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George A. Fitzsimmons, Secretary
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REQUEST FOR ORAL HEARING ON
 OPEN WELLS SUBMISSION(S) ISSUES

In March, 1977, we submitted a Wells submission for Shatkin and others. No proceedings resulted (yet). The main body of the recommended charges paralleled those made against First Options of Chicago, Inc., at about the same time. Those resulted in the filing of detailed refutations by way of answer, numerous postponements of any trial, and finally a settlement (SEA Rel. No. 34-13017) with no sanctions other than "undertakings" to comply with applicable regulations as (correctly) reinterpreted. Rather than repeat the First Options exercise, we felt, Shatkin's parallel matter seemed to have been somehow abandoned. Now we are advised it is not. Shatkin I.

In August, 1978, we submitted another Wells submission for Shatkin. Again no proceedings, and a conclusion by us that the staff recommendation had been abandoned. Not so, we are now advised. Shatkin II.

In August, 1979, we submitted still another Wells submission for Shatkin and others. We were later told it was "unresolved," but not (when we asked) what that meant. Shatkin III.

Next we were told that the staff recommendation in Shatkin III was being revised. New charges, and a new respondent, were being added. Part of the old Shatkin III charges (Rule 10b-4) were being dropped. Later we learn that the Rule 10b-4 charge was dropped by vote of the Commission (not a staff revision), but that the other recommended

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charges in Shatkin III were neither presented to, nor considered by, the Commission. Now we know what "unresolved" means. The staff has now dug deeper into its theory book, come up with a replacement for its rejected Rule 10b-4 theorizing, namely, Rule 11a-1(a) and added Mr. Lehmann because he is unlucky enough to fit into the new theory. That makes this Shatkin IV, or Shatkin III(A), depending on how one reckons.

We do not know what it is about Shatkin (except that it is one of the largest options clearing firms) that attracts this substantial staff effort and the application of its best and brightest minds. We would welcome an opportunity to discuss all open staff recommendations (whatever they now are) at an open or closed session of the Commission, and at least resolve where we are now. We so request. We realize the request is unusual, but so is the situation.

And as we show in the latest revised recommendation (whether or not the staff realizes it) the most recent recommendation involves a wholesale attack on the market-maker structure of the CBOE, the Regulation T financing of the market-makers, and (by necessary implication) their net capital rule exemption. The overall Shatkin project has now become an enforcement bull in a regulatory china shop. It is time for some informed reflection on the Division of Enforcement's Shatkin policy.

Very truly yours,

ARVEY, HODES, COSTELLO & BURMAN

By:


Jeffrey R. Liebman

JRL/as

Enclosures

cc: Hon. Harold M. Williams
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 of Wells Submission of December 27, 1979)
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 ber 27, 1979)
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 ber 27, 1979)
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