

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
January 31, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12554

In the Matter of

**MICHAEL SASSANO,
DOGAN BARUH, ROBERT
OKIN and R. SCOTT ABRY,**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933, SECTIONS 15(b)(6) AND 21C OF
THE SECURITIES EXCHANGE ACT OF
1934, SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
AND SECTIONS 9(b) AND 9(f) OF THE
INVESTMENT COMPANY ACT OF 1940**

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 Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b)(6) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Michael Sassano (“Sassano”), Dogan Baruh (“Baruh”), Robert Okin (“Okin”) and R. Scott Abry (“Abry”) (collectively the “Respondents”), and in addition, Section 9(f) of the Investment Company Act against Baruh.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. **Michael A. Sassano III**, 35, resides in Miramar Beach, Florida, and New York, New York. From July 1995 until January 2003, CIBC World Markets Corp. (“World Markets”) employed Sassano as a registered representative (“RR”) in its CIBC Oppenheimer retail division, and specifically in its Private Client Services (“PCS”) division. In January 2003, Sassano became a RR of Fahnestock & Co., Inc. (“Fahnestock”). In late 2003, Fahnestock changed its name to Oppenheimer & Co., Inc. (“Oppenheimer”). Sassano holds Series 7, 63 and 65 licenses. In

March 2004, Oppenheimer indefinitely suspended Sassano, and in July 2004, he resigned from Oppenheimer.

2. **Dogan Baruh**, 30, resides in New York, New York. From June 1998 until January 2003, World Markets employed Baruh as a RR in its CIBC Oppenheimer retail division, and specifically in its PCS group as part of a group of RRs working with Sassano. In January 2003, he became a RR of Fahnestock. He holds a Series 7 license. In March 2004, Oppenheimer indefinitely suspended Baruh. In July 2004, Baruh resigned from Oppenheimer.

3. **Robert Okin**, 50, resides in Armonk, New York. From August 1997 to January 2003, Okin was a Managing Director serving as the Head of World Markets' PCS. Prior to June 2002, Okin supervised the Head of World Markets' Financial Services division. After June 2002, he was Abry's direct supervisor. In January 2003, Okin became an employee of Fahnestock and remained Abry's supervisor at Fahnestock. Okin is currently Head of Branch Distribution Systems at Oppenheimer. He holds Series 7, 8 and 63 licenses.

4. **R. Scott Abry**, 42, resides in Cos Cob, Connecticut. From 1997 until January 2003, World Markets employed Abry in its PCS as the branch manager of Sassano's branch. He served as the branch manager until January 2003, at which time he became a branch manager at Fahnestock and remained Sassano's branch manager. He holds Series 7, 9 and 10 licenses. In September 2003, Abry resigned from Fahnestock and became a branch manager in a New York City branch of another broker-dealer.

B. OTHER RELEVANT ENTITIES

5. **CIBC World Markets Corp.** is a New York based broker-dealer subsidiary of Canadian Imperial Bank of Commerce ("CIBC"), a Canadian financial and bank holding company. World Markets, through its CIBC Oppenheimer retail division, serviced high-net-worth individuals, money managers, and small corporations, including market timing hedge funds. In January 2003, World Markets sold its Oppenheimer retail division to Fahnestock. World Markets is registered with the Commission as both a broker-dealer and investment adviser. On July 20, 2005, the Commission instituted settled administrative and cease-and-desist proceedings against World Markets, finding that World Markets violated Section 17(a) of the Securities Act, Sections 7(c), 10(b), 11(d), 15(c) and 17(a) of the Exchange Act and Rules 10b-3, 10b-5, 17a-3 thereunder, Rule 22c-1 as adopted under Section 22(c) of the Investment Company Act and Regulation T promulgated by the Federal Reserve Board regarding the extension of margin credit. See In the Matter of Canadian Imperial Holdings Inc. and CIBC World Markets Corp., AP File No. 3-11987 (July 20, 2005).

6. **Fahnestock and Co., Inc.** ("Fahnestock") was a New York based broker-dealer which, in January 2003, through its parent holding company Fahnestock Viner Holdings, Inc., acquired the CIBC Oppenheimer retail division of World Markets. After the purchase, Sassano, Baruh, Okin and Abry became employees of Fahnestock, with Okin and Abry remaining Sassano and Baruh's supervisors until September 2003. In September 2003, Fahnestock changed its name

to Oppenheimer. Oppenheimer is registered with the Commission as both a broker-dealer and investment adviser.

C. THE FRAUDULENT MARKET TIMING SCHEME

7. Sassano and Baruh collaborated with numerous hedge fund customers to deceptively market time mutual funds through a variety of deceptive practices. Okin and/or Abry knew of, and approved, these practices. Their fraudulent conduct was repeatedly detected by mutual funds and, from at least 1999 until September 2003, these mutual funds frequently sent World Markets and Fahnstock letters and emails complaining about abusive market timing trading by Sassano's and Baruh's customers. Sassano and Baruh used numerous strategies to help their hedge fund customers deceive the mutual funds, including the use of: (a) multiple accounts, (b) multiple RR numbers; (c) different branch numbers; (d) trades in smaller dollar amounts; (e) accounts at Charles Schwab & Co., Inc. ("Schwab") and FMR Corp. ("Fidelity") to continue market timing funds that had blocked their customers trading through World Markets; and (f) variable annuities. These were among their favorite tactics to enable market timing customers to deceive mutual funds and "stay under the radar" of the mutual funds' internal timing monitors. In addition, Baruh knowingly accepted numerous mutual fund orders after 4:00 p.m. ET and processed those orders as though they had been placed prior to 4:00 p.m. ET so that they received the same day's net asset value ("NAV"). Sassano's and Baruh's market timing customers understood the reason for these tactics was to deceive mutual funds and "stay under the radar" of the mutual funds' internal timing monitors.

Market Timing and Late Trading

8. "Market timing" refers to the practice of: (a) frequent buying and selling of shares of the same mutual fund, or (b) buying or selling mutual fund shares in order to exploit inefficiencies in mutual fund pricing. While not illegal per se, market timing can harm other mutual fund shareholders because, among other things, it can dilute the value of the mutual fund's shares. Market timing can also disrupt the management of the mutual fund's investment portfolio and cause the targeted mutual fund to incur costs borne by other shareholders to accommodate frequent buying and selling of shares by the market timer. As a result, mutual funds often monitor market timing activity and impose restrictions on excessive trading. Some mutual funds also send "block notices" to RRs whom the mutual funds suspect are engaged in market timing.

9. Rule 22c-1(a) under the Investment Company Act requires mutual funds issuing redeemable securities, their principal underwriters and dealers in their shares, and any person designated in the fund's prospectus as authorized to consummate transactions in fund shares to sell and redeem fund shares at a price based on the current NAV next computed after receipt of an order to buy or redeem. Mutual funds generally determine the daily price of their shares as of 4:00 p.m. ET. In these circumstances, orders received before 4:00 p.m. must be executed at the price determined as of 4:00 p.m. that day. Orders received after 4:00 p.m. must be executed at the price determined as of 4:00 p.m. the next trading day.

10. “Late trading” refers to the practice of placing orders to buy or sell mutual fund shares after the time as of which a mutual fund has calculated its NAV (usually as of the close of trading at 4:00 p.m. ET), but receiving the price based on the prior NAV already determined as of 4:00 p.m. Late trading enables the trader to profit from market events that occur after 4:00 p.m. but that are not reflected in that day’s price. In particular, the late trader obtains an advantage – at the expense of the other shareholders of the mutual fund – when he learns of market moving information and is able to purchase (or sell) mutual fund shares at prices set *before* the market moving information was released. Late trading violates Rule 22c-1(a) under the Investment Company Act and harms other shareholders when late trading dilutes the value of their shares.

Deceptive Market Timing and Late Trading Practices

11. Sassano created a large and successful market timing business in which he executed mutual fund orders on behalf of his customers – large market timing hedge funds. Sassano’s market timing business became so successful it made him one of the top-producing RRs at World Markets. From 1998 to 2002, World Markets paid Sassano over \$12.3 million. In 2003, Fahnestock (which had then changed its name to Oppenheimer) paid Sassano over \$3 million. As his business grew, Sassano hired additional people to work in his group, and he directed their activities. At its peak, Sassano had numerous people working in his group. Sassano’s right hand man throughout the period of the fraud was Baruh.

12. Sassano’s and Baruh’s market timing business was well known to Okin and Abry. Because it was highly profitable, World Markets supported Sassano’s and Baruh’s market timing business and even afforded them the exclusive right to engage in market timing. For example, in March 2000, Sassano sent an email to, among others, Okin, to “reaffirm our restricted list” of mutual funds that only Sassano and his customers could market time. Sassano made this request “in order to prevent any disruption in my business.” Okin approved Sassano’s request and reaffirmed his exclusive ability to market time these funds. Indeed, at various times thereafter, Okin reprimanded other RRs at World Markets and Fahnestock trying to market time on behalf of their customers, noting such behavior was the exclusive purview of Sassano.

13. Sassano also requested, and Okin approved, the creation of an electronic trading platform at World Markets to facilitate Sassano’s market timing business. Thus, World Markets created the Mutual Fund Exchange System (“MFES”) exclusively for Sassano. The MFES allowed Sassano’s customers to submit their mutual fund trades via electronic spreadsheet, which Sassano could then electronically convert into orders within World Markets’ system. The MFES had the added benefit of allowing customers to submit multiple smaller trades within one account as a way to stay under the radar of mutual funds’ internal timing monitors.

14. Respondents actively assisted market timing customers in deceiving mutual funds. Among the deceptive practices that Respondents’ engaged in on behalf of their customers were the following: (a) using multiple accounts, including the “cloning” of new accounts, in order to evade blocks placed on known market timers by mutual funds; (b) creating new RR numbers to disguise timers and their RRs from mutual funds; (c) sending trades from a different branch to deceive the mutual funds about the origins of the trade; (d) trading in smaller amounts to not be

detected as timers by mutual funds, including using an in-house electronic trading platform to break up trades into small dollar volumes; (e) using other broker-dealers that had other trading platforms, such as Schwab and Fidelity, to continue market timing mutual funds that had blocked their customers' trading through World Markets; and (f) using annuities to market time. The hedge funds knew of, and endorsed, this wrongful conduct.

15. From at least August 2001 to November 2002, Baruh and another RR in Sassano's group accepted numerous trade orders from at least one of their market timing hedge fund customers before 4:00 p.m. ET, with the understanding that Baruh and the RR would not receive final instructions on executing the proposed trades until after 4:00 p.m. Further, despite the fact that the trading decision was made after 4:00 p.m., the understanding was that the proposed trades would be priced as of 4:00 p.m. Typically, the customer would fax its proposed trades to Baruh before the market closed. Thereafter, the customer would call and instruct whether to execute the proposed trades. These calls very often occurred after 4:00 p.m., allowing the customer to observe the after-hours markets.

Use of Multiple Accounts

16. Sassano, Baruh and others in Sassano's group acting at their direction opened multiple accounts for their customers to disguise the identities of the account holders and to continue market timing on behalf of customers that mutual funds had previously blocked. Creating new accounts enabled a timer to evade blocks mutual funds had placed on their previous timing accounts.

17. For instance, between November 13, 2001 and December 20, 2001, Sassano, Baruh and others in Sassano's group acting at their direction cloned 12 accounts for one of Sassano's market timing customers so that the customer could continue trading in one mutual fund after receiving notices prohibiting further trading in that fund. Specifically, between November 13, 2001 and November 27, 2001, Sassano, Baruh and others acting at their direction executed market timing trades in the international mutual fund in two of the customer accounts. As a result, the mutual fund, on November 28, 2001, blocked those accounts due to "a pattern of excessive trading." To evade those trading restrictions, between December 4, 2001 and December 6, 2001, Sassano, Baruh and others acting at their direction executed timing trades in the mutual fund in eight different accounts for the same customer whose accounts had been previously blocked. On December 7, 2001, the mutual fund blocked those eight accounts, again due to "excessive trading." Finally, to evade the November and December blocks, on December 14, 2001, Sassano, Baruh and others acting at their direction executed trades in the mutual fund in two more accounts for the same customer, leading the mutual fund, on December 20, 2001, to block these two new accounts from further trading.

18. Baruh, on Sassano's behalf, recommended that customers create additional accounts for trading. For example, Baruh recommended to a hedge fund customer that it create additional accounts so it could better market time mutual funds. The customer had multiple accounts at World Markets. For another customer whose accounts were blocked by a mutual fund because of excessive market timing, Baruh recommended that, to get around these restrictions, the

customer purchase shares of the mutual fund in the five additional accounts it had that had never purchased shares of that fund.

19. Some mutual funds figured out that Sassano and Baruh enabled their customers to clone accounts to evade blocks and notified World Markets and Fahnstock that they disapproved of the practice. For example, in October 2002, Mutual Fund Company A sent a letter to World Markets banning Sassano from executing further market timing in their funds. Despite World Markets' assurances that Sassano would stop, by December 2002, Sassano's group had 27 new market timing accounts that Mutual Fund Company A had shut down. When Mutual Fund Company A complained, World Markets again assured Mutual Fund Company A that Sassano's market timing would cease. Despite this, Sassano's group continued to time Mutual Fund Company A in new accounts. Consequently, in January 2003, Mutual Fund Company A called World Markets to complain. As explained in a January 14, 2003 email to Sassano and Baruh, Mutual Fund Company A was "frustrated by the fact that you stop timing in current accounts when they ask only to show up later in others."

Use of Multiple Registered Representative Numbers

20. Mutual funds often identified customer accounts that were engaged in market timing by RR numbers. Sassano and RRs in his group used multiple RR numbers to deceive mutual funds about the source of market timing trades. Using alternative RR numbers allowed them to disguise their identity and fool the mutual funds into believing that they had not been previously blocked from trading. This became increasingly important as the Sassano group's business grew and mutual funds began to identify their RR numbers as the source of abusive trading. All told, Sassano and his group had 57 individual or shared RR numbers at World Markets.

21. Okin and Abry were aware of these practices. For example, on November 4, 2002, Baruh sent Abry an email "wondering if we would be able to get a new rep number. If possible it would be great if that rep read MAS (as in Mike's initials as opposed to having his name) and have the rep go 100% to Mike's production." Abry forwarded this request on, until it reached World Markets' Registration Department. When asked why the rep would not be structured "to easily identify who this # belongs to," Baruh responded:

The reason why we would like to have Mike's initials as opposed to his name is certain fund families have blocked Mike's name from even purchasing their funds. This is because they have associated just the name on the rep as a "market timer." Without going too much into details, not all of Mike's business is [m]arket timing, and we are prevented from purchasing these funds simply because they are associating his name with a known market timer. So if these accounts were coded as MAS the funds will let us buy the mutual funds and we would not be restricted.

This explanation did not sit well with the Registration Department, which was “very hesitant to approve something based on the need to misrepresent or conceal information.” Abry received this entire email chain.

22. On November 13, 2002, the Vice President of Compliance at Mutual Fund Company B, called the Director of Compliance at World Markets. As the Director of Compliance at World Markets explained in an email the next day to Okin and Abry (among others):

The purpose of the call was to once again communicate to CIBC that [Mutual Fund Company B] would no longer tolerate the market timing activity that Michael Sassano engages in on behalf of his clients through [Mutual Fund Company B]. Since 4/3/02, I have received three different letters (attached below) from [Mutual Fund Company B] requesting that Michael ‘make no further investments in [Mutual Fund Company B]’ He believes that Michael is deliberately attempting to conceal his association with this activity by creating numerous RR#s and breaking up the orders to smaller amounts so that the market timing goes undetected. . . . [I]n light of the potential impact on other CIBC businesses (U.S. Equities, Asset Mgmt) and the fact that [Mutual Fund Company B] has threatened to complain to the NASD, I believe that there are significant business and regulatory risks associated with Sassano’s continued market timing through [Mutual Fund Company B].

23. Approximately a week later, the Director of Compliance at World Markets called Okin to follow up on his email. Okin, however, dismissed him, saying this was a business issue, not a compliance issue. The Director of Compliance strongly disagreed, again reiterating his belief that Sassano’s conduct was a compliance issue. Despite this, Okin refused to follow up on Mutual Fund Company B’s complaint or the concerns of the Director of Compliance at World Markets.

24. On November 21, 2002, Baruh emailed the Mutual Fund Operations Department to “make sure that everyone in the group knows what happens when they supply the fund families with the name on the rep. We are having a difficult time having the trades go through already, and if we help out the funds in tracking us down it will be that much harder.”

25. After the Registration Department denied Baruh’s request for an RR number with only initials, Baruh tried a different tack. In January 2003, Baruh and another RR working for Sassano (“RR Doe”), had their own RR numbers. On January 15, 2003, Baruh sent an email to Abry’s administrative assistant. In it, Baruh indicated that he and RR Doe “wanted to start using these [RR #s] and open new accounts but have 100% of the proceeds/commissions generated from those two [RR #s] be credited to Mike’s [Sassano] general rep number.” That same day, their request was approved. Thereafter, all revenue attributable to Baruh’s RR number 171 and RR Doe’s RR number 271 were paid to Sassano.

26. Baruh then told the other RRs in Sassano’s group that “in the future when we buy [shares of a certain mutual fund], . . . [d]efinitely do the buys under [RR Doe’s] rep (271)[;] they are looking into the Sassano name.” Baruh also told Mutual Fund Operations that if a certain

mutual fund called about recent purchases to “ask what rep this is[,] give them rep [RR Doe].” He also told Mutual Fund Operations that “[i]f they ask if it is timing tell them no.”

27. Baruh also submitted trades to mutual funds while purposely omitting Sassano’s name or using fake RR numbers as a way to “trick” the mutual funds. For example, in response to a question from a customer concerning its ability to open accounts without Sassano’s name, Baruh responded: “We can do it. . . . I’ve done trades not under Mike’s name, so Mike’s name don’t [sic] come up. . . . I’ll get back a trade a few days later and be like who’s rep 000 for example, you know, and they’re like, that’s nobody, and then they know that it’s a trick that we played on them.”

Use of Different Branch Numbers

28. Respondents also disguised timing trades by using a different branch code in their customer’s account numbers. Each World Markets customer account included a three-digit branch code as a prefix to the account number. The branch code for the New York branch that Sassano was assigned to was “033.” Once it became clear to mutual funds that blocking account numbers and RR numbers would not stop Sassano, many of them threatened, and then actually began, to block the entire 033 branch from trading. Consequently, on September 19, 2002, Baruh emailed Abry to request a “super branch” for the Sassano group. As Baruh explained:

The reason for the super branch is two fold. Sometimes the mutual fund companies in order to restrict us from trading ban branch 033 from doing any business. This has rarely happened but I’m sure you can understand the significance of banning branch 033, when we are the only ones they would like to restrict. So in essence this is for the firms [sic] benefit.

29. Abry forwarded this request to World Markets’ Director of Operations, who noted that “If the funds find out we are screwing around they will throw us out.” Abry replied: “They are throwing us out anyway, maybe we can prolong the agony we sure could us[e] the revenue.”

30. On October 15, 2002, Mutual Fund Company C blocked Sassano’s branch from any further purchases because of Sassano’s repeated market timing activity. Shortly thereafter, on October 25, 2002, Sassano emailed Okin asking if “any headway” had been made on his request for his own branch. Okin forwarded this request to World Markets’ Director of Operations, asking “is there a way to set up a [d]ifferent 3 digit start to his accounts?” World Markets’ Director of Operations responded, “What [he’s] trying to do is hide himself from the funds. If they find we are trying to backdoor them.....” Okin agreed: “I assume that’s what he’s trying-I am okay with saying no, we can’t. I would love a good reason though.” To which World Markets’ Director of Operations replied, “I think jeopardizing our fund relationships is a pretty good reason.”

31. At the same time that Mutual Fund Company C was blocking the market timing activity, Sassano formed a joint RR number with a RR in World Markets’ Boca Raton office, for a new market timing customer. On October 3, 2002, Baruh emailed the Boca Raton branch manger, asking him to open new accounts for the customer out of the Boca Raton branch. The Boca Raton

branch manger responded, “Since you [the Sassano group] are handling the account, the account should be domiciled in the 033, NY office and have [the Boca Raton RR] just be split on this account.” Baruh, however, insisted that the accounts be opened in Boca Raton, which allowed Sassano’s group to evade blocks mutual funds had placed on the 033 branch.

32. Later, on April 28, 29 and May 2, 2003, Baruh executed a number of trades for Sassano’s Boca Raton customer. In doing so, however, Baruh told the Mutual Fund Operations Department not to inform the mutual fund that Sassano entered the trades. Rather, Baruh told the Mutual Fund Operations Department that, “should the mutual fund company call tomorrow, please just give them the [Boca Raton RR] rep name.”

Use of Smaller Dollar Amounts

33. Another method Respondents used to disguise their timing from funds was to stay “under the radar” of the funds by trading in small dollar amounts. Sassano’s group opened multiple accounts for their timing customers to spread timing money across multiple accounts, instead of trading one large lump sum, which would be a “red flag” to mutual funds. By trading in this way, they deceived the mutual funds into accepting large timing trades that the mutual funds would otherwise reject, by making the large trades appear as several smaller trades.

34. For example, on August 28, 2002, Baruh wrote to the Mutual Fund Operations Department concerning the Sassano group’s identical smaller dollar amount trades in multiple customer accounts. Apologizing for the increased work these trades were causing the Mutual Fund Operations Department, Baruh wrote, “We obviously aren’t purposefully trying to create more work for you guys by splitting these trades up. We are trying to break them up so the fund companies do not think these are market timing accounts, even though they are.”

35. Okin knew about the Sassano group’s use of multiple accounts. In June 2002, Baruh had emailed Okin asking for a lower margin rate for a customer. As Baruh explained, “[t]here are three accounts (even though it is the same client) that add up to approx. \$4,300,000. The reason they have three separate accounts is to stay under the radar with the mutual fund companies, otherwise it is the same entity.” Satisfied with the explanation, Okin approved the lower margin rate.

36. Prior to that, on January 14, 2002, a CIBC Managing Director wrote Okin about how the aggressive market timing trading by Sassano’s customers was harming the CIBC name. Addressing a particularly aggressive Sassano market timing customer that had over 30 accounts, the CIBC Managing Director told Okin: “[I]t appears this particular client trades aggressively and uses small size to stay under the radar of the mutual funds.” Okin did nothing to stop this trading.

37. In addition, Sassano used the MFES electronic trading platform to break up trades into smaller dollar volumes within the same accounts. On September 24, 2002, Abry’s Assistant Branch Manager sent Abry a “confidential” email of “high importance” entitled “Sassano Mutual Fund Trades,” which warned:

I think we are going to have a potential problem with the way Mike's group has been processing trades for some accounts. In an effort to draw less attention to the timing issue, Mikes [sic] group is placing several exchanges in small amounts in an attempt to go unnoticed. So basically, where once you had 2 transactions an exchange out and an exchange in, now we have 20 in smaller increments.

While it may work in the short term, one account, 033-57873, generated almost 1,900 trades in August, on an exception run that both Compliance and our regulators look at when they perform an audit.

I'm not sure that they are doing anything illegal, but I would think once the fund families catch on they will be pissed. Should we get [the Head of Financial Services] involved to see what the potential issues to the firm could be?

38. Despite this warning, Abry did nothing to stop this abusive practice.

Use of Schwab and Fidelity Accounts to Conceal Customers' Trades and Continue Timing Funds that Blocked Trading

39. Sassano and Baruh also used platforms at other broker-dealers as a way to deceive mutual funds. Specifically, Sassano and Baruh opened accounts at Fidelity and Schwab on behalf of Sassano's market timing customers as another means of evading mutual fund blocks. Okin and Abry approved the opening of these accounts at Schwab and Fidelity knowing they were going to use them to continue timing funds that had previously blocked or rejected Sassano's customers' trades.

40. For example, on November 8, 2001, Mutual Fund Company D emailed World Markets' Head of Mutual Fund Marketing, complaining that it had:

noticed some market timing coming in through Schwab's RIA platform in Mutual European (\$3.7 million came in on Nov 5 and left 2 days later). After digging further with Schwab, we discovered that the broker of record was Mr. Sassano.

We wanted to make you aware that:

- 1) he's still timing assets in our funds despite our repeated requests to curb his activity, and
- 2) he is doing business away from CIBC and going through Schwab.

Mutual Fund Company D went on to threaten that "if his timing activity . . . is allowed to continue, we will have no choice but to suspend marketing support for any calendar quarter in which we discover future [timing] activity."

41. That email was forwarded to the Head of Financial Services, who, in turn, forwarded it to Okin. In doing so, the Head of Financial Services noted that because the President of Mutual Fund Company D was involved and that Mutual Fund Company D was a "strategic

partner,” he had instructed Sassano “to stop using” the mutual fund. The Head of Financial Services also noted that Mutual Fund Company D’s email “proves that the Schwab account isn’t as concealing as we think.” Okin responded simply by noting that he had forwarded the email chain on to Abry.

42. In a separate email concerning this incident, dated November 9, 2001, Okin noted to Abry that “this is where we can get into problems.” Abry responded “so much for stealth trading.” After Okin reminded Abry that the mutual fund was “one of our key relationships,” Abry indicated he would make sure that Sassano and his team “understand.”

43. Despite these warnings, Sassano continued to use Schwab and Fidelity accounts to market time mutual funds. For example, on February 4, 2002, Mutual Fund Company E blocked 13 Sassano accounts due to market timing. The Head of Mutual Fund Services forwarded this notification to the Head of Financial Services and Abry, telling them:

Fyi; this is the kind of email that we are getting on a much more regular basis. they are usually followed in about a month (from the originating company) with another email stating that new accounts have been identified from the same broker or that trading activity is now being detected through Schwab accounts. Then come the emails threatening to close us down as a firm.

44. Similarly, on February 11, 2002, Mutual Fund Company F requested no more trading, complaining that, although on January 3, 2002 it had identified 6 different rep numbers trading “hot money” through both World Markets and Schwab accounts, the timing had continued under 2 new rep numbers (bringing the total to 8). Okin, in forwarding the entire chain to Abry, wrote: “Scott, we have to be careful here. It is not prudent to screw around with our fund relationships to the point where they kick us out.”

Using Annuities to Market Time

45. Sassano also used annuities as another vehicle in which to market time mutual funds.¹ To use variable annuities to time mutual funds, however, Sassano’s group often had to evade the restrictions on market timing that the variable annuity companies had in place. For example, in an October 2001 email relaying that they had successfully stayed off the timing reports

¹ Variable annuities are issued by insurance companies and include certain insurance features, such as a right to receive annuity payments at a time usually delayed until the future and the right to pass the contract value to a beneficiary upon death. Variable annuities are frequently sold as alternatives to direct investments in mutual funds, but in addition to charges for managing the mutual funds, customers are charged separate fees for the insurance features. Like mutual funds, the return of variable annuities varies with the market’s performance, and variable annuities offer investors a selection of mutual funds in which to invest (the separate accounts). The investor may allocate his or her investment among the mutual funds available through the variable annuity.

of one particular annuity company, Sassano exhorted his team to “stay on top of why and how to keep under the radar [and] don't get lazy penetrate more.”

46. Abry as well as other branch management was fully aware that Sassano used annuities as an additional platform in which to engage in market timing, and that variable annuity companies, like mutual funds, prohibited it. As Abry's Assistant Branch Manager wrote in a February 25, 2003 email to the Head of National Sales Practices at World Markets, “the annuities are another way for their market timers to get mutual fund capacity. They are also subject to the same trading restrictions a mutual fund would place on any other market timer that they thought was putting through excessive trades. From time to time we receive notice from the annuity that if the trading does not stop, our client will get kicked out.”

47. Okin approved Sassano's use of annuities as another vehicle in which to market time mutual funds. Specifically, in June 2002, the Head of Oppenheimer Life Agency at World Markets received numerous complaints from annuity companies about Sassano's customers' market timing. Alarmed by this, she complained to her boss and asked that Sassano be stopped from permitting his customers' to time through annuities. She, however, was overruled. Specifically, at a July 2002 meeting, Okin approved Sassano's market timing of annuities, provided Sassano's customers did not time through annuities issued by certain favored annuity companies.

D. VIOLATIONS

48. As a result of the conduct described above, Sassano and Baruh willfully violated Section 17(a) of the Securities Act, which prohibits fraudulent conduct in the offer and sale of securities, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities. As part of their scheme to defraud mutual funds, Sassano and/or Baruh utilized numerous deceptive practices on behalf of their market timing hedge fund customers. These included routinely accepting mutual fund orders after 4:00 p.m. ET with the understanding that those trades would be presented to the mutual funds for processing as if they had been received by World Markets before 4:00 p.m., and therefore would receive that day's NAV; using new account numbers for blocked customer accounts; creating new RR numbers to disguise timers and their RRs from mutual funds; trading in smaller amounts to not be detected as timers by mutual funds, including using an in-house electronic trading platform to break up trades into small dollar volumes; using annuities to market time; using other broker-dealers that had other trading platforms, such as Schwab and Fidelity, to continue market timing mutual funds that had blocked their customers' trading; and in at least one instance, sending trades from a different branch to deceive the mutual funds about the origins of the trade. Through these actions, Sassano and Baruh willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

49. As a result of the conduct described above, Sassano and Baruh willfully aided and abetted and caused their customers' violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities. Sassano's and Baruh's market timing customers engaged in

a fraudulent scheme to conceal their identities from the mutual fund companies' internal market timing monitors and by late trading. Customers consulted with Sassano and Baruh and authorized deceptive market timing and late trading. Sassano and Baruh knew that mutual funds were attempting to block their customers' trading by virtue of the block notices Sassano and Baruh received, and Sassano and Baruh knew that their timing customers were using multiple accounts and multiple RR numbers as part of this improper scheme. Sassano urged his customers to market time through annuities and trade in such a way as to "stay under the radar" of the annuity companies' internal market timing monitors. In addition, Baruh entered late trades on behalf of at least one customer while knowing the customer's trading decisions were occurring after market hours. Additionally, Baruh recommended to one customer that it create additional accounts so it could better market time mutual funds. As a result, that customer had multiple accounts at World Markets and Fahnstock. Similarly, Baruh recommended to another market timing customer that it evade the trading restrictions placed upon its accounts by purchasing that mutual fund in accounts that had never purchased the mutual fund before. Sassano and Baruh also substantially assisted their timing customers in carrying out the scheme. As noted above, Baruh entered late trades on behalf of their customer. In addition, Sassano and Baruh requested multiple RR numbers and multiple accounts, and routinely executed trades in funds that had imposed restrictions on marketing timing trading. Thus, Sassano and Baruh knowingly and substantially assisted their timing customers' fraudulent, deceptive scheme.

50. As a result of the conduct described above, Sassano and Baruh willfully aided and abetted and caused CIBC World Markets Corp.'s violations of Section 15(c) of the Exchange Act, which prohibits a broker or a dealer from effecting any transaction in, or inducing or attempting to induce the purchase or sale of, any security by means of any manipulative, deceptive, or other fraudulent device or contrivance, and Rule 10b-3, which prohibits a broker or dealer from using or employing any act, practice, or course of business that is a manipulative, deceptive, or other fraudulent device or contrivance in connection with the purchase or sale of any security otherwise than on a national securities exchange. World Markets committed primary violations of Section 15(c) of the Exchange Act and Rule 10b-3. World Markets effectuated transactions in the purchase or sale of securities using fraudulent devices to hide its customers' market timing and late trading of mutual funds. Sassano and Baruh aided and abetted and caused World Markets' violations of Section 15(c) of the Exchange Act and Rule 10b-3, since they knowingly engaged in deceptive market timing and, in the case of Baruh late trading, on behalf of their customers. And since that conduct substantially assisted and caused World Markets to violate Section 15(c) and Rule 10b-3, by causing it to employ a manipulative, deceptive, or other fraudulent device in connection with the purchase or sale of a security, Sassano and Baruh aided and abetted and caused World Markets' violations of Section 15(c) Exchange Act and Rule 10b-3.

51. Baruh also willfully aided and abetted and caused World Markets' violations of Rule 22c-1. As an initial matter, World Markets violated Rule 22c-1. Rule 22c-1, as adopted under Section 22(c) of the Investment Company Act, requires certain mutual funds, persons designated in such issuers' prospectuses as authorized to consummate transactions in any such securities, their principal underwriters, or dealers in the funds' securities to sell and redeem fund shares at a price based on the current NAV next computed after receipt of an order to buy or redeem. World Markets, by virtue of dealer agreements with mutual funds' principal underwriters,

was a dealer within the meaning of Rule 22c-1. World Markets accepted and executed trades after the close of the United States equity markets at a price other than the current NAV which was next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Baruh knew of, and substantially assisted in, this violation. Specifically, Baruh knowingly accepted mutual fund orders after 4:00 p.m. ET. Baruh then processed those orders as though they had been placed prior to 4:00 p.m. ET so the customer could receive the same day's NAV. Baruh's actions allowed the customer to place trades after 4:00 p.m., after learning after-hours information, but receive that same day's NAV. Baruh therefore willfully aided and abetted and caused World Markets' violations of Rule 22c-1 as adopted under Section 22(c) of the Investment Company Act.

52. As a result of the conduct described above, Okin and Abry willfully aided and abetted and caused violations of Section 17(a) of the Securities Act, Sections 10(b) and 15(c) of the Exchange Act and Rules 10b-3 and 10b-5. Okin and Abry knew that Sassano and his group both had a large market timing business and were improperly concealing their activities from mutual funds, and they assisted them in doing so. More specifically, Okin and Abry received letters that mutual funds sent to World Markets informing it that the Sassano group's trading violated the respective fund's prospectus. Additionally, Okin and Abry were aware that at various times, certain mutual funds threatened to cancel their dealer agreements with World Markets because of Sassano's market timing. Okin and Abry also knew the Sassano group used deceptive tactics to evade the mutual fund's restrictions. For example, as discussed above, Okin and Abry knew Sassano used the Schwab trading platform to conceal his activities from the mutual funds and to continue to time mutual funds that had blocked Sassano's customers timing activity. Both were also aware of the allegations by at least one mutual fund that Sassano was breaking up trades and using multiple RR numbers "so the market timing goes undetected." Armed with this knowledge, Okin and Abry also provided substantial assistance. Okin and Abry, among others, helped the Sassano group gain access to the Schwab platform. Moreover, in June 2002, Okin approved a lower margin rate for one of Sassano's customers, despite Baruh specifically telling Okin that the customer had multiple accounts "to stay under the radar with the mutual fund companies, otherwise it is the same entity." Then, in July 2002, Okin approved Sassano's timing of annuities, over the objection of the Head of the Oppenheimer Life Agency, who by that time had received numerous complaints from annuity companies about Sassano's market timing. Finally, Abry knew Sassano used multiple accounts and broke up trades into small amounts to facilitate his deceptive market timing. Nonetheless, Abry approved multiple account opening documents for many of Sassano's market timing customers and knew of Sassano's frequent requests for additional RR numbers. As Baruh explained to Abry in one request for new RR numbers, "the reason for this is because the Sassano name is so well known in the mutual fund business that at times it becomes a hinderance. [sic] Therefore if we had new rep numbers, and to take it one step further, those reps still got paid out to Mike but had a special coding such as just his initials it would shield us from the Fund Companies." Consequently, Okin and Abry willfully aided and abetted and caused Sassano's and Baruh's and their customers' violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5, and World Markets' violations of Sections 10(b) and 15(c) of the Exchange Act and Rules 10b-3 and 10b-5.

53. Okin and Abry failed reasonably to supervise Sassano and Baruh. Abry, as branch manager at World Markets and Fahnestock, had immediate supervisory authority over Sassano and Baruh. Okin, as Head of PCS at World Markets, had supervisory authority for the RRs in PCS, including Sassano and Baruh. Okin retained this supervisory authority over Sassano and Baruh at Fahnestock. Okin and Abry, however, failed reasonably to supervise Sassano and Baruh. Okin and Abry were confronted with evidence that Sassano and Baruh were breaking up trades to evade mutual funds' internal timing monitors, using annuities as an additional way to obtain "capacity," using multiple RR numbers to evade detection and using external trading platforms to conceal trading activity. Despite their knowledge concerning Sassano's and Baruh's activities, neither took adequate steps to discipline Sassano or Baruh or otherwise took reasonable steps to stop this conduct, unless and until a mutual fund threatened to terminate its relationship with World Markets, and even then they did not take reasonable steps with a view to preventing the conduct. For these reasons, Okin and Abry failed reasonably to supervise Sassano and Baruh under Section 15(b)(6) of the Exchange Act, which incorporates by reference Section 15(b)(4)(E).

III.

54. In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 15(b) of the Exchange Act including, but not limited to, civil penalties pursuant to Section 21B of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 203(f) of the Advisers Act including, but not limited to, civil penalties pursuant to Section 203(i) of the Advisers Act;

D. What, if any, remedial action is appropriate in the public interest against Baruh pursuant to Section 9(b) of the Investment Company Act including, but not limited to, civil penalties pursuant to Section 9(d) of the Investment Company Act; and

E. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Sassano should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and from causing violations and any future violations of Section 15(c) of the Exchange Act and Rule 10b-3, and whether Sassano should be ordered to pay disgorgement and prejudgment interest;

F. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, and Section 9(f) of the Investment Company Act, Baruh should be ordered to cease and desist

from committing or causing violations of and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and from causing violations and any future violations of Rule 22c-1 as adopted under Section 22(c) of the Investment Company Act, and Section 15(c) of the Exchange Act and Rule 10b-3, and whether Baruh should be ordered to pay disgorgement and prejudgment interest; and

G. Whether, pursuant to Section 21C of the Exchange Act, Okin and Abry should be ordered to cease and desist from committing or causing violations of and any future violations of violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and from causing violations and any future violations of Section 15(c) of the Exchange Act and Rule 10b-3, and whether Okin and Abry should be ordered to pay disgorgement and prejudgment interest.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that each Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If any Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, that Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forth with upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness

or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Nancy M. Morris
Secretary