

# Pensions & Investments

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## LETTERS TO THE EDITOR

### FAJ, AIMR ethical issues

October 1, 2001

In "Praise for book turns to criticism," June 25, page 2, and "Rubinstein to stay on editorial board of FAJ despite talking to Fridson," Sept. 3, page 30, Barry Burr brings to light the unfair treatment that I and my book, "Capital Ideas and Market Realities," have received at the hands of the Financial Analysts Journal.

This unseemly affair has reaffirmed my conviction that FAJ's publisher, the Association for Investment Management and Research (whose motto is "setting higher standards for investment professionals worldwide"), needs to institute standards that would allow FAJ to better serve its readership and investors in general, rather than the special interests of select members of its editorial board. In an open letter to AIMR and FAJ (posted at <http://www.cimrbook.com>), I document numerous apparent violations of AIMR standards on the part of certain editorial board members; these seem particularly egregious because they were committed in defense of marketing activities that appear violative of securities laws.

With FAJ Editor Gifford Fong's decision (noted in "Rubinstein...") to curtail discussion, the last word on the subject is FAJ book review editor Martin Fridson's assertion that "sophisticated investors who knew the right questions to ask would not have been misled." This leaves readers with the impression that the onus of discovery is on the investor, rather than the burden of disclosure on the investment manager - a stance that is absolutely antithetical to AIMR's own standards and to securities law.

Many of AIMR's standards of conduct are directed at eliminating conflicts of interests that can erode professionalism. Yet, as "Praise..." makes clear, the way in which business is conducted at FAJ is fraught with conflicts of interests. First, Mark Rubinstein, member of the editorial board, persuaded FAJ and other journals to reject papers I submitted in the 1980s, which were critical of his own firm's investment products and the way in which they were marketed. Second, in 2001, Mr. Rubinstein was instrumental in having Mr. Fridson write an unprecedented

repudiation of his prior favorable review of my book.

Mr. Rubinstein defends his review of my earlier paper by saying he was acting as a disinterested academic, rather than the co-owner of a firm managing more than \$50 billion in portfolio insurance. Now Mr. Fong (also a portfolio insurance vendor), in "Rubinstein...", defends Mr. Rubinstein's interference in the book review process, noting "the real question is: was Mark acting in his capacity as an editorial board member?" This specious dissection of intent (academic/businessman, interested reader/editorial board member) is precisely what conflict-of-interest standards are designed to avoid.

It is time for AIMR to hold its own officials and staff to the same high standards it demands of its members.

Bruce I. Jacobs  
member of AIMR  
principal  
Jacobs Levy Equity  
Management Inc.  
Florham Park, N.J.

### AIMR strict on ethics code

October 15, 2001

In his Oct. 1 letter to the editor, Bruce Jacobs, a member of the Association for Investment Management and Research, alleges violations of the AIMR Code of Ethics and Standards of Professional Conduct by AIMR members and makes recommendations for how AIMR should handle those allegations. As we informed Mr. Jacobs previously, as well as Barry Burr when he interviewed me for articles appearing in *Pensions & Investments*, allegations of violations of the Code & Standards are governed by, and handled by, the AIMR Professional Conduct Program in accordance with the Rules of Procedure for Proceedings Related to Professional Conduct and the AIMR Bylaws. (Both the Rules of Procedure and the AIMR Bylaws are available to the public on the AIMR website, [www.aimr.org/standards/ethics/conduct](http://www.aimr.org/standards/ethics/conduct).)

According to Rule 12 of the Rules of

Procedure, all proceedings conducted pursuant to the Rules of Procedure are confidential and the records of proceedings shall remain confidential and shall not be made public. What this means in plain English is that, with the exception of the Designated Officer, Professional Conduct Program staff, and members of the relevant Professional Conduct Committees established by the AIMR Board of Governors, no one, including any complainants, can or will be advised regarding the existence, status or outcome of a professional conduct complaint, unless the matter results in a public sanction of an AIMR member. All public sanctions of AIMR members are published in our member newsletter, the AIMR Exchange.

AIMR does hold itself, its leaders and its staff to the same high standards to which it holds all AIMR members. Therefore, regardless of a complainant's or the press' wish to take an issue public, we must, and will, strictly adhere to the Rules of Procedure including the rule regarding confidentiality in order to maintain the integrity of the AIMR Professional Conduct Program, even though it means leaving public accusations unanswered.

Patricia Doran Walters  
designated officer  
AIMR Professional  
Conduct Program  
senior vice president  
AIMR Professional Standards  
and Advocacy  
Charlottesville, Va.

### AIMR's misinterpretation

November 12, 2001

In a letter in the Oct. 15 *Pensions & Investments*, Patricia Doran Walters, designated officer, AIMR professional conduct program, and senior vice president, AIMR professional standards and advocacy, responds to my Oct. 1 letter to the editor. She informs us "in plain English," that (excepting herself, her staff and relevant professional conduct committee members), "no one, including any

complainants, can or will be advised regarding the existence, status, or outcome of a professional conduct complaint, unless the matter results in a public sanction of an AIMR member." Her response is troubling on two counts.

First, Ms. Walters' statement on confidentiality is inaccurate. Rule 12, cited by Ms. Walters, provides clear exceptions to confidentiality: "The pendency, subject matter and status of proceedings ... may be disclosed if the alleged violation is a clear violation of law or regulations or if it caused or has the potential to cause serious harm to the investment management profession, the financial analysis community, and/or the general public."

One of the allegations I make in my open letter is that some portfolio insurance vendors violated securities law by advertising the strategy as a "guaranteed equity investment" and by not providing required risk disclosures. Such abusive marketing, which essentially portrayed the strategy as a free lunch, fueled a \$100 billion fad in "insured" assets. On Oct. 19, 1987, the abrupt sale of equity and equity futures required by portfolio insurance programs converted a market correction into a

crash larger than that of 1929. Thus, my allegations concern legal abuses that caused serious harm to investors and the public generally. AIMR can indeed comment openly if it wishes to.

Second, the broad issues I raise transcend the individuals concerned. Rather, they deal with the conduct of the FAJ and its oversight by the AIMR. For example, I question whether members of the FAJ editorial board who have vested financial interests in certain products or strategies should be allowed to review articles about those products or strategies; whether editorial board members should be allowed to influence the book review process; and whether the FAJ should publish statements that are clearly contradictory to securities law and AIMR's own standards. The answers to such questions, I submit, should not be cloaked by a policy of secrecy.

The level of confidentiality described by Ms. Walters may be appropriate to protect the reputations of individual AIMR members who are the subject of complaints. But when the same level of secrecy is applied to the manner in which and the rules by which the AIMR and

FAJ, as organizations, conduct themselves, it cannot inspire confidence. It is like a police department that investigates itself, absolves itself and provides the public no reason for its conclusions. Here, as in so many areas of our business, transparency is a necessary adjunct of accountability.

The AIMR should clarify the standards that govern the FAJ and enforce them rigorously. This would assure members that it applies to FAJ editors, even those who are not AIMR members, the same code of ethics and standards of professional conduct that all members are required to follow. The objectivity of AIMR's premier publication, the FAJ, as well as AIMR's own integrity, are at stake.

Bruce I. Jacobs  
*member of AIMR*  
*principal*  
*Jacobs Levy Equity Management, Inc.*  
*Florham Park, N.J.*