Commission (the "Opinion and Order"), and undertake certain actions, all as more fully set forth in the Offers of Settlement.

The Commission has determined that it is appropriate and in the public interest to accept the Respondents' Offers of Settlement and the undertakings contained therein and, accordingly, issues this Opinion and Order.

II. OPINION AND FINDINGS⁴

A. RESPONDENTS

1. The Gabelli Group, Inc. is a New York Corporation with its principal place of business at 655 Third Avenue, New York, New York. Through subsidiaries, partnerships and other entities, as well as through the direct control of Mario J. Gabelli, The Gabelli Group, Inc. controls the activities of the other Entities.

2. Gabelli-Rosenthal & Partners, L.P. ("Gabelli- Rosenthal") is a Delaware limited partnership with its principal place of business at 400 Park Avenue, New York, New York. Gabelli-Rosenthal's business is to develop and pursue leveraged buyout transactions.

3. G&R Partners (G&R) is the general partner of Gabelli-Rosenthal. G&R itself is a partnership of GLI (Gabelli Leverage, Inc.) and RLI (Rosenthal Leverage, Inc.). GLI is a wholly owned subsidiary of Gabelli Securities, Inc., a holding company which itself is a subsidiary of The Gabelli Group, Inc. RLI is a subsidiary of Rosenthal & Rosenthal, a merchant bank independent of The Gabelli Group, Inc. GLI is the managing general partner and RLI is the co-general partner of G&R.

4. Gabelli Funds, Inc. ("GFI") is a Delaware Corporation with its principal place of business at 655 Third Avenue, New York, New York. GFI, a wholly owned subsidiary of The Gabelli Group, Inc., is an investment adviser registered under Section 203 of the Investment Advisers Act of 1940. GFI acts as the adviser to three registered investment companies, including The Gabelli Asset Fund ("the Asset Fund") and The Gabelli Equity Trust ("the Equity Trust"), described below.

5. GAMCO Investors, Inc. ("GAMCO") is a New York corporation with its principal place of business at 655 Third Avenue, New York, New York. GAMCO, a wholly owned subsidiary of The Gabelli Group, Inc., is an investment adviser registered under Section 203 of the Investment Advisers Act of 1940. GAMCO makes investment decisions for individuals and institutions and has stated in filings with the Commission that it is deemed to be the beneficial owner of the securities which are purchased on behalf of its clients.

6. Mario J. Gabelli is the Chairman, Chief Executive Officer, Managing Director, and controlling shareholder of The Gabelli Group, Inc., Chairman and Chief Executive Officer of GAMCO Investors, Inc. and Chief Executive Officer and President of Gabelli Funds, Inc. He is also Chairman and President of the Equity Trust and Trustee, President, Chief Executive Officer and Chairman of the Asset Fund. Mario J. Gabelli makes the investment decisions for each of the Entities.

B. SUMMARY

The Commission finds that, by February 13, 1987, the Entities, over which Mario J. Gabelli exercised a controlling influence, had formed a group and developed an intent to pursue a leveraged buyout ("LBO") of DiGiorgio Corporation ("DiGiorgio"). This group included Gabelli Funds, Inc., which is the investment adviser to two registered investment companies, the Equity Trust and the Asset Fund.⁵ The group purchased and/or held DiGiorgio stock in furtherance of the LBO.

The Entities and Mario J. Gabelli failed to comply with Section 13(d) of the Exchange Act and Rule 13d-1 thereunder. The Entities failed to file a Schedule 13D within ten days after February 13, 1987, the date by which, as a group, they owned more than five percent of the common stock and had developed the intent to change or influence control of DiGiorgio. Further, GAMCO and GFI reported their DiGiorgio holdings on Schedules 13G into June 1987 although, by February 13, 1987, they were ineligible to do so because they were members of the group. In addition, Mario J. Gabelli failed to satisfy his obligation under Section 13(d)

and Rule 13d-1 to report his indirect beneficial ownership of more than five percent of the common stock of DiGiorgio. As described below, Mario J. Gabelli was a cause of the Entities' failure to comply with Section 13(d) and Rule 13d-1.

The Commission also finds that, by February 13, 1987, the Entities willfully violated Section 17(d) of the Investment Company Act and Rule 17d-I thereunder in that the Entities are affiliated persons of the Asset Fund and the Equity Trust and participated in a joint enterprise with those investment companies to purchase and/or hold DiGiorgio stock in furtherance of the LBO proposal, without prior Commission approval.

C. FACTUAL BACKGROUND

I. The Entities

The Commission finds that Mario J. Gabelli has a controlling influence over the Entities. He founded the Entities, is the controlling shareholder of the parent company, The Gabelli Group, Inc., and directs the Entities' investment activities. The Commission finds that Mario J. Gabelli's influence over the Entities meets the statutory definition of control contained in Section 2(a)(9) of the Investment Company Act.

Beginning prior to February 1987, GAMCO filed Schedules 13G which reported its holdings of DiGiorgio stock. GFI began to report its holdings in February 1987 by filing Schedules 13G jointly with GAMCO. GAMCO and GFI continued to file Schedules 13G until June 1987. The February 12, 1987 Schedule 13G, filed jointly by GAMCO and GFI, reported an aggregate position of 18.56% of DiGiorgio's stock. Gabelli-Rosenthal, the business of which is to pursue LBO's, and G&R Partners, the general partner of Gabelli-Rosenthal, began purchasing DiGiorgio stock on February 9 and 27, 1987, respectively, but did not report their positions until the Entities filed a joint Schedule 13D on June 29, 1987.

2. The LBO Proposal to DiGiorgio

On February 13, 1987, a representative of Gabelli-Rosenthal sent a letter to DiGiorgio's Chairman proposing an LBO. The letter began, "As you know, we have been keenly interested for some time in working with you to take DiGiorgio private." The letter continued that, in light of the recent filing by a European investor of a 13D concerning DiGiorgio, "we would like to meet with you at the earliest possible date to discuss a proposal to acquire all of the outstanding stock of DiGiorgio Corporation." The letter included a specific proposed price per share for the LBO, and stated that "[k]ey management would remain with DiGiorgio and be invited to participate with the buying group." DiGiorgio's chairman rejected the proposal by telephone February 19 and at a meeting with representatives of Gabelli-Rosenthal on March 2, 1987.

Despite these rejections, the Entities continued to pursue the LBO. A monthly memorandum, dated February 25, 1987, from Mario J. Gabelli and certain of his staff to the Gabelli-Rosenthal limited partners described issuing a "letter of interest to a major New York Stock Exchange Company" (a reference to DiGiorgio). A monthly memorandum dated March 25, 1987, to the Gabelli-Rosenthal limited partners reported that "we were presenting a proposal for a major New York Stock Exchange company. Our proposal was not accepted ...

We continue to believe that the company will either do a leveraged buyout or some form of restructuring. Therefore, we are keeping it active and will revisit the company next month." On April 28, a representative of Gabelli-Rosenthal sent another letter proposing an LBO to DiGiorgio's chairman. The letter "proposed for your consideration and discussion with us the

purchase of all the outstanding shares of stock" and again suggested a specific purchase price. DiGiorgio management rejected the proposal.

On April 30, an employee of Gabelli-Rosenthal wrote to Gabelli-Rosenthal's limited partners requesting their approval to invest in DiGiorgio in an amount in excess of the partnerships diversification limit. This request was related to the need for flexibility in the event Gabelli-Rosenthal proceeded with its LBO proposal and for expanded investment authority. The letter stated that "purchase of the Company stock will enable us to realize a gain if someone else makes an offer for the Company or effectively lowers our cost if we pursue a leveraged buyout ourselves." Consistent with provisions in the Gabelli-Rosenthal offering memorandum which required it to notify the limited partners of investments by affiliates, the letter further advised that "GAMCO and affiliates hold a substantial stock position in [DiGiorgio]."

In late May, an internal memorandum to Mario J. Gabelli indicated that a senior executive of DiGiorgio favored an LBO. The memorandum concluded, however, that: "Obviously, if the DiGiorgio Board of Directors had to officially consider a proposal, [DiGiorgio's chairman] probably can win the battle at present because of 'his board' being supportive."

On June 25, 1987, Mario J. Gabelli delivered a letter to Robert DiGiorgio, DiGiorgio's former CEO, and had identical letters sent to DiGiorgio's chairman and another senior DiGiorgio executive. The letter contained an "offer for the purchase of all the outstanding shares of DiGiorgio."

On June 29, 1987, The Gabelli Group, Inc., G&R Partners, Gabelli-Rosenthal & Partners, L.P., GAMCO Investors, and Gabelli Funds Inc. filed a Schedule 13D relating to their holdings in DiGiorgio. That document reported an aggregate position of 28.59% of DiGiorgio's stock. The Board of Directors of DiGiorgio rejected the LBO proposal, and it was withdrawn on or about July 21, 1987. This was reflected in an amendment to the Schedule 13D.

3. The Investment Company Procedures

The Asset Fund and the Equity Trust adopted procedures to address certain concerns under Section 17 of the Investment Company Act. The Asset Fund procedures, which are entitled "Portfolio Proxy Voting Procedures," provide that GFI (the fund's adviser) must "vote all shares of portfolio companies in favor of ... all proposals favored by the management of such proxy companies," except in certain enumerated situations. The procedures continue:

Proposals in which any Trustee, the Adviser, or any of its affiliates has or intends to have an interest of any kind, which are not favored by the management of the portfolio company, shall be promptly reported, with copies of all related proxy or disclosure materials and an explanation of the Adviser's recommendations, to each member of the Board and voting on such proposals shall be as directed by a unanimous written consent or majority vote of the Board (Emphasis added.)

The Equity Trust procedures, which are entitled "Investment Committee Procedures," provide for the establishment of an investment committee which would meet prior to the investment adviser (GFI) making a "Qualified Investment." The procedures define a "Qualified Investment" as an investment which would result in GFI and its affiliates owning five percent or more of a company's stock and where GFI and its affiliates "[intend] to take any action to influence management or control." The procedures provide further that:

At a meeting of [a committee of independent directors] called to consider a particular Qualified Investment, the Committee shall consider all factors it deems appropriate in determining the action to be taken with respect to the Qualified Investment, which may include the analysis and recommendations of the Adviser. The Committee shall determine in its sole discretion and without qualification all actions to be taken regarding the Qualified Investment. ... (Emphasis added.)

The Equity Trust procedures also provide that "[t]he Adviser... may appeal to the full Board any decision of the Committee with regard to a particular Qualified Investment."

In the context of the proposed DiGiorgio LBO, the Asset Fund proxy voting procedures were inapplicable because there was no proxy vote involved. The Equity Trust investment committee procedures were applicable only after the June 29 filing of the Schedule 13D.

D. VIOLATIONS OF SECTION 13(d) OF THE EXCHANGE ACT AND RULE 13d-1

Section 13(d)(1) requires any person who acquires, directly or indirectly, the beneficial ownership of more than five percent of a company's stock, to, within ten days, file with the Commission and send to the company and to the exchanges where the company's stock is traded, a statement describing the purchases and containing other information, including a description of any plans that person may have to acquire control of the company. The purpose of these reporting requirements is to "allow... investors to be informed of potential changes in corporate control and [to] permit ... the market to value the shares accordingly" *General Aircraft Corp. v. Lampert*, 556 F.2d 90,94 (1st Cir. 1977) (emphasis in original). See also *GAF Corp. v. Milstein*, 453 F.2d 709, 717 (2d Cir. 1971), cert. denied, 406 U.S. 910 (1972).

Rule 13d-3 sets forth criteria for determining beneficial ownership under Section 13(d): "[A] beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares (1) Voting power... and/or (2) Investment power which includes the power to dispose, or to direct the disposition of, such security."

The term "person" includes entities acting as a group for the purpose of acquiring, holding, voting or disposing of securities of a company Section 13(d)(3); Rule 13d-5(b)(1). Two or more persons constitute a "group" under Section 13(d) if they combine in support of a common objective, and the group is deemed to have acquired beneficial ownership of all securities beneficially owned by its members as of the date of such an agreement to act together. Rule 13d-5(b)(1). See *Wellman v. Dickinson*, 682 F.2d 355, 363 (2d Cir. 1982), cert. denied, 460 U.S. 1069 (1983) (The court held that defendants, in an effort to induce a takeover of a company, formed a group under Section 13(d) in that they "reached an understanding to act in concert in disposing of their shares." The court wrote that "the touchstone of a group within the meaning of Section 13(d) is that the members combined in furtherance of a common objective."); *SEC v. Savoy Industries*, 587 F.2d 1149, 1162 (D.C. Cir. 1978), cert. denied, 440 U.S. 913 (1979) (The court held that defendant was part of a group under Section 13(d) because he "had a common purpose with the members of the group" and had "effectively joined forces with the other group members", *id.* at 1165). The existence of a group may be demonstrated by circumstantial evidence. *Savoy*, *supra*, 587 F.2d at 1162.

Rule 13d-1(b) permits certain institutional investors who might otherwise be required to file the statement (Schedule 13D) required by Section 13(d)(1) to file an alternative short-form statement (Schedule 13G) if such person acquired the securities in the "ordinary course of

his business [and not] for the purpose [nor with] the effect of changing or influencing the control of the issuer nor in connection with or as a participant in any transaction having such purpose or effect .. " When a 13G filer no longer meets these criteria or forms a group with other entities which are ineligible to use Schedule 13G, it must file a Schedule 13D "promptly, but [within] not more than 10 days." Rule 13d-1(b)(3)(i). See *Jacobs v. Pabst Brewing Co.*, 549 F. Supp. 1050, 1064 (D. Del. 1982), *aff'd sub nom. Kalmanovitz v. G. Heileman Brewing Co., Inc.*, 769 E2d 152 (3d Cir. 1985). For the ten day period immediately following the filing of the Schedule 13D, such person cannot vote or direct the voting of the securities or acquire an additional beneficial ownership interest in the equity securities of the issuer or of any person controlling the issuer. Rule 13d-1(b)(3)(ii).

Schedule 13D describes the information a person acquiring more than five percent of a company must file pursuant to Section 13(d)(1). Thus, a Schedule 13D filer must state, in Item 4, the "purpose or purposes of the acquisition of securities," and a description of "any plans or proposals which the reporting persons may have which relate to or would result in [among other things]: The acquisition by any person of additional securities of the issuer; ... An extraordinary corporate transaction, such as a merger, reorganization or liquidation. . . ; [and] any other material change in the issuer's business or corporate structure" A failure adequately to disclose the information required by Item 4 constitutes a violation of Section 13(d) and Rule 13d-1. *Wellman, supra*, 682 F2d at 362.

1. Group Status and Intent to Change or Influence Control of DiGiorgio

The Commission finds that, by February 13, 1987 (the date of the first proposal letter to DiGiorgio's chairman), the Entities constituted a group under Section 13(d)(3). Mario J. Gabelli directed the activities of each of the Entities comprising this group in the pursuit of an LBO of DiGiorgio. The Commission also finds that the group intended to change or influence control of DiGiorgio. The February 13 and April 28, 1987 letters to DiGiorgio's chairman proposed an LBO and specified a price and other terms. The April 28 letter followed rejections by DiGiorgio management of the previous LBO proposal. Moreover, on April 30, 1987, Gabelli-Rosenthal sought approval from its limited partners to invest in DiGiorgio in excess of the diversification limit in the Gabelli-Rosenthal partnership agreement, further reflecting the Entities' intent to influence or change control of DiGiorgio through the pursuit of an LBO.

The Commission finds, therefore, that by February 13, 1987, the Entities as a group owned in excess of five percent of the stock of DiGiorgio with the purpose of changing or influencing control of that company. The Entities were required to file a Schedule 13D disclosing their group status and this purpose within ten days of February 13, 1987, which they failed to do. Further, GAMCO's and GFI's continued reliance on Schedules 13G after February 13, 1987 was inappropriate. As of that date, GAMCO and GFI were members of a group intending to change or influence the control of DiGiorgio, and so were disqualified from filing Schedules 13G under Rule 13d-1(b)(1)(i). The Entities lacked sufficient systems and procedures to ensure compliance with Section 13(d) and Rule 13d-1.

2. Beneficial Ownership.

Mario J. Gabelli is the CEO, president, chairman trustee and/or chief investment officer of each of the Entities, and the controlling shareholder of The Gabelli Group, Inc., the parent entity. He controls the investment decisions that resulted in the Entities' purchases and sales of DiGiorgio stock. Although Mario J. Gabelli did not personally own any shares of DiGiorgio, his control over the Entities' DiGiorgio holdings made him the indirect beneficial owner of

those shares under Rule 13d-3 promulgated under the Exchange Act. See *Wellman v. Dickinson*, supra, 682 F.2d at 365- 366.

GAMCO's DiGiorgio holdings reached the five percent threshold prior to February 1987, thus causing Mario J. Gabelli personally to have a reporting obligation under Section 13(d) and Rule 13d-1. Mario J. Gabelli did not comply with this reporting requirement.⁸

Based on the foregoing, the Commission finds that The Gabelli Group, Inc., Gabelli-Rosenthal & Partners, L.P., G&R Partners, Gabelli Funds, Inc., GAMCO Investors, Inc., and Mario J. Gabelli failed to comply with Section 13(d) of the Exchange Act and Rule 13d-1 thereunder, and that Mario J. Gabelli was a cause of the Entities' failure to comply.

E. VIOLATIONS OF SECTION 17(d) OF THE INVESTMENT COMPANY ACT AND RULE 17d-1

Section 17(d) prohibits any person that is an affiliated person of an investment company (or an affiliated person of an affiliated person of an investment company) from participating, as a principal, in a joint transaction with that investment company in contravention of rules established by the Commission. Pursuant to Section 17(d), the Commission adopted Rule 17d-1 to prevent investment companies from participating in joint transactions "on a basis different from or less advantageous than that of other participant[s]." Rule 17d-1 requires that filing of an application for the Commission's approval prior to a first or second-tier affiliated person of an investment company participating in any joint enterprise or their joint arrangement or profit sharing plan with that investment company. Gabelli Funds, Inc., as the investment adviser to the investment companies, is an affiliated person of those investment companies by virtue of Section 2(a)(3)(E) of the Investment Company Act. The Gabelli Group, Inc., GAMCO, Gabelli-Rosenthal and G&R are second-tier affiliated persons of the investment companies because they and Gabelli Funds Inc. are under Mario J. Gabelli's control.

By February 13, 1987, when the first letter proposing an LBO was sent to DiGiorgio's CEO, the Entities participated, as principals, in a transaction with the Asset Fund and the Equity Trust to purchase and/or hold DiGiorgio common stock in furtherance of the LBO. That activity was a joint enterprise under Section 17(d) of the Investment Company Act. The Equity Trust and the Asset Fund "[were] no longer ... completely free agent[s] as to the shares [they] had purchased." *SEC v. Talley Industries, Inc.*, 399 F.2d 396,404 (2d Cir. 1968), cert. denied, 393 U.S. 1026 (1969). The potential conflict that existed between the interest of the investors in the Gabelli investment companies and the interest of the Entities in pursuing the LBO is the kind that Section 17(d) was intended to address.

Based on the foregoing, the Commission finds that The Gabelli Group, Inc., Gabelli-Rosenthal & Partners, L.P., G&R Partners, Gabelli Funds, Inc., and GAMCO Investors, Inc. willfully violated Section 17(d) of the Investment Company Act and Rule 17d-I thereunder. The procedures which the investment companies adopted, as described above, are inadequate to address the concerns of Section 17(d) or to ensure that a timely application was made to the Commission pursuant to Rule 17d-I.

III. OFFERS OF SETTLEMENT

The Gabelli Group, Inc., Gabelli-Rosenthal & Partners, L.P., G&R Partners, Gabelli Funds, Inc., GAMCO Investors, Inc., and Mario J. Gabelli have submitted Offers of Settlement, in which, solely for the purpose of these proceedings, or any other proceeding brought by or on behalf of the Commission, or in which the Commission is a party, without hearing and

prior to the adjudication of any issue of fact or law, and without admitting or denying any of the above, they consent to the issuance of this Opinion and Order.

The Gabelli Group, Inc., Gabelli-Rosenthal & Partners, L.P., G&R Partners, Gabelli Funds, Inc., and GAMCO Investors, Inc., in their Offers of Settlement, agree and undertake to: (1) comply in all material respects, with Section 13(d) of the Exchange Act and Rule 13d-1 thereunder and Section 17(d) of the Investment Company Act and Rule 17d-I thereunder; (2) retain (individually or collectively with one or more of the other Respondents) outside counsel to review their practices and procedures for complying with Section 13(d) of the Exchange Act and Rule 13d-1 thereunder and Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder, and to prepare reports which will include recommendations for ensuring compliance; (3) submit counsel's reports and recommendations to their management and to the boards of directors of the Equity Trust and the Asset Fund; and (4) make available to the Commission staff, within three months of the entry of this Order, counsel's reports and recommendations and a description of actions taken in response to counsel's reports and recommendations.

Mario J. Gabelli, in his Offer of Settlement, agrees and undertakes to: (1) comply, in all material respects, with Section 13(d) of the Exchange Act and Rule 13d-1 thereunder; (2) retain (individually or collectively with one or more of the other Respondents) outside counsel to review his practices and procedures for complying with Section 13(d) of the Exchange Act and Rule 13d-1 thereunder and to prepare a report which will include recommendations for ensuring compliance; (3) submit counsel's report and recommendations to the management of the various Entities and to the boards of directors of the Equity Trust and the Asset Fund; and (4) make available to the Commission staff, within three months of the entry of this Order, counsel's report and recommendations and a description of actions taken in response to counsel's report and recommendations.

IV. ORDER

IT IS HEREBY ORDERED THAT:

(1) The Gabelli Group, Inc., Gabelli-Rosenthal & Partners, L.P., G&R Partners, Gabelli Funds, Inc., and GAMCO Investors, Inc.:

(a) comply, in all material respects, with Section 13(d) of the Exchange Act and Rule 13d-1 thereunder;

(b) shall not be prohibited from serving or acting in the capacities enumerated in Section 9(b) of the Investment Company Act, provided that they comply, in all material respects, with Section 17(d) of the Investment Company Act and Rule 17d-I thereunder and that they take the actions which relate to Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder described in paragraphs (c), (d) and (e) below;

(c) retain (individually or collectively with one or more of the other Respondents) outside counsel to review their practices and procedures for complying with Section 13(d) of the Exchange Act and Rule 13d-1 thereunder and Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder, and to prepare reports which will include recommendations for ensuring compliance;

(d) submit counsel's reports and recommendations to their management and to the boards of directors of the Equity Trust and the Asset Fund; and

(e) make available to the Commission staff, within three months of the entry of this Order, counsel's reports and recommendations and a description of actions taken in response to counsel's reports and recommendations.

(2) Mario J. Gabelli:

(a) comply, in all material respects, with Section 13(d) of the Exchange Act and Rule 13d-1 thereunder;

(b) retain (individually or collectively with one or more of the other Respondents) outside counsel to review his practices and procedures for complying with Section 13(d) of the Exchange Act and Rule 13d-1 thereunder and to prepare a report which will include recommendations for ensuring compliance;

(c) submit counsel's report and recommendations to the management of the various Entities and to the boards of directors of the Equity Trust and the Asset Fund; and

(d) make available to the Commission staff, within three months of the entry of this Order, IPHLX Rule 1013 states that the unit of trading in each series of options dealt in on the Exchange shall be the unit of trading established for that series by the rules of the Options Clearing Corporation ("OCC"). Art. XV, Sec. I(g) of the counsel's report and recommendations and a description of actions taken in response to counsel's report and recommendations.

(3) Upon entry of this Order, these proceedings will be terminated, provided, however, in the event of noncompliance with this Order, that the Commission specifically reserves all legal remedies available to it to seek enforcement of the Commission's Order and compliance with the terms of the Respondents' undertakings as set forth in this Order, including but not limited to the right to reopen these proceedings.

By the Commission.

Jonathan G. Katz
Secretary

Footnotes

1 This Order refers to The Gabelli Group, Inc., Gabelli- Rosenthal & Partners, L.P, G&R Partners, Gabelli Funds, Inc., and GAMCO Investors, Inc. collectively, as "the Entities."

2 Section 15(c)(4) of the Exchange Act (15 U.S.C. § 78o(c)(4)) provides:

If the Commission finds, after notice and opportunity for a hearing, that any person subject to the provisions of Section 12, 13, 14 or subsection (d) of Section 15 of this title or any rule or regulation thereunder has failed to comply with any such provision, rule, or regulation in any material respect, the Commission may publish its findings and issue an order requiring such person, and any person who was a cause of the failure to comply due to an act or omission the person knew or should have known would contribute to the failure to comply, to comply, or to take steps to effect compliance, with such provision or such rule or regulation thereunder upon such terms and conditions and within such time as the Commission may specify in such order.

3 Section 9(b)(2) of the Investment Company Act (15 U.S.C. §80a-9(b)(2)) provides:

(b) The Commission may, after notice and opportunity for hearing, by order prohibit, conditionally or unconditionally, either permanently or for such period of time as it in its discretion shall deem appropriate in the public interest, any person 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, if such person- (2) has willfully violated any provision of the Securities Act of 1933, or of the Securities Exchange Act of 1934, or of title II of this Act, or of this title, or of the Commodity Exchange Act, or of any rule or regulation under any of such statutes....

4 The Commission's opinion and findings are based upon information gathered during an informal investigation conducted by the Division of Enforcement.

5 The Equity Trust is a closed-end, non-diversified management investment company. The Asset Fund is an open-end, diversified management investment company. The Equity Trust is listed on the New York Stock Exchange. Neither the Equity Trust nor the Asset Fund is named as a respondent herein.

6 By February 13, 1987, the group held over 18% of DiGiorgio's stock. On June 10, 1987, GAMCO and GFI filed a Schedule 13G reporting ownership of approximately 2.7% of DiGiorgio's stock. By June 29, 1987, when the group filed a Schedule 13D, the group held over 28% of DiGiorgio's stock. Although Mario J. Gabelli did not personally own any DiGiorgio stock, his control over the Entities made him the indirect beneficial owner of their holdings. See Discussion at pages 10-1t, infra.

7 Persons eligible to use Schedule 13G under Rule 13d-1(b)(1)(ii) include registered brokers or dealers, banks, insurance companies, registered investment companies, registered investment advisers, certain employee benefit plans or pension funds, certain holding companies and groups of such entities, provided that all members of the group are eligible to use Schedule 13G.

8 Mario J. Gabelli, as an individual, is not eligible to file a Schedule 13G under Rule 13d-1(b)(1)(ii) and is therefore required to report his beneficial ownership on Schedule 13D. The Commission staff, however, has allowed individuals who are the beneficial owners of more than five percent of a company's stock to file Schedules 13G jointly under Rule 13d-1(f) with an eligible entity within their control where the individual owns directly, or indirectly through an ineligible entity, less than one percent of the company's stock and does not intend to change or influence control of the company. See December 5, 1986 no action letter regarding Warren E. Buffet and Berkshire Hathaway, Inc. To meet this obligation the individual would file a separate Schedule 13G cover sheet and sign the Schedule in his individual capacity. See Schedule 13G, Instruction (I) and Notes for Cover Page and Item 10; 17 CFR 240.13d-102.