

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 53513/March 17, 2006

INVESTMENT ADVISERS ACT OF 1940  
Release No. 2499/March 17, 2006

ADMINISTRATIVE PROCEEDING  
File No. 3-12128

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In the Matter of	:	
	:	ORDER MAKING FINDINGS
MARTIN J. DRUFFNER	:	AND IMPOSING REMEDIAL
	:	SANCTIONS BY DEFAULT
	:	

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The Securities and Exchange Commission (Commission) issued an Order Instituting Proceedings (OIP) on December 16, 2005, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act) and Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). A telephonic prehearing conference is scheduled for March 23, 2006.

The Commission sent the OIP by certified mail to Martin J. Druffner (Druffner), in Hopkinton, Massachusetts, 01748, on December 16, 2005.<sup>1</sup> The Commission also sent the OIP by certified mail to Michael A. Collora (Attorney Collora).<sup>2</sup> The Commission's files do not contain a green card showing receipt of the OIP by Druffner or Attorney Collora. The Division of Enforcement (Division) considers Attorney Collora to be Druffner's counsel in this proceeding; however, Attorney Collora has not filed the required notice of representation. 17 C.F.R. § 201.102(d)(2).

On March 2, 2006, the Division filed a pleading titled Proof of Service and Motion for Default (Motion for Default). In the Motion for Default, the Division represents that on January 26, 2006, it sent copies of the OIP and my January 13, 2006, Order Postponing Hearing and

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<sup>1</sup> I have omitted the street address for privacy concerns.

<sup>2</sup> The Division told a law clerk in my Office that Attorney Collora represented Druffner in the criminal action, United States v. Druffner, No. 05-CR-10232JLT (D. Mass. 1995). This is supported by the fact that Attorney Collora's name appears on the Service List for this proceeding. As a matter of standard practice, the Service List is derived from information gathered from any underlying proceeding.

Scheduling Prehearing Conference to Druffner's residence in Hopkinton, Massachusetts, 01748, by Federal Express. Exhibits to the Motion for Default show that on January 27, 2006, M. Druffner signed for a Federal Express priority envelope delivered to a residence in Hopkinton, Massachusetts, 01748. (Motion for Default, Exhibits A, B.)

### **Ruling**

The Commission's Rules of Practice provide that a party to a proceeding may be found to be in default if the party fails to file an Answer, or respond to a dispositive motion within the time provided, or to otherwise defend the proceeding. See 17 C.F.R. §§ 201.155(a), .220(f). It is established that Druffner was served with the OIP on January 27, 2006, and it is highly probable that he was served with the OIP during the week of December 18, 2005. The OIP specified that an Answer was due within twenty days of service of the OIP. (OIP at 3.) To date, Druffner has not filed an Answer.

On March 2, 2006, the Division mailed a copy of the Motion for Default by first class mail to Druffner at his residence in Hopkinton, Massachusetts, 01748. To date, Druffner has not filed an opposition to the Motion for Default.

Druffner is in default because he has not filed an Answer to the OIP as required by Rule 220 of the Commission's Rules of Practice, he has not filed an opposition to the Division's Motion for Default, and has not otherwise defended the proceeding.<sup>3</sup> 17 C.F.R. §§ 201.154(a), .155(a), .220(f). Accordingly, I find the allegations in the OIP to be true.

Druffner is a thirty-six-year-old resident of Hopkinton, Massachusetts, who during the relevant period, from April 1996 until at least June 2003, was employed by Prudential Securities, Inc., which was headquartered in Newark, New Jersey, and registered with the Commission as a broker-dealer (File No. 8-27154) and an investment adviser (File No. 801-16801).

On August 25, 2005, the United States Attorney for the District of Massachusetts filed a criminal Information against Druffner concerning his use of deceptive trading practices to market time in mutual funds. United States v. Druffner, No. 05-CR-10232JLT, (D. Mass. Aug. 25, 2005) The Information charged Druffner with four counts of violating Section 10(b) of the Exchange Act and four counts of wire fraud because from at least 1999 through, in or about, October 2003, Druffner defrauded mutual funds by employing various deceptive and fraudulent acts and practices to execute prohibited market timing trades on behalf of seven hedge fund customers. According to the Information, Druffner's deceptive and fraudulent conduct consisted of three basic categories of conduct: 1) creating and using multiple customer account numbers; 2) creating and using multiple financial advisors, or "FA" numbers; and 3) making affirmative

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<sup>3</sup> There was no motion for default in Kern, 84 SEC Docket 2923 (Feb. 1, 2005), where the Commission recommended requiring a respondent to show cause why he should not be held in default. A show cause order is unnecessary in this proceeding where Druffner has not filed an Answer after he was served with the OIP, he has not responded to a default motion, and his attorney in the criminal case has represented to the Division that Druffner would likely default. (Motion for Default at 2.)

representations and material omissions to employees at mutual fund companies about the true nature and extent of his market timing, all for the purpose of avoiding detection by mutual funds. The Information alleged, among other things, that Druffner engaged in this conduct after he was notified, explicitly and repeatedly, both that mutual fund companies prohibited his customers' market timing activity, and, in some cases, that mutual fund companies had precluded Druffner from further trading because of repeated violations of limitations in their prospectuses. The Information stated that Druffner generated in excess of \$2,000,000 in net commissions as a result of his deceptive and fraudulent scheme. On September 19, 2005, Druffner pled guilty to the eight counts alleged in the Information, including four counts of violating Section 10(b) of the Exchange Act.

Section 15(b) of the Exchange Act authorizes a sanction where it is in the public interest to do so and a person has been convicted of violating the Exchange Act within ten years of the OIP by conduct committed while associated with a broker or dealer.<sup>4</sup> Section 203(f) of the Advisers Act authorizes a sanction where it is in the public interest to do so and a person has been convicted of a securities related crime within ten years of the OIP or has willfully violated a provision of the Exchange Act for conduct committed while associated with an investment adviser.

Based on these facts, I find it is in the public interest to bar Druffner from associating with any broker, dealer, or investment adviser.

### **ORDER**

IT IS ORDERED, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, that Martin J. Druffner is hereby BARRED from associating with any broker, dealer, or investment adviser.

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Brenda P. Murray  
Chief Administrative Law Judge

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<sup>4</sup> The term convicted is used to describe someone who has been found guilty of a crime. I find the term applicable based on Druffner's guilty plea entered September 19, 2005.