



SECURITIES AND EXCHANGE COMMISSION

Washington, D. C. 20549

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NEWS BACKGROUND

March 24, 1975

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FINANCIAL PROGRAMS, INC. AND 5 FORMER EMPLOYEES CITED: SETTLEMENT
OFFERS BY FIRM, 2 INDIVIDUALS ARE ACCEPTED

The Commission instituted administrative proceedings under the Securities Exchange, Investment Company, and Investment Advisers Acts with respect to Financial Programs, Inc. ("Programs"), a mutual fund manager based in Denver, Colorado, Thomas J. Herbert, Program's former president and during the relevant period a member of its Board of Directors, and John R. Hurley, James R. Frankenthaler, Robert E. Anton, and Lambert Hirsheimer, each a former Programs employee.

The proceedings are based on staff allegations about the investment practices of the four Programs-managed mutual funds -- Financial Industrial Fund, Inc., Financial Industrial Income Fund, Inc., Financial Dynamics Fund, Inc., and Financial Venture Fund, Inc. The Commission's staff contends that Programs permitted inexperienced and incompetent persons, who were not properly supervised, to make significant investment decisions for the funds, contrary to the representations in the funds' prospectuses that they were professionally managed by competent persons. It is alleged that Programs and the individual respondents invested some \$21 million of the funds' assets in over-the-counter securities that were unseasoned, speculative, and in limited supply. These purchases are claimed to have been made without adequate investigation and to have been based primarily on a single securities salesman's recommendations. It is further alleged that these purchases sometimes caused the funds to exceed the limitations recited in their prospectuses about the extent to which they would invest in any given security. Furthermore, Programs's income-oriented fund, Financial Industrial Income Fund, Inc., is said to have been invested in debt securities of an unseasoned issuer having only nominal assets.

The Commission's staff also charges that the supply of these securities available for public trading was so limited and the funds purchases of them so substantial that the funds, in part, manufactured their own investment performance. It is claimed that the funds' own buying caused the prices of these securities to rise and that further buying by the funds maintained the prices at appreciated levels. It is further alleged that the funds' prospectuses, proxy-soliciting materials, and periodic reports were false and misleading because they did not disclose that the ascending market prices of the portfolio securities purchased on the salesman's recommendation and the resulting increases in the net asset values of the funds' own shares had been caused and were being maintained by the funds' own buying and made no mention of the funds' inability to dispose of their holdings at the prices that they had themselves created. In this connection, the order for proceedings asserts that when the funds sold the securities that had been acquired on the salesman's advice, the prices received were so low that most of the original investment was lost.

According to the Commission's staff, the activities just described caused the funds to sell new shares and to redeem old ones at inflated net asset values in violation of provisions of the Investment Company Act designed to see to it that redeemable investment company securities are sold and redeemed at fair prices.

Programs is also charged with having caused the funds to maintain excessive cash balances with a certain bank. The bank is said to have considered these balances when it lent money to persons affiliated with Programs. The Commission's staff also claims that Programs delayed unreasonably before it began to make an adequate inquiry into the funds' transactions in the salesman-recommended over-the-counter issues.

Each individual respondent is charged with having himself violated the statutory provisions claimed to have been violated by Programs and with having willfully aided and abetted Programs's violations of those sections.

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Settlement Offers and Terms

At the time that it instituted the proceedings, the Commission also accepted offers of settlement from Programs, Hurley, and Frankenthaler. In so doing the Commission noted that three new directors, each of whom is to be satisfactory to the Commission's staff and independent of Programs, will be added to the funds' boards. Note was also taken of various mitigating factors urged by Programs.

Programs's offer of settlement obligates it to:

(A) Refrain for 180 days from performing any investment advisory function for any new client (this will not impair Programs's ability to continue to act for the funds and for other existing clients);

(B) Offer the funds \$2.5 million in settlement of claims against Programs based on the allegations in the order for proceedings and on other grounds (that offer is to be passed on by a special committee of each board consisting of the three new independent directors just referred to and one other person); and

(C) Pay half of that \$2.5 million to the funds in accordance with their respective losses even if their boards decide to reject Programs's offer (the \$1.25 million needed for this has been deposited in escrow).

Programs also undertakes to refrain the future from causing more than two persons associated with it from serving as directors of the funds. In addition, Programs will employ a special compliance officer. That person, who must be satisfactory to the Commission, will review Programs's procedures for managing the funds and may recommend changes in and/or additions to Programs's present procedures. Moreover, the special compliance officer will monitor Programs's compliance with the comprehensive manual of procedures that will be prepared on the basis of his report. Finally, Programs undertakes to submit itself to the Commission's jurisdiction should questions arise about its compliance with its undertakings.

John R. Hurley of Ventura, California, formerly a portfolio manager for Programs, has been barred from both the general securities business, including any association with a broker-dealer, and the investment company industry. James R. Frankenthaler of Morganville, New Jersey, also a former Programs portfolio manager, has been suspended from association with any broker, dealer or investment adviser with the proviso that he may after three of said six months become so associated as a non-supervisory security analyst. Frankenthaler has also been barred from association with any investment company. Nevertheless, he may after 18 months apply to the Commission for permission to associate himself with an investment company. His application for such permission must be supported by a showing of appropriate supervision satisfactory to the Commission's staff. The sanctions against Hurley and Frankenthaler are based on their participation in the activities above described and on findings that they violated the Investment Company Act's constraints against certain types of transactions between registered investment companies and persons associated with them. Hurley and Frankenthaler were found to have bought a salesman-recommended issue for their own accounts not long before that same stock was purchased by a Programs-managed fund. They then sold that stock at a profit. These transactions were arranged by the recommending salesman. Hence they were deemed vehicles by which he compensated Hurley and Frankenthaler for channeling the funds' brokerage to them. The Investment Company Act prohibits such compensation. Moreover, the transaction was found a joint participation between Hurley and Frankenthaler, on the one hand, and the investment company, on the other, that called for Commission approval, which was not obtained.

Frankenthaler's prohibited transaction related to a single security. Hurley's case involved not only that security, but two others as well. In addition, Hurley (but not Frankenthaler) was charged with having received merchandise and other benefits from the recommending salesman.

The sanctions were based on findings that Programs, Hurley and Frankenthaler violated the securities acts as charged in the order for proceedings. Respondents consented to the findings without admitting or denying the charges against them. A hearing on the charges against the remaining respondents will be scheduled.