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U.S. House of Representatives
Committee on Energy and Commerce

SUBCOMMITTEE ON TELECOMMUNICATIONS AND FINANCE

Washington, DC 20515-6119

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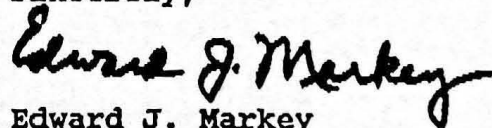
The Honorable Richard C. Breedren
 Chairman
 Securities and Exchange Commission
 450 Fifth Street, N.W.
 Washington, D.C. 20549

Dear Chairman Breedren:

On Thursday, March 4, 1993, the Subcommittee on Telecommunications and Finance will be holding a hearing on H.R. 578, the Investment Adviser Regulatory Enhancement Act of 1993. Appearing as a witness at this hearing will be Steven D. Wymer. In order for the Subcommittee Members and staff to prepare adequately for this hearing, it is necessary that we have access to certain information pertaining to Commission examinations of companies owned and operated by Mr. Wymer as investment advisers.

Because of the imminence of this hearing, I would appreciate receiving this information as soon as possible.

Sincerely,



Edward J. Markey
 Chairman

**CHRONOLOGY OF DENMAN & CO. AND INSTITUTIONAL TREASURY
MANAGEMENT, INC.
AND EXAMINATIONS THEREOF**

INTRODUCTION AND SUMMARY: The following sets forth the examination and significant registrant histories of the investment advisers controlled by Steven Wymer ("Wymer"), including SDW Asset Management, Inc. ("SDW"), J.A. Denman & Co. ("J. A. Denman"), Denman and Company, Inc. ("Denman"), and Institutional Treasury Management, Inc. ("ITM"). From the date of the earliest registration (SDW in May 1986), the Commission was not able to schedule any "routine" inspections of these registrants due to insufficient resources. Over the course of the Wymer firms' existence, the staff did have occasion to conduct limited "cause" examinations. As is detailed below, the cause examinations in February 1988, July 1990 and June 1991, were, unlike a routine inspection, limited in both scope and duration. These examinations focused on narrow inquiries which were subsequently resolved.

The first examination took place in February 1988, as a follow-up to an examination of an unrelated investment adviser. During the previous examination, the staff discovered that a financial planner had been referring clients to J.A. Denman in return for a finder's fee. Although Wymer controlled another registered investment adviser, SDW, the entity to which the clients were referred for portfolio management was J.A. Denman, which was not registered with the Commission. J.A. Denman claimed to be exempt from registration as an adviser on the basis that it only provided advice on government securities. According to Wymer, J.A. Denman invested cash in money market funds when not fully invested in government securities. Therefore, the examination staff informed Wymer that he should register J.A. Denman as an investment adviser.

During the course of the next several months, Wymer filed an investment adviser registration for J.A. Denman, changed the corporate name and investment adviser registration of SDW to Denman, transferred J.A. Denman's clients and business to the newly named Denman (formerly registered as SDW) and then withdrew the registration for J.A. Denman. The net result was to transfer all of the clients and advisory business to one registered firm, thus resolving the registration issues.

As a follow-up, the staff scheduled Denman for a cause examination approximately six months after the registration process was completed. That examination, in February 1988, yielded a number of relatively minor violations which became the subject of a deficiency letter to the registrant. These included: improperly charging performance fees on a quarterly basis rather than on an annual basis; a failure to fully comply with the disclosure requirement for payment to the solicitor for the referrals; and other minor books and records violations. As noted below, the registrant resolved these issues.

In January 1990, the staff was informed, both by Wymer and his accounting firm, that false financial statements had apparently been circulated by Denman. The inspection staff commenced an immediate inquiry and, within a matter of days, determined that the financials were, indeed, false and had been circulated to three recipients in an effort to increase Denman's line of credit. The staff further determined that the false financials were not filed with the Commission, were not provided to any advisory clients, and were not relied on by the recipients to their detriment. The staff demanded an explanation from Wymer, who responded that an overzealous employee (Wymer's father) had been responsible for the false financials, and that they had been prepared and circulated without his knowledge or consent. He further represented that he had terminated the employee and immediately notified the recipients of the falsity of the financial information.

The staff also independently verified that the recipients were notified. In addition, the staff conducted a one-day field examination of Denman which was followed by a deficiency letter to Wymer requiring that he provide a written explanation of the incident, what steps were taken to remedy the situation and the specific procedures instituted to ensure that this did not recur. The deficiency letter also noted a failure to prepare certain computations and books and records on a timely basis, and a minor advertising violation. The staff's inquiry was limited to the preparation and use of the financial statements and concluded that the recipients of the false financials did not rely on the information and they did not result in any investor harm. Moreover, as Denman did not have custody or possession of client funds or securities and did not charge certain fees, it was not required to provide clients with an audited balance sheet nor file one with the Commission.

The staff initiated another cause examination of Denman in June 1991. This inquiry was in response to a complaint by an employee of the State of Iowa claiming that Denman was engaging in unsuitable options trading on behalf of a client. The staff's inquiry revealed that options trading was taking place in the customer's account contrary to its stated investment restrictions but with the client's consent. The client thereafter also acted to amend its charter to permit the subject trading. Although the staff sent ITM a deficiency letter in September 1991 concerning the "unsuitable" investments, as well as a minor advertising and performance fee violation, the staff continued to review the registrant's activities off-site. From late September through November 1991, the staff made numerous and repeated requests for documents from Refco Securities, the brokerage firm through which ITM conducted the bulk of its trading. Refco also served as the custodian for the accounts which ultimately were victimized by Wymer's fraud and was the conduit through which Wymer was able to perpetrate his scheme.

It was the staff's detection of a discrepancy between the voluminous Refco trading documents and those maintained by Wymer that lead to the staff's discovery of the fraud being perpetrated on investors. Although the financial dimensions of this fraud are staggering, approximately ninety percent of ITM's client accounts were unaffected and a similar percentage of documents were genuine.

<u>DATE</u>	<u>EVENT</u>
01/27/86	Wymer incorporates SDW Asset Management, Inc. as a California corporation.
05/15/86	SDW Asset Management, Inc. files a Form ADV to register with the Commission as an investment adviser.
11/07/86	The Commission's Los Angeles Regional Office ("LARO") Investment Management inspection staff conducts routine examination of a registered investment adviser that referred clients to J.A. Denman & Co., an unregistered entity, in exchange for a solicitation fee.
12/08/86	J.A. Denman & Co. claims an exemption from registration as an investment adviser on the basis that it only provides portfolio advice on government securities. The staff's position is that J.A. Denman & Co. should register as an investment adviser (Section 203 of the Advisers Act) because, when not fully invested in government securities, it places uninvested cash in money market funds.
02/27/87	J.A. Denman & Co. files a Form ADV to register with the Commission as an investment adviser.
03/09/87	SDW Asset Management, Inc. files a Form ADV Amendment, changing the name of the corporation and investment adviser registration to Denman & Co.
06/08/87	J.A. Denman & Co. files a Form ADV-W to withdraw its registration with the Commission as an investment adviser.
02/03/88- 03/08/88	LARO conducts cause examination of Denman as follow-up to earlier issues.

03/28/88 LARO sends Denman deficiency letter concerning improper charging of performance fees on a quarterly basis (Rule 205-3(c)(3) under the Advisers Act), disclosure of payments to solicitors (Rule 206(4)-3 under the Advisers Act), and books and records (Rules 204-1 and 204-2 under the Advisers Act).

04/27/88 Denman responds to deficiency letter, refunds the performance fees charged to clients, ceases solicitation arrangement, terminates Denman's individual clients and starts marketing its services to banks and other institutional clients.

04/06/89 Denman employee creates financial statement that misrepresents the firm's financial condition and includes an audit report purportedly issued by Deloitte, Haskins & Sells ("Deloitte") and sends the false documents to Sanwa-BGK and to Coopers & Lybrand, Sanwa's accountants. Sanwa also provides the false documents to Cantor-Fitzgerald, a brokerage firm which is to perform a credit analysis of Denman. Cantor Fitzgerald discovers that the financial statements do not comport with another version in its possession.

12/18/89 Deloitte advises Wymer that it has learned of the audit report.

01/90 Wymer advises the recipients of the false financials that they are not true and accurate and may not be relied upon.

01/12/90 Deloitte advises SEC/LARO of the audit report problems.

01/19/90 Wymer informs Commission examiner by telephone that an errant employee created and mailed to a broker-dealer a falsified financial statement, and as a result, Wymer fired the employee and warned each of the three recipients of the falsified financial statement.

02/01/90 Wymer advises LARO that he received a copy of Deloitte's 01/12/90 letter to LARO and is working with Deloitte to resolve the problem.

07/30/90 LARO conducts one-day cause examination of Denman to examine the circumstances relating to the false financial statements.

09/04/90 LARO sends Denman deficiency letter concerning the false financial statements (Section 206(4) of the Advisers Act), and minor advertising (Rule 206(4)-1 under the Advisers Act) and books and records violations (Rule 204-2 under the Advisers Act).

09/27/90 Denman responds to the deficiency letter. Wymer represents that the false financial documents were prepared without his knowledge or consent, that he fired the employee responsible (his father), and that he has notified the recipients of the falsity of the information.

11/16/90 James Pearce, a Wymer associate, incorporates ITM as a Florida corporation.

12/20/90 ITM files a Form ADV to register as an investment adviser with the Commission.

03/22/91 ITM files a Form ADV Amendment to disclose that Wymer is giving investment advice on behalf of the firm.

04/91-
05/30/91 LARO receives letter/telephone call from employee of the State of Iowa questioning the suitability of Denman's options trading for Marshalltown, Iowa.

05/23/91 ITM files a Form ADV Amendment to disclose that Wymer acquired ITM in February 1991.

06/28/91-
07/01/91 LARO initiates a cause examination of ITM/Denman as a result of question raised by the Iowa employee. The staff determines that Marshalltown understood it was trading in options, however, the staff instructs Wymer to halt the options trading until an updated written consent from Marshalltown is obtained. Marshalltown subsequently amends its charter to specifically permit options trading.

- 09/16/91 LARO sends ITM deficiency letter concerning unsuitable investments (Section 206 of the Advisers Act), advertising and retention of supporting documentation for performance (Rules 204-2(a)(16) and 206(4)-1(a)(5) under the Advisers Act), charging of performance fee on a monthly basis (Rule 205-3 under the Advisers Act), ITM's advisory contract containing certain prohibited provisions (Section 206 of the Advisers Act) and amendment of ITM's and Denman's ADV.
- 09/24/91 Despite client authorization of options trading, LARO staff remains concerned and requests production of account documents (account opening documents and monthly account statements for 1990-1991) for Marshalltown from Refco, the New York-based custodian brokerage firm for Marshalltown's account. Refco produces documents piecemeal, as set forth below.
- 10/17/91 Refco sends by overnight courier documents (account opening documents and computer run of option and bond transactions).
- 11/06/91 LARO orally requests account documents for Marshalltown for 1988-1989 and requests information about a trade for which LARO has a confirm but which does not appear on the account documents. LARO faxes the trade confirmation to Refco.
- 11/13/91 Refco sends by overnight courier some, but not all, of the requested documents and advises that the trade confirmation does not appear on Refco's system.
- 11/14/91 LARO faxes letter to Refco renewing demand for documents previously requested.
- 11/19/91 LARO broker-dealer examination staff completes initial analysis of the trading records and finds a discrepancy between the \$10 million balance that ITM was reporting to Marshalltown and the zero balance that Refco was reporting to ITM. A referral is made to LARO enforcement staff.
- 11/20/91 Enforcement staff contacts city managers at Marshalltown, requests that information and documents be provided as quickly as possible.

11/20/91 Refco sends by overnight courier the documents previously requested but not produced on 11/13/91. Documents produced indicate recent deposits of \$3 million in Treasury notes into Marshalltown's account. LARO faxes letter to Refco requesting more documents.

11/22/91 (Friday) LARO orally requests that Refco produce Marshalltown's current account records. Refco faxes the requested account records which indicate deposit of \$7 million in Treasury notes made to Marshalltown's account the day before.

11/22/91 LARO investment management inspection staff continue their cause examination. Wymer tells staff that certain requested records are on a truck to Florida in connection with ITM's impending move. Exam staff calls LARO enforcement from ITM's offices to report relevant records are not there. At 5:00 p.m. enforcement staff calls Wymer and he explains that the recently deposited \$7 million in notes had always been in a separate account for Marshalltown at Refco. Enforcement staff cannot confirm as it is after close of business in New York.

11/24/91 (Sunday) Enforcement staff sends memorandum to Commission recommending authorization of formal order of investigation.

11/25/91 Refco sends additional documents in response to LARO's 11/20/91 letter.

11/25/91 Commissioner Fleischman, acting as duty officer, authorizes the staff's request for a formal order of private investigation. Staff begins to subpoena bank records and track the money flow.

11/27/91 Wymer and counsel meet with Commission staff. Staff serves subpoena on Wymer for testimony and documents.

11/29/91-
12/03/91 LARO conducts examination/investigation at ITM offices.

12/04/91 Wymer appears for testimony, but produces no documents and asserts Fifth Amendment privilege against self-incrimination to all questions other than his name.

12/06/91 Commissioner Roberts, acting as duty officer, authorizes the filing of an action seeking a temporary restraining order, preliminary and permanent injunctions, appointment of a receiver, and an asset freeze against ITM, Denman and Wymer.

12/09/91 The Commission files its complaint against ITM, Denman and Wymer.

12/10/91 The Commission files supplemental papers.

12/11/91 Court grants the Commission's motions for a temporary restraining order, appointment of a receiver and an asset freeze against ITM, Denman, Wymer and all client funds under their control.

12/19/91 Wymer arrested and charged with one count of securities fraud and two counts mail fraud and is denied bail.

12/20/91 Receiver files report, and the Commission concurs. Court preliminarily enjoins Wymer, ITM and Denman from violating certain provisions of the federal securities laws, modifies the asset freeze to release client funds and continues the receivership.

12/30/91 Wymer files answer to Commission's complaint.

01/02/92 Wymer is indicted on thirty felony counts of securities fraud, mail fraud, money laundering, making false statements to the Commission's officers and obstruction of justice.

01/15/92 Court issues order permanently enjoining ITM and Denman from violating certain provisions of the federal securities laws.

01/92 U.S. Attorney brings ten forfeiture actions against Wymer's property.

02/10/92 Court issues order permanently enjoining Wymer from violating certain provisions of the federal securities laws.

02/24/92 Court enters order to end receivership.

03/12/92 ITM and Denman file for bankruptcy.

04/27/92 The Commission institutes public administrative proceedings against ITM and Denman pursuant to Section 203(e) of the Advisers Act and accepts ITM's and Denman's Offers of Settlement under which they agree to the entry of an order revoking their registrations as investment advisers.

06/09/92 The Commission institutes public administrative proceedings against Wymer pursuant to Section 203(f) of the Advisers Act and accepts Wymer's Offer of Settlement under which he agrees to the entry of an order permanently barring him from associating with the securities industry.

08/18/92 The Commission authorizes the settlement of its claims against Wymer for disgorgement and penalties.

08/92 Wymer begins cooperating with authorities.

09/29/92 The Commission's Judgment of Disgorgement, Restitution and Civil Penalties Against Steven D. Wymer is entered. Wymer is ordered to pay \$209 million in disgorgement and interest.

09/29/92 Wymer pleads guilty to nine felony counts of racketeering, securities fraud, mail fraud, bank fraud and obstruction of justice.

12/16/92 Court appoints liquidating agent in the civil action to liquidate all of Wymer's disgorged assets for the eventual return to defrauded investors.

1992 Defrauded former ITM/Denman clients file civil litigation.

03/31/93 Scheduled date for Wymer's sentencing in the criminal action.

