

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 54937 / December 14, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12505

In the Matter of

JOHN M. REPINE and
ARCHER ALEXANDER
SECURITIES CORP.,

Respondents.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS PURSUANT TO SECTIONS
15(b) AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against John M. Repine (“Repine”) and Archer Alexander Securities Corp. (“Archer Alexander”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions Pursuant to Sections 15(b) and 21C of the Exchange Act (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offer, the Commission finds¹ that:

A. SUMMARY

Archer Alexander and John M. Repine, its chief executive officer, failed reasonably to supervise a registered representative associated with the firm during 2003 (the "Registered Representative") with a view to preventing and detecting his violations of the federal securities laws arising from a fraudulent trading scheme involving inverse floating rate collateralized mortgage obligations ("inverse floaters"). Archer Alexander also violated various net capital, books and records, and reporting provisions of the federal securities laws as a result of the Registered Representative's conduct.

During 2003, the Registered Representative exclusively traded inverse floaters, a complex and thinly-traded type of collateralized mortgage obligation. Archer Alexander restricted the Registered Representative to trading these securities on a riskless principal basis and instituted a special supervisory procedure requiring that he obtain prior approval from Repine before entering into any inverse floater transaction.² Contrary to these restrictions, the Registered Representative entered into non-riskless principal transactions in which he secretly bought new issues of inverse floaters worth millions of dollars from other dealers for forward settlement without getting prior authorization from or informing Repine and Archer Alexander. The Registered Representative held these proprietary positions for weeks before selling them to other dealers or to his retail customers. He then falsified trade tickets to make it appear as though the transactions had been done on a riskless principal basis. The Registered Representative also made material misrepresentations and omissions when he sold inverse floaters to retail investors for whom these complex and risky securities were unsuitable. By engaging in this conduct, the Registered Representative violated the antifraud provisions of the federal securities.

Archer Alexander generated approximately half of its 2003 revenues from the Registered Representative's inverse floater trading and paid him millions of dollars in compensation for these trades. Repine did not respond reasonably to numerous red flags regarding the Registered Representative's trading and the suitability of inverse floaters for the Registered Representative's retail customers. Repine and Archer Alexander also did not develop and implement reasonable supervisory policies and procedures relating to the Registered Representative's trading in inverse floaters and did not reasonably implement the firm's special supervisory procedure requiring the Registered Representative to get Repine's prior approval for his inverse floater trades. Accordingly, Repine and Archer Alexander failed reasonably to supervise the Registered Representative with a view to detecting and preventing his violations of the antifraud provisions. In addition, the Registered Representative's conduct caused Archer Alexander to violate various net capital, books and records, and reporting provisions.

¹ The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

² "A riskless principal transaction occurs when a dealer receives from its customer an order to purchase (or sell) a security and purchases (or sells) that security to another person in a transaction that is proximate in time and designed to offset the customer's order." *In the Matter of David E. Lynch*, Exchange Act Rel. No. 46439, at n.13 (Aug. 30, 2002).

B. RESPONDENTS

John M. Repine, age 51, is a registered representative with his principal residence in Spring Hill, Kansas. He holds Series 7, 24, and 27 licenses. Repine is the chief executive officer and managing principal of Archer Alexander. During 2003, he had primary responsibility for overseeing the firm's operations and supervising brokers in branch offices, including the Registered Representative.

Archer Alexander Securities Corp. ("Archer Alexander") is a broker-dealer registered with the Commission since December 1996. Archer Alexander is incorporated in Kansas and has its principal offices in Overland Park, Kansas. It is a wholly-owned subsidiary of Great Plains Capital Corp., a holding company owned by Repine and John S. Raydo, his brother-in-law and Archer Alexander's president and chief financial officer. From January to mid-December 2003, Archer Alexander was an introducing broker-dealer with a fully disclosed clearing agreement with Clearing Firm, pursuant to which Clearing Firm cleared all of Archer Alexander's securities transactions and maintained customer accounts. As of the date of this Order, Archer Alexander is in the process of winding up its operations, and has consented to having its broker-dealer registration revoked by the Commission, effective December 15, 2006.

C. FACTS

1. The Registered Representative's Trading

The Registered Representative was an independent contractor associated with Archer Alexander from August 2002 to December 2003. During this time, he was the head of an Archer Alexander branch office located in Boca Raton, Florida and responsible for supervising the brokers and other employees working in that office. Repine, who worked in Archer Alexander's main office in Kansas, supervised the Registered Representative. The Registered Representative's business focused entirely on trading inverse floaters,³ and he had between 200 and 250 retail customer accounts for whom he purchased and sold these securities. Archer Alexander paid the

³ Inverse floaters are a type of collateralized mortgage obligation ("CMO") issued by the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corp. ("Freddie Mac"), or the Government National Mortgage Association ("Ginnie Mae"), which guarantee principal and interest payments on the securities. Inverse floaters are structured so that interest payments move in the opposite direction of a floating rate index, such as the London Interbank Offered Rate ("LIBOR"). The coupon formulas typically contain multipliers that magnify the effect of changes in the specified index, making them highly leveraged and giving them a high degree of price volatility as interest rates move. Some of the main risks associated with inverse floaters include market, liquidity, and extension risk. Inverse floaters trade in the over-the-counter market, and are among the most thinly traded and volatile types of CMOs. CMOs issued and guaranteed by Fannie Mae, Freddie Mac, and Ginnie Mae are exempt from registration under Section 3(a)(2) of the Securities Act of 1933 ("Securities Act") and are "exempted securities" under Section 3(a)(12) of the Exchange Act. The antifraud provisions still apply to the offer, purchase, and sale of CMOs, however, even if the securities are not registered. *See In the Matter of Kenneth R. Ward*, Exchange Act Release No. 34-47535 (March 19, 2003) (Commission opinion finding that broker violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 in connection with sale of inverse floaters); *see also Staff Report on Enhancing Disclosure in the Mortgage-Backed Securities Markets, A Staff Report of the Task Force on Mortgage-Backed Securities Disclosure*, at n. 52-59 and accompanying text (Jan. 2003) (available at <http://www.sec.gov/news/studies/mortgagebacked.htm>) ("MBS Task Force Staff Report").

Registered Representative ninety percent of the net markups⁴ – *i.e.*, after ticket charges and other such expenses were deducted – on his retail customers’ trades.

In late 2002 or early 2003, the Registered Representative requested and obtained Repine’s approval to do dealer-to-dealer trading of inverse floaters. In other words, the Registered Representative bought inverse floaters into an Archer Alexander proprietary account from a dealer, and then sold the securities from the Archer Alexander proprietary account to a dealer rather than to his retail customers. Archer Alexander paid the Registered Representative ninety-five percent of the net markups on such trades. The Registered Representative was Archer Alexander’s leading producer, and markups from his inverse floater trading accounted for approximately half of the firm’s revenues during 2003.

2. Archer Alexander’s Policies and Procedures Governing the Registered Representative’s Trading

Archer Alexander’s policies and procedures governing the Registered Representative’s trading were consistent throughout 2003. The firm only allowed the Registered Representative to trade on a riskless principal basis. The firm imposed this restriction, which applied both to the Registered Representative’s retail customer and dealer-to-dealer trades, because it did not want to violate its net capital requirements and did not want to assume the trading risk associated with holding proprietary positions.

Repine also imposed a special supervisory procedure that required the Registered Representative to get his prior authorization before entering into any trade. Repine imposed this requirement because he believed the Registered Representative’s trading required extra scrutiny due to his history of purchasing more inverse floaters than his retail customers could purchase with the money available in their accounts. After getting the required approval for a trade, the Registered Representative was supposed to fax trade tickets to Archer Alexander and Clearing Firm. Repine informed his assistant of the terms of these trades, and at his direction she reviewed the tickets submitted by the Registered Representative to verify that they matched the terms of the trades that Repine had approved.

3. The Registered Representative’s Fraudulent Trading Scheme

In fact, however, the Registered Representative consistently did not trade on a riskless principal basis during 2003. Rather, on almost every trade, the Registered Representative bought new issues of inverse floaters worth millions of dollars on Archer Alexander’s behalf from other dealers for forward settlement one to two months after the trade date.⁵ He did not have buyers for the securities at the time he purchased them and, in many instances, did not obtain authorization from Repine before committing to buy the securities. He also did not prepare or submit tickets at the time he entered into these purchase transactions. As a result, the Registered Representative

⁴ “A markup is the difference between the price charged to a customer for a security and the prevailing market price for the security, when the seller of the security is acting as a principal, holding ownership of the security and selling it to the customer.” *Press v. Chemical Investment Servs. Corp.*, 166 F.3d 529, 533 n.3 (2d Cir. 1999) (*citing S.E.C. v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1469 (2d Cir. 1996)).

⁵ “The CMO market convention is corporate settlement (3 business days after the trade date) unless the CMO is a new issue. In the case of a new issue, the settlement date for all CMO classes is usually 1 to 3 months after the CMO is initially offered for sale. This period allows dealers to accumulate the collateral that will back the CMO.” FRANK J. FABOZZI, *THE HANDBOOK OF MORTGAGE-BACKED SECURITIES* 195 (5th ed. 2001).

committed Archer Alexander to multi-million dollar proprietary positions without Repine's or Archer Alexander's knowledge or authorization. The value of these proprietary positions well exceeded Archer Alexander's available net capital, thereby exposing the firm to substantial risk.

The Registered Representative then waited weeks, or sometimes even months, before selling the positions in the hope that the market would turn in his favor. In some cases, he sold the securities to his retail customers at a markup, but in many instances he sold them to other dealers. As the settlement dates approached, and after the Registered Representative had found buyers for the securities, he instructed his assistant to prepare two trade tickets: one trade ticket for the purchase that reflected a false trade date, and one trade ticket for the sale with a matching trade date, to make it appear as though he had bought and sold the securities on the same day (*i.e.*, on a riskless principal basis). At the Registered Representative's direction, his assistant then sent these falsified trade tickets to Archer Alexander's main office and Clearing Firm.

For example, on June 23, 2003, the Registered Representative submitted trade tickets stating that on that day he had purchased a block of the FNR 03-40 MS inverse floater with a face value of over \$10.1 million from Dealer A at \$89.75 for settlement on June 30, and that same day had sold the entire block of securities back to Dealer A at \$97, also for settlement on June 30. In reality, however, the Registered Representative bought the position from Dealer A on March 26 for settlement on June 30, and then sold the position back to Dealer A on May 12, also for settlement on June 30. Archer Alexander paid the Registered Representative over \$698,000 for this trade.

To facilitate his trading scheme, the Registered Representative also entered into "roll trades" or "dollar rolls" with other dealers, in which he sold blocks of inverse floaters to other dealers while simultaneously agreeing to repurchase the securities for settlement on a future date. The Registered Representative submitted falsified trade tickets that made it appear as though a roll trade had been two, separate riskless principal transactions.⁶ For example, on May 22, 2003, the Registered Representative submitted trade tickets stating that he had bought a block of the FNR 03-23 SN inverse floater with a face value of \$3.7 million from Dealer A at \$97 for settlement on May 30 and sold the entire block back to Dealer A on the same day at the same price, also for settlement on May 30. On July 1, the Registered Representative submitted tickets stating that he had bought the block from Dealer A at \$96.1875 and sold it back to Dealer A at \$101.25, both for settlement on July 7. In reality, however, the Registered Representative first bought the securities from Dealer A on March 10 for settlement on May 30, and then on April 16 did a roll trade with Dealer A to extend the settlement date to July 7. On June 3, after the market had moved in his favor, the Registered Representative sold the block back to Dealer A at \$101.25. Archer Alexander paid the Registered Representative almost \$180,000 for this trade.

During 2003, Archer Alexander paid the Registered Representative almost \$5 million for his inverse floater trades. In most cases, the Registered Representative only was able to generate markups resulting in these payments because he took unauthorized proprietary positions and did not trade on a riskless principal basis. Eventually, in early December 2003, Archer Alexander incurred a loss of approximately \$1.9 million on one of the Registered Representative's unauthorized trades. The loss caused a net capital deficiency that forced the firm to halt operations

⁶ Although roll trades are a common financing technique in the mortgage-backed securities market, *see* MBS Task Force Staff Report, at n. 49-51 and accompanying text, the Registered Representative did not inform Repine or Archer Alexander that he was doing such trades, nor did the tickets he submitted reflect his agreement to repurchase the securities for settlement at a later date.

for several weeks. On December 9, 2003, Archer Alexander terminated the Registered Representative for violating “firm policy and procedures” by engaging in unauthorized trading in connection with this particular transaction.

4. Repine’s and Archer Alexander’s Supervision of the Registered Representative

During 2003, Repine ignored or failed to conduct a reasonable inquiry into numerous red flags regarding the Registered Representative’s trading and the suitability of inverse floaters for some of his retail customers. In addition, Repine and Archer Alexander failed to develop and implement reasonable supervisory policies and procedures to prevent and detect the Registered Representative’s violations of the federal securities laws.

Throughout the course of 2003, the Registered Representative sought approval or submitted tickets for numerous dealer-to-dealer trades that constituted red flags. On multiple occasions, including the FNR 03-40 MS transaction described above, the Registered Representative purportedly bought and sold the same large block of inverse floaters on the same day, often with the same counterparty and/or at unusually large spreads. Despite the highly irregular circumstances of these trades, Repine only questioned the Registered Representative about such a trade once, when the Registered Representative sought approval for a trade in which he purportedly bought and sold the same block of inverse floaters with the same counterparty on the same day at approximately a ten point spread. The Registered Representative falsely told Repine that after he bought the securities from a dealer, he received a call from the trader at that dealer, who said he had another customer willing to pay much more for the securities and asked the Registered Representative to sell them back. Repine accepted this explanation and did not conduct any additional inquiry, such as contacting the counterparty to verify that the trade dates submitted by the Registered Representative were accurate.

Repine also ignored red flags regarding the Registered Representative’s roll trades. During 2003, the Registered Representative submitted tickets for at least four trades similar to the FNR 03-23 SN transaction described above, in which he purportedly bought and sold the same large block of inverse floaters on the same day with the same counterparty at the same price. Repine did not question the Registered Representative or conduct any additional inquiry regarding these trades.

Repine also failed to respond reasonably to red flags regarding the suitability of inverse floaters for some of the Registered Representative’s retail customers. Under Archer Alexander’s policies and procedures, Repine was supposed to review and approve every new account “to determine customer suitability for investments in CMOs.” Repine knew that the Registered Representative’s business focused exclusively on inverse floaters, and that any customer of the Registered Representative would be investing in inverse floaters. In their new account forms, however, many of the Registered Representative’s customers expressed conservative objectives incompatible with a potentially volatile investment such as inverse floaters. Repine never identified investments in inverse floaters as unsuitable for any of the Registered Representative’s customers.

Repine and Archer Alexander also failed to develop and implement reasonable supervisory policies and procedures to prevent and detect the Registered Representative’s violations of the federal securities laws. The firm did not have reasonable policies and procedures to monitor whether the Registered Representative traded inverse floaters on a riskless principal basis. In addition, Repine and the firm failed to develop a reasonable system to implement the special supervisory procedure requiring the Registered Representative to get prior approval for his trades.

When Repine learned that the Registered Representative had entered into trades without obtaining the required prior approval, he took no action to enforce the requirement other than reprimanding the Registered Representative. Repine and the firm also failed to develop a reasonable system to implement Archer Alexander's procedure requiring Repine to conduct an annual inspection of the Registered Representative's office. The firm failed to produce a written report showing that this inspection was conducted during 2003.

5. Archer Alexander's False Books and Records

By engaging in his fraudulent trading scheme, the Registered Representative caused Archer Alexander to create false and inaccurate books and records throughout 2003. Archer Alexander's purchase and sales blotter did not reflect the Registered Representative's numerous purchase transactions for forward settlement and its general ledger did not reflect the resulting proprietary positions. In addition, the Registered Representative created trade tickets for purchases reflecting falsified trade dates that matched the dates of subsequent sell transactions to make it appear as though he had effected purchase and sale transactions on a riskless principal basis.

6. Archer Alexander's Insufficient Net Capital During 2003

Because he committed Archer Alexander to tens of millions of dollars worth of proprietary positions that he had bought for forward settlement, the Registered Representative caused the firm to miscalculate its net capital throughout 2003. During that period, Archer Alexander calculated its net capital in accordance with Exchange Act Rule 15c3-1(a)(2)(vi), which required that the firm maintain minimum net capital of only \$5,000. However, a broker-dealer that engages in more than ten non-riskless principal transactions for its own account in a calendar year is required to calculate its net capital in accordance with Rule 15c3-1(a)(2)(iii), which requires a broker-dealer to maintain net capital of not less than \$100,000. Furthermore, because Archer Alexander's purchase and sales blotter did not reflect the Registered Representative's purchase transactions and its general ledger did not reflect the resulting proprietary positions, Archer Alexander's calculation of net worth was incorrect and the firm did not take "haircuts" on these positions when performing its net capital computations.⁷ As a result of not using the appropriate minimum when calculating net capital and failing to take haircuts on these positions, Archer Alexander's net capital computations were incorrect throughout 2003, and it continued to do business while undercapitalized.

For example, during March 2003 the Registered Representative bought positions in eight different inverse floaters – with a combined value of \$67,077,410 – for forward settlement at the end of May and end of June. As of the end of March 2003, he had not yet sold any of these inverse floaters, meaning that Archer Alexander had proprietary positions in these securities. Consequently, the firm should have included the securities in its inventory as an asset, and its obligation to pay for these securities as a liability on its balance sheet. The firm computed its excess net capital for the first three months of 2003 as \$158,395. However, in doing so, Archer Alexander did not take the required haircuts on any of the open proprietary positions in inverse floaters that the Registered Representative had purchased on Archer Alexander's behalf. In fact, Archer Alexander should have taken millions of dollars in combined haircuts on those proprietary

⁷ "In computing 'net capital,' the [net capital] rule requires deductions from 'net worth' of certain specified percentages of the market values of marketable securities and future commodity contracts, long and short, in the capital and proprietary accounts of the broker or dealer, and in the 'accounts of partners.' These deductions are generally referred to in the industry as 'haircuts.'" *Net Capital Requirements for Brokers and Dealers – Interpretation and Guide*, Exchange Act Rel. No. 8024 (Jan. 18, 1967).

positions, resulting in a significant net capital deficit. Because Archer Alexander never included haircuts for the Registered Representative's proprietary positions during 2003, its net capital computations throughout this period were materially incorrect.

7. Archer Alexander's Inaccurate FOCUS Reports

In addition, the firm's Financial and Operational Combined Uniform Single ("FOCUS") reports for the first three quarters of 2003 were inaccurate. As stated previously, Archer Alexander failed to include the Registered Representative's proprietary positions in inverse floaters on its general ledger. Consequently, these balances were not included on its FOCUS report balance sheets. In addition, Archer Alexander stated in its FOCUS reports that its net capital requirement was \$5,000, rather than \$100,000. Finally, the haircut charges Archer Alexander reported on its FOCUS reports were inaccurate because they did not include any haircut charges for its inverse floater positions.

D. LEGAL ANALYSIS

1. Respondents Failed Reasonably to Supervise the Registered Representative

Sections 15(b)(4)(E) and 15(b)(6) of the Exchange Act authorize the Commission to sanction a broker, dealer, or person associated with a broker or dealer if it finds that the sanction is in the public interest and the broker, dealer, or associated person "has failed reasonably to supervise, with a view to preventing violations of the provisions of [the federal securities laws], another person who commits such a violation, if such person is subject to his supervision." "The supervisory obligations imposed by the federal securities laws require a vigorous response even to indications of wrongdoing." *In the Matter of John H. Gutfreund, et al.*, 51 S.E.C. 93, 108, Exchange Act Release No. 31554 (Dec. 3, 1992). "Red flags and suggestions of irregularities demand inquiry as well as adequate follow-up and review. When indications of impropriety reach the attention of those in authority, they must act decisively to detect and prevent violations of the federal securities laws." *In the Matter of Edwin Kantor*, 51 S.E.C. 440, 447, Exchange Act Release No. 32341 (May 20, 1993) (internal quotations omitted). Furthermore, supervisors may not rely upon the unverified representations of a person subject to their supervision when investigating red flags. *In the Matter of Prospera Financial Services, Inc., et al.*, Exchange Act Release No. 34-43352 (Sept. 26, 2000).

By engaging in the conduct described above, the Registered Representative violated the antifraud provisions of the federal securities laws and aided and abetted Archer Alexander's violations of certain net capital, books and records, and reporting provisions. Repine did not respond reasonably to red flags regarding the Registered Representative's trading. His failure to respond to these red flags trading was particularly unreasonable in light of: (a) the size of the Registered Representative's trades; (b) Archer Alexander's minimal net capital and the resulting need to ensure that all of the firm's trades were done on a riskless principal basis; and (c) Repine's recognition that the Registered Representative's trading required additional scrutiny. Repine also did not respond reasonably to red flags regarding the suitability of inverse floaters for certain of the Registered Representative's retail customers with conservative investment objectives. Moreover, as described above, Repine and Archer Alexander did not develop reasonable supervisory policies and procedures, and systems to implement these policies and procedures, to detect and prevent the Registered Representative's unlawful conduct. Repine and Archer Alexander also did not develop a reasonable system to implement the special supervisory procedure governing the Registered

Representative's trading. Repine and Archer Alexander also failed to implement the firm's procedure requiring Repine to conduct an annual inspection of the Registered Representative's office. As the firm's chief executive officer and designated supervisory principal, Repine was responsible for these failures. If Repine had responded to these red flags, or if he and the firm had developed and implemented reasonable supervisory policies and procedures, it is likely that the Registered Representative's fraudulent conduct would have been detected and prevented. Accordingly, Repine and Archer Alexander failed reasonably to supervise the Registered Representative with a view to preventing his violations of the federal securities laws.

2. Archer Alexander Violated Books and Records Provisions

Section 17(a)(1) of the Exchange Act provides that brokers and dealers "shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title." Rule 17a-3(a)(1) requires brokers and dealers to make and keep current "[b]lotter (or other records of original entry) containing an itemized daily record of all purchases and sales of securities." Rule 17a-3(a)(2) requires brokers and dealers to make and keep current "[l]edgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts." Rule 17a-3(a)(7) requires brokers and dealers to make and keep current "[a] memorandum of each purchase and sale for the account of the member, broker, or dealer showing the price and, to the extent feasible, the time of execution." Implicit in the Commission's recordkeeping rules is the requirement that information contained in a required book or record be accurate. *See, e.g., Armstrong Jones & Co.*, Exchange Act Release No. 8420 (Oct. 3, 1968), *aff'd, Armstrong Jones & Co. v. SEC*, 421 F.2d 359 (6th Cir. 1970). This requirement applies regardless of whether the information entered itself is mandated. *See Sinclair v. SEC*, 444 F.2d 399, 401 (2d Cir. 1971); *James F. Novack*, Exchange Act Release No. 19660, 47 S.E.C. 892 (Apr. 8, 1983). Scienter is not required to violate Section 17(a)(1) of the Exchange Act and the rules thereunder. *See In the Matter of Orlando Joseph Jett*, Exchange Act Release No. 49366 at n.45 (March 5, 2004).

Archer Alexander willfully violated Section 17(a)(1) of the Exchange Act and Rules 17a-3(a)(1), 17a-3(a)(2), and 17a-3(a)(7) as a result of the Registered Representative's conduct.⁸ Because the Registered Representative did not submit tickets or otherwise inform Archer Alexander when he bought inverse floaters for forward settlement, the firm's purchase and sales blotter did not reflect these transactions and its general ledger did not reflect the resulting positions. Consequently, they were inaccurate, in violation of Rules 17a-3(a)(1) and 17a-3(a)(2), respectively. Because the Registered Representative later wrote, or caused to be written, trade tickets that contained false trade dates, Archer Alexander did not have accurate memoranda of these trades, and thereby violated Rule 17a-3(a)(7).

3. Archer Alexander Violated Net Capital Provisions

Section 15(c)(3) of the Exchange Act makes it unlawful for a broker or dealer to "effect any transaction in, or to induce or attempt to induce the purchase or sale of any security . . . in contravention of such rules and regulations as the Commission shall proscribe as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with

⁸ "Willfully" as used in this Order means intentionally committing the act which constitutes the violation. *Cf. Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). There is no requirement that the actor also be aware that he is violating one of the Rules or Acts.

respect to financial responsibility and related practices of brokers and dealers.” Pursuant to this section, the Commission promulgated Rule 15c3-1, commonly referred to as the “net capital rule.” “The principal purposes of Exchange Act Rule 15c3-1 . . . are to protect customers and other market participants from broker-dealer failures and to enable those firms that fall below the minimum net capital requirements to liquidate in an orderly fashion without the need for a formal proceeding or financial assistance from the Securities Investor Protection Corporation.” Exchange Act Release No. 49830 (June 8, 2004).

Archer Alexander willfully violated Section 15(c)(3) of the Exchange Act and Rule 15c3-1 because, as a result of the Registered Representative’s conduct, it continued to do business while undercapitalized. Because the firm’s purchase and sales blotter did not reflect the Registered Representative’s purchases for forward settlement and its general ledger did not reflect the resulting proprietary positions, Archer Alexander failed to take these transactions and positions into account when determining its net capital requirements and calculating its net capital. During 2003, Archer Alexander was maintaining net capital in accordance with Rule 15c3-1(a)(2)(vi), which requires that a broker or dealer maintain net capital of not less than \$5,000. Because it did more than ten transactions for its own investment account during 2003, however, Archer Alexander should have been maintaining net capital in accordance with Rule 15c3-1(a)(2)(iii), which requires a dealer to maintain net capital of not less than \$100,000. Moreover, because Archer Alexander was unaware that the Registered Representative had engaged in forward settlement purchases on behalf of the firm, it failed to include the value of those positions and the corresponding liability to pay for those positions on its balance sheet and to properly reduce its tentative net capital by the amount of the haircuts the firm was required to take on the resulting positions from trade date in accordance with Rule 15c3-1(c)(2)(vi). As a result, Archer Alexander had significant net capital deficits throughout 2003, but continued to engage in a securities business.

4. Archer Alexander Violated Reporting Provisions

Rule 17a-5(a) requires brokers and dealers to file FOCUS reports. Implicit in the FOCUS report requirements is the requirement that the information contained in those reports be accurate. *In the Matter of Nikko Securities Co. International, Inc.*, Exchange Act Release No. 32331 (May 19, 1993). Archer Alexander willfully violated Rule 17a-5(a) by filing inaccurate FOCUS reports for the first three quarters of 2003 that did not reflect its proprietary inverse floater positions, the haircuts it should have taken on these positions, or the resulting effect of those positions on the firm’s net capital.

E. COOPERATION

In determining to accept Respondents’ Offer, the Commission has considered Respondents’ undertakings to cooperate fully with the Commission in any and all investigations, litigations, or other proceedings relating to or arising from the matters described in this Order. Respondents undertake to:

1. Produce, without service of a notice or subpoena, any and all non-privileged documents and other information reasonably requested by the Commission’s staff;
2. In the case of Repine, to be available to be interviewed by the Commission’s staff at such times and places as the staff may reasonably request, and to appear and testify truthfully

and completely without service of a notice or subpoena in such investigations, depositions, hearings, or trials as the Commission's staff may reasonably request; and

3. In the case of Archer Alexander, make its best efforts to encourage its employees, officers, directors, and agents to be interviewed at such times and places as the staff may reasonably request and make its best efforts to cause its employees to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings, or trials as the Commission's staff may reasonably request.

F. UNDERTAKING

1. Repine shall provide to the Commission, within thirty days after the end of the six month supervisory suspension period described below, an affidavit that he has complied fully with the sanctions described in Section IV., below.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

- A. Respondents be, and hereby are, censured;
- B. Archer Alexander cease and desist from committing any violations and any future violations of Section 17(a)(1) of the Exchange Act, Rules 17a-3(a)(1), 17a-3(a)(2), 17a-3(a)(7), and Rule 17a-5(a)(2)(iii) thereunder, and Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder;
- C. The registration of Archer Alexander as a broker and dealer with the Commission be, and hereby is, revoked, effective December 15, 2006;
- D. Repine be, and hereby is, suspended from association with any broker or dealer in a supervisory capacity for a period of six months, effective on the second Monday following the entry of this Order;
- E. It is further ordered that Repine shall, within thirty days of the entry of this Order, pay a civil money penalty in the amount of \$15,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies John M. Repine as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent

to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street N.E., Washington, D.C. 20549; and

F. Repine shall comply with the undertaking enumerated in Section III.F., Undertaking, above.

By the Commission.

Nancy M. Morris
Secretary