**Securities Exchange Act of 1934**
**Release No. 34-31554**

**IN THE MATTER OF JOHN H. GUTFREUND, THOMAS W. STRAUSS, AND JOHN W. MERIWETHER, RESPONDENTS**

**ADMINISTRATIVE PROCEEDING**
**File No. 3-7930**

**December 3, 1992**

# ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIESEXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND REPORT OF INVESTIGATION PURSUANT TO SECTION 21(a) OF THE SECURITIES EXCHANGE ACT OF 1934

## I.

The Commission deems it appropriate and in the public interest that public administrative proceedings be and they hereby are instituted against John H. Gutfreund, Thomas W. Strauss, and John W. Meriwether pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act").

## II.

In anticipation of the institution of these administrative proceedings, Gutfreund, Strauss, and Meriwether have each submitted Offers of Settlement which the Commission has determined to accept. Solely for the purposes of these proceedings and any other proceedings brought by or on behalf of the Commission or to which the Commission is a party, prior to a hearing pursuant to the Commission's Rules of Practice, and without admitting or denying the facts, findings, or conclusions herein, Gutfreund, Strauss, and Meriwether each consent to entry of the findings, and the imposition of the remedial sanctions, set forth below.

## III.

The Commission also deems it appropriate and in the public interest that a report of investigation be issued pursuant to Section 21(a) of the Exchange Act [FN1] with respect to the supervisory responsibilities of brokerage firm employees in certain circumstances. Donald M. Feuerstein consents to the issuance of this Report, without admitting or denying any of the statements contained herein.

## IV.

On the basis of this Order and the Respondents' Offers of Settlement, the Commission finds the following: [FN2]

## A. FACTS

### 1. Brokerage Firm Involved

Salomon Brothers Inc ("Salomon") is a Delaware corporation with its principal place of business in New York, New York. At all times relevant to this proceeding, Salomon was registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act. Salomon has been a government- designated dealer in U.S. Treasury securities since 1939 and a primary dealer since 1961.

## 2. Respondents

John H. Gutfreund was the Chairman and Chief Executive Officer of Salomon from 1983 to August 18, 1991. He had worked at Salomon since 1953.

Thomas W. Strauss was the President of Salomon from 1986 to August 18, 1991. During that time period, Strauss reported to Gutfreund. He had worked at Salomon since 1963.

John W. Meriwether was a Vice Chairman of Salomon and in charge of all fixed income trading activities of the firm from 1988 to August 18, 1991. During that period, Meriwether reported to Strauss. During the same period, Paul W. Mozer, a managing director and the head of Salomon's Government Trading Desk, reported directly to Meriwether.

## 3. Other Individual

Donald M. Feuerstein was the chief legal officer of Salomon Inc and the head of the Legal Department of Salomon until August 23, 1991. From 1987 until August 23, 1991, the head of Salomon's Compliance Department reported directly to Feuerstein.

## 4. Summary

In late April of 1991, three members of the senior management of Salomon--John Gutfreund, Thomas Strauss, and John Meriwether--were informed that Paul Mozer, the head of the firm's Government Trading Desk, had submitted a false bid in the amount of $3.15 billion in an auction of U.S. Treasury securities on February 21, 1991. The executives were also informed by Donald Feuerstein, the firm's chief legal officer, that the submission of the false bid appeared to be a criminal act and, although not legally required, should be reported to the government. Gutfreund and Strauss agreed to report the matter to the Federal Reserve Bank of New York. Mozer was told that his actions might threaten his future with the firm and would be reported to the government. However, for a period of months, none of the executives took action to investigate the matter or to discipline or impose limitations on Mozer. The information was also not reported to the government for a period of months. During that same period, Mozer committed additional violations of the federal securities laws in connection with two subsequent auctions of U.S. Treasury securities.

The Respondents in this proceeding are not being charged with any participation in the underlying violations. However, as set forth herein, the Commission believes that the Respondents' supervision was deficient and that this failure was compounded by the delay in reporting the matter to the government.

## 5. The Submission of Two False Bids in the February 21, 1991 Five-Year U.S. Treasury Note Auction

For a considerable period of time prior to the February 21, 1991 auction, the Treasury Department had limited the maximum bid that any one bidder could submit in an auction of U.S. Treasury securities at any one yield to 35% of the auction amount. On February 21, 1991, the Treasury Department auctioned $9 billion of five-year U.S. Treasury notes. Salomon submitted a bid in its own name in that auction at a yield of 7.51% in the amount of $3.15 billion, or 35% of the auction amount. [FN3] In the same auction, Salomon submitted two additional $3.15 billion bids at the same yield in the names of two customers: Quantum Fund and Mercury Asset Management. [FN4] Both accounts were those of established customers of Salomon, but the bids were submitted without the knowledge or authorization of either customer. Both bids were in fact false bids intended to secure additional securities for Salomon. Each of the three $3.15 billion bids was prorated 54% and Salomon received a total of $5.103 billion of the five-year notes from the auction, or 56.7% of the total amount of securities sold at that auction.

After the auction results were announced, Paul Mozer, then a managing director in charge of Salomon's Government Trading Desk, directed a clerk to write trade tickets "selling" the $1.701 billion auction allocations received in response to the two unauthorized bids to customer accounts in the names of Mercury Asset Management and Quantum Fund at the auction price. Mozer at the same time directed the clerk to write trade tickets "selling" the same amounts from those accounts back to Salomon at the same price. These fictitious transactions were intended to create the appearance that the customers had received the securities awarded in response to the unauthorized bids and had sold those securities to Salomon.

Under Salomon's internal procedures, the trade tickets written by the clerk resulted in the creation of customer confirmations reflecting the purported transactions. Mozer directed the clerk to prevent the confirmations from being sent to either Mercury Asset Management or Quantum Fund. As a result, the normal procedures of Salomon were overridden and confirmations for the fictitious transactions were not sent to either Mercury Asset Management or Quantum Fund.

**6. The Submission of a bid in the February 21, 1991 Auction by S.G. Warburg and the Treasury Department's Investigation of That Bid and the Salomon False Bid**

In the February 21, 1991 five-year note auction, S.G. Warburg, a primary dealer in U.S. Treasury securities, submitted a bid in its own name in the amount of $100 million at a yield of 7.51%. The 7.51% yield was the same yield used for the unauthorized $3.15 billion Mercury bid submitted by Salomon. At the time the bids were submitted, S.G. Warburg and Mercury Asset Management were subsidiaries of the same holding company, S.G. Warburg, PLC. Because the unauthorized Mercury bid was for the maximum 35% amount, the submission of the $100 million bid in the name of S.G. Warburg meant that two bids had apparently been submitted by affiliated entities in an amount in excess of 35% of the auction.

The submission of the bids was noticed by officials of the Federal Reserve Bank of New York and brought to the attention of officials of the Treasury Department in Washington, D.C. The Treasury Department officials did not know that one of the bids had been submitted by Salomon without authorization from Mercury. Because the bids were to be significantly prorated, officials of the Treasury Department decided not to reduce the amount of either bid for purposes of determining the results of the February 21, 1991 auction. The Treasury Department began to review whether the relationship between S.G. Warburg and Mercury Asset Management was such that the bids should be aggregated for determination of how the 35% limitation should be applied to those entities in future auctions.

After reviewing facts concerning the corporate relationship between Mercury Asset Management and S.G. Warburg, the Treasury Department determined to treat the two firms as a single bidder in future auctions of U.S. Treasury securities. The Treasury Department conveyed that decision in a letter dated April 17, 1991 from the Acting Assistant Commissioner for Financing to a Senior Director of Mercury Asset Management in London. The April 17 letter noted that a $3.15 billion bid had been submitted by Salomon on behalf of Mercury Asset Management in the five-year U.S. Treasury note auction on February 21, 1991, and that S.G. Warburg had also submitted a bid in the same auction, at the same yield, in the amount of $100 million. The letter noted that Mercury Asset Management and S.G. Warburg were subsidiaries of the same holding company and stated that the Treasury Department would thereafter "treat all subsidiaries of S.G. Warburg, PLC as one single entity for purposes of the 35 percent limitation rule." Copies of the letter were sent to Mozer and to a managing director of S.G. Warburg in New York.

**7. Receipt of the April 17, 1991 Treasury Department Letter by Salomon**

Mozer received the April 17 letter during the week of April 21, 1991. On April 24, he spoke with the Senior Director at Mercury Asset Management who had also received the April 17 letter. Mozer told the Senior Director that the submission of the $3.15 billion bid in the name of Mercury Asset Management was the result of an "error" by a clerk who had incorrectly placed the name of

Mercury on the tender form. Mozer told the Senior Director that he was embarrassed by the "error," which he said had been "corrected" internally, and he asked the Senior Director to keep the matter confidential to avoid "problems." The Senior Director indicated that such a course of action would be acceptable. The Mercury Senior Director was not aware that the submission of the bid was an intentional effort by Salomon to acquire additional securities for its own account.

**8. Mozer's Disclosure to John Meriwether of the Submission of One False Bid**

Mozer then went to the office of John Meriwether, his immediate supervisor, and handed him the April 17 letter. When Meriwether was finished reading the letter, Mozer told him that the Mercury Asset Management bid referred to in the letter was in fact a bid for Salomon and had not been authorized by Mercury. After expressing shock at Mozer's conduct, Meriwether told him that his behavior was career-threatening, and he asked Mozer why he had submitted the bid. Mozer told Meriwether that the Government Trading Desk had needed a substantial amount of the notes, that there was also demand from the Government Arbitrage Desk for the notes, and that he had submitted the false bid to satisfy those demands.

Meriwether then asked Mozer if he had ever engaged in that type of conduct before or since. Mozer responded that he had not. Meriwether told Mozer that he would have to take the matter immediately to Thomas Strauss. Mozer then told Meriwether of his conversation with the Mercury Senior Director in which he had told that individual that the bid was an "error" and had asked him to keep the matter confidential. Meriwether listened to Mozer's description of the conversation, but did not respond. He then gave the letter back to Mozer and Mozer left the office.

**9. Discussions among Senior Management**

Meriwether then called Thomas Strauss. Strauss was not in, but he returned Meriwether's call later that day. Meriwether told Strauss that Mozer had informed him that he had submitted an unauthorized customer bid in an auction of U.S. Treasury securities. Strauss indicated that they should meet to discuss the matter first thing the next morning.

Meriwether met with Strauss at 9:15 a.m. the following morning, April 25, in Strauss' office. Prior to the meeting, Strauss had arranged for Donald Feuerstein, the firm's chief legal officer, to attend, and Feuerstein was in Strauss' office when Meriwether arrived. Meriwether began the meeting by describing his conversation with Mozer the previous day. He told Strauss and Feuerstein that Mozer had come to him and had informed him that he had submitted an unauthorized customer bid in an auction of U.S. Treasury securities. He said that he had informed Mozer that his conduct was career- threatening and that Mozer had denied that he had ever before or since engaged in that type of conduct. He indicated that Mozer had received a letter from the Treasury Department inquiring about the bid and that Mozer had shown him a copy of that letter. Meriwether also reported that Mozer had said that he had submitted the bid to satisfy demand for the securities from the Government Trading Desk and from Salomon's Government Arbitrage Desk. Finally, he told Strauss and Feuerstein that Mozer had informed him that he had contacted an individual at Mercury Asset Management who had also received the letter from the Treasury Department. Meriwether indicated that Mozer had told that individual that the submission of the bid was an error, and had attempted to persuade him not to inform the government of that fact.

When Meriwether was finished, Feuerstein said that Mozer's conduct was a serious matter and should be reported to the government. Feuerstein asked to see a copy of the April 17 letter. Meriwether returned to the trading floor and retrieved the letter from Mozer. He then returned to Strauss' office and provided the letter to Feuerstein. After some discussion about the letter, Strauss said he wanted to discuss the matter with Gutfreund, who was then out of town, and the meeting ended.

A meeting was then held early the following week, on either Monday, April 29 or Tuesday, April 30, with Gutfreund. The meeting was attended by Meriwether, Feuerstein, Strauss and Gutfreund and

was held in Strauss' office. Meriwether summarized his conversation with Mozer. Meriwether also indicated that he believed that the incident was an aberration and he expressed his hope that it would not end Mozer's career at Salomon.

After Meriwether's description, Feuerstein told the group that he believed that the submission of the false bid was a criminal act. He indicated that, while there probably was not a legal duty to report the false bid, he believed that they had no choice but to report the matter to the government. The group then discussed whether the bid should be reported to the Treasury Department or to the Federal Reserve Bank of New York. The hostile relationship that had developed between Mozer and the Treasury Department over the adoption of the 35% bidding limitation in the Summer of 1990 was noted, as was the role of the Federal Reserve Bank of New York as Salomon's regulator in the area of U.S. Treasury securities, and the group concluded that the preferable approach would be to report the matter to the Federal Reserve Bank of New York. The meeting then ended.

At the conclusion of the meeting, each of the four executives apparently believed that a decision had been made that Strauss or Gutfreund would report the false bid to the government, although each had a different understanding about how the report would be handled. Meriwether stated that he believed that Strauss would make an appointment to report the matter to Gerald Corrigan, the President of the Federal Reserve Bank of New York. Feuerstein stated that he believed that Gutfreund wanted to think further about how the bid should be reported. He then spoke with Gutfreund the next morning. Although the April 17 letter had been sent from the Treasury Department, Feuerstein told Gutfreund that he believed the report should be made to the Federal Reserve Bank of New York, which could then, if it wanted, pass the information on to the Treasury Department. Strauss stated that he believed that he and Gutfreund would report the matter in a personal visit with Corrigan, although he believed that Gutfreund wanted to think further about how the matter should be handled. Gutfreund stated that he believed that a decision had been made that he and Strauss, either separately or together, would speak to Corrigan about the matter.

Aside from the discussions referred to above regarding reporting the matter to the government, there was no discussion at either meeting in late April about investigating what Mozer had done, about disciplining him, or about placing limits on his activities. [FN5] There was also no discussion about whether Mozer had acted alone or had been assisted by others on the Government Trading Desk, about whether false records had been created, about the involvement of the Government Arbitrage Desk, which Mozer had said had sought securities from the auction, or about what had happened with the securities obtained pursuant to the bid. Similarly, there was no discussion about whether Salomon had violated the 35% bidding limitation by also submitting a bid in its own name. [FN6]

For almost three months, no action was taken to investigate Mozer's conduct in the February 21 auction. That conduct was investigated only after other events prompted an internal investigation by an outside law firm, as is discussed below. During the same period, no action was taken to discipline Mozer or to place appropriate limitations on his conduct. Mozer's employment by Salomon was terminated on August 9, 1991, after an internal investigation had discovered that he had been involved in additional improper conduct.

Each of the four executives who attended the meetings in late April placed the responsibility for investigating Mozer's conduct and placing limits on his activities on someone else. Meriwether stated that he believed that, once he had taken the matter of Mozer's conduct to Strauss and Strauss had brought Feuerstein and Gutfreund into the process, he had no further responsibility to take action with respect to the false bid unless instructed to do so by one of those individuals. Meriwether stated that he also believed that, though he had the authority to recommend that action be taken to discipline Mozer or limit his activities, he had no authority to take such action unilaterally. Strauss stated that he believed that Meriwether, who was Mozer's direct supervisor, and Feuerstein, who was responsible for the legal and compliance activities of the firm, would take

whatever steps were necessary or required as a result of Mozer's disclosure. Feuerstein stated that he believed that, once a report to the government was made, the government would instruct Salomon about how to investigate the matter. Gutfreund stated that he believed that the other executives would take whatever steps were necessary to properly handle the matter. According to the executives, there was no discussion among them about any action that would be taken to investigate Mozer's conduct or to place limitations on his activities.

**10. Violations after Disclosure by Mozer to Management**

After Mozer's disclosure of one unauthorized bid on April 24, 1991, he submitted two subsequent unauthorized bids in auctions of U.S. Treasury securities.

**a. The April 25, 1991 Five-Year U.S. Treasury Note Auction**

*7 On April 25, 1991, the U.S. Treasury auctioned $9 billion of five-year U.S. Treasury notes. Salomon submitted a bid in that auction for $3 billion, just under the maximum 35% amount of $3.15 billion. Salomon also submitted a $2.5 billion bid in the name of Tudor Investment Corporation ("Tudor"). A bid of only $1.5 billion had been authorized by Tudor, however, and the tender form submitted by Salomon was thus false in the amount of $1 billion. The bid by Salomon in its own name and the unauthorized portion of the Tudor bid totaled $4 billion, or 44.4% of the auction amount.

The $2.5 billion bid on behalf of Tudor was prorated 84% and $2.1 billion of five-year notes was awarded in response to the bid. Trade tickets were written providing the entire $2.1 billion auction allocation to Tudor after the auction. At Mozer's instruction, a trade ticket was then written "selling" $600 million of the notes back to Salomon on the auction day at the auction price. The five-year notes were "sold" from Tudor to Salomon at the auction price even though the price of the notes had risen above that price by the time of the transaction.

**b. The May 22, 1991 Two-Year U.S. Treasury Note Auction**

On May 22, 1991, the U.S. Treasury auctioned $12.255 billion of two-year U.S. Treasury notes. Salomon submitted a $2 billion bid in that auction on behalf of Tiger Management Corporation ("Tiger"). A bid of only $1.5 billion had been authorized by Tiger, and the tender form submitted by Salomon was thus false in the amount of $500 million.

The $2 billion bid submitted on behalf of Tiger was accepted in full. After the auction results were announced, Tiger was provided with $1.5 billion of the $2 billion allocation provided in response to its bid. The remaining $500 million was not provided to Tiger but was transferred internally to a proprietary trading account on the Government Trading Desk at Salomon.

Prior to the auction on May 22, 1991, Mozer had decided that the firm should accumulate a long position in the two-year notes prior to the auction. He communicated that decision to the individual then trading two-year notes on the Government Trading Desk. Consistent with that trading decision, at 12:30 p.m. on May 22, 1991, Salomon had a net long position in the two-year notes of $485 million. Salomon failed to disclose that position, however, on its tender form submitted in the auction, as required by the auction rules. The tender form falsely stated that Salomon had a net position of less than $200 million in the notes as of 12:30 p.m. on the auction day.

With the securities received in response to its own bid, the $500 million of notes received in response to the unauthorized portion of the Tiger bid, and the extra $485 million received as a result of the failure accurately to disclose the firm's net long position, Salomon received a total of $5.185 billion of the two-year notes from the auction, or 42.3% of the auction amount.

The activities described above with respect to the April 25, 1991 and the May 22, 1991 auctions of U.S. Treasury securities violated Sections 10(b) and 17(a) of the Exchange Act and Rules 10b-5,

17a-3, and 17a-4 thereunder. There is no evidence that the respondents or Feuerstein knew of the submission of the false bids in the February 21, April 25 and May 22, 1991 auctions.

**11. The Delay In Reporting the False Bid to the Government**

There was no disclosure to the government of the false bid in the February 21, 1991 auction prior to August 9, 1991, when the results of the internal investigation were first made public.

In mid-May, after it had become clear to Feuerstein that the false bid had not yet been reported, Feuerstein met with Gutfreund and Strauss and urged them to proceed with disclosure as soon as possible. He was told by both that they still intended to report the matter. Feuerstein also learned from the in-house attorney who worked with the Government Trading Desk of a proposal by Mozer that Salomon finance in excess of 100% of the amount of the two-year U.S. Treasury notes auctioned on May 22, 1991. [FN7] Feuerstein expressed his disapproval of the proposal to the attorney. Feuerstein believed that Mozer's support for this proposal, his submission of the unauthorized bid in the February auction, and his conduct during the Summer of 1990 which led to the adoption of the 35% bidding limitation combined to indicate that he had an "attitudinal problem." Prior to leaving for Japan on May 23, 1991, Feuerstein spoke with Strauss and conveyed these concerns to him. He also again discussed with Strauss his belief that the bid should be reported to the government as soon as possible. Feuerstein also spoke with Gutfreund in early June and again urged him to report the matter to the government.

Strauss and Gutfreund also discussed the matter of reporting the bid on several occasions during this period. On at least one occasion, Strauss also urged Gutfreund to decide how to handle the matter and to proceed with disclosure to the government.

Gutfreund indicated on these occasions that he still intended to report the false bid to the government. Gutfreund stated that he believed, however, that the false bid was a minor aberration, and that the reporting of the bid was not a matter of high priority.

As noted above, in the auction on May 22, 1991 for two-year U.S. Treasury notes, Salomon and two customers bid for and received approximately 86% of the two-year notes. On May 23, reports appeared in the press concerning rumors of a possible "squeeze" in the May two-year issue. On May 30, press reports mentioned Salomon by name in connection with a rumored short squeeze in the two-year notes.

In early June, Strauss spoke by telephone with a senior official of the Treasury Department. Strauss told the official that the firm was aware of the Department's interest in the May 22, 1991 auction and was willing to discuss the matter with the Department. Following Strauss' call, Gutfreund arranged to meet with officials of the Treasury Department to discuss Salomon's role in the May 22, 1991 auction.

On June 10, 1991, Gutfreund met with an Under Secretary of the Treasury and other Treasury Department officials in Washington, D.C. During the meeting, Gutfreund told the Treasury Department officials that he believed that the firm had acted properly in connection with the May 22, 1991 auction, and he indicated that the firm would cooperate with any inquiries by the Department into the matter. While the focus of the discussion at the meeting was the May 22, 1991 auction, Gutfreund did not disclose to the Treasury Department officials that he knew that a false bid had been submitted in the February 21, 1991 five-year note auction by the head of the firm's Government Trading Desk, the same individual responsible for the firm's activities in connection with the May two-year note issue.

On June 19, Meriwether, Strauss and Gutfreund met to discuss the allegations concerning the May 22, 1991 two-year note auction. At that meeting, Strauss and Gutfreund decided that disclosure of the unauthorized customer bid in the February 21, 1991 auction should be delayed until more information could be obtained about Salomon's activities in the May two-year note auction. No

decision was made about how much time should elapse before a report was made. While Gutfreund and Strauss were under the general impression that someone in the legal department was reviewing the May 22, 1991 auction, there was not any discussion about any specific efforts or inquiries that would have to be undertaken before a report could be made. There were also no efforts or inquiries underway at that time to investigate Mozer's conduct in the February 21, 1991 auction. Feuerstein was not informed of or present at the meeting and was not informed of the decision to delay the disclosure.

For the next several weeks, there was not any further consideration of reporting the unauthorized bid in the February 21, 1991 auction to the government. Some discussion about limiting Mozer's activities did occur in late June with respect to the auction for June two-year U.S. Treasury notes. On the day of the auction, Strauss and Gutfreund told Mozer that he should not bid in an aggressive or high-profile manner in the auction because of the attention which had been focused on Salomon's role in the May two-year auction.

**12. The Internal Investigation**

In early July, Salomon retained a law firm to conduct an internal investigation of the firm's role in the May 22, 1991 two-year note auction. On July 2, a lawyer with that law firm had received a call from the general counsel of a brokerage firm who indicated that an FBI agent and a representative from the Antitrust Division of the Department of Justice had made a request to speak with representatives of the firm about the May two-year note auction. Before agreeing to be retained by the firm, the lawyer indicated that he wished to determine whether Salomon, which was a regular client of the firm, also wanted representation in connection with the matter. The lawyer then spoke with employees of Salomon and was told that Salomon might wish to be represented in connection with the matter and that the firm should hold itself available. Prior to that time, in late June of 1991, Salomon had received inquiries from the Commission and from another government agency concerning activities in the two-year U.S. Treasury notes auctioned on May 22, 1991. Several days after the lawyer contacted Salomon, Feuerstein decided to retain the law firm and directed that it begin an internal investigation of the firm's activities in the May 22, 1991 two-year note auction.

At the time the law firm was retained, it was asked only to investigate facts concerning the May two-year notes. The law firm was not informed of the false bid submitted in the February 21, 1991 auction. On July 8, attorneys from the law firm began interviewing employees on the Government Trading Desk at Salomon. The interviews were attended by several attorneys from the law firm and by the in-house attorney working with the Government Trading Desk. Sometime during the week of July 8, the attorneys learned that one of Salomon's customers in the May two-year note auction, Tiger Management Corporation, had apparently sold $500 million of a $2 billion auction award to Salomon on the day of the auction at the auction price, and that trade tickets for the transaction did not exist.

On July 12, attorneys from the law firm interviewed Thomas Murphy, who was then the head trader on the Government Trading Desk. In connection with questions about customer authorization for the $500 million portion of the $2 billion Tiger award sold to Salomon on the day of the auction, Murphy was asked whether there had been similar types of problems in the past. Murphy said that he could not answer the question without speaking to the Salomon attorney who was present. Murphy and the attorney then left the room. When they returned, Murphy did not answer the question but continued with the interview.

When the interview was over, Feuerstein met with the attorneys from the law firm for a previously-scheduled status meeting. During that meeting, Feuerstein and the attorneys discussed the questions concerning authorization for the $500 million portion of the Tiger award. Feuerstein then informed the attorneys that Salomon had submitted an unauthorized customer bid in the February 21, 1991 five-year note auction. The attorneys and Feuerstein agreed that the scope of the internal investigation should be broadened, and a decision was made that the law firm would expand the

investigation to include a review of all auctions for U.S. Treasury notes and bonds since the July 1990 adoption by the Treasury Department of a 35% bidding limitation. [FN8]

On the following Monday, July 15, the attorneys from the law firm began the expanded internal investigation agreed upon at the meeting. During the review that was conducted between July 15 and early August, the law firm discovered a $1 billion false bid in the December 27, 1990 auction of four-year U.S. Treasury notes, a second $3.15 billion false bid in the February 21, 1991 auction, a $1 billion false bid in the February 7, 1991 auction of thirty-year U.S. Treasury bonds, [FN9] the failure to disclose the $485 million when-issued position in the May 22, 1991 auction, and questions concerning customer authorization for the bid submitted in the name of Tudor in the April 25, 1991 auction. [FN10] The results of the internal investigation were reported to Feuerstein on August 6 and to other members of senior management of Salomon, including Gutfreund, Strauss, and Meriwether, on August 7. [FN11]

On August 9, 1991, after consultation with and review by outside counsel, Salomon issued a press release stating that it had "uncovered irregularities and rule violations in connection with its submission of bids in certain auctions of Treasury securities." The release described several of the violations and stated that Salomon had suspended two managing directors on the Government Trading Desk and two other employees.

In telephone conversations on August 9, 1991 in which they reported on the results of the internal investigation, Gutfreund and Strauss disclosed to government officials for the first time that the firm had known of a false bid in a U.S. Treasury auction since late April of 1991. On August 14, 1991, Salomon issued a second press release which publicly disclosed for the first time that Gutfreund, Strauss and Meriwether had been "informed in late April by one of the suspended managing directors that a single unauthorized bid had been submitted in the February 1991 auction of five-year notes."

On Sunday, August 18, at a special meeting of the Board of Directors of Salomon Inc, Gutfreund and Strauss resigned their positions with Salomon and Salomon Inc, and Meriwether resigned his position with Salomon. On August 23, 1991, Feuerstein resigned his position as Chief Legal Officer of Salomon. [FN12]

**13. The Commission's Action**

Following an intensive investigation, on May 20, 1992, the Commission filed a complaint in U.S. District Court for the Southern District of New York charging Salomon and its publicly-held parent, Salomon Inc, with numerous violations of the federal securities laws. Among other things, the complaint charged that Salomon had submitted or caused to be submitted ten false bids in nine separate auctions for U.S. Treasury securities between August of 1989 and May of 1991. The false bids alleged in the complaint totaled $15.5 billion and resulted in the illegal acquisition by Salomon of $9.548 billion of U.S. Treasury securities. The complaint alleged that submission of the bids allowed Salomon repeatedly to circumvent the limitations imposed by the Treasury Department on the amount of securities any one person or entity may obtain from auctions of U.S. Treasury securities. [FN13]

Simultaneously with the filing of the action, Salomon and Salomon Inc consented, without admitting or denying the allegations of the complaint, to the entry of a Final Judgment of Permanent Injunction and Other Relief. The Judgment required, among other things, that Salomon pay the amount of $290 million, representing a payment of $190 million to the United States Treasury as civil penalties and asset forfeitures and a payment of $100 million to establish a civil claims fund to be administered by a Fund Administrator appointed by the Court.

On May 20, 1992, the Commission also instituted and settled, pursuant to an Offer of Settlement submitted by Salomon, an administrative proceeding against the firm pursuant to Section 15(b) of the Exchange Act. In that proceeding, the Commission found that Salomon had failed, in

connection with the facts described in this Order, reasonably to supervise a person subject to its supervision with a view to preventing violations of the federal securities laws.

**B. FINDINGS**

**1. Legal Principles**

Section 15(b)(4)(E) of the Exchange Act authorizes the Commission to impose sanctions against a broker-dealer if the firm has:

> failed reasonably to supervise, with a view to preventing violations [of federal securities laws], another person who commits such a violation, if such person is subject to his supervision. Section 15(b)(6) of the Exchange incorporates Section 15(b)(4)(E) by reference and authorizes the Commission to impose sanctions for deficient supervision on individuals associated with broker-dealers.

The principles which govern this proceeding are well-established by the Commission's cases involving failure to supervise. The Commission has long emphasized that the responsibility of broker-dealers to supervise their employees is a critical component of the federal regulatory scheme. [FN14] As the Commission stated in Wedbush Securities, Inc.: [FN15]

In large organizations it is especially imperative that those in authority exercise particular vigilance when indications of irregularity reach their attention.

The supervisory obligations imposed by the federal securities laws require a vigorous response even to indications of wrongdoing. Many of the Commission's cases involving a failure to supervise arise from situations where supervisors were aware only of "red flags" or "suggestions" of irregularity, rather than situations where, as here, supervisors were explicitly informed of an illegal act. [FN16]

Even where the knowledge of supervisors is limited to "red flags" or "suggestions" of irregularity, they cannot discharge their supervisory obligations simply by relying on the unverified representations of employees. [FN17] Instead, as the Commission has repeatedly emphasized, "[t]here must be adequate follow-up and review when a firm's own procedures detect irregularities or unusual trading activity...." [FN18] Moreover, if more than one supervisor is involved in considering the actions to be taken in response to possible misconduct, there must be a clear definition of the efforts to be taken and a clear assignment of those responsibilities to specific individuals within the firm. [FN19]

**2. The Failure to Supervise**

As described above, in late April of 1991 three supervisors of Paul Mozer-- John Meriwether, Thomas Strauss, and John Gutfreund--learned that Mozer had submitted a false bid in the amount of $3.15 billion in an auction of U.S. Treasury securities. Those supervisors learned that Mozer had said that the bid had been submitted to obtain additional securities for another trading area of the firm. They also learned that Mozer had contacted an employee of the customer whose name was used on the bid and falsely told that individual that the bid was an error. The supervisors also learned that the bid had been the subject of a letter from the Treasury Department to the customer and that Mozer had attempted to persuade the customer not to inform the Treasury Department that the bid had not been authorized. The supervisors were also informed by Salomon's chief legal officer that the submission of the false bid appeared to be a criminal act.

The information learned by the supervisors indicated that a high level employee of the firm with significant trading discretion had engaged in extremely serious misconduct. As the cases described above make clear, this information required, at a minimum, that the supervisors take action to investigate what had occurred and whether there had been other instances of unreported

misconduct. While they could look to counsel for guidance, they had an affirmative obligation to undertake an appropriate inquiry. If they were unable to conduct the inquiry themselves or believed it was more appropriate that the inquiry be conducted by others, they were required to take prompt action to ensure that others in fact undertook those efforts. Such an inquiry could have been conducted by the legal or compliance departments of the firm, outside counsel, or others who had the ability to investigate the matter adequately. The supervisors were also required, pending the outcome of such an investigation, to increase supervision of Mozer and to place appropriate limitations on his activities.

The failure to recognize the need to take action to limit the activities of Mozer in light of his admitted misconduct is particularly troubling because Gutfreund and Strauss did place limitations on Mozer's conduct in connection with the June two-year U.S. Treasury note auction at a time when they thought the firm had not engaged in misconduct, but press reports had raised questions about the firm's activities. Although they had previously been informed that a serious violation had in fact been committed by Mozer, they failed for over three months to take any action to place limitations on his activities to deal with that misconduct.

The need to take prompt action was all the more critical in view of the fact that the potential unlawful conduct had taken place in the market for U.S. Treasury securities. The integrity of that market is of vital importance to the capital markets of the United States, as well as to capital markets worldwide, and Salomon occupied a privileged role as a government-designated primary dealer. The failure of the supervisors to take vigorous action to address known misconduct by the head of the firm's Government Trading Desk caused unnecessary risks to the integrity of this important market.

To discharge their obligations, the supervisors should at least have taken steps to ensure that someone within the firm questioned other employees on the Government Trading Desk, such as the desk's clerk or the other managing director on the Desk. Since the supervisors were informed that Mozer had said that he submitted the false bid to obtain additional securities for another trading desk of the firm, they should also have specifically investigated any involvement of that area of the firm in the matter. The supervisors should also have reviewed, or ensured that others reviewed, documentation concerning the February 21, 1991 auction. Such a review would have revealed, at a minimum, that a second false bid had been submitted in the auction and that false trade tickets and customer confirmations had been created in connection with both false bids. Those facts would have raised serious questions about the operations of the Government Trading Desk, and inquiries arising from those questions might well have led to discovery of the additional false bids described above. For instance, two of the other false bids, those submitted in the December 27, 1990 and February 7, 1991 auctions, involved the same pattern of fictitious sales to and from customer accounts and the suppression of customer confirmations used in connection with the February 21, 1991 auction. Inasmuch as Mozer had admitted to committing one apparently criminal act, the supervisors had reason to be skeptical of Mozer's assurances that he had not engaged in other misconduct.

Each of the three supervisors apparently believed that someone else would take the supervisory action necessary to respond to Mozer's misconduct. There was no discussion, however, among any of the supervisors about what action should be taken or about who would be responsible for taking action. Instead, each of the supervisors assumed that another would act. In situations where supervisors are aware of wrongdoing, it is imperative that they take prompt and unequivocal action to define the responsibilities of those who are to respond to the wrongdoing. The supervisors here failed to do that. As a result, although there may be varying degrees of responsibility, each of the supervisors bears some measure of responsibility for the collective failure of the group to take action.

After the disclosure of one unauthorized bid to Meriwether, Mozer committed additional violations in connection with the submission of two subsequent unauthorized customer bids. Had limits been placed on his activities after the one unauthorized bid was disclosed, these violations might have

been prevented. While Mozer was told by Meriwether that his conduct was career- threatening and that it would be reported to senior management and to the government, these efforts were not a sufficient supervisory response under the circumstances. The supervisors were required to take action reasonably designed to prevent a repetition of the misconduct that had been disclosed to them. They could, for instance, have temporarily limited Mozer's activities so that he was not involved in the submission of customer bids pending an adequate review of what had occurred in the February 21, 1991 auction, or they could have instituted procedures to require verification of customer bids.

Under the circumstances of this case, the failure of the supervisors to take action to discipline Mozer or to limit his activities constituted a serious breach of their supervisory obligations. Gutfreund, Strauss and Meriwether thus each failed reasonably to supervise Mozer with a view to preventing violations of the federal securities laws. [FN20]

As Chairman and Chief Executive Officer of Salomon, Gutfreund bore ultimate responsibility for ensuring that a prompt and thorough inquiry was undertaken and that Mozer was appropriately disciplined. A chief executive officer has ultimate affirmative responsibility, upon learning of serious wrongdoing within the firm as to any segment of the securities market, to ensure that steps are taken to prevent further violations of the securities laws and to determine the scope of the wrongdoing. He failed to ensure that this was done. Gutfreund also undertook the responsibility to report the matter to the government, but failed to do so, although he was urged to make the report on several occasions by other senior executives of Salomon. The disclosure was made only after an internal investigation prompted by other events. Gutfreund's failure to report the matter earlier is of particular concern because of Salomon's role in the vitally-important U.S. Treasury securities market. The reporting of the matter to the government was also the only action under consideration within the firm to respond to Mozer's actions. The failure to make the report thus meant that the firm failed to take any action to respond to Mozer's misconduct.

Once improper conduct came to the attention of Gutfreund, he bore responsibility for ensuring that the firm responded in a way that recognized the seriousness and urgency of the situation. In our view, Gutfreund did not discharge that responsibility.

Strauss, as the President of Salomon, was the official within the firm to whom Meriwether first took the matter of Mozer's misconduct for appropriate action. As its president, moreover, Strauss was responsible for the operations of Salomon as a brokerage firm. [FN21] Though he arranged several meetings to discuss the matter, Strauss failed to direct that Meriwether, Feuerstein, or others within the firm take the steps necessary to respond to the matter. Even if Strauss assumed that Meriwether or Feuerstein had taken the responsibility to address the matter, he failed to follow-up and ascertain whether action had in fact been taken. Moreover, it subsequently became clear that no meaningful action was being taken to respond to Mozer's misconduct. Under these circumstances, Strauss retained his supervisory responsibilities as the president of the brokerage firm, and he failed to discharge those responsibilities.

Meriwether was Mozer's direct supervisor and the head of all fixed- income trading activities at Salomon. Meriwether had also been designated by the firm as the person responsible for supervising the firm's fixed-income trading activities, including the activities of the Government Trading Desk.

When he first learned of Mozer's misconduct, Meriwether promptly took the matter to senior executives within the firm. In so doing, he took appropriate and responsible action. However, Meriwether's responsibilities did not end with communication of the matter to more senior executives. He continued to bear direct supervisory responsibility for Mozer after he had reported the false bid to others within the firm. As a result, until he was instructed not to carry out his responsibilities as Mozer's direct supervisor, Meriwether was required to take appropriate supervisory action. Meriwether's efforts in admonishing Mozer and telling him that his misconduct

would be reported to the government were not sufficient under the circumstances to discharge his supervisory responsibilities.

### C. DONALD M. FEUERSTEIN

Donald Feuerstein, Salomon's chief legal officer, was informed of the submission of the false bid by Paul Mozer in late April of 1991, at the same time other senior executives of Salomon learned of that act. Feuerstein was present at the meetings in late April at which the supervisors named as respondents in this proceeding discussed the matter. In his capacity as a legal adviser, Feuerstein did advise Strauss and Gutfreund that the submission of the bid was a criminal act and should be reported to the government, and he urged them on several occasions to proceed with disclosure when he learned that the report had not been made. However, Feuerstein did not direct that an inquiry be undertaken, and he did not recommend that appropriate procedures, reasonably designed to prevent and detect future misconduct, be instituted, or that other limitations be placed on Mozer's activities. Feuerstein also did not inform the Compliance Department, for which he was responsible as Salomon's chief legal officer, of the false bid. [FN22]

Unlike Gutfreund, Strauss and Meriwether, however, Feuerstein was not a direct supervisor of Mozer at the time he first learned of the false bid. Because we believe this is an appropriate opportunity to amplify our views on the supervisory responsibilities of legal and compliance officers in Feuerstein's position, we have not named him as a respondent in this proceeding. [FN23] Instead, we are issuing this report of investigation concerning the responsibilities imposed by Section 15(b)(4)(E) of the Exchange Act under the circumstances of this case.

Employees of brokerage firms who have legal or compliance responsibilities do not become "supervisors" for purposes of Sections 15(b)(4)(E) and 15(b)(6) solely because they occupy those positions. Rather, determining if a particular person is a "supervisor" depends on whether, under the facts and circumstances of a particular case, that person has a requisite degree of responsibility, ability or authority to affect the conduct of the employee whose behavior is at issue. [FN24] Thus, persons occupying positions in the legal or compliance departments of broker-dealers have been found by the Commission to be "supervisors" for purposes of Sections 15(b)(4)(E) and 15(b)(6) under certain circumstances. [FN25]

In this case, serious misconduct involving a senior official of a brokerage firm was brought to the attention of the firm's chief legal officer. That individual was informed of the misconduct by other members of senior management in order to obtain his advice and guidance, and to involve him as part of management's collective response to the problem. Moreover, in other instances of misconduct, that individual had directed the firm's response and had made recommendations concerning appropriate disciplinary action, and management had relied on him to perform those tasks.

Given the role and influence within the firm of a person in a position such as Feuerstein's and the factual circumstances of this case, such a person shares in the responsibility to take appropriate action to respond to the misconduct. Under those circumstances, we believe that such a person becomes a "supervisor" for purposes of Sections 15(b)(4)(E) and 15(b)(6). As a result, that person is responsible, along with the other supervisors, for taking reasonable and appropriate action. It is not sufficient for one in such a position to be a mere bystander to the events that occurred.

Once a person in Feuerstein's position becomes involved in formulating management's response to the problem, he or she is obligated to take affirmative steps to ensure that appropriate action is taken to address the misconduct. For example, such a person could direct or monitor an investigation of the conduct at issue, make appropriate recommendations for limiting the activities of the employee or for the institution of appropriate procedures, reasonably designed to prevent and detect future misconduct, and verify that his or her recommendations, or acceptable alternatives, are implemented. If such a person takes appropriate steps but management fails to act and that person knows or has reason to know of that failure, he or she should consider what

additional steps are appropriate to address the matter. These steps may include disclosure of the matter to the entity's board of directors, resignation from the firm, or disclosure to regulatory authorities. [FN26]

These responsibilities cannot be avoided simply because the person did not previously have direct supervisory responsibility for any of the activities of the employee. Once such a person has supervisory obligations by virtue of the circumstances of a particular situation, he must either discharge those responsibilities or know that others are taking appropriate action.

**V. ORDER**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions specified in the Offers of Settlement submitted by John H. Gutfreund, Thomas W. Strauss, and John W. Meriwether.

Accordingly, IT IS HEREBY ORDERED that:

A. John H. Gutfreund be, and he hereby is:

> (i) ordered to comply with his undertaking not to associate in the future in the capacity of Chairman or Chief Executive Officer with any broker, dealer, municipal securities dealer, investment company or investment adviser regulated by the Commission; and
>
> (ii) ordered to pay to the United States Treasury a civil penalty aggregating $100,000 pursuant to Section 21B(a)(4) of the Exchange Act;

B. Thomas W. Strauss be, and he hereby is: (i) suspended from associating with any broker, dealer, municipal securities dealer, investment company or investment adviser for a period of six (6) months; and (ii) ordered to pay to the United States Treasury a civil penalty aggregating $75,000 pursuant to Section 21B(a)(4) of the Exchange Act;

C. John W. Meriwether be, and he hereby is: (i) suspended from associating with any broker, dealer, municipal securities dealer, investment company or investment adviser for a period of three (3) months; and

(ii) ordered to pay to the United States Treasury a civil penalty aggregating $50,000 pursuant to Section 21B(a)(4) of the Exchange Act.

By the Commission.

Jonathan G. Katz
Secretary

**Footnotes**

FN1 Section 21(a) of the Exchange Act authorizes the Commission to investigate whether any person has violated the Exchange Act and the rules thereunder and, in its discretion, to publish a report concerning such investigations.

FN2 The findings herein are solely for the purposes of this proceeding and are not binding on any other person or entity named as a respondent in any other proceeding.

FN3 The Treasury Department adopted the 35% limitation in July of 1990 after Salomon submitted several large bids in amounts far in excess of the amount of securities to be auctioned. Prior to July of 1990, the Treasury Department had not placed limitations on the amount of bids that could be submitted but had limited the maximum amount that any single bidder could purchase in an auction to 35% of the auction amount.

The Salomon bids which led to the adoption of the 35% bidding limitation were submitted at the direction of Paul Mozer. Mozer was angered by the adoption of the new bidding limitation and he expressed his disagreement with the decision to adopt the new rule to officials at the Treasury Department and in several news articles. Mozer also registered his anger

through his bidding activity in the Treasury auction the following day. In an auction for $8 billion of seven-year U.S. Treasury notes on July 11, 1990, Mozer entered 11 bids at the maximum 35% amount at successive yields between 8.60% and 8.70%. The successful bids in the auction were between 8.55% and 8.58%, and the bids submitted by Mozer were intended as protest bids.

FN4 The actual name placed on the tender form was "Warburg Asset Management." The correct name of the account at the time was Mercury Asset Management, though Salomon employees often referred to the account as "Warburg Asset Management."

FN5 Sometime after the meetings in late April, Meriwether informed Mozer that a decision had been made to report the false bid to the government.

FN6 Within several days of the meeting with Gutfreund, Meriwether asked a Salomon in-house attorney and managing director who regularly worked on matters pertaining to the Government Trading Desk to provide him with historical information concerning the 35% bidding limitation. When he made the request, Meriwether also informed the attorney of the submission of the false bid in the February 21, 1991 auction by Mozer. The attorney furnished Meriwether with the information he had requested in early May. Meriwether and the attorney did not subsequently discuss the matter.

FN7 Prior to the auction for the May two-year notes, one of Salomon's customers asked the firm to finance a very large position in the issue in the repo market. Mozer was in favor of financing that position. However, because Salomon and two other customers had bid for and received approximately 86% of the two-year notes at the May 22, 1991 auction, a decision to finance the customer's position would mean that Salomon was financing over 100% of the issue. Because of concerns about the propriety of that action, Meriwether decided, in a meeting with Mozer and several other managing directors on May 28, 1991, that the firm would not finance the customer's position.

FN8 Feuerstein also told the lawyers that he had advised senior management that for business reasons the false bid should be reported to the government. He then asked the lawyers to research the question of Salomon's legal duty to report the false bid. Several weeks later, the law firm advised Salomon that, based on the research it had conducted, it was unable to provide any conclusive answer to the question.

FN9 The bid submitted by Salomon in the February 7, 1991 auction was the result of a failed practical joke which employees of the firm had intended to play against a sales manager in the San Francisco office of Salomon who was scheduled to retire on the day after the auction.

FN10 As with the false bids submitted in the February 21, 1991 auction, the false bids in the December 27, 1990 and February 7, 1991 auctions were accompanied by fictitious sales of auction allocations received in response to the false bids to accounts in the names of customers and then back to Salomon, all at the auction price. In addition, in each of those instances, the normal procedures of Salomon were also overridden and confirmations for the fictitious transactions were not sent to the customers.

FN11 Members of the Boards of Directors of Salomon and its parent, Salomon Inc, were not notified of Mozer's disclosure that he had submitted a false bid in the February 21, 1991 auction until August 8, 1991, when they were informed of the results of the internal investigation and that management had learned in late April of the false bid.

FN12 Since their resignations in August of 1991, neither the Respondents nor Feuerstein have been associated in any capacity with any entity regulated by the Commission.

FN13 The Commission's complaint also charged that Salomon and Salomon Inc had engaged in a number of other violations of the federal securities laws. The complaint alleged that the August 9, 1991 press release failed to state material facts by not disclosing that members of senior management had known of the false bid in the February 21, 1991 auction since late April, that Salomon had engaged in prearranged trades in U.S. Treasury securities in 1986 with other firms to create the false appearance that the firm had sustained approximately $168 million of trading losses for income tax purposes, that Salomon had engaged in a practice of overstating the amount of customer orders for debt securities of certain government-sponsored enterprises ("GSEs") in discussions with representatives of the GSEs prior to the primary distributions of those securities, and that the firm had engaged in a practice of purchasing medium term notes from corporate issuers as principal while representing to those issuers that the notes had been purchased as agent for a customer.

FN14 Smith Barney, Harris Upham & Co., Exchange Act Release No. 21,813 (March 5, 1985).

FN15 48 S.E.C. 963, 967 (1988).

FN16 See, e.g., William L. Vieira, Exchange Act Release No. 26576 (February 26, 1989); Nicholas A. Bocella, Exchange Act Release No. 26574 (February 7, 1989); First Albany Corporation, Exchange Act Release No. 30515 (March 25, 1992).

FN17 See Shearson Lehman Hutton Inc., Exchange Act Release No. 26,766 (April 28, 1989); Prudential-Bache Securities, Inc., Exchange Act Release No. 22755 (January 2, 1986).

FN18 Prudential-Bache Securities, Inc., supra.

FN19 See, e.g., William E. Parodi, Sr., Exchange Act Release No. 27299 (September 27, 1989); Gary W. Chambers, Exchange Act Release No. 27963 (April 30, 1990). Supervisors who know of wrongdoing cannot escape liability for failure to supervise simply because they have failed to delegate or assign responsibility to take appropriate action.

FN20 Salomon did not have established procedures, or a system for applying those procedures, which together reasonably could have been expected to detect and prevent the violations. The affirmative defense provisions of Section 15(b)(4)(E) thus do not apply in this case.

FN21 As we noted in Universal Heritage Investments Corporation, 47 S.E.C. 839, 845 (1982):

The president of a corporate broker-dealer is responsible for compliance with all of the requirements imposed on his firm unless and until he reasonably delegates particular functions to another person in that firm, and neither knows nor has reason to know that such person's performance is deficient.

FN22 In late May or early June, Feuerstein did speak with the head of the Compliance Department about the need to develop compliance procedures with respect to the firm's activities in government securities.

FN23 We note that Feuerstein has represented that he does not intend to be employed in the securities industry in the future.

FN24 Although it did not represent an opinion of the Commission, the concurring opinion in Arthur James Huff, Exchange Act Release No. 29017 (March 28, 1991), is consistent with this principle. The operative portion of that opinion, Part VI, explains that in each situation a person's actual responsibilities and authority, rather than, for example, his or her "line" or "non-line" status, will determine whether he or she is a "supervisor" for purposes of Sections 15(b)(4)(E) and (6).

FN25 See, e.g., First Albany Corporation, Exchange Act Release No. 30515 (March 25, 1992); Gary W. Chambers, Exchange Act Release No. 27963 (April 30, 1990); Michael E. Tennenbaum, Exchange Act Release No. 18429 (January 19, 1982).

FN26 Of course, in the case of an attorney, the applicable Code of Professional Responsibility and the Canons of Ethics may bear upon what course of conduct that individual may properly pursue.